

NEBRASKA CPA

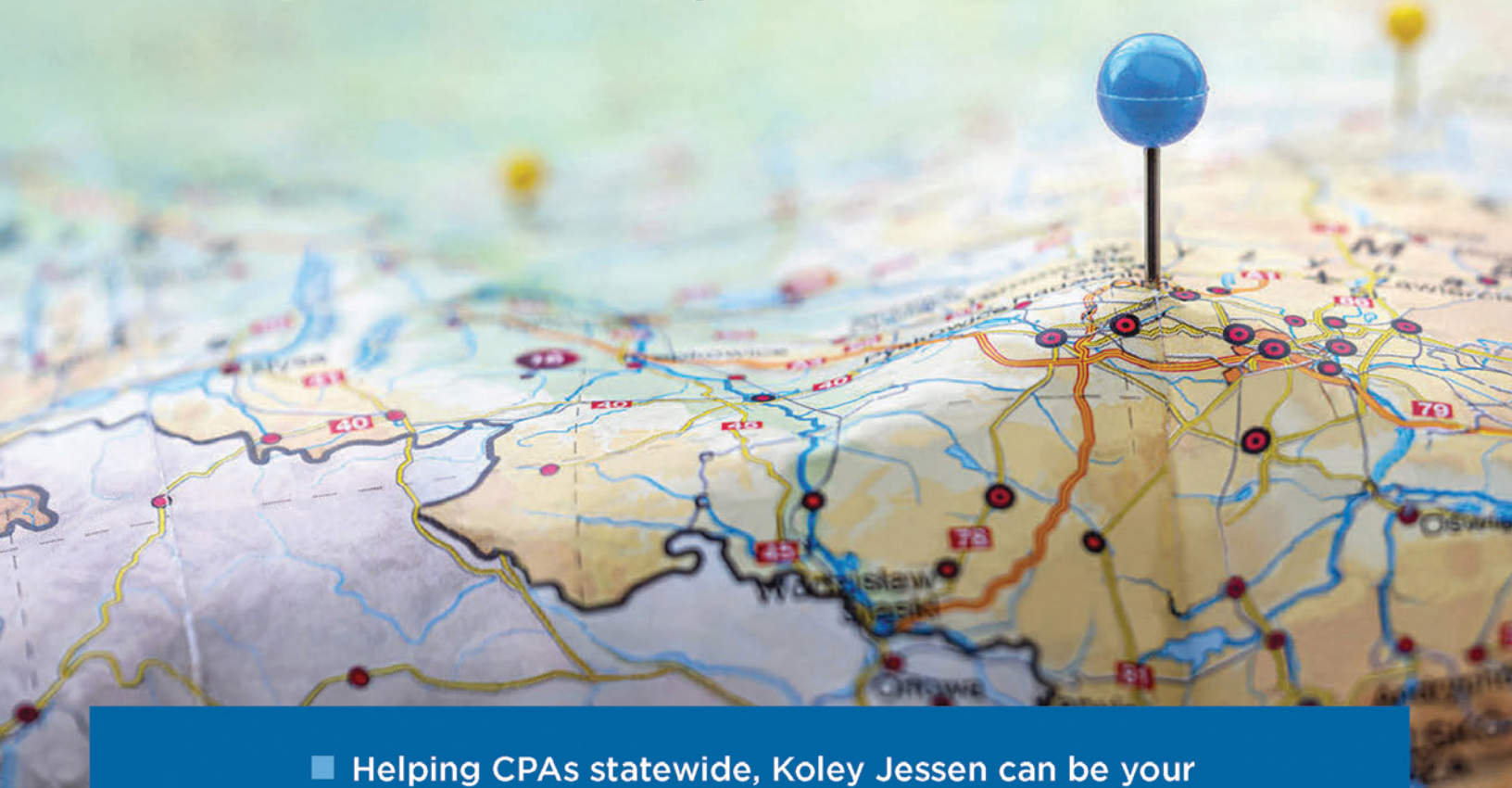
ISSUE 6, 2022

WAGE & HOUR UPDATE:

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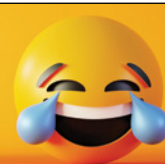
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INCREMENTAL MATURITY BY NITIN BHOJRAJ, CPA, CFE



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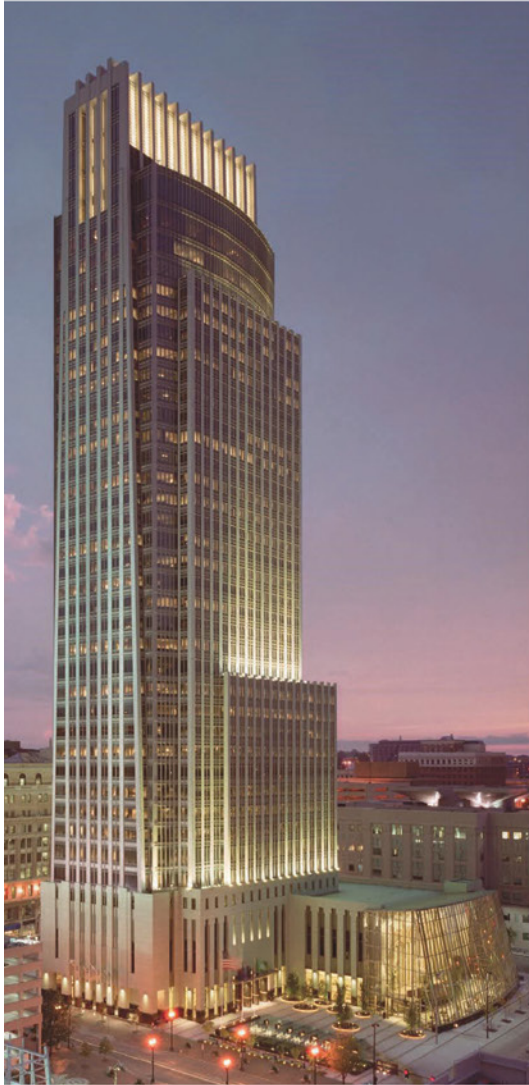
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BY JONI SUNDQUIST, NEBRASKA SOCIETY OF CPAs

GROWING THE P

Recruiting and retaining top talent remains a priority as 2022 draws to an end and the new year begins.

SINCE 1976, THE FOUNDATION OF THE NEBRASKA SOCIETY OF CPAs has been committed to helping Nebraska college and university accounting students become future Nebraska CPAs. For the 2022-2023 school year, the Foundation Board of Trustees approved a total of \$99,000 in scholarships to 76 accounting students at 14 Nebraska colleges and universities. Distributed to accounting students across Nebraska who are in their junior, senior, and graduate years of college, these scholarships are made possible by a transfer of funds from the Society to the Foundation as approved by the Society Board of Directors as well as through generous donations from many of our members. You will find a list of the Foundation Board of Trustees, photos of all scholarship recipients, and an honor roll of contributors starting on page 26 of this issue.

Hyping Accounting Careers

In addition, the Society's Accounting Careers Committee, led by Society Past Chairman Ryan Burger, continues to expand its outreach to high schools and colleges throughout the state. In November, the Nebraska Society joined the AICPA and 34

other state CPA societies to launch the first-ever Accounting Opportunities Week, which added to the momentum of the committee's ongoing efforts. In all, committee members gave approximately 25 presentations to more than 500 high school students and five presentations to nearly 300 college students in 2022. You'll find a list of committee members on the Society website at www.nescpa.org/committees. You can "Join a Committee" from this page as well—just click on the link, complete the form, and return it to society@nescpa.org.

