

## Strategies to Build Your Business & Personal Net Worth

### **B**onus depreciation deadline looms

The deadline is quickly approaching to take advantage of a significant tax deduction. You only have until the end of 2004 to benefit from a temporary depreciation bonus to businesses for the purchase of new property.

This depreciation bonus offers the opportunity to deduct upfront 50% of the cost of qualified property—an especially good tax result when combined with a cost segregation study.

Eligible property is generally defined as new property and certain leasehold improvements placed into service by December 31, 2004.

The deduction cannot be taken until the property is placed into service. Appropriate tax planning is the best way to leverage this additional tax deduction.

### **S**mall business, big tax mistakes

In the face of business pressures, keeping up with IRS rules and regulations can be difficult, but the consequences of noncompliance can put a small enterprise out of business just as easily as poor economic conditions can.

While you can't control the economy, you can avoid the most common tax mistakes made by small businesses.

#### **Borrowing employment taxes -**

Social Security and income taxes withheld from employees' pay may sit in a small business's bank account for days before they must be sent to the IRS, which may tempt the owner to justify "borrowing" it to pay other bills.

When the time comes to convey the employment taxes to the IRS, the money is no longer available.

The IRS frequently audits the payment of employment taxes. A business owner who is responsible for withholding and transmitting employment taxes—and who willfully fails to do so—is personally liable for a 100% penalty tax, even if the business is incorporated.

#### **Independent contractors -**

Some small businesses treat certain workers as independent contractors so they don't have to pay their employment taxes or provide them with employee benefits.

Misclassifying workers as independent contractors is a common—and costly—mistake. If the IRS discovers you misidentified employees as independent contractors, you may owe back

### **New overtime rules for white-collar employees**

by Sarah Farrell, Kansas City, [sfarrell@bkd.com](mailto:sfarrell@bkd.com)

**T**he Department of Labor (DOL) recently released long-awaited changes to the Fair Labor Standards Act of 1938 (FLSA), revising the salary and duties tests used to determine who is legally entitled to overtime pay.

The new rules, announced April 20, will take effect August 23, 2004. Currently, employees earning less than \$155 a week (\$8,060 annually) are eligible for overtime pay. The salary level will increase to include those earning less than \$455 a week (\$23,660 annually).

#### **Standard duties test replaced**

To determine whether employees earning between

\$23,660 and \$100,000 are exempt from the FLSA overtime requirements, the new rules will replace the long and short duties tests with a standard duties test.

The new rules also specify employees in certain occupations are entitled to overtime. New sections added to the regulations clearly state blue-collar workers are entitled to overtime, as are police, firefighters, emergency medical technicians, paramedics and other public safety first responders.

Licensed practical nurses and other similar health care workers do not qualify as exempt employees. Registered nurses earning a salary will still be exempt; however, new language has been added to ensure veterans will not lose their right to overtime.

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employment taxes for those individuals, plus interest and penalties.

### **Inadequate expense records -**

Another mistake small businesses often make is not keeping adequate records of business travel and entertainment expenses.

Even if all your expenses are legitimate, deducting them may be disallowed if you haven't kept certain receipts and records. The records must be created at the

time the expense is incurred, not two years later.

### **Unreasonable compensation -**

Problems can result if the owner of a regular C corporation pulls out all the business's profits as owner's compensation.

The corporation is entitled to a deduction for employee compensation—but not for dividend distributions to shareholders.

The IRS will examine whether the owner's compensation is reasonable, given the business, the

work the owner does and the compensation paid by similar businesses for similar work.

### **Ignoring tax consequences -**

The biggest mistake some business owners make is not recognizing their business decisions may carry tax consequences. In the rush to close deals and conduct business, taxes may not be a high priority. However, almost every business transaction may have tax consequences.

## **Roth conversions may make sense**

If you have a traditional individual retirement account (IRA), you can convert it to a Roth IRA if (1) your modified adjusted gross income (AGI) does not exceed \$100,000 and (2) you file a joint return if you are married.

