# Pennsylvania Community Accounting & Tax Professionals ACCUMENTAL OF THE PROPERTY OF THE PROPE

The Magazine Of The Pennsylvania Society of Public Accountants

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- ✓ PSPA Drafted Bills SB 952 & SB 953 Begin Move Through the Pennsylvania Senate
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#### **A Message From The President**



Summertime and the weather has been very inviting for outdoor activities. It is a welcome change from tax season which is now a third of a year behind us. And the Phightin Phillies are on a ten game winning streak and are in first place. It's a real shame for Mets and Yankees fans.

Sorry for the real life diversion. No doubt we have some important tax and accounting issues to discuss. But first I want to thank PSPA members for the opportunity you have allowed me in being your president. I will try my best. Also thanks to the Central Chapter for their wonderful

convention and to our Executive Office for making sure all the details were attended to. I know everyone who was at the convention shares my sentiments.

Now let's discuss PSPA business. One important issue is the legislative efforts PSPA is exerting to make PA tax law a bit easier for taxpayers and practitioners alike. Our two initiatives sponsored by Senator Tomlimson can be a positive contribution to bring about tax simplification.

The other issue that looks to be emerging is the IRS Commissioners "New Regulatory Model". IRS will be holding meetings so that taxpayers and tax practitioners can voice their opinion on how better compliance can become a realty, thereby reducing the so-called "Tax Gap". PSPA will voice our opinion and will keep members posted on the "New Regulatory Model" that is expected to be in the Treasury Secretary's hands by December, 2009.

And seminar season is upon us with a full slate of Gear Up Seminars that our local chapters will be sponsoring throughout the state. Please visit our website to see the full list of seminars that are available to you. Remember this is a biennial year so CPE credits must be obtained.

While visiting our website, sign up for the PSPA ListServe. It's a great way to read about issues affecting other practitioners as well as getting answers to your own questions.

On a sad note, our Executive Director, Sherry's husband Steve lost his mother

this past week. On behalf of all PSPA members who know and appreciate Steve's efforts, I want to offer sincere condolences. Our thoughts are with you and your family.

Enjoy the rest of the summer. Be sure to get away for a few days and hopefully we will see you in September.

Respectfully Submitted,

Paul J. Cannataro, CPA PSPA President



Outgoing President Randy L. Brandt, CPA (right) makes presentation to PSPA President Paul J. Cannataro, CPA at PSPA's 62nd Annual Meeting



#### QUESTIONS FOR THE PENNSYLVANIA DEPARTMENT OF REVENUE?

The PSPA Committee on Cooperation with the PA Department of Revenue will meet with Revenue officials again in the Fall. All PSPA

members are invited to submit questions/
issues/problems with the Pennsylvania
Department of Revenue to the PSPA Executive
Office. You can submit your questions via email
at info@pspa-state.org or via fax: 717-737-6847.
All questions must be received by November 1,
2009 to be included on the meeting agenda.
Please make your questions are sysinct as
possible, providing enough background
information and details as necessary.



#### GET A MEMBER - GET A SEMINAR PSPA'S 2009 MEMBERSHIP RECRUITMENT CAMPAIGN

PSPA is only as strong as its members. As a member of PSPA you understand the value of the many benefits PSPA offers; your personal endorsement is very important to us and it is the most effective way we build membership. Help us spread the word and through PSPA's GET A MEMBER-GET A SEMINAR program you'll receive a FREE seminar of your choice. That's right, for recruiting just ONE new member YOU will receive a seminar of your choice, absolutely FREE. The free seminar is a \$150 value...another outstanding benefit of PSPA!

Additional information can be found on the PSPA website or by contacting 1-800-270-3352.

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(Left to Right) Frank H. Kelly, EA, State Secretary; Lamont B. Anderson, PA, First Vice President; Paul J. Cannataro, CPA, PSPA President; Barry L. Meyer, PA, President Elect; Frank Cellini, EA, Second Vice President; Missing from Photo – John J. Komarnicki, CPA, State Treasurer.



## Legislative CORNER

## More than 60 PSPA Members Gather in Harrisburg for PSPA's 6<sup>th</sup> Annual Day at the Capitol

PSPA held its 6<sup>th</sup> Annual Day at the Capitol on Tuesday, June 16, 2009 in Harrisburg. The day began with a *Legislator Appreciation Breakfast* in the East Wing Rotunda.

Following the breakfast, PSPA members dispersed to attend pre-arranged legislative meetings with their elected House members and Senators. During the meetings, members provided their legislators with information regarding legislation drafted by the PSPA – Senate Bills 952 & 953 (See below for additional information)

Later, it was over to the *Harrisburg Hilton and Towers* for lunch and a Legislative Workshop. Finance Committee Chairman, David K. Levdansky, (District 39 Allegheny & Washington Counties) addressed the group outlining his thoughts on the budget debate. He indicated that the legislature would have some very tough months ahead, but in the end either taxes would need to be raised or programs would need to be cut. Rep. Levdansky added that combined reporting would also be a focus of his committee during this legislative session.

Representatives from the Governor's Center for Local Government Services of the Department of Community and Economic Development gave an update on the progress of Act 32 of 2008 implementation (Consolidation of the Local Earned Income Tax).

This is a FREE event offered to ALL PSPA members each year. Please plan to attend this very important event next year on Tuesday, June 15, 2010!

#### PSPA...WORKING FOR YOU!

SB 952 & SB 953 Reported Out of Senate Finance Committee - Now Headed for Full Senate Approval

Throughout the past six months, PSPA has been working with members of both the House and Senate to draft legislation that would resolve two issues that our members face in their practice on a routine basis. These issues were identified at a PSPA Legislative Committee meeting that took place last September and they were the focus of the

Day at the Capitol event on June 16th.

We are extremely happy to report that both bills were reported out of the Senate Finance Committee on Wednesday, July 15, 2009 and are headed for the full vote of the Senate.

