

NEBRASKA CPA

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NEBRASKA CPA

MARCH/APRIL 2021

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PRESIDENT'S MESSAGE

BY JONI SUNDQUIST, NEBRASKA SOCIETY OF CPAS

SPRINGING FORWARD TO A GREATER FUTURE



Spring is a time of change and new beginnings, and that's especially true at your Society.

In March, we released a brand-new website to greatly improve upon your member experience. Creation of the new Society site was completed in conjunction with Imarc, a full-service digital agency headquartered in Amesbury, Mass. Imarc has two decades of experience working with State CPA Societies from across the country.

The new and improved Society website at nescpa.org allows you to:

- **Track your CPE.** Easily keep track of your CPE and retrieve your CPE reports at any time with the new My CPE Tracker.
- **Register for CPE.** With thousands of CPE programs to choose from, use the Filter tool to find programs that suit your needs. Sort by Fields of Study, Credits, Dates, and more to locate the CPE courses that are perfect for you.
- **Find a CPA.** Are you looking to grow your business? Promote your firm and the services you offer in the new Find a CPA online directory.
- **Post a job.** Are you trying to hire staff or perhaps seeking a new career? Check out our new Careers section to post or find a job.
- **Stay in the know.** Stay up-to-date on information related to the profession with headlines and the latest news affecting today's CPA. You'll also find a link to the Nebraska CPA online journal.
- **Donate.** Help build the CPA pipeline with a donation to the Society's Foundation or contribute to the Political Education Committee (PEC) to help elect business-friendly state legislators.
- **Pay your dues.** Join or renew your membership online to receive discounts on education and other products and services, ensure a favorable legislative and regulatory environment, receive news and information, and support Nebraska accounting students. Firm administrators are provided special access to the site to ensure the accuracy of all firm and employee information.

If you have any questions about the Society's newly designed website, please feel free to contact the Society at (402) 476-8482 or society@nescpa.org. We will continue to roll out additional new features in the weeks and months to come.

CPE Catalog Is Now Live

Our 2021 CPE Catalog is now live on our website! Browse our complete list of CPE and sign up for courses that will help you stay on top of your game at nescpa.org/cpe. All NESCPA members receive exclusive discounts on all our courses and conferences.

As in the past, we will continue to add courses on hot topics throughout the year. Please let us know if you would like to see CPE on a topic not currently listed, or feel free to share your feedback with us.

In addition to courses, registration is also open for our spring conferences. Due to the ongoing COVID-19 pandemic, we made the decision to keep our learning opportunities virtual throughout the summer. This means the Business & Industry Conference on April 22, the Not-for-Profit Conference on June 7, and the Governmental Accounting & Auditing Conference on June 9-10 will all be held in a virtual format. We are pleased to be working with Sunflower Development again this year for our video production needs; Sunflower's conference platform makes interacting with speakers, attendees, and sponsors a breeze.

Our CPE Catalog is developed based on member feedback with significant input from our CPE Committee, so please feel free to reach out to Vice President Kelly Ebert with your suggestions for topics and speakers we should consider for future programming.

Rep. Bacon Signs Letter to IRS

On March 31, a bipartisan group of 60 members of Congress signed on to a letter, led by Rep. Lloyd Smucker (R-PA), requesting IRS Commissioner Charles Rettig extend the federal tax filing deadline for first quarter estimated tax payments to May 17, 2021. Read the letter at <http://bit.ly/2021-03-31LtrIRS>. Such a change would streamline tax filings, help ensure tax compliance, and help ease the burden of millions of small businesses and other taxpayers. The Nebraska Society of CPAs thanks Rep. Don Bacon (R-NE) for signing the letter and supporting Nebraska's small business community, individual taxpayers, and the CPA profession.

A growing list of people and organizations have been asking for an extension for all filers and we hope Commissioner Rettig heeds the call to make this common-sense alignment. Read more at <http://bit.ly/2021-03Stakeholders>.

Small businesses and the CPAs who advise them recently had a huge success when Congress decided to extend the PPP application deadline from March 31 to May 31. The Nebraska Society and AICPA will continue to advocate on issues to support economic recovery. We are making strides towards a bright economic future for all citizens.

Appropriations Committee Releases Budget

The Nebraska Legislature's Appropriations Committee officially released its biennial budget. View the budget at <https://nebraskalegislature.gov/pdf/reports/fiscal/2021proposal.pdf>. Speaker Mike Hilgers announced his intention to begin budget debate on April 8 and pass the final package the week of April 12. The last two weeks of April will be devoted to the "taxing and spending" bills.

Update on Property Tax Incentive Act Credit

State Senator Lou Ann Linehan, who is chairman of the Nebraska Legislature's Revenue Committee, in late March requested that Speaker Mike Hilgers designate Legislative Bill 181 as a consent calendar bill—consent calendar bills are an avenue to get bills on the floor of the Legislature that aren't controversial. On April 12, LB 181 advanced from General File on a 45-0 vote! This bill, as amended, would remedy challenges created with the Nebraska Property Tax Incentive Act Credit, which was included in LB 1107



**In the months to come,
we plan to spring
even higher—into a
new year filled with hope and
opportunity, and a future fueled
by imagination and innovation.**

(2020). The bill would allow, not require, pass-through entities to distribute the refundable credit in the current manner. Further, it would change the filing method for the next year so that the credit is claimed at the entity level and then distributed according to the shareholder or partnership agreements. Finally, if a pass-through entity is unable to claim the credit this year, the entity will have one year to catch up and claim the credit next year.

A hearing was held before the Revenue Committee at the Nebraska Legislature on March 16. Society Chairman-Elect Erica Parks and Society Legislation Committee Chairman Shawn Melotz submitted position letters in advance of the hearing, while Society Chairman Ryan Burger and I testified in person in support of the bill, as amended. Read more at <https://conta.cc/3uEUzsU>. The Society is extremely grateful for Sen. Linehan's assistance and time; we are very optimistic that this bill will pass the Legislature prior to the end of the session in June. Watch your email for updated information on this issue.

Onward & Upward

April 1 marks the beginning of our new fiscal year. While the COVID-19 pandemic changed the way we operated this past year, your Society staff has not wavered in our service to Nebraska CPAs. Our commitment to the profession remains steady and strong. We look forward to offering in-person courses later this year and visiting with members face to face very soon. In the months to come, we plan to spring even higher—into a new year filled with hope and opportunity, and a future fueled by imagination and innovation.

May the challenges of this past year serve as a springboard in your life as well, allowing you to reach new heights and achieve greater success both personally and professionally. ◀



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.



