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What Federal and
State Have in Store***

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OSCPA mission statement

The Oklahoma Society of Certified Public Accountants represents Oklahoma CPAs on a timely, responsive and creative basis, by promoting the public image and professionalism of CPAs; by protecting the interests and designation of CPAs; by providing member services, including quality education and opportunities for interaction; and by building and developing leadership skills among CPAs.

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Enhancing Your Membership Value

One of the primary goals specified in the OSCPA Plan of Action is to provide, promote and improve benefits and services relevant to members' needs. Accordingly, the underlying objective of virtually every individual and committee involved in the leadership of this organization includes enhancing the value of your membership. Several of the benefits your leadership strives to provide consist of:

- **Information Resource** – The OSCPA offers relevant news, research and articles on technical information and professional issues through CPAFOCUS; e-mail newsletters like OSCPA Wire and *Business and Industry Essentials*; and the society web site, www.oscpa.com. Members receive comprehensive updates on issues affecting the profession via the delivery method he or she prefers. Publications are targeted toward each member's individual interests from consulting to practice management.
- **Member Services** – The OSCPA offers a wide variety of services dedicated to enhancing the professional and personal growth of its members, including employment assistance, technical assistance, client referrals, group insurance and other group-buying power discounts. Whether it's finding a new job or position, locating a new employee or intern for your company or firm, growing your business through client referrals or seeking technical advice on subjects outside your area of expertise, the OSCPA has the resources in place to assist you.
- **Image Enhancement** – The OSCPA promotes members as strategic business advisers and increases their perceived value to the public, students and employers through statewide and

national advertising campaigns, media communications, an active speaker's bureau and accounting careers activities. Members conserve resources by letting the OSCPA perform a significant portion of their public relations work for them.

- **Government Relations** – Membership in the OSCPA ensures a unified voice in all state legislation and judicial and regulatory agency decisions affecting the CPA profession. Our legislative team is constantly working to maintain your right to practice independently and to protect the interests of you, your clients, employers and customers.
- **CPA Standards** – Our organization strives to uphold the CPA reputation of integrity, objectivity and professionalism through ethics enforcement and practice-monitoring programs. Additionally, we provide affordable, statewide opportunities in life-long learning from top-quality, national instructors at a local level. From foundation courses in tax and accounting to leadership and strategic thinking, members are able to participate how and when they choose through classroom, satellite, on-site, self-study and/or online CPE programming.

While all of these benefits are extremely important, the services we don't provide are even more important. We need your help in this area. Input from the general membership is vitally important to your board of directors in enhancing our Plan of Action. Whether it's expressing your thoughts on a course evaluation, contacting one of the leaders in your local chapter, or communicating with a board member or one of our staff, please let us know how we can serve you better. ☎

Letter to the Editor

In answer to one reader's common technology problem, CPAFOCUS author Greg Hanger provides insight and a detailed solution.

Dear Editor:

Recently my 13-year-old stepson, Jim, came to me and announced that he had found a wonderful search engine for the Internet. I was very suspicious that he might have found something less than wonderful, but did not have time to investigate immediately.

A week or so later Jim approached me again complaining that his computer was displaying advertising, and that some of it looked "bad." I knew I had we had a problem, but felt confident I could deal with it. I was shocked to learn how serious this issue turned out to be.

Installed on his computer was a program that overrode the default search engine and replaced the homepage with a page titled "Home search." The default search engine was replaced and impossible to change. The pop-up blocker from Yahoo was disabled, and pop-up ads were coming up every couple of minutes.

Jim appeared to have three programs installed (found in Add/Remove Programs): "Home Search Assistant" "Search Extender," and "Shopping Wizard." When I tried to remove these programs I found they could not be removed. I ran both Spybot and Adaware. Both programs found numerous files to be removed, but each time I restarted the computer nothing was changed. I researched on the Internet and found many forums with questions and answers but have yet to find a solution. Most who encountered this problem gave up and reinstalled their operating systems, or if they were lucky they could roll back their XP operating system to an earlier date and remove it that way. Some downloaded free software that claimed to clear up the problem. None of these solutions work for me. Jim is running Windows XP Home Edition. Can anyone help me?

Anonymous

Dear Anonymous,

In order to make sure we answered your question thoroughly, I deferred your question to Greg Hanger, CPA, author of this issue's technology article on page 10. Please read on for his advice. - Ed.

Dear Anonymous,

You have found one of the nastiest examples of adware. In fact the common term for a program such as this one is malware (short for *malicious software*). This particular site is rumored to have pop-up ads, which lead the user to "solutions" that install more spyware. The ads I have seen delivered by this malware are suspect at best.

This pest can be removed, but be prepared. Whether you tackle this project yourself, or decide to bring in a technician, arm yourself with the information I am going to give you. This will minimize the time spent on the problem.

First, a brief explanation why this monster is so hard to kill is in order. Spybot and Adaware cannot remove this program because they primarily function by removing objects - files, registry entries and so on that reside on the computer. This malware operates by randomly renaming its operating files each time you shut down the computer. Therefore it is difficult for these programs to locate the files. This might also explain why freeware written to remove the problem does not function for you. To make matters more difficult, the malware runs a Windows Service (a routine that runs in the background) that is hidden by using a misleading name. This service will attempt to reinstall any software that is

removed. So, even if you find the files that run the program and remove them, they will reappear.

The solution is to hunt and kill this service by disabling it. Then you will need to learn the naming pattern for the files that need to be removed. Remove them and hard boot (unplug while running) the computer.

Visit <http://www.short-media.com/review.php?r=259> for detailed instruction on how this is accomplished and freeware to assist in this process. If you're inexperienced, I recommend having someone involved who is experienced with operat-

Both programs found numerous files to be removed, but each time I restarted the computer nothing was changed.

ing systems to avoid damaging programs you might be using in your office. Their instructions should be followed exactly as written for the best results.

Once this problem is resolved, install Windows XP service pack 2 to avoid the issue in the future. If you want Jim to continue to have the freedom to install software on your computer involve him in the removal of this software. He will definitely benefit from the experience.

Greg Hanger, CPA

2004 MAP Survey Highlights

47 Oklahoma Firms Participating

- Individual Tax Services accounted for 27.4 percent of total fees
- 85.4 percent of firms use a fixed fee structure
- 29.4 percent of participants have a succession plan in place
- 57.1 of participants of firms have paperless systems in place or are planning to provide paperless services

For other details such as staff and partner compensation, billable hours and more, visit MAP Survey in the CPA Resources section of www.oscpa.com.

MAP Results Yield Benchmarks

The key to finding better business practices may be as close as your computer.

Sponsored by Aon Insurance Services and Robert Half Management Resources, the 2004 MAP Survey reveals firm answers to questions about services, staffing, bonuses, salaries, costs, income, billable hours and more.

John M. Arledge, CPA, of John M. Arledge & Associates, PC in Edmond, Okla., said he found the information extremely useful.

"I like to compare our company's results to other survey participants," he said. "I think it's useful to know what is happening in our state and in our region of the United States."

According to Arledge, the most

useful categories for his firm are costs, salaries, income and billable hours.

"I think the statistics regarding personnel hours worked and benefits provided really stand out," he said.

For the first time, the subjects of outsourcing and paperless office were included in the questionnaire.

"Though this information wasn't particularly valuable for our office right now, we will review these items at a later date," he said.

Brought to you by PCPS, the AICPA Alliance for CPA Firms and the Texas Society of CPAs, the results are available at <http://www.oscpa.com/?857>, in Adobe PDF format. Need a MAP legend? Try *Understanding the MAP Landscape*, also available. €



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A Funny Thing Happened at Work

Don't Dump On My Valentine

With February 14 just around the corner, a love story might be in order. Mike Crawford, CPA, tells the romantic story of a finance officer, a city employee and tokens of affection.

There's nothing like true love or infatuation. A trip I made to meet with a small city government's financial official epitomizes this truism.

When I met this finance officer to discuss budget issues, she was a cheerful, friendly, upbeat and attractive young lady in her late twenties.

While we were talking in her office, there came a knock at the door. Another city employee dressed in a dirty uniform and possessing an unpleasant odor, entered the office and told the finance officer he had another little gift for her. She took the gift, hugged the man and said she needed to get back to our meeting. After he left, I asked her if she often received little gifts from employees. Somewhat embarrassed, she explained the situation.

The gift-giving employee apparently had harbored a crush on her for some time. He worked for the city as the garbage landfill supervisor, which explained his sullied uniform and foul smell. On his modest salary, he could not afford expensive gifts. However, he desperately wanted to show his affection for her. He often searched through the rubbish for

little treasures he felt were somewhat worthy of expressing his affection for her.

That day he brought her a small crystal ballerina figurine with part of one leg broken off. I watched her gently place the delicate trinket on a windowsill in her office. Then, I noticed several odd items sitting on her windowsills and scattered throughout her office. There was a small wooden clock without the hour and minute hands, a unique-shaped perfume bottle with a small amount of perfume still in the bottom, a cracked heart-shaped picture frame with no picture, numerous ceramic figures and dishes with various broken pieces, a dingy baseball cap and even a used hairbrush. I asked the finance officer why she kept all these odd and seemingly worthless items and, in her usual cheerful and friendly manner, she said she knew how much the items meant to the landfill supervisor and she didn't want to hurt his feelings.

So there the items remained — symbols of smitten generosity and heartfelt gratitude. €

Michael A. Crawford, CPA, is chairman of Crawford & Associates, PC, in Okla. City, Okla. Crawford is a past president of the OSCP, past chairman of various OSCP committees and a member of the Oklahoma Accounting Hall of Fame. He is a current member of the Governmental Accounting Standards Advisory Council, nationally recognized as a frequent lecturer and speaker, an author of various AICPA technical publications and the current co-author of the CCH Miller Governmental GAAP Guides and Updates.

... in her usual cheerful and friendly manner, she said she knew how much the items meant to [him] ...

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For more information, visit the CPA Resources section of www.oscpa.com.



Native Oklahoman Fred Imel, CPA, has been practicing for 25 years, from the farm and factory to investigation and international audit. His firm, James F. Imel, PC, also engages in personnel, marketing, strategy and operations as an outside controller.

"It's A Great Life if You Don't Weaken"

By Fred Imel, CPA

It was my senior year of college and I was doing my homework in the dining room of the fancy French restaurant where I waited tables every night. Some customers even asked for me and I made enough money to be on my own.

I loved to work.

At a place like that in the middle of the afternoon, it's very quiet and peaceful. Cooks are preparing for the evening meals and the dining rooms are empty. I took a chair at a corner table. It was a soft red room, with a formal decor — really inspirational for a young student. The janitor pattered through doing his work, his gentle hum and noises more soothing than background music.

He was a tall, thin black man with fluffy gray hair, resembling a cloud on his head. He only had about three teeth and he couldn't get them fixed because he didn't have the money. I don't think he was skinny by choice either.

As he worked through the dining room pushing his sweeper, carefully

dusting the furniture for the evening, he made a pleasant "thuth-thuth-thuth" as he sucked on his teeth. He was a happy man who enjoyed his work and did the very best job he could. He did things the boss didn't ask him to do and was the best janitor we ever had.

Each day, he asked how I was and each day I said, "Fine."

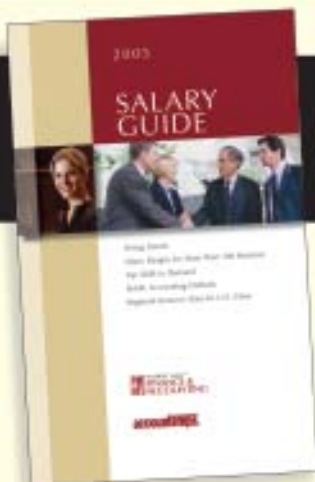
I asked how he was and pausing with thought, he always said, "Fine...thank you." He was really saying thank you, they weren't just words.

Next, he always said would be, "Would you like a cup of coffee? I made some fresh."

"Yes, I would. Thank you," I said. "I'll get you some," he replied.

He stopped what he was doing, then reappeared a minute later with a tall Irish cup filled with warm, fresh coffee, sitting atop a small white saucer. It was the best coffee — the kind you only get in restaurants. There was no doubt the

(See LIFE on page 25)



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To make a contribution, mail your check payable to the Educational Foundation to 1900 NW Expy, Ste. 910, Okla. City, OK 73118-1898. Contributions may also be made online at www.oscpa.com.

THANK YOU!



Greg Hanger, CPA, is a sole proprietor specializing in the areas of taxation and technology consulting. He has extensive experience in technology planning for CPA firms and clients and has been a member of the OSCP Technology Committee since 2000.

