



THE OREGON CERTIFIED PUBLIC

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**Cheryl Langley
Reflects on 35-year
OSCPA Career**

U.S. Accounting Standards at a Crossroads

Employee vs.
Independent Contractor

Tablet PCs:
Death to Laptops

Beyond Fee Disputes:
Part 3

This information has been compiled as a resource guide only and is not intended to be an endorsement for any of the following review sources. All information is subject to change at any time.

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You may ask, why donate to the Oregon CPA/Legislative Action Committee?
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- Passed legislation enabling Oregon to join 47 other states in becoming a "Mobility-Practice Privilege" state — creating cross-border fairness for CPA service delivery
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Keep on Painting a Bright Future

The OSCP Educational Foundation is proud to be associated with so many giving accounting professionals, and it asks that you continue giving back to your profession. Some facts about The OSCP Educational Foundation:

- 58 scholarships totaling \$107,525 awarded to students in 2011
- More than \$1.3 million in scholarships awarded to 900 students since the Foundation's inception in 1985
- Several planned giving strategies are available to OSCP members, including General Fund and Name Contributions, Endowment Funds, Retirement Plans, Estates, Real Estate, Life Insurance, Gift Annuities, and Charitable Trusts

The Foundation's mission is to support the profession's future in Oregon. Thank you to past, present and future donors.

Contribute today at
www.orcpa.org/educational_foundation/





Jeff Mechanick is an Assistant Director at the Financial Accounting Standards Board (FASB). In that role, he provides strategic and technical oversight of all activities involving nonpublic entities (private companies and not-for-profit organizations (NPOs)), chairs the FASB's Not-for-Profit Advisory Committee, and participates in some of the FASB's broader outreach activities. He has also been the lead staff person for the AICPA/FAF/NASBA Blue-Ribbon Panel on Standard Setting for Private Companies and the FASB/IASB Financial Crisis Advisory Group. He is a member of the AICPA and the New York State Society of CPAs, and has served on the AICPA's NPO Expert Panel. His article, *U.S. Accounting Standards at a Crossroads: Implications for Not-for-Profit Organizations*, is on Page 13.

Brendan Lowney is a Principal at Forest Economic Advisors LLC. In addition to his role driving the commercial aspects of FEA's business, Lowney interprets and forecasts the North American and international economic landscape – analysis that forms the basis of FEA's industry projections. He is also responsible for deepening FEA's coverage of the key end-use markets in the residual, manufacturing, and trade sectors. He also contributes macroeconomic and policy analysis to FEA's single and multi-client research projects. He can be reached at 1-978-496-6334 or blowney@getfea.com. **Rocky Goodnow** is the Director of the North American Timber Service at FEA LLC. He is responsible for FEA's outlook on the North American timber markets. Goodnow leads the development of FEA's timber econometric models, which are used in the analysis of future demand on wood fiber resources, regional timber supplies, and timber values. He can be reached at 1-978-496-6337 or rgoodnow@getfea.com. Their article, *The Conventional Wisdom on Timberland Prices is Likely Too Bearish*, appears on Page 20.



Larry J. Brant is chair of the Northwest law firm of Garvey Schubert Barer PC Tax and Benefits Practice Group. He has represented clients for over 26 years on a variety of tax issues, including tax controversies with federal, state and local taxing authorities, reorganizations, mergers and acquisitions, worker classification, tax deferred exchanges, unreasonable compensation, and the passive-activity loss rules. He is considered a resident expert on S corporations. In addition to overseeing the firm's tax practice, Brant is also chair of the Oregon State Bar Tax Section, and is a frequent writer and lecturer on tax topics. Brant would like to thank Steven D. Nofziger and Jason R. Faas, associates in Garvey Schubert Barer PC, for their assistance in writing the article, *Employee vs. Independent Contractor*, that appears on Page 24.

Bill Douglas, CPA/CFF/CITP CIA CFE, is the president of Cost Advisors Inc., a consulting firm based in Portland that he founded in 1999. Cost Advisors' focus is risk management, fraud and recovery. Douglas has extensive experience managing financial projects at both large and small public companies. Before founding Cost Advisors, he held management positions in Accounting, Sales and Marketing at Tektronix Inc. and FLIR Systems Inc. He has also been an auditor with Deloitte & Touche and CFO of a software firm. Douglas is also an Oregon Licensed Private Investigator. He is a frequent speaker, writer and trainer on topics related to white-collar crime and financial controls. Douglas is past Chairman of the Business & Industry Committee of the Oregon Society of CPAs and is a past board member of the Oregon Association of Certified Fraud Examiners and past officer of the Oregon chapter of the Institute of Internal Auditors. Bill is also a member of the American Institute of CPAs, the Northwest Fraud Investigators Association, and the Oregon Association of Licensed Investigators. Reach him at bill@costadvisors.com. His article, *The Rude Laptop*, appears on Page 28.



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Nikki Kobliha

I find it hard to believe I am writing my first message as chair of the Society. If you had asked me 10 years ago, or even five years ago, where I saw myself today, this surely would not have been on my radar. I can still remember getting the call asking me whether I would want to be vice chair of the Society. Not knowing what that really meant at the time, I asked what it would entail. Vice chair leads to chair-elect and then chair, based on the progression set up by the Society.

The setup allows a volunteer to see several different aspects of the Society before becoming chair. But even before I knew all the details, I knew the chair provided this message to be included in the magazine. I can honestly say it is the task I dreaded the most. For the last few years I have been reading the messages of past chairs and thinking about what my inaugural message would include. Would there be some hot topic impacting the accounting profession that I would want to discuss? Would there be a program I would want to make sure our membership was aware of and encourage involvement? Is there a change on the horizon for the Society itself that needs some attention? Well, of course, there is all of that.

Can you picture a world where we have a separate board from the FASB that would set private company reporting standards? The Financial Accounting Foundation is forming a working group to determine if such a board is necessary. The creation of this working group follows the release of the report issued by

The Winds of Change are Blowing

a “blue ribbon panel” formed to address how accounting standards can best meet the needs of users of private company financial statements. Working for a public company in PacifiCorp, there are times when I wonder how financial statement users could not want all the information we present in our financial statements. At the same time, I think if my husband were applying for a loan at his small, privately held company, most of the information PacifiCorp presents would be neither relevant to his company nor useful for the bank that would generally want to understand his cash flow situation and whether he could pay back the loan. It is an interesting dilemma. I personally think a separate board made up of the appropriate mix of knowledgeable representatives makes sense and could improve the relevance of information contained in private company financial statements, but the outcome remains to be seen. If you haven’t been keeping up on this or want to watch it unfold, I suggest you visit the Private Company Financial Reporting page on the AICPA website. Find a link at www.orcpa.org/pcfcr.

Count me in! If you have been reading this publication, you know the OSCP launched its “Count Me In” campaign last spring. I would like each of you to stop and think what your membership means to you and how you can get more out of it. Do you attend the Brown Bag Series luncheons organized by the Career Development team? Are you signed up as a speaker in the Speakers Bureau? Have you volunteered your time as a coach and mentor to an accounting student? Do you review proposed legislative bills? Do you write articles for the magazine? Have you walked with the Financial Literacy Team in the Starlight Parade? These are examples of the many activities coordinated by the Society’s various strategic

interest teams. I had the opportunity to meet with the chairs and vice chairs for many of our teams back in December. All of these teams could use your help. Even if it means you give only one presentation a year for the Multnomah County Library financial literacy series or participate in round table meetings in Central Oregon or Benton-Linn, your support is appreciated and the networking opportunity will prove valuable.

With an organization as old as ours (going on 103 years now) we have seen a lot of change. Simply looking at our membership going from 10 male members in 1908 to 4,865 members with 60 percent male and 40 percent female as of April 1, 2011, demonstrates we had to evolve our programs and offerings to support that growth. While change can be challenging at times, I believe change is good.

At the Society we have a big change on the horizon. As many of you know, OSCP President Cheryl Langley will be retiring June 30 of this year. Cheryl has been with the Society for 35 years, the past 22 as president. Her departure is bound to bring about change, but don’t worry, I don’t see the core strategy of the Society changing just because we have a new captain at the helm. If that strategy and direction changes, it will be because the services and support we need to provide our members has changed or is changing. I know I will miss Cheryl and her dedication to the Society and the profession, but after her 35 years of service she deserves to retire. I also look forward to the perspective a new president will bring to this organization. Look for the announcement of her successor in the near future.

I welcome your comments and thoughts. You can reach me at ChairNikki@orcpa.org.



Brent Goodfellow

The following firms were named in *Oregon Business Magazine's 100 Best Companies List* in March: **KPMG LLP** (No. 28 in Large Companies); **McDonald Jacobs PC** (No. 14 in Small Companies); **Pittman & Brooks PC** (No. 1 in Small Companies) and **PricewaterhouseCoopers LLP** (No. 11 in Large Companies).

Brent Goodfellow, CPA, President/CTO, One Tech LLC in Hillsboro, took part in *The CPA Technology Advisor's* Top 25 Thought Leader Symposium held in Dallas, Texas, in February. The first-of-its-kind event featured leaders distinguished in the technology field, with many participants having been named to the *100 Most Influential People in Accounting*, IPA's *Top 10 Most Recommended Consultants*, and the AICPA's *Technology 100* lists.

Robert G. Moody, Jr. of Talbot Korvola & Warwick LLP has been named a member of the Governmental Accounting Standards Board (GASB) Task Force to participate in its project on Deferred Inflows of Resources and Deferred Outflows of Resources.

Chuck Swank, shareholder/owner of Grove Mueller & Swank PC in Salem, was recognized with a distinguished service award and nominated for Salem's First Citizen by the Salem Area Chamber of Commerce in February.

Carolyn D. Thompson, Briggs & Thompson LLC in Coos Bay, earned a designation as a Certified Valuation Analyst through the National Association of Certified Valuation Analysts.



Rob Moody

Jeremy L. Shook recently was named a shareholder in the firm of James L. Shook CPA PC in Tigard.

Staff from James L Shook CPA PC also recently presented on tax savings strategies to the Tigard Chamber of Commerce.

Geffen Mesher & Co. PC in Portland announced in February that **Michael Lortz** became a shareholder. **Steve Wilcox** was also promoted to manager, and **Harvest Schwenter** joined the firm as audit senior. The firm also recently added **Marie Selby**, **Corey Hart** and **Elena Morozova** to its staff.

William Trotter and **Earl Dorman** joined Alison & Hill Tax Consulting in Eugene.

J. Brooks Peacock joined Wells Fargo Advisers in Salem.

Kernutt Stokes LLP of Eugene would like to announce the addition of **Marcia Adler** to its staff. **Tenille Woodward**, also of Kernutt Stokes LLP, has earned her Certified Pension Consultant (CPC) credentials from the American Society of Pension Professionals and Actuaries (ASPPA).

Lyman Potts, Elemental Technologies Inc. in Portland was profiled in the *Portland Business Journal*.

Josh Barrett, Black Helterline LLP in Portland, was featured in the *Portland Business Journal* for his work with small creative businesses as a business lawyer.

Glenn Munro, Isler CPA LLC in Eugene, was appointed treasurer of the board of directors for the Lane Community College Foundation.



Jeremy Shook



Tenille Woodward

Gerri Couper, Jones & Roth PC in Eugene, has been elected to the Downtown Events Management, Inc. board and will serve as treasurer.

Kelly Bosch, Moss Adams LLP in Eugene, joined the Pearl Buck Center board of directors.

Rhonda Bishop, Bishop French LLC in Portland, and **Daniel Nelson** of KPMG LLP in Portland graduated from The Art of Leadership, a board training program presented by Business for Culture and the Arts.