Roth conversions can be attractive because, unlike traditional IRA withdrawals, Roth withdrawals are not taxed, provided all the tax law requirements are met.

When converting to Roth IRA status, traditional IRA owners must pay income tax on accumulated earnings and tax-deductible contributions. This can be worthwhile if the owner will be in a higher tax bracket when tax-free withdrawals will be made.

The tax legislation of 2003 accelerated the reduction of federal income tax rates. The new rates are 10%, 15%, 25%, 28%, 33% and 35%.

Rates will return to higher levels after 2010; in many cases, converting a traditional IRA to a Roth IRA when tax rates are lower makes sense, but not everyone who is considering a Roth conversion will be influenced by tax cuts.

Compared to a traditional IRA, no minimum distributions must be taken from a Roth IRA when the owner reaches age 70½. Those planning to leave their IRAs "untapped" may want to opt for a Roth IRA conversion, despite tax-rate cuts.

Though complicated, Roth IRA conversion rules may provide certain individuals the framework for a worthwhile strategy.

## **Provide employee relocation expenses**

Businesses often offer relocation assistance to attract new employees from other areas or to encourage current employees to relocate.

# **New overtime rules. . .**

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## **Duties tests revamped**

In addition to salary-level changes, the regulations revamp the duties tests that determine if an employee falls within the white-collar exemptions to the overtime.

The tests that classify employees as exempt differ based on whether an individual is categorized as a bona fide executive, professional or administrative employee.

The final rules add a new requirement: to be considered exempt, executive employees must have the authority to hire or fire or make recommendations related to hiring, firing or other changes in employee status that are given particular weight.

The duties test retains the mainstay definition of an executive as one whose primary duty is the management of an entire organization—or a recognized department or subdivision—and customarily and regularly directs the work of two or more employees.

A newly added requirement: those with 20% equity ownership in the company must be "actively engaged in management."

## **Exercise discretion & independent judgment**

The revised duties test for professional employees will require advanced knowledge in a field of science or learning that usually results from prolonged, specialized intellectual instruction and study.

The requirement that professional employees perform work that requires the consistent exercise of discretion and judgment is retained in the final rules.

The revised administrative employee duties test defines the primary duty for exempt employees as the performance of office or nonmanual work directly related to the general business operations of the employer or its customers; DOL says administrative employees also must exercise discretion and independent judgment "with respect to matters of significance."

## **Disciplinary pay docking revised**

The final rules do not differ from the proposed rules in their treatment of the salary-based test used to determine whether an employee is exempt or nonexempt.

DOL's proposed language allows salaried employees who violate company rules to have their pay docked by their employer without risk of losing their exempt status.

Under current regulations, pay docking can only occur on a weekly basis; the final rules allow docking on daily intervals with an employee losing a day's pay for violating company rules, such as a sexual harassment policy or safety procedures.

## **What employers need to do**

Controversy over the final rules continues and there is a proposed Senate amendment under consideration; however, employers need to be ready to implement the new rules August 23, 2004, as they currently exist.

For more information about the new rules, visit DOL's web site at [www.labor.gov/](http://www.labor.gov/). □

The relocation assistance provided can affect the taxes of the employee and the employer. Following is guidance for several common situations.



Reimbursements for moving expenses are generally taxable to the employee; however, reimbursements for qualified moving expenses made through a plan under which employees must substantiate their moving expenses generally are not.

If your business purchases an employee's residence at its fair market value, the employee does not receive compensation and, generally, will not have taxable gain on the sale of the residence; however, payment exceeding fair market value is considered taxable compensation.

If a business reimburses an employee for a home sold at a loss, the reimbursement is taxable as compensation.

