

The Silver State CPA

October 2011



America Invents Act Signed Into Law September 16, 2011

Tax Strategy patents are now one of only three business method patents the Patent & Trademark Office is prohibited from issuing. P. 4

IRS Offers Relief for 2010 Estates P. 11

PCAOB enters Agreement with Norway P. 12

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President's Message



I want to invite all of you to our 3rd Annual Southwest Tax Conference on December 6th & 7th. We have been working diligently to prepare this conference for you. It will be held at the Bellagio Hotel as it has been for the past two years. The Bellagio provides a beautiful backdrop for our conference and excellent amenities.

This year we will open our conference with Charles Rettig, Esq. from Los Angeles. Charles is very active in the AICPA and IRS organizations and always is on top of the latest information. His background in law presents a very interesting slant to our compliance requirements.

Also, we will have a representation from the IRS which will include Christine Footit, our Sr. Stakeholder Liaison, John Kirk, Special Agent, from the TIGTA, Debbie Thompson, Exam Territory Manager, and Bob Carey, Collection Territory Manager. They will be on a panel to bring us the latest information in their respective areas. Terri Malone, specialist will make a presentation on the Bank Secrecy Act. All very valuable information for our practical use as tax practitioners.

We also have with us this year Richard Vallari, Owner of Southwest Sales Tax Solutions, LLC. Nexus is a very hot topic today with the recent Amazon case and with our clients getting more and more electronic in their business activities. Richard will hopefully help us keep our clients out of trouble.

Kip Dellinger will be with us from the AICPA to discuss Circular 230 updates.

At the end of the first day, we will have an optional panel composed of sole practitioners, to Big 4 firms. They will discuss practical logistic topics we face everyday.

At the beginning of the second day, we will have a panel of Brian Fralick and Keith Pierce from Grant Thornton, and Jason Thomas, from Fair, Anderson, and Langerman. They will be covering tax updates in the areas of individuals, corporations, and partnerships. This will be a two hour presentation.

We will have speakers on some specialized topics such as: Marc Schultz, Partner, Snell & Wilmer, on Green Energy; William Kropkof, Kropkof Financial on Retirement Planning; John Kober, from Morgan Lewis, and John Maxfield from Holland and Hart, to speak on Employee Stock Ownership.

There will be a two hour panel on estate taxes with Bart Mowry of Maupin, Cox & Legoy and Nicole Vance from the Wells Fargo Bank.

Lunch on the first day will be open for networking and on the second day, we will have Robert Lang PhD, Professor and Director of the Brookings Mountain West, UNLV to speak to us on the Local Economy.

This conference has been very successful in the past and we have received excellent reviews. We hope you will join us. If you register before November 4th, you will get a discounted rate and if you register more than one person from your firm, we will offer a group rate. Just contact the society office for details. See you there !!

Nina Gallagher
NVCPA President

3rd Annual Southwest Tax Conference

Bellagio - Las Vegas

December 6-7, 2011

The Southwest Tax Conference is the perfect opportunity for you to get the federal tax updates and insights you need on issues that impact you and your clients. This conference will enable you to direct your clients through the maze of tax and economic information coming from Washington. Topics include individual, corporate, large to mid-size companies, green energy, and topics that affect you today in your practice. Hear from tax experts and earn up to 17 hours of CPE all in Las Vegas (including 4 hours of ethics). This is the only Taxation Conference you will need to attend in 2011.

The Southwest Tax Conference will be held at the beautiful Bellagio hotel on the vibrant Las Vegas Strip. Room rates for attendees of the conference are being offered at a special \$151.20 per night if you book using room code: NEVCPA. To book a room call 1-888-987-6667, but you must book by November 1, 2011 to get this rate.

