

**BRIDGING FINANCIAL GAPS**



EVANGELINE A. GIRON

## Charitable contributions and taxes

mission to help out. The rate for 2008 and 2009 for charity-related mileage is 14 cents per mile.

You can deduct the fair market value of clothing, appliances, furniture or other items you give to charity. Write up an itemized list and have someone from the charity sign it to protect yourself if the IRS questions your deduction. The charity won't tell you how much the item is worth, but the charity will vouch for having received it from you.

*“You might want to make charitable donations toward the end of the year, after you've had a chance to estimate the amount of your tax bill. If you think you might wind up owing a lot of taxes for the year, you can increase your year-end charitable donations and reduce your tax liability.”*

You might want to make charitable donations toward the end of the year, after you've had a chance to estimate the amount of your tax bill. If you think you might wind up owing a lot of taxes for the year, you can increase your year-end charitable donations and reduce your tax liability. But if it looks like you might benefit more from the deduction in the following year, wait until January 1.

**Deductible and non-deductible contributions**

You can deduct a wide variety of cash and non-cash charitable contributions to various organizations. However, you cannot deduct contributions to or on the behalf of a specific individual or to an unqualified organization. Nor can you take a deduction for your time or your personal expenses, appraisal fees or some contributions of partial interests in property.

To find out if a charity is a qualified organization, check the Internal Revenue Service web site at <http://www.irs.gov/charities/>. The website <http://www.guidestar.org/> also tracks approved non-profits.

You can deduct part of the cost of tickets to fundraising din-

ners—but not the whole amount. You deduct the difference between the amount you paid and the amount you would normally pay for the event. For example, if you paid \$100 for a fundraising dinner, and you would normally pay \$50 for a similar dinner, you can deduct \$50 (\$100 less \$50).

You can take a tax deduction if you donate a car, boat, or plane to a qualified charitable organization. Starting in 2005, however, the deduction has not

nearly been as lucrative. Under current rules, if the charity sells the donated item, you can only deduct the amount the charity receives for it—which may be considerably less than Blue Book value. The charity must provide you with this information on IRS Form 1098-C, Contributions of Motor Vehicles, Boats, and Airplanes.

If you donate personal possessions—clothes, appliances, furniture and the like—you can take a deduction for the property's fair market value—what the item would sell for in, say, a thrift store. However, play it safe and get an itemized receipt—regardless of how much it's worth—just in case the IRS audits your return later.

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Evangeline can be reached at her marketing location at the Ground Floor of Eagle Rock Plaza (in front of Jollibee), 2700 Colorado Blvd., Los Angeles, CA 90041 or at her business address at 655 N. Central Ave., 17th Fl., Glendale, CA 91203, phone number (323) 356-3803 or (323) 254-6787.

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**LEGAL LIFELINE**



ATTY. GENE W. CHOE

## Legal lifeline

to “write down” the principal of your home mortgage, to reduce interest rates and to extend the loan terms up to 40 years from the date of the order. The pri-

monthly amortization payments to sustainable level, of about 31 percent to 38 percent of the homeowner's income. As incentives to banks/creditors, they will receive

*“If you do not want to go into bankruptcy, then loan modification with your lender is your other option. You can negotiate with your lender to reduce your principal and interest rates in order to make your monthly payments bearable.”*

mary aim is to avoid foreclosure and to allow the homeowner to stay at their house. The Senate is currently deliberating its own version of the bill. It will only be a matter of time before President Obama will sign this into law.

If you do not want to go into bankruptcy, then loan modification with your lender is your other option. You can negotiate with your lender to reduce your principal and interest rates in order to make your monthly payments bearable.

Generally, banks are willing to negotiate loan modification with the homeowner. The net proceeds that banks will get from the sale of foreclosed homes are but a fraction of the owed mortgage amounts. Besides, they on average must incur \$80,000 in foreclosure related costs.

Moreover, President Obama's Homeowner Affordability and Stability Plan (HASP) aims to bring

an upfront fee of \$1,000 for each eligible modification established under the initiative. Also, as an incentive to homeowners to stay current on his or her loan, the initiative will provide a monthly balance reduction payment that will go straight to reducing your principal loan. Therefore by staying current on the loan, the homeowner can get up to \$1,000 each year for five years.

As to your credit card debts, you can negotiate with the credit card companies so that they will accept much less payments than the balance owed, either with or without filing for bankruptcy.