## Borrowing money?

In this period of low-interest rates and easy credit, be sure you're comfortable with your ability to repay debts and fully understand the risks. Consider the following:

- ✓ You may be able to borrow from your retirement account; however, the loan must be repaid with after-tax money. In a 35% tax bracket, you will need \$15,385 of taxable income to repay \$10,000. Most plans require participants who terminate to repay the loan in full.
- ✓ Home loan interest is generally tax deductible, but you will have to pay off the balance if you sell your home. If your sales proceeds are less than your loan balance, you will owe the difference.
- ✓ Overspending is never a good idea, especially when it means carrying a balance on your credit card for long periods.

Even with highly competitive rates, interest can add up.

## Don't negotiate away your profits

Avoid trying to boost sales at the expense of profits by offering unusually favorable payment terms or giving away too many discounts.

Here are some ideas that may help protect your profits:

- ✓ Tell salespeople the total cost of making or providing your product or service and explain your required profit margins
- ✓ Provide an acceptable price range or set negotiation limits for salespeople
- ✓ Take control of the sales process from the very beginning, rather than allowing the customer to set the pace and the tone of the negotiations
- ✓ Avoid giving away too many promotional items and free samples
- ✓ Focus on features and benefits, not price
- ✓ Provide your sales staff with regular training in sales and negotiation skills



## NFP board member alert

Are you a volunteer board member for a not-for-profit (NFP) organization? If you are, it's important to keep in mind the IRS's trust fund recovery penalty.

If an NFP or for-profit entity fails to properly remit social security taxes and/or income taxes withheld from employees' wages, the IRS will directly approach the organization's "responsible persons" for the tax payments, including a potential 100% penalty.

In general, a penalty will *not* be imposed on any unpaid volunteer board member of an exempt organization if the member:

- ✓ Serves solely in an honorary capacity

- ✓ Does not participate in the day-to-day operations of the organization
- ✓ Does not participate in the financial operations of the organization
- ✓ Does not have actual knowledge of the failure on which the penalty is based

For an active member who has governing responsibilities, it is still important to ask questions about who is handling tax payments, whether it's a staff member, the executive director, a payroll service or an accountant.

Also, find out what checks and balances are in effect to make sure no problems arise. Annual reviews or audits may be helpful to verify compliance and strengthen internal controls.

## Storing your tax records

Once you've filed your tax return, you may be tempted to clean house and get rid of some of your old records. The following guidelines may help you decide which items should keep.

Keep records that prove your income, as well as your expenses, *e.g.*, W-2, 1099, K-1, bank and brokerage statements and canceled checks, for at least three years after the date you file the return or the due date (if later).

Investment records showing when you purchased an investment, the purchase price and any dividends reinvested should be kept for at least three years after the year you report the sale.

Because of the \$250,000 (\$500,000 for married couples) exemption, most homeowners won't have a taxable gain when they sell their homes; however, special circumstances could result in such a profit; therefore, keep statements related



## Guidelines for paper records

### Three Years\*

- ✓ Auto mileage logs (three years or life of vehicle)
- ✓ Bank deposit slips
- ✓ Canceled checks
- ✓ Daily sales records
- ✓ Entertainment records
- ✓ Expense reports
- ✓ Paid vendor invoices
- ✓ Written acknowledgment from charity for contributions of \$250 or more

*\*From date of filing return or due date of return, whichever is later*

### Six Years

- ✓ Bank statements
- ✓ Contracts (after expiration)

### Permanent

- ✓ Annual financial statements
- ✓ Corporate stock records
- ✓ General ledger & journals
- ✓ Real estate records
- ✓ Tax returns
- ✓ Copy C of Form W-2
- ✓ LIFO inventory record

### Other

- ✓ Depreciation schedules (life of asset, plus three years)
- ✓ Meeting minutes (life of company)
- ✓ IRA contribution and distribution records (three years after final distribution)

to both the purchase and improvement of your home.

Maintain a permanent file with copies of your tax returns. You'll need a copy of your return in case the IRS questions whether or not you filed.

