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## Health Care Reform

By Scott Haigler, CPA



This past spring brought more than a changing of the seasons. Spring also brought about significant tax law changes for individuals and businesses with the Senate's passage of the health care reform package. The health care legislation is made up of two bills that passed within a week of each other. Both bills must be read together to understand the full impact.

To help pay for the expanded health care coverage, high income individuals will pay more payroll taxes, starting in 2013, and be subject to an unearned investment tax equal to 3.8%. It should be noted that the levels for determining high income individuals are not indexed for inflation; therefore, over time, more and more taxpayers will be subject to the higher payroll tax rates. Federally mandated coverage begins in 2014. Individuals who fail to maintain the mandated minimum levels of health insurance coverage will face a nondeductible tax penalty.

Similar to individuals, businesses choosing not to offer qualifying health care for their employees will be subject to a nondeductible excise tax. The legislation provides small businesses relief through supplements and tax credits to offset the additional costs. For purposes of the legislation, a small business is defined as having less than 25 full-time equivalent employees and average annual wages of less than \$50,000.

As a final note, as of mid-May, there have been a number of parties (including 20 of the 50 states) that have joined a lawsuit challenging the legality of the federal health care reform law. The states' position for filing the lawsuit is that the federal law infringes on the constitutional rights of individuals by mandating all U.S. citizens carry qualified health insurance coverage or pay a tax penalty. As is the case with many tax controversies, the court system will likely determine the final outcome of this significant legislation.

## A Balanced Perspective

By Ray Berend

As I began my work today, I looked up from the computer and saw a familiar note taped on the credenza: To build trust a leader must exemplify competency, common goals, and integrity. I jotted these words on a note for myself some 20+ years ago while attending a conference led by John Maxwell, a noted author who wrote *The 21 Irrefutable Laws of Leadership*. In the book, he speaks of the power of the "Law of Solid Ground" which focuses on understanding that trust is the solid ground (foundation) of leadership. A quote from Maxwell's book that really is timely as we lose so many of the Depression and World War II veterans: "The only thing that walks back from the tomb with the mourners and refuses to be buried is the character of a man ... It can never be buried."

I think we are especially challenged with seeking and finding the solid ground in current times with our elected officials in Washington. Recently, former U.S. Senator Bill Frist reported to his audience at the San Antonio Medical

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# Corporate Shell Game

By Leo Munoz, CPA, CFE



How well do companies know their vendors? Simple questions can be insightful for a company to know who it pays on a regular basis for goods and services – questions such as:

- Who are the company's owners?
- Where is the company's physical location?
- How was the company referred to our business?

Consider some of the following findings from the **2008 Report to the Nation on Occupational Fraud & Abuse** issued by the Association of Certified Fraud Examiners:

- Of the 959 case data compiled from 2006 to 2008, 24% of the cases involved billing schemes.
- Billing scheme median loss, \$100,000.
- Average duration of billing scheme, 24 months.

Shell companies are a typical means to carry out a billing scheme. The lure of billing schemes for fraudsters is the notion they do not need to extract cash straight from a company's cash register or alter company checks, but simply need a way to convert checks fraudulently received, as a disguised vendor, into cash.

## Shell Companies

As the name infers, these are companies set up with no real substance other than to disguise themselves as a bona fide vendor, bill a target company for falsified goods or services and convert checks received into cash. On the surface, these companies may be incorporated or set up as a DBA, and have a bank account and an existing address, typically a P.O. Box. If a company's policies require a vendor to have a physical address, the fraudster may use a home or relative's address. Fraud cases most often reported involve an employee with authorization responsibilities in the cash disbursements/accounts payable process who sets up a shell company to defraud the company of thousands of dollars. The employee has the shell company added to the accounts payable system and invoices the company periodically under the shell company name for goods or services not received. Sometimes, the dishonest employee has help either inside or outside the target company.

## Uncovering the Shell – Prevention and Detection

Companies can take steps to protect their assets from being victimized by a shell company scheme with some common sense and due diligence both on the front end and periodically. Steps may include:

- Have a prospective vendor fill out a standard vendor data form to include company information such as all owner names, vendor address, phone numbers, state of incorporation, copy of articles of incorporation, or DBA certificate and references.