SB 953, sponsored by Senator Tomlinson (Bucks County) will allow a surviving spouse to file a joint return for the year in which his or her spouse passed away if a joint return could have otherwise been filed.

SB 952, also sponsored by Senator Tomlinson, eliminates penalties and interest for taxpayers who make estimated tax payments "equal to the amount of the taxpayer's liability for the preceding tax year" (after credits). Our intention was to mirror what is currently allowed under federal law.

We will keep you informed as these bills move through the legislature. We also have companion bills in the House of Representatives. We thank all of you who attended the PSPA Day at the Capitol to meet with your legislature regarding this PSPA Legislation.

Special thanks to Neil C. Trama, Jr., (Northeast Chapter), Legislative Committee Chairman for his guidance. Once passed, we hope that this legislation helps you, our members and your clients.

Thank you for your continued support.

#### PSPA South Central Chapter Member Appointed to the Pennsylvania State Board of Accountancy

Alfred L. Whitcomb, Public Accountant, a long-time member of the PSPA South Central Chapter was nominated to the Pennsylvania State Board of Accountancy by Governor Ed Rendell; his nomination was confirmed by the Pennsylvania Senate.

Mr. Whitcomb will fill the Public Accountant seat on the Board; the seat became vacant earlier this year when George Coury of Western Pennsylvania (also a PSPA member) issued his resignation from the Board.

Mr. Whitcomb is the principal of Whitcomb Tax & Financial Services in Mechanicsburg, PA.

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## ENNSYLVANIA TAX UPDATE MERE USE OF ASSETS OF DELINQUENT TAXPAYER

DOES NO CREATE BULK SALE LIABILITY

By Sharon R. Paxton

On June 6, 2009, the Commonwealth Court ruled, in Pizzutti, Inc. v. Commonwealth, that the Board of Finance and Revenue erred in permitting a bulk sale assessment against a taxpayer for merely using the assets of another taxpayer who was delinquent in the payment of sales tax. Pizzuti, Inc. was established by the exwife of the owner of a restaurant called "Le Perroquet," which owed substantial amounts to creditors, including unpaid rent and sales tax that had been collected but never remitted to the Department of Revenue. The new corporation entered into a lease with the owner of the building formerly occupied by Le Perroquet and continued to use all the equipment, furniture and other tangible assets owned by Le Perroquet, which were encumbered by a bank lien. Pizzutti, Inc. did not pay Le Perroquet for the use of the equipment, and there was no formal transfer of assets from Le Perroquet to Pizzutti, Inc. The Department of Revenue took the position that any "transfer" of assets, including a gift, can trigger bulk sale liability (responsibility for unpaid taxes of the transferor) under Section 1403 of the Fiscal Code. The Court disagreed, noting that Section 1403 authorizes the Department to pursue only the "purchaser" of assets for a bulk sale liability. The Court rejected the Department's argument that the term "purchaser" signifies any "recipient" of assets and held that the plain language of Section 1403 imposes a bulk sale liability for unpaid taxes of a seller or transferor only where the new owner of the transferred assets has acquired them by payment of consideration.

#### **Pennsylvania Supreme Court Finds** Allegheny County's Base Year Tax **Assessment Scheme Unconstitutional**

On April 29, in a long-awaited opinion, the Pennsylvania Supreme Court struck down Allegheny County's 2002 "base year" property tax assessment system as unconstitutional and ordered the county to conduct a county-wide reassessment. Clifton, et al. v. Allegheny County, et al., 969 A.2d 1197 (Pa. 2009).

This holding should spur property owners in the Commonwealth to examine their assessments, especially those property owners in counties that have not conducted a countywide reassessment in three or more years. In such a situation, it is very possible that the stale base year assessment is resulting in assessments that are too high. The Court refused to hold that base year systems were unconstitutional per se, but warned that a base year system without periodic adjustments, would invariably lead to a violation of the Pennsylvania Constitution's Uniformity Clause. The holding of this case will have ripple effects throughout the Commonwealth, as nearly all counties use a base year system of assessment.

Property owners can get a rough idea of whether their current assessments are overstated by taking what they believe to be the fair market value of the property and multiplying it by the common-level ratio determined by the State Tax Equalization Board (the ratios can be found at www.steb. state.pa.us). If the result is less than the assessed value of the property, the assessment is too high and an appeal should be considered.

Under a "base year" system of valuation, a county performs a countywide reassessment of all property in the base year, and then uses each property's base year assessment as that property's basis for taxation in the base year, as well as in subsequent years. In the base year, each property's assessed value will be based on its actual value. Each year thereafter, a property's market value may change, but its assessed value will remain frozen at the base year level. It is not difficult to see how the further one gets from the base year, the greater the

chances of inequities occurring within the taxing jurisdiction. For instance, within a certain school district, a given municipality may see a severe decrease in fair market values over time, while within the same school district another municipality may see a rise in values. As a result, using stale base year assessment numbers, property owners in the municipality where fair market values have decreased pay a higher proportionate share of tax burden than property owners living in a municipality where property values increased. This situation is exactly what the Court addressed and found unconstitutional.

The Court's holding only found the Allegheny County system unconstitutional. With respect to property owners in the other 66 counties in the state, it is likely that challenges will be brought in many counties attacking the application of the base year system. As the Court discussed in its opinion, the passage of time from a base year will inevitably lead to non-uniformity within a particular tax jurisdiction.

#### Personal Income Tax -**Cancellation of Personal Indebtedness**

The Department of Revenue has issued guidance regarding the circumstances under which cancellation of indebtedness should be included in a taxpayer's income. Generally, cancellation of personal indebtedness is taxable income to the extent it represents a substitute for one of the eight classes of income taxed in Pennsylvania. The Department has taken the position that "indebtedness" includes principal, interest, penalties, fines and administrative fees that may be assessed in connection with indebtedness. In certain instances, a cancellation resulting in taxable income is excluded from a taxpayer's income, such as when the cancelled debt is the result of a legitimate dispute with the creditor. The Department

## Pennsylvania



anticipates issuing further guidance with respect to this issue as applied to bankruptcy and taxpayers that believe they are insolvent. (PIT Bulletin No. 2009-02, April 30, 2009.)

