delaware banker

Winter 2024
Vol. 20 No. 1

The Proposed Rule on Overdraft Fees

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Contents

SUBMISSIONS
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View from the Chair

by
Tarrie Miller
President & COO
County Bank

Chair
Delaware Bankers Association

"DELBANKPAC is the perfect vehicle to voice our priorities to the candidates and elected representatives."

This year, 2024, promises to be a momentous one, politically, at least. All the candidates, whether Democrat or Republican, conservative or liberal, share a common trait. Each claim that their opponent's side has made a mess of things and that they will set things right. In the 1933 film *Duck Soup*, Groucho Marx, assuming the presidency of a small country, made probably the most honest political promise ever made:

> *The last man nearly ruined this place,*
> *He didn't know what to do with it.*
> *If you think this country's bad off now,*
> *Just wait till I get through with it!*

A less sarcastic, though equally sobering observation was made by Thomas Jefferson when he wrote:

> *The government you elect is the government you deserve.*

Hope springs eternal for better solutions to the challenges facing our state and our nation, but as Jefferson noted ultimately the outcomes we receive are those for which we have voted.

This year, Delaware faces a full slate of choices. We will cast votes for president, senator, representative, governor, lieutenant governor, state senate, and state house. Additionally, there will be significant changes. Governor Carney has reached his term limit, and Senator Carper is retiring. The voters will exercise a great responsibility, as will our industry. Fortunately, our industry has a valuable tool to help in that effort: DELBANKPAC!

As the preeminent state for financial services, the banks of Delaware impact the future of the industry nationwide. That is why DELBANKPAC is so important. Through DELBANKPAC, the DBA supports candidates and elected officials who understand and believe in solid banking ideals.

DELBANKPAC was formed to protect the livelihood of the banking industry. The PAC provides direct monetary contributions to support those elected officials or candidates for state offices who support Delaware banking.

DELBANKPAC is the vehicle that brings bankers together to protect and promote the banking industry by supporting candidates for the State General Assembly, whose election will be in banking's best interests. The PAC does not participate directly in federal electoral contests, engage in lobbying, exact pledges in return for its support, or seek legislative favors from candidates after they are elected.

DELBANKPAC helps your voice be heard in Dover. A strong political action committee is essential for an effective government relations effort.

Former presidential speechwriter and columnist Peggy Noonan noted:

> *Our political leaders will know our priorities only if we tell them, again and again, and if those priorities begin to show up in the polls.*

DELBANKPAC is the perfect vehicle to voice our priorities to the candidates and elected representatives. Please contribute to DELBANKPAC to help ensure that we continue to advocate on behalf of our members who represent the diverse financial services industry in Delaware. As in the past, we look forward to working with the government to keep Delaware banking strong for our industry and our community.

Do You Have a Small Business Lending Program?

LET US HELP YOU WITH THAT!

The Division of Small Business has new flexible lending programs that allow us to help financial institutions support their small business clients in starting, succeeding, and growing.

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DELAWARE SSBCI
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Delaware
DIVISION OF SMALL BUSINESS

President’s Report

by
Sarah A. Long
President, CEO & Treasurer
Delaware Bankers Association

“Through our actions, we are capable of empowering others to be successful."

I stopped making New Year’s resolutions a couple of years ago. That said, each December, as I prepare for the New Year, I tidy up my desk. I thumb through all the stacks of paper I have amassed, hoping to shred a few things and get the New Year off to a fresh start. This year was no exception.

A byproduct of this endeavor is finding all the “little pearls of wisdom” that I have tucked away and saved over the years. Some of these nuggets are inspiring, motivating, or encouraging. Others are sobering, thought-provoking, or soul-searching.

Among the “pearls” is author Lauren Child's variation on “Sticks and Stones”. “Sticks and stones may break my bones, but words can also hurt me. Stones and sticks break only skin, while words are ghosts that haunt me.” Sobering, right? How many times did we say as children when we felt picked on, “Sticks and stones may break my bones, but words will never hurt me”? Which meant you couldn't hurt me by calling me names or saying mean things about me. As an adult, you realize words have meaning and can be hurtful. This quote reminds me to try to pause and think before saying something I might regret, or that might make a situation worse. As my mother used to say, “If you can't say anything nice, don't say anything at all.”

Another is this quote attributed to John Wesley, the founder of Methodism. “Do all the good you can, by all the means you can, in all the ways you can, in all the places you can, at all the times you can, to all the people you can, as long as ever you can.” What I especially like about this quote is it reminds me that we all can do something to help others, and it doesn’t have to be big. Even small, random acts of kindness make a difference. Even offering a warm smile can brighten someone's day and make them feel seen and heard.

And then there is this powerful quote by Professor Stephen Hawking, the theoretical physicist and cosmologist. “Remember to look up at the stars and not down at your feet. Try to make sense of what you see and wonder about what makes the universe exist. Be curious. And however difficult life may seem, there is always something you can do and succeed at. It matters that you don't just give up.” Hawking gave this now-famous advice to his three children, Lucy, Robert, and Tim. Down-to-earth advice from a brilliant man who studied the origin of the cosmos, enlightened the world about the origin of everything, and never gave up.

And of course, this snippet on leadership by John Maxwell, author, speaker, and pastor whose primary focus is on leadership. “A leader is great not because of his or her power, but because of his or her ability to empower others.” I was well into my career before I understood that there is a difference between managers and leaders. I was even further in my career before I understood just how important understanding that difference is. A true leader ensures through their actions the success of others. We all need mentors to guide us, advocates to support us, and sponsors to elevate us. This quote reminds me that through our actions, we are capable of empowering others to be successful.

And finally, this Cherokee Metaphor. “One evening, an old Cherokee told his grandson about a battle that goes on inside people. He said, "My son, the battle is between two "wolves" inside us all. One is Evil. It is anger, envy, jealousy, sorrow, regret, greed, arrogance, self-pity, guilt, resentment, inferiority, lies, false pride, superiority, and ego. The other is Good. It is joy, peace, love, hope, serenity, humility, kindness, benevolence, empathy, generosity, truth, compassion, and faith." The grandson thought about it for a minute and then asked his grandfather: "Which wolf wins?" The old Cherokee simply replied, "The one you feed.” This speaks to the power of choice and the frailty of humanity, of striving for goodness and giving yourself some grace.

As we enter 2024, I hope you share the “little pearls of wisdom” that inspire, motivate, and encourage you with others. They will have more impact and staying power than those New Year’s resolutions you’ve already thrown the towel in on. Cheers to you in 2024!

What's New at the DBA

New Associate Member

Meriplex
Meriplex is a managed IT and Cybersecurity solutions provider that enables transformation for banks by combining secure, innovative technology with advanced technology and advanced expertise. As a trusted partner for banks, they deliver business-driven solutions that provide the scalability and support needed to power growth.

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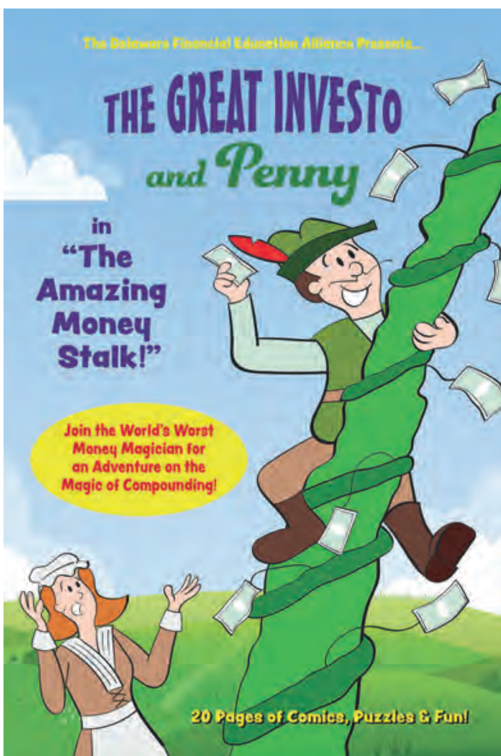
New Comic Book for 2024 Teach Children to Save Day!



