

# The Silver State CPA

July 2010

## Discharge of Indebtedness Tax Implications P.11

**Proposed Bylaw  
Amendment on  
AICPA Membership  
Requirements P.1**

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# A Message from the NVCPA

*The Nevada Society of CPAs has been asked to deliver the following important message from the AICPA regarding proposed membership changes.*

## Proposed Bylaw Amendment on AICPA Membership Requirements

By Robert R. Harris, CPA/CFF  
Chairman, AICPA Board of Directors



Robert R. Harris, CPA/CFF

At its May meeting, the AICPA governing Council voted unanimously to authorize a membership ballot that would modify the AICPA's admission requirements for voting members. The recommendation is a part of the first major comprehensive review of AICPA membership requirements since the 1950s. We believe our membership requirements need to acknowledge the dramatic changes that the profession has undergone in the past 50 years and that they should better reflect the profession's current composition and the many ways that accounting professionals can enter or participate in the profession. As a member, I will cast my "yes" vote and I encourage all of you to do the same when you receive the ballot on the proposed bylaw amendment in August.

Let me explain exactly what you are being asked to vote on. The ballot measure, if approved, would add a provision to the current CPA certificate requirement that would permit people to qualify for admission in the AICPA as voting members if they at one time held a valid CPA certificate and their certificate was not revoked due to a disciplinary action. It also would permit accounting professionals who meet all of the education, examination and experience requirements of the Uniform Accountancy Act (UAA) but who do not have a current CPA certificate to be eligible for membership. The "3 e's" required for CPA certification under the UAA are 150 hours of education, passage of the Uniform CPA Examination and at least one year of work experience. The UAA is the certification/licensure model approved by both the National Association of State Boards of Accountancy and the AICPA. It is the basis of our successful efforts to secure CPA mobility in 47 states and counting.

Importantly, new members who join under the updated bylaw would be required to abide by the AICPA's Code of Professional Conduct and continuing professional education standards. They also would continue to be prohibited from holding out as a CPA, in accordance with state board regulations.

Now you're probably wondering why we are doing this. I'm happy to answer that for you.

Proposed Bylaw Amendment  
Continued on Page 8

# Member News

LAS VEGAS, NEVADA - Three staff members of Houldsworth, Russo & Co. recently earned promotions. Jennifer Schwartz and Kunie Sugiyama were promoted to senior accountants, while Shelly Figueredo was promoted to manager. Schwartz has been with the company for more than seven years, Sugiyama for more than five years and Figueredo for more than three years.

RENO, NEVADA (July 2, 2010) Bosma Group, P.C is pleased to announce the promotion of Lisa Carlon to Shareholder/Partner. Lisa's responsibilities will include coordinating the delivery of Bosma Group services to her client base and continuing to be a resource for Bosma Group and other CPA firms who need assistance in the tax arena.

"After working closely with Lisa for many years at Grant Thornton, I have always been impressed by her professionalism, work ethic and technological savvy," said Mike Bosma, Managing Shareholder of the Bosma Group. "Lisa's vision of pairing excellent client service with invaluable knowledge will be an asset to our team," Bosma added.

Prior to joining the Bosma Group team, Lisa was the International Tax Practice Leader for Grant Thornton's Reno Office. During her time at Grant Thornton, Lisa played a vital role in all client international tax issues and worked directly with both the Regional and the National International Tax Partners in various international tax issues.

"I was immediately drawn to the personality and close intimacy of the company," said Lisa. "The company has an amazing ability to think outside the box which contributes to higher levels of success for the clients."

Lisa became a Certified Public Accountant in 2005 after graduating from the University of Nevada Reno with a Bachelor of Science Degree in Accountancy in 2002. She is the past President for the Nevada Society of Certified Public Accountants (NVCPA) and is a board member of The Nevada Diabetes Association for Children and Adults (NDACA).



LAS VEGAS, NEVADA (June 18 , 2010) Third-grade student Atarie Phillips-Dickerson was honored this month for her patriotic artwork, which was selected as the winner of the annual art contest held by Johnson Jacobson Wilcox CPAs.

Laura Dearing Elementary students were asked to depict why they're proud to live in America. The winning work of art is an American flag and the words, "I love America because every color is together."

Phillips-Dickerson is a student in Jennifer Denney's art class. Her school will be awarded \$5,000, which can be used to best meet its greatest need. In addition, Phillips-Dickerson received a basket of art supplies to encourage continued creativity. Her art illustrated the cover of the firm's Fourth of July card.

