



# The PTLCB&L Design Professional's Practice Bulletin

Volume 6 • Number 1

EDITORS: RICHARD J. DAVIES, ESQUIRE    NEIL P. CLAIN, ESQUIRE

July 2002

## POWELL TRACHTMAN LOGAN CARRLE BOWMAN & LOMBARDO

A PROFESSIONAL  
CORPORATION

475 ALLENDALE ROAD  
SUITE 200

KING OF PRUSSIA, PA 19406  
(610) 354-9700  
FAX (610) 354-9760

1763 ROUTE 70 EAST  
SUITE 213  
CHERRY HILL, NJ 08003-2320  
(856) 663-0021  
FAX (856) 663-1590

114 NORTH SECOND STREET  
HARRISBURG, PA 17101  
(717) 238-9300  
FAX (717) 238-9325

## Important Changes In The Tax Laws That May Affect You

By: Thomas J. Bogar, J.D., LL.M.

On June 7, 2001, President Bush signed into law the "Economic Growth and Tax Relief Reconciliation Act of 2001" (the "Act"). It is the largest tax reduction legislation in the last twenty years. The Act contains changes to many aspects of the tax law. Some of the reductions are currently effective while the benefits from many others are delayed for years. Most of the tax benefits come from tax rate reductions, the incremental decrease in estate taxes, and an increase in child tax credits.

This article is intended to provide a relevant summary of the Act and how it may affect you and your business. Of significant importance is how the Act includes education-related tax benefits and provides increased retirement savings incentives for IRAs and 401ks. The Act also offers some tax relief to the individual alternative minimum tax (AMT).

Additional information on how the Act affects the estate tax can be found at our website [www.powelltrachtman.com](http://www.powelltrachtman.com)

### INDIVIDUAL INCOME TAXES

**Rate Reductions.** The Act reduces the lowest tax rate to 10%, retroactive to January 1, 2001. Since this new rate is now 5% lower than the previous 15%

floor, the net effect will be to reduce 2001 federal income taxes by at most \$300 for individuals, \$500 for heads of household, and \$600 for joint filers. Taxpayers who timely filed their tax returns for 2000 should have received their advance refund before October 2001. If you filed later, or filed an extension, you can expect your refund later this fall. The Treasury Department will determine the amount of the refund based upon your last year's returns.

Since June 30, 2001, each tax bracket has been reduced by 1%, and will incrementally decrease until eventually the brackets will be 10%, 15%, 25%, 28%, 33%, and 35% in 2006.

**Marriage Penalty.** Unfortunately, the Act does not provide relief to the marriage penalty until 2005 when it is phased in over the next four years by increasing the 15% bracket for joint filers. For those taking the standard deduction, the 15% bracket is increased in 2005 and gradually increases over the next five years.

**Alternative Minimum Tax (AMT).** The Act provides temporary relief by providing a \$49,000 exemption for joint filers (\$24,500 for married taxpayers filing separately and a \$35,750 exemption for unmarried filers). The

*continued on page 2*

### A Note From The Editors:

This Bulletin addresses recent developments affecting Design Professionals as well as business concerns as important as the specific professional and technical issues they face.

### Contents:

Important Changes In The Tax Laws That May Affect You .....	1
The Design Professional and the Vacuum Cleaner Salesman .....	3
Regional Chapter of Design Build Institute Continues to Thrive .....	4

## Important Changes In The Tax Laws... continued from page 1

increases are temporary because they are effective 2001 through 2004. The Act also eliminates the prior adverse impact of the AMT upon the Child Tax Credit, the Earned Income Credit, and the Adoption Credit.

**Child Credit.** The Act retroactively increases the credit from \$500 to \$600 per child effective January 1, 2001. The credit then incrementally increases starting in 2005 so it will reach \$1,000 in 2010.

**Adoption Credit.** The Act increases the credit \$5,000 to \$10,000 for special needs children and increases the income phase-out to \$150,000, effective 2002.

**Dependent Care Credit.** Effective 2003, the dependent care credit limitations will increase to the maximum credit allowed (\$3,000 for one dependent; \$6,000 for two or more dependents) and the applicable percentage that is deductible will increase to 35%, with the phase out beginning at \$15,000, instead of the \$10,000 under prior law.

