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## THE LOW COST OF GETTING SOME HELP

*Bart A. Basi, CPA/Attorney at Law  
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### Introduction

Last month, in The Advisory titled, "THE HIGH PRICE OF NOT OBTAINING ADVICE", The Center wrote on common omissions many businesses endure. Among the problems were a lack of tax strategy, a lack of business succession planning, and a lack of formalities and lawsuit protection. In day to day operations, this may not seem like much of a problem, but as we concluded last month, these problems can or will always be fatal to even the best run company. There are ways to solve many problems companies face. These solutions should be viewed as part of an ongoing relationship with a professional.

### Cure for No Tax Strategy

Many companies don't have a tax strategy, and while it may not seem like a big deal, it is. Their tax strategy is simply to pay as few taxes as they have to despite the tax consequences and lost opportunities with the money. This is no way to deal with the tax law.

To begin the cure, the best way to deal with a lack of a tax strategy is quite simply to have your previous years' tax returns reviewed by a professional who specializes in tax strategies.

If your business is not taking available tax credits or deductions, that person will be able to spot the problem and recommend action. Often times, unused credits, deductions, and even mistakes come to light. When they are applied the reduction in tax liability is substantial. Once completed, at least an annual review should be implemented.

### Cure for No Business Succession Plan

As expounded upon last month, most businesses do not have a good business succession plan or have even started on a business succession plan at all. Let's all remember, life is finite! A business will typically go beyond a human lifespan, humans only get one lifespan. To those you leave behind, your business can be a blessing, or a curse.

The easiest way to start, not finalize, a business succession plan is with a will. While any attorney can write a will for a client, it is best to choose one with a business succession and valuation background. In addition to a will, a valuation and successors should be added.

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## A CASE STUDY

The US Court of Appeals found that an IRS summons for an appraiser's report was in good faith and resulted in the appraiser's report being discoverable by the IRS. In the case, the taxpayer had an appraisal done of an area of land. The land was valued at over \$1,000,000. of which a charitable donation was made.

The couple deducted the gift as a charitable deduction over a period of years. The caveat was that the appraisal was done via the request by an attorney for the taxpayer. When the IRS called the appraisal into question, the taxpayer and attorney refused the summons due to attorney/client work product.

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**Cure for No Formalities**

Some businesses have no formalities such as a corporate record book or even a formal entity. This usually does not disrupt day to day operations, but it's a risky proposition for those in business. Lawsuits happen all day and every day. If you find yourself named in a lawsuit, the absolutely worst position to be in is operating a business without a valid business structure to shield you and your family from personal liability. The best course of action to cure this is to create a proper legal entity in which to do business. The second important step is (if not already done), update your corporate record books.

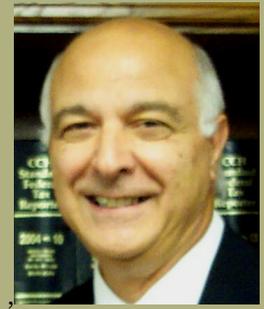
Incorporating or organizing is absolutely critical to shielding yourself from personal liability. Without a formal entity, personal assets are fair game for a creditor or litigant to attach. Equally important, record books must be up to date. Without a valid corporate record book, the formal entity becomes useless. It is therefore important to have an entity with an up to date corporate record book.

**Conclusion**

In conclusion, it is important you have the right advice for your situation. Paying excessive taxes, not having a business succession plan, and not having a formal business structure is never good business. Sooner or later, the Grim Reaper, a plaintiff's attorney, or the government catches up with you. Having a strategy and a written plan will help avoid problems for you and your family that inevitably all of us will face.

It is recommended that the steps in this article be a start to your planning. If you start developing a plan or course of action, you will be better prepared to deal with future events.

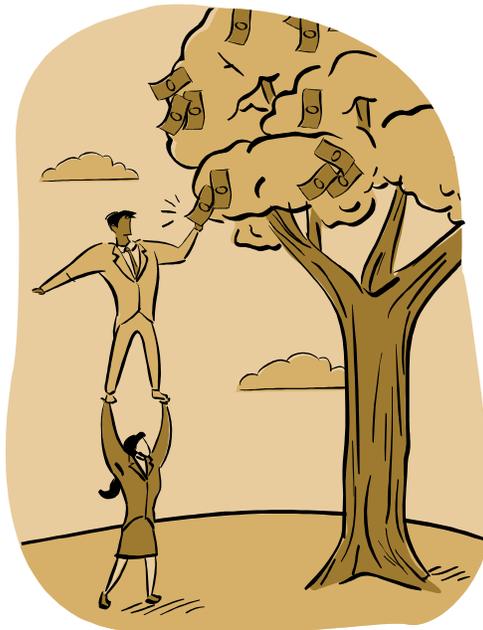
This concludes our two part series regarding the need that businesses have to secure themselves in the legal and tax environment of business. If you would like a copy of the first part, it is available either online or through my office. Please feel free to e-mail Marcus at [marcus@taxplanning.com](mailto:marcus@taxplanning.com) or call him at (618) 997-3436.



