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WithumSmith+Brown

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THE NEW BANKRUPTCY LAW – How Could the Changes Affect Your Business?

By Kenneth J. DeGraw, CPA/PFS, CFP®, WS+B Shareholder

The recently passed Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 received a significant amount of attention primarily as a result of the changes to consumer filings, most notably the use of a “means test” for individuals seeking protection. There was, however, more to this act than meets the eye. Quietly and without much fanfare or notoriety in the press, changes were made to commercial filings, which will affect creditors as well as debtors. In addition, an entirely new chapter to the code was added related to cross-border insolvencies as well as provisions for the health care industry, farmers and the securities industry.

There was no secret that the act’s provisions were crafted to provide creditors with greater protection from claims of debtors; this is exemplified in the changes related to preferential payments. Preferential payments in their simplest form are payments made by the debtor within 90 days prior to filing; these payments typically need to be repaid to the debtor. Vendors can now take advantage of some new and revised defenses to these claims. Secured lenders will now have a liberalized period of time to perfect their claims from 10 to 30 days. Unsecured lenders will have the addition of a deminimus rule for aggregate payments of less than \$5,000, the mandatory use of the vendor’s jurisdiction for aggregate payments of less than \$10,000, and finally the subtle but relevant change in the ordinary course of business defense.

Vendors will also have new provisions in a Chapter 11 case for goods delivered within 20 days of the filing. These goods will now receive an administrative priority for payment. Vendors will also be able to reclaim goods delivered to the debtor in the 45 days prior to filing. There are, however, very specific time periods that must be respected in order to attain the relief under these provisions.

Not to be left out lessors also received a very favorable provision in the form of the time period required to accept or reject executory leases. These leases must be accepted or rejected within 210 days of the order of relief including available extensions, or the lease is deemed rejected.

The law’s changes are sweeping and will transform the insolvency landscape. Should you need assistance with the defense of customer claims or professional guidance with your bankruptcy planning, please contact a member of our Insolvency and Business Recovery Services Team at your local WS+B office.

*ALSO IN THIS
ISSUE:*

*Building Your
Wealth –
The Whole
Picture*

*Machinga
Is Named
New Shareholder*

BUILDING YOUR WEALTH – Start With a Personal Financial Plan

*By Hal R. Terr, CPA/PFS, CFP®
WS+B Tax Manager*

Setting Your Goals

Are you saving enough for your children's education or your own retirement? Will your dependents be taken care of in the event of your premature death? Is your estate distributed according to your wishes and not subject to shrinkage due to unnecessary taxation?

All of us lead busy lives, and we don't always take the time to plan out our financial futures. However, consider the following financial issues:

- Many retirees today will live 25 or more years in retirement, requiring far more in the way of management of financial resources to maintain a desired lifestyle.
- Social Security and company pensions no longer provide the majority of retirement funds for many people, and the movement to 401(k) plans and proposed changes to Social Security have shifted the investment burden to the individual.
- Health care costs and college education expenses are rising significantly faster than the general inflation rate.
- Changes in income and estate tax laws occur almost annually.

It helps to have your goals defined and know exactly what is necessary to get from here to there – but you don't have to do it alone. Fortunately, there are financial planning specialists who can help you with this process. They provide

an integrated assessment of your assets and financial resources to achieve both your short- and long-term goals, including cash-flow and education planning, compensation and benefits, asset allocation, and income, estate and gift tax planning – as well as your risk management and investment considerations.

Insuring Against Risk

Risk management is an integral part of the financial planning process. Its purpose is to address major economic risks that you might face. Major risks include premature death, disability, medical expenses, property loss, long-term care and outliving your income. Individuals often acquire insurance policies to address these risks without incorporating them into their overall plan. Unnecessary or redundant expenses often result. Without effective risk management, therefore, your financial plan may not be optimized and may otherwise unravel.