- Research vendor via the internet; public records can be used to verify company ownership.
- Confirm items on the vendor data sheet; call phone numbers to ensure credibility. Are they listed in the phone book?
- Evaluate vendors listing only a P.O. Box as their address with no physical address.
- Look for unusual vendor name conventions; names with just initials may reveal a match with an employee's initials.
- Compare vendor addresses with employee addresses, looking for matches.
- Track unusual invoicing patterns, such as increasing frequency and dollar amounts.

Additionally, companies should review the internal controls over their accounts payable/cash disbursements process and, at a minimum, have in place (1) proper authorization of purchase orders, invoicing, payments, and vendor set up, (2) adequate segregation of duties, (3) monthly bank reconciliations and review, (4) dual signatures for checks over certain amounts, and (5) system controls that flag duplicate payments and invoices. Companies that are proactive in analyzing their anti-fraud controls can reduce the risk of fraudulent activity within their organization. An independent review of controls can also provide valuable insight and an unbiased perspective of whether or not adequate controls are in place and working effectively within an organization.

## We Are On The Move in Austin

To better serve our clients and prepare for continued business growth, we are moving to a larger space for our Austin office in early August, 2010.

We hope you will stop by to visit us in our new location.

Please make note of our new address:

811 Barton Springs Road, Suite 550  
Austin, Texas 78704

Telephone: 512.476.0717

Facsimile: 512.476.0462

We hope to see you soon!

# More Federal Changes Headed Your Way

By Gary Christensen, CPA



## Electronic Transactions

The Treasury will begin implementing a three-pronged initiative to dramatically reduce the number of transactions that are conducted on paper by moving them to electronic systems.

First, businesses currently permitted to use paper Federal Tax Deposit coupons will have to make those deposits electronically beginning in 2011. The only exception is for businesses with \$2,500 or less in quarterly tax liabilities that pay when filing their returns. Currently only businesses with tax payments in excess of \$200,000 annually are required to make payments through the EFTPS system. If you need assistance in setting up the EFTPS payment system, please contact PS&Co.

Second, the Treasury will require individuals receiving Social Security, Supplemental Security Income, Veterans, Railroad Retirement, or Office of Personnel Management benefits to receive payments electronically. Individuals will be able to receive

benefits either through direct deposit into a bank account or the Treasury's Direct Express debit card. The requirement will apply to new enrollees beginning on March 1, 2011 and to existing check recipients beginning on March 1, 2013.

Finally, the Treasury will eliminate the option to purchase paper savings bonds through payroll deductions for federal employees on September 30, 2010 and for the private sector by January 1, 2011.

## 401(k) Questionnaire

The IRS developed a Section 401(K) compliance check questionnaire which went out in May to a sample of 1,200 plan sponsors. The Risk-Modeling Project is designed to enhance the IRS's ability to electronically identify the tax returns of noncompliant plans and reduce taxpayer burden associated with the examination of compliant qualified plans. The on-line questionnaire must be completed by accessing the IRS website within 90 days of receipt of the letter. For a copy of the questionnaire and assistance with its proper completion, please contact a member of the PS&Co. team.

## A Balanced Perspective

By Ray Berend – *continued from page 1*



Foundation sponsored breakfast the difficulty of a polarized House and Senate. He said that both legislative branches, since the election of our current president, have voted along party lines 90% of the time versus a history of 55%. He recommended that we refer to the Kaiser Family Foundation website ([www.kff.org](http://www.kff.org)) to get an accurate summary of the Health Care Reform Act

and an analysis for its funding. He reports the Congressional Budget Office's estimate of deficit reduction over ten years "ain't true." I remember well those numbers were used by the president for a final push to get the House and Senate on board for approving health care reform.

Maxwell also reminds us of President Johnson, a consummate politician, who lost the trust of the American people because of his administration's continuous misrepresentation of the true facts about the war in Vietnam. Ultimately, Johnson's position became so weakened that he withdrew from running for re-election for president.

We can learn from the actions of our leaders. For a leader to have the authority to lead, he needs more than the title

on his door. He has to have the trust of those who are following him.

A business leader may be able to self-review and evaluate his or her organization's internal foundation of trust. The measurements for competency and common goals should be developed and defined internally for our companies. The measurements for integrity are more difficult; however, a survey of employees is a good place to start. The survey should seek their rating on questions such as:

- The leaders live what they teach.
- The leaders will do what they say.
- The leaders are honest with others.
- The leaders will put what is best for others ahead of what is best for them.
- The leaders are transparent.

