

Executive's Tax & Management Report

Wealth-building strategies plus
late-breaking tax news

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Estate Tax Uncertainty and Importance of Planning

By Angela Beasley Phyfer and Chrissy M. Leggett

Despite uncertainty surrounding the future of the estate tax, it is still possible—and important—for executives to engage in estate planning.

Background Information

In 2001, Congress enacted the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) [P.L. 107-16]. EGTRRA reflects congressional cooperation on several issues including the following:

- Tax rate reduction
- Estate tax repeal

- Marriage penalty relief
- Education incentives
- Child tax credit increase
- Pension reform
- Alternative minimum tax relief

Congress designed EGTRRA to meet budgetary constraints by phasing the provisions in and out over a 10-year period, with a projected sunset in 2011 that would reinstate the tax law as it was prior to the enactment of EGTRRA.

Under the estate tax provisions of EGTRRA, the tax rates have steadily declined from 55 percent in 2001 to

Preparer Prosecuted for Homebuyer Credit Fraud

With new tax credits come new attempts to circumvent the law. But the IRS is sending a clear message to those tempted to engage in fraud related to the First-Time Homebuyer Credit.

"We will vigorously pursue anyone who falsely tries to claim this or any other tax credit or deduction," said Eileen Mayer, Chief, IRS Criminal Investigation. "The penalties for tax fraud are steep. Taxpayers should be wary of anyone who promises to get them a big refund."

The IRS announced that it has successfully prosecuted a

Jacksonville, Florida, tax preparer for falsely claiming the credit on a client's federal tax return and that the preparer faces up to three years in jail, a fine of up to \$250,000 or both.

Originally passed in 2008 and modified in 2009, the new credit provides up to \$8,000 for first-time homebuyers who close on a home before December 1, 2009. To qualify, the purchaser (and spouse, if applicable) must not have owned a primary residence in the past three years, the IRS explains. (Different rules apply for 2008 home purchases.) ■

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45 percent in 2009. The exemption amount has steadily increased from \$1 million in 2001 to \$3.5 million in 2009. Meanwhile, the transfer of property owned by an individual at death will pass to heirs tax-free in 2010 due to the estate tax repeal, which provides for no federal estate tax imposed on the transfer and an unlimited exemption amount. However, given the projected 2011 sunset provision, the tax rate will return to 55 percent, while the exemption amount will return to \$1 million. Although the sunset has been removed from some of the EGTRRA provisions, Congress has done nothing to make the repeal permanent or to change the tax rates or exemption amounts after 2010.

Alternatives Outlined

There appear to be four possible alternatives to managing the upcoming estate tax repeal and sunset provisions of EGTRRA:

- 1. No action.** Congress could do nothing and let the repeal occur in 2010 and the EGTRRA provisions sunset in 2011. This would allow the estate tax to vanish entirely next year and then reappear in 2011 with a tax rate of 55 percent and an exemption amount of only \$1 million.
- 2. Permanent tax rate and exemption amount.** Federal lawmakers could pass legislation to make permanent the 2009 tax rate and exemption amount of 45 percent and \$3.5 million, respectively. President Barack Obama's budget recently passed by Congress includes a stated assumption that the estate tax will remain at the 2009 rate and exemption amount. Because of this stated assumption, it is apparent that President Obama and the Democratic congressional leaders strongly oppose repeal of the estate tax. Therefore, it

would be reasonable to anticipate that Congress will approve legislation that extends the estate tax into future years.

- 3. Increase tax rate and/or decrease exemption amount.** Congress could pass legislation that increases the tax rate and/or decreases the exemption amount. This alternative would allow the federal government to generate more revenue as a result of a higher tax rate and the possibility of more estates being subject to estate tax due to a decreased exemption amount.
- 4. Temporary patch.** Congress could enact a temporary patch for 2010. This temporary patch could extend into 2010 the 2009 tax rate of 45 percent and the 2009 exemption amount of \$3.5 million. More than likely, the patch would be enacted in late 2009 to be effective for 2010. There is an expectation of major legislation in 2010 to make permanent the estate tax and exemption amount to be effective for 2011 and future years.

Although Congress is likely to pass legislation to eliminate the temporary repeal and make the estate tax permanent, there is still much uncertainty regarding estate tax and estate planning. However, it is important to understand that under current law, the following applies:

- The lowest tax rate and largest exemption amount are in effect this year.
- No estate tax will be in effect next year.
- A higher tax rate and lower exemption amount will be in effect for 2011.

Ways to Lower an Individual's Gross Estate

Regardless of what happens in Congress with the estate tax, there are several ways to reduce the amount of estate tax levied on the transfer of

property that is included in the individual's gross estate at death:

■ **Gifts.** One way to lower an individual's gross estate is to gift amounts during an individual's lifetime. For 2009, an individual is allowed an annual gift tax exclusion for gifts of up to \$13,000 per donee to an unlimited number of donees. Spouses may combine their annual exclusion amounts and give split-gifts of up to \$26,000 per donee. Even if the entire gift comes from only one spouse, an election can be made on a gift tax return to treat the gift as being made by both spouses, thereby allowing annual tax-free gifts by one spouse of up to \$26,000 per donee. Also, gifts in excess of the annual exclusion amount may be offset by an individual's lifetime gift tax exemption, which is currently \$1 million.

■ **Property transfers between spouses.** Another way to lower an individual's gross estate is to transfer property tax-free from one spouse to the other spouse, who is a U.S. citizen. The property transfer may be made outright or in trust to the spouse. Generally, a trust must, at a minimum, distribute all income to the spouse for life to qualify as a tax-free transfer to the spouse. In order for the trust to qualify as tax-free, there can be no limitations on the requirement of distributing all income to the spouse for life.

Therefore, a trust that provides limitations, such as distributions of income to the spouse until that spouse sells the house or remarries, will not qualify as a tax-free trust. However, tax-free transfers between spouses may still be accomplished if the executor of the estate elects to have the property qualify as a qualified terminable interest property (QTIP) trust.

With a QTIP trust, no estate tax applies on the transfer of assets to a spouse, but estate tax may apply upon the death of the surviving spouse because the assets in the QTIP trust will be includible in the spouse's gross estate. The QTIP trust guarantees that remaining assets after the death of the surviving spouse will pass to the beneficiaries, who were previously selected by the first deceased spouse. The QTIP trust also offers a measure of asset protection for the surviving spouse, because the QTIP assets can only be used for the benefit of the surviving spouse and are not generally recoverable by creditors of the surviving spouse.

