



## Taxing Issues to Consider

BY CAREY A. MILLER

*Carey A. Miller is a business and commercial law attorney and tax consultant. She recently attended the 66th Institute on Federal Taxation sponsored by New York University. One of the premier events for tax practitioners, the week-long event provides high-level updates, practical advice, and in-depth analysis of the latest trends and developments. You can reach her at Carey.Miller@woodsfuller.com.*



As 2007 draws to a close, you may want to consider how a new employer tax credit and final regulations concerning nonqualified deferred compensation plans could impact your business. Here's a brief summary of what you need to know about each of these tax issues. If you want more details, please contact one of the Woods, Fuller, Shultz & Smith P.C. attorneys specializing in taxation.

### Expansion of Work Opportunity Tax Credit

**What is it?** The Work Opportunity Tax Credit (WOTC) was created several years ago to promote the hiring of disadvantaged workers by providing employers with tax credits.

**How has the tax credit changed?** The 2007 Small Business Act expanded the WOTC to include individuals between the ages of 18 and 39 who reside in specified rural renewal counties—that is counties that lost population through the 1990s.

Tax credits are available for hiring these individuals not because they are disadvantaged persons, but simply because they reside in rural renewal counties.

**Are businesses in our area impacted?** Rural renewal

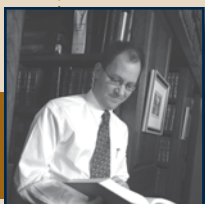
counties have been identified in 32 states, including South Dakota, Minnesota, and Iowa (see page 2).

**How much is the tax credit?** The tax credit can be as much as \$2,400.

**Who qualifies for the tax credit?** The new law is effective for individuals if three conditions are met: (i) the employee was hired after May 25, 2007, and before August 31, 2011; (ii) the employee must fall into the specified age range and the employee's principal residence must be in a rural renewal county on the date of hire; and (iii) the employer complies with the 28-day rule described below. Only wages incurred and paid while the employee resides in a rural renewal county qualify for the credit.

Employees may not be previous employees of the employer, dependents of the employer, or related parties of the employer. If you acquire a business employing individuals who worked for the previous owner and live in a rural renewal county, you may be eligible for the tax credit.

**What is the important 28-day rule?** Employers have only 28 days after the date of hire to submit a certifi-



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cation request, IRS Form 8850, to their state workforce agency. The form is available at [www.irs.gov](http://www.irs.gov).

Employees will also have to fill out Department of Labor Form 9061 (available at [www.doleta.gov/business/incentives/opptax](http://www.doleta.gov/business/incentives/opptax)). Because this is a new credit, and government forms do not have a specific designation for “rural renewal county,” employees should include a cover letter stating that they are applying for the Work Opportunity Tax Credit relating to a rural renewal county.

## Final Regulations Take Effect on Nonqualified Deferred Compensation Plans

**What is the background?** Many businesses allow employees to defer compensation and avoid current taxation of income. After the Enron scandal, Congress became concerned about deferred compensation arrangements. A new law—the American Jobs Creation Act of 2004—dramatically changed the rules applied to deferred compensation plans. These rules are covered in Internal Revenue Code (IRC) Section 409A.

**What is new this year?** After several years of revisions, proposed regulations, and changing deadlines, final regulations were passed this April explaining the requirements of the 2004 law. Important deadlines associated with the law have been set, including operating in compliance with the final regulations as of 2008.

### What are the important dates and deadlines?

**January 1, 2005**—All compensation arrangements subject to Section 409A must be operated in reasonable “good faith” compliance with Section 409A after this date.

**January 1, 2008**—Deferral arrangements subject to

Section 409A must operate in compliance with the final regulations as of this date. For 2007, deferred compensation plans could be operated in compliance with either the proposed regulations or the final regulations.

**December 31, 2008**—An IRS extension announced in the fall of 2007 set this as the deadline for bringing deferred compensation plan documents into compliance with the final regulations.

In other words, even though the deadline to have your compensation plan documents amended to reflect the final regulations is not until December 31, 2008, your deferral arrangements must operate in compliance with the final regulations as of January 1, 2008.

**Is your business impacted?** Companies utilizing any number of deferred compensation arrangements for employees or directors are impacted, including those using certain severance or non-compete agreements. The breadth of this law means that businesses should consider whether they must comply with these regulations.

### What are the penalties if you are not in compliance?

Even though the employer puts the deferred compensation plan into effect, the employee—or participant—suffers the consequences if the plan violates Section 409A.

If the deferred payment is in violation, the entire amount of deferred compensation must be included in taxable income. The employee will pay an additional 20% tax on the compensation and interest is assessed at the IRS underpayment rate plus 1%.

If you would like to talk to an expert who can put tax law in perspective for your business, contact Woods Fuller at 605-336-3890. □

## Rural Renewal Counties

Businesses can receive a tax credit when hiring someone residing in a rural renewal county—a county that lost population in the 1990s. Qualifying counties in South Dakota, Minnesota, and Iowa are below. For a complete list of the qualifying counties in 32 states, go to [www.irs.gov/instructions/i8850/ch02.html#d0e563](http://www.irs.gov/instructions/i8850/ch02.html#d0e563).

### South Dakota

Aurora, Campbell, Clark, Day, Deuel, Douglas, Faulk, Grant, Gregory, Haakon, Hand, Harding, Hutchinson, Jones, Kingsbury, Marshall, McPherson, Miner, Perkins, Potter, Sanborn, Spink, Tripp, and Walworth.

