

the Pennsylvania

Spring 2010



Community Accounting & Tax Professionals

Accountant

The Magazine Of The Pennsylvania Society of Public Accountants

- ✓ **PA Budget Inching Forward**
- ✓ **IRS Registration of Tax Return Preparers**
- ✓ **ATTENTION LICENSEES: Is YOUR Firm Practicing Without a License?**
- ✓ **Small Business Health Care Tax Credit**
- ✓ **Important Changes to Continuing Professional Education Requirements**

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A Message From The President



One of the constants in our lives both professionally and personally is change. As we approach the upcoming convention it is a reminder that there are many changes that are taking place, not the least of which is the advancement of our line officers.

This is a perfect opportunity to thank the members of PSPA and our very capable Executive Office for the terrific year we all experienced. Having reached out to the members of all nine chapters was a rewarding experience.

And having Sherry there along with Bonnie and Janet to facilitate the many needs required during this year was, as the Visa commercial states, "Priceless".

I also want to thank our line officers for supporting me this year. As an organization we can look forward with confidence knowing that Barry Myer and his line officers will continue the progress being made by PSPA.

One of the last events to take place during this administration will be the 63rd Annual Convention. Under the capable management of Chairwoman Joyce Huttman, the Cooperstown convention promises to provide a grand finale to this year. Hopefully many of you will be there to partake in the festivities that have been planned.

Our organization is monitoring the professional changes that are taking place. We are working on presentations to keep our members abreast of the new regulatory model the Tax Preparer Registration will bring. Seminars are being planned to assist our members in keeping on top of this regulatory process including a prep course to enable participants to pass the Competency Exam.

Our profession is experiencing many changes. Significant accounting changes are being ushered in by SSARS 19, which will revolutionize Compilation and Review Engagements. PSPA is planning seminars to provide a detailed explanation of the changes brought about by SSARS 19 which will impact financial statements prepared for periods ending on or after December 15, 2010.

Finally, PSPA is attempting to bring Legislative changes that will positively effect your practice. PSPA's two tax bills will bring about a more efficient taxing system in PA. We hope to see all of our members at our 7th Annual Day on the Hill, on June 15, to bring our message of these tax bills to our legislature.

While our busy tax season may be over, the many challenges that our profession has embraced will require each member to maintain their knowledge and improve their skills in order to provide clients with the most up to date accounting and tax services. And PSPA will be there to support our members, who are among the best accountants and tax preparers in the world.

Respectfully submitted,

Paul J. Cannataro, CPA
PSPA President



Community Accountants
& Tax Professionals

Your 2010-2011 Membership Dues are now Due

PSPA membership dues are due on or before June 30, 2010. You can pay your dues online at www.pspa-state.org. Paper forms were mailed to the PSPA membership in early May. Active and Associate membership dues remain an incredible value at just \$185. Help your association by paying your dues on time.

PSPA Gives You a Return on Your Investment!

- Educational discounts on relevant seminar, geared to your firm
- \$50-80 seminar discounts on each full day and multiple day seminars.
- Chapter Meetings – 2 & 4 hour topics – always timely, practical information.
- PSPA Listserv – Our email discussion group...giving you answers at your fingertips.
- Savings on a variety of products and services with members-only discounts on CCH, Hertz, Quickfinder Handbooks, The Tax Book, RIA Federal Tax Handbook, UPS, Bank of America, Becker CPA Review and much, much more.
- Advocacy for you and your firm in Harrisburg.
- FREE Classified Advertising, both online and in this magazine.

Are We Doing a Good Job? Tell a Colleague

GET A MEMBER, GET A SEMINAR 2010-2011

Recruit just ONE new member to join the PSPA and YOU will receive a seminar of your choice, absolutely FREE. The free seminar is a \$150 value...another outstanding benefit of membership in the PSPA.

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IRS Section 7216 Webinar REPLAY

Now Available at www.pspa-state.org

PSPA Members: \$20

You Can't Afford Not to Have This Information!



Cooperstown, New York

Register today for PSPA's 63rd Annual Meeting, June 24-27, 2010 at the beautiful Otesaga Resort in Cooperstown, New York. All registration materials and schedule of events are available at www.pspa-state.org. PSPA members were mailed a registration packet in late April.

Day at the Capitol

Tuesday

June 15,

2010





PENNSYLVANIA TAX UPDATE

PA BUDGET INCHING FORWARD

By Sharon R. Paxton

While Commonwealth revenue collections continue to come up short of projection for the current year (General Fund about \$1 billion short of target through April) and it is almost universally acknowledged that pension fund shortfalls will present a major financial problem for the Commonwealth in FY 2011-2012, there seems to be little interest in voting for tax increases in what is an election year for most Pennsylvania legislators.

SALES & USE TAX EXPANSION

On March 23rd, the Pennsylvania House, by a 107-89 vote, adopted a 2010-2011 General Fund budget similar to the Governor's February budget proposal and sent it to the Senate. This, however, did not include Governor Rendell's proposal to reduce the sales tax rate from 6% to 4%, but broaden the tax base to produce a net tax increase of more than half a billion dollars. In fact, the House also did not vote on any of the other tax increases and changes proposed by the Governor - including combined reporting of Corporate Net Income Tax, a natural gas severance tax, elimination of the sales tax vendors' allowance and expansion of tobacco taxes to cover cigars and smokeless tobacco.

At this point, most observers see little likelihood that the Governor's sales tax proposal will be adopted this year. The Governor's sales and use tax proposal would expand the tax base to include nearly all services and eliminate 74 categories of tax exemptions. It would retain consumer exemptions for food, clothing and prescription medicines and business exclusions for manufacturing and processing machinery and equipment. The services to become subject to tax under the Governor's proposal would include: accounting, auditing and bookkeeping services, administrative services, advertising, public relations and related services, air transportation, all other professional and technical

services, architectural, engineering and related services, consulting (scientific, environmental and technical), custom computer programming, design and data processing, electrical, plumbing, heating air conditioning maintenance, information services, legal services, transportation services, scientific research and development services, specialized design services, waste management and remediation, and water and sewage services. Among the exemptions directly impacting the business community that would be eliminated are: bad debts, catalogs and direct mail advertising materials, charges for returnable containers, common carrier equipment, public utility equipment and supplies, rail transportation equipment and wrapping and packaging supplies.