In the worst-case scenario, these software pests damage a computer's operating system to the point of no return ...

Guarding Against Adware/Spyware

By Greg Hanger, CPA

Many of us have heard of adware and by now most of us have heard about spyware. In recent months, these sometimes-nefarious programs have become an overwhelming issue for computer users. Many victims unintentionally install software on their systems, which interferes with computer performance. In the worst-case scenario, these software pests damage a computer's operating system to the point of no return — creating a costly reinstallation of operating system software and programs.

The good news is no one has to tolerate adware or spyware — prevention is the cure. By learning exactly what these software programs do and understanding how to avoid bogging down computer hardware with them, you will be well on your way to protecting yourself.

Definitions

Adware is a product available for free and, in exchange, displays advertising banners within the software interface.

Instead of paying for the software, the company creates revenue by selling advertising space in the software

product. (See <http://www.webattack.com/Adwarepop.html>.)

Spyware gathers information about a user as he or she navigates around the Web. It is intended to track surfing habits in order to build marketing profiles. Spyware is often included in free downloads from the Web, where the license agreement (which so many of us accept without reading) may mention information about your habits will be transmitted back to the company's Web site, but not

information specifically about you. (See <http://www.netlingo.com>.)

The Good, the Bad and the Ugly

Although abuse exists, all adware is not necessarily bad. Adware should only be viewed as a problem when it does not function in a way that is fully disclosed and understood by the user. For example, Internet service provider Netzero provides a useful service in exchange for advertising that appears when you log on to their network. Many who use a free service may find they are not getting much for the advertising they endure, but it is fully disclosed and appears to be honest. Many other examples exist, such as the Google Toolbar, AOL Instant Messenger, Netscape Radio, etc. While installation is not necessarily recommended, these programs attempt to disclose what is happening and might provide a valuable service for some people.

If you decide to take the adware plunge, always read the license agreements and privacy policies to avoid a nasty surprise. Free software that uses advertising is a tradeoff between the advertising and tracking of your information and the utility of the program.

When do they cross the line and become bad? Unscrupulous products may piggyback on existing software without sufficient or any disclosure. Adware calling itself freeware or shareware is an abuse. In addition, if the advertising or tracking spyware is not fully disclosed it is abusive behavior. This abuse is often accomplished through the use of cookies installed without your knowledge. Software changing the behavior of your Web browser without your consent is abuse, e.g., software changing your default homepage and the behavior of your

browser. Pop-up browser windows are probably the most annoying of these changes. Spyware at its worst may attempt to monitor user activity on the Internet and transmit that information in the background to someone else. Further, spyware could potentially be used to gather information about e-mail, passwords and credit card numbers.

In addition, so-called free software may lead to problems. For example, use of file sharing programs, such as WinMX or Kazaa, may result in ethical or legal problems, in addition to exposing the user to an overload of advertising.

One company, Claria (formerly known as Gator), delivers contextual advertising in the form of pop-ups. Their software builds a profile of your surfing habits. This information is collected and stored on a file on your computer identifiable through your IP address. The information is then collected from your computer while you browse the Internet. I recommend avoiding all adware from this company including DateManager, WeatherScope, PrecisionTime and eWallet. DateManager provides appointment alarms and date reminders while eWallet keeps track of the data you enter on Web forms (including credit cards) so it can automatically fill in the data for you later. WeatherScope shows the current and forecast weather and PrecisionTime keeps your system clock up-to-date.

Prevention is the Cure

The best way to avoid the issues created by adware and spyware is to not install it. A pop-up blocker is a first line of defense. Much of the unscrupulous spyware I have seen installed on work computers was the result of responding to a pop-up. Generally the user is tricked into giving permission. For example, one user I know responded to a pop-up that offered to correct the time on her windows clock. One "yes" click later and she had turned her machine into an advertising dedicated device.

Windows XP recently released an update (service pack 2 or SP2) which adds pop-up blocking, and other security features making adware and spyware

much more difficult to install. I have been using the service pack for about a month and I highly recommend it. However, your network administrator should test the service pack with your office applications before rolling it out to the entire office.

The pop-up blocker seems to be very effective and unobtrusive. A yellow bar appears at the top in Internet Explorer alerting the user to a blocked pop-up. The blocker provides information about blocked pages.

The user can right click on this bar to reveal options on how to allow pop-ups. You have the option to always allow pop-ups at this site or to temporarily allow pop-ups. You might want to allow a pop-up when it is part of a site with necessary pop-up tools or notifications. For example, CCH Internet Tax Research NetWork notifies the user when they are about to be logged off. Pop-up blockers prevent this notification from appearing. Users can configure this blocker to always allow this window.

New security warnings help users avoid the issue of programs installed without their knowledge. Permission must be given to install items accessed over the Internet. In addition, ActiveX, a set of technologies from Microsoft enabling interactive content for the World Wide Web, requires permission to install. The service pack also activates the built-in Internet firewall by default.

If you have not upgraded to Windows XP or you already have a spyware problem, two free solutions exist for dealing with this issue, Spybot Search & Destroy (<http://www.safer-networking.org>) and Ad-Aware by Lavasoft (<http://www.lavasoftusa.com>). If you have a problem, I recommend running both of these products.

Download and update the Spybot software first. Remove adware and spyware from your machine, then download, update and run the Ad-Aware software. Accept the Spybot options to safeguard against problems. In addition, the Spybot software offers the opportunity to back-up your computer settings or registry.

You might be required to reboot your machine and run the software again to remove programs running in the back-

ground. The software products will provide you with caveats concerning the removal of adware, including that adware will be removed and therefore will not function. Running these programs does pose a risk of damaging your system; however, the risk posed by most spyware is greater.

If you want to avoid pop-ups and you are not running Windows XP, consider the free pop-up blocker from Google, MSN or Yahoo. Yahoo's blocker claims to scan for spyware. I found the Google blocker relatively unobtrusive and easy to configure. Visit <http://www.you-niversity.com/help/popup/popups.htm>, which has configuration information, before you decide on a free pop-up blocker.

If you want to be more aggressive in avoiding spyware and adware, consider Mozilla's Firefox browser (<http://www.mozilla.org>). This browser has many interesting features such as the ability to open multiple Web pages and tab between them. However, some Web pages may not work with it.

Larger offices should consider restricting user rights to install software as a solution to avoiding the problem. The Windows operating system is easily configured to restrict a user's ability to install software. Smaller offices without a network administrator or offices running a multitude of frequently updated software may find this to be too restrictive.

Executive Summary

Adware and spyware problems can be easily avoided with proactive measures. Using tools available by updating your Windows XP operating system to Service Pack 2, and/or installing software available for free on the Internet should all but eliminate the issue. Policies restricting the installation of new software packages may also help prevent the problem. As with all computer security issues, a trade-off exists between the cost of preventing the problem and the resulting benefits. ☎

Meetings Focus on Need for Key Persons

At the recent OSCP Grassroots Lobbying Training and Professional Issues Update sessions held in Enid, Ardmore, Tulsa and Oklahoma City, attendees learned the comprehensive structure and significance of the OSCP Key Persons Program and also had an opportunity to discuss current professional issues.

Professional Issues Update

President Pat Milligan, President Elect Don Orr, Past President Jimmy Williams and AICPA Council representatives Carlos Johnson and Dick Kostboth served as panelists on the Professional Issues portion of the program. OSCP leadership discussed current issues such as Interpretation 101-3 (independence for performance of non-attest services for attest clients), Audit Quality Centers, Outsourcing, the PCAOB, the increased transparency of Peer Review and the revised peer review standards. For more information on Interpretation 101-3, Audit Quality Centers, Outsourcing, PCAOB, the transparency of Peer Review, or revised peer review standards, visit www.oscpa.com.

Key Persons Needed

The sessions primarily focused on the purpose and step-by-step process of the Key Persons Program, from initiating contact with local state legislators through simple lobbying strategies to aid the CPA profession. The OSCP's Key Person Program is a cooperative effort among the OSCP Government Relations Resource Pool, our lobbyist, the OSCP staff and members across the state, putting CPAs in contact with their elected representatives. The program's objective is to maintain regular and personal contact with each member of the state legislature.

Key Person Goals and Responsibilities

The primary goal of a Key Person involves developing and promoting a personal constituent relationship with your legislator based on mutual trust and respect and placing you in a position to help the profession achieve its legislative objectives. Other Key Person responsibilities include:

- Reporting back to the OSCP office (Executive Director) on the nature and results of each contact.
- Attending political fund-raising events and delivering PAC contributions.
- Attending chapter legislator recognition functions and any OSCP sponsored legislative conferences or receptions.

To assist Key Persons in their roles, the OSCP sends Legislative Updates when important changes occur and Action Alerts when legislators should be contacted. The OSCP Web site also maintains a government relations section dedicated to keeping Key Persons informed of current events and providing comprehensive resources.

Building a Constituent Relationship

Legislators want to know as many of their constituents as possible. "They want to be your best friend," according to Benny Vanatta, OSCP's contract lobbyist. However, legislators usually don't hear from most of their constituents. It typically takes three to four times for your name to stick with a legislator. Use what works for you, whether it's talking about family, hobbies or church. CPAs have a great opportunity to build a relationship by serving as the campaign treasurer. Any legislator would appreciate having a CPA handling campaign finances.

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Correspondence Specifics

Meet legislators in their districts as opposed to the Capitol. If you send a personal letter, send it via e-mail or fax — snail mail is out. In correspondence, address the legislator as “The Honorable.” When discussing a bill, know the bill number and title and which committee is hearing the bill. Remember to let the legislator know you are a constituent. Again, the OSCPA will provide you with this information when you are e-mailed an “alert.”

Other ways to initiate or build relationships with local legislators include:

- Attending their town meetings, public or official functions;
- Inviting them to visit your firm or business;
- Presenting CPA/PAC contributions;
- Serving on an ad hoc advisory group;
- Making personal political contributions;
- Volunteering to work in election campaigns; and
- Hosting a candidate fundraiser in your home.

Why a Relationship Matters

Your legislators must deal with and understand hundreds of different issues before determining how to vote and how to best represent their constituents’ needs. Elected officials receive information on legislative proposals from many sources including media, trade and professional associations, public interest groups, law firms and businesses. These representatives frequently serve as the dominant information and lobbying source for your legislator. As both constituent and Key Person, you can communicate your views to your legislators not only for you and your profession, but also for your community.

If you already have or could develop this type of relationship with your senator or representative and would like to become a part of this program, please contact OSCPA Executive Director Daryl Hill at 405/841-3800, ext. 3812, 800/522-8261 or dhill@oscpa.com. For more information on the OSCPA Key Persons Program, visit www.oscpa.com/?311.

Your Help is Needed


The OSCPA currently needs Key Persons for the following legislators.

House:

- Mike Brown-D, District 4, Tahlequah
- Doug Cox-R, District 5, Grove
- Larry Glenn-D, District 7, Miami
- Steve Martin-R, District 10, Bartlesville
- Wade Rousselot-D, District 12, Wagoner
- Jerry McPeak-D, District 13, Warner
- Ray Miller-D, District 15, Whitefield
- Jerry Shoemaker-D, District 16, Morris
- Wes Hilliard-D, District 22, Sulphur
- Ryan Kiesel-D, District 28, Seminole
- Brian Bingman-R, District 30, Sapulpa
- Mike Shelton-D, District 97, Oklahoma City
- Lee Denney-R, District 33, Cushing
- Rex Duncan-R, District 35, Sand Springs
- Joe Sweeden-D, District 36, Pawuska
- Terry Hyman-D, District 49, Leon
- Randy Terrill-R, District 53, Moore
- Paul Wesselhoft-R, District 54, Moore
- Ryan McMullen-D, District 55, Burns Flat
- Phil Richardson-R, District 56, Minco
- Joe Dorman-D, District 65, Rush Springs
- Darrell Gilbert-D, District 72, Tulsa
- Jabar Shumate-D, District 73, Tulsa
- John Auffet-D, District 86, Stilwell
- Richard Morrisette-D, District 92, Oklahoma City
- Mike Thompson-R, District 100, Oklahoma City
- Lisa J. Billy-R, District 42, Purcell
- Ann Coody-R, District 64, Lawton

Senate:

- Jim Wilson-D, District 3, Tahlequah
- Judy E. McIntyre-D, District 11, Tulsa
- Mary Easley-D, District 18, Broken Arrow
- Ron Justice-R, District 23, Chickasha
- John Ford-R, District 29, Bartlesville
- J.B. Harrison-D, District 10, Fairfax
- Randy Bass-D, District 32, Lawton
- Debbie Leftwich-D, District 44, Oklahoma City
- Bernest Cain-D, District 46, Oklahoma City ☎



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Jimmy J. Williams, CPA/PFS is founder and managing director of Jimmy J. Williams & Co., PC in McAlester, Okla., a firm specializing in the areas of litigation support, business valuations and taxation. He is also CEO and co-founder of Asset & Investment Advisors, Inc., a registered investment advisory and financial planning firm. He is the immediate past president of the OSCP and an AICPA council member at-large. Additionally, he serves on the AICPA's Personal Financial Planning Executive Committee.