■ **Payments for health care expenses and qualified tuition.** These are not subject to gift tax and are considered to be tax-free gifts if paid on behalf of someone else. However, the payments must be made directly to the provider of medical or educational services and should not be paid as reimbursement to the person who incurred the expenses. The exclusion is unlimited, meaning that any amount may be paid on behalf of someone else for health care expenses or qualified tuition and still be considered a tax-free gift.

■ **Portability of lifetime exemption.** Another interesting concept that has been discussed by Congress is portability of the lifetime exemption amount between spouses. This concept would allow the remaining lifetime exemption of the deceased spouse to transfer to the surviving spouse at death. The lifetime exemption amount is expected to remain at the 2009 amount of \$3.5 million. Should portability be enacted by Congress, spouses will not have to be as concerned with who owns what assets dur-

ing life and at death because any unused amount at the death of the first spouse would automatically transfer to the surviving spouse. For example, if Wife had \$1 million in assets at her death and Husband had \$6 million in assets, then Wife would use only \$1 million of her \$3.5 million lifetime exemption amount. At Wife's death, the remaining \$2.5 million would then transfer to Husband, which would allow Husband's entire \$6 million in assets to avoid estate taxation upon his death.

Conclusion

In order to fund various programs and stimulus packages, the Obama Administration will be seeking to derive revenue from many sources. Based on the recent actions of Congress, one could be led to believe that the estate tax will not be repealed and will more than likely remain at the 2009 tax rate of 45 percent and 2009 exemption amount of \$3.5 million. However, Congress could generate more revenue by either increasing the 2009 tax rate and/or decreasing the 2009 exemption amount, or by doing nothing and allowing the estate tax to revert back to the tax rate of 55 percent and exemption amount of \$1 million, which were in effect before the passage of EGTRRA. This would subject more estates to taxation, thus raising more revenue.

Methods such as making lifetime gifts, transferring property from one spouse to the other, and making payments for health care and qualified tuition can assist individuals in avoiding estate taxation by lowering an individual's gross estate. Because estate tax rates are substantial, these methods will be increasingly important in the event that the exemption amounts decrease in the future.

So, what should you do? Begin estate planning under existing law,

because it is safe to assume that the estate tax will not be repealed in the near future. Also, keep in mind that by *not* making a decision regarding estate planning, you are making a decision; if death occurs prior to any estate planning, it

could result in unnecessary taxation of an individual's gross estate.

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SALES & USE TAXES

The Economic Crisis and State Revenue Activities

By Diane L. Yetter

The economic crisis is not just impacting businesses and individuals. As we have been hearing in the news, state and local governments are also facing some of the worst budget challenges ever. In many states, the debate is about how much to cut services versus increasing revenue. Individuals and businesses have been very vocal that increasing taxes at this time would just make it harder for them and result in further reductions in state revenue as higher taxes would put them out of business. So, the states are facing real challenges: How can they increase revenues at a time when businesses and individuals are least able to pay?

A recent article in THE NEW YORK TIMES from June 4, 2009 (www.nytimes.com/2009/06/05/us/politics/05states.html?th&emc=th) discusses how states' budget crisis is getting worse. Most states overestimated the expected revenue from all tax sources. In fact, half of the states overestimated all three major tax sources: sales tax, personal income tax and corporate income tax.

The National Conference of State Legislators (NCSL) has prepared some interesting reports on the states and their budget to actual results (www.ncsl.org/documents/fiscal/StateTaxPerformanceJune2009.pdf).

Sales tax collections in 31 states were below prior year collections;

however, sales tax collections were higher year over year in nine states, with North Dakota leading the pack, according to NCSL reports.

So, what are states doing to compensate for the reduced revenue? This article predominantly focuses on how states are responding in the sales and use tax arena.

Variety of Approaches

States have taken a variety of approaches to generate more revenue, including the following:

- Elimination of exemptions (sometimes called "loop-holes")
- Broadening of the tax base to include new areas such as services
- Changes in interpretations of what constitutes "doing business" in the state
- Some rate increases (e.g., Massachusetts just increased its state sales tax from five percent to 6.25 percent effective August 1, 2009.)

In addition, a number of states have proposed and passed amnesty programs as a way to get some quick cash—as well as new taxpayers—in the door. These programs have proven to be very lucrative for the states in the past, and they are all hoping for this trend to continue. Twelve states have or will offer amnesty during 2009. See www.ycstax.com/news.php#ref4 for current information on amnesty programs.

One of the most visible and controversial approaches is enactment of so-called Amazon laws, which classify affiliates who direct online customers to an out-of-state merchant's Web page to be deemed "agents" of the remote merchant. This activity by the in-state agents creates nexus for the out-of-state retailer, which requires them to register and collect sales tax on not only the sales referred to them by the deemed agent but any sales delivered into the state. This law was passed in New York in 2008 and in Rhode Island in 2009; however, other states proposed legislation only to have it vetoed by their governor or tabled after Amazon threatened to sever affiliate programs in the state. This has raised the question of whether the states' actions to add taxpayers to its rolls would increase revenues or actually decrease them, since such a move could put the in-state affiliates out of business.

Increased Enforcement

Another tactic used by states to generate more revenue is increased enforcements. This comes in the form of:

- increased audits,
- more aggressive positions taken by the auditors, and
- more reliance on taxpayers to defend inappropriate assessments.

Most of the companies I have talked to concerning their recent

experience have confirmed these efforts by the states. Not only are the states performing more audits, but municipalities have increased their audit efforts as well. These audits include home-rule sales and use taxes and business licenses. These localities are sending audit notices and desk assessments to businesses that have customers in their jurisdiction. Just because a company has a customer in a particular jurisdiction, this doesn't necessarily mean it has a business license requirement. It is critical to evaluate the registration requirements, determine what constitutes nexus under the specific license rules and make sure the company is registered appropriately.

Audits are also starting to include areas on which auditors may have previously passed or only performed a cursory review. For example, areas where taxpayers have seen auditors take much more aggressive positions include the following:

- Requesting exemption certificates for every exempt transaction and being unwilling to check the state's records to see if the entity has a valid exemption
- Requiring receipts that reflect the sales tax on procurement

card transactions regardless of invoice amount (including restaurants)

- Reconciliation of gross sales from income tax returns to sales tax returns resulting in assessments for any differences

Another trend that taxpayers are experiencing is shorter and sloppier audits. Historically, auditors would request waivers for six months to a year. However, as states are anxious to collect every penny owed them, waivers are not as easy to request. In fact, auditors are rushing through audits and issuing assessments that have not been reviewed by the taxpayer. This shifts the burden of proving any exceptions from an audit activity to an administrative hearing activity. And these hearings are being dragged out indefinitely—forcing a number of taxpayers to make payments against the audit for the items they agree with to reduce the interest costs.

