

Financial, Legal & Tax Advisory

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Corporate Records – Often Forgotten, But Always Important

Introduction

Recently, The Center dealt with a situation where a corporation was keeping insufficient records. While this may sound like a no-harm, no-foul prospect, having little or no records in this case became a dire situation. In fact, the court ruled that, due to the lack of records, the corporation was for the most part, invalid and liability extended into the owners of the business.

The fact is that thousands of people own corporations for the purpose of conducting business while limiting liability. What many people don't realize is that the limited liability is effective only if certain requirements are met. One of the requirements to avoid losing the protection of limited liability, also known as piercing the corporate veil, is to hold meetings and keep accurate records. Failure to keep records does not mean certain failure in court or the IRS, but it is definitely a strike against you.

Definition and Requirements

Corporate records are documents prepared by a business to fulfill requirements imposed by law. Under the Model Business Corporation Act, a corporation shall keep as permanent records, minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors on behalf of the corporation. Records must also be kept of resolutions creating all classes of stock, all written communications to the shareholders, the most recent annual report, and names of shareholders. The form of the requirements require that the records be kept in written form or in a form that can be reduced to writing in a reasonable time and be made available to shareholders or the government upon request.

Meetings can be held on a regular basis or a special meeting can be called. Regular meetings can have their notice requirement waived. Generally, special meetings require notice which must be shown in the corporate records. At a minimum, corporate meetings are required to be held once per year.

Discussion

After reviewing the above requirements, are your records up to par? If you've been in business for 12 years, can you count 12 meeting notes in your records? If not, let me use an example to illustrate just how the lack of minutes can be used to cause you problems.

Oftentimes, business owners will use their own personal property for business use. Being that it is used for the business use, it is often indecipherable who owns the property. During a lawsuit to seize assets, any assets located in the building can be presumed to be business property. In this example, unless the business owner has a corporate record of his personal property being authorized for use by the corporation, it is very

likely that the property will be presumed to be that of the corporation's and be subject to the lawsuit.

At other times, corporations will face lawsuits from individuals. Corporate records will be seized under a subpoena power of the court. If the corporate records do not exist or have not been kept up, it is too late to produce them. The person suing at that point has another foot forward in proving that your corporation is merely an alter ego of the owner. Under this theory, a court can pierce the corporate veil to attach the owner's personal assets to satisfy claims against it.

IT IS IMPORTANT TO KEEP RECORDS. Granted you will not be legally bulletproof with them, but without them you are a sitting duck!

Conclusion

There is no requirement or rule stating that records cannot be created for past events. Therefore, records can be created for events that happened long ago, from memory.

However, records must be maintained in a particular format. Writing "had a meeting on 4/15/04 to discuss tax problem" is not sufficient. There is a format used to show formality both of the record and of the meeting. The format should state the date, time, location, and actions taken at each meeting.

The Center maintains corporate records for numerous clients. If you would like the professionals at The Center to assist you with your record keeping, please give us a call. Remember, the law states that you should have corporate records and keep them current!

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Dr. Basi's Recently Published Articles:

Valuations and the Issue of Terminal Value, Distributor's Link, Winter 2010

Let's End the Tax Year Right, Pro-Link, Q4, 2009

Dr. Basi's Speaking Schedule:

March 19 – Indian Wells, CA
Speaking at Food Equipment Distributors Association (FEDA)

May 11 & 12 – Philadelphia, PA
Speaking at CONSTRUCT

Basi, Basi & Associates at The Center for Financial, Legal & Tax Planning, Inc.

- Mergers & Acquisitions
- Retirement and Estate Planning
- Business Valuation
- Tax Aspects of Business Decisions
- Accounting Services
- Business Succession Planning
- Strategic Planning and Negotiation for Buying or Selling a Business

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SERVICES OF THE CENTER FOR FINANCIAL, LEGAL AND TAX PLANNING, INC.

Stockholders (owners) of closely-held business corporations should focus their attention on business planning, direction, and related tax matters at least once a year. Inevitably, the following questions should be addressed:

- Am I provided with timely and relevant information in making my business decisions?
- What steps should be taken for year-end income tax planning?
- How do the recent tax law changes impact my current plans for my company?
- Is the asset composition of my company structured to derive maximum tax advantages?
- What is my business really worth?
- Will I, as an owner, be able to enjoy retirement without incurring unnecessary expenses?
- Do I really know where my cash comes from and where it goes?
- Do I have a business plan and is it current?

The Center for Financial, Legal and Tax Planning, Inc. has the expertise that enables its personnel to respond quickly and effectively to these and other business questions. Our objective is to help with the important decisions necessary to enable you to make the best use of your business resources.

Expertise exists in each of the following ten areas:

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|--------------------------|---------------------------------------|
| 1. Accounting Services | 6. Investment Analysis |
| 2. Budgeting & Cash Flow | 7. Mergers & Acquisitions |
| 3. Business Succession | 8. Retirement & Estate Planning |
| 4. Business Valuation | 9. Strategic Planning |
| 5. Income Tax Planning | 10. Tax Aspects of Business Decisions |

The Center's broad experience in solving problems of the closely-held company and its owners includes the ability to formulate a complete financial plan as well as provide financial tax planning services. The Center is a leader in financial and tax planning for the closely-held business and has developed the expertise necessary to respond to client needs. The Center can coordinate this multi-faceted process for you in an unbiased fashion. Personnel do not sell investments. Advice is offered because it is right for you, not because a product needs to be sold. All advice of The Center is independent and objective of any product bias.

If you would like to receive the Financial, Legal & Tax Advisory by email, please send an email to trish@taxplanning.com.

Basi, Basi & Associates at The Center for Financial, Legal & Tax Planning, Inc.

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