*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**

- **A business will typically go beyond a human lifespan, humans only get one lifespan.**
- **Incorporating or organizing is absolutely critical to shielding yourself from personal liability.**
- **Having a strategy and a written plan will help avoid problems for you and your family that inevitably all of us will face.**



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## A CASE STUDY CONTINUED:

### Editor's Comment

Had this document been prepared in anticipation of litigation, it could have qualified for work product doctrine exception. The court in this opinion gave a scathing review of the taxpayer's strategy to withhold the evidence as completely improper. It is important that the public understands that if an appraisal is done, the end product is discoverable by courts. This case is a good example of why a solid appraisal by a qualified appraiser should be done in every instance.



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## WSJ Article – “The Economy Stole My Retirement” - Retirements in Peril for Entrepreneurs in Their 60s and 70s Who Can't Sell Their Companies

This article appeared in the September 12, 2012 edition of the Wall Street Journal.

The authors observed that:

- “The weak economy has been tough for small-business owners across the board, with their total revenue inching up by just 3% since 2007 and declining in fields such as construction (-12%), real-estate services (-3%) and retailing (-2%)...”
- “...But for entrepreneurs in their 60s and 70s, the consequences have been particularly vexing. Many of them are stuck in “business purgatory,” unable to retire and forced to hang on for a recovery that economists say could still be a long way off.”
- “I am so tired,” one of the business owners interviewed says. “I don't know that I'll ever be able to retire.”

Here's a link to the full article:

<http://online.wsj.com/article/SB10000872396390444230504577615861593287688.html>

As the generation of Baby Boomers approaches retirement, it has been estimated that over the next 15 - 20 years, retiring business owners will be seeking to successfully exit their businesses, with an aggregate value in the trillions of dollars.

Without the assistance of an experienced M&A advisor and a comprehensive transition plan & process to maximize the value of their business - and ultimately their own personal wealth - many of these business owners will typically:

- Exit their companies as a result of pressure from outside circumstances, not as a result of their own desires
- Exit their companies on a timetable that's forced on them, instead of one that meets their needs
- Undervalue their companies and leave hard earned wealth on the table
- Pay too much in taxes
- Lose control of the process by being reactive rather than proactive
- Fail to realize their business and personal goals
- Suffer unnecessary personal stress

From experience, we recommend that our selling clients begin the process 2-3 years before they believe they will really need to exit the business. While some businesses have sold in as short as six months, the average tends to be closer to a year, with some businesses requiring 2-3 years before finding the right buyer and the right deal. In addition, some business may benefit from making a few changes/improvements to their business to command the best price and terms, and it may take from a few months to a year or more to implement those changes.

If you know of a business owner who's thinking of selling or buying a business and who might benefit from a free, confidential, consultation with us, have them contact me at:

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## Frequently Asked Questions...



**Q: Can the Section 179 expenses be carried forward into future years if all of the deduction cannot be used in the current year?**

**A: Yes, 179 expenses can be carried forward if enough income is not present to be used in the current year.**

**Q: I am a businessperson with accounts receivable owed to my business. If my clients do not pay their obligations, can I "write off" the amounts clients do not pay?**

**A: This depends on whether you are a cash basis or accrual basis taxpayer. If you are an accrual basis taxpayer, then yes, you may charge as an expense, the amount customers default on once it is certain they will default. If you are a cash basis taxpayer, then the receivable is not booked until money is received. It is therefore, not "written off", but merely never booked to start with. For these reasons, it is important that business not allow receivables to go much beyond the standard 10 or 30 day window in which they are due.**

**Q: My business is in arrears on its payments. What is my best course of action?**

**A: There is no one standard answer for this situation. With that said, generally it is best to not ignore the obligations in which you may be in default of. Calling the creditor, being forthright, and knowing your rights are tantamount to survival and recovery in the process. If a creditor does not know you're willing to work with them, they have no choice but to pursue other legal options against you.**

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