The Delaware Bankers Association and the Delaware Financial Education Alliance have created a new comic book, especially for 2024 Teach Children to Save Day. This year's comic is "The Amazing Money Stalk," and features The Great Investo and Penny. The book, written and illustrated by Greg Koseluk, demonstrates the power of compounding and the importance of saving for a financially independent future. All students will receive their own copy of the comic book to keep.

The comic book was made possible thanks to the generous sponsorship of our members including: Barclays, Wells Fargo, Sallie Mae, Smarty Pig, TD Bank, WSFS Bank; Artisans' Bank; Bank of America; Fulton Bank; M&T Bank; Visa; Comenity Bank; County Bank; First Citizens Community Bank; and, Shore United Bank.

Corinne Takes the Plunge!

The 33rd Annual Polar Bear Plunge Fundraiser to benefit Special Olympics Delaware was held on February 4, 2024 in Rehoboth Beach, DE. Over 4,380 Bears plunged raising $1.5 million making it a record-breaking year in both number of participants and dollars raised. Since 1992, the plunge has become one of the most significant and successful fundraisers in the state of Delaware!

DBA's Director of Events, Corinne Stayton, joined by her daughter, Averie, and friends raised over $1800 this year! This is the eighth year both Corinne and Averie have participated in the plunge. All proceeds fuel the mission of Special Olympics Delaware (SODE) to provide year-round sports training, leadership opportunities, and health screenings for thousands of athletes. To learn more about SODE visit https://sode.org. Mark your calendar for the 2025 Polar Bear Plunge Sunday, February 2, 2025!

The CFPB's Proposed Rule on Overdraft Fees

A Summary and Discussion

By:
Glen Trudel
Troutman Pepper Hamilton Sanders LLP

On January 17, 2024 the Consumer Financial Protection Bureau (CFPB or Bureau) published a proposed rule for public comment (the Rule). This proposed rulemaking aims to eliminate current regulatory exceptions relating to overdraft transactions, to regulate permissible overdraft charges, and to amend the regulatory text and commentary of Regulation Z and Regulation E, such that the requirements of the Truth in Lending Act (TILA)/Regulation Z would apply to overdraft "credit" provided by certain large insured financial institutions. Overdraft charges would now be considered "finance charges," unless, alternatively, the financial institution charges a fee covering only its applicable costs and losses, in accordance with the new regulation.

According to the CFPB, these changes "would allow consumers to better compare certain overdraft credit to other types of credit and would provide consumers with several substantive protections that already apply to other consumer credit."

These requirements would be applicable solely to financial institutions of more than $10 billion in assets or any affiliate thereof, which, according to the CFPB, includes about 175 of the largest banks and credit unions, encompassing an estimated two-thirds of the overall overdraft fee revenue generated nationally. That said, other financial institutions should not rest easy—the CFPB states in its proposal that it plans to monitor market response to the Rule "before determining whether to alter the regulatory framework for financial institutions with assets less than or equal to $10 billion."

Interested parties must submit comments on or before April 1, 2024.

Summary of the Proposed Rule

According to the CFPB, the proposed rule is intended to close what it considers to be a "loophole" in TILA, which currently provides that any charge for honoring checks or items similar to checks is not a "finance charge" if the financial institution has not previously agreed in writing to pay items that overdraw an account in return for the imposition of a fee. Such provision would be updated so that the exception would no longer apply to "above breakeven overdraft credit" offered by an institution covered by this new proposal.

To accomplish this, the CFPB's proposal affords covered large financial institutions two alternatives for offering overdraft "credit":

(1) a "courtesy" overdraft service, provided in exchange for a "breakeven" fee, which would be exempt from TILA/Regulation Z (the Courtesy Overdraft Alternative); or

(2) a covered overdraft credit line/loan, provided in connection with debit card or routing/account number transactions, which would permit "above breakeven" fees, and which would be subject to the amended TILA/Regulation Z provisions (Covered Overdraft Credit Alternative).

Courtesy Overdraft Alternative

Under the Courtesy Overdraft Alternative, the proposed rule provides two methods by which an applicable financial institution can operate within this alternative. These methods hinge on the determination method selected for establishing the fee to be charged—a "breakeven standard" and a "benchmark standard."

With respect to the "breakeven standard," the courtesy fee to be charged would be determined using a "breakeven" analysis, in accordance with standards set forth in the proposed rule, taking into account net losses the institution incurs when it charges off negative account balances, costs of funds, and other direct costs that can be "specifically traceable" to providing such courtesy overdrafts in the previous year. However, such costs and losses would not include "general overhead costs or charge-off losses due to unauthorized use, EFT errors, billing errors, returned deposit items, or rescinded provisional credit."

Under the "benchmark standard," a financial institution could establish its courtesy fee in accordance with a safe harbor benchmark fee set by the CFPB, and thereby be entitled to presume that such charge does not exceed its costs and charge-off losses. The CFPB is currently considering potential benchmark fees of $3, $6, $7, or $14, respectively, in the proposed rule. The CFPB considers each fee level as "potentially viable" because they "each apply the calculation method proposed by the breakeven standard to alternative data sets and/or alternative approaches for calculating the total number of non-covered overdraft transactions." The analysis performed by the CFPB to arrive at these values was based on information collected from financial institutions' charge-off losses, plus $1.00 per overdraft transaction to cover a financial institution's cost of funds, as well as operational costs such as call center expenses. The final benchmark to be chosen will depend ultimately on the decisions the CFPB makes in determining what to include in the overall calculation formula, such as losses from transactions where overdraft fees are waived, or average vs. highest bank losses as surveyed. The CFPB is seeking comment regarding each of these benchmark fee alternatives in the proposed rule.

Covered Overdraft Credit Alternative

Under the Covered Overdraft Credit Alternative, a covered large financial institution would be required to provide to customers receiving what the Rule refers to as "covered overdraft credit" the full TILA credit disclosures, as well as to comply with the other substantive TILA requirements applicable to credit

(Continued on p . 12)

Overdraft Fees

(continued from p. 11)

cards generally, such as account opening disclosures, periodic statements, advertising rules, etc. As a result, a customer would need to apply to receive such credit and an "ability to pay" analysis would be required as part of the underwriting process. Moreover, other substantive requirements applicable to credit cards, including penalty fee limitations, first year fee provisions, and the requirements relating to rate changes, would apply. Such credit could not be conditioned on compulsory use of preauthorized electronic fund transfers for repayment of such overdraft credit by the consumer – a consumer could still opt in to permit automatic payments on a periodic basis, but he/she would retain the right to repay the overdraft credit manually. Further, due regard will need to be paid by the covered financial institution to ensure any applicable usury laws are observed by the terms of this form of credit, as with the other forms of consumer credit it offers.

As part of the implementation of these changes, the proposed rule would amend a current exemption providing that a charge imposed in connection with an overdraft credit feature (such as a charge for each item resulting in an overdraft) is not a finance charge if it does not exceed the charge for a similar transaction account without an overdraft credit feature (e.g., the charge for returning each item). One result of such an amendment would be that all fund transfer charges on asset accounts with linked overdraft lines of credit (such as a fee assessed to transfer funds from an overdraft line of credit to an asset account to cover an item and thereby avoid creating a negative balance in the asset account) would be deemed finance charges.

Considerations Regarding the Proposed Rule

The CFPB's proposed rulemaking on overdraft fees is another of several ongoing supervisory and enforcement-based initiatives that the CFPB has been pursuing, in part in response to the Biden administration's more broad-based crusade against what it terms "junk fees."

