



**Mike Ertel is a Certified M & A Advisor and a Principal Broker with Legacy Advisors Group, a full-service M & A Advisory firm with an office in Tampa, Florida specializing in representing sellers and buyers of small-to mid-sized companies. Prior to joining Legacy Advisors Group, Mike's business career spanned 30+ years with Fortune 500 and Fortune 1000 Companies, with senior management roles in Marketing, Operations and Logistics. Mike also served as President, COO of a mid-sized Manufacturing company headquartered in Tampa. Mike also holds a BS in Electrical Engineering and an MS in Industrial Administration, both from Purdue.**

## Why a Policy Handbook is a Necessity

*Bart A. Basi, CPA/Attorney at Law  
The Center for Financial, Legal & Tax Planning, Inc.*

### Introduction

Does your company have a policy handbook outlining the expectations of the company and employee conduct? Whether your company is large or small, policy handbooks are a necessary instrument to your business. Policy handbooks save management time in resolving day-to-day disputes and they can also be especially helpful when more severe disputes arise. Your policy handbook can have a profound effect on your tax and potential legal issues. It is imperative for companies having even a few employees to have a policy handbook before any disputes arise.

### Fringe Benefits and Tax Consequences

Fringe benefits are benefits paid for by the employer, for the benefit of the employee. Usually included among fringe benefits are retirement programs, health insurance, life insurance and vacation benefits. Generally, expenses paid by the company on behalf of the employee for fringe benefits are deductible by the company. A clear indication of the benefits, including what amounts or time periods involved, should be clearly spelled out in your manual.

Keep in mind that if you own two or more companies, you must keep fringe benefits consistent across your organizations to fulfill legal and tax requirements for deductibility and administration.

Your policy handbook can have consequences influencing your tax position. There are many tax provisions that are affected by employee use of company property. For instance, deductibility of company vehicles requires a written policy prohibiting employees from using the company vehicles for personal use. If there is not a written policy against using the vehicles for personal use, your company may lose the deduction. Loss of deductions can result in a much higher tax liability than expected, had a written policy been in place.

Policy handbooks can also have an impact on the finances of your company. Limiting or prohibiting phone calls during work time may prevent an otherwise industrious employee from being an interstate socialite while on company time. The result would be greater

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## A CASE STUDY

The Tax Court disallowed an estate from claiming the marital deduction because the decedent's wife did not predecease him. In this case, the decedent and his wife both suffered from a fatal disease. They had wills drafted that indicated that if the wife died within six months of the decedent's death it should be deemed that the wife

survived him. The decedent's wife died 46 days before him. The estate claimed a marital deduction, which the IRS disallowed. The Tax Court found that because a will cannot be drafted in order to alter the actual order of deaths, the decedent's estate did not qualify for the marital deduction.

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productivity from the employee and a lower company phone bill.

It is also important to define vacation time and what happens to unused time. However, make sure the definition or proclamation does not create a balance sheet liability.

**Legal Consequences**

The ultimate importance of a policy handbook is the effect it may have in court. Committing to your position in writing prior to a dispute or court case can have a profound effect on the outcome of the circumstances. Every attorney would agree that they would rather have a policy handbook with a sexual harassment procedure as opposed to not having a policy. Stating you will not tolerate sexual harassment after it has been committed may not save you from liability.

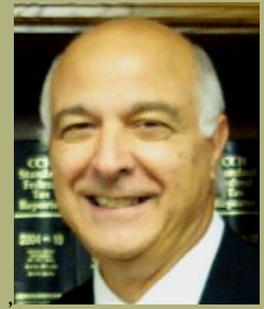
Do you work in a hazardous environment? A policy handbook containing safety procedures and OSHA regulations can be a very important device. Not only is it important to keep your employees safe, it is important to define safe procedures to avoid winding up in court.

Defining job descriptions is also important to help you in a legal situation. The Fair Employment Act describes exempt and nonexempt employees for purposes of paying a salary or wage. Just stating that an employee is exempt it does not establish the fact. Care must be taken to design jobs to conform to legal standards.