Sessions Include:

- IRS Enforcement Priorities - Current Developments in the Tax Trenches
- Employee Stock Ownership Plans
- Click! ...You've got Nexus!
- IRS Bank Secrecy
- Tax Update - Individual/Corporation/ Partnership
- Green Energy
- Estate Taxes
- Circular 230 - Update
- Local Economy Update
- Retirement Planning/Defined Benefits Plan
- IRS Panel - Updates Important to Practitioners
- Panel - Issues Nevada Firms are Facing Today (optional 1 hour of CPE)

Conference Pricing

Early Bird Pricing (Register before November 4th)
\$595

Standard Pricing (After November 4th)
\$695

Group Pricing (5 or more people)
\$575 - Early Bird
\$675 - After Early Bird

**Must call in to get this rate.

CPE Hours Offered

17 or 18 (with optional hour on day one with no additional cost)

Thank You To Our Sponsors:



Five-Year Push by AICPA Yields Protection from Royalty Fees and Lawsuits

By The AICPA



A New Law Removes Barriers for Taxpayers

Taxpayers won a significant victory [September 16, 2011] with the enactment of the **America Invents Act**, a major patent reform measure that includes a provision to eliminate tax strategy patents fought for by the American Institute of Certified Public Accountants and the state CPA societies for more than five years.

If allowed to proliferate, this form of patent would have complicated tax compliance for countless Americans and exposed many to royalty fee charges and patent infringement litigation.

“Tax strategy patents are the equivalent of private tollbooths that block tax compliance options and could cost Americans more money,” said Barry Melancon, president and CEO of the AICPA. “We are grateful that Congress and the President recognized this and acted to correct the inequity.”

In effect, tax strategy patents erect a barrier to the use of legitimate methods to reduce or defer tax liability. That can lead to disparities in which one taxpayer faces a higher tax burden than another, even when the two have essentially the same tax situation. Eliminating the issuance of new tax strategy patents will level the playing field so that every American can take all legal steps to keep his or her taxes as low as possible.

“Navigating the tax code should be a simple, clear and fair process,” Melancon said. “The remedy contained in the new law reinforces this goal and makes it easier for financial professionals to give appropriate tax advice.”

The new law deems any “strategy for reducing, avoiding, or deferring tax liability” to be “prior art” under patent law, and therefore not patentable. Under the law, “tax liability” is broadly defined to mean any tax liability under federal, state, local or foreign law.

Why Are They Picking on Me?

By Richard A. Vallari CPA, CMI



As a business owner, the down side of tax compliance is an audit conducted by the Nevada Department of Taxation. Unfortunately, compliance costs time and money. The cost of gathering requested documents, the time the auditor spends reviewing records, and time required to review the auditor's workpapers to determine if the assessment is reasonable. If the audit is petitioned, there is an investment of additional time and money.

One rule that seems to apply to all audits – an audit is always conducted at the most inconvenient time. The usual human reaction is a complete lack of understanding as to why the department has selected YOU. How can this be? You look around your place of business and wonder. I have been meticulous about filing sales tax returns timely, my payments are always prompt. And yet...you have been notified that your business has been “selected” for an audit. It's almost as mysterious as being called to jury duty. Why are they picking on me?

The world is full of mysteries and unanswered questions. The Bermuda Triangle. Jack the Ripper. The Roswell UFO incident. The Chicago Cubs not winning a world series in over 100 years, and of course, why your business was selected for audit by the Nevada Department of Taxation in the first place when there are so many other eligible candidates.

Now that we have the frustration out of the way, let's consider the reason why you were selected for audit. I confess, I really do not know. I often pose this question to department officials. The reaction is always the same – the deer in the headlights stare. However, I have managed to determine that two factors create an audit situation and are addressed below: leads from another audit, and the audit lottery.

Leads from another audit give the Nevada Department of Taxation cause for a Sales and Use Tax audit of your business. When a taxpayer is audited, everyone the taxpayer conducts business with is audited too. Since the purpose of an audit is compliance, then all transactions are considered to be within the audit limits. Auditors look at vendors that the taxpayer has purchased from to determine if they are registered by the state. In addition, if the vendor is outside Nevada, a review of the transaction is conducted thoroughly to determine if the vendor has nexus and is required to register.

