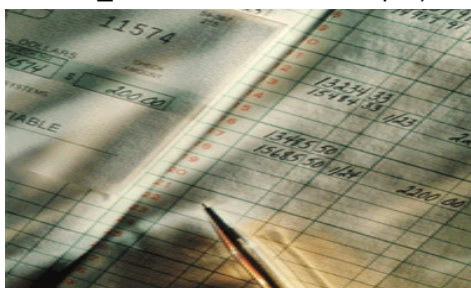


KUTAK ROCK LLP WOULD LIKE TO WISH YOU AND YOURS A VERY HAPPY NEW YEAR!

**TAX SERVICES COULD END
AUDITOR INDEPENDENCE**

Audit committees of public companies, which are charged with hiring and supervising their companies' independent auditors, should take note of a recent proposal by the Public Company Accounting Oversight Board (PCAOB) that further limits the meaning of "independent."

Under the PCAOB's proposal issued December 14, 2004 (http://www.pcaobus.org/Rules_of_the_Board/Documents/Docket_017/Release2004-015.pdf),



Auditors may soon face new restrictions under a recent PCAOB proposal

an auditing firm would not be considered independent of a company if the firm:

- enters into a contingent fee arrangement with such company;
- provides services relating to tax planning or giving tax opinions for transactions that (i) are or could be considered prohibited tax shelters under federal tax regulations or (ii) are based on "aggressive" interpretations of tax laws and regulations; or
- provides tax services to certain members of management of such company.

These restrictions would apply at the time of engagement of the auditor and throughout the audit engagement.

Also, when seeking pre-approval of tax services, auditing firms would be required to supply the audit committees with certain information, discuss with the audit committees any

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potential effects on its independence, and document the substance of such discussion.

Audit committees should also review the SEC's issuance earlier this month of frequently-asked questions (FAQs) on auditor independence matters. Both of these items are especially important in today's environment, in which the SEC has publicly warned that it will hold audit committees accountable for a public company's financial wrongdoing.■

DEFERRED COMPENSATION RULES EASE UP FOR ONE YEAR

John Schembari and Kathryn Magli of our Omaha office write:

IRS guidance issued last week allows companies with non-tax qualified deferred compensation plans one more year to conform their plans and procedures to the restrictions imposed by the American Jobs Creation Act. Meanwhile, these plans will still need to comply with a good faith interpretation of the new rules, including those set forth in the IRS guidance. Generally, these new rules apply to plans formed after October 3, 2004, to contributions, grants and awards under existing plans and made after 2004, and to pre-2005 contributions if the existing plan is "materially modified."

The effect of this tax law change is greater restriction on a participant's ability to defer income. If a plan fails to comply, the participant could be

taxed immediately on all previously deferred amounts and also pay a 20% penalty tax. Other key points in the IRS guidance:

- Companies relying on the "good faith compliance" exception noted above must still update their plans by December 31, 2005 to reflect the new law.
- Any changes to an existing plan to enhance or add a benefit or right newly allowed under the tax law would be considered a "material modification" and therefore cause all the deferred

A 20% penalty tax could apply for failing to comply

compensation to be subject to the new rules.

- A company can terminate its plan during 2005 and not have to comply with the new laws, provided it distributes all deferred income as taxable income to participants in 2005.
- A participant in a pre-2005 plan can make a deferral election for 2005 as late as March 31, 2005, but only as to amounts not yet paid when the election is made.

The IRS press release on this guidance can be found at www.benefitslink.com/pr/detail.php?id=38525. You can also review our summary and analysis at www.kutakrock.com, under Publications and then Client Alerts.■

ANOTHER GOOD REASON TO DONATE BEFORE YEAR-END

Under a recent tax law change, taxpayers who donate their vehicles to charities after December 31, 2004 will no longer be able to deduct the fair market value of the vehicle if it is valued over \$500. Instead, they will only be able to deduct the gross proceeds actually received by the charity upon its sale of the vehicle. Also, no deduction will be allowed unless the charity provides written acknowledgment of the sale to the taxpayer, including the taxpayer's social security number and the vehicle identification number, within 30 days of the sale. (Sec. 884 of HR 4520)

However, the taxpayer will still be able to deduct the fair market value of the vehicle if the charity elects to use the vehicle instead of selling it or if the charity makes material improvements upon the vehicle before selling it.



Make your vehicle donations before Jan 1, 2005 to receive the maximum tax benefit

These changes, contained in the recently-enacted American Jobs Creation Act, close a loophole that allowed taxpayers to claim a charitable deduction for an amount well in excess of the benefit actually received by the charity. Most charities sell vehicles at auctions, in bulk or in private sales, with proceeds rarely approaching the fair market value of the vehicle.

A charitable donation of a vehicle on December 31, 2004 could give a taxpayer a higher tax deduction than the same donation made just one day later. ▢

FASB NOW REQUIRES STOCK OPTION EXPENSING

On December 16th, the FASB issued Statement No. 123R requiring companies to recognize an expense for issuing stock options. Currently, unlike cash compensation, no

expense is recognized when options are issued or exercised. This new rule applies to most companies beginning after June 15, 2005, and to "small business issuers" after December 15, 2005.

The SEC will be providing "appropriate guidance" on this new requirement to assist financial statement preparers. You should consult your CPA firm on this, including the deferred tax effects. ▢

SEC FAULTS DISNEY FOR OMITTING RELATED PARTY DISCLOSURES

In an enforcement action announced last week, the SEC charged that The Walt Disney Company failed to publicly disclose the existence of significant financial relationships between the company and certain directors. As a result, Disney violated proxy statement and annual Form 10-K disclosure rules from 1999 to 2001. Disney settled by consenting to a cease-and-desist order.

- the spouse of a director was employed by a subsidiary and received more than \$1.0 million in compensation annually;
- a director's company was paid to provide air transportation for that director in connection with Disney business; and

SEC says disclosures must be timely and complete

- a director was provided with company perks valued at over \$200,000 annually, including office

space, secretarial services, a leased car and a driver.

These disclosures are important because they provide shareholders with the information necessary to evaluate a director's objectivity and independence, according to the SEC. ▢

The relationships, which were not reported until after 2001, included the following:

- children of three non-employee directors were employed by the company and were paid at least \$60,000 each;

Kutak Rock LLP is a national law firm with 16 offices located throughout the United States. Our practice areas include:

- Corporate Governance
- Banking Law
- SEC Reporting and Compliance
- Mergers and Acquisitions
- Employment / Employee Benefits Law

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