Financial Planning For Closely Held Business Owners

By Jimmy J. Williams, CPA/ PFS

Most small to medium accounting firms in public practice maintain several clients that are closely held businesses owners (CHBOs). Financial planning for CHBOs requires special consideration. The CPA planner is the most trusted adviser to help.

A closely held business (CHB) is not defined by size. The determining factor is the client's degree of control over the business. The form of the entity also plays an important role in considering the strategies available for the CHBO.

One of the most critical steps in providing financial planning services for the owner is the information-gathering process. The CPA planner may require the services of other specialists in the areas of real estate, business valuation and insurance to properly analyze and provide competent, comprehensive financial planning services to CHBOs. Planning areas for the CHBO include:

- CHB valuation;
- Cash flow planning;
- Income taxes planning;
- Risk management;
- Investment planning; and
- Succession planning.

Valuation of the CHB

Typically, the most valuable asset an owner has is the business operation. The purpose of going through a business valuation may not be only to determine the value, but also to decide what steps management can take in the future to increase the value.

The valuation of the CHB can provide the CPA planner critical information for the following financial planning issues:

- Projection for net worth available for retirement funding;
- Estate planning and post-mortem planning;
- Establishment and maintenance of an employee stock ownership plan;
- Gifting program of ownership units;
- Buy-sell agreements;
- Life and disability insurance planning;
- Investment planning; and
- Creditor protection planning.

Cash Flow Planning

Cash flow planning for an owner is similar to non-owner/employee planning. The difficulty in determining predictable cash flow is most apparent in start-up companies. In contrast, a well-established CHB may provide a predictable cash flow to an owner — once the CPA planner understands the business cycles and operations of the CHB.

The CPA planner must give consideration to the separation of the CHB and CHBO cash flows before discussing cash flow planning. One tool for such purposes is a monthly cash flow budget at the beginning of each year. Another useful tool is an annual cash flow projection for the next five to ten years.

To complete the cash flow analysis, the CPA planner should review the use of credit by the CHB. The short- and long-term needs of the CHB should be considered, including the following:

- Cost of credit versus use of cash reserves;
- Debt versus equity financing for large expenditures;
- Seasonal cash-flow fluctuations; and
- Required personal guarantees of business debt.

Income Tax Planning

Financial planning engagements should consider the implications of income taxes on CHBOs. Special concern areas are shareholder loans, ownership of assets, passive loss rules, S corporation elections, built-in gains, unreasonable compensation and related entities.

Tax planning strategies generally fall into three categories: tax deferral, tax reduction and income shifting. The CHB expands these areas with additional opportunities for planning.

The structure of the business entity may have significant implications for income tax planning. CPA planners should be competent in each area mentioned above or seek an expert in the specialized area for consultation.

Risk Management

Owner status opens the door to potential risk exposure, including personal liability for the following:

- Employee injuries;
- Employee actions;
- Retirement plan failures;
- Product failures; and
- Nonpayment of debts, when the corporate veil can be pierced.

The CPA planner should educate clients on inherent risks and the means to mitigate the impact of any claims. Some consideration should be given to obtaining liability insurance that provides broad coverage against potential business-related claims for the owner. Another planning opportunity requires an analysis of positioning the personal assets of CHBOs to protect them if claims are not fully covered by insurance.

Life insurance should be considered a tool for risk management. When investigating life insurance for owners, the CPA planner should review potential benefits in the context of estate, income tax and investment planning and cash flow management. The most common owner uses of life insurance are group term, split-dollar life insurance funding methods and reverse split-dollar life insurance funding methods.

Investment Planning

Diversification is critical for CHBOs. Typically, a substantial portion of their net worth is invested in illiquid, nonmarketable investments – their businesses. Due to the concentration of their net worth being held within their business, the owner should give serious consideration to other areas of investments in different asset classes to provide liquidity and diversification.

Succession Planning

In most cases, the CHB is a substantial portion of the owner's family net worth. Proper succession planning is critical to maintain the value of the business and generate the cash flow necessary to fund the owner's retirement. Key issues affecting succession planning for the CHBO are:

- Emotional issues;
- Personality traits (both successor and owner);
- Desire for control;
- Inability to communicate; and
- Management practices.

One method of initiating a succession plan is to encourage the establishment of an emergency succession plan. The plan should be developed with involvement from all family members. Remember, most CHBs involve more than one family member and the viewpoints of all family members will contribute to the eventual success of the plan.

Summary

The CPA planner will receive much gratitude (and opportunities for additional services and fees) by utilizing a comprehensive approach to financial planning for CHBOs. The CPA planner should observe one caveat – the Statements on Responsibilities in Personal Financial Planning Practice (SORs) apply to any member who provides PFP services, whether on a full-time, part-time or occasional basis.

CPA planners can guide clients through a maze of financial opportunities and experience great satisfaction in serving the total financial needs of a very important person – the closely held business owner. ☛

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In Memory...

We sincerely regret the loss of the following members and extend deepest sympathy to their families and friends.

Lavina S. Hussey, Stillwater, Okla., member since Sept. 18, 1981.

Roger H. Mayer, Red Oak, Texas, member since March 4, 1985.

Jack Paul Revell, Okla. City, Okla. member since Sept. 13, 1962.

Frank L. Tibbitts, Sperry, Okla., member since Oct. 16, 1985.

Edwin W. Weaver, Edmond, Okla., member since May 31, 1996.

The OSCP gratefully accepts donations to the Educational Foundation in memory of loved ones. To donate, please send your donation, along with the name of the person for whom you are making a donation, to the OSCP Educational Foundation, 1900 NW Expressway, Ste. 910, Oklahoma City, OK, 73118.

Members in the News

Kelley J. Grace, CPA, of Murrell Hall McIntosh & Co. PLLP in Norman, Okla., was elected as the first president of Norman Exchange Club, a civic organization that focuses on community service projects and child abuse prevention.

Donita Huddleston Thomas, CPA, of Bank of America in Oklahoma City; **Martha A. Burger, CPA**, of Chesapeake Energy Corporation in Oklahoma City; and **Susan F. Clark, CPA**, of Carl E. Gungoll, Exploration, Inc., in Oklahoma City; were named 2004 Journal Record Circle of Excellence

Honorees.

Sandra Werner, CPA, of First National Bank in Elk City, Okla., was named a trustee to the Oklahoma Foundation for Excellence, an organization that recognizes and encourages academic excellence in public schools.

Volunteers Help Students

In an effort to increase enrollment in and commitment to accounting, the Accounting Careers Committee invites you to participate in the Accounting Careers Exploration program. As a presenter with the ACE Program, you'll use FREE OSCP-supplied presentation materials, including a 15-minute video, student handouts and a presenter's guide.

CPAs who have made presentations (so far) for the 04-05 school year include **Elizabeth Camphor, CPA**, of Oklahoma City; **Rick Freeman, CPA**, of Tulsa; **Cathy King, CPA**, of Tahlequah; **Steve Milam, CPA**, of Tulsa; **Warren Shreve, CPA**, of Edmond; **Jennie Wade, CPA**, of Perry and **Derrel White, CPA**, of Woodward.

We're looking for more dynamic CPAs with a passion for their profession and a willingness to share that passion with students. Volunteer to visit a school today by e-mailing awelch@oscpa.com. Schools are assigned on a first-come, first-serve basis!

National Initiative Gets Local Volunteers

Lisa M. Anderson, CPA, of Woodrum, Kemendo & Cuite, P.C.; Tulsa, Okla., and **J. Patrick Milligan, CPA**, of Hogan & Slovacek, P.C.; Tulsa, Okla., have volunteered for the AICPA's financial literacy group. The opportunity allows CPAs to apply and take a broad leadership role in the volunteer effort to educate the American public, from school children to retirees, on financial topics that apply specifically to their particular stage of life or needs. "I want to help arm people with financial skills that will allow them to avoid and/or eliminate the bondage of debt and to no longer be a slave to their money, but to have their money work for them," Anderson said.

Inaugural Bedlam Bash a Win for OU and OSU Fans

It was a great day for Bedlam gridiron in Stillwater, as a sea of bright orange and deep crimson dressed CPAs flowed in and out of OSCP's first-ever tailgate tent at the Oct. 30, 2004, OU/OSU football match up.

Early risers enjoyed a spread of breakfast treats and latecomers, as well as halftime attendees, enjoyed Little Caesar's pizza while watching the Bedlam teams clash on a 60-inch television screen inside the tent.

Throughout the morning and afternoon, attendees traded in free tickets to claim assorted OU and OSU prizes, but the big winner was online trivia wiz Alan Switzer, CPA, from Okla. City. Switzer won a pair of highly coveted tickets to the game at Boone Pickens Stadium.

Special thanks to Fleming and Gandall and Accel Financial Staffing for helping OSCP sponsor the event. View pictures of the OSCP Bedlam Bash online at <http://www.oscpa.com/?861>.



Alan Switzer, CPA, from Okla. City, collects his game tickets from **Patty Hurley, OSCP associate executive director**.



David Phillips, CPA, Dick Kostboth, CPA, and Gary Franklin, CPA, enjoy a little Cowboy camaraderie before the game.

OSCPA Health Plans

Good news for Oklahoma CPAs: OSCPAs health plan rates appear to be stabilizing. With medical cost trends still in the nine to 14 percent range, the OSCPAs plans are beating the system.

Discussions with New York Life recently have led to an announcement that there would be NO RATE INCREASE for the Jan. 1, 2005, renewal of the program. In addition, there are now four High Deductible Health Plans (HDHP) that qualify members, their employees and families to open Health Savings Accounts (HSA). Enjoy the benefits of reduced health insurance premiums, along with the tax-deductible contributions, tax-deferred accumulation and tax-free withdrawals for allowable medical expenses. To learn details of these plans and to obtain a no-obligation premium proposal, call Beale Professional Services at 800/530-4863 or visit <http://www.bealepro.com>.

The OSCPAs sponsored Health Plan underwritten by Blue Cross Blue Shield of Oklahoma will raise its premiums 7.3 percent for 12 months effective Jan. 1, 2005. During the month of December, OSCPAs members and member firms may enroll in this program without evidence of insurability. Rates may vary based on health, but you cannot be denied coverage. Also included in the plan for 2005 are

HDHPs that qualify for Health Savings Accounts.

Beale has been involved in Medical Savings Accounts and Health Savings Accounts since their inception. For more than 42 years, Beale has been providing insurance services to OSCPAs members.

Delegation Attends AICPA/CPA-SEA Leadership Event



OSCPAs President-Elect **Don Orr** (second from right) and OSCPAs Executive Director **Daryl J. Hill, CAE**, (second from left) attended the 2004 AICPA/CPA-SEA Leadership Conference. Pictured with the OSCPAs conference delegates are AICPA President Barry Melancon (left) and AICPA Vice Chair Leslie Murphy (right.)

2005-2006 Nominees Approved

The OSCPAs Board of Directors has approved the candidates submitted by the Nominations Committee for the OSCPAs,

Educational Foundation and CPA-PAC offices indicated (terms begin May 2005).

OSCPA

President (automatic): Don Orr
President Elect: Barbara Ley
Vice President: Rodney Gray
Treasurer: Dick Shanahan
Secretary: Rae Rice
Past President: Pat Milligan
2-year Director At Large: Steve Milam, Jayna Lawrence, Karen Tucker

CPA-PAC

3-year term as member of the board of trustees: Thom McGuire (District 4)

Educational Foundation

5-year term as member of the board of trustees (two to be elected): Jeff Frable, Randy Thurman.

