

September/October 2003

*Superior Thinking. Unmatched Integrity.*

## The Future Looks Bright

In our business, brighter is definitely better. Welcome to the first issue of the *HR Adviser* with our new look.

As we anticipate our 30th anniversary in 2005, we appreciate our past and how we became your *skilled, reliable, and trusted* advisers. But as times inevitably change, so, too, does the firm - hence, our updated look.

While our look has changed, our commitment to quality and dedication to helping you attain your business goals continues to be our primary focus.


This process of reflection and enhancement is known as re-branding.

Re-branding is not just about designing a new logo, inventing a new tag line, or picking a new color scheme.

It is the result of a lengthy process that included choosing an advertising agency, interviewing staff, and deciding on a new image that reflects our strengths - quality service and responsiveness, depth of knowledge and commitment, and technical excellence.

Why the color change?

We selected colors that reflect our vibrancy, excitement, and enthusiasm for the future - both yours and ours.

The bottom line is - we give you *superior thinking*, backed by a reputation for *unmatched integrity* that is second to none. 

*“We selected colors that reflect our vibrancy, excitement, and enthusiasm for the future - both yours and ours.”*

## Notable and Quotable

An accountant earns CPA status after passing all four parts of the rigorous CPA exam and completing two years of work experience in public accounting. Congratulations to our newest CPAs, Audit Seniors **Nadine Galvez** and **Mike Tsetlin**.

Holtz Rubenstein is pleased to welcome new staff members to three different areas of the firm.

After 30 years experience in health care from all sides of the fence, **Al Conti** is Healthcare Operations Specialist with the Health Care Services division of Holtz Rubenstein, involved in the audit/compliance reviews of Health Insurance Portability and Accountability Act ("HIPAA") standards, compliance reviews and special internal audit reviews.

**Chris Feustel** joins the firm as a senior in the tax department, after five years previous experience. He is a member of the AICPA and NYSSCPA.

**Joseph Schiano** joins the firm's accounting and auditing department as a senior, after over 6 years previous experience, working with diverse clients, including manufacturers, not-for-profits, professional services, and retailers.

It is promotion time at the firm:

The firm is pleased to announce that **Joseph Chase** is now a Senior Manager in the audit department, and **Patrick Yu** is a Senior Manager in the not-for-profit practice. Both have eight years public accounting experience. **Harold Deiters** becomes a Manager in the audit department.

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## Holtz Rubenstein Obtains Favorable New York State Tax Ruling

From time to time we report the result of a New York State "Advisory Opinion." What are these rulings, and what are their effects?

Advisory opinions are written by the New York State Department of Taxation and Finance's Technical Services Division on the tax consequences of a difficult issue. New York State issues them in response to a request from a taxpayer.

Taxpayers request an "advisory opinion" when they want to know the tax consequences of their actions before they enter into them. Only the party who requests an advisory opinion can rely on what New York State decides. The IRS has a similar procedure (called a "private letter ruling") for obtaining the tax consequences of a transaction.

Just recently, Holtz Rubenstein requested an advisory opinion on whether its bi-monthly newsletter, the *HR Adviser*, constitutes promotional material

qualifying for exemption from New York State Sales and Use Tax.


Promotional materials include any advertising literature, catalogs, and other related items.

Any printed promotional materials delivered by a common carrier, the U.S. Postal Service, or a similar delivery service to destinations within New York State, are exempt from New York State Sales and Use Tax when a purchaser (directly or through a printer-mailer) delivers these materials to a client or prospective client at no charge to the client.

All promotional materials delivered outside New York State also are exempt from sales and use taxes.

The New York State Department of Taxation and Finance has ruled that the

*Adviser* qualifies as promotional materials as defined above. The firm may make purchases of promotional materials exempt from tax by giving the supplier a properly completed Form ST-121.2, *Certificate of Exemption for Purchases of Promotional Materials*. So we have the pleasure of giving you useful information in every issue and it's tax free -- to us.