Kevin Minkoff, Kevin R Minkoff CPA LLC in Portland, spoke to the Foster Area Business Association about new tax laws. ☺

Been in the news?

We want to know! We do our best to highlight your achievements in each issue of ***The Accountant***. However, we can't catch them all. Make sure to let us know about new hires, promotions, awards and any community service events that you and your firm participate in. Send your news items and photos to Joel Weiler at marketing@orcpa.org.

Foundation Awards \$107,525 to 58 Accounting Students

The OSCPAs Educational Foundation recently awarded scholarships to college students majoring in accounting and to those students pursuing their fifth year of education at an accredited Oregon college or university. This year, the Foundation awarded 58 college scholarships totaling \$107,525, with individual scholarships ranging from \$1,000 to \$3,000 each. For a complete list of the 2011 scholarship recipients, visit www.orcpa.org/educational_foundation/scholarships.

OSCPA Member Directory is Accessible, Searchable Online for Members Only

Access the OSCPAs Online Member Directory, available only to OSCPAs members, for the most up-to-date member contact information. Search for members by: member type, business name, location, or business type. To begin searching, go to www.orcpa.org/members/member_directory.

Members Helping Members – Peer Consulting Directory is Easy to Use and is Online

The Peer Consulting Directory helps OSCPAs members get answers to technical questions from fellow members whose firms have volunteered to offer peer consulting assistance on a limited basis. Members who have technical questions in the areas listed in the directory can contact a firm through the Peer Consulting Directory. This benefit is available at www.orcpa.org/members/peer_consulting. The search feature is based on city, size of firm, services offered and industries served. For more information about the Peer Consulting Directory, contact Tonna Hollis in Administration and Member Services at 503-597-5471 / 1-800-255-1470, ext. 29; thollis@orcpa.org.

Meet the Winners of the Three CPA Exam Review Course Drawings

OSCPAs members were eligible to win one of three CPA Exam Review Course drawings, taking home full scholarships to cover the cost of the review courses, which range from \$1,400 to \$3,065 in value. Each drawing was held at a different time throughout the past several months. The three exam course providers and their winners are:

Becker Professional Education: Breanna K. Taylor, Student Member, Linfield College

Kaplan CPA Review: Michael A. Davidson, CPA Candidate Member, Jones & Roth PC, Eugene

Roger CPA Review: Heather Zeitzwolfe, Student Member, Portland State University

Thank you to the exam review course providers for their scholarship donations.

Volunteer Opportunity: Promote Financial Literacy at the Starlight Parade

Want to volunteer, have fun, and spread a great message all at the same time? The OSCPAs is looking for volunteers to march in the Rose Festival Starlight Parade, held the evening of Saturday, June 4, in downtown Portland. The OSCPAs entry is sponsored by the OSCPAs Financial Literacy Team. The time commitment is from about 7:30 p.m. to 10:30 p.m. the night of the parade, and duties include carrying balloons, holding a banner and signs, and lots of smiling and waving. You can register online at <http://www.orcpa.org/about/events> and search for event #C01028. Questions? Contact Joel Weiler at jweiler@orcpa.org or 503-597-5478 / 1-800-641-7200, ext. 12.

We Want to Write About You

The OSCPAs is looking for a few good accountants...well, stories about them that you are willing to share. We know as accounting professionals you do great things every day, you have great relationships with clients and/or employers, many of you have fascinating hobbies, and many of you have successful and inspiring business stories to tell. We'd like to share these stories with your fellow OSCPAs members.

Do you or a fellow professional have a story to share about a great personal relationship you have formed with a longtime business client? Do you or a coworker have a hobby that you think our readers would find interesting? What successful business stories do you think would help inspire other accounting professionals who read *The Accountant*? We'd like to profile you and your story and print stories about you – our members – in the magazine and on our website.

Submitting your ideas is easy. Simply email Cam Sivesind, editor, at csivesind@orcpa.org, or call 503-641-7200 / 1-800-255-1470, ext. 16. Let's talk and get your story out there.





OSCPA Launches New Blog: 'More than Numbers'

We invite you to take a look into the lives of some of our members who have offered to share their experiences as CPAs through the Oregon Society of CPAs blog, "More Than Numbers." Bookmark the blog at <http://oscpa.wordpress.com> or subscribe to the RSS feed to see what is happening with Diane Thiercof of Thompson Kessler Wiest & Borquist, and Sarah Friesen of Patrick Lumber Company.

Also make sure to keep in touch with us on the following social media outlets:

Facebook:

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<http://facebook.com/OregonSaves>

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'Surviving Busy Season' Opens Spring Brown Bags

Topics are set for the Spring OSCPA Portland Spring Brown Bag luncheons. On May 17, a panel of accounting professionals will talk about tips for Surviving Busy Season; the June 14 topic will feature a panel talking about the New CPA Exam, and a speaker from series sponsor Robert Half will talk about Landing Your Next Job on July 12. The informative noon-hour lunches are brought to you by the OSCPA Career Development Team and are held at KPMG's downtown Portland offices.



The OSCPA would like to thank Robert Half for agreeing to sponsor both the spring and fall Brown Bag luncheons again in 2011 after their support of the 2010 events. Watch the OSCPA website and e-newsletters for more information.



When it comes to tax matters, you can never have too much talent.

► Welcome Gary, Ada, Paige, Lisa, Stacy and Alana to the GSB Tax and Benefits Group.

Attorneys and paralegals pictured by row, front to back, left to right:

Vincent Cacciottoli
Ada Ko
Larry Brant
Gary Tober
Christine Brown
Kenneth Schubert, Jr.
Akane Suzuki

Norman Bruns
Paige Davis
Jason Faas
Teresa Byers
Lisa Findlay
Carla DewBerry
William Simon
David Canary

Melissa Love
Sandy Ullom
Shirley Stores
Wes Freese
Jill Chiodo
Deborah Cleland
Alana Rich
Michelle DeLappe
Stacy Guinasso
Cynthia Fraser

Not pictured:
Roland Hjorth
James Kibble

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FEEL THE POWER

New Members Add to Our Strength

We welcome these new members of the OSCP, people who appreciate access to valuable benefits such as members-only pricing on professional training, OSCP events, insurance, office products, CPA review courses, publications, and more. OSCP membership: Power. Strength. Value. These applicants were approved for Society membership during February and March 2011.



Eastern Oregon

- John R. Russell, Pendleton
Dickey and Tremper LLP

Emerald Empire

- Jeffery J. Bridgens, Eugene
Moss Adams LLP
- Andrea M. Smasne, Eugene
Moss Adams LLP
- Heather A. Smiley, Eugene
Buchholz & Garber LLC

Metro Portland

- Riley M. Barnes, Portland
PricewaterhouseCoopers LLP
- Darel F. Capps, Salem
Oregon Department of Transportation
- Shirley D. Cyr, Portland
Clean Energy Works Oregon Inc.
- Jennifer L. Darst, Salem
Boldt Carlisle & Smith LLC
- Ryan M. Dunlap, Aloha
Intel Corporation
- Carmen N. English, Portland
Talbot Korvola & Warwick LLP
- Ethel M. Gallares, Portland
- Michelle M. Gottlieb, Portland
Irvine & Company CPAs
- Kristen M. Grau, Lake Oswego
Delap LLP
- Jaimie L. Green, Portland
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- Brianne N. Hirning, Hillsboro
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- Ryan N. Marquez, Portland
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- Pedro J. Nunez Dieguez, Tigard
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- Dolores Passarelle, Portland
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- Camden W. Reeve, Portland
Alten Sakai & Company LLP
- Matthew E. Snyder, Portland
Greenbrier Rail Services
- Jamay G. Vonhoff, Portland
PNW Tax Advisors LLC
- Robert N. Walker, Beaverton
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- Bernd Deffland, Greenville
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- James K. Hawley, Manhattan Beach
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- Jonathan P. Almassi, Portland
Smarsh
- Taryn M. Braseth, Portland
LaPorte & Associates
- Christopher M. Burnett, Roseburg
Steve Tuchscherer CPA PC

- Xueqing Chen, Salem
Michael Rice CPA
- Sarah A. Friesen, Portland
Patrick Lumber Company
- Elena Morozova, Portland
Geffen Mesher & Co. PC
- Austin J. Pearce, Lake Oswego
Delap LLP
- Jennifer A. Taylor, Portland
Northwest Permanente PC
- Jerry D. Williams, Corvallis
Hewlett Packard Co.

Students

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- Kara J. Bond, Baker City
- Penny L. Brandon, Salem
- Annie Driver, Medford
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- Nadine Rice, Bend
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- Caden L. Ross, Beaverton
- Natalya I. Starykov, Lake Oswego
Delap LLP
- Breanna Taylor, Sherwood
- Nicole M. Warwick, Vancouver
Western Construction Services

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THANK YOU FOR SAYING 'COUNT ME IN!'

Members whose names have an asterisk served on the OSCP Board of Directors. Members whose names are in italics served on The OSCP Educational Foundation Board of Directors. Members whose names are in bold served as an OSCP Project or Strategic Interest Team Chair or Local Service Area Chair. All others listed served on a Project Team, Strategic Interest Team or Local Service Area Council.

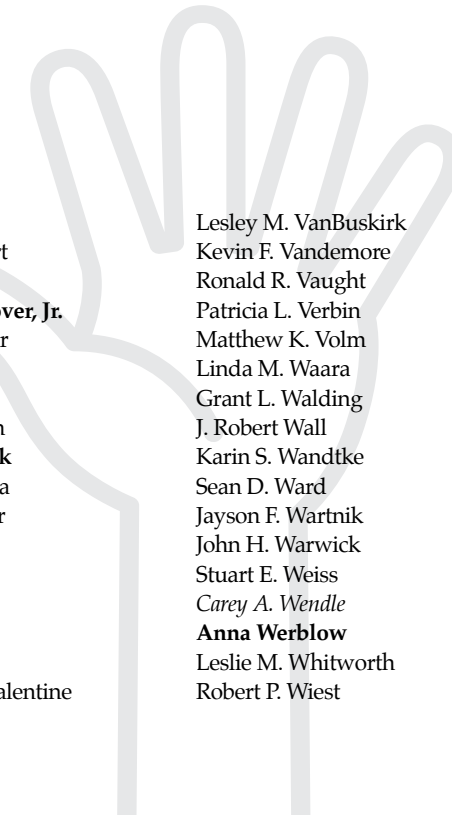
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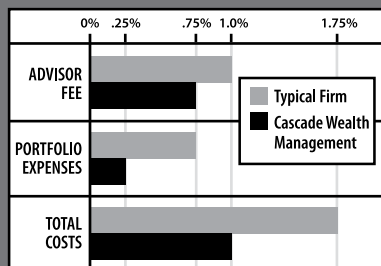
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U.S. Accounting Standards at a Crossroads: Implications for Not-For-Profit Organizations

By Jeffrey D. Mechanick

When I joined the staff of the Financial Accounting Standards Board (FASB) in early 2006, as its specialist for not-for-profit organizations (NFPs), I thought I was joining a “sleepy hamlet” up in Norwalk, Conn., where accounting standards are set at a (relatively) “glacial pace.” Five years later, I find myself in an environment that not only isn’t all that sleepy, but is at times downright frenetic. Indeed, it’s not much of an exaggeration to say that the standard-setting world here in the U.S. is truly at a once-in-a-generation, if not once-in-a-lifetime, crossroads. We await decisions on the accounting standards and standard-setting process for public companies by the U.S. Securities and Exchange Commission (SEC), and for nonpublic entities (private companies and NFPs) by the FASB’s parent, the Financial Accounting Foundation (FAF), amid stepped-up efforts by the FASB to complete major projects to improve U.S. GAAP and converge it with International Financial Reporting Standards (IFRS) in a number of key areas under the FASB’s Memorandum of Understanding (MOU) with the International Accounting Standards Board (IASB) in the aftermath of the Financial Crisis. This article is designed to give readers a flavor of these various developments, which I believe could have significant direct or indirect implications for the NFP sector. I’ll explore these developments in greater detail at the OSCPA’s Not-For-Profit Conference on May 2 in Portland.