#### Personal Income Tax -**Cancellation of Business Indebtedness**

The Department of Revenue has issued a bulletin to provide guidance regarding the treatment of cancellation of business indebtedness for personal income tax purposes. Generally, no taxable income is recognized on loan proceeds when the taxpayer borrows money because there is an obligation to repay the lender. As a result of the obligation to repay, the taxpayer is "allowed to include loan proceeds in his or her cost basis of rents and royalties property." Including these loan proceeds in the basis of the rents and royalties property is beneficial to the taxpayer in four ways: (1) because a taxpayer's basis is used to determine the amount of gain or income realized on the disposition of rents and royalties property; the higher the basis, the lower the gain; (2) a taxpayer benefits by including loan proceeds in the basis of the property when the property is depreciated by the taxpayer; (3) tax law in Pennsylvania allows "an interest expense deduction" related to business indebtedness; and (4) Pennsylvania tax law also allows the proceeds of the loan to be used by the taxpayer on a "tax-free basis" because of the understanding of the obligation to repay the lender. Pennsylvania law does not, however, recognize an equivalent to the federal exclusionary rules for "qualified real property

business indebtedness" or "qualified farm indebtedness." Therefore, real property business indebtedness should be treated the same as any other business indebtedness for Pennsylvania tax purposes. This bulletin is applicable to "individuals, sole proprietors, owners of disregarded entities, partnerships, and S corporations realizing

cancellation of business indebtedness." Additionally, this bulletin provides detailed instructions on how to calculate the amount of reportable income or basis reduction, how to classify reportable income, and relevant definitions. (PIT Bulletin No. 2009-04, April 30, 2009.)

#### Personal Income Tax -**Cancellation of Investment Indebtedness**

The Department of Revenue has issued a bulletin to provide guidance regarding the treatment of cancellation of investment indebtedness for purposes of Pennsylvania's personal income tax. Generally, no taxable income is recognized on loan proceeds when the taxpayer borrows money because there is an obligation to repay the lender. Because of this obligation to repay, the taxpayer is "allowed to include loan proceeds in his or her cost basis of investment property." When the obligation to repay is subsequently forgiven, however, the taxpayer must include the proceeds of the loan as taxable income because the obligation to repay has disappeared. Therefore, when a taxpayer relinquishes investment property in connection with cancellation of investment indebtedness, he or she must recognize net gain or income from the sale, exchange or disposition of property in accordance with the rules explained in this bulletin. This bulletin is applicable to "individuals, sole proprietors, owners of disregarded entities, partnerships, and S corporations realizing cancellation of investment indebtedness." Additionally, this

bulletin provides detailed instructions on how to calculate the amount of reportable income or basis reduction, how to classify reportable income, and relevant definitions. (PIT Bulletin No. 2009-05, April 30, 2009.)

#### Personal Income Tax - Cancellation of **Indebtedness Secured by a Principal** Residence

The Department of Revenue has issued a bulletin to provide guidance regarding the personal income tax implications of the cancellation of indebtedness secured by a principal residence. This bulletin also discusses the Pennsylvania implications of The Mortgage Forgiveness Debt Relief Act of 2007 and The Housing and Economic Recovery Act of 2008 (the "Federal Acts"). Cancellation of indebtedness may result in taxable income to the extent it represents a substitute for gain from the sale, exchange or disposition of property. When the home securing the debt is taken by the lender in full or partial satisfaction of that debt, the taxpayer will be treated as having sold the property and may have gain or loss as a result. Insolvent and bankrupt taxpayers may be eligible to exclude cancelled indebtedness from income. A taxpayer will not be taxed on any gain to the extent he or she qualifies for an exclusion of gain from the sale, exchange or disposition of a principal residence under 72 P.S. Sec. 7303(a) (3) (vii). The Pennsylvania exclusion for gain from principal residences is broader than the exclusion of gain available for Federal purposes under the Federal Acts. This bulletin provides detailed rules addressing qualification for the exclusion of gain from the disposition of a personal residence, exceptions thereto, and the computation of taxable gain for taxpayers who do not qualify for exclusion. (PIT Bulletin No. 2009-03, April 30, 2009.)

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



#### CORNER

### IRS Reminds Certain Excise Taxpayers to e-file Form 2290

The annual filing season for most Forms 2290, Heavy Highway Vehicle Use Tax Return, is approaching and the IRS reminds taxpayers that electronic filing is now required for individuals and organizations reporting 25 or more taxable highway vehicles.

Form 2290 is used to report and pay the highway use taxes that pay for America's roads and interstate highways. Last year truckers and others paid more than \$1 billion in federal highway use taxes.

For most Form 2290 filers the due date for tax period July 1, 2009, through June 30, 2010, is August 31, 2009. For vehicles placed in service after July 31, 2009, Form 2290 and Schedule 1 must be filed, and the tax paid, by the last day of the month after the month the vehicle is first used in the tax period. For example, if a taxpayer begins using a taxable highway vehicle in September 2009, the due date for filing Form 2290 and paying the tax is October 31, 2009.

Although filing Form 2290 electronically is not required for taxpayers reporting fewer than 25 vehicles all taxpayers are encouraged to file their forms electronically.

"Taxpayers should take advantage of the benefits of filing Form 2290 electronically," IRS Excise Tax Program Director Ricky Stiff said. "This really isn't new. Most taxpayers file and pay their personal federal income taxes using a computer and this is no different. The best part of 2290 e-file is that taxpayers will receive their Schedule 1 almost immediately.

"There is no more waiting for Schedule 1 to come in the mail and truckers can then register their vehicles right away." Most states require a stamped Schedule 1 before a trucker can register their vehicle and obtain proper license tags.

