Fall 2007

the Pennsylvania Accountant

pspa

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The Magazine Of The Pennsylvania Society of Public Accountants

✓ A Guide to Pennsylvania State Transferable Tax Credits

✓ Professionals Corner

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the Pennsylvania Accountant

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A Message From The President

Autumn is the season of cool evenings with majestic sunsets, foliage in all its many colors, Saturday afternoons spent following the college scoreboards, and… the season to finish all of those tax returns that we put on extension last Spring!

At the September Leadership Meeting, members discussed the future of PSPA with regard to its membership growth and marketing efforts. Conference topics ranged from a possible name change for PSPA to various membership programs aimed at our target market. In an effort to gather input from both current members and potential members, PSPA will conduct a survey at each of the Gear Up 1040 Seminars this year. Respondents will enter their name in a drawing for a $100 Visa GiftCard. Membership input and feedback is our best gauge for planning the future of the organization, so I hope that you will participate in this very important survey.

PSPA's effort on the legislative front continues to grow. PSPA introduced a bill last summer (HB 1650) sponsored by House Member Marc J. Gergely of Allegheny County (Representative Gergely serves on the Professional Licensure Committee and was joined by twenty other sponsors on the bill). The bill addresses the issue of peer review fees, exemption for firms with five or fewer reviewed financial statements of companies having less than $ 2 million in gross annual revenues, and calls for the adoption of peer review standards that are not monopolized by AICPA.

On September 12, 2007, PSPA provided testimony before the House Professional Licensure Committee regarding proposed changes to the CPA Law. The two main issues involve CPA mobility among states and the simple majority (51%) ownership change for CPA firms. PSPA members Paul Cannataro and Timothy Sundstrom communicated PSPA's position at the meeting. The membership of PSPA owes Paul, Tim, Chuck McDonald of Malady & Wooten, Executive Director Sherry DeAgostino and all of the participants of our Chapter sponsored Legislator Appreciation events for the progress that PSPA continues to make at the State Capitol.

My Chapter visits are providing me with the opportunity to talk with members across the state and to hear about their experiences and practice concerns. While there appears to be no ready solution to the issues of accounting pronouncements overload or about why tax laws are passed without more input from our profession, it does help to know that the challenges facing me as a sole practitioner are the same ones facing other tax and accounting professionals throughout Pennsylvania and beyond. Some would say that "misery loves company"; I'd like to think of it as common challenges that can be solved if we are all willing to work together.

Next year's 61st PSPA convention is scheduled for June 26th-29th at the Hershey Lodge in Hershey, PA. We are looking forward to a program of events that will appeal to all members of the family. Additional information on this event will appear in the Winter 2008 issue of this magazine.

Respectfully Submitted,
Gerald L. Brenneman, CPA
PSPA President

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PSPA to Conduct PRACTICE & FEE SURVEY as Membership Benefit

PSPA will launch an online survey to members in an effort to collect useful data regarding fees and other practice information that will help you to better manage your practice. Once the survey is active, PSPA members will be sent an email with the link where they can complete the survey. This will be an anonymous survey. Once you respond, your email address will be added to a list, but your email address will not be attached to your survey response. This list will be used for the purposes of distributing the survey results only. In order to receive a copy of the survey results you must respond to the survey. If you are unsure if the PSPA has an accurate email address for you please contact the PSPA Executive Office at 1-800-270-3352 or complete the change request on the back of this publication.

PSPA to Meet with PA Department of Revenue

The PSPA Committee on Cooperation with the PA Department of Revenue will hold its annual meeting with the Department on November 15, 2007. The meeting transcript will be posted to the PSPA website following the meeting. The Q&A will also be printed in the Winter 2007 issue of this publication.

PSPA Holds Legislator Appreciation Breakfast

The South Central Chapter of the PSPA held a Legislator Appreciation Breakfast on October 23, 2007, in the East Wing of the Capitol Building. The event was well attended by both legislators and PSPA members alike. Topics of discussion included pending accounting legislation: SB 838, HB 1765 & HB 1650.

Legislators attending the event included:

Rep. Stephen Barrar, District 160; Rep. James Kotik, District 45; Rep. Ron Miller, District 93; Rep. Dan Moul, District 91; Rep. Marc Mustio, District 44; Rep. Jerry Nailor, District 88; Rep. Steven Nickol, District 193; Rep. John Payne, District 105; Rep. Scott Perry, District 92; Rep. Harry Readshaw, District 36; Rep. Dick Solobay, District 48; Rep. Dick Stevenson, District 8; Rep. James Wansacz, District 114; and Senator Edwin Erickson, District 26; Senator Patricia Vance and Rep. Scarlatti were represented by staff.

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PENNSYLVANIA TAX UPDATE

Changes to Tax Administration and Appeals Process Take Effect January 1, 2008

By Sharon R. Paxton

As discussed in more detail in a prior edition of *The Pennsylvania Accountant,* significant changes to the tax administration and appeals process will apply to all determinations and assessments of tax liability issued by the Pennsylvania Department of Revenue on or after January 1, 2008. Current procedures will continue to apply to appeals of tax assessments, determinations and settlements issued prior to January 1, 2008, until there is a final disposition. For most major Pennsylvania taxes, an "assessment" process will be employed, and the procedures for filing administrative appeals from such assessments, as well as for the handling of refund claims, will be standardized. One of the primary changes will be the elimination of the corporate tax account "settlement" process. Under the new rules, notices of additional corporate taxes will be in the form of "assessment" notices. If a company's corporate tax report is accepted as filed, there will be no notice to the taxpayer. Generally, corporate tax assessments will be required to be issued within three years from the date the tax report was filed.

Applicability of Capital Stock/Foreign Franchise Tax to Single Member LLC or Business Trust Owned by Nonprofit Organization

On September 20, 2007, the Pennsylvania Department of Revenue issued Corporation Tax Bulletin 2007-01 to clarify its position on the subjectivity of disregarded entities (LLCs and business trusts) owned by non-for-profit organizations to Capital Stock/Foreign Franchise Tax ("CSFT"). Tax-exempt organizations under Section 501 of the Internal Revenue Code, and entities organized as not-for-profit organizations that would qualify as tax-exempt organizations under Section 501, are exempt from CSFT. To qualify as a not-for-profit entity, the Articles of Organization, Trust Agreement or Bylaws must specifically state that the LLC or business trust is organized as a not-for-profit entity and limit the activity of the entity to those of a not-for-profit or tax exempt organization. In addition, the Bulletin lists documents that must be provided to the Department of Revenue to support a position that the entity would qualify as a tax-exempt organization under Section 501 of the Internal Revenue Code.

