



STATEMENTS

Third Quarter 2008

New CA Cell Phone Laws and Potential Employer Liability

by Bruce Ramsey, Attorney at Law

One of the most talked about law changes this year is the new cell phone law that takes effect July 1, 2008. RINA would like to share the following article, written by Bruce Ramsey, Attorney at Law, who acts as outside general counsel to privately held companies throughout Northern California.

On July 1, 2008, two new cell phone laws (Veh. Code Sections 23123, 23124) become effective in California. They prohibit cell phone use while driving unless a hand-free listening and talking device, such as a Bluetooth headset, is used. The "push-to-talk" feature (speakerphone) for certain vehicles (e.g. tow trucks, farm vehicles) is permitted. Strangely enough, dialing while driving is not prohibited, but the DMV strongly urges against this.

Violations are treated like speeding tickets – a base fine of \$20 for the first offense and \$50 for subsequent offenses. There is no grace period in terms of ticket issuance. According to the Uniform Bail and Penalty Schedule, with the addition of penalty assessments, a first offense may be as high as \$76 and a second offense may be as high as \$190.

Employer Liability for Employees and Cell Phones

Cell phone use by employees may create liability for employers under the doctrine of *respondent superior*. Under this doctrine, an employer

may be liable for injuries its employees cause if the act that caused the injury was in the scope of employment, regardless of the employer's negligence or control over the employee. For example, one company agreed to pay \$500,000 to a deceased estate when their employee was attempting to place a business call on his cell phone, dropped the phone, ran a red light, and struck and killed a man. This company agreed to pay this sum even though they had no role in the accident, the employee was driving to a non-business related event, and the company did not provide its employees with cell phones.

Cell phone use by employees may create liability for employers under the doctrine of respondent superior.

As a result of such cases, and these new laws, California employers should implement policies, such as: prohibiting the use of cell phones for business purposes while driving, employees signing an acknowledgement that phones will not be used while driving, as well as a release which releases the employer from any related liability; placing warning labels on phones; implementing cell phone safety sessions; providing manuals on proper cell phone use; and providing for disciplinary action for failure to abide by these policies.

Employer liability for cell phone usage is not going away. Instead, employers can limit their liability by being properly informed and creating policies that encourage legal and responsible phone use.

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Employee Spotlight Yung-Ming Ling

by Pamela Raumer, Business Development Director

With the 2008 Summer Olympics just around the corner, we're proud to highlight our own Yung-Ming Ling, Tax Manager in our Oakland Office. Ling has returned to RINA after spending two and a half years in his home country of Singapore. During that time, Ling fulfilled his childhood dream of representing the Republic of Singapore in the sport of Judo in the Biennial Southeast Asian Games, commonly known as the SEA Games.

The SEA Games are the Southeast Asian version of the Olympic Games. Ling took time off from work and trained full-time in China in order to win the National Judo Championships and to qualify for selection for SEA Games squad. Once his selection was confirmed by the National Olympic Council, he headed to Japan for additional training.

Ling was selected as the National Team Captain by the coaching staff for the 5 person team. He finished 4th in the Men's under 73kg event, narrowly missing out for a medal - it was an exciting event. Both Ling and an archer were featured in Singapore's national newspaper for their commitment to the sport they love, and the sacrifices they made in order to make the SEA Games team.

Competing in Judo was not the only thing Ling did while he was away in Singapore. During that time, Ling also worked as an assistant manager at KPMG Singapore and subsequently as regional tax manager at GE Commercial Finance. He covered jurisdictions such as China, Hong Kong, Australia, and other Southeast Asian countries.

His tax experience includes the following:

- Tax treaties analysis
- Tax due diligence projects in conjunction with M&A activities
- Multi-jurisdiction income and indirect tax compliance and planning
- Cross border tax planning and restructuring projects
- FAS 109 tax provision reporting

As the picture shows, Ling knows the pride that comes from representing his country at an international event. We're glad he's back representing RINA.



RINA's Yung-Ming Ling (left) with teammate Pui-Seng at the SEA Games



403(b) Plans – New Tax Reporting and Audit Requirements

by Meghan Hauptman, Audit Senior

New requirements effective January 1, 2009 might require your non profit organization to file an annual tax return and have audited financials for its 403(b) employee benefit plan. Currently there are either no Form 5500 filing requirements, or limited filing requirements, for most 403(b) plans. However, the Department of Labor (DOL) recently finalized the revisions to the 2009 Form 5500. The result of these revisions is that 403(b) plans subject to ERISA will now require audited financial statements. Non profit organizations with more than 100 eligible participants will be required to attach audited financial statements to the plan's Form 5500.

There are numerous issues 403(b) plan sponsors will need to address, such as obtaining complete and accurate financial information, obtaining necessary participant record reports and ensuring the plan is properly administered. Key items plan sponsors should be aware of include:

- A planning committee needs to be established to monitor the plan. The committee should meet regularly and document discussions with minutes.
- Although the first audit required will be for the 2009 plan year, the Form 5500 requires a comparative Statement of Net Assets, meaning the 2008

financial information will be needed. Plan sponsors should contact their 403(b) investment custodian to ensure that an investment statement will be available at the plan level for 2008 and years thereafter.

- As your auditors are required to perform procedures at the participant level, they will need access to participant records with plan totals showing the activity for the year. This could be a significant request, especially if participants have direct access with their own account number. Plan sponsors should contact their record keeper to ensure that these records are available.
- Your auditors will be required to document internal controls over the plan. They will typically focus on the enrollment, investment, contribution, distribution, and financial reporting cycles. Early consideration of these significant cycles and internal procedures could help make the audit more efficient.

