

Alternative Dispute Resolution (ADR)

Intense competition and resulting gross profit margin shrinkage leave business owners with no choice but to cut overhead expenses. Legal costs, an overhead expense, are sizeable for many companies and unpredictable for most. And substantial portions of legal expenditures tend to be unproductive, meaning that they don't raise future profit. It's just an empty expense ... dollars spent to extinguish a burning fire.

Sure, fires (and legal expenses) are natural phenomena, but shouldn't we look for ways to minimize their cost? Ways to avoid them altogether? Of course, and the practice is called alternative dispute resolution (ADR) ... a catch all phrase for the various means and methods for resolving disputes outside of our court system.

Alternative Dispute Resolution: An Overview

The founders of our country realized that a clear and just system for resolving disputes was critical to achieve the dream of freedom, equality and robust commerce for all. They devised our federal court system. Our state governments did the same to adjudicate claims arising within an individual state. As a result, people and organizations that believe they have been wronged may bring their case before the court. The facts are presented and reviewed, arguments are made by each party, and a binding decision is made.

To be sure, our court systems have served us well, but they are not perfect. Court rules and procedures, designed to be fair, can result in long delays, substantial administrative costs (including lawyer fees), unexpected opinions and endless appeals. In addition, our court system is public and tends to be very adversarial. Given this long list of undesirables, innovators have developed alternatives of the following broad types:

1. Dispute Avoidance
2. Early Dispute Detection and Resolution
3. Voluntary Mediation and Arbitration
4. Mandatory Arbitration

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Year End Tax Planning Guide	In This Issue	Alternative Dispute Resolution
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From The Editor



David L. Perkins, Jr.

Dear Business Owner:

The holidays are a time to rejoice and be glad. As the fully empowered owner of a private company, in the greatest country in the world, during the most interesting times in the history of the world – rejoice and be glad. If you have 2004 projects and goals that remain unaccomplished, there is still time. If your original goals are not achievable, make new ones that ... come year-end ... will allow you to say “we did good”.

The holidays are also a time to recognize those around us. Recognize your employees, customers and vendors in a genuine way. Make sure they know that it is their business, and they make it go. Celebrate the year's successes and their individual contributions. Address, as well, the exciting personal and business improvements that will be made in the coming year.

This issue of *The Business Owner* offers tax guides to help you take control of your tax bill. Tax minimization can put real dollars in your pocket. Don't forget, a tax dollar saved is far more valuable than a new dollar of revenue or a dollar of expense eliminated (see “Which is More Valuable” in Nov/Dec 2003 issue). Many tax reduction strategies must be implemented before December 31, so get with it.

Finally, take a look at your litigation expenses over the past year. Did you get real value? If not, consider minimization strategies. Begin by reading the cover article in this issue.

Sincerely,

David L. Perkins, Jr.
Publisher and Editor

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MARKETING AND ADVERTISING

Tag Lines and Messages

What You Say Should Support Your Brand Vision

So you've developed a professional image in your logo and the style of your presentations, ads and web site. You use it consistently in all your communications. So, what is it that you are saying about your company?

Your brand message is the set of words that you use to communicate about your company and its products or services. A tag line that accompanies the logo can be important, but it's only one small piece of the total message. All your communications should convey the same message about your business and your products.

To develop a really effective brand strategy, you need to develop a clear set of messages that capture your brand promise, your business strategy and your core values. These must be known by all your employees and consistently conveyed to your customers and business associates. Most importantly, they must address the questions and concerns of your customers.

Tag Line

As with the logo, many companies try to develop a tag line that "says it all" — something that captures the essence of the entire company; something that is as memorable as those of the ever-present consumer brands that have been around for decades: "You're in good hands" (AllState Insurance); "The Real Thing" (Coca-Cola); and "Just Do It" (Nike).

It's a hard task to come up with something that is ageless. As a young company you can afford to try out some tag lines before you make a commitment to one. Choose something that is both appropriate and believable. Test it with your first customers. See if it sticks. See what customers say — they may come up with something better! Unlike changing the logo — which has a huge visual impact — modifying a tag line can be more subtle.

Beyond the Tag Line

The tag line is only a few words meant to be catchy and memorable. But what do you say in all your other communications — both written and oral? By developing a message platform you create a set of clear and consistent messages that underlie all your communications — presentations, print media, electronic communications and web site. The key elements of developing a message platform are:

- Understanding your fundamental business and core values and
- Understanding what's important to your customers.

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"The unexamined life is not worth living."

Socrates

Checklist for Drafting Your Arbitration Clause

There is no perfect alternative dispute resolution clause because not everyone wants the same thing. Here is a list of things for you and your attorney to think about. This checklist is not intended to be exhaustive. Consider the requirements of applicable law and consult other appropriate authorities.

1. **Mediation, Arbitration or Both?** Is your intent to avoid the court system all together? If so, you will want a binding clause. You may also want a two-step resolution process. First, stipulate that if the parties are unable to work out their differences on their own, they must attempt to mediate. Mediation can be swift and less expensive than arbitration, and both parties maintain control of the resolution. However, if resolution is not achieved via mediation, you may want your clause to stipulate that the parties will then submit to binding arbitration. The decision made by the arbitrator will be final.
2. **Simplicity.** We all want to avoid complicated agreements and clauses. However, simplicity can lead to dispute when the intent of the wording is unclear. For example, if an arbitration clause simply says, "The parties agree to submit any disputes arising from this agreement to final and binding arbitration," there are many issues left open. Which arbitration organization will be used? How will an arbitrator be selected and how many? What system of laws will be used by the arbitrator? Location? How will expenses be shared?
3. **Expenses.** A well-drafted arbitration clause will stipulate how expenses will be divided. While most choose to have the expenses divided equally, some expense items may not be divided. For example, if one party decides to have a court reporter transcribe the proceedings, should both parties pay? Also, if the plaintiff loses, should that party pay more of the expenses?
4. **Selection of Mediator, Arbitrator:** For mediation, a single mediator is typical. However, given the higher risk inherent in binding arbitration, some want more carefully crafted terms for selection of the arbitrator. For example, to select a single mediator or arbitrator, each party could select one.

The sole purpose of the two arbitrators would be to select who will mediate the case. Sometimes, to reduce the risk and impact of potentially having a "maverick" arbiter, a three-person panel might be desired. The third-chosen-by-the-first-two method works well here as well. Certainly, when multiple arbitrators are desired, an odd number makes more sense.