Intern Nebraska

Did you know the state of Nebraska offers a grant program that provides financial assistance to businesses that create new internships in the state? Through the Nebraska Department of Economic Development, for-profit and non-profit businesses can offset up to 50% of intern wages, up to \$5,000 per internship. Internships create lasting connections between students, businesses, and regions; more than half of young people who participate in an internship become full-time employees where they intern. Applications for the program are due March 15. You'll find a link with more information on the Society website at www.nescpa.org/careers/recruiting.



We know you have many choices for CPE and are grateful for your participation in Society conferences and courses. Thank you for supporting your profession and the Nebraska Society of CPAs! If you have questions regarding CPE or suggestions regarding future courses or speakers, please do not hesitate to contact Society Vice President Kelly Ebert at kelly@nescpa.org.

Nebraska Legislature Convenes January 4

The First Session of the 108th Nebraska Legislature is scheduled to convene on Wednesday, Jan. 4, 2023, with 26 new and returning state senators taking the oath of office. Although the political makeup of the body is not changing, whether newly elected or appointed, the level of legislative experience will be significant. This lack of institutional knowledge and experience is likely to create challenges; however, with so many new leaders in the body and a newly elected governor, it's also an exciting time for our state.

2023 will be a "long session," whereby the Nebraska Constitution requires the Legislature to meet for no more than 90 legislative days. (No more than 60 legislative days are required in even years.) Presently, the session is expected to last until the second week of June.

The only item state senators are required to complete is the budget, but the list of issues that legislators wish to address is long and includes tax reform, K-12 school funding, criminal justice reform, ARPA funding, guns/constitutional carry, and abortion. Through our lobbying team at Radcliffe, Gilbertson, and Brady, the Society will be keeping a close eye on any and all issues that could affect the accounting profession, including licensing reform and the taxation of accounting services. Stay tuned.

Thank You!

Thank you for your membership and loyal support of the Nebraska Society of CPAs. We look forward to serving you throughout 2023 and the years to come! ◀



Joni Sundquist is president and executive director of the Nebraska Society of CPAs. You may contact her at (402) 476-8482 or joni@nescpa.org.

PROFESSION

2023 Conferences Scheduled

The Society has scheduled the following conferences for the coming year. Please mark your calendars and plan to attend in person.

BUSINESS & INDUSTRY CONFERENCE

Tuesday, April 25 | Hillcrest Country Club, Lincoln

NOT-FOR-PROFIT & GOVERNMENTAL ACCOUNTING CONFERENCE

Wednesday-Thursday, June 14-15 | Innovation Campus, Lincoln

WOMEN IN ACCOUNTING SUMMIT

Wednesday, August 30 | Riverview Lodge, Mahoney State Park, Ashland

FALL CONFERENCE & ANNUAL MEETING

Thursday-Friday, October 26-27 | TBD, Omaha

TAX CONFERENCE

Monday-Tuesday, December 4-5 | TBD, Omaha



WAGE & HOUR UPDATE: THREE THINGS TO KNOW

BY ERIN SCHROEDER, KOLEY JESSEN

IT WAS A BUSY YEAR FOR LABOR AND EMPLOYMENT lawmakers. The U.S. Department of Labor (DOL) continues to roll back regulations, such as the independent contractor rule, implemented by the prior administration. The DOL promised to revisit the Fair Labor Standards Act (FLSA) regulations as well, announcing a Notice of Proposed Rulemaking (NPRM) in its spring regulatory agenda for 2022. The anticipated NPRM could potentially increase the minimum salary for exempt white-collar workers for the first time in nearly three years.

Meanwhile, state and local lawmakers have set their sights on pay transparency. The mandatory publication of compensation ranges in job postings is intended to close the wage gap that impacts women and minorities. With the prevalence of remote work in a post-COVID world, many businesses are now relying on a work-from-home (WFH) workforce across the nation, or even the globe. This leaves management professionals to navigate laws in places where they previously had no legal obligations.

Here are three things to know about the current wage and hour updates from 2022:

1. FLSA executive, administrative, and professional employee exemption is scheduled to get a refresh.

The Wage and Hour Division has not published the proposed rule yet, but this new regulation could include a change to the salary basis level (currently \$684 per week, or \$35,568 annualized), automatic increases to the salary basis level, or revision of the duties

tests. The last major update to this regulation was in 2020, when the salary basis was raised for the first time since 2004.

In 2016, the DOL increased the standard salary level from \$455 weekly, or \$23,660 annualized, to \$913 weekly, or \$47,476 annualized. Enforcement of that rule was stayed due to legal challenges. Even though enforcement of the 2016 rule stalled out, many employers raised employee salaries in anticipation of the new rule's impact on exempt workers.

Employers of exempt executive, administrative, and professional employees should stay tuned for updates, as salary or duties adjustments may be required to maintain employees' exempt status from the overtime requirements of the FLSA.

2. DOL seeks to leave the old independent contractor rule in 2021.

The reliance on independent contractor workers, particularly in the expanding "gig economy," has steadily increased over the past decade. The question of whether a worker is an employee or independent contractor is determined on a case-by-case basis, using a multi-factor test. That is, it did until the DOL published the 2021 Independent Contractor Rule at the very end of the Trump administration. The 2021 rule made it easier to classify a worker as an independent contractor, prescribing only two "key" factors to consider, with lesser consideration given to other, additional factors. On Oct. 13, 2022, the DOL published an NPRM to restore the old "economic realities test," which gives equal weight to each part of the multi-factor test, making it arguably harder to classify a worker as an independent contractor.

The comment period for the most recent NPRM has been extended until Dec. 13, 2022.

3. States push for pay transparency.

California most recently joined Washington, Colorado, and New York City in mandating employer transparency regarding pay. Multistate employers will want to proactively monitor these laws to ensure compliance and avoid penalties. These initiatives stem from an effort to narrow the gender wage gap and encourage pay transparency.

Covered Employers: Generally speaking, the laws apply to employers with a threshold number of employees working in the jurisdiction. For instance, the New York City pay transparency law applies to employers with four or more workers or one or more domestic workers in New York City. All four workers do not need to work in New York City or the same location for an employer to be covered. Employers are covered as long as one of the employees works in New York City.

Requirements: These laws generally require employers to advertise a job, promotion, or transfer opportunity with a disclosure of the minimum and maximum annual salary or hourly wage for the position in the advertisement. Generally, if the wage range is not certain, a reasonable, good-faith estimate will suffice. However, the range cannot be open-ended (e.g., “hourly compensation starts at \$15 per hour” is not enough information).

Remote Workers: Each law differs on application to job postings for remote workers. For instance, the Colorado law applies to any posting by a covered employer for either work tied to Colorado locations or remote work performable anywhere, but not work performable only at non-Colorado worksites. Therefore, a remote job posting, even if it states that the employer will not accept Colorado applicants, remains covered by the act’s transparency requirements.

Multistate employers with a presence in any of the above-referenced jurisdictions should take a keen eye to the pay transparency laws that may apply to their job postings. ◀



Erin Schroeder is an attorney in Koley Jessen’s Employment, Labor, and Employee Benefits Practice Group. She has been with the firm since 2020 and currently advises clients with HR consulting and employment litigation needs. For more information, contact her at (402) 343-3892 or erin.schroeder@koleyjessen.com.

