JANUARY / FEBRUARY 2004

The Business owner®

Place Controls on Who Owns Your Company Stock

How would you like a 10 percent minority owner in your company to give two percent of his ownership to each of his five children? Or, your daughter's divorced husband owning part of your company? Or, a creditor becoming a stockholder? Or, someone you never met getting shares of stock in your business?

When either you *or* your company (be it a regular C or S corporation, partnership or limited liability company) sell or transfer any ownership position through a sale, gift or option; be sure the buyer (or recipient) represents that the stock is *being acquired or given for investment purposes only*. Also, stipulate that the shares cannot be sold or transferred without complying with the rules of the Securities and Exchange Commission and applicable state laws. Use the following precautions to protect yourself and your company.

Precaution #1. An investment agreement should be prepared and executed that specifies all of the terms, restrictions, and conditions of the stock sale, transfer, gift, or option to buy stock.

Precaution #2. The investment agreement should grant to both you (as owner) and your company a right-of-first-refusal before shares can be sold or transferred.

Precaution #3. On the face of the actual stock certificate issued, print a legend alerting any potential buyer of the following:

a. The shares of stock are subject to an investment agreement.

b. The shares cannot be sold, encumbered, gifted, or otherwise transferred except as stipulated in the investment agreement and in full compliance with the Securities Act of 1933 and applicable state laws.

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Also in This Issue

The Reference Source

for owners of small and mid-size businesses and the professionals who advise them ... since 1975.

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From The Editor

David L. Perkins, Jr.

Can you reasonably ask for more?

You are a business owner and in full control of your destiny. You are empowered with the information that you need to make good decisions and succeed. Today it was reported that gross domestic product (GDP) grew an incredible 8.2% in the third quarter of 2003. The stock market is up. Interest rates remain at historic lows.

If you have not yet fully committed to making 2004 a breakthrough year – do it now. Write down one goal that you will commit 100% to achieving this year. And when you do, you will say "2004 was a good year".

One tip? Work smart as well as hard. Hard work is necessary … but not sufficient. You must make wise tactical decisions and then apply hard work in the execution of your well laid plans.

We at *The Business Owner* are here to support you. Contact us any time.

David L. Perkins, Jr.
Publisher and Editor

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Kathy Piersall, A Blue Moon Arts, production editor

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FAMILY BUSINESS

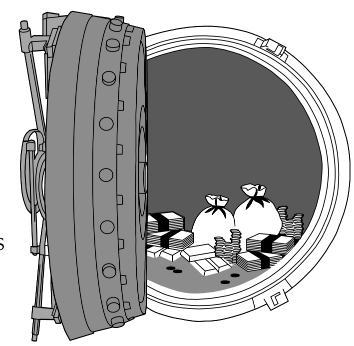
Qualifying For Higher Ed Financial Aid

Higher education is incredibly expensive. If your son or daughter does not qualify for athletic or scholarly incentives, the only basis for assistance is one of need. The assessment of "need" is fairly subjective. If you are on the cusp, so to speak, it may come down to how you and your child have organized your financial affairs. Here are some things to consider.

Parental Income: Up to 47 percent of parental income is considered eligible to pay for school. As you know, your reported income can swing wildly from year to year. As a business owner, you have a lot of discretion as to when to take things such as tax write-offs and bonuses.

To Do: Investigate the year or years of income that will be considered on your application for financial aid. Then, include in your analysis the impact that financial and tax decisions might have on your hopes for educational financial aid.

Income of the Student: Student income is assessed at a higher rate than parents. As such, decisions in the year or two prior to the aid application, such as how to compensate your child for work, may impact the aid agency's determination of need.



To Do: If your child works for you, consider the impact that their compensation could have on the aid application. For example, a barter arrangement … in which the child works for minimal compensation in exchange for your agreement to pay for certain higher education expenses … might be considered. Or, maybe this year is the year for your son or daughter to take a lower paying position that has benefits that are rewarding in non-monetary ways such as experience or knowledge.

How, Where the Money is Held: Financial aid rules make it less penalizing when savings accounts are in the parent's name as opposed to the child's name. When funds for college are coming from the parents, your decisions as to where to hold monies for college may have consequences.

To Do: When deciding how education savings will be held, consider that holding funds in the name of your child, or in special accounts for the benefit of your child, may impact efforts to qualify for financial aid.

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"Three paths must converge for you to be successful: market need, competency and passion."