5. **Qualifications of Professionals:** Qualifications should be tailored for the type of dispute. If the agreement is to be contained in a purchase and sale agreement for a business, you may want an arbitrator to be an attorney or business broker/merger and acquisitions professional with a minimum of (fill in the number of years here) years of experience in transactions involving the purchase and sale of businesses. You may also want a mediator or arbitrator that has been trained and certified by one of the main certifying organizations, such as the American Arbitration Association.
6. **Discovery.** How much discovery will be allowed? In what form (depositions, interrogatories, requests to produce documents, requests to admit, requests for inspection or physical examination)? If discovery is to be allowed, for what period of time?
7. **Scheduling.** You may wish to provide for when the arbitration will occur, with reference to the completion of the selection of the mediator or arbitrator as well as any limit on the number of days that arbitration hearings will continue. This necessarily implies limits upon the amount of time each party will have to present direct testimony and limits on the amount of time for cross-examination.
8. **Privacy.** You may want to include a confidentiality provision, keeping confidential any dispute, any testimony, any documents produced and any outcome of the arbitrator. Don't forget to include a remedy for any violation of the confidentiality provision.
9. **Role of Arbitrators.** You may want to consider whether the arbitrators may also serve as mediators, trying to settle the dispute through settlement negotiations, or whether the role of the arbitrator will be strictly limited to deciding the dispute.
10. **Rules of Evidence.** It is taken as a given in most arbitration that the rules of evidence do not govern, and that the arbitrator has discretion to consider whatever evidence he wants. If you want a different result, say so in your arbitration agreement.
11. **Briefs.** If you want to file pre-hearing or post-hearing briefs, provide for them in the arbitration agreement. You may want to require that each party prepare an opening letter brief, no more than three pages long, setting forth the parties position at the outset of arbitration. You may also

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Arbitration Clause: It's Only Good if It's Binding and Enforceable

If you go to the trouble of crafting an arbitration clause and incorporating it into your agreements, you want it to be binding and enforceable on the parties. It needs to be able to withstand legal challenge. This can only be achieved when the clause is written and used correctly. Here are guidelines to which your ADR clauses should conform, or risk being thrown out as ineffective by the courts:

- **Knowledge and Agreement:** Make sure that any party you wish to be bound reads, understands and has the option to accept or decline your offer, good or service that requires agreement to the arbitration clause.
- **Give Something of Value:** At the time of agreement, provide the party something of value (consideration) for accepting your terms, such as goods, services or promises.
- **Neutrality:** Make sure that the clause is fair to both parties, in terms of time, cost and win-lose prospects.
- **Equally Binding:** Don't try to require the opposing party to utilize ADR while you retain the right to sue.

Are ADR Clauses Legal and Binding?

State and federal courts have consistently upheld arbitration

agreements that are fair, not discriminatory, and were agreed to fairly by adults of sound mind. For example, the Supreme Court ruled in *Circuit City Inc. v. Adams*, May 2001; held that employers may bind employees to an ADR agreement, as long as it is fair and equitable.

"Opt Out" Provisions

With the proliferation of Internet sales, companies struggle with consumer demand for speed and the company's desire to stipulate the terms under which a sale is made – such as with agreement that disputes will be resolved via ADR. To address this issue, companies are attempting to enforce such agreements through "I accept the terms" buttons on websites, and "opt out" clauses inserted in the terms of agreements included in packaging. The former requires the consumer, before purchase, to warrant that they have read and accepted the terms of sale (which might include an ADR agreement). The latter allows the customer time to "opt out" of the ADR clause (or return the product for a refund) if they wish not to accept the good with the ADR clause. Visit with your attorney before implementing one of these strategies, but it appears that the courts are upholding the validity of such agreements ... when they are fairly and properly written. □

Checklist for Drafting Your Arbitration Clause, continued from previous page

want to allow each party to submit briefs to the arbitrator(s) within (fill in the number of days here) days after the close of the arbitration hearings. Consider varying the briefs allowed ... depending upon the amount in controversy.

- 12. Decision format.** Do you want a decision announced orally at the close of the arbitration hearing? Written without explanation of the reasoning? Written with explanation of reasoning?
- 13. Appeal-Enforcement.** Arbitration awards are generally thought to be final and binding. You should say this in your arbitration agreement. But be aware that courts may still get involved, for example, if one of the parties claims that the subject matter is outside the scope of the arbitration agreement (called 'substantive arbitrability'). Or, if a party claims 'procedural arbitrability,' the appropriate arbitration procedures were not followed. A well-drafted arbitration agreement will set forth the precise agreement of the parties on both substantive and procedural arbitrability.
- 14. Limit of Arbitrators Authority.** Most statutes allow a court to set aside an award if the arbitrator exceeds his powers. A well-drafted arbitration clause defines the powers of the arbitrator. For example, "The arbitrator shall have the authority to award compensatory damages." An award of punitive damages by an arbitrator, or an attempt by an arbitrator to issue an injunction, would undoubtedly exceed his authority under such a clause.

15. Choice of Law. Some parties want the clause to specify that the law of a particular legal jurisdiction will be followed. Unless the arbitration agreement clearly indicates that the arbitrator's judgment on the law of the jurisdiction shall be final and binding, such a clause invites a losing party to go to court to set aside the award because the arbitrator has misapplied the law. A well-drafted clause will identify the jurisdiction of law that will apply to the contract, and will indicate whether the arbitrator's judgment on questions of law shall be final and binding or subject to review in court.

16. Be Aware of Local Laws: Be aware of local peculiarities. For example, the Vermont Arbitration Act contains a significant "trap door" through which parties may fall if they are not careful. It provides that an agreement to arbitrate is not enforceable unless the parties sign a separate "Acknowledgement of Arbitration" drafted in a certain manner. Check your local laws.

17. Provisional Remedies. Unless your clause allows a party to seek immediate yet temporary and preliminary relief from the courts, such as attachment, garnishment, or injunctive relief, you may find that your arbitration clause gives the arbitrator exclusive remedy. So, consider whether you want your clause to allow provisional remedies from the courts while arbitration is pending. □

This article was adapted from one written by Gary H. Barnes of Downs, Rachlin & Martin.

Basics of Tax Planning

As an individual taxpayer and business owner you will often have options as to when and how to complete a taxable transaction. You have the right to choose the timing and method that results in the lowest tax liability. There is nothing wrong or illegal about tax planning or tax avoidance, as long as you don't use illegal means. Illegal means includes deceit, subterfuge or concealment in one or more of the following categories. Steering clear of these leaves quite a bit of room to maneuver.

- Failure to report income
- Claiming fictitious or improper deductions
- Improper allocation of income to a related taxpayer who is in a lower tax bracket

Every tax planning strategy is based upon structuring a transaction to accomplish one or more of the following often-overlapping goals:

A. Lower Taxable Income.

By lowering taxable income, one lowers the amount of taxes due. Many strategies to reduce taxable income will simply delay or defer the recognition of income. This alone is valuable, of course, given the time value of money. Other tactics include increasing tax-deductible expenses, moving income to entities that enjoy lower tax rates, or finding losses to offset investment gains. For more detail, see articles herein titled *Tax Planning for Businesses*, *Tax Planning for Individuals and Families*, and *Ways to Lower the Applicable Tax Rate*.

B. Claim All Available Tax Credits.

Tax credits are dollar for dollar reductions to your tax bill. Deductions are dollar for dollar reductions of your taxable income. There is a big difference. Tax credits are much more valuable than deductions because a \$100 credit reduces your tax bill by \$100, regardless of your tax bracket. In contrast, a deduction simply reduces your taxable income by the product of the deduction amount times the applicable tax rate. For example, if you are in the 33 percent tax bracket, a \$100 deduction will reduce your taxes by \$33. For a review of tax credits available, see articles herein titled *Tax Planning for Businesses* and *Tax Planning for Individuals and Families*.

C. Lower The Applicable Tax Rate.

Such strategies include the rationalization of taxable income between tax years in light of marginal tax rates; moving income to persons or entities that are taxed at lower rates; moving income into accounts that are non-taxable or tax deferred; or conducting transactions in a manner that qualifies for lower rates (such as long-term vs. short term capital gain rates). See also articles herein titled *Ways to Lower the Applicable Tax Rate*, *Tax Planning for Businesses* and *Tax Planning for Individuals and Families* for more detail.