The audit lottery is the main source of audits. The state uses a random selection procedure to generate approximately 5,000 audit candidates annually. This honored group is then broken out evenly to audit supervisors for review. Supervisors look at several factors to determine which businesses will face an audit. These factors include, but are not limited to federal NAICS code, history of taxpayer filing, and industry initiatives.

Once the notice of intent to audit arrives at your business, and imponderables are pondered, the usual reaction is “What do I need to do for this to go smoothly?” Well, that is a topic for another article. However, I can report confidently that the failures of the Chicago Cubs can be traced back to a goat from 1945 and a black cat entering the field of play in September 1969.

How to Apply the Withholding Rules for Payments to a Foreign Person.

By Kimberly Woods

Do your clients make payments to a foreign person? If so, you and your clients need to understand the withholding requirements under §1441 and §1442. In general, withholding of 30% is required on payments made to a foreign person. Help your clients avoid penalties by answering the following seven questions:

Am I a withholding agent?

A withholding agent is any person, U.S. or foreign, who has control, receipt, custody, disposal, or payment to a foreign person of income subject to withholding.

Who is the beneficial owner?

You must determine the beneficial owner of the income in order to properly determine withholding. The beneficial owner is the person required to include the payment in income. Generally, the beneficial owner of a payment is the person to whom the payment is made.

The owner of a disregarded entity is considered to be the beneficial owner of payments made to the disregarded entity. For flow-through entities, the beneficial owner will generally be the owners or beneficiaries of the flow-through entity.

You will determine the beneficial owner of a payment by requesting a withholding certificate from the payee.

Is the beneficial owner a foreign person?

A foreign person is a foreign corporation, partnership, trust or estate, the U.S. branch of a foreign corporation, or a nonresident alien.

Nonresident aliens are individuals who are neither U.S. citizens nor resident aliens. A resident alien is one who is a lawful permanent resident or one who meets a substantial presence test.

Is the payment subject to withholding?

Payments are subject to withholding if they are from sources within the

United States and are either: (1) fixed or determinable annual or periodic income (FDAP) or (2) gains from disposition of timber, coal, iron ore, or from sale or exchange of patents, copyrights, or other similar intangible property.

A payment is from sources within the United States if it is paid by domestic corporations, U.S. citizens or resident aliens, if the income-producing property is located in the United States, or if income is from personal services performed in the United States.

FDAP is any income except gains from the sale of property and

excludible income. Examples of FDAP include interest, dividends, alimony, pensions, and income from personal services.

How much should I withhold?

The general rule is 30% withholding. Exceptions to the 30% requirement include income effectively connected with a U.S. trade or business (ECI), tax treaty exceptions, and personal services income.

Income is ECI if the assets that produce the income are used in the conduct of the U.S. trade or business, or if the activities of the trade or business were a material factor in the realization of the income. ECI is exempt from withholding.

If the United States has entered into a tax treaty with the foreign nation, different lower withholding rates may apply. Refer to the tax treaties and IRS Publication 515 to determine the appropriate rate.

Personal services also receive different treatment. Payments for independent personal services will be subject to 30% withholding unless they are ECI or they qualify for a treaty exemption.

Payments for dependent personal services will be subject to graduated withholding under Circular E. Refer to IRS Publication 15 for more information.

What documents do I need?


Your client must be able to associate a payment with a valid withholding certificate. If it cannot, it must apply the presumption rules found in the regulations under §1441 to determine withholding.

Employees performing dependent personal services should provide a Form W-4. If employees are claiming treaty benefits, they should provide Form 8233.

Individuals will use Form 8233 to claim treaty benefits. All others should provide a Form W-8, as described below:

- Form W-8BEN: establishes an entity or individual as the beneficial owner of the income and is used by entities to claim treaty benefits.

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- Form W-8ECI: used to claim the exemption from withholding for effectively connected income
- Form W-8EXP: used by a foreign government or organization to claim a reduced rate or exemption
- Form W-8IMY: used by a foreign flow-through entity or foreign intermediary. In addition to this form, the flow-through entity or intermediary should provide the appropriate withholding certificates and other information necessary for you to determine the beneficial owners of the income.