E-filing Form 2290 will also reduce errors that can occur with paper filing which means less correspondence with the IRS.

To file electronically, taxpayers need to select an approved software provider for Form 2290. Their names and contact information are available on IRS.gov, – just type "2290 e-file" in the keyword search box in the upper right hand corner. More Form 2290 information, including frequently asked questions, is available on the IRS Web site.

In addition to Form 2290, excise Forms 720, Quarterly Federal Excise Tax Return, and 8849, Claim for Refund of Excise Taxes (Schedules 3 and 6), may also be e-filed.

#### Treasury Releases Build America Bonds Update

As part of the effort to increase transparency in government and maintain accountability of funds allocated under the American Recovery and Reinvestment Act (ARRA), the U.S. Department of Treasury released an update on issuances of the Build America Bonds program, including state-by-state data. You can view the update at: www.treas.gov/press/releases

The Build America Bonds program is a new financing tool created by the ARRA to allow state and local governments to obtain funding at lower borrowing costs for projects such as school and hospital construction, transportation infrastructure development, and water and sewer upgrades. Build America Bonds are designed to appeal to a broader set of investors than traditional tax-

exempt bonds. Under the Build America Bonds program, the Treasury makes a direct payment to the state or local governmental issuer in an amount equal to 35 percent of the interest payment on the Build America Bonds.

#### American Recovery and Reinvestment Act of 2009 Provides Energy Incentives for Businesses

The American Recovery and Reinvestment Act of 2009 (ARRA) provides a number of energy tax incentives for both small and large businesses. Businesses and individuals who take advantage of these energy-saving steps this year may result see bigger tax savings next year.

Here are some of the major provisions that apply:

- 1. Extension of Renewable Energy Production Tax Credit: This law extends the "eligibility dates" of a tax credit for business facilities that use wind, closed-loop biomass, open-loop biomass, geothermal energy, municipal solid waste, qualified hydropower and marine and hydrokinetic renewable energy. The "placed in service date" is now Dec. 31, 2012 for wind facilities and Dec. 31, 2013 for the other facilities.
- 2. Election of Investment Credit in Lieu of Production Credit:
  Businesses that operate facilities that produce electricity from wind and some other renewable resources after Dec. 31, 2008 can now *choose* either the energy investment tax credit or the production tax credit.
- 3. Repeal of Certain Limits on Business Credits for Renewable Energy Property: ARRA repeals

the \$4,000 limit on the 30 percent tax credit for small wind energy property and the limitation on property financed by subsidized energy financing for property placed in service after Dec. 31, 2008.

- 4. Coordination with Renewable Energy Grants: Business taxpayers can apply for a grant in lieu of claiming either the energy investment tax credit or the renewable energy production tax credit for property placed in service in 2009 or 2010.
- 5. Temporary Increase in Credit for Alternative Fuel Vehicle Refueling Property: Qualified property placed in service in 2009 and 2010 is now eligible for a 50 percent credit, and the per-business location limit increases to \$50,000. Property relating to hydrogen remains at the 30 percent rate, but the perbusiness location limit rises to \$200,000.

In addition, there are several other energy credits available that small businesses should be aware of, such as:

- 6. Residential Energy Property Credit: The new law increases the energy tax credit for homeowners who make energy efficient improvements to their existing homes. The new law increases the credit rate to 30 percent of the cost of all qualifying improvements and raises the maximum credit limit to \$1,500 for improvements placed in service in 2009 and 2010. The credit applies to improvements such as adding insulation, energy efficient exterior windows and energy-efficient heating and air conditioning systems.
- 7. Plug-in Electric Drive Vehicle Credit: The new law modifies the credit for qualified plug-in electric drive vehicles purchased after Dec. 31, 2009.
- 8. Plug-In Electric Vehicle Credit: The new law also creates a special tax credit for two types of plug-

in vehicles — certain low-speed electric vehicles and two- or threewheeled vehicles.

More information on these business energy tax incentives are available on www.IRS.gov

#### New Way to Verify Employee Social Security Numbers

The process for employers to verify Social Security numbers is changing. Employers can now verify employee Social Security numbers by phone 24 hours a day, seven days a week with a new automated telephone service.



Beginning fall 2009, employers, as well as third parties acting on behalf of employers, will only be able to verify employee numbers online or over the automated telephone service. Social Security's telephone agents will no longer verify numbers for employers.

To use the system, you must be registered. Employers can register today at www.socialsecurity.gov/employer. Select the "Business Services Online" link. More information is available on the website. For registration questions, visit www. socialsecurity.gov/employer or call Social Security's employer reporting service center at 1-800-772-6270.

#### Pennsylvania Once Again Extends Property/Rent Rebate Program

The deadline to apply for Pennsylvania's Property Tax/Rent Rebate Program for older adults and residents with disabilities has been extended from June 30 to December 31

## Home Improvement Contractors Were Required to Register with Attorney General's Office by July 1, 2009

The Home Improvement Consumer Protection Act ("HICPA") was adopted by Pennsylvania's General Assembly in October, 2008, and signed by the Governor as Act 132 of 2008. The law establishes a mandatory registration program for contractors who offer or perform home improvements in Pennsylvania. The statute also establishes minimum insurance requirements for contractors; requires contractors to provide their registration number in their ads and contracts; establishes required contract terms for home improvement contracts; prohibits unfair business practices; and creates a criminal penalty for home improvement fraud.

Any contractor (who performs at least \$5,000 worth of home improvements per year) that is not registered with the Office of the Pennsylvania Attorney General by July 1, 2009 will be prohibited from offering or performing home improvements until they become registered. Offering or performing home improvements without being registered is a violation of the act and may subject the contractor to an enforcement action and possible civil penalties.

Registration may be completed online at: http://www.attorneygeneral.gov/hic.aspx?id=4340. Contractors are encouraged to register online as they will receive a registration number and a printable temporary registration certificate instantaneously.