Governor Rendell proposes to put the additional revenue collected in FY 2010-11 into a new "Stimulus Transition Reserve Fund," which would be tapped to replace federal stimulus funding that has shored up the 2009-10 budget and will provide Pennsylvania with approximately \$2.8 billion in FY 2010-11. Only \$500 million of stimulus funding will be available in FY 2011-12.

COMBINED REPORTING; SINGLE SALES FACTOR; REMOVING NOL CAP

Unless there is a quick sea-change from last year's budget debate, the Governor's resurrected proposal to move from separate company reporting to combined reporting for Corporate Net Income Tax purposes would also seem to have tough sledding ahead. While past proposals would have substantially reduced the rate in conjunction with combined reporting, this time the Governor has proposed only a one percent reduction, from 9.99% to 8.99%. The proposal does appear to have some support on the Governor's side of the aisle.

In conjunction with combined reporting, the Governor proposes

to eliminate the use of property and payroll factors for apportionment and move to a "single sales factor." On a standalone basis, this proposal has had substantial business support, and the Commonwealth has made several increases in the weighting of the sales factor over recent years. It will be interesting to see whether the Governor's opponents will seek to sever this part of the Governor's proposal and incorporate it into the final budget on a standalone basis.

The same could be said for the Governor's proposal to lift the current cap on net operating loss carryforwards. The Governor would lift the cap prospectively and retain the current \$3 million or 20% cap for prior year losses.

NATURAL GAS SEVERANCE TAX

There seems to be substantial debate over the Governor's proposal for a natural gas severance tax. Many other states impose a severance tax on natural gas. With the Marcellus Shale formation underlying a large part of the Commonwealth, many see a golden opportunity to generate revenues to deal with current and future revenue shortfalls.

CIGARS & SMOKELESS TOBACCO

Pennsylvania apparently is the only state that does not tax cigars and smokeless tobacco. The Governor's budget documents claim that in public polling, 90 percent of the public supports taxing these products. Southcentral PA tobacco farmers and their allies, however, have been successful in the past in opposing this tax.

It is difficult to believe that Pennsylvania's General Assembly will vote for any general tax increase in an election year. However, since we are facing a substantial revenue shortfall in the current fiscal year and fiscal storm clouds on the horizon, it would not be surprising to see some narrow "adjustments" in Pennsylvania's tax

system, in conjunction with this year's budget.

ADMINISTRATIVE SERVICE FEE NOT TAXABLE HELP SUPPLY SERVICE

In *All Staffing, Inc. v. Commonwealth*, 325 F.R. 2006 (January 5, 2010), a three-judge panel of the Commonwealth Court ruled that administrative services performed by All Staffing, Inc., a professional employer organization ("PEO"), were not subject to Pennsylvania's sales tax because they did not fall within the definition of "help supply services." The Commonwealth has filed Exceptions to the Court's decision and oral argument has tentatively been scheduled for June 2010.

All Staffing is a PEO, an entity that provides certain human resources-related services ("PEO Services") to clients by placing the clients' employees on its payroll. After a client's employees are transferred to All Staffing's payroll, the client retains control and direction over the day-to-day activities of the employees and makes all hiring, firing, wage setting, disciplinary and other business and personnel decisions. All Staffing performs various PEO Services for its clients, including data processing services, human resources assistance, safety and risk management assistance, and maintenance of workers' and unemployment compensation accounts. The PEO Services that All Staffing provides for its clients are performed by its own personnel under All Staffing's supervision, and almost all of these services are performed at All Staffing's offices, away from client worksites. All Staffing's clients pay for all costs of the employees placed on All Staffing's payroll, as well as an administrative service fee for the PEO Services.

The Commonwealth contended that, because All Staffing places all of a client's employees on its payroll, its business activities fall within the definition of "help supply services," and thus fees charged for the PEO Services are subject to sales tax. (The taxability of reimbursements for "employee costs" were not in dispute because, when employee costs included in the price for "help supply services" are separately stated, those costs are not subject

to sales tax; only the "service fee" is taxed.) All Staffing argued that the sales tax statute imposes tax on a vendor's provision of "help" to its customers, and that it does not provide "help" (i.e., personnel) to any of its clients. Rather, it is the client's payroll that is transferred to All Staffing, and All Staffing has never introduced a single new individual to a client's workforce. All Staffing further noted that it uses its own employees, not the clients' employees on its payroll, to provide the PEO Services, and its clients do not supervise the employees providing the PEO Services. The Commonwealth Court panel agreed with All Staffing's position that the PEO Services are not subject to sales tax because those services are performed solely by All Staffing's own employees who are supervised by All Staffing and not by its clients.

TOWNSHIP "FLAT TAX" ON BUSINESS UPHELD

The Commonwealth Court, in an unreported opinion, has affirmed a decision of the Court of Common Pleas of Bucks County, which held that a business privilege "flat tax" ordinance passed by Warrington Township did not violate the Local Tax Reform Act or the Uniformity Clause of the Pennsylvania Constitution. *Shelly Funeral Home, et al. v. Warrington Twp.*, No. 769 C.D. 2009, December 31, 2009.

The tax in question was imposed on only those businesses with gross receipts in excess of one million dollars. A consortium of local businesses filed a facial challenge to the ordinance, on the ground that the "flat tax" was in reality a gross receipts tax that carved out all businesses that did not exceed one million dollars in gross receipts, in violation of the prohibition on new gross receipts taxes under the Local Tax Reform Act. The consortium also argued that the tax violated the Uniformity Clause of Pennsylvania's Constitution (on the ground that the tax unfairly targeted those businesses that exceeded the one million dollar threshold) and improperly taxed receipts generated in 2008 prior to the passage of the ordinance.