LOOKING BACK, FORGING AHEAD

BY DAN SWEETWOOD,
NEBRASKA BOARD OF PUBLIC ACCOUNTANCY

COVID 19-Pandemic. It seems unreal but we reached the one-year anniversary of the outbreak of the COVID-19 pandemic. I am extremely proud of your State Board's response to the pandemic including minimal disruption to operations. Although the Board cancelled meetings with the goal of protecting members, staff, and the public, we later were able to meet virtually after Governor Pete Ricketts issued executive orders allowing for the meetings. The State Board continues to hold virtual meetings, including in January and March of this year.

Uniform CPA Examination. The pandemic has disrupted the CPA examination; however, our Nebraska test sites responded well and mostly remained open and operational (it should be noted as of late March the Omaha site has closed temporarily). Additionally, those candidates impacted were given the opportunity to extend the 18-month window to complete the examination through December 31, 2020. At its March meeting, the State Board provided a further

extension for those impacted until September 30, 2021. On the national front, the Board of Examiners (BOE) has launched a pilot project to allow for remote testing within a candidate's home and/or other approved locations in response to emergencies such as the pandemic in the future. More to come on this.

Two Task Forces Addressing Issues. The State Board has launched a task force to review regulations within Chapter 5/ Rules of Professional Conduct. Several State Boards have adopted the AICPA Uniform Code of Conduct to address regulatory issues and have removed their specific state codes, as we have in Nebraska. Other charges of the Chapter 5/Rules of Professional Conduct Task Force are to ensure the current Chapter 5 rules are relevant, modernized, and in line with the need to protect the public. Recommendations from this task force will be made to the State Board. In addition to myself and State Board staff, task force members on this important project include Dr. Thomas Purcell, CPA, chairman; Dan Davis, CPA, vice chairman;



Melissa Ruff, CPA; Rand Hansen, CPA; Michele Stromp, CPA; and Joni Sundquist, president, Nebraska Society.

Additionally, the Nebraska Society of CPAs launched a task force with the assistance of the State Board to address succession issues of small CPA firms in Nebraska after a firm questioned current requirements. We anticipate recommendations arising from the task force that will include changes to the current Nebraska Public Accountancy Act and State Board regulations regarding non-CPA ownership in Nebraska. Stay tuned—more to come on this! In addition to Society President Sundquist and myself, task force members include Ryan Burger, CPA, chairman; Marcy Luth, CPA, vice chairman; Dr. Thomas Purcell, CPA; and Dana Weber, CPA.

New Members! It is always exciting to have new members join the State Board, although we will miss those who have been with us for the last eight years. Christi Olsen, CPA, and Mark Manning, CPA, have been appointed by the Governor and made

the commitment to volunteer their valuable time to address the needs of the public and the profession as State Board members. Please join me in thanking them for their service! Additionally, the State Board is looking for new members this year, including a CPA from the second congressional district and a CPA from the third congressional district. If interested, go to the Governor's website at <https://governor.nebraska.gov/board-comm-req>.


Take care and never hesitate to contact us with any questions and/or concerns! ◀



Dan Sweetwood is executive director of the Nebraska Board of Public Accountancy. You may contact him at (402) 471-3595 or dan.sweetwood@nebraska.gov. You may also contact Kristen VanWinkle, administrator of the State Board, at kristen.vanwinkle@nebraska.gov.

NEBRASKA TAX PLANNING OPPORTUNITIES: ADDING VALUE FOR YOUR CLIENTS BEFORE AN AUDIT

BY NICK NIEMANN AND MATT OTTEMANN, MCGRATH NORTH



As with all tax matters, state and local taxes and incentives offer the opportunity to choose to plan ahead or to choose to not plan ahead. Planning ahead usually results in the better outcome.

Below are several of the planning opportunities that state and local tax professionals are addressing during the life of a business or individual, and which we are seeing in audits and appeals, when not properly addressed early on.

Issue: Sales Tax on Software Development

Problem: The Nebraska Department of Revenue won't recognize that custom software developed by outside firms for a company is exempt from sales tax, unless the software development agreement meets a three-factor test for the developers to be treated as "temporary employees" of the company for sales tax purposes. NDR Rev. Rul. 1-2-1.

What to Do: If a company very precisely includes the three factors for temporary employees in its software development agreement, it may avoid Nebraska sales tax on that development. Audits and appeals usually center around proving the agreement complies and that various contract terms or company practices don't contradict this. The three-factor test is actually a "safe harbor," which enables other factors and legal grounds to apply if this safe harbor is not met.

Issue: Tax on Cloud Computing

Problem: The Nebraska Department of Revenue has, in multiple matters we have been asked to help resolve, alleged that sales tax is due on a part of cloud computing charges. The department's contention was that otherwise tax-exempt cloud computing was protected by certain levels of otherwise taxable security measures.

What to Do: If cloud service contracts are carefully drafted, a company may reduce or eliminate the portion of cloud computing charges that the department alleges are subject to the sales tax on security services. On audit or appeal, we are addressing the legal position that security is an integral part of the cloud service and should not be parsed and taxed.

Issue: Nebraska Residency for Income Tax Purposes

Problem: The Nebraska Department of Revenue routinely follows individuals who move outside of Nebraska to attempt to classify these persons as still being taxable residents.

What to Do: If your client intends to move out of state to nonresident status, the 12 principal factors for determining a person's resident or nonresident status should be addressed and documented during the move. Frequently, individuals will want to retain certain Nebraska connections (such as home or business ownership) which the Department of Revenue uses against you. On audit or appeal, we usually find the taxpayer hasn't met all of the 12 factors or kept the documents to best prove this, so this often becomes a matter of legal positioning and settlement.

Issue: Nebraska Tax for Trusts Administered Elsewhere

Problem: Nebraska's statutes impose tax on trusts created by a Nebraska resident. This may not be constitutional for trusts administered outside Nebraska.



If an owner wants to transfer stock into an LLC, partnership, or trust, the potential disqualification needs to be addressed before the stock is transferred. The case law provides debatable positions for audit or appeal when the ownership isn't clean.

What to Do: If a trust's only contact with Nebraska was the residence of a grantor, the trust may not be subject to Nebraska income tax. This is best handled when the trust is set up or results in a legal analysis upon audit or appeal.

Issue: Qualification for Nebraska's Capital Gain Exclusion

Problem: The Nebraska Department of Revenue has challenged the qualification for this exclusion in a number of situations, including when corporate stock is first placed into an LLC, partnership, or trust or when stock is sold in a deemed asset sale under Sec. 338(h)(10) of the federal tax code.

What to Do: The selling owner needs to meet the statutory requirements at the time of sale. If an owner wants to transfer stock into an LLC, partnership, or trust, the potential disqualification needs to be addressed before the stock is transferred. The case law provides debatable positions for audit or appeal when the ownership isn't clean.