Transportation Companies May Benefit From Court's Rejection of Department of Revenue's Tax Apportionment Procedure

On April 27, 2007, a majority of the Commonwealth Court, sitting *en banc*, upheld the Court's 2006 decision in *FedEx Ground Package Systems, Inc. v. Commonwealth*, in which a three-judge panel rejected the Department of Revenue's longstanding interpretation of Pennsylvania's "revenue-miles" apportionment fraction, which is used to apportion the income and value of transportation companies for Corporate Net Income Tax and Franchise Tax purposes. The Court determined that the numerator of the apportionment fraction should be computed by multiplying "Pennsylvania miles" by "Pennsylvania average receipts" per mile, rather than by multiplying "Pennsylvania miles" by "everywhere receipts per mile." The Commonwealth filed a Notice of Intent to Appeal with the Pennsylvania Supreme Court on May 25, 2007. Although the Commonwealth Court's decision is not yet final, transportation companies should consider filing protective refund claims if it appears they have overpaid Pennsylvania corporate taxes under the method of calculation adopted by the Court.

Companies doing business in multiple states generally apportion their income and value to Pennsylvania using a three-factor apportionment formula that measures the volume of property, payroll and sales in Pennsylvania. Transportation companies are, however, subject to a special apportionment procedure. The Tax Reform Code of 1971 provides that the business income of railroad, truck, bus and airline companies must be apportioned based on the ratio of "total revenue miles within this Commonwealth" to "total revenue miles of the taxpayer everywhere." See 72 P.S. § 7204(3)2(b)(1). A "revenue mile" is defined as "the average receipts derived from the transportation by the taxpayer of persons or property one mile." Id. The Department of Revenue has historically divided total receipts by total miles, then multiplied that number by Pennsylvania mileage to arrive at Pennsylvania "revenue miles," which is the numerator of the apportionment fraction. However, this is a "shortcut" that really results in apportionment based on a pure mileage ratio and ignores variances that may result from different types of hauling and different costs incurred in different geographical areas.

The Commonwealth Court ruled that FedEx Ground Package System should be allowed to use a numerator based on revenues *actually realized* from mileage traveled in Pennsylvania. As the company's average receipts per mile in Pennsylvania were \$2.94, as compared to \$3.93 per mile everywhere, the Department's "shortcut" method substantially overstated the company's Pennsylvania tax liability. The Court determined that the Department's

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NSA State Director's Message

NSA State Director of the Year

Tax Preparer Legislation

Tax preparer registration legislation continues to be a hot topic, and it appears that enactment is inevitable. The current legislative proposal would require any tax return preparer not recognized in Circular 230 (CPA's, PA's, EA's & Attorneys) to take and pass a new federal examination to become registered. NSA feels this would be unfair to those members who have earned an ACAT credential (Accreditation Council for Accountancy and Taxation) by passing a rigorous examination which demonstrates competence in tax return preparation. NSA continues to meet with Congress and Treasury officials to ensure that the ACAT examination is validated for purposes of this legislation, or as an alternative to any new federal examination. In addition, ACAT is now accredited by the National Commission for Certifying Agencies (NCCA), which now enhances ACAT's status with government regulators, college boards, etc. ACAT is an independent accrediting and monitoring organization affiliated with the National Society of Accountants. ACAT accredits professionals in independent practice who have demonstrated measurable knowledge of the principles, practices, and ethical standards of accounting and taxation. NSA wants their members to not only be recognized as professionals but to be professionals.

"*Every professional needs a professional credential*". Explore your options. Visit ACAT's website today at: www.acatcredentials.org

Education

NSA continues to make quality education programs available on your desktop through ***ConnectED***, a series of one hour webinars to help Accountants and Tax Professionals. As a special introductory offer for NSA members, anyone signing up for 2 webinars at $35 each will get a third FREE. For more information regarding the webinars please contact NSA toll free at (800) 966-6679.

The following programs were recently added to the schedule:

Thursday, November 29, 2007
Topic: Tax Season Management

Thursday, December 20, 2007
Topic: Minimizing Liabilities during Tax Season and Beyond.

Thursday, January 17, 2008
Topic: Microsoft Office

Thursday, February 28, 2008
Topic: No Business is Too Small for an Employee Benefit Plan

Thursday, March 27, 2008
Topic: Easy Client Communications

Thursday, April 24, 2008
Topic: Outlook: How to Effectively Use a Program You Already Have

Thursday, May 29, 2008
Topic: A Dollar Here…A Dollar There

Thursday, June 26, 2008
Topic: The Engagement Process: The Life of a Client from Birth to Death

Visit NSA's Learning Gateway for quality, affordable education online or CD-ROM at www.softconference.com/NSATLG/

NSA's 2007 Enrolled Agent Review Course is now available on NSA's Learning Gateway.

NSA Membership Offer

NSA is the Home for Main Street Accounting and Tax Professionals.

The National Society of Accountants is once again offering a discounted membership to any PSPA member who joins NSA *as a new member* (Offer does not apply on renewal memberships). PSPA members can join NSA for $129, and save $50 off the regular $179 membership fee. A NSA membership application appears on page 19 for your convenience.

If you are not an NSA member, why not complement your valuable PSPA membership and experience the benefits that membership in a national organization has to offer.

Associate State Directors

The following individuals have volunteered to serve NSA in the capacity of Associate State Directors, and can be contacted regarding membership questions and information on NSA programs.

Philadelphia Chapter
Andrew J. Piernock, Jr., ATP
Scranton/Northeast Chapter
Debra Eremus, ATP
Western PA Chapter
Penny Erbe, EA

Please feel free to contact me with any questions via email at rbraschcpa@verizon.net

Respectfully submitted,
Richard Brasch Jr., CPA
NSA State Director - Pennsylvania

NSA State Director, Richard Brasch, CPA; NSA Governor District II, Robert Sommer and Ray Bucks, CPA, PSPA Past President at the NSA Convention in Portland Oregon.

PSPA Welcomes New Members

(The following members joined from September through October 2007)

BUXMONT CHAPTER

James J. Dalaimo, CPA	Raggi & Weinstein LLP	BX	Active
Michael J. Desantis, CPA	Desantis & Company	BX	Active
Lee B. Fleischman	Durham Bookkeeping & Consulting	BX	Active
Elaine D. Freemer, CPA		BX	Active
Gary D. Goodman, CPA	Gary D. Goodman, CPA PC	BX	Active
Kelly-Jean Kwiatkowski, CPA	AccountAbility	BX	Active
Leonora E. Pennington, EA	Professional Bookkeeping Systems	BX	Active
Patrick Sharkey, CPA	Abo and Company LLC	BX	Active
Linda T. Siegfried, CPA	Orleans Companies	BX	Active

CENTRAL CHAPTER

James H. Nolen	Nolen's Accounting & Tax Service	CTL	Active
Kelly A. Schanley, CPA	Wren & Company	CTL	Active

LEHIGH VALLEY CHAPTER

Gerard P. Donchez, CPA		LV	Active
Wayne Grant		LV	Active
John Gugliotta, Jr., CPA	John Gugliotta, Jr., CPA	LV	Active
John F. Murphy, CPA	John F. Murphy, P.C.	LH	Active
Susan M. Smith	Getz, Hall & Co., LLP	LV	Active
Robert L. Weseloh, CPA		LV	Active

