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Affording the PPACA in 2014 and Beyond - Part II

*Bart A. Basi, CPA/Attorney at Law
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Recap of Last Month

Last month, was Part I of Affording the PPACA in 2014 and Beyond. Within was discussed the individual mandate, the governments role, and the beginning of the employer's role in all of this. This month, we will complete the article and go though what business owners should consider to continue to flourish. So, to continue.....

Next is the penalty for each employee who elects to have subsidized insurance. If any employee elects to go on subsidized care, this penalty is \$3000 per employee receiving the subsidy. The first 30 are included in this formula, but only applies to each full-time employee taking the subsidy. This penalty cannot exceed the first penalty explained above.

Strategies

The ACA will cause an increase in the cost of doing business for many employers. The cold hard reality is that many substantial businesses will not be able to afford being a so called "large employer". There are ways to deal with the upcoming reality. While we do not endorse any idea as being a specific plan, businesses have

a duty to carry on and keep their employees employed even if it is at the expense of other employees.

1) Convert full time employees to part-time employees

If you're in a situation where you have 50 full time and full time equivalent employees, the easy solution is to drop some to 29 hours. Most employees do their jobs in 55-75% of the allotted time. On the plus side, you can still pay them the same amount that you would have had they been available 40 hours per week.

2) Outsource

There are always some jobs that can be outsourced. Some good examples of this are cleaning, maintenance, transportation, and even sales. The good thing here is that the necessary employee will maintain some form of employment and just as in cutting hours, the same compensation can be paid to them.

Continued on page 2

A CASE STUDY

Professional Advice

A Court of Federal Claims has ruled that a taxpayer cannot claim "privilege" when the taxpayer has already claimed to rely on professional advice to avoid penalties. As part of the background, the taxpayer was involved in financial transactions as professional services. Along the way, the taxpayer got involved in Structured Trust Advantaged Repackaged Securities (STARS).

Foreign tax credits in the hundreds of millions of dollars were taken against their tax liability and the taxpayer claimed it was to gain leverage. The IRS claimed it was a tax shelter. The court tended to be sympathetic to the taxpayer; however, the fact remained that the taxpayer used the professional advice as a defense and thus waived his rights (under the defense) to "work product protection".

Continued on page 3



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3) Lay off employees

As an absolute last resort, if it has to be done, it has to be done. One option that comes to mind is to offer voluntary lay-offs first to those who take them on a voluntary basis. The reality is that some employees would appreciate some time off and have working spouses who can sustain their standard of living. On the positive side, these people are always recallable. If staff is lost in the mean time, give them a call.

4) I'm just too big!

Some businesses in the 75 to 100 employee range are simply too big to reduce back to a small employer status. For these employers, consider selling a division to a key employee, a relative, or even a competitor. One key thing to note here, any ownership in another company, if it is a majority share, will result in the employee numbers being combined. Selling off 49% ownerships will not result in reducing employee numbers for purposes of the PPACA,

5) So what can I do to reduce costs?

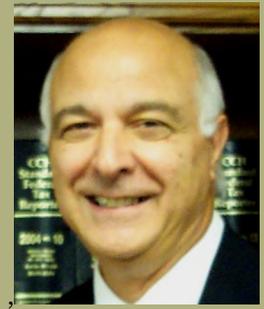
Some people are just stuck being large employers and they need to be. You can get creative as long as you stay legal with what you do here. Many health problems are

caused by an individual's behavior. Smoking and obesity are two widely known risk factors for health issues for the employee and higher premiums for the employer. Offering these people incentives and helping to curb the risks is not only good for your health insurance premiums, but also for the employee.

Let's face it; most of us could stand to lose some weight. Most overweight people do not want to be, so why not make it a win-win situation? Offering an employee the chance to stay for losing so much as one pound a month is not a Draconian sentence and the employee will enjoy better health as a result. Smokers too can utilize many aids to help them quit as well. You can also give financial incentives to these individuals to achieve desired results. Whatever you do, make it a positive experience and you will end up with a positive result in cutting costs and having healthier workers.