### Minnesota

Big Stone, Chippewa, Cottonwood, Faribault, Jackson, Kittson, Koochiching, Lac Qui Parle, Lincoln, Marshall, Martin, Murray, Norman, Pipestone, Red Lake, Redwood, Renville, Stevens, Traverse, Wilkin, and Yellow Medicine.

### Iowa

Adair, Adams, Appanoose, Audubon, Butler, Calhoun, Cass, Cherokee, Clay, Clayton, Emmet, Floyd, Franklin, Fremont, Hancock, Humboldt, Ida, Keokuk, Kossuth, Montgomery, Osceola, Palo Alto, Pocahontas, Poweshiek, Sac, Taylor, Union, Wayne, Winnebago, and Worth. □

## MEET OUR NEW SHAREHOLDER

### Gregory S. Starnes

Greg Starnes is being named a shareholder of Woods Fuller effective January 1, 2008. Specializing in securities law, business organizations, and business and real estate transactions, Greg is glad to be home—in more ways than one.

This Huron native left South Dakota after completing college. Six years later, having been a banker in Texas, a law student in California and a lawyer in Colorado, he decided it was time to come back home. Greg joined a small firm and practiced law in Sioux Falls for seven years, followed by seven years in the hotel industry—holding both legal and executive positions. But the law called him back, and he joined Woods Fuller in 2001.

“I took stock of my strengths and weaknesses, what I enjoy doing and where I best fit in the business world,” says Greg. Today, his day-to-day experience in business has given him a fresh perspective and common-sense approach when working with clients. “I better understand what the person on the other side of the table is thinking,” says Greg. “They want clear answers and trust us to do the background legal research and analysis to provide those answers.”

Greg has also found home in family. The father of three children ages 11 to 14, he is married to Jennifer, who works with a venture capital group. The family travels, and they are winter sports enthusiasts—enjoying skiing, skating, and hockey.

He’s thrilled to become a shareholder in Woods Fuller. “I like the clientele, the size of the firm, its reputation, and the work ethic,” says Greg. “It’s nice to find a home in a firm that is secure, stable, and has been around for more than 100 years.” □



#### ADMITTED TO BAR:

1985, Colorado

1988, South Dakota

#### EDUCATION:

Augustana College, B.A. Government and International Affairs, 1981

University of the Pacific, McGeorge School of Law, J.D., 1985

#### PRACTICE AREAS:

Business and Real Estate Transactions, Business Organizations, Securities

## MEET OUR NEW ASSOCIATE

### Scott Hendricks Leuning



Scott Hendricks Leuning has a sense of adventure. It’s evident when you walk into his office and see the caribou antlers mounted on the wall. The symbol of the wild north is both a reminder of a successful hunting trip and his experience practicing law in the 49th state.

For the Sioux Falls native, the decision to move to Alaska following law school and a clerkship came when he and his wife Lana, an occupational therapist, took out an atlas and began naming different states in which to begin their careers. “One of us said, ‘What about Alaska?’” recalls Scott. The young couple packed up and headed north. What they thought would be a brief interlude turned into 10 years, during which he became a partner at a firm specializing in litigation and product liability lawsuits.

“We loved it,” says Scott. But the arrival of two sons—now one and three—made them want to be closer to family. They returned home, and Scott joined Woods Fuller in June 2007.

Heading to Alaska wasn’t the first time Scott picked up stakes. Before law school, he traveled and studied for a year in Central America, planning to pursue a doctorate in Latin American history. But then “a light bulb went off,” Scott says. “Sitting in an ivory tower wasn’t where I wanted to be. I decided I could have more of an impact by becoming a lawyer.”

Today, he believes his non-traditional route brings a world view and a rounded background to his practice. And, polishing his writing skills in his graduate studies allowed him to concentrate more fully on practical courtroom skills during law school. “I like the courtroom aspect,” says Scott. “I enjoy going into that adversarial process and doing everything I can to assist my client.” □

#### ADMITTED TO BAR:

1995, South Dakota

1997, Alaska

#### EDUCATION:

St. Olaf College, B.A. History, 1988

cum laude; University of Chicago, M.A.

International Relations, 1991, with honors;

University of Minnesota, J.D. 1995, cum laude

#### PRACTICE AREAS:

Litigation, Product and Professional Liability

## Attorneys Making an Impact



Two Woods Fuller attorneys will be contributing their time and talents to worthy Sioux Falls community programs and organizations.

Matt Bock has been selected to participate in the Sioux Falls Area Chamber of Commerce's Leadership Sioux Falls program. In addition, he and fellow attorney Beth Lewis will be stepping into area classrooms this school year as volunteers for Junior Achievement of South Dakota.



As a member of the twenty-second Leadership Sioux Falls class, Matt will be participating in a program created to ensure the continuing vitality of the Sioux Falls area community. The program provides for a planned and continuing source of motivated leaders who are educated about the community and its challenges and opportunities.

A maximum of 30 individuals are accepted to participate in Leadership Sioux Falls each year. Admission is competitive. Participants attend monthly sessions, October through May,

covering issues concerning the community such as arts and culture, education, and legislative and government.

Junior Achievement of South Dakota educates and inspires students in grades K-12 to value free enterprise, business, and economics, to improve the quality of their lives. Classroom volunteers help students better understand economic concepts as a first step in making a successful transition from school to work. Beth will work with second grade students at Hawthorne Elementary, and Matt will work with first grade students at St. Joseph Cathedral Elementary.

Matt joined Woods Fuller in 2005. His practice areas include business organizations and business transactions. Beth joined the firm in 1994. Her practice is concentrated in the areas of real estate, secured transactions, banking and commercial law, corporate law, and environmental law. □

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