**Employer-Provided Child Care.** The Act creates a new credit worth as much as \$150,000 for employers who provide employees with child care facilities or child care resource and referral services. This change becomes effective January 1, 2002.

**Earned Income Credit.** In 2002, the phase-out for joint filers of the earned income credit will incrementally increase until it is fully implemented in 2007. Non-taxable employee compensation is now excluded from earned income.

### ESTATE, GIFT AND GENERATION SKIPPING TRANSFER TAXES

**Unified Credit and Exemption.** Beginning in 2002, the estate tax will be incrementally phased-out until it is eventually repealed in 2010. The phase-out and repeal similarly apply to generation skipping transfer taxes. The top tax brackets are scheduled to incrementally decrease from 50% in 2002 to 45% in 2009. Once the estate tax is phased out, there will no longer be a step-up in basis from inherited assets so that the gain in inherited assets sold by heirs will be measured

from the date the assets were acquired by the decedent. However, the basis for certain property may be stepped-up to its fair market value for transfers to spouses on the first \$3,000,000 of property, and for transfers to all others on the first \$1,300,000 of property.

The Act does not repeal the gift tax. In fact, the Act provides for a \$1,000,000 lifetime gift tax exemption beginning in 2002, when the gift tax rates will gradually reduce until the top rate for transfers over \$1,000,000 will be 35%.

### EDUCATION PROVISIONS

**Education Savings Accounts.** In 2002, the contribution limit will be increased from \$500 to \$2,000. Also, the income phase-out range will increase to \$190,000-\$220,000 of modified adjusted gross income. Finally, the Act allows contributions by corporations or other entities and for tax-free distributions for grades K through 12 expenses, including tuition, computer technology or internet access.

**Qualified Tuition Plans.** Beginning in 2002, qualified distributions from state plans will be free from federal taxes. The Act also permits private prepaid tuition plans which meet certain conditions, and tax-free rollovers for the benefit of the same beneficiary.

**Employer-Provided Education Assistance.** Effective January 1, 2002, \$5,250 of graduate education paid by an employer is excluded from the employee's income. This provision is now made permanent under the Act because it was set to expire December 31, 2001.

**Student Loan Interest Deduction.** Beginning 2002, the 60-month limit will be repealed and the phase-out for the deduction will be increased to \$50,000-\$60,000 of modified adjusted gross income for single filers and \$100,000-\$130,000 for joint filers.

**Qualified Higher Education Deduction.** From 2002 to 2005, an above-the-line deduction for qualified tuition and related expenses will be allowed for taxpayers with adjusted gross income less than \$130,000 (or \$65,000 for singles). The maximum

deduction allowed is \$3,000 in 2002 and 2003, and \$4,000 thereafter.

### RETIREMENT SAVINGS AND PENSION REFORM

**Individual and Employee Contribution Limits.** Beginning in 2002, IRA and Roth IRA contributions will increase from \$2,000 to \$3,000 per year, then gradually increase to \$5,000 over the next seven years, and increase in \$500 per year increments thereafter. Similarly, 401(k), 403(b) and simplified employee pension plan ("SEP") contributions will increase from \$10,500 to \$11,000 per year over the next five years until they reach \$15,000 in 2006, and increase in \$500 per year increments thereafter. The dollar limit on annual elective deferrals to a SIMPLE plan is increased from \$6,500 to \$7,000 over the next four years until it reaches \$10,000 in 2005.

The annual compensation limit that must be taken into account for determining contributions and benefits under a qualified plan is increased from \$170,000 to \$200,000, and will be indexed for inflation in \$5,000 increments thereafter. Annual additions to a defined contribution plan have been increased from \$35,000 to \$40,000, and will be indexed in \$1,000 increments thereafter. The limits on annual benefits received from a defined benefit plan have been increased from \$140,000 to \$160,000 and will be indexed in \$5,000 increments thereafter.

Finally, the special rules limiting plan loans to 5 corporation shareholders, partners and sole proprietors have been eliminated, thus benefiting owners of many closely-held businesses.