The CFPB's intentions are reflected by the press release announcing the proposed rulemaking, where CFPB Director Rohit Chopra declared, "Decades ago, overdraft loans got special treatment to make it easier for banks to cover paper checks that were often sent through the mail … Today, we are proposing rules to close a longstanding loophole that allowed many large banks to transform overdraft into a massive junk fee harvesting machine."

The CFPB estimates the Rule may save consumers $3.5 billion or more in fees annually, based on an average of $150 per household for the 23 million households it posits are affected by overdraft fees each year, in addition to the same amount consumers may already have saved as compared to 2019 levels.

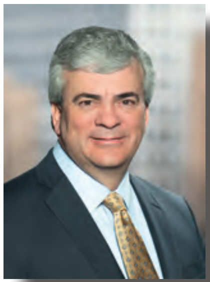
This latest CFPB effort was foreshadowed by its December 19, 2023 report on "Overdraft and Nonsufficient Funds Fees – Insights from the Making Ends Meet Survey and Consumer Credit Panel," which details consumers' experiences with overdraft (and nonsufficient funds (NSF)) fees. Based on data from the CFPB's "Making Ends Meet" survey and credit bureau data from the Consumer Credit Panel, the CFPB's report states that 23.6% of consumers reside in households that were charged an overdraft fee in the past year. Further, there is substantial overlap in the populations charged overdraft and NSF fees. Among consumers in households charged an NSF fee in the past year, 85% also incurred an overdraft fee. The report also found that many consumers charged an overdraft fee were surprised by the fee. Specifically, 43% were surprised by their most recent account overdraft, 35% thought it was possible, and 22% expected it. Notably, according to the report, some consumers "appear to use overdrafts often and intentionally as a source of credit…"

Still, some banking industry commentators and institutions question whether there remains a substantial need for this sort of regulation at this time. They argue that many banks, including the largest banks that would be bound by the final rule, have over the last couple of years overhauled their overdraft policies, in response to perceived governmental and other pressures already brought to bear. They have done so by, for example, reducing substantially the amount of their overdraft fees, and/or instituting other customer-friendly elements such as affording grace periods to allow an account to regain a positive balance and thereby avoid the imposition of a fee, providing a dollar value cushion of some amount so that more relatively *de minimus* overdrafts would not incur an overdraft fee, and/or providing warnings to consumers when their account balance falls below a given floor amount. Others have posited that the result of the imposition of such rulemaking could cause more banks not to offer the overdraft service altogether and not allow their consumer's debit accounts to go negative. This, in turn, could lead to a decrease in availability of short-term liquidity that many consumers need on a regular basis.

When Might This Proposed Rule Become Effective?

Once finalized, the Rule will go into effect as of the October 1 that follows by at least six months of the date of publication of the final Rule in the *Federal Register*[1]. The CFPB anticipates the effective date of the Rule to be October 1, 2025. This presumes that the volume of comments received, the time required for the CFPB's consideration thereof and determination of final changes if any to be made to the proposed Rule, and their finalization will not result in delays that push the final Rule's publication past April 1, 2025.

It remains to be seen whether any potential legal or Congressional challenge, or the results of the national elections this November, will delay or otherwise materially affect the trajectory of this proposed Rule. What is clear is that this proposal already has been and will continue to be met by strong opposition from the banking industry and trade associations, and from those large financial institutions that would feel the costs and other effects of this new regulation most keenly.



Glen Trudel is a consumer financial services, banking, and business attorney who counsels financial institutions, marketplace lenders, fintech entities, and other companies on both regulatory and transactional matters. He has significant experience documenting and creating marketplace lender platforms and structures, as well as with the acquisition and divestiture of consumer and business credit card and other loan portfolios.

Glen also advises state and federal financial institutions and other entities on regulatory, operational and vendor outsourcing matters, debt sales and collection agreements, and other transactions. Additionally, he assists clients in the structuring and documentation of new credit products and on formation and licensing issues in Delaware. Before re-entering private practice,

Glen was a senior vice president and counsel with MBNA America Bank, N.A. (now part of Bank of America). During, and since, his 14 years with the bank, he has advised on a broad variety of general purpose and private label credit card/unsecured lending, deposit, and other bank regulatory issues. Glen has extensive experience representing card issuers and partners in the negotiation, structuring, creation, and administration of joint marketing, co-brand, affinity, miles/reward program, and enhancement agreements, as well as account portfolio acquisitions and divestitures.

In his business practice, Glen counsels clients in the creation of business entities and in connection with contractual, traditional corporate governance, and other matters, including providing Delaware law opinions.

Notes:

1- 15 U.S.C. 1604(d) provides as follows: (d) EFFECTIVE DATES OF REGULATIONS CONTAINING NEW DISCLOSURE REQUIREMENTS - Any regulation of the Bureau, or any amendment or interpretation thereof, requiring any disclosure which differs from the disclosures previously required by this part, part D, or part E or by any regulation of the Bureau promulgated thereunder shall have an effective date of that October 1 which follows by at least six months the date of promulgation, except that the Bureau may at its discretion take interim action by regulation, amendment, or interpretation to lengthen the period of time permitted for creditors or lessors to adjust their forms to accommodate new requirements or shorten the length of time for creditors or lessors to make such adjustments when it makes a specific finding that such action is necessary to comply with the findings of a court or to prevent unfair or deceptive disclosure practices. Notwithstanding the previous sentence, any creditor or lessor may comply with any such newly promulgated disclosure requirements prior to the effective date of the requirements.

Non-Cash Charitable Contributions

Avoid an Audit by Knowing the Rules

by
Robert Freed
Santora CPA Group

It's the most wonderful time of the year – tax filing season. While many taxpayers no longer itemize deductions due to the increased standard deduction, as well as caps on state and local taxes and mortgage interest, many taxpayers still itemize for state tax purposes even if using the standard deduction for federal purposes.

Charitable contributions on a tax return, especially non-cash, are a favorite target of the Internal Revenue Service (IRS), and it's imperative to understand the rules and have the right support for the deduction claimed.

While many taxpayers are familiar with the popular non-cash contribution of donating clothes or household items to Goodwill or a similar organization, there are three additional non-cash contributions that can help increase your itemized deductions: donating a used car, works of art, and/or appreciated stock to a charity. Each of these donations has specific guidelines that must be adhered to and require some additional support in order to substantiate the deduction claimed on the tax return.

Let's take a look at these three donations in a bit more detail.

Donating a Used Car

One of the negative aspects of buying a new car is the annoyance involved with getting rid of your old car. Many individuals find the trade-in allowance offered by dealers to be well below the car's true value. But the alternative of selling the car on your own involves the expense of advertising, as well as the commitment of time needed to meet with potential buyers, accompanying them on test drives, and negotiating a fair price.

Some taxpayers consider a different option for their old cars: donating them to charity. An increasing number of charities have turned to car-donation programs. The donation approach saves you the trouble of trying to sell the car. Many charities offer the added convenience of picking up the car at your home.

Keep in mind that the amount of the deduction you will be allowed to claim is subject to special limitations. In many cases, the deduction you can claim is less than your view of the car's value.

For cars worth over $500, the deduction will be the lesser of the vehicle's fair market value (FMV) or the amount for which the charity actually sells the car, if it sells the car without materially improving it. This limit applies to any motor vehicle designed for road use, including vans and trucks, as well as boats and airplanes.

Since most charities do sell the cars they receive, it's likely that your donation will be limited to the actual sales price. Furthermore, these sales are often at auction or in bulk and typically result in sales below their "Blue Book" value. Also, you won't know the amount of your deduction until the charity has sold the car and reported the sale proceeds to you.