Classified Ads

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- Lincoln, NE CPA \$500K
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NEW STATE BOARD MEMBERS GET RAMPED UP!

BY DAN SWEETWOOD, NEBRASKA BOARD OF PUBLIC ACCOUNTANCY





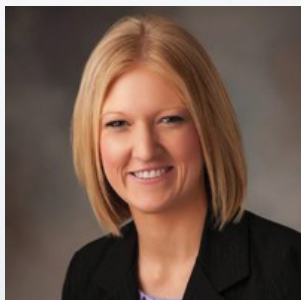
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STATE BOARD CHAIRMAN MELISSA RUFF, CPA, of Deloitte, State Board Secretary Christi Olsen, CPA, of Circle CPA, and State Board member Drew Blossom, CPA, of KMPG LLP recently joined State Board Administrator Kristen VanWinkle at the 114th Annual Meeting of the National Association of State Boards of Accountancy (NASBA) in San Diego, Oct. 30 through Nov. 2. This event was a great opportunity for our newly elected chairman and members to get “ramped up” on recent national developments. It also provided these individuals with the opportunity to hear from national speakers and interact with other board members from across the country.

Upon joining the State Board, I remind members that one of the greatest opportunities afforded them is the chance to interact and meet members from other boards, especially those from surrounding states within the NASBA Central Region. Throughout my long career, I have had the pleasure of witnessing the development of numerous lifelong friendships among members from various states. In addition, attending these national meetings creates strong bonds among the members from Nebraska as they learn and socialize together. In turn, this has created a more positive environment within the State Board, particularly during times when deep discussions must be had and difficult decisions must be made.

Of course, when members volunteer their valuable time to attend national meetings, their commitment to the State Board and its mission increases in correlation. Usually, three to four members attend these meetings along with a State Board staff member, allowing different members to attend if they choose. Members who are unable or choose not to travel are able to receive updates from those who attend and from virtual opportunities provided by NASBA staff.

Apart from the NASBA Annual Meeting, newly elected State Board Education and Examination Chairman Sarah Borchers, DBA, CPA, who is an assistant professor of accounting at the University of Nebraska at Kearney, joined me recently for a visit to NASBA/CPA Exam Services (CPAES) headquarters in Nashville, Tenn. Pat Hartman, director of client services at NASBA, hosted us for an overview of CPAES and its comprehensive array of services to state boards of accountancy.

Through a contractual agreement with the State Board, CPAES is responsible for processing the applications of Nebraska candidates sitting for the Uniform CPA Examination. Because of our visit to CPAES headquarters, Borchers was able to witness the work of CPAES onsite and ask questions. As chairman of the important Education and Examination (EE) Committee, she oversees efforts to ensure CPAES is providing appropriate services to our Nebraska candidates and to the State Board.

The good news is that CPAES has provided excellent service over the years, as indicated through internal and external surveys. However, this does not mean every applicant has a great application experience. The State Board staff is able to provide assistance at times, and the EE Committee remains active and aware of CPAES’ activities, with the Nebraska coordinator attending all CPAES meetings to answer questions and update the EE Committee.

Although some might question the travel costs associated with attending national meetings and getting “ramped up,” I can assure you this is money well spent as our Nebraska members remain engaged and active on the national stage! ◀



If you have any questions or concerns, do not hesitate to contact State Board Executive Director Dan Sweetwood or Administrator Kristen VanWinkle at (402) 471-3595 or at dan.sweetwood@nebraska.gov or kristen.vanwinkle@nebraska.gov, respectively.



TAKING ADVANTAGE OF THE SECTION 1202 GAIN EXCLUSION

BY HANNAH FISCHER FREY, JESSE D. SITZ & CARRIE SCHWAB, BAIRD HOLM LLP

WHILE THE SALE OF A BUSINESS CAN RESULT IN A HEALTHY lump sum for successful founders and their shareholders, the sale often results in recognition of gain, which is subject to taxation. The potential tax liability on gain recognition is where Section 1202 steps in as a beneficial tax planning tool. Section 1202 allows eligible, non-corporate taxpayers who own qualified small business stock (QSBS) for more than five years to exclude up to 100% of the taxable gain recognized by the sale of QSBS.

Section 1202 was enacted in 1993 to incentivize small business growth. However, in its initial iteration, the statute only allowed for 50% of QSBS gain exclusion, and the non-excludable portion of gain was taxed at 28%, resulting in a similar tax rate as the standard long-term capital gain rate. The Small Business Jobs Act amended Section 1202 in 2010 to allow for the 100% exclusion of gain, which led to increased interest from business owners and private equity groups. With that said, Section 1202 is often overlooked and plays a significant role in negotiating the sale of any business that qualifies.

Certain qualifications must be met to take advantage of Section 1202 gain exclusion. This article details what qualifies as small business stock and how business owners and investors can best take advantage of Section 1202.

A. QSBS Requirements

Stock qualifies as QSBS where (1) as of the date of issuance, the corporation was a “qualified small business”; (2) the stock was acquired by the taxpayer at its original issue in exchange for money, property, or services; and (3) during substantially all of the taxpayer’s holding period of such stock, the corporation meets the “active business” requirements and is a C corporation.

1. Qualified Small Business

A “qualified small business” for the purposes of Section 1202 means a domestic C corporation for which:

- a. The gross assets do not exceed (and have never exceeded) \$50MM on the date of the stock issue;
- b. Immediately after the issuance, the gross assets do not exceed \$50MM; and
- c. The corporation agrees to submit reports to the IRS and its shareholders, as may be required by the IRS.

The requirement that a C corporation is the issuer of QSBS results in tricky issues for existing S corporations and partnerships. However, mechanisms are available under Sections 368 and 351 that allow an S corporation to convert into a C corporation or to contribute assets to a newly formed C corporation.



While a pass-through entity itself cannot take advantage of Section 1202, the shareholders of the pass-through entity may take advantage of the exclusion upon the disposition of QSBS owned by the entity, if the pass-through entity meets certain requirements. The exclusion is only available to the gain attributable to the interest that the taxpayer owned in the pass-through entity on the date the QSBS was acquired. Therefore, if Owner A has a 25% interest in ABC partnership on Jan. 1, 2015, when ABC partnership purchases QSBS for \$1MM, then Owner A would only be entitled to 25% of that \$1MM, even if ABC partnership purchases more QSBS after Jan. 1, 2015.

2. Original Issuance

A corporation must have issued the stock after Aug. 10, 1993, and in exchange for money, property, or services but not in exchange for stock. The prohibition against acquiring QSBS through the exchange of stock is an issue when a corporation engages in a recapitalization or reorganization. However, Section 1202 allows for the preservation of QSBS status through certain Section 368 or Section 351 transactions.

Likewise, the holding period for QSBS received upon a transfer by gift, at death, or from a partnership to a partner will be tacked

onto the newly acquired QSBS. A similar result occurs upon the exercise of convertible stock.

3. Active Business

The active business requirement specifies that the corporation must (i) have been a C corporation during substantially all of the taxpayer's holding period of the stock for which the taxpayer is claiming the exclusion; (ii) use at least 80% of its assets, measured by value, in the active conduct of one or more qualified trades or businesses; and (iii) be an eligible corporation.

A qualified trade or business does not include:

- a. A business involving the performance of certain professional services;
- b. Any banking, insurance, financing, leasing, investing, or similar business;
- c. Any farming business;
- d. Any business involving the production or extraction of products like oil and gas; or
- e. Any business operating a hotel, motel, restaurant, or similar business.