How do I report withholding?

Withholding is reported to the beneficial owners on Form 1042-S. You must submit all Forms 1042-S and the summary Form 1042-T to the IRS. In addition, an annual return, Form 1042 must be submitted. All of these forms are due by March 15.

You should file Form 1042-S for any payment with respect to which you are a withholding agent, even if you were not required to withhold. Wages paid to nonresident alien employees are reported on Form W-2. If an employee was exempt from withholding due to treaty benefits claimed using Form 8233, the payment should be reported on Form 1042.

Withholding agents are personally liable for any tax required to be withheld. In addition, penalties will be applied if the forms in the 1042 series are not timely filed when required. Gaining an understanding of these rules will help you and your clients avoid these penalties.

6th Annual Las Vegas Golf Tournament

- Date:** Wednesday, October 19th
- Time:** Registration 7:00 am
Shotgun start 8:00 am
- Location:** Siena Golf Course
- Cost:** \$150 / Single
\$300 / Twosome
\$500 / Foursome



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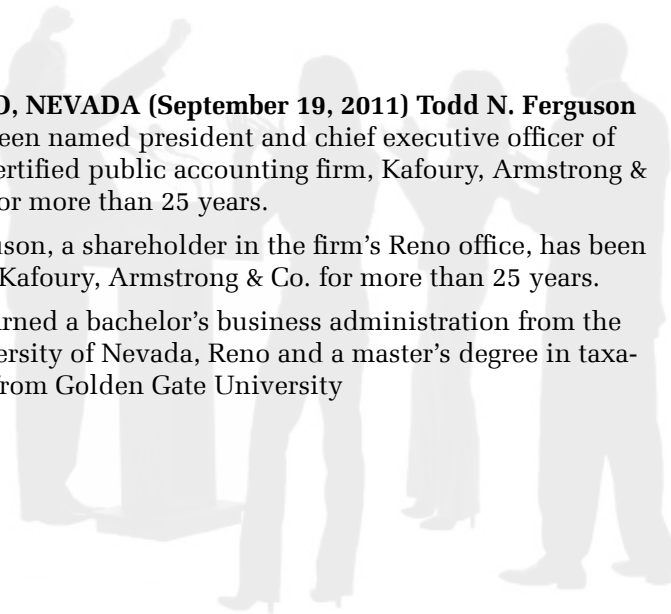
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PHOENIX

Member News



RENO, NEVADA (September 19, 2011) Todd N. Ferguson has been named president and chief executive officer of the certified public accounting firm, Kafoury, Armstrong & CO. for more than 25 years.

Ferguson, a shareholder in the firm's Reno office, has been with Kafoury, Armstrong & Co. for more than 25 years.

He earned a bachelor's business administration from the University of Nevada, Reno and a master's degree in taxation from Golden Gate University

Welcome New Members!

Susan E. Nuckles
Reno, NV

Jodie Nelson
Zephyr Cove, NV

Scott London
Los Angeles, CA

Stephen A. Stewart
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Ellie J. Bowdish
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IRS Offers Filing and Penalty Relief for 2010 Estates

The Internal Revenue Service announced [September 13, 2011] that large estates of people who died in 2010 will have until early next year to file various required returns and pay any estate taxes due. In addition, the IRS is providing penalty relief to certain beneficiaries of these estates on their 2010 federal income tax returns.

This relief is designed to give large estates, normally those over \$5 million, more time to comply with key tax law changes enacted late last year. Revised versions of the estate tax forms are now available on IRS.gov, and the carryover basis form will be released this fall.