NORTHEAST CHAPTER

Carl J. Babushko, CPA	CJ Babushko, CPA PC	NE	Active
Michael Chisarick	Snyder & Clemente	NE	Active
David B. Fellin	David B. Fellin, Accountant	NE	Active
George Ginader, CPA	Ginader Jones & Co., LLP	NE	Active
Walter S. Sokol, CPA	Walter S. Sokol, CPA	NE	Active
Charles L. Wilson, CPA	Pocono Home Care	NE	Active
David L. Winkelblech, CPA		NE	Active

PHILADELPHIA TRI-COUNTY

James F. Difilippo, CPA	Difilippo & Company	PH	Active
Theodore H. Ottey, III, CPA	T.H. Ottey III	PH	Active
Beatrice E. Taylor, EA		PH	Active

SOUTH CENTRAL CHAPTER

Larry T. Crown, CPA	R. William Wire Associates, P.C.	SOC	Active
Virginia C. Gante, CPA		SOC	Active
Michael A. Jackman, EA	Patriots Choice Tax Service	SOC	Active
Jennifer Roth	USI Affinity	SOC	Associate

SOUTHEAST CHAPTER

Joseph J. Ciminera, Jr.	Ciminera & Associates Inc.	SE	Active

WEST CENTRAL CHAPTER

Julie L. Kosinski	Lea Ann S. Plessinger CPA LLC	WC	Active

WESTERN PENNSYLVANIA CHAPTER

Maureen R. Edmiston, CPA	Edmiston & Associates	WP	Active
Robert J. Kopko, CPA	Robert J. Kopko, CPA, PC	WP	Active
Stephanie MacCarney		WP	Student
Enefaa N. Nwosi, CPA		WP	Active
Dennis Schauer	Henry Rossi and Company	WP	Active
Lisa Vento	University of Pittsburgh	WP	Active
Sharon L. Weisberg, CPA	Lando, Weisberg, Kelley & Co., PC	WP	Active

Congratulations to Winners of PSPA's 2007 Membership Sweepstakes

PSPA's 2007 Membership Sweepstakes program was met with much success. Through the efforts of our members, more than sixty new members were obtained from this program alone.

Congratulations to Howard Boehringer of the Lehigh Valley Chapter, and to C. Thomas Maniaci of the Philadelphia Tri-County chapter whose names were chosen in the drawing for the 5-day seminar pack. This drawing included the names of all PSPA members whose referral led to the successful recruitment of at least one new member.

Patricia Kramer, CPA, of the Philadelphia Tri-County Chapter won the Gear Up 1040 Seminar. This drawing included the names of all PSPA members who participated by referring at least one name for membership recruitment purposes. Look for information on PSPA's new membership campaign in the next issue of this magazine.

Pennsylvania Business Owners' Outlook Stable Amid Turmoil On Wall Street; Housing Worries Temper Their Companies' Prospects

The well-publicized anxiety on Wall Street about credit availability and the housing market is not yet translating into the same degree of concern among small and mid-sized business owners across Pennsylvania, according to the PNC Economic Outlook survey. This survey, conducted every six months since April 2003, gauges the mood and sentiment among small business owners who represent the bedrock of the American economy.

Steady interest rates and lower energy prices contributed to their stable outlook for sales, profits and hiring during the next six months compared to our surveys in Spring 2007 and Autumn 2006.

Key Findings

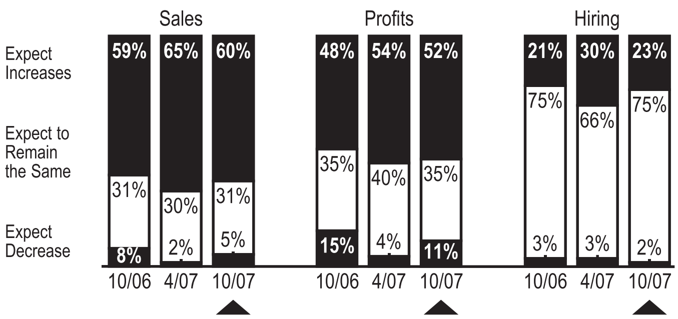
Wall Street's credit squeeze and housing slump are not yet raising the same concerns among Pennsylvania business owners, according to PNC's findings.

Stable Business Outlook: Reflecting stable interest rates and lower energy prices, owners' expectations for sales, profits and hiring are on par with the Spring 2007 and Autumn 2006 results. More than half expect company sales (60%) and profits (52%) to increase while one out of four (23%) expect to add full-time employees.

House Prices: Their tempered view on the housing market is evident by the two out of five (41%) who expect local house prices to decline during the next 6-12 months, compared to one out of four (25%) that expect an increase. One-third (34%) expect prices to be flat. Of those business owners who expect a decline in house prices, close to one out of five expect that it will adversely impact their sales (17%) and profits (21%).

Owners' Expectations for Their Business

For the next six months

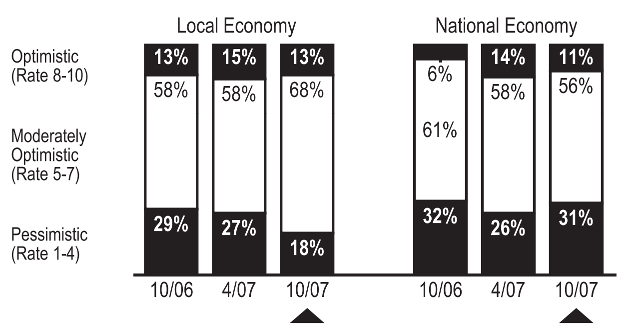


- **Investing In Their Own Business:** Just over two out of three (67%) Pennsylvania business owners plan to make investments in their business, slightly less than in our past two surveys. Technology equipment, mentioned by 19%, is most likely to receive the largest spending increase over the next six months with other types of business equipment (13%) second, followed by employee training (10%).
- **Continued Cost Pressures:** Two out of three (67%) expect to pay higher prices to suppliers, up from our Spring survey but still below the Autumn 2006 survey. These results likely reflect limited declines in energy and other raw material prices. About half expect an increase in employee compensation (51%) and healthcare costs (53%), little changed from 48% and 57%, respectively, in our Spring survey.
- **Prices Charged to Customers:** A greater number (38%) plan to pass along some portion of their higher costs in the form of higher selling prices to customers, compared to 32% in the Spring. Of those who plan to raise prices, nearly two-fifths (38%) report favorable market conditions will allow it, while three-fifths (59%) are attempting to preserve profit margins.

Owners' Outlook on the Economy

U.S. and local outlook for the next six months

- **Attitude About Local Economy**: Compared to the U.S. economy, Pennsylvania business owners are relatively more positive about their local economy with 13% optimistic (rating 8 to 10 on a scale of 1 to 10) and 18% pessimistic (rating 1 to 4). This is less pessimistic about their local economy than in our past two surveys.
- **Attitude About U.S. Economy**: Compared to last Spring, a lower number (11% now vs. 14% in the Spring) are optimistic while a higher number (31% now vs. 26% in the Spring) are pessimistic about the U.S. economy.
- **Lingering Concerns**: Among a list of five choices, higher energy prices remain the top concern for Pennsylvania business owners, but to a lesser extent than in our survey a year ago. 34% said a rise in energy prices would have the greatest impact on their business over the next six months compared to 30% in the Spring and 50% last Autumn. The possibility of federal business and personal tax rate hikes is the second greatest concern (20%).