Your deduction will be based on the car's FMV at the time of the donation ONLY if the charity uses the car in its operations or materially improves the car before selling it. In that case, FMV is usually set according to the "Blue Book" listings for used cars published by the National Automobile Dealers Association. The IRS will accept the value in the "Blue Book," or another established used car pricing guide, if the guide lists a sales price for a car that is the same make, model, and year, sold in the same area, and in the same condition, as the car you donated. In some cases, this value will exceed the amount you could actually get on a sale.

However, if the car is in poor condition because it needs substantial repairs or is unsafe to drive and the pricing guide only lists prices for cars in average or better condition, the guide won't set the car's value. Instead, you must establish the car's true market value by any reasonable method. Many used car guides show how to adjust the value for items such as accessories or mileage.

Make sure the charity qualifies as a charitable organization. You won't be entitled to a charitable deduction unless you donate your car to an eligible, charitable organization. In some cases, the transaction is more complex because private fund raisers may be operating car donation programs on behalf of charities. This is permissible as long as the private company is acting as the agent for a qualified charity.

If the charity sells the car, you will need a written acknowledgement from the charity containing your name and tax ID number, the vehicle ID number, a certification that it was sold at “arm's length” to an unrelated party, the gross proceeds of sale, and a statement that the deduction cannot

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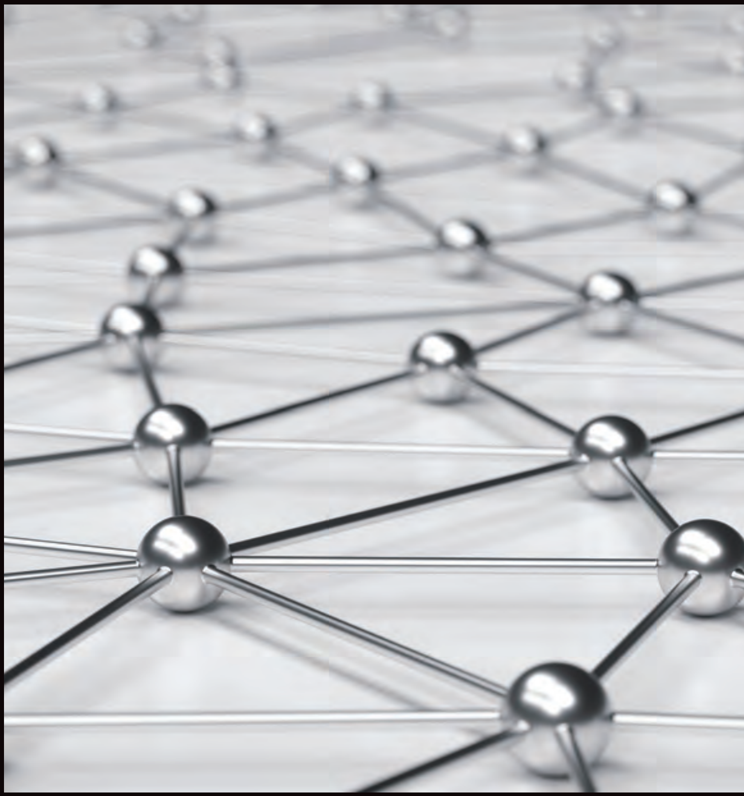

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exceed the proceeds. The charity should provide you with this acknowledgement within 30 days of the sale.

If, instead, the charity will use (or materially improve) the car, the acknowledgement needs to certify the intended use (or improvement) and the intended duration of the use, along with a statement that the car will not be sold before completion of the use or improvement. In this case, the acknowledgement should be provided within 30 days of the donation.

If you donate your used car to charity, make sure you take the steps needed to substantiate your tax deduction.

Donating a Work of Art

Several different tax rules may come into play in connection with donating a work of art. For example, a charitable contribution of a work of art is subject to reduction if the charity's use of the work of art is unrelated to the purpose or function that is the basis for its qualification as a tax-exempt organization. The reduction equals the amount of capital gain you would have realized had you sold the property instead of giving it to charity.

One or more substantiation rules may come into play when you donate a work of art. If you claim a deduction of less than $250, you must get and keep a receipt from the donee organization, and you must also keep reliable written records for each item you donated.

If you claim a deduction of at least $250, but not more than $500, then you must get and keep an acknowledgment of your contribution from the donee organization. The acknowledgment must state whether the organization gave you any goods or services in return for your contribution and include a description and good-faith estimate of the value of any goods or services given.

If you claim a deduction in excess of $500, but not over $5,000, then in addition to getting an acknowledgment, you must also maintain written records that include information about how and when you obtained the property and its cost basis. You must also complete Section A of Form 8283 and attach it to your tax return.

Where the claimed value of the property exceeds $5,000, then, in addition to an acknowledgment, you must also have a qualified appraisal of the property. This is an appraisal that should be done by a qualified appraiser no more than 60 days before the contribution date and that meets numerous other requirements. You include information about these donations on Section B of Form 8283, again, which you file with your tax return.

If your total deduction for art is $20,000 or more, you must attach a complete copy of the signed appraisal. If an item of art is valued at $20,000 or more, the IRS may request that you provide a photograph as well. If an item of art has been appraised at $50,000 or more, you can ask the IRS to issue a "Statement of Value," which can be used to substantiate the value.

In addition, your deduction may be limited to 20%, 30%, 50%, or 60% of your contribution base, which usually is your adjusted gross income. These percentage limitations vary depending on the year in which the contribution is made, the type of organization involved, and whether or not the deduction of the work of art had to be reduced because of the unrelated-use rule explained above. The amount not deductible on account of a ceiling may be deductible in a later year under carryover rules.

Donors sometimes make gifts of partial interests in an art work. For example, a donor may contribute a 50% interest in a painting to a museum, with the understanding that the museum will exhibit it for six months of the year and the donor will keep possession of it for the other six months.

Special requirements apply to these donations. The donee charity must take complete ownership of the item within 10 years or at the donor's death, whichever comes first. Failure to comply results in the donor's recapture of all charitable deductions claimed, plus interest and a 10% penalty. Also, the FMV used in determining the amount of each later contribution can't exceed the property's value at the time of the initial contribution.

Donating Appreciated Stock

If you are planning to make a relatively substantial contribution to a charity, college, etc., you can donate appreciated stock from your investment portfolio instead of cash. Your tax benefits from the donation can be increased, and the organization will be just as happy to receive the stock.

This tax planning tool is derived from the general rule that the deduction for a donation of property to charity is equal to the FMV of the donated property. Where the donated property is "gain" property, the donor does not have to recognize the gain on the donated property. These rules allow for the "doubling up" of tax benefits: a charitable deduction, plus avoiding tax on the appreciation in value of the donated property.

FMV of the stock is easily determinable especially if the stock is traded on an established stock exchange. In many instances the FMV is nothing more than the mean value of the stock on the day it is transferred to the charitable organization.

An example of the potential tax benefits can be seen in a simple example.

Joe and Jane are siblings, each of whom attended the University of Delaware. Each plans to donate $10,000 to the school. Each also owns $10,000 worth of stock in ABC, Inc., which they bought for just $2,000 several years ago.

Joe sells his stock and donates the $10,000 cash. He gets a $10,000 charitable deduction, but he must report his $8,000 capital gain on the stock.

Jane donates the stock directly to the school. She gets the same $10,000 charitable deduction and avoids any tax on the capital gain. The school is just as happy to receive the stock, which it can immediately sell for its $10,000 value.

While this plan works for Jane in the above example, it will not work if the stock has not been held for more than a year. It would be treated as "ordinary income property" for these purposes, and the charitable deduction would be limited to the stock's $2,000 cost.

Also, depending on the amounts involved and the rest of your tax picture for the year, taking advantage of these tax benefits may trigger alternative minimum tax concerns.

The most important thing to remember in donating any of these non-cash contributions is to have the proper substantiation in case of an audit by any federal or state tax government agency.

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Robert works with individuals, and existing and newly established businesses, in a wide variety of areas including tax, trust, estate and retirement planning, as well as tax compliance services.