States are also conducting more desk audits, requiring the taxpayer to do much more of the work. This saves the state travel dollars and auditor time. There is usually no offset of the liability for the taxpayer's efforts.

Tips to Stay Compliant

To help minimize assessments during the audit process make sure all your sales tax rates are current so that sales tax charged to your customers is correct and that you have valid exemption certificates for your exempt customers. With shorter audit cycles, there is less time to obtain these certificates once an audit begins.

Also, if you are in a service business, keep in mind that if you travel to perform services at your customer site, you have likely established nexus and could be subject to not only sales tax, but also income tax. As states look to service activities as new sources of revenue, it will be critical to monitor the laws in the states where you have customers. Conduct a nexus study to determine if you have a liability and, if you do, take advantage of amnesty programs offered by the states. After an amnesty program closes, the state usually steps up its enforcement efforts to identify potential taxpayers that didn't come forward.

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BUSINESS TAXES

Need a Biz License? Better Pay Taxes First

In their ongoing efforts to close the tax gap—the difference between what taxpayers owe and the amount of taxes actually paid—some federal lawmakers support enforcing federal tax compliance through state business licensing.

Background Information

Senate Finance Committee Chairman Max Baucus (D-Mont.) and Ranking Member Chuck Grassley (R-Iowa) had asked the Government Accountability Office (GAO) to

study how coordination between the IRS and the states could enhance compliance and narrow the \$345 billion annual tax gap. The result of that request is a recent GAO report, entitled "Opportunities Exist to Improve Tax Compliance of Applicants for State Business Licenses" (GAO-09-569), which recommends that the IRS consider expanding a program that requires taxpayers to show that they have paid federal taxes owed before being eligible to receive a state business license.

"This report confirms my initial thinking that we can improve tax compliance through better cooperation between the IRS and state licensing boards," said Baucus. "Checking to ensure that taxpayers seeking a business license are up to date on their tax obligations is a common sense approach to improving tax compliance. These are taxes already legally owed, so it's not raising taxes on anyone. Partnering with state authorities could begin to reduce the burden

on honest taxpayers who shoulder the billions of legally-owed but unpaid dollars every year and help to fund priorities like health care.”

Survey responses from 48 state revenue officials indicate that 20 states “require compliance with state taxes to obtain a state business license, and that these requirements exist for one or more industries,” the GAO reported. An additional 20 states do not have such a requirement, and eight do not require state business licenses.

Citing IRS data, the GAO said the IRS has arrangements “with 13 states that require compliance with one or more federal taxes to qualify for a state business license.”

GAO Recommendations

The GAO identified numerous ways to enforce federal tax compliance through state business licensing arrangements and recommended that the IRS study whether the return on investment for such arrangements is high enough to warrant expanding them and, if so, to do so. The IRS agreed with the recommendations.

“I am encouraged by the GAO’s findings and fully expect the IRS to follow up on recommendations to evaluate state licensing requirements and work with states

to expand these arrangements as needed,” Baucus said.

The GAO cited California as a successful case study. “The California requirement that three types of businesses be in compliance with federal employment taxes to obtain a state business license shows promise as a valuable tool for improving federal tax compliance,” the GAO wrote in its report. The three types of businesses are farm labor contracting, garment manufacturing and car washing and polishing.

As a result of that federal-state partnership, the IRS collected almost \$7.4 million in employment taxes during 2006 and 2007, the Finance Committee explained. “The agency’s cost of data-sharing between the IRS and California to facilitate the arrangement was \$331,348, representing a 22:1 return on investment.”

In addition, “[t]ax compliance among businesses after they applied for state business licenses showed continued improvement,” the GAO wrote.

“This program has made a big difference in compliance with federal employment tax obligations in California,” Grassley said. “It seems to have done so without costing a lot of money or taking up other state and federal

resources. As the report recommends, it makes sense for the IRS to approach other states and spread the word about this idea. Taxpayers should pay what they owe, not a penny more or a penny less.”

What’s Next?

So, assuming the IRS decides to expand upon programs to improve federal tax compliance through state business licensing, where do the best opportunities lie? “Varying licensing requirements from state to state and lack of uniformity among states in categorizing a license as a ‘business license’ make pinpointing the exact number of opportunities difficult,” the GAO explained. “States that currently require compliance with state taxes for selected business license applicants may represent more of an immediate opportunity for establishing arrangements that require federal tax compliance to qualify for a state business license since they already see tax compliance as important for the businesses.”

The GAO also noted that certain challenges would have to be addressed, including “a lack of current legal authority in some states to link businesses to tax compliance.”

To read the full GAO report, visit www.gao.gov/new.items/d09569.pdf. ■

DEALING WITH THE IRS

Input Provided on Preparer Regulation

Tax preparer associations and consumer groups alike recently voiced their support for efforts to hold tax preparers to high ethical standards.

In June, IRS Commissioner Doug Shulman announced plans by year’s end to propose a comprehensive set of recommendations related to the tax return preparer community. In the first of a series of IRS Tax Return Preparer Review Public Forums, a range of

industry groups shared their own recommendations.

National Standards

“A tax return is probably the most critical piece of financial interaction that a consumer has with the federal government during the year,” said Jean Ann Fox, director of Financial Services for the Consumer Federation of America. “A wrongly or fraudulently prepared return can lead to dire economic consequences,

or even criminal sanctions. Yet there are no licensing requirements or supervision for the industry that actually fills out the tax returns of tens of millions of consumers. Anyone can charge the public to prepare tax returns for whose accuracy the taxpayer is responsible.”

Frank Degen, an enrolled agent speaking on behalf of the National Association of Enrolled Agents (NAEA), said the NAEA supports greater oversight of tax return

preparers. The tax code, he said, “has become horrendously complex” since the last major tax reform two decades ago.

“Enrolled agents have first-hand knowledge of too many Americans ill-served by charlatan preparers, preparers unwilling or unable to interpret the increasingly convoluted tax code, preparers contributing to this nation’s staggering tax gap,” he said.

The NAEA and other professional organizations are calling for national standards for all paid preparers. “To be blunt, it is the Wild West out there right now, and we need to bring the sheriff back to town,” Degen said.

He explained three “pillars” for a new oversight program:

1. **Competency.** “Taxpayers would have a reasonable expectation of competency if preparers are subject to initial testing, continuing education, background checks, and strong ethical standards,” he said, noting that federal lawmakers have introduced bills embracing this concept in prior Congresses. “The only basis for grandfathering (if any) of unenrolled preparers is passage of a competency test that the Treasury Department deemed comparable. The absence of an initial competency test could place taxpayers in a worse position than currently exists, as taxpayers will assume a preparer holding a federal license has at least demonstrated minimal competence.”
2. **Centralization.** “Any program should build on the existing regulatory framework and consolidate administration and enforcement under the Office of Professional Responsibility [OPR],” he said, citing several benefits including “one ethics code; coordinated exams that would allow for advancement within the profession; and standardized continuing education requirements all

administered under the already existing system.”