The PNC Financial Services Group, Inc. (NYSE: PNC) is one of the nation's largest diversified financial services organizations providing retail and business banking; specialized services for corporations and government entities, including corporate banking, real estate finance and asset-based lending; wealth management and global fund services. **METHODOLOGY:** Harris Interactive Inc., a global market research firm, conducted the telephone survey between late July and mid-August 2007 among small and mid-sized businesses. 610 interviews were conducted nationally and 734 within PNC Bank's primary region, including 155 in Pennsylvania. All respondents were owners or senior decision-makers in their respective businesses. Sampling error for the Pennsylvania results is +/-8 percentage points. Study released October 2007. **DISCLAIMER:** This report was prepared for general information purposes only and is not intended as specific advice or recommendations. Any reliance upon this information is solely and exclusively at your own risk.

the Pennsylvania Accountant

A Guide to Pennsylvania State Transferable Tax Credits

The state of Pennsylvania has enacted many programs which are meant to assist businesses in the state. There are many grants, tax credits, and other economic benefits that can be used by companies throughout the state. A few of the tax credits have been designated as transferable, allowing companies to sell these credits for cash. This report will outline the ways for a company to apply for and sell these tax credits.

KIZ TAX CREDITS

KIZ tax credits are part of the larger state KIZ program. The program is meant to cultivate entrepreneurial undertakings by assigning geographic areas which benefit those operating in the zones. These zones are located near colleges and universities, so that these educational institutions can work together with business support organizations to help new companies succeed. New graduates are thus encouraged to stay in the area to pursue their professional careers.

Each qualifying company can be awarded up to \$100,000 in credits each year, with a cap of \$25 million available to all companies per year. The availability to sell the credits gives these small businesses the opportunity to bring in cash that can be used to improve or sustain existing operations, or to create new operations. Credits were first awarded in 2006.

Application for Credits

To be eligible for KIZ credits, a company must meet three major criteria:

- The company must be operating within a designated KIZ
- The company must be less than eight (8) years old
- The company must be in one of the targeted industry sectors

The KIZ geographic boundaries are set by the state and can only be altered with state approval. Each KIZ has different targeted industries, with major focus on information and health technology and advanced manufacturing. Prior to state approval, each company must receive approval from the local KIZ coordinator that all requirements have been met. Depending on the zone, additional requirements may be set.

The yearly deadline for application is September 15. Award letters are then sent out December 15. The credits must be applied to that year's tax liability before they can be sold.

Tax Credit Calculation

A company will compare gross revenues (not net profits) in the first two years of operation to determine the tax credit. The tax credit is equal to 50% of the increase from year one to year two in revenue generated while in the zone. Grants may be included in the calculation of gross revenues. The amount of gross revenue is taken directly from the federal tax return for the company for each corresponding year.

If a company earns \$100,000 in year one and \$300,000 in year two, they would be eligible for the maximum \$100,000 credit.

\$300,000 - \$100,000 = \$200,000
\$200,000 * 50% = \$100,000

Each subsequent year, the credit can be calculated using the next year's revenues. So, if that same company earns \$600,000 in year three, they would be eligible for another \$100,000 credit.

\$600,000 - \$300,000 = \$300,000
\$300,000 * 50% = \$150,000
(\$100,000 max per company per year)

A very important note is that revenues generated from the sale of tax credits can also be included in gross revenues from year to year. The money from the sale of the credits is taxable as income, but can continue to create tax credits even if revenues have leveled off.

If the amount of total credits applied for exceeds the \$25 million cap, the credit awards will be pro-rated based the total amount applied for against the original cap. For example, if the total amount of credits applied for is \$50 million, awards would be reduced by ?. There is no carry over for any unused portion from year to year.

Use and Sale of Credit

Once the company has been approved and received their award letter, they must apply the credit to any existing tax liability for the year in which they applied. A company may not carry back any credit, but may carry forward a credit over the next four years.

If the company decides to sell the credit, it must apply to the Department of Commerce and Economic Development for approval. The buyer must be identified on the application for sale and must sign the application as well. A seller may sell to more than one buyer, and a buyer may buy from more than one seller.

The buyer must use the full amount of the credit purchased in the year in which they receive the credit. The purchased credits are not allowed to exceed 75% of the buyer's total tax liability. Any unused portion of the purchased credit cannot carry back or forward. The credits can only be sold once.

Comprehensive Example

Happy Valley KIZ is created in January 2005. ABC, Inc. is created in June 2005, and moves into the KIZ in November 2005. Any revenue earned outside the KIZ is not used for the calculation of the tax credit. ABC, Inc. earns \$10,000 during its time in the KIZ in 2005. ABC earns \$210,000 in 2006, having spent the whole year in the KIZ. ABC applies for credits before September 15, 2007, and is awarded a \$100,000 credit on December 15, 2007. ABC uses \$5,000 of the credit for taxes due to the state, and sells the remaining \$95,000 to BIG Corp. for a rate of .90 cents on the dollar. After the state tax returns have been filed for 2007, and the DCED has approved, BIG gives ABC a check for \$85,500.

ABC, Inc. has just received \$85,500 to use for its company in any way. BIG Corp. has just saved \$9500 in taxes. ABC can continue to apply for tax credits as long as its revenue increases from year to year, within the eight year window.

R&D TAX CREDITS

R&D tax credits are meant as a stimulus for new companies to use to generate revenue even if they are in a development stage in which very little profit is being made. This credit is beneficial because companies that are not as profitable and have little or no state tax liability may sell the credits for cash. These credits have been available since 1999, and available to sell since 2003.

Unlike KIZ credits, there are no time, geographic, or segment requirements for R&D tax credits. Any business with qualifying R&D expenditures can apply for these tax credits.

There is no individual limit for the credit, but there is an overall cap of $40 million. $8 million of this total is set aside for small businesses. A small business is any business whose total assets are worth less than $5 million. If there is any excess in the credits over the cap, the credits will be pro-rated based on the cap limit and the total applied for.

Application for R&D Credits

Companies must submit the application for credits based on the prior year's R&D expenditures by September 15. Approval will be received by the company by December 15. Some larger companies may have to submit a study done by an outside source that details the auditing of the research expenses.

Calculation of Credit

To determine the credit, a rate of 10% is applied to the increase in research expenses occurring in Pennsylvania from the base year research expenses. Small businesses could use a 20% rate beginning in 2006.

Qualified research expenses are defined in Section 41 (B) of the Internal Revenue Code of 1986. The research expenses must have occurred in the state of Pennsylvania to be eligible for this credit.