In addition, the Board approved the committee's recommendation of the three members' names for submission to the Governor for his consideration of appointment to the Oklahoma Accountability Board for a 5-year term to begin July 1, 2005: Carlos Johnson, Nancy Hyde, Dick Kostboth

Thanks to all for consenting to be nominated. Ballots will be mailed to all members by **Dec. 31, 2004** and **should be completed** and returned to the OSCPAs by **Jan. 31, 2005**. ☺

Jan./Feb. New OSCPAs Members

Student Members

Richard S. Clay, Cameron University
Jennifer D. Combs, Cameron University
Melissa R. Funk, Cameron University
Dong W. Kim, Cameron University
Sarah R. Ballard, East Central University
Diane M. Carlson-Landon, Langston University
Warren D. Oxford, Langston University
Christopher D. Barbee, Northeastern Oklahoma A&M University
Darlene Adkins, Northeastern State University
Elizabeth F. Baines, Northeastern State University
Karen A. Dodge, Northeastern State University
Jennifer D. Donohue, Northeastern State University
Crystal M. Duke, Northeastern State University
Amy D. Kirk, Northeastern State University
Jamie R. Wright, Northeastern State University
Amy S. Hahn, Oklahoma Baptist University
Joshua A. Pitts, Oklahoma Christian University
Julia E. Green, Oklahoma City Community College
Diana M. Chain, Oklahoma City University
Jennifer P. Elliott, Oklahoma City University
Chad T. Ford, Oklahoma City University

Carol J. Kerr-Holmes, Oklahoma City University
Jae-Ri Lee, Oklahoma City University
Kristi L. Mahaffey, Oklahoma City University
Denese A. Stanley, Oklahoma City University
Dylan D. Williams, Oklahoma City University
Alissa A. Finch, Oklahoma State University
Robert G. Haight, Oklahoma State University
Tara R. Jones, Oklahoma State University
Josh L. McKee, Oklahoma State University
Rachelle C. Miller, Oklahoma State University
Julie D. Murray, Oklahoma State University
Dong Fang Zhao, Oral Roberts University
Sunil K. Sahai, Oklahoma State University
David W. Seila, Oklahoma State University
Ellen M. Sprehe, Oklahoma State University
Destiny D. Stephens, Oklahoma State University
Chrispin N. Ogama, St. Gregory's University
Melissa C. Donley, Southwestern Oklahoma State University
Cynthia A. Cox, Tulsa Community College
Julie A. Branch, University of Central Oklahoma
Ingrid S. Bridges, University of Central Oklahoma
Brian W. Houle, University of Central Oklahoma
Sohee K. Kinder, University of Central Oklahoma

Meaghan K. Mendenhall, University of Central Oklahoma
Ruth E. Simpson, University of Central Oklahoma
Sherry K. Wilson, University of Central Oklahoma
Shunying Cao, University of Oklahoma
Derek C. Hammock, University of Oklahoma
Ronald D. Kirkpatrick, University of Oklahoma
Leslie A. McClendon, University of Oklahoma
Roosmarijnn F. Tarhule-Lips, University of Oklahoma
Amber R. Weckenmann, University of Oklahoma
Shelley A. Denny, University of Tulsa
Sean R. Patrick, University of Tulsa

Associate Members

Kelly R. Brown, Choctaw
Cynthia K. Dickerson, Healdton, staff accountant, Smith, Carney and Co., PC, Ardmore
Jennifer L. Ellison, Oklahoma City, audit staff, Cole and Reed, PC, Oklahoma City
Kendra R. Horner, Oklahoma City, staff accountant, Larry K. Anderson, PC, Oklahoma City

(See MEMBERS on page 33)



Form 1040: Individual Tax Return Preparation Workshop (# 430)

1/10/2005 - 1/10/2005 • OSCPA • OKC

Level: Basic

Recommended CPE Credit: 8

Developer: Garverick McCoy Tax Seminars, Inc.

Instructor: TBD

Early Bird Rates: Good through: 12/27/2004

Standard Rates: Effective: 12/28/2004

Forms 1120S and 1120: S and C Corporation Tax Returns Preparation Workshop (# 432)

1/11/2005 - 1/11/2005 • OSCPA • OKC

Level: Basic

Recommended CPE Credit: 8

Developer: Garverick McCoy Tax Seminars, Inc.

Instructor: TBD

Early Bird Rates: Good through: 12/28/2004

Standard Rates: Effective: 12/29/2004

Effective Controllorship Skills

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Technology Center/Enid (#436) • Cameron

University/Lawton (#438) • Moore Norman

Technology Center/Norman (#440) • OSU-Tulsa/

Tulsa (#442) • High Plains Technology Center/

Woodward (#444)

Level: Intermediate

Recommended CPE Credit: 8

Developer: ACPE

Instructor: Group

Early Bird Rates: Good through: 12/29/2004

Standard Rates: Effective: 12/30/2004

Form 1040: Individual Tax Return Preparation Workshop (# 446)

1/12/2005 - 1/12/2005 • Hilton Tulsa Southern Hills

• Tulsa

Level: Basic

Recommended CPE Credit: 8

Developer: Garverick McCoy Tax Seminars, Inc.

Instructor: TBD

Early Bird Rates: Good through: 12/29/2004

Standard Rates: Effective: 12/30/2004

Forms 1120S and 1120: S and C Corporation Tax Returns Preparation Workshop (# 448)

1/13/2005 - 1/13/2005 • Hilton Tulsa Southern Hills

• Tulsa

Level: Basic

Recommended CPE Credit: 8

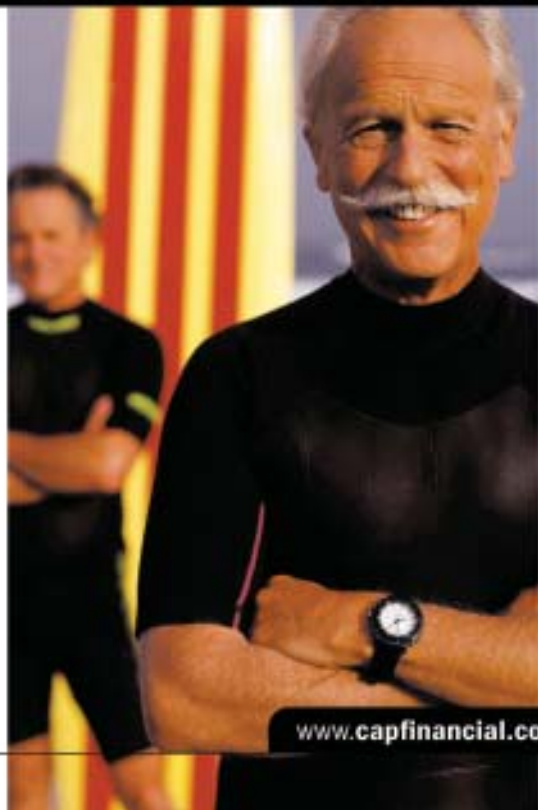
Developer: Garverick McCoy Tax Seminars, Inc.

Instructor: TBD

Early Bird Rates: Good through: 12/30/2004

Standard Rates: Effective: 12/31/2004

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OSCPA Pricing Key

OSCPA CPE programs are priced according to the developer. For the seminar you are interested in attending, check the developer name and/or color and match to the OSCP A Pricing Key. Be sure to check early bird deadlines for the correct price. Questions? Contact Donna Meyer, education coordinator, at 405/841-3800, Ext. 3829 or toll-free at 800/522-8261.

ACPEN Satellite Seminars

Early Bird Rates

OSCPA Member	\$159
Nonmember	\$209

Standard Rates

OSCPA Member	\$184
Nonmember	\$234

AICPA 1-Day Seminars

Early Bird Rates

AICPA & OSCP A Member	\$189
OSCP A Member Only	\$219
AICPA Member Only	\$239
Nonmember	\$269

Standard Rates

AICPA & OSCP A Member	\$214
OSCP A Member Only	\$244
AICPA Member Only	\$264
Nonmember	\$294

AICPA 2-Day Seminars

Early Bird Rates

AICPA & OSCP A Member	\$289
OSCP A Member Only	\$319
AICPA Member Only	\$339
Nonmember	\$369

Standard Rates

AICPA & OSCP A Member	\$314
OSCP A Member Only	\$344
AICPA Member Only	\$364
Nonmember	\$394

AICPA 3-Day Seminars

Early Bird Rates

OSCP A Member	\$499
Nonmember	\$549

Standard Rates

OSCP A Member	\$524
Nonmember	\$574

Other Developer 1-Day Seminars

Early Bird Rates

OSCP A Member	\$219
Nonmember	\$269

Standard Rates

OSCP A Member	\$244
Nonmember	\$294

Other Developer 2-Day Seminars

Early Bird Rates

OSCP A Member	\$319
Nonmember	\$369

Standard Rates

OSCP A Member	\$344
Nonmember	\$394

OSCPA Two-Hour Ethics Programs

OSCP A Member	\$49
Nonmember	\$62

Vern Hoven Seminars

Early Bird Rates

OSCP A Member	\$219
Nonmember	\$269

Standard Rates

OSCP A Member	\$244
Nonmember	\$294

CPAFOCUS CPE Registration Form

Name _____ OSCP A Member ID # _____

Firm/Co. Name _____

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City/State/Zip _____

Phone _____ FAX _____

E-mail Address _____

Are you a CPA? ☐ Yes ☐ No Do you hold a permit to practice? ☐ Yes ☐ No
Are you an OSCP A member? ☐ Yes ☐ No Are you an AICPA member? ☐ Yes ☐ No

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2) Course Name _____	Course # _____	Course Price _____	
Location _____	Course Date _____		
3) Course Name _____	Course # _____	Course Price _____	
Location _____	Course Date _____		
4) Course Name _____	Course # _____	Course Price _____	
Location _____	Course Date _____		
5) Course Name _____	Course # _____	Course Price _____	
Location _____	Course Date _____		

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To Register: Fax completed form with credit card payment to 405/841-3801, or mail to OSCP A, 1900 NW Expy, Ste. 910, OKC, OK 73118-1898. You may also register via our web site at www.oscpa.com. Direct questions to Educational Coordinator Donna Meyer 405/841-3800, Ext. 3829, or toll-free at 800/522-8261, or by e-mail at cpe@oscpa.com. Registration confirmations will be sent by e-mail unless otherwise requested. For additional information, contact the OSCP A Education Coordinator.

Cancellation/Transfer Policy: You can cancel or transfer a program on our website at www.oscpa.com or you can notify Donna Meyer by e-mail at dmeyer@oscpa.com, by fax at 405/841-3801, or by phone at Ext. 3829. Cancellations and program transfers made before the early bird deadline will be refunded or transferred at no charge. Cancellations or program transfers made within 2 weeks of the program date and greater than 24 hours in advance will be charged a \$25 cancellation fee for administrative tasks. If you cancel within 24 hours of the program date, you will be considered a no show and will forfeit your registration fee. Your program materials will be mailed. Substitutions may be made at no charge. Some restrictions apply, see bonusbuy policies for bonusbuy participants.

Members share secrets on making it through the tax season surge

Snapshots of Survival

By Amy Welch, OSCP Director of Communications

As April 15 draws near, they find themselves preoccupied with thoughts of deductions, returns, deadlines and filings. They lie awake at night fantasizing of finding lost receipts and undiscovered loopholes.

And those are just the taxpayers.

This frantic season brings a whole new set of resolutions for tax preparers: how to survive tax season without going over the edge.

For many members, the answers are as simple as working out regularly to release the stress or getting weekly massages to ease the tension. Some turn to the Good Book and some even turn to “good bye.” One way or another, they found a way to cope and decided to share their secrets.

For example, Renee Beasley, CPA, a tax senior manager with Deloitte & Touche LLP in Tulsa, said keeping a sense of humor, going for a jog, munching

chocolate and taking a Jacuzzi bath help her.

“Oh, yea,” she added, “Children with after-school activities so you are constantly reminded that it’s not all about you and tax season!”

Others, like

Libby Thomas, CPA, a tax manager with Hogan & Slovacek, PC, in Okla. City, and Greg Nobles, CPA, a sole practitioner in Cleveland, said they stick to a rigorous work schedule and find solace in the fact that tax season is a once-a-year event. While Thomas admitted to occasional breaks for rest, she added that her April 15 resembles a confessional.

“I apologize profusely to my spouse, children, grandchildren, co-workers and total strangers on April 15,” she said. “I lie and promise to never be grumpy again.”

Many members choose to keep family and friends as close as possible. Tony Otto, CPA, a manager with Hogan & Slovacek, PC in Tulsa, said he makes time each week to play with his kids in the backyard.

“And if we get any snow,” he said, “I have to take the kids sledding behind the office.”

Dee Blasdel, CPA, a general partner with Stotts Barclay Pettus Moore & Whipple, Inc., in Bartlesville, said she uses her breaks for herself and her loved ones.

“Get away from the office and the tax returns once in awhile — both physically and mentally,” she said. “Not only will this preserve your sanity, but the time out gives you the energy to focus and hit the ground running when you return.

