

# INTEGRA INTERNATIONAL

## *Doing Business Guide*

### *United States of America*

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**Integra International**  
**Gold Gocial Gerstein, LLC**

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**Integra International** member firms are high quality, independent accountancy and business services firms, all of whom are committed to providing the best possible service to their clients in their own marketplace. Each guide is one of a series of country profiles compiled for use by **Integra International** member firms' clients and professional staff and each has been designed for the information of readers. While every effort has been made to ensure accuracy, the information contained in each guide may not be comprehensive and recipients should not act upon it without seeking professional advice. Up-to-date advice and general assistance for each region's matters can be obtained from the Integra International member located there.

## **1. Facts and Figures and Introduction to the United States of America**

The United States is the third largest populated country in the world, with approximately 304,059,724 residents as of July, 2008. Only China and India surpass it. The European Union has a population of nearly 491,018,683 as of July, 2008; however it is not considered a country. The United States has the world's second largest economy measured by Gross Domestic Product (GDP). The 2007 estimate of GDP, provided by the *Central Intelligence Agency World Factbook*, has the European Union surpassing the United States in GDP by \$2.78 Trillion. The United States legal currency is the U.S. Dollar (\$). The country is generally comprised equally of men and women, with 67% of the population between the ages of 15 and 64 years old. Every state in the United States is comprised of counties, municipalities, townships, and school districts.

Income tax in the United States has existed for more than 90 years.

The Emergency Economic Stabilization Act of 2008 (P.L. 110-343), the Housing Assistance Act of 2008 (P.L. 110-289), the Food, Conservation and Energy Act of 2008 (P.L. 110-246), the Heroes Earning Assistance and Tax Relief Act of 2008 (P.L. 110-245), the Economic Stimulus Act of 2008 (P.O. 185) and other significant developments were signed into law during 2008:

The Emergency Economic Stabilization Act, signed by President Bush on October 3, 2008, includes financial market rescue provisions and tax incentives for both individuals and businesses.

*The Housing Assistance Act*, signed on July 30, 2008 by President Bush includes \$15.1 billion in tax incentives that are primarily targeted at home ownership and providing affordable housing.

*The Food, Conservation, and Energy Act* became law after the House and Senate both voted on June 18, 2008 to override President Bush's veto. The bill provides significant benefits to farmers, ranchers and timber producers.

On June 17, 2008, President Bush signed the *Heroes Act* which provides tax breaks for members of the military and their families and clarifies the tax treatment of state and local benefits provided to volunteer firefighters and emergency medical responders.

*The Economic Stimulus Act*, signed by President Bush on February 13, 2008, includes a recovery rebate credit for individuals, increases Section 179 expensing amounts and a 50% bonus depreciation deduction for qualifying property.

## **2. Company Law**

The legal and tax entities that may be formed in the United States are relatively simple to define; however, there are many complexities as to their formation requirements, legal liability, and taxation. In the following sections, a very abbreviated and general explanation will be provided.

### **Pass-through Entities**

A pass-through entity is so defined due to its method of taxation. This type of entity is not taxed, but rather taxable income or loss is passed through to the owner(s), member(s), or shareholder(s) of the entity. There are different types of business structures that may be formed as pass-through entities. They include partnerships, S corporations, and limited liability companies.

#### **2.1 Partnerships**

A partnership may be structured either as a general partnership (GP) or a limited partnership (LP). The main difference between the two types of partnerships is the legal liability that each partner assumes. The formation of a partnership involves the joining of at least two parties which may be any permissible combination of individuals, corporations, trusts, or other partnerships. The formation of a GP requires each partner to be personally liable for the entity's debts and obligations of the partnership. The formation of a LLP, on the other hand, has at least one general partner who is personally liable for the debts and obligations of the partnership. The other partners are called "limited partners" and do not have any personal liability beyond the capital contributions they made to the partnership.

Furthermore, a GP allows any one of the partners to obligate the firm to commitments without consent from the other partners, unless restrained by the terms of the partnership agreement. The partners are, therefore, each personally, jointly and severally liable to different degrees.

General partners must pay self-employment tax on their net earnings from self-employment assigned to them from the partnership. Net earnings from self-employment include an individual's share, distributed or not, of income or loss from any trade or business carried on by a partnership.

Limited partners are subject to self-employment tax only on guaranteed payments, such as professional fees for services rendered. Additionally, if you are a member of a partnership that carries on a trade or business, you are considered self-employed and subject to self-employment tax.

## **2.2 S Corporations**

A small business corporation (an S corporation) must meet certain criteria, as outlined in the Internal Revenue Code Section 1361. Generally, that criteria requires that it must be a domestic corporation, it may not have more than 100 shareholders, and the shareholders must be citizens or residents of the United States. The S corporation may only have one class of stock, and its shareholders may only be individuals, estates, qualified trusts, and certain tax-exempt entities. Family members may elect to be treated as one shareholder, effective for tax years beginning after December 31, 2004. The types of trusts allowed are grantor trusts (where the grantor is the shareholder), voting trusts (where the beneficiary is the shareholder), and testamentary trusts that receive S

corporation stock. Generally, the testamentary trust may be treated as an eligible shareholder for two years after the deemed owner's death.

The shareholders are protected from personal liability with respect to claims against the debts and obligations of the S corporation above the amount each shareholder paid for his or her stock ownership or has contributed to capital. Additionally, the S corporation's continuation is unaffected by the death or transfer of shares by any of the shareholders, unless the eligibility requirements are no longer met upon the death of a shareholder or the transfer of his or her interest. A decision to revoke an S election may, however, be made with a majority vote by the shareholders.

When making payments to a corporate officer or shareholder, these payments must be treated as wages to the extent the amounts are reasonable compensation for services to the corporation by the employee.

### **2.3 Limited Liability Company**

A limited liability company (LLC) is an entity that provides the liability protection of a corporation while functioning and being taxed as a partnership. A participant in an LLC is identified as a "member." Each member is protected from personal liability in excess of the capital contributions each has made to the LLC. There is no limit on the number of members, nor are there restrictions on the types of entities that may be members in an LLC. Additionally, an LLC may make disproportionate allocations and distributions, distribute appreciated property without the recognition of gain, and exchange appreciated property for membership interests without the recognition of gain. Members of an LLC pay self-employment taxes on earnings. Generally, members pay

self-employment tax on their share of partnership earnings. An LLC can continue to exist upon the death of a member, if the member owned less than a 50% interest, or had advance planning for business continuation. However, unlike a GP or an LP, only one member is needed to form an LLC. Single member LLCs are taxed by the federal government as sole proprietorships. Also, LLC's may elect to be treated as a C corporation or an S corporation.

#### **2.4 Limited Liability Partnerships**

Limited liability partnerships (LLP's) are a relatively new form of business organization. LLP's have elements of partnerships and corporations. LLP's are similar to LLC's in the respect that each member is protected from personal liability in excess of the capital contributions each has made to the LLP. They also avoid double taxation, while being able to manage the business directly. There are two major differences that separate LLP's from the other forms of business. One is the type of business is restricted to only certain types of professional practices, such as accountants, attorneys, physicians, and other occupations treated as professions. The other is the shield of personal liability is only for all things other than personal acts of malpractice, negligence, or wrongful act. If there is a wrongful act, the partner involved will be liable personally, while all the partners not involved with the act will be free of personal liability. This formation was designed to protect innocent partners from personal liability.

#### **2.5 C Corporations**

A C corporation is the most complex type of entity. Corporations must maintain extensive records and are subject to close regulation. A corporation and its shareholders

are double-taxed, first on the corporate profit, and second on the dividends paid to its shareholders. For this reason, many closely held corporations do not pay dividends. Dividends are taxed by shareholders as capital gains.

Various federal and state filings are required to form a corporation. The corporation does provide protection from personal liability to its shareholders in excess of the amount paid to acquire stock. There are no limits as to the number of shareholders a corporation may have after the initial shareholder. Generally, corporate hierarchy is such that shareholders elect directors, and directors appoint management. An individual may hold all three positions. A corporation only terminates if voted upon by the directors and/or shareholders and a majority, as defined by state law, agrees to terminate, sell, or liquidate the company.