Use and Sale

Companies may now use the credits to absorb up to 100% of state tax liability. There is a fifteen year carry forward for these credits available to the original grantee, but no carry back.

Any credits that have not been used one year after being granted may be sold. The buyer may use the credit to absorb up to 75% of their state tax liability. There is no carry back or carry forward for the buyer. The buyer may not re-sell the credits.

FILM TAX CREDITS

This new transferable tax credit entitled the Film Production Tax Credit is available for certain production expenses of the producers of feature films and certain television commercials or shows intended for a national audience.

Production expenses include:

- compensation paid to individuals or payments made to entities representing individuals for their services
- the cost of construction, operations, editing, photography, sound synchronization, lighting, wardrobe and accessories
- the cost of transportation
- the cost of insurance coverage
- the costs of food and lodging
- the purchase of music or story rights and
- the cost of rental of facilities and equipment.

Production expenses will not include:

- certain items such as deferred compensation or profit sharing
- development costs, marketing or advertising expenses or
- expenses related to the selling of the credit.

Application for Film Tax Credits

The Pennsylvania Department of Community and Economic Development (DCED) will administer the award of the credits on a first-come, first-served basis using the data on which the application for credits is received. DCED will certify that amount of the credit to PA Department of Revenue upon execution of a contract outlining the production and Pennsylvania production expenses.

Any taxpayer who is awarded this credit and fails to incur qualified production expenses as outlined in the contract shall repay the amount of the credit claimed to the Commonwealth.

Calculation of Credit

The credit is equal to 25% of qualified film production expenses. Qualified film production expenses are Pennsylvania production expenses if at least 60% of the total production expenses are incurred in Pennsylvania.

Compensation paid to individuals or payments made to entities representing individuals for services provided in the film cannot exceed $15 million.

Use and Sale

Credits granted may be carried forward, but they may not be carried back or refunded. Credits may be sold to another Pennsylvania tax payer for cash. Third party agents can assist with the sale of credits.

CONCLUSION

Transferable tax credits are an easy way for companies in Pennsylvania to obtain funding for their companies and projects. The use of tax credits can enable a small, growing company to maintain its current level and avoid cash flow problems, or even allow a company to grow dramatically. These tax credits can amount to hundreds of thousands of dollars for companies to use to reinvest in the company and generate future revenues. By selling tax credits that can be acquired so easily, a company can turn itself around with very little effort.

The growth of economic areas across Pennsylvania can be accelerated because of these credits. By injecting a few hundred thousand dollars into the economy of any of the many zones across the state, growth can be achieved and sustained. With the collaboration of educational institutions and business development organizations in these programs, a strong economic base can be built that will sustain local economies for years to come.

2007 SEMINAR GUIDE

ACCOUNTING PROGRAMS

DATE	TITLE	SPEAKERS	LOCATION	SPONSOR	CPE
Dec. 5	Gear Up Accounting Seminar	Gear Up Speakers	Springfield Country Club, Springfield	Philadelphia Chapter	8 Hours A&A

TAX PROGRAMS

DATE	TITLE	SPEAKERS	LOCATION	SPONSOR	CPE
Nov. 5 & 6	Gear Up 1040 Seminar	Gear Up Speakers	Days Inn Penn State, State College	PSPA	16 Hours Tax
Nov. 5 & 6	Gear Up 1040 Seminar	Gear Up Speakers	Best Western, Bethlehem	Lehigh Valley Chapter	16 Hours Tax
Nov. 6 & 7	Gear Up 1040 Seminar	Gear Up Speakers	Bel Aire Hotel, Erie	PSPA	16 Hours Tax
Nov. 7 & 8	Gear Up 1040 Seminar	Gear Up Speakers	Woodlands, Wilkes Barre	Northeast Chapter	16 Hours Tax
Nov. 13 & 14	Gear Up 1040 Seminar	Gear Up Speakers	Springfield Country Club, Springfield	Philadelphia & Southeast Chapters	16 Hours Tax
Nov. 14	Estate & Financial Planning for the Small Business Owner	National Panel	Webcast Seminar	PSPA	8 Hours Tax
Nov. 19 & 20	Gear Up 1040	Gear Up Speakers	Sheraton Harrisburg-Hershey	Central/SOC	16 Hours Tax
Dec. 3 & 4	Gear Up 1040 Seminar	Gear Up Speakers	Radisson Hotel, Trevose	Buxmont Chapter	16 Hours Tax
Dec. 10 & 11	Gear Up 1040	Gear Up Speakers	Sheraton Harrisburg-Hershey	Central/SOC	16 Hours Tax
Dec. 12	Annual Tax Update	National Panel	Webcast Seminar	PSPA	8 Hours Tax
Dec. 13 & 14	Gear Up 1040 Seminar	Gear Up Speakers	Radisson Hotel, Monroeville	Western PA Chapter	16 Hours Tax

The following by-law change is being printed in this issue of the PA Accountant Magazine in accordance with the PSPA By-Laws

Section 2. Except as otherwise herein provided, the President may appoint the following standing committees:

1. By-Laws
2. Membership/Public Relations
3. PSPA/PICPA Liaison
4. Banking Relations
5. Executive Director's Oversight
6. Legislative
7. Monitoring State Board of Accountancy
8. Long Range Planning
9. Budget
10. Professional Conduct and Grievances
11. Co-operation with IRS
12. Co-operation with PA Department of Revenue
13. Education
14. Editorial Advisory
15. Auditing
16. Annual Meeting
17. Scholarship
18. <u>Practice Continuation</u> ~~(Quality Review)~~
19. Technology
20. Nominating

From the committee members thus selected, the President shall designate a Chairman from the Board of Directors or Committee.

CPA Licenses Expire December 31, 2007

Individual and Firm CPA license holders must renew their licenses on or before December 31, 2007. This calendar year expiration date is a change to prior biennial licensing periods, which expired April 30th. Once renewed, your new license will run from January 1, 2008 through December 31, 2009.

Licensees should renew their individual licenses once they've met the CPE and peer review requirements, but must be renewed no later than December 31, 2007. The State Board of Accountancy will not accept renewal applications on which licensees have used course dates that occur at some point in the future. In other words, you cannot count credits that have not yet been taken even though you are registered to attend.

Firm licenses can be renewed immediately; licensees do not need to wait until the individual CPE requirement is met. Once again, this license must be renewed by December 31, 2007. Firms must submit their peer review acceptance letter with the renewal.