The box above lists the guidelines for paper records.

## Don't terminate your S corporation

S corporations help avoid the double taxation that results from

using a regular C corporation; however, certain innocent actions could inadvertently terminate S corporation status.

S corporation shareholders must either be individuals or certain trusts. Generally, foreigners and some types of trusts cannot be shareholders. If a shareholder transfers shares to an ineligible shareholder, S corporation status could be lost.

An S corporation may not have more than 75 shareholders (a husband and wife count as one shareholder). S corporation status can be terminated if stock transfers or issuances result in more than 75 shareholders.

One way to prevent too many or ineligible shareholders is to include transfer restrictions in your corporate charter and bylaws, if consistent with applicable state and local laws.

In addition, S corporations may not have more than one class of stock; however, there are a variety of equity compensation arrangements, *e.g.*, employee stock option plans, that do not violate this rule.

## Managing unemployment insurance costs

Managing unemployment insurance (UI) costs can be complicated and vary from state to state. The following tips may help you cover the bases:

- ✓ Be aware of unwarranted benefit charges; 25 states do not allow employees to simultaneously collect severance pay and unemployment benefits.
- ✓ Know your state's experience-rating methods. Under the reserve ratio (also the most popular) your company could still have an unnecessarily high unemployment rate if it paid out a large amount of benefits as long as 25 years ago. This would apply even if few unemployment benefits were paid in recent years.

- ✓ Consider voluntary contributions. Rate notices used in many states include useful information for determining if a voluntary contribution would reduce costs.
- ✓ Related companies may be able to reduce their overall UI rates by combining their unemployment experience.
- ✓ Companies involved in mergers or acquisitions may be able to reduce UI costs. Successor employers may be able to use the former employer's FICA and FUTA wage limits.
- ✓ Contact state agencies directly to resolve disputes; established relationships could be helpful in resolving future disputes.

## Deferral of tax on upfront receipts

Accrual method businesses have historically been able to defer

the recognition of tax on upfront receipts for goods until delivery; however, more restrictive rules existed for services.

Now, accrual method businesses may defer tax on upfront receipts for qualifying services to the next taxable year, provided they also are deferred for financial reporting purposes.

Rents, insurance premiums, interest and certain other items remain taxable when received.

These rules are generally effective for taxable years ending on or after December 31, 2003, but the IRS will generally not challenge businesses that already deferred the recognition of qualifying prepayments.

## Deduct alimony payments

Alimony payments, unlike

child support, are tax deductible by the person who pays them and are considered taxable income to the recipient; however, to be tax deductible, alimony payments must meet certain requirements:

- ✓ Cannot be voluntary; must be required by your divorce or separation agreement
- ✓ Must be in cash, although you can agree to cover a specific expense such as the rent or mortgage
- ✓ You and your former spouse must be living apart
- ✓ If the recipient dies, payments must stop
- ✓ Cannot be child support; if child's age decreases payment, the differential is generally treated as child support □



## Reporting foreign bank & financial accounts

**U**.S. citizens who have a financial interest in or authority over any financial accounts in a foreign country must file Form TD F 90-22.1 with the Treasury but only if the total value exceeds \$10,000 at any time during the calendar year.

You must file if you:

- ✓ Have a financial interest in an account and are the owner of record or have legal title, whether the account is maintained for your own benefit or for the benefit of others, including non-U.S. citizens.
- ✓ Have an account maintained in the name of two individuals jointly or if several individuals each own a partial interest in an account, each individual has a financial interest in the account.
- ✓ Have a financial interest in each bank, securities or other financial account in a foreign country for which the owner of record or holder of legal title is:
  - An individual acting as an agent, nominee, attorney or in another capacity on your behalf
  - A corporation in which you own directly or indirectly greater than 50% of the total value of shares of stock



- A partnership in which you own an interest in greater than 50% of the profits
- A trust in which you either have a present beneficial interest in greater than 50% of the assets or from which you receive greater than 50% of the current income

The likelihood for noncompliance is more significant in situations involving an indirect interest in the foreign account, *e.g.*, a U.S. parent corporation that owns greater than 50% of the total value of the shares in a foreign corporation.