"Her piece was chosen based on the child's concept and messaging, as well as the unique strokes and movement of her color applications," says Kristi Overgaard, founder/creative director of one11, a design firm that partners with Johnson Jacobson Wilcox for the annual contest. "This is our country's flag, in its appropriate colors, but Atarie made it hers, and ostensibly ours, as a country, with her beautiful statement."

Nick Pizzo, senior accountant for Johnson Jacobson Wilcox, said the goal is to choose a different school each year based on need. The CPA firm started this tradition in conjunction with its 10-year anniversary in 2005. "Seeing patriotism through the eyes of our youth is a reminder of what America really means," says Pizzo. "We at Johnson Jacobson Wilcox are proud to be able to support this annual art competition. But to be honest, by seeing what these kids do, we get far more out of it than the resources we put in. Thank you, Atarie Phillips-Dickerson and Laura Dearing Elementary School, for the inspiration you give us all."

## Welcome New Members!

**Lisa Ayarbe**  
Ashley Quinn  
Reno, NV

**Sarah M. Crumby**  
Cupit, Milligan, Ogden & Williams  
Reno, NV

# Bob Ranweiler is Back!!!



One of the most popular CPE instructors the Nevada Society of CPAs offers has returned to Nevada after a long break. Bob Ranweiler has been slated to teach his popular Tax Advisors Update both in Reno and Las Vegas in early December. Bob Ranweiler is a principal with LarsonAllen specializing in taxation. He provides internal tax training within LarsonAllen and external tax training for other tax professionals. His courses have become very popular with all CPAs and is filling up very fast. Sign up today to reserve your spot in this popular seminar!

#### Course Description:

There is no substitute for the unique perspective of a CPA active in public accounting. LarsonAllen's own Andy Biebl and Bob Ranweiler have developed, "Tax Advisors Update—2010," to keep you apprised of the latest tax developments. Andy and Bob have hosted tax seminars and authored tax publications for more than 20 years. Count on an in-depth session that delivers the useful tools, strategies, and insight needed to serve clients well.

At the end of this session you will BE ABLE TO:

- Identify key tax developments occurring in the past year
- Recognize new tax planning opportunities for individuals and businesses arising from recent tax legislation
- Implement opportunities and defensive strategies in reaction to IRS positions

#### Course Highlights

- Key legislative developments from Congress, including the latest on proposed tax legislation
- Review of IRS pronouncements, treasury regulations, and court cases
- Practical planning tips and illustrations based on actual examples from a practitioner's view
- Important estate and gift, tax-exempt, payroll tax, and other federal developments

#### Who should attend?

Tax professionals, whether in public practice or industry, who need to be aware of new federal tax legislation, IRS guidance, and recent court decisions.

#### Reno Course:

December 15th, 2010

\$265 (Member Price) / \$295 (Non-Member Price)

#### Las Vegas Course:

December 17th, 2010

\$265 (Member Price) / \$295 (Non-Member Price)

Visit [www.nevadacpa.org](http://www.nevadacpa.org) or call 1(800) 554-8254 to register for these courses.

## 3rd Annual Reno Chapter Picnic August 18th, 2010

The Reno Chapter of the Nevada Society of Certified Public Accountants, will hold its 3rd Annual Picnic lunch on Wednesday, August 18th in the Plaza Pavilion at Bartley Ranch Regional Park. This event gives our members an opportunity to network with other professional accountants and to have some fun while doing it.

The Chapter will be inviting accounting students from the University of Nevada, Reno to attend the picnic to learn more about the Society and to meet some of its members. The Reno Chapter will be underwriting a portion of the initial membership fee for any student who decides to join the Society.

If you are able to attend, please RSVP to Melanie Thompson at 826-6800 or [mthompson@nevadacpa.org](mailto:mthompson@nevadacpa.org).



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# Are You Shooting Bear or Going Fishing? A Business Development Survival Kit

By Lisa Benson, The Growth Partnership

How many times have you placed an ad, sent out direct mail pieces, or delivered a newsletter without receiving your desired response? Assuming you have fabulous marketing collateral, the only answer for not getting the results you had hoped for is timing. You need to stop trying to get the prospects to buy when you want them to buy, and make sure you are there when they are ready to buy.