“Your family will appreciate it and so will you.”

Frequent breaks are key to survival for many members, including Stephanie Knapp, CPA, a sole practitioner in Lindsay.

“Go home when you are tired,” Knapp advised. “It’s more efficient to work fresh than to waste time fixing exhaustion mistakes.”

Another remedy for Knapp?

“Lots of Jimmy Buffet music from March first to April fifteenth,” she said.

While some turn to music, others like Jimmy J. Williams, CPA, a managing partner with Jimmy J. Williams & Co., PC, in McAlester, turn to books.

“I know this sounds crazy, but I am more refreshed by reading a good novel or biography of successful people during a hectic time such as tax season,” he said.

However, in addition to regular exercise and a strategically planned workweek, Williams still uses audio to help him out.

“I listen to motivational tapes... to

This frantic season brings a whole new set of resolutions ... how to survive tax season without going over the edge.

maintain a heightened level of motivation and not feel burned out during the three-and-a-half month tax season,” he said.

Burn out is exactly what these members are trying to avoid. From exercise to rest, indulgences to will power, quiet meditation to gatherings with loved ones, tax preparers find a variety of ways to manage the anxiety of an inbox that suddenly seems surreal. And while many members confessed they stick with tried-and-true methods to best suit their personalities and their lives, one member, Michele Hart, CPA, a sole practitioner in Weatherford, said she didn’t have a tax season survival tip — and that she didn’t need one.

“I love what I do and I have a great staff,” she said. “I don’t need to say more than that.”

Keep the Faith

“I think there is a lot of merit in starting off each day by reading Scriptures from the Bible and having a private time with our Creator before all the demands of the day engulf us. It helps by placing things in their proper perspective...” - Don Orr, CPA, Finley & Cook, PLLC, Shawnee

“It is my practice to study spiritual values daily [and to] meditate daily... [Know] that all conditions are temporary and will soon change.” - Hedin E. Daubenspeck, CPA, Sole Practitioner, Tulsa

“This probably won’t win an award, but it is daily meditation. I recognize that all I have is the Lord’s. With that in mind, I use my time accordingly. He is my strength & daily sustenance. I guess that is what keeps me focused & prioritized correctly!” - Ron Lundin, CPA, Elite Small Business Solutions P.C., Inc., Sand Springs

You’re in Great Company

“I don’t have any magical answers but what I try to do during this rather frustrating time of year is leave it at work. Go home to the family and focus on them and pick it up the next day.” - Amie Martin, CPA, Greater Oklahoma City Chamber of Commerce, Okla. City

“My secret weapon to get me through tax season and any other stressful time is

my friends. I have lunch every week and dinner once a month with this group of women...We giggle, rant, rave, whine, and share our stories. It rejuvenates my attitude and restores my soul.” -

Katherine Ann Ray, CPA, Foundation Management, Inc., Okla. City

“...My survival secret is my husband, who pretty much assumes all the household duties during this time of the year. He does laundry, vacuums, runs errands, pays bills and brings me supper or has it ready when I get home. He even fills up my car... He’s a great supporter and we make a pretty good team...” - Kay Palmeter, CPA, Finley & Cook, PLLC, Shawnee

Sound Bodies Equal Sound Minds?

“I take time to run two to three miles about three or four times a week. It only takes about 20 to 30 minutes, and running is an excellent stress reliever. I also do not continue working if I am tired or stressed. Taking just a 10-minute break and clearing my head can make it so much easier to come back and be able to focus better on the project.” - Debbie Ray, CPA, American Fidelity Corporation, Okla. City

“...Joining a kickboxing class at the Y was the best frustration release. We (another colleague and I) left at 6:00 came back at 7:30 and was good to go for 2-3 more hours with a much better attitude.” - Stacey Vascellaro, CPA, Smith, Carney & Co., PC, Okla. City

“Stay in shape. Visit the gym at least three times a week. Stay away from sugar and simple carbohydrates. Use exercise instead of caffeine to keep energy up (that’s a hard one for me). Set-up so many hours of family/spouse time per week and keep it sacred. This gets me through all seasons.” - J. Kent Wilkinson, CPA, Legacy Bank, Duncan

Make the World Go Away...

“... I plan to have a chair massage at the office for all staff members who are interested. I hope to have someone come in weekly but it may be every other week.

(See SNAPSHOTS page 33)



Robert A. Behren is CEO and president of CompleteSite Interactive. He is the founder and former publisher and editor of *The Practical Accountant*, *Accounting Technology*, *Practical Tax Strategies* and several other major accounting publications.

Overview of New Federal Tax Laws

By Robert A. Behren

Congress enacted two major tax laws in October 2004. These laws, the Working Families Tax Relief Act and the American Jobs Creation Act—will be referred to here as the “2004 Act”. The report covers the highlights of the Act’s many provisions that change hundreds of sections of the Tax Code. While the provisions both cut and raise taxes, several cuts simply continue tax relief already granted. These extensions prolong the 2003, 2004 and 2005 expiration dates.

17 to \$1,000 for 2003 and 2004. The rate was scheduled to drop to \$700 in 2005. Under the 2004 Act, the \$1,000 per child credit continues from 2005 through 2010.

The child credit is partly refundable—that is, payable to those (low income individuals) with no income tax liability. The 2004 Act increased the refundable portion of the child credit for 2004 and after, making this benefit available retroactively, for this year.

Marriage Penalty Relief

A marriage tax penalty occurs when the tax on a couple’s combined incomes on a joint return is higher than the sum of what the taxes would be on their separate incomes as single individuals. The penalty arises when the combined incomes are taxed in a higher bracket than their incomes as single individuals. A marriage tax bonus occurs when taxes on the combined incomes are less. Recent tax laws double marrieds’ standard deductions and the incomes covered by the 15 percent bracket, eliminating the marriage penalty.

The 2003 Act delivered this result only for 2003 and 2004. The 2004 Act extends it to 2005 through 2010. The 2005 standard deduction is projected at around \$5,000 for singles or \$10,000 on a joint return.

This way of identifying a marriage penalty assumes two individuals would have the identical individual and family items as a married couple had when each was single. It ignores that tax is applied to taxable income, a concept incorporating a range of income and deduction rules that exist only for married persons. Even as a purely tax rate measure, the legislation makes no changes in the brackets above 15 percent.

10 Percent Rate

Under the 2003 tax cut, the 10 percent tax rate — the lowest rate — was applied on taxable income up to \$7,000 for singles or marrieds filing separately and \$14,000 on joint returns. These numbers, indexed for inflation, are \$7,150 (single and separate returns) and \$14,300 (joint returns) for 2004 but were scheduled to drop to \$6,000 and \$12,000 in 2005. The 2004 Act continues the \$7,000/\$14,000 rule from the 2003 Act through 2010. With inflation adjustment, the numbers should be around \$7,300 and \$14,600 in 2005; meaning taxable income up to those numbers will be taxed at 10 percent. The 15 percent and higher rates apply to taxable incomes above this level.

All taxpayers with taxable incomes more than \$6,000 (single and separate returns) or \$12,000 (joint returns) will save tax under this provision (as compared to the rule previously scheduled for 2005). For example, all joint filers (and not just low-income filers) with taxable income of at least \$14,600 will save \$130.

Child Credit

The 2003 Act increased the child credit from \$600 for each child under age



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Alternative Minimum Tax (AMT) Relief

The AMT, a complex federal tax system, runs parallel to the regular federal income tax. It applies when tax under that system is higher than the regular federal income tax. The number and proportion of middle and upper-middle income taxpayers hit by AMT increases annually. For example, middle income taxpayers with large families and taxpayers with large gains subject to state income taxes have been hit. Dependency exemptions and state income taxes aren't deductible for AMT. Recent cuts in the regular income tax, increasing the cases where AMT taxes are higher than the regular income tax, have accelerated the trend. A number of taxpayers find that their taxes have not enjoyed the full relief expected from the tax cuts. The 2004 Act continues the modest AMT relief, for 2005 only.

A basic exemption amount applies in figuring AMT, but is phased out as AMT-taxable income rises. For 2003, 2004 and now 2005, that exemption amount is increased to \$58,000 for marrieds filing jointly and \$40,250 for singles.

Deducting State And Local Sales Tax

The 2004 Act allows individual taxpayers to deduct state and local sales taxes or to deduct either state and local sales tax (including use tax) or state and local income tax, at the taxpayer's option. The change is primarily to benefit individuals living in states with no income tax (leading examples are Florida and Texas), where much of the state's revenues are raised through sales tax. (A couple of states have neither state income nor state sales tax, but have local taxes.) It will indeed benefit those individuals, but can also benefit those who pay high sales taxes in a particular year with relatively low levels of income tax.

The change is effective for 2004 and 2005. Deductions may be based on actual sales tax paid or through use of IRS safe harbor tables, showing amounts IRS will accept as deductible based on taxpayer income, family size and sales tax rates.

Charitable Contributions Of Property

The new rules apply as follows for any vehicle with a claimed value over \$500:

- (1) No deduction unless the donor gets a certificate from the charity and includes the certificate with the return claiming the deduction.
- (2) If the charity sells the vehicle without significantly using or improving it, deduction can't exceed what the charity gets for it.

The charity's certificate must, among other things, show: the donor's name and taxpayer ID; the vehicle ID; if sold, that it was sold at arm's length to an unrelated party; and the gross proceeds.

If the charity keeps the car for its own use, relevant details must be provided in the certificate. No specific valuation rule is prescribed in the Act, except that gross proceeds of later sale by the charity need not be the limit on the donor's deduction. Presumably, the donor here can use fair market value as reasonably determined. These rules apply for contributions after 2004. Contributions before year-end 2004 will be deductible under the old rules.

When a C corporation deducts a property contribution of more than \$5,000 (whether of cars or other property), it must obtain a qualified appraisal and attach related required information to its return. This rule now applies to all C corporations after June 3, 2004, though they still do not need qualified appraisals for gifts of stock in trade or publicly traded securities. Previously, the qualified appraisal rule for corporations affected only closely held or personal service corporations.

The IRS wants to make sure taxpayers know not to claim deductions based on Blue Book value (which assumes good operating condition) for cars not in good condition.

Deducting Legal Fees In Discrimination Cases

There is a disagreement among the courts over whether contingent legal fees paid in

successful tort recoveries are excluded from the plaintiff's recovery or included but then deducted. For regular income tax purposes, the differing views don't make a big difference. Inclusion and deduction increases the plaintiff's tax because deduction is a miscellaneous itemized deduction, allowed only to the extent that it (with other such deductions) exceeds two percent of adjusted gross income. The real problem is the AMT. Miscellaneous itemized deductions don't reduce AMT, so a huge AMT can result.

The 2004 Act provides full relief for some plaintiffs in this fix and zero relief for others. If the plaintiff's recovery is for unlawful discrimination (or for certain claims under Medicare or against the Federal government), the fee, whether contingent or fixed, and court costs are deductible in computing adjusted gross income. This is equivalent to excluding these amounts, since it's not a miscellaneous itemized deduction, and so not subject.

Plaintiff recoveries based on other claims get no relief. The new rule applies to fees and costs in judgments and settlements after Oct. 22, 2004. However, the Supreme Court is considering the exclusion versus deduction issue, and may shortly give a ruling applicable for cases decided or settled before Oct. 23, 2004 and in cases involving claims other than the unlawful discrimination, Medicare and Federal government items covered by the 2004 Act. The disagreement among the lower courts often turned on whether the attorney owned a piece of the claim (represented by the contingent fee) under state law; if so, exclusion (favorable to the plaintiff) resulted. The lawyer is taxed the same way under either theory, but sometimes tried to craft the engagement with the client taxpayer to achieve a favorable tax result for the client. One rule from Congress about one set of claims and another from the Supreme Court about the rest is an unlikely long-term solution. Congress may decide to act again.

New Rules On Nonqualified Deferred Compensation

(See FEDERAL on page 24)

(FEDERAL from page 23)

The 2004 Act makes major changes in the rules for nonqualified deferred compensation, a major element in the pay packages of executives in large corporations and sometimes in smaller corporations and other entities. Deferred compensation is earned now and received later. It's called nonqualified to distinguish it from pension plans, 401(k)s and other profit-sharing plans, stock bonus plans and some employer plans. Nonqualified deferred compensation plans can be set up so compensation earned now but paid later will be taxed when the executive receives it. The employer paying the compensation deducts only when the compensation is taxable to the executive, so the payer's deduction more or less matches the payee's income.