The Commonwealth Court rejected these arguments, and explained that the tax was not a gross receipts tax, but

a "flat tax," which was clearly permitted under prior precedent. There was also no Uniformity Clause violation, as the township, in passing the ordinance, had taken into account the ability to produce revenue and found that those businesses with gross receipts in excess of one million dollars generally consumed a larger percentage of the township's resources. Finally, the court found that the ordinance did not improperly tax receipts generated prior to its passage, as the tax was a flat tax on the privilege of doing business, and merely consulted 2008 receipts to determine whether the tax applied. The consortium has filed a petition for allowance of appeal with the Pennsylvania Supreme Court.

PERSONAL INCOME TAX - MILITARY SPOUSES RESIDENCY RELIEF ACT

Under certain conditions, a service member's nonmilitary spouse can maintain out-of-state residency so that his/her compensation income will not be subject to Pennsylvania's Personal Income Tax. However, non-compensation income from Pennsylvania sources (e.g. from a Pennsylvania trade or business) will be subject to tax. *See* Personal Income Tax Bulletin 2010-1, issued March 17, 2010.

SALES & USE TAX - PRINTING EXCLUSION

The Pennsylvania Supreme Court has affirmed, *per curiam*, the Commonwealth Court's 2009 decision in *EUR Systems, Inc. v. Commonwealth*, 965 A.2d 319, in which the court ruled that a provider of fulfillment services could not claim the printing exclusion for equipment and supplies used in producing telephone bills. While some degree of individualization of documents is permissible, each telephone bill was so different from the others that they did not satisfy the regulation's requirement of "substantial[ly] similar printed matter." *EUR Systems, Inc. v. Commonwealth*, No. 48 MAP 2009, March 24, 2010.

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



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Firm:		Contact:	
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Annual Fees: \$ _____ **Yr. End:** ____ In the past three years, how many firm members attended a loss control seminar _____

Number of billable employees (with years of experience): _____ On what date was the firm established _____

	F/Time:	P/Time*:	
5+ years:	_____	_____	Within the past 5 years:
4 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 <input type="checkbox"/> NO <input type="checkbox"/>
3 years:	_____	_____	Has any member of the firm provided services or acted as a director/officer/committee member for any financial institution? YES <input type="checkbox"/> NO <input type="checkbox"/>
2 years:	_____	_____	
1 years:	_____	_____	
<1 years:	_____	_____	
Total:	_____	_____	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 <input type="checkbox"/> NO <input type="checkbox"/>

*Average of 25 hours per week or less

Renewal: ___/___/___ Insurer: _____ Limit: \$ _____ Deductible: \$ _____ Premium: \$ _____
 What is the retroactive date on your current policy ___/___/___ None N/A

Approximately percentages 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%

** Call for a supplement

CLAIMS HISTORY (within the past five years): None

Date claim(s) Reported	One: / / _____	Two: / / _____	Three: / / _____
Amount Paid, including Defense Expenses (if closed)	\$ _____	\$ _____	\$ _____
Reserve amount (if open)	\$ _____	\$ _____	\$ _____

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NSA State Director's Message



*NSA State Director
of the Year*

NSA President Robert Cross Addresses IRS PTIN Regs

On March 27, the IRS issued proposed regulations requiring all paid tax return preparers to have a valid PTIN by December 31 of this year. Identifying numbers issued by the Internal Revenue Service prior to the effective date of this regulation will expire on December 31, 2010, unless properly renewed. The IRS may conduct a tax compliance check on tax return preparers who apply for, or renew a PTIN or other prescribed identifying number.

On April 26, 2010, NSA President Robert Cross submitted comments on the proposed regulations to the IRS. In summary, Mr. Cross recommended that this regulation extend to all tax preparers including volunteers, and that registration fees to obtain or retain a PTIN for these preparers be limited or eliminated. In addition, it was recommended that PTINS be required for any preparers providing "FREE" services in conjunction with commercial services, such as refund anticipation loans, appliance sale promotions, automobile purchases and similar services incident to any commercial endeavor. Further, Mr. Cross recommended that the proposed regulations should be amended to provide that tax return preparers may register for a PTIN until such date as a competency test becomes available, and any preparer registering for a PTIN after the competency test is available must be a registered tax preparer. NSA was concerned that

tax preparers who attempt to register after December 31, 2010, but before the availability of a competency exam may be unable to receive a PTIN, and will therefore be unable to comply with the new requirement. The proposed regulations state that any preparer registering for a PTIN after December 31, 2010 and not regulated under Circular 230 must be a registered tax preparer. It is anticipated that the test will not be available until April 2011. NSA is urging IRS to implement an effective public awareness campaign relative to these proposed regulations.

NSA's 65th Annual Meeting

NSA's 65th Annual Meeting will be held in Arlington, VA on August 18-21, 2010 at the Hyatt Regency Crystal City. Register before July 1 to save \$100 off the full conference cost; after July 1, conference cost will be \$649. The schedule, similar to last year, includes 11 hours of CPE, the Awards breakfast, 2 buffet lunches, and admittance to NSA's Installation Banquet. NSA members across the nation will meet to elect officers for the upcoming year.

NSA Membership

Now is the time to join NSA, the Association for Accounting & Tax Professionals! As an NSA member, you'll get immediate access to NSA's newest benefit, "What's New In Tax" Online Center where you can get up-to-the-minute daily tax news, journal articles, tax alerts, newsletters, and other expert commentary from 18 CCH federal and state publications; you can customize and save your searches and even get email updates! To subscribe to these sources would cost you as much as \$7000, but we're giving it to members **FREE**. All you have to do is become an NSA member. Call NSA Membership Services toll-free at 800-966-6679 for additional

information.