So what is the answer? A business development survival kit. Like any other adventurous undertaking, you need to make sure you are completely prepared. Having a clearly defined map and all the necessary tools will help you ensure your success. So let's get started planning our business development adventure.

## Are We Shooting Bear, or Going Fishing?

We need to decide what our target is going to be. If we are shooting bear, we will need to be equipped differently than if we are going fishing. Looking at your firm's best clients is a great way to start narrowing down the possibilities. What demographic criteria do these clients have in common? Are they within a certain revenue range? Are the majority of your best clients within a certain industry group? You will also want to look at the most profitable services your firm provides. Determine who uses those services and then find more companies that need those services.

You may very well be tempted to try to catch fish and shoot bear at the same time. Avoid this temptation at all cost. Make sure you are being as targeted as possible with your prospect set. Every prospect should be a perfect fit for your firm. Don't waste your efforts on the ones too big to fit in your boat, or the ones you will end up throwing back.

## Fish Don't Bite Because You Drop a Line

So you have decided to go fishing. Unless you are at the trout farm, the fish are not going to bite just because you

drop a line. Business development is a lot like fishing in that you need to be in the right place, at the right time. Buying professional services is not an impulse buy, so establishing yourself as a resource and consistently demonstrating your interest in earning the prospect's business is very important. Building trust, sharing knowledge and establishing reliability with a prospect over time can make the difference when they are ready to buy.

Begin by introducing yourself and your firm with a series of mailers or letters, and then follow up in a timely manner with phone calls.

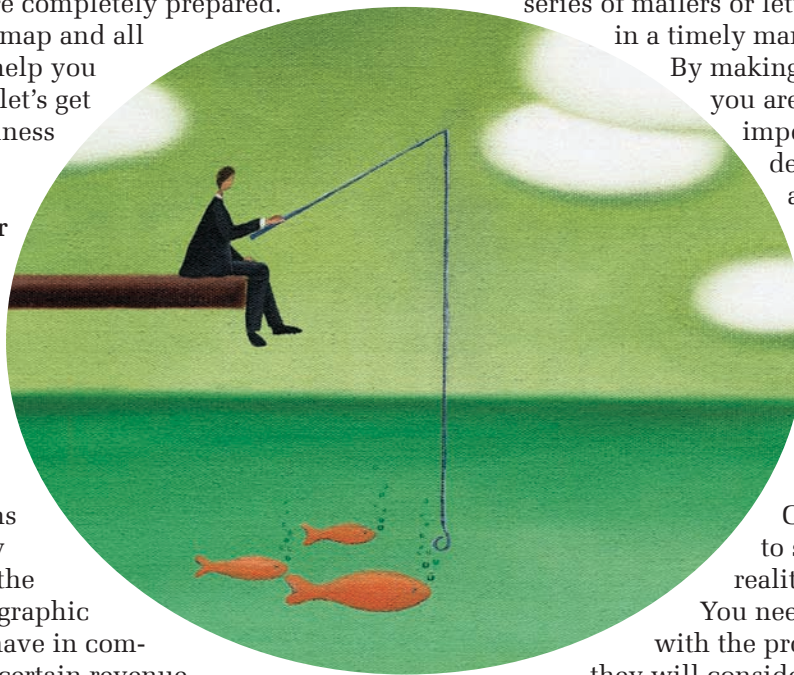
By making follow up phone calls, you are demonstrating two very important steps in the business development process. You are appealing to the prospect's basic human need by letting the prospect know they are important to you. The phone call also demonstrates your human side and begins the process of building trust.

Often the process will seem to stop right here, when in reality this is just the beginning. You need to build trust and respect with the prospect over time before they will consider working with you.

## Do You Have The Right Bait?

Unless you know everything about the fish you are trying to catch, you might not have the right bait. To be truly successful in business development you need to know about your prospects and what's important to them. Do your homework. Get to know the issues and concerns of your target audience. Then you will be able to help them overcome their issues. This is not about you. It is all about the prospects.

You have done your homework and you know how you can help your prospects. Now you need to start doing it. In order to build trust and establish yourself as a reliable resource you need to start sharing your knowledge. Some ideas for doing this are:



- Sending information of value to the prospect
- Demonstrate your expertise in their field by sharing articles or blog posts
- Give the prospects tools that they are able to use immediately
- Send timely information to your prospects as quickly as you send it to your clients

By sharing information, tools, and expertise, you will establish yourself as a thought leader in their industry and build trust with them on a personal level. By doing these types of activities consistently, the prospects will eventually begin to question the level of service they are getting from their current firm. When they are making a change, you will have already established yourself as a trusted resource and will have significantly increased your chance to win their business. Paying attention and showing a sincere interest in a person's business will always be positively perceived.

