

# A Cash Flow-Based Analysis of Ability to Pay and the Yates Memo Tests

By Robert W. Alcorn, MBA, CPA

## Preface

The King was not happy. He had sentenced his royal barrister, the royal alchemist, and the royal CPA to an appointment with physician Monsieur Joseph-Ignace Guillotin's contraption for their part in the organization, financing, and collapse of the lead-to-gold alchemy plant, which had failed miserably and taken the royal treasury with it.

First, the barrister, head lain to watch the Grim Reaper's scythe descend upon him. The executioner hauled on the lanyard, the blade fell six inches and then stuck fast. As custom had it, Providence intervened on behalf of an innocent man, and the barrister was set free. And likewise, when it came the alchemist's turn at justice.

However, the royal CPA, when in his repose and in view of the blade, exclaimed, "Wait a minute! I think I see the problem!"

This illustrates my reason for addressing the "ability to pay" under 8 C.F.R. § 204.5(g)(2) and related Yates memo testing issues.

I am a CPA in private practice, not an attorney, and have no particular persuasion for or against the intent of the ability-to-pay concept and the Yates memo tests. While I do have opinions on immigration and immigration law, as well as its administration, my concern regarding ability to pay and the Yates memo tests is focused strictly on the efficacy of the Yates memo tests to accurately and fairly determine a petitioner's ability to pay, so that the impact of the law's intent is properly placed, whether that be permission granted, or permission denied.

I am neither a proponent nor opponent of the intent of ability to pay and the Yates memo tests. I am not trying to allow more immigrants into the United States, nor am I trying to keep them out. I address the issue only as a tangential spectator, one who has had reason to work with both concepts, and finds that there are some aspects in their administration that are counter to their intended purposes. Namely, that in the design and application of the Yates memo tests, in my opinion, some beneficiaries who should be denied are in fact being approved; and in the converse, some beneficiaries who should be approved are being denied.

It is this interest in the fair application of the law that piques my interest to address my views on this matter, in hopes that perhaps some positive and mutually beneficial—to immigrants, their attorneys, and USCIS—changes can be made to USCIS's processes and procedures. These changes would advance the common interest of accurate and fair application of the law, and more expeditious processing of the heavy caseload related to I-140 cases.<sup>1</sup>

## Introduction

A U.S. employer wants to hire a person from another country to work in the company's Texas headquarters. After conducting interviews around the globe, the company finds a thoroughly qualified candidate from India and hires her. Under federal law, a prospective employer (petitioner) must petition United States Citizen and Immigration Services (USCIS) through Form I-140 and demonstrate that it has the ability to pay the prospective immigrant-employee (beneficiary) the proffered wage.<sup>2</sup> The

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<sup>1</sup> I recommend using Barron's Dictionary of Accounting Terms in navigating the technical language of this Article. Although I have tried to reduce some of the confusing elements to simpler terms, the dictionary may serve as a useful companion to fully understand some of the accounting terms set forth herein.

<sup>2</sup> 8 C.F.R. § 204.5(g)(2) states:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or

petitioner must continue to demonstrate its ability to pay the proffered wage from the priority date until the beneficiary obtains lawful permanent residence. In some cases, it may take as many as eight years, or perhaps more, to gain residency. If at any time during the waiting period for residency the petitioner fails to demonstrate the ability to pay, the beneficiary must find an alternate immigration strategy or risk falling out of status.

In black-and-white terms this law appears easy to apply and its effect has no unusual consequence. However, the stakes are raised when the beneficiary takes steps to set roots in the U.S. and make it her home. The beneficiary may have married a U.S. citizen and had children who are U.S. citizens. The law's application may thus bear the consequence of breaking up a family. Given the potential human cost associated with a petitioner's failure to demonstrate the ability to pay, the definition, measurement, and determination of passing or failing the Yates memo tests take on heightened importance for not only the petitioner and the beneficiary, but others as well.

The underlying issue is that much time and energy is spent in disagreement between petitioners and USCIS over how the petitioner can, and cannot, demonstrate the requisite ability to pay under the current measurement guidelines in practice by USCIS.

In 2004, a review of I-140 processing practices revealed that USCIS adjudicators would unnecessarily request additional evidence from petitioners and further question their ability to pay. Consequently, USCIS suffered a backlog of I-140 petitions which caused an increase in processing delays. Adding to the morass was that petitioners and USCIS adjudicators alike were confused with how exactly "ability to pay" should be defined and measured. In response thereto, USCIS Associate Director for Operations William R. Yates issued a memorandum in May 2004 to provide instructions to USCIS adjudicators for determining a petitioner's ability to pay. Mr. Yates's memo set forth three tests:

[USCIS] adjudicators should make a positive ability to pay determination in any one of the following circumstances:

1. Net income

The initial evidence reflects that the petitioner's net income is equal to or greater than the proffered wage.

2. Net current assets

The initial evidence reflects that the petitioner's net current assets are equal to or greater than the proffered wage.

3. Employment of the beneficiary

The record contains credible verifiable evidence that the petitioner not only is employing the beneficiary but also has paid or currently is paying the proffered wage.

I refer to the three tests as the net-income test, net-current-assets test, and W-2 test, respectively, and collectively as the Yates memo tests, as well as their application. Mr. Yates instructed that "[i]f the record is complete with respect to all of the required initial evidence, [USCIS] adjudicators are **not** required to issue [a request for evidence] to obtain further documentation to support a decision based on the record or establish the petitioner's ability to pay."

Although its design was to provide guidance to USCIS adjudicators and reduce a backlog of I-140 petitions caused by unnecessary requests for evidence, USCIS adjudicators have instead adopted the Yates memo and its three tests as the final determiner of whether a petition should be granted at all. As a result, the I-140 petition process has become more confusing than before the Yates memo, and an attempt to navigate through the Yates memo tests with clarity is in order.

Winston Churchill is credited with saying, "Golf is a game whose aim is to hit a very small ball into an even smaller hole, with weapons singularly ill-designed for the purpose." Along that same line of thought, from a businessman's cash-flow perspective, the Yates memo tests, in some instances, are the equivalent of using an oil dipstick from a '57 Chevy straight-six to measure ambient wind velocity. Plainly stated, the Yates memo tests, as currently defined and utilized, are a sub-optimal standard to measure the ability to pay.

As I will demonstrate, the Yates memo tests, each one taken in its individual, discreet simplicity, allow for greatly disparate results among petitioners with wildly varying economic indices, and simultaneously, with petitioners who have extremely similar indices. These indices are the three Yates memo tests—net income, net current assets, and actual W-2 payments.

It appears to me that there are two elements to this ability-to-pay issue. The first element is the concept of ability to pay—the petitioner's actual capacity (however "capacity" is ultimately defined) to produce that which is needed (in the end, "cash") to pay the wage of a beneficiary while maintaining the petitioner's capacity to remain a viable "going concern." The second element is the "measuring

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personnel records, may be submitted by the petitioner or requested by the Service.

sticks/tools/devices/criteria”, i.e. the Yates memo tests, which are used to measure the first element, which put simply, is “ability,” and is even further reduced to the “ability to produce cash to pay the proffered wage.”

Tax returns were not designed with the Yates memo tests in mind, but rather the determination of net taxable income, such income being based on more than one possible method of accounting (cash basis versus accrual basis), with myriad elections available (Section 179 deduction versus regular depreciation methods), management decisions on issues such as “lease versus buy,” and the like. It is possible to have net taxable income and zero cash in the bank, and it is possible to have negative taxable income but plenty of cash in the bank. Similarly, it is possible to pass all three Yates memo tests and not have the ability to pay in cash, and it is possible to fail all three tests but have plenty of cash to pay the employee’s proffered wage.

So then, what *is* ability to pay? The answer is simple: Ability to pay is cash and access to cash.

Payroll checks are good only as long as there is cash available in the bank account on which the payroll checks are drawn. After all, payroll checks cannot be cashed from “net income as shown on the petitioner’s income tax return.” Why? Because it is entirely possible that on an accrual-basis tax return all of the sales are still sitting in accounts receivable and have not yet been converted to cash! The concept is a simple one: One cannot cash payroll checks from inventory or other current assets—only cash.

Using two of the Yates memo tests, the scenario is possible wherein the petitioner’s sales, made on credit to customers in the form of accounts receivable, have not been collected as of year end. The petitioner would be determined to have the ability to pay under either the net-income or net-current-assets tests. An illustration shows how this plays out: A petitioner with no current liabilities has broken even for eleven months in a dismal year, and suddenly on December 31 has a large sale of \$300,000 in goods. This sale results in a year-end profit of \$75,000, which is the petitioner’s net income. These profits, however, are sitting in accounts receivable and have been neither collected nor converted to cash as of December 31. And, because the petitioner has no liabilities, the \$300,000 in accounts receivable generates a net-current-assets balance of \$300,000. If the beneficiary’s proffered wage is \$50,000 per year, the petitioner passes the net-income and net-current-assets tests based only on a single sale which has resulted in nothing more than a balance owed to the petitioner. Not a single dollar of that sale which pushed the petitioner into the “pass” side of two Yates memo tests

has become cash which would cover a payroll check for the preceding 364 days!

Apparently the test criteria do not address where the cash comes from if you look at the W-2 or net-income tests since if a petitioner can pass either test, then USCIS looks no further to ascertain where the cash came from to pay the W-2, or where the cash generated by the net income went to. For example, if the petitioner can produce a valid W-2, then it does not matter that the cash to pay the proffered wage came from *not paying* trade accounts payable to vendors, or from a long-term note taken out at the bank, or from the shareholder making a capital contribution or long-term loan to the company. Neither does it matter if the petitioner had net income in excess of the proffered wage and, simultaneously, 100% of the cash generated by such profit was distributed to the petitioner’s shareholders, leaving zero cash in the company. That W-2 amount could have well been paid by long-term borrowing.

However, if the petitioner is short on all three Yates memo tests, the petitioner is not allowed to use resources available to the shareholder as a consideration in determining ability to pay, such as an available line of credit, or a shareholder’s personal cash on hand to put into the company, or many other useful assets or tools truly available in determining access to cash.

Net income alone does not address how much cash was, or will be, available, and net current assets, which may be converted to cash in the near future, may well be consumed by acquisitions of fixed assets and debt reduction. Thus, a true determination of ability to pay should be based on what I would call a “cash flow” basis. The standard is simple: Does the petitioner have cash and/or access to cash sufficient to pay the proffered wage? Only by taking the entirety of the petitioner’s activity into consideration at one time, including its access to cash via additional capital contributions from owners or borrowing, can the petitioner’s ability to pay be accurately measured, in the full context of all the other sources of incoming cash and demands for outgoing cash.

Using a cash-flow approach departs from the relatively tangible world of numbers on financial statements and tax returns and enters into the more ethereal world of projections of future activities, which are exponentially more open to debate, and this would exacerbate the existing problem if used on a wholesale basis. While a cash-flow approach is a wonderful, but utopian, idea, in the daily real world a system to determine ability to pay, in order to be useable, practical, and effective, may have to settle for a proxy method of determining ability to pay. In other words, we may all agree that the three Yates memo tests are

not the perfect cash-flow or ability-to-pay measuring tools, but under existing limitations of law, time, and resources, these tests will have to serve as proxies for the more perfect ideal for the time being.

Keeping in mind the cash-flow approach to define ability, I propose to analyze the existing system and offer critiques and suggestions for relatively minor changes to the system which will more effectively measure that which is meant to be measured—a petitioner's ability to pay a proffered wage during a specific period of time.

### **The Yates Memo Tests Have Become the Rule, Not the Ruler**

It is my observation from reading USCIS requests for evidence and decision letters in cases on which I have consulted that the “measuring device” has become “the measured.” Despite the Yates memo tests' purpose as tools to measure attributes, such as actual W-2 payments, net income as per income tax return, and net current assets, the tests have become that which is being measured, rather than the petitioner's true ability to pay. In short, the tests *are* the ability to pay. Thus, the tests are no longer the ruler for measuring ability to pay; they are the absolute indicator of a petitioner's ability to pay.

No longer does paying the actual proffered wage serve as one indicator of the petitioner's ability to pay. The same goes for the other two tests of net income and net current assets. The question seems to have gone from “Does the petitioner have the ability to pay?” and looking to the results of the three Yates memo tests to inform the decision making, to “Does the petitioner pass any of the three Yates memo tests? Yes/no; end of story.”

Similar observations were made by authors Ronald Y. Wada and A. James Vázquez-Azpiri in their article *Proving Ability to Pay: Working with the Yates Ability-to-Pay Memo*,<sup>3</sup> in which they refer to the Yates memo as a “double-edged sword.” The authors discuss the background behind the issuance of the Yates memo, including its purpose and guideline to reduce unnecessary requests for evidence and the backlog of cases in 2004:

The “Purpose” and “Background” sections of the Yates ATP Memo set out the corrective purposes of the memorandum—it seeks to eliminate the practice of USCIS officers issuing unnecessary requests for evidence (RFEs) to question petitioners' ability to pay proffered

wages; this practice not only expends limited USCIS resources, but also, as the memorandum observes, increases processing delays and confuses petitioners and applicants. This elimination is to be achieved by educating USCIS officers as to when they should refrain from issuing RFEs in order to make ability-to-pay determinations. As the memorandum suggests, the larger context in which these prescriptions should be read, as with the most recent USCIS rulemaking activities, is the backlog reduction initiative currently underway at the agency.

It is clear from a reading of the subsequent sections of the Yates ATP Memo that, in addition to facilitating the approval process by eliminating ill-considered RFEs for approvable cases, the Memo may also be used to facilitate the denial of an I-140 petition by enabling officers to move directly to the issuance of a denial if the financial information submitted with the petition in question fails to measure up to the standards articulated in the memorandum. Although the Yates ATP Memo injects much-needed determinacy into the vague landscape of ability-to-pay practice, and will thus be of great value to practitioners, it is clear that the Memo is also a double-edge sword that equips USCIS officers with the tools necessary to deny immigrant petitions summarily and without further inquiry.<sup>4</sup>

The authors conclude their article by noting:

The prescriptions of the Yates ATP Memo act as a double-edged sword—on the one hand improving the predictability of adjudications by articulating and standardizing objective tests for an employer's ability to pay, while on the other hand encouraging examiners to interpret the ability-to-pay regulation in an inflexible manner based on relatively simplistic measures of an employer's ability to pay. The memorandum tightens documentation requirements for petitioners by the license it grants USCIS officers to ignore any further documentation proffered by the petitioner, and potentially reduces the entire ability-to-pay issue to a crude one-document touchstone. Although the memorandum affirmatively instructs USCIS examiners to accept ability to pay as proven under the [Net Income] Test, the Net Current Assets Test, or the Actual Payment Test, the memorandum also encourages USCIS

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<sup>3</sup> Ronald Y. Wada & A. James Vázquez-Azpiri, *Proving Ability to Pay: Working with the Yates Ability-to-Pay Memo*, 11 Bender's Immigr. Bull. 753 (Jul. 15, 2006).

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<sup>4</sup> *Id.* at 754–55 (footnotes omitted).

examiners to deny petitions under virtually any other scenario.<sup>5</sup>

The observations and recommendations of this article seek to provide some relief from this problem, and others, while staying within the main framework set out under the Yates memo.

### **The Yates Memo Tests Are Discreet and Non-Articulating**

Under the Yates memo tests, a petitioner has three options to demonstrate ability to pay. The first Yates memo test is to demonstrate that the petitioner actually paid to the beneficiary a salary or wage that was equal to or greater than the proffered wage for the year in question. The second test is the net-income test, which states that the petitioner's net income, as demonstrated by the petitioner's annual income tax return, or other acceptable financial statement or document, must be equal to or greater than the proffered wage for the year in question. The third test is the net-current-assets test, which states that the petitioner's net current assets as of the end of the year in question, as demonstrated by the petitioner's annual income tax return, or other acceptable financial statement or document, must be equal to or greater than the proffered wage for the year in question.