Issue: Optimizing ImagiNE Nebraska Incentives

Problem: Most state tax incentive programs, including Nebraska's, have certain requirements to qualify for and optimize the available incentives. These can relate to the level of new investment and jobs, the type of business, the level of compensation, the locations, the corporate structure, and the type of property being acquired. We typically review more than 25 factors in preparing ImagiNE Nebraska Applications.

What to Do: Under the ImagiNE Nebraska Act, the project application needs to occur ahead of project commencement to optimize results. There are 20 main critical legal criteria that need to be addressed in the planning stage for these projects. Ideally, potential issues are dealt with in advance with the Nebraska Department of Economic Development or the Nebraska Department of Revenue before the project commitments are in place. Under this Act, a project agreement is entered into with the state of Nebraska.

This is a contract. The project application is part of this contract. So, both the application and the agreement need to be addressed with the same level of legal review and care as with all contracts. Options for appeal exist for issues that are not resolved, either during the project application process or during the project's audits.

Issue: Wayfair Changes the Rules on Sales Tax Collection

Problem: In the recent *Wayfair* decision, the U.S. Supreme Court eliminated the traditional physical presence rule, which held that a company must have physical presence in a state to be required to collect tax in that state. This means that companies may need to collect sales tax in a state even if they are not physically located in that state.

What to Do: *Wayfair* is a game changer. This reversal of the physical presence rule means that all companies selling products or services in multiple states need to determine whether they now have a sales tax collection requirement. Failure to determine this accurately can result in under collection (with tax due upon audit) or over collection (with in effect a noncompetitive overcharge). Companies must also align their purchasing practices to be sure they are not inadvertently paying a use tax on purchases where the seller has stepped up its tax collections.

Issue: A Business Buyer's Liability for the Seller's Unpaid Taxes

Problem: Nebraska tax law can, in certain cases, require the purchaser of a business to pay the unpaid taxes of the predecessor owner.

What to Do: This can be largely addressed in the drafting of the purchase agreement, along with the due diligence process. In addition, if a company properly plans and requests clearance from the Nebraska Department of Revenue, it may avoid taxes of a predecessor.

Issue: Bundled Transaction Rules

Problem: An improperly structured purchase transaction, in which a purchaser receives multiple goods or services for one, non-itemized price, can cause tax to be imposed on the purchase of otherwise nontaxable goods or services.

What to Do: If a company plans its purchase or sale transactions to avoid classification as a bundled transaction, it may avoid unnecessary sales or use tax. On audit or appeal, we can also address whether this is actually one nontaxable transaction, not to be broken into taxable and nontaxable portions.

Issue: Classification as Taxable Goods or Nontaxable Services

Problem: It is not always clear whether a purchase transaction is for taxable goods or nontaxable services. The answer to this drives whether the transaction is subject to sales and use tax.

What to Do: If a company structures its transactions in light of the Nebraska Department of Revenue's six-factor test for distinguishing nontaxable services from taxable goods, it may reduce its ultimate sales tax cost on the transaction to zero. When this reaches audit or appeal, we usually need to bring both the department's test as well as applicable "principal object" case law into play.

Issue: Qualification for Alternative Apportionment

Problem: Within the last few years, Nebraska amended its statutes to add new apportionment rules that, in general, better reflect the relative economic activity of many companies in Nebraska. However, for some companies, the statutory apportionment rules do not fairly represent its Nebraska activities.

What to Do: If a company receives an alternative apportionment ruling, it may apportion its income to Nebraska using a test appropriate for its business model. This now needs to be applied for before the tax year. This is subject to appeal if not granted.

Summary

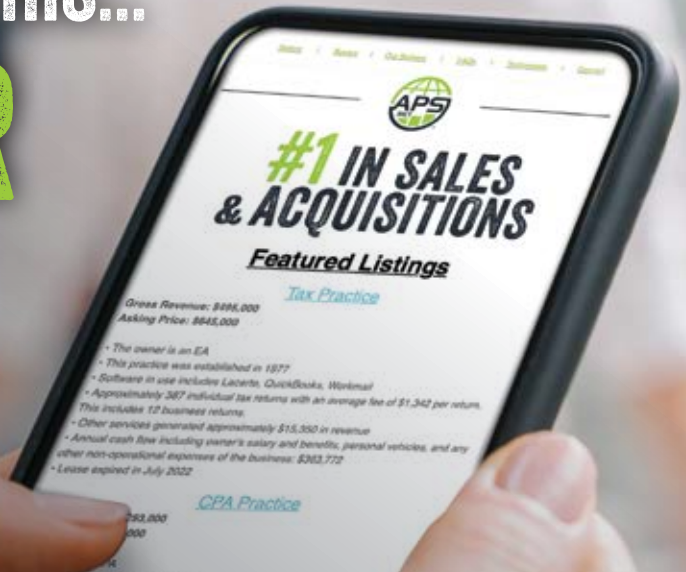
This article has examined some of the various planning opportunities that can occur "Before an Audit." In our next two articles, we'll look first at certain best practices "During an Audit" and then "After an Audit" (i.e., the appeal). These are also highlighted in our publication, *The Anatomy of Resolving State Tax Matters*. ◀

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 and defend tax and incentive positions with the appropriate state or local agency, including the Nebraska Department of Revenue. Learn more at www.NebraskaStateTax.com. For a copy of their complete publication, "The Anatomy of Resolving State Tax Matters," please visit their website or contact Niemann or Ottemann at (402) 341-3070 or at nniemann@mcgrathnorth.com or mottemann@mcgrathnorth.com, respectively.

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CONTINUED REMOTE WORKING MAY RESULT IN UNINTENDED STATE TAX CONSEQUENCES FOR EMPLOYERS

BY JEFF SCHAFFART AND NICHOLAS BJORNSON, KOLEY JESSEN



Many employees are now at the one-year mark of working from home. As society returns to “normal,” employers should evaluate the potential tax consequences of permitting or requiring employees who live in other states to work from home. States are considering whether a return to “normal work” should also mean a return to “normal” nexus and other taxation rules.

The main issues arise when an employee is a resident of one state while the employer’s physical location is in another. This has potential ramifications for income tax withholding; income, sales, and use taxes; and unemployment insurance.

Income Tax Withholding

Forty-one states impose a personal income tax on wage income, but their rules vary. For example, some states have a 14-day rule stating that if an employee is working in the state for 14 days or less per year, no income tax withholding is due to that state. Other states use dollar thresholds. Others have entered into reciprocity agreements with each other that eliminate income tax withholding requirements. The issue is further compounded by potential local income tax withholding requirements. As a result, the income tax withholding laws of the state in which the employer has its primary place of business must be compared to those of the states and localities where the employer’s employees have their residences. The failure to do so may result in employees, and their employer, being under-withheld in one or more states, with the resulting

potential for interest and penalties accruing on the underpayment (or lack of payment).