A corporation is subject to a federal graduated tax ranging from 15% to 38%, but averaging no more than 35% for taxable net income over \$18,333,333.

There are many rules surrounding corporate tax law. There are tax credits and special deductions for certain types of corporations, which will be discussed later.

Furthermore, corporations can either be publicly traded, closely held, or foreign-owned. Publicly traded corporations are subject to the most stringent regulations and are traded on the American Stock Exchange (AMEX), the New York Stock Exchange (NYSE), the NASDAQ or the over-the-counter (OTC) markets. The Securities and Exchange Commission (SEC) is the primary regulatory body governing publicly traded corporations and is responsible for protecting investors and maintaining the integrity of the securities markets.

Personal service corporations are taxed at 35% by the Internal Revenue Service. Qualified personal service corporations provide services in the fields of accounting, actuarial, architecture, engineering, healthcare, law, or the performing arts.

## **2.6 Sole Proprietorships and Other Organizations**

A sole proprietorship is an unincorporated, single-owner business that is the simplest entity to form and maintain. It permits the owner to have sole control and responsibility. It has minimal regulations and less paperwork than any other type of entity. This type of entity, however, does not have a separate legal existence apart from its owner and, as a result, the owner has unlimited personal liability for all debts and obligations of the business. There is also a limited ability to raise capital, and often the business will terminate upon the death of the owner. This type of entity does not require the filing of a separate tax return. The business activity is reported directly on the owner's personal federal and state income tax return (Schedule C). Since the owner is not an employee, the business is not subject to the complexity of federal and state payroll taxes, unless it has employees apart from the owner. Unlike any of the other entities, the owner retains all the business profits. At year-end, the owner is subject to self-employment tax of 15.3% on the net profits of the business up to \$106,800 (2009) and 2.9% over that amount. The owner is responsible during the year to remit federal and state estimated tax payments on the income of the business.

### **Non-profit Organizations**

A non-profit organization is formed under Internal Revenue Code Section 501, and is generally exempt from income taxes. Examples of non-profit organizations are

schools and universities, philanthropic, and mutually beneficial organizations. Generally, all non-profit organizations are taxed on income from a business enterprise that is not substantially related to their exempt purpose. This taxable income is identified as Unrelated Business Income (UBI). Non-profit organizations that receive certain levels of support from governmental bodies are subject to additional regulations and record keeping requirements.

### **Private Foundations**

A private foundation is an Internal Revenue Code Section 501(c)(3) non-profit organization which is defined as any 501(c)(3) non-profit organization other than those contributing 50% or more to charitable donees, receiving more than one-third of their annual support from its members and the public and not more than one-third from investment income and Unrelated Business Income (UBI), supporting organizations to Section 501(c)(3) entities, and private safety testing organizations. A private foundation is not exempt from tax unless its governing document specifically prohibits it from engaging in prohibited activities (as defined) or the accumulation of income.

### **Estates and Trusts**

A trust is an entity typically created by a will or intervivos instrument. Trustees take title to the property to protect or conserve it for the beneficiaries of the trust. There are ordinary rules concerning the preservation of principal and distribution of income to which these trusts are subject. The rules are enforced by state chancery and probate courts. There are other trusts that may be formed which are subject to specific rules and

regulations pertaining to taxation, capital preservation, and income distribution. These special trusts include grantor trusts and charitable trusts.

An estate is created upon the death of an individual, and an executor (executrix) is responsible for properly handling and distributing all of the assets of the deceased according to his or her will, paying all outstanding debts and filing all required federal and state documents.

A fiduciary is an individual who occupies a position of special confidence toward another by holding property of that person who has the beneficial title or interest or is one who receives and controls income of another. Trustees and executors are considered fiduciaries.

Estates and trusts are typically regarded as conduits with respect to income that is required to be distributed currently or is distributed at a specific time to a beneficiary. Although the income must be reported, a deduction is also permitted for the income when it is distributed or becomes currently distributable. Generally, though not always, beneficiaries are taxed on the part of income currently distributed or distributable and the trust or estate on the portion that has accumulated.

## **2.7 Business Start-up and Registration Procedures**

Start-up and registration procedures for doing business in the United States include the filing of a federal Form SS-4, Application for Employer Identification Number. This form is a minimum filing for a business entity, except a sole proprietorship. No application fee is required. A sole proprietorship need only file an SS-4 if the owner chooses to trade under a different name, has employees, or obtains a

separate employer identification number for confidentiality of his or her social security number. Shareholders and corporations choosing to be taxed as S corporations are required to file an additional Form 2553, Election to be a Small Business corporation. To assure taxation as desired, it is generally advisable to file federal Form 8832, Entity Classification Election, particularly for partnerships and LLCs.

Businesses and non-profit entities are generally formed, organized, and governed pursuant to the laws of one of the fifty states, District of Columbia (Washington, DC), or other protectorates of the United States.

The registration of a new entity, whether a corporation, S corporation, partnership, limited liability company, limited partnership, or sole proprietorship, requires that a legal document must be filed with the state under which laws the business will operate. Foreign or out-of-state entities typically need to submit an Application for a Certificate of Authority in order to conduct business in a state under which laws it did not incorporate.

### **3. Accounting and Auditing**

Both government regulatory agencies and industry groups develop governing standards for accounting and auditing. Additionally, there are state and national committees and organizations that support accounting and auditing professionals and that lobby for certain laws and standards to meet changing needs.

#### **3.1 Accounting**

Accounting services that may be provided include attestation services, compilations, payroll services, tax compliance services, and general bookkeeping. Attestation services require the accountant to maintain independence from the company for which the services are being performed and generally mean that the accountants are expressing an opinion or some level of assurance as to the fairness of the application of Generally Accepted Accounting Principles (GAAP). Attestation service levels include “reviews” and “audits.” A review consists primarily of inquiries of company personnel and analytical procedures applied to the financial data to measure compliance with accounting standards. It is substantially less in scope than an audit which is the expression of an opinion regarding the accuracy and fairness of the financial statements. The purpose of a review is to express limited assurance that there are no material modifications that should be made to a company’s financial statements in order for them to be in conformity with GAAP.

A compilation differs from a review and audit in that the accountants need not be independent and do not express an opinion or any other form of assurance on company

information. The accountant's compilation report reflects that the information being presented is that of the company's management.

Payroll, tax, and bookkeeping services are obtained as needed and are relatively self-explanatory. There are, however, standards that must be met in performing any level of accounting service.

### **3.2 Auditing**

An audit must be conducted in accordance with Generally Accepted Auditing Standards (GAAS) and includes tests of accounting records and procedures considered necessary for an independent firm to express an opinion on the financial statements of a company. An audit includes examination on a test basis of the evidence supporting the amounts and disclosures in the financial statements. Professional judgment, along with guidelines established by the FASB and the AICPA, determines the number of transactions to be examined and the areas to be tested. An audit also includes assessing the accounting principles used and significant estimates made by management as well as evaluating the overall financial statement position. An audit is planned and performed to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit is not designed to detect immaterial errors, fraud, or other illegal acts, or illegal acts that do not have a direct effect on the financial statements. Again, professional judgment and AICPA established guidelines assist in determining materiality. Finally, an audit must include obtaining an understanding of the company's internal controls sufficient to plan the audit and to determine the nature, timing, and extent of audit procedures to be performed. However, it is not designed to provide

assurance on the adequacy of internal controls or to identify significant deficiencies in the design or operation of the internal controls.

Certain circumstances require that an audit be performed and some audits may be specialized if, for example, government funding is received, if public contributions exceed certain limits, or if fraud is suspected.

Publicly traded companies, unlike closely-held companies, are required to have audits of their annual financial statements, to submit additional filings to the SEC on a regular basis and to abide by the provisions of the Sarbanes-Oxley Act of 2002. Some of the provisions of the Sarbanes-Oxley Act of 2002 are as follows:

Establishment of a Board of Directors comprised of five financially-literate members to be appointed for five-year terms. Two of the members must be or have been certified public accountants, and the remaining three must not be and cannot have been certified public accountants. The Chair may be held by one of the certified public accountant members, provided that he or she has not been engaged as a practicing certified public accountant for five years. The Board's members will serve on a full-time basis.