IRS 2010 Tax Forums

Join your colleagues for three days of informative education sessions, training and networking, featuring a full agenda of the latest tax law information, hands-on workshops, networking opportunities and exhibits of the latest products and services for your business needs. NSA members will again receive a \$10 discount when registering through NSA. Tax Forum Schedule below:

Atlanta, GA (**June 22-24, 2010**)

Preregistration ends June 8th

Chicago, IL (**July 13-15, 2010**)

Preregistration ends June 29th

Orlando, FL (**July 27-29, 2010**)

Preregistration ends July 13th

New York, NY (**Aug 10-12, 2010**)

Preregistration ends July 27th

Las Vegas, NV (**Aug 24-26, 2010**)

Preregistration ends Aug 10th

San Diego, CA (**Aug 31-Sept 2**)

Preregistration ends Aug 17th

NSA Leadership Networking & Legislative Strategy Conference

The 2010 Leadership Conference will be held September 23-26, 2010 in Oklahoma City, OK. The 2011 program will be scheduled for the west coast.

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
National Society of Accountants

IRS Registration of Tax Return Preparers

In a recent news release, IRS has announced its plans to require tax return preparers to use Preparer Tax Identification Numbers (PTINs) as the preparer's identifying number on all tax returns and tax refund claims that they prepare. These regulations when final will implement some of the recommendations in Publication 4832, Return Preparer Review.

Under the proposed regulations, the IRS will issue forms, instructions, or other guidance that will require paid tax return preparers to begin using PTINs for all tax returns and refund claims filed after Dec. 31, 2010. *The PSPA strongly encourages all preparers to register for a PTIN by the deadline date of December 31, 2010 if they do not currently have one.*

The IRS plans to launch a new system before the end of the year through which all tax return preparers will be required to register, including those who already have a PTIN. Tax return preparers who already have a PTIN will have the number revalidated and reassigned to them through the new system, while tax return preparers who do not have a PTIN will be issued one through the new system.

Following the initial registration, currently licensed Certified Public Accountants, Public Accountants (in PA and NJ), Enrolled Agents or attorneys will be required to pass a competency test within three years of registration. Failure to pass the exam will result in the IRS contacting them

proposing to deactivate their PTIN and remove them from the list of registered preparers, as well as explaining the appeals process. IRS plans to have the competency test available by May 2011.

The IRS has a series of FAQs regarding tax preparer registration on their website. Practitioners have indicated particular concern regarding members of their staff and whether these individuals will need to register and pass the competency exam. Below is an excerpt from this FAQ that addresses this issue and indicates that employees who assist in return preparation, even if they don't sign the return, will be subject to registration:

Question: How will the recommendations impact owners of firms or franchises? Do the owners and their staff need to obtain a PTIN and test as applicable? What if an attorney or enrolled agent or CPA signs all the returns, would the unenrolled preparers be subject to the regulations?

Answer: All individuals who are compensated for preparing, or assisting in the preparation of, all or substantially all of a federal tax return or claim for refund or who sign, or are required to sign, a federal tax return or claim for refund as paid tax return preparer must obtain a PTIN and, if applicable, successfully pass an examination.

The following article was written by BNA Software and indicates the position that IRS may take during the interim period between when the preparer applies for the initial

registration and when he/she passes the exam. According to this article, preparers will not be able to use the 'registered preparer' designation until they've passed the competency test, but WILL be able to prepare returns during this period.

Reprinted From:
Tax News From BNA Software
IRS Says No Registered Preparer Designation without Competency Test

By Diane Freda
Publication date: 05/07/2010

Internal Revenue Service Electronic Tax Administration Director David Williams May 6 said that while all tax preparers will have to sign up with IRS under a new regulatory regime, they will not be given their registration papers with IRS until they have passed a test to determine their competency.

"People who come in [early] will have three years before they have to take the competency exam," he said. "Once you pass the test, we propose to call you an IRS registered tax preparer. We will give folks a certificate that says that."

Speaking at the Council for Electronic Revenue Communication Advancement's spring meeting, Williams outlined plans for IRS to assign a preparer tax identification number (PTIN) to all paid preparers who sign a return or who prepare all or substantially all of a tax return.

The objective is to have a web-based interface system up and running by Sept. 1, he said, allowing people to sign up, pay a fee, and obtain their PTIN. Those who already have a PTIN will be allowed to keep it, but they will have to pay a fee to register and update IRS's information about them.

IRS is working now on setting the user fee, after selecting Accenture as the contractor to establish the registration system.

Preparers will have to meet suitability

PSPA Planning to Offer Preparatory Course for Competency Exam



We are currently working with Gear Up Seminars to provide a preparatory course for the competency exam. More information will be forthcoming on dates and locations. We are targeting the course for Fall 2010, but it will depend on IRS' timeline.

requirements, Williams said. IRS is looking at the Circular 230 rules, adding that, “[what] you will see is a redefinition of practice before the IRS to include tax return preparation.”

IRS is also looking at how it does tax compliance checks because the service will need to determine that people who are preparing other people’s returns have been compliant in filing their own. IRS will be building a system to check that, he said.

IRS is expecting to sign up between 900,000 and 1.2 million tax preparers. A PTIN will become a condition of practice, Williams said. “If we identify a tax compliance problem or criminal problem we need to be able to resolve this and work through the due diligence process to determine if that person is really fit to practice before IRS.” None of that will be happening in the last four months of this year, he said.

Competency Exams

Anyone who is not an attorney, certified public accountant, or enrolled agent will be required to pass a competency exam. There will be two versions of the exam, which Williams said is expected to be available in May 2011. Preparers will be required to complete 15 hours of continuing education annually. Each year, two of those hours will need to be ethics training, and four hours of new tax law, he said.