**Conclusion**

It's very important to define each one of your company policies. Failing to do so allows other people, employees, courts or even unions to define your policies. The consequences of not having a policy handbook can also lead to problems concerning matters you may not have previously considered. It is important to spell these things out in order to prevent someone from doing it for you to your disadvantage.

The Center specializes in preparing policy handbooks and assisting companies with the tax and legal aspects of their handbooks. Contact the specialists at The Center for a review of your current handbook, for an update or to write a specific policy handbook for your company.



*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.*

**A CASE STUDY CONTINUED:**

**Editor's Comment:** This was some creative tax planning on the part of the decedents and their attorney. While a will can provide for the actual order of death in the case where deaths are virtually simultaneous, the order of death in this case was too distinct and clear to be altered, thus subjecting the estate to the tax consequences of no marital deduction.

Everyone should review their wills to see if a "simultaneous" death clause is included. All wills between married couples should have a "simultaneous" death clause to insure that the marital deduction will be allowed.



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## Points of Interest

- Whether your company is large or small, policy handbooks are a necessary instrument to your business.
- A clear indication of the benefits, including what amounts or time periods involved, should be clearly spelled out.
- The ultimate importance of a policy handbook is the effect it may have in court. Committing to your position in writing prior to a dispute or court case can have a profound effect on the outcome of the circumstances.



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## Beware of Being Scammed by Florida Filings!

### **Mike Ertel, CBI/ M&AMI/ CM&AA**

I recently heard from a long time business acquaintance who told me a remarkable story about being scammed by a firm called Florida Filings in the process of filing their annual report on the Florida Secretary of State's website. Their story goes like this:

*"My boss asked me to pay the annual report in March 2010. I went to [sunbiz.org](http://sunbiz.org) and pressed the link on their site called filing services and filled out the form. I gave the credit card information and faxed it back. The form clearly states, you will see a charge on your bank records that say Florida Filings. The internet link and the document had the Florida state logo and [sunbiz.org](http://sunbiz.org). I did not question it and sent it in. Many companies use a merchant service company to process credit cards.*

*In August, my boss calls me and said he received a \$400 penalty from the State of Florida for not filing the annual report. I called the Division of Corporations, they directed me to call Florida Filings, that I did not deal with the State. I had to pay the tax again and the penalty. The Florida legislature passed a law this year that said under no circumstances could the penalty be waived.*

*I wrote the Attorney General's office and complained about Florida Filings and asked how it is that the Division of Corporations knew about this company and knew people were being ripped off. They wrote back and said they knew businesses were being taken and had contacted 312 of them to warn them and gave them the chance to waive their penalty, get their money back and re-file. We just happened to be missed in those calls."*

BOTTOM LINE: Forewarned is forearmed. Be wary when you're using your credit card online, even if it appears to be a legitimate website affiliated with the Florida Secretary of State's own website, [www.sunbiz.org](http://www.sunbiz.org).

*On another note, 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 [mertel@legacyadvisorsgroup.com](mailto:mertel@legacyadvisorsgroup.com)*

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## Frequently Asked Questions...



**Q: I am selling property through an installment sale agreement. Under the terms, the payments will be made well past January 1, 2011 when capital gains rates go up. Is there anyway I can prevent paying higher capital gains taxes?**

**A: Yes, although an installment sale carries payments that go well past the end of this year, the taxpayer can elect to recognize the gains in the year of the sale. Therefore, if you sell your business or property with owner financing, the gains can be taxed at today's lower rate.**

**Q: Being that the capital gains and dividend tax rates "sunset" on December 31, 2010, are Congress and the President doing anything to preserve the rates as they are currently in effect?**

**A: The issue is now being debated between both sides of the political aisles. While speculation is rampant on whether a law will be passed preserving the rates or not, the best strategy is to assume the tax rates will sunset and make preparations from there.**

**Q: The estate tax exemption goes from unlimited this year to only \$1,000,000 next year. What should the average business owner do in order to best deal with the estate tax issue?**

**A: The estate tax exemption will likely be modified to its 2009 level of \$3,500,000. At least that is what the consensus is at this point. Unfortunately the event that gives rise to the estate tax, death, is inevitable. There is really no way to plan or prevent the estate tax from being triggered. It is therefore best to craft your estate plan and/or business sale to heirs to accommodate the situation with the estate tax.**

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