### You've Got a Bite. What Now?

When a child gets a bite on their fishing line, their first instinct is to use all their strength to set the hook and reel in the catch. As an adult, you know you can't go meet with a prospect and expect to come back to the office with a new client immediately. You are not the only one fishing for that new business and you need to be prepared to demonstrate why you are a better choice than your competitor. You need to ask questions to:

- Learn about what they do
- Ask questions about their business and their experiences
- Find out their issues and needs
- Learn about their goals and future plans
- Check that you understand everything they told you

An initial meeting with a prospect should be a fact-finding mission. You don't want to start prescribing a solution before you have diagnosed their needs. Once you have a good basic understanding of their business and their needs, you can go back for a follow-up meeting with ideas about how you and your firm can help.

### What Does it Weigh?

When a fish is caught, it's always weighed and measured. You also need to measure all of your business development activities – from the expenses incurred, to the time involved, to the success achieved. Keep track of:

- Number of prospects launched into your busi-

- ness development initiative
- Number of prospects contacted
- Number of face to face meetings scheduled
- Number of proposal opportunities
- Number of new clients
- First year revenue associated with a new client
- Annuity revenue associated with new clients

Make sure you are measuring along the way so you can make changes if you are not seeing the results you want.

### What's on Your Stringer?

Just like fishing, some days are better than others in business development. To fill your stringer with new clients your business development initiatives need to be done consistently. Remember to:

- Choose your prospects wisely.
- Reach out to prospects, introduce yourself and your firm and then follow up providing information of value to the prospect
- Be consistent. Demonstrate to the prospect they will have a better experience with you than they are having now
- When you meet with a prospect, make sure the meeting is about them. Listen and learn everything you can about their business, their issues and their concerns. The prospect should talk at least 70% of the time
- Measure all of your activities and your results so you know when to make changes. If something isn't working, try something different. If it is working, stick with it
- Have realistic expectations. It takes time to build trust and respect with your prospects

If you follow the map and use the tools provided in this business development survival kit your adventure will surely be successful.

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#### About the Author:



As a shareholder at The Growth Partnership, Lisa Benson guides the strategy and operations of the Business Development/Lead Generation Services Division. Using a sophisticated nurture-marketing model, she and her team of experienced marketing and business development professionals help accounting firms achieve a delicate balance between short-term results and long-term relationships.

The Growth Partnership  
314-209-0922

# Comprehensive Independent Contractor (C.I.C.) Business Model: An Option Whose Time Has Come

By David Sity, CPA  
Sity 2009©



Bankruptcy or financial survival: this is what independent contractors could mean too many American businesses in the economic reality of the new millennium. Yet, the concept still raises a specter of myths and stereotypes in the minds of many business leaders.

An effectively applied C.I.C. Business Model allows businesses to avoid one of the major traps into which Microsoft and FedEx unwittingly fell. A careful study of some of the myths and realities regarding independent contractor status helps pave the way to a better understanding of some of the solutions needed to implement an effective and cost efficient C.I.C. Business Model. Properly implemented, an IRS-proof C.I.C. Business Model is possible.

## OVERVIEW

Many businesses already utilize independent contractors in a wide array of capacities. The current employee-based model will continue to flourish, even though that model will incorporate an increasing number of independent contractors. Department of Labor statistics predict a steady increase in the number of independent contractors in the near future.

## GLOBAL ECONOMIC FACTORS

In regard to foreign labor markets, the Chinese often employ slave labor practices while some Chinese workers literally work for no wages/benefits whatsoever. Child labor

and exploitation is rampant in such countries as India, Pakistan, Indonesia, etc.,. How does our nation compete with this type of unfair competition?

## HISTORY & BACKGROUND

The current Employee-Based Business Model started out innocently enough. During World War II, businesses were having trouble attracting and retaining qualified workers. So, they offered benefits, such as insurance, to attract these workers. This became a type of silken spider web. No one stopped to consider all sides of a spider web are sticky. Eventually, many businesses became committed to paying unaffordable pension and health care costs.