D. Control The Effects Of The Alternative Minimum Tax (AMT).

The AMT was established in 1986 to ensure that higher income individuals and corporations pay at least a basic level of tax, regardless of the number of tax credits and deductions that they garner. It requires that federal income taxes be calculated by two separate and distinct methods — regular tax laws and AMT laws. You pay the higher of the two. C-corporations with annual revenues under \$5 million (and in some cases up to \$7.5 million) are exempt. Individual taxpayers that have incomes over \$75,000 face heightened risk of triggering AMT taxes. AMT tax rates are lower, such as 26 percent and 28 percent for individuals, but far fewer credits and deductions are allowed. For more information, see articles in this issue titled *Tax Planning for Businesses* and *Tax Planning for Individuals and Families*. □

About the Publisher

David L. Perkins, Jr. owns, writes, edits and publishes *The Business Owner*, the newsletter of choice for more than 25,000 business owner subscribers that are serious about building wealth through successful private business ownership.

Mr. Perkins draws editorial ideas and inspiration from his daily work as a merger and acquisitions consultant, where he has advised on more than 100 purchase/sale transactions involving both private and public companies. His M&A consulting firm is Vercor, which has six U.S. offices and a European affiliate office. Vercor specializes in sell-side representation of businesses valued between \$2 million and \$75 million (see www.VercorAdvisor.com).

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David L. Perkins, Jr. is the author of [A Concise Overview of Business Valuation](#) and co-author of [The Business Sale, An Owner's Most Perilous Expedition](#). Both may be purchased at www.TheBusinessOwner.com.

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"Every right comes with responsibility. Every opportunity comes with obligation. Every possession comes with duty."

John D. Rockefeller

Tax Planning for Businesses

As explained in the accompanying article titled *The Basics of Tax Planning*, every tax planning strategy is based on structuring transactions to accomplish one or more of the following often-overlapping goals:

- Lower current taxable income
- Claim all available tax credits
- Lower the applicable tax rate
- Control the effects of the alternative minimum tax (AMT)

Here is a list of suggestions for applying each to your business.

WAYS TO LOWER THE CURRENT TAXABLE INCOME OF YOUR BUSINESS

Maximize the Expenses Recognized In The Current Year.

Do this by paying (cash basis of accounting) or booking (accrual basis) expenses in the current year that might otherwise be recognized in future years. This is accomplished by incurring the expenditure before year-end by issuing a purchase order or paying expenses such as rent, insurance or taxes. Talk to your accountant about your particular situation.

Contribute to a Qualified Retirement Plan. Employer contributions to qualified retirement plans are tax deductible. Qualified plans generally mean employer sponsored pension, profit sharing or stock bonus plans that meet requirements of Internal Revenue Code section 401(a), or an annuity that meets requirements of Internal Revenue Code section 404(a)(2). There are three types of qualified plans: defined contribution, defined benefit and hybrid. If you do not have a qualified plan in place, talk to an attorney, accountant or financial advisor. In some cases, a plan must be in place before year end to be fully utilized the following year.

Increase or Accelerate Charitable Contributions. Donating to a worthy cause not only does good but can reduce your taxable income. Advancing next year's payment might be considered as well, as many nonprofit organizations now accept credit cards. The charity will appreciate the earlier receipt of the money and you get a deduction. Empty your closets of old clothes, furniture and the like and donate them to a charity. Remember to get a receipt and figure out the fair market value of the goods you donate. If you're audited, no receipt means no deduction.

WAYS TO FIND, QUALIFY FOR AND CLAIM BUSINESS TAX CREDITS

A taxpayer can take a dollar off its tax bill for every tax credit dollar for which it qualifies! Obviously, it's an extremely powerful tool for tax reduction. Most federal tax credits currently available to small businesses, however, are very narrowly targeted to encourage you to take certain actions that lawmakers have deemed desirable. There are also a few credits designed to prevent double taxation and a few designed to encourage certain types of investments that are considered socially beneficial. The credits can be divided into four categories:

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Tax Planning for Individuals and Families

The income tax owed by individuals is calculated as follows:

+ Total Income	Line 1
- Deductions	Line 2
= Adjusted Gross Income	Line 3
- Itemized Deductions	Line 4
= Taxable Income	Line 5
- Tax Credits	Line 6
= Total Tax	Line 7

To reduce the total tax bill (i.e. the bottom line result of the above equation), one must do one or more of the following:

- Reduce total income as calculated by the IRS (line 1 above)
- Increase deductions (line 2 above)
- Increase itemized deductions (line 4 above)
- Increase tax credits (line 6 above)

Furthermore, as described in the accompanying article titled *The Basics of Tax Planning*, one must attempt to mitigate the effects of the alternative minimum tax (AMT).

Step 1: REDUCE TOTAL INCOME

One way to reduce your tax bill is to lower the amount of income that is subject to taxation. This notion may seem counterintuitive at first, but there are things that can be done to obtain income or income-like benefits that fall outside of the IRS's definition of income. Here are some ideas:

Defer Income. If delaying income to next year would result in a lower tax rate, or if you simply want to delay the payment of tax to obtain the use of the money for another year, consider ways to delay the receipt of the income. Watch out, however, for the strict rules that govern when income is earned, referred to as a "constructive receipt".

Increase Non-Taxable Income. Certain state and local bonds offer a yield that is free of federal tax and, if you live in the state or locality from which they were issued, free of state and local tax. U.S. Treasury bills, notes and bonds yield interest income that is exempt from state and local taxes. In addition, the tax benefit of these investments increase in value as your marginal tax rate rises.

Utilize Capital Losses. Capital losses, such as losses in investments in publicly traded stocks, may be used to offset capital gains dollar-for-dollar up to the amount of any gains realized on other investments. In addition, a limited amount of capital losses that exceed capital gains may be used as a deduction against ordinary income.

Select Investments that Generate Little or No Income. An alternative to current income is future income. Most publicly traded stocks pay few if any dividends and offer the potential for capital appreciation. Capital gains are not taxed until they are realized (sold). Some bonds may offer some deferral of income as well.

Move Money to Tax Sheltered Accounts. Income generated on investments held in retirement accounts such as IRA and 401(k) is

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Tax Planning for Businesses, continued from previous page

Credits for Certain Taxes. Credits are permitted to offset the sting of certain taxes, including FICA taxes on tips for food and beverage establishment employees, foreign taxes, a portion of prior alternative minimum tax (AMT) liability, and gasoline taxes paid by farmers or off-highway-vehicle users.

Activities that Benefit the Poor and Disadvantaged. There are a number of credits designed to encourage employment or investment that benefits certain groups: the welfare-to-work credit, the disabled access credit, the empowerment zone employment credit, the Indian employment credit, the low income housing credit, the credit for contributions to Community Development Corporations, and the work opportunity tax credit.

Credits for Activities that Benefit the Environment. Currently, the largest group of credits are those for investment in equipment or processes that save energy or protect the environment in some way: alternative fuels, qualified electric vehicles, reforestation, energy, alcohol fuel, enhanced oil recovery and renewable resource electricity production.

Credits for Certain other Investments. The smallest (and shrinking) group of credits relates to certain investments that are deemed socially beneficial: rehabilitation of old or historic

buildings, orphan drug programs and research and development.

WAYS TO LOWER THE APPLICABLE TAX RATE

There are a number of strategies for lowering the applicable tax rate. See the article in this issue of *The Business Owner* titled "Ways to Lower the Applicable Tax Rate."