*Powell, Trachtman, Logan, Carle, Bowman and Lombardo, P.C.,* believes it is essential that you be kept apprised of current legal developments that may affect you and your business. We welcome appointments with our tax and estate planning attorneys to discuss how the changes could affect your tax planning. Future articles will focus more directly on how the Act specifically effects estate planning, and on what education benefits are available in the Act.

---

---

## The Design Professional and the Vacuum Cleaner Salesman – We see the difference, but the courts might not.

By: Pamela Hans, Esquire

Do you think of your profession as having much in common with door-to-door vacuum sales? What about sales of life insurance? Are you selling encyclopedias? Amway? Avon? What about carpet cleaners? Lawn-care services? Do you think of yourself as a door-to-door salesman (or woman)? Do you consider your clients to be unsophisticated individuals in need of protection from unscrupulous architects and engineers trying to execute pressure sales...? Of course you do not...but the courts in Pennsylvania might.

A Pennsylvania statute enacted in 1996 to address unscrupulous door-to-door sales tactics has recently attracted our attention because of its potential for application to the design-professional's marketing efforts. The statute applies to "home sales" contracts and provides in part that:

**Where goods or services having a sale price of twenty-five dollars (\$25) or more are sold or contracted to be sold to a buyer, as a result of, or in connection with a contact with or call on the buyer or resident at his residence either in person or by telephone, that consumer may avoid the contract or sale by notifying, in writing, the seller within three full business days following the day on which the contract or sale was made and by returning or holding available for return to the seller, in its original condition, any merchandise received under the contract or sale. Such notice of rescission shall be effective upon depositing the same in the United States mail or upon other service which gives the seller notice of rescission. 73 P.S. § 201-7 (Emphasis supplied).**

The statute also requires the **seller to provide the buyer with notice of the buyer's right to cancellation.**

This consumer protection measure was enacted presumably to protect unsuspecting consumers from being bound by overhasty purchases made at the urging of the door-to-door sales person peddling his wares or services. However, according to the plain meaning of its terms, the law can be applied to the services provided by architects and engineers when the contract for goods or services is entered into at the owners' residence or is initiated by a "contact with" the buyer at his residence. While the statute by its terms applies to person-to-person meetings and telephone calls, neither statute nor case law expressly defines "contact," and so it is possible that courts will consider email, fax, or other electronic communication between a buyer and seller as constituting "contact."

Consider the following scenarios:

You receive a telephone call from someone who, enamored with the acoustics of the new Kimmel Center, wants to have the acoustics replicated in his home theater. He invites you to his home and asks that you get to work on the project immediately. You work on the project for months. Then you receive a telephone call...he has changed his mind.

You receive an email from the president of a Fortune 100 Company, working from home of course, asking for your input in the design of a new vacation home. You engage in lengthy correspondence by fax and email, and eventually enter into a written contract without the required notice provision. You dedicate substantial resources of your firm to this project. Three months later, you get a telephone call advising that the project is off.

A homeowner finds your listing in the telephone directory and calls you, from his home, to discuss possible renovations to his house. You meet to dis-

cuss the project at his home and you are careful to have him sign a written contract for the work. You put in many hours of work, and when the design is complete you call the owner to let him know. He tells you that he has changed his mind, he does not want to go forward with the project – and refuses to pay you a dime for the work and also wants you to return the money he has already paid.

Can the buyers described cancel without paying you for all the time and resources you dedicated to their projects? Can they get away with this?

There are no published decisions applying the statute to design professionals. However, we do know that one judge, from the bench, ruled that it did apply to the provision of professional design services and dismissed the fee claims of an architect who failed to provide the required notice of the right to cancel along with the agreement with the owner.

Additionally, the courts have applied this statute to transactions among individuals we would not ordinarily think require such "consumer protection." In one case, *Burke v. Yingling* 446 Pa. Super 16,666 A 2d 288 (1995), a buyer, whom the court characterized as "sophisticated," initiated contact with an individual who sold customized audio-video systems. The parties conducted lengthy negotiations, and on more than one occasion the seller went to the buyer's home to discuss the transaction. After a few months, the parties finally agreed on a contract, but without the required notice of the buyer's right to cancel. Once the equipment was installed the purchaser changed his mind. He rescinded the contract, returned the equipment, and refused to pay the seller a dime, based on the failure of the seller to provide the required notice. The court agreed with the buyer, although he was certainly a sophisticated individual who



had many weeks (even months) to decide on the purchase. The court decided that the statute applied, according to the **plain meaning of its terms** to this transaction, and the particular circumstances of the transaction could not be used to avoid the statutorily mandated result.