No member may, concurrent with service on the Board, "share in any of the profits of, or receive payments from, a public accounting firm," other than "fixed continuing payments," such as retirement payments. Members of the Board are appointed by the Commission, "after consultation with" the Chairman of the Federal Reserve Board and the Secretary of the Treasury. Members may be removed by the Commission "for good cause."

The Board shall:

- (1) register public accounting firms;
- (2) establish, or adopt, by rule, "auditing, quality control, ethics, independence, and other standards relating to the preparation of audit reports for issuers;"
- (3) conduct inspections of accounting firms;
- (4) conduct investigations and disciplinary proceedings, and impose appropriate sanctions;
- (5) perform such other duties or functions as necessary or appropriate;
- (6) enforce compliance with the Act, the rules of the Board, professional standards, and the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto;
- (7) set the budget and manage the operations of the Board and the staff of the Board.

The Board must require registered public accounting firms to "prepare, and maintain for a period of not less than 7 years, audit work papers, and other information related to any audit report, in sufficient detail to support the conclusions reached in such report."

The Board must require a second partner review and approval of the audit reports. Registered accounting firms must adopt quality control standards.

The Board must adopt an audit standard to implement the internal control review required by section 404(b). This standard must require the auditor evaluate whether the internal control structure and procedures include records that accurately and fairly reflect

the transactions of the issuer, provide reasonable assurance that the transactions are recorded in a manner that will permit the preparation of financial statements in accordance with GAAP, and a description of any material weaknesses in the internal controls.

In order to audit a public company, a public accounting firm must register with the Board. The Board shall collect "a registration fee" and "an annual fee" from each registered public accounting firm, in amounts that are "sufficient" to recover the costs of processing and reviewing applications and annual reports.

The Board shall also establish by rule a reasonable "annual accounting support fee" as may be necessary or appropriate to maintain the Board. This fee will be assessed on issuers only.

Annual quality reviews (inspections) must be conducted for firms that audit more than 100 issuers, all others must be conducted every 3 years. The SEC and/or the Board may order a special inspection of any firm at any time.

The SEC is authorized to "recognize, as 'generally accepted'... any accounting principles" that are established by a standard-setting body that meets the bill's criteria, which include requirements that the body:

- (1) be a private entity;
- (2) be governed by a board of trustees (or equivalent body), the majority of who are not or have not been associated persons with a public accounting firm for the past 2 years;
- (3) be funded in a manner similar to the Board;

(4) have adopted procedures to ensure prompt consideration of changes to accounting principles by a majority vote;

(5) consider, when adopting standards, the need to keep them current and the extent to which international convergence of standards is necessary or appropriate.

It shall be "unlawful" for a registered public accounting firm to provide any non-audit service to an issuer contemporaneously with the audit, including: (1) bookkeeping or other services related to the accounting records or financial statements of the audit client; (2) financial information systems design and implementation; (3) appraisal or valuation services, fairness opinions, or contribution-in-kind reports; (4) actuarial services; (5) internal audit outsourcing services; (6) management functions or human resources; (7) broker or dealer, investment adviser, or investment banking services; (8) legal services and expert services unrelated to the audit; (9) any other service that the Board determines, by regulation, is impermissible. The Board may, on a case-by-case basis, exempt from these prohibitions any person, issuer, public accounting firm, or transaction, subject to review by the Commission.

It will not be unlawful to provide other non-audit services if they are pre-approved by the audit committee in the following manner. The bill allows an accounting firm to "engage in any non-audit service, including tax services," that is not listed above, only if the activity is pre-approved by the audit committee of the issuer. The audit committee will disclose to investors in periodic reports its decision to pre-approve non-audit services. Statutory insurance company regulatory audits are treated as an audit service, and thus do not require pre-approval.

The pre-approval requirement is waived with respect to the provision of non-audit services for an issuer if the aggregate amount of all such non-audit services provided to the issuer constitutes less than 5% of the total amount of revenues paid by the issuer to its auditor (calculated on the basis of revenues paid by the issuer during the fiscal year when the non-audit services are performed), such services were not recognized by the issuer at the time of the engagement to be non-audit services; and such services are promptly brought to the attention of the audit committee and approved prior to completion of the audit.

The authority to pre-approve services can be delegated to one or more members of the audit committee, but any decision by the delegate must be presented to the full audit committee.

The lead audit or coordinating partner and the reviewing partner must rotate off of the audit every five years.

The accounting firm must report to the audit committee all "critical accounting policies and practices to be used, all alternative treatments of financial information within [GAAP] that have been discussed with management, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the firm".

The CEO, Controller, CFO, Chief Accounting Officer or person in an equivalent position cannot have been employed by the company's audit firm during the 1-year period preceding the audit.

Each member of the audit committee shall be a member of the board of directors of the issuer, and shall otherwise be independent.

"Independent" is defined as not receiving, other than for service on the board, any consulting, advisory, or other compensatory fee from the issuer, and as not being an affiliated person of the issuer, or any subsidiary thereof.

The SEC may make exemptions for certain individuals on a case-by-case basis.

The audit committee of an issuer shall be directly responsible for the appointment, compensation, and oversight of the work of any registered public accounting firm employed by that issuer.

The Sarbanes-Oxley Act prohibits the purchase or sale of stock by officers and directors and other insiders during blackout periods. Any profits resulting from sales in violation of this section "shall inure to and be recoverable by the issuer." If the issuer fails to bring suit or prosecute diligently, a suit to recover such profit may be instituted by "the owner of any security of the issuer."

Directors, officers, and 10% owners must report designated transactions by the end of the second business day following the day on which the transaction was executed.

The Act requires each annual report of an issuer to contain an "internal control report", which shall:

- (1) state the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and
- (2) contain an assessment, as of the end of the issuer's fiscal year, of the effectiveness of the internal control structure and procedures of the issuer for financial reporting.

Each issuer's auditor shall attest to, and report on, the assessment made by the management of the issuer. An attestation made under this section shall be in accordance with standards for attestation engagements issued or adopted by the Board. An attestation engagement shall not be the subject of a separate engagement.

The SEC requires each issuer to disclose whether it has adopted a code of ethics for its senior financial officers and the contents of that code. The SEC shall issue rules to require issuers to disclose whether at least one member of its audit committee is a "financial expert." Issuers must disclose information on material changes in the financial condition or operations of the issuer on a rapid and current basis.

### **3.3 Consulting**

Consulting services have evolved from advice on accounting related matters to a wide range of services involving diverse technical disciplines, industry knowledge, and consulting skills. In a consulting service, the findings, conclusions and recommendations are presented. The nature and scope of the work is determined solely by agreement between the accountant and the client. The work is generally prepared only for the use and benefit of the client.

The general standards of the profession are contained in Rule 201 and Rule 202 of the AICPA Code of Professional Conduct:

- A. Professional Competence
- B. Due Professional Care
- C. Planning and Supervision
- D. Sufficient Relevant Data

- E. Client Interest
- F. Understanding with Client
- G. Communication with Client

Professional judgment must be used when applying the Statements on Standards for Consulting Services.

Accounting firms also offer consulting services which include business valuation, merger and acquisition planning, litigation support services, information systems consulting, financing, corporate and individual income tax planning, estate tax planning, and many other management advisory services. The Sarbanes-Oxley Act, enacted in 2002, places limitations on the consulting services, including some of those listed above, that may be offered by auditors to clients that are publicly-traded companies.

The Statement on Standards for Valuation Services I establishes standards for AICPA members who are engaged to estimate the value of a business, business ownership, security or intangible asset. The term engaged to estimate value refers to an engagement that involves estimating the values of a subject interest. Valuation analysts should be aware of any governmental regulations and other professional standards applicable to the engagement. The use of professional judgment is an essential component of estimating value.

## **4. Tax Law**

### **Taxing Authorities**

The federal taxing authority is generally the Internal Revenue Service (IRS). The IRS deals with all matters pertaining to federally assessed business, personal income tax and federally-assessed employer and employee payroll tax matters.