In the past, we have obtained favorable Federal and New York State rulings for clients. Call your Holtz Rubenstein tax adviser at 631-752-7400 if you have a question. 




### Announcing: 2004 Holtz Scholarship Winners

Each year, Holtz Rubenstein selects students from Hofstra University to receive the William J. Holtz Endowed Memorial Scholarship, named after the late co-founder of the firm. The scholarship is awarded to a Long Island resident who is a full-time accounting student with a GPA of 3.0 or greater, who has demonstrated civic contribution and a requirement of financial aid. This year's winners are Yana Nicole Asatur and Jaclyn Fiore, who each receive the scholarship.

**Yana Nicole Asatur** is a member of both the national and international honor societies at Hofstra, maintaining an accounting GPA of 3.88. She is also a member of the accounting and tax societies at the school.

**Jaclyn Fiore** maintains an accounting GPA of 4.0, earning her spots on the national and accounting honor societies and as a Provost Scholar. She is also a member of the accounting and tax societies and the Institute of Management Accountants (IMA).

The scholarships were awarded at the annual spring induction ceremony of Beta Alpha Psi, the national accounting honor society. If you are interested in contributing to the scholarship fund, please contact Partner Gordon Siess at 631-752-7400 x-315. 

### CyberNotes

#### FirstGov.gov


**FirstGov.gov** is a free U.S. government web portal for all levels of users who are searching for statistics, legislation, or consumer information. How should you pack for a plane trip to save time at the airport security? Check out their suggestions under "Frequently Asked Questions." Got a question for your local or national elected official? Use the e-mail option on **firstgov.gov** and get the answers, typically in less than two days time.

Citizens, businesses, and non-profit organizations all can check out **firstgov.gov** for the information you need. (By the way, one tip to get through airport security quickly – don't lock your bag.)

#### TruthorFiction.com

The e-mail warns this is the worst virus ever...apply this patch on your computer...just follow the simple directions below...delete a file with the following name...pass this along to everyone in your address book...


You might have received any one of the messages listed above in an e-mail, warning of catastrophic data loss. But are they for real? When you're having a hard time finding the truth behind all the sensationalism, visit **truthorfiction.com** to find out.

**TruthorFiction.com** offers a comprehensive listing of all known hoaxes, scams, and even true events that are often spread through e-mail and the web. Broken down by topic, it is simple to search through the site and find out the "real deal." Before you follow suspicious instructions and delete files in order to stop a "virus" that might be a hoax, do some detective work at **truthorfiction.com**. 

## Internal Control Reporting – Are You Compliant?

Section 404 of the Sarbanes-Oxley Act (“SOA”) requires all public companies to include in their annual reports a report by management on their internal controls over financial reporting. The SEC has adopted final rules, which will require management to describe its responsibilities for establishing and maintaining an adequate internal control structure and procedures for financial reporting, and to assess the effectiveness of these controls.

Compliance with this requirement is effective for fiscal years ending on or after June 15, 2004 for companies with a public float in excess of \$75 million. All other filers must comply for fiscal years ending on or after April 15, 2005.

Holtz Rubenstein can assist you in the compliance requirements of Section 404. Please contact Partners Andrew Vuono or Howard Weiner at 631-752-7400. 

## Estimated Personal Income Tax on the Sale/Transfer of Real Property

As set forth in the July/August issue of the *HR Adviser*, effective September 1, 2003, taxes on New York real estate sold by individuals, estates and trusts who are nonresidents of New York State must be prepaid (in effect, a withholding tax at the time of sale) on the gain attributable to the nonresident.

Recently, the New York State Department of Taxation and Finance issued a notice pertaining to this new section of the tax law.

Form IT-2663, *Application for Certification for Recording of Deed and Nonresident Estimated Income Tax Payment Voucher*, must be filed and the estimated income tax due must be paid by each seller before the deed may be recorded. The amount of the estimated income tax is determined by multiplying the gain by the highest applicable rate of New York State personal income tax in effect for the taxable year (currently 7.7%). This form must be filed regardless of whether a tax is due.