Continued on page 14

An eligible corporation does not include:

- a. A domestic international sales corporation (DISC) or former DISC;
- b. A regulated investment company, real estate investment trust, or real estate mortgage investment conduit (REMIC);
- c. A cooperative;
- d. A corporation where more than 10% of the value of its assets consist of stock or securities in other corporations which are not subsidiaries; or
- e. A corporation where more than 10% of the total value of assets consist of real property.

B. Maximizing the Gain Exclusion

The available gain exclusion for QSBS depends on the date of issuance and whether the gain exceeds the dollar limitation that applies to each taxpayer individually.

1. Percentage Limitation

The maximum gain exclusion percentages, ranging from 50% to 100%, depend on the date of issuance. For example, stock that qualifies as QSBS acquired on July 1, 2001, will only be eligible for 50% gain exclusion upon disposition, whereas stock acquired on July 1, 2011, will be eligible for 100% gain exclusion. Accordingly, any analysis must closely track the date of issuance and incorporate the applicable exclusion percentage.

2. Dollar Limitation

In addition to the percentage limitations, Section 1202 also provides for a dollar limitation on the amount of gain that may be excluded. Gain excluded in a year by a taxpayer from the sale of QSBS cannot exceed the greater of:

- a. \$10MM reduced by the aggregate amount of eligible gain taken into account by the taxpayer. This limitation is a lifetime, per-taxpayer, per-QSBS limitation. This limitation is also a per-issuer limitation; or
- b. 10 times the aggregate adjusted bases of QSBS issued by such corporation and disposed of by the taxpayer during the taxable year.

C. Potential Disqualification Missteps

There are several easy-to-overlook missteps that may result in the disqualification of QSBS treatment, including (1) disqualifying redemptions by the issuing corporation; (2) inadvertently exceeding the gross asset cap of the issuing corporation; and (3) failing to continually meet the active business requirement. Each of these rules should be closely examined as part of the deal analysis to ensure compliance both during negotiations and until the deal has closed.

D. Rollover Equity Transactions and Section 1202

Rollover equity transactions became increasingly popular during the COVID-19 pandemic as a way for private equity firms to reduce their initial equity investment during uncertain economic times. Rollover equity acts as seller financing, and rollover equity helps ensure that interests are aligned between rollover participants and the target's buyers. Structuring a rollover equity transaction involves interesting tax planning hurdles where QSBS is involved.

In a typical rollover equity transaction, structuring the transaction to ensure equity rolls over on a tax-free or deferred basis is essential. The initial tax on the rollover equity is deferred until the target company resells. Tax is avoided in these situations by not triggering a sale. However, where QSBS is involved, structuring the rollover as a sale instead of a tax-free transaction results in two benefits: (1) QSBS holders cashing out can avoid tax on gain resulting from the sale, and (2) rollover participants can claim the gain exclusion and receive a step up in basis on the replacement equity. To defer the gain exclusion in a rollover equity transaction, rollover participants must make a timely Section 1045 election.

There are three ways to trigger a taxable rollover: (1) a sale, (2) redemption for cash (that satisfies the redemption requirements above), or (3) a taxable exchange of QSBS for buyer equity. The transaction must also be structured in a manner that does not inadvertently qualify for tax-free treatment, such as under Section 351 or Section 368.

E. Choice of Entity Considerations

In 2018, the Tax Cuts and Jobs Act (TCJA) reduced the corporate tax rate to 21% and eliminated the corporate alternative minimum tax (AMT). The TCJA changes and the growing interest in Section 1202 have resulted in a newfound popularity for C corporations; therefore, a growing number of taxpayers are looking to take advantage of Section 1202 benefits.

Whether advising a startup or venture capitalist, Section 1202 is a helpful tool for practitioners and is growing in use. Keeping an eye out for potential missteps and following the requirements above will assist in achieving compliance with Section 1202. ◀



Hannah Fischer Frey and Jesse Sitz are partners at Baird Holm LLP, focusing their law practices in the areas of federal and state income tax law and

business succession planning. Fischer Frey and Sitz work closely with other tax practitioners and preparers to document and structure deals for their clients in a tax-efficient manner. Carrie Schwab is a summer associate at the firm and is a JD candidate at the University of Nebraska College of Law. For more information, you may contact Fischer Frey or Sitz at hfrey@bairdholm.com or jsitz@bairdholm.com, respectively.

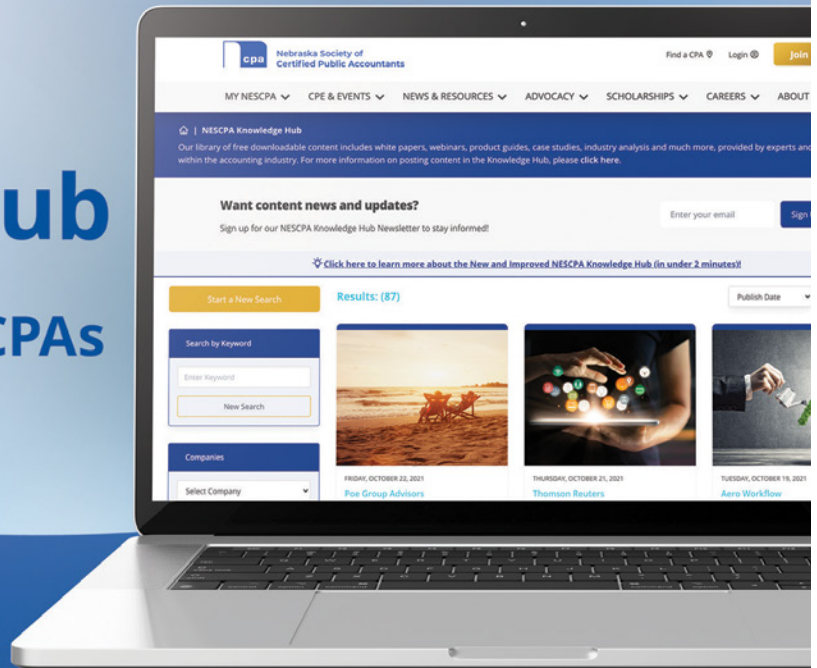


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Avoiding Substandard Audit Reports

BY PAUL H. KOEHLER, CPA, GOVERNMENT/NONPROFIT SERVICES SPECIALIST



THE PURPOSE OF AN AUDIT IS TO PROVIDE FINANCIAL statement users with an opinion by the auditor on whether the financial statements are presented fairly, in all material respects, in accordance with an applicable financial reporting framework, which enhances the degree of confidence that intended users can place in the financial statements (AU-C 200.03). An audit conducted in accordance with Generally Accepted Auditing Standards (GAAS) and relevant ethical requirements enables the auditor to form that opinion.

Auditors are to obtain sufficient appropriate audit evidence to reduce audit risk (that is the risk that the auditor expresses an **inappropriate** opinion when the financial statements **are materially misstated**) to an acceptably low level (AU-C 200.05). According to newly effective AICPA SAS No. 138, misstatements, including omissions, are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgement made by a reasonable user based on the financial statements. And it only takes one material misstatement to render a set of financial statements to be **materially misstated**.

High quality audit reports are critical to serving the public interest, as discussed in SAS No. 146, paragraph 6. SAS No. 134, as amended by SAS No. 41, addresses audit reporting and was effective for

periods ended on or after Dec. 15, 2021. Paragraph 20 of AU-C 200 states that “the auditor not represent compliance with GAAS unless the auditor has complied with **all** of the AU-C sections **relevant** to the audit.” (NOTE: This concept never involves the notion of materiality—just relevance or “applicability.”) In other words, auditing standards, including those dealing with reporting, are either relevant or not.

