



ARMSTRONG TEASDALE LLP

CORPORATE SERVICES GROUP

DECEMBER 2007 - JANUARY 2008

The Public Law and Finance Practice Group Continues to Grow

Armstrong Teasdale LLP is pleased to announce that John M. Nations and John J. Diehl, Jr. have joined the firm’s Real Estate Group / Public Law and Finance Practice Group as partners.

Nations and Diehl bring a collective 35 years of government relations and public finance experience in a wide range of areas including redevelopment, planning, land use, real estate, business, construction and transportation. Nations and Diehl have a strong track record of assisting businesses and individuals in building strategic relationships, exploring opportunities, and solving problems to improve communities in the private sector as well as at the local, state, and federal government levels.

In addition, the firm is pleased to announce that Marc B. Fried, former Jefferson County Counselor, has joined the firm as an associate in the Public Law and Finance Practice Group. He will concentrate his practice in private-public development projects, with an emphasis on Transportation Development Districts and Community Improvement Districts.

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“With the addition of such experienced, reputable and highly-respected attorneys, we continue to grow and solidify our position as a leading law firm in the areas of economic development, land use, municipal law, public finance and real estate,” said James E. Mello, Public Law and Finance Practice Group Leader. “These lawyers do an amazing job of finding long-term strategic solutions that bring developers and communities together. We are very excited to have them on board,” he added.

Armstrong Teasdale Recognized for Superior Client Service

Armstrong Teasdale LLP was distinguished among the Top 50 Law Firms for delivering outstanding service to clients, according to the *BTI Client Service A-Team 2008* report. This is the only client service ranking based solely on unprompted client response during in-depth interviews.

For the seventh year in a row, BTI conducted more than 250 interviews with corporate counsel at large and Fortune 1000 companies. BTI investigates every aspect of client service, from law firm relationships to overall firm performance.

Las Vegas Office Gains Two Local Attorneys

Armstrong Teasdale LLP is pleased to announce the addition of our newest partner, Mr. Bruce Leslie, and Mr. Bob List as our new Senior Counsel in the Las Vegas office. Mr. Leslie has had a long and distinguished career as a Las Vegas attorney, most recently with the Beckley Singleton firm. He will be assigned to the Business Services group. Mr. List has likewise had a long and distinguished Nevada career, most prominently as Governor of Nevada from 1979 to 1983. "We are extremely excited about the additions of both of these gentlemen and strongly believe that they will provide the foundation upon which to build a very strong office in Las Vegas," said firm Partner, Mr. Byron Francis.

TAX & EMPLOYEE BENEFITS

The Kiddie Tax Grows Up

Christopher J. Anderson

The Kiddie Tax was enacted in 1986 to discourage parents from shifting investment income to children in much lower income tax brackets (generally by transferring ownership of investment property to children). Under the Kiddie Tax, any unearned income in excess of a modest exclusion (\$1,800 in 2008) is taxed at the parents' marginal rate rather than at the child's lower rate. Unearned income is generally investment income - interest, dividends and capital gains. The Kiddie Tax does not apply to earned income such as wages.

As initially enacted, the Kiddie Tax only applied to children under age 14. This remained unchanged from 1986 through 2005. However, for tax years beginning in 2006, the reach of the Kiddie Tax was expanded to include children who were under age 18. This change effectively eliminated the ability to shift income to older teenagers, not just "kiddies".

Recent changes to the treatment of dividends and capital gains increased the incentive for income shifting. Prior to 2008, the differential between the top marginal tax bracket and the lowest tax bracket was 25% for ordinary income and 10% for capital gains and qualified dividends. In 2008, the differential for capital gains and qualified dividends increases to 15% because capital gains and qualified dividends for taxpayers in the lowest two tax brackets will be zero. This zero rate applies to children with taxable income of up to \$32,550. Perhaps in response to this increased incentive, in 2007 the reach of the Kiddie Tax again was expanded and, not surprisingly, made more complicated. In effect, the tax now should be thought of as a move toward a family tax rate on unearned income rather than just a Kiddie Tax.