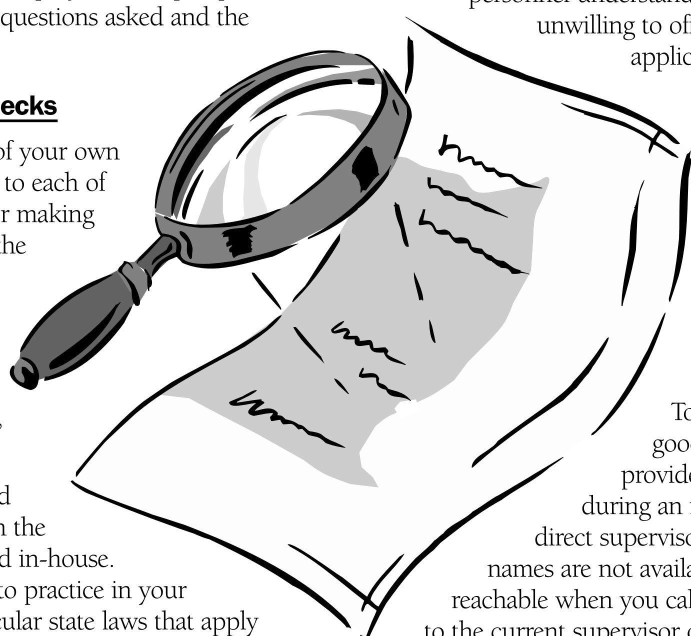
Alan Weiss, Ph.D.
Consultant and author of
The Million Dollar Consultant

Background Checks: What You Don't Know Can Hurt You!

If you subscribe to the theory that having more data contributes to making a better decision, then the advantage of conducting background checks on your prospective hires is apparent. However, there are also legal considerations that make it worthwhile to attempt to obtain background information, even if the attempt is ultimately unsuccessful. For example, consider a situation where an employee engages in violent conduct at your workplace and is later found to have engaged in similar conduct at a previous job. You will be in a far better position to defend against claims of "negligent hiring" if you at least attempted to obtain background information from the prior employer, even if your attempt failed. Accordingly, at a minimum, it is a good practice to contact each previous employer of the prospective hire and to record accurately the questions asked and the responses received.

Do-It-Yourself Background Checks

For many positions, having one of your own employees make a telephone call to each of the applicant's prior employers, or making the call yourself, will provide all the information you need. The primary advantage of doing background checks yourself rather than through an outside agency (commonly referred to as a "consumer reporting agency" or "CRA") is that using a CRA subjects you to certain federal and state laws that do not apply when the background checks are conducted in-house. An employment lawyer licensed to practice in your state can advise you on the particular state laws that apply and can provide you with a suitable application form with the necessary authorization.



If you decide to conduct background checks in-house, here are a few pointers to keep in mind:

Obtain Written Authorization From The Applicant

Even if you will be using your own employee to make inquiries into the applicant's background, your employment application should include a statement instructing the applicant to designate any prior employers or other references who you are not authorized to contact, and a statement authorizing you to contact anyone who has not been so designated. If the applicant instructs you not to contact a particular person, abide by that instruction but ask the applicant the reason for it. In some cases, the explanation may be a simple one such as, "My current boss doesn't know I am looking for a new job." In other cases, the question will prompt the applicant to provide information about past work experiences that he or she would not otherwise have disclosed.

Call The Right People

In general, telephone calls to prior employers are more helpful than calls to the people listed by the applicant as "Personal References" – I have never yet heard of an applicant receiving a negative reference from Mom!

Moreover, if you can make contact with someone who supervised or actually worked with the applicant, you are likely to obtain more helpful information than if you speak with Human Resources. In many cases, Human Resources personnel understandably and properly will be unwilling to offer any information beyond the applicant's dates of employment and the title the applicant held at the time his or her employment ended. In contrast, individuals with whom the applicant actually worked on a daily basis may be less circumspect, and will nearly always have information more relevant to the applicant's suitability for the job you are trying to fill.

To reach the best contacts, it is a good idea to have the applicant provide, either on an application form or during an interview, the name of his or her direct supervisor at each prior employer. If those names are not available or the individuals are not reachable when you call, an alternative is to ask to speak to the current supervisor of the department or division in which the applicant worked.

Assign The Right People To Make The Call

It is important that the employee conducting background checks be familiar with legal guidelines governing interviews. Even with an authorization from the applicant, you will not be protected against charges of discrimination if you attempt to obtain from a third party information that you could not legally require the applicant to provide directly (see "Ask the Right Questions", below).

Ask The Right Questions

Before you call a former employer, you should determine what information is directly relevant to an applicant's ability to perform the duties of the position for which you are hiring. On that basis, you should create a list of relevant questions and stick to it. Generally, you are free to inquire into areas relating to particular job skills (for example, whether the

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Why Every Business Person Should Understand Business Valuation

The everyday concepts of the business world are sales, management, marketing, accounting, inventory, purchasing, cash flow, borrowing, customers, vendors, insurance, etc. These concepts are what business owners, managers and professional advisors deal with on a daily basis. A much more evasive concept is business valuation … and valuation in general.

Knowledge of business valuation is not necessary to successfully start or manage a business, or to be a competent attorney, accountant, stockbroker or insurance agent. But those having a basic understanding of value and business valuation will have a tremendous advantage.