WAYS TO CONTROL THE EFFECTS OF THE CORPORATE ALTERNATIVE MINIMUM TAX (AMT)

The corporate alternative minimum tax (AMT) applies to C-corporations only. It was established in 1986 and has been weakened by laws enacted in 1993 and 1997. Small corporations generally are exempted from the AMT if they had average gross receipts of less than \$5 million for the first three taxable-year periods beginning after December 31, 1993. If this is true, then a corporation will continue to qualify for the exemption as long as its average three year gross receipts do not exceed \$7.5 million. Studies have shown that many small corporations are unaware of their exemption to AMT and erroneously pay tax under the AMT. The first step to minimizing the effects of the AMT is to find out if you are exempt. If not, consult your tax advisor. The corporate AMT calculations are complex. □

Tax Planning for Individuals and Families, continued from previous page

not taxable. In many cases, the contribution amounts may be deductible as well.

Home Sale Exclusion. Home sales offer a tremendous opportunity for tax-free income. With the new laws, you don't have to reinvest the money and you can claim the exclusion every two years!

Step 2: INCREASE REGULAR DEDUCTIONS

The second step in lowering individual taxes is to maximize the allowable "regular" deductions. These deductions should not be confused with itemized deductions which appear on schedule A. These "regular" deductions can be made whether or not you itemize. In addition, don't confuse the term deductions with exemptions. Exemptions are a completely different type of deduction and are independent of the decision of whether to itemize or not. Below is a list of the allowable "regular" deductions:

Retirement Account Contributions. If you are not covered by a retirement plan at work, or if you are but earn less than the phase out amount, you may contribute up to \$3,000 for the tax year 2004 (to be contributed by April 15, 2005) and deduct the entire amount. Earnings within the account also accrue tax-free.

Student Loan Interest. If you paid interest on a student loan you may be eligible to deduct some or all of it, whether the loan was for your own education, your spouse's, or that of a child or anyone else who was your dependent at the time the education was undertaken.

Medical Savings Account (MSA). Individuals who are self employed or who participate in a health insurance plan of an employer that averaged no more than 50 employees during the two preceding years may create a deductible Archer MSA account. This account may be used as a vehicle for deducting from taxes a portion of the funds that go towards meeting the medical expense deductible of the insurance plan.

Health Insurance Payments. If you are self-employed and pay medical insurance premiums for you and your family, you may be able to deduct 60 percent of the premium cost. If you choose to itemize, you can also deduct any amount not deducted here along with other unreimbursed medical costs ... subject to the 7.5 percent of AGI limitation.

Moving Expenses. To qualify, your new place of employment must be at least 50 miles farther from your old residence than

your former job was from your old residence. There are also stipulations for how long you were employed at your old employer and how long you remain employed at your new employer. Consult your tax advisor.

Alimony Payments. A tax-deductible expense to the payer in the year that the expense is paid. Alimony payments are considered taxable income to the payee in the year that such payments are received.

Education Expenses. Up to \$4,000 ('04 and '05) may be deducted for "qualified education expenses" for post-high school academic or vocational courses.

Step 3: INCREASE ITEMIZED DEDUCTIONS

Every taxpayer may take the standard deduction, \$4,850 in 2004. However, if your itemized deductions total a higher number you will want to itemize and use the higher number. The only way to find out is to go through the exercise. In some cases, however, you don't have a choice. For example, if your filing status is married filing separate and your spouse itemizes, then you must also itemize. Some itemized deductions can only be taken if they exceed certain levels.

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Tax Planning for Individuals and Families, continued from previous page

Miscellaneous itemized deductions such as tax preparation fees, employee expenses and investment costs can be taken only if they exceed 2 percent of your AGI. If your itemized deductions in any given year don't exceed the standard deduction, consider trying to combine payment of these types of expenses into one year so you can exceed the limit and take the deduction every-other-year.

Home Mortgage Interest, Points and Investment Interest. Home mortgage and investment interest are the only types of interest expense that are deductible for individuals. The IRS definition of "home," referred to as a "qualified residence," can include condominiums, cooperatives, mobile homes, boats, recreational vehicles and time-share units. The home must simply have basic living and sleeping accommodations. Interest incurred on debt associated with the ownership of a second residence may be deductible as well. Investment interest expense is only deductible to the extent of net investment income. Points paid on a primary residence may be deducted either in the year paid or over the life of the loan. Points paid for a second residence must be amortized over the life of the loan.

State and Local Taxes, Real Estate Taxes and Personal Property Tax. Subject to phase out for high-income individuals, state, local, personal and real property tax costs may be deducted in the year they are paid. Individuals should consider the timing of actual payment of such taxes in light of marginal tax rates.

Charitable Contributions. Donating to a worthy cause not only does good but it can reduce your taxable income. Advancing next year's payment might be considered, as many nonprofit organizations now accept credit cards. The charity will appreciate the earlier receipt of the money and you get a deduction. Empty your closets of old clothes, furniture and the like and donate them to a charity. Remember to get a receipt and figure out the fair market value of the goods you donate. If you're audited, no receipt means no deduction. Also, a powerful way to reduce taxes and maximize deductions is to donate appreciated assets. Doing so will save you

from owing tax on the capital gain and you will still be able to deduct the full, appreciated value of the stock.

Unreimbursed Health, Medical and Dental Expenses. If you own a company but don't offer a health insurance plan, consider adding one. As long as the plan has a rational basis for any discrimination (i.e. excluding any employees), then your company can deduct the expense and you and your dependents may be able to receive the benefits tax-free or on a tax-advantaged basis.

Casualty, Theft or Disaster Loss. If you suffer from a loss of property due to theft or a sudden, unexpected or unusual event, you may be able to claim a loss equal to the lesser of your adjusted basis or fair market value, net of any reimbursement from an insurance company. Such expenses may be deducted only to the extent that they exceed 10 percent of AGI. If you suffer loss to personal or business property resulting from a disaster occurring in an area that has been designated a disaster area entitled to federal assistance, you have the added option to deduct the loss on the prior year's tax return, which serves to accelerate the benefit.

Education Expenses and Miscellaneous Deductions. To the extent that education expenses are not available for a regular deduction or credit, they may be deductible as an itemized expense if required by your employer. These expenses are only deductible to the extent that they, along with all other miscellaneous itemized expenses, exceed 2 percent of AGI. Deductible miscellaneous expenses are mostly related to expenses incurred in the pursuit of taxable income such as legal fees, investment fees, uniforms, professional subscriptions, job search costs, union dues, professional association membership and unreimbursed expenses incurred on the job.

Step 4: INCREASE TAX CREDITS

Tax credits are dollar for dollar reductions to your tax bill. Deductions are dollar for dollar reductions of your taxable income. There is a big difference. Tax credits are much more valuable than deductions because a \$100 credit reduces your tax bill by \$100,

regardless of your tax bracket. In contrast, a \$100 deduction simply reduces your taxable income by \$100 and your tax bill by \$25 (if you are in the 25% percent tax bracket). Use this list as you begin to assess the credits that might be available to you.

Child Tax Credit. Every individual or family qualifies for a credit for each dependent child, stepchild, grandchild or foster child under the age of 17.

Adoption Tax Credit. Adoption expenses not reimbursed by your employer may be deducted, up to certain limits..

Dependent Care Expense Credit. If you incur child care expenses so you or, if married, you and your spouse can go to work, you may be able to deduct 20 percent of the expense.

Elderly and Disabled. A credit is available to certain low-income individuals 65 years of age or older, and to individuals under age 65 if they are retired with a permanent and total disability and have taxable disability income from a public or private employer. The income limits are low.

Elective Contributions to Retirement Plans. Low-income earners may take as a tax credit up to 50 percent of elective contributions to an employer sponsored retirement plan or IRA. Phase-out provisions begin at low income levels.

Hope Scholarship Credit. If you, your spouse or a dependent was enrolled at least half-time in the first or second year of college, you may be able to deduct qualified expenses incurred.