As with other major changes over the years, the 2004 Act changes are largely prompted by perceived abuse of this matching principle: the employer is deducting before the executive gets the money or the deferral is bogus; the executive has effective use of the money before he or she owes tax on it. The overall tendency of the 2004 Act is to make nonqualified deferred compensation taxable sooner. The 2004 Act will likely affect you if you're an individual who will get (or represent a company which will offer) such compensation devices as: performance plans, restricted stock, stock appreciation rights, phantom stock plans, supplemental employee retirement or excess benefit plans, severance pay plans (sometimes), rabbi trusts, plans deferring bonuses more than 2 1/2 months beyond the end of the year the bonus was earned, or individual arrangements (as in employment contracts) to defer pay.

The 2004 Act changes are effective generally for amounts deferred after 2004 and for amounts deferred before 2005 where the deferral plan is materially changed after Oct. 3, 2004. IRS will issue guidance on changing plans, getting out of plans or canceling deferral elections without violating the prohibition against material changes. Existing arrangements may offer an election to defer pay. An election made in 2004 to defer pay earned

in 2005 (which is the way most are designed) would generally not be subject to the new rules; an election made in 2005 to defer pay earned later in that year would be subject to the new rules.

Tax-Free Gain Limited On Home Acquired In Tax-Free Exchange

Gain on the sale of your principal residence can be tax-free up to \$250,000 (in some cases, \$500,000 on a joint return). But Congress has just limited tax-free treatment where the property was acquired in a tax-free exchange. The new rule applies where the taxpayer acquires, for example, residential property rented in exchange for property the taxpayer owns of like kind — residential rental property or other investment property. The taxpayer may then convert the property and later sell it and claim tax-free gain.

The 2004 Act makes the home sale gain taxable if it happens within five years of the date the property was acquired in a tax-free like-kind exchange. Where property worth more than its cost basis is swapped for like property, the basis of the property transferred becomes the basis of the property received. The built-in gain (value less basis), plus any future appreciation, is taxed on sale of the property received. This principle is frustrated if property received can be sold tax-free. The new rule applies to sales after Oct. 22, 2004.

Deduction For Teachers

Individuals teaching grade 12 and below may take a business deduction of up to \$250 a year for amounts they spend for books, supplies and other classroom teaching materials. This above the line deduction — a deduction in figuring adjusted gross income and not subject to the two percent floor on itemized deductions — expired at the end of 2003. The 2004 Act revives it for expenditures for all of 2004, deductible on 2004 returns. It will also be available for 2005 expenditures on 2005 returns.

U.S. Production Deduction

The 2004 Act adds a unique deduction for U.S. production activities. It benefits the following activities taking place in the U.S.: manufacturing, agriculture, mineral extraction, production of electricity and natural gas, films, construction and U.S. construction project engineering and architectural services. While the largest benefits will go to large C corporations, many S corporations, partnerships and sole proprietors will get some benefit.

The deduction is effective starting in 2005. Broadly, the deduction the first year is three percent of production net income (income from activities described above) or, if less, three percent of taxable income (adjusted gross income if an individual). A further limit: deduction can't exceed 50 percent of payroll (Form W-2 wages). The deduction percentage is to go from three percent (2005-2006) to six percent (2007-2009) and to nine percent thereafter. No special action or program participation is required. For many businesses, the deduction will be available simply for continuing to do what they are already doing.

Expensing Equipment Costs

Businesses may elect to expense the cost of most new business equipment up to a fixed annual amount, instead of deducting the cost through depreciation deductions over a period of years. Under the 2003 Act, expensing was allowed for up to \$102,000 of new equipment. The \$102,000 allowance was reduced dollar for dollar by the amount by purchases of such equipment exceeded \$410,000. These dollar ceilings, originally \$100,000 and \$400,000 (indexed for inflation to \$102,000 and \$410,000 for 2004) were to end after 2005, and revert to \$25,000 and \$100,000.

The 2004 Act continues the \$100,000/\$400,000 ceilings, as indexed, through 2006 and 2007. The Act also continues through 2006 and 2007 the rule allowing off-the-shelf software to be expensed, a benefit that would otherwise expire at the end of 2005.

Bonus depreciation, up to 50 percent of the cost of new, unexpensed equipment, was allowed under the 2003 Act for

2003 and 2004, then it was scheduled to expire. The 2004 Act does not change that expiration.

SUV Expense Limit

Passenger vehicles qualify for sport utility vehicle expensing when it was used more than 50 percent for business. In cases where the vehicle was used 100 percent for business, they could be expensed up to the \$102,000 ceiling. The 2004 Act puts a \$25,000 per vehicle ceiling on expensing the cost of a passenger highway vehicle weighing more than 6,000 lbs unloaded gross weight and less than 14,000 lbs gross weight. The balance of the cost over \$25,000 may be depreciated under the usual rules for passenger cars. The \$25,000 ceiling applies to purchases after Oct. 22, 2004. If the vehicle was used only partly for business (it must be used more than 50 percent for business), the \$25,000 ceiling is reduced proportionately. For example, if the vehicle was used 80 percent for business, the ceiling is \$20,000.

The ceiling on SUVs won't affect the overall ceiling (\$100,000 as indexed, which in 2005 may be \$105,000) on the expense limit. For example, if a business buys a \$70,000 SUV and \$90,000 of other equipment in 2005, and uses it all 100 percent for business, it can expense \$25,000 of the SUV and \$80,000 of other equipment (or less for the SUV and

correspondingly more for the other equipment), up to the (projected) \$105,000 ceiling. ☹

(LIFE from page 8)

coffee had just been brewed.

It was 25 years before I realized he knew when I would get there and made the coffee just before I arrived. As he set it down on the table, the spoon tinkled on the saucer, and he said, "It's a great life if you don't weaken."

I never knew what to say after that. We did this every day as if we had never done it before. Under the auspices of a great cup of coffee, our cares would briefly slip away.

And we had many issues keeping us up at nights. Our friends and neighbors were fighting a war in a far-away place called Vietnam. The country was deeply divided with drugs, riots and sexuality issues. Our president and other leaders were assassinated in broad daylight. It was confusing and scary. Yet, with a little bit of faith, fortitude, friends and a whole lot of sacrifice, we made it through.

Sound familiar? Now, America is again at war. We're in conflict with other nations and with ourselves and there seems to be no end in sight. We're concerned about a few points dropping off a consumer confidence index and pain solutions that force us to change.

The drop in confidence seems overall, not just consumer. How do you pick yourself up after you've fallen? Do you need more faith? More fortitude? More sacrifice? It's tough. If it weren't tough, the fall wouldn't matter.

Sometimes, life's most worthwhile goals take a long, long time to achieve. Sometimes, it takes more than a lifetime. Personal, financial, social, economic goals — they're all the same. Then, with unexpected joy, you find if you reach the goal, the struggle was important, too.

So, if you are involved in a struggle for your job, family, business or something else that's fallen, and it's really bigger than you, let me tell you something straight from one of the greatest men I have ever known: it's a great life if you don't weaken. ☹



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It's About Time...

2004 State Tax Changes

Sheppard F. Miers, Jr., CPA, is a shareholder in the Tulsa, Okla. office of Gable & Gotwals and practices in the areas of federal and state taxation. He is the state liaison of the Oklahoma Bar Association Taxation Law Section for 2004.

By Sheppard F. Miers, Jr., CPA

In the 2004 session, the Oklahoma legislature enacted some of the new state laws on taxation, several becoming effective because voters approved them in the Nov. 2, 2004, statewide general election.

Individual Income Tax Rate Reduction/ SQ 713

The maximum individual income tax rate would be permanently reduced from 7 percent to 6.65 percent for taxable years beginning on or after Jan. 1, 2004. The reduced rate is applicable to individuals not deducting federal income tax to determine Oklahoma taxable income. The provision for adjusting the maximum individual income tax rate each year, depending on state revenue estimates, would be repealed. (HB 2660, §13; amending 68 O.S. 2001, §2355.A; effective Jan. 1, 2004; State Question 713 approved by voters in the Nov. 2, 2004 general election.)

Retirement Income Exemptions/ SQ 713

The individual income tax exemption of federal and state employee retirement pay would be increased from \$5,500 to \$7,500 for the 2005 tax year and all subsequent tax years. The exemption of retirement benefits received by low income taxpayers will apply to individuals with Oklahoma adjusted gross income of \$37,500 or less if the taxpayer filing status is single, head of household, or married filing separately and to individuals with Oklahoma adjusted gross income of \$75,000 or less if the taxpayer filing status is married filing jointly or qualifying widow. (HB 2660, §14; amending 68 O.S. Supp. 2003, §2358; effective for taxable years beginning after Dec. 31, 2004; State

Question 713 approved by voters in the Nov. 2, 2004, general election.)

Oklahoma Capital Gain Deduction/ SQ 713

A deduction from Oklahoma adjusted gross income would be allowed for individual taxpayers for qualifying Oklahoma capital gains in taxable years beginning after Dec. 31, 2004. "Qualifying gains receiving capital treatment" is defined as net capital gains, as defined in the Internal Revenue Code, included in an individual's federal income tax return that was earned 1) on sale of real or tangible personal property located within Oklahoma that has been owned by the individual for at least five years or 2) stock or an ownership interest in an Oklahoma company, limited liability company or partnership, owned by the individual for at least three years. An entity will qualify as an "Oklahoma company, limited liability company or partnership" if the primary headquarters of such entity has been located in Oklahoma for at least three uninterrupted years. (HB 2660, §14; amending 68 O.S. Supp. 2003, §2358; effective Jan. 1, 2005; State Question 713 approved by voters in the Nov. 2, 2004, general election.)

Registration of Out-of-State Attorneys; Withholding Tax

The Registration of Out-of-State Attorneys Act, enacted as a part of intended tort reform, will require registration of out-of-state attorneys representing clients in actions or proceedings in Oklahoma, including court and administrative agency proceedings, certain court or agency mandated arbitration, mediation or alternative dispute resolution procedures in the state, and discovery and

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settlement negotiations incident to any such proceedings. An out-of-state attorney must register with the Oklahoma Bar Association and the Oklahoma Tax Commission. The Tax Commission must provide a statement verifying such registration to the out-of-state attorney and the associated in-state attorney. Such out-of-state attorneys must report to the Tax Commission annually all income derived from legal services performed in connection with proceedings covered by the Act, under regulations to be established by the Tax Commission. The client, common fund or other person or entity paying an out-of-state attorney for services must withhold five percent of all income of the out-of-state attorney derived from legal services performed in connection with proceedings covered by the Act and remit the amount withheld to the Tax Commission. An out-of-state attorney is required to notify the client or person paying for services of the withholding and remittance requirements. (H.B. 2661, §§35-53, enacting 5 O.S. Supp. 2004, §§1.1-1.19, effective Nov. 1, 2004.)

Pass-Through Entity Withholding From Non-Resident Members

The requirement that a pass-through entity (a partnership, S-corporation or trust) withhold income tax quarterly from Oklahoma income of non-resident members, shareholders and beneficiaries is amended to provide that a pass-through entity must pay the tax due by the due date of its income tax return for the taxable year, including extensions, and must pay estimated amounts quarterly if the withholding for the year is reasonably expected to exceed \$500. A pass-through entity can be relieved of the requirement to withhold income tax from each non-resident member who files an affidavit with the Tax Commission agreeing to be subject to personal jurisdiction of the Tax Commission, or if the entity is a publicly traded partnership that has agreed to file an annual information return reporting identifying information for each non-resident member with Oklahoma income in excess of \$500. A pass-through entity also is not required to withhold tax for a

nonresident member if the Tax Commission has determined by rule that the income of the nonresident member is not subject to withholding. (HB 2421, §§4, 5; and SB 1556, §1; amending 68 O.S. Supp. 2003, §§2385.30, 2385.31, effective July 1, 2004.)

Independent Biomedical Research Institute Contribution Credit

The income tax credit for donations to an independent biomedical research institute scheduled to be effective for tax years beginning after Dec. 31, 2004, is modified to eliminate a provision that would make the credit be subject to state revenue and budget estimates. (HB 2421, §3; amending 68 O.S. Supp. 2003, §2357.45; effective Jan. 1, 2005.)

Small Business and Rural Venture Capital Formation Incentive Acts

The Small Business Capital Formation Incentive Act and Rural Venture Capital Formation Act are amended to modify the definitions of the terms “capitalization” and “Oklahoma small business venture,” and the method of calculation and timing of allowance of income tax credits under the Acts and to modify the expiration dates. (HB 2124, §§1-7; amending 68 O.S. 2001, §§2357.61 – 2357.63, and 2357.72 – 2357.74; effective June 9, 2004.)