Business valuation is the process of determining what a business is worth, or what a portion of a business is worth. By worth, we mean the value of either:

a. Holding the ownership interest (i.e. the value of the net benefits that we expect to receive, presumably income or cash flow).

b. Selling the ownership position, today or at some date in the future (in this case, the task is estimating what someone would pay for the ownership position held by you)

A business is simply an investment. It happens to be a compilation of assets – both tangible and intangible – that are combined with human capital to generate a profit or income stream. A private business is no different than a public one, except that the public form allows for ease of purchase of ownership interests. The business form – public or private – does not change the basic analysis that is required to assess the attractiveness or value.

For the Business Owner. If you own a business, your business is likely your largest investment. The quality of your retirement probably hinges on the proceeds that can be obtained from an eventual sale. To ensure your money, time and hard work are yielding returns, an owner of a business should periodically check its value. To plan effectively, he or she should understand value and be able to constantly monitor it. Too many business owners accept myth and misconceptions about business valuation. They obtain rules of thumb from magazine articles, friends or advisors who mean well but have no real knowledge of the confusing arena of business valuation. The result is disappointment and at times, disaster.

"Knowledge of business valuation is not necessary to successfully start or manage a business, or to be a competent attorney, accountant, stockbroker or insurance agent. But those having a basic understanding of value and business valuation will have a tremendous advantage."

For the Future Business Owner. You look for opportunity, but how will you assess it when it comes? Your skills at evaluating opportunity, and the action you take (or don't take) may have a more significant financial impact on you and your loved ones than all the other skills and abilities you possess including education, experience, character, work ethic, vision, etc.

For the Professional Advisor. The success of any advisor depends on the knowledge and benefits they bring to the client. This holds true for all disciplines, but especially if you are an advisor to business owners such as an attorney, accountant or financial advisor. The goal of the business owner is to build wealth. A basic understanding of business valuation will provide a framework from which the advisor can put himself or herself into the shoes of the client and help him or her make decisions that build value – the ultimate service to any business owner.

For the Employee Striving for Advancement. Ask any business owner what he most wants from his employees. He or she will say, "I want them to think like me". Whether you are an entry level employee, middle manager or top executive, knowledge of business valuation will set you apart from the pack and position you for advancement.

For the Person Who Desires Wealth. Look at any person that has amassed significant wealth in a free society, and he or she will have been a great investor. The only way for anyone to build real wealth is through investment – wise investment, of course. A basic understanding of business valuation will provide the tools for successful investing … whether the vehicle is a private business, public company or non-operating asset. ❑

What's the best way to get a referral? Don't Ask!

Picture this. You walk into your best friend's house and say, "Mary, could you do me a favor? I'm looking for some new friends and I was wondering if you knew anyone like yourself that you could refer me to. And, by the way, I'm going to be selling them something, and a personal introduction would be so very nice. Ah, oh, hey, thanks."

Doesn't that sound ludicrous? Doesn't it seem imposing? Even border on rude? Your friend may even agree to do this for you, but in the end … when it comes time to put up or shut up … your friend's list will be very short. Maybe even empty. And, you can be an even bigger jerk by calling them up pretending to like them. "…Hey, speaking of referrals, how about those friends I asked you about the other day?"

Jeffrey Gitomer

What I have just described for you is what 99.9 percent of all salespeople do when they ask for a referral. It is obvious from the above example that they are 100 percent wrong!

Anyone who asks for a referral doesn't get it. A referral isn't something for which you ask. A referral is something that you earn. Sure, you can ask for them but it makes everyone feel awkward and will often destroy a budding relationship.

The definition of referral is *risk*. You are asking your customer or a friend to risk their friendship or business relationship with someone else by referring them to you. And, they are NOT going to do that without a high level of comfort, long history of performance, and a deep level of trust.

Is there a right way? Yes, but it's the hard way AND the long way. I hope it's your way.

1 **Become better friends.** People will only refer you if they feel safe and can trust you.

2. **Provide incredible service.** Your entire company must be "earn-a-referral" driven. This means that service, or the response to a service need, must always be at the highest level. The referral level.

3. **Anticipate needs.** People love surprises … when they are positive ones. If you know someone is about to run out of supplies, delivering them a week in advance will blow their doors off.

4. **Be a value provider.** Send your customers weekly information that they can use to help build their business. My weekly e-zine, *Sales Caffeine*, is my way of providing on-going value to my customers in the form of sales strategies and techniques while staying in front of them 52 times a year.

5. **Show them areas where they might get new business.** Real value partners show opportunities.

6. **Start with asking for (by earning) testimonials rather than referrals.** This way you can be certain that they are happy enough to refer.

6.5 **Execute the Law of Reciprocity.** Give them a referral. The best way to get anything you want is to give it. People tend to give what they want to get. When you go shopping at Christmas you get things you like.

Somehow, salesmen and women have come to view this referral thing upside down. The key is to understand what triggers the automatic referral, not how to dig one out of a relationship. Once you realize that you must first give in order to receive, you have taken the first step. The next step is to understand that the law of reciprocity is *indirect*. In other words, you give without thinking "he owes me one." Don't keep track of what you do in this regard.