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The Law Offices of Gene Choe practices in business and general civil litigation, immigration, personal injury, real estate transaction and litigation, criminal defense, family law, collection and judgment enforcement and appellate laws. You may contact (213) 639-3888 for any legal matters you may have.  
(Advertising Supplement)

## ‘When do I have to be paid the prevailing wage?’

*Common questions on employment-based immigration*

by FRANKLIN W. NELSON, ATTORNEY AT LAW

(Part 2)

IN last week's article, I briefly described the process of obtaining a “green card” through a job offer. One of the most fundamental requirements in this process is presenting and maintaining a “bona fide” job offer throughout this process, and one of the most fundamental components of the bona fide job offer is the prevailing wage. If an employer fails to offer the prevailing wage for the position being offered, the Department of Labor (“DOL”) or US Citizenship and Immigration Services (“USCIS”) could conclude that the job offer is not *bona fide* and, therefore, deny the case.

The solution would appear simple: simply offer the prevailing wage immediately and continuously throughout the process. However, in practice this is not quite so easy. Not only must the prevailing wage be offered, but the employer must also demonstrate to the DOL and the USCIS that the wage has been offered. The latter is significantly more complex and begins with the inclusion of the wage in certain aspects of recruitment process preceding the filing of the application for Labor Certification; and the actual certification of the wage on the DOL's Labor Certification.

*How does the employer show that the wage is being offered?*

The employer must demonstrate that the prevailing wage has been offered by actually paying the prevailing wage or by showing it is both willing and able to pay. Actual payment of the prevailing wage is sufficient, by itself, to show the wage is being offered. However, if the employer chooses not to pay the prevailing wage at any time while the application is pending, that employer must show that it was still able to pay it. This is often referred to as the “ability to pay” issue and is the reason for many, if not most, denials. Although company tax returns are primary evidence of ability to pay, for many small companies the net profits reported on their returns do not always accurately reflect their actual ability to pay the wage.

In recent months, the ability to pay issue has become a frequent subject of USCIS Requests for additional Evidence (RFE). Actually, paying the employee the prevailing wage makes responding to these RFEs simple. If, on the other hand, the employee is not being paid the prevailing wage, and if the company's tax returns also do not show ability to pay, proving ability to pay becomes much more difficult and, perhaps, depending on the evidence available, impossible under current USCIS standards.

*What if my H-1B wage is different?*

If actual payment of the prevailing wage is sufficient, by itself, to establish ability to pay, why not simply tell the employer to start paying the prevailing wage the moment it is established? Well, one reason is that employers, despite my wishes to the contrary, don't always do what I advise them to do. More importantly, however, paying the prevailing wage for labor certification purposes might violate the beneficiary's current status. Perhaps the beneficiary is out of status and not authorized to work. If that is the case, the employer cannot pay the beneficiary the prevailing wage—or, in fact, any wage at all, without violating US law.

If the beneficiary is authorized to work for the employer as an H-1b alien, their H-1b status is based on a separate prevailing wage determination that is not necessarily the same as the prevailing wage determination made for labor certification purposes. This could be due to differences in the requirements for the H-1b position versus the labor certification position, the passage of time between the two prevailing wage determination, or other factors. However, regardless of the reason, if the two wages are different, paying the labor certification



Atty. Franklin W. Nelson

prevailing wage could potentially violate the H-1b professional's status—something that should not be done without, at the very least, careful consideration. So again, although paying the labor certification prevailing wage immediately solves the labor certification issue, it may create other issues.

The obligation to show that the employer has the ability and willingness to pay the prevailing wage continues through the entire petition process until permanent residency is granted to the employee beneficiary. USCIS can raise the issue any time and the employer must be able to demonstrate ability and willingness from the date the priority date was established by filing the labor certification to the present; even if they already demonstrated this at a previous point in the petition process. The willingness to pay issue will be the focus of next week's segment, but by now it should be becoming clear that, although actual payment (or receipt) of the prevailing wage does make some things easier, the timing of this is important, and it may not be the appropriate solution in a particular case, depending on where it is in the adjudication process.

Mr. Nelson obtained both his Bachelor's Degree in Economics and his Juris Doctorate Degree from the University of Southern California, one of the top universities in the United States. He has been practicing law since 1990 and immigration law since 1994. A member of the American Immigration Lawyers Association, the Los Angeles County Bar Association, and the American Bar Association, Mr. Nelson is admitted to practice before all courts in the State of California, the United States District Courts for the Northern, Central, and Eastern Districts of California, the United States Court of Appeals for the Ninth Circuit and the United States Supreme Court.

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Attorney Franklin W. Nelson is a licensed attorney in the State of California as well as Federal District Courts throughout California, the United States Court of Appeals for the Ninth Circuit and the United States Supreme Court. He has been practicing law for nearly 20 years and is the President and principle shareholder of Nelson & Associates, PLC, with offices in Pasadena and El Monte, CA. Further inquiries should be directed to Attorney Nelson at his Pasadena Office by calling (626) 683-3451.  
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