I point out that each one of these three tests are completely separate, independent, and discreet tests, with no one test looking to the results of either of the other two tests to inform its conclusion, i.e. non-articulating. Each test is static, as opposed to dynamic, in nature, contemplating no allowance for the coordination, inter-relationship, interaction, or synergy among the different activities being measured by the different tests (wages paid, generation of net income or loss via business operations, accumulation of net current assets via operations or by owner capital contributions or long-term borrowing, etc.). In other words, it does not matter how miserably the petitioner fails the net-income test, say by having a loss of \$1,000,000 and by having a net-current-liability position (current liabilities exceeding current assets) of \$400,000. As long as the petitioner actually managed to pay the beneficiary the proffered wage and can produce a legitimate W-2, the petitioner has met the standard of the W-2 test and the petitioner's ability to pay is established.

This static testing allows for the following types of scenarios to occur and at the same time reach a favorable ability-to-pay determination under the Yates memo tests (assume the proffered wage is \$50,000 in each scenario):

Scenario #1: The petitioner has a net loss of \$400,000 for the year, no wages paid to the beneficiary during the year, and on the last day of the year, the petitioner borrowed \$170,000 from a bank on a long-term (non-current) balloon note due in fourteen months. The petitioner failed all three tests for the period January 1 through December 30, but on the last day of the year, as a result of access to cash via a long-term bank loan, the petitioner passed the net-current-assets test since it had more than \$50,000 in net current assets as of December 31. Note that at no time during the year did the petitioner ever have net current assets sufficient to pay the proffered wage, and only on December 31 was he able to do so. Moreover, the net-current-assets test does not in any way burden the petitioner to demonstrate *how* its cash came to be generated in the bank as of December 31.

Scenario #2: The petitioner has a net loss of \$300,000 for the year and has gotten very far behind with paying accounts payable invoices to vendors. As a result, the petitioner has a net-current-liability position—current liabilities exceeding current assets—of \$800,000. The petitioner did pay the beneficiary a salary during the year of \$50,000. However, this was done by withholding payment from vendors and running up a huge liability with creditors. The petitioner teeters on bankruptcy, but because a W-2 to the beneficiary for \$50,000 can be produced, the petitioner's ability to pay has been affirmatively established under the W-2 test.

The purpose of these illustrations is to point out that the three Yates memo tests, partly due to their non-articulating and independent usages, can produce affirmative results in situations that are clearly outside the spirit of the ability-to-pay determination's purpose. However, these are the tests by which USCIS and petitioners are bound, for better or for worse.

As illustrated by Scenario #1, the net-current-assets test completely disregards any coordination between net income—the vehicle that is the generator of cash and other current assets—and its resultant effect, or lack thereof, on the creation and accumulation of cash and other current assets. Although it passed the net-current-assets test in this fashion, has the Scenario #1 petitioner only worsened its chances of survival by taking such a large loan while suffering significant losses? Only a fully integrated cash-flow analysis of *all* aspects of the business would be able to answer this question.

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<sup>5</sup> *Id.* at 758.

The Yates memo tests presuppose that net income, net current assets, and actual W-2 payments made are each singularly independent events, and each test, taken alone, can measure a petitioner's ability to pay. Cash, in a household, a corporation, or a nation, has volume and velocity. In reality, the inter-relationship of profits, current assets, payment of wages, borrowing and repaying debt, and acquisition of fixed assets is a highly integrated process which is more akin to the human circulatory system—cash is to a business what blood is to a body. It circulates and the measurement of it cannot accurately take place in an isolated snapshot, or without considering the totality of other factors that affect cash, which is practically every other aspect of the entity. A surgeon cannot operate on the heart without taking into consideration all the other aspects of the body at the same time.

Cash is a tangible representation of stored labor or value. Assume that in 1742 I grow a bushel of corn at my expense and labor, and am willing to trade the bushel of my corn with another person fifty miles away for five of her chickens. Not wanting to carry the bushel fifty miles, I reduce to writing that the written piece of paper is worth a bushel of my corn to the bearer of my piece of paper, or five chickens. A third party can carry this piece of paper (money) to the chicken rancher who releases the five chickens for delivery to me. Three months later, the chicken rancher, en route to the regional Chicken Rancher Convention, stops by my farm to hand over the piece of paper (money) declaring that the chicken rancher can collect a bushel of my corn. In this example, the piece of paper declaring tradable value—money—was a very small volume of money, moving at a low velocity over a three month period of time. Extrapolate this simple scenario to today's economy and it can be seen that there are infinite transactions, produced by an infinite number of people, being traded in instantaneous periods of time—great volume of cash and great velocity of cash. This description of a simple economy writ large is an attempt to point out what cash is, how fluid its movement is in a modern enterprise/economy, and why it can be so difficult to measure when taken in the context of millions of transactions, while at the same time considering concepts such as net income, net current assets, and ability to pay as singular, isolated states of being.

In a perfect world, I would suggest that a fair and proper analysis of a petitioner's ability to pay a wage should be based on fully dynamic, articulating tests that simultaneously consider multiple factors' combined and cumulative effect on cash on hand, truly the only thing with which a wage can be paid. These factors include, but are not limited to, the petitioner's ability to generate net income, planned uses of cash for asset acquisitions or debt reduction, and access to cash

via loans or shareholder capital contributions. However, this perfect-world approach is an extremely technical, complex and impractical process. Understandably so, the Yates memo tests and USCIS Standard Operating Procedure rules have been forced to simplify the tools used to measure ability to pay, or otherwise USCIS would never adjudicate another case.

I point out some of the weaknesses of the Yates memo tests so that as I discuss other approaches to measuring ability to pay, not by replacing the Yates memo tests, but by making some modifications to the current methods, these new approaches will make sense when viewed in the context of the noted weaknesses.

### **Areas of Agreement Where Current Policy Coincides With the Cash-Flow Approach to Measuring Ability to Pay**

At times, USCIS's position is counter to my "perfect-world, cash-flow approach" to measure ability to pay. The best example of this counter-approach is to disallow any and all depreciation as an add-back to net taxable income even though it is often a "non-cash" deduction. At other times, USCIS's position has some aspects of a cash-flow approach concept in the logic it applies. I offer three specific examples of this agreement in approaches to illustrate that perhaps incorporating this Article's recommendations is not such a far-flung idea unworthy of consideration.<sup>6</sup>

#### Example #1: Consider Net Taxable Income Before Net Operating Loss Deduction

USCIS I-140 Standard Operating Procedure states: "It is important to **consider taxable income BEFORE the [net operating loss] deduction** in order to determine whether the petitioner had sufficient taxable income in the year of filing to pay the proffered wage."<sup>7</sup>

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<sup>6</sup> Each example is predicated on the current USCIS position that each of the three tests stands alone and is independent evidence of the ability to pay, referring to the "proxy" concept mentioned in the Introduction. *See supra*. In the truest sense of ability to pay being measured by cash and access to cash, the inter-relationship of the three tests would have to be considered taken together, rather than separately.

<sup>7</sup> U.S. Citizenship and Immigration Servs., Dep't of Homeland Sec., I-140 Immigrant Petition for Alien Worker Standard Operating Procedure, p. 121. This document, referenced in the Adjudicator's Field Manual (AFM) at § 22.2 is inaccessible on the USCIS website. While the AFM ostensibly links to the document, that link results in an error. The Standard Operating Procedure is available on a number of websites, including [http://www.olenderpham.com/sites/default/files/Standard%20Operating%20Procedures%20\(SOP\)%20I-140%20-%20USCIS%20-%202007.pdf](http://www.olenderpham.com/sites/default/files/Standard%20Operating%20Procedures%20(SOP)%20I-140%20-%20USCIS%20-%202007.pdf).

In some denials I have seen, USCIS claimed that while current-year net taxable income was in excess of the proffered wage, the petitioner's net-operating-loss deduction in the current year, with the net operating loss originating in a prior year, had reduced current-year net taxable income to zero and thus, the petitioner failed the net-taxable-income test for the current year due to the net-operating-loss deduction which originated in a prior year.

The USCIS Standard Operating Procedure policy states that USCIS should consider net taxable income *before* the net-operating-loss deduction. This guideline suggests that the net-operating-loss deduction is being disregarded since it supposedly did not require the use of cash during the current year. I submit that this logic is readily applicable to the argument to allow the add-back of depreciation related to fixed assets acquired in prior years.

If using the net taxable income before the net-operating-loss deduction is proof of ability to pay under the Yates memo tests (proxy concept), then that presupposes that net taxable income equals cash and cash available is sufficient to pay the proffered wage. Following that line of logic, if it can be shown that part of the current year's depreciation is not consuming current-year cash, it is not illogical nor inconsistent to allow that portion of the current year's depreciation to be added back to net taxable income.

Example #2: If the Difference Between the Salary Actually Paid and the Proffered Wage is Equal to or Less Than Net Current Assets, the Ability to Pay is Established

USCIS Standard Operating Procedure states: "If the difference between the salary paid and the proffered wage is [equal to] or [less than] the [net current] assets, [t]hen the ability to pay is [e]stablished."<sup>8</sup> This policy recognizes the cash used to actually pay the beneficiary's wage during the period in question, such actual payment being less than the required proffered wage. The policy then allows for the net current assets as of period end to be added to the actual wage paid (actual cash consumed), in recognition that period-end net current assets represent a source of cash, such source being available on the last day of the period. Taken together, these elements may thus be used in determining ability to pay for that period.

Example #3: If the Difference Between the Salary Actually Paid and the Proffered Wage is Equal to

or Less than Net Taxable Income, the Ability to Pay is Established

USCIS Standard Operating Procedure states: "If the difference between the salary paid and the proffered wage is [equal] or [less than] the net income or taxable income[,] [t]hen the ability to pay is [e]stablished."<sup>9</sup> This policy recognizes the cash used to actually pay the beneficiary's wage, such consumption of cash being reflected as a deduction in arriving at net taxable income per the petitioner's tax return. Following the convention which allows that net taxable income represents cash or access to cash available to pay the proffered wage, in allowing the actual wage paid to be summed with the remaining net taxable income, after the deduction of that same actual wage, is another concession to the cash flow concept of measuring ability to pay.

**The Yates Memo Tests' Unintended Bias Against Young, Marginal Companies**

Petitioners with 100 or more employees are often mature, and stable, entities. Those petitioners having fewer than 100 employees, which, I assume, represent the vast majority of petitioners, comprise the workload of the USCIS service center staff dealing with requests for evidence, appeals, and the like related to ability-to-pay cases, i.e. – the "marginal petitioners."

The Yates memo tests are better suited to mature, developed petitioners with operations, and resultant financial statistics used under the current Yates memo testing guidelines that are more stable, more subject to direct management control of financial statistical outcomes (net income or net current assets), and less subject to the drastic swings in net income or net current assets that are common in new businesses. This testing bias toward mature petitioners is a significant drawback to young, new companies that need skilled labor via the immigration process.

An excellent example I have had repeated exposure to is the software-development industry. A petitioner that had spent several years developing a sophisticated software package for use in the hospital-management industry was early in its business life cycle. The petitioner's revenue stream was nonexistent because it was in the software's creation and development stage and had little product actually available to sell during the three years in question. As a result, the petitioner's net-income and net-current-assets amounts were negative and the W-2 amount was below the proffered wage. This early-stage petitioner was being funded by its owners' capital contributions

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<sup>8</sup> U.S. Citizenship and Immigration Servs., Dep't of Homeland Sec., I-140 Immigrant Petition for Alien Worker Standard Operating Procedure, p. 115.

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<sup>9</sup> U.S. Citizenship and Immigration Servs., Dep't of Homeland Sec., I-140 Immigrant Petition for Alien Worker Standard Operating Procedure, p. 115.

during this multi-year development stage. Over a three-year period, annual capital contributions were approximately \$2.5 million, \$2.0 million, and \$1.3 million.

Given this petitioner's early stage in its business life cycle, strict application of the Yates memo tests, which includes the refusal to consider additional capital contributions despite a consistent history of owner commitment, led to USCIS's determination that the petitioner did not have the ability to pay the proffered wage. However, the owners' commitment, demonstrated by their significant and continuous capital contributions, was clear evidence of the petitioner's "access to cash."

In this case, the petitioner was denied much needed skill to help it become a successful, job-producing entity, when evidence, albeit outside the Yates memo tests, obviously showed that it had reliable and ready access to cash easily sufficient to pay the proffered wage. I would suggest that other factors outside the three Yates memo tests measurements, such as access to cash via capital contribution or ability to borrow, be considered as a matter of policy.

#### **Requirement for Petitioner's Audited Financial Statements**

8 C.F.R. § 204.5(g)(2) states: "Evidence of [the petitioner's] ability [to pay the proffered wage] shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements."<sup>10</sup> I will assume that the term "annual reports" refers to the so-called annual reports issued by publicly-traded companies which are required by law to be audited at least on an annual basis, if not more often. There is no legal requirement placed on "non-public" enterprises, bank loan covenants and other private reasons for audits notwithstanding. I further assume that "audited financial statements" refers to financial statements of non-publicly-traded petitioners.

With regard to federal tax returns, why does a petitioner's federal income tax return, obviously unaudited, carry the mantle of credibility while the same petitioner's financial statements, also unaudited, are deemed unreliable? Where does the information used to produce a federal income tax return come from? In the great majority of the cases under discussion in this Article, the information comes from the petitioner's unaudited financial statements, which information is the basis of the federal income tax return. Admittedly, the petitioner's federal income tax return, while unaudited, does have that nasty little perjury clause in small font just underneath the signature line. But how does the credibility factor of

that clause significantly change the veracity of a tax return versus the veracity of the unaudited financial statements from which that same return was prepared?

My professional estimate from thirty years in the CPA business is that few taxpayers of any ilk have even bothered to read the fine print and are not aware of the perjury clause, and their existing level of integrity would not change even if they were made acutely aware of it.

The petitioners that seem to find themselves having ability-to-pay problems are not the large-scale petitioners that have 100 or more employees who do not have to substantively prove up their ability to pay,<sup>11</sup> nor the completely financially anemic petitioners. Rather, it is the "marginal" petitioners that have trouble.

An audit is no small thing, without regard to the size of the petitioner, whether size be measured in terms of revenues, number of employees, or any other financial or operative statistical measurement. The legal liability burden on the auditor is enormous, and thus the cost for the amount of audit work required to meet all of the auditing standards is most burdensome for these "marginal" petitioners. If there is some concern that the petitioner cannot establish the ability to pay for a wage of \$18,000 per year, then you can bet that the same petitioner cannot afford an \$8,000 audit of its financial statements for the petition for its ethnic cook for a Mandarin restaurant in Philadelphia, or the Chinese couture designer in San Francisco, or the Thai home nurse for an invalid family patriarch in Los Angeles! Additionally, while producing one audit at each year end is very expensive, for those petitioners who need to demonstrate the ability to pay for an interim period, producing audited financial statements for interim periods less than the entire year is exponentially expensive.

My recommendation is that if USCIS will accept unaudited federal income tax returns, which have been prepared from unaudited petitioner financial statements, then it is not unreasonable in the absence of evidence to the contrary regarding the petitioner's veracity to accept the petitioner's unaudited financial statements as legitimate, admissible proof of ability to pay. Interestingly enough, in my personal experience working to overcome a denial or request for evidence, I have yet to see USCIS fail to accept data from non-public petitioners' financial statements that were unaudited. This suggests to me that in formalizing the procedure of accepting unaudited financial statements, USCIS would not really be compelled to take much of a step away from its current actual operating practice.