In my life, I have found that when I measure or count my chips I only get back an amount equal to what I gave. In other words, if I feel that someone owes-me-one … then *one* is all I get. But, if I let it go and give simply because I know that is what is best for the recipient, the world pays me back. The world will always pay you back in multiples. Sometimes it just takes a little longer.

Another key difference between great people (who make great salespersons) and poor salespersons is the great ones think "the end of time" rather than "end of the month".

Referrals are really report cards. They will tell you how you're doing at building business relationships and friendships. If you are not getting referrals, it means you're doing a poor to medium job. If you get lots of referrals, it means you're doing a good job. However, if you get unsolicited referrals it means you have achieved the ultimate in sales. Someone proactively spoke on your behalf and the recipient took action as a result. On the sales report card, there are no higher marks. And as a salesperson … and a person … there is no better feeling. ❐

Jeffrey Gitomer is author of The Sales Bible, and Customer Satisfaction is Worthless, Customer Loyalty is Priceless. He is President of Charlotte-based Buy Gitomer, gives seminars, runs annual sales meetings, and conducts Internet training programs on selling and customer service at www.trainone.com. He can be reached at salesman@gitomer.com

Special Alert: IRS Deals Major Blow to Split-Dollar Arrangements

Split-dollar arrangements have been commonly used by employers to provide valuable benefits to key employees. They are popular because of their unique and attractive features that primarily pivot around the steady and dependable, long-term cash build-up feature of the whole life insurance product.

If you are one of the millions that are a party to a split-dollar arrangement, the IRS has significantly changed the way in which these arrangements are taxed. The result could be sudden and significant tax payments due by the employee to the IRS. Whether you are the employee or employer, this development merits your immediate attention.

A Review of the Split Dollar Arrangement: Since the early 60s, split-dollar life insurance plans have been used by large public corporations and small closely held businesses. Split-dollar is the name given to the arrangement whereby an employer and an employee share, if you will, in a single whole life insurance policy.

The typical arrangement is for the employee to own the policy and the employer to pay the policy premiums. The employee gets a valuable benefit – death benefit insurance. Typically, the arrangement will also include that the employee grant to the employer all cash build-up within the policy up to the sum of the premiums paid by the employer. In this way, the employer (over time) is reimbursed for the cost of the policy. Furthermore, if the employee remains with the company for an agreed upon period, he or she will "get to keep" any cash value build-up that exceeds the amount necessary to reimburse the employer for premiums paid (typically, over a vesting schedule of years).

The new rules are complex. If you are a party to a split dollar arrangement, you need to contact your tax or financial advisor.

As one can see, the split-dollar arrangement provides benefits to both employee and employer. The employee gets a current benefit (death benefit insurance), incentive for remaining with the employer (i.e. over time, cash value build-up in the policy) and a retirement plan of sorts. The employer gets a vehicle for providing short term and long-term benefits to a key employee, including a means for "tying" the employee financially to the company in a manner that allows for reimbursement of the cost.

The New World of Split Dollar: On September 11, 2003, the IRS issued new regulations on the tax treatment of split-dollar life insurance arrangements. Before, the IRS gave favorable treatment to the benefits provided by the employer to the employee. "Favorable" means minimal taxes owed by the employee for the benefits received. In actuality, the real economic benefit to the employee probably has exceeded the amount that the IRS deemed taxable. That has now changed.

Pat Olson, Assistant secretary of the U.S. Treasury, issued the following statement regarding the new rules:

> *"Under these (new) rules, companies can no longer use split-dollar life insurance arrangements to provide tax-free compensation to their executives. By insuring that split-dollar arrangements are appropriately taxed, the regulations curb a backdoor form of executive compensation and promote greater transparency."*

The new rules are complex. If you are a party to a split dollar arrangement, you need to contact your tax or financial advisor. There are some grand fathering provisions, but they may not be very attractive. In many cases, the best course of action may be to terminate the plan. The IRS has extended some incentives for doing so before January 1, 2004. Certainly, plans entered into or materially modified after September 17, 2003 are affected by the new regulations.

Again, if you are a party to a split-dollar arrangement, you need to immediately contact your financial or tax advisor. Matt Henderson, one of the financial planning experts for* The Business Owner*, is also available to consult with you. He can be reached at Henderson & Associates, (918) 428-5433 or email at mhenderson@finsvcs.com. ❐

"It's better to move when you're 80 percent ready and make up the other 20 percent while you're moving then it is to wait until you're 100 percent prepared. The delay waiting for the final 20 percent is dysfunctional and adds little value in the eye of the beholder (or buyer)."

Alan Weiss, Ph.D.
Consultant and author of
The Million Dollar Consultant

"Fenwick, Benton & Perkins. How may I direct your call?"

