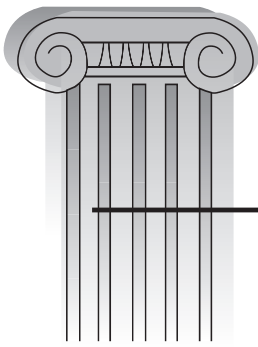

Fine **Print**

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GOLDEN PARACHUTE PAYMENTS

by James Q. Butler

A Golden Parachute payment is a payment made to certain individuals in upper management of a company when a company changes ownership.

A person receiving such a payment would be 1) an employee, independent contractor, or other person who performs professional services for the corporation; and 2) an officer, shareholder, or highly-compensated individual. Such a person is considered a "disqualified" individual for tax purposes because there may be tax consequences if any of the above individuals receive such a payment. Contact your attorney to find out more about tax penalties for Golden Parachute payments.

To be considered a Golden Parachute payment, the value of the payment must equal or exceed three times the average amount the disqualified individual received in compensation over the last five years with the corporation before the year in which the change of ownership or control occurs.

A payment made to a disqualified individual is not considered a parachute payment if made 1) by a small business corporation (under S corporation rules) or 2) by a regular C corporation as long as 1) immediately before the change in ownership or control no stock in such corporation was readily tradable on an established securities market, and 2) the shareholders approved the payment.

Let's look at a hypothetical case. A parent corporation is owned by four family members. The parent owns 100% of a subsidiary corporation which generates $5 million in business each year. The subsidiary corporation has its own CEO who earns $100,000 per year. The CEO has a Golden Parachute contract which provides for $350,000 in benefits if the CEO is terminated and the subsidiary corporation changes ownership. The severance agreement is approved by the Board of Directors of the subsidiary. The CEO, in this situation, would clearly be considered a disqualified individual based on the above rules. The subsidiary corporation at issue here is a C corporation, so the first exception having to do with S corporation rules (preceding paragraph) does not apply.

cont. on page 2

Learn About Two Important Acts For Environmental Issues

By Thomas M. Skove

Q: What is CERCLA?

A: The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) is the preeminent environmental liability law. This law makes current and even former owners and operators potentially liable for any release of hazardous substances that causes the government or a third party to spend time and money to take care of the contamination problem.

Q: What is SARA?

A: The Superfund Amendments and Reauthorization Act (SARA) is the 1986 amendment to CERCLA, which allows an "innocent purchaser" (the buyer who did not know about any environmental contamination when the property was purchased) to qualify for CERCLA's third-party legal defense, typically referred to as the "innocent purchaser defense."

Q: How could I prove I was an "innocent purchaser"?

A: Assuming you took all the appropriate steps to find out who owned the property and how it was used, the court will examine the extent of your experience and knowledge. The

cont. on page 2

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GOLDEN PARACHUTE, cont. from page 1

The parent corporation (having only four family member shareholders) obviously is not a publicly traded corporation. Next, the requirement that shareholders must approve a payment can be met if 1) the payment is approved by a separate vote of the shareholders who, immediately before the change in ownership or control, hold more than 75% of the voting power of all outstanding stock of the corporation and 2) all shareholders were given sufficient information about the payments. Presuming the parent corporation (a sole shareholder of the subsidiary), acting through its Board of Directors, approved the parachute payment to the CEO of the subsidiary corporation, the subsidiary corporation will qualify for a tax deduction. Normally a corporation would not be able to deduct such a payment. However, in this case the corporation can take a deduction.

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CERCLA, cont. from page 1

court will then decide what you knew or could have known about the property and if a property inspection might have revealed contamination.

Q: How does CERCLA benefit me as a property buyer?

A: If you are interested in buying a property but are concerned about possible contamination problems down the road, CERCLA will allow you to enter into an indemnification agreement with the current owner before you buy the property, so that any possible future contamination clean up costs would be covered.

There are potential costs to all contamination, and an agreement between the buyer and seller regarding who's responsible for those costs is important.

Q: How would that agreement work?

A: The seller can agree that the buyer will not be responsible for any contamination caused by the seller, or the seller and buyer can agree to share responsibility for different types of contamination.

Q: Why would a property owner want to do that?

A: It's always better to enter into a deal with your eyes open. After the buyers or sellers, or both, conduct an environmental investigation, they can then define the potential problems. Once the problems are defined, they can decide if anything needs to be done about them now, if future study is warranted, or if a "wait and see" posture is best. Regardless of what decisions are made, there are potential costs to all contamination, and an agreement between the buyer and seller regarding who's responsible for those costs is important.

Q: Is there any way to get protection against legal action?

A: In June 1998, the U.S. Supreme Court permitted another method that corporate owners of subsidiary companies may use to get liability protection. In U.S. v. BestFoods, the Court held that if a corporate subsidiary controlled its own environmental operations — such as hazardous waste disposal — and decided itself how to comply with environmental regulations, then its corporate parent would not have to bear the costs. This decision allows parent companies to make some risk management decisions and protect themselves from having to pay for liabilities they did not cause - before they buy subsidiary companies with potential environmental problems.

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IN THE HOPPER

Pending state legislation which could affect small business

House Bill 349 would modify the Uniform Partnership Law relative to: 1) the standard of care owed a limited partnership by the general partners, similar to the duty of a director of a corporation under Ohio Revised Code (O.R.C.) 1701.59; and 2) "self dealing" by a partner, with specific notice and disclosure requirements; and 3) the accounting a partner must make to the partnership.

In addition, the bill would permit the merger of a general partnership with one or more other general partnerships or with other entities, such as corporations, partnerships, limited partnerships, or limited liability companies.

To review this bill, visit www.legislature.state.oh.us/.

From the OSBA Office of Government Relations

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