Contractors may also mail the completed application to the Attorney General's office at:

#### Pennsylvania Office of Attorney General

Bureau of Consumer protection 15th Floor, Strawberry Square Harrisburg, PA 17120 ATTN: Home Improvement Contractor Registration

The cost of the registration is \$50 and it is valid for two years.

Additional information including the application (pdf) and a FAQ can be accessed at the Office of the Attorney General's website at: http://www.attorneygeneral.gov/index.aspx.

## Change In Extension Deadlines For Partnerships, S Corporations and Trusts

Earlier this year, the Internal Revenue Service changed the length of filing extensions for certain business returns. The change, which reduces the extension period from six to five months, eases the burden on taxpayers who must report information from Schedules K-1 and similar documents on individual tax returns.

Since Pennsylvania regulations provide for an automatic state extension of time to file for taxpayers who are granted an extension for filing federal income tax returns, the extension period granted by the Commonwealth has been changed to match the new federal extension.

The Department of Revenue will offer five-month extensions of time to file for PA-20S/PA-65, PA S Corporation/Partnership Information Return and PA-41, PA Fiduciary Income Tax Return.

This change is effective for extension requests for tax returns due on or after Jan. 1, 2009, and applies to business entities and trusts that file the aforementioned forms for a tax year ending on or after Sept. 20, 2008.

Income, deductions and credits from partnerships, S Corporations, estates and trusts are reported to partners, investors and beneficiaries on Schedules PA RK-1 and PA NRK-1. The recipients then use that information to complete their own tax returns. Requiring these statements to be issued one month earlier, generally by Sept. 15, will provide recipients time to prepare and file returns within the extended time frames.

This change does not affect the process for requesting an extension

of time to file, nor does it affect extensions of time to file other types of business returns, such as those used by S Corporations and LLCs.

## Proposed Amendments Modify the Rules Relating to Contingent Fees Under Circular 230

The IRS has issued proposed regulations (REG-113289-08) governing practice before the Internal Revenue Service (Circular 230). These proposed regulations affect individuals who practice before the IRS. The proposed amendments modify the rules relating to contingent fees under Circular 230, allowing a practitioner to charge a contingent fee in three limited exceptions. Under proposed Sec. 10.27(b)(2)(i) and (ii), a practitioner may charge a contingent fee for services rendered in connection with the IRS's examination of, or challenge to: (i) an original tax return; or (ii) an amended return or claim for refund or credit filed before the taxpayer received a written notice of examination of, or a written challenge to, the original tax return (or filed no later than 120 days after the receipt of such written notice or written challenge).

#### Reduced Research Credit

The IRS has issued proposed regulations (REG-130200-8) that amend the regulations concerning taxpayers who make the **election to claim the reduced research credit (Sec. 280C(c)(3))**. The proposed regulations simplify how taxpayers make the election and affect taxpayers that claim the research credit.

#### Minimum Wage Increase Effective 07/24/09

The Federal government, Pennsylvania and New Jersey increased the minimum wage for all employers effective 7/24/09 to \$7.25 per hour. (Other states whose rates may be higher will remain at those rates more than half of the states have higher rates.) This is the third and final annual increase under the Fair Minimum Wage Act of 2007.

You can update your minimum wage poster for PA at the following website: http://www.dli.state.pa.us/landi/lib/ landi/laborlaw/pdf/llc-1.pdf

#### IRS Seeks New Issues for the Industry Issue Resolution Program

The Internal Revenue Service is encouraging business taxpayers, associations and other interested parties to submit to the Industry Issue Resolution (IIR) Program tax issues for resolution that involve a controversy, dispute or an unnecessary burden on business taxpayers.

The objective of the IIR program is to resolve through issuance of new and improved guidance business tax issues common to significant numbers of taxpayers. In past years, issues have been submitted by associations and others representing both small and large business taxpayers, resulting in tax guidance that has affected thousands of taxpayers.

Submissions received are reviewed semi-annually with selections next being made from issues submitted by Aug. 31, 2009.

The IIR program recently accepted for review the topic of technical terminations of publicly traded partnerships.

Guidance issued as a result of the IIR program includes:

Auto Last In First Out (LIFO) for automobile wholesalers, manufacturers and dealers regarding the proper treatment of the dollar-value, LIFO inventory method for pooling purposes of crossover vehicles, which have characteristics of trucks and cars. (Revenue Procedure 2008-23) Valuation of Parts Inventory by Heavy Equipment Distributors. (Revenue Procedure 2006-14)

Clarification regarding circumstances when facsimile signatures may be used to sign

employment tax forms. (Revenue Procedure 2005-39)

An explanation of the circumstances under which insurance companies that make incentive payments to health care providers will be permitted to include those payments in unpaid losses and how a taxpayer may obtain permission to change their accounting method for such payments. ( Revenue Procedure 2004-41)

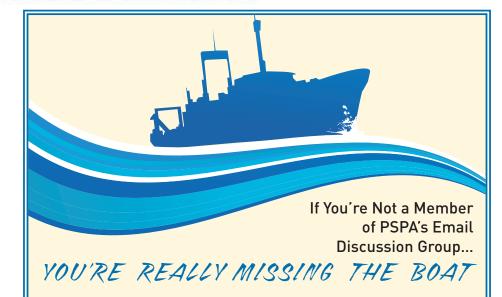
For each issue selected, an IIR team, consisting of IRS and Treasury personnel, gathers relevant facts from taxpayers or other interested parties affected by the issue. Their goal is to recommend guidance to resolve the issue. This benefits both taxpayers and the IRS by saving time and expense that would otherwise be expended on resolving the issue through examinations.

IIR project selections are based on the criteria set forth in Revenue Procedure 2003-36. For each issue selected, a multi-functional team of IRS, Chief Counsel, and Treasury personnel will be assembled. The teams will gather and analyze the relevant facts from industry groups and taxpayers for each issue and recommend guidance.