CHAPTER MEETINGS

Go to www.pspa-state.org/chapters to download a registration form or contact the PSPA Executive Office at 1-800-270-3352

	TOPIC	SPEAKER	LOCATION	CPE
Buxmont				
Nov 27	IRS Update & Ethics*	Richard Furlong, IRS	Williamson's Restaurant	4 Tax
Dec 18	PA Ind. & Corp Tax Update	Jeffrey Creveling & David Braden PA Dept. of Revenue		4 Tax
Jan 22	NJ Tax Update	Jim Trussel		2 Tax
Central				
Nov 13	Divorce - Accountants Role		Eden Resort	4 Other
Dec 8	Spouse's Night	Rainbow Dinner Theatre		
Lehigh Valley				
Nov 20	NJ Corporate Tax Update	James Trussel	Best Western	2 Tax
Dec 4	Tax Law Update, breakfast meeting	Mary Lew Kehm, CPA	Best Western	2 Tax
Dec 17	Holiday Party		Best Western	
Philadelphia				
February 1, 2008	Tax Potpourri	David Zalles	Springfield Country Club	8 Tax
South Central				
Nov 14	Forensic Accounting	John H. Marx	Holiday Inn Harrisburg	4 A&A
Dec 6	Holiiday Part		Mt Hope Winery	
Jan 23	Federal & PA Forms Update	Frank Kelly, EA	Holiday Inn Harrisburg	4 Tax
West Central				
Nov 15	Estate Planning Issues in Estate and Long Term Care Planning	Gerald P. Neugebauer Jr., Esquire, CPA Julieanne E. Steinbacher, Esquire	Joe's Place, Tyrone, PA	3 Tax 2 A&A 1 Other
Western PA				
Dec 15	Holiday Party			
Jan 17	State Tax Update/SAS New Regulations of Auditing		Edgewood Country Club	2 Tax/ 2 Accounting
Feb 14	Round Table Discussion	Penny Erbe, Kevin Matschner	Edgewood Country Club	2 Other
May 12	After Tax Season Party			

* Fulfills EA Ethics Requirement

IRS Changes Position on Non-Spouse Beneficiary Rollovers from Plans

New for 2008, retirement plans MUST allow direct rollovers for beneficiaries. This is a change to IRS Notice 2007-7 which made direct rollovers for beneficiaries optional.

the Pennsylvania Accountant

PROFESSIONALS CORNER

IRS Grants Unlimited Access to E-Services to Circular 230 Practitioners

Circular 230 Practitioners have asked the IRS for unlimited access to E-Services and beginning November 1, 2007, IRS has granted that request.

Circular 230 Practitioners who qualify are attorneys, certified public accountant, public accountants and enrolled agents eligible to practice before the IRS. New users must still complete an online IRS e-file application and go through the same approval process used for Electronic Return Originators.

The three incentive products are:

Disclosure Authorization

Eligible tax professionals can complete disclosure authorization forms, and view and modify existing forms, all online. Disclosure Authorization allows tax professionals to electronically submit Form 2848, Power of Attorney and Declaration of Representative; and Form 8821, Tax Information Authorization. Disclosure Authorization expedites processing and issues a real-time acknowledgement of accepted submissions.

Electronic Account Resolution

Tax professionals using EAR can quickly resolve clients' account problems by electronically sending and receiving inquiries about individual or business account problems, refunds, installment agreements, missing payments or notices. Tax professionals must have a power of attorney (Form 2848 only) on file before inquiring into a client's account. Responses are delivered to a secure electronic mailbox within three business days. Use Disclosure Authorization to submit the Form 2848 to the IRS.

Transcript Delivery System

TDS resolves clients' need for return and account information quickly in a secure, online session. It allows eligible tax professionals, with a power of attorney (Form 2848 only) on file, to request and receive account transcripts, wage and income transcripts, tax return transcripts, and verification of non-filing letters for individual taxpayers and account transcripts for business taxpayers. Use Disclosure Authorization to submit the Form 2848 to the IRS.

For additional information go to the IRS E-Services information page at www.irs.gov/taxpros/article/0,,id=174857,00.html.

New PURTA Surcharge Rate Published

In the Sept. 30, 2007, Pennsylvania Bulletin, the Department of Revenue published the rate of the Public Utility Realty Tax Act (PURTA) surcharge. The tax rate shall be imposed upon gross receipts taxes as provided by law for the period beginning the next January 1.

The result of the PURTA surcharge calculation for the tax year beginning January 1, 2008, is the imposition of 2.8 mills (0.0028) to be paid upon each dollar of gross receipts reported and settled. Exceptions to this surcharge are gross receipts from providing mobile telecommunication services, as well as telegraph or telephone messages transmitted in interstate commerce.

2008 Inflation Adjustments Widen Tax Brackets, Raise IRA/401(k) Limits and Expand Tax Benefits

For 2008, personal exemptions and standard deductions will rise, tax brackets will widen and workers will be able to save more for retirement, thanks to inflation adjustments announced by the Internal Revenue Service.

By law, the dollar amounts for a variety of tax provisions must be revised each year to keep pace with inflation. As a result, more than three dozen tax benefits, affecting virtually every taxpayer, are being adjusted for 2008. Key changes affecting 2008 returns, filed by most taxpayers in early 2009, include the following:

The value of each personal and dependency exemption, available to most taxpayers, is $3,500, up $100 from 2007.

The new standard deduction is $10,900 for married couples filing a joint return (up $200), $5,450 for singles and married individuals filing separately (up $100) and $8,000 for heads of household (up $150). Nearly two out of three taxpayers take the standard deduction, rather than itemizing deductions, such as mortgage interest, charitable contributions and state and local taxes.

Tax-bracket thresholds increase for each filing status. For a married couple filing a joint return, for example, the taxable-income threshold separating the 15-percent bracket from the 25-percent bracket is $65,100, up from $63,700 in 2007.

The maximum earned income tax credit for low and moderate income workers and working families with two or more children is $4,824, up from $4,716. The income limit for the credit for joint return filers with two or more children is $41,646, up from $39,783.

The maximum Hope credit, available for the first two years of post-secondary education, is $1,800, up from $1,650 in 2007.

The income limit for the savers credit is $53,000 for joint filers (up $1,000), $39,750 for heads of household (up $750) and $26,500 for singles and married persons filing separately (up$500). Low-and moderate income workers who contribute to a retirement plan, such as an IRA or 401(k), may qualify for the credit, which is available in addition to any other tax savings that apply.

The contribution amount allowed for Roth IRAs begins to phase out for joint filers with incomes exceeding $159,000 (up from $156,000) and $101,000 (up from $99,000) for singles and heads of household.

For contributions to a traditional IRA, the deduction phase-out range for an individual covered by a retirement plan at work begins at income of $85,000 for joint filers (up from $83,000) and $53,000 for a single person or head of household (up from $52,000).

Participants in most employer-sponsored 401(k) plans and 403(b) plans for employees of public schools and certain tax-exempt organizations can contribute up to $15,500, unchanged from 2007. Individuals, age 50 or over, can make an additional contribution of up to $5,000, also unchanged from 2007.

Individuals participating in SIMPLE retirement plans can contribute $10,500, unchanged from 2007. Those, age 50 or over, can make an additional contribution of up to $2,500, also unchanged from 2007.

The annual contribution limit for

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PNC
LEADING THE WAY

Professionals Corner

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most defined contribution plans rises to $46,000, up from $45,000 in 2007.