The IRS is providing the following relief:

- Large estates, opting out of the estate tax, now will have until Tuesday, Jan. 17, 2012, to file Form 8939. This special carryover basis form, required of estates making this choice, was previously due on Nov. 15, 2011. Because this is a change in the specified due date rather than an extension, no statement or form needs to be filed with the IRS to have this new due date apply.
- 2010 estates that request an extension on Form 4768 will have until March 2012 to file their estate tax returns and pay any estate tax due. Normally, a six-month filing extension is automatically granted to estates filing this form, but extensions of time to pay are granted only for good cause. As a result, most 2010 estates that timely file Form 4768 will have until Monday, March 19, 2012 to file Form 706 or Form 706-NA. For estates of those dying late in 2010 (after Dec. 16, 2010 and before Jan. 1, 2011), the due date is 15 months after the date of death. No late-filing or late-payment penalties will be due, though interest still will be charged on any estate tax paid after the original due date.
- Special penalty relief is provided to many individuals, estates and trusts that already filed a 2010 federal income tax return, or obtained an extension and plan to file by the Oct. 17, 2011 extended due date. Late-payment and negligence penalty relief applies to persons inheriting property from a decedent dying in 2010, who then sells the property in 2010 but improperly reports gain or loss because they did not know whether the estate made the carryover basis election.

Details are in Notice 2011-76, posted September 13, 2011 on IRS.gov.





PCAOB Enters into a Cooperative Agreement with Norway

By The Public Company
Accounting Oversight Board

The Public Company Accounting Oversight Board [September 14, 2011] announced a cooperative agreement with the Financial Supervisory Authority of Norway for the oversight of audit work performed by public accounting firms that practice in the two regulators' respective jurisdictions.

"With this agreement, Norway's FSA and the PCAOB are joining forces to improve audit quality and protect investors," said PCAOB Chairman James R. Doty. "I am pleased that the PCAOB is continuing to make progress in overcoming the obstacles that have in the past prevented PCAOB inspections in Europe."

He added, "It is particularly important in these challenging economic times that regulators work together to protect investors in the global financial markets."

This cooperative agreement provides a basis for the resumption of joint inspections of PCAOB registered accounting firms that are located in Norway and that audit, or participate in audits, of companies whose securities trade in U.S. markets.

In 2008, the PCAOB conducted a joint inspection in Norway with the FSA, but has since been blocked from inspections in that country.

This agreement also includes provisions governing the exchange of confidential information between the oversight authorities, consistent with the provisions of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act. Those provisions amended the Sarbanes-Oxley Act of 2002 to permit the PCAOB to share confidential information with its non-U.S. counterparts under certain circumstances.

"We value our important cooperative relationship with Norway's FSA and are pleased that we are able to resume joint inspections in Norway," said Rhonda Schnare, PCAOB Director of International Affairs. "We are working hard to reach similar cooperative arrangements with other jurisdictions in Europe and around the world," she added.

The Sarbanes-Oxley Act directed the PCAOB to oversee and periodically inspect all accounting firms that regularly audit companies whose securities trade in U.S. markets. More than 900 audit firms currently registered with the PCAOB are located outside the United States, spanning 84 countries. There are five registered firms located in Norway.

The PCAOB is a nonprofit corporation established by Congress. Its mission is to oversee the audits of public companies in order to protect the interests of investors and further the public interest in the preparation of informative, accurate and independent audit reports. The PCAOB also oversees the audits of broker-dealers, including compliance reports filed pursuant to federal securities laws, to promote investor protection

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Using Your Profit Sharing Plan to Meet Life Insurance Needs

By Mahesh Odhrani, LUTCF

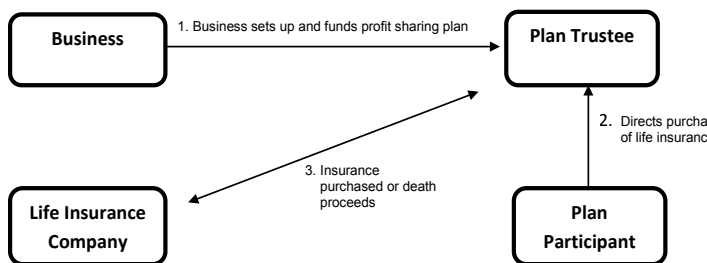
Some business owners with profit sharing plans or key executives participating in profit sharing plans may find themselves in situations where they need more life insurance to protect their family or for other needs like estate planning and buy-sell funding. Others may be more focused on protecting their families in the event of a premature death, rather than on their own retirement. They, however, do not have sufficient cash flow or other sources of funds to purchase it. As a result, they run the risk of placing their families in financial distress in the event of their death.

