

the **WithumSmith+Brown** Journal

Summer 2004



SARBANES-OXLEY

How Private Companies and Not-For-Profits Can Benefit

The initial uproar over the Sarbanes-Oxley Act has not subsided; the repercussions are being felt by companies throughout the business world – including public companies, private companies and not-for profits.

Public companies are in the throws of developing internal control systems that are designed to operate so that companies meet their Section 404 internal audit compliance objectives. While these regulations have been directed to public companies, non-public companies and not-for-profits are increasingly viewing the new standards as “best practices.” As a result, organizations that comply without being mandated to do so could have an advantage in a number of business situations:

- Bankers setting loan conditions
- Vendors seeking partnerships
- Insurance companies underwriting director and officer policies
- Benefactors disbursing funds
- Candidates considering board membership
- Government agencies awarding grants
- Evolving state regulations patterned after Sarbanes-Oxley

The decision makers in these situations may gradually differentiate between companies or organizations that comply with Sarbanes-Oxley Section 404 and those that do not. More favorable terms may apply to those that can provide evidence of a strong internal control structure.

Proactive, cutting-edge private companies and not-for-profit organizations may also choose to comply in order to be perceived as leaders in their field or to anticipate future regulatory requirements.

If you lead a private company or not-for-profit, what can you do?

1. Start with the control environment, to reinforce what’s known as the “tone at the top.” This can include building an independent board of directors or board of trustees and establishing a Code of Conduct to be signed by all employees.
2. Next address the “low-hanging fruit.” Here you can examine segregation of duties and system access and document estimates and reserves.

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New Jersey's Tax Changes – How Will They Affect You?

*By Michael Hoffman, CPA
Tax Manager*

Despite earlier promises by Governor James McGreevey, there are some significant proposals to once again change the current New Jersey tax system. These were approved by the state legislature on June 21, 2004. However, unlike the changes put into effect in 2002, some of these proposals will affect the taxation of individuals instead of businesses.

The major piece of this legislation is being referred to as the “millionaire tax.” For any taxpayers with taxable income in excess of \$500,000, the maximum tax rate will be increased from 6.37% to 8.97%. This proposal is in contrast to prior promises from the administration not to change the taxation of individuals.

The excess revenues generated from this tax will be returned to taxpayers via the property tax rebate program. Under this property tax relief plan, 93 percent of New Jersey homeowners, including 458,000 senior citizens, will receive larger rebate checks this year. More than 1.1 million homeowners who received NJ SAVER rebates that averaged \$250 last year will receive checks of up to \$800. Approximately 190,000 families with income between \$125,000 and \$200,000 will see their average rebate check from last year double, to \$500. As in recent years, the rebates will be limited to

filers with gross incomes under \$200,000.

The other two major changes affect the corporate business tax. The first proposal involves extending the net operating loss suspension. The 2002 Act prohibited corporate taxpayers from using prior year losses to offset current year income for the 2002 and 2003 tax years. Taxpayers were promised that this restriction would only be in place for two years, but the new proposal would extend this. There is also talk that to appease angry taxpayers, the restrictions might be revised to disallow only 50% of prior year losses.

The final major proposal involves the depreciation of fixed-asset acquisitions. For Federal purposes, corporate taxpayers are allowed to expense \$100,000 of fixed-asset additions in the year of acquisition. The prior federal law allowed the expensing of \$25,000, but was increased as a way to encourage taxpayers to continue to invest in their businesses. The new legislation will “decouple” New Jersey’s treatment from the federal, meaning only \$25,000 will be allowed as a deduction for New Jersey purposes.

For more information about how these changes might affect you or your business, please contact a WS+B tax professional at one of our local offices.

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3. Focus on key controls, not all controls. Try to avoid identifying too many controls, and use configurable (system) controls where possible.

By taking such a selective, staged approach, your private company or not-for-profit can gradually improve its internal control structure and derive advantages based upon a cost-benefit analysis. For more information about how your company can benefit from SOX requirements, contact your local WS+B office.



Protect Your Assets Through Offshore Investing

By Leonard Cohen, CPA
Tax Manager

The government's increasing knowledge of our personal lives and business affairs intensifies the interest of investing funds outside of the U.S. banking system. Such investment venues may appear to be an attractive alternative to customary depository institutions' asset protection.

The benefits of offshore investing include:

1. **Reduction of Taxes:** Usually an offshore company is set up in a low or tax-free area, a tax-haven country.
2. **Protection of Assets:** The long arm of creditors may be frustrated in their attempt to seize assets deployed outside of the United States, i.e. asset protection.
3. **Confidentiality:** A company organized in a foreign country may be precluded by local law from disclosing information to U.S. authorities.

Any person who has accumulated assets through business interests, the professions, investments, or inheritance is exposed to the risk of losing those assets in costly and protracted lawsuits that may culminate in judgments. The cost of insurance to cover these potential liabilities has substantially increased, and coverage may become inadequate or unavailable in the long run. This explains why an increasing number of American taxpayers are placing their accumulated wealth in offshore asset protection trusts in traditional havens, where laws protect the grantors of grantor trusts from the claims of creditors. As an indication of how widespread this practice has become, it is estimated that there are currently well over \$2 billion in assets in offshore trusts.

Generally, when funds are deposited in a "tax-haven" country, the income is not subject to the host country's tax. The income earned can be spent abroad. Offshore credit cards can also be obtained in a tax-haven country. But, the basic rule is that a United States citizen/resident is taxed on his/her worldwide income.

Deploying assets outside of the country to obtain a greater measure of privacy is mitigated by the requirement to report income.

To find out more about how you might benefit from offshore investing and/or asset protection, please contact Kimberlee Phelan or David Springsteen in the Tax Department at WithumSmith+Brown's Princeton Office.

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Ted Nappi is Named New Shareholder

WithumSmith+Brown is pleased to announce the promotion of Ted Nappi, CPA/PFS, CSEP, to shareholder in the firm.

A graduate of Monmouth University, West Long Branch NJ, Ted joined WS+B's Red Bank office in 1994 as a senior accountant. He has since earned the professional designations of personal financial specialist (PFS) from the American Institute of Certified Public Accountants (AICPA) as well as certified specialist in estate planning (CSEP) from the National Institute of Excellence in Professional Education, LLC, in conjunction with various state societies of CPAs and Surgent and Associates, LLC.

Ted is a member of the AICPA and New Jersey Society of Certified Public Accountants (NJSCPA) and has served on the Tax Committee for the Monmouth/Ocean Chapter of the NJSCPA. He is also a member of the Estate and Financial Planning Council of Central New Jersey, treasurer of Literacy Volunteers of America (Monmouth County affiliation), and a board member of the YMCA (Red Bank branch). He also provides presentations and articles in the specialty areas of estate, retirement and business planning. Ted and his wife, Nereyda, reside in Jackson, NJ, and are the proud parents of two young daughters.