There will be two exams at the start—one for the basic Form 1040 and the earned income tax credit, which will be limited to “Schedule C EZ.” The second exam will include small business returns and the full range of Schedule C returns, including individual and small business returns exams. Preparers need not take both exams, he said.

It will be several years before a database is up and running that will allow taxpayers to check to see what tests their preparer has passed, he said.

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ATTENTION LICENSEES: Is YOUR Firm Practicing Without a License?

The Pennsylvania State Board of Accountancy has determined that many accounting firms are practicing public accounting without the required firm license, and the fines that are assessed can be several thousands of dollars.

If you are a Certified Public Accountant or Public Accountant and your firm structure is either a partnership or corporation you are required to have a separate firm license. **THIS REQUIREMENT INCLUDES SINGLE MEMBER LLCs!** The only firm structure that does not need a firm license are those registered as Sole Proprietors. In recent years many smaller accounting firms have become LLC’s but have failed to apply for the firm license.

The initial firm license fee is \$45 and renewals are \$100. The renewals are based on the same licensing year as your individual license. The form for initial firm registration is available on the State Board of Accountancy’s website at: www.dos.state.pa.us/bpoa, click on ‘licensure information’ and then on ‘board forms.’

There are many good practitioners who have found themselves in this situation. We have been told by the Board Administrator for the State Board of Accountancy,

“Any possible disciplinary action against a firm for unlicensed practice is not precluded by the firm’s voluntary disclosure of its unlicensed practice in connection with an application for firm licensure. That being said, the Board Office holds firm to their stance that the burden for knowing the Rules and Regulations of the State Board of Accountancy falls on the licensee themselves and in this case the firms owners.” Firms are being fined when the fact they are practicing without a license is uncovered through some other means than the initial firm application. For example, if a licensee comes before the Board for a minor CPE infraction (i.e. failure to get 20 hours of CPE in the initial year of the biennial licensing period) the Board will look to see if a firm license is required. If it is found that the firm is practicing without a firm license the firm will be fined. It appears that in most of the cases a \$2,000 fine has been assessed for each year the firm practiced with out a license. (Many fines range between \$8,000-\$12,000).

Our Advice: Apply for your firm license today!

Questions? Contact the PSPA Executive Office at 1-800-270-3352.

Join the PSPA Practice Assistance Cooperative!

The PSPA Practice Continuation Committee is currently seeking PSPA members who would like to become a part of our Practitioner Assistance Cooperative. Basically, we’d like to add your name to our list as a practitioner willing to lend per diem practice assistance to a fellow PSPA member in the event of a medical emergency or death. The PC Committee is in the process of developing a list of guidelines to which a spouse can refer if a medical emergency or death of his/her practitioner spouse occurs. The Cooperative list will be a part of these guidelines. Please see page 15 of this publication for the Practice Assistance Cooperative registration form. The form should be mailed to PSPA Executive Office, Attn: Practitioner Assistance Cooperative, 20 Erford Road, Suite 200A, Lemoyne, PA 17043.

A workshop geared for both practitioner and spouse will be held at PSPA’s 63rd Annual Meeting.

Small Business Health Care Tax Credit

The new health reform law gives a tax credit to certain small employers that provide health care coverage to their employees, effective with tax years beginning in 2010. The Internal Revenue Service mailed postcards the week of April 19 to more than four million small businesses and tax-exempt organizations to make them aware of the benefits of the recently enacted small business health care tax credit, and to encourage them to check their eligibility. The following information and questions and answers provide information on the credit as it applies for 2010-2013, including information on transition relief for 2010. An enhanced version of the credit will be effective beginning in 2014. The new law, the Patient Protection and Affordable Care Act, was passed by Congress and was signed by President Obama on March 23, 2010.

Eligibility Rules

- **Providing health care coverage.** A qualifying employer must cover at least 50 percent of the cost of health care coverage for some of its workers based on the single coverage rate.
- **Firm size.** A qualifying employer must have less than the equivalent of 25 full-time workers not counting owners or family members (for example, an employer with fewer than 50 half-time workers may be eligible).
- **Average annual wage.** A qualifying employer must pay average annual wages below \$50,000 (not counting owners or family members).
- **Both taxable (for profit) and tax-exempt firms qualify.** The same definition of qualified employer applies to an organization described in Code section 501(c) that is exempt from tax under Code section 501(a). However, special rules apply in calculating the credit for a tax-exempt qualified employer. See the following FAQs.

Frequently Asked Questions & Answers

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Calculation of the Credit

1. What expenses are counted in calculating the credit?

A. Only premiums paid by the employer under an arrangement meeting certain requirements (a “qualifying arrangement”) are counted in calculating the credit. Under a qualifying arrangement, the employer pays premiums for each employee enrolled in health care coverage offered by the employer in an amount equal to a uniform percentage (not less than 50 percent) of the premium cost of the coverage. See questions below for information on transition relief for tax years beginning in 2010 with respect to the requirements for a qualifying arrangement.

If an employer pays only a portion of the premiums for the coverage provided to employees under the arrangement (with employees paying the rest), the amount of premiums counted in calculating the credit is only the portion paid by the employer. For example, if an employer pays 80 percent of the premiums for employees’ coverage (with employees paying the other 20 percent), the 80 percent premium amount paid by the employer counts in calculating the credit. For purposes of the credit (including the 50-percent requirement), any premium paid pursuant to a salary reduction arrangement under a section 125 cafeteria plan is not treated as paid by the employer.

In addition, the amount of an employer’s premium payments that counts for purposes of the credit is capped by the premium payments the employer would have made under the same arrangement if the average premium for the small group market

in the State (or an area within the State) in which the employer offers coverage were substituted for the actual premium. If the employer pays only a portion of the premium for the coverage provided to employees (for example, under the terms of the plan the employer pays 80 percent of the premiums and the employees pay the other 20 percent), the premium amount that counts for purposes of the credit is the same portion (80 percent in the example) of the premiums that would have been paid for the coverage if the average premium for the small group market in the State were substituted for the actual premium.