SAS No. 134, paragraph .09, indicates the objectives of the auditor are to:

- Form an opinion on the financial statements; and
- Express *clearly* the opinion through a written report.

For purposes of this report, an audit report will be considered “substandard” if it does not meet the above objectives or departs from a relevant audit standard including:

- ▶ Making false statements regarding audit scope, Generally Accepted Accounting Principles (GAAP), audit finding, or any other statement of substance;
- ▶ Failing to include required content specified by SAS No. 134 or other relevant standard, including content sequencing (for example, paragraph .24 of SAS No. 134 says the first section of the auditor’s report should include the auditor’s opinion and should have the heading “Opinion”; paragraph .28 requires the

Basis for Opinion section, appropriately headed, to directly follow the “Opinion” section);

- ▶ Failing to express an appropriate opinion (the auditor incurs the “audit risk”). Per SAS No. 134, opinions are either unmodified, or modified (qualified, adverse, or disclaimer).
 - Of course, an auditor’s opinion is based on their professional judgement, which can vary among different professionals. AU-C 200 .A27 contains a very important observation in this regard:
 - The distinguishing feature of professional judgement expected of an auditor is that such judgement is exercised based on competencies necessary to achieve **reasonable** (emphasis added) judgements, developed by the auditor through relevant training, knowledge, and experience.
 - Furthermore, SAS No. 134, paragraph .A45, acknowledges that “there is an unavoidable risk that some material misstatements of the financial statements may not be detected even though the audit is properly planned and performed in accordance with GAAS. Accordingly, the subsequent discovery of a material misstatement of the financial statements resulting from fraud or error does not by itself indicate a failure to conduct an audit in accordance with GAAS.”
 - It follows, then, that auditors would be well-served to document all misstatements (as defined by AU-C 450, along with examples thereof) noted during a GAAS audit and their evaluation regarding materiality. (An

unnoted misstatement would never be a material misstatement that could affect the auditor’s opinion.)

- Finally, a material misstatement that goes undiscovered, even in a properly conducted GAAS audit, results in an inappropriate opinion that fails to serve the public interest.

The SAS No. 134 objective regarding *clearly* expressing the auditor’s opinion is challenging to evaluate achievement thereof due to an apparent absence of a definition or practical criteria. (What is “clear”?)

- ▶ For example, some opinions include an update to a prior year opinion along with the current year opinion, and properly refer to “audits” plural, when other paragraphs of the same auditor’s report inappropriately refer to the “audit” singular. While awkward and potentially unclear, this report does not consider a substandard auditor’s report to have been issued, just because of this plural/singular issue. Reasonable readers may not be impacted.
- ▶ On the other hand, in an auditor’s report on a state or local government set of financial statements where auditors are to opine on multiple opinion units separately (versus having only one opinion unit, or one overall opinion in certain special circumstances), an auditor’s failure to consistently refer to plural opinions versus a singular opinion may lack sufficient clarity so as to qualify as a substandard audit report.

For purposes of this report, any auditor’s report that is not “substandard” is considered “standard.” Standard audit reports

Continued on page 18

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can potentially depart from specific language available to auditors in illustrations or examples, or include unfortunate typographical, spelling, or grammatical errors. Audit report content, including the appropriateness of the auditor's opinion(s) is what is critical to serving the public interest.

Below are examples of actual auditor's reports read by the author in recent years, issued by firms of all sizes, all of which were signed and dated, representing to have conducted their audit(s) in accordance with GAAS. Many of these reports contained multiple substandard characteristics, and all opinions were unmodified, unless otherwise noted.

Making false statements

- ▶ An auditor who prepared and presented (an independence issue) comparative (two-year) cash basis financial statements on part of a nonprofit organization (NPO), but had only audited the current year, stated in the auditor's report that the auditor had audited both years. (The auditor also failed to mention that the NPO was a component unit of a government and that the basis of accounting used was inappropriate for the government's GAAP basis financial statements.)
- ▶ An auditor reporting on a city's financial statements under SAS No. 134 in the "going concern" paragraph referred to both Financial Accounting Standards Board (FASB) alternatives for defining the "reasonable period of time" management is to use for their evaluation of "substantial doubt" rather than the appropriate Governmental Accounting Standards Board (GASB) definition (see SAS No. 132).
- ▶ An auditor's Yellow Book report in a Single Audit indicated there were reportable findings, but neither that report nor the accompanying Schedule of Findings and Questioned Costs reported any. That same auditor's Single Audit compliance report indicated that the auditee's major federal programs were identified in the Schedule of Findings and Questioned Costs. They were not. Neither of these auditor's reports were subsequently recalled and corrected.

Failing to include required content

- ▶ An auditor reporting on a Dec. 31, 2021, set of GAAP financial statements failed to follow SAS No. 134 with all its new required content and sequencing.
- ▶ An auditor reporting on a June 30, 2021, set of GAAP financial statements under SAS No. 134 (early application is permitted by SAS No. 141's amendment) failed to:
 - opine on the entity's change in financial position;
 - include a Basis for Opinion section; and,
 - report on Other Information presented with the financial statements.
- ▶ An auditor reporting on a city's Dec. 31, 2020, financial statements under SAS No. 134 failed to use the heading "Opinions" as required by paragraph .24 thereof. (The plural form of that word would have been appropriate since there were multiple opinion units, but no heading at all was used.)



- ▶ Despite basing their opinions on "our audit and the report of other auditors," the auditor failed to indicate anywhere in the audit report what was audited by the other auditors, whose report did not accompany theirs.
- ▶ An auditor's adverse opinion on a local government's financial statements prepared by the auditor failed to include all the material misstatements that would have resulted in the adverse opinion (see AU-C 705, paragraph .28). There were numerous additional GASB 34 material misstatements besides the one that was cited (lack of government-wide financial statements), including overstatement of assets on one line item of \$1.2MM, inclusion of account groups (superseded by GASB 34) in the basic financial statements, failure to report by major fund (not by fund type), and numerous footnote omissions.
- ▶ Auditors of numerous local government financial statements over multiple years failed to properly identify the individual opinion units in the financial statements subject to the respective audits.
- ▶ In general, auditors are to opine on a reporting entity's financial position and changes therein and cash flows, not individual financial statements. One auditor recently opined on an entity's "statements of functional expenses" inappropriately, as well as causing additional confusion by then not listing the other individual statements presented therewith.

Failing to express an appropriate opinion

- ▶ An auditor failed to modify their opinion on a set of financial statements they prepared for a special-purpose government engaged only in business-type activities for numerous material GAAP departures (see GASB 34), including:
 - balance sheet not in "classified" format;
 - statement of revenues and expenses did not distinguish between operating and nonoperating items;
 - reporting capital assets previously disposed;
 - failure to report a very significant capital asset received previously from another government; and
 - several footnote disclosures needed for fair presentation.



- ▶ An auditor failed to modify their opinion for material misstatements in the comparative Statements of Activities of a not-for-profit (NFP) foundation that underreported fundraising and general and administrative costs resulting in part from intermixing natural and functional expenses in the total operating expense amount. Program expenses were presented outside of operating expenses. Most of these errors were corrected in the comparative presentation in the following year's

comparative financial statements, but with no acknowledgment of the correction of these errors. The same auditor failed to modify their opinion in that following year's audit.