Seven states, including Nebraska, tax people where their office is even if they do not actually work in the state. This is known as the convenience of the employer (COE) rule. The COE rule comes into effect if the employee works from a home in another state out of their own convenience instead of due to the employer’s necessity. For example, an employee who is based out of an office in Nebraska but works out of her home in Iowa is subject to Nebraska state tax on any compensation earned while working from home. Further, the Nebraska Department of Revenue has stated that it won’t change withholding requirements for businesses based on employees’ locations during the pandemic, and that it won’t impose new withholding obligations on businesses. Many other states provided employee withholding relief in response to the pandemic.

Massachusetts similarly advised employers to keep withholding taxes for employees who normally work within their jurisdictions but are now temporarily out of state. However, New Hampshire filed suit with the U.S. Supreme Court contending that Massachusetts taxing their residents is unconstitutional. Iowa filed an amicus brief in support of New Hampshire challenging the ability to tax nonresidents’ income while they’ve been working remotely. The outcome of this litigation should be monitored by employers who rely on the COE rule.



When employees work in states other than where the office is located, the employer must decide whether to report and pay unemployment insurance in the state where the employee is located, or in the state where the employer is located. Unemployment insurance taxes are paid to only one state.

States require an employer to register, file, and withhold state payroll taxes and, if the employer fails to do so, may collect these tax obligations from the employer and impose penalties and interest. Depending on the state, penalties may be assessed for each day of delinquency and interest accrues on the estimated amount of taxes due for the period covered by the withholding report.

Income/Sales and Use Tax

In addition to state income tax withholding concerns, having an employee work remotely may create “nexus” for a state to impose other taxes, such as income and sales and use tax. Nexus permits a state to tax an out-of-state (foreign) entity when there is a sufficient connection (a “nexus”) between the foreign entity and the state. What constitutes nexus varies across states. For sales and use tax purposes, although most states have now adopted laws that impose an “economic” nexus based on the dollar amount of sales or the number of transactions in those states, nexus can still be created through the physical presence of employees. On the income tax side, federal Public Law 86-272 prevents states from imposing corporate income tax without a minimum level of physical presence, and it excludes certain marketing activities.

If an employer has established nexus because of employees working remotely, the rules for sourcing income and profit to the respective jurisdictions often depend on the physical presence of employees. This could materially change the apportionment of business profits. Businesses with offices in one state that have employees work from home in another state may be required to source sales to the various states where their remote workers perform services for their customers. However, businesses that solely provide either services or intangibles and have employees working in market-based sourcing states (market-based sourcing method assigns the receipts from sales of services to the location of a service provider’s customers or the destination where its customers receive the benefits of the service) should not face apportionment issues resulting from employees working from home. Employers should now be aware of these new concerns.

There is limited guidance from the states thus far in terms of income and sales and use tax nexus triggered by employees working from home. Iowa has stated that simply having a remote employee during the declared state of emergency won’t create nexus or cause the company to lose protection under Public Law 86-272. Other states and jurisdictions have issued similar guidance, but many states have not issued any relief associated with employees working from home and some states have stated that they will enforce their withholding and tax nexus law.

Unemployment Insurance

When employees work in states other than where the office is located, the employer must decide whether to report and pay unemployment insurance in the state where the employee is located, or in the state where the employer is located. Unemployment insurance taxes are paid to only one state. All states require employers to use the same four-part test for each employee to make this determination, applied in descending order:

Localization of Services. An employee’s services are localized in a particular state if all or most of his/her services are performed in that state, with only incidental services performed elsewhere. Where the employee performs services outside of the state on a permanent or substantial basis, the services cannot be treated as localized to a particular state.

Base of Operations. If the employee’s services are not localized, the employer should conduct the “base of operations” test, which focuses on the place the employee customarily returns to in order to receive instructions or supplies.

Place of Direction and Control. If the employee’s services are neither localized, nor subject to a base of operations, the third test is the “place of direction and control,” which is often a corporate or regional headquarters where the employee gets instructions.

State of Employee’s Residence. If none of the previous three tests provide an answer, then unemployment insurance taxes are due to the employee’s state of residence.

If employers decide to continue to let employees work from home, the first three tests may more easily fail for a nonresident employee, thus requiring the reporting and payment of unemployment insurance taxes to states where employees have their place of residence.

In conclusion, employers should be aware of the different withholding requirements that their new employees working from home could trigger and follow guidance issued by state tax agencies. ◀



For more information, contact Jeff Schaffart or Nicholas Bjornson at Koley Jessen at jeff.schaffart@koleyjessen.com or nicholas.bjornson@koleyjessen.com, respectively. Schaffart solves complex tax and legal issues by providing timely, pragmatic advice to private equity sponsors, general counsel, management teams, and business owners. Bjornson’s practice focuses on federal, state, and international taxation of corporations, partnerships, and individuals.



ADVISING PRESIDENT BIDEN ON ESTATE AND GIFT TAX PROPOSALS

BY SHARON KREIDER, CPA

My wealthy (and very conservative) client called after the election results were apparent and asked, “What is Biden going to do to me?” He didn’t want a wait-and-see answer. And he didn’t want me to say, “Go see your estate attorney.” He wanted my opinion, perhaps to weigh against the attorney’s opinion. I know that you are facing the same problem with your clients. Here’s an opinion piece for you.

Two Assumptions

There are two basic assumptions applied in the following discussion on President Biden’s estate tax proposals. Our country has run up a big COVID-related deficit, and we will have to pay down the deficit

someday. Our economy is fragile because of COVID-19. We need to consider the immediate impact on our economy of all proposed tax increases. Maybe short-term or mid-term impacts will result in a delay to what might otherwise be good tax policy.

Current Law

Assets are included in the estate at their fair market value. They are subject to 40% federal estate tax if the estate assets’ total value is greater than the exemption amount (currently \$11.7 million for each individual). Inherited assets receive a step-up in basis to fair market value at the date of death. The gift exemption is currently the same as the estate tax exemption, encouraging many wealthy people to maximize gifts in

anticipation of President Biden’s success in reducing the exemption amount.

Proposals

President Biden has made four proposals to increase taxes on the transfer of wealth.

1. Reduce the estate tax exemption.
2. Reduce the gift tax exemption and decouple it from the estate tax exemption.
3. Increase the rate on taxable estates from 40% to 45%.
4. Eliminate step-up in basis at inheritance.