<sup>10</sup> 8 C.F.R. § 204.5(g)(2).

<sup>11</sup> See 8 C.F.R. § 204.5(g)(2).



Again, relief from the requirement for audited financial statements is another way USCIS can continue to operate within its existing framework, expedite the processing of cases, and not weaken the integrity of the process.

### **Net Current Assets:**

#### **Beginning-of-Year vs. End-of-Year**

The second test under the Yates memo guidelines holds that the net current assets of the petitioner, as indicated by the petitioner's income tax return, is equal to or greater than the proffered wage. Current assets are those assets that are either cash, or assets that are expected to be converted into cash within the next twelve months from the date of the balance sheet. Such current assets traditionally include cash, certificates of deposit, publicly-marketable securities, trade accounts receivable, and inventory. Current liabilities are those liabilities that are expected to be paid within the next twelve months from the date of the balance sheet. Such current liabilities traditionally include trade accounts payable, sales and payroll taxes payable, and the principal portion of monthly installment payments due to be paid within the next twelve months on long-term mortgages and other loans. Net current assets is the difference between total current assets on a certain date, say December 31, 2009, and total current liabilities on that same date.

For petitioners who use the calendar year as its accounting year, USCIS practice uses tax returns and financial statements as of December 31 of any given year to ascertain the petitioner's net-current-assets position. In turn, these disclosures are used to determine the petitioner's ability to pay for the entirety of that same calendar year, and to satisfy the second Yates memo test. Put another way, the petitioner's net-current-assets position is being measured on the *last* day of the year in order to determine the petitioner's ability to pay for the preceding 364 days. In reality, under a cash-flow based analysis of ability to pay, a net-current-assets measurement on any given date is only valid on a prospective basis, not a retroactive basis. Thus, I believe that if it is USCIS policy that net current assets can determine a petitioner's ability to pay, then the net current assets should be properly viewed as a factor in the calendar year *following* the date that the net-current-assets position is measured. In other words, the net-current-assets position as of December 31, 2008, should be considered as evidence of the petitioner's ability to pay for calendar year 2009, not 2008.

An illustration helps explain how this suggestion would operate. Assume the petitioner opens its doors on January 1, 2008, with the owner's capital contribution of \$25,000, hires the beneficiary, and establishes the priority date as January 1, 2008. The

proffered wage is \$50,000, but the petitioner pays the beneficiary wages of only \$20,000 throughout 2008 and conducts no other business, has no other transactions, and uses the accrual basis of accounting for its financial statements and tax return. In this case the net loss—the wages actually paid to the beneficiary—is \$20,000, the W-2 is only \$20,000, and net current assets are only \$5,000 (\$25,000 initial capital contribution less the \$20,000 salary paid out). The petitioner cannot pass any of the three Yates memo tests for calendar year 2008.

Now assume that at 4:55 p.m. on December 31, 2008, a customer walks in to the petitioner's store and makes a purchase on credit (i.e., accounts receivable) for \$200,000, and walks out the door at closing five minutes later. The petitioner now has net current assets of \$205,000 (\$5,000 of cash and \$200,000 of accounts receivable) at December 31, 2008, and will pass the Yates memo net-current-assets test. But the eleventh-hour sale had absolutely no capacity to fund any proffered wage due and payable prior to 4:55 p.m. on December 31, 2008, because the sale did not even exist before then! Nonetheless, under current practice, the petitioner would have passed the net-current-assets test for all of 2008 because the petitioner's net-current-assets position is established as of the last minute of the last day of a calendar year. This net-current-assets position allows a petitioner to establish the ability to pay for the 364 days prior to the creation of the same net current assets.

Back to the example: the \$200,000 account receivable from the customer, created on December 31, 2008, gives the petitioner a net-current-assets position of \$205,000 as of December 31, 2008, but the petitioner cannot pay 2009 payroll until the customer actually makes payment sometime in 2009. When the customer pays off his account to the petitioner, the petitioner, in 2009, has the funds to pay wages to the beneficiary in 2009, not 2008!

I recommend that ability to pay based on net current assets for a given period would be based on the net-current-assets balance as of the beginning date of the period in question rather than the current practice of using the net-current-assets balance as of the ending date of the period in question. This is another example of a simple policy change that will allow USCIS to continue to operate within its existing framework, expedite the processing of cases, and not weaken the integrity of the process.

### **A Comparison of Tax Return Forms and the Components of Net Income**

In several instances, I have seen requests for evidence and denials from USCIS predicated on the petitioner's net income, as shown on the petitioner's

federal income tax return. Specifically, the income amount shown on page one of the applicable return. Page one of any return apparently is referred to as the single page to be consulted in any tax return to find the petitioner's net income for purposes of determining ability to pay pursuant to the Yates memo tests, as incorporated by the USCIS I-140 Standard Operating Procedure.<sup>12</sup>

Federal tax returns are designed to present information in a manner that is similar to the income statement and balance sheet format. *The front page of federal tax or informational returns is an income statement and the schedule L is a balance sheet.*

The following table identifies the IRS Form number and the type of information provided by each tax return.

If the Organization is a . . .	Then the Tax Return is Form.	And the tax return provides a modified	
		Income Statement	Balance Sheet
Corporation	1120 or 1120EZ	X	X
S Corporation	1120S or 1120 EZ	X	X
Partnership	1065	X	X
Sole Proprietorship	1040, with Schedule C	X	
Non-profit	990 or 990EZ	X	X

But tax returns were not designed with ability-to-pay test criteria in mind. Rather, tax returns were designed to determine the identification of the various types of income and loss, the quantitative amount of each type of income and loss, and the calculation of the particular tax applicable to each type of income and loss.

Let me point out at this juncture that it is not possible, nor necessary, to get sidetracked into the morass that is the detail of the Internal Revenue Code in order to have a useful discussion of the relationship between federal income tax forms and the determination of net income for purposes of applying the Yates memo tests to establish a petitioner's ability to pay. Accordingly, my discussion will generalize tax terms, concepts, tax rates, and the like, in an attempt to focus on the larger issue of developing an

understanding of the various return forms for purposes of applying ability-to-pay and Yates memo-tests concepts. It will also be assumed that all S-corporation and partnership owners are individual persons for simplicity of explanation. Under discussion here are C-corporation Form 1120, S-corporation Form 1120S, and partnership Form 1065. Although not readily apparent, a distinction between the various forms is that the S-corporation and partnership returns share a commonality that is not found with the C-corporation—the concept of the “owner” being involved for purposes of calculating income tax. The C-corporation return never once considers the “owner” in its process.

A common phrase used in documents between USCIS and petitioners is “the entity (corporation, partnership, etc.) is separate and apart from the individuals who own the entity.” This is an important concept in legal matters. Without separation of the individual from the corporate entity, there would be no legal-liability protection and business development would suffer drastically. However, this distinction has to be viewed from the perspective of legal-liability-protection matters, ownership, and corporate governance matters. When it comes to federal income tax, it is important to understand that the U.S. Tax Code has, in effect, “pierced the corporate veil.”

This requires some clarification. The Tax Code has not pierced the corporate veil in terms of legal-liability protection, but it has, in a way, pierced the corporate veil when it comes to S-corporations filing Form 1120S, and entities taxed as partnerships for tax purposes filing Form 1065. In these two instances, consideration of the “owner” is inherent in the entire conception, design, and implementation of the tax return forms. This inclusion of the owner in S-corporation and partnership tax law and related income tax form reporting is critical in distinguishing these returns from C-corporation returns.

This inclusion of the owner's role in S-corporation and partnership tax returns is what causes the Forms 1120S and 1065 to require that certain types of income and loss *not* be reported on the all-important “Page 1” of the 1120S and 1065.

Under the Tax Code, not all income and loss sources are equal. Various types of income and loss receive significantly different treatment when it comes to applicable tax-rate schedules, inclusion, exclusion, or limitation of certain incomes, and losses, or deductions. A partial list of common but identifiable separate sources of income and loss that receive separate tax treatment includes: ordinary income (wages, salaries, self-employment income), dividend income, interest income, capital gains and losses, rental real estate income (loss), self-employment

<sup>12</sup> U.S. Citizenship and Immigration Servs., Dep't of Homeland Sec., I-140 Immigrant Petition for Alien Worker Standard Operating Procedure, p. 120 (emphasis added).

income for self-employment tax purposes, royalties, and many more.

C-corporations stand alone in that *all* types of income and loss are lumped into one combined net number, and the applicable tax rate(s) are applied to that one net income amount. Thus, one net income amount comprised of all various types of income and loss is multiplied by one tax-rate schedule.

When it comes to anything other than a C-corporation, the disparate tax treatment of each type of income or loss must be dealt with on a type-by-type basis. Why does the C-corporation enjoy the simplicity of just netting together all income and loss from all the various types of income and loss to arrive at one combined net figure and then apply the appropriate tax-rate schedule? The answer is simple: Because the C-corporation tax regime is the only regime that does not have to deal with the inclusion of the owner in determining the C-corporation's net income and applicable tax-rate schedule for income tax reporting purposes.

Every other entity type *must* contemplate the role of owners in preparing its income tax returns. S-corporations and partnerships do not pay federal income tax as an entity. Rather, the income or loss generated by S-corporations and partnerships is attributed downstream to the owners. The owners then include the income or loss from the S-corporations and partnerships in their individual federal income tax returns and the owners themselves pay any taxes due from the income. This is the commonly referred to "flow-through" concept associated with S-corporations and partnerships.

Critical to this discussion for understanding what is "net income" for ability-to-pay and Yates memo-tests calculation purposes is that this "flow-through" reporting exercise is a tax fiction applicable only for purposes of calculating income tax due. It is *not* for the purpose of determining what is the "net income" of the entity for ability-to-pay and Yates memo-tests purposes.

In the eyes of the state, there is no legal difference between a C-corporation and an S-corporation. If you look at a corporate charter issued by the state it is impossible to know if the corporation has a C or S designation. At their inception, all corporations are C-corporations. It is not possible to charter an S-corporation. Rather, a C-corporation must first be chartered, and only after that, the overt act of preparing a Form 2553 Election by a Small Business Corporation and filing it with the Internal Revenue Service (IRS) must be done before that C-corporation finally becomes an S-corporation for tax purposes.

The S-corporation enjoys the same rights, privileges, protections, and obligations that a C-corporation enjoys since in the eyes of the state, both entities are simply a corporation. The only difference is their treatment for federal income tax purposes.

For tax purposes, the S-corporation and partnership must both complicate their net-income calculation and reporting process by identifying, quantifying, and segregating the various types of income and loss from each other, and presenting these various incomes and losses in a very segregated format. As a result, each owner can identify each various type of income or loss when preparing his personal income tax return and can then apply the myriad separate tax treatments to the various and separate incomes and losses.

It is for this tax reporting reason alone that S-corporations and partnerships *must* segregate these items *not* on page one of Forms 1120S and 1065. Instead, they are required to separately state the items that are subject to disparate tax treatments by individual taxpayers on pages two and three of Form 1120S for S-corporations, and on page four of Form 1065 for partnerships.

I have belabored the differences between C-corporations and S-corporation/partnerships over the previous few paragraphs to drive home this next point. I have seen often enough the argument made by USCIS that page one of the 1120S and 1065 is the only page that can be considered from those returns in identifying net income for ability-to-pay and Yates memo-tests calculation purposes. Any income or loss items enumerated on pages two, three, or four of these return forms will be completely disregarded as net income or loss of the petitioner. This disregard is apparently based on the mistaken belief that any item of income or loss not shown on page one is not a normal business income activity, or is a "flow-through" transaction (which all of them are in an 1120S and 1065), or is somehow specifically identifiable as a transaction of the owner of the entity as opposed to being a real and legitimate activity or transaction of the petitioner S-corporation or partnership. This disregard is an error in logic resulting from the extremely confusing and ambiguous plethora of tax return formats, "flow-through" concepts, and certain terms of art in tax documents.

The only reason anything is reported on pages two, three, and four of the S-corporation and partnership returns is not because that activity is somehow not an activity or transaction of the petitioner itself, but because, for tax-reporting purposes only, that activity or transaction *must* be reported in a format, separate and distinct from the activity reported on page one, for later use by the owner. A comparison of the line items

of the 1120 to the corresponding line items of the 1120S and 1065 corroborates this assertion.<sup>13</sup>

Exhibit II shows the various major categories of incomes and losses that receive disparate tax treatment at the individual owner income-tax level. Those same items receive the same tax treatment at the C-corporation tax level. Also shown is the applicable "Schedule," if any, and the page number and line number of the tax form where those same items appear on Forms 1120,<sup>14</sup> 1120S,<sup>15</sup> and 1065.<sup>16</sup> Important to note is that on Form 1120, all items are listed on page one, whereas almost all of the corresponding items on Forms 1120S and 1065 are listed on pages two, three, and four. The difference in which page of the return some particular category of income or loss appears has *nothing* to do with whether or not that item is a valid business transaction by the petitioner. It is strictly where it is for no other reason than the vagaries of the 1120S and 1065 tax-reporting requirements for use by its owners in preparing their individual income tax returns. The same categories of income or loss items appear on the 1120, 1120S, and 1065, albeit in different places.

C-corporations, in the ordinary course of business operations, have sales, cost of goods sold, interest and dividend income, capital gains on sales of assets, net gains and losses on rental real estate property, generate royalty income, make charitable donations, and take advantage of the accelerated tax deduction called Section 179 Deduction for fixed asset acquisitions. When the cumulative net income or loss of each of the categories of activity is combined and netted out, the resultant number is called net income.

S-corporations and partnerships, in the ordinary course of operating their businesses likewise have the exact same activities within them, just as the C-corporation, with the resultant number called net income. The only difference between C-corporation and S-corporation/partnership operations in this context is not in some distinction over what item is a "real" or "normal" income-producing activity that is unique to one but not the other. Rather, the only difference is on what respective page number and line

number those exact same categories of activities appear on the respective returns. The difference is solely due to the tax-reporting requirements for the benefit of the owner.

Note that on Form 1120, the term used on page one, line thirty is "Taxable Income," whereas the corresponding item on Forms 1120S and 1065 is called "Ordinary Business Income (Loss)." Again, the reason for this slight difference in terms gets back directly to differences in income-tax treatments between C-corporations and S-corporations/partnerships.

For the C-corporation, since all categories of incomes and losses get bundled together into one lump number and receive the same tax treatment, there is no reason to distinguish the income as "ordinary" or some other moniker; it is simply "Taxable Income." For S-corporation and partnership owners, there are several types of categories of income, such as ordinary income (wages/salaries/income from business operations), passive income (rental real estate operations), self-employment income, investment income, and others. The term "Ordinary Business Income (Loss)" is a direct reference to the tax distinction of "ordinary" versus "passive" or "investment" income. Again, this distinction is nonexistent with C-corporations.

Additionally, carrying the dismissal of items on pages 2–4 through to its effect on the net-current-assets test, all items on pages 2–4 have already been added or subtracted to arrive at the numbers shown on the Schedule L Balance Sheet which is used to calculate net current assets. If net income for S-corporations and partnerships is not allowed to include the effect of those items on pages 2–4, to be consistent, then the balance sheet numbers should be required to be restated to also exclude the effects of those items in the net-current-assets calculation. In practical terms, such restatement would be excessively burdensome on petitioners.