Selling Your Business? Follow These 10 Commandments

1. **Place a reasonable price on your business.** Asking an inflated figure can run off good buyers. At best, it slows down the process considerably. What you want is accurate pricing. Too low, and you leave money on the table. Too high, and you waste time and lose buyers and credibility.
2. **Carry on "business as usual."** Don't become so obsessed with the transaction that your attention wavers from running your business. Since the sale process can take some time, and because the current performance of the business is critical, make sure the business continues to get what it needs. Outsourcing the sale task to a business broker can help here.
3. **Engage experts to insure confidentiality.** A breach of confidentiality surrounding the sale of a business can change the course of the transaction. When the business owner represents himself, every potential buyer immediately learns the identity of the business. A broker can screen buyers without ever disclosing the identity of the seller.
4. **Prepare for the sale well in advance.** Be sure your records are complete and orderly for at least the past three years. Do necessary and obvious legal and accounting "housecleaning," as well as a literal sprucing-up of the plant or store.
5. **Anticipate information the buyer may request.** To obtain financing, the buyer will need financial, legal and tax records; accurate data on the assets that are being sold; and information to satisfy environmental/contamination concerns.
6. **Achieve leverage through buyer competition.** Dealing with multiple buyers can be tricky and time consuming, but the best way to get a good price is through good old-fashioned competition. A good broker may be in the best position to create and manage this time consuming process.
7. **Be flexible.** Don't enter the process with hardened positions, such as 100 percent cash at closing. View all deal points as negotiable. If the buyer asks you to give on a deal point, find out what he or she is willing to give in return. Offer solutions, not demands.
8. **Negotiate, Don't Dominate.** You're used to being your own boss, but be prepared to learn that the buyer may be used to having his or her way, too. Decide ahead of time "when to hold and when to fold."
9. **Time Kills Deals.** When the buyer falls in love, close the deal! Don't allow the attorneys and others to slow down the process. These transactions aren't near as complex as people want to make them … especially people working by the hour.
10. **Be willing to stay involved.** Even if you're feeling burned out, realize that the buyer may want you to stay within arm's reach for a while. You have more knowledge about the business than anyone. The buyer wants and needs your knowledge … at least until he or she is acclimated.

Bonus. Don't allow the buyer to "work in the business for a while" prior to purchase. The disruption can be substantial, confidentiality is impossible, and what are the odds that your business looks better from the inside? Slim. Oh, and buyers without money are notorious for just "wanting to work in the business for a while …"

As for screening buyer prospects, ask every buyer (just as a business broker would), "How much cash do you personally have, without borrowing, that you are willing and able to put toward the purchase of this business (i.e. the "equity" piece of the deal)? If the buyer does not offer a straight answer, ask to see a financial statement. Why? It is pretty tough to buy a business without any money. If they say. "Well, I have contacts," say "Great. Let's set up a meeting so I can talk to the person that will write the check." ❒

Investment Basics: Securities and Exchange Commission

The primary mission of the U.S. Securities and Exchange Commission (SEC) is to protect investors and maintain the integrity of the securities markets.

Unlike the banking world, where deposits are guaranteed by the federal government, stocks, bonds and other securities can lose value. There are no guarantees. That's why investing should not be a spectator sport; indeed, the principal way for investors to protect the money they put into the securities markets is to do research and ask questions.

The laws and rules that govern the securities industry in the United States derive from a simple and straightforward concept: all investors, whether large institutions or private individuals, should have access to certain basic facts about an investment prior to buying it. To achieve this, the SEC requires public companies to disclose meaningful financial and other information to the public, which provides a common pool of knowledge for all investors to use to judge for themselves if a company's securities are a good investment. Only through the steady flow of timely, comprehensive and accurate information can people make sound investment decisions.

"The laws that govern the securities industry in the United States derive from a simple concept: all investors, large and small, should have access to certain basic facts about an investment prior to buying it."

The SEC also oversees other key participants in the securities world, including stock exchanges, broker-dealers, investment advisors, mutual funds and public utility holding companies. Here again, the SEC is concerned primarily with promoting disclosure of important information, enforcing the securities laws, and protecting investors who interact with these various organizations and individuals.

Crucial to the SEC's effectiveness is its enforcement authority. Each year the SEC brings between 400 to 500 civil enforcement actions against individuals and companies that break the securities laws. Typical infractions include insider trading, accounting fraud, and providing false or misleading information about securities and the companies that issue them.

Fighting securities fraud, however, requires teamwork. At the heart of effective investor protection is an educated and careful investor. The SEC offers the public a wealth of educational information on its Internet website at www.sec.gov. The website also includes the EDGAR database of disclosure documents that public companies are required to file with the Commission.

Though the SEC is the primary overseer and regulator of the U.S. securities markets, the SEC works closely with many other institutions such as Congress, other federal departments and agencies, the stock exchanges, state securities regulators, and various private sector organizations.

History of the SEC: Before the Great Crash of 1929, there was little support for federal regulation of the securities markets. This was particularly true during the post-World War I surge of securities activity. Proposals that the federal government require financial disclosure and prevent the fraudulent sale of stock were never seriously pursued.