## CURRENT TRENDS

The "C.I.C. Business Model" also serves to avoid government mandated rationing of executive compensation by fiat. It minimizes government interference in a company's internal decision-making process. Federal "Czars" would have less control over these external contractual decisions. It is anyone's guess as to how far-reaching the influence of the "Pay Czar" might eventually extend. The new "Job Czar" might soon regulate any business holding government contracts or any business deemed "financially essential" to the U.S. economy.

Utilization of a "C.I.C. Business Model" can empower American businesses to compete globally.

The climate has changed for the American people and American business. The questions are:

1. How will American business evolve to address the change?
2. Will American business have time to acclimate?

A thorough discussion on this subject, the seven myths surrounding independent contractor conversion, and a sample cost-benefit analysis comparing worker status appears in its entirety on the Society's website. If your business is thinking about using independent contractors instead of employees, this is a "must-read" article.

SEE: [www.nevadacpa.org/CIC.pdf](http://www.nevadacpa.org/CIC.pdf)

David Sity is a CPA (WI) who worked as an Employment Tax Specialist with the IRS for over fourteen years. Mr. Sity has developed a set of specific guidelines which can be expanded for use in any number of businesses or industries. Any consulting or CPA firm interested in his services for:

1. the determination of employment status of workers for its business clients, or;
2. worker conversion, or;
3. the initiation and application of a "Comprehensive Independent Contractor Business Model," or;
4. operational/re-organizational analysis for its clients, or;
5. commercial editing;

You may contact Mr. Sity, CPA at:  
[AalborgSity@gmail.com](mailto:AalborgSity@gmail.com)

# Proposed Bylaw Amendment on AICPA Membership Requirements (Continued)

By Robert R. Harris, CPA/CFF  
Chairman, AICPA Board of Directors



Our AICPA membership base is a tremendous asset for the profession. It holds a vast and varied collective knowledge and a diversity of experiences and perspectives. But to continue to be effective, it needs to evolve along with the profession as a whole. For example, the membership once was virtually all in public practice. Today, roughly 50% of our members come from non-public accounting areas – business, industry, nonprofits, government and academia. In addition, while many accountants years ago spent their entire careers with one employer, the younger generation is being told they may have seven to 10 different careers during their working years.

The crux of the issue is that state boards of accountancy, the licensing bodies for the profession, require a CPA certificate/license when someone holds out to the public as a CPA. Those working in business and industry don't hold out to third parties; they perform services for their employers. The same is true with accountants working in government or as educators. Or, an individual might have moved from public accounting to a non-public accounting job, such as a chief financial officer at a company or a school district's controller. As a result, these individuals might not acquire or maintain an active CPA certificate.

In addition, some young people who have passed the CPA exam and fulfilled the UAA's other requirements for CPA certification choose not to acquire or maintain a certificate or license since it is not mandatory and they do not hold out as a CPA.

Here are the benefits of the bylaw change for you and the profession:

- These new members, many of whom are critical partners in the financial reporting chain, would have access to the same AICPA resources as the auditors they work with. This helps enhance our mission of protecting the public interest.
- There would be consistency in admission requirements for accounting professionals from any state as well as for those working in the various areas of accounting.
- Newer and future generations of accounting professionals would have a closer and earlier affiliation with the CPA profession, which could influence the direction of their careers. It also would enable us to capture their insights and input as the profession grapples with demographic changes and other future challenges.

This is an important decision for our profession, so I invite you to go to our dedicated Web page at [www.aicpa.org/ballot](http://www.aicpa.org/ballot) to learn more.



## 2010 Health Care Reform Act: Critical Tax and Insurance Ramifications for You, Your Business and Your Clients

See the dramatic and significant tax and health insurance changes that are coming to America! The nearly \$1 trillion, 10 year cost of the Patient Protection and Affordable Care and Reconciliation Acts of 2010 will change the way health insurance is delivered and how we will pay for it. Be informed of these changes and get tips for strategies to best deal with them.