It is easy for these corporations to miss reporting the foreign bank and financial accounts of the foreign subsidiary.

In addition, the Form TD F 90-22.1 is not filed with the tax return; the filing date of June 30 does not coincide with the normal income tax return due dates.

This form will likely receive additional scrutiny in the post-September 11 era. Failure to file Form TD F 90-22.1 can result in penalties.

Nonfilers should file the form for all prior years and attach an explanation for their reasons for failure to file. □

# Do you feel generous? Think about April 15

by Jeff Layman, BKD Wealth Advisors, LLC, [jlayman@bkd.com](mailto:jlayman@bkd.com)

**T**hroughout the year, organizations and institutions ask us to contribute to their worthy causes; no matter what form your contribution takes, you will generally see some tax savings for it.

Tax benefits at this level of giving are relatively straightforward: cash contributions are deductible, and the obso-

lete, but still functional, computer you donate to your church is also deductible for its cash value.

Many of us contribute at that level on a regular basis, but what about those occasions when you can and want to give a large gift? First, give some thought to structuring your gift to increase your tax advantage.

## Giving can give back

Suppose your 25-year college reunion is coming up next June, and you want to make a substantial contribution.

To generate cash, you review your investments. In an individually managed account that you own, you find 200 shares of a stock your money manager bought two years ago for \$25 a share.

The stock has risen to \$50 a share; you instruct the money manager to sell the shares and you donate the \$10,000 in proceeds to your school. The sale involves minimal trading costs because the stocks are in an individually managed account for which you pay an asset-based advisory fee.

Finally, suppose you are in the 35% tax bracket. Because you give

the \$10,000 to your alma mater, you get to deduct \$10,000 from your taxable income. Theoretically, this saves you \$3,500 in taxes.

<b>Deduction for cash contribution</b>	<b>\$10,000</b>
<b>Tax rate</b>	<b>x .35</b>
<b>Tax savings</b>	<b>\$ 3,500</b>

On another line of your 1040, you will have to pay the tax on your capital gain, the difference between what you paid for the stock and its sale price (\$5,000).

Because you held the stock for more than one year, the gain will be taxed at 15%, the current long-term capital gains tax rate.

<b>Taxable gain on sale of stock</b>	<b>\$5,000</b>
<b>Tax rate</b>	<b>x .15</b>
<b>Tax cost</b>	<b>\$750</b>

This reduces your real tax savings on the contribution to \$2,750.

<b>Tax savings on deduction</b>	<b>\$3,500</b>
<b>Taxes paid on capital gain</b>	<b>- \$750</b>
<b>Net tax savings</b>	<b>\$2,750</b>

If, instead, you simply gave the stock to your college, your \$3,500 tax savings would remain intact because you can deduct the fair market value of the contributed stock (\$10,000 on the date of the donation), not just the \$5,000 you paid for it.

The stock's current price—less the price you paid for it—represents an unrealized \$5,000 gain, and you do not have to pay the \$750 in taxes on that gain.

## Follow rules

If you're thinking about making a substantial gift, look at your portfolio. If you find highly appreciated holdings, *i.e.*, low cost basis stock, you may be able to give what you want and save taxes, too.

There are some rules to follow: generally, you must own the appreciated stocks more than one year before donating them and you cannot give other types of property, *e.g.*, inventory from your furniture store, as "appreciated."

You also cannot donate art you

created, though art you bought more than a year ago does qualify, if it has appreciated, as do antiques and real estate.