Poultry Product Tax Credit

An income tax credit is allowed for tax year 2005 for the purchase and transportation of poultry litter equal to \$5 per ton purchased and transported; subject to a total limit of \$375,000 annually. A carryover of unused credits for up to 5 years is allowed. A credit is allowed only if specified requirements are satisfied with respect to the source and use of the poultry litter purchased. (HB 2218, §1; adding 68 O.S. Supp. 2004, §2357.100; effective January 1, 2005.)

Hepatitis Immunization Credit

The tax credit allowed to a taxpayer operating one or more food service establishments for immunizations against Hepatitis A for employees of the taxpayer who work in such establishments is extended for all future taxable years without limitation (expiration on Dec. 31, 2004, is deleted). (SB 1382, §1; amending 68 O.S. 2001, §2357.33; effective Nov. 1, 2004.)

Credit for Providing Child Care Services

The income tax credit of 20 percent of eligible expenses paid by an entity primarily engaged in the business of providing child care services to comply with specified national accrediting standards is renewed by deleting a statutory expiration date of Dec. 31, 2003. (SB 1478, §1; amending 68 O.S. 2001, §2357.27; effective Nov. 1, 2004.)

Volunteer Firefighter Training Credit

An income tax credit is provided for volunteer firefighters who complete specified training and receive certification of the training. (HB 2372, §3; adding 68 O.S. Supp. 2004, §2358.7; effective July 1, 2004.)

Low Income Taxpayer Sales Tax Relief/ SQ 713

The allowance of sales tax relief of \$40 per personal exemption for low-income individuals would be allowed for calendar year 2005 and thereafter without being subject to reduction based on state revenue and budget estimates. It is to be allowed for individual taxpayers claiming personal exemptions only for the taxpayer or spouse of the taxpayer who have gross household income not exceeding \$20,000 and for individual taxpayers claiming any additional exemptions, an individual taxpayer with a disability or who is age 65 or older, with gross household income not exceeding \$50,000. (HB 2660, §15; amending 68 O.S. 2001, §5011; effective Jan. 1, 2005, if State Question 713 is approved by voters in the Nov. 2, 2004

(See STATE on Page 31)



Patrick W. Lovely, CPA, MBA, CVA, is a member of both the Ethics and Business Valuation/Litigation Support committees of the OSCP and a member of the Course Review, Grading and Standards Committees of the NACVA. He has published numerous articles in national periodicals on litigation and valuation issues.

... judicial standards and professional standards have the same expectations.

Mutual Relationship of Judicial and Professional Standards

By Patrick W. Lovely, CPA, MBA, CVA

The General Standards of the AICPA Code of Professional Conduct ("Code") explicitly require the CPA to have education, training and experience in order to provide chosen professional services offered to the public. The advent of specialties such as valuation, lost profits calculations, forensic accounting and litigation services are departures from historical education, the professional services of CPAs and the pronouncements of the AICPA. Specialties are departures from the traditional knowledge base of CPAs. The expectation of two diverse forums is evident.

1. The public forum and the expectation of competence a professional must exhibit in practicing traditional services before the general public.
2. The specialized services forum and the expectation of competence required in the practice of litigation support services.

Federal courts long ago established the requirement of specialized education and training in *Frye*.¹ The Supreme Court later enunciated in *Daubert*² that *Frye* was too exacting and rejected the *Frye* test in favor of a broader "scientific validity" test.³ *Kumho*⁴ iterated the precepts of *Daubert*⁵ and expanded the coverage to all experts providing expert testimony, including financial experts. With that said, judicial standards and professional standards have the same expectations. We can align rules of evidence with the AICPA standards.

Article IV of the Federal Rules of Evidence ("FRE") addresses relevancy and its limits. Relevancy questions whether the item of information sufficiently justifies bringing the information into evidence. Relevancy exists only as a relationship between the item of evidence and a matter of "provable" in the case. The expert helps determine the relationship through observation, inquiry and analysis of sufficient relevant data. According to the first exclusionary rule of law, FRE Rule 401, irrelevant facts will not be admitted.

FRE Rule 401. Definition of "Relevant Evidence"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequences to the determination of the action more probable or less probable than it would be without the evidence.

Relevancy consists of two concepts: materiality and probative value. Materiality directs itself to the particular issue within the range of controversy. The question of materiality is answered by responding to the question, "Relative to what?" Separate from but in conjunction with materiality, the evidence must have probative value. Considerations for testing probative value are:

1. The degree of value is largely proportionate to the degree of common sense, logic and experience;
2. The evidence does not have to be conclusive or substantially probable; and
3. The evidence only has to make the

fact somewhat more likely than not. Evidence meeting the probative value test has a sufficient relationship to the prima facie facts. Materiality and probative value are conjunctive.

Similar corollaries in AICPA pronouncements include FASB No. 2: relevance and reliability are the most important and achievable characteristics of accounting information.⁶ Together, they make the information useful. The absence of one characteristic makes the information useless. Subject to valid constraints, the practitioner may sacrifice a little of one characteristic in order to gain in the other. Verifiability adds to the usefulness of the information and significantly increases the degree of assurance the information represents what it purports to represent.

The concepts of relevance, reliability and verifiability culminate in the expectations of the Code's General Standards: professional care, planning, supervision and sufficient relevant data. Without professional rigor for these principles, the antithetical presumptions result from lack of competence or bias. Intentional bias is introduced when the result is induced.

FRE Rule 403: Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion or Waste of Time

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury or by considerations of undue delay, waste of time or needless presentation of cumulative evidence. Exclusionary rules under FRE Rule 403, important procedurally, are relative to admissibility hearings and objections to testimony and jury instructions. The rule is important to the practitioner in the context of deposition, expert reports and testimony because they command the expert to avoid confusing the issues, wasting of time and presenting circumstantial evidence. For example, the expert may proffer generalized statements with no direct bearing on the fact in question to confuse the issue and falsely impact the minds of the judge or jury.

The principle of integrity and objectivity requires maintaining impartiality, intellectual honesty, and a state of independence from external influences enabling unbiased conclusions and judgment. Rule 102: Integrity and Objectivity of the Code states, In the performance of any professional service, a member shall maintain objectivity and integrity shall be free of conflicts of interest and shall not knowingly misrepresent facts or subordinate his or her judgment to others.

The expert may not proffer unsupported evidence and opinions in favor of the client. The mere conjecture of an expert witness is biased and unethical. Article VII of FRE addresses opinions and expert testimony. The assumption of the adversarial system is that through examination and cross-examination the truth will be found or, at least, there will be a favorable honest result. Each side puts on witnesses whose testimony supports their assertions. Putting the trier of fact into a reasonably accurate reproduction of the event requires the intellectually honest presentation of relevant facts and meaningful inferences.

FRE Rule 702: Testimony of Experts⁷

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

An opinion may be drawn from one of the following sources:

1. Facts based upon personal observations, including facts communicated

(See ETHICS on page 30)

The rule is important to the practitioner in the context of deposition, expert reports and testimony

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from others and sources of information reasonably relied upon by experts in the field — not as affirmative evidence but as basis for the testimony;

2. Evidence adduced during the trial;
3. Opinions based upon hypothetical questions; and
4. Data conveyed by counsel or other sources.

Opinions based upon other sources must be information reasonably relied upon by experts in the field or on learned treatise. Examples of sources of information relied upon by experts in the field may be refereed and peer reviewed articles. Learned treatises are scientific texts and learned texts on the relevant subject matter often cited by contemporaries in the professional community. The witness may be required to demonstrate that such other sources are authoritative.

FRE Rule 702 is most expressive of the Code's General Standards under Rule 201

- A. *Professional Competence.* Undertake only those professional services that the member or the member's firm can reasonably expect to be completed with professional competence.
- B. *Due Professional Care.* Exercise due professional care in the performance of professional services.
- C. *Planning and Supervision.* Adequately plan and supervise the performance of professional services.
- D. *Sufficient Relevant Data.* Obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

The Statement on Standards for Consulting Services No. 1 guides the expert's efforts and emphasizes the importance of the General Standards. Competence requires familiarity with the body of knowledge relevant to the particular field of endeavor. The practitioner must be able to apply accepted approaches, theories and techniques applicable at that time and place and for that particular purpose. Accepted approaches, theories and techniques can

range from elementary to broad. The practitioner must be familiar with and appropriately apply theory used by the professional community in the particular field of endeavor.

The practitioner must understand:

- (1) The parties to the matter and whether conflicts of interest exist;
- (2) Whether other parties may be joined in the matter and prospective conflicts of interest;
- (3) The particular issues within the range of controversy;
- (3) How the issues relate to the facts and available information;
- (4) The extent to which scope limitations may impact information gathering, accepted approaches and techniques and the resulting evidence and opinions;
- (5) The goals and how best to identify, obtain and analyze information through the discovery process; and
- (6) The development of other required information.

Practitioners become as familiar with the work of staff and other professionals used in gathering, compiling and analyzing information as if the efforts were their own. All efforts, information and analyses are the foundation for the expert's testimony.

Rule 703. Bases of Opinion Testimony by Experts

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Facts or data upon which the expert may base an opinion may be derived from three possible sources: firsthand observations, presentation at trial and presentation of data to the expert outside of court and other than his own perception, e.g., data published by the Federal Reserve or propositions from an authoritative manual.

The proponent of the evidence must prove the offered testimony is based on

sufficient facts or data and must show the findings and conclusions are based on reliable principals and methods appropriately applied. If the expert has complied with professional standards, compliance with federal standards naturally follows. Cross-examination will suffice for admissibility of the expert's opinions.

Oklahoma adopted the Federal Rules of Evidence and follows *Daubert* and *Kumho* through *Taylor v State*, 1995 OK CR 10, 889 P.2d 319 and *Christian v. Gray*, 2003 OK 10, 65 P.3d 591.

(Footnotes)

¹ *Frye v. United States*, 54 App. D.C. 46, 47, 293 F.1013 (1923).

² *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 US 579 [1993].

³ Many states still use *Frye* as the test for expert testimony.

⁴ *Kumho Tire Company, LTD v. Patrick Carmichael*, 526 US 137 [1999].

⁵ Thirty-five states have adopted *Daubert*. Eight states have stated *Daubert* is instructive.

⁶ AICPA. FASB Statement of Financial Accounting Concepts No. 2 – Qualitative Characteristics of Accounting Information. New York: May, 1980: x-xii. 'Accounting information' in this regard should include any exercise that collects, analyzes, and interprets information.

⁷ Forty-six states have adopted Rule 702. ☹

Additional Ethics Resources Are Available

For more information on ethics resources, visit the CPA Resources section of www.oscpa.com.

You can also search through back issues of OSCP Wire by visiting Article Database in the CPA Resources section of www.oscpa.com.

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general election.)

Sales Tax Exemption of Cigarettes, Tobacco Products/ SQ 713

In connection with the proposed increase of state tobacco excise taxes, an exemption from state sales tax would be allowed for sales of cigarettes and tobacco products. (HB 2660, §12; amending 68 O.S. 2001, §1355; effective January 1, 2005; State Question 713 approved by voters in the Nov. 2, 2004 general election.)

Sales Tax Collections at Special Events

The requirements for collection and remittance of sales tax on sales at special events are modified to allow promoters or organizers of a special event held on an annual basis during the same 30-day period each year to request that the Tax Commission place the responsibility for reporting and remitting sales tax within 15 days following conclusion of the special event on special event vendors, rather than the promoter or organizer, subject to specified requirements. The special event reporting requirements also will not apply to a special event sponsored by a public or private school or university or a special event sponsored by a city or town that has less than 10 special event vendors. (HB 2421, §2; amending 68 O.S. Supp. 2003, §1364.2; effective July 1, 2004.)

Border States Exemption

A sales tax exemption is enacted for sales of tangible personal property or taxable services to a state that borders Oklahoma or a political subdivision of such a state, if the other state or political subdivision grants a reciprocal exemption for sales to the state of Oklahoma and its political subdivisions. (HB 2421, §1; amending 68 O.S. Supp. 2003, §1356; effective July 1, 2004.)

Exemption For Career Technology Student Organization

A sales tax exemption is allowed

effective July 1, 2005, for sales of tangible personal property or services to the Career Technology Student Organizations under the Oklahoma Department of Career and Technology Education. (HB 2421, §1; amending 68 O.S. Supp. 2003, §1356; effective July 1, 2005.)