Lifetime Learning Credit. For those who already have two years of college and can't qualify for the Hope credit, the Lifetime Learning Credit provides a smaller tax benefit for an unlimited number of years in which you take postsecondary educational courses. You can claim the credit for yourself, your spouse if filing jointly, and for any dependents for whom you claim an exemption on your tax return.

Social Security Tax. If you changed jobs in 2004 and expect to gross more than \$87,900, you may have paid too much social security tax. You're liable for social security tax only on the \$87,900, but both employers are required to pay their shares. If you paid too much, you can get it back with a tax credit against your income tax liability.

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Tax Planning for Individuals and Families, continued from previous page

Step 5: TAME THE AFFECTS OF THE AMT

Although the alternative minimum tax (AMT) was intended to apply to high-income taxpayers, especially those that take advantage of tax loopholes, it can also apply to middle-income taxpayers who have not engaged in some tax planning. In fact, the AMT is hitting more and more taxpayers each year. The only deductions allowed under the AMT are for mortgage interest and charitable contributions. Therefore, even though the AMT doesn't look so fierce when you look at its tax rates, more income is taxed so it always produces a higher tax bill. To figure out if you're in the AMT you must calculate your taxes under the AMT system and under the regular income tax system. You pay the higher of the two.

State and Local Taxes. State, local, and other taxes paid and claimed as itemized deductions are not allowed as deductions for AMT purposes. As such, persons that live in high tax states have more trouble with the AMT. One strategy is attempting to pay state and local taxes in years when you won't face the AMT, because otherwise they will give you absolutely no tax relief. Keep in mind that real property taxes cannot be deducted until they are actually paid to the taxing authority. So, if you pay property taxes through a mortgage lender, the lender's cooperation in paying the taxes before a due date will be required to achieve your objective. Also, even when a delay in payment of property taxes could incur penalties, the tax savings could be well worth it.

Medical Expenses. Medical expenses can be deducted for AMT purposes but they must exceed 10 percent of adjusted gross income, compared to 7.5 percent as a regular itemized deduction. Thus, as with the deduction for state and local taxes, you might be able to time medical deductions to maximize

medical expenses in non-AMT years. Medical problems and expenses aren't something that you can usually plan, but you do have a bit of control over when you pay medical bills. So, think about the acceleration and deferral methods that we discussed above when dealing with medical expense payments.

Miscellaneous Itemized Deductions. Miscellaneous itemized deductions that are greater than 2 percent of your adjusted gross income are deductible for normal tax purposes, but they are not deductible for AMT purposes. These expenses include unreimbursed employee business expenses, expenses for the production of income, tax return preparation expenses, and many others too numerous to mention here. And, you do have much more control over these expenses. So, if they are large, make sure to do your AMT planning so you don't lose the tax benefit of these expenses.

Capital Gains. Investment gains are taxed under the AMT at the regular and more desirable capital gains rates, but large amounts of capital gain income could trigger AMT taxes. If you've done well with your long-term investments and are looking to liquidate, review your AMT situation and determine what impact such a sale would have. You might be able to make decisions that will minimize your AMT taxes, such as selling only part of the investment in each of two or three tax years.

Avoid Private-Activity Bonds. There is a certain kind of municipal bond called a private activity bond that loses its tax-free status under AMT. Private activity bonds are issued by private companies for projects that benefit the public, such as airports, seaports and stadiums. If you're worried about being bumped into the AMT or you're in it, you will probably want to avoid private-activity bonds. □

Ways to Lower the Applicable Tax Rate

Strategies for lowering the rate at which income is taxed include the rationalization of taxable income between tax years in light of marginal tax rates, moving income to persons or entities that are taxed at lower levels, moving income into accounts that are non-taxable or tax deferred, and conducting transactions in a manner that qualifies for lower rates (such as long-term vs. short term capital gain rates).

Allocate Income Among Years to Avoid Higher Tax Brackets. This technique, known as Marginal Tax Rate Analysis, is simply the process of managing income levels between years in an effort to eliminate or reduce the amount of income that is taxed at higher rates.

Hold Appreciated Investments Long Enough to Qualify for Long-Term Gains Treatment. Investments held for less than one year are taxed at ordinary income tax

rates, which are higher than capital gains rates. Investments held for more than a year are taxed at long-term capital gain rates, which are lower at all income levels. A rate that is even lower may be available for transactions occurring after December 31, 2000, if the asset is held more than five years.

Make Charitable Contributions with Appreciated Assets Instead of Cash.

Doing so will save you from owing tax on the capital gain and you will still be able to deduct the full, appreciated value of the stock (if you have held the investment more than a year).

Gift Money, Assets or Investments to Entities that Enjoy Lower Tax Rates.

Any person can give \$11,000 in cash or property per year to any person or persons, with no income tax or gift consequence to either party. This tax code

provision is most often used to move assets to children and grandchildren because the amount transferred will not be subject to estate and/or generation-skipping tax. It is an effective tool for moving income generating assets to persons that enjoy lower tax rates. As long as the gift is \$11,000 or under, there is no reporting requirement. Additionally, one spouse may give \$22,000 and as long as the amount is reported and both spouses consent on the return, the amount will not be taxable.

Shift Income to Entities Domiciled in Cities, States or Countries with Lower Overall Tax Rates.

City, County, State and Country taxes vary significantly. Businesses that have multiple locations of operation and/or a non-local client base, and even individuals, should consider how taxes could be reduced if income could be attributed to another locale. □

Ask the Expert: Age-Based Discrimination Laws

Michael J. Lissau, Esq.
Labor and Employment Law Specialist
Partner-Hall, Estill, Hardwick, Gable, Golden & Nelson

Question 1: My business has less than 20 employees. Do I need to worry about age based discriminate laws?

Answer: Federal Age Discrimination in Employment Act (ADEA) applies only to employers that have "twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year." However, most States have their own laws governing discrimination. So, you need to be familiar with the laws of the state(s) in which you operate.

Question 2: What should I do to 'steer clear' of age-based discrimination lawsuit risks?

Answer:

- A. Understand the federal and state laws under which you operate.
- B. Avoid making implied promises of job security in recruiting materials, personnel policy manuals and handbooks.
- C. Make sure your employees who are responsible for making offers of employment do not make statements that can be construed as guaranteeing employment.
- D. Avoid statements during disciplinary action, hiring procedures, or other discussions such as "I don't think you can do the job like you used to"; "We are going to get some new/fresh faces in here"; and "we would like to hire someone who is going to be here a long time".
- E. Ensure that employees over 40 receive the same discipline as those under 40 for like or similar conduct.
- F. Verify that pay rates for equal jobs are comparable with the various age groups within the company.
- G. Closely monitor all policies and procedures as it relates to discipline, promotions, pay increases and interviews to make sure they are administered in a fair and nondiscriminatory manner.

Question 3: Is there some standard that the court uses to gauge whether age-based discrimination has occurred?

Answer: The Supreme Court of the United States set forth the framework for establishing a case of intentional age



discrimination. The Plaintiff, who claims that he/she was not hired because of their age, must demonstrate:

1. The Plaintiff is a member of a protected age group.
2. The Plaintiff was qualified for the position in question.
3. Despite being qualified, the Plaintiff's employment was adversely affected; and
4. Someone younger, with similar or lesser qualifications, replaced him.

If the plaintiff successfully establishes elements 1 through 4, the burden then shifts to the employer to articulate a legitimate, nondiscriminatory reason for the adverse employment action. The plaintiff will then have the ultimate burden to establish that the employer's reasons are "pretext" for discrimination (i.e. not worthy of belief).