Requests for guidance on tax issues under the IIR program can be submitted at any time to IIR@irs.gov.

#### Attn: Members - Do You Want IRS to Address a Systemic Issue?

Marvin R. Huttman, CPA, Co-Chairman of the PSPA Committee on Cooperation with the IRS, is asking members to inform the Executive Office of systemic IRS issues. Issues of a systemic nature can be brought to the attention of the IRS at periodic IRS Liaison Meetings. Please email or fax a summary of the issue along with any IRS communications or documentation (please black out all names and SS#'s) to the PSPA Executive Office. (Email to: info@pspa-state.org; Fax: 717-737-6847.)



#### **RECENT TOPICS OF DISCUSSION INCLUDE:**

- → Form 8109
- → Unemployement Compensation
- → Home Improvement Contractors
- → Medical Insurance Allowance
- → Various Tax & Accounting Software
- → First Time Homebuyer Credit
- → IRA Investments
- → Pennsylvania Mini Cobra

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PSPA's Quickbooks for Accounting Professional had more than 170 attendees at the Eden Resort on June 25th.

#### 62nd Annual Meeting Highlights HISTORIC STRASBURG INN LANCASTER COUNTY





## Pennsylvania

#### NSA State Director's Message



NSA State Director of the Year

As I complete my fourth year of service as State Director in Pennsylvania, I want to again thank PSPA for their continued support.

#### NSA 1st VP Cross Installs **PSPA Line Officers**

NSA's First Vice President Robert L.

Cross conducted the officer installation ceremony at PSPA's Annual Meeting this year. In August of this year, Mr. Cross will assume the top job as NSA's President. Before becoming a line officer, Bob served on many of NSA's committees and was Administrative Chair of the Right to Practice Committee, which oversees the federal and state legislative efforts, including the Federal Tax Committee. In fact, Mr. Cross has addressed Congress several times on behalf of NSA. Bob has been awarded virtually every award that NSA offers including NSA's Editorial Award, NSA's Distinguished Service Award and the prestigious Accountant of the Year Award. Two years ago at NSA's 62<sup>nd</sup> Annual Meeting held in Portland, Oregon, I had the distinct pleasure of being present as then President Robert Fukuhara presented Mr. Cross with a special presidential award, a Bushido Blade, declaring Mr. Cross as NSA's "Ultimate Defender."

#### National Society of Accountants Supports Tax Preparer Registration

James H. Nolen, President of the National Society of Accountants (NSA), testified at a July 30, 2009 hearing called by the Internal Revenue Service (IRS) to hear from stakeholders regarding the possible regulation of tax preparers. In addition to his elected role as NSA President, Nolen is also the

owner of Nolen's Accounting and Tax Service in Oklahoma City, OK.

"A minimum competency exam at the front end along with tax preparer registration, required continuing education and significant penalties for non-registrants should be mandatory," Nolen said. "This should be coupled with aggressive enforcement by the IRS."

He emphasized the importance of tax preparer preparation before they begin serving clients.

"Given that a client's financial well being is sometimes at stake, it is not unfair to have minimum standards or to require a test," Nolen said. "In fact, NSA bylaws require a professional credential as a condition of continuing membership."

One way to verify adequate education is testing. "If a barber or a beautician needs pass a competency examination, then a tax preparer should as well, given that a poor effort by the preparer can have substantially

worse effects on the client than a bad haircut," Nolen declared.

But he added that a number of practitioners have earned a waiver of the examination requirement by passing a valid examination. For example, NSA recognized in the early 1970s that some preparers had no test available to them if they did not want to become an Enrolled Agent, Certified Public Accountant (CPA), or attorney. As a result, NSA formed the Accreditation Council for Accountancy and Taxation (ACAT) to offer tax credentials. ACAT examinations are administered by Professional Credential Services, Inc. (a subsidiary of the National Association of State Boards of Accountancy), the same group that administers the CPA examination. ACAT examinations are psychometrically validated and are certified by the National Organization of Credentialing Agencies.

"I am sure that other organizations may have developed valid examinations



(Left to Right) W. Raymond Bucks, CPA, NSA Governor District II; Robert Cross, NSA President Elect; Sherry L. DeAgostino, PSPA Executive Director; Richard Brasch, Jr., CPA, NSA State Director

as well," Nolen explained. "We believe it appropriate that an examination waiver of the examination requirement be provided for any practitioner who passes or has passed an ACAT examination. Of course, the IRS should have the right to audit these examinations to ensure they meet whatever objective standards are set."

He added that examination waivers should be granted any individual holding a license from a state Board of Accountancy.

NSA has a long history of providing continuing education for tax preparers, and Nolen said, "We support a requirement for continuing education to ensure continuing competence with respect to basic tax knowledge, especially given our ever changing tax code. All of the education recognized by NSA for continuing professional education purposes must meet the standards established by the National Association of State Boards of Accountancy (NASBA). This is the same standard recognized for purposes of maintaining the CPA license and ensures the education taken is of sufficient professional quality. We recommend that any education required for tax preparers should also meet minimum professional standards."

As for implementation of an IRS tax preparer regulatory program, Nolen said, "NSA believes that an orderly, phased implementation of registration and/or testing over a two or three-year period is mandatory. A shorter time period is likely to unnecessarily disrupt the filing process."

NSA supports the establishment of an "administrative entity" to oversee tax preparers and ensure that any fees paid by preparers are used for regulation and to educate consumers. This is preferable to a state-by-state approach.

"NSA has been dismayed that a number of states are considering imposing fees on tax preparers merely as a means of enhancing state budgets," Nolen said. "This does nothing to address competence and does nothing to educate consumers about the financial perils or possible criminal penalties they may face if they engage the services of unscrupulous preparers."

Nolen also encouraged the IRS to launch a robust consumer education program. "Without such a program, we are concerned that those individuals who do not comply with current requirements will not comply with any new requirements, either," he said. "A key is to bring those individuals into the tax preparer system and the best way to do so is to ensure that they suffer significant financial harm if they willingly flout the law. If we fail to bring these preparers into the system, we will merely be trying to increase compliance by the compliant and this effort will have missed its mark."

