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New Deduction Benefits Manufacturing and Construction Industries

By Ronald L. Bleich, CPA, LL.M., CFP[®], WS+B Shareholder

Internal Revenue Code Section 199 allows a deduction of 9% (3% for years beginning in 2005 and 2006, and 6% for years beginning in 2007 – 2009) of the lesser of “qualified production activities income” (QPAI) or taxable income for the taxable year (determined without this deduction). The maximum amount allowed as a deduction is limited to 50% of W-2 wages for the taxable year. For this purpose, W-2 wages are generally equal to the adjusted wages reported in box #1 of Form W-2, plus elective deferrals such as those for 401(k) plans, etc.

QPAI is defined as the excess of “domestic production gross receipts” over the cost incurred to generate those receipts. In simpler terms, it is the net income derived from the manufacture, production or construction of domestic (made in the USA) products.

The construction industry will benefit from the deduction if receipts are from construction activities performed on property that is deemed to be real estate. “Construction activities” include the erection or substantial renovation of real property. The term does not cover tangential services such as hauling trash and debris, and delivering materials unless conducted by the party performing the actual construction. Improving land, such as grading and landscaping, and painting will be deemed part of construction activities only if they are performed in connection with other activities that constitute the erection or substantial renovation of real property.

Construction performed in the USA has been defined to mean the construction of real property that is residential and commercial buildings and their structural components, inherently permanent structures other than tangible property in the nature of machinery, inherently permanent land improvements and infrastructure by a taxpayer who is considered to be in the trade or business of construction for purposes of the NAICS codes. Property that is tangible personal property is not subject to the deduction.

The term infrastructure for purposes of the definition of construction includes roads, power lines, water systems, railroad spurs, communications facilities, sewers, sidewalks, cable and wiring.

Gross receipts from the sale of land are not considered to be income that is eligible for the deduction. In this situation, in order to compute the deduction, the land portion of the sale, together with its related costs, must be segregated from the total income.

The rules are complex and may be calculated differently for different taxpayers. For an example, visit the Tax Alert section of the WS+B Web site at www.withum.com. Also, please do not hesitate to contact a WS+B professional at your local office and allow us to determine how the new deduction may benefit your organization.

ALSO IN THIS ISSUE:

‘Double-Dipping’ in Divorce Cases

NEW - WS+B Global Assurance

Bourke Is NJSCPA President-Elect

Beware of the ‘Double-Dip’

By Noël J. Capuano, CPA, CVA, WS+B Manager

When contemplating divorce, there are many complex issues to become familiar with; tax implications, equitable distribution, alimony and child support are but a few of these issues.

In the case where one of the parties to the divorce owns a business interest, there are additional valuation and equitable distribution issues to consider. Earlier this year, with the issuance by the New Jersey Supreme Court of the Steneken decision, the areas of valuation, equitable distribution and support became considerably more interdependent. They also became decidedly more complex. As a result, the Steneken decision, and the concept of “double-dipping” which it addresses, has become one of the hottest issues facing valuation professionals today.

The concept of “double-dipping” refers to the consideration of a marital asset in both the determination of support and the division of marital assets (equitable distribution).

In the Steneken case, Mr. Steneken owned a business and drew a salary in excess of \$200,000 per year. During the course of valuing Mr. Steneken’s business, his valuation expert determined that Mr. Steneken’s “reasonable compensation” was in the range of \$150,000. The \$50,000 “excess” was added back to earnings and capitalized at a rate of 24%, thus increasing the value of the business by approximately \$240,000.

Mrs. Steneken was awarded 35% of the business in equitable distribution and alimony based on the reasonable compensation of \$150,000.

Mrs. Steneken appealed, arguing that the family’s lifestyle during the marriage had been supported by Mr. Steneken’s actual salary of more than \$200,000. On remand, the trial court agreed and increased her alimony award based on Mr. Steneken’s actual salary of more than \$200,000. Although the decision was appealed based on the argument that

Mrs. Steneken had already received her share of Mr. Steneken’s “excess” compensation by virtue of the fact that it had already been capitalized and distributed in equitable distribution, the appeal failed, and the Supreme Court affirmed the trial court’s decision.

The implications of this decision for the business owner are far reaching. Business owners typically pay themselves a salary that is, at best, discretionary. For

those business owners getting divorced, be aware that the court appears not to be concerned with whether or not salary is “reasonable” for purposes of determining alimony awards. For more information about “double-dipping” or other valuation issues, please contact a valuation specialist at your local WS+B office.

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NEW – *WithumSmith+Brown Global Assurance Answers SOX Compliance Needs*

WithumSmith+Brown recently announced the expansion of its SOX compliance services through the formation of WithumSmith+Brown Global Assurance, LLC (WS+B GA). Led by CEO Tom Basilo, WS+B GA answers the growing demand in the marketplace for dedicated and advanced capabilities in SOX compliance.

“Our experience and methodology will give clients a service that is entrepreneurial in spirit and design,” said Basilo. “We offer a very hands-on and versatile approach with boutique-level responsiveness that stresses the deep interaction many seek.”

WS+B GA offers a staff of nearly 30 highly-trained control specialists who are subject-matter experts on a wide range of compliance, corporate governance and business process issues. In addition to providing SOX counsel and project support, the firm, located in Princeton, also offers internal audit services, enterprise risk consulting, technology risk consulting and specialty services.

The new entity serves a diverse clientele ranging from public middle-market companies (nonaccelerated filers) to private equity

and venture capital-backed corporations and IPOs. WS+B GA’s new product, SOX¹²³, is designed for venture-backed private companies and applies the firm’s innovative, process-driven methodology that streamlines processes for maximum cost and time efficiency without compromising quality.

***...WS+B GA
answers
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capabilities in
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WithumSmith+Brown’s 30-year reputation for excellence and results as well as its legacy of success combined with WS+B GA’s highly specialized experience in regulatory compliance and internal controls bring to market a source for SOX services that offers a decidedly different flair. WS+B GA’s flexibility in working with a wide-range of technology-based platforms and processes will also help serve clients at various levels of technological sophistication.

For more information about WS+B GA’s service offerings, please visit the WithumSmith+Brown Global Assurance Web site at www.wsbga.com or contact Tom Basilo or Ray Broek at 609.734.9090.



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Jim Bourke Is Named President-Elect of NJSCPA



WithumSmith+Brown is pleased to announce that James C. Bourke, CPA, CITP, a shareholder and director, has been elected president-elect of the New Jersey Society of Certified Public Accountants (NJSCPA) for a one-year term through May 2006.

Based in WS+B's Red Bank office, Jim is the shareholder in charge of firm technology and IT consulting services. His expertise includes computerized accounting environments, the structuring of communications solutions, computer-assisted office automation and the intricacies of the Internet and e-commerce solutions. He has a comprehensive background in accounting, tax, management advisory and

litigation support services for closely-held technology businesses.

Jim joined the NJSCPA in 1989. He has served on the board of trustees as secretary and was a member of the NJSCPA Litigation Services, Legal Profession Liaison and Committee Operations committees. He also served as chair of its Chapter Operations Committee. In addition, Jim served as president, vice president, secretary, treasurer and director of the NJSCPA Monmouth/Ocean Chapter and has chaired various Monmouth/Ocean Chapter committees.

A member of the American Institute of Certified Public Accountants and New Jersey Technology Council, Jim also serves on the advisory council of a regional bank and the board of directors of Camp Zehnder YMCA. Jim earned his BS degree in accounting from Kean University. He resides in Manasquan with his wife, Jody, and their three young children.