Before you make a large contribution, contact your BKD Wealth-Plan advisor for more information about planned giving. □

## Market commentary

by Jeff Layman, BKD Wealth Advisors, LLC, [jlayman@bkd.com](mailto:jlayman@bkd.com)

**T**he trend of asset consumption driven by asset inflation may be over. Interest rates recently crept higher, and signs of job growth have led to expectations of slightly higher inflation. Related to corporate-earnings growth, the short-term effect may be negative but could be positive longer-term. Companies may need a slightly higher rate of inflation to resurrect top-line organic growth; however, the real constraint may be the impact of slightly higher interest rates on the debt-laden household sector.

Analysts estimate operating earnings per share for the S&P 500 will be \$62.96 by year end, up from \$54.74 per share in 2003 (a 15% rate of growth). After adjusting for option expenses, pension adjustments, goodwill impairment and settlement and litigation costs, the 2004 earnings-per-share estimate declines to \$49.21. The market currently trades at a forward P/E of 17 based on consensus-quoted operating earnings vs. a P/E of 22 based on earnings adjusted for true costs.

The low-interest-rate environment has spurred corporate-earnings growth, especially in the

small- to mid-company sector. Consumer spending has also been sustained by lower mortgage rates and overall lower borrowing costs. Low interest rates and lower taxes have recently spurred economic growth, leading stock and bond prices higher. At the same time, valuations in many sectors of the economy are overvalued and the leverage used to fuel consumption has risen to record levels.

A sustained rise in interest rates now could slow recovery, place short-term constraints on additional gains in either stocks or bonds and potentially reverse the recent direction of the residential real estate market.

U.S. stocks have moved slightly higher in 2004 than where they ended last year. Historically low interest rates and uncertainty over prospects of a sustained recovery in the U.S. economy continued to deliver mixed results for stocks.

The biggest beneficiaries were interest-rate-sensitive industries such as homebuilders. Energy stocks also led the market in the first quarter as commodity prices continued their upward trend.

Bond yields moved lower during the first quarter with the yield on the ten-year U.S. Treasury bond moving from 4.21% at year-

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# SOX 404: update & overview

by Travis Webb, Indianapolis, [twebb@bkd.com](mailto:twebb@bkd.com)

**T**he winds continue to shift in how the *Sarbanes-Oxley Act of 2002* (the Act) should be addressed, but there may be increased clarity in sight as the deadline for accelerated filers looms.

## A quick revisit

Because the public market and accounting industry has been so consumed by the Act over the last two years, we occasionally forget not everyone is as familiar with the topic.

The Act was primarily a congressional response to frauds in the public marketplace such as Enron, Worldcom and many others.

The Act created an oversight body for the public company audits by the accounting industry, established tougher penalties for white collar crimes (particularly those closely associated with the recent frauds), and created new rules for companies that are public registrants.

Those rules included changes and disclosures related to audit committee members and their responsibilities, protection for employees and new responsibilities and certifications to be performed by management.

Section 404 of the Act (SOX 404) requires management to certify their internal control over financial reporting; as a result of the efforts and costs involved, SOX 404 is the focal point in today's marketplace.

The costs to comply may extend into six and seven digit numbers for many registrants.

## Implementation delayed

Implementing SOX 404 has been a bumpy ride, and, in February, the Securities and Exchange Commission (SEC) announced a decision to extend its effective dates.

The regulations originally required accelerated filers to comply for fiscal years ending on or after June 15, 2004; the date has been deferred to fiscal years ending on or after November 15, 2004.

While only a five-month delay in the effective date has been granted, a registrant with a fiscal year falling between June and November 15 has an additional year to complete the documentation and testing process.

For other filers, the effective date was deferred from fiscal years ending on or after April 15, 2005, to ending on or after July 15, 2005.

## Accelerated filers take note

There has been some confusion determining accelerated-filer status. Entities have been caught by market recoveries that improved their stock prices and caused them to become accelerated filers for SOX 404 purposes, which resulted in an earlier effective date.

