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U P D A T E

News of Developments in the Financial Sector and Related Areas

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Save Money on Franchise Taxes

Bank holding companies and banks organized under the laws of the State of Arkansas may want to consider amending their articles to provide for a par value of $.01 for each share of authorized stock. Banks and bank holding companies in Arkansas generally have a par value of $10.00 per share. Assuming that an institution had 500,000 shares of stock outstanding at a par value of $10.00 per share and all of its assets were in Arkansas, an institution would pay an annual franchise tax of $13,500.00. By amending the articles to provide for a par value of $.01 per share, the institution would only pay the minimum annual tax of $50.00. An institution would not want to amend its articles to provide for no par value since shares without par value are assessed at a rate of $25.00 per share, which if 500,000 shares were outstanding, would result in an annual franchise tax of $33,750.00. The *Arkansas Corporate Franchise Tax Act of 1979* is available in the Arkansas Code at § 26-54-101 et. seq. (Repl. 1997).

Arkansas Taxation of Individuals

Leathers v. Warmack, 341 Ark. 609 (2000) is a case of first impression by the Arkansas Supreme Court and involves the border-city tax exemption for residents of Texarkana, Arkansas. Leathers, as Commissioner of Revenue, appealed a lower court decision which found Mr. and Mrs. Warmack exempt from state income taxes for certain years. The sole issue in the case is whether the Warmacks had established residency in Texarkana during the years in question. The lower court found that the Warmacks' decision to move to Texarkana was motivated by the desire to develop properties in Texarkana and to take advantage of the border-city tax exemption. During the audit period, the Warmacks also owned a home in Fort Smith, Arkansas, where they had formerly lived. During the years in question, both the Fort Smith home and a rental unit in Texarkana was maintained by the Warmacks. However, the Warmacks had the Fort Smith home listed for sale and it was shown numerous times. The house in Fort Smith was not sold until some years after the audit period. The lower court found that during the audit period the Warmacks' absences from Texarkana were for legitimate business, vacation or medical reasons. The lower court also found that during the audit period the Warmacks were registered to vote and had voted in Miller County, they had assessed and paid personal property taxes in Miller County and that their drivers' licenses reflected their Texarkana address. As a result, based on the totality of the circumstances, the court concluded that the Warmacks had proved beyond a reasonable doubt that they were residents of Texarkana during the audit period. In its review of the lower court's decision, the Supreme Court stated that a residency determination may only be made

after thoroughly reviewing the facts on a case-by-case basis, and indicated the factors to be considered in making this determination included the address used on federal income tax returns, utility bills, voter registration, driver's license, vehicle registration and property assessments. The court concluded that under this case-by-case analysis, a taxpayer's claim of intent will not be accepted when the circumstances point to a contrary conclusion. The Supreme Court concluded that the lower court was correct in its determination that the Warmacks were residents of Texarkana and exempt from state income taxes during the audit period.

Pooling-of-Interests Accounting

The Financial Accounting Standards Board ("FASB") will begin testing its plan to eliminate pooling-of-interests accounting. In pooling-of-interests, the assets of the two merging companies are combined and the financial results reported as if the two companies had previously been one company. The value of the assets of each company are not repriced. In purchase accounting, the price paid above the acquired company's net worth is accounted for as goodwill which must be amortized or subtracted from the combined company's reported earnings over a period of time. During the testing period, the FASB will test goodwill periodically to determine if it has declined in value. If a method to determine the impairment of goodwill is not found during the testing period, merging companies may be required to amortize goodwill over a period of twenty years. The FASB is not expected to issue a final rule until sometime after the first quarter of next year.

Purchase of Life Insurance By Banks

The Office of the Comptroller of the Currency ("OCC") has issued OCC Bulletin 2000-23 regarding the purchase of life insurance by banks to insure that life insurance purchases are consistent with safe and sound banking practices. The bulletin replaces OCC Bulletin 96-51 and applies to all life insurance purchases by banks entered into after July 20, 2000. The bulletin permits a bank to purchase whole life insurance that is incidental to the business of banking, and an appendix to the bulletin identifies a number of situations in which a bank may purchase or acquire life insurance or an interest in life insurance such as: a financing or cost recovery vehicle for benefit plans; to provide retirement benefits; to protect against the loss of net income due to the death of a key person; to protect against loss due to loan nonpayment resulting from a borrower's death or from deaths among borrowers in a pool of loans; and as security for a loan. The bulletin also addresses the analysis that should be undertaken by a bank before the purchase of life insurance. The bulletin is reprinted in Fed. Banking L. Rep. (CCH)¶ No. 35-491.

Internet Securities Auctions

In two letters issued by the Staff of the Securities and Exchange Commission [*Wit Capital Corp.*, SEC No-Action Letter (avail. July 20, 2000) and *Bear, Stearns & Co., Inc.*, SEC No-Action Letter (avail. July 20, 2000)], the Staff concluded that both firms may conduct Internet securities auctions. In *Wit Capital Corp.*, the Staff said that a firm may conduct Internet auctions of common equity securities of registrants subject to the periodic reporting requirements of the Securities Exchange Act of 1934. In reaching this position, the Staff noted among other facts that the Internet auction screens will be part of the prospectus. In *Bear, Stearns & Co., Inc.,* the Staff said that a firm may conduct Internet auctions of debt securities of registrants subject to periodic reporting requirements of the Securities Exchange Act of 1934; however, the Staff, disagreeing with the firm's views, said that Internet screens presenting real-time pricing information are prospectuses as defined in the Securities Act of 1933.