Exemption For Sales to Public Authorities

A sales tax exemption will be allowed for sales to the Ardmore Development Authority, Durant Industrial Authority and Oklahoma Ordnance Works Authority. (HB 2213, §1; amending 68 O.S. Supp. 2003, §1356; effective July 1, 2004.)

Telecommunications Services

The term “telecommunications services” for purposes of sales tax is amended to expressly exclude labor charges for the construction, installation, movement, servicing, repair or maintenance of any equipment such as antennas or dishes that have a connection with the transmission of a message or image from cellular towers that are used for transmission of telecommunications. (HB 2335, §1; amending 68 O.S. Supp. 2003, §1354; effective July 1, 2004.)

Sales Tax Exemption of College Athletic Tickets, and Oklahoma City National Memorial

Sales tax exemptions are to be allowed for sales of tickets for admission to a collegiate athletic event that is held in a facility owned or operated by a municipality or a public trust of which the municipality is the sole beneficiary, and that actually determines or is part of a tournament championship, a conference championship or a national championship; and for sales of tangible personal property or services to or by a tax exempt organization operating the Oklahoma City National Memorial and Museum, an affiliate of the National Park System. (SB 1383, §1; amending 68 O.S. Supp. 2003, §1356; effective April 1, 2004.)

County Sales Tax Funding County Hospital

The statute authorizing a county sales tax not exceeding two percent is amended to provide for continuing levy of a county sales tax for a county hospital if the hospital is sold but the county remains indebted for support and operation of the hospital. (SB 1342, §§1-2; amending 68 O.S. Supp. 2003, §1370, and 68 O.S. 2001, §1370.8; effective April 14, 2004.)

Low-Income Senior Homestead Valuation Freeze/ SQ 714

The valuation freeze on homestead property of low-income seniors would be amended to provide that the qualifying maximum level of income would be gross household income not exceeding the estimated median income of residents in each county, or the metropolitan statistical area that includes a county, rather than the current maximum income limit of \$25,000. (SJR30, §1, referring Article X, Section 8C of the Oklahoma Constitution to voters for amendment as State Question 714; and HB 2208, §1; amending 68 O.S. 2001, §2890.1; effective Jan. 1, 2005; State Question 714 approved by voters in the Nov. 2, 2004, general election.)

Homestead Exemption For Totally Disabled Veterans/ SQ 715

A proposed amendment of the Oklahoma Constitution would allow a complete exemption from ad valorem tax for the homestead of a veteran who has a service related 100 percent permanent disability. (HJR 1044, §1, adding Article X, Section 8E to the Oklahoma Constitution, effective Jan. 1, 2006; State Question 715 approved by voters in the Nov. 2, 2004, general election.)

Ad Valorem Tax Protest Procedures

The time period for filing a written complaint protesting increased valuation of property is changed to 20 working

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days (instead of calendar days) from the date notice of increased valuation was mailed or delivered. The informal hearing with the county assessor may be held in person, by telephone or any other method that can be used to adequately conduct a hearing and that is agreed upon by both the taxpayer and the county assessor. If a taxpayer appeals to the county board of equalization, the county assessor is required to provide the board with all information and results of the informal hearing. Appeal to the county board of equalization must be on a form prescribed by the Oklahoma Tax Commission. If a taxpayer fails to appear at the county board of equalization without giving advance notice of the reason, the county is authorized to assess costs of the hearing to the taxpayer. Payment of such costs is a prerequisite to filing an appeal to the district court from the board of equalization. A taxpayer that gives advance notification of absence shall be given the opportunity to reschedule the hearing date. (HB 2421, §§6, 7; amending 68 O.S. 2001, §§ 2876, 2877; effective July 1, 2004.)

Homestead Exemption Application Filing Date

The filing date for a taxpayer's application for a homestead exemption is changed to March 15 or within 30 days from and after receipt by the taxpayer of notice of valuation increase, whichever is later. (SB 1146, §10; amending 68 O.S. Supp. 2003, §2892; effective June 4, 2004.)

Qualified Manufacturing Facility Exemption

The five-year qualified manufacturing facility exemption from ad valorem tax is amended to provide that if a taxpayer fails to claim the exemption for a year in which it otherwise qualified, the taxpayer may file a claim for exemption for an additional year within two years of the end of the original five-year period. (SB 1254, §2; amending 68 O.S. Supp. 2003, §2902; effective May 19, 2004.)

Electric Power Generation Facility Exemption

The five-year ad valorem tax exemption for qualifying new manufacturing facilities is amended to allow an entity engaged in electric power generation by means of wind to qualify for the exemption under the exemption requirements contained in prior law before 2003 amendments to the statute. (HB 2192, §1; amending 68 O.S. Supp. 2003, §2902; effective March 15, 2004.)

Graduated Gross Production Tax Rates; Monthly Reports

The provisions for graduated gross production tax rates based upon the price of oil are extended through June 30, 2007; the month for applying average prices is modified; and the delinquency date of payment and monthly reports is changed. (SB 1253, §1; amending 68 O.S. Supp. 2003, §§1001, 1010; effective July 1, 2004; and SB 1081, §§1-3; amending 68 O.S. Supp. 2003, §§1001 and 1010; effective Nov. 1, 2004.)

Proposed Tobacco Tax Increase/ SQ 713

The Oklahoma excise tax on cigarettes and cigars, smoking tobacco and chewing tobacco would be increased. The additional tax on cigarettes that would be enacted is 40 mills per cigarette. A total tax of \$1.03 per pack of twenty cigarettes would be levied if voters approve the increase. Cigarettes and tobacco products would be exempted from state and local sales tax. Revenue from the increases in cigarette and tobacco excise taxes would be specifically apportioned to health care programs, education, the state's general fund and cities and counties. (HB 2660, §§2-11; adding 68 O.S. Supp. 2004, §§302-5, 302-6, 402-3, and amending 68 O.S. 2001, §§346, 352, 1355; effective January 1, 2005; State Question 713 approved by voters at the Nov. 2, 2004, general election.)

Simplified Estate Tax Return; Estates Qualifying for Lineal Descendant Exemption

A simplified estate tax return or affidavit is authorized to be prescribed by

the Tax Commission for filing when all the property of a decedent passes to a lineal descendant or spouse of the decedent and the net estate does not exceed the maximum lineal descendant exemption amount stated in 68 O.S. 2001, §809. SB 1121, §3; amending 68 O.S. Supp. 2003, §815; effective Nov. 1, 2004.

Time for Filing Objection to Estate Tax Audit Valuation and Assessment Notice

The time for filing a written objection with the Tax Commission of an estate tax audit valuation and tax assessment notice is changed to 60 days from the date of the mailing of such notice (previously 30 days). (SB 1121, §3; amending 68 O.S. Supp. 2003, §815.B; effective Nov. 1, 2004.)

Notice of Denial of Permit, License or Tax Exemption

Every agency that has authority to deny a permit, license or tax exemption shall be required to provide a written response to the applicant at the time of denial that states the reason for the denial, any applicable appeals procedure for the applicant and any time limitation for filing an appeal. (SB 1363, §1; adding 74 O.S. Supp. 2004, §3118; effective Nov. 1, 2004.)

Delinquency Penalty Abatement

The provision allowing abatement of the 10 percent penalty for delinquent payment of tax is amended to provide that the taxpayer may qualify for abatement of the penalty by payment of the tax and interest thereon within 60 days of the date of proposed assessment. The statute previously allowed abatement upon payment of the tax, without any interest, within 30 days. (SB 1121, §1; amending 68 O.S. Supp. 2003, §217(D); effective Nov. 1, 2004.)

Tax Incentive Review Committee

A Tax Incentive Review Committee is
(See STATE on page 34)

Members from page 17

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"Chocolate with indiscriminate catalogue spending as a close second." - Jane Winham, Murrell Hall McIntosh & Co. PLLP, Norman

"My survival tool for the Tax Season is flying. As a private pilot I try to fly on the weekends. The concentration necessary for safe flight takes your mind off of everything else but flying the plane. As soon after April 15, as is possible, I fly down to Ft. Lauderdale and spend several days on the beach." - Nick Ede, Vexis Systems, Inc., Tulsa

(SNAPSHOTS from Page 21)

Each massage is round 10 -15 minutes per person and cost \$10-\$15 per person. If all of us are a little more relaxed it sure makes the office a better place to work." - Lynda C. McColl, CPA, McColl & Associates, Mustang

"I usually go out to the Grand Canyon by myself on April 16, hike down to the Colorado River and sit for 2-3 days. The Canyon puts life in perspective as to what is important enough to worry and stress over. Communing with rocks that are over 1.7 billion years old give me the impression that there aren't many things to worry about, [especially] work-related things..." - Kevin Howard, CPA, Smith Carney & Co. PC, Ardmore

"I take a "Mid-Season" Break after the March 15th deadline. I usually go to Las Vegas or California for a weekend of golf and relaxation. Then when I get back, I plan my after tax season trip to have something to look forward to." -

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"I must confess the way I survived tax season was to get out of public accounting. Today I work as a CFO for a manufacturing company." - Joan A. Gourley, CPA, CFO, Jobri, L.L.C., Konawa

"I survive very easily. Long ago I learned that I don't like taxes so I don't do taxes." - C. J. Bud Funk, CPA, Unique Stitches Inc., Tulsa

"I found that the best way to get through tax season was to get out of public accounting." - Jim W. Brown, CPA, Occidental Petroleum Corporation, Tulsa. ☺

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to be appointed by the Legislature and Governor to annually review existing tax incentives and report to the Governor and leadership of the Legislature. The Tax Commission is authorized to require the

recipient of a tax incentive or tax expenditure to report information to the Tax Commission concerning tax incentives that is needed for the Committee to review such incentives. The Tax Commission may disallow any claim for a tax

incentive of a person for failure to report information to the Tax Commission. (SB 1516, §§1-4; adding 68 O. S. Supp. 2004, §205.4, and amending 68 O.S. 2001, §205; effective July 1, 2004.) ☐

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Since 1982, Crouch Slavin & Company has worked with companies that want to be more efficient. By implementing carefully selected business management applications and working closely with their CPA, CS&Co helps businesses save time and reduce costs to achieve their business objectives.

Crouch, Slavin & Company offers complete business management consulting services using proven technology applications. We have expertise with accounting and human resource applications and networking services. In addition to product and business process expertise, our consultants are actively involved in organizations such as the AICPA, Society of HR Management, American Payroll Association and the Information Technology Alliance. CS&Co uses a detailed process to ensure both a proper recommendation and a successful implementation. Our central purpose is: **Giving our clients a business advantage through the best use of technology.**

Benefits of Assisting Your Clients with Technology

- ▶ Offer assistance your competitors cannot
- ▶ Increase the depth of your firm's services
- ▶ Improve your clients' efficiencies
- ▶ Help your clients' make better decisions with better information

Benefits of Working with CS&Co

- ▶ Experienced Certified professionals for each product
- ▶ Availability of software for use in your firm
- ▶ Additional revenue opportunities for your firm
- ▶ Quality accounting and HR systems recommend by CPAs

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For more than two decades, Best Software has published software solutions that help businesses automate processes and achieve tangible results. The broad range of integrated solutions offered include: the most recommended mid-market application by CPAs, MAS 90 and MAS 200; the specialized manufacturing features of Platinum for Windows; track benefits, payroll and recruiting using the Abra HR Suite; and the enterprise-wide MAS 500 that automates all areas of business management including CRM, accounting and financials, project accounting, distribution, manufacturing and human resources.

News

Solutions 2004 was a success. Attendees at our fifth annual conference viewed the newest modules available for Abra Suite: Employee Self Service and Online Benefits Enrollment and the upcoming versions of PFW and MAS 90. Additionally, all attendees received a copy of our helpful *Tips and Tricks* booklet. Thank you to **Best Software** and **Unitime** for sending several key executives and product specialists to the conference. We look forward to seeing everyone at **Solutions 2005!**

Now that 2005 has arrived, please contact our office to schedule a consultant to assist with your year-end close in Abra, PFW, MAS 90 or MAS 200. Start your year off right with a full system review. Now is the perfect time to clean up your data.

CS&Co is proud to announce the addition of **MAS 500** to our product offering. MAS 500 is a highly reliable and robust software system. It boasts integrated solutions that automate all areas of business management including CRM, accounting and financials, project accounting, distribution, manufacturing, human resources and more. If you or your clients have outgrown your current accounting system and require a scalable, powerful, SQL-server based solution, MAS 500 may be for you. Call us for a needs analysis.

Congratulations to **Asurion of Nashville, TN** and **Little Rock Wastewater Utility** for their successful implementation of Abra Suite's Online Benefits Enrollment.

For more information on any of the above, please contact CS&Co.