- ▶ An auditor's report was not modified on a set of NFP comparative financial statements where two-thirds of its net assets were improperly identified as donor restricted in perpetuity versus not in perpetuity. Detail footnote totals did not articulate with the amounts on the Statement of Financial Position. Neither the financial statements nor the auditor's report were recalled and reissued. The subsequent year's auditor's report was not modified for the correction of this error.

Recently issued SAS No. 146, *Quality Management for an Engagement Conducted in accordance with GAAS*, paragraph 6, states, "The public interest is served by the consistent performance of quality audit engagements that achieve the objective(s) of this SAS and other AU-C sections." Appropriate audit opinions matter, especially in this time in our country's history when it is often challenging to know what to believe and trust in. Users of auditor's reports should never have reason to question their veracity. ◀



Paul H. Koehler, CPA, is a sole practitioner in Lincoln, Neb. He has more than 45 years' experience in auditing, training, and consulting, specializing in nonprofit organization and state and local governments. You may contact him at (402) 488-1578.

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Nebraska State Taxes: 2022 Year In Review

BY NICK NIEMANN & MATT OTTEMANN, MCGRATH NORTH LAW FIRM

2022 BROUGHT SEVERAL SIGNIFICANT NEBRASKA STATE AND local tax developments that are likely to affect many of your clients. We've highlighted some key statutory changes and case developments you will want to know.

Income Tax

Social Security Income Exemption. In 2021, Nebraska passed a bill that would exempt a portion of the Social Security benefits received by Nebraska seniors. The exemption percentage would increase through 2025, until 50% of those benefits were exempt from Nebraska tax.

In 2022, the Legislature stepped up that exemption, so that 100% of Social Security benefits would be exempt from Nebraska income tax by 2025.

Individual Income Tax Rate Reductions. In 2022, the Legislature acted to gradually reduce the top income tax rates paid by individuals and fiduciaries. For individuals and fiduciaries, the top rate will be decreased from its current 6.84% to 5.84% for 2027 and later years, via an annual reduction of 0.2% beginning in 2023.

Corporate Income Tax Rate Reductions. The Legislature also acted to gradually reduce the top income tax rates paid by corporations. For corporations, the top rate will be decreased from its current 7.81% to 5.84% via a series of annual reductions beginning in 2023.

Military Retirement Income. In an attempt to incent retired military members to stay in Nebraska, the Legislature acted to exempt 100% of military retirement benefits from Nebraska income tax.

Department of Revenue Residency Challenges. The Nebraska Department of Revenue has continued to focus on the tax residency of persons who maintain homes in multiple states. In the Dec. 9, 2022, decision in *Acklie v. Department of Revenue*, the Nebraska Supreme Court decided the Acklies remained Nebraska residents for tax purposes for several reasons, including their travel schedule.

In the *Acklie* decision, the Nebraska Supreme Court declined to review, and thus did not overturn, a Department of Revenue test for determining the number of days spent in a location when a person is traveling. This leaves undecided how the Department of Revenue should count partial days.

We like to use a "Declaration of Abandonment" in pre-planning when a client decides to change residency.

Foreign Income. The Department has continued to press its position, which is an outlier among states, that Nebraska should be able to tax a percentage of income earned by an international company's foreign subsidiaries (so-called 965 income and GILTI income). The Department's position is being challenged in a case filed in 2022: *Precision Castparts Corp. v. Department of Revenue*.



E-Verify. In 2022, the Department began to issue proposed assessments (60-day letters) to companies that have utilized Nebraska incentives and R&D credits, on the grounds that they failed to fully E-Verify every new employees' work status. There are a number of legal grounds being overlooked in defending against the Department's position, which we believe should be amended into existing protests or included in new protests.

Property Tax

Funding for Existing Property Tax Credit. In 2022, the Legislature locked in the funding for the existing Real Property Tax Credit, which was funded at \$548 million in 2022 but was scheduled to be reduced to \$375 million in 2024. The Legislature kept the \$548 million funding for 2022, increased this to \$560 million in 2023, and then increased the funding by up to 5% annually for later years.

Additional Property Tax Credit. In 2022, the Legislature also created a second refundable credit to refund a part of the community college property taxes paid by Nebraska landowners. This credit would be funded with \$50 million in 2022, but that would increase to \$195 million for 2026. For later years, that credit would be increased up to 5% annually.

Significant Failure to Claim These Credits. Unfortunately, a significant percentage of these credits are not claimed by Nebraska landowners. In September 2022, the state estimated

that approximately 40% of the available credits were unclaimed—meaning the state was keeping about \$200 million of the \$500 million available.

Isolated Mistake Is Not an Equalization Violation. There are normally two ways to challenge a property tax assessment: actual value and equalization.

In *Lancaster Cty. Bd. of Equalization v. Moser*, the Mosers owned irrigated agricultural land in Lancaster County. The land was valued as irrigated land. However, the neighboring land was also irrigated, but that land was mistakenly not valued as irrigated. The Mosers thus challenged the value of their property for property tax purposes, claiming their land value was not equalized with their neighbor's property.

The Nebraska Supreme Court rejected this argument, finding that an isolated error in the valuation of one property need not be replicated through the equalization process.

Sales Tax

While the Legislature did not make significant changes to Nebraska's sales tax statutes in 2022, there were a few sales and use tax court decisions of importance.

Continued on page 22

Potential Corporate Officer Liability. In the case *Crow v. Department of Revenue*, a company was assessed Nebraska use tax on its purchase of items used in its business. The assessment was protested. After the date of protest, the company went out of business and did not keep money sufficient to pay the assessment. The Department then issued a Demand for Payment to an officer of that company, alleging that the officer was personally liable for the tax at issue because the officer paid other creditors of the company while the assessment was still under protest. The Department alleged this was willful nonpayment of taxes, even though the Department's assessment was still under protest.

This matter is still under consideration by the Lancaster County District Court. However, if the Department's position is upheld, this could create significant personal risk for responsible officers of companies. Those officers could be held personally liable for a company's tax if they simply knew about the assessment, even though it was under protest, and paid other creditors instead of the Department of Revenue.

Effect of Prior Guidance From NDOR. The case *NPPD v. Department of Revenue* involved a narrow issue regarding the classification of certain electric distribution systems as real versus personal property. The tax commissioner held that the systems constituted personal property, so the lease of those systems was taxable.

The bigger issue for most taxpayers was the Department's treatment of its prior guidance to NPPD. The Department had previously treated the systems at issue as real property and reversed its position in this assessment. The commissioner did not require the Department to follow its prior guidance. Instead, the commissioner simply found that NPPD did not need to pay penalties on the transaction because the Department changed its position. This was appealed to the District Court, which has not yet ruled.

We've seen a number of times in which the Department's current legal staff has decided to reverse the Department's prior positions on certain matters. While results of a legal challenge vary based on specific facts of a situation, there can be a number of legal defenses that can apply in those cases.