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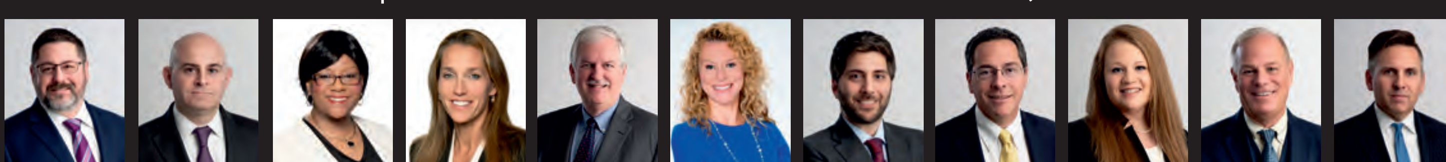

Choosing Between Grantors and Grantor Trusts?

What New IRS Guidance Could Mean for Trustees

by
Scott E. Swenson
Connolly Gallagher LLP

To reimburse or not to reimburse? That is the question trustees of grantor trusts may now face in light of much-talked about guidance from the IRS Office of the Chief Counsel known as Chief Counsel Advice 202352018, released December 29, 2023. The CCA has raised eyebrows in the estate planning world for concluding that trust beneficiaries who consent to a modification allowing the trustee the discretion to reimburse the grantor of a grantor trust for taxes paid by the grantor on the trust's income have in fact made a gift to the grantor. The result is surprising to many, but what does it mean for trustees? For the unwary, it could mean the possibility of whipsaw between the interests of beneficiaries and the demands of grantors.

What's Changed?

"Grantor trust" is the term typically used to describe a trust the income of which is taxable to the grantor by virtue of the grantor retaining one or more powers, or the trust having one or more of the characteristics, described in Sections 671 through 679 of the Internal Revenue Code. A trust designed to be excluded from a grantor's estate for estate tax purposes but the income of which is taxed to the grantor for income tax purposes, sometimes called an "intentionally defective grantor trust," can be a powerful planning tool thanks to long-standing precedent.

Nearly 20 years ago, the Service confirmed that a grantor's payment of income tax attributable to a trust is not a gift by the grantor to the beneficiaries of the trust because it is in discharge of the grantor's own tax liability. Hence, a grantor could effectively supercharge her gift to a trust by paying the trust's income taxes herself, often at a lower tax rate, allowing the trust assets to grow without the drag of income tax and with no further gift or estate tax consequences for the grantor. In the same Revenue Ruling, the Service held that a discretionary power on the part of an independent trustee to reimburse the grantor for income taxes paid on behalf of the trust would not alone cause the trust to be included in the grantor's estate for federal estate tax purposes. Thus, a grantor trust could include a built-in "relief valve" for grantors whose assumption of a trust's income tax burden proved more than bargained for—a feature now common in grantor trusts.

While CCA 202352018 does not upset these rules for trusts created with a discretionary power on the part of the trustee to reimburse the grantor for income taxes paid on the trust's income, whether under the terms of the trust or under the default provisions of state law, it does yield the unexpected result that a beneficiary's consent or acquiescence to a trust modification adding such a discretionary power constitutes a gift on the part of the beneficiary to the grantor.

What's the Implication for Trustees?

The modification underlying CCA 202352018 is less likely to occur in Delaware, where state law already permits an independent trustee to reimburse a grantor for taxes paid on the trust's income unless prohibited by the terms of the trust. The CCA does not suggest that the exercise of such a power already in existence is in any way problematic or might result in the imputation of a gift on the part of the beneficiaries. But the CCA shines a light on the practice of reimbursing a grantor for taxes and should cause a trustee to ask "why?" rather than "why not?" if a non-beneficiary grantor asks for reimbursement.

CCA 202352018 concludes that value passes from the beneficiaries to the grantor by virtue of the beneficiaries' consent—or non-objection—to a modification giving the trustee the discretionary power to reimburse a grantor for taxes paid on the trust's income. Implicit in this conclusion is the rationale, correct or not, that value must pass from the beneficiaries to the grantor when a grantor is reimbursed from the trust for taxes paid on the trust's income. Against this backdrop, unless the grantor is herself a beneficiary, why would a conscientious fiduciary decide to give trust funds to a non-beneficiary at the expense of the beneficiaries?

One justification could lie within the power to "turn off" grantor trust status, assuming this can be accomplished under the terms of the trust. A grantor who wants to be reimbursed for taxes she paid on the income of a grantor trust could, in the face of the trustee's refusal, simply turn off the trust's "grantor" status and force the trust to pay its own income taxes going forward. This would be a bad result for the beneficiaries, as the added income tax burden on the trust would be a drag on its returns. Hence, a savvy fiduciary might avoid this result for the beneficiaries by reimbursing the grantor from time to time for taxes paid on the trust's income, keeping that grantor happy enough to allow the trust to remain a grantor trust. If grantor trust status cannot be "turned off," then perhaps a trustee concludes it should not divert trust funds to a non-beneficiary grantor in the form of tax reimbursements. Even worse, if the trustee is the only party with the power to "turn off" grantor trust status, that trustee could

(Continued on p . 20)

Trusts

(continued from p. 19)

face tremendous pressure from the grantor either to reimburse the grantor for taxes paid or otherwise to "turn off" grantor trust status, neither of which is likely to be in the best interests of the beneficiaries.

Finally, for grantor trusts moving to Delaware from jurisdictions without a statutory analog to 12 Del. C. § 3344 and which do not contain provisions allowing the grantor to be reimbursed for taxes paid on the trust's income, consider whether the mere change of situs to Delaware—if consented to or not objected to by the beneficiaries—has implications for the beneficiaries under CCA 202352018. After all, moving such a trust to a jurisdiction like Delaware, with a statute allowing an independent trustee to reimburse the grantor for taxes paid on trust income, would effectively be a backdoor way of accomplishing what the parties in the CCA sought to accomplish by modification.

Summary Takeaways for Trustees and Their Advisors

- For trustees evaluating new business, if the trust in question is a grantor trust or could become a grantor trust, consider:
    - o Whether the trustee has the discretion to reimburse the grantor for taxes paid on the trust's income, either under the terms of the trust or under state law (this will often be the case in Delaware thanks to 12 Del. C. § 3344); and
    - o Whether grantor trust status can be "turned off" under the terms of the trust, and if so, by whom.

- It may be advisable for trustees to avoid grantor trusts in which the trustee has the discretionary power to reimburse the grantor for taxes paid on the trust's income unless there is also the power to turn off grantor trust status—preferably held by someone other than the trustee.

- For trusts already under administration where the trustee has the power to reimburse the grantor for taxes paid on the trust's income, in the face of a request from the grantor to be reimbursed for taxes paid on the trust's income, consider:
    - o Whether the grantor or someone else can "turn off" grantor status under the terms of the trust, in which case perhaps the grantor's request for reimbursement can be justified for the sake of maintaining grantor trust status for the beneficiaries; and
    - o If the trustee has the power to "turn off" grantor status under the terms of the trust, whether the trustee can or should release that power.

- For trusts moving to Delaware from jurisdictions without a statutory analog to 12 Del. C. § 3344 and which do not contain provisions allowing the grantor to be reimbursed for taxes paid on the trust's income, any beneficiary participation in such a move should be considered carefully.

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Notes:

1- CCA 202352018 (issued Nov. 28, 2023, released Dec. 29, 2023). Chief Counsel Advice (CCA) materials are written advice or instructions prepared by the Office of Chief Counsel and issued to field or service center employees of the IRS or Office of Chief Counsel. See Chief Counsel Advice Training Materials, as revised April 2006.

2- Rev. Rul. 2004-64, 2004-27 I.R.B. 7 (July 6, 2004). See also I.R.C. § 671.