RINA can help you determine if you are subject to the new reporting and audit requirements. Please do not hesitate to call us.



Section 1031 Like Kind Exchange of Vacation Homes

by Helena Sterling, Tax Supervisor

The IRS recognizes that many taxpayers hold dwelling units primarily for the production of rental income, but also occasionally use the properties themselves for personal purposes. The IRS recently issued Revenue Procedure 2008-16 which is effective for exchanges of dwelling units occurring on or after March 10, 2008.

This revenue procedure provides taxpayers with a safe harbor under which a dwelling unit will qualify as “property held for productive use in a trade or business or for investment” under Section 1031 even though a taxpayer occasionally uses the dwelling unit for personal purposes.

The following outlines the circumstances under which the IRS will not challenge whether a vacation home will qualify as property “held for investment”:

Relinquished property:

1. Must be owned by the taxpayer for *at least 24 months prior to the exchange*.
2. In **each** of these two 12 month periods
 - The taxpayer rents the dwelling to another party at a fair market rental rate for 14 days or more, and
 - The taxpayer’s personal use of the dwelling *does not exceed the greater* of:
 - a. 14 days, or
 - b. 10% of the number of days the dwelling was rented

Replacement property:

1. Must be owned by the taxpayer for *at least 24 months after the exchange*
2. In **each** of these two 12 month periods
 - The taxpayer rents the dwelling to another party at a fair market rental rate for 14 days or more, and
 - The taxpayer’s personal use of the dwelling *does not exceed the greater* of:
 - a. 14 days, or
 - b. 10% of the number of days the dwelling was rented

If a taxpayer filed a federal income tax return reporting a transaction as a Section 1031 exchange expecting the replacement property to meet the above criteria, but later determines that it did not qualify, then the taxpayer should file an amended return.

Please do not hesitate to call your RINA representative, if you need assistance with a Section 1031 exchange transaction.

IRS Announces Mileage Rate Increase

by the RINA Tax Department

Due to rising gas prices, the Internal Revenue Service has increased the optional standard mileage rates for the final six months of 2008, to better reflect the real cost of operating an automobile. Taxpayers may use the optional standard rates to calculate the deductible costs of operating an automobile for business, charitable, medical or moving purposes. The mileage rate will

increase by eight cents to 58.5 cents a mile for all business miles driven from July 1 through December 31, 2008. The new rate for computing deductible medical or moving expenses will also increase by eight cents to 27 cents a mile. The rate for providing services for charitable organizations is set by statute, not the IRS, and remains at 14 cents a mile.

RINA Third Quarter

JULY

July 31

- Second quarter 2008 payroll and sales tax returns due
- Qualified retirement plans (2007 Forms 5500) due

AUGUST

August 15

- 2007 Forms 990, 990-EZ, 990-PF due for calendar year end exempt organizations that filed an automatic three-month extension

SEPTEMBER

September 1

- County business property tax payment due

September 15

- Final due date for 2007 tax returns for calendar year end corporations that filed an automatic six-month extension
- Third quarter 2008 estimated tax payments for individuals due
- Third installment of 2008 estimated tax for calendar year end corporations due

Save the Date! Thursday October 23, 2008

RINA is co-hosting an exit planning seminar on Thursday, October 23, 2008, at the Marriott in San Ramon along with Summit Financial Group and Bridge Bank. The seminar will feature John Brown and Kevin Short, co-authors of the newly released book "Cash Out Move On", and will include the latest industry statistics and trends for business owners who are looking to sell their businesses to a third party. For more information, please contact Denise Clay at 925-210-2180.

RINA Gives Back

by Pamela Raumer, Business Development Director

Furniture Donations

RINA's recent Walnut Creek office renovation left us with extra office furniture that was still useable. Our office manager, Gayle Tostenson, went to work to find local organizations that could make good use of it. The following organizations benefited from RINA's donations:

- Lindsay Wildlife Museum, Walnut Creek – Founded in 1955, the museum's programs connect people with wildlife to inspire responsibility and respect for the world we share.
- Youth Homes, Inc., Walnut Creek – For over 40 years, Youth Homes has been providing California counties with high quality residential treatment programs for abused and neglected children and adolescents.
- World of Wonders Science Museum (WOW), Lodi – offers hands-on science based exhibits and programs to stimulate discovery for all ages.
- Food Bank of Contra Costa and Solano – The Food Bank's mission is to alleviate hunger and provide an efficient coordinated system for collecting and distributing food that reduces food waste and increases public awareness regarding hunger and food security issues.
- Salesian High School, Richmond – College preparatory Catholic school which educates young men and women to develop into good citizens for the betterment of society.
- Hume Center, Concord - The Hume Center provides comprehensive multicultural and multilingual mental health services to under-served populations.

Oakland Reads!

Oakland Rotary No. 3 has launched a city-wide book project, "Oakland Reads", designed to help the children in Oakland's schools develop early reading skills. Early reading proficiency is one of the key factors in educational success. Studies indicate that children who fail to read by age 9 (Grade 3) typically fall behind in other areas and rarely make up the lost ground. "Oakland Reads" will help address this critical need for childhood literacy by providing free books for children to take home during a crucial period in childhood development. This program is unprecedented in the Rotary world. When asked to share his experience with "Oakland Reads", RINA Tax Manager and Oakland Rotarian Tom Neff advised: "I have been actively involved in the Oakland community for several years, and I can easily say that this was the most satisfying project I have been a part of. Seeing the looks on the kids' faces when we told them the books were theirs to keep made it all worthwhile!"



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