Reverend Billy Graham spoke of integrity as "the glue that holds our way of life together." He said, "When wealth is lost, nothing is lost; when health is lost, something is lost; when character is lost, all is lost." Dr. Graham perhaps can influence our national leaders. You and I can work on our foundation first at home and in our business.

# DUE DATE CALENDAR

## JULY

**JULY 12**

*Individuals:*

Form 4070, for employees who received \$20 or more in tips during June, is due to employers.

## AUGUST

**AUGUST 2**

*Employee Benefit Plans:*

Form 5500 is due if plan uses calendar year.

**AUGUST 10**

*Individuals:*

Form 4070, for employees who received \$20 or more in tips during July, is due to employers.

**AUGUST 16**

*Corporations:*

File the Texas Franchise Tax Report for EFT filers on extended returns originally due May 17, 2010.

*Corporations:*

File request for additional extension to file Texas Franchise Tax Report for EFT filers.

## SEPTEMBER

**SEPTEMBER 10**

*Individuals:*

Form 4070, for employees who received \$20 or more in tips during August, is due to employers.

**SEPTEMBER 15**

*Corporations:*

Deposit the third quarter of estimated income tax for 2010 (use Form 1120-W).

*Corporations:*

File 2009 Calendar Year Form 1120 and 1120S if you timely requested an automatic 6 month extension on March 15.

*Individuals:*

If you are not paying your 2010 income tax through withholding, the third quarter estimated tax payments should be made using Form 1040-ES.

*Partnerships:*

File 2009 Calendar Year Form 1065 if you timely requested an automatic 5 month extension on April 15.

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## Dependent Eligibility Audits

By Diana Weeks, MBA, CCP, SPHR, PI



Employers are now being faced with many questions and soon new challenges with the issue of legislative health care reform. Every company wants to remain competitive and provide the best benefits at the most reasonable cost to employees. In addition to this new issue of health care reform, the current downturn of economic conditions and increasing health care costs, are pressuring companies to quickly prepare and

help control plan expenses.

Every company should ensure that covered dependents on health care plans are truly eligible for coverage. Benefits must be administered fairly to all employees and eligible dependents. The benefit offerings should be aligned, defined, and communicated to employees through the Summary Plan Descriptions (SPD) and the Human Resources Department.

A dependent eligibility audit may be used as a tool to assist in containment of benefits costs without revising the foundation of a health care plan or changing amounts to employee contributions. Ineligible dependents in health care plans may have an impact in increasing health care costs for the employees and the company. An audit can also assist the company in meeting ERISA's fiduciary responsibility. An audit can assist the employee and employer

by educating the employee on the definition of a dependent according to the SPD, and to reduce the risk of a rejected or an ineligible claim that could result in significant cost to the affected employee.

A dependent eligibility audit consists of several stages of review and implementation. The planning phase consists of defining and creating a project timeline and communication to be sent to the covered workforce and dependents. The verification phase will be completed by conducting a detailed review of documentation and eligibility. The company, as a result of the audit, may remove participants that are not qualified to participate in the plan and, in turn, reduce expenses for the company and plan members. There may also be an amnesty phase that allows the employee to remove the ineligible dependent with no penalty to the employee. Good education and communication are essential to the success of the audit.

Is the company doing everything possible to reduce costs, protect the employee and employer from unpaid claims? Before health care reform provides significant changes, one thing is certain – controlling benefits costs will continue to be a primary focus in revising company budgets. Containment of health care costs, good employee relations and benefits compliance should be on human resources agenda before health care reform overwhelms your company with new regulations.

# Financing a Business: Is the Answer Debt or Equity?

By Greg Weichbrodt, MBA, ASA



When seeking financing, owners typically have two options: debt or equity. It is necessary to consider facts and circumstances specific to business owners and their business to determine the best alternative.

## Debt Financing

If your company has a solid operating history and tangible assets that can be pledged as collateral, you may be able to secure a bank loan for your business.

Lenders generally require a history of cash flow generation that is sufficient to pay the interest on the contemplated debt and to provide the ability to repay the principal.

Other debt financing factors:

- Can be a low cost form of financing.
- Debt is a legal obligation and remedy for nonpayment may be forced bankruptcy.
- Legal obligations cease upon payoff.
- Tax deductible interest expense.
- Ownership is not diluted.
- Profits and appreciation in business value is not shared.
- Control of the business is generally maintained.
- Loan covenants are typically required.
- Personal guarantee will likely be required.