Notice 2007-90 (IRB 2007-46)

This notice alerts taxpayers, tax practitioners, executors and other persons who represent estates, that, in light of a recent Tax Court decision (Estate of Roski, 128 T.C. 113), the IRS is changing its policy and now will determine on a case-by-case basis whether security will be required when a qualifying estate elects under Code Section 6166 to pay all or a part of the estate tax in installments. This notice invites comments from the public regarding the relevant factors and appropriate standards for determining whether security is deemed to be necessary (and thus will be required) to protect the government's interest in obtaining full payment of the estate tax and interest thereon when that liability is deferred under Section 6166.

IRS to Offer One-Day Workshops for Some Section 501(c)(3) Organizations

The IRS announced (IR-2007-176) that it is offering one-day workshops for small and mid-sized Section 501(c)(3) exempt organizations during fall and winter 2007 and spring 2008. The workshop is designed for administrators, volunteers or tax practitioners who are responsible for an organization's tax compliance. Each workshop is limited to 200 attendees and will be filled on a first-come, first-served basis. The non-refundable cost is $45 and includes a text and other IRS forms and publications. The workshops are being held in Salt Lake City, Columbia, S.C., Sacramento, CA, Arlington, VA, Austin, TX, and Columbus, OH.

You can't deduct net losses from an activity not entered into for profit

In Nora E. Keating et al. (T. C. Memo. 2007-309) the IRS challenged the taxpayer's horse breeding activity, claiming it was a hobby loss. The taxpayer was a doctor, but she spent significant amounts of time in the activity and, aware that her horse activity could be scrutinized by the IRS, she keep records, consulted a CPA, etc. Nonetheless, the Court sided with the IRS in finding the taxpayer's activities were a hobby, and not carried on for profit. The Court cited failure to consult experts in the field, not maintaining detailed costs on the individual horses, etc.

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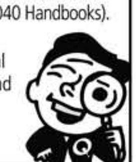

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Professionals Corner

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TREASURY, IRS ISSUE PENSION PROTECTION ACT GUIDANCE

The Treasury Department and the Internal Revenue Service (IRS) issued a notice providing guidance on the corporate bond yield curve and associated segment rates that will be used under the enhanced pension funding rules enacted by the Pension Protection Act of 2006 (PPA).
Under PPA, Treasury was required to produce a yield curve and simplified segment rates for investment-quality corporate bonds that are in the top three quality levels for use by private pension plans in determining their funding obligations and the amounts of lump-sum payments to retirees. IRS Notice 2007-81 outlines the methodology used by Treasury in producing the yield curve.
The Notice also provides the full yield curve and various segment rates for August 2007 together with the 23 months of historical segment rates extending back to September of 2005. In addition, each month IRS will publish a standard notice containing updated monthly yields along with the additional rates required under the provisions of PPA.

IRS Offers Relief for Late S Corporation Elections

Businesses that are eligible to elect S corporation tax treatment now have a simpler process for requesting relief for late elections under a change announced by the Internal Revenue Service.

Revenue Procedure 2007-62 allows small businesses that missed filing Form 2553, Election by a Small Business Corporation, before filing their first Form 1120S, U.S. Income Tax Return for an S Corporation, to file both forms simultaneously. The change is effective for taxable years that end on or after Dec. 31, 2007. Internal Revenue Bulletin 2007-41, published on Oct. 9, 2007, includes this new guidance.

The IRS cautioned that the requirement for filing Form 2553 to establish the election in advance of filing the initial Form 1120S remains in effect. However, the new process will save time and effort for those taxpayers who can establish reasonable cause for making a late election.

Form 2553 will be updated to reflect the new rules, so taxpayers filing paper Forms 2553 should download the most recent revision from IRS.gov. Form 2553 can also be submitted electronically as an attachment to an e-filed Form 1120S.

There is relief under earlier guidance for late elections for taxpayers who meet certain conditions. Previously, taxpayers had to submit Form 2553 along with a statement explaining the reasons for the late election. The new guidance provides a simplified method to request relief by permitting taxpayers to file their first Form 1120S along with Form 2553 and include the statement on the form.

Small business corporations that are eligible for tax treatment under Subchapter S of the Internal Revenue Code enjoy the advantages of the corporate structure while being taxed similarly to a partnership or sole proprietorship.

The new procedure will reduce taxpayer burden by allowing the agency to process a properly completed tax return and its corresponding election without delays or additional contacts with taxpayers to resolve the issue of a missing election.

The change, based on suggestions from tax professionals and small business owners, resulted from the work of an IRS process improvement team led by the Office of Taxpayer Burden Reduction.

Notice 2007-86

Provides additional transition relief regarding the application of Section 409A to nonqualified deferred compensation plans. Generally, this notice extends to December 31, 2008, the transition relief that was scheduled to expire on December 31, 2007. This transition relief revokes and supersedes the transition relief provided in section III of Notice 2007-78 and modifies the relief provided in section IV of Notice 2007-78 related to employment agreements. It does not affect the guidance provided in section IV of Notice 2007-78 related to the application of Section 409A(b) (restrictions on certain trusts and other arrangements).

Notice 2007-88 (IRB 2007-45)

Requests comments from the public regarding a proposal to change the process by which taxpayers obtain the consent of the Commissioner of Internal Revenue to change a method of accounting for federal income tax purposes. The proposal described in this notice is one possible approach. The IRS is interested in considering other possible approaches. Therefore, changes to the process, including any pilot program, will not become effective until the IRS considers public comments and suggestions received in response to this notice and publishes guidance announcing changes to the process.

Gaming Sponsors to Use IRS Form W-2G on Winnings Greater than $5,000

Beginning March 4, 2008, casinos and other sponsors of poker tournaments will be required to report winnings of more than $5,000 on IRS Form W-2G. Tournament sponsors who comply with this reporting requirement will not need to withhold federal income tax at the end of a tournament. If any tournament sponsor does not report the tournament winnings, the IRS will enforce the reporting requirement and also require the sponsor to pay any tax that should have been withheld from the winner if the withholding requirement had been asserted. The withholding amount is normally 25 percent of any amounts that should have been reported. So that tournament sponsors can comply with this requirement, tournament winners must provide their taxpayer identification number to the tournament sponsor. If a winner fails to provide this identification number, the tournament sponsor must withhold federal income tax at the rate of 28 percent. See IR-2007-173.

Social Security Announces Increase in 2008

The Social Security Administration has announced that Social Security and Supplemental Security Income benefits will increase by 2.3 percent in 2008. In addition, the maximum amount of earnings subject to the Social Security tax (taxable maximum) will increase to $102,000 from $97,500.

The IRS Releases Publication 393, Federal Employment Tax Forms.

The publication contains the instructions and samples of Form W-2, which has been redesigned for 2007. The publication also includes instructions for ordering Forms W-2, W-3, the 1099 series (INT, MISC, DIV, etc.).

Offer in Compromise

If you're seeking an offer in compromise, you've got to submit financial information before the IRS will even consider reducing the amount you owe. In Michael D. Cornwell et ux. (T.C. Memo. 2007-294) the Tax Court sided with the IRS in holding that the settlement officer's inclusion of the taxpayer's prior overtime earnings in the calculation of reasonable collection potential was not an abuse of discretion.