Nolen also noted, "Taxpayers must also be educated, by a number of means, to understand that a paid preparer must sign a return." To obtain a complete copy of his testimony, visit www.nsacct.org,

#### 64th Annual Meeting

NSA's 64<sup>th</sup> Annual Meeting will be held in San Diego, CA on August 12-15, 2009, and the site for the 2010 meeting will be Crystal City, VA.

#### Membership

The National Society of Accountants continues to offer a discounted membership to any PSPA member who joins NSA as a new member incentive. PSPA members can join NSA for \$159, and save \$30 off the regular \$189 membership fee. This offer expires on December 31, 2009.

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



#### Legislative Update

Continued from page 4

## PSPA hosted the following legislators at the breakfast:

Rep. Joseph A. Petrarca	District 55
Sen. Kim L. Ward	District 39
Rep. Tim Seip	District 125
Rep. RoseMarie Swanger	District 102
Rep. Jaret Gibbons	District 10
Rep. Jennifer Mann	District 132
Rep. Dick Stephens	District 8
Rep. Ed Staback	District 115
Sen. Edwin Erickson	District 26
Rep. Seth Grove	District 196
Rep. Mark Keller	District 86
Rep. Katie True	District 41
Rep. Mario Civera	District 164
Rep. Nick Kotik	District 45
Rep. Mike Carroll	District 118
Rep. John Payne	District 106
Rep. Ron Miller	District 93
Rep. Tom Creighton	District 37
Rep. Doug Reichley	District 134
Rep. Bernie O'Neil	District 29
Rep. Tim Solobay	District 48
Rep. Stephen Barrar	District 160
Rep. Gordon Denlinger	District 99
Rep. Don Walko	District 20
Rep. Sam Rohrer	District 128
Rep. William Adolph, Jr.	District 165
Sen. Mary Jo White	District 21
Rep. Katherine Watson	District 144
Rep. Joseph Brennan	District 133
Rep. Cherelle Parker	District 200
Rep. Karen Boback	District 117



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#### Comparison of Federal and Pennsylvania Continuation Laws

Note: Pennsylvania's state continuation law, 2009 Act 2, was effective July 10, 2009. Pennsylvania also mandated conversion rights upon loss of coverage.

On June 10, 2009 Governor Edward G. Rendell signed Act 2 of 2009 to help address the growing need to extend health care options for those newly unemployed.

Employees laid off by small employers (with 2 to 20 employees) are now eligible for state Mini-COBRA benefits. Prior to this, only those who worked for companies employing more than 20 people were eligible for federal COBRA benefits in Pennsylvania.

This also means that the 65 percent reduction in COBRA

premiums authorized under the new federal stimulus law will now apply to Mini-COBRA benefits for workers laid off from small businesses, for up to nine months. Any employee of a small business in Pennsylvania who is terminated after July 10, 2009, and before Jan. 1, 2010, will be eligible for the subsidy.

More information on the new Mini COBRA bill can be found at http://www.ins.state.pa.us/ins/cwp/view.asp?A=1274&Q=550035

#### FEDERAL (COBRA)

#### PENNSYLVANIA

#### COVERED EMPLOYERS AND PLAN COVERAGE

Group health plans maintained by private-sector employers with 20 or more employees, employee organizations, or state or local governments; coverage must be identical to that available to similarly situated beneficiaries who are not receiving COBRA coverage under the plan (generally, the same coverage that the qualified beneficiary had immediately before qualifying for continuation coverage)

Group health plans maintained by employers with 2-19 employees; continue hospital, surgical or major medical coverage under group policy; coverage does not include dental only and vision only plans, or other similarly limited plans.

#### QUALIFIED BENEFICIARIES (EMPLOYEE / DEPENDENTS)

Individual covered by a group health plan on the day before a qualifying event - either an employee, the employee's spouse, or an employee's dependent child. In certain cases, a retired employee, the retired employee's spouse, and the retired employee's dependent children may be qualified beneficiaries. In addition, any child born to or placed for adoption with a covered employee during the period of COBRA coverage is considered a qualified beneficiary. Agents, independent contractors, and directors who participate in the group health plan may also be qualified beneficiaries.

Same as COBRA, except that state law requires 3 months of continuous coverage during entire period before a qualifying event.

#### **CONTINUATION PERIOD**

18 months - COBRA beneficiaries generally are eligible for group coverage during a maximum of 18 months for qualifying events due to employment termination or reduction of hours of work.

29 months - Disability can extend the 18 month period of continuation coverage for a qualifying event that is a termination of employment or reduction of hours. If certain requirements are met, the entire family qualifies for an additional 11 months of COBRA continuation coverage. Plans can charge 150% of the premium cost for the extended period of coverage.

36 months - Certain qualifying events, or a

second qualifying event during the initial period of coverage, may permit a beneficiary to receive a maximum of 36 months of coverage.

36 months - Under COBRA, participants, covered spouses and dependent children may continue their plan coverage when they would otherwise lose coverage due to divorce (or legal separation) for a maximum of 36 months.

9 months

#### FEDERAL (COBRA)

#### PENNSYLVANIA

#### **QUALIFYING EVENTS**

#### **Qualifying Events for Employees:**

Voluntary or involuntary termination of employment for reasons other than gross misconduct – 18 months

Reduction in the number of hours of employment – 18 months

#### **Qualifying Events for Spouses:**

Voluntary or involuntary termination of the covered employee's employment for any reason other than gross misconduct – 18 months

Reduction in the hours worked by the covered employee – 18 months

Covered employee's becoming entitled to Medicare – 36 months

Divorce or legal separation of the covered employee – 36 months

Death of the covered employee - 36 months

#### **Qualifying Events for Dependent Children:**

Loss of dependent child status under the plan rules – 36 months

Voluntary or involuntary termination of the covered employee's employment for any reason other than gross misconduct – 18 months

Reduction in the hours worked by the covered employee – 18 months

Covered employee's becoming entitled to Medicare – 36 months

Divorce or legal separation of the covered employee – 36 months

Death of the covered employee – 36 months

Same Qualifying Events as COBRA, though continuation period limited to 9 months

#### **ELIGIBILITY**

To be eligible for COBRA coverage, must have been enrolled in employer's health plan when employed and health plan must continue to be in effect for active employees. COBRA continuation coverage is available upon the occurrence of a qualifying event that would, except for the COBRA continuation coverage, cause an individual to lose his or her health care coverage.