Question 4: If a suit is filed against my business, what should they do first?

Answer: Contact your attorney immediately.

Question 5: If I am found to have violated the ADEA (Age Discrimination in Employment Act), what penalties can I expect?

Answer: The penalties may be any one or more of the following:

- Require managers to sign a statement regarding the ADEA and undergo EEOC training.
- Provide neutral and fair employment references to a prevailing plaintiff.
- Payment to employee of compensation lost because of age discrimination ("back pay").
- Reinstatement.
- Liquidated damages of double the back pay award.
- Payment of plaintiff's attorney's fees, in full or in part.

Costs of defending an ADEA case vary dramatically depending on the underlying facts, number of individuals involved in the case, whether the EEOC is a party to the action, whether the case is before a judge or jury, whether the case goes through appeal, and the attorney representing the Plaintiff. The costs of these cases can range between \$45,000 (no jury) to \$150,000 (and higher). □

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Tag Lines and Messages: What You Say Should Support Your Brand Vision, continued from page 3

The first step is to look inside your company to identify the messages that best communicate what your company is about. The brand is already there. It lies in the staff, and their expertise and conduct; in the product and its qualities; in the values that the owners and management imbue and exemplify. It is a question of finding that essence and putting it into words.

The second step is to put yourself in your customer's shoes. Find out what questions they ask, what their primary concerns are, what attracts them to your product or service. Use their input to craft a message that speaks to what's important to them.

Whether you agree with them or not, you need to take people's interpretations, beliefs, opinions, behaviors and emotions into account when developing messages. Words have many connotations. How they are perceived depends on the person reading or hearing them, the context in which they are presented, and any subliminal messages that accompany them. As you develop messages, have people with divergent backgrounds and points of view read and analyze the words. Identify and avoid words with negative connotations.

The message platform supports promotion of both the company and its products and services. In crafting the messages specifically aimed at attracting customers, there are several important questions to answer before you start to write.

What's Most Important To Communicate?

Walk a trade-show floor and count how many booths make obvious their products or services and why you should buy them. Companies are often guilty of creating messages that only they understand. They are so enmeshed in the details of their product and service offerings that they create messages that only make sense to them, not to prospects. Technology companies are most guilty of this. Others try to convey everything there is to know about a product rather than the essentials. A customer wants to know the benefits of a product — how it will improve his life.

What's Relevant? What's NOT Relevant?

Are you talking about product features that really resonate with your audience? In the early days of the personal color printer business, long before digital cameras, manufacturers hyped resolution and number of colors. They showed detailed photographic images in their brochures and at trade shows, when all people wanted to know was how fast the printers could print.

As with your top-level messages, find out what's most important to your customers. Distill your message down to the key points that develop a potential customer's interest in your product and that encourage him to buy.

What's Unique?

Unless you want to sell a commodity, you need to differentiate your offering from the rest of the market. You need to make your message stand out from the noise. Maybe you really do have a better mouse trap, but is that clear from your messages?

Maybe your product is similar to competitors but you have outstanding service. Does your message convince your audience that that is important? Maybe you have a really novel new product. Can you persuade customers that they need to try it?

What's Believable?

This one is critical. If you put together a great advertising campaign with slogans, images and a brand promise, you better be able to deliver. Does your mouse trap really work better? Do you consistently live up to your promise of better service? Is your new product really something that customers will want to repeatedly buy? There are many examples of companies that have not lived up to their advertising messages. This is the worst thing a company can do. Building customer expectations and then not meeting them destroys the trust required to build brand loyalty.

This article is the fourth of a nine-part article series on branding called *The ABC's of Small Business Marketing*. Coverage will include the natural offshoots of branding: marketing, advertising and selling.

May-June 2004 Issue: *Your Marketing Message: Back to the Drawing Board*

July-August 2004: *Avoid Marketing Mayhem: Establishing Your Brand Vision*

Sept-Oct 2004 Issue: *Logo and Look: Selecting the Visual Elements that Support Your Brand Vision*

> This Issue: *Tag Lines and Messages: What You Say Should Support Your Brand Vision*

Jan-Feb '05 Issue: *Guided Missile Marketing: Selecting Mediums with Maximum Payload*

Mar-April '05 Issue: *Marketing for Dummies? Build in Quality Control*

May-June '05 Issue: *Master Your Marketing: Monitoring and Feedback Enable Continuous Improvement*

July-Aug '05 Issue: *Creative Creatures: Working with Marketing, PR and Ad Professionals*

Sept-Oct '05 Issue: *Win the Marketing Game: Be Proactive or Perish* □

Jean Wilcox and Jane Cameron contributed their expertise to this article series. They are partners of CattleLogos Brand Management Systems, LLC and co-authored Abullard's ABC's of Branding.

**"Don't be afraid to go out on a limb.
That's where the fruit is. "**

H. Jackson Browne

Alternative Dispute Resolution (ADR), continued from cover

As with any initiative, the first step is to create awareness and make a plan. To reduce legal expenses, begin with the following:

- *How big is the problem?* Estimate historical dispute costs. Include direct (legal fees, settlement fees, fines) and indirect costs (management time and energy spent, lost profit, damage to morale or image).
- *Awareness.* Educate all managers and employees on the cost of disputes (determined in step 1), and obtain commitment that something should be done. *Note:* Employee buy-in tends to be stronger when employees have a stake in the overall profit of the company.
- *Assessment of Solution Alternatives:* Appoint an employee to obtain ideas for reducing dispute expenses. Ideas come from other companies, articles, reports and experts. Have the ideas presented to the key managers and employees.
- *Plan Development:* As a group, develop a plan for dispute expense minimization. Take care to assure each key manager and employee feels a part of the process and a meaningful contribution. Put the plan in writing and have all contributors initial their support.
- *Results Monitoring and Plan Review:* Progress reports are not only a valuable means for improving the plan and making it more and more successful, but as a means for keeping the initiative fresh in the minds of those from whom success depends.

Dispute Avoidance

Studies show that company culture has a substantial impact on dispute frequency and cost. Cultures that are competitive, aggressive, vindictive and prideful tend to have the most disputes and highest cost per dispute. Recognize this, and then develop a culture that strives to avoid disputes and, when grievances arise, minimize the expense.

Also, by tracking how and where disputes arise, root causes may be identified. Are disputes arising regularly with a particular product or service? A particular contract? Employee? Division? When a pattern is discovered, action may be taken to eradicate the problem at its roots.

Early Dispute Detection and Resolution

Detect "hot spots" and deal with them before they're ablaze. The first step is for everyone to understand that early detection is important. Next, develop a culture that supports and rewards the voicing of problems at an early stage and, when disputes arise, promotes open expression and dialogue. Conflicts can best be resolved by demonstrating a genuine interest in understanding and addressing the issue while resolving the problem in a manner that maintains healthy relationships and minimizes relationship damage.

Mediation

If the attempts to directly resolve differences fail, assistance may be sought in an attempt to avoid the court system. Facilitated dispute resolution is called mediation. As the court system has become slow, expensive, adversarial and unpredictable, mediation has exploded in popularity, usage and sophistication. Many attorneys regularly mediate, and there are tens of thousands of trained professional mediators in the U.S. (see, for example, www.mediate.com). Mediation is typically non-binding. The oft-cited benefits of mediation, as opposed to court adjudicated disputes, are:

- Swifter Resolution
- Lower Overall Cost
- Confidential
- Less Adversarial
- Each Party Maintains Control of Settlement

The most important characteristic of mediation is that it leaves the settlement decision in the hands of the opposing parties, who work out the terms of settlement themselves ... with the aid of a mediator. In this way, the parties each

have little risk as they utilize mediation in an attempt to reach a resolution. However, this leaves open the possibility that the parties never reach an agreement, despite the assistance.