Yet, there are some case decisions that suggest that the courts will examine the particulars of the sale to determine if the statute's terms were **intended to** apply to such a transaction. In *Lou Botti Construction v. Harbulak* 760 A.2d 896 (Pa. Super. 2000), the court concluded that since the contract was entered into as a result of a prior social dating relationship between the buyer and seller, the contract was not initiated "as a result of or in connection with" a contact at the buyer's residence. Accordingly, since the buyer did not fall within the class of persons apparently **envisioned** by the consumer protection statute, the seller was not penalized for failing to include the requisite notice.

Whether a prior professional relationship, as opposed to a social relationship, would warrant a similar finding that the statute did not apply has not been decided.

The lack of a definitive answer to the question of whether or not the statute will apply to your agreement seems to create a problem. However, it is a problem that can be easily avoided; when in doubt, provide the required notice outlined in the statute. It can be prepared for each contract without much effort. Its attachment should not ring any alarms or require undue scrutiny from the client since it is mandated by statute and identified as such, and many buyers have seen

similar notices for other transactions (e.g., home and car sales). We have prepared the required notice for certain clients, particularly those providing residential design services, to provide such "an ounce of prevention."

## Regional Chapter of Design-Build Institute of America Continues to Thrive

By: Gunther Carrle, Esquire

Several years ago, the rapid growth of design-build as a project delivery method prompted the Design-Build Institute of America ("DBIA") to charter a local chapter covering Pennsylvania, New Jersey and Delaware.

While the popularity of design-build has been increasing on a national basis, the relatively rapid growth of design-build in this region is at least partially attributable to favorable changes in the statutes governing the practice of architecture in both Pennsylvania and New Jersey.

Prior to these statutory revisions, it was difficult for owners to avail themselves of design-build unless the design-builder was organized as an architectural entity or the design professional was the prime in the relationship. Statutory revisions that specifically permit the design professional to be a subcontractor to the design-builder have eliminated the licensing risks that were typically associated with such a relationship in both states. However, Pennsylvania and New Jersey continue to require that the entity ultimately responsible for providing the architectural or engineering services to be authorized to do so under each state's licensing laws. Thus, integrated design-build entities which are assembled by adding a staff

of architects or engineers to an entity not otherwise authorized to provide those services directly are not valid.

Despite this growth in the use of the method, the inability to use the design-build delivery method for public projects continues to be the primary obstacle to full acceptance of the design-build process in both states. Although the new Pennsylvania Procurement Code expressly authorizes the use of design-build for public projects, it continues to make all procurement subject to the Commonwealth's Separations Act. That act requires the award of separate prime contracts for general, mechanical, electrical and plumbing construction on any public project with a construction value in excess of \$25,000. Therefore, as a practical matter it is not possible to use design-build on most projects in Pennsylvania. Pennsylvania is trying to use design-build where ever possible, either by special statutory authorization or for projects of narrow scope in which only one trade is required. The situation in New Jersey is similarly difficult. New Jersey public procurement is governed by a variety of statutes, each addressing a different public entity. Unfortunately, there is no specific statutory authorization for the use of design-build on public projects.

Both states-particularly Pennsylvania-seem eager to implement design-build as a method for delivering projects, but legislative revisions are critical to fully do so. The local DBIA chapter is actively involved in advocating those changes. For those of you who may be interested in participating in the regional chapter's activities [call or email us \(at info@powelltrachtman.com\)](mailto:info@powelltrachtman.com) and we will forward your name to the Chapter.



©2002 Powell, Trachtman, Logan, Carrle, Bowman & Lombardo, P.C.

This bulletin is intended for general information purposes only and does not constitute legal advice. The reader should consult with legal counsel to determine how laws, suggestions and illustrations apply to specific situations.