Under the new law, there now are three categories of children subject to the Kiddie Tax. The three categories are based upon the age of the child, with different requirements for each age. The three requirements common to all of the age groups are the same as the requirements initially enacted in 1986: (i) that the child must have a living parent on the last day of the taxable year; (ii) that the child does not file a joint return for the taxable year; and (iii) that the child has net unearned income in excess of double the standard deduction. The standard deduction in 2008 is \$900, so the threshold is \$1,800 of investment income. If one of these tests does not apply, the Kiddie Tax does not apply.

The three age categories are (i) under age 18 at the end of the taxable year; (ii) age 18 at the end of the taxable year; and (iii) between ages 19 to 23 at the end of the taxable year.

If a child is under age 18 at the end of the taxable year, the three common tests set forth above are sufficient for the Kiddie Tax to apply. Net unearned income in excess of \$1800 in 2008 is taxed at the parents' rate.

If the child is 18 at the end of the taxable year, the Kiddie Tax will not apply unless one additional requirement also is satisfied. That requirement is that the child's earned income must be less than 50% of the child's support. This test is based only upon earned income, which generally means that 18 year olds who are not working full time are likely to get picked up by the tax.

Finally, for children who are aged 19 to 23 at the end of the year, the Kiddie Tax will apply only if the above four tests are met and the child also is a full time student. Whether a child is a full time student is the same test as is applied for purposes determining whether a child is a dependent - the child must have been enrolled full time at a qualifying educational institution during at least five calendar months of the tax year. Effectively, this extension of the Kiddie Tax prevents parents from transferring highly appreciated property to college students, who then can sell the property, pay no tax (because capital gains are at a zero rate for them) and use the proceeds to pay tuition.

The following chart summarizes the tests applied to determine whether the Kiddie Tax applies to a particular child:

Requirements	Under 18	Age 18	Ages 19 - 23
Living parent, no joint return and unearned income in excess of threshold	X	X	X
Earned income less than 50% of support		X	X
Full-time student (5 months of the year)			X

SECURITIES

SEC Adopts Rule 144 Amendments

Jill R. Newbold

The Securities and Exchange Commission recently adopted significant amendments to Rule 144 under the Securities Act of 1933. Generally, Rule 144 permits the public resale of restricted and control securities under certain conditions, and is the most commonly used registration exemption for the resale of unregistered securities. The amendments, summarized below, will be effective for all sales of securities made under Rule 144 beginning February 18, 2008.

Background

Under the Securities Act, all offers and sales of securities in the U.S. must be registered with the SEC or fall within an exemption from registration. Rule 144 provides a safe harbor from registration for resales of restricted securities and resales of securities held by affiliates of the issuer (known as “control” securities). Affiliates of an issuer of securities are those persons who control, are controlled by or who are under common control with the issuer.

Currently, four conditions apply to the sales of both restricted and control securities: (i) current public information about the issuer of the securities must be available; (ii) sales must fall within specified volume limitations; (iii) sales may only be made in a certain manner (through brokers or directly to market makers);

and (iv) upon meeting the filing threshold, the selling shareholder must file a notice on Form 144 with the SEC. Restricted securities are also subject to a one year holding period.

Additionally, Rule 144(k) offers non-affiliate holders of restricted securities a fairly straightforward resale option. Under Rule 144(k), a holder of restricted securities who is not an affiliate of the issuer at the time of sale, and who has not been an affiliate of the issuer during the three months preceding the sale, may make unlimited sales without regard to the provisions of Rule 144, as long as the holder has held the securities for at least two years.

Amended Rule 144

Reduction of Holding Period for Securities of Reporting Issuers

As noted above, holders of restricted securities must hold the securities for one year before they can be resold pursuant to Rule 144. As amended, Rule 144 differentiates types of restricted securities based upon the public reporting status of the issuer of the securities. If the issuer of the securities has been subject to the reporting requirements under the Securities Exchange Act of 1934 at the time of the sale, the holding period is six months. However, restricted securities of non-reporting issuers remain subject to the one year holding period.