One Solution: Life Insurance Opportunities in Profit Sharing Plans

While the primary purpose of profit sharing plans and other qualified retirement plans are to provide retirement benefits, looking to the profit sharing or qualified plan may be the solution. The plan may provide for the payment of “incidental” death benefits. Government regulations provide that life insurance may be purchased in a qualified plan so long as the death benefits are incidental. Life insurance coverage in a profit sharing plan is considered incidental if no more than 50% of the company’s contributions to the plan are used to purchase whole life insurance on the participant or less than 25% to purchase term insurance or universal life insurance.

How Does It Work?

1. Ensure the profit sharing plan permits investment in life insurance and, if not, amend it to do so.
2. Participant directs plan trustee to apply for and pay the premium for life insurance.
3. Trustee applies for the insurance on behalf of the participant to be owned by, and payable to, the plan, as beneficiary.



Advantages

- Fills gaps in personal insurance needs.
- Fills gaps from other employee benefit programs.
- When the participant wants a guaranteed return on investment rather than market risks associated with mutual funds and other market related securities.
- Pays life insurance premiums with “pre-tax” dollars

that are or have been deductible to the employer through the profit sharing plan.

- For plan participants who would otherwise be uninsurable or insurable at a higher than standard risk, policies may be guaranteed issue depending upon the plan.
- Life insurance proceeds pass to the beneficiary income tax-free to the extent they exceed cash values. Cost of the economic benefit of the insurance, previously taxed to the participant or paid with nondeductible employee contributions, is also received income tax-free.
- If the participant dies before retirement, the life insurance policy will provide all, or substantially all, the monies that would have been available at retirement.
- Reduces impact on cash flow.

Disadvantages

- Stock, bonds and mutual funds may provide greater investment growth compared to internal rates of return on the insurance policy.
- Policy expenses and commissions may be greater than for comparable investment alternatives.
- The portion of the death benefit attributable to the cash value in the policy is taxable income, reduced by the economic benefit costs reported to the employee annually.
- There may be income tax consequences if there is a lifetime removal of the policy from the qualified plan.
- Death benefits from the policy are includible in the insured’s estate.
- For estate tax planning purposes, life insurance owned outside a qualified plan may be more effective.

Mahesh Odhrani is a Financial Representative with Wealth Strategies Group in Las Vegas, NV. Neither Guardian, nor its subsidiaries, agents or employees provide tax or legal advice. You should consult your tax or legal advisor regarding your individual situation. www.wealthsgnv.com

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YOU GET TWO DOLLARS IN HEARTBURN FROM THIS CLIENT FOR EVERY DOLLAR IN FEES? “LET’S TALK THIS THROUGH.”

Ron Klein, JD, CFE, VP Claims Counsel for CAMICO, discusses the risks faced by CPAs every day.



OK, Ron, is this client relationship really a risk to me?

Well, let’s look at the red flags. The client has careless record-keeping practices, is late in providing information and is often non-responsive, causing you delays. What happens if the business fails or you later discover the client had been deliberately withholding information due to unethical activity? How might you be blamed?

Isn’t it better to fix the problem and keep the client?

Sure, if you can. But at what cost to you, your staff and your firm?

But disengagement is such an unpleasant business...

Not nearly as unpleasant as getting sued. Proactively managing your risk through client selection and retention is really about upgrading your client base and thus upgrading your firm.

OK, so I’m ready to disengage from this problem client. What’s the next step?

Calling CAMICO is always your first step. Our risk management specialists will help you tactfully and securely end the relationship. We have over a dozen sample disengagement letters and will even help you tailor your own letter to make sure all your bases are covered.

Not insured by us? Give CAMICO a call, and we can start the conversation about lowering your risk – and ending your heartburn – today.

See a video of Ron Klein talking about how CPAs are best handled in disengagements at www.camico.com/disengage

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