The New York State Department of Taxation will return to the nonresident transferor a stamped certification indicating that the filing requirements have been met and the certification must then be


## Do Not Fax

You know that the federal government established a national Do-Not-Call registry earlier this year. But did you also know it may cover the faxes you send?

The Telephone Consumer Protection Act (“TCPA”) requires permission **in writing** before faxing to customers and prospects. This applies to both business-to-consumer and business-to-business faxes. And this doesn’t merely apply to broadcast faxes, but to all faxes that contain marketing materials (e.g., sales collateral, price sheets, RFPs, proposals, etc.) Previously, an established business relationship indicated permission to send unsolicited faxes.



Luckily (for businesses, not necessarily for consumers), the FCC has postponed the effective date of the new fax advertising rules, from August 25, 2003 to January 1, 2005. Until then you don’t need written consent prior to sending marketing faxes TO CLIENTS with whom you have a current relationship, although you do need to get “express consent” from PROSPECTS. And the TCPA rules do not permit you to send a fax to get their permission. Please consult with legal counsel if you have any questions on this.

Violators are subject to up to \$500 in fines, per violation. To find out more about TCPA and the Do Not Call registry, visit [www.fcc.gov](http://www.fcc.gov). 

submitted to the recording officer at the time the deed is to be recorded. Nonresident transferors can take a credit on their income tax returns for the estimated tax paid.

*Tips:* The State indicates that you should allow three days from the receipt of your application for it to process and certify your application; however, it is our suggestion that the form be filled out as far in advance as reasonably possible before the transaction so as to avoid a problem at the closing.

This also means that your tax adviser/accountant should be consulted as early as possible in the sale process so as to allow time for him/her to do the necessary gain calculation.

Note the practical problem of paying the estimated income tax prior to the closing if there is a lack of cash and the seller is depending upon the proceeds of the sale to fund his/her/its tax requirements. If the property sale is eligible for installment sale treatment, the estimated income tax is due only on the 2003 portion of the gain.

New York State residents and exempt nonresidents must complete Form TP-584, *Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income*

*Tax*, to certify that they are exempt from the payment of estimated income tax. A nonresident transferor is exempt from the payment of estimated income tax on the transfer of real property if:


- The real property being transferred is used exclusively as a principal residence.

(“Principal residence” has the same definition as applicable under the Internal Revenue Code. This means that if the seller owned and used the home as a principal residence for 2 out of the 5 years before the sale, an estimated tax is not required even if the gain exceeds the excludable amount [\$250,000 for a single individual and \$500,000 for a married couple]).

- The transferor is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration.

- The transferor or transferee is a specified governmental agency or authority or a private mortgage insurance company.

- The gain is not recognizable for Federal purposes (for example, a like-kind exchange).

If you have a question, contact Tax Partner Alan E. Weiner at 631-752-7400 x-330 or [AEWeiner@hr CPA.com](mailto:AEWeiner@hr CPA.com). 

## Controlling Costs in the Small Business Environment

By Patrick Fahey, CPA

With the increase in small businesses filing for bankruptcy during these tough economic times, businesses need to develop new strategies to keep them afloat.

The days of focusing only on increasing sales volume are over. Controlling costs and the net bottom line need to be the main focus of each small business owner. Many small business owners never take the time to develop a process to gauge if their business is running as designed. Rather than performing this process on a daily basis, some business owners do it monthly or even annually. Too many times, cost overruns are caught too late due to management focusing on stale historical information rather than daily reports.



Patrick Fahey

Budgets often are prepared only for the purpose of pleasing the company's lenders, rather than used as an effective management tool. They can be prepared by department, by product type, or for overall operations of the company as a whole. Budgets can improve profitability by establishing goals and objectives for management and by aiding in planning for the most efficient use of resources. Budgets allow a company to quickly identify and resolve financial problems that may arise.