3. **Adequate resources.** “The most pragmatic element for any program is adequate resources for administration, promotion and enforcement,” Degen said. “... OPR should retain all registration fees for administration of the program, including policing all practitioners and preparers under their jurisdiction.”

Registration

The National Society of Accountants (NSA), among other organizations, voiced its support for a registration program for preparers. “Because of a tax preparer’s intimate and detailed knowledge of a client’s financial situation, and the ability to impact

that financial situation through tax return preparation and filing, NSA has long supported registration of tax preparers,” said James H. Nolen, NSA president. “Registration would provide a means of allowing current and potential clients to know that the preparer meets whatever minimum standards are set to be qualified as a professional preparer.”

Robin McKinney said the National Community Tax Coalition (NCTC) supports the licensing of paid tax preparers, noting that such a move would “increase the accuracy of tax returns, as well as tax preparer compliance and accountability.”

The NCTC, McKinney said, supports the following elements of a licensing system:

Official Pushing for Unique ID Numbers for Preparers

For the third time in four years, the Treasury Inspector General for Tax Administration (TIGTA) has recommended that the IRS require a unique identification number for tax return preparers to use when filing tax returns on behalf of clients.

A recent TIGTA report explains that the IRS cannot easily track preparers’ activities and compliance with tax laws. Although preparers currently use their Social Security numbers or Preparer Tax Identification numbers on tax returns they file, IRS data on return preparers is stored on 22 different systems, and those systems are not integrated, according to the report.

“The IRS currently is not able to track, monitor or control preparers’ activities and compliance, or even determine the total number of paid tax return preparers,” commented J. Russell George, the Inspector General for TIGTA. “As a result, the IRS currently is not capable of ensuring that paid preparers adhere to professional

standards and follow the law.”

TIGTA also made the following recommendations to the IRS:

- Require tax return preparers to be compliant with their own federal tax filing requirements
- Enforce existing penalties on preparers who do not provide identification numbers on returns they prepare
- Develop a database management system that would allow the IRS to identify all preparers

According to TIGTA, the IRS has agreed to develop a return preparer database and start imposing penalties on preparers who do not provide identification numbers. In addition, the IRS agreed in principle to other recommendations from TIGTA.

To view the report, visit www.treas.gov/tigta/auditreports/2009reports/200940098fr.pdf. ■

- Registration of all preparers
- A pre-certification education curriculum
- A one-time competency exam for all unenrolled preparers
- Mandatory continuing education requirements of at least eight annual hours for all unenrolled tax preparers
- A centralized complaint system that tracks complaints based on type, preparer contact information, Preparer Tax Identification Number (PTIN) and Electronic Filing Identification Number (EFIN)
- An oversight board that includes representation from the tax preparer industry

Existing Authority

The American Institute of Certified Public Accounts (AICPA) “supports the goals of increasing compliance and maintaining high ethical standards for all tax practitioners,” said Michael P. Dolan, who spoke on the organization’s behalf. Among other things, the organization also is advising against new legislation to regulate federal tax return preparers and against unnecessary duplication in regulatory oversight.

“The AICPA believes the Service already has sufficient authority to regulate federal tax return preparers without the need for an additional legislative grant of authority,” said Dolan, chairperson of the AICPA’s IRS Practice and Procedures Committee.

He pointed to the current penalty structure for preparers, including penalties for the following actions:

- Understatement of a taxpayer’s liability
- Failure to furnish a copy or to sign a return
- Promotion of abusive tax shelters and gross valuation overstatements
- Aiding and abetting of the understatement of tax liability

- Actions to enjoin certain conduct by preparers and promoters

Dolan also noted that the IRS regulates certain practitioners through its OPR. “OPR enforces Circular 230 which governs the practice by CPAs, attorneys, and enrolled agents before the Service. OPR has the authority to identify standards of performance, and discipline these Circular 230 practitioners through disbarment and other sanctions.”

The AICPA recommends extending OPR’s oversight responsibilities “to include unlicensed tax return preparers by providing all preparers (and all other tax practitioners) with one unique identification number for use in all interactions by those professionals with the Service,” Dolan said. “This would provide an opportunity to eliminate the problematic proliferation of identification numbers (social security, central authorization file or CAF, P-TIN, etc.); and at the same time, make it easier for the IRS to track all the interactions of such professionals with the Service.”

In addition, the AICPA is concerned about unnecessary duplication in regulatory oversight, according to Dolan. “CPAs, attorneys, and enrolled agents (*i.e.*, tax professionals already subject to Circular 230) should be exempt from any new federal regulation regime imposed on currently unlicensed preparers,” he said. “The bills introduced in the last Congress properly recognized that these professionals are already subject to regulation and standards imposed upon them by state boards of accountancy, state bars, court systems, and Circular 230. Moreover, these bills effectively acknowledge that CPAs, attorneys, and enrolled agents already pay significant fees to obtain and maintain their professional status.”

Testing Requirements

Some speakers at the public forum supported the concept of continuing education and a qualifying examina-

tion for preparers, but noted that the examination requirement should be waived for certain professionals.

“One of the minimum standards should be successfully passing a qualifying examination to test basic knowledge any paid preparer should know,” said the NSA’s Nolen. “If a barber or a beautician needs [to] 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.”

Waivers, he said, should be granted to “tax practitioners who have already demonstrated their competence by passing a valid examination,” such as Accreditation Council for Accountancy and Taxation (ACAT) exams, or to those holding a license from a state Board of Accountancy. “These practitioners have likewise demonstrated a level of competence that is based on a long-established regulatory standard that has education, experience and examination as required components. Every state accountancy regulatory scheme requires continuing professional education as a condition for license renewal.”

Nolen pointed to the states of California and Oregon, which already license tax preparers. “These states already impose adequate and efficient licensing requirements on their tax and accounting professionals. We do not believe additional federal testing requirements should be imposed on these individuals or similarly situated individuals in other states.”

The National Association of Tax Professionals (NATP) recommended requiring tax professionals to be affiliated with an association and to complete at least 24 hours of continuing education in tax matters annually. In addition, speaking on behalf of the NATP, Larry Gray said preparers who are affiliated with a professional association and who have a specific amount of

experience and education should not have to take an examination.