In the public company arena, the SEC continues to move toward making a decision on whether and how to incorporate IFRS into the U.S. financial reporting system for U.S. public companies (domestic registrants). In February 2010, the SEC staff began creating a workplan to assist the SEC commissioners in making a decision by the end of 2011.¹ The workplan is focusing both on how ready IFRS is for the U.S. marketplace and how ready the U.S. is for IFRS, addressing questions raised by respondents to the SEC’s proposed road map for moving domestic registrants to IFRS, issued for comment in November 2008.²

In his remarks at the AICPA National Conference on Current SEC and PCAOB Developments this past December, SEC Deputy Chief Accountant Paul Beswick may have given signals about the SEC’s ultimate direction on this matter.³ Coining the term “condorsement,” Beswick described a scenario in which U.S. GAAP would continue to exist and gradually be made to converge to IFRS, but only insofar as it was in the best interest of the U.S. capital markets to do so. Such convergence would occur through completion of the current MOU projects, additional efforts by the FASB to converge other U.S. GAAP standards to IFRS where appropriate, and ongoing participation by the FASB, like other national standard setters, in the IASB’s standard-setting process, leading to U.S. endorsement and incorporation of new IFRS standards into

U.S. GAAP, to the extent they are in the best interests of the U.S. marketplace.

The future of accounting standards and standard setting for private companies was the recent focus of the Blue Ribbon Panel (BRP) on Standard Setting for Private Companies, whose recommendations are now being reviewed by the FAF’s Board of Trustees, to determine appropriate actions. The BRP was jointly sponsored by the FAF, the American Institute of Certified Public Accountants, and the National Association of State Boards of Accountancy. It was formed in response to constituent concerns about the growing complexity of U.S. GAAP and insufficient attention being paid to the private company sector during the FASB’s standard-setting process, as well as constituent interest in the simplification efforts undertaken in other jurisdictions, including the creation of separate, simplified standards, such as IFRS for Small and Medium-sized Entities (SMEs) and Canadian GAAP for Private Enterprises.

In its report to the FAF’s Board of Trustees in January 2011,⁴ the BRP did not recommend such separate, stand-alone GAAP – either IFRS for SMEs or a “home-grown” set based on U.S. GAAP – at this time, but rather a greater focus in creating appropriate exceptions and modifications to GAAP for private companies, informed by a differential framework (set of decision criteria) based on private company user needs. Most BRP members also rec- ▶

ommended that a separate, private company standard-setting board be established under the FAF to work alongside the FASB and have ultimate authority for making appropriate exceptions and modifications in GAAP.

In its consideration of the BRP's recommendations, the FAF is reaching out to a broad group of stakeholders, to assess the recommendations not only in the context of private businesses but also private sector (non-governmental) NFPs, which were not explicitly considered by the BRP. FAF President and CEO Terri Polley recently indicated that the Trustees' process, which began in February, will take approximately six to eight months to complete.⁵

While that consideration is occurring, the FASB and the FAF have made and are continuing to make changes to enhance the FASB's focus on nonpublic entities, including many of the shorter-term changes recommended by the BRP. In January 2011, the FAF appointed Daryl Buck, a private company financial executive, to the FASB's board. In the fall of 2010, the FASB assigned four additional staff members to focus on nonpublic entities, especially in the FASB's major MOU projects on financial instruments, revenue recognition, and leases. The FASB held public roundtables specifically for nonpublic entities in connection with the financial instruments and leases projects, and had significant representation by nonpublic entities at the public roundtables held in connection with the revenue recognition project. In April the FASB is launching a new electronic feedback mechanism to allow stakeholders an easier means of weighing in on proposed changes to GAAP, especially those who traditionally have not responded in large numbers via formal written comment letters, such as preparers of nonpublic entity

financial statements and small and mid-sized audit firms that serve them.

Perhaps most importantly, the FASB has also begun initial work toward developing the differential framework recommended by the BRP. One of the fundamental prerequisites is reaching a common understanding of who are the users of nonpublic entity financial statements, how they use those statements in their decision making and to what degree that use differs from that of public company investors, and what implications those differences should have for GAAP standards. Using input received from private company roundtables held last fall and discussions with some other key stakeholders, the FASB's staff has been drafting a white paper on that for private companies, to be vetted publicly in the coming months. On the not-for-profit side, the staff is working with the FASB's Not-for-Profit Advisory Committee (NAC) and others to determine to what extent, FASB Concepts Statement No. 4, *Objectives of Financial Reporting by Nonbusiness Organizations*, issued in 1980, needs updating.

The FASB and the IASB are now approaching the end of major MOU projects aimed at improvement and convergence of U.S. GAAP and IFRS in the accounting for financial instruments, revenue recognition, and leases.⁶ The two boards are currently redeliberating proposals (Exposure Drafts) on these projects, and they expect to issue final standards later in 2011. Effective dates for the standards are likely at least a few years away, especially for nonpublic entities.

Of these projects, the Leases Project, in particular, will probably have the greatest sector-wide effect on NFP financial statements. While the FAB and IASB are continuing to make changes to simplify certain aspects of the original proposals (in

areas such as initial measurement, subsequent expense recognition, and short-term leases), it is likely that, in the future, most of the leases currently given off-balance-sheet, operating lease treatment will now be on the balance sheet as a liability with an offsetting asset representing the right to use the lease asset during the term of the lease. NFPs will need to assess the potential impact of these changes on their internal systems and on debt covenants and other legal agreements.

The FASB's decision to exclude pledges receivable and payable of NFPs from the scope of the financial instruments proposal, and the focus of the revenue recognition proposal on contracts with customers (as opposed to donations), will lessen the potential impact if these upcoming standards on many NFPs. However, certain groups of NFPs should follow one or both of these projects fairly closely, such as colleges and universities with sizeable student loan portfolios (financial instruments project), and colleges and universities, health care entities, and other NFPs with significant research grants and contracts (revenue recognition project).

While the FASB is currently focusing much of its efforts on the major MOU projects, it also has various other projects (FASB-only projects), generally aimed at improving disclosures and other aspects of GAAP. One of these, noteworthy for NFPs participating in union and other multiemployer defined benefit pension and other postretirement plans, is the Disclosures about an Employer's Participation in a Multiemployer Plan Project, aimed especially at improving disclosures about exposure to underfunded plans. The FASB currently expects to issue a final standard in the next few months.

Another FASB-only project of potentially much more widespread impor-

tance to NFPs, as well as public and private business enterprises, is the Disclosure Framework Project. The objectives of the project are to (1) establish an overarching framework intended to make financial statement disclosures more effective and coordinated and (2) seek ways to better integrate information provided in financial statements. Many view this project as an important potential vehicle for helping to address the "disclosure overload" that many constituents have indicated is a key element in the complexity of GAAP that's much in need of simplification.

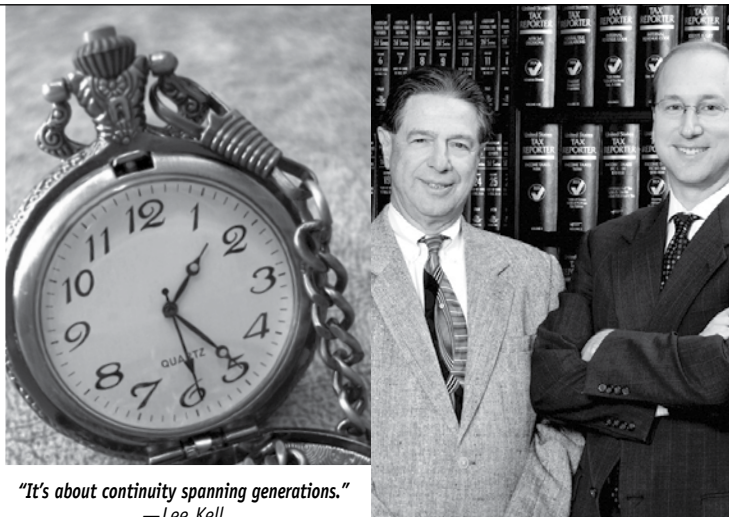
Finally, as we await the strategic decisions by the SEC and the FAF on standards and standard setting, and as the FASB continues to work at improvement, simplification, and convergence in both the MOU projects and FASB-only projects, the NAC has undertaken an important project, trying to identify potential improvements to the nearly two-decades-old NFP financial reporting model (last substantially revised in 1993 with FASB Statement No. 117, *Financial Statements of Not-for-Profit Organizations*). At its February 2011 meeting, the NAC formed three subgroups to explore various facets of the model and elements not currently in the model⁷:

Reporting Financial Performance. This subgroup will consider how to improve the reporting of financial performance via the statement of activities – including the need for and definition of an operating metric, a separate operating statement, and net asset classification I and how changes in net assets are presented (the degree of flexibility of presentation that should be afforded). The subgroup also will consider how to improve the cash flow statement, including its interrelationship with the statement of activities.

"Telling the Story." This subgroup will consider potential improvements beyond the statement of activities and statement of cash flows – for example, a Management's Discussion & Analysis

type of standard, segment reporting, a statement of functional expenses, and summarized financial statements.

Liquidity/Financial Health. This subgroup will consider potential improve-▶



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ments that could be made to better reflect liquidity or other key measures of financial health, on the balance sheet and/or the notes.

The subgroups will bring the results of their efforts to the full committee for discussion at its next meeting, on September 8-9, 2011, in Norwalk. The NAC will then determine whether to recommend possible standard-setting actions by the FASB or educational or other efforts by the FASB or other organizations.

The views the author expresses in this article are his own and do not represent official positions of the FASB, which are arrived at only after extensive due process and deliberations.

(Endnotes)

- 1 SEC Release Nos. 33-9109; 34-61578, available at the SEC's website, www.sec.gov. Progress reports on the workplan are also available at the SEC's website.
- 2 SEC Release Nos. 33-8982; 34-58960, available at the SEC's website, www.sec.gov
- 3 His remarks are available at <http://www.sec.gov/news/speech/2010/spch120610pab.htm>
- 4 Available at the FAF's website, www.accountingfoundation.org
- 5 From the Highlights of the February 2011 NAC Meeting, available on the FASB's website, www.fasb.org
- 6 Summaries of all current FASB projects may be found on the FASB's website, www.fasb.org
- 7 The descriptions below are taken from the Highlights of the February 2011 NAC Meeting, available on the FASB's website, www.fasb.org

Author's profile appears on Page 4.



For more on this topic, visit www.orcpa.org/web_briefs.

Not-For-Profit Conference is May 2

Jeffery D. Mechanick is speaking at the May 2 Not-For-Profit Conference at the DoubleTree Hotel Lloyd Center in Portland. Learn about what is new in the not-for-profit arena and the latest on topics of interest to internal/external clients.

Register at www.orcpa.org and select event #08000.

In each issue of *The Accountant*, we'll pose a pressing issue, a topic important to individual CPAs and the profession as a whole, for discussion and debate. Log on and vote today.