Some business owners think, "The reason my labor costs are up is because my sales increased." Labor costs as a percentage of sales should decrease as sales increase. When both sales and labor costs increase, it usually is an indication of a lack of productivity. In many instances, a lack of training is the reason for this problem.

Many business owners do not realize the cost of increasing revenues. Companies should not take on new business unless they fully understand all of the costs involved. When businesses take on new customers without doing their homework first, many costs are left out or overlooked during the evaluation

process. The result is that the true profit margin is usually determined well after the company invests a significant amount of time and capital, which can be disastrous for a small business.

While cost cutting can offer an immediate and effective method of improving the bottom line of a business, indiscriminate cost cutting can adversely affect a company's product and service. The first step in the process should be to identify the company's objectives, both long-term and short-term. Once this is done, a business owner must decide what cost cutting measures will benefit the company. Obviously, you should consider the level of service and/or quality of product your company will provide.

Budgets should include all cost elements and not provide for inefficiencies or overruns. After actual results are recorded, potential areas of cost savings can be identified. Costs generally rise and fall with sales, so it may be helpful to analyze costs as a percentage of sales.

When analyzing areas in which the company experienced overruns, answer the following questions:


- Are vendor invoices being carefully checked for overcharging?
- Is obvious over-capacity being eliminated?
- Is the company wasting electricity and/or heat?
- Are we searching for alternative suppliers offering lower prices but the same quality?
- Can we negotiate better discounts with existing suppliers?
- Is the company eliminating wasteful processes to make the production process more efficient?
- Are we analyzing telecom bills, shopping long distance and cellular plans, and eliminating unused phone lines?

Purchasing is one key area where you can often identify waste. It is also an area that can significantly affect cash flow. Managing your cash flow will not only improve your position, in terms of cash on hand, but also will decrease unnecessary use of short term financing such as overdrafts. You also should take a long and careful look at your financing and discuss options with your bank. Perhaps your premises are too large for your present needs?

Continuous review of your costs and how your actual performance compares to your

## NYC Announces Tax Amnesty Dates


The New York City Department of Finance has announced that it will accept applications for tax amnesty from October 20, 2003 through January 23, 2004. Tax amnesty gives individuals and businesses the opportunity to pay past due New York City taxes without paying any penalties or facing criminal prosecution. Also, any interest accrued before October 20, 2000 will be waived.

Taxes that are eligible for amnesty include the NYC General Corporation Tax, the Unincorporated Business Tax and the Commercial Rent or Occupancy Tax. Taxes that are **NOT** eligible for amnesty include the New York City Resident Personal Income Tax, Sales and Use Tax and Real Estate Tax. Amnesty is available for tax years ending on or before December 31, 2001 except for the Commercial Rent or Occupancy Tax, which applies to tax years ending on, or before May 31, 2001. 



budgeted costs is critical for small businesses, especially during economic downturns. This process should not be done in response to a crisis. Even while a business is growing, controlling your costs will increase profits and competitiveness. Remember – controlling costs is not only about cutting expenses. During periods of growth, a company may be able to increase revenue while holding some expenses constant. Thoughtful budgeting will offer an opportunity to get more from your resources and increase your profits.

Many small business owners may find it worth the investment to involve their CPA in this process, as they can help to develop budgeting models and assist in analyzing data. Holtz Rubenstein's professional staff have extensive experience in helping their clients implement effective tools by which they can identify inefficiencies and cost overruns on a timely basis. In many cases, a third party often is needed to jumpstart the process.

For assistance on controlling costs, contact Senior Audit Manager Pat Fahey at 631-752-7400 x-203 or [PFahey@hrcrepa.com](mailto:PFahey@hrcrepa.com). 

## Florida Tax Amnesty

The Florida Legislature has authorized a one-time opportunity to pay back taxes with no penalty and reduced interest. The Tax Amnesty Program began July 1, 2003 and continues through October 31, 2003. The program applies to taxes, penalties and interest that were due on or before June 30, 2003.

All taxes administered by the Florida Department of Revenue, including personal property intangible tax, are included in the program with the exception of unemployment tax.