Las Vegas: August 19th  
Reno: August 20th

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Visit [www.nevadacpa.org](http://www.nevadacpa.org) for more information

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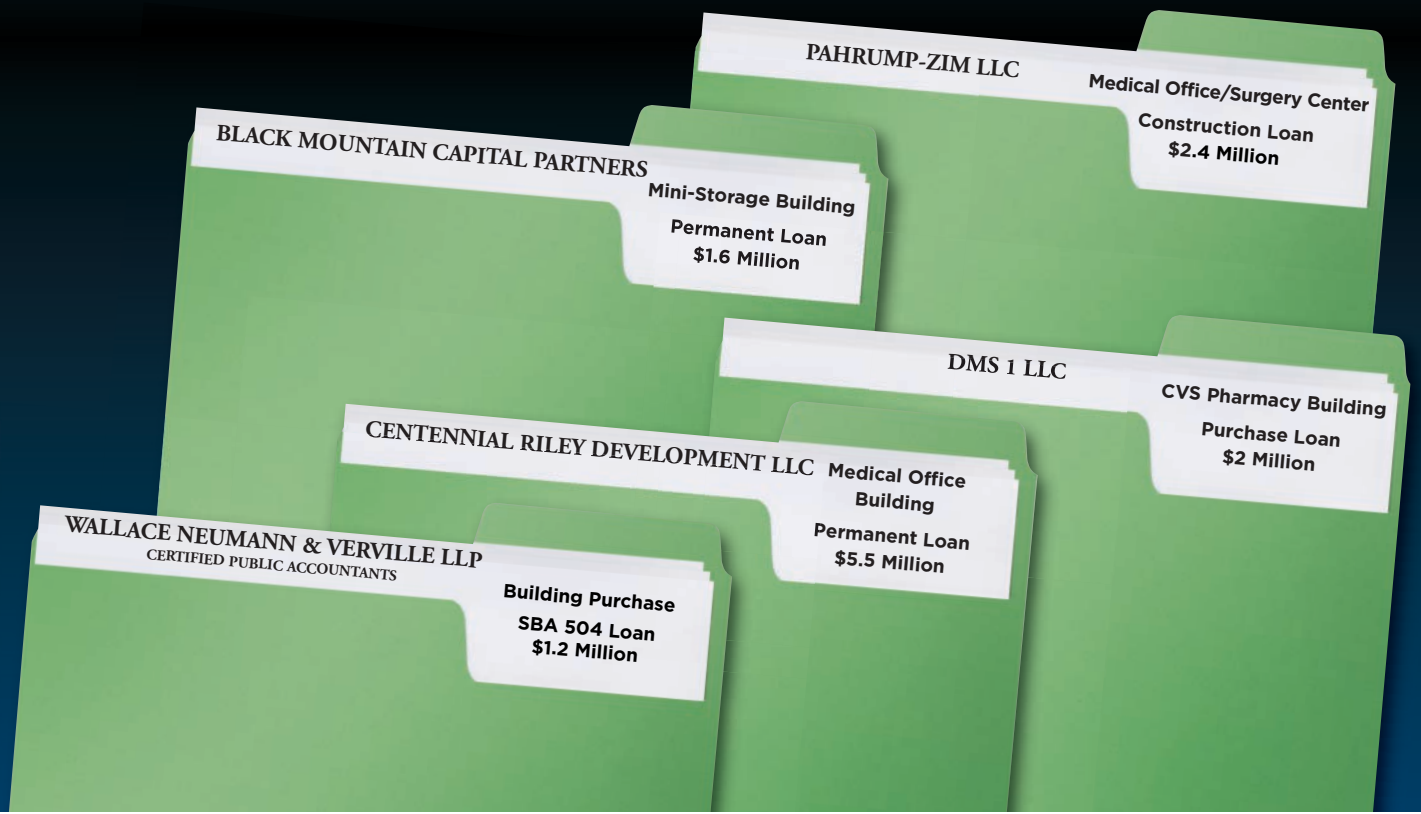
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# CFO Perspectives

By Reg Baker, CPA PFS

The challenge of writing a column like this is the diverse experience and backgrounds of the readers. Some readers could be high level executives with many areas of responsibility while others may be in smaller companies with limited staff and more narrow responsibilities, and yet still other readers could be in public accounting and are passing the article to younger staff and/or clients. Needless to say, writing relevant columns of interest to all these readers is difficult. Especially when column length is limited to only so many words.....

As mentioned in last month's column, this column will be addressing how the Chief Financial Officer (CFO) interfaces with the "C" suite and other managers of their entity. Depending on the size of the entity this CFO interface could be extensive or be limited to just one or two individuals.

Regardless of size considerations, the CFO interface is essentially an education, coordination and monitoring function.