Procedure and Practice

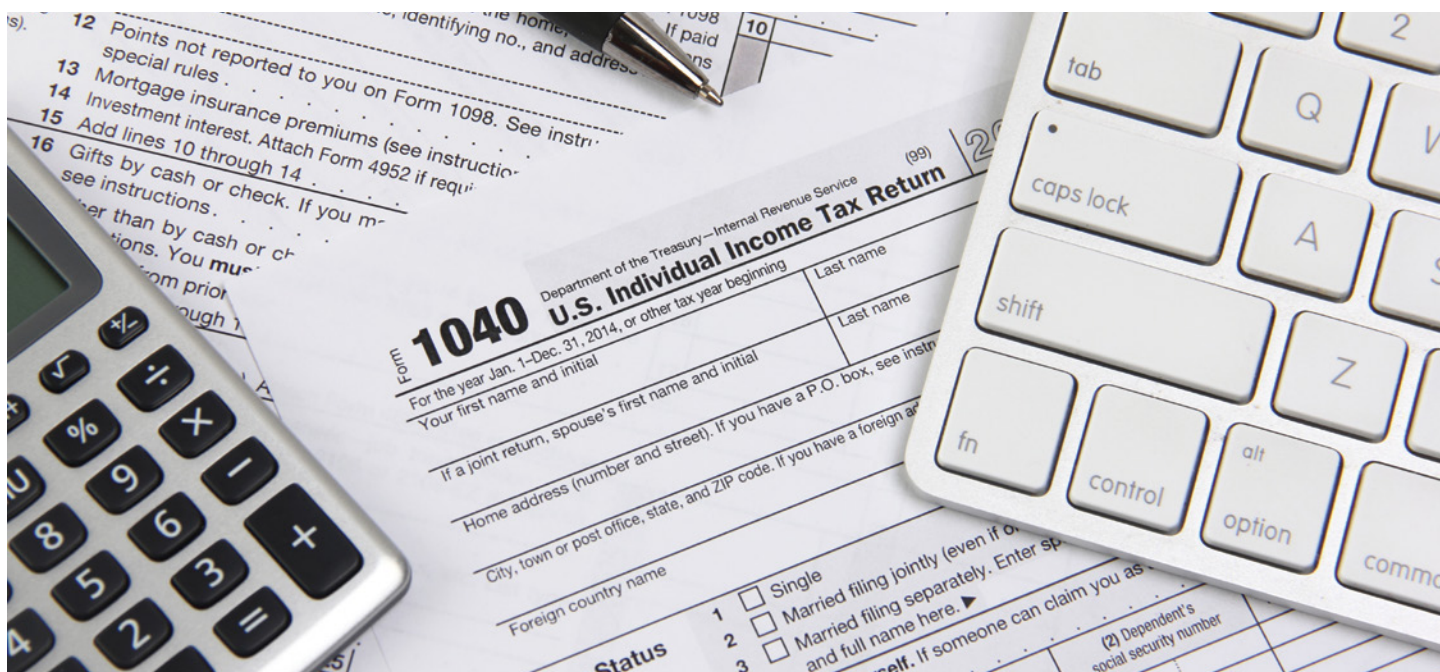
Standard of Review. The *Acklie* decision also highlighted another important legal principle—that the Nebraska Supreme Court will give a certain amount of deference to the District Courts, which in turn gives a certain amount of deference to the tax commissioner. So, to win or reach an optimal settlement, it's critical that the legal positions and legal defenses be fully and properly expressed as early in the process as possible. Where this hasn't been done in pending audits, claims, and appeals, the protest or refund claim should be amended to cover this.

Looking Ahead

As we move to 2023, expect to see the Department of Revenue, and possibly the Nebraska Legislature, further addressing remote workforce issues. ◀



Nick Niemann and Matt Ottemann are partners with McGrath North Law Firm. As state and local tax and incentives attorneys, they collaborate with CPAs to help clients and companies evaluate, defend, and resolve tax matters and obtain various business expansion incentives. See their websites at www.NebraskaStateTax.com and www.NebraskaIncentives.com for more information. For a copy of their full publication, *The Anatomy of Resolving State Tax Matters*, or their *Nebraska Business Expansion Decision Guide*, please visit their websites or contact them at (402) 341-3070 or at nniemann@mcgrathnorth.com or mottemann@mcgrathnorth.com, respectively.



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Common Misconceptions IN SELLING A PRACTICE

SELLING AN ACCOUNTING PRACTICE IS A ONCE-IN-A-LIFETIME EXPERIENCE FOR most practice owners. Due to the fact it is such a rare event, sellers need to be aware of some key misconceptions about the process.

Misconception No. 1:

The seller needs to stay around for years to assist the buyer in the transition.

Despite what most think when they enter into the idea of selling their practice, extensive experience with countless practice sales has shown us that a shorter transition is much more effective for both parties. A reason for this is that the seller is not needed nearly as much to help as initial intuition tells us. In fact, the seller can even be a hindrance to the transition if he or she is around for long after the buyer takes over the practice. It is also a common belief that the best scenario is for the seller to engage in extended and/or repeated meetings between the buyer and the clients. However, experienced buyers know that the tendency in such meetings is for the former owner and client to do all of the talking and for the buyer to be an outsider. Similarly, if the seller stays around the office, clients will want to talk to the seller rather than to the new buyer. However, if the buyer meets the clients without the seller, there will be a better chance for the buyer to get to know the clients and to establish good relationships. The only way to avoid the issues of a long transition completely is to get the seller out of the office and preferably out of town.

Misconception No. 2:

The best buyer for an accounting practice is another accounting firm.

It is true that many accounting firms see themselves as willing to purchase another practice and often seek such acquisitions. However, in many instances, an existing firm is not the ideal buyer of a practice. Oftentimes, an existing firm does not have the time to take on another practice. In a typical sale situation, the seller is ready to retire. The buyer must be willing to assume the workload of an experienced owner as well as do all the extra things involved in a transition. A typical buying firm does not have such an individual available who can fill the shoes of the seller. This lack of time ties into the second reason why firms are sometimes not the best buyers for practices. Firms are often only marginally motivated to buy a practice. Of course, all firms are motivated if a seller offers generous terms and agrees to continue working at a reduced rate of pay. Compare this to a potential buyer who is an individual with several years of experience who has dreamed of owning a practice. That buyer brings to the table the willingness to devote much time and energy to taking over the workload and making the practice work. Such an individual is much more motivated than the typical firm buyer.

Misconception No. 3:

Accounting practices have some intrinsic value that all potential buyers recognize, and with which all agree.

If one is selling a gallon of gasoline this might be true. But most people need gasoline, purchase it regularly, and have a good idea of what it costs. This is not true of accounting practices. Many people in the world would not purchase a practice if it were offered to them for a dollar. In a metropolitan area of millions, there might only be a couple of hundred potential buyers for a particular practice. In other areas, there might be considerably less.

If a practice is offered at a certain price, all potential buyers might step up to the plate with check in hand. On the other hand, it could be priced where only one or two would agree to purchase. This is because buyers have quite different ideas as to value and possess different degrees of motivation and interest. Sometimes a seller turns away a very motivated and capable buyer because, for one reason or another, the seller decides the buyer is not quite perfect. His or her misconception is that there are a large number of buyers and that all buyers are equally motivated and equally willing to pay some known price. That misconception could be costly.

This same misconception comes into play when sellers think the only trick is finding a buyer. Practice owners routinely say, "Oh, I have a buyer" or "I have someone interested in buying my practice." The implication is that finding a buyer is the hard part. The object in selling a practice (unlike in selling gasoline) is to first locate all potential buyers for the practice and from that group determine the top 5% or 10% in terms of motivation and ability. It is from this group one must find the buyer, if one is interested in finding the true value of the firm. ◀

SOCIETY FOUNDATION AWARDS

Scholarships

\$99,000 PRESENTED TO 76 NEBRASKA COLLEGE STUDENTS IN 2022-2023

SINCE 1976, THE FOUNDATION OF THE NEBRASKA SOCIETY OF CPAs has supported the future of the CPA profession in Nebraska by sponsoring scholarships for accounting students attending Nebraska colleges and universities.