Each state's revenue department deals with matters pertaining to income taxes, while their labor departments administer and deal with unemployment tax matters. Additionally, sales and use tax laws exist in each state and are administered by the respective state revenue department. Real estate and personal property tax laws are administered by the counties, municipalities, townships and school districts within each state.

### **Labor Departments**

The U.S. Department of Labor prepares America's workforce for new and better jobs ensuring the adequacy of their workplaces. This agency administers and enforces many federal statutes, including protecting workers' wages, health, and safety; employment and pension rights; promoting equal employment opportunities; unemployment insurance and workers compensation programs; and publishing labor and economic statistics.

All states have a state labor department which generally performs various state function which are the administration of benefits to unemployed individuals; workers compensation to individuals with job-related injuries; providing for vocational rehabilitation to those with disabilities; enforcing the labor laws and safety standards, and

promotion of economic development and improved business climates within the state. Each state labor department functions under the state's secretary and laws being administered will vary from state to state.

### **Trade Commissions**

There are numerous national and international trade commissions whose rulings and regulations impact on U.S. businesses. One of the more widely recognized national agencies is the Federal Trade Commission (FTC). The FTC and the U.S. Justice Department enforce various antitrust, trade, and consumer protection laws. They advance the policies underlying congressional mandates through non-enforcement activities. It maintains a regional presence with offices in seven geographical areas across the country.

The United States International Trade Commission (USITC) is an independent non-partisan quasi-judicial federal agency. It has broad investigative powers on matters of trade. Trade data is also gathered and analyzed by the USITC and provided to the executive and legislative branches of government as part of the information on which U.S. trade policy is based. The USITC is the primary regulatory agency of international trade; however, there are numerous trade commissions that focus on imports and exports of particular foreign countries.

The U.S. Securities and Exchange Commission (SEC) is the main regulatory agency protecting investors in the U.S. securities markets and maintaining the integrity of these markets. The SEC also oversees other participants in the security market being primarily concerned with promoting the disclosure of information, enforcing the

securities laws and protecting investors who interact with these other participants, whether business organizations or individuals.

### **The Emergency Economic Stabilization Act of 2008**

The measure includes tax incentives for both individuals and businesses, as well as \$44 billion in revenue offsets.

The following provisions are included in the Emergency Economic Stabilization Act:

1. The alternative minimum tax (AMT) exemption amount for individuals is increased for tax years beginning in 2008, to \$69,950 for married individuals filing a joint return and surviving spouses; \$46,200 for unmarried individuals; and \$34,975 for married individuals filing separate returns (see ¶<sup>1</sup>1405).

2. For tax years beginning in 2008, the nonrefundable personal tax credits are allowed to the full extent of the taxpayer's regular tax and AMT liability (see ¶1415).

3. Homeowners may claim an additional standard deduction for real property taxes, up to \$500 (\$1,000 for joint returns) for any tax year beginning in 2008 or 2009 (see ¶1002).

4. The election to deduct state and local general sales taxes in lieu of state and local income taxes is extended to apply to tax years beginning before January 1, 2010 (see ¶1021).

5. The deduction for qualified tuition and related expenses is extended for years, through December 31, 2009 (see ¶1082).

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<sup>1</sup> Note: ¶ - This symbol represents the Internal Revenue Code Section referred to.

6. The deduction for eligible educator expenses, allowing eligible educators an above-the-line deduction of up to \$250 for educational expenses, has been extended to apply to tax years beginning in 2008 and 2009 (see ¶1084).

7. For the 2008 tax year, if the total amount of a taxpayer's allowable child tax credit exceeds the taxpayer's total tax liability (regular and alternative minimum), the taxpayer is eligible for a refundable child credit equal to 15 percent of the taxpayer's earned income in excess of \$8,500, up to the per child credit amount (see ¶1302).

8. For 2009, the definition of a "qualifying child" is modified with respect to age and joint returns, the tiebreaker rules are clarified, and the child tax credit is tied to the child's dependency exemption (see ¶137A).

9. The 15-year MACRS recovery period for qualified leasehold improvement property is extended to apply to property placed in service in 2008 and 2009 (see ¶1240).

10. A credit is available for tax years beginning after December 31, 2008, for new qualified plug-in electric drive motor vehicles. The amount of the credit is \$2,500, plus \$417 for each kilowatt hour of traction battery capacity in excess of four kilowatt hours (see ¶1318).

11. Personal casualty losses attributable to a federally declared disaster occurring in 2008 and 2009 are deductible without regard to whether the losses exceed 10 percent of a taxpayer's adjusted gross income (AGI) (see ¶1124).

## Housing Assistance

The following highlights some of the provisions in the Housing Assistance Act:

1. A first-time homebuyer who purchases a principal residence after April 8, 2008, and before July 1, 2009, can qualify for a credit of up to \$7,500 (\$8,000 if you purchased your home in 2009).

**Homes purchased in 2008.** You generally must repay the credit over a 15-year period in 15 equal installments. The repayment period begins in 2010 and you must include the first installment as additional tax on your 2010 tax return.

If your home ceases to be your main home before the 15-year period ends, you must include all remaining annual installments as additional tax on the return for the tax year that happens. This includes situations where you sell the home, you convert it to business or rental property, or the home is destroyed, condemned, or disposed of under threat of condemnation.

**Homes purchased in 2009.** You must repay the credit only if the home ceases to be your main home within the 36-month period beginning on the purchase date. This includes situations where you sell the home, you convert it to business or rental property, or the home is destroyed, condemned, or disposed of under threat of condemnation. You repay the credit by including it as additional tax on the return for the year the home ceases to be your main home. If the home continues to be your main home

for at least 36 months beginning on the purchase date, you do not have to repay any of the credit.

2. Homeowners may claim an additional standard deduction for real property taxes, up to \$500 (\$1,000 for joint returns), for any tax year beginning in 2008 (see ¶1002).

3. Gain from sale of a principal residence allocable to periods the property is not used as the principal residence by a taxpayer, the taxpayer's spouse or the taxpayer's former spouse is not excluded from the taxpayer's income (see ¶1705).

4. The state housing credit volume cap for the low-income housing credit is temporarily increased for calendar years 2008 and 2009 (see ¶1334).

5. A corporation may elect to claim a credit for a portion of its unused alternative minimum tax and research credits that are attributable to tax years beginning before January 1, 2006, instead of taking the 50 percent bonus depreciation deduction on any eligible qualified property (see ¶1237).

6. The increased estimated tax payment required to be made by certain large corporations (a corporation with at least \$1 billion in assets) in July, August, or September of 2012, has been repealed. However, the estimated tax payment required to be made in July, August, and September of 2013 has been increased to 117.75 percent of the amount otherwise due (see ¶227).

## Military Tax Relief

The Heroes Act includes the following:

1. Members of a military family, their spouses and qualifying children are not required to have a social security number to claim the refundable tax credit for eligible individuals for the 2008 tax year (the recovery rebate credit) if the credits are claimed on a joint return (see ¶126).
2. The availability of the election to treat combat zone compensation that is otherwise excluded from gross income under Code Section 112 as earned income for purposes of the earned income credit is made permanent (see ¶1375).
3. An eligible small business employer can claim a temporary tax credit for up to 20 percent of the military differential wage payments it makes to qualified workers during the tax year. The military differential credit does not apply to any payments made after December 31, 2009 (see ¶1323).
4. The rules allowing for penalty-free distributions from retirement plans for individuals ordered or called to active duty on or after December 31, 2007 for more than 179 days are now permanent (see ¶2157).
5. For purposes of the exclusion of gain from the sale of a principal residence, an individual can elect to suspend the running of the five-year ownership and use testing period during any period that the individual or the individual's spouse is serving outside the United States as part of the Peace Corps (see ¶1705).
6. A mark-to-market tax is imposed on the net unrealized gain in the property of certain individuals who expatriate (see ¶2412).

7. The minimum penalty for failure to file a tax return within 60 days of the due date (with extensions) is increased to the lesser of \$135 or 100 percent of the net amount of the tax due (see ¶2801).