**Education:** The CFO needs to educate and create an awareness of the many areas, functions and transactions that impact the financial affairs of an entity. Not to overstate the importance of the CFO's role, but there is very little that happens within an entity that does not impact the entity's finances in one way or another. The more the managers and leadership of an entity understand, support and appreciate this fact, the greater the probability is that the entity is being well managed.

**Coordination:** Once the leadership and managers of the entity appreciate and support the role of the CFO, then the work of coordination begins. Frequent contact with all aspects of a company is essential for a CFO to effectively execute their role. For example, it is only by understanding how sales transactions are received, processed, approved, recorded, reconciled, collected, monitored, managed and exceptions are handled can a CFO (or their staff) effectively advise the other managers and create a useful support system for the entity. To be effective, a CFO and the entity's leadership both need to extrapolate this concept throughout the entire entity.

**Monitoring:** It is only by monitoring (which by my definition includes reporting) all the various activities of an entity can the CFO and the entity's leadership effectively manage, direct and control the entity. As the old saying goes, "If you can't quantify it, you can't manage it". Providing and reacting to daily, weekly and monthly reports with trend analysis and important observations are critical to an entity's success. Again, the more this is appreciated and supported by the entity the more likely the entity will be successful. We'll be talking about dashboards in a later column.

You might have noticed that I have used the term "entity" throughout this article. The reason is that much, if not all, of what I am writing about is true for companies for profit as well as for non-profit entities. Entity is being used to refer to both profit and not-for-profit entities.

Please contact me with your feedback at [reg@regbaker.com](mailto:reg@regbaker.com).



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# Discharge of Indebtedness Tax Implications

By Jason Thomas, CPA  
FAIR, ANDERSON, & LANGERMAN



Familiar with these lyrics, “What is love? Baby don’t hurt me, no more...” Well, in today’s environment, the words could be changed to, “What is debt? Banker don’t hurt me, no more...” The current economic tsunami has caused us all to re-think how we approach our businesses and what strategic decisions need to be made; included in that mix should be some planning for dealing with debt forgiveness income.

Cancellation of indebtedness (COD) income is simply being treated as earning taxable income when a taxpayer does not have to pay back everything they owe. This income can also result when existing debt is restructured with more favorable terms, such as a lower interest rate and or extended repayment term. The current laws were not designed for the banking sector melt down which has encouraged widespread defaults. This unbalanced scenario warrants full utilization of the current tax and debtor laws to restructure for long-term viability and business growth.

When debt is discharged, the calculation of COD income will depend upon whether the debt is recourse or nonrecourse. Property conveyed to the lender in satisfaction of recourse debt will generate COD income to the extent that the fair market value of



the property is less than the principal amount of the debt. Property conveyed to a lender in satisfaction of nonrecourse debt is treated as a sale, and gain results to the extent the principal amount of the debt exceeds the tax basis of the property. However, COD income can also result when existing debt is

significantly modified, when outstanding debt is acquired by a related party, and when debt is exchanged for an equity interest in a corporation or partnership.

The laws allow for COD income to be excluded from being treated as taxable income and were commonly applied in the early 1990’s. The world at that time was a bit less complicated and lenders had a more direct relationship with borrowers to negotiate debt work outs. Today things are not quite as simple. For the average commercial loan, the lender has turned into a plethora of multi-tiered, multi-partied financial instrument arrangements. The borrower may have a hard time figuring out who the lender is as the loan has been sliced and diced into tranches of securities. The borrower who is in a default situation may be stuck working with a loan servicer that may not be able to or be unwilling to work with the borrower.

Currently, borrowers still have ways to exclude COD income from taxation; however, it takes much more proactive planning in today’s environment to ensure

a tax benefit. COD income can be excluded in a Title 11 Bankruptcy, case when the taxpayer is insolvent, when the debt is considered to be qualified real property business indebtedness, and other exemptions. The cost of exclusion can be the reduction of the tax basis of existing assets and the elimination of net operating loss and credit carryovers. In addition, for 2009 and 2010, an eligible taxpayer may elect that COD income incurred when debt instruments are reacquired be deferred and be included into income over a five year period starting in 2014. Because of the complexities of the tax laws and the environment of securitized debt, proactive planning is essential for debt workouts to be not only financially viable but also to be tax-free or tax deferred.