Two examples come to mind. First, life insurance purchased through an employer is often annual term. That means that premiums go up every year. A healthy individual, however, may be able to purchase a product to cover 20 years at a premium guaranteed to be less than the employer-sponsored product. Another important feature is that an individual insurance product, unlike group insurance, can be taken from job to job or held during periods of unemployment. The second example is disability income insurance. The average 40-year-old is three times as likely to suffer a disability of 90 days or more than to die. Yet, few people seriously consider disability income insurance.

“A thorough financial plan can help you cut through the confusion...”

The insurance options available in the marketplace are overwhelming. A thorough financial plan can help you cut through the confusion and provide independent, objective recommendations on product and its design to handle your risk management effectively.

Investing for Your Future

One of the primary mistakes individual investors make when formulating an investment strategy is incorrectly identifying an investment goal. For instance, many investors honestly believe that if their equity holdings outperform the S&P 500 Index that their investments must be doing well. This type of investment approach has actually hurt many investors, particularly during the past few years.

Rather than focusing upon a particular return, a successful investment strategy should be customized to meet your individual needs and risk tolerance levels. A successful plan is dynamic in nature and incorporates investments from various asset classes constructed in such a manner to maximize return while minimizing risk. Your written investment plan should complement your overall financial plan and also consider your investment goals, performance measurement and investment manager compensation.

Need Help?

Finding a financial advisor today is far less of a problem than finding a competent one. Consider objective, fee-based financial planners whose loyalty is to their clients, not to a product they are trying to sell. Your accountant is a good

place to start. He or she sees your whole financial picture and can build an integrated financial plan, so tax advantages, investment strategies and insurance needs are considered comprehensively to meet your financial goals.

A highly-skilled advisor can assist you in developing a plan that incorporates your personal investment style and maximizes your tax savings. Our strategic alliances with insurance and investment advisors can also assist in the implementation of the plan to ensure your goals and objectives are met. For more information or to start the planning process, contact a financial planning specialist at your local WS+B office.

WS+B *ON THE MOVE...*

In June, WS+B's East Brunswick staff (formerly Mendlowitz Weitsen) moved to the firm's New Brunswick office at 120 Albany Street, Suite 201, New Brunswick, NJ 08901. The phone number is 732.828.1614; fax is 732.828.5156.

In early July, WS+B's Red Bank office will be moving across the street from its current location to One River Centre, 331 Newman Springs Road, Suite 125, Building 1, Red Bank, NJ 07701-6765. The phone number is 732.842.3113; fax is 732.741.7292.

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Rebecca Machinga Is Named New WS+B Shareholder



WithumSmith+Brown is pleased to announce the promotion of Rebecca Machinga, CPA, to shareholder in the firm. Rebecca began working at WS+B as an intern in the Princeton office during the 1992 tax season.

Society of Certified Public Accountants (NJSCPA) and the American Institute of Certified Public Accountants (AICPA). She currently serves on the board of directors of the IMA Princeton chapter, where she has held numerous leadership positions, including three terms as president. She has also been involved with IMA at the state and national levels. She actively served on the AICPA National Mentoring Task Force and still co-chairs the Autumn in Moorestown (NJ) Committee.

After earning her bachelor's degree in accounting at Trenton State College (now The College of New Jersey), she joined the firm in November 1992 as a staff accountant.

Rebecca's professional experience includes audits, reviews, tax and consulting services mostly with closely-held service companies. She is a member of the Institute of Management Accountants (IMA), the New Jersey

In addition to client service and community/professional activities, Rebecca has made many contributions within the firm. She has taken on leadership roles for WS+B's Women's Leadership Development Group, the firm's mentoring program and firm-wide recruiting. She has also served on WS+B's Performance Evaluation and 30th Anniversary committees. Rebecca lives in Hopewell Township, New Jersey, with her husband, Jarod.

"I'm excited about becoming part of the management of the firm and participating in decision making, growing the firm and helping others to succeed."

– Rebecca Machinga, CPA