For these reasons, I contend that S-corporations and partnerships should be allowed to include the items of income and loss shown on their respective pages 2–4 when calculating net income for purposes of determining ability to pay under the Yates memo tests.

### **Why Certain Components of Depreciation Expense Should Be Added Back to Net Income**

The ability to pay any proffered wage is ultimately determined by access to raw cash. Many measuring sticks are used in determining ability to pay such as net income, net current assets, or W-2 proof of actually having paid the salary. On payday, however, the paychecks only clear the bank if there is actual cash in the bank account. The checks cannot be paid with net income or net current assets because these

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<sup>13</sup> See *infra* **Appendix B**, Exhibit I.

<sup>14</sup> Internal Revenue Serv., U.S. Dep't of Treasury, OMB No. 1545-0123, Form 1120: U.S. Corporation Tax Return (2011); see *infra* **Appendix B**, Exhibit II.

<sup>15</sup> Internal Revenue Serv., U.S. Dep't of Treasury, OMB No. 1545-0130, Form 1120S: U.S. Income Tax Return for an S Corporation (2011); see *infra* **Appendix B**, Exhibit III.

<sup>16</sup> Internal Revenue Serv., U.S. Dep't of Treasury, OMB No. 1545-0099, Form 1065: U.S. Return of Partnership Income (2011); see *infra* **Appendix B**, Exhibit IV.

two items are only proxies for measurements of cash, and not actual cash itself.

With the spirit of the ability-to-pay rules being the accurate measurement of a petitioner's ability to actually pay a proffered wage with cash, in certain cases, adding back certain components of the total depreciation deduction is justified in accurately making the measurement. Depreciation is often described as a "non-cash" expense, which depending on the case can be wholly true, partially true, or not true at all.

First I would like to offer a description of what depreciation actually represents and how it does, and does not, affect cash. Measurements of time and expenses are conjoined in accounting. You cannot have one measurement without the other. This is why financial statements are always associated with a day, month, or year. Some cash expenditures impact a very short period of time. For example, the utility bill from the electric company represents an instantaneous consumption of electricity which cannot be stored for later use and it does not have a useful lifespan of several years. The electricity is consumed instantaneously during a measured period of time, say one month. Thus the cash expenditure to pay for the electricity is immediately deducted from revenues for that same month in determining net income. In accounting terminology, this matching of revenues for a specific period of time with expenditures for that same period is called the "matching" principle—the matching of expenses with the attendant revenues for a specific period of time.

Other cash expenditures are associated with something that will provide a benefit over many years, such as a building, a printing press, or construction equipment. These items are able to be stored and repeatedly used, providing a benefit on a daily basis far into the future. These items are also likely to be relatively expensive. For two different reasons, accounting and tax rules spread the matching of the costs of these long-lived items (called "long-term assets") over several years (e.g. three years for a computer and thirty-nine-and-one-half years for a building).

The accounting rules spread the association of a long-term-asset expenditure with the attendant revenues over several years in accordance with the aforementioned "matching principle." Meanwhile at the IRS, while spreading out the expenditure over several years is partially motivated by the matching principle, it is also motivated by the shifting of a deduction from taxable income from one tax period to another tax period. This influences the net-taxable-income number on which the income tax is based. (This is why you see differences in the way

depreciation is calculated for financial-statement purposes under Generally Accepted Accounting Principles (GAAP) as opposed to the depreciation calculation methods allowed for tax purposes, also known as "book-to-tax differences.")

Put another way, the petitioner would like to fully deduct the cost, say \$100,000, of the construction equipment and trucks in the year the equipment was purchased, thus reducing net taxable income by \$100,000. But the IRS says, "No—you can only take one-fifth of the total cost of the asset each year for the next five years in calculating the net taxable income of your company." This means that although the petitioner paid \$100,000 for the equipment in Year 1, the tax return shows a deduction of only \$20,000 in Year 1 for depreciation purposes, and the same \$20,000 deduction in Years 2 through 5 until the full \$100,000 has been deducted. This spreading of the deduction for the expenditure of \$100,000 in equipment over five years is called depreciation. And through the example above, it is shown that the amount set forth on the company tax return as the depreciation deduction for Years 2 through 5 has nothing to do with the outlay of cash during that period. The \$100,000 was paid in Year 1 at the time of the purchase, but the net income for the following four years is reduced each year by \$20,000 due to the "spreading out," or matching, concept of the depreciation deduction.<sup>17</sup>

I also mentioned that the depreciation deduction can fully, partly, or not at all represent the actual cash expenditures during a particular year. Using the example above, in Year 1, the petitioner outlaid \$100,000 in cash to buy the equipment and was allowed a depreciation deduction of only \$20,000. Thus, in Year 1, the \$20,000 depreciation deduction was fully representative of the outlay of at least \$20,000 in cash in Year 1. However, in Year 2, the \$20,000 deduction for depreciation has no association with the expenditure/outlay of actual cash in Year 2 because not a *single* penny of cash was paid out during Year 2 to create that \$20,000 deduction. The cash outlay that generated the equipment associated with the Year 2 depreciation deduction was actually paid out in Year 1, although in Year 2 the depreciation deduction was \$20,000.

Assume that in Year 3 the petitioner purchases another \$100,000 of long-term assets. The petitioner will have yet another \$20,000 depreciation deduction for that new equipment, and a Year 3 total depreciation deduction of \$40,000 (\$20,000 related to assets purchased in Year 1 and \$20,000 related to assets purchased in Year 3). \$20,000 will not be

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<sup>17</sup> See *infra* **Appendix B**, Exhibit V.

reflective of the actual outlay of cash (the \$20,000 deduction in Year 3 for the assets purchased in Year 1), and the remaining \$20,000 will be representative of the actual outlay of cash for the new assets purchased in Year 3. This is an example of where the depreciation deduction is partially representative of a cash outlay during the year in question.

Finally, in Year 4, the \$40,000 depreciation deduction (\$20,000 related to assets purchased in Year 1 and \$20,000 related to assets purchased in Year 3) is an example of where the depreciation deduction represents the outlay of zero cash during the year in question.

The appropriateness of adding back some or all of the depreciation deduction to the net income for a particular year for purposes of determining ability to pay for that year is dependent on the extent to which the deduction in the year in question is associated with long-term assets *actually* acquired during the year in question. This would mean that the cash was paid out in that same year. Another dependent factor is whether the deduction in the year in question is associated with long-term assets actually acquired *prior* to the year in question. This would mean that the cash paid out for the assets associated with the current year's depreciation deduction actually occurred in a time period prior to the time period under scrutiny for the ability to pay.<sup>18</sup>

The deduction amount for depreciation related to assets acquired *prior* to the year in question *did not* require the outlay of cash in the year in question. Thus, if it is assumed that using the net income number is an appropriate measure of a petitioner's ability to pay cash out in the form of a paycheck to a beneficiary, then it is appropriate to add back to that net income number a deduction which *did not* require the outlay of cash during that same period (i.e., the amount of depreciation in the current year related to assets acquired in a previous year). Allowing this type of depreciation expense to be added back to net income is another example of a slight modification of the existing Yates-memo rules that will bring ability-to-

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<sup>18</sup> Referring to the "proxy" concept that net income represents cash for Yates memo-tests purposes of measuring ability to pay, it would be consistent to say that depreciation in the current year related to assets purchased in prior years is not associated with the outlay of cash during the current year. In reality, however, it is entirely possible that it could be associated with cash if, for example, that asset was purchased with long-term debt and payments were still actually being made in the current year. Other scenarios also exist, but this type of in-depth analysis gets back to the "cash flow" analysis I have previously discussed, and further in-depth analysis does not stay within the existing conventions of the Yates memo tests.

pay testing a step closer to a cash flow basis of testing and more accurately measure ability to pay.

In his article *Strengthening I-140 Financial Ability Evidence in the Dawn of Denials Without RFEs*, author Romulo E. Guevara states:

*USCIS has insisted in past [requests for evidence] . . . that it does not look at depreciation unless the petitioner can identify the actual cash equivalent of the depreciated amount.* Petitioners should include this additional material in their analysis of financial ability where depreciation is used. For instance, if depreciation includes office equipment or machinery, evidence showing its purchase or photos of the items should be included in the petition, along with identification to it in the petitioner's tax return and schedules.<sup>19</sup>

This comment indicates that USCIS is amenable to considering the "add-back" of depreciation expense to net income if the petitioner "can identify the actual cash equivalent of the depreciated amount." The above explains how a petitioner can make this identification and why, under the existing set of tests, the add-back of that portion of current year depreciation related to assets acquired in years prior to the year in question is not at odds with the existing process.

In my personal experience working to overcome a denial or request for evidence, I have made this same add-back argument in six cases and USCIS accepted the argument four times. The other two cases are still pending in appeal per my most recent update on the cases. This suggests to me that to formalize the procedure of accepting the add-back of depreciation related to assets acquired in prior years, USCIS would not really be taking much of a step away from its current actual operating practice.

This is yet another example of a simple policy change that will allow USCIS to continue operating within its existing framework, expedite the case processing, and not weaken the integrity of the process.

In support of my depreciation argument, several Administrative Appeal Office (AAO) decisions show that there is a willingness to allow petitioners to utilize the depreciation in cases where they did not have sufficient taxable income, net assets, or payroll records to prove that it can pay the proffered wages.

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<sup>19</sup> Romulo E. Guevara, *Strengthening I-140 Financial Ability Evidence in the Dawn of Denials Without RFEs* (2004) (emphasis added), available at <http://www.ilw.com/articles/2005,0118-guevara.shtm>.

In *In re Matter of [Name Redacted]*,<sup>20</sup> the petitioner showed a loss of \$21,710. USCIS denied the petition and ruled that the petitioner failed to show that it had the ability to pay the proffered wage of \$25,000. On appeal, the AAO reviewed the petitioner's tax returns and noted that the depreciation, tax on hand at year end, and taxable income totaled over \$30,000. This amount exceeded the proffered wage, and the AAO approved the petition.

In *In re Matter of [Name Redacted]*,<sup>21</sup> USCIS denied the petition and ruled that the business income was \$484. The proffered annual wage was \$25,000. The AAO added back the depreciation to the petitioner's income for a total income of \$50,965.00 and reversed the denial.

In *In re Matter of [Name Redacted]*,<sup>22</sup> the AAO added taxable income, depreciation, and cash on hand at the end of the year. The AAU found that the petitioner had the ability to pay the proffered annual wage. The AAO's decision was significant because the original denial was predicated on the fact that the petitioner's liabilities exceeded its assets, despite the petitioner's ability to show a sufficient sum between profit, depreciation, and year-end cash balance.

These administrative rulings are bolstered by the requirement enunciated in *Chi-Feng Chang v. Thornburgh*<sup>23</sup> and *In re Matter of [Name Redacted]*<sup>24</sup> that it is the petitioner's burden to establish that any deduction on the tax returns was not an actual expense to the enterprise during the time period covered by the document, and that the deduction represents actually available funds. The full analysis of the tax returns may establish that the depreciation deduction was not an actual cash expense to the business and that it represents available funds to meet the ability to pay the proffered wage.

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<sup>20</sup> *Matter of [Name Redacted]*, EAC-03-091-51137 (AAO Sept. 22, 2005), available at [http://www.uscis.gov/err/B6%20-%20Skilled%20Workers,%20Professionals,%20and%20Other%20Workers/Decisions\\_Issued\\_in\\_2005/SEP222005\\_01B6203.pdf](http://www.uscis.gov/err/B6%20-%20Skilled%20Workers,%20Professionals,%20and%20Other%20Workers/Decisions_Issued_in_2005/SEP222005_01B6203.pdf).

<sup>21</sup> *Matter of [Name Redacted]*, EAC-01-018-50419 (AAO May 13, 2002).

<sup>22</sup> *Matter of [Name Redacted]*, EAC-02-103-53128 (AAO Jan. 10, 2003).

<sup>23</sup> *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989).

<sup>24</sup> *Matter of [Name Redacted]*, A-96-322-294 (AAO Apr. 7, 2004).

### Allowing the Use of Alternative Accounting Methods for Ability-to-Pay/Yates Memo Testing Purposes

Under the Yates memo, acceptable evidence includes financial statements and tax returns, among other lesser documents. Financial statements and tax returns can both be prepared using the cash basis of accounting, or the accrual basis of accounting. The decision on which method to use for either financial statements or tax returns rests with the petitioner.

I would argue that since the current method of testing is, out of necessity, a proxy method, and since each petitioner has free election to select its basis of accounting to best serve the petitioner's profits, cash flow, and tax burden, petitioners should be allowed to calculate their ability to pay using whichever method of accounting that provides the most favorable result. The mission here is to determine ability to pay for I-140 purposes, not the fair application of the Internal Revenue Code. If the matter at hand was the fair application of the Code, I would be the first to agree that once a taxpayer elected a certain method of accounting for tax purposes, that method should be used consistently ongoing.

But testing for ability to pay is not about the fair application of the Code. I will presume that all parties to this issue will agree, for differing reasons, that the current methodology of ability-to-pay testing is not perfect. As demonstrated in the example of a petitioner's financial statements for two years, prepared under both the accrual and the cash basis of accounting,<sup>25</sup> it is possible to pass all three Yates memo tests and have little to no cash, while in the next year fail all three tests and have plenty of cash. The clash of the Yates memo tests, when confronted with two different methods of accounting, shows a certain unfairness in the proxy. So in all fairness, why should two petitioners receive differing treatment just because they filed a financial statement or tax return using one method versus the other method when the matter at hand is a proxy approach to a fairly intangible problem, and not the application of tax law?

This alternative method argument comes within proximity of a couple of other arguments made by authors Ronald Y. Wada and A. James Vázquez-Azpiri. In their article, they discuss the background behind the issuance of the Yates memo, the memo's purpose and guideline being to reduce unnecessary requests for evidence and reduce the backlog of cases at that time:

“Hybrid” combinations of these tests, while not specifically authorized in the Yates ATP

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<sup>25</sup> See *infra* **Appendix B**, Exhibit VI(1).

Memo, seem to be reasonable extensions of the authorized tests, as follows:

*Mix and Match* — The Yates ATP Memo does not specifically endorse applying different tests for different years (e.g., Actual Payment Test for year 1, Net Current Assets Test for year 2, and Net Income Test for year 3); however, such a mix would not violate the spirit or intent of either the regulation or the Yates ATP Memo, so it appears to be a valid strategy.

*Combining Actual Payment and either Net Income or Net Current Assets in a single year* — The Yates ATP Memo does not specifically endorse adding a petitioner's net income or net current assets to a beneficiary's actual paid salary to arrive at a demonstration of ability to pay (e.g., beneficiary took a pay cut during one year and was paid less than the proffered wage, but the petitioner's financials show sufficient funds to cover the difference); however, such a combination would not violate the spirit or intent of the regulation or the Yates ATP Memo, and as of this writing has been specifically endorsed by the Nebraska Service Center, so it appears to be an acceptable approach for reducing the petitioner's burden under the standard of tests.<sup>26</sup>

Wada and Vázquez-Azpiri's advocacy of allowing "Mix and Match" is corroborative of my argument to allow petitioners use of alternative accounting methods.

My own experience is that USCIS has on several occasions accepted my arguments regarding the use of alternative accounting methods in calculating a Yates memo test in addressing a request for evidence or in rebutting a denial.

Regarding their final paragraph cited above, the SOP referenced herein explicitly cites their suggestion as policy:

Beneficiary's Salary Can Be Deducted from the Proffered Wage to Determine the Ability to Pay

If the record contains credible documentary evidence that the petitioner has paid the beneficiary in the year of filing, then his or her salary can be deducted from the proffered wage in order to establish the petitioner's ability to pay the proffered wage.