The topic in the last issue (*The Accountant*, March/April 2011) was related to the article *Making the Leap from Sole to Small Practitioner*. We wanted to know at what stage *your* business is at. Nearly 43 percent of you said "I plan to remain a sole practitioner until I retire," while tied at nearly 22 percent each were "My succession plan is to merge with another sole practitioner/small firm" and "I am already part of a small firm and plan continued growth." Less than 15 percent of you said "I plan to hire on a younger partner to take over the business someday."

Pressing Issues

What keeps you up at night? What excites you or concerns you about the current state of accounting or its future direction?

THIS ISSUE'S QUESTION:

After reading the article *U.S. Accounting Standards at a Crossroads: Implications for Not-For-Profit Organizations*, this issue's question asks: **What do you make of convergence of U.S. GAAP with IFRS?** Your choices are "The U.S. should keep its own accounting standards," "The U.S. needs to get with it and move to IFRS," "There is going to be the use of both GAAP and IFRS for some time," or "I plan to retire before I have to worry about any of this." You can vote and monitor results on any member page on the OSCP website. Watch for final results in the July/August 2011 issue of the magazine.

Questions? Contact Cam Sivesind, Vice President of Marketing & Public Relations, 503-597-5476 / 1-800-255-1470, ext. 16; csivesind@orcpa.org.

Vote today at <http://www.orcpa.org/members#poll>



Where Has the Time Gone?

Editor's note: Cheryl Langley will retire June 30, 2011, after 35 years of service to the OSCPA – the past 22 of those as President and CEO of the Society. She graciously wrote this fare-

well piece, looking back at her career with the OSCPA and noting some key moments in the Society's history during her tenure. We wish Cheryl the best as she and her husband, Garry, set plans to travel and experience the world near and afar.

It was the morning of July 6, 1976, and there I was, one rather nervous 29-year-old wearing her best summer outfit, reporting for the first day on the job as an "executive secretary" for the Oregon Society of CPAs' Executive Director. That morning I entered Suite 310 of the Oregon Bank Building located in downtown Portland, of course, arriving 30 minutes early to reassure the new boss, Mr. James K. Lawrence, that I was dependable. The Society's offices were welcoming and newly decorated, because the Society had just invested in an office renovation. Evidently the 1976-77 budget was able to absorb such an expenditure since 1976 was also the year that CPE became a mandatory requirement for Oregon CPA licensure.

Many years later, I realized that Jim had a grand plan in 1976. He was hopeful that he had made a good hiring decision and I ►



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would become his partner to help him manage the office. I was the fifth full-time employee to join the OSCPA staff. Today, there are 16 full and part-time staff members. When CPE became mandatory the Society began to adapt to a much different business model that has evolved over the years and as the profession's educational needs have expanded.

Coming to work for the OSCPA was a life-changing decision that can only be described as an incredible opportunity. If I hadn't said to Jim Lawrence in the spring of 1976, "Okay, I'll give it a try," I often wonder what other avenue I might have traveled. I had never envisioned myself becoming a secretary, much less having a career in the non-profit / professional membership association arena. For any of our readers that remember back during the Lawrence era, Jim was a stickler for getting it right and doing the best one could do while providing service extraordinaire! It didn't take me too long to realize that I had made a wise decision in coming to work that day.

From that moment on, I absorbed everything I could about CPAs and volunteerism. Thirty-five years later, I will now admit that I knew very little about CPAs and the accounting profession when I rounded the corner of Third & Washington on that warm July day. Jim Lawrence retired as the second full-time Executive Director in 1989, following 16 years of outstanding management and leadership. I was appointed to fill his "large shoes" in July 1989.

Fast forward to the spring of 2011, almost 35 years since Jim hired me and 22 years post his retirement in 1989, it all seems like yesterday. During this seemingly short period, I am absolutely amazed that never a day passes that there isn't something new or challenging to contemplate. The most wonderful aspect of my career is that I have interacted with some of the most amazing and talented professionals in the world...Certified Public Accountants. How did I get so lucky? And, I am now looking forward to my own retirement beginning July 1, 2011.

Recently, I was asked if I would share a few insights with members before I retire. A member said to me the other day, "I hear that you are hanging up your spurs." His comment was on point, because there are those days that I feel like Annie Oakley, dodging a bullet every now and then, while contemplating an issue that just might not be in our members' best interest (and working with volunteer leadership to deal with it). I have also realized that trying to capture 35 years of history and experiences is more than my institutional memory was designed to store.

So, what follows are highlights taking you on a brief stroll down OSCPA Milestone Lane, commencing in 1976. Prior to this time, I'd like to remind members that the Society celebrated its 100th anniversary



Cheryl shares a laugh with then-departing-Chair Alan Steiger at the OSCPA's 1991 Leadership Planning Conference.

sary in 2008. The chronicles of the first 100 years (1908-2008) can be found on the Society's website at www.orcpa.org/about/.

- 1975** Mandatory continuing professional education requirements for Oregon CPAs were enacted in 1975. Soon thereafter, the Society's CPE calendar and class attendance doubled.
- 1976** The OSCPA embarked on a new business model to be the premier provider of CPE for Oregon's accounting professionals.
- 1980** The OSCPA purchased a headquarters building in Beaverton, and 31 years later 10206 S.W. Laurel Street remains the OSCPA's home.
- 1982** The AICPA held its 95th Annual Meeting in Portland with almost 2,000 CPAs from across the country in attendance.
- 1985** The Society's first female President (known as Chair today) was elected.
- 1985** The OSCPA Educational Foundation was established. Today, the Foundation has awarded over \$1.3 million in scholarships to students majoring in accounting.
- 1986** The professional liability insurance crisis hits, and firms faced cancellation of coverage. If insurance was attainable, the rates often tripled or quadrupled. This was a crisis that lasted many years.
- 1988** Nationally the profession approved the Plan to Restructure, which led to the birth of Peer Review / practice monitoring of accounting and auditing services, and eventually increased regulation not only nationally, but also state-by-state.
- 1990s** The accounting profession was teetering on a near-crisis shortage of new entrants. Everyone realized that something needed

to be done to increase enrollments in college and university accounting programs. By the mid-2000s, the crisis had turned the corner with accounting program enrollments at all-time highs, thanks to a national effort lead by the AICPA in collaboration with 54 state societies.

- 1993-95** LLC and LLP legislation was enacted in Oregon.
- 1997** Oregon became the 40th state to enact legislation that lead to the implementation of the 150-Hour Education requirement, which became effective in Oregon on January 1, 2000.
- 2000** Oregon accounting firms were allowed to have a simple majority of CPA ownership – the birth of non-CPA ownership.
- 2001** Oregon joins 43 other states allowing CPAs to accept commissions and opening a new era and possibilities for CPAs in public accounting. The regulations governing the acceptance of contingent fees were also clarified when CPAs gained the ability to accept commissions.
- 2002** Sarbanes-Oxley Act was signed by President George W. Bush, and the accounting profession entered an era of increased regulation that is still being addressed in 2011.
- 2003** The pen & pencil Uniform CPA Exam also entered a new era...it became electronic, and in April 2003 candidates took their first computerized CPA exam.
- 2006** Benjamin Bankes becomes the CPA profession's iconic mascot to teach the nation how to wisely manage personal finances, and the OSCPA's Financial Literacy Team dedicates time and talent to promote the initiative, which is still going strong in 2011.
- 2009** Effective June 24, 2009, Oregon became the 44th state to enact Mobility Legislation enabling CPAs to practice cross-borders with a significant reduction in regulatory and licensing complexities.
- 2009-10** The Society, along with the world, addresses the beginning of the most dramatic economic crisis since 1929. By 2011, the Society had weathered the great economic storm, thanks to the outstanding support and dedication of over 4,900 members and their employers.
- 2010** The OSCPA launches an all new website featuring state of the art e-commerce functionality to serve OSCPA members as well as expanding communications with the public. ORCPA.ORG has become a nationally recognized web resource for the accounting profession.
- 2011** The Oregon Legislature launched its first "annual session" and the OSCPA is anticipating increased involvement in legislative and regulatory issues and activities in the future. There most



Joining Cheryl at the January 2011 Mid-Winter CPA/SEA Meeting were (center) Marlene Gazda, CEO of the New Hampshire Society of CPAs, and Patricia M. Moyers, CAE and former CEO (recently retired) of the West Virginia Society of CPAs.

likely will be a dramatic shift in how the Society's Legislative Policy and State Taxation initiatives are addressed now that Oregon's lawmakers will be in session annually for a designated period of time.

In closing and as spring 2011 moves along, Oregonians being the predictable beings that we are look forward to lessening rain and fewer clouds, while optimistically planning summer activities. A similar analogy applies to the accounting profession, as well as the OSCPA. Over time and what is certainly to be expected in today's complex world, the OSCPA – like any other business – periodically has experienced a dark cloud of uncertainty. Somehow through the efforts and dedication of the Society's members, in collaboration with a dynamic professional staff, has forged ahead with a vision and commitment that has proven to be the magic for 103 years. I will predict it will only get better in the years ahead! I am describing a very unique relationship that doesn't just mysteriously happen. It takes tireless work and sacrifice. It is a formula that blends volunteers and employees sharing a common mission to ensure the ongoing success of Oregon's accounting community.

As my opportunity to serve the OSCPA is drawing to a close, I am reminded of how privileged I have been to serve the OSCPA in several roles and, since 1989, as the Society's CEO. To me, it has been an extraordinary experience working side-by-side with many talented, highly ethical and wonderfully patient individuals. I only wished that I could personally express my appreciation to each and every one of you. However, I am confident that you all know who you are and also that you will remain in my heart along with a million memories as I embark on the next chapter entitled "retirement." ♡

The Conventional Wisdom on Timberland Prices is Likely Too Bearish

By Brendan Lowney and Rocky Goodnow

In August of 2009, *Barron's* magazine published an article stating that U.S. timberlands were one of “the world’s most overvalued asset classes” and that timberland prices were “vulnerable to a decline of as much as 50 percent in coming years.” This may or may not be true

— we think it isn’t — but the experience of the last two years certainly doesn’t support this extreme degree of pessimism. In fact, timberland returns, as measured by the NCREIF Index of Timberland Returns, has declined by only five percent in 2009, followed by a one percent decline in 2010.

In reality, timberland prices have

probably declined by more than the NCREIF index indicates. The paucity of actual sales over the past few years has greatly increased the difficulty of gauging the true value of timberland. The consensus view among our contacts is that timberland values are about 15 percent off of peak levels. Moreover, the consensus view among stakeholders in the timber sector is that prices will likely drop another 10 to 20 percent before they hit bottom. We think that this view is too pessimistic for reasons that have very little to do with the demand/supply fundamentals for timber.



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One of the primary attractions of timberland investing is the wide variety of value drivers. Timberland investments derive value from the following:

- The income stream from harvesting timber
- Appreciation of the underlying real estate
- Revenue streams associated with recreation or mineral rights
- Conservation easements
- Loose correlation with other asset classes due to the biological growth of the trees
- The inflation hedge provided by the relatively fixed nature of timberland supply

There remains an unusually high degree of uncertainty about the path of recovery in the housing sector (the primary end-use market for logs) as well as for both residential and commercial real estate. A narrow focus on these drivers could certainly justify the current pessimism surrounding the path of timberland values. However, if we broaden our view beyond the world of timber, we would conclude that the last two items from the list above support higher timberland values, all other things being equal.