Improved Enforcement

The American Bar Association (ABA) Section of Taxation provided two suggestions for improving enforcement of return preparer rules. "First, additional resources should be deployed to evaluate data from returns prepared by paid preparers so that trends can be identified and addressed," said Armando Gomez, vice chair for Government Relations of the Section of Taxation. "In this regard, we note that enforcement of a registration requirement that would require paid preparers to include a registration number on each return they prepare would better facilitate the ability of the Service to ascertain when errors are due to oversight, negligence, or intentional wrongdoing. Over time, the Service might use data collected to develop targeted education to paid preparers regarding recurring errors that are identified.

"Second, the scope of 'practice before the Service' under Circular 230 should be expanded to specifically include the preparation of

returns for compensation ... , but only for the limited purpose of preparing returns. It is ironic that Congress 'clarified' in 2004 that a tax professional who renders a single written tax opinion to a taxpayer can be subject to regulation under Circular 230 for 'practice before the Service' regardless of whether the tax opinion is ever disclosed to the Service, but that a tax return preparer who prepares hundreds of returns that are filed with the Service is not considered to be 'practicing before the Service.' Ensuring that all paid preparers are subject to Circular 230 and its ethical requirements would level the playing field and improve the quality of return preparation generally."

Implementation

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

He also spoke about the need to bring noncompliant preparers

into the tax preparer system. "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."

"... [T]he Section of Taxation encourages the Service to use public service announcements, its website, and other publicity to acquaint preparers and the public with the actions it implements to improve the quality of return preparation," Gomez said. "For example, the Service could establish a system on its website through which taxpayers could verify whether their preparer is registered under this program. The Service might also use such publicity efforts to remind preparers of their obligations to sign the returns that they prepare and to include their registration numbers on those returns. And of course, the Service and its Office of Professional Responsibility should continue to use publicity of enforcement and disciplinary actions, when appropriate, to ensure that taxpayers and preparers understand that wrongful conduct will not go unpunished." ■

DEALING WITH THE IRS

IRS Warns of Recent Identity Theft Scams

The IRS regularly issues warnings about identify theft scams that use the IRS name, logo or Web site. In its most recent alert, the IRS cautions taxpayers to avoid four recent scams.

Making Work Pay Refund

Scam artists trying to trick unsuspecting victims into revealing personal and financial information may pose as a trusted government, financial or business institution or official, the IRS explains. Scams can be carried out *via* e-mail, fax or phone.

The Making Work Pay Refund scam is known as a "phishing"

scam because it takes place *via* e-mail. "This phishing e-mail, which claims to come from the IRS, references the president and the Making Work Pay provision of the 2009 economic recovery law," the IRS states. "It says that there is a refundable credit available to workers, consumers and retirees that can be paid into the recipient's bank account if the recipient registers their account information with the IRS. The e-mail contains links to register the account and to claim the tax refund."

Most taxpayers, however, receive their Making Work Pay tax credit in their paychecks as a

result of decreased tax withholding—rather than as a lump-sum distribution from a federal fund, the IRS cautions. "Additionally, consumers and retirees who are not wage earners are not eligible for this tax credit."

Inherited Funds, Lottery Winnings

In this phishing scheme, taxpayers receive an e-mail purportedly coming from the U.S. Department of the Treasury. The e-mail states that they will receive millions of dollars in recovered funds, lottery winnings or cash consignment if they reply to the e-mail with

their phone numbers and other personal information, according to the IRS.

“The e-mail may be just the first step in a multi-step scheme, in which the victim is later contacted by telephone or further e-mail and instructed to deposit taxes on the funds or winnings before they can receive any of it,” the IRS states. “Alternatively, they may be sent a phony check of the funds or winnings and told to deposit it but pay 10 percent in taxes or fees. Thinking that the check must have cleared the bank and is genuine, some people comply. However, the scammers, not the Treasury Department, will get the taxes or fees.”

Form W-8BEN

If you receive what appears to be an IRS request to provide detailed personal and financial information on a Form W-8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding*, you may be the

target of an identity theft scam. The IRS cautions that scam artists may modify the genuine Form W-8BEN and ask taxpayers to provide their nationality, passport number, bank account and PIN numbers, spouse’s name and mother’s maiden name, or other personal or financial information or security measures for financial accounts.

According to the IRS, fraudsters either e-mail or fax the form or a letter requesting the personal and financial information. The letter warns recipients that they will face additional taxes unless they fax the required information.

There are two ways to spot such a fraudulent request. First, keep in mind that the genuine Form W-8BEN filed with the taxpayer’s financial institutions—not with the IRS. Second, the taxpayer’s passport number, bank account number, security or similar information is not requested on the genuine W-8BEN.

Refund Scam

In the most common scam seen by the IRS, victims receive a bogus e-mail, claiming to come from the IRS and telling recipients that they are eligible for a tax refund in a given amount. Recipients are instructed to click on a link, which takes them to a form that requests personal and financial information.

Recent variations on this scam include e-mails that purportedly come from the IRS’s Exempt Organizations division and e-mails that include the name and bogus signature of an actual or made-up IRS executive, according to the IRS.

The IRS warns taxpayers that refunds are based on their tax returns and that they do not have to complete a special form to obtain a refund.

Tips to Follow

Identity theft is a serious issue, and taxpayers should be vigilant about protecting their personal and financial information from potential scam artists.

The IRS has a few recommendations for recipients of suspicious e-mail claiming to come from the IRS:

- Do not open any files attached to the e-mail. They might contain malicious code that could infect your computer.
- Do not click on any links, because they also might contain malicious code or might connect you to a phony—but authentic-looking—IRS Web site and then prompt you to provide personal identifiers, bank or credit card account numbers or PINs.
- Call the IRS at 1-800-829-1040 to find out whether the IRS is trying to contact you.
- Forward the suspicious e-mail or URL address to the IRS at phishing@irs.gov and then delete the e-mail. ■

Warning Signs of a Potential Phishing Scam

The IRS advises taxpayers to be on the lookout for the following signs of potential e-mail, also known as phishing, scams:

- A request for detailed or an unusual amount of personal and/or financial information
- An incentive to encourage the recipient to respond to the e-mail (e.g., mentioning a tax refund or offering to pay the recipient to participate in an IRS survey)
- A threat for not responding to the e-mail (e.g., additional taxes or blocking access to the recipient’s funds)
- Getting the IRS or other federal agency names wrong
- Incorrect grammar or odd phrasing (The IRS reports that many e-mail scams originate

overseas and are written by nonnative English speakers.)

- A particularly long address in any link contained in the e-mail message or one that does not start with the actual IRS Web site address, which is www.irs.gov (Move your computer mouse over the link included in the text of the e-mail to see the actual link address or URL.)