This year, the Society's Foundation contributed \$99,000 in scholarships to accounting students at 14 Nebraska colleges and universities. This translated to scholarships for a record-breaking 76 college accounting students across the state for the 2022-2023 school year. The scholarships ranged from \$1,000 to \$3,000 each.

Since the 150-hour education requirement was enacted into law, we have specifically assisted students who are in pursuit of a Master of Accounting and those who are at the end of their schooling to meet the education requirement. Of the 76 scholarships, 24 went to students in the final semester of their 150-hour requirement. In addition, four one-year scholarships were presented in honor of the Society's 2022 award recipients. Another two of the scholarships honored the previous Society executives: Arnold Magnuson led the Society from 1958 to 1990 and Dan Vodvarka from 1990 to 2018. New this year were five Sponsor-a-Student "Pipeline"

Scholarships, which have been funded and sponsored by several generous members. We also supported 41 other accounting students through our general accounting scholarships, before these individuals arrive at the final stage of their academic career.

Congratulations to each and every one of this year's scholarship recipients. These are some of the best and brightest in Nebraska and soon-to-be future leaders of the CPA profession in our state.

You will find the 2022-2023 scholarship winners along with their photos on the following pages.

We also applaud all of Nebraska's college and university accounting instructors and administrators. Educators play a critical role in the lives of our students and the long-term success of the accounting profession and we appreciate all they do!

Please support the future of the accounting profession by making a donation to the Society's Foundation at www.nescpa.org/scholarships/donate. ◀

Thank you to the Foundation of the Nebraska Society of CPAs Board of Trustees for 2022-2023.

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Chadron State College



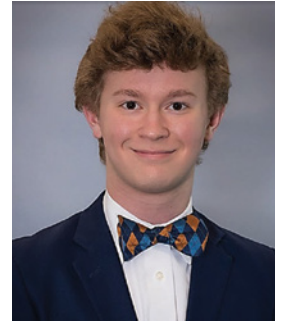
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Creighton University



Allison Harless
Doane University



Parker Lange
Doane University



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Caroline Anderson
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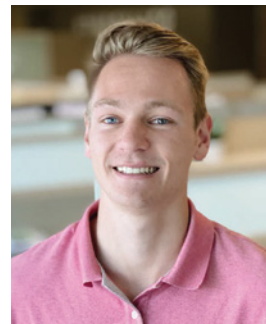
Piper Rasmussen
Midland University



Jenna Jaeschke
Nebraska Wesleyan



Hayden Retzlaff
Nebraska Wesleyan



Connor Riekenberg
Nebraska Wesleyan



Matthew Evans
Peru State College



Brittany Goodro-Sincebaugh
Peru State College



Crystal Homan
Peru State College



Ashton Baxa
University of Nebraska
Kearney



Larren Fear
University of Nebraska
Kearney



Harley Edic
University of Nebraska
Lincoln

150-Hour Scholarship Recipients (continued)



Jamison Theye
University of Nebraska
Lincoln



Christina Porath
University of Nebraska
Omaha



Calvin Musil
Wayne State College



Dawson Weber
Wayne State College



Society Award Scholarship Recipients



*Outstanding CPA in Business
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Chadron State College



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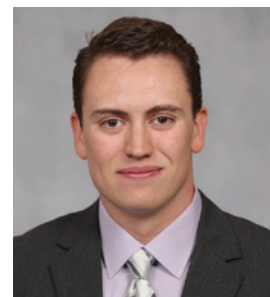
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Sydney Lindstedt
University of Nebraska
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*Arnold L. Magnuson
Scholarship*
Grace Shehan
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*Dan Vodvarka
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Kloe Ruth
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Concordia University



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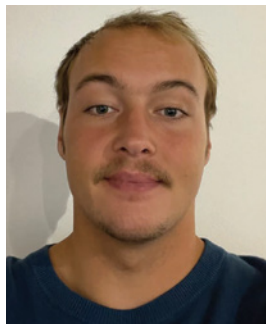
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Jessica Robinson
Creighton University



Andrew Standard
Creighton University



Jared Smith
Doane University



Savannah Thornton
Hastings College



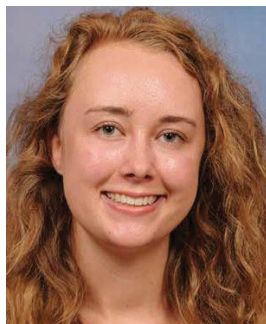
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Michelle Carstens
Peru State College



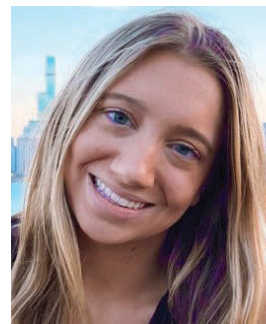
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Peru State College



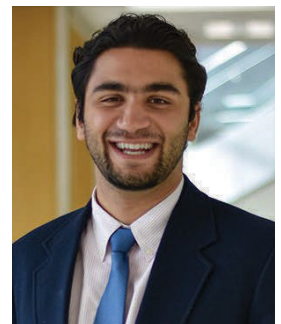
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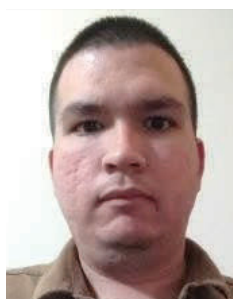
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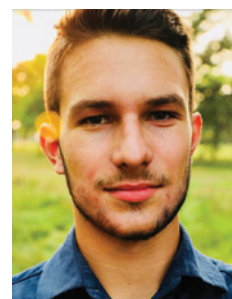
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MORE THAN 200 SOCIETY MEMBERS AND ORGANIZATIONS REMEMBERED THE SOCIETY'S FOUNDATION OVER THE PAST YEAR and a half by making nearly \$43,000 in contributions that will support accounting students at 14 colleges and universities throughout Nebraska. Thank you to everyone on the following Foundation Honor Roll for helping to ensure the pipeline of new CPAs will continue to flow in Nebraska!

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² All or a portion of contribution was given in memory of former Society Executive Director Arnold Magnuson of Lincoln, who passed away March 17, 2022.

³ Contribution given in memory of William O. Johnson of Oakland, father of Society Executive Director Joni Sundquist. Johnson passed away Oct. 12, 2021.

⁴ All or a portion of contribution was given in memory of Society member Mark S. Eldridge of Omaha, who passed away Aug. 15, 2022.

⁵ All or a portion of contribution was given in memory of Society member JoAnn Martin, who passed away Oct. 20, 2021.

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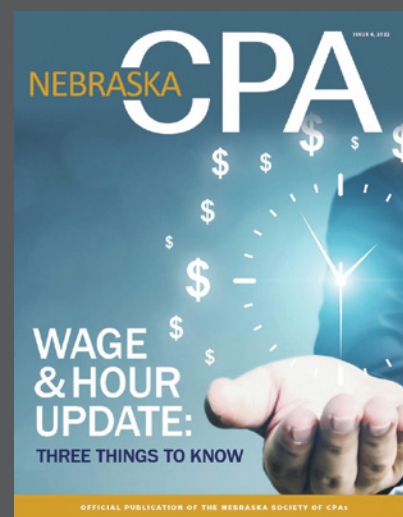
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