It would be great if timberland returns were negatively correlated with the returns of most financial assets as the sector's most ardent supporters have argued. Unfortunately the data do not support this view. They do support the contention that timberland returns are loosely correlated with the returns of other assets and have proven successful in helping to diversify investment portfolios. But more importantly, will they continue to exhibit low correlation with other returns? This is a timely question since the financial meltdown has exposed many correlations in the returns on financial assets

that were not evident in the empirically driven models. After all, there had never been a nationwide decrease in home prices before, so if one bundled a bunch of geographically diverse mortgages into a security, then the risk that they would all go south at once was minimal, right?

The historical evidence suggests that timberland returns are only loosely related with other financial returns. However, biological growth of trees, which increases both the volume and value of the timber asset as trees mature into higher value products, gives this contention a solid theoretical grounding as well. In the post-bubble environment, portfolio managers are placing a higher premium on assets with a clear loose correlation to the overall market.

The biggest macro trend supporting timberland prices (assuming we could accurately gauge them) is related to their value as an inflation hedge. This contention may seem odd at a time when core inflation has dropped to 40-plus year lows and 10-year government bond yields have dropped to a Japanese-like level of 2.5 percent (Graph S1) and the Fed has clearly signaled that it is concerned about deflation.

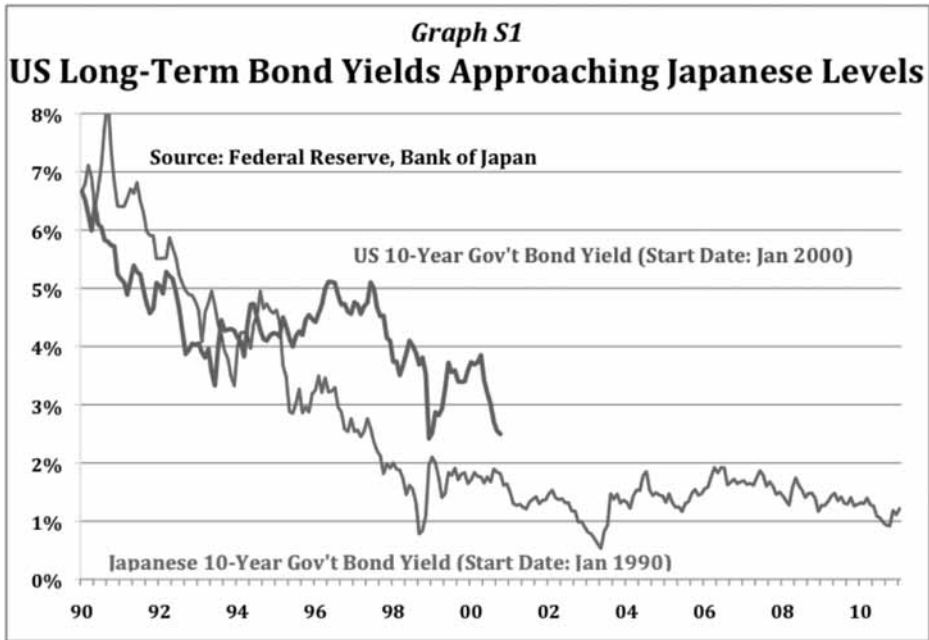
To combat deflation, the Fed has attempted to stimulate growth through two rounds of quantitative easing. If the latest round, which is set to end in June, proves to be ineffective, there is a strong likelihood that the Fed will take even more aggressive steps to generate positive inflation. Paradoxically, the threat of ►

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deflation has increased the risks for higher inflation down the road.

Although inflation anxiety is not showing up in the bond market, it is clearly evident in the commodity markets. The most visible inflation hedge, gold, has surged above \$1,400 per ounce. In fact, the expectations of higher inflation is evident in the widespread increases in the prices of commodities as a whole. Since January of 2009, the inflation-adjusted prices have surged for copper, iron ore, tin, cotton, aluminum, and coal. See Graph S2.

To be sure, real timber prices remain uninspiring, but that is due to factors intrinsic to the sector – namely that the housing market remains moribund and

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inventories are high. Remember also that timberland values are driven by factors beyond the income stream from timber harvesting. Timberland investment will become increasingly attractive to inflation-phobes as the housing market improves and the prices of other inflation

hedges become prohibitively expensive.

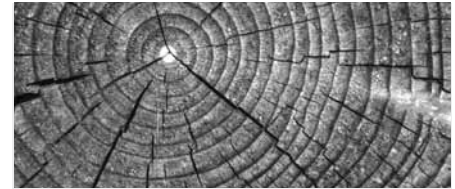
Investors taking a long-term view would be heartened to know that timber prices held up quite nicely during the Great Inflation of the 1970s. (Graph S3)

Bottom Line: Increased concern about the long-term inflation outlook will sup-

port timberland prices once transactions start flowing again and we can get a true reading on timberland values. The consensus view that timberland values are 10 percent to 20 percent overvalued may be too bearish. ☺

Rocky Goodnow will present on "North American Forest Product Markets - What Will the Next Five Years Look Like?" at the June 17 Forest Products Conference in Eugene.

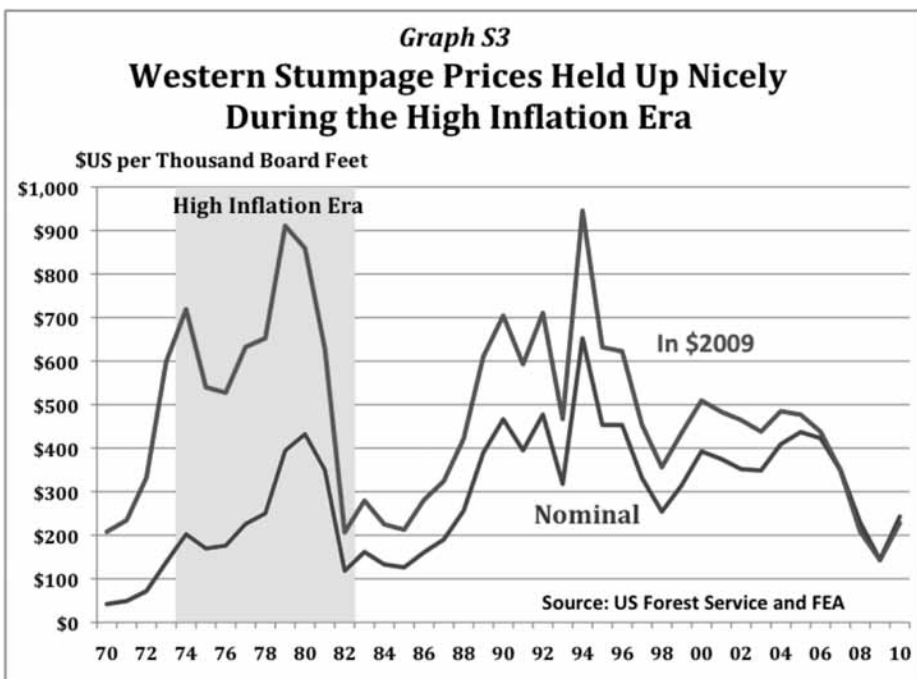
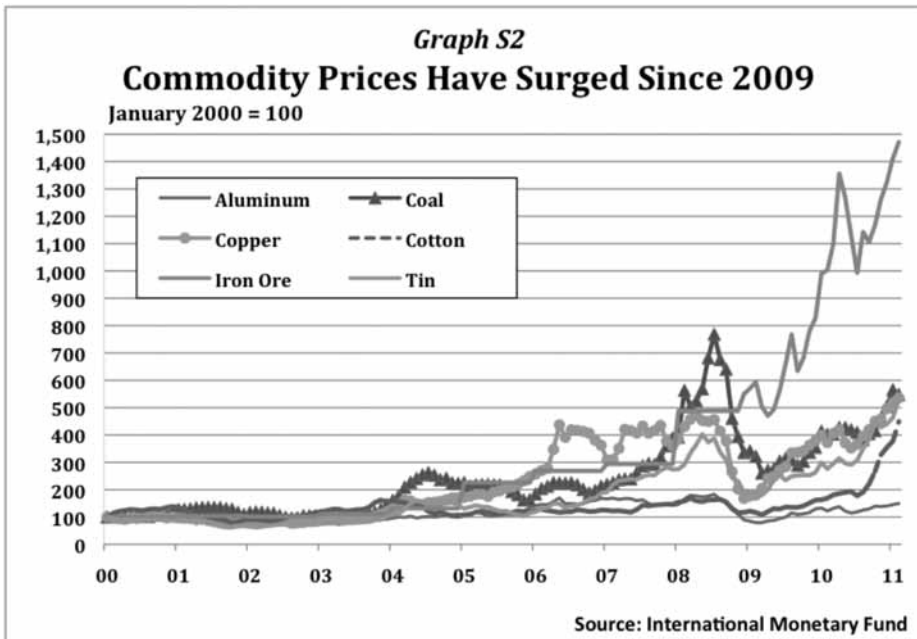
Authors' profiles appear on Page 4.



Forest Products Conference is June 17

The Forest Products Conference will be held Friday, June 17, at the Hilton Eugene & Conference Center in Eugene. Learn about a variety of current issues that are impacting the forest products industry. The event is co-sponsored by the Oregon and Washington societies of CPAs.

Visit www.orcpa.org and register for event #08006.





Employee vs. Independent Contractor

By Larry J. Brant

In 2005, the Bureau of Labor Statistics reported approximately 10.3 million workers, or 7.4 percent of the U.S. workforce, were classified as independent contractors.¹ Today, that number is likely dramatically larger. According to government studies, many workers classified as independent contractors are actually employees. Consequently, worker classification has become a hot topic for the IRS, state departments of revenue, and other federal, state and local government agencies. In addition, the plaintiff's bar has taken note of this issue and the opportunities for individual and class action lawsuits against businesses. This article highlights some of the worker classification rules, the risks of misclassification, and general guidelines for businesses and advisers.

New Scrutiny on Worker Classification

Although worker classification has been an area of focus for many years, current economic and political pressures have pushed it to the forefront of governmental attention. Congress' Joint Committee on Taxation has concluded

there is a significant loss of tax revenue associated with worker misclassification. Consequently, the IRS is dramatically increasing audit activity, targeting worker misclassification as a means of reducing budget deficits. State and local governments have followed suit and are aggressively scrutinizing businesses and industries that commonly utilize independent contractors.

State and local governments have the same motivation to prevent worker misclassification as the federal government – to generate revenue, increase compliance, and ensure workers are properly treated under their employment laws. State and local governments are particularly concerned about payment of income taxes and ensuring their unemployment insurance and workers' compensation systems remain healthy. Federal and state legislatures and local administrative agencies are reviewing a wide range of proposals and recommendations related to reducing worker misclassification.

Misclassification

Many businesses have legitimate business reasons for classifying workers as independent contractors, such as when the workers perform temporary, specialized services for the business and perform the same services for others through independently established businesses. In some industries, the use of independent contractors is a common practice (e.g., construction and transportation). Workers in these industries often prefer to be independent contractors because they like the freedom to be their own boss, and to own and operate their own businesses.

It is not uncommon for businesses to

pay independent contractors more than the wages they pay employees because the contractors are responsible for their own costs of doing business, including payroll taxes, benefits, tools, equipment and liability insurance. So, classification of workers as independent contractors does not automatically result in cost savings. Nevertheless, some government regulators perceive businesses as solely motivated to classify workers as independent contractors to avoid payroll and other "employee-related" expenses, circumvent minimum wage, overtime, antidiscrimination and other employment laws, or avoid union organization. As a result of this widespread perception, along with the significant need for governments to cure budget deficits, the focus on worker classification has recently intensified throughout the United States. Businesses and their legal advisers need to pay careful attention to this important issue.