In a warning about recent tax-related scams, the IRS reminded taxpayers that it does *not*:

- discuss tax account matters with taxpayers by e-mail,
- initiate taxpayer contact *via* unsolicited e-mail, or
- ask for personal identifying or financial information *via* e-mail.

New Standards for E-File Providers

Taxpayers worried about the security of information collected, processed and stored by authorized IRS e-file providers may find some comfort in the IRS's announcement that it has developed six new security, privacy and business standards to better protect that information.

Security, Privacy Goals Identified

Intended to supplement the Gramm-Leach-Bliley Act [P.L. 106-102] and implementing rules and regulations promulgated by the Federal Trade Commission, the new standards, which are outlined in Announcement 2009-56 [IRB 2009-28, 145, July 10, 2009] have four security and privacy objectives:

- Minimum encryption standards for transmission of taxpayer information over the Internet and authentication of Web site owners/operators beyond that offered by standard version Secure Socket Layer (SSL) certificates
- Periodic external vulnerability scan of the taxpayer data environment
- Protection against bulk-filing of fraudulent tax returns
- Ability to timely isolate and investigate potentially compromised taxpayer information

Six New Standards Outlined

Here is a rundown of the new standards:

1. **Extended Validation SSL certificate.** Authorized IRS e-file providers that collect taxpayer information *via* the Internet must have a valid and current

Extended Validation Secure Socket Layer certificate meeting certain requirements.

2. **External vulnerability scan.** Providers that collect, transmit, process or store taxpayer information are required to contract with a qualified third-party vendor to run weekly external network vulnerability scans of all their "system components" (e.g., any network component,

The new standards have four security and privacy objectives.

server or application that is included in or connected to the taxpayer data environment), according to the IRS guidance. If vulnerabilities are detected, those issues must be addressed.

3. **Information privacy and safeguard policies.** Authorized IRS e-file providers that own or operate a Web site through which taxpayer information is collected, transmitted, processed or stored must adopt a written information privacy and safeguard policy, according to the IRS. The policy must be consistent with applicable government and industry guidelines. Such providers also are required to acquire, maintain and display a license/accreditation seal from an approved consumer protection and privacy seal vendor.

4. **Protection against bulk filing of fraudulent income tax returns.** Providers that own or operate a Web site

through which taxpayer information is collected, transmitted, processed or stored also must follow this standard. They are required to implement technologies to protect their Web site against bulk filing of fraudulent income tax returns.

5. **Public domain name registration.** This standard also applies to providers that own or operate a Web site through which taxpayer information is collected, transmitted, processed or stored. They must register their Web site's domain name with a domain name registrar that is both located in the United States and accredited by the Internet Corporation for Assigned Names and Numbers (ICANN).

6. **Reporting of security incidents.** Any provider that collects, transmits, processes or stores information about an individual's federal income taxes must report security incidents to the IRS as soon as possible—at the latest, by the next business day after confirmation of the incident.

The announcement also specifies that if the provider's Web site is the proximate cause of the incident, the provider must immediately stop collecting taxpayer information *via* its Web site—until the underlying causes of the incident have been addressed.

The IRS is accepting comments on the standards through September 15, 2009. To submit a comment, send an e-mail to new.efile.requirements@irs.gov and include "Announcement 2009-56" in the subject line. ■

Are Settlement Proceeds Subject to Withholding?

After reaching a settlement with a former employee regarding front and back pay, an employer contended that it must withhold employment taxes from the settlement proceeds. The former employee disagreed, setting the stage for a U.S. district court to rule on the issue.

Case Background

Among other things, Diane Josifovich alleged that her former employer, Secure Computing Corporation, had failed to pay her earned commissions and that the company had violated New Jersey state law.

She sought the following forms of relief:

- Back pay
- Front pay
- Emotional distress damages
- Attorneys' fees and costs

In May 2009, a U.S. District Court conducted a seven-hour settlement conference, resulting in a settlement of the claims asserted by Josifovich. However, the attorneys in the case later notified the court that they had been unable to reach agreement on whether the settlement proceeds were subject to employment tax withholding.

Both parties agree that at least part of the settlement proceeds is taxable, but the court was asked to decide whether Secure Computing Corporation could or must withhold taxes from any portion of the settlement proceeds payable to Josifovich and, if so, how much of the settlement proceeds would be subject to withholding [*D.E. Josifovich v. Secure Computing Corporation*, U.S. District Court,

Dist. N.J.; Civ. 07-5469 (FLW) (filed July 31, 2009)].

Josifovich also asked that the settlement proceeds be increased by the amount of any withholdings, if, in fact, the court concluded that the company must withhold employment taxes.

Court Analysis

The court noted that neither party challenged enforcement of the settlement agreement or whether the settlement proceeds are taxable. The dispute between the parties centers solely on whether any portion of the settlement proceeds is subject to withholding taxes, the court explained.

Secure Computing Corporation maintained that any portion of the settlement that is attributable to “pay” is subject to withholding and that, as an employer, it is obligated to withhold employment taxes.

Josifovich, however, made the following arguments:

- No portion of the settlement proceeds should be subject to withholding.
- She should receive the entire gross amount of the settlement.
- Any tax payment would be her obligation—not the company's.

Citing other court decisions, the district court concluded that “there is no question that back pay, paid as compensation for a period in which ... [Josifovich] actually rendered services, must be the subject of withholding.” As a result, the court said that Secure Computing Corporation “must withhold taxes from any amount of the settlement proceeds allocated to ... [her] back pay claims.”

Regarding settlement proceeds allocated to front pay, Josifovich contended that her former employer may not withhold taxes, since she did not perform services during the front pay time period.

The court was not persuaded by the cases she cited in support of her argument. Instead, the court pointed to the U.S. Supreme Court decision in *Social Security Bd. v. Nierotko*, 327 US 358, 365–66 (1946). The Supreme Court in that case concluded that “services performed—a component of the definition of wages, which are subject to withholding—encompasses the entire employee/employer relationship and not merely the work actually performed,” the district court explained. As a result, the court said that Josifovich’s front pay also is subject to withholding taxes and that Secure Computing Corporation should withhold taxes from all settlement proceeds allocated to back and front pay.

Since the parties seemed to agree that any portion of the settlement proceeds attributable to emotional distress and attorneys’ fees and costs should be subject to a Form 1099, instead of a Form W-2 for employee wages, the court focused its analysis on withholding from back and front pay.

However, the court said there was disagreement on how the settlement proceeds should actually be allocated to each of Josifovich’s claims. “The parties agreed to a lump sum figure to settle all claims alleged, and did not address allocation of amounts to specific claims or categories of damages.”