Accelerated filers (defined by regulation 17CFR240.12b-2) include:

- ✓ Those who have filed for the last 12 months
- ✓ Those with an aggregate market capitalization of \$75 million or more at the end of the last business day of the second quarter of the fiscal year based on voting and non-voting common equity held by nonaffiliates

For entities close to the \$75 million market-capitalization level, taking a close look at affiliate holdings is critical to determining the effective date.

## PCAOB's final rules

On March 9, 2004, the Public Company Accounting Oversight Board (PCAOB) released its final rules for the external auditor's attestation related to SOX 404.

While many questions remain, issuance of the final rule provides registrants a barometer for what it will take to achieve a "clean opinion" from their external auditor and relaxes provisions allowing auditors to rely on others' work, *e.g.*, internal auditors.

In addition, compromises were made to reduce duplicative efforts of external and internal auditors and address concerns about inappropriate reductions in internal audit departments.

The changes should reduce the overall cost of compliance; however, the required effort and resulting cost will be substantial. Auditors must perform sufficient testing themselves to provide the principal evidence for their opinion.

Your external auditors' ability to assist you is constrained. To maintain their independence, your auditors' involvement in your efforts to document, test and assess internal control is severely limited.

As of press time, the SEC's approval of the final PCAOB standard was thought to be imminent. The SEC planned to solicit comments on the rule through May 17, 2004, before announcing their decision.

Many observers believe the train has already left the station and that the SEC will approve the rule. If that happens, the next update will contain implementation guidance from PCAOB, as well as increased confidence from the accounting firms that will have a final rule to base auditing internal controls on.

## Getting started

Even if you are among those enjoying a new deferral, it's time to step up efforts to complete SOX 404 activities.

Improvement efforts can be substantial, yet many entities are finding the time and resources to complete initial evaluations of internal control and resulting remediation.

Take the following steps to move your process forward:

- ✓ Identify who in management will lead the project (often the chief financial officer or controller)
- ✓ Assess system complexity and existing resources, including consideration of existing documentation and testing
- ✓ Evaluate potential outside resources
- ✓ Evaluate whether to use as your criteria the Internal Control-Integrated Framework report from the Committee of Sponsoring Organizations of the Treadway Commission (available at [www.coso.org](http://www.coso.org))
- ✓ Develop a compliance timeline that recognizes the impact of testing and any necessary remediation and improvement efforts
- ✓ Create project teams, provide training and execute your documentation plan

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For more information about Section 404 go to [www.bkd.com](http://www.bkd.com). □

# Costs of being publicly traded: why going private may make sense

by Joe Meyer, Evansville,  
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**S**OX 404 is aimed at improving accountability in the business world, but its increased compliance costs and regulatory attention may make the idea of taking your public company private very appealing.

Few, if any, accommodations have been made for small public companies; *all* public companies, regardless of size, are faced with more rules and regulations.

In addition, smaller companies

are generally receiving less attention from market makers. This makes it difficult for many smaller companies to attract attention to their stock.

## Process of going private

If your company decides to go private, it is essential to have a highly qualified team of attorneys and financial advisors assist you in the process.

**SOX** for a Private Company

The Securities and Exchange Commission (SEC) allows companies with fewer than 300 shareholders of record to deregister its securities and become private.

The definition of shares "held of record" is different from "beneficially owned." Generally, companies will have fewer shareholders of record than beneficial owners.

For example, a company may have many shareholders who hold their shares in "street name;" however, under SEC rules, these shares may be considered to be owner of record by far fewer holders (typically brokers). So, qualifi-

cations about the number of shareholders may be more easily met than it initially appears.

The easiest way to reduce the number of stockholders is through stock repurchases; however, such transactions may not always be effective in eliminating the required number of stockholders.

Tender offers and involuntary techniques, such as "squeeze out" mergers and reverse splits, are other ways to accomplish the same objective.