Arbitration

Arbitration is a settlement means that is more like a traditional court with a "judge" (arbitrator) who reviews the facts, hears the arguments and then issues an award. This court system alternative is private and guarantees that a settlement will be reached, as the arbitrator's job is to provide the terms of settlement. However, for the ruling to be binding, the parties must agree to such or be contractually bound.

Critics of arbitration say that it can have many of the undesirable characteristics of the court system – slow, in-depth discovery, high cost and an adversarial nature. Most studies show, however, that it is much less so. In addition, one of the substantial benefits is that it is private.

Binding arbitration is truly a substitute for the court system. It offers many of the same benefits of mediation (listed above), but the parties DO cede control of the settlement to the arbitrator. Why cede control of the settlement terms? Because, if the dispute goes to court the parties will lose control of the settlement terms as well.

For an arbitration ruling to be binding, the parties must have agreed in advance to put resolution in the hands of an arbitrator. When this occurs, the arbiter's ruling is final. If either party tries to go to the courts with the same case, the opposition could produce the arbitrator's ruling and the court would usually consider it as the final resolution of the case. Also, if a party fails to adhere to the terms of the arbiters ruling, the other may present such in a court of law and obtain judicial enforcement.

To be clear, either party to an arbitration may appeal the arbitrator's decision in a court of law, however, the court will rarely change the arbitrator's findings of fact, rather simply review whether the arbitrator was guilty of malfeasance; exceeded the limits of his or her authority; or whether the award conflicts with prevailing law.

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New Tax Laws Enacted in 2004

2004 was once again an eventful year for tax legislation. The Working Families Tax Relief Act of 2004 was signed into law in September, and the American Jobs Creation Act of 2004 was on the President's desk awaiting signature as this issue was being printed. Here is a summary of the most significant provisions as they relate to you, the owner of a private business:

- **Manufacturers ... and certain other companies:** Manufacturers engaged in "domestic production" will receive a new tax break beginning in 2005. It comes in the form of a tax deduction equal to 3% of manufacturing income in 2005 and 2006; 6% in 2007, 2008 and 2009; and 9% in 2010 and beyond. The definition of manufacturing is very broad and includes publishers, oil and gas production companies, software producers, farmers, meat processing companies, construction companies, architecture and engineering. See your tax advisor to determine if you qualify.
- **SUV deduction ... "loophole" reduced:** Automobiles that weigh more than 6,000 lbs have been exempt from strict limits on section 179 expensing. This enabled businesses to deduct up to the full cost of such "SUVs" in the year of purchase. The new law caps – beginning the day President Bush signs the American Jobs Creation Act of 2004 into law – section 179 expensing at \$25,000 for vehicles that weight less than 14,000 lbs but more than 6,000. For vehicles that weight less than 6,000 lbs., the cap remains at \$2,960 (not including bonus depreciation, which expires December 31, 2004).
- **Commercial Real Estate Investors:** Improvements made by lessor or lessee before January 1, 2006 to the interior of non-residential real property more than 3 years after the building was placed in service may be depreciated over a 15 year life (straight line) rather than the regular 39 year requirement. Such expenditures also become eligible for first year bonus depreciation.
- **Individuals in states with no income tax:** Individual taxpayers may – in 2004 and 2005 – deduct state and local sales taxes on their federal tax returns. More particularly, individual taxpayers

may choose whether to deduct state and local sales taxes OR state and local income taxes (but not both). This provision requires the taxpayer to itemize (as opposed to taking the standard deduction), and will primarily benefit residents of states that do not have a state income tax such as Texas, Florida, Washington and South Dakota.

Note 1: If you didn't keep all your receipts in 2004 and/or don't want to tally up all the sales tax that you paid (who would?), the IRS will provide you with estimation tables.

AMT: Sorry, but this potential windfall might blow you straight into the AMT trap as this provision does not allow the deduction of state and local income tax for alternative minimum tax (AMT) purposes.

Bonus Depreciation Expiring: The special 50% bonus depreciation allowance expires December 31, 2004. If you are considering making capital expenditures in the near future, talk to your tax advisor about any potential benefit of meeting the year-end deadline. Remember, to qualify for additional depreciation amounts under the bonus provision, assets must be purchased and placed in service on or before December 31, 2004. □

This and That

'Red Tape' in the United States, World

A recent report extensively analyzed the amount of "red tape" by country. The *Doing Business Report* analyzed how regulation and legal systems in 145 countries affect entrepreneurs' ability to start and operate businesses. The criteria included the time, bureaucratic steps and cost to register companies and property with government; obtain credit, hire and fire workers; and protect investors. The United States ranked a surprising second, just behind New Zealand — the easiest place to start a business. Not surprisingly, the report found that countries with less burden have higher economic growth.

Alternative Dispute Resolution (ADR), continued from previous page

A Software Solution for Everything

An interesting new development is web-based mediation tools. They orchestrate dialogue and settlement negotiation management. Sites include clicknsettle.com, settleonline.com and cybersettle.com. Their niche is lower dollar amount disputes.

Arbitration Clauses in Contracts

Mediation and arbitration clauses have become more and more popular in legal agreements. For example, parties entering into an agreement – whether to lease property, contract for services or enter into a partnership – often agree (in writing) that if a dispute arises, a certain resolution protocol will be followed. The clause may be "soft," such as stipulating that the parties will attempt to resolve the dispute via mediation (before the court system is used). The clause may be "hard," stipulating that the parties will use mediation and then, if a settlement is not reached, binding arbitration. Typically, the language will stipulate how a particular mediator or arbitrator will be selected,

how costs will be shared, and which "tribunal" will be used. (See accompanying article titled "Drafting an Arbitration Clause.")

ADR "Tribunals"

There are many ADR "tribunals," which promulgate rules for mediation and arbitration and provide administrative support for the same. A few of the more prominent are the International Centre for Settlement of Investment Disputes (ICSID), the International Chamber of Commerce (ICC), the American Arbitration Association (AAA), and the London Court of International Arbitration (LCIA).

ADR agreements typically bind the parties to a particular resolution methodology or certain tribunal, in the event of a dispute. □

Lawrence Yadon, an attorney-mediator and founder of Mediation Dynamics, contributed to this article. Mediation Dynamics provides arbitration, mediation and related services to businesses and individuals. Larry can be reached at Larry@MediationDynamicsUSA.com or 918-521-9257.

2004 Tax Information of Interest

Updated as per new tax laws enacted in September and October of 2004!