When a court must decide how to allocate settlement proceeds, it considers several factors, including “the pleadings, the evidence, the terms of the settlement and the intent of the payor,” the district court said, citing *D. Glatthorn*, DC-FL, 93-1 USTC ¶150,338, 818 FSupp 1548, 1551 (1993).

Here, the district court said it had neither any support for Josifovich’s allegation that a substantial portion of the settlement proceeds should be allocated to emotional distress nor a final figure for her legal fees. The court said it would conduct a hearing with counsel for both parties before deciding how much of the settlement proceeds should be

allocated to back and front pay, emotional distress and attorneys’ fees and costs.

The court nixed Josifovich’s request for an additional award if the court determines that any portion of her settlement proceeds is subject to withholding. Among other reasons, the court noted that she entered into a voluntary settlement agreement. “This Court will not alter the terms of that voluntary settlement agreement and require ... [Secure Computing Corporation] to pay more simply because ... [Josifovich] now, after the close of negotiations, is dissatisfied with the anticipated tax consequences of her agreement,” the court said. “A settlement

agreement is a contract and, consequently, a court will not rewrite that contract simply to provide one party with a better bargain than the one she negotiated.”

In conclusion, the court said that Secure Computing Corporation “is required to withhold applicable employment taxes from that portion of the settlement proceeds allocated to back pay and front pay, and an appropriate W-2 form should be issued. Any settlement proceeds allocated to ... [Josifovich’s] emotional distress claims and attorneys’ fees and costs are to be paid with no employment taxes withheld, and should be issued with a Form 1099.” ■

COMPENSATION & BENEFITS

Pay Expected to Inch Upward in 2010

As some experts express cautious optimism about economic recovery, U.S. workers may have a similar sentiment about receiving a pay raise next year, according to recent surveys from global consulting firm Watson Wyatt (www.watsonwyatt.com).

Merit Raises Are on the Rise

Watson Wyatt found that after a year of slashed raises due to the recession, many employers expect pay raises to rebound next year. In fact, median merit increases of three percent are projected for 2010, compared to actual increases of only two percent this year, according to the Watson Wyatt 2009/2010 U.S. Strategic Rewards survey report.

A separate survey by subsidiary Watson Wyatt Data Services found that a mere 10 percent of companies are planning no pay raises for workers in 2010—a significant decline from 25 percent this year.

“This has been a very difficult year for both employers and their workers,” said Laura Sejen,

global director of strategic rewards consulting at Watson Wyatt. “But there is some good news on the horizon. Employers plan to give larger raises next year, and many plan to reinstate previously cut pay raises as planning for an eventual economic recovery continues.”

Watson Wyatt’s Strategic Rewards survey revealed that companies are giving the highest merit pay increases this year to high-performers. Those who “exceed expectations” are expected to receive a median merit increase of 3.1 percent, and those who “far exceed expectations” will receive a four-percent increase. Compare that to the 0.2 percent increase going to workers who “partially met expectations” this year.

Plans to Reverse Pay, Other Cutbacks

In the latest update to an ongoing series of surveys by Watson Wyatt about the effects of the recession on HR programs, the firm also found that an increas-

ing number of employers expect to reverse salary cuts and freezes and restore matching contributions to 401(k) plans.

Compared to 17 percent of employers two months earlier, 33 percent of employers that froze salaries now plan to unfreeze them within the next six months, Watson Wyatt reports. In addition, 44 percent expect to roll back salary cuts within the same timeframe, compared to 30 percent in the last survey.

However, the news is not all positive, especially when it comes to health care costs. Among employers that increased employee contributions to health care premiums, 66 percent do not anticipate reversing that decision, Watson Wyatt reports.

Meanwhile, many employers plan to shift more health care benefit costs to workers, according to the survey. Forty percent expect to increase the percentage employees contribute toward premiums, and 41 percent anticipate increasing the deductibles, co-pays or out-of-pocket maximums for 2010. ■

Cash-for-Clunkers Program Ends

Federal officials pumped an additional \$2 billion in funding for the Consumer Assistance to Recycle and Save Program before announcing that the so-called cash-for-clunkers program would end in late August.

The original \$1 billion allotment quickly started running out this summer as consumers traded in old vehicles and qualified for a federal voucher of \$3,500 or \$4,500 to offset the purchase or lease price of newer, more fuel-efficient vehicles. The additional funding was included in a bill that was enacted on August 7 [P.L. 111-47].

The Department of Transportation (DOT) announced last month that the cash for clunkers program would end on August 24, according to CCH, publisher of EXECUTIVE'S TAX & MANAGEMENT REPORT.

IRS Guidance Extends WOTC Deadline

As you read in the July issue of EXECUTIVE'S TAX & MANAGEMENT REPORT, companies that hired unemployed veterans or "disconnected" youths in the first half of this year may be able to claim the newly expanded work opportunity tax credit (WOTC). Recent guidance from the IRS [Notice 2009-69] extends the hiring and certification deadlines and clarifies the definition pertaining to disconnected youths.

Notice 2009-69 explains that employers that hire an unemployed veteran or disconnected youth after December 31, 2008, and before September 17, 2009, will be eligible for the expanded WOTC. However, employers must file Form 8850, *Pre-Screening Notice and Certification Request for the Work Opportunity Credit*, by October 17, 2009, to qualify.

The notice also clarifies the definition of "not readily employable by reason of lacking a sufficient number of basic skills" as it pertains to a disconnected youth. A disconnected youth will fall into that category "if the individual states in writing that he or she does not have a certificate of graduation from a secondary school or a GED Certificate ... [or] that he or she has a certificate of graduation from a secondary school or a GED Certificate that was awarded no less than 6 months preceding his or her hiring date and has not held a job (other than occasionally) or been admitted to a technical school or post-secondary school since receiving the certificate," Notice 2009-69 states.

Unemployed veterans and disconnected youth were added to a list of 10 other targeted groups eligible for the WOTC, under the American Recovery and Reinvestment Act [P.L. 111-5].

Simplified Form Available for Offers in Compromise

Financially struggling taxpayers may have been deterred from applying for an Offer in Compromise in the past, because the initial application required them to provide too much information, the National Taxpayer Advocate explained in her mid-year report to Congress.

More recently, however, the IRS released a simplified application form. The revised Form 656, *Offer in Compromise*, includes only a trimmed-down, four-page application. Its accompanying new Form 656-B, *Offer in Compromise Booklet*, contains all forms and instructions necessary to file an offer in compromise, the IRS reports.