### **Farm Bill**

The following are some of the provisions of the Farm bill:

1. For most taxpayers who receive Commodity Credit Corporation loans or agricultural program payments, deductible farm losses are limited to the greater of \$300,000 or total net farm income for the previous five years (see ¶767).

2. Payment thresholds increased and indexed for farm and non-farm optional methods of computing net earnings from self-employment (see ¶2676).

3. The loan limits for agricultural bonds has been increased from \$250,000 to \$450,000, indexed for inflation and the dollar limitation in the definition of substantial farmland has been eliminated (see ¶729).

4. An alternative maximum tax rate of 15 percent will apply to the qualified timber gain of a C corporation for a tax year (see ¶1772).

5. A non-refundable income tax credit of up to \$1.01 per gallon for the production of cellulosic biofuel has been added as a component of the alcohol fuels income tax credit (see ¶1329A).

6. The credit amount for the alcohol mixture credit and the alcohol credit for the use or sale of ethanol as fuel in 2009 and 2010 is reduced from 51 cents per gallon to 45 cents per gallon for ethanol with a proof of greater than 190 (the blender amount) and

from 37.78 cents per gallon to 33.33 cents per gallon for ethanol with a proof of at least 150 but less than 190 (the low-proof blender amount) (see ¶1326).

7. Special rules for contributions of real property for conservation purposes extended through December 31, 2009 (see ¶1063).

8. The estimated income tax payment required to be made by certain large corporations in July, August, or September of 2012, has been increased to 125 percent of the amount otherwise due (see ¶1063).

9. Many of the tax benefits extended to the victims of the Katrina, Wilma and Rita hurricanes are modified and available for victims of the tornadoes and storms that hit the Greensburg, Kansas area in May 2007 (see ¶897; ¶1134; ¶1141).

### **Economic Stimulus Package**

The Stimulus bill includes the following provisions:

1. A refundable rebate is available for individuals in 2008, and the rebate amount is equal to the greater of: the taxpayer's net income tax liability (not to exceed \$600, or \$1,200 for joint filers) or \$300 (\$600 for joint filers) if the individual has either: (a) at least \$3,000 of earned income, Social Security benefits or certain veterans' benefits (including survivors of disabled veterans), or (b) net income tax liability of at least \$1 and gross income greater than the sum of the applicable basic standard deduction amount and one personal exemption (two if a joint return) (see ¶126).

2. The Code Sec. 179 expensing amounts are increased for 2008. The dollar limit is increased to \$250,000 and the investment limit is increased to \$800,000 (see ¶1208).

3. The 50 percent first-year bonus depreciation deduction is available for qualifying property acquired after December 31, 2007 and placed in service before January 1, 2009. Qualifying property must be (a) eligible for the modified accelerated cost recovery system (MACRS) with a depreciation period of 20 years or less; (b) water utility property; (c) computer software (off-the-shelf); or (d) qualified leasehold property (see ¶1237).

#### **4.1 Taxes on Income**

##### **4.1.1 Individuals and Sole Proprietorships**

Income taxes are imposed annually by the federal government, by most state governments, and by some local governments. The rates differ from entity to entity and from state to state. Employers are required to withhold federal, state, and local taxes from their employees' wages. Under certain circumstances, estimated federal and state income taxes may also need to be paid by individuals. Taxable income is not always equal to the net income of the business or the gross income of an individual. Additionally, the income which is taxable for federal purposes may differ from that which is taxable for state and local tax purposes. The U.S. tax laws are very complex. As a result, the following barely skims the surface of the federal income tax laws.

The income of sole proprietorships, as well as pass-through entities, are therefore, subject to individual tax rates, which for federal purposes, are blended rates ranging from 10% to 35%.

There are numerous items that are deducted from an individual's gross income. These include home mortgage interest, home real estate taxes, and charitable

contributions and are known as “itemized deductions.” Additionally, there are dependency exemptions for children and other qualifying persons which help lower an individual’s taxable income. Consequently, the personal situation of the individual taxpayer should be a consideration prior to determining the best type of business entity to be formed.

Private foundations are similar to non-profit charitable organizations. The net investment income is subject to a federal excise tax of 2%, and Unrelated Business Income (UBI) is subject, for federal tax purposes, to the corporate tax rates. Private foundations may, however, be formed such that they are taxed as a trust. In which case their UBI and investment income would not be subject to the taxes explained above. A private foundation is not exempt from income taxes as are non-profit organizations unless its governing document specifically prohibits it from engaging in prohibited activities (as defined) or the accumulation of income. If tax-exempt status is not applicable, or is subsequently revoked by the IRS, a private foundation is subject to the federal and state corporation income tax rates.

Estates and trusts are subject to blended federal and state tax rates that are the same as those for individuals except they start at 15% rather than 10%. The higher rates become effective at much lower income levels than for individuals. Certain charitable trusts are exempt from the normal trust tax rate schedule, but are subject to the income and excise taxes imposed on private foundations.

#### **4.1.2 Corporations and Partnerships**

Corporations are taxed for federal purposes at a blended rate ranging from 15% to 38%, depending upon the level of taxable income. As taxable income rises above certain thresholds, the benefit of the lower rates is phased out. Taxable income in excess of \$18,333,333 is taxed at 35%. Professional service corporations, providing services by doctors, engineers, accountants, lawyers, etc., are taxed at a flat rate of 35%, without benefit of the lower, initial tax brackets.

The pass-through entities, as defined earlier, are generally not taxed. Rather the income is passed through to the owners, members or shareholders, and the net taxable income is, thereby, taxed at the individual's tax rate.

#### **4.1.3 International Tax Law**

Foreign individuals arriving in the United States must apply for either a Social Security Number (SSN) by filing federal Form SS-5, "Social Security Administration Application for a Social Security Number," or a Taxpayer Identification Number (TIN) by filing federal Form W-7, "Application for IRS Individual Taxpayer Identification Number." A TIN is applied for if an individual is not eligible for an SSN.

#### **Non-resident Aliens**

Non-resident aliens are taxed on most U.S. source income at a flat rate of 30% or the lower treaty rate, if applicable. Income that is effectively connected with the conduct of a U.S. trade or business is, however, taxed in the same manner as U.S. citizens. Foreign source income of non-resident aliens is not subject to United States tax. A federal Form 1040-NR, "U.S. Non-resident Alien Income Tax Return," is required to be

filed provided a foreign individual is engaged at any time in a trade or business in the U.S., has only exempt income, or has income subject to tax under the Internal Revenue Code (IRC). The minimum income required to file a federal income tax return does not apply to foreign individuals. A non-resident alien need not file a return if his or her tax liability was fully satisfied through withholding by a withholding agent, and if the foreign individual was not engaged in a U.S. trade or business during the tax year. A withholding agent may be a U.S. resident or a foreign individual who is required to deduct, withhold, and pay any tax of a non-resident alien individual, or a foreign business entity. The annual filing required is federal Form 1042, “Annual Withholding Tax Return for U.S. Source Income for Foreign Persons.”

Foreign companies that open a U.S. office should follow the business start-up and registration procedures explained earlier in this guide. An IRS Taxpayer Identification Number (TIN) may be needed rather than an Employer Identification Number (EIN). Foreign individuals working in or having ownership in the U.S. office of the foreign company must adhere to the rules described above for non-resident aliens. Income earned by the U.S. office of a foreign company is considered to be income connected with or from a U.S. source and is, therefore, taxable in the U.S. The taxation of the business is similar to that of any U.S. business discussed earlier in this guide, with some minor exceptions. For example, foreign corporations file an annual federal Form 1120-F rather than a Form 1120 for domestic corporations.

### **U.S. Citizens and Resident Aliens.**

U.S. citizens or U.S. resident aliens living abroad are subject to the same U.S. income tax laws that apply to citizens and resident aliens living in the U.S. Their U.S. gross income includes income from all sources including foreign sources. Federal Form 2555, “Foreign Earned Income” is used by those who have a foreign home and satisfy either the bona fide residence test or the physical presence test, as defined by the IRC, whereby they can elect to exclude a limited amount of their foreign earned income up to \$87,600. The excluded income cannot exceed the foreign earned income for the year. The federal Form 2555 may also be used to claim the housing exclusion or deduction.