Many borrowers are in the situation of having their loan in limbo with the FDIC. It has been estimated for 2010 that banks will lose up to two trillion of loan base and the FDIC will take over approximately 200 banks. The impression is that the government is accelerating the process of bank closures. That being said, it has also been reported that the FDIC is running out of money while hiring more resources to deal with this cri-

**Being conscientious, diligent, and resolute sooner rather than later in dealing with every possible aspect of the debt situation will give the debtor a better chance for a workable solution.**

sis. This all adds up to more bureaucracy in the transaction, which can leave many unanswered questions for borrowers, including, "How will personal loan guarantees be dealt with?" Questions such as these affect how COD income is excluded.

In the navigation of debt workouts, no matter what course is taken for the given situation, it is imperative in the current environment to leave nothing to chance, such as making timely elections. Being conscientious, diligent, and resolute sooner rather than later in dealing with every possible aspect of the debt situation will give the debtor a better chance for a workable solution. With the law being applied properly in tandem with vigilant negotiation, possibly with the FDIC, debtors can maintain more control of the situation. Maybe this tapestry of ingredients is the new normal and the best way to deal with it is to get used to it. This is just the start of more to come.

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# Faster Than A New York Minute... You Owe Sales Tax On Phantom Sales! What is happening in the Empire State?

By Richard A. Vallari CPA, CMI

In last month's column, I made reference to the fact that New York is looking to hire approximately 330 additional state tax auditors despite facing an approximate \$9.2 billion dollar budget deficit. On the surface, it appears to the casual observer that New York is enhancing tax enforcement in order to ensure "compliance" to help with budget revenue shortfalls. Currently, New York appears to be pressuring auditors to bring in more revenues through aggressive auditing.

Since last month's column, I have had discussions with a colleague who operates a boutique firm in western New York specializing in sales tax audit representation. He asserts that auditors have become quite aggressive in their quest to assess sales tax. Their new approach: use indirect auditing techniques if the taxpayer does not meet New York's rigid "adequate records" standard.

Many business owners in New York are struggling to understand the rationale of indirect auditing techniques, especially when their business records are mostly complete. Traditionally, New York applied these methods to identify tax evaders. However, New York is regularly applying these procedures towards restaurant and bars, industries with notoriously high cash receipts. The attitude of auditors appears to assume the sales are underreported, even if records indicate otherwise.

One indirect auditing technique that has become common practice includes reviewing third party information then extrapolating the result to determine if sales are underreported. New York uses their adequate record standard from their statutes to justify this approach; if every sales invoice for the audit period cannot be produced, New York is then free to utilize an "indirect method" to arrive at what the state perceives as correct sales. Under this approach, calculated sales are usually greater than actual sales.

For our friends in New York, once the sales tax assessment is issued, the state income tax people start to salivate and the legal fees to challenge the audit methodology begin to mount. Once the tax bill is issued, the burden of proof is on the taxpayer. The ironic part of this madness is that while New York is hammering out inflated tax assessments through use of their indirect auditing techniques in an attempt to enhance revenues,

they're putting small businesses in the grave, which only leads to lower tax revenues for the state in the long run.

So what does this have to do with happenings in Nevada? Many Nevada businesses are heavily cash based. Additionally, there will soon be a new governor in office who may have a philosophy similar to New York's with regards to audit enforcement. Perhaps what is happening in New York may be best explained by rogue auditors looking to make a name for themselves to their superiors. However, the New York Department of Finance and Taxation's acceptance of these indirect audit methods appears to indicate otherwise.

Fortunately we do things different in Nevada. I have had the pleasure of working with many auditors and have found them to be professional and fair. They realize that getting to the correct amount of tax owed, if any, is more paramount than inflating assessments to gain the favor of their superiors. In any state where the economy is struggling, there should not be a bounty out to over burden business with aggressive auditing procedures when there is no evidence that things are not on the up and up. Let's hope auditors in Nevada never face the need or the pressure from their superiors to become so aggressive that well kept records are ignored and indirect auditing techniques are applied.



Rich is the founder of Southwest Sales Tax Solutions, LLC. He has over 20 years of experience handling sales and use tax issues. His company specializes in sales and use tax audit representation and consulting. Rich is licensed CPA, a member of the Nevada Society of CPA's and the American Institute of Certified Public Accountants. Rich is also a member of the Institute for Professionals in Taxation, earning his designation as a Certified Member of the Institute in Sales Tax (CMI). Rich may be contacted at (702) 233-0049 or at [rvallari@cox.net](mailto:rvallari@cox.net).



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