The new Form 656-B includes the following items:

- A checklist to determine if the offer can be processed

- A revised Worksheet to Calculate an Offer Amount
- Form 433-A, *Collection Information Statement for Wage Earners and Self-Employed Individuals*
- Form 433-B, *Collection Information Statement for Businesses*
- A revised IRS Offer in Compromise Low Income Guidelines table based on the 2009 U.S. Department of Health and Human Services standards
- A revised Form 656-A, *Income Certification for Offer in Compromise Application Fee and Payment*
- The Offer in Compromise Summary Checklist

The IRS's Office in Compromise program is designed to help financially struggling taxpayers resolve their tax liability for a reduced amount. To download the revised Form 656 or the new Form 656-B, visit IRS.gov.

Flexibility Helps Employers Ride out Recession

Ninety-four percent of employers are maintaining or increasing their workplace flexibility programs, despite cost-cutting measures prompted by the recession, according to a study of U.S. employers with 50 or more employees released by the Families and Work Institute (FWI).

Eighty-one percent of surveyed employers are maintaining the workplace flexibility options they offer, 13 percent are increasing them and six percent have reduced such options, the survey found. In addition, 26 percent have specifically used reduced work weeks, telecommuting and other flexible workplace options to minimize the need for layoffs.

"It is hardly surprising that our survey finds that 77 percent of employers are cutting and controlling labor and operational costs during the recession," said Ellen Galinsky, co-founder and president

of FWI. "What is surprising is that between 34 percent to 43 percent of employers are actively helping employees weather the recession, that employers are largely retaining or increasing workplace flexibility as [a] way to manage through a difficult economic environment, and that 57 percent of employers are giving employees some or a lot of input about the flexibility they use."

Two-thirds of surveyed employers reported declining revenues over the past year, while another 28 percent said their revenues have held fairly steady. Six percent of respondents reported that their revenue has grown in the last 12 months.

The most common strategies used by survey participants to control costs include the following:

- Decreasing/eliminating bonuses or eliminating salary increases (69 percent)
- Layoffs (64 percent)
- Hiring freeze (61 percent)
- Eliminating all nonessential travel (57 percent)

To download the FWI study, visit www.familiesandwork.org.

Downsizing, Cuts Impact Data Security

Downsizing and spending cuts may have helped employers deal with budgetary shortfalls, but at some large U.S. companies, they have also lead to data leaks, according to Proofpoint, Inc.'s sixth annual study of outbound e-mail and data loss-prevention issues.

Specifically, Proofpoint found the following:

- Eighteen percent of study participants investigated a suspected leak or theft of confidential or proprietary information associated with an employee leaving the company—voluntarily or not—during the past year.

- Forty-two percent reported that increasing numbers of layoffs at their organizations have created a greater risk of data leakage.

- Forty-seven percent indicated that IT staff layoffs have negatively impacted their ability to protect confidential, proprietary and sensitive information.

- Fifty percent report that budget constraints have negatively impacted their ability to protect such information.

To download the report, visit www.proofpoint.com/outbound.

Small Biz Association Revamps Web Site

Small business owners looking for a one-stop source for business resources, networking opportunities and information on successfully managing a small business might want to check out the new NFIB.com, recently launched by the National Federation of Independent Business (NFIB).

The site includes information on programs and discounts on key small business products and services, issues and benefits specific to each of the 50 states, NFIB's advocacy work on behalf of small business, timely news stories about small business issues, a guide to employment and other laws pertinent to small businesses and webinars and other learning opportunities.

"We conducted a great deal of research into how our members and other small business owners used the Web, what kind of information was most important to them, what resources they wanted and what they could use every day in their business," said Mark Garzone, NFIB's senior vice president, marketing. "The new NFIB.com presents that information in a clean, dynamic, easy-to-use site that any owner will find helpful as they confront the daily challenges of running a small business."

Execs Report Low Morale, Lack of Trust

Although there is cautious optimism about economic recovery, the recession has resulted in low morale and lack of trust within organizations. Forty-seven percent of employed executives are either somewhat or very dissatisfied with their current jobs, according to the most recent Executive Quiz results from The Korn/Ferry Institute (www.kornferry.com). Executives also report that employee morale is low in their organizations and that there is a lack of trust for corporate leadership.

Forty-five percent of executives described employee morale as either "fair" or "poor," while 42 percent said morale is "good" and 13 percent said it is "outstanding."

"The global recession has left fewer employees to do more work, often for less pay," said Ana Dutra, president and CEO of Korn/Ferry Leadership and Talent Consulting. "Stress levels are high and some executives are getting burnt out. However, irrespective of the business cyclicity, companies must take proactive steps to keep key employees engaged if they want to retain them for the long term and be seen as an employer of choice."

Low employee morale among executives may be related to their lack of trust toward upper management, according to The Korn/Ferry Institute. In fact, 31 percent of surveyed executives said that they do not trust their boss, and 36 percent indicated that they do not trust their CEO.

The survey also found that the majority of executives have their sights set on upward mobility. Fifty-six percent said they aspire to be CEOs, while 16 percent said they might want to be a CEO and 12 percent said they do not have such aspirations. Fifteen percent of survey respondents currently work as a CEO or have done so in the past. ■

Deadline Coming for Carryback Option

Eligible individuals in small businesses have until October 15 to take advantage of a limited-time offer to choose the expanded business loss carryback option included in the American Recovery and Reinvestment Act [P.L. 111-5]. The deadline for eligible calendar-year corporations is September 15.

Under the Act, "many small businesses that had expenses exceeding their income for 2008 can choose to carry the resulting loss back for up to five years, instead of the usual two," the IRS explains. "This means that a business that had a net operating loss (NOL) in 2008 could carry that loss as far back as tax-year 2003, rather than the usual 2006. Not only could this mean a special tax

refund, but the refund could be larger, because the loss is being spread over as many as five tax years, rather than just two."

Small businesses that experienced a large loss in 2008 may find this option to be particularly helpful, according to the IRS. The IRS identified three key benefits for choosing this option:

1. Offsetting the loss against income earned in up to five prior tax years
2. Getting a refund of taxes paid up to five years ago
3. Using up part or all of the loss now, rather than waiting to claim it on future tax returns

To choose this option, an eligible small business must have an average of \$15 million or less

in gross receipts over a three-year period ending with the tax year of the NOL, the IRS reports.

The October 15 deadline applies to a sole proprietor that qualifies as a(n):

- eligible small business (ESB),
- individual partner in a partnership that qualifies as an ESB, and
- shareholder in an S corporation that qualifies as an ESB.

The deadline for fiscal-year taxpayers depends upon two factors: when their fiscal year ends and whether they are making the choice for the tax year that ends or begins in 2008, according to the IRS.

For more information, visit www.irs.gov. ■

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