Federal Form TD F 90-22.1, “Report of Foreign Bank and Financial Accounts,” is an information form that must be filed by a citizen or resident of the U.S. or a domestic business entity that has a financial interest in or signing authority over any foreign financial account whose aggregate value exceeds \$10,000.

Federal Form 1116, “Foreign Tax Credit,” is used by U.S. citizens or resident aliens to claim a credit on their U.S. individual income tax return for foreign taxes paid or accrued to a foreign country or U.S. possession. The credit may also be claimed by estates and trusts. In certain circumstances, the credit may be claimed without filing the form.

U.S. citizens who are bona fide residents of American Samoa, Puerto Rico, or the Virgin Islands may exclude some or all gross income. U.S. citizens residing in those locations should consult more detailed information regarding their tax situation.

## **Taxation of Controlled Foreign Corporations**

A Controlled Foreign Corporation (CFC) is any foreign corporation in which more than 50% of total combined voting power or total value is directly, indirectly, or constructively owned by U.S. shareholders. U.S. shareholders are subject to tax on earnings distributed from the CFC. Also, to the extent that a CFC has “Subpart F income,” as defined in the IRC, a U.S. shareholder is subject to tax on his or her proportionate share of that income, whether or not distributed, provided the corporation was a CFC for at least 30 consecutive days during the year. Form 5471, “Information Return of U.S. Persons with Respect to Certain Foreign Corporations,” is an informational return that must be filed annually by U.S. persons who have an ownership interest of 10% or more in a foreign corporation. Owning 10% of either the total value of corporate stock or the total combined voting power of all classes of stock with voting power deems the U.S. person a U.S. shareholder by definition. A U.S. person may be a citizen, resident, domestic partnership, corporation, or an estate or trust.

Form 5472, "Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business", is an informational return to provide required information under §6038A and §6038C when a reportable transaction occurs during the tax year of a reporting corporation with a foreign or domestic related party. A reportable transaction is a monetary transaction or any part of the transaction was non-monetary or less than full consideration was paid or received.

Foreign Personal Holding Companies (FPHC) require U.S. shareholders to include as taxable income their pro rata share of undistributed FPHC income. A foreign

corporation is typically classified as a FPHC if at least 60% (50% after the first tax year) of its gross income (not gross receipts) consists of specified types of income, such as interest, dividends, and annuities, and if more than 50% of the voting interest or total value of its outstanding stock is owned directly or indirectly by five or less U.S. citizens or residents. Personal holding companies must attach Schedule PH, “U.S. Personal Holding Company Tax” to their return.

Passive Foreign Investment Companies (PFIC) are classified as such if a foreign corporation meets either a passive income threshold whereby 75% or more of the corporation’s gross income for the tax year is passive, or a passive asset threshold whereby 50% or more of the average fair market value of the corporate assets consist of those used for the production of passive income. A Publicly Traded Foreign Corporation has slightly varying determinations classifying it as a PFIC. A PFIC can be either a qualified or non-qualified fund. U.S. shareholders of a non-qualified PFIC fund are taxed on realized PFIC income and are charged interest on deferred and unrealized income. Whereas, U.S. shareholders of a qualified PFIC fund are taxed on their respective shares of the fund’s earnings but may elect to defer payment of tax on income not currently received, subject to an interest charge. For tax years beginning with 1998, special rules apply for a PFIC that is also a CFC.

All federal tax calculations are made in the taxpayer’s functional currency, the U.S. dollar. However, some exceptions apply such as for a foreign corporation or for a foreign subsidiary of a U.S. corporation, whereby a company may be required to adopt the functional currency of the environment in which it is operating. The taxable income

or loss of a foreign branch and the other items of a foreign corporation must be translated into the U.S. dollar. The IRS, however, has authority to specify the use of average exchange rates rather than the daily exchange rates.

Taxation of foreign source income is among the most complex issues in the Internal Revenue Code. It is recommended that an analysis be made of a company's particular situation before selection is made as to of the type of business/legal entity, location of headquarters, and other strategic decisions.

#### **4.2 Tax Credits and Incentives**

##### **Tax Credits**

Federal and state tax laws allow for numerous types of income tax credits which reduce taxes incurred and paid for the year. Some credits may be refundable, while most are non-refundable. Federal credits for individuals include the earned income tax credit, credits for elderly and disabled persons, credits for child and dependent care expenses, credits for post-secondary education expenses, a \$1,000 child tax credit, an adoption credit up to \$10,000, a foreign tax credit for taxes paid to other countries, retirement saves contribution credit and energy tax credits. Federal business credits typically apply to corporations, though some can be passed through S corporations and partnerships to the individual, and include a general business credit, a credit for contributions paid to certain community development corporations, a credit for increasing research and development expenses, disabled access credit, and the work opportunity tax credit.

## **Business Incentives**

Business incentives primarily include those at both a federal and state level that encourage energy production and conservation and the development of businesses in neighborhoods that are less affluent or crime-ridden areas.

In the past, U.S. companies were provided an incentive to sell goods in foreign markets through the extraterritorial income (ETI) regime (see discussion in Foreign Individuals and Companies section). Beginning in tax years 2005, certain businesses are being allowed a deduction for the manufacture, production, growth or extract (MPGE) of qualifying production property conducted within the United States. This is commonly being referred to as the Section 199 Domestic Production Deduction. The deduction is permitted for businesses such as contractors, manufacturers, home builders, developers, engineers, and architects that make something from two or more separate components. The amount of the deduction is based on the amount of qualified production activities income (QPAI) and increases over five years from 3% of QPAI in 2005 and 2006, to 6% in 2007 to 2009, and 9% thereafter. QPAI is equal to domestic production gross receipts (DPGR) less cost of goods sold and other direct expenses allocated to those receipts and a share of expenses that are not directly allocable to DPGR. The Section 199 deduction is limited to 50% of W-2 wages for the year and may not exceed taxable income for that year.

On a federal level, these incentives are in the form of credits that were previously discussed. The states, however, are the true beneficiaries from such incentives and

typically are the governmental bodies that issue such incentives. Again, most of the state incentives resemble the federal incentives in the form of tax credits.

#### **4.3 Other Taxes**

##### **Sales and Use Taxes**

Unlike Europe, the United States does not administer a federal level Value Added Tax (VAT) or sales tax. Sales and use taxes are state-administered taxes.

Beginning October 1, 2005, a group of states adopted provisions established by the Streamlined Sales Tax Project (SSTP) to collect sales taxes on internet sales. The states in full compliance with the SSTP provisions include Arkansas, Indiana, Iowa, Kansas, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Oklahoma, Kentucky, Rhode Island, South Dakota, Vermont, Washington, Wyoming, and West Virginia. States in partial compliance that are associate members of SSTP include Ohio, Tennessee and Utah. Wisconsin will become the twenty-third associate member July 1, 2009 and a full member October 1, 2009.

##### **Payroll Taxes**

Payroll taxes are assessed on any employer that retains employees to perform work on behalf of their company. Subcontractors are not considered employees and guidelines exist for employers to determine whether they have employees and are thereby subject to remit payroll taxes. In addition to remitting employer payroll taxes, employers are required by federal and state laws to withhold from and remit their employees' federal and state withheld taxes, and state unemployment taxes. These employee withholdings

and employer taxes are reported and remitted together on monthly, quarterly, or annual filings as required by federal and state laws.

Federal payroll taxes include federal unemployment tax (FUTA) at 0.8% on each employee's first \$7,000 of wages annually, Medicare tax at 1.45% with no annual income limits, and Social Security tax at 6.2% on the first \$106,800 of annual wages (for 2009). The taxable wage base for Social Security changes annually. The Social Security tax and Medicare tax are referred to as FICA taxes and are reported on federal Form 941 quarterly. Employee withholdings, which are also reported on federal Form 941, include federal income tax as dictated by "Circular E," and the employees' portion of the FICA taxes which is equivalent to the rates assessed on employers. FUTA tax is solely an employer's tax, and is reported annually on federal Form 940.