Special IRS Web Section Unveiled for Homeowners Who Lose Homes

The IRS unveiled (IR-2007-159) a special new section on IRS.gov for people who have lost their homes due to foreclosure. The IRS also reassured homeowners that, although mortgage workouts and foreclosures can have tax consequences, special relief provisions can often reduce or eliminate the tax bite for financially strapped borrowers who lose their homes.

The new section of IRS.gov includes a variety of information, including a worksheet designed to help borrowers determine whether any of the foreclosure-related relief provisions apply to them. For those taxpayers who find they owe additional tax, it also includes a form they can use to request a

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4 years:	________	________
3 years:	________	________
2 years:	________	________
1 year:	________	________
<1 year:	________	________
Total:	________	________

*Average of 25 hours per week or less

In the past three years, how many firm members attended a loss control seminar ____

On what date was the firm established___________

Within the past 5 years:

Has the firm provided services to a client that is engaged in the issuance, offering, registration or sale of securities or bonds; or provided clients with forecasts or projections for inclusion in sales literature, etc., of any securities or bonds?
YES ☐ NO ☐

Has any member of the firm provided services or acted as a director/officer/committee member for any financial institution? YES ☐ NO ☐

Has any member of the firm had an accounting license or authority to practice accounting revoked, or been subject to disciplinary action, fine reprimand, or criminal penalty related to performance of professional services? YES ☐ NO ☐

Renewal: ___/___/___ Insurer: ___________________ Limit: $ ___________ Deductible: $ ___________ Premium: $ __________
What is the retroactive date on your current policy ___/___/___ ☐ None ☐ N/A

Approximately percentage of income received from the following activities for the last annual period:

Activity	%
Audit: Public Companies**	
Audit: Other	
Review	
Compilation	
Bookkeeping	
Tax	
Business Valuation	
Computer Consulting	
Litigation Support	

Activity	%
Litigation Support	
Management Advisory Services	
Assurance Services	
Financial Planning	
Asset Management	
Sale of Mutual Funds	
SEC/Sarbanes Oxley Related Services**	
Other*	
Total	100%

••Calls for a supplement

CLAIMS HISTORY (within the past five years):

Date claim(s) Reported	One: ____/____/19 ______	Two: ____/____/19 ______	Three: ____/____/19 ____
Amount Paid, including	$ ____________________	$ ____________________	$ ____________________
Defense Expenses (if closed)	$ ____________________	$ ____________________	$ ____________________
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Pennsylvania Tax Update

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interpretation of the statute essentially reduces the apportionment fraction to Pennsylvania miles over "everywhere miles." The majority stated that this was clearly not the intent of the General Assembly. Otherwise, it would not have specifically defined "revenue mile" in terms of "average receipts." Importantly, the majority also rejected the Department's interpretation of the statute because it failed "to limit the numerator of the fraction to Pennsylvania activity," which is a fundamental principle of tax apportionment. Three dissenting judges contended that the majority's decision improperly eliminates "revenue miles" as the basis of apportionment and adopts a "gross receipts" apportionment scheme.

As a practical matter, some companies may not readily be able to break out Pennsylvania revenues, or may be charging rates that are uniform throughout their coverage area. However, transportation companies with the ability to access detailed data should evaluate past Pennsylvania Corporate Tax Reports and file protective refund claims if they believe they have overpaid Pennsylvania tax.

Pennsylvania Supreme Court Upholds Imposition of Bank Shares Tax on Bank with Out-of-State Shareholder

In *Allfirst Bank v. Commonwealth*, 82-83 MAP 2006 (October 17, 2007), the Pennsylvania Supreme Court ruled that the imposition of Bank Shares Tax on a bank whose sole shareholder is a foreign corporation not domiciled in Pennsylvania is constitutionally permissible because the tax is imposed on the institution itself and is not a personal property tax imposed on the institution's shareholder(s). The Court rejected Allfirst's argument that the Bank Shares Tax is imposed on shareholders and is therefore unconstitutional to the extent it purports to tax the personal property of a foreign corporation not commercially domiciled in Pennsylvania and that does not conduct banking activities in the state. In reaching its decision, the Court relied heavily on the United States Supreme Court's decision in *Society for Savings in the City of Cleveland, Ohio v. Bowers*, in which the U.S. Supreme Court held that a similar tax imposed by Ohio was a tax on banks and not a tax on bank depositors. The Court quoted with approval a three-part test used in Bowers, focusing on the third element of that test – whether the bank, if it pays the tax, has a legal right to make itself whole from its shareholders. The Court determined that the Pennsylvania statute does not require collection of the tax from a bank's shareholders, does not place an affirmative duty to pay the tax on the shareholders, and does not otherwise grant the bank a right of indemnification. Thus, the Court viewed the Bank Shares Tax statute as only giving the bank the option of paying the tax with shareholder funds. Finding this to be dispositive, the Court held the tax to be levied directly on the bank itself and not on the bank's shareholders.

Sharon R. Paxton is a member of McNees Wallace & Nurick LLC's State and Local Tax Group.

Professionals Corner

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payment agreement with the IRS. In some cases, eligible taxpayers may qualify to settle their tax debt for less than the full amount due using an offer-in-compromise.

The IRS urges struggling homeowners to consider their options carefully before giving up their homes through foreclosure.

Under the tax law, if the debt wiped out through foreclosure exceeds the value of the property, the difference is normally taxable income. But a special rule allows insolvent borrowers to offset that income to the extent their liabilities exceed their assets.

The IRS cautions that under the law, relief may be limited or unavailable in some situations where, for example, part or all of a home was ever used for business or rented out.

Borrowers whose debt is reduced or eliminated receive a year-end statement (Form 1099-C) from their lender. By law, this form must show the amount of debt forgiven and the fair market value of property given up through foreclosure. Though the winning bid at a foreclosure auction is normally a property's fair market value, it may not necessarily reflect its true value in some cases.

The IRS urges borrowers to check the Form 1099-C carefully. They should notify the lender immediately if any of the information shown on their form is incorrect. Borrowers should pay particular attention to the amount of debt forgiven (Box 2) and the value listed for their home (Box 7).

The IRS also reminds lenders of their obligation to provide accurate information on the Form 1099-C. By law, the lender must send a copy of this form to the IRS. IRS follow-up contacts with taxpayers involved in foreclosure are based largely on the information reported on this form, and whether it conflicts with information provided by the taxpayer on their federal income tax return.

The IRS normally initiates these follow-up contacts by sending the borrower a notice. The tax agency urges borrowers with questions to call the phone number shown on the notice. The IRS also urges borrowers who wind up owing additional tax and are unable to pay it in full to use the installment agreement form, normally included with the notice, to request a payment agreement with the agency.

You can get more detailed information on the IRS Web page Questions and Answers on Home Foreclosure and Debt Cancellation.

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