2. What is the average premium for the small group market in a State (or an area within the State)?

A. The average premium for the small group market in a State (or an area within the State) was determined by the Department of Health and Human Services (HHS). Publication of the average premium for the small group market on a State-by-State basis has been posted to the IRS website.

3. What is the maximum credit for a qualified employer (other than a tax-exempt employer)?

A. For tax years beginning in 2010 through 2013, the maximum credit is 35 percent of the employer’s premium expenses that count towards the credit.

Example– For the 2010 tax year, a qualified employer has 9 full time employees (FTEs) with average annual wages of \$23,000 per FTE. The employer pays \$72,000 in health care premiums for those employees (which does not exceed the average premium for the small group market in the employer’s State) and otherwise meets the requirements for the credit. The credit for 2010 equals \$25,200 (35% x \$72,000).

4. What is the maximum credit for a tax-

exempt qualified employer?

A. For tax years beginning in 2010 through 2013, the maximum credit for a tax-exempt qualified employer is 25 percent of the employer's premium expenses that count towards the credit. However, the amount of the credit cannot exceed the total amount of income and Medicare (i.e., Hospital Insurance) tax the employer is required to withhold from employees' wages for the year and the employer share of Medicare tax on employees' wages.

Example—For the 2010 tax year, a qualified tax-exempt employer has 10 FTEs with average annual wages of \$21,000 per FTE. The employer pays \$80,000 in health care premiums for those employees (which does not exceed the average premium for the small group market in the employer's State) and otherwise meets the requirements for the credit. The total amount of the employer's income tax and Medicare tax withholding plus the employer's share of the Medicare tax equals \$30,000 in 2010.

The credit is calculated as follows:

- (1) Initial amount of credit determined before any reduction: $(25\% \times \$80,000) = \$20,000$
- (2) Employer's withholding and

Medicare taxes: \$30,000

(3) Total 2010 tax credit is \$20,000 (the lesser of \$20,000 and \$30,000).

5. How is the credit reduced if the number of FTEs exceeds 10 or average annual wages exceed \$25,000?

A. If the number of FTEs exceeds 10 or if average annual wages exceed \$25,000, the amount of the credit is reduced as follows (but not below zero). If the number of FTEs exceeds 10, the reduction is determined by multiplying the otherwise applicable credit amount by a fraction, the numerator of which is the number of FTEs in excess of 10 and the denominator of which is 15. If average annual wages exceed \$25,000, the reduction is determined by multiplying the otherwise applicable credit amount by a fraction, the numerator of which is the amount by which average annual wages exceed \$25,000 and the denominator of which is \$25,000. In both cases, the result of the calculation is subtracted from the otherwise applicable credit to determine the credit to which the employer is entitled. For an employer with both more than 10 FTEs and average annual wages exceeding \$25,000, the reduction is the sum of the

amount of the two reductions. This sum may reduce the credit to zero for some employers with fewer than 25 FTEs and average annual wages of less than \$50,000.

Example—For the 2010 tax year, a qualified employer has 12 FTEs and average annual wages of \$30,000. The employer pays \$96,000 in health care premiums for those employees (which does not exceed the average premium for the small group market in the employer's State) and otherwise meets the requirements for the credit.

The credit is calculated as follows:

- (1) Initial amount of credit determined before any reduction: $(35\% \times \$96,000) = \$33,600$
- (2) Credit reduction for FTEs in excess of 10: $(\$33,600 \times 2/15) = \$4,480$
- (3) Credit reduction for average annual wages in excess of \$25,000: $(\$33,600 \times \$5,000/\$25,000) = \$6,720$
- (4) Total credit reduction: $(\$4,480 + \$6,720) = \$11,200$
- (5) Total 2010 tax credit: $(\$33,600 - \$11,200) = \$22,400$.

6. Can premiums paid by the employer in 2010, but before the new health reform legislation was enacted, be counted in calculating the credit?

A. Yes.

7. How is the number of FTEs determined for purposes of the credit?

A. The number of an employer's FTEs is determined by dividing (1) the total hours for which the employer pays wages to employees during the year (but not more than 2,080 hours for any employee) by (2) 2,080. The result, if not a whole number, is then rounded to the next lowest whole number.

Example—For the 2010 tax year, an employer pays 5 employees wages for 2,080 hours each, 3 employees wages for 1,040 hours each, and 1 employee wages for 2,300 hours.

The employer's FTEs would be calculated as follows:

- (1) Total hours not exceeding 2,080 per employee is the sum of:

Tax Legislation 2010: Patient Protection and Affordable Care, Health Care and Education Reconciliation, HIRE and Other Recent Tax Acts -- Law, Explanation and Analysis

CCH's Law, Explanation and Analysis of the tax provisions of the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 provides tax professionals with a single integrated reference source covering this historic legislation. Along with the impacted Internal Revenue Code provisions, as amended, and supporting committee reports, CCH editors, together with leading tax practitioners and commentators, have created a complete practical analysis of tax impact of these complex Acts. As a bonus, this Law, Explanation and Analysis book also includes complete coverage of the Hiring Incentives to Restore Employment (HIRE) Act and other recent tax legislation.

PSPA Members save 30% off of the list price of \$71.50 through the Member Order Direct program with CCH. If you are interested please log-in to the PSPA website, go into 'affinity programs and discounts' and click on the link under the CCH heading. In order to pull up this publication, type in "tax legislation 2010" in the keyword search box.