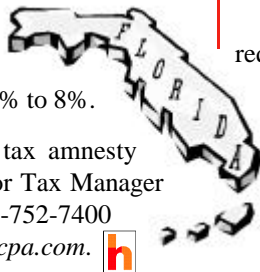
The Amnesty Program applies to all the following situations:

- Failure to file a timely or required tax return (e.g., the Florida intangibles tax return);
- Understatement of a tax liability on a tax return;
- You have an outstanding bill or warrant, are currently undergoing an audit, or are scheduled for an audit;
- You collected sales and use tax but have not registered with the Department of Revenue and have not remitted the tax.

Individuals and businesses are *ineligible* if the related liability is already covered by a settlement or payment agreement, the person is under criminal investigation for violating a Florida revenue law or the person has been convicted of violating a Florida revenue law.

The program requires the filing of a Tax Amnesty Agreement, appropriate tax documents, and full payment of the tax and interest. The information must be **submitted no later than October 31, 2003**. You also must waive all protest rights and rights to refund related to the liability. On November 1, 2003, interest on unpaid tax will increase from the current rate of 4% to 8%.

Questions about the tax amnesty program? Contact Senior Tax Manager Sid Leibowitz at 631-752-7400 x-265 or [SLeibowitz@hrca.com](mailto:SLeibowitz@hrca.com).



## Holtz Rubenstein Benefits Consulting ("HRBC") Tip of the Month

### Advantages of Buying LTC -

Virtually everyone is aware of the need to protect themselves and their assets from the financial ravages of an illness or injury through medical insurance. However, fewer are aware of the need for, and availability of, similar protection against the costs of long-term care (LTC), whether in a nursing home or needing assistance to remain in their own home.

This coverage not only is available and affordable, but the costs may be deductible if provided by a business or you receive a 10% New York State income tax credit if purchased individually. Protect your family and your pocketbook.

Questions? Contact HRBC President Mark Senders at 631-396-0350 or [MSenders@holtzbenefits.com](mailto:MSenders@holtzbenefits.com).



### New ABA Rules on Disclosure of Client Information

Clients have long relied upon the doctrine of attorney-client privilege and attorneys' rules of professional responsibility to assure that anything revealed to an attorney in the course of representing a client would not be divulged to third parties, including judicial or administrative authorities. Two recent changes to the American Bar Association ("ABA") model code of conduct serves as a reminder that the limitation on disclosure is not absolute.

It should be noted, however, that both changes permit, but do not require, the attorney to disclose client confidences in certain circumstances. In addition, the code of conduct does not actually establish the scope of an attorney's ability or duty to preserve information revealed by a client, but only serves as a guideline that the various state judiciaries draw upon in establishing rules governing lawyers' conduct.

The first change allows, but does not require, lawyers to disclose confidences to prevent or rectify a crime or fraud causing financial injury when a lawyer's services were used to help perpetrate the crime.

The second change allows, but does not require, lawyers to disclose a client's confidences to protect the company when the lawyer learns of an employee's or officer's illegal act and the top executives fail to address the problem appropriately after being informed of the situation by the attorney.

The changes come in response to the environment that also produced the Sarbanes-Oxley Act of 2002. Previously, the ABA rule only permitted an attorney to reveal information to the extent that the lawyer believed it was reasonably necessary to prevent reasonably certain death or substantial bodily harm, but not to prevent or rectify financial injury.

The second change adopts but expands upon Sarbanes-Oxley and Securities and Exchange Commission ("SEC") rules issued pursuant to this law requiring attorneys to report corporate wrongdoing up the chain of corporate authority, ultimately to the Board of Directors. However, the ABA rule goes further in that it allows the attorney to disclose the client's confidences to protect the company if the corporate executives do not address the problem appropriately. In addition, while the Sarbanes-Oxley/SEC rules only apply to work performed for publicly traded companies, the ABA proposals apply to all attorney-client relationships.