Reducing the Exemption

President Biden has suggested that the estate tax exemption should be lowered to \$3.5

million per individual, and the exemption amount for gifts lowered to \$1 million. How likely is this change? Considering that the Republicans wanted the estate tax repealed and settled for a doubling of the exemption amount when they enacted the Tax Cuts and Jobs Act (TCJA), a drastic reduction would be a battle. The compromise is likely to be the pre-TCJA number of \$5 million adjusted for inflation after 2011 (resulting in about a \$5.7 million estate tax exemption effective for 2022). Would this change endanger our economy when it is suffering from COVID-19 shutdowns and slowdowns? The Tax Policy Center estimates that this change would result in 55,000 additional taxable estates and \$60 billion of increased revenue over 10 years. (Read more at <https://www.taxpolicycenter.org/briefing-book/how-could-we-reform-estate-tax>.) Those numbers seem small compared to our deficit and our GDP and should have little negative impact on our economy.

Decoupling the Gift Tax Exemption From the Estate Tax Exemption

In 2011, the gift tax exemption was increased from \$1 million to equal the estate tax exemption (\$5 million in 2011). Is it likely that the gift tax exemption will be decoupled from the estate tax exemption? Yes. Why? Because it affects only those who can gift large amounts (let's say \$11.7 million in 2021) and still have enough assets remaining to enjoy a luxury life. Will it really drop to \$1 million? It's possible, but politicians are involved in drafting legislation, and their wealthy constituents are large donors. Expect a compromise at some higher amount. Perhaps \$2 million. This change should have little negative impact on our economy.

Federal Estate Tax Rate

The current rate is 40% for taxable estates. The rate was 55% in 1997, 45% in 2007, and 35% in 2011. The rate increased to the current 40% in 2013. While it is not likely that the rate will increase to its 1997 high of 55%, a compromise might result in a 45% rate, especially if the exemption amount is also compromised at the pre-TCJA \$5 million amount.

Step-up in Basis

We've tried this before. The Tax Reform Act of 1976 eliminated step-up in basis on all inherited assets, but the provision was repealed before it took effect. For a moment (the year 2010), the estate tax was repealed, and carryover basis was required for most inherited assets. The estate tax law went back to "normal" in 2011.

President Biden, and other progressives, believe that the step-up in basis increases generational wealth transfer and contributes to income inequality. Because of step-up in basis rules, wealthy taxpayers can permanently escape capital gains taxes by passing appreciated assets from generation to generation.

If step-up in basis is eliminated, capital gains tax would apply between the decedent's basis and the asset's sales price (generally the fair market value at the date of death if sold promptly.) In addition to this change, President Biden also proposed that capital gains be taxed as ordinary income for upper-income taxpayers, meaning that the tax to the beneficiaries on inherited assets would be substantial.

There are two immediate problems with the elimination of the step-up in basis:

1. Estate tax and capital gains tax would be paid on the same asset, albeit estate tax on the asset's fair market value and capital gains tax on the appreciation of the asset. Federal



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taxes could be 50% or 60% or more, and those rates could be a disincentive to invest.

2. The repeal of step-up in basis would be a compliance issue. Basis records would be required for everyone unless exceptions (and their complications) are added to the repeal.

This change could negatively impact our economy and is thus less likely than some other estate tax proposals to be included in successful legislation. The step-up in basis on inherited assets is very entrenched.

Valuation Discounts and GRATs

Although not part of President Biden's campaign proposals, others have suggested that valuation discounts in the form of lack of control and lack of marketability should be limited. (President Trump withdrew IRS proposed regulations that would have curtailed discounts.) Grantor retained annuity trusts (GRATs) provide an annuity to the grantor for the term of the trust. For gift tax purposes, the grantor makes a gift equal to the remaining value of the trust. The gift amount is based on the "remainder" amount determined based on the annuity payment and a factor published monthly by the IRS. The computation can result in a heavily discounted value for the gift. Proposals on GRATs have included a 10-year minimum annuity period and a retained interest that would produce a taxable gift equal to some amount (one proposal is the greater of 25% of trust assets or \$500,000). These proposed changes should have little negative impact on our economy. ◀



Sharon Kreider, CPA has helped more than 15,000 California tax preparers annually get ready for tax season for the past two decades. With a keen ability to demystify complex individual and business tax legislation, Kreider instructs Western CPE tax seminars and presents regularly for the AICPA, the California Society of Enrolled Agents, and A.G. Edwards. She gained her detailed, hands-on tax knowledge through her extremely busy, high-income tax practice in Silicon Valley. For more information, contact Western CPE's customer service center at (800) 822-4194 or wcpe@westerncpe.com. ©2021 Sharon Kreider



MEMBER SPOTLIGHT: GEORGE BEHRINGER

George Behringer received his Nebraska CPA certificate in 1980 and has been a member of the Nebraska Society of CPAs for 41 years. We recently had the opportunity to zoom with George and wanted to share his story with you.

Q: What led you to become a CPA and where did you get your start in the profession?

A: I grew up in a family that owned and operated a small business in Erie, Pa. The business was started by my grandfather in 1911. In the late 1950s, my dad and my grandmother taught me how to process the weekly payroll for the eight to 12 employees. I was 14 at the time, and I continued preparing payroll and invoices and paying bills every week for seven years. My younger brothers continue to own and operate Standard Pattern Works in Erie.

While attending Gannon College in Erie, I also worked as an accountant at a truck stop. In both jobs, I was impressed by the way my dad and the owners of the truck stop would always follow the advice of the CPAs.

While in college, two of my classes were taught by adjunct professors who had their own CPA practices. They encouraged their students to interview with the Big 8 accounting firms. I received offers from seven of the eight and in 1966 selected the Lybrand, Ross Bros. & Montgomery office in Pittsburgh. After 10 years, I became a Coopers & Lybrand partner. In 1980, my family moved to Omaha, and I became the managing partner of the Nebraska practice in 1987.

In 1998, our three children had finished their undergraduate degrees, so my wife Nancy and I pursued an international assignment with PwC. After performing my due diligence, I accepted a four-year assignment in Riyadh, Saudi Arabia. PwC had just acquired a local CPA firm that previously was owned by another international firm in Saudi Arabia.

During my four years, I was responsible for risk management matters (signing off on all new client acceptances in eight Middle East countries) and quality control reviews of audit practices in the eight countries. We also enjoyed getting our family together for vacations in Australia and a safari in

Africa. We came back to Nebraska twice each year. After completing my four years, I recruited a replacement PwC partner who was in the Saudi practice for the next seven years. I retired as an active partner in 2002, nine months after 9/11.