Remittance of the federal and state payroll and withholding taxes vary from employer to employer, depending on their total payroll. Generally, state unemployment tax is remitted quarterly; state income tax is usually remitted monthly; federal unemployment is usually remitted quarterly; and federal income tax and FICA is typically remitted either weekly or monthly.

### **Real Estate Taxes**

Real estate taxes are imposed by local jurisdictions and the rates vary according to the jurisdictions in which one resides.

The real estate tax rate is generally the aggregate of levies by the local taxing district. The value of real estate being taxed would be the real property as assessed

according to its full and fair value which is defined as the price it would sell for at a fair and bona fide sale by private contract on the date of assessment.

### **Estate, Gift, and Inheritance Taxes**

Estates of decedents dying during 2009 are exempt from federal estate taxes on the first \$3.5 million of asset value. In 2010, the estate tax is repealed and then in 2011, it is scheduled to revert back to a \$1 million exclusion. Gift tax returns, if applicable, should be referenced to ensure that all or part of the unified estate and gift tax credit has not been previously used.

## **5. Labor and Common Employment Law**

Federal labor laws that are enforced by the U.S. Department of Labor are numerous as they include nearly 200 statutes. The Federal Labor Standards Act prescribes standards for wages and overtime pay. The Occupational Safety and Health Act (OSHA) regulates safety and health conditions in most private industries. The Employee Retirement Income Security Act (ERISA) regulates employers who offer pension or welfare benefit plans for their employees. The Labor-Management Reporting and Disclosure Act deals with the relationship between a union and its members. The list goes on and includes, among others, laws protecting the environment, veterans, recipients of financial aid, natural birth and adoptee mothers, laws governing acts within the workplace, and industry-specific laws.

Each state's labor department further carries out these laws. The states are also required to provide unemployment benefits if an employee is terminated or laid off and disability compensation if an employee is injured on the job. Most states require companies to carry workers compensation insurance in each state in which employees work. Most companies also purchase other privately-owned insurance policies for protection from liability.

The normal work week in the U.S. is 40 hours for full time employees. However, status as a part-time employee may cut that in half. Many businesses have implemented casual Fridays, and one finds more accommodations being made for flexible hours and

employees working from home. Vacation and days off provided to employees are decided upon on a company-by-company basis with certain federal requirements.

Employers must exercise care when classifying workers. The determination of whether a worker is an employee or an independent contractor can be a significant decision. Independent contractors are considered self-employed individuals and are not subject to employment tax withholding. Nor are they normally included in an employer's fringe benefits plan or retirement plan. Federal and state auditors have been very aggressive in this area. Misclassification of an "employee" as an "independent contractor" can be a costly mistake for an employer.

## 6. Trade Laws

Numerous national and international trade laws exist to protect businesses and consumers. We will only touch on the major policies.

### National

The United States trade law as it pertains to addressing foreign unfair practices affecting U.S. export of goods or services is principally governed by Section 301 of the Trade Act of 1974, as amended. It provides a domestic procedure whereby interested persons may petition the office of the United States Trade Representative (USTR) to investigate a foreign government policy or practice and take action. The USTR may also commence an investigation on its own initiative. For example, this section of the Trade Act may be used to obtain increased foreign market access for U.S. goods and services to provide more equitable conditions for U.S. investment abroad and to obtain more effective protection for U.S. intellectual property.

Section 337 of the Tariff Act of 1930 makes it unlawful to engage in unfair acts or unfair methods of competition when importing or selling imported goods. Most investigations under Section 337 regard alleged infringement of intellectual property rights, usually U.S. patents. Patents protect inventions and improvements to existing inventions. Other intellectual property includes, for example, trademarks and copyrights. Trademarks are brand names and/or designs which are applied to products or used in connection with services. Copyrights cover literary, artistic, and musical works.

In 1974, the U.S. Congress established the Private Section Advisory Committee System to ensure that U.S. trade policy and trade negotiation objectives adequately reflect

U.S. commercial and economic interests. This committee now falls under the realm of the USTR's Office of Intergovernmental Affairs and Public Liaison, an office created during the Clinton administration to expand and enhance the USTR's partnership with and outreach to state and local governments, the business community, labor, environmental and special interest groups. Such programs included U.S. participation in the GATT Uruguay Round, the Asia Pacific Economic Forum, the Summit of the Americas, and the Public Education Campaign.

At the beginning of 1996, a new unit of the USTR was created to monitor all U.S. trade agreements, implement U.S. trade laws, determine compliance by foreign governments, and pursue actions to enforce U.S. rights under these agreements and laws. This permanent unit, the Monitoring and Enforcement Unit, became necessary due to the Clinton administration having concluded more than 180 national and international trade agreements.

### **International**

Since the late 1980's, the U.S. has entered into market-opening agreements with Europe, Japan and China. However, there are numerous multilateral or international agreements that exist with almost every country in the world. There exists a World Trade Organization which is the only international organization dealing with the global rules of trade between nations. Its main function is to ensure that trade flows as smoothly, predictably, and freely as possible. The organization, as it accomplishes its goals, results in assurance for consumers and producers that they will enjoy secure supplies and greater choice of goods and services and for producers and exporters assurance that foreign

markets will remain open to them. This organization also results in a more prosperous, peaceful, and accountable economic world. The organization's top level decision-making body is the Ministerial Conference which meets at least once every two years. The organization is headquartered in Geneva, Switzerland, and has 153 countries in its membership as of July 23, 2008, and was first established on January 1, 1995.

## 7. Websites and Phone Numbers

### *Federal Government*

|  |                |                  |
|--|----------------|------------------|
| Internal Revenue Service Center (IRS)  | 1-800-829-1040 | www.irs.gov      |
| Securities & Exchange Commission (SEC) | 1-800-SEC-0300 | www.sec.gov      |
| U.S. Department of Commerce (DOC)      | 1-202-482-2000 | www.commerce.gov |
| U.S. Department of Labor (DOL)         | 1-866-487-2365 | www.dol.gov      |
| U.S. Patent & Trademark Office         | 1-800-786-9199 | www.uspto.gov    |
| Federal Trade Commission (FTC)         | 1-877-FTC-HELP | www.ftc.gov      |

### *Industry Associations*

|  |                |               |
|--|----------------|---------------|
| American Institute of Certified Public Accountants (AICPA) | 1-888-777-7077 | www.aicpa.org |
| Financial Accounting Standards Board                       | 1-203-847-0700 | www.fasb.org  |

## 8. Individual States Quick Reference Guide

**ALABAMA** website: [www.revenue.alabama.gov](http://www.revenue.alabama.gov)  
For Forms: (334) 242-2677 or see website  
Tax assistance: (334)-242-2677

**ALASKA** website: [www.revenue.state.ak.us](http://www.revenue.state.ak.us)  
For Forms: (907) 465 2320 or see website  
Tax assistance: (907) 465-2320

**ARKANSAS** website: [www.arkansas.gov/dfa](http://www.arkansas.gov/dfa)  
For Forms: (501) 682-1100 or see website  
Tax assistance (501) 682-1100

**CALIFORNIA** website: [www.ftb.ca.gov](http://www.ftb.ca.gov)  
For Forms: (800) 338-0505 or see website  
Tax assistance (800) 852-5711

**COLORADO** website: [www.taxcolorado.com](http://www.taxcolorado.com)  
For Forms: (303) 238-3278 or see website  
Tax assistance (303) 238-7378

**CONNECTICUT** website: [www.ct.gov/drs](http://www.ct.gov/drs)  
For Forms: (860) 297-5962 or (800) 382-9463 or see website  
Tax Assistance (860) 297-5962

**DELAWARE** website: [www.state.de.us/revenue](http://www.state.de.us/revenue)  
For Forms: (302) 577-8200 or (800) 292-7826 or see website  
Tax Assistance (302) 577-8200

**DISTRICT OF COLUMBIA** website: [www.cfo.dc.gov](http://www.cfo.dc.gov)  
For Forms: (202) 442-6546 or see website  
Tax Assistance (202) 727-4829