3- A trustee who is not related or subordinate to the grantor as described in I.R.C. § 672(c).

4- Rev. Rul. 2004-64, 2004-27 I.R.B. 7 (July 6, 2004).

5- See 12 Del. C. § 3344 ("Unless the terms of the governing instrument expressly provide that a trustor may not be reimbursed by a trust for the trustor's personal income tax liability, if the trustor of a trust is treated under 26 U.S.C. § 671 et seq. as the owner of all or part of the trust, the trustee (other than a trustee who is the trustor or a person who is a "related or subordinate party" with respect to the trustor within the meaning of 26 U.S.C. § 672(c)) may, in the trustee's sole discretion, or at the direction or with the consent of an adviser (who is not the trustor or a person who is a "related or subordinate party" with respect to the trustor within the meaning of 26 U.S.C. § 672(c)), reimburse the trustor for any amount of the trustor's personal federal, state, county, metropolitan-region, city, local, foreign, or other income tax liability that is attributable to the inclusion of the trust's income, capital gains, deductions, and credits in the calculation of the trustor's taxable income.").

6- That is, unless perhaps one or more of the beneficiaries somehow materially participates—or fails to exercise a veto power—with respect to the exercise of the power to reimburse the grantor for taxes paid on the trust's income.

7- Often this is accomplished by the grantor relinquishing her right to substitute trust assets for assets of equivalent value or the trustee relinquishing the right to lend to the grantor without adequate interest or security, but there are many ways in which a trust may be considered a grantor trust, so exercise caution with respect to the determination of grantor or non-grantor status. See I.R.C. §§ 671-679.

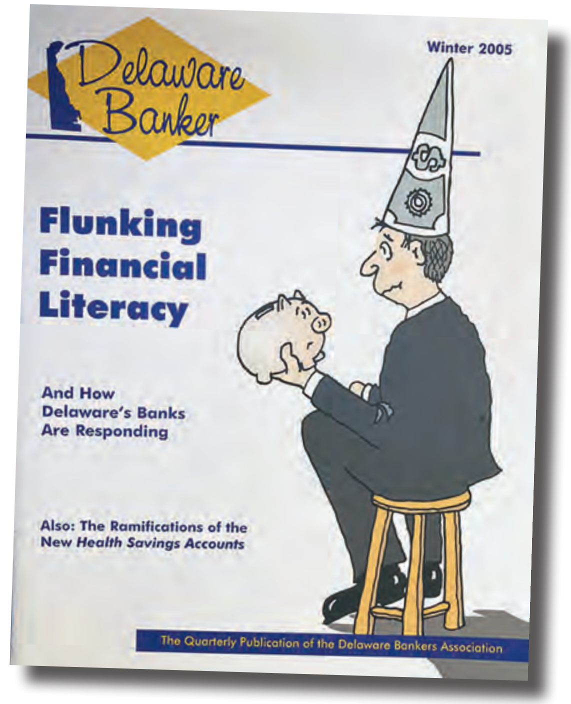
8- Reimbursement payments to the grantor for taxes she paid on the trust's income would always be less than or, at worst, roughly equal to the tax the trust would pay if the trust were not a grantor trust. This is due to the compressed nature of a trust's income tax brackets. See I.R.C. § 1(j)(2)(E).

9- Conversely, if the change of situs and governing law can be accomplished without the participation of the beneficiaries, it seems in retrospect this would have been a much better option for the parties discussed in the CCA than the court modification process turned out to be.

Celebrating Two Decades (nearly) of Financial Literacy Efforts in Delaware

A Look Back at the Work of the DFEA

by
Charles Bogle
Special Contributor



Financial Literacy is at the core of the DFEA's mission, as the very first issue of Delaware Banker attested

Unlike Sergeant Pepper's Lonely Hearts Club Band, it was not 20 years ago today. More like 19. You may notice the front of this Delaware Banker magazine notes this issue is the start of Volume 20 of the quarterly publication. To commemorate that milestone, as the author of the very first cover story in 2005, I've been asked to revisit the topic of financial literacy in Delaware. That first article was titled: "Flunking Financial Literacy." So, let's see if any progress has been made…

Reflecting on the state of financial literacy in 2005, the American Bankruptcy Institute, The Federal Reserve, and the National Endowment for Financial Education reported the United States had the lowest personal savings rate of any industrialized nation, with less than 50% of households having less than $1,200 in saving.[1] The personal savings rate as a percentage of GDP was 2.4%, down from 7.5% in the 1980s, and 24% in the 1940s.[2] Non-housing consumer debt totaled $2.12 trillion.[3]

Since 2005, the Delaware Financial Education Alliance supported by Delaware's banks has introduced numerous awareness campaigns to address the situation. Here they are…

The Amazing $2,000 Pizza – Created in 2004 for Get Smart About Credit Day, this four-page comic geared to high school and college students illustrated the danger of maxing out your first credit card and then only making minimum payments. The comic was later re-licensed for use by the Federal Reserve Bank of St. Louis. The comic's creator, Greg Koseluk, was awarded the Silver Award of Excellence by the National Association of Economic Educators.

The David G. Bakerian Scholarship - Since 2002 the Delaware Bankers Association has awarded two annual scholarships to Delaware high school students participating in the Keys to Financial Success elective course. The Delaware Financial Education Alliance, in cooperation with the University of Delaware's Center for Economic Education and Entrepreneurship (CEEE), the Consumer Credit Counseling Services of Maryland and Delaware, and the Federal Reserve Bank of Philadelphia, piloted the Keys to Financial Success course in one Delaware high school in 2001-02. Since then, the course has been extended each year to additional schools statewide. The goal of this semester-long elective course is to better equip young people with the knowledge necessary to have strong financial futures. The Keys course includes five units: Future Financial Goals and the Decision-Making Process; Career Planning-Investments in Human Capital; Money Management; Consumer Skills; and Risk Protection. In 2019 the DBA was proud to rename the Keys to Financial Success Scholarship in honor of David G. Bakerian, the late, former president of the DBA/DFEA.

Teach Children to Save Day – Delaware's Teach Children to Save Day began in 1998 and has grown to be one of the most successful in the country. In most other states individual banks are encouraged to connect with their local schools to teach a lesson on savings. In Delaware the DFEA partners with the University of Delaware's Center for Economic Education and Entrepreneurship (CEEE) to present a cohesive, statewide effort. The age-appropriate curriculum is developed by the CEEE to meet State economic competency standards. The DFEA through its members, raises funding for the program and assists in coordinating and training the volunteer bankers. The CEEE pairs the volunteer bank employees with the classroom teachers and students.

In its first few years, kindergarten through sixth grades were served, which create the need for seven separate curricula. The program was later streamlined to focus on third and fourth grade students, which was most appropriate given state testing standards. In 2009, responding to Dr. Bonnie Meszaros' desire for a better book on compounding, the DFEA's Greg Koseluk wrote and illustrated the first in the Great Investo series: The Great Investo and the Astounding, Abounding Compounding Machine. Eight more original Great Investo books followed.

DFEA President Sarah Long expressed a long-term goal of providing each student with their own copy of the book to take home and share. In 2023, on the 25th Delaware Teach Children to Save Day, this dream was realized when the lesson was incorporated into a 20-page comic book, again featuring the characters of the Great Investo and Penny, written and illustrated by Greg Koseluk. Delaware's banks responded with enthusiastic support! In addition to the book proving to be popular with the students, the Delaware General Assembly also enjoyed this innovative approach. The first comic, "Big Money Trouble," taught the economic concept of scarcity, and the need to save. In 2024, a second comic book was produced, this time on the power of compounding in saving, and the pitfalls of compounding in borrowing. Again, the support of the banks has been overwhelming.

In the 25 years of Teach Children to Save Day, thousands of banker volunteers have taught over one hundred thousand students throughout Delaware!