Risks of Misclassification

The risks of misclassifying workers, whether or not intentional, are significant. If the IRS determines an independent contractor is really an employee, it may assess amounts that should have been withheld from payroll for federal payroll taxes (i.e., Social Security and Medicare) and income taxes, as well as penalties and interest. Other federal agencies, such as the Department of Labor or the National Labor Relations Board, may also assess penalties, fines and interest, in addition to disqualifying retirement plans. State and local agencies are also quick to assess taxes that are based in whole or part on employee payroll, including unemployment taxes, withholding taxes, workers' ►



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compensation insurance taxes and public transit taxes, as well as assessing penalties, fines and interest.

Federal, state and local taxes are not the only areas of concern. The workers themselves may initiate private lawsuits seeking damages for breach of contract and compensation for failure to pay for tools and equipment, workers' compensation insurance, pension contributions and benefits, sick pay, vacation pay, business expenses, and other employee benefits. When many workers are involved, class action lawsuits may evolve.

The costs of defending worker lawsuits or battling government audits can be staggering. Likewise, the publicity from worker lawsuits can hurt business goodwill. Moreover, the distraction to management resulting from worker lawsuits or government audits usually has a negative impact on business operations.

General Classification Rules

Worker classification is not an exact science. While some types of workers should clearly be classified as employees, there is a significant gray area with respect to other types of workers. Moreover, although workers are often classified in groups based upon occupation, classification should technically be done on an individual-by-individual basis. Additionally, state and local rules may differ from federal rules, such that a worker may potentially be classified as an employee under state law and an independent contractor under federal law.

Making matters more complex, state and local rules may differ within a single jurisdiction, depending upon the application within the jurisdiction. For example, it is not uncommon for some of the classification rules applicable to workers within a state to differ for purposes of unemployment taxes, workers' compensation insurance taxes and withholding taxes. These differences are often less than obvi-

ous and make compliance difficult for most businesses.

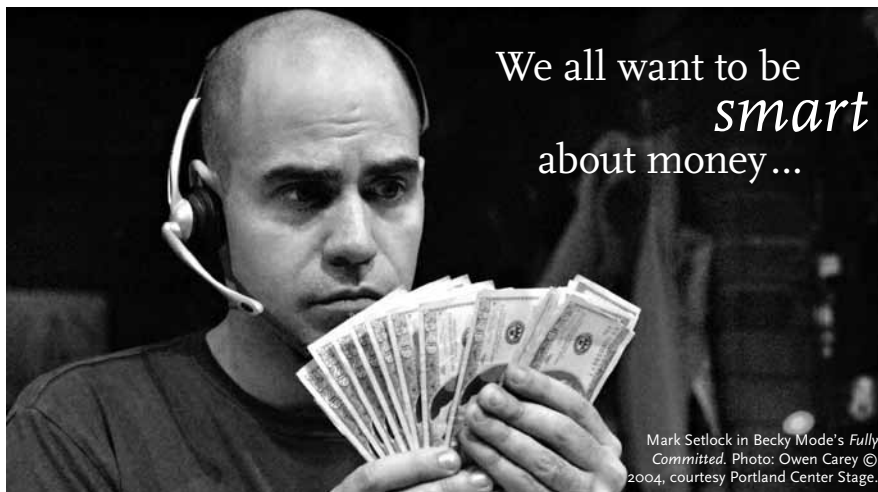
Federal Law

Under federal law, certain workers are classified by statute as employees (i.e., corporate officers and commission drivers, home workers and salespersons), but most others are classified under common law rules. Under the federal common law rules, an employment relationship exists when the person for whom the services are performed has the right to control and direct the individual performing the services, not only as to the result to be accomplished, but also as to the details and means by which that result is accomplished. It is not necessary that the employer actually direct or control the manner of performance; it is sufficient if the employer has the right to do so. If

an employment relationship exists, any other designation of the relationship by the parties (including designation of independent contractor status) is immaterial.

The IRS and other agencies look to a variety of factors in determining whether a right to control a worker's performance exists. Twenty common law factors² are discussed in Revenue Ruling 87-41, which for years was the standard by which worker classification determinations were made. Nearly all tax practitioners and employers have some familiarity with the "20-factor test."

In the two decades since issuing Revenue Ruling 87-41, the IRS has modified and updated its approach to worker classification. In an attempt to ensure the focus is on the "right to control," the IRS now encourages its auditors to



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look beyond the 20 factors contained in Revenue Ruling 87-41 and to focus on three categories of factors: (1) Behavioral Control Factors; (2) Economic Control Factors; and (3) Factors Evidencing How the Parties Perceive their Relationship. This evolutionary approach essentially groups many of the factors from Revenue Ruling 87-41 into these three general categories and gives some factors more weight than others. Regardless, application of the test remains quite subjective.

State Law

Federal law does not control worker classification for state and local law purposes. States use a variety of different tests to classify workers. The majority of states use some variation of a three-prong common law test, often called the "ABC Test," which analyzes whether:

- The worker is free from direction and control over the performance of services;
 - The services are either outside the employer's usual course of business or performed outside of the employer's business premises; and
 - The worker is engaged in an independently established trade, occupation, profession or business.
- If the ABC Test is met, the worker is an independent contractor. If one of the three prongs is not met, the worker is an employee.

Although the ABC Test is based in common law, many states have codified variations of it. One common variation uses only the first and last prongs, and is often called the "AC Test." Some states allow workers to be classified under alternative tests. For example, Washington's unemployment tax statutes utilize two similar, but alternative, tests to determine whether a worker is an employee.

The variety of state law tests and differences from federal law creates signifi-

cant confusion and hazards. A worker may be classified differently for federal and state purposes, differently from state to state, and even differently within in the same state. For example, Oregon has codified a variation of the AC Test for purposes of its workers' compensation, unemployment, and withholding tax laws. Oregon's test differs from the federal test, so workers in certain industries are frequently found to be independent contractors by the IRS, but employees for Oregon tax purposes. This statutory test does not apply to other employment-related determinations in Oregon, such as when an independent contractor sues for employment related benefits or for determining an employer's liability for acts of its employees. A different common law test is used in such cases. These differences can be hazardous to unsuspecting businesses.

Conclusion

Businesses and their advisors must be prepared for increased federal, state and local government scrutiny of worker classification. Businesses and their advisors should regularly discuss the risks of misclassification and review worker classification decisions as this area of law is in a state of flux. Business owners should not assume a worker who is an independent contractor for one purpose is automatically an independent contractor for all purposes. They are well-advised to enlist their attorneys to periodically review their worker classification decisions and determine if possible problem areas exist. Assistance of qualified legal counsel should also be obtained when appropriate, including when:

- Drafting and reviewing independent contractor agreements;
- Analyzing differences between relevant state, local and federal laws, and the application of those laws to a group of workers; and

- Undergoing state, local or federal worker classification audits or exams.

Proper worker classification has always been a concern for federal, state and local agencies. Due to recent economic and political pressures, however, worker classification is currently and will likely continue to be at the forefront of government regulation. The risks associated with worker lawsuits or government audits are significant. Businesses need to be well advised in this area. Consequently, periodic reviews and adjustments, if necessary, to prior worker classification decisions are warranted.³ ❖

- 1 The contents of this article are for educational purposes only and should not be construed as legal or tax advice or a legal or tax opinion relative to any specific situation. Persons faced with worker classification issues should seek the counsel of an attorney experienced in this specific area of law.
- 2 The factors are: (1) worker instructions; (2) worker training; (3) hiring, supervising, and paying assistants; (4) setting work hours; (5) requiring full-time work; (6) work on employer premises; (7) setting work order or sequence; (8) requiring reports; (9) provision of tools and materials; (10) significant investment by worker; (11) payment of expenses; (12) payment by the hour, week, or month; (13) economic risk of profit or loss; (14) making services available to the public; (15) working for multiple persons; (16) degree of integration into employer business; (17) personal rendering of services; (18) continuing relationship; (19) right to discharge; and (20) right to terminate.
- 3 This author has published a much more detailed white paper, *Employee vs. Independent Contractor: Another Look at Worker Classification*, on this topic. To request a copy, please email him at: lbrant@gsblaw.com.

Author's profile appears on Page 4.



The Rude Laptop

New Tablet PCs are Handy for CPA Consultants

By Bill Douglas

I want to share a problem that I believe is common among business people. That is, how to organize the information that we receive in face-to-face meetings and how to retrieve information that's needed real time in the same meetings. New tablet PCs are now reaching the market. As a consultant, a tablet PC has solved these problems for me.

The concept of a tablet PC is not new. Bill Gates introduced a tablet PC 10 years ago at a trade show in the fall of 2000. Tablet PCs are different than laptops in that they are the size of a paper tablet or smaller and a touchscreen is used for input. The most common early tablets in 2000 were laptops with a swivel screen that allowed handwriting input.

The Old Laptop


Even the early tablet PCs held promise of a new way to manage information for professional people who don't always work at a desk. Consultants and other mobile professionals visit several clients in a day – in their clients' offices, in restaurants and coffee shops. Consultants have a unique set of needs not met by a traditional laptop:

Good consultants arrive for meetings 15 or more minutes early to allow for traffic. Opening a laptop during this wait time is inconvenient because of the

laptop's size, weight and battery charge and because of the imminent arrival of the client. Often, this wait time becomes wasted time.

During client meetings, an open laptop screen creates a barrier between the consultant and the client. In some (but not all) company cultures, an open laptop during a meeting is considered rude. Though the consultant may be typing notes, the client may think he's checking emails and not listening. At the very least, the clicking sound is a distraction. So the consultant usually takes notes on a paper tablet or copybook and transcribes or scans these into a customer relation-

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ship management (CRM) system later. Alternatively, the hard copy sheets of paper are filed (or not).

It's acceptable to open the laptop during a meeting to retrieve information for a client. But the laptop can be a nuisance: space on the (restaurant) table may be tight, the laptop may not wake up quickly, and the laptop fan could be loud. Further, the screen is a barrier again and it is awkward to open and close the laptop repeatedly.

When the meeting is over, a heavy traditional laptop must be coddled on its way back to the office or home. Due to the consequences of data loss and identity theft, or the mere expense of equipment loss, the laptop cannot be left unattended.

The consultant must tote the cumbersome laptop bag, containing a spare battery, power supply, mouse and paperwork through security checkpoints, the day-care pickup, the grocery store, the mall, the health club, etc.

Air travel presents another big productivity loss to the consultant. In coach class, a reclining seat in front effectively shuts down the consultant's laptop in the seat behind. The consultant's remaining tray space makes it nearly impossible to open and type on the keyboard of a traditional laptop.

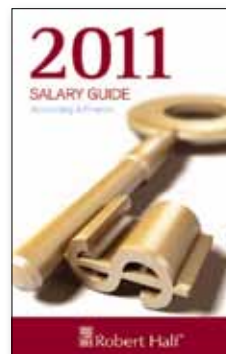
Tablet PC 90 Percent Solution

Given these drawbacks of a traditional laptop, I purchased my first tablet PC

with a swivel display in 2004 and have been using a swivel-type tablet ever since. The swivel tablet with handwriting recognition solved some, but not all, of the traditional laptop problems. The swivel tablet allowed me to fold the screen of the laptop face-up over the top of the keyboard and take notes while in meetings and working on airplane trays. Despite the old rumors, Microsoft Windows handwriting recognition technology has been very good for several years now. I used Microsoft's OneNote (part of Microsoft Office), to record my handwritten notes. OneNote allows me to keep handwriting in script form, and yet it's still searchable. It's just like having a copybook, except I can have as many folders, tabs and pages ►



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as I wish. I also send handwritten email notes and holiday cards to clients from the tablet.