**FLORIDA** website: [www.myflorida.com/dor](http://www.myflorida.com/dor)  
For Forms: (850) 488-8422 or see website  
Tax Assistance (800) 352-3671

**GEORGIA** website: [www.etax.dor.ga.gov](http://www.etax.dor.ga.gov)  
For Forms: (404) 417-6011 or see website  
Tax Assistance (404) 417-4480

**HAWAII** website: [www.hawaii.gov/tax](http://www.hawaii.gov/tax)  
For Forms: (800) 222-7572 or see website  
Tax Assistance (800) 222-3229

**IDAHO** website: [www.tax.idaho.gov](http://www.tax.idaho.gov)  
Tax Form: (800) 972-7660 or (208) 334-7660 or see website  
Tax Assistance (800) 972-7660

**ILLINOIS** website: [www.revenue.state.il.us](http://www.revenue.state.il.us)  
For Forms: (800) 356-6302 or see website  
Tax Assistance (800) 732-8866 or (217) 782-3336

**INDIANA** website: [www.in.gov/dor/](http://www.in.gov/dor/)  
For Forms: (317) 615-2581 or see website  
Tax Assistance (317) 232-2240

**IOWA** website: [www.state.ia.us/tax](http://www.state.ia.us/tax)  
For Forms: (515) 281-7239 or (800)532-1531 or see website  
Tax Assistance (515) 281-3114 or (800)367-3388

**KANSAS** website: [www.ksrevenue.org](http://www.ksrevenue.org)  
For Forms: (785) 296-4937  
Tax Assistance (785) 368-8222

**KENTUCKY** website: [www.revenue.ky.gov](http://www.revenue.ky.gov)  
For Forms: (502) 564-3658 or see website  
Tax Assistance (502) 564-4581

**LOUISIANA** website: [www.revenue.louisiana.gov](http://www.revenue.louisiana.gov)  
For Forms: (225) 219-2113 or (888) 829-3071 or see website  
Tax Assistance (225) 219-0102

**MAINE** website: [www.maine.gov/revenue](http://www.maine.gov/revenue)  
For Forms: (207) 624-7894 or see website  
Tax Assistance (207) 626-8475

**MARYLAND** website: [www.marylandtaxes.com](http://www.marylandtaxes.com)  
For Forms: (410) 260-7951 or see website  
Tax Assistance (410) 260-7980

**MASSACHUSETTS** website: [www.mass.gov](http://www.mass.gov)  
For Forms: (617) 887-6367 or (800)392-6089 or see website  
Tax Assistance (617) 887-6367

**MICHIGAN** website: [www.michigan.gov/taxes](http://www.michigan.gov/taxes)  
For Forms: (800) 367-6263 or see website  
Tax Assistance (800) 827-4000

**MINNESOTA** website: [www.taxes.state.mn.us](http://www.taxes.state.mn.us)  
For Forms: (651) 296-4444 or see website  
Tax Assistance (651) 296-3781

**MISSISSIPPI** website: [www.mstc.state.ms.us](http://www.mstc.state.ms.us)  
For Forms: (601) 923-7815 or see website  
Tax Assistance (601) 923-7089

**MISSOURI** website: [www.dor.mo.gov/tax](http://www.dor.mo.gov/tax)  
For Forms: (800) 877-6881 or see website  
Tax Assistance (573) 751-7191

**MONTANA** website: [www.mt.gov/revenue](http://www.mt.gov/revenue)  
For Forms: (406)444-6900  
Tax Assistance (406) 444-6900

**NEBRASKA** website: [www.revenue.ne.us](http://www.revenue.ne.us)  
For Forms: (800) 626-7899 or see website  
Tax Assistance (402) 471-5729

**NEVADA** website: [www.tax.state.nv.us](http://www.tax.state.nv.us)  
For Forms: (775) 684-2000 or see website  
Tax Assistance (775) 684-2000

**NEW HAMPSHIRE** website: [www.revenue.nh.gov](http://www.revenue.nh.gov)  
For Forms: (603) 271-2192 or see website  
Tax Assistance (603) 271-2191

**NEW JERSEY** website: [www.state.nj.us/treasury/taxation](http://www.state.nj.us/treasury/taxation)  
For Forms: (800) 323-4400 or (609)826-4400 or see website  
Tax Assistance (609) 292-6400

**NEW MEXICO** website: [www.state.nm.us](http://www.state.nm.us)  
For Forms: (505) 827-2206 or see website  
Tax Assistance (505) 827-0827

**NEW YORK** website: [www.nystax.gov](http://www.nystax.gov)  
For Forms: (800) 462-8100 or see website  
Tax Assistance (800)835-3554

**NORTH CAROLINA** website: [www.dor.nc.com](http://www.dor.nc.com)  
For Forms: (877) 252-3052 or see website  
For Assistance (877) 252-3052

**NORTH DAKOTA** website: [www.nd.gov/tax](http://www.nd.gov/tax)  
For Forms: (701) 328-3450 or (800) 638-2901 or see website  
For Assistance (701) 328-1032

**OHIO** website: [www.tax.ohio.gov](http://www.tax.ohio.gov)  
For Forms: (800) 282-1782 or see website  
For Assistance (800) 282-1780

**OKLAHOMA** website: [www.tax.ok.gov](http://www.tax.ok.gov)  
For Forms: (405) 521-3108 or see website  
Tax Assistance (405) 521-3160

**OREGON** website: [www.oregon.gov/dor](http://www.oregon.gov/dor)  
For Forms: (503) 378-4988 or see website  
Tax Assistance (503) 378-4988 or (800) 356-4222

**PENNSYLVANIA** website: [www.revnuce.state.pa.us](http://www.revnuce.state.pa.us)  
For Forms: (800) 362-2050  
Tax Assistance (888) 728-2937 or see website

**RHODE ISLAND** website: [www.tax.state.ri.us](http://www.tax.state.ri.us)  
For Forms: (401) 222-1111 or see website  
Tax Assistance (401) 222-1040

**SOUTH CAROLINA** website: [www.sctax.org](http://www.sctax.org)  
For Forms: (800) 768-3676 or see website  
Tax Assistance (803) 898-5709

**SOUTH DAKOTA** website: [www.state.sd.us/drr2/revenue.html](http://www.state.sd.us/drr2/revenue.html)  
For Forms: (800) 829-9188 or see website  
Tax Assistance (800) 829-9188

**TENNESSEE** website: [www.state.tn.us/revenue](http://www.state.tn.us/revenue)  
For Forms: (615) 253-0600 or see website  
Tax Assistance (615) 253-0600 or (800) 342-1003

**TEXAS** website: [www.window.state.tx.us](http://www.window.state.tx.us)  
For Forms: (800) 252-1389 or see website  
Tax Assistance (800) 252-1381

**UTAH** website: [www.tax.utah.gov](http://www.tax.utah.gov)  
For Forms: (801) 297-6700 or see website  
Tax Assistance (801) 297-2200 or (800) 662-4335

**VERMONT** website: [www.state.vt.us/tax](http://www.state.vt.us/tax)  
For Forms: (866) 828-2865 or see website  
Tax Assistance (802) 828-2865 or (866) 828-2865

**VIRGINIA**

For Forms:  
Tax Assistance

website: [www.tax.virginia.gov](http://www.tax.virginia.gov)  
(804) 440-2541 or see website  
(804) 367-8031

**WASHINGTON**

For Forms:  
Tax Assistance

website: [www.dor.wa.gov](http://www.dor.wa.gov)  
(800) 647-7706 or see website  
(800) 647-7706

**WEST VIRGINIA**

For Forms:  
Tax Assistance

website: [www.state.wv.us/taxdiv](http://www.state.wv.us/taxdiv)  
(304) 344-2068 or (800) 344-2068 see website  
(304) 558-3333

**WISCONSIN**

For Forms:  
Tax Assistance

website: [www.dor.state.wi.us](http://www.dor.state.wi.us)  
(608) 266-1961 or see website  
(608) 266-2772

**WYOMING**

Form Forms:  
Tax Assistance

website: <http://revenue.state.wy.us>  
(307) 777-5200 or see website  
(307) 777-7961