\* \* \*

If you are considering going private, contact your BKD advisor for more information. □

## Going private?

**N**ationally, more companies are evaluating the costs and benefits of being publicly traded. The following may help you decide if going private will benefit your company.

### Why go private?

**Avoid increased regulatory and compliance costs** - No matter what source is referenced, the costs of compliance are staggering; going private eliminates compliance and SEC reporting

**Reduce public pressures to maintain growth** - Private companies generally have a smaller audience and may be in a better position to think long term than their public counterparts

**Reduce tax burdens and increase control** - Many going private transactions can involve ESOPs (either initially or soon after the going private transaction); ESOPs can be powerful tools to reduce or eliminate tax and to concentrate control in fewer stockholders

### Potential pitfalls & disadvantages

**Decreases liquidity & shareholder base** - Other than trading in "pink sheets," the market for the stock is significantly reduced

**Reduces access to acquisition capital**

**Requires cash for the transaction** - Cash is required to accomplish the reduction in shareholders of record. The funding sources for the transactions must be considered

To become qualified to deregister, some entities are seeking to reduce their total number of shareholders to fewer than 300 by such means as buy-outs, tender offers and other transactions. □

## Security solutions from BKD Technologies

**T**he *Sarbanes-Oxley Act of 2002*, Section 404, suggests the need for strong information security within a company.

BKD Technologies is an experienced provider of Section 404 information technology (IT) solutions. We can:

- ✓ Document your existing IT controls
- ✓ Design and perform tests of these controls
- ✓ Recommend improvements to correct deficiencies
- ✓ Evaluate specific Section 404 documentation software, interfaces and vendors

Your BKD Technologies representative can help you with information security solutions to comply with Section 404.



You will receive secure, remote assistance through BKD Online Connect, our convenient online support program for registered clients.

Online Connect offers a cost-effective way to receive support without an on-site visit. It's also easy to view product demonstrations and learn about installations, upgrades and patches through Online Connect. □

**BKD**  
Technologies

## Deduct investment expenses

If you have a lot of itemized deductions and a modest income, investment expenses may be deductible.

Costs that fall into this category include fees for professional advice, subscriptions to investment publications and accounting and legal fees related to investment activities.

To be deductible, investment expenses—along with your other

miscellaneous itemized deductions—must exceed 2% of your adjusted gross income.

The amount you can deduct is further decreased if you are a high-income earner. Miscellaneous itemized deductions are completely disallowed for individuals subject to the alternative minimum tax.

What's not deductible:

- ✓ Trading commissions, which

are added instead to your investment cost basis

- ✓ Travel costs and attendance fees for investment seminars, conventions and stockholder meetings
- ✓ Costs related to purchasing tax-exempt securities; however,

you may be able to deduct the interest on money you borrow to purchase taxable securities

For more information about investment expenses being deductible, contact your BKD WealthPlan advisor. □

## Market...

(continued from page 5)  
end 2003 to 3.76% at the end of the first quarter.

Bond yields have moved higher in the last several weeks because of better-than-expected

news in the most recent U.S. employment report.

Longer-dated and higher-quality U.S. bonds led the market higher during the first quarter. □

### Tale of the Tape

#### Selected Returns through May 31, 2004

Benchmarks	1 Year	Year to Date
DOW	15.12%	-2.54%
S&P 500	16.30%	0.79%
NASDAQ Composite	24.49%	-0.83%
Russell 2000	28.86%	2.04%

#### Selected Asset Classes - Mutual Funds


Large Cap Growth	0.74%
Large Cap Value	1.26%
Mid Cap Growth	2.81%
Mid Cap Value	4.14%
Small Cap Growth	0.56%
Small Cap Value	2.80%
Science & Technology	-1.19%
International	1.81%

Source - The Wall Street Journal, June 1, 2004. As with a portfolio of all stocks and bonds, a diversified portfolio gives no guarantee of safety of principal, which is subject to fluctuation.

## Investment strategies from BKD Wealth Advisors, LLC



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