There are still some problems with the swivel tablet though. The swivel tablets are heavy, hot, and noisy. Also, once closed, these old tablets take too long to wake up from sleep mode.

The New Tablets

Everything changed in 2010. Apple introduced the iPad on April 3, 2010, selling 14.8 million iPads in 2010. I considered switching to an iPad but I am convinced that's not a device for consultants.

Nevertheless, the iPad rollout got me considering the new generation of other tablets. The iPad and other new tablets no longer have a separate keyboard. The user types or writes onto the display; there is no lid. Also, the newer tablets are lighter, often weighing 1.5 pounds or less.

I have been using the HP Slate 500, and it solved the problems I had with the older swivel tablets. The Slate has a digital pen and is the size of a paperback book. I can store it in its leather "book cover" case and just tuck it under my

arm if it's not raining. I have been taking handwritten notes with OneNote in my car (while parked!), office lobbies, conference rooms, coffee shops and restaurants. I can retrieve Excel spreadsheets and other documents without opening a lid. Not only is the Slate quiet and unobtrusive, it's also a good conversation starter.

Predictions for the New Generation of Tablet PCs

The newer tablets are the future for

mobile professionals. As prices drop and performance improves, they may even replace laptops for some business people. Even at this early stage, I recommend a tablet for CPA consultants, salespeople and others who need a computer while on the move. ☺

Author's profile appears on Page 4.



For more on this topic, visit www.orcpa.org/web_briefs.

Technology Conference is June 2-3

The OSCPA's Technology Conference Featuring K2 Enterprises will be held Thursday and Friday, June 2 and 3, at the Oregon Convention Center in Portland. The conference is filled with 16 hours of fast-paced presentations designed to maximize your time and enhance your learning. Nationally recognized speakers have extensive expertise in numerous software applications. They will share their knowledge with you in order to help you do your job with efficiency and ease. Participants will receive helpful tips and advanced techniques, along with the tools and skills necessary to keep up with the ever-increasing pace of changes in computer technology. All sessions feature high-quality, full-color computer projection systems for clear viewing. This conference is designed for CPAs in public practice or industry who want to take better advantage of technology to improve efficiency and effectiveness.

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Are FLPs and FLLCs Dinosaurs for Estate Planning Purposes?

By William V. Mason II and Christopher D. Hays

Family Limited Partnerships (FLPs) and Family Limited Liability Corporations (FLLCs) have been a popular way for people to hold and transfer assets. FLLCs are more commonly used in Oregon.

Historically, use of these entities and transferring minority interests in them has been effective to reduce one's estate. If you have been monitoring court decisions you may be questioning whether FLPs and FLLCs have a place in estate and gift tax planning. The IRS seems to be challenging them consistently and you might be imagining that they are winning many cases. This article will highlight some of the recent cases involving FLPs/FLLCs to help you be better equipped to advise your clients on what "to do" and "not to do" in their holding companies.

For the most part, the IRS has been successfully challenging the minority interest valuations of FLP/FLLC interests in a decedent's estate by arguing that gifts of FLP/FLLC interests were never actually made. The key to defeating the IRS challenge is meeting the exception noted in IRC section 2036(a). The establishment of the FLP/FLLC must qualify as a "bona

fide sale" for "adequate and full consideration." The "adequate and full consideration" is easily achieved by the founder receiving all partnership/member interests after the contribution of investments to the newly formed entity. The key to achieving the "bona fide sale" is to insure the entity was formed for legitimate and significant non-tax reasons, the entity is managed and decisions documented in accordance with the partnership/operating agreement and the decisions support the reason for the formation of the entity, and the founder does not access the entity's assets/cash inappropriately.

The change in the tax law raising the lifetime gift tax exemption from \$1 million to \$5 million and the estate tax exemption from \$3.5 million (or zero in 2010) to \$5 million for 2011 and 2012 creates an opportunity for many individuals to pass along substantial wealth and successfully reduce their taxable estates. FLPs and FLLCs still have a legitimate place in the planning arsenal.

The Estate of Jorgensen (TCM 2009-66) is a good example of a case where the taxpayer did very few things right. The case involved a husband and wife who had

saved and invested over their lifetimes. The couple established a FLP by contributing \$500,000 in marketable securities to it. The husband made all decisions related to the FLP.

After the husband's death, the wife established a second FLP with approximately \$1.8 million in marketable securities. She did not want to take an active role in the management of the FLPs, gifting interests in the FLP and turning over management responsibilities to her two adult children. One of the children then took a \$125,000 "loan" from the second FLP, making only two interest-only payments on this loan. The mother withdrew funds from the FLP to pay taxes, other personal expenses and to be used for gifts.

Upon the mother's death, the estate valued the mother's interests in the FLPs applying discounts to her pro-rata values of the FLPs. The IRS subsequently assessed nearly \$800,000 in deficiencies claiming the mother effectively owned 100 percent of both FLPs. The key issue in the case was whether or not the establishment of the FLPs met the "bona fide sales for adequate consideration" exception under IRC section 2036(a). The tax court stated "We must determine whether [the decedent] had a legitimate and significant non-tax reason...for transferring her property," and was there a transfer of the property.

The estate argued that the business purposes were management succession, financial education, perpetuation of investment philosophy, pooling of assets, and spendthrift concerns. The tax court ruled that there was no "legitimate and significant non-tax reason" for the transfer. While the husband devoted time and energy into learning and understanding investing and the markets, he did not pass this knowledge on to his children. ►



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After his death, the wife and children let an investment advisor make most of the decisions. These accounts primarily held passive investments and were rarely traded. The court held that “perpetuation of a ‘buy and hold’ strategy for marketable securities is not a legitimate or significant non-tax reason for transferring the bulk of one’s assets to a partnership.” The court also rejected the estate’s pooling of assets argument since there was minimal, if any, benefit to such approach. The court also noted that having the son, for which there were spending concerns, as a general partner did not serve this purpose. The court also noted that the FLPs did not maintain books or records and there were no formal meetings or partnership minutes.

Given that the operations of the FLPs did not support the stated business purposes and the mother was free to withdraw funds from the FLPs to make cash gifts, pay taxes, pay other personal expenses, forgive debts to the FLPs without prorated distributions to the other partners, the court agreed with the IRS that no transfer of assets had ever taken place.

In *Estate of Black v. Commissioner* (133 T.C. No. 15), the IRS didn’t fare as well. We would call this a “good facts” or a good operations case. In 1925, at age 23, Samuel Black started work at Erie Indemnity Co. He accumulated a substantial holding of the company’s stock over his career and retired as a senior vice president and the second largest shareholder. In 1993, Mr. Black formed an FLP, with substantial stock transfer and other restrictions, funding it entirely with Erie stock, and subsequently gifting interests in the FLP. Mr. Black had a son, who was in a difficult marriage, and two grandsons that lacked ambition. The non-tax purpose for creating the FLP was to protect and prolong family wealth. Mr.

Black’s son also contributed shares of Erie stock held in his own name to the FLP. By the time Mr. Black died in 2001, the FLP expanded its holdings into commercial real estate, acquiring property by using dividends from the stock. Pro-rata distributions were made to the partners during the lifetime of Mr. Black.

The IRS assessed the estate deficiencies totaling over \$83 million. Again the issue involved IRC section 2036(a) and the “bona fide sales for adequate consideration” exception. In this case, the court sided with the taxpayer. The FLP protected the son’s stock during a costly divorce, the consolidation of the Erie shares allowed them to maintain a seat on the Erie board of directors, and the transfer restrictions kept the grandsons from

being able to sell the Erie stock. The court determined that the FLP was formed for legitimate non-tax purposes and Mr. Black did not exercise any more control over the FLP than allowed in the partnership agreement.

Miller v. Commission (TCM 2009-119) was another case that resulted in a taxpayer victory. Mr. Miller was a retired architect who developed his own system for investing in marketable securities. After Mr. Miller passed away, Mrs. Miller formed an FLP with approximately \$3.8 million in marketable securities, approximately 77 percent of her total net worth, subsequently making gifts to her sons of the FLP interests, including the general partnership interest. The FLP was managed by a company owned by the general



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partner son, utilizing the father's investment strategy. The court held that this was a sufficient non-tax purpose for the formation, and since the mother retained enough assets to maintain her lifestyle and did not "raid" the FLP for living expenses, the gifts were upheld and the taxpayer won.

Lastly, let's look at *Murphy v. U.S.*, 2009 WL 3366099 (W.D. Ark.). Mr. Murphy had large holdings in Murphy Oil Corp. stock, timber, and other assets. He contributed approximately \$89 million in Murphy stock and other assets to establish an FLP (this was only about 50 percent of Mr. Murphy's total wealth). The purpose was to pool the family's wealth and to grow it over the long-term. Two of Mr. Murphy's more responsible children were put in charge of managing the assets. Over the years, the FLP held regular meetings, purchased and sold assets, prepared monthly and quarterly statements for the partners, and respected the business form and purpose of the entity.

After Mr. Murphy's death, the IRS assessed \$34 million in deficiencies, claiming again that the FLP failed to meet section 2036(a) exception for a bona fide sale. In this case, the court noted that the FLP was managed based on Mr. Murphy's philosophy and that the formalities of the business operations were respected. The court concluded that the FLP was established "in good faith and for legitimate and significant non-tax purposes."

Three critical issues must be satisfactorily resolved in order to be able to achieve discounted values non-controlling interests in FLPs and FLLCs held by the decedent/estate. **First**, there must be a legitimate and significant non-tax purpose for the establishment of the FLP and FLLC. **Secondly**, the FLP/FLLC must conduct itself in accordance with its part-

nership/operating agreement, having regular meetings with management, and regularly providing financial information to the partners/members. **Third**, there must be a "bona fide" transfer of the contributed assets. The newly formed FLP/FLLC, after gifting takes place (or as soon as there exist other partners/members of the entity), must not be considered to be the personal pocket book of the individual that contributed investments at the outset. The individual contributing the investments must retain enough personal wealth to satisfy his/her life style, relying on his/her interest in the FLP/FLLC only to the extent of allowable pro-rata distributions. Living up to these three critical issues will establish a strong case if the IRS challenges the values of the estate's/decedent's interests in FLPs and FLLCs..

Do's

Maintain sufficient assets outside the FLP/FLLC to maintain the founder's standard of living through their life expectancy, including funds to pay potential estate taxes

- Establish the FLLC for legitimate non-tax purposes and make sure they are carried out after the entity is created (e.g. if a purpose is educating the next generation on management responsibility, this should be documented as it takes place)
- If the FLLC holds marketable securities, make sure it is actively managed in accordance with the defined plan
- Respect the formalities of the entity (legal and tax)
- Have regular distributions and make sure they are consistent with the operating agreement
- Keep current and accurate books and records

Don'ts

- Do not transfer personal use assets into the FLP/FLLC (e.g. house, automobile)
- Do not make distributions based on needs of individual members (e.g. distributions for a down payment on a house, buy a car, take a vacation, or pay personal living expenses) ☞



About the Authors: *William V. Mason II, ASA, CPA/ABV/CFE, is a partner and shareholder with Jones & Roth CPAs and Business Advisors. Mason leads the firm's Business Valuation and Litigation Support Team. Christopher D. Hays, ASA, CPA/ABV, CVA, CFE, is a senior manager with Jones & Roth and a member of the firm's Business Valuation and Litigation Support Team. Both are members of the OSCP.*

Estate & Trust Conference is June 24

The OSCP's Estate & Trust Conference will be held Friday, June 24, at the Oregon Convention Center in Portland. The conference will provide an overview of recent developments and important issues in estate planning, trust planning and estate and trust reporting.