- a. 10,400 hours for the 5 employees paid for 2,080 hours each (5 x 2,080)
- b. 3,120 hours for the 3 employees paid for 1,040 hours each (3 x 1,040)
- c. 2,080 hours for the 1 employee paid for 2,300 hours (lesser of 2,300 and 2,080)

These add up to 15,600 hours
(2) FTEs: 7 (15,600 divided by 2,080 = 7.5, rounded to the next lowest whole number)

8. How is the amount of average annual wages determined?

A. The amount of average annual wages is determined by first dividing (1) the total wages paid by the employer to employees during the employer's tax year by (2) the number of the employer's FTEs for the year. The result is then rounded down to the nearest \$1,000 (if not otherwise a multiple of \$1,000). For this purpose, wages means wages as defined for FICA purposes (without regard to the wage base limitation

Example—For the 2010 tax year, an employer pays \$224,000 in wages and has 10 FTEs.

The employer's average annual wages would be: \$22,000 (\$224,000 divided by 10 = \$22,400, rounded down to the nearest \$1,000)

9. Can an employer with 25 or more employees qualify for the credit if some of its employees are part-time?

A. Yes. Because the limitation on the number of employees is based on FTEs, an employer with 25 or more employees could qualify for the credit if some of its employees work part-time. For example, an employer with 46 half-time employees (meaning they are paid wages for 1,040 hours) has 23 FTEs and therefore may qualify for the credit.

10. Are seasonal workers counted in determining the number of FTEs and the amount of average annual wages?

A. Generally, no. Seasonal workers

are disregarded in determining FTEs and average annual wages unless the seasonal worker works for the employer on more than 120 days during the tax year.

11. If an owner of a business also provides services to it, does the owner count as an employee?

A. Generally, no. A sole proprietor, a partner in a partnership, a shareholder owning more than two percent of an S corporation, and any owner of more than five percent of other businesses are not considered employees for purposes of the credit. Thus, the wages or hours of these business owners and partners are not counted in determining either the number of FTEs or the amount of average annual wages, and premiums paid on their behalf are not counted in determining the amount of the credit.

12. Do family members of a business owner who work for the business count as employees?

A. Generally, no. A family member of any of the business owners or partners, or a member of such a business owner's or partner's household, is not considered an employee for purposes of the credit. Thus, neither their wages nor their hours are counted in determining the number of FTEs or the amount of average annual wages, and premiums paid on their behalf are not counted in determining the amount of the credit. For this purpose, a family member is defined as a child (or descendant of a child); a sibling or step-sibling; a parent (or ancestor of a parent); a step-parent; a niece or nephew; an aunt or uncle; or a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law or sister-in-law.

13. How is eligibility for the credit determined if the employer is a member of a controlled group or an affiliated service group?

A. Members of a controlled group (e.g., businesses with the same owners) or an affiliated service group (e.g., related businesses of which one performs

services for the other) are treated as a single employer for purposes of the credit. Thus, for example, all employees of the controlled group or affiliated service group, and all wages paid to employees by the controlled group or affiliated service group, are counted in determining whether any member of the controlled group or affiliated service group is a qualified employer. Rules for determining whether an employer is a member of a controlled group or an affiliated service group are provided under Code section 414(b), (c), (m), and (o).

How to Claim the Credit

14. How does an employer claim the credit?

A. The credit is claimed on the employer's annual income tax return. For a tax-exempt employer, the IRS will provide further information on how to claim the credit.

15. Can an employer (other than a tax-exempt employer) claim the credit if it has no taxable income for the year?

A. Generally, no. Except in the case of a tax-exempt employer, the credit for a year offsets only an employer's actual income tax liability (or alternative minimum tax liability) for the year. However, as a general business credit, an unused credit amount can generally be carried back one year and carried forward 20 years. Because an unused credit amount cannot be carried back to a year before the effective date of the credit, though, an unused credit amount for 2010 can only be carried forward.

16. Can a tax-exempt employer claim the credit if it has no taxable income for the year?

A. Yes. For a tax-exempt employer, the credit is a refundable credit, so that even if the employer has no taxable income, the employer may receive a refund.

17. Can the credit be reflected in

determining estimated tax payments for a year?

A. Yes. The credit can be reflected in determining estimated tax payments for the year to which the credit applies in accordance with regular estimated tax rules.

18. Does taking the credit affect an employer's deduction for health insurance premiums?

A. Yes. In determining the employer's deduction for health insurance premiums, the amount of premiums that can be deducted is reduced by the amount of the credit.

19. May an employer reduce employment tax payments (i.e., withheld income tax, social security tax, and Medicare tax) during the year in anticipation of the credit?

A. No. The credit applies against income tax, not employment taxes.

Anticipated Transition Relief for Tax Years Beginning in 2010

20. Is it expected that any transition relief will be provided for tax

years beginning in 2010 to make it easier for taxpayers to meet the requirements for a qualifying arrangement?

A. Yes. The IRS and Treasury intend to issue guidance that will provide that, for tax years beginning in 2010, the following transition relief applies with respect to the requirements for a qualifying arrangement:

- (a) An employer that pays at least 50% of the premium for each employee enrolled in coverage offered to employees by the employer will not fail to maintain a qualifying arrangement merely because the employer does not pay a uniform percentage of the premium for each such employee. Accordingly, if the employer otherwise satisfies the requirements for the credit described above, it will qualify for the credit even though the percentage of the premium it pays is not uniform for all such employees.
- (b) The requirement that the employer pay at least 50% of the premium for an employee applies to the premium for single (employee-

only) coverage for the employee. Therefore, if the employee is receiving single coverage, the employer satisfies the 50% requirement with respect to the employee if it pays at least 50% of the premium for that coverage. If the employee is receiving coverage that is more expensive than single coverage (such as family or self-plus-one coverage), the employer satisfies the 50% requirement with respect to the employee if the employer pays an amount of the premium for such coverage that is no less than 50% of the premium for single coverage for that employee (even if it is less than 50% of the premium for the coverage the employee is actually receiving).

USI Affinity, PSPA's endorsed insurance broker, is committed to keeping you informed about all of the changes to Health Care and how they affect you and your business. To learn more about the small business tax credit or our health care solutions, visit <http://www.usiaffinity.com/> benefits or call 800-265-2876.