PERSONAL EXEMPTION	\$3,100 per person (none if filing as a dependent)
EXCEPTION PHASEOUT	Starts at \$214,050 MFJ, \$107,025 MFS, \$142,700 S, \$178,350 H of H
MAXIMUM SALARY DEFERRALS	\$13,000 for 401(k), 403(b), 501(c), 457 plans, \$16,000 if 50 or older; \$9,000 for SIMPLE, \$10,500 if 50 or older
MAXIMUM IRA CONTRIBUTION	\$3,000 (Regular or Roth), \$3,500 if age 50 or over
STANDARD MILEAGE RATES	Business: 37.5¢ Charity: 14¢ Medical/Moving: 14¢
ITEMIZED DEDUCTION PHASEOUT	Starts at AGI over \$142,700 (MFJ, H of H, S), \$71,350 (MFS)
SOCIAL SECURITY	7.65% (6.2% SS + 1.45% medicare). SS levied on first \$87,900 in wages only (\$5,450 max. SS paid by any individual). Household help: SS tax levied only after \$1,500 paid.
KIDDIE TAX (Children under 14)	First \$800 not taxed; \$800 to \$1,600 at child's rate; over \$1,600 at parent's rate.
FOREIGN INCOME EXCLUSION	\$80,000
SECTION 179 LIMIT	\$102,000 max aggregate, less phase out as total 179 property placed in '04 exceeds \$410,000. (Available in '05 as well).
BUSINESS DEPRECIATION "BONUS"	50% (Expires 12-31-04!)
CAPITAL GAINS RATES*	Assets held 1 year or less: taxed at ordinary income rates Assets held more than 1 year: • 15% for taxpayers in brackets higher than 15% • 5% for taxpayers in 15% or lower tax bracket
*Non-collectables ("collectables" are taxed at 28%)	
CHILD TAX CREDIT	\$1,000 for each under age 17 at YE (subject to phaseouts at higher income levels)
AMT RATES	26% of income up to \$175,000; 28% thereafter
AMT EXEMPTION	\$58,000 MFJ; \$40,250 S
DIVIDEND INCOME	5% for 10% and 15% income tax rate payers; 15% for taxpayers in brackets higher than 15%
ANNUAL GIFT EXCLUSION	\$11,000
RETIREMENT PLAN WITHDRAWS MANDATORY	Age 70 1/2
HOME SALE EXCLUSION	\$250,000 (s), \$500,000 (MFJ)

ESTATES AND TRUSTS

If Taxable Income Is:	The Tax Is:
Not Over \$1,950	15% of the taxable income
Over \$1,950 but not over \$4,600	\$292.50 plus 25% of excess over \$1,950
Over \$4,600 but not over \$7,000	\$955 plus 28% of the excess over \$4,600
Over \$7,000 but not over \$9,550	\$1,627 plus 33% of the excess over \$7,000
Over \$9,550	\$2,468.50 plus 35% of the excess over \$9,550

MARRIED FILING JOINT/SURVIVING SPOUSE

If Taxable Income Is:	The Tax Is:
Not Over \$14,300	10% of the taxable income
Over \$14,300 but not over \$58,100	\$1,430 plus 15% of excess over \$14,300
Over \$58,100 but not over \$117,250	\$8,000 plus 25% of the excess over \$58,100
Over \$117,250 but not over \$178,650	\$22,787.50 plus 28% of the excess over \$117,250
Over \$178,650 but not over \$319,100	\$39,979.50 plus 33% of the excess over \$178,650
Over \$319,100	\$86,328 plus 35% of the excess over \$319,100

Standard deduction: \$9,700 (+\$950 if age 65+ or blind; +\$950 for each spouse over 64)

Standard deduction (SD) for dependents is the greater of \$800 or earned income plus \$250 (not to exceed the SD for dependent's filing status)

HEAD OF HOUSEHOLD

If Taxable Income Is:	The Tax Is:
Not Over \$10,200	10% of the taxable income
Over \$10,200 but not over \$38,900	\$1,020 plus 15% of excess over \$10,200
Over \$38,900 but not over \$100,500	\$5,325 plus 25% of the excess over \$38,900
Over \$100,500 but not over \$162,700	\$20,725 plus 28% of the excess over \$100,500
Over \$162,700 but not over \$319,100	\$38,141 plus 33% of the excess over \$162,700
Over \$319,100	\$89,753 plus 35% of the excess over \$319,100

Standard deduction: \$7,150 (+\$1,200 if age 65+ or blind)

Standard deduction (SD) for dependents is the greater of \$800 or earned income plus \$250 (not to exceed the SD for dependent's filing status)

SINGLE

If Taxable Income Is:	The Tax Is:
Not Over \$7,150	10% of the taxable income
Over \$7,150 but not over \$29,050	\$715 plus 15% of excess over \$7,100
Over \$29,050 but not over \$70,350	\$4,000 plus 25% of the excess over \$29,050
Over \$70,350 but not over \$146,750	\$14,325 plus 28% of the excess over \$70,350
Over \$146,750 but not over \$319,100	\$35,717 plus 33% of the excess over \$146,750
Over \$319,100	\$92,592.50 plus 35% of the excess over \$319,100

Standard deduction: \$4,850 (+\$1,200 if age 65+ or blind), \$800 for dependent

Standard deduction (SD) for dependents is the greater of \$800 or earned income plus \$250 (not to exceed the SD for dependent's filing status)

MARRIED FILING SEPARATE RETURNS

If Taxable Income Is:	The Tax Is:
Not Over \$7,150	10% of the taxable income
Over \$7,150 but not over \$29,050	\$715 plus 15% of excess over \$7,150
Over \$29,050 but not over \$58,625	\$4,000 plus 25% of the excess over \$29,050
Over \$58,625 but not over \$89,325	\$11,393.75 plus 28% of the excess over \$58,625
Over \$89,325 but not over \$159,550	\$19,989.75 plus 33% of the excess over \$89,325
Over \$159,550	\$43,164 plus 35% of the excess over \$159,550

Standard deduction: \$4,850 (+\$950 if age 65+ or blind) (SD)

Standard deduction (SD) for dependents is the greater of \$800 or earned income plus \$250 (not to exceed the SD for dependent's filing status)

CORPORATE TAX RATES

If Taxable Income Is:	The Tax Is:
\$0 to \$50,000	15%
Over \$50,000 but not over \$75,000	\$7,500 plus 25% of excess over \$50,000
Over \$75,000 but not over \$100,000	\$13,750 + 34% of excess over \$75,000
Over \$100,000 but not over \$335,000	\$22,250 plus 39% of excess over \$100,000
Over \$335,000 but not over \$10,000,000	\$113,900 plus 34% of excess over \$335,000

Business Owner's Toolbox

Part Time Experts and Professionals

www.guru.com

The mission of www.guru.com is to connect companies with top freelance and contract talent locally or globally. They boast of 366,000 freelance professionals. Simply sign-up at www.guru.com, describe the project for which you want to find a professional, and wait for online "bids" from the professionals themselves. Interview them as you would any employee or contractors (over the phone).

Selling Internationally?

www.assessyourinternationalrisk.org

There are perils abound in business and foreign commerce is a landmine for the unseasoned international purveyor. This website, sponsored by the Small Business Administration, U.S. Chamber of Commerce and AIG, provides a wealth of information for U.S. entrepreneurs seeking to sell to foreign buyers. You'll find two main categories of information – assessing your risk exposure and 'how get paid.'

Alternative Dispute Resolution Resources

www.adr.org

The most comprehensive site for information about all forms of dispute prevention and resolution including mediation, arbitration, fact-finding, partnering, dispute review boards and other related alternative dispute resolution processes. The American Arbitration Association (AAA) is a non-profit organization that has offered mediation and arbitration panels, rules, administration, education and training for more than 75 years.

Online Dispute Resolution

www.CyberSettle.com

The world's #1 online settlement company and holder of US Patent # 6,330,551. Proven to significantly reduce expenses and help speed up settlement. The most progressive and aggressive insurance carriers, law firms, governmental entities, and self-insured corporations use CyberSettle regularly to maximize claim processing efficiency.

" Leaders are 'twice-born' individuals who endure major events that lead to a sense of separateness, or perhaps estrangement, from their environments. As a result, they turn inward in order to reemerge with a created rather than an inherited sense of identity."

Abraham Zaleznik

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