Visit www.orcpa.org and register for event #08008.

Be Aggressive When Managing Your Passive Activities

By Dan Eller

Taxpayers who maintain diverse investments should take time to familiarize themselves with passive-activity rules. Enacted with the Tax Reform Act of 1986 (the "TRA") and codified primarily in 26 U.S.C. § 469 ("Section 469"), those rules create substantial bars to using tax losses and credits generated by a "passive" activity against other activities of a taxpayer, most notably those that are "active." This article explores the basic passive-activity rules and concludes with some planning tips taxpayers may use to maximize the tax items associated with their passive activities.

Who is Affected?

Before the enactment of the TRA, the classic passive-activity structure involved some form of pass-through entity, such as a limited partnership or an S corporation. Investors sought out these types of entities because they offered both limited-liability protection and the pass through of valuable tax attributes. Those tax attributes usually fell into one of two categories: losses (e.g., depreciation) or credits. For example, a taxpayer would invest in a limited partnership as a limited partner and receive an allocation of losses and credits with the sole goal of offsetting those losses and credits against income from the taxpayer's active activities, such as ordinary income from wages or service fees. In addition to partnerships and S corporations, natural persons, trusts, and estates all fit squarely within the passive-activity rules.

This does not mean, however, that C corporations are spared from these rules. Indeed, cooperatives and tax-exempt corporations with unrelated business tax-

able income should be mindful of these restrictions. More important, however, are personal-service corporations and closely held C corporations. A personal-service corporation is one in which, as its name suggests, the performance of personal services (e.g., healthcare, engineering, consulting, and legal) by employee-owners is the primary business (i.e., more than 50 percent) of the corporation. An important metric to determine is whether the employee-owners own more than 10 percent of the stock of the corporation, as measured by stock value, on the last day of the measuring period, which is usually the last day of the preceding year. Closely held C corporations essentially are those for which 50 percent of their outstanding stock is owned by five or fewer shareholders.

What is a Passive Activity?

Once a taxpayer has determined whether it is of a type subject to the passive-activity rules, the taxpayer must next determine which of the taxpayer's activities are passive. This latter determination involves several additional considerations, each of which should be considered in turn, as well as in relation, to another. For most taxpayers, the goal will be to avoid passive-activity status but, of course, care should be taken in each case making the determination. That is particularly important in the first consideration: whether an activity is separate.

Separate Activities. A taxpayer must determine which of its activities is passive first by analyzing whether any of the taxpayer's activities may be considered separately from other activities. This can be important both in isolating certain passive activities from other passive

activities, as well as in making the passive versus active determination (discussed below). The passive-activity regulations under Section 469 permit a taxpayer to separate activities based on a facts-and-circumstances test. Facts to consider include the geographical location of each activity; the extent of common ownership or control; and the interdependence between the activities. Taxpayers should know that although the separate activity determination is made at the entity level (e.g., in the case of a partnership of qualifying corporation), that determination is conclusive for each of the owners of the business. This may create a conflict between the entity and its owner. When such conflicts arise, each party should be separately represented by professional counsel.

Trade or Business. Once the activities are separately determined, each activity must be tested to see if it is a "trade or business." In general, a "trade or business" for Section 469 purposes is the same as one for other tax purposes, such as Section 162 deduction allowance. In addition, Section 469 includes in the definition of a "trade or business" activities dealing with research and experimentation as defined under Section 174, and certain other activities defined in the regulations. In short, issues of trade-or-business determinations in the context of Section 469 are usually of little consequence, especially when compared with the material participation standard necessary to avoid the imposition of passive-activity rules.

Material Participation. If a separate activity is a trade or business, the taxpayer must materially participate in the activity or be deemed to be passive with respect to such an activity. The Section 469 regu- ►

lations set forth no less than seven tests for establishing material participation. Although a complete discussion of each test is beyond the scope of this article, a few tests are worth noting.

A taxpayer materially participates in an activity if the taxpayer participates for more than 500 hours during the tax year. This rule is tempered by subtracting out “junk hours,” or those of a type not normally performed by an owner of such a business, and hours more typical of an investor in the business. The 500-hour standard may be reduced to 100 hours if no other individual participates more in the business than that individual.

Similarly, if the individual’s participation constitutes substantially all of the participation in the activity, that will suffice regardless the number of total hours the individual invests in the business. Recall that every tax year stands on its own; therefore, one test permits the finding of material participation if the individual materially participated in five of the previous 10 tax years. Finally, the taxpayer may be able to establish material participation if the taxpayer was regularly, continuously, and substantially involved in the activity when all of the facts and circumstances are considered.

Avoiding Passive-Activity Restrictions

The primary area of passive-activity planning naturally relates to establishing the taxpayer’s material participation. With respect to rental activities, however, even proving material participation will not always be sufficient because such activities are per se passive. Similar to the material-participation standard, exceptions to the per se passivity of rental activities are seven in number. Those exceptions include activities in which

the average use period is seven or fewer days; average of use of 30 days or less combined with the provision of significant personal services; the provision of extraordinary personal services in connection with the activity; and the rental of the taxpayer’s residence. Again, with proper planning, taxpayers are often able to meet either the material-participation standard and/or one of the exceptions to the per se passivity of rental activities.

For some taxpayers (e.g., full-time professionals such as physicians), no matter of planning will permit them to avoid the passive-activity restrictions. The present impact of these restrictions may mean that some tax benefits (usually losses and credits) will be lost in the current tax year. Although those tax benefits may carry forward to another tax year, the present value of those benefits will be impaired, often negatively skewing the economics of the taxpayer’s rationale for investing in the activity in the first place.

One way to unlock deferred tax benefits is to dispose of the passive activity in respect of which the deferred tax benefits arose. If the taxpayer disposes of the taxpayer’s entire interest in the passive activity (both directly and indirectly), all excess losses from that activity may be triggered for use against nonpassive income. Thus, if the taxpayer had \$50,000 worth of deferred passive losses and disposed of the activity giving rise to that activity, the taxpayer could utilize that \$50,000 loss in the current tax year to offset ordinary service income.

Of course, this planning tool is subject to its host of limitations. For example, the disposition must be taxable (i.e., it cannot involve a nonrecognition transaction), and cannot involve certain persons related to the taxpayer. For this reason, the tax

effects of the disposition should be measured in connection with the perceived benefit of using the deferred tax benefits.

Final Takeaways

Taxpayers of all kinds participate in activities that are nominally “passive.” When we counsel these taxpayers, we should identify all such activities to determine if the passive-activity restrictions will have negative ramifications on the taxpayers’ current tax reporting position. If so, we should explore whether those taxpayers can arrange their affairs to avoid the restrictions. If not, we should look for long-term exit strategies that maximize the total long-term tax positions of these taxpayers. ♦



About the Author:

Dan Eller will be presenting a session on “**Passive Activities**” at the OSCP’s June 10 Real Estate Conference in Portland.

He is a tax attorney in the Portland office of Schwabe, Williamson & Wyatt. Dan offers transactional tax advice in addition to representing clients involved in tax controversies. You can reach Dan at deller@schwabe.com or (503) 796-3762.

Real Estate Conference is June 10

The OSCP’s Real Estate Conference will be held on June 10 at the Sheraton Portland Airport Hotel. The conference will provide an overview of recent developments and important issues in real estate with a focus on taxation.

Visit www.orcpa.org and register for event #08005.

The OSCPAs Ethics Process – Beyond Fee Disputes

A look into what is involved when there is a potential violation of professional standards

By Debbie J. Hollingsworth

In the March/April 2011 issue of *The Accountant* we discussed how to prevent a fee dispute and mitigate problems up front to end a dispute.

The article stressed the importance of communication and the CPA and client working together to resolve the issue so that both parties come away feeling satisfied with the resolution. If that happens, usually everyone can move forward.

However, if this process does not go smoothly and the CPA and the client do not arrive at a mutually agreeable resolution, it is likely that what began as a dispute over the fee charged for services could go on to become a complaint against the CPA for alleged substandard or otherwise “unethical” practices.

If someone files a complaint with the OSCPAs asserting substandard work or misconduct by a CPA who is a member of the OSCPAs, that complaint will be sent to the AICPA for their review and potential investigation in accord with the Joint Ethics Enforcement Agreement between the OSCPAs and the AICPA. If the AICPA believes there may be a violation of the Code of Professional Ethics, they will open a case and start their investigation. The OSCPAs Professional Responsibility Strategic Interest Team (PRSIT) does not conduct investigations due to limited resources. All investigations are con-

ducted by professional staff investigators through the AICPA’s Ethics Division even if the CPA is not a member of the AICPA.

After the AICPA has opened a case file, they will send the CPA an opening letter advising them of the investigation process and their rights. The AICPA will also likely include a list of questions for the CPA and request supporting documents to assist in the handling of the case. They will evaluate all the evidential materials against the Code of Professional Conduct and determine whether or not one or more violations have occurred.

If there are violations, the AICPA will draft a letter of Required Corrective Action (RCA letter) outlining the sanctions to be imposed. These can range from no sanction to additional CPE, to AICPA review of future work product, to suspending or terminating the CPA’s ability to provide specific work product, to suspending or terminating memberships in the AICPA and OSCPAs. The OSCPAs PRSIT will be asked by the AICPA to review their recommendations and are provided an opportunity to either concur with the AICPA or recommend modifications to the RCA letter. When the CPA receives the final RCA letter, they have the option of accepting the findings or requesting their case go before the AICPA Joint Trial Board. The OSCPAs will follow its bylaws in taking action and, in most

cases; the action will mirror that of the AICPA, subject to approval of the OSCPAs Board of Directors.

In addition, if a complaint is filed with the Board of Accountancy or the Board otherwise becomes aware of a potential violation, they may open their own case for investigation. The sanctions of the Board of Accountancy can range from a letter of concern to fines to pre-issuance work product review, to limitations on scope of practice, to suspension or revocation of the CPA’s license to practice.

So, as uncomfortable as a dispute over fees can be, the dispute can lead to an investigation into potential ethics violations, which is much worse. In most cases, it is better to resolve a fee complaint with the client before it escalates into an ethics complaint.



About the Author:
Deborah J. Hollingsworth is a longtime member and past chair of the OSCPAs Professional Responsibility Team, and is currently vice chair of the OSCPAs

Board of Directors. She owns her own practice, Deborah J. Hollingsworth CPA LLC, in Tigard.



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Thursday-Friday, June 2-3, 2011 –
Oregon Convention Center, Portland

Registering is easy. Visit www.orcpa.org, click on the Professional Development tab, and then click "Educational Catalog" and search for the event number.

Note: Parking will be validated when parking at the Oregon Convention Center underground parking structures and at the Hilton Eugene & Conference Center.

Questions? Contact the OSCPA Professional Development Division at 503-641-7200 / 1-800-255-1470, ext. 3 or email us at profdev@orcpa.org.

Farm Taxation: Planning Opportunities and Pitfalls with Andy Biebl – #08004

Tuesday, June 7, 2011 –
Oregon Convention Center, Portland

Real Estate Conference – #08005

Friday, June 10, 2011 –
Sheraton Portland Airport Hotel, Portland

Forest Products Conference – #08006

Friday, June 17, 2011 –
Hilton Eugene & Conference Center, Eugene

Accounting & Auditing Conference – #08007

Thursday, June 23, 2011 –
Oregon Convention Center, Portland

Estate & Trust Conference – #08008

Friday, June 24, 2011 –
Oregon Convention Center, Portland