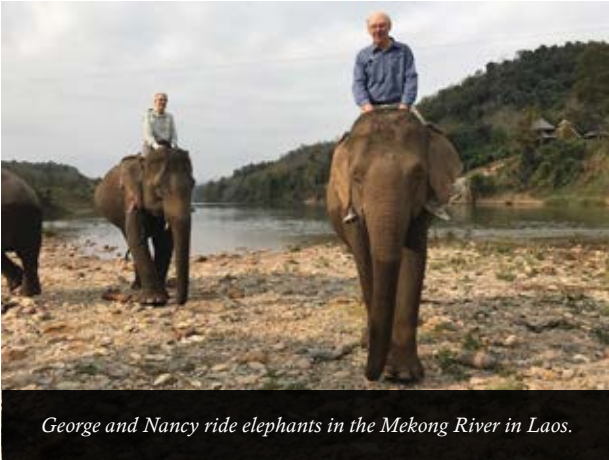
Q: Describe your involvement in developing Nebraska's strong business relationship with Japan.

A: After being appointed Honorary Consul General of Japan in Nebraska in 2010, I searched for existing relationships between Japan and Nebraska, gathering information from the Japanese Consulate in Chicago, Nebraska Department of Economic Development, and the Japanese Saturday School conducted in Omaha for children in Kindergarten through 10th grade. Most of the parents at the school are Japanese nationals working in Nebraska and western Iowa. I became a member of the Omaha Sister Cities Association (OSCA), which includes the sister city in Shizuoka, Japan, and have accompanied Governor Pete Ricketts on two trade missions to Japan. In 2015, I was chairman of the planning committee for the 50th anniversary of the sister city relationship between Omaha and Shizuoka, which is described in more detail below. In 2013, Marubeni and NTT purchased two companies in Omaha for \$2.7 billion and Jun Kaneko helped us welcome the new Japanese expats moving to Omaha. I've worked with a sister city group in Hastings and assisted with a 1928 Japanese Hall restoration in the Scottsbluff/Gering area. Japan is the largest foreign direct investor in Nebraska and Japan is Nebraska's No. 1 export market outside of North America.

Q: What do you consider to be your greatest accomplishment?

A: In 2012, the Omaha Sister Cities Association (OSCA) asked me to form a committee to celebrate and commemorate the 50th anniversary in 2015 of OSCA and its sister city relationship with Shizuoka, Japan. At the time, I was the Honorary Consul General of Japan in Nebraska. OSCA now has six sister cities and we hope a seventh will soon be approved.

Eight other members joined me on the planning committee and we started planning events and raising funds to commemorate and celebrate the 50th anniversary in 2015. The



George and Nancy ride elephants in the Mekong River in Laos.



The Behringers return from a hike in Antarctica.



Sami Al Sarraj and George pose for a photo on the Behringers' last day in Saudi.

events in Omaha included a joint concert performed at the Holland Center by the Omaha Symphony and the Shizuoka Philharmonic orchestras. After just one rehearsal, the orchestras blended their performances together to a full house.

While 80 Shizuoka guests were in Omaha, we hosted them to a banquet attended by 450 people. In addition to the concert, the Shizuoka delegation gifted to Omaha a Japanese Tea House that was built in Japan and reassembled at the Japanese Park at the Lauritzen Gardens botanical center.

I led a 60-member delegation to Japan to celebrate the 50th anniversary in Shizuoka, where we attended dinners and tours hosted by locals. OSCA gifted a Jun Kaneko ceramic sculpture to the Shizuoka Zoo while we were there.

OSCA received a special commendation from the Japanese Ministry of Foreign Affairs for the events and activities during the 50th anniversary.

Q: Tell us about your experience of living and working in a foreign country.

A: Nancy and I have traveled to 59 countries on all seven continents, including my four-year assignment from 1998 to 2002 as a CPA in Riyadh, Saudi Arabia. The managing partner of the Saudi practice was Sami Al Sarraj, who went to college in America and was married to an American. I worked with CPAs and Chartered Accountants from Britain, Pakistan, Australia, and Saudi. All of our services were performed in English and then translated into Arabic for governmental and tax filings. We attracted and retained capable Saudi CPAs, who were all members of the Saudi Organization of CPAs (SOCPA).

The Capital Markets in Saudi required joint audits of publicly held companies. This called for much collaboration between the auditors, and resulted in effective audits, but were more costly for the registrants.

We lived in a three-bedroom villa on a Western compound called Arizona Golf Resort. It had one of only two grass golf courses in Saudi at the time. We were part of a golf group of 15-20 couples who traveled to other Arabian cities like Doha,

Dubai, and Abu Dhabi for long golf weekends. To this day, we continue to travel with friends from Toronto and London. The experiences we shared created lasting friendships.

The weekends in Islamic countries are on Thursdays and Fridays rather than Saturdays and Sundays. My assistant's name was Haque; he was a Bangladeshi national working in Saudi. As practicing Muslims, our staff and clients would stop whatever they were doing for the five prayer calls a day. During work hours, they would go to a nearby mosque or say their prayers on a prayer rug in their office facing the Holy City of Mecca. Meetings with client executives could start at 10:00 or 11:00 at night. This meeting schedule resulted from when the Saudis lived in the desert and had a Bedouin lifestyle two to three generations ago.

Living in an Islamic culture was challenging, yet fun at the same time. One learns to adapt to the culture. It's been 18 years since we lived in Riyadh and perhaps some of the cultural norms are gradually changing.

Q: What advice do you have for young CPAs?

A: As Warren Buffett said, "By far the best investment you can make is in yourself." That means investing in your education and development. CPA firms have as much interest in your career development as you do. You are the service component of the deliverables to clients. While you are developing your personal skills, you're exploring and observing many different organizations and management styles. It can open many doors for future employment opportunities.

My advice for young CPAs: Challenge yourself to take on more client responsibility, volunteer to become active by seeking leadership opportunities in community activities and business organizations. Your self-development will increase as you focus on client assignments while members of the CPA firm will observe your eagerness to take on more responsibility. As you develop your technical skills, people skills, and presentation skills, you will be recognized as a young professional by your firm, your clients, and the business community. ◀

Interested in connecting with George? You can reach him via email at gjbehringer@icloud.com.

DID COVID THROW YOU INTO A SINGLE AUDIT?

BY MARK PRIEBE, AND AMY BALES, NON-FEDERAL AUDIT TEAM, U.S. DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL



Since the beginning of the coronavirus pandemic,

Congress has passed several acts that fund COVID-19 federal awards. Among them are the Coronavirus Aid, Relief, and Economic Security Act (CARES Act); the Paycheck Protection Program and Health Care Enhancement Act; the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSAA); and the American Rescue Plan.