Conclusion

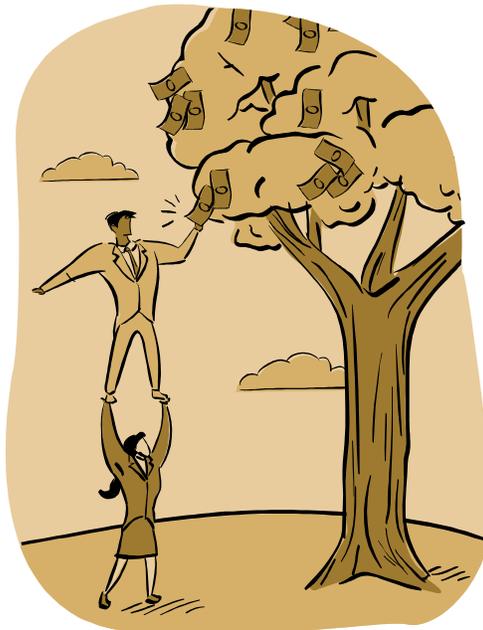
The healthcare bill has now become law and it is now being implemented. Not only are there incentives for small businesses to cover employees and new opportunities for individuals to obtain health insurance, but opportunities to improve ourselves and our businesses await. Many see the PPACA as a negative thing for business. Let's rise to the challenge and make it a good thing for businesses, employees, and this country.



Dr. Bart A. Basi is an attorney, CPA, and the Senior Advisor of The Center for Financial, Legal & Tax Planning, Inc, a full service company specializing in financial, legal & tax matters. Basi is a nationally recognized author, lecturer, and advisor on how to structure deals to minimize taxes. Tax structure makes the difference between getting the deal done and watching the deal fall apart. Many of you may be familiar with Basi and the topics he covers in the Financial, Legal & Tax Advisory which may be read in various industry-specific trade publications.

Points of Interest

- **The cold hard reality is that many substantial businesses will not be able to afford being a so called "large employer".**
- **.... the necessary employee will maintain some form of employment and just as in cutting hours, the same compensation can be paid to them.**
- **You can get creative as long as you stay legal.**



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A CASE STUDY CONTINUED:

Editor's Comment:

Editor's Comment: It is worth mentioning this case because many people use professional advice as a defense to penalties. Often it is effective, but the defense, no matter when asserted, should be claimed only after it has been thought of strategically and thoroughly. Often it is tempting to assert the defense on a haphazard basis. Don't!



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The Importance of Analyzing and Recasting/Restructuring Your Financial Statements

Working with one of my clients recently I was struck once again by the importance of analyzing and recasting – and possibly even restructuring – your company's financial statements as the first step in getting your business ready for sale.

Like almost all businesses, this client's financial statements had been prepared with the goal of minimizing taxes, rather than maximizing market value.

Over a period of years, the business had been expensing and/or depreciating all of its capital equipment purchases to the maximum extent allowable under the tax code, and expensing all of its research and engineering activities.

As a result, the business appeared to be marginally profitable, and in some years actually showed a loss, and as a result paid very little in taxes.

However, when it came time to sell the business, a potential buyer looking at the business' own books, records and tax returns would have a difficult time discerning the intrinsic value of this business. The net book value of its equipment was shown at a fraction of its market value, and its annual income appeared to be very modest compared to its sales volume.

By analyzing and recasting – and in this case – restructuring its financial statements to better reflect the company's true value we were able to:

- Discover that the company had failed to take advantage of significant tax credits for its research and engineering expenses which could save significantly more in taxes over the last four years,
- Document that the company was substantially more profitability over the last several years, and therefore commanded a substantially higher market value.
- Document the significant investment the company had made in developing several new products whose sales were just beginning to take off, creating future tax deductions for the buyer, and
- Delineate the current market value of its plant and equipment

...all of which contributed to a much higher market value for the company.

If you know of someone who's thinking of selling or buying a business and who might benefit from a free, confidential, consultation, have them contact me directly at 813.299.7862, or mertel@lmaallc.com

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Frequently Asked Questions...



Q: The S Corporation comes with the burden of complying with the 2% Shareholder Rules, does the C Corporation have the same issue?

A: No, the C Corporation shareholders do not have the same issue that the S Corporation holds. This is one issue that has to be taken into consideration while deciding to go with an S Corporation or a C Corporation.

Q: Does a single member LLC benefit from the same level of protection from liability as a multiple member LLC?

A: This is a state level issue, but generally, no. The single member LLC does not have the benefit of having a partner in the business. Therefore, when liability of the sole partner arises, creditors can easily attack and carry assets of the LLC. This is due to the presence of what is known as charging orders and the specific effect they have on LLCs.

Q: How many states now have the Series LLC?

A: There are now 14 states that have the Series LLC and they are becoming more common in this country. The benefit they have is that assets within them can be divided up into "series" and each "series" benefits from an added layer of protection from creditors.

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