<sup>26</sup> Ronald Y. Wada & A. James Vázquez-Azpiri, *Proving Ability to Pay: Working with the Yates Ability-to-Pay Memo*, 11 Bender's Immigr. Bull. 753, 756 (Jul. 15, 2006).

The following table describes when the petitioner may be able to establish eligibility based on the income statement or the balance sheet when the organization has already paid a portion of the beneficiary's salary in the year of filing:

If the difference between the salary paid and the proffered wage is . . .	Then the ability to pay is . . .
= or < the net income or taxable income	Established
<input type="checkbox"/> the net income	Not established
= or < the net current assets	Established
<input type="checkbox"/> the net current assets	Not established

I would propose that petitioners be able to calculate the net-income and net-current-assets tests by using whichever method of accounting that favors them most, as an accommodation to the "imperfection" of the proxy method.

**Sole Proprietorship Petitioners: An Appeal for a Broader Scope of Measurement**

Two of the most interesting and challenging cases I have worked on both happened to be situations where the petitioner, a sole proprietor, was denied ability-to-pay status due to the Yates memo tests' strict application, in spite of demonstrable and significant net worth (between \$100,000 and over \$1 million). In both cases the annual proffered wage was less than \$20,000.

Regarding an individual as a petitioner, a particular phrase is often cited: "[A] sole proprietorship does not exist as an entity apart from the individual owner. Therefore the sole proprietor's adjusted gross income, assets[,] and personal liabilities are also considered as part of the petitioner's ability to pay."<sup>27</sup> Under the technical GAAP accounting literature, the traditional concepts of current assets, current liabilities, net current assets, and operating cycle are effectively disregarded when addressing accounting for individuals (sole proprietors). The terms current assets, current liabilities, and net current assets are terms of art unique to the accounting profession. A commonly understood definition of current assets is provided by

<sup>27</sup> See, e.g., Matter of [Name Redacted], LIN-07-155-50881, 2010 Immig. Rptr 9282 (USCIS AAO Apr. 13, 2010), also available at [http://www.uscis.gov/err/B6%20-%20Skilled%20Workers,%20Professionals,%20and%20Other%20Workers/Decisions\\_Issued\\_in\\_2010/Apr132010\\_05B6203.pdf](http://www.uscis.gov/err/B6%20-%20Skilled%20Workers,%20Professionals,%20and%20Other%20Workers/Decisions_Issued_in_2010/Apr132010_05B6203.pdf)



PPC's *Guide to GAAP* which states that "current assets" are "cash and those assets that are reasonably expected to be realized in cash or sold or consumed within one year or within a business's normal operating cycle if it is longer. . . . For some businesses, however, such as shipbuilders, distillers, logging companies, and others with extended production processes, the operating cycle may be longer than one year."<sup>28</sup> This definition considers the fact that the time period to be used for determining whether a particular asset should be considered "current" or "non-current" is not solely based on the 365-day concept but on common sense and reasonable practicality as applied to the business or entity at hand.

Likewise, in the American Institute of Certified Public Accountants' (AICPA) *Accounting Research Bulletin No. 43*, the analysis of net current assets states: "Accordingly, the views expressed in this section represent a departure from any narrow definition or strict *one year* interpretation of either current assets or current liabilities; the objective is to relate the criteria developed to the operating cycle of a business."<sup>29</sup> Again, this pronouncement considers the fact that the time period to be used for determining whether a particular asset should be considered "current" or "non-current" is not solely based on the 365-day concept. Note also that the "operating" or "business" cycle is mentioned again.

With regard to the application of the concept of "current assets" to the financial statements of a sole proprietor or individual, AICPA's *Statement of Position 82-1 (SOP 82-1)* is the technical accounting industry guide on financial reporting for individuals.<sup>30</sup> SOP 82-1 establishes several rules for accounting for individuals that are a departure from the accounting rules applied to "non-individuals," such as corporations, LLCs, partnerships, joint ventures, and the like. Germane to this discussion, the noteworthy accounting rules departures applicable to individuals are two. The first departure is that financial statements for individuals are prepared on a "fair market value" basis as opposed to a "historical cost" basis. The second departure is that "[t]he SOP recommends that assets and liabilities be shown in order of liquidity and maturity. Classification as "current" and "non-current" is not appropriate because an individual's financial affairs do not usually involve an operating cycle."

I am aware of the intent of not only the "currently paying the proffered wage" test and the net-income test, but also of the intent of the net-current-assets test as described in the Yates memo. The intent is to demonstrate that the petitioner can actually pay the proffered wage, with cash—such cash obtained from existing assets and/or operations.

If the technical accounting concept of net current assets is to be used as an absolute measurement, in and of itself, of ability to pay, instead of being used as just a "device for measuring" ability to pay, then the purpose in the preceding paragraphs was to demonstrate that the technical literature on the specific concept of "current" is not absolutely associated with 365 days in each and every case. If the petitioner is an individual and other rules of measurement for individuals are to be applied such as "a sole proprietorship does not exist as an entity apart from the individual owner [and] [t]herefore the sole proprietor's adjusted gross income, assets[,] and personal liabilities are also considered as part of the petitioners ability to pay," then the technical accounting rules determining current vs. non-current assets, and the resultant "net current assets" threshold should not be strictly applied to this case. Rather, a "liquidity" test approach would be a better measurement in this sole proprietorship case than the "net current assets" test approach because the latter was designed for entities with an operating cycle, not individuals.

In wrapping up my arguments in the case of the sole proprietorship-petitioner with a beneficiary who was a nurse to the family patriarch, I summarized:

I am reminded of the supposed theological debate as to "How many angels can dance on the head of a pin?" In the end, if the question is "Do the assets in the [XX Family Trust] technically qualify as 'current assets' and therefore does the petitioner pass the "net current assets" test as described in the Yates memo?", understanding that the technical accounting literature does not apply the concept of "current" to the financial affairs of an individual, I contend that the assets in the [XX Family Trust] qualify as "current" under the current technical literature and that the petitioner does meet the "net current assets" test.

If the question is "Can this petitioner pay the proffered wage during the period under consideration?", then in my references above I have shown that the technical accounting literature does allow for flexibility in the definition of "current" and does not even consider the concept of "current" as being applicable to individuals when preparing their

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<sup>28</sup> Stephen W. Lindsey et. al., *PPC's Guide to GAAP* 5.201 (14th ed. 2008).

<sup>29</sup> AICPA, *Accounting Research Bulletin No. 43*, at 11 (1953).

<sup>30</sup> AICPA, *Industry Audit Guide* app. e (1982).

financial statements. Thus, we are left with the practical question of the petitioner's brute outright capacity to pay the proffered wage during the period April 25, 2001, through December 31, 2007, in cash, with such cash being immediately available in the form of the highly liquid assets in the (XX Family Trust). It is my professional opinion that the petitioner did have that ability."

In the second sole proprietorship case to which I referred above, I appealed to the "broader scope of measuring ATP" as follows:

At this point, I would like to address other financial considerations applicable in this particular case which are outside the limited and specific scope of the three Yates [m]emo tests, but nonetheless have a direct and significant impact on my analysis of this petitioner's ability to pay an annual proffered wage of \$18,096.

In this particular case, we had a sole proprietor who, in 2004 [and] 2005, had the following financial attributes:

- a net worth far in excess of one million dollars[;]
- owned his home[;]
- owned the building in which he operated his law practice[;]
- had prepaid advertising and property taxes in order to accelerate his deductions which were completely discretionary disbursements of cash for purposes of reducing his tax liabilities[;]
- had credit worthiness such that his bank extended to him lines of credit of \$650,000 and \$800,000[,] respectively[;]
- his total cash balances per his bank statements at [December 31, 2004, and December 31, 2005,] were \$649,998 & \$732,688[,] respectively . . . [;]
- had year-end accounts receivable from clients in the amounts of \$272,742 and \$326,812[,] respectively[;]
- had made discretionary contributions to his tax-deductible retirement account of \$21,200 and 22,400 . . . [;]
- had [adjusted gross income] for tax years 2006, 2007[,] [and] 2008 of \$381,139, \$454,275[,] and \$419,397[,] respectively[;] [and]
- during 2006, his cash flow was such that he reduced his total debt from \$3,906,980[,] as of [December 31, 2005,] to \$3,084,159[,] as of [December 31, 2006], much of which was completely discretionary reduction. This is a reduction of both short and long-term debt of \$822,821 . . . .

Finally, in the forming of my professional opinion as to the ability of this petitioner to have paid the proffered wage of \$18,096 in each year 2004 and 2005, I considered not only the ability of this petitioner to pay the proffered wage and demonstrate such, but I have considered likewise, given all the facts and circumstances presented to me by the petitioner, whether I could fairly use the facts and circumstances of this particular petitioner and credibly form an argument (supported by fair application of accounting rules and tax law, the nuances of cash flow, the effects of prepaid deductions, access to cash via lines of credit, ownership of substantial pieces of real estate and a significant net worth) which demonstrates that this petitioner [*did not*] have the ability to pay an annual proffered wage of \$18,096 in each year 2004 and 2005. I find that, in the reverse, I cannot form a substantiated professional opinion that this petitioner did not have the ability to pay the proffered wage.

I think that in sole proprietorship cases, a modification to the strict adherence to the Yates memo tests to accommodate a broader definition of ability to pay would not lessen the intent nor the effect of the applicable immigration laws, and would make application of the law more fair to all parties—the petitioner, the beneficiary, and USCIS.

### Large Scale Petitioners

8 C.F.R. § 204.5(g)(2) states: "In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage."<sup>31</sup> With the recent fiascos of Enron, WorldCom, and the like, why should a 100-or more-employees petitioner be given this latitude to dispense with meeting any legitimate testing of its ability to pay?

<sup>31</sup> 8 C.F.R. § 204.5(g)(2).

I contend that the 100-employees-or-more rule dispensing with proving up ability to pay is arbitrary. Is it because the larger petitioner has access to shareholder contributions, ready lending from creditors in the marketplace, “too big to fail,” momentum, or the ability to “squeeze out” \$50,000 for a proffered wage? Why is this any different, or even more likely, than a petitioner’s position that has less than 100 employees? What are the powers possessed by the one-hundredth employee that the previous ninety-nine employees collectively lack?

Also, what are the comparisons, in terms of possessing the ability to pay, of entities in different industries? For example, what is the true financial wherewithal of a Dallas, Texas firm of 101 CPAs working in a leased office, using leased office furniture and equipment, with no tangible, salable property as compared to a 5-member limited liability company in Midland, Texas, with thousands of undeveloped acres under lease, and 57 producing oil wells with related equipment? If none of the CPAs showed for work, there would be no revenue. But if the 5 LLC members were absent for months, the oil wells would just keep pumping 24 hours a day and continue to produce revenue.

I pose this comparison to illustrate what I believe to be the arbitrary, and not necessarily accurate nor warranted, presumptions inherent in the 100-employees-or-more rule. What would be the end result if the same attributes ascribed to large petitioners, whatever they are, were ascribed equally to smaller petitioners?

From my work with small-business clients, if USCIS would ascribe whatever qualities it believes to be inherent in petitioners with 100 or more employees to the petitioners with less than 100 employees, I estimate that many of the smaller petitioners could be just as able to demonstrate the ability to pay as would the larger petitioners. In 95% of the cases I have worked on, the petitioners are dealing with only one beneficiary. And, in almost all of those cases, the proffered wage is typically below \$100,000. For many smaller petitioners to bridge a gap in the ability-to-pay calculation would not be out of reach much of the time if only the petitioner could be allowed to assert its access to cash via shareholder assets, available lines of credit, and the like. Small businesses, relatively speaking, can be quite flexible in arranging access to cash. They are able to move quickly and make fast changes whereas large companies are akin to oil tankers—they take a while to turn.

I would recommend that either the less-than-100-employees petitioners be given credit for the same powers the 100-or more-employees petitioners are assumed to have (if the less-than-100-employee

petitioner truly does have the same relative capabilities), or that the 100-or-more-employees petitioners must prove up their ability to pay the as less-than-100-employees petitioners, in the interest of fairness.

I wonder what American Airline’s net income and net current assets looked like just before it filed bankruptcy in November 2011?

### **Suggested Changes to I-140 SOP Language**

In my research for this paper, I discovered some inaccuracies in the USCIS I-140 Standard Operating Procedure. In regard to evidence to prove ability to pay, the Standard Operating Procedure states:

#### Tax Year Cannot be Changed without IRS Permission

*An organization cannot change its year for tax purposes without permission from the IRS. Tax returns for consecutive years that have different reporting years may be an indication that the documents are fraudulent.*

In addition, the ending balances on the balance sheet for one year should match the beginning balances for the next year.<sup>32</sup>

While the change of a taxpayer’s end-of-year for tax-reporting purposes is generally quite restricted, there are a few instances where such a change can in fact occur without affirmative, overt permission being required from the IRS. Below is a citation referring to the details of where to find information related to “automatic” year-end changes:

Automatic approval. An adoption, change, or retention of annual accounting period that is permitted to be made pursuant to a provision of the Code or regulations or a published automatic approval. Before submitting an application pursuant to this revenue procedure, taxpayers are encouraged to review the automatic approval procedures referenced in [Revenue Procedure 2002-39] § 1.442-1 and the following revenue procedures: Rev. Proc. 2002-37 (for corporations); Rev. Proc. 2002-38 (for partnerships, S corporations, electing S corporations, and PSCs); Rev. Proc. 66-50, as modified by Rev. Proc. 81-40 . . . (for individuals); Rev. Proc. 85-58 . . . and Rev. Proc. 76-10, . . . as modified by Rev. Proc. 79-3 (for exempt organizations); Rev. Proc. 82-27 . . . (for employee retirement plans and employee

<sup>32</sup> U.S. Citizenship and Immigration Servs., Dep’t of Homeland Sec., I-140 Immigrant Petition for Alien Worker Standard Operating Procedure, p. 119 (emphasis added).

trusts); and Rev. Proc. 85-15 . . . (for changes to comply with [I.R.C.] § 441(g)).<sup>33</sup>

The SOP also states:

There are a variety of methods for keeping track of accounting data and presenting financial information. The two most commonly used are the cash-basis and accrual methods.

The cash-basis method of accounting is the recognition of:

- Revenue when it is received, and;
- Liabilities/Expenses when they are due.

This accounting method is not recommended for accounting purposes because both revenues and expenses can be understated.<sup>34</sup>

I agree with the concluding statement that “both revenues and expenses can be understated.” However, both revenues and expenses can also be *overstated* under the cash-basis method.

Let's first define “understated” and “overstated.” “Understated” or “overstated” relative to what? Basically, relative to “accrual-basis” accounting.

Accrual-basis accounting seeks to associate economic transactions with the time period in which the obligation to receive revenue or pay an expense is directly associated. For example, Petitioner sells a widget to Customer on December 27, 2009, on credit for \$10,000. Customer does not actually pay Petitioner until sometime in 2010, but Petitioner records the sale in 2009 when the transaction that obligated Customer to pay actually occurred. Likewise with Petitioner's expenses. On December 28, 2009, Petitioner receives the utility invoice for the period ending December 20, 2009. Petitioner is obligated to pay that invoice, but will not actually pay it until sometime in 2010. However, in keeping with associating the expense with the period in which the obligation for the debt arose, Petitioner will record the expense in 2009 when the transaction that obligated it to pay the utility invoice arose, even though actual payment will not occur by the petitioner to the utility company until sometime in 2010.