When a non-federal entity expends \$750,000 or more of federal awards (either direct or indirect awards) in their fiscal year, a single audit is required under Subpart F of *Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). With the influx of grant aid, many entities that were under the audit threshold will find themselves for the first time in many years required to have a single audit.

COVID-19 Programs

Some programs created by these acts with single audit implications include:

- Provider Relief Fund—Assistance Listing 93.498
- Coronavirus Relief Fund—Assistance Listing 21.019
- Education Stabilization Fund—Assistance Listing 84.425 (with separate alpha codes to differentiate the grant award type)

Some new programs, like the Paycheck Protection Loan Program, are not subject to single audit. The assistance listing at <https://beta.sam.gov> will tell you whether the program is subject to Uniform Guidance, including the single audit requirements in Subpart F.

Many existing programs received additional funds to help with the pandemic, and these extra funds will increase the likelihood



Statements on Auditing Standards No. 141 says that due to the COVID-19 pandemic, the effective date of those standards has been delayed and will now take effect for audits of financial statements for periods ending on or after December 15, 2021, with early implementation permitted.

that a grantee will be required to obtain a single audit.

Reporting COVID-19 Expenditures

One of the factors that will determine whether a recipient of COVID-19 funds is subject to audit in a given fiscal year is the determination of when (and in which fiscal year(s)) to report the costs incurred on the Schedule of Expenditures of Federal Awards (SEFA). This can be a complicated matter considering some awards were made before terms and conditions were established, the period of performance sometimes allowed costs to be applied before awards existed, and the awards will cross multiple fiscal years. The AICPA Government Audit Quality Center issued a non-authoritative guide to reporting on an accrual-basis SEFA; the GAQC Nonauthoritative Guidance for Reporting on the SEFA may be found at <http://bit.ly/GAQC-SEFA>.

Compliance Supplement and COVID-19 Addendum

The Compliance Supplement (2 CFR 200, Appendix XI) assists auditors in performing single audits by identifying compliance requirements that federal agencies expect to be considered as part of a single audit. The 2020 Compliance Supplement, which was effective for audits of fiscal years ending June 30, 2020, came out in August 2020. Additional audit guidance for COVID-19-related programs funded under the CARES Act was issued in an addendum to the 2020 Compliance Supplement on December 22, 2020. The addendum includes information on new COVID-19 programs and existing programs impacted by COVID-19, as well as a new subrecipient reporting requirement under the Federal Funding Accountability and Transparency Act (FFATA).

Auditors will use the addendum in conjunction with the 2020 Compliance Supplement to determine appropriate

audit procedures. For any programs being audited that are not in the Compliance Supplement or addendum, or for new COVID-19 programs being audited prior to issuance of the addendum, the auditor will follow guidance in Part 7 of the Compliance Supplement to identify direct and material compliance requirements to test. The 2020 Compliance Supplement and addendum are available on the Office of Management and Budget's (OMB) Office of Federal Financial Management website at <https://www.whitehouse.gov/omb/office-federal-financial-management>.

Although many federal agencies issued implementing guidance for new and existing programs receiving COVID-19 funding, the addendum reminds auditors that guidance documents do not create new compliance requirements and auditors should therefore refer to a statute, regulation, or terms and conditions of awards as criteria in audit findings.

Federal agencies have already begun work on the 2021 Compliance Supplement which will be effective for audits of fiscal years ending June 30, 2021. Information included in the 2020 addendum will be incorporated into the 2021 Compliance Supplement. Expect to see updates to audit guidance for COVID-19 related programs that were extended by or created under CRRSAA.

Single Audit Due Dates

Single audits are generally due within the earlier of 30 calendar days after receipt of the auditor's report or nine months after the end of the audit period (2 CFR 200.512(a)). Due to the late issuance of the audit guidance for COVID-19 programs contained in the 2020 Compliance Supplement addendum, OMB included in Appendix VII to the addendum a three-month single audit extension for recipients and subrecipients that received COVID-19 funding with original due dates from October 1, 2020, through June 30, 2021 (i.e., January 1, 2020, through September 30, 2020, fiscal year ends).

Recent Changes to Requirements and Standards

Single audits must be performed under generally accepted auditing standards, *Government Auditing Standards*, and the audit requirements of Uniform Guidance. Auditors should be familiar with recent changes to these requirements and whether the changes will impact the first single audits that include COVID-19 funding.

For purposes of the single audit, the 2018 revision of *Government Auditing Standards* is effective for periods ending on or after June 30, 2020. Auditors performing single audits should be aware of the significant changes to the standards for evaluating threats to independence, especially if they perform non-audit services for their clients (i.e., preparing accounting records or financial statements, including the SEFA).

Revisions to Uniform Guidance were published on August 13, 2020, with an effective date of November 12, 2020 (85 FR 49506, <http://bit.ly/85FR-49506>). Noteworthy changes were made to the procurement standards and closeout provisions, among others. These revisions are not applicable to federal awards issued prior to the effective date, including awards under the CARES Act issued prior to that date. Therefore, auditors evaluating their client's compliance with the administrative requirements and cost principles in Uniform Guidance should pay close attention to the award date. Any awards made under CRRSAA would be subject to the Uniform Guidance revisions, while those awards made under the CARES Act prior to November 12, 2020, will not be subject to those revisions.

Recent changes to generally accepted auditing standards were made in Statements on Auditing Standards No. 134–140, originally effective for periods ending on or after December 15, 2020. Statements on Auditing Standards No. 141 says that due

to the COVID-19 pandemic, the effective date of those standards has been delayed and will now take effect for audits of financial statements for periods ending on or after December 15, 2021, with early implementation permitted. These revisions are primarily related to changes in the auditor's report.

Federal Agency Oversight

Federal agencies have responsibilities related to ensuring the quality of single audits through the Inspector General Act of 1978, as amended, and the Uniform Guidance. To help assess the quality of single audits, agencies conduct quality control reviews of audit documentation prepared in support of single audits and perform desk reviews of single audit reporting packages.

Due to the impact of COVID-19 on the single audit, federal agencies will likely be paying particular attention to several areas during quality control reviews and desk reviews:

- Was the report package and data collection form submitted timely? Based on the fiscal year covered by the audit, and whether the auditee received COVID-19 funding, did an extension apply?

- Were COVID-19 expenditures separately identified on the SEFA and Data Collection Form? Were findings applicable to COVID-19 programs identified as such?
- Were all programs with a single Assistance Listing Number considered one program for purposes of major program determination? (i.e., 84.425—Education Stabilization Fund is evaluated in its entirety and not by separate alpha code)
- For audits with reports issued prior to publication of the addendum, did the auditor use Part 7 to determine which compliance requirements to test for new COVID-19 programs?
- For audits with reports issued after publication of the addendum, did the auditor comply with the requirements in the addendum?