The Great Investo Radio Public Service Announcements – In 2005 the character of The Great Investo, the World's Worst Money Magician, and his clever assistant, Penny, first burst out in a series of radio public service announcements. The series was created by Greg Koseluk who also provided the voice for the inept magician, with Penny portrayed by Susan Janvier, and then later by Margaret Cregan. Over 50 episodes were produced and aired statewide. While not initially targeted to children, listeners provided anecdotal evidence that the characters were especially popular with children.

(Continued on p . 24)

Greg Koseluk and Susan Janvier record the first radio episodes of *The Great Investo*

Investo and Penny perform at the 2023 Teach Children to Save Day event. Now with Margaret Cregan in the role of Penny.

Financial Literacy

(continued from p. 23)

The Great Investo Children's Books – The love of The Great Investo and Penny by children, along with the need for targeted curricula, led to the creation of the Great Investo book series. The first two books in the series, the aforementioned Compounding Machine, and the next book, The Great Investo and Disastrous Decisionator, were printed by the DFEA. In 2013 the series was made available on the Amazon platform which allowed a wider distribution. To date, nine books have been created (see sidebar). All the books and the comic books were made possible by the long, loyal, and generous support of member banks including: Artisans' Bank, Bank of America, Barclays, Capital One, Comenity, Discover Bank, First Citizens Community Bank, County Bank, Fulton Bank, M&T Bank, Sallie Mae, Shore United Bank, Smarty Pig, TD Bank, Wells Fargo, WSFS Bank, and Visa.

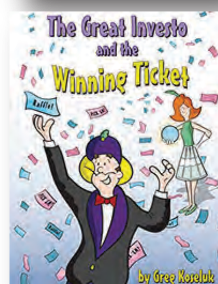
Money Magic – The Great Investo and Penny jumped from radio to video in 2013 in a series of six ten-minute videos created for classroom use and funded by a grant from the WSFS Foundation. Each video came with a teacher's lesson plan from the CEEE and take-home materials for the students. The lessons included: Scarcity, Opportunity Cost, Cost-Benefit-Analysis, Saving and Budgeting, Compound Interest, and, The Characteristics of Money. The videos were written by Greg Koseluk and produced by Never Dull Productions.

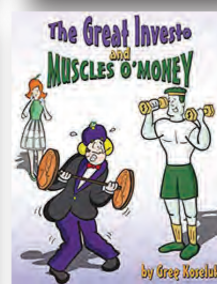
Multiplying Flamingos?! Penny and Investo illustrate compounding in an episode of *Money Magic*

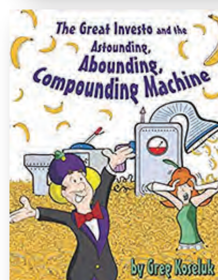
The Great Investo Saver's Club first met in 2018 and was created for children between the ages of 8 and 11. The main feature of the club was the kit, which included a savings diary, stickers to make a personal savings bank, and a wall poster to set savings goals and track progress. Thousands of club kits were distributed in schools and at the Delaware State Fair.

Wizzo the Money Dog - So you want to know more about financial topics, but you don't know where to start? Well, starting in 2023, Wizzo the Money Dog has the answers to many basic money questions. This DFEA series featured short, informative, entertaining videos on such topics as balancing a checkbook, saving for college, and navigating mobile banking. The series is written and produced by

Great Investo Book Series







Corinne Stayton gets advice on saving from Wizzo the Money Dog in: "So You Want to Save for College."

Greg Koseluk, with Corinne Stayton supplying the support to the star canine Wizzo, and with droll narration by BBC radio veteran Glenn Mitchell.

More Money Than Cents - Have you ever heard someone described as having "More money than sense?" It refers to a person who spends their money unwisely or on something that is unnecessary. It's one thing to have money, but another altogether to know how to manage it with wisdom and sound judgment. In 2023, the DFEA launched a series of short online videos to remedy that situation. Each video offers practical information on how to navigate the realm of personal finance in one specific topic. The videos feature rapidly paced graphics, and narration by professional vocal artist Heather Eidson.

That's quite a lot of activity in less than two decades. So, what is the state of financial literacy in 2024? Well, the savings rate as of December 2023 was at 3.7% of GDP[4] or 8% of disposable income. Our personal savings ranks 15th among 34 OECD (Organization for Economic Cooperation and Development) member nations.[5] There are some encouraging signs there, but, ouch, non-housing debt was $4.893 trillion.[6] Saving rates are generally cyclical, with rates going up in difficult economic times, but perhaps teaching the next generation the importance of saving while they're still in school has helped make a difference.

"We are so proud of the many programs the Delaware Bankers Association in partnership with the Delaware Financial Education Alliance has delivered over the past 20 years to support financial literacy in Delaware," says Sarah Long, DBA and DFEA Presisent. "From Teach Children to Save Day which helps 3rd and 4th graders foster an understanding of the importance of savings, to the awarding of two David G. Bakerian scholarships annually to students who complete the Keys to Financial Success program, each program touches the lives of children and young adults in our state. Closing the financial education gap among Delaware children and young adults supports a strong Delaware of tomorrow."

Notes
1.ABA Education Foundation
2.U.S. Bureau of Economic Analysis
3.The Federal Reserve
4.U.S. Bureau of Economic Analysis
5.Organization for Economic Cooperation and Development
6. Federal Reserve Bank of New York

Accounting for Success

What Exactly is a Delaware Holding Company?

By Vivienne Delano
& Steven Blahut
Belfint Lyons & Shuman, P.A.

"Setting up a subsidiary holding/ family-owned investment company can be a good and cost-effective way to minimize taxes on income on intangible assets."

With all the tax laws and high rates on intangible income, corporations and high-net-worth families are looking for a way to minimize the tax on that income. One way is to set up a Delaware holding company/ family investment company.

Many of you might be asking, "What exactly is a holding company?" A holding company is set up to manage and maintain investments, intangible property, and trusts. Investments and intangible property would include trademarks, patents, marketable securities (stocks and mutual funds), and debt obligations (notes). The parent company would set up a subsidiary company and transfer ownership of these intangible assets to the subsidiary company. These subsidiaries are separate companies, with their own books and records.

Income from these intangible assets is not taxed by Delaware under 30 Del. C., §1902(b)(8) which provides an exemption for "Corporations whose activities within this State are confined to the maintenance and management of their intangible investments and the collection and distribution of the income from such investments or from tangible property physically located outside this State, which is a benefit for the parent company since these income items are usually large amounts. The income from dividends, interest, and capital gains/losses in these investments is protected in Delaware, and so are the underlying assets that generate this income.

The benefits of setting up a company in Delaware to hold these assets fall into two categories: 1) legal benefits and 2) the Delaware holding company advantage. Setting up a Delaware holding company can be simple and there are many resources available in Delaware to assist in setting up and formation of the company. These resources will not only assist in preparing and filing setup paperwork with the state of Delaware but will also serve as a registered agent for delivering of legal documents from Delaware and filing annual non-tax reports with various states, including Delaware.

Delaware holding companies will need to establish and maintain their own bank account separate from the parent company account. There are various banks available to set up bank accounts for payment of operating expenses and receiving of incoming wires. These banks also have accounts which hold the intangible assets for safekeeping and receive the income on these intangible assets such as dividends, interest, and capital gains.

The holding company should have their own board of directors or managers with some Delaware directors and main decision making for these companies in Delaware, by holding at least one meeting a year in Delaware. There are numerous legal and accounting firms that can assist with the formation documents as well as scheduling and hosting the annual meeting, which is one of the nexus requirements of a holding company. Also, accounting firms, such as Belfint, Lyons & Shuman, can handle the reporting and tax filing requirements of these companies. Since the holding company needs to have a physical presence in Delaware, such as employees and a lease, to establish substance in Delaware, the employees of these legal and accounting firms can serve as employees, officers, and directors of the holding companies and the holding company can lease office space from these firms. Nexus requirements also state that to establish substance in Delaware through a holding company is to have residents of Delaware serve as authoritative figures of the company, so the making and execution of management decisions come from Delaware.