For a cash-basis taxpayer who recognizes revenue when the cash is received in-hand, and recognizes

expenses when cash is disbursed out-of-pocket, under a strict line of logic, it is impossible to overstate or understate revenues and expenses, according to that “basis of accounting.” This is because cash-basis revenues and cash-basis expenses are tied directly to the movement of cash either in or out of the taxpayer's control within the tax year.

However, I do believe that what abuses are alluded to in the Standard Operating Procedure definition refers to the ebb and flow of revenues and expenses as reported under the cash basis of accounting, due to the natural timing of customer/vendor cash payments. (As for reference to more egregious and intentional abuses of accounting, as Enron and WorldCom have shown us, whether cash basis or accrual basis, abuses can be found in both methods.)

For cash-basis taxpayers, end-of-year often sees 1) an above-average payment on accounts receivable from customers to sellers so that the payers can take their deductions before year end, and 2) above-average payments on expenses by buyers to likewise take advantage of deductions before year end by actually paying. Without any manipulation on either the seller's or buyer's side, it is inherent that revenues and/or expenses will not be the same as those reported under the accrual-basis method of accounting.

It would be possible to further skew cash-basis revenues. This could be done by intentionally withholding the mailing of invoices to customers until very late in the year so that the cash payments by customers will fall in the following year. Another possibility is to increase current year cash-basis revenues with a concerted accounts-receivable collections effort just prior to year end. Likewise with expenses, a concerted and intentional timing of payments to vendors for items that are deductible either before year end or after year end can make a substantial difference in reported expenses.

If accrual-basis accounting is fully and properly implemented, this “over(under)-statement” issue ceases to exist. The cash basis of accounting, by the recognition of revenue and expense untethered to the time period in which they arose, gives rise to the opportunity to overstate or understate net income as compared to the accrual basis of accounting

With this explanation of cash basis versus accrual basis of accounting, the more appropriate wording of the Standard Operating Procedure previously quoted would be:

The cash-basis method of accounting is the recognition of:

- Revenue when it is received, and;
- Expenses when they *are paid*.

<sup>33</sup> Rev. Proc. 2002-39 § 3.02(1), 2002-22 I.R.B. 1046, 1049.

<sup>34</sup> U.S. Citizenship and Immigration Servs., Dep't of Homeland Sec., I-140 Immigrant Petition for Alien Worker Standard Operating Procedure, p. 115.

This accounting method is not recommended for accounting purposes because both revenues and expenses can *be understated or overstated*.<sup>35</sup>

### Planning Tips for Petitioners

I am surprised at how often petitioners find themselves in position to fail all three Yates memo tests. One does not accidentally become a petitioner. It takes an overt act to become a petitioner, and thus petitioners have cause to be forewarned. I hear an earful from petitioners who are nonplussed at the box they find themselves in when trying to overcome a denial letter due to failing to meet any one of the three Yates memo tests. This occurs especially when the beneficiary has been on the payroll for several years and the problematic year is three years back. The petitioner, three years later, is still in business, and the beneficiary has been there during that time as well. "So what is the problem?", I often hear from exasperated petitioners.

Apparently there is room for improvement by immigration attorneys in communicating to petitioners their upcoming and continuing obligations to meet at least one of these three tests. Knowing far in advance that the petitioner must meet the Yates memo tests, and having much time available in advance with which to manage the petitioner's operations and resultant financial outputs (W-2, net taxable income, and net current assets) to prepare to pass those tests, I suspect that most petitioners who truly have the ability to pay can manage their affairs to easily establish the ability to pay. Those who cannot may well genuinely be lacking that wherewithal if they cannot manage their affairs to meet at least one of the tests.

As most petitioners I have seen are the smaller entities—less than 100 employees—and almost all have only one beneficiary, it appears to me that most petitioners could successfully navigate their way to meeting at least one of the three tests if made acutely aware. Planning tips could include, but are not limited to:

1. Paying the Proffered Wage Test. The petitioner must make certain that the W-2 is at or above the proffered wage. If cash is limited to meet the proffered wage, then with planning the petitioner can: 1) contribute or loan cash to the entity to provide sufficient funds, 2) borrow cash from other lenders, 3) withhold payments to vendors to provide the needed cash, and/or
- d) push customers to pay their accounts receivable earlier.
2. Net-Income Test. The petitioner must make management decisions in operations that will manage the net income to meet the test. Options include accelerating revenue or minimizing expenses late in the year, making alternative decisions regarding tax elections available that accelerate expense recognition. For example, it is not mandatory to elect to take the Section 179 deduction on any or all fixed-asset purchases during the tax year. So whereas in the interest of reducing net taxable income a petitioner would ordinarily take this accelerated deduction, the petitioner may limit its use of this deduction to keep net taxable income at a targeted level. Techniques used here would vary depending on whether the petitioner is an accrual-basis versus cash-basis taxpayer.
3. Net-Current-Assets Test. Net current assets balances can be managed upward, if needed, at year end through withholding payments on long-term debt, having cash injected into the entity by way of capital contributions or long-term loans from owners, long-term loans from non-owners, focusing on sales to customers at year end (accrual-basis technique), and delaying actual payments of expenses until after year end (cash-basis technique).

It must be noted that the decision over which of the three tests is the best one for a particular petitioner to manage is unique to each petitioner's situation at the end of each period. This is due to the petitioner having to consider which Yates memo test will cause the least disruption to the decisions that would have been made absent the need to plan ahead to meet a particular Yates memo test. For example, increasing the beneficiary's W-2 wage upward will have a negative effect on net taxable income and net current assets because the salary expense will have to be increased and the cash balance will have to be decreased. Likewise, the decision for each petitioner will vary depending on whether that petitioner is a cash-basis versus accrual-basis entity.

### Income Statement vs. Balance Sheet—What's the Difference?

In my dealings with clients, and based on the questions I have received from immigration attorneys at various seminars, the understanding of financial statements—the income statement and the balance sheet—and what they are intended to convey is limited. Let me be the first to admit that understanding financial statements is a real and difficult thing for anyone to grasp.

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<sup>35</sup> See U.S. Citizenship and Immigration Servs., Dep't of Homeland Sec., I-140 Immigrant Petition for Alien Worker Standard Operating Procedure, p. 115.

In my mind, I see each statement in separate terms. I see the balance sheet as a “still-life photograph,” and I see the income statement as a “moving picture” or video. Reducing the analogy to a very personal level for purposes of explanation and communication, the balance sheet is a listing of assets, liabilities, and equity *as of a particular date in time*:

Assets: the “stuff” you own (your home and Ferrari)

Liabilities: how much of that “stuff” is owned by creditors, due to your debt (the mortgage on your home and the note payable on the Ferrari)

Equity: how much of “your stuff you own” that is free and clear to you after the lenders have taken their stake in the property (equity in your home and Ferrari)

It is important to note that the balance sheet is a listing of assets, liabilities, and equity at a single, specific point in time (December 31, 2011), and not for a *period* of time (January 1, 2011–December 31, 2011) as does the income statement.

For example, you bought your home for \$300,000 with \$100,000 down and a mortgage payable on it of \$200,000. You bought your Ferrari for \$125,000, paying \$50,000 cash down with a note payable for the remaining \$75,000. Your total assets (stuff you own) are booked at \$425,000 (\$300,000 for the home and \$125,000 for the Ferrari). Your total debt is \$275,000 (\$200,000 mortgage plus \$75,000 note payable on the Ferrari). That leaves your balance sheet equity in your assets, after deducting the stake owned by the lenders of \$150,000 (\$100,000 equity in your home, and \$50,000 equity in your Ferrari).

This example, while greatly simplified, is the same thing as the balance sheet for any other entity. The balance sheet is a listing of assets owned as of a specific point in time, with a listing of the debt owed against those assets at that same point in time, and showing the resultant equity held by the petitioner at that same point in time after subtracting the debt owed to others.

The income statement is more akin to a video since it details activities “over a period of time,” usually twelve months in I-140 cases. It shows, side-by-side, month-by-month the dollar amount of each item of revenue and expense. One can see the rise and fall over time of revenue, or salaries expense, utilities, and so on, culminating in a summation and netting of all those transactions over time into a single number called net income (or net loss).

As opposed to the static photograph of the balance sheet, the income statement is dynamic and shows

movement. By studying the balance sheet, the “financial condition” of the entity can be assessed as of that one date of the statement, usually December 31. But what cannot readily be determined is which way things are going. Is the entity on the way up, or down? To see this, the income statement is needed to reveal the movement over time of revenues, expenses, and the attendant net income or loss.

Those experienced in working with and reading financial statements can make these determinations with less or different information. But this discussion is a more elementary discussion to help those readers who are not accountants and CPAs gain a broader understanding of these two critical financial statements that we all must use—USCIS, attorney, petitioner and beneficiary alike—in order to work our way together through these I-140 cases.

### Summary of Recommendations

1. Issue revised testing guidelines to prevent the use of the Yates memo tests as the ability-to-pay test, as opposed to their intended use as informative tools to aid in measuring ability to pay;
2. Reduce or eliminate the requirement for audited financial statements;
3. Use beginning-of-year net current assets as opposed to end-of-year net current assets;
4. Allow consideration of income and loss items on pages 2–4 of S-corporation and partnership returns in calculating net income;
5. Allow the “add-back” of depreciation expense related to assets acquired in years prior to the year in question;
6. Allow petitioners to use either cash-basis or accrual-basis financial statements and tax returns when calculating the ability to pay;
7. In cases where the petitioner is a sole proprietor, modify policy so that strict application of the Yates memo tests is relaxed to consider the totality of the sole proprietor's assets and true ability to pay;
8. Consider the owners' net worth and capacity to contribute cash to the petitioner entity;
9. Consider the petitioner's ability to borrow (access to cash) from owners and non-owners;
10. Reassess the application of the 100-employees-or-more rule; and
11. Correct two USCIS Standard Operating Procedure language errors in the cash-basis rule.

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**Robert W. Alcorn**, MBA, CPA is an independent practitioner in Dallas, TX. He works extensively with immigration attorneys around Texas and the U.S. to resolve tax problems related to “ability to pay”, “lack of good moral character” and other non-citizen tax

issues. He is a frequent speaker at immigration CLE conferences on tax issues unique to non-citizens.

Mr. Alcorn was assisted by **Timothy J. Larsen**, J.D. 2012, St. Mary's University School of Law. B.S., University of Maryland.

**A Cash Flow-Based Analysis of Ability to Pay and the Yates Memo Tests Exhibits  
Exhibit I**

Comparison of Various Line Items of Income(Loss) Between  
C-Corporation and S-Corporation/Partnership Return Forms

	2011 Form 1120			2011 Form 1120S			2011 Form 1065		
	Schedule	Page	Line	Schedule	Page	Line	Schedule	Page	Line
Taxable Income		1	30						
Ordinary Business Income(Loss)					1	21		1	22
Gross Rents		1	6						
Net Rental Real Estate Income(Loss)				K	2	2	K	4	2
Interest Income		1	5	K	2	4	K	4	5
Dividend Income		1	4	K	2	5	K	4	6
Royalties		1	7	K	2	6	K	4	7
Net Short-Term Capital Gain(Loss)		1	8	K	2	7	K	4	8
Net Long-Term Capital Gain(Loss)		1	8	K	2	8	K	4	9a
Net Section 1231 Gain(Loss)		1	9	K	2	9	K	4	10
Section 179 Deduction		1	20	K	3	11	K	4	12
Charitable Contributions		1	19	K	3	12a	K	4	13a



EXHIBIT II

Form 1120

Department of the Treasury Internal Revenue Service

U.S. Corporation Income Tax Return

For calendar year 2011 or tax year beginning 2011, ending 2011

OMB No. 1545-0123

2011

See separate instructions.

A Check if: 1a Consolidated return, 1b Life/nonlife consolidated return, 2 Personal holding co., 3 Personal service corp., 4 Schedule M-3 attached. B Employer identification number, C Date incorporated, D Total assets. E Check if: (1) Initial return, (2) Final return, (3) Name change, (4) Address change.

Income section table with rows 1a-11. Includes Merchant card and third-party payments, Gross receipts or sales, Total, Returns and allowances, Subtract line 1d from line 1c, Cost of goods sold, Gross profit, Dividends, Interest, Gross rents, Gross royalties, Capital gain net income, Net gain or (loss), Other income, Total income.

Deductions section table with rows 12-29c. Includes Compensation of officers, Salaries and wages, Repairs and maintenance, Bad debts, Rents, Taxes and licenses, Interest, Charitable contributions, Depreciation, Depletion, Advertising, Pension, profit-sharing, Employee benefit programs, Domestic production activities deduction, Other deductions, Total deductions, Taxable income before net operating loss deduction, Net operating loss deduction, Special deductions, Add lines 29a and 29b.

Tax, Refundable Credits, and Payments section table with rows 30-36. Includes Taxable income, Total tax, Total payments and refundable credits, Estimated tax penalty, Amount owed, Overpayment, Enter amount from line 35 you want: Credited to 2012 estimated tax, Refunded.

Sign Here section with signature line, date, title, and a box for 'May the IRS discuss this return with the preparer shown below (see instructions)? Yes No'.

Paid Preparer Use Only section with fields for Print/Type preparer's name, Preparer's signature, Date, Check if self-employed, PTIN, Firm's name, Firm's EIN, Firm's address, Phone no.

Form **1120S**  
Department of the Treasury  
Internal Revenue Service

**U.S. Income Tax Return for an S Corporation**

OMB No. 1545-0130

▶ Do not file this form unless the corporation has filed or is attaching Form 2553 to elect to be an S corporation.  
▶ See separate instructions.

**2011**

For calendar year 2011 or tax year beginning \_\_\_\_\_, 2011, ending \_\_\_\_\_, 20

<b>A</b> S election effective date	<b>TYPE OR PRINT</b>	Name	<b>D</b> Employer identification number
<b>B</b> Business activity code number (see instructions)		Number, street, and room or suite no. If a P.O. box, see instructions.	<b>E</b> Date incorporated
<b>C</b> Check if Sch. M-3 attached <input type="checkbox"/>		City or town, state, and ZIP code	<b>F</b> Total assets (see instructions) \$

**G** Is the corporation electing to be an S corporation beginning with this tax year?  Yes  No If "Yes," attach Form 2553 if not already filed

**H** Check if: (1)  Final return (2)  Name change (3)  Address change (4)  Amended return (5)  S election termination or revocation

**I** Enter the number of shareholders who were shareholders during any part of the tax year . . . . . ▶

**Caution.** Include **only** trade or business income and expenses on lines 1a through 21. See the instructions for more information.