Although for-profit and foreign entities are not considered non-federal entities subject to single audit requirements, auditors of these entities should be aware that federal agencies may impose audit requirements on them as well.

Summary

New federal funding will make single audits more prevalent in the coming months and

years, but also more complicated. The best advice that can be given is for the auditor and grantee to closely read the 2020 Compliance Supplement addendum and the 2021 Compliance Supplement, once it is available. Both auditors and grantees should monitor federal agency webpages for information related to COVID-19 programs and should document any guidance that was relied upon in making decisions about how to comply and applying professional judgement. ◀

Mark Priebe is director of the Non-Federal Audit Team and Amy Bales is senior auditor of the Non-Federal Audit Team for the U.S. Department of Education Office of Inspector General. In these roles, Priebe and Bales are charged with assuring the quality of audits completed by external auditors for Department of Education programs. Priebe is located in the Washington, D.C., office and may be reached at (202) 245-8255 or mark.priebe@ed.gov. Bales is in the Kansas City Regional Office and may be reached at (816) 268-0502 or amy.bales@ed.gov.

Priebe is scheduled to speak at the Nebraska Society of CPAs' 25th Annual Not-For-Profit Conference, which will be held June 7-8, 2021, via live webcast. Register today at <http://bit.ly/Not-For-Profit-Conf2021>.

Disclaimer: The views expressed in the above article do not necessarily represent the views of the agency or the United States.



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Julie D. Bauman, CPA firm is accepting applications for a full-time staff accountant. This is an opportunity to join a practice that is continuing to break the mold – we are working virtually, yet we are continuing to provide value to our clients and help them achieve their goals. We are looking for a team player with 3-5 years of experience, including audit and tax. A CPA certificate or in process of completing the CPA exam is required. This position is fully remote and will encompass governmental, non-profit, and for-profit audits, reviews, and compilations. The position will also require preparation of personal and corporate income taxes. Prior experience with PPC Software from Thomson Reuters (Engage/Ultra Tax) is preferred, but not required. We provide potential for growth, a team-concept environment, and a killer benefits package! For a complete job description, duties, and benefits, please send resume and inquiries to lynn@juliebaumancpa.com or call 402-245-4040, ext. 514.



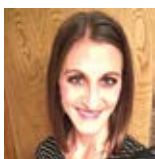


Members in the News

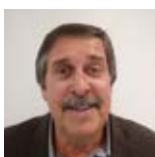


Julie Bauman of Julie D. Bauman, CPA, PC (JDB) in Falls City has been elected to the F&M Bank Board of Directors. JDB has 15 employees and is in its 19th year of business working for clients across the United States. Bauman earned her CPA license in May 1995, when she passed the exam on

the first sitting. She has been involved in many organizations over the years, serving as chairman of the Nebraska Society of CPAs, on the American Institute of CPAs Governing Council, as well as the Nebraska Bar Association Client Assistance Fund and the Nebraska Enterprise Fund.



Kayla Bomar with Green Plains Inc. represented the Nebraska Society of CPAs as one of 40 business and community leaders to share insights with the Nebraska Department of Education as the department begins revising the standards for Career and Technical Education (CTE) courses for all career fields. This process takes place every five years and is an opportunity to ensure programs of study, courses, and standards are aligned to the economic priorities and workforce needs of communities across Nebraska.



Paul Koehler has been selected to join the team of experts at the American Institute of CPAs' Center for Plain English Accounting (CPEA), which is the AICPA's National A&A Resource Center. As a member of CPEA's team of experts, Koehler will

author reports and assist CPEA members with accounting, auditing, attest, review, and compilation needs by sharing technical advice and guidance. The CPEA's straightforward and clear style of writing and speaking helps practitioners understand the current standard-setting environment, interpret complex accounting and auditing rules, assess the potential impact of proposed standards, and determine how to implement standards. Learn more at <https://www.aicpa.org/interestareas/centerforplainenglishaccounting.html>.



When **Kelly Mann** realized she was doing the same task over and over on specific audits, she knew there had to be a better way. Mann paired up with a technical co-founder to create AuditMiner. Watch the news segment from KETV NewsWatch 7 at <http://bit.ly/KellyMannKETV> to learn more about her journey and why an Omaha venture capital fund is focusing on female-run startups. You'll also want to check out KETV Reporter David Earl's interview with Mann at <http://bit.ly/KellyMann-DavidEarlKETV>, where she talks about juggling her startup, family, and health challenges during the pandemic.



JoAnn Martin has been selected as vice chairman of the Lincoln Community Foundation Board of Directors. Martin serves as vice chairman of Ameritas Mutual Holding Co. and is the retired CEO of Ameritas. ◀

in Memoriam

JOYCE I. SWANSON

1944-2021

A \$100 donation has been made to
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in memory of Joyce.

Nebraska Certificate #0937
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EDWARD W. FITZGERALD

1941-2021

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in memory of Ed.

Nebraska Certificate #2052
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RICHARD E. FLEISSNER

1956-2020

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1960-2020

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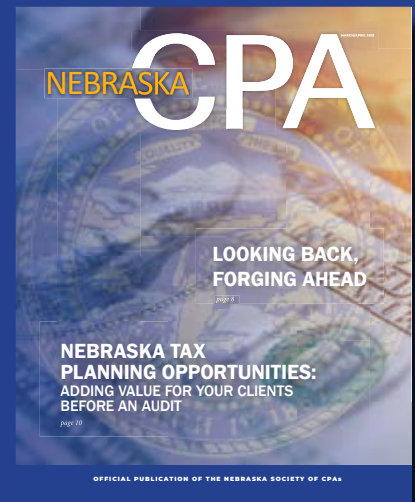
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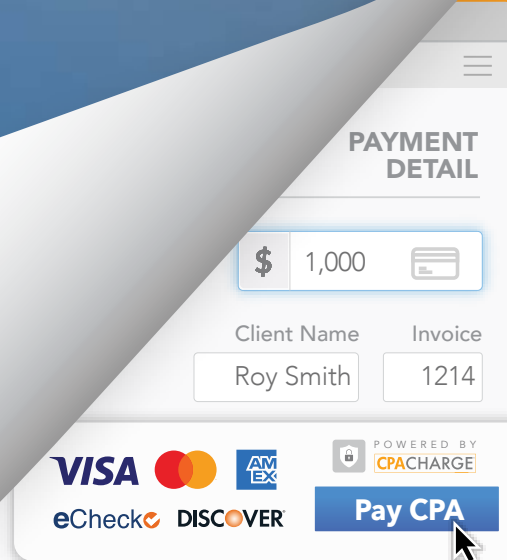
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