Same as COBRA, except that state law requires 3 months of continuous coverage during entire period before a qualifying event. Not available to any person covered under group policy who is covered or eligible for Medicare, or is eligible for or covered by other employer based group health insurance.

#### **NOTICE REQUIREMENTS**

Employers or health plan administrators must provide an initial general notice when employee is hired if entitled to COBRA benefits.

When no longer eligible for health coverage, employer has to provide a specific notice regarding rights to COBRA continuation benefits.

Employers must notify their plan administrators within 30 days after an employee's termination or after a reduction in hours that causes an employee to lose health benefits.

The plan administrator must provide notice to individual employees of their right to elect COBRA coverage within 14 days after the administrator has received notice from the employer.

Employee must respond to this notice and elect COBRA coverage by the 60th day after the written notice is sent or the day health care coverage ceased, whichever is later. Otherwise, employee will lose all rights to COBRA benefits.

Spouses and dependent children covered under such health plan have independent right to elect COBRA coverage upon employee's termination or reduction in hours.

Group policy insurer must provide notice of mini-COBRA law within 45 days of effective date. Employers must notify their plan administrators, the covered employee and insurer of a qualifying event and rights within 30 days of a qualifying event. Employee must respond to this notice and elect coverage within 30 days of notice.

Covered employee or eligible dependent must provide written notice within 14 days if not eligible for coverage (i.e., not available to any person covered or eligible for Medicare, or eligible for or covered by other employer based group health insurance).

The plan administrator must provide notice to insurer within 14 days of election.

Conversion: Employers must notify qualified beneficiaries of the right to convert their policy during the 180 days prior to the expiration of their

COBRA coverage period.

#### FEDERAL (COBRA)

#### PENNSYLVANIA

#### TERMINATION OF COVERAGE

Coverage begins on the date that coverage would otherwise have been lost by reason of a qualifying event and will end at the end of the maximum period. It may end earlier if:

Premiums are not paid on a timely basis. The employer ceases to maintain any group health

After the COBRA election, coverage is obtained with another employer group health plan that does not contain any exclusion or limitation with respect to any pre-existing condition of such beneficiary. However, if other group health coverage is obtained prior to the COBRA election, COBRA coverage may not be discontinued, even if the other coverage continues after the COBRA election.

After the COBRA election, a beneficiary becomes entitled to Medicare benefits. However, if Medicare is obtained prior to COBRA election, COBRA coverage may not be discontinued, even if the other coverage continues after the COBRA election.

Coverage begins on the date that coverage would otherwise have been lost by reason of a qualifying event and will end at the end of the maximum period. It may end earlier if:

Individual is eligible for Medicare or group hospital, surgical or major medical coverage, whether or not they actually enroll for that coverage;

Upon failure to verify that individual is not eligible for employer-based health insurance as a dependent;

Is eligible for or covered by other employer based group health insurance;

Premiums are not paid on a timely basis; or Group policy is terminated.

#### **CONVERSION RIGHTS**

Some plans allow participants and beneficiaries to convert group health coverage to an individual policy. If this option is generally available from the plan, a qualified beneficiary who pays for COBRA coverage must be given the option of converting to an individual policy at the end of the COBRA continuation coverage period. The option must be given to enroll in a conversion health plan within 180 days before COBRA coverage ends. The premium for a conversion policy may be more expensive than the premium of a group plan, and the conversion policy may provide a lower level of coverage. The conversion option, however, is not available if the beneficiary ends COBRA coverage before reaching the end of the maximum period of COBRA coverage.

Pennsylvania law requires fully-insured group health policies to allow qualified beneficiaries to convert group policies to individual policies upon loss of coverage for any reason, including termination of mini-COBRA coverage.

Qualified beneficiaries must apply for the conversion policy and pay for the first premium within 31 days of the group coverage termination. There are some exceptions to the mandated conversion offering. Insurers do not have to extend the conversion option to individuals who:

- have not had coverage for a period of at least three months prior to termination;
- are eligible for Medicare;
- have other similar coverage;
- are eligible for similar group coverage;
- are eligible for similar benefits under state or federal law; or
- would be considered over-insured under the insurer's definition.

Converted policies may not have pre-existing condition exclusions.

#### **OTHER**

Employers must continue health insurance for military reservists for their first 30 days on active duty.

#### APPLICABLE STATUTES

IRC § 4980B, ERISA §601 et seq.

40 P.S. § 756; 2009 Act 2 (2009 House Bill 1089 – Mini-COBRA)

#### **GOVERNMENT AGENCY CONTACT**

Depts. of Labor and Treasury (private sector plans); Dept. of Health and Human Services (public sector plans) Pennsylvania Insurance Department

Comparison Provided by: Bobbie Freiberg, CLU
Benefit Advisory Services, LLC • 215-540-8900 Fax: 215-525-2828

This Chart is provided to you for general informational purposes only. It broadly summarizes state and federal statutes, but does not include references to other legal resources (e.g., supporting regulations, or formal or informal opinions of state offices of commissioners of insurance) unless specifically noted. Please seek qualified and appropriate counsel for further information and/or advice regarding the application of the topics discussed herein to your employee benefits plans.

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Celeste Ann Midkiff CPA, PC
1202 W Broad Street
Quakertown, PA 18951

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