Important Changes to Continuing Professional Education Requirements

In February 2010 the Pennsylvania State Board of Accountancy informed licensees about various changes being made to the CPE requirements, two of which are conditions of license renewal in 2012. The changes include:

- As a condition of license renewal in 2012 for the current licensing period, a licensee must have completed a minimum of 4 hours in professional ethics as part of the overall 80-hour biennial CPE requirement.
- Beginning January 1, 2012, a licensee will not be able to obtain CPE credit for authorship of an article, book or other writing. Because CPE credit for authorship is awarded for the year in which publication occurs, a licensee who is planning to author a writing for CPA credit should ensure that it is published before January 1, 2012 to receive credit.
- Beginning January 1, 2010, a licensee may obtain qualifying CPE hours from a program sponsor that is approved by the accountancy regulatory body of a state that permits the practice of public accounting under principles of substantial equivalency. A listing of states that permit practice by substantial equivalency can be obtained by visiting NASBA's website at www.nasba.org.

PSPA chapters are planning various Ethics courses throughout the year. Please refer to our website for dates and locations. Additionally, we also plan to offer ethics online.

REMINDER: Licensees must have at least 20 hours of continuing professional education by December 31, 2010, the end of the first year of the 2-year biennial licensing period.



CORNER

PROFESSIONALS

COBRA Subsidy Eligibility Period Extended to May 31

Workers who lost their jobs during April and May may qualify for a 65-percent subsidy on their COBRA health insurance premiums. The American Recovery and Reinvestment Act established this subsidy to help workers who lost their jobs as a result of the recession maintain their employer sponsored health insurance.

The Continuing Extension Act of 2010, enacted April 15, reinstated the COBRA subsidy, which had expired on March 31. As a result, workers who are involuntarily terminated from employment between Sept. 1, 2008 and May 31, 2010, may be eligible for a 65-percent subsidy of their COBRA premiums for a period of up to 15 months. In some cases, workers who had their hours reduced and later lose their jobs may also be eligible for the subsidy.

Employers must provide COBRA coverage to eligible individuals who pay 35 percent of the COBRA premium. Employers are reimbursed for the other 65 percent by claiming a credit for the subsidy on their payroll tax returns: Form 941, Employers QUARTERLY Federal Tax Return, Form 944, Employer's ANNUAL Federal Tax Return, or Form 943, Employer's Annual Federal Tax Return for Agricultural Employees. Employers must maintain supporting documentation for the claimed credit.

There is much more information about the COBRA subsidy, including questions and answers for employers, and for employees or former employees, on the COBRA pages of the IRS.gov.

IRS Releases 2009 IRS Data Book

The IRS has issued its Data Book on its fiscal year 2009 activities. The book is published annually and contains statistical tables and

organizational information on a fiscal year basis. The full text of the 2009 Data Book is available at www.irs.gov.

Late Filing Penalties

Recent tax law changes increased the penalties for failing to timely file partnership or S corporation returns. For tax returns filed after 2008, the penalty is equal to \$89 per shareholder or partner for each month or partial month the return is late. The *Worker, Homeownership, and Business Assistance Act of 2009* increased the penalty to \$195 for returns filed after 2009.

IRS "Wins" 48-month Suspension of Tax Attorney:

A practitioner disciplinary action is initiated by a complaint filed by the Office of Professional Responsibility (OPR). The resulting disciplinary proceeding is a legal process heard by an Administrative Law Judge (ALJ) who decides whether a violation has occurred and the appropriate sanction. A 3/4/10 news release announced that a Massachusetts tax attorney had been barred from practicing before the IRS for 48 months for failing to

file one federal tax return and for filing another five returns late. The attorney (who had formerly worked for the IRS Office of Chief Counsel) appealed the ALJ's 24-month suspension to the Secretary of the Treasury's Appellate Authority, which imposed the harsher 48-month suspension. News Release IR-2010-27.

S corporation owner escapes failure to deposit and pay penalties on "nonwage advances"

The Tax Court has concluded that an S corporation, solely owned and operated by one individual, wasn't liable for penalties for a failure to deposit and pay payroll taxes where its certified public accountant (CPA) advised that it could institute an annual payroll while transferring advances to the owner's individual's account throughout the year that wouldn't be treated as wages. The CPA incorrectly advised that the funds wouldn't be wages at the time of transfer if the owner had an obligation to repay the advances. Ryan, Inc., TC Summary Opinion 2010-18

Statement on Standards for Accounting and Review Services (SSARS) No. 19 Compilation & Review Engagements

The Accounting and Review Services Committee recently passed SSARS 19, issued to make the compilation service standards and the review service standards stand alone standards. Further, SSARS No. 19 provides for a complete re-write of both the compilation service standards and the review service standards. For example, SSARS No. 19 provides for a new compilation report and a new review report. SSARS No. 19 will affect all practices that currently issue compilation and review reports.

The new standard will be effective for periods ending on or after December 15, 2010, with the exception of the optional explanation of the reasons for impairment of independence description in the accountants' compilation report, which is allowed immediately.

PSPA is currently putting together a course to help members navigate the new standard as it relates to OCBOA financial statements. Additional information on this course, which is planned for early Fall will be forthcoming.

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The PA Accountant is published four times annually by the Pennsylvania Society of Public Accountants, 20 Erford Road, Suite 200A, Lemoyne, PA 17043. All editorial correspondence, manuscripts, etc, should be sent to: PSPA, 20 Erford Road, Suite 200A, Lemoyne, PA 17043. This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. The publication is not engaged in rendering legal, accounting or other professional services.

Editor's Note:

If you would like to submit an article for publication please contact the PSPA Executive Office at 1-800-270-3352 or (717) 737-4439 for submission deadlines and for a copy of the author guidelines.