<b>Income</b>	<b>1 a</b> Merchant card and third-party payments. For 2011, enter -0- . . . . .	<b>1a</b>			
	<b>b</b> Gross receipts or sales not reported on line 1a (see instructions) . . . . .	<b>1b</b>			
	<b>c</b> Total. Add lines 1a and 1b . . . . .	<b>1c</b>			
	<b>d</b> Returns and allowances plus any other adjustments (see instructions)	<b>1d</b>			
	<b>e</b> Subtract line 1d from line 1c . . . . .	<b>1e</b>			
	<b>2</b> Cost of goods sold (attach Form 1125-A) . . . . .	<b>2</b>			
<b>3</b> Gross profit. Subtract line 2 from line 1e . . . . .	<b>3</b>				
<b>4</b> Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797) . . . . .	<b>4</b>				
<b>5</b> Other income (loss) (see instructions—attach statement) . . . . .	<b>5</b>				
<b>6</b> <b>Total income (loss).</b> Add lines 3 through 5 . . . . . ▶	<b>6</b>				
<b>Deductions</b> (see instructions for limitations)	<b>7</b> Compensation of officers . . . . .	<b>7</b>			
	<b>8</b> Salaries and wages (less employment credits) . . . . .	<b>8</b>			
	<b>9</b> Repairs and maintenance . . . . .	<b>9</b>			
	<b>10</b> Bad debts . . . . .	<b>10</b>			
	<b>11</b> Rents . . . . .	<b>11</b>			
	<b>12</b> Taxes and licenses . . . . .	<b>12</b>			
	<b>13</b> Interest . . . . .	<b>13</b>			
	<b>14</b> Depreciation not claimed on Form 1125-A or elsewhere on return (attach Form 4562) . . . . .	<b>14</b>			
	<b>15</b> Depletion ( <b>Do not deduct oil and gas depletion.</b> ) . . . . .	<b>15</b>			
	<b>16</b> Advertising . . . . .	<b>16</b>			
	<b>17</b> Pension, profit-sharing, etc., plans . . . . .	<b>17</b>			
	<b>18</b> Employee benefit programs . . . . .	<b>18</b>			
	<b>19</b> Other deductions (attach statement) . . . . .	<b>19</b>			
	<b>20</b> <b>Total deductions.</b> Add lines 7 through 19 . . . . . ▶	<b>20</b>			
	<b>21</b> <b>Ordinary business income (loss).</b> Subtract line 20 from line 6 . . . . .	<b>21</b>			
<b>Tax and Payments</b>	<b>22a</b> Excess net passive income or LIFO recapture tax (see instructions) . . . . .	<b>22a</b>			
	<b>b</b> Tax from Schedule D (Form 1120S) . . . . .	<b>22b</b>			
	<b>c</b> Add lines 22a and 22b (see instructions for additional taxes) . . . . .	<b>22c</b>			
	<b>23a</b> 2011 estimated tax payments and 2010 overpayment credited to 2011 . . . . .	<b>23a</b>			
	<b>b</b> Tax deposited with Form 7004 . . . . .	<b>23b</b>			
	<b>c</b> Credit for federal tax paid on fuels (attach Form 4136) . . . . .	<b>23c</b>			
	<b>d</b> Add lines 23a through 23c . . . . .	<b>23d</b>			
	<b>24</b> Estimated tax penalty (see instructions). Check if Form 2220 is attached . . . . . ▶ <input type="checkbox"/>	<b>24</b>			
	<b>25</b> <b>Amount owed.</b> If line 23d is smaller than the total of lines 22c and 24, enter amount owed . . . . .	<b>25</b>			
	<b>26</b> <b>Overpayment.</b> If line 23d is larger than the total of lines 22c and 24, enter amount overpaid . . . . .	<b>26</b>			
<b>27</b> Enter amount from line 26 <b>Credited to 2012 estimated tax</b> ▶	<b>27</b>				
	<b>Refunded</b> ▶				

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

**Sign Here**

Signature of officer \_\_\_\_\_ Date \_\_\_\_\_ Title \_\_\_\_\_

May the IRS discuss this return with the preparer shown below (see instructions)?  Yes  No

<b>Paid Preparer Use Only</b>	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
	Firm's name ▶				Firm's EIN ▶
	Firm's address ▶				Phone no.

**EXHIBIT III (Cont'd)**

<b>Schedule B</b>	<b>Other Information</b> (see instructions)	<b>Yes</b>	<b>No</b>
<b>1</b>	Check accounting method: <b>a</b> <input type="checkbox"/> Cash <b>b</b> <input type="checkbox"/> Accrual <b>c</b> <input type="checkbox"/> Other (specify) ▶ _____		
<b>2</b>	See the instructions and enter the: <b>a</b> Business activity ▶ _____ <b>b</b> Product or service ▶ _____		
<b>3</b>	At the end of the tax year, did the corporation own, directly or indirectly, 50% or more of the voting stock of a domestic corporation? (For rules of attribution, see section 267(c).) If "Yes," attach a statement showing: <b>(a)</b> name and employer identification number (EIN), <b>(b)</b> percentage owned, and <b>(c)</b> if 100% owned, was a qualified subchapter S subsidiary election made? . . . . .		
<b>4</b>	Has this corporation filed, or is it required to file, <b>Form 8918</b> , Material Advisor Disclosure Statement, to provide information on any reportable transaction? . . . . .		
<b>5</b>	Check this box if the corporation issued publicly offered debt instruments with original issue discount . . . . . <input type="checkbox"/> If checked, the corporation may have to file <b>Form 8281</b> , Information Return for Publicly Offered Original Issue Discount Instruments.		
<b>6</b>	If the corporation: <b>(a)</b> was a C corporation before it elected to be an S corporation <b>or</b> the corporation acquired an asset with a basis determined by reference to the basis of the asset (or the basis of any other property) in the hands of a C corporation <b>and</b> <b>(b)</b> has net unrealized built-in gain in excess of the net recognized built-in gain from prior years, enter the net unrealized built-in gain reduced by net recognized built-in gain from prior years (see instructions) . . . . . ▶ \$ _____		
<b>7</b>	Enter the accumulated earnings and profits of the corporation at the end of the tax year. \$ _____		
<b>8</b>	Are the corporation's total receipts (see instructions) for the tax year <b>and</b> its total assets at the end of the tax year less than \$250,000? If "Yes," the corporation is not required to complete Schedules L and M-1 . . . . .		
<b>9</b>	During the tax year, was a qualified subchapter S subsidiary election terminated or revoked? If "Yes," see instructions . . . . .		
<b>10a</b>	Did the corporation make any payments in 2011 that would require it to file Form(s) 1099 (see instructions)? . . . . .		
<b>b</b>	If "Yes," did the corporation file or will it file all required Forms 1099? . . . . .		

<b>Schedule K</b>	<b>Shareholders' Pro Rata Share Items</b>	<b>Total amount</b>	
<b>Income (Loss)</b>	<b>1</b> Ordinary business income (loss) (page 1, line 21) . . . . .	<b>1</b>	
	<b>2</b> Net rental real estate income (loss) (attach Form 8825) . . . . .	<b>2</b>	
	<b>3a</b> Other gross rental income (loss) . . . . . <span style="float: right;"><b>3a</b></span>		
	<b>b</b> Expenses from other rental activities (attach statement) . . . . . <span style="float: right;"><b>3b</b></span>		
	<b>c</b> Other net rental income (loss). Subtract line 3b from line 3a . . . . . <span style="float: right;"><b>3c</b></span>		
	<b>4</b> Interest income . . . . . <span style="float: right;"><b>4</b></span>		
	<b>5</b> Dividends: <b>a</b> Ordinary dividends . . . . . <span style="float: right;"><b>5a</b></span> <b>b</b> Qualified dividends . . . . . <span style="float: right;"><b>5b</b></span>		
	<b>6</b> Royalties . . . . . <span style="float: right;"><b>6</b></span>		
	<b>7</b> Net short-term capital gain (loss) (attach Schedule D (Form 1120S)) . . . . . <span style="float: right;"><b>7</b></span>		
	<b>8a</b> Net long-term capital gain (loss) (attach Schedule D (Form 1120S)) . . . . . <span style="float: right;"><b>8a</b></span> <b>b</b> Collectibles (28%) gain (loss) . . . . . <span style="float: right;"><b>8b</b></span> <b>c</b> Unrecaptured section 1250 gain (attach statement) . . . . . <span style="float: right;"><b>8c</b></span>		
<b>9</b> Net section 1231 gain (loss) (attach Form 4797) . . . . . <span style="float: right;"><b>9</b></span>			
<b>10</b> Other income (loss) (see instructions) . . . Type ▶	<b>10</b>		

EXHIBIT III (cont'd)

		Shareholders' Pro Rata Share Items (continued)	Total amount	
<b>Deductions</b>	<b>11</b>	Section 179 deduction ( <i>attach Form 4562</i> ) . . . . .	<b>11</b>	
	<b>12a</b>	Contributions . . . . .	<b>12a</b>	
	<b>b</b>	Investment interest expense . . . . .	<b>12b</b>	
	<b>c</b>	Section 59(e)(2) expenditures <b>(1) Type ▶</b> _____ <b>(2) Amount ▶</b> _____	<b>12c(2)</b>	
	<b>d</b>	Other deductions ( <i>see instructions</i> ) . . . . . Type ▶ _____	<b>12d</b>	
<b>Credits</b>	<b>13a</b>	Low-income housing credit (section 42(j)(5)) . . . . .	<b>13a</b>	
	<b>b</b>	Low-income housing credit (other) . . . . .	<b>13b</b>	
	<b>c</b>	Qualified rehabilitation expenditures (rental real estate) ( <i>attach Form 3468</i> ) . . . . .	<b>13c</b>	
	<b>d</b>	Other rental real estate credits ( <i>see instructions</i> ) Type ▶ _____	<b>13d</b>	
	<b>e</b>	Other rental credits ( <i>see instructions</i> ) . . . . . Type ▶ _____	<b>13e</b>	
	<b>f</b>	Alcohol and cellulosic biofuel fuels credit ( <i>attach Form 6478</i> ) . . . . .	<b>13f</b>	
	<b>g</b>	Other credits ( <i>see instructions</i> ) . . . . . Type ▶ _____	<b>13g</b>	
<b>Foreign Transactions</b>	<b>14a</b>	Name of country or U.S. possession ▶ _____		
	<b>b</b>	Gross income from all sources . . . . .	<b>14b</b>	
	<b>c</b>	Gross income sourced at shareholder level . . . . . <i>Foreign gross income sourced at corporate level</i>	<b>14c</b>	
	<b>d</b>	Passive category . . . . .	<b>14d</b>	
	<b>e</b>	General category . . . . .	<b>14e</b>	
	<b>f</b>	Other ( <i>attach statement</i> ) . . . . . <i>Deductions allocated and apportioned at shareholder level</i>	<b>14f</b>	
	<b>g</b>	Interest expense . . . . .	<b>14g</b>	
	<b>h</b>	Other . . . . . <i>Deductions allocated and apportioned at corporate level to foreign source income</i>	<b>14h</b>	
	<b>i</b>	Passive category . . . . .	<b>14i</b>	
	<b>j</b>	General category . . . . .	<b>14j</b>	
	<b>k</b>	Other ( <i>attach statement</i> ) . . . . . <i>Other information</i>	<b>14k</b>	
	<b>l</b>	Total foreign taxes (check one): ▶ <input type="checkbox"/> Paid <input type="checkbox"/> Accrued . . . . .	<b>14l</b>	
	<b>m</b>	Reduction in taxes available for credit ( <i>attach statement</i> ) . . . . .	<b>14m</b>	
	<b>n</b>	Other foreign tax information ( <i>attach statement</i> )		
<b>Alternative Minimum Tax (AMT) Items</b>	<b>15a</b>	Post-1986 depreciation adjustment . . . . .	<b>15a</b>	
	<b>b</b>	Adjusted gain or loss . . . . .	<b>15b</b>	
	<b>c</b>	Depletion (other than oil and gas) . . . . .	<b>15c</b>	
	<b>d</b>	Oil, gas, and geothermal properties—gross income . . . . .	<b>15d</b>	
	<b>e</b>	Oil, gas, and geothermal properties—deductions . . . . .	<b>15e</b>	
	<b>f</b>	Other AMT items ( <i>attach statement</i> ) . . . . .	<b>15f</b>	
<b>Items Affecting Shareholder Basis</b>	<b>16a</b>	Tax-exempt interest income . . . . .	<b>16a</b>	
	<b>b</b>	Other tax-exempt income . . . . .	<b>16b</b>	
	<b>c</b>	Nondeductible expenses . . . . .	<b>16c</b>	
	<b>d</b>	Distributions ( <i>attach statement if required</i> ) ( <i>see instructions</i> ) . . . . .	<b>16d</b>	
	<b>e</b>	Repayment of loans from shareholders . . . . .	<b>16e</b>	
<b>Other Information</b>	<b>17a</b>	Investment income . . . . .	<b>17a</b>	
	<b>b</b>	Investment expenses . . . . .	<b>17b</b>	
	<b>c</b>	Dividend distributions paid from accumulated earnings and profits . . . . .	<b>17c</b>	
	<b>d</b>	Other items and amounts ( <i>attach statement</i> )		
<b>Reconciliation</b>	<b>18</b>	<b>Income/loss reconciliation.</b> Combine the amounts on lines 1 through 10 in the far right column. From the result, subtract the sum of the amounts on lines 11 through 12d and 14l	<b>18</b>	

EXHIBIT IV

Form **1065**  
Department of the Treasury  
Internal Revenue Service

**U.S. Return of Partnership Income**

For calendar year 2011, or tax year beginning \_\_\_\_\_, 2011, ending \_\_\_\_\_, 20\_\_\_\_\_

OMB No. 1545-0099

**2011**

▶ See separate instructions.

<b>A</b> Principal business activity	<b>Print or type.</b>	Name of partnership	<b>D</b> Employer identification number
<b>B</b> Principal product or service		Number, street, and room or suite no. If a P.O. box, see the instructions.	<b>E</b> Date business started
<b>C</b> Business code number		City or town, state, and ZIP code	<b>F</b> Total assets (see the instructions) \$ _____

- G** Check applicable boxes: (1)  Initial return (2)  Final return (3)  Name change (4)  Address change (5)  Amended return  
(6)  Technical termination - also check (1) or (2)
- H** Check accounting method: (1)  Cash (2)  Accrual (3)  Other (specify) ▶ \_\_\_\_\_
- I** Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year ▶ \_\_\_\_\_
- J** Check if Schedules C and M-3 are attached

**Caution.** Include **only** trade or business income and expenses on lines 1a through 22 below. See the instructions for more information.

<b>Income</b>	<b>1a</b> Merchant card and third-party payments (including amounts reported on Form(s) 1099-K). For 2011, enter -0- . . . . .	<b>1a</b>			
	<b>b</b> Gross receipts or sales not reported on line 1a (see instructions)	<b>1b</b>			
	<b>c</b> Total. Add lines 1a and 1b . . . . .	<b>1c</b>			
	<b>d</b> Returns and allowances plus any other adjustments to line 1a (see instructions) . . . . .	<b>1d</b>			
	<b>e</b> Subtract line 1d from line 1c . . . . .	<b>1e</b>			
	<b>2</b> Cost of goods sold (attach Form 1125-A) . . . . .	<b>2</b>			
	<b>3</b> Gross profit. Subtract line 2 from line 1e . . . . .	<b>3</b>			
	<b>4</b> Ordinary income (loss) from other partnerships, estates, and trusts (attach statement) . . . . .	<b>4</b>			
<b>5</b> Net farm profit (loss) (attach Schedule F (Form 1040)) . . . . .	<b>5</b>				
<b>6</b> Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797) . . . . .	<b>6</b>				
<b>7</b> Other income (loss) (attach statement) . . . . .	<b>7</b>				
<b>8</b> <b>Total income (loss).</b> Combine lines 3 through 7 . . . . .	<b>8</b>				
<b>Deductions</b> <small>(see the instructions for limitations)</small>	<b>9</b> Salaries and wages (other than to partners) (less employment credits) . . . . .	<b>9</b>			
	<b>10</b> Guaranteed payments to partners . . . . .	<b>10</b>			
	<b>11</b> Repairs and maintenance . . . . .	<b>11</b>			
	<b>12</b> Bad debts . . . . .	<b>12</b>			
	<b>13</b> Rent . . . . .	<b>13</b>			
	<b>14</b> Taxes and licenses . . . . .	<b>14</b>			
	<b>15</b> Interest . . . . .	<b>15</b>			
	<b>16a</b> Depreciation (if required, attach Form 4562) . . . . .	<b>16a</b>			
	<b>b</b> Less depreciation reported on Form 1125-A and elsewhere on return	<b>16b</b>			<b>16c</b>
	<b>17</b> Depletion ( <b>Do not deduct oil and gas depletion.</b> ) . . . . .	<b>17</b>			
	<b>18</b> Retirement plans, etc. . . . .	<b>18</b>			
	<b>19</b> Employee benefit programs . . . . .	<b>19</b>			
	<b>20</b> Other deductions (attach statement) . . . . .	<b>20</b>			
	<b>21</b> <b>Total deductions.</b> Add the amounts shown in the far right column for lines 9 through 20 . . . . .	<b>21</b>			
<b>22</b> <b>Ordinary business income (loss).</b> Subtract line 21 from line 8 . . . . .	<b>22</b>				

**Sign Here**

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than general partner or limited liability company member manager) is based on all information of which preparer has any knowledge.