Tempted by promises of "rags to riches" transformations and easy credit, most investors gave little thought to the dangers inherent in uncontrolled market operation. During the 1920s, approximately 20 million large and small shareholders took advantage of post-war prosperity and set out to make their fortunes in the stock market. It is estimated that of the $50 billion in new securities offered during this period, half became worthless.

When the stock market crashed in October 1929, the fortunes of countless investors were lost. Banks also lost great sums of money in the crash because they had invested heavily in the markets. When people feared their banks might not be able to pay back the money that depositors had in their accounts, a "run" on the banking system caused many bank failures.

With the crash and ensuing depression, public confidence in the markets plummeted. There was a consensus that for the economy to recover, the public's faith in the capital markets needed to be restored. Congress held hearings to identify the problems and search for solutions. Based on the findings in these hearings, Congress passed the Securities Act of 1933 and the Securities Exchange Act of 1934. These laws were designed to restore investor confidence in our capital markets by providing more structure and government oversight.

The main purposes of these laws can be reduced to two common-sense notions:

- Companies publicly offering securities for investment dollars must tell the public the truth about their businesses, the securities they are selling, and the risks involved in investing.
- People who sell and trade securities – brokers, dealers and exchanges – must treat investors fairly and honestly, putting investors' interests first.

Congress established the Securities and Exchange Commission in 1934 to enforce the newly passed securities laws, to promote stability in the markets and, most importantly, to protect investors. President Franklin Delano Roosevelt appointed Joseph P. Kennedy, President John F. Kennedy's father, to serve as the first chairman of the SEC.

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Background Checks: *What You Don't Know Can Hurt You!*, continued from page 4

applicant has had experience working with a particular type of equipment) and areas relating to traits that you require of all employees (for example, regular attendance and the ability to work well with others). However, you should avoid questions that are likely to take you into areas protected by privacy rights. For example, you may inquire of a past employer whether the applicant had a good attendance record, but you should avoid inquiring into the specific reason for absences, which often implicates medical issues, marital status and other privacy concerns.

Using Consumer Reporting Agencies

In some instances, particularly when hiring for a position that involves high-level responsibilities or access to valuable company assets, you might wish to conduct a background check by using a CRA – an outside service that regularly engages in gathering or evaluating information about individuals for the purpose of providing reports to third parties. If you decide to use a CRA, an employment attorney licensed to practice in your state can provide you with the necessary documents to ensure your compliance with all relevant federal and state laws. While the particular requirements of those laws are beyond the scope of this article, you should be aware that such laws create technical and highly specific rules concerning the nature, timing and format of authorizations that must be obtained by employers, and notices and disclosures that must be provided by employers. Such laws also contain requirements governing the conduct of the CRAs themselves, so selection of an established and reputable CRA is important. Your human resources association or your employment lawyer should be able to provide recommendations and additional advice. ❒

Barry D. Kellman, a partner in the Employment Law Department of Greenberg Glusker in Los Angeles, provided the expertise for this article. His client e-mail contact is bkellman@ggfirm.com

Did You Know?

67% of Americans dream of owning their own business, and 55% of Americans would quit their job to start one if they had the resources to do so, according to a recent FedEx survey.

***Securities and Exchange Commission,* continued from page 9**

Organization and Enforcement: The SEC is comprised of five commissioners, four divisions and 18 offices. With approximately 3,100 staff, the SEC is small by federal agency standards. Headquartered in Washington, DC, the SEC has 11 regional and district offices throughout the country.

Commissioners are appointed by the President of the United States with the advice and consent of the Senate. Their terms last five years and are staggered so that one commissioner's term ends on June 5 of each year. To ensure that the commission remains non-partisan, no more than three commissioners may belong to the same political party. The President also designates one of the commissioners as chairman, the SEC's top executive.

The commissioners meet to discuss and resolve a variety of issues the staff brings to their attention. At these meetings the commissioners:

- Interpret federal securities laws.
- Amend existing rules.
- Propose new rules to address changing market conditions.
- Enforce rules and laws.

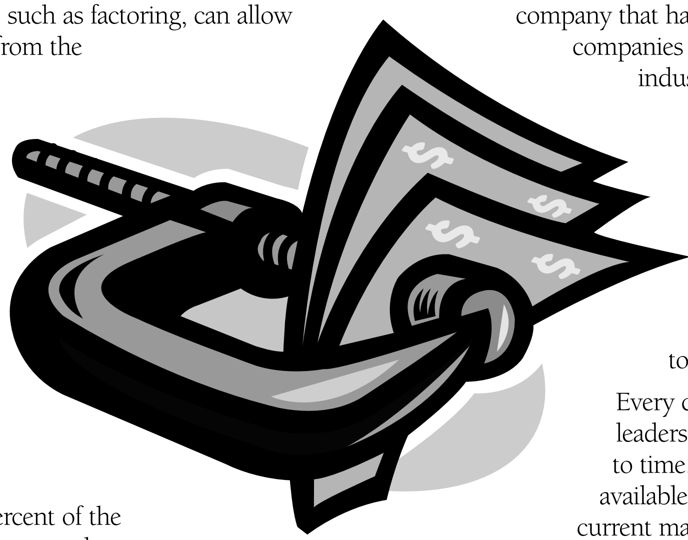
These meetings are open to the public and the news media unless the discussion pertains to confidential subjects, such as whether to begin an enforcement investigation. ❒

Won't Work for Food: Factoring Accounts Receivable

You need money to grow your business. When you started, you contributed your own savings to get things going (referred to as the "equity capital" of your business). You likely borrowed money as well ("debt capital"). Credit cards, leasing, home equity loans and bank borrowing are the primary sources of debt capital for new and small businesses. However, when money is still tight and the commercial banks are not cooperating, you need alternatives.