## Equity Financing

A business can obtain capital from an equity investment. This type of financing often is used by young companies that own

limited collateralizable assets, but possess potential for a future return to investors. Investor returns, such as profit sharing, or appreciation in company value could prove to be costly to an owner giving up a portion of his business.

Other equity financing factors:

- Could provide an incentive to an employee investor.
- Return of the investment generally is not contractually required.
- The loss of exclusive managerial control.
- Shareholders have a permanent interest.
- Personal relationships between owners must be maintained, and often fail.
- Shareholders expect a return in addition to their investment, either in the form of periodic distributions, a return of capital when the business is sold, or both.
- The overall return a shareholder expects is likely greater than debt financing costs.
- Distributions of profits or return of capital are not tax deductible.

## Summary

Obtaining necessary capital can be a critical decision for the success of a business. Valuation consultants are uniquely familiar with the effects of debt and equity financing and can be an excellent resource for business owners in understanding the potential impact of choosing either option of raising capital. Consideration of owners' current needs and future desires, along with the facts and circumstances surrounding the business, should play a part in the ultimate decision.

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## Expanded Reporting for Foreign Financial Assets

By Renee Foshee, JD, CPA

Many U.S. taxpayers are familiar with the current Report of Foreign Bank and Financial Accounts (FBAR) requirements. These require a U.S. person, individual, or entity that holds a financial interest in, or signature or other authority over, bank accounts, securities accounts, or other financial accounts in foreign countries, which in aggregate exceed \$10,000 for any part of the calendar year, to file an FBAR report (TD F 90-22.1) by June 30 of each year.

Effective March 18, 2010, there are expanded rules under the Foreign Account Tax Compliance Act (FATCA). FATCA requires reporting by qualified individuals who hold any interest in a specified foreign financial asset when the aggregate value exceeds \$50,000. Taxpayers who have an FBAR filing requirement may also have a FATCA filing requirement. Specified foreign financial assets under FATCA now include stocks and securities issued by a non-U.S. person, financial interests, and contracts held for investment that have a non-U.S. issuer or counterparty,

and interests in foreign entities. If the IRS believes a taxpayer has an interest in any of these specified foreign financial assets, the taxpayer must provide sufficient information to demonstrate the aggregate value is less than \$50,000 or there is a presumption the taxpayer has a filing requirement.

The minimum penalty for failure to submit the required disclosure is \$10,000. The maximum penalty is \$50,000, but there is a provision for penalty waiver if reasonable cause for failure to file can be demonstrated. Penalties for both FBAR and FATCA can be assessed at the same time for the same accounts.

These new requirements are not applicable to everyone; however, it is important to keep in mind that having investments in foreign countries requires additional attention to the obligations for proper reporting. For further information please contact a member of our International Tax team – Hector Fietze, James Carter or Renee Foshee.

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## Making a Difference in the Communities We Serve



Giving back to the communities in which we do business is a philosophy PS & Co. lives by and one we share with our interns. As in years past, participants in the Austin and San Antonio intern programs selected two local charities where they could roll up their sleeves, work as a team, and offer **Service More Than Expected.**

The Austin team selected the Capital Area Food Bank of Texas (CAFB) where they assisted in processing 5,795 pounds of food. CAFB partners with 355 agencies to provide much needed supplies to nearly 300,000 hungry central Texans. When asked about his role in this year's program, tax intern Kyle Voss commented, "I am glad to see that, even during busy season, Padgett makes it a priority to

enable its people to volunteer. Coming from Texas A&M where service is a way of life, I've seen the impact that a spirit of volunteerism can have."

Not to be outdone, the San Antonio interns, along with several PS&Co. team members, headed out to this year's Homes of Distinction tour which was held at Stone Creek Ranch in Fair Oaks. The team spent the day shuttling visitors around on golf carts and lending a helpful hand whenever it was needed. Proceeds from this year's event benefited Boysville Texas. The Boysville campus is designed to help children in crisis who, for a variety of reasons, are unable to remain in their homes.

Helping create a brighter tomorrow is a proud tradition of our firm. We are pleased this year's interns share that vision and willingly work to help make a difference in the communities we serve.



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