While the ultimate impact of the ABA changes awaits action by the various state bar associations (including the New York State Bar Association, which sets the rules for New York attorneys) and judicial organizations, clients should be aware of the changing environment and its potential impact on the attorney-client relationship.

Contact your attorney for further information.



## Year-End Cash and Tax Planning for Individuals

Even though December 31 still may seem far away, it will arrive before we know it. Now is the time to do some year-end cash planning and also possibly take some general tax planning steps that will reduce your 2003 tax liability:

- † Plan for capital gains and losses
- † If you itemize, consider making charitable contributions of cash, securities held for more than 12 months, and/or other property
- † Contribute to your 401K plan
- † Consider the timing of income and deductions
- † Contribute, if eligible, to an IRA, Roth IRA, and/or a Coverdell Education Savings Account
- † If you are self-employed, open a SEP Plan
- † Open an account in a qualified state tuition program, or 529 plan, to save for a beneficiary's college tuition
- † Make gifts to loved ones 


## Dividend vs. Salary for an Employee/Shareholder

A constant issue with the IRS is the treatment of salaries paid to an employee/shareholder of a corporation. Disputes arise as to whether salaries are a "reasonable" amount of compensation for services rendered by the employee. If the IRS determines that unreasonable and excessive salaries were paid to avoid the "double tax," where income is taxed at both the corporate and individual levels, then the salaries would be disallowed as a corporate expense and the amount would be treated as a dividend.

For C Corporations, dividends to shareholders are now taxed at a 15% tax rate on the individual level starting in 2003. This makes paying dividends a little

more appealing than prior years where dividends were taxed at the individual's marginal tax rate. However, there is still a double tax on dividends. The income is first taxed at the corporate level and then taxed at the individual level at the lower 15% tax rate.

It is still more advantageous to pay out salaries to an employee/shareholder (assuming reasonable compensation) since the salary would reduce income at the corporate level and be taxed to the individual at their marginal tax rate. In deciding whether a salary is "reasonable", the courts consider a number of factors including the nature, extent and scope of an employee's work, the size and complexity of the business, the amount of dividends paid compared to the salary received and the amount of income earned by the business compared to the salary received.

For S Corporations, this generally isn't a problem because as a flow-through entity, there is no double taxation. If the IRS disallows the salaries as unreasonable, the disallowed expense at the corporate level is negated by the exclusion of income at the individual level. 

(continued from page 1)

## Notable and Quotable

In addition, five of our staff have been promoted to senior accountant - **Kimberly Finnegan, Nadine Galvez, Gianni Iaboni, Jennifer Ladasky,** and **Nicholas Tambakis;** and our newest semi-senior-level accountants are **Erica Comando, Robert Lunetta,** and **Sapna Patel.**




Partner **Howard Weiner** addressed the more than 90 participants from 24 countries at the 2003 conference of DFK International, the worldwide association of independent accounting firms and business advisers, on "The Changed Regulatory Landscape for Professional Firms." Currently, Howard is the president of DFK/USA and has been appointed to the Task Force on International Accounting Quality.

Also participating in the conference, for his 20th consecutive DFK International annual meeting, was Partner **Alan E. Weiner**, who was recently elected by DFK International as Vice President of the Americas and is a sitting member of its Executive Committee, and Partner **Beatrix McKane**, who has been selected to sit on the International Healthcare Committee.



Partner **John McAteer** was the invited speaker at Smith Barney's panel discussion entitled, "Looking Ahead Beyond Transition."

John discussed the usefulness of business valuation in forensic accounting. 

## DFK Firm Spotlight: McLeod & Company

DFK International is the worldwide association of independent accounting and business advisory firms in which Holtz Rubenstein is actively involved. Through our affiliation, we are able to provide enhanced services to you and to other clients throughout the United States and the world.

This issue we spotlight DFK's member in Virginia - McLeod & Company. We invite you to visit them at [www.mcleodco.com](http://www.mcleodco.com). 

To change contact information for the HR Adviser, please contact us at [info@hrcpa.com](mailto:info@hrcpa.com).