Businesses that sell goods or services to other businesses have expanded alternatives for tapping their accounts receivable to obtain cash. Alternative mechanisms, like factoring, are most useful for companies that are having a difficult time qualifying for more traditional forms of bank borrowing, such as working capital lines of credit.

Accounts receivable financing, such as factoring, can allow the lender to shift their focus from the credit of your company to the credit of your customers. Such a funding solution can be obtained quickly – sometimes in less than 48 hours. And, some forms of accounts receivable financing, like factoring, are actually not loans but the sale of an asset (receivables). The lender will buy your receivables and front you cash – anywhere between 50 percent and 85 percent of the value of your invoices. The company then collects your accounts receivable. Once they collect the amount advanced to you, they forward additional collected amounts to you … less a fee that is typically one percent to five percent … based on the volume of the accounts receivable and the number of invoices.



For example, say your outstanding invoices for September total $10,000. The accounts receivable financing company will immediately give you, say, $7,000 or 70 percent. When the financing company collects the rest of the $10,000 from your customers, you will get the $3,000 back less a service fee of, say, three percent. So, in total, you receive $9,100 of the $10,000.

When you have exhausted more traditional sources of debt capital (borrowed funds), accounts receivable financing may offer an alternative to raising cash by giving up equity (ownership) in your business. And, as mentioned above, many of the vendors do the collection work … and may provide some credit control functions. These services free you up to pursue new accounts or other business activities.

The downside? First, it can be expensive. If you operate on thin profit margins, it might be too costly to justify. Second, your customers might not like the fact that someone other than you is collecting on the receivable. Third, factoring is a capital source of last resort. Do you really want to exhaust all your sources of capital? All things being equal, you would rather have some sources in reserve in the event that things get worse.

To investigate this option, begin by contacting your banker. Many banks offer various types of accounts receivable financing. Even if your needs are not a great fit for them, they might be able to make some recommendations. Check into the Commercial Finance Association (www.cfa.com) as well to learn more and locate reputable member firms.

In every case, you will want to look for a financing company that has experience in working with companies that are similar to yours in terms of industry and size. Ask for and check references. If you move forward, be sure to closely examine all agreements and contracts. Have your attorney look over them. In addition, keep in mind the importance of the personal relationship that you have with the "banker" assigned to your account.

Every company, from startups to industry leaders, faces cash flow problems from time to time. The key is to know what options are available and to select the right one. The current market for alternative financing is competitive, so it's a great time to get a good deal. ❑

Lewis Y. Faber, founder and Chairman of New York-based specialty finance company, Yale Capital, Inc., contributed his expertise to this article. He can be reached at www.yalecapital.com and (212) 681-9500.

"Authentic brand management boils down to understanding that a brand is a promise that has to be fulfilled everywhere, at any time."

Helmut Panke, CEO
BMW

IRS Suggests Ways to Avoid Problems at Tax Time

For taxpayers looking for ways to avoid the last-minute rush for preparing and filing tax returns, the Internal Revenue Service offers these tips:

1. Organize Tax Records. Tax preparation time can be significantly reduced for taxpayers who develop a system for organizing their records and receipts. Start with the income, deduction or tax credit items that were on last year's return.

2. Don't Procrastinate. Resist the temptation to put off doing taxes until the last minute. Hurrying to meet the filing deadline may cause a taxpayer to overlook potential sources of tax savings and could increase the risk of making an error.

3. Visit the IRS Online. Taxpayers accessed the IRS Web site at IRS.gov more than 3 billion times in 2002. Anyone with Internet access can download tax forms, instructions and publications as well as tax law information and answers to frequently asked tax questions.

4. Take Advantage of Free Tax Assistance. The IRS offers recorded messages on about 150 tax topics through its TeleTax service at 1-800-829-4477. It also offers federal tax forms and publications at 1-800-TAX-FORM (1-800-829-3676). Many post offices and libraries carry the most widely requested forms and instructions. Libraries may also have reference sets of IRS publications. Taxpayers needing IRS forms or publications should act soon to be sure they have the items in time to meet the April deadline.