▶ \_\_\_\_\_ ▶ \_\_\_\_\_  
Signature of general partner or limited liability company member manager Date

May the IRS discuss this return with the preparer shown below (see instructions)?  Yes  No

**Paid Preparer Use Only**

Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
Firm's name ▶	Firm's EIN ▶			
Firm's address ▶	Phone no.			

EXHIBIT IV (cont'd)

Schedule K		Partners' Distributive Share Items	Total amount	
Income (Loss)	1	Ordinary business income (loss) (page 1, line 22)	1	
	2	Net rental real estate income (loss) (attach Form 8825)	2	
	3a	Other gross rental income (loss)	3a	
	b	Expenses from other rental activities (attach statement)	3b	
	c	Other net rental income (loss). Subtract line 3b from line 3a	3c	
	4	Guaranteed payments	4	
	5	Interest income	5	
	6	Dividends: a Ordinary dividends	6a	
	b	Qualified dividends	6b	
	7	Royalties	7	
	8	Net short-term capital gain (loss) (attach Schedule D (Form 1065))	8	
9a	Net long-term capital gain (loss) (attach Schedule D (Form 1065))	9a		
b	Collectibles (28%) gain (loss)	9b		
c	Unrecaptured section 1250 gain (attach statement)	9c		
10	Net section 1231 gain (loss) (attach Form 4797)	10		
11	Other income (loss) (see instructions) Type ▶	11		
Deductions	12	Section 179 deduction (attach Form 4562)	12	
	13a	Contributions	13a	
	b	Investment interest expense	13b	
	c	Section 59(e)(2) expenditures: (1) Type ▶ (2) Amount ▶	13c(2)	
d	Other deductions (see instructions) Type ▶	13d		
Self-Employment	14a	Net earnings (loss) from self-employment	14a	
	b	Gross farming or fishing income	14b	
	c	Gross nonfarm income	14c	
Credits	15a	Low-income housing credit (section 42(j)(5))	15a	
	b	Low-income housing credit (other)	15b	
	c	Qualified rehabilitation expenditures (rental real estate) (attach Form 3468)	15c	
	d	Other rental real estate credits (see instructions) Type ▶	15d	
	e	Other rental credits (see instructions) Type ▶	15e	
	f	Other credits (see instructions) Type ▶	15f	
Foreign Transactions	16a	Name of country or U.S. possession ▶	16a	
	b	Gross income from all sources	16b	
	c	Gross income sourced at partner level	16c	
	d	Foreign gross income sourced at partnership level		
	e	Passive category ▶	e	
	f	General category ▶	f	
	g	Other ▶	g	
	h	Deductions allocated and apportioned at partner level	16h	
	i	Interest expense ▶	i	
j	Other ▶	j		
k	Deductions allocated and apportioned at partnership level to foreign source income			
l	Passive category ▶	16k		
m	General category ▶	16l		
n	Other ▶	16m		
l	Total foreign taxes (check one): ▶ Paid <input type="checkbox"/> Accrued <input type="checkbox"/>	16l		
m	Reduction in taxes available for credit (attach statement)	16m		
n	Other foreign tax information (attach statement)			
Alternative Minimum Tax (AMT) Items	17a	Post-1986 depreciation adjustment	17a	
	b	Adjusted gain or loss	17b	
	c	Depletion (other than oil and gas)	17c	
	d	Oil, gas, and geothermal properties—gross income	17d	
	e	Oil, gas, and geothermal properties—deductions	17e	
	f	Other AMT items (attach statement)	17f	
Other Information	18a	Tax-exempt interest income	18a	
	b	Other tax-exempt income	18b	
	c	Nondeductible expenses	18c	
	19a	Distributions of cash and marketable securities	19a	
	b	Distributions of other property	19b	
	20a	Investment income	20a	
	b	Investment expenses	20b	
c	Other items and amounts (attach statement)			

**Exhibit V**

Petitioner, Inc.

**Analysis of Cash Outlay vs. Depreciation Deduction**

Year		Actual Cost of Asset	Cash Paid at Purchase	Change in Cash Due to Purchase	Depreciable Life	Depreciation Deduction Allowed	Change in Cash Balance Compared to Current Year Depreciation Deduction
			(A)		(B)	(C)=(A)/(B)	
1	Buy Printing Press	\$100,000	\$100,000	(\$100,000)	5 yrs.	(\$20,000)	(\$80,000)
2				0	5 yrs.	(\$20,000)	\$20,000
3				0	5 yrs.	(\$20,000)	\$20,000
4				0	5 yrs.	(\$20,000)	\$20,000
5				0	5 yrs.	(\$20,000)	\$20,000
	Total at End of 5th Year		\$100,000	(\$100,000)		(\$100,000)	\$0

**Exhibit VI(1)**

Petitioner, Inc.

**Cash vs. Accrual Two-Year Yates Memo Test Analysis\***

Proffered Wage = \$50,000

	<b>2010 Cash Basis</b>	<b>Pass/Fail</b>	<b>See</b>		<b>2011 Cash Basis</b>	<b>Pass/Fail</b>	<b>See</b>
Proffered Wage Actually Paid	\$5,000	Fail	Ex. VI(2)		\$45,000	Pass**	Ex. VI(4)
Net Income	(\$165,000)	Fail	Ex. VI(2)		\$20,000	Pass**	Ex. VI(4)
Net Current Assets	(\$95,000)	Fail	Ex. VI(3)		(\$290,000)	Fail	Ex. VI(5)
Cash Balance	\$5,000		Ex. VI(3)		\$70,000		Ex. VI(5)

Proffered Wage = \$50,000

	<b>2010 Accrual Basis</b>	<b>Pass/Fail</b>	<b>See</b>		<b>2011 Accrual Basis</b>	<b>Pass/Fail</b>	<b>See</b>
Proffered Wage Actually Paid	\$5,000	Pass**	Ex. VI(6)		\$45,000	Fail	Ex. VI(8)
Net Income	\$85,000	Pass**	Ex. VI(6)		(\$35,000)	Fail	Ex. VI(8)
Net Current Assets	\$155,000	Pass	Ex. VI(7)		(\$95,000)	Fail	Ex. VI(9)
Cash Balance	\$5,000		Ex. VI(7)		\$70,000		Ex. VI(9)

\*Exhibit VI(1) should be read in conjunction with Exhibits VI(2)–(9), *supra*, as indicated.

\*\*Petitioner will pass using the I-140 Standard Operating Procedure guideline that allows the net income to be added to the actual salary paid to prove the ability to pay.



**Exhibit VI(2)**

Petitioner, Inc.

Profit & Loss  
January–December 2010

Cash Basis

	<u>Jan–Dec 2010</u>
Ordinary Income/Expense	
Expense	
Other Wages	\$135,000.00
Beneficiary Wage – Other	<u>\$ 5,000.00</u>
Total Wage	\$140,000.00
Rent	<u>\$ 25,000.00</u>
Total Expense	<u>\$165,000.00</u>
Net Ordinary Income	<u>(\$165,000.00)</u>
Net Income	<u>(\$165,000.00)</u>

**Exhibit VI(3)**

Petitioner, Inc.

**Balance Sheet**  
**As of December 31, 2010**

Cash Basis

Dec 31, 2010

Assets	
Current Assets	
Checking/Savings	
<b>Operating Bank Account</b>	<b><u>\$ 5,000.00</u></b>
Total Checking/Savings	<u>\$ 5,000.00</u>
Other Current Assets	
Inventory	<u>\$ 10,000.00</u>
Total Other Current Assets	<u>\$ 10,000.00</u>
<b>Total Current Assets</b>	<b><u>\$ 15,000.00</u></b>
Fixed Assets	
Machinery & Equipment	<u>\$100,000.00</u>
Total Fixed Assets	<u>\$100,000.00</u>
Total Assets	<u>\$115,000.00</u>
Liabilities & Equity	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts Payable	<u>\$110,000.00</u>
Total Accounts Payable	<u>\$110,000.00</u>
<b>Total Current Liabilities</b>	<b><u>\$110,000.00</u></b>
Total Liabilities	<u>\$110,000.00</u>
Equity	
Capital Stock	<u>\$170,000.00</u>
Net Income	<u>(\$165,000.00)</u>
Total Equity	<u>\$ 5,000.00</u>
Total Liabilities & Equity	<u>\$115,000.00</u>
<b>Current Assets</b>	<b>\$ 15,000.00</b>
<b>Current Liabilities</b>	<b><u>(\$110,000.00)</u></b>
<b>Net Current Assets</b>	<b><u>(\$ 95,000.00)</u></b>

**Exhibit VI(4)**

Petitioner, Inc.

**Profit & Loss**  
**January–December 2011**

Cash Basis

	<u>Jan–Dec 2011</u>
Ordinary Income/Expense	
Income	
Revenues	<u>\$315,000.00</u>
Total Income	<u>\$315,000.00</u>
Cost of Goods Sold	
Cost of Goods Sold	<u>\$250,000.00</u>
Total Cost of Goods Sold	<u>\$250,000.00</u>
Gross Profit	\$ 65,000.00
Expense	
<b>Beneficiary Wage</b>	<b><u>\$ 45,000.00</u></b>
Total Expense	<u>\$ 45,000.00</u>
Net Ordinary Income	<u>\$ 20,000.00</u>
<b>Net Income</b>	<b><u>\$ 20,000.00</u></b>

**Exhibit VI(5)**

Petitioner, Inc.

**Balance Sheet**  
**As of December 31, 2011**

Cash Basis

Dec 31, 2011

Assets

Current Assets

Checking/Savings

**Operating Bank Account**

**\$ 70,000.00**

Total Checking/Savings

\$ 70,000.00

Other Current Assets

Inventory

\$ 10,000.00

Total Other Current Assets

\$ 10,000.00

**Total Current Assets**

**\$ 80,000.00**

Fixed Assets

Machinery & Equipment

\$360,000.00

Total Fixed Assets

\$360,000.00

Total Assets

\$440,000.00

Liabilities & Equity

Liabilities

Current Liabilities

Accounts Payable

Accounts Payable

\$370,000.00

Total Accounts Payable

\$370,000.00

Total Current Liabilities

\$370,000.00

**Total Liabilities**

**\$370,000.00**

Equity

Capital Stock

\$215,000.00

Retained Earnings

(\$165,000.00)

Net Income

\$ 20,000.00

Total Equity

\$ 70,000.00

Total Liabilities & Equity

\$440,000.00

**Current Assets**      **\$ 80,000.00**

**Current Liabilities** **(\$370,000.00)**

**Net Current Assets** **(\$290,000.00)**

**Exhibit VI(6)**

Petitioner, Inc.

**Profit & Loss**  
**January–December 2010**

Accrual Basis

	<u>Jan–Dec 2010</u>
Ordinary Income/Expense	
Income	
Revenues	<u>\$500,000.00</u>
Total Income	<u>\$500,000.00</u>
Cost of Goods Sold	
Cost of Goods Sold	<u>\$250,000.00</u>
Total Cost of Goods Sold	<u>\$250,000.00</u>
Gross Profit	<u>\$250,000.00</u>
Expense	
Beneficiary Wage	
Other Wages	<u>\$135,000.00</u>
<b>Beneficiary Wage – Other</b>	<b><u>\$ 5,000.00</u></b>
Total Beneficiary Wage	<u>\$140,000.00</u>
Rent	<u>\$ 25,000.00</u>
Total Expense	<u>\$165,000.00</u>
Net Ordinary Income	<u>\$ 85,000.00</u>
<b>Net Income</b>	<b><u>\$ 85,000.00</u></b>

**Exhibit VI(7)**

Petitioner, Inc.

**Balance Sheet**  
**As of December 31, 2010**

Accrual Basis

Dec 31, 2010

Assets

Current Assets

Checking/Savings

**Operating Bank Account**

**\$ 5,000.00**

Total Checking/Savings

\$ 5,000.00

Accounts Receivable

Accounts Receivable

\$500,000.00

Total Accounts Receivable

\$500,000.00

Other Current Assets

Inventory

\$ 10,000.00

Total Other Current Assets

\$ 10,000.00

**Total Current Assets**

**\$515,000.00**

Fixed Assets

Machinery & Equipment

\$100,000.00

Total Fixed Assets

\$100,000.00

Total Assets

\$615,000.00

Liabilities & Equity

Liabilities

Current Liabilities

Accounts Payable

Accounts Payable

\$360,000.00

Total Accounts Payable

\$360,000.00

Total Current Liabilities

\$360,000.00

**Total Liabilities**

**\$360,000.00**

Equity

Capital Stock

\$170,000.00

Net Income

\$ 85,000.00

Total Equity

\$255,000.00

Total Liabilities & Equity

\$615,000.00

**Current Assets**      **\$515,000.00**

**Current Liabilities**   **(\$360,000.00)**

**Net Current Assets**   **\$155,000.00**

**Exhibit VI(8)**

Petitioner, Inc.

**Profit & Loss**  
**January–December 2011**

Accrual Basis

	<u>Jan–Dec 2011</u>
Ordinary Income/Expense	
Income	
Revenues	<u>\$ 10,000.00</u>
Total Income	<u>\$ 10,000.00</u>
Gross Profit	\$ 10,000.00
Expense	
<b>Beneficiary Wage</b>	<b><u>\$ 45,000.00</u></b>
Total Expense	<u>\$ 45,000.00</u>
Net Ordinary Income	<u>(\$ 35,000.00)</u>
<b>Net Income</b>	<b><u>(\$ 35,000.00)</u></b>

**Exhibit VI(9)**

Petitioner, Inc.

**Balance Sheet**  
**As of December 31, 2011**

Accrual Basis

Dec 31, 2011

Assets

Current Assets

Checking/Savings

**Operating Bank Account**

**\$ 70,000.00**

Total Checking/Savings

\$ 70,000.00

Accounts Receivable

Accounts Receivable

\$195,000.00

Total Accounts Receivable

\$195,000.00

Other Current Assets

Inventory

\$ 10,000.00

Total Other Current Assets

\$ 10,000.00

**Total Current Assets**

**\$275,000.00**

Fixed Assets

Machinery & Equipment

\$360,000.00

Total Fixed Assets

\$360,000.00

Total Assets

\$635,000.00

Liabilities & Equity

Liabilities

Current Liabilities

Accounts Payable

Accounts Payable

\$370,000.00

Total Accounts Payable

\$370,000.00

Total Current Liabilities

\$370,000.00

**Total Liabilities**

**\$370,000.00**

Equity

Capital Stock

\$215,000.00

Retained Earnings

\$ 85,000.00

Net Income

(\$ 35,000.00)

Total Equity

\$265,000.00

Total Liabilities & Equity

\$635,000.00

**Current Assets**      **\$275,000.00**

**Current Liabilities**   **(\$370,000.00)**

**Net Current Assets**   **(\$ 95,000.00)**