Simplification of Requirements for Sales by Non-Affiliates

When amending Rule 144, the SEC simplified the resale requirements for an investor who is not an affiliate of the issuer and has not been an affiliate for at least three months prior to the resale of the securities. Specifically, the SEC eliminated the volume, manner-of-sale and notice filing requirements for resales by non-affiliates of Exchange Act reporting issuers so that such resales will be subject only to the six month holding period and the requirement that current public information be available about the issuer of the securities at the time of resale. Furthermore, Rule 144(k) has been amended to allow non-affiliates to resell restricted securities after one year (rather than two years), regardless of the reporting status of the issuer of the securities.

Manner-of-Sale Condition Eliminated for Debt Securities

In its current form, Rule 144 confines permissible resales of all securities to resales through brokers or directly to market makers. Sellers are not able to make arrangements for the purchase of securities, dealers cannot solicit buyers, and excessive commissions or other payments to dealers are all prohibited.

As amended, Rule 144 eliminates the manner-of-sale condition for all transactions in debt securities, recognizing that such conditions are unsuitable for the general debt trading practices. Under the rule, “debt securities” will include any security other than an equity security. Furthermore, non-convertible preferred securities with liquidation preferences in excess of par

will also be eligible to be treated as debt for purposes of the manner-of-sale dispensation.

Higher Filing Thresholds for Form 144

Since its original adoption, Rule 144 has required a Form 144 to be filed with the SEC upon the sale of 500 shares or other units or \$10,000 in value sold in reliance on the rule. The amendments raise the filing threshold to 5,000 shares or other units or \$50,000 in value sold in reliance on Rule 144. As with the current version, the amended Rule 144 requires the Form 144 to be filed concurrently with the sale.

Post-amendment Considerations

As a result of the Rule 144 amendments discussed above, future transactions in unregistered securities will be implicated and past transactions may call for reexamination. For example, attorneys are encouraged to reconsider the exit strategies for restricted securities, especially the necessity of resale registration statements for resales by non-affiliates of reporting companies, and to remember the amendments when negotiating registration rights agreements. Existing registration rights agreements may need to be reviewed to determine if revisions are appropriate to reflect any of the Rule 144 amendments discussed above.

This discussion of the Rule 144 amendments is a summary only. The full text of the amendments can be found in the SEC’s adopting release at <http://sec.gov/rules/final/2007/33-8869.pdf>.

SECURITIES

SEC Proposes Revisions To Regulation D

Steven J. Foristal

On August 3, 2007, the Securities and Exchange Commission (the “SEC”) proposed four revisions to Regulation D (17 CFR 230.501, et. seq.) promulgated under the Securities Act of 1933, as amended (the “Act”). Currently, Regulation D contains three limited offering exemptions from registration of securities. Although Regulation D was initially adopted in 1982 as a way to assist small business capital formation, today, companies of all sizes readily use the registration exemptions found in Regulation D. The SEC accepted comments through October 9, 2007 regarding the four proposed revisions, which are summarized below.

Background

The Act requires that every offer and sale of securities in the United States be registered with the SEC, unless an exemption from registration applies. Currently, Regulation D contains three exemptions from registration, which are contained in Rules 504 through 506.

Rule 504 provides exemptions for companies that are not subject to reporting requirements under the Securities Exchange Act of 1934 for the offer and sale of up to \$1,000,000 of securities in a 12-month period. Rule 505 exempts offers by companies of up to \$5,000,000 of securities in a 12-month period to an unlimited number of

accredited investors and up to 35 unaccredited investors, so long as offers are made without general solicitation or advertising. Rule 506 provides an exemption without any limit on the offering amount, so long as offers are made without general solicitation or advertising and sales are made only to accredited investors and up to 35 non-accredited investors - but, unlike Rule 505, non-accredited investors under Rule 506 must satisfy an investment sophistication standard.

In addition to the rules containing these three exemptions, Regulation D contains five rules that support the interpretation and application of the exemptions. Rules 501 through 503 contain definitions, conditions, and other provisions that apply generally throughout Regulation D. Rule 507 disqualifies issuers from relying on Regulation D, under certain circumstances, for failure to file a Form D notice. Rule 508 provides a safe harbor for certain insignificant deviations from a term, condition, or requirement of Regulation D.

Proposed Revisions To Regulation D

New Exemption for Offers and Sales to “Large Accredited Investors”

The proposed exemption for offers and sales to “large accredited investors” would be set forth in proposed new Rule 507. The new rule would allow an issuer to sell an unlimited amount of its securities to an unlimited number of investors who qualify as large accredited investors.