The IRS also staffs a Tax Help Line for Individuals at 1-800-829-1040, 7:00 a.m. to 10:00 p.m. on weekdays, and 10:00 a.m. to 3:00 p.m. on Saturdays through April 12, and on Sunday, April 13 (all times are local, except in Alaska and Hawaii, which should use Pacific Time). Help for small businesses, corporations, partnerships and trusts who need information or help preparing business returns is available at the Business and Specialty Tax Line at 1-800-829-4933. Hearing-impaired individuals with access to TTY/TDD equipment may call 1-800-829-4059 to ask questions or to order forms and publications.

5. Use IRS Taxpayer Assistance Centers and Volunteer Programs. Tax help is available at more than 400 IRS offices nationwide. To obtain the location, dates and hours of the Volunteer Income Tax Assistance and Tax Counseling for the Elderly programs, call the IRS toll-free Tax Help Line for Individuals at 1-800-829-1040, or check the local newspaper. The IRS web site contains information on local IRS offices.

6. Use Electronic Refund Options. One way to speed up an expected refund and reduce the chance of theft is to have the refund amount deposited directly to the taxpayer's bank account by the IRS. The tax instruction booklet gives details on entering the financial institution's routing numbers and the taxpayer's account numbers on the tax return. Make sure the numbers entered on the form are correct.

For checking on the status of a refund, a new option this year is, Where's My Refund? ... an Internet-based service. Simple online instructions guide taxpayers through a process that checks the status of their refund after they provide identifying information shown on their tax return. The results also include links to customized information that is based on the taxpayer's specific situation. The links guide taxpayers through the next steps needed to resolve any issues that may be affecting their refund.

7. File Electronically. About 47 million taxpayers filed their returns electronically in 2002. Aside from ease of filing, IRS e-file is the fastest and most accurate way to file a tax return. For those due a refund, the wait time for e-filers is half that of paper filers. This year, the IRS web site is hosting Free File, a free tax preparation and electronic filing program for eligible taxpayers.

8. Double-Check Math and Data Entries. Taxpayers should review their return for possible math errors and make sure the names and social security number or other identification numbers for themselves, their spouse and dependents are correct and legible.

9. Don't Panic if Immediate Payment Is Not an Option. For those who can't immediately pay the taxes due, consider some stress-reducing alternatives. A taxpayer can apply for an IRS installment agreement, suggesting their own monthly payment amount and due dates, and getting a reduced late payment penalty rate. Taxpayers also have various options for charging their balance due on a credit card, either as part of an electronic return or via a phone call to a processing agent. Official Payments Corporation may be reached at 1-800-2PAY-TAX (1-800-272-9829), or at www.officialpayments.com. The Link2Gov Corporation may be reached at 1-888-PAY-1040 (1-888-729-1040), or at www.pay1040.com. There is no IRS fee for credit card payments, but the processor charges a convenience fee. Electronic filers with a balance due can file early and authorize the government's financial agent to take the money directly from their checking or savings account on the due date.

Taxpayers who file their tax returns or request for extensions on time, even if they can't pay, avoid potential late filing penalties.

10. Request an Extension of Time to File. If the clock runs out, taxpayers can get an automatic four-month extension of time to file, to August 15. An extension of time to file is not an extension of time to pay, however. Taxpayers may call 1-888-796-1074, e-file a Form 4868 that is included in most tax preparation software, or send a paper Form 4868 to the IRS. Those who request the extension by computer or phone will need their adjusted gross income amount from their 2001 tax return. Taxpayers who charge their expected balance on a credit card don't have to file the form. Contact Official Payments Corporation or Link2Gov Corporation. There is no IRS fee for credit card payments, but the processors charge a convenience fee.

The extension itself does not give a taxpayer more time to pay any taxes due. The taxpayer will owe interest on any amount not paid by the April deadline, plus a late payment penalty if at least 90 percent of the total tax due has not been paid by April 15. ❑

2004 Tax Calendar

2003, December 31
- Deadline for establishing many self-employed retirement plans.
- Last day to contribute to a charity.

2004, January 2
- Start of 2004 tax season.

2004, January 15
- Individuals and trusts must make the fourth payment of 2003 estimated tax if the final return will not be filed by January 31 and will not pay income tax for the year through withholding (or will not pay in enough tax that way). Use Form 1040-ES.

2004, January 31
- Employers must give information statements to recipients of certain payments made during 2003 such as: dividends, interest, real estate transaction payments, rent, royalties, broker and barter transactions, payments to attorneys, profit sharing distributions, retirement plan distributions, prizes and awards, medical and healthcare payments, debt forgiveness and cash payments over $10,000.
- Individuals and trusts that owned, but did not pay, estimated tax on January 15 must file final 2003 income tax today.

2004, February 15
- Individuals who were exempt from income tax withholding for 2003 must file a new Form W-4 by today to continue exemption for 2004.
- Employers begin today withholding income tax from any employee that was exempt from withholding in 2003 but did not provide a new form W-4 for 2004.

2004, February 28
- Employers must file 1099 series information reports on the recipients who received 1099 forms on January 31 as noted above.
- Business receipts of mortgage interest exceeding $600 from an individual must be reported on form 1098.
- Form W-2 "A