As summarized above, setting up a subsidiary holding/family-owned investment company can be a good and cost-effective way to minimize taxes on income on intangible assets. With the various resources available here in Delaware, setting up and maintaining a holding/investment company can be pretty painless. Not all companies or families would benefit, but it might be beneficial to research options with a consultant that specializes in holding companies.

PROBLEM SOLVERS

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When professionals call on other professionals for advice, they call Connolly Gallagher – for planning, for strategy, for litigation. They draw on leaders in trusts, estates and taxation, who bring over 100 years of steeled experience. *Chambers High Net Worth 2022*, *U.S. News – Best Lawyers*®, and *Delaware Today–Top Lawyers* consistently rank Connolly Gallagher as one of the region's best law firms. And our firm is home to three Fellows of the American College of Trust and Estate Counsel.

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Photo (L to R) Scott E. Swenson, Alexis Turner Garris, Charles J. Durante, Gregory J. Weinig, Regina S. Schoenberg, Trisha W. Hall

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The Gen X Savings Crisis: How Plan Sponsors Can Help

Louis D. Memmolo, AIF, GBA, NQPA
Weiner Benefits Group, LLC

According to a December 2023 survey from Schroder's, nearly half of non-retired Gen Xers, those born between 1965 and 1980, have not done any retirement planning whatsoever. Moreover, they report a savings gap of over $450,000 between what they say they'll need and what they project they'll have. Amplifying these concerns, a separate study by the National Institute on Retirement Security earlier last year found that the typical Gen X household has only $40,000 in total retirement savings. So how can employers help their MTV Generation workers save and balance the rising costs of benefits packages with offering the tools and resources needed?

Flexible work arrangements. Recognize that Gen Xers may look to pursue nontraditional retirement paths — such as phased retirement or working in encore careers — and provide support for these choices. Flexible work arrangements, such as part-time or remote work options, can allow employees to stay in the workforce longer and postpone their full retirement date. Tailor custom roles based on their new work schedule and availability.

"Plan sponsors have a critical role in bridging the retirement savings gap for Gen X employees."

Emergency savings opportunities. Effective this year, SECURE 2.0 paves the way for employers that provide a defined contribution plan to offer an emergency savings account for non-highly compensated employees. The provision could go a long way toward helping circumvent hardship withdrawals, allowing workers to be automatically opted in at up to 3% of their salary as Roth after-tax contributions — capped at $2,500.

Mid-career financial checkups. Offer personalized financial consultations focused on where Gen X employees are in their financial journey, emphasizing mid-career corrections and available savings acceleration strategies such as catch-up contribution to employee-sponsored retirement accounts.

Support for "Sandwich Generation" challenges. Provide resources and support for those in the "sandwich generation," including elder care assistance, childcare benefits and flexible spending accounts that can be used for dependent care needs.

Plan sponsors have a critical role in bridging the retirement savings gap for Gen X employees. Initiatives such as SECURE 2.0 are steps in the right direction, but they must occur within the framework of a holistic and individualized approach to employee financial well-being. By incorporating measures such as those listed above into your company culture and benefits structure, you can demonstrate a serious commitment to the long-term success and stability of your workforce. It's important to engage with employees early and often. Plan sponsors that proactively address these needs can expect not only to aid their employees in securing a more stable financial future, but also to potentially benefit from a more productive and loyal workforce.

Balancing Competitive Benefits in Budget Constraints for Plan Sponsors

It is crucial for companies to regularly benchmark and compare their benefits packages to their peers within the industry in order to maintain their competitive advantage, provide a wholistic approach to financial wellbeing, maintaining and maximizing employee engagement and productivity. Benchmarking fees and services help provide a glimpse into what the market is providing to meet the needs of not only the Gen X population but all of your employees. Offering a competitive benefits package, however, can be challenging for plan sponsors due to budgetary constraints, rising costs, and poor plan performance; putting an excessive financial burden on an employer or the employee can lead to negative effects on the business, resulting in an increased difficulty when it comes to attracting and retaining employees.

Maximizing Potential with Regular Performance Checks

As employee benefits and financial advisors, regularly benchmarking 401(k) and benefits plans is crucial to overall satisfaction.

Generally, the benchmarking process can be started in late February or early June since that's when the business begins discussing the budget for the upcoming year. Furthermore, investment review and monitoring, while ongoing throughout the year, is always necessary as part of the benchmarking process.

Frequency of benchmarking depends on the organization and the plan sponsor. Some plan sponsors may need to review their portfolio annually to ensure their business objectives are met, while others can withstand longer review periods. It’s recommended on surface level annually. However, a full comprehensive analysis is recommended at least every 2-3 years.

Providing cutting edge benefits with a sense of financial wellbeing and security, from hire to and through retirement, is critical for any employer seeking to attract and retain the highest level of productivity and engagement.

This article is not intended to be exhaustive. The summarized information comes directly from our Fiduciary Hot Topics, Retirement Times, and Legislative Update Newsletters – through our RPAG and Zywave partnerships. Please contact us for all sources and/or complete articles. If you would like to be added to our email list, get more information, or schedule a review, please contact the WBG Team.

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Corporate Transparency Act Affects Loan Documents

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"Banks now need assurances from reporting company borrowers that they have complied with reporting obligations..."

Most bankers have received many summaries (including one in the spring 2023 Delaware Banker) of the Corporate Transparency Act and the regulations implemented by the Financial Crimes Enforcement Network (FinCEN) in connection with the Act. The Act became effective January 1, 2024 and has a direct impact on bank lending activities. Business entities, which include corporations, limited liability companies, limited partnerships, and business trusts, are now "reporting companies" that must file with FinCEN detailed personal information regarding the beneficial owners of the entities. The Act is intended to combat money laundering, terrorist financing, and tax fraud. There are 23 exceptions to being a reporting company-- including "large operating companies" (basically entities that employ more than 20 full time employees and have more than $5,000,000 in annual gross receipts and a physical office operation in the U.S.), publicly-traded corporations, and certain charitable or tax exempt organizations—but most typical family businesses that are the lion's share of Delaware bank customers are not exempt.

The interplay between lending and the Act arises from the difficulty that lending customers will have meeting the reporting requirements imposed by the Act. The information that must be reported is very sensitive, detailed, and (in many cases) hard to obtain, including dates of birth, home addresses, and even images of individuals. The bank customer faces both civil and criminal penalties for a broad scope of reporting violations, such as providing false or fraudulent information, failure to file complete and accurate reports, and unauthorized disclosure or use of beneficial ownership information. Banks now need assurances from reporting company borrowers that they have complied with reporting obligations, which include the ongoing requirement to notify FinCEN of changes in the beneficial ownership information. Therefore, banks should consider adding to loan documents borrower and guarantor representations and warranties that they have timely complied with reporting obligations under the Act, as well as an ongoing covenant to comply with the Act. There should be an obligation to report to FinCEN any transfer of beneficial ownership interests in the entities. Banks should include in the loan documents the borrower's written consent to receive beneficial ownership information and related reports from FinCEN (if not already contained in application documentation or the loan commitment letter). A borrower or entity guarantor's failure to timely file the required reports should be an event of default under the loan documents. Banks may also want to ask borrowers to add provisions to their organizational documents that require their owners to supply to the business entity itself (as a reporting company) accurate information needed to comply with the Act.

The time to adjust documents to address the Act is now. New business entities formed on or after January 1, 2024 have only 90 days after formation to file reports (this shortens to 30 days if formed on or after January 1, 2025); companies formed before January 1, 2024 must report by January 1, 2025.

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