Large accredited investors would consist of the same categories of entities and individuals that qualify for accredited investor status under existing Rule 506. But, under the proposed rule, the dollar-amount thresholds would be significantly higher and would measure investments rather than assets or net worth. Legal entities would be required to have \$10 million in investments to qualify as large accredited investors, as compared with Rule 506’s threshold of \$5 million in assets. Individuals generally would be required to own \$2.5 million in investments or have annual income of \$400,000 (or \$600,000 with one’s spouse) to qualify as large accredited investors, as compared to the accredited investor standard under Rule 506 of \$1 million in net worth or annual income of \$200,000 (or \$300,000 with one’s spouse).

Also, proposed Rule 507 would permit an issuer in an exempt transaction to publish a limited announcement of an offering. Any announcement made under the proposed rule would be required to include a prominent statement that sales pursuant to the offering will only be made to large accredited investors, that no money or other consideration is being solicited or will be accepted through the announcement, and that the securities have not been registered with or approved by the SEC and are being offered and sold pursuant to an exemption. Limited other information may be included at the option of the issuer.

Revised Definition of “Accredited Investor”

The SEC proposed revisions to the definition of the term “accredited investor” contained in Rule 501(a) of Regulation D, which sets forth the standards to qualify as an accredited investor. The revision would affect Rules 504 through 506, which rely on the accredited investor definition. Also, proposed Rule 507, described above, would be affected to the extent that it relies on the definition of accredited investor in the definition of large accredited investor.

The proposed revision would add an alternative “investments-owned” accreditation standard to Rule 501(a) for entities and individuals. To qualify as accredited under this standard, legal entities must have \$5 million in investments, while the threshold for individuals and spouses would be \$750,000. In addition, the proposed revision would define the term “joint investments,” establish a mechanism to adjust the dollar-amount thresholds in the definitions in the future to reflect inflation, and add several categories of permitted entities to the list of accredited and large accredited investors.

Reduced Waiting Time Required by the Integration Safe Harbor

Under the current integration safe harbor, offers and sales occurring more than six months before a Regulation D offering or more than six months after the completion of a Regulation D offering will not be integrated - that is, they will not be considered part of the same offering for the purposes of qualifying for an exemption under Regulation D. The SEC's Advisory Committee on Smaller Public Companies has advised that the six-month waiting period provided in Rule 502(a) is an unnecessary restriction that weighs too heavily in favor of investor protection, at the expense of capital formation. On the Advisory Committee's recommendation, the SEC proposed to shorten the integration safe harbor from six months to thirty days.

Disqualification Provisions

Currently, only Rule 505 provides disqualification provisions regarding the availability of Regulation D exemptions. The SEC proposed Rule 502(e) provides that the availability of all Regulation D exemptions to issuers and covered persons (defined in the proposed rule) would be conditioned on the application of bad actor disqualification provisions. Generally, exemptions under Regulation D would not be available to an issuer or covered person if either has committed a securities-related violation within the past five years or been convicted of a securities-related crime within the past ten years.

More Information

The above analysis only contains a summary of the proposed revisions to Regulation D. The full text of the proposed revisions can be found in the SEC's release at <http://www.sec.gov/rules/proposed/2007/33-8828.pdf>.

IN-HOUSE MONTHLY CLE PROGRAMS

Upcoming Presentations and Programs

January 24, 2008

“Current Issues in Intellectual Property”
Nick Clifford

February 28, 2008

“ALAS Update”
Jay Summerville

March 27, 2008

“Trademarks and Copyrights”
Tom Nutter

Armstrong Teasdale CLE programs are held on the fourth Thursday of each month at 11:45 a.m. in the training room on the 8th floor.

Recent Presentations and Programs

October 25, 2007

John Cowling and Dan Nelson, “Electronic Discovery”

November 15, 2007

Jerry King, “Fire and Explosion”

September 27, 2007

Joe von Kaenel, “Opinion Letters and Audit Responses”

If you have any questions regarding this material, please do not hesitate to call your regular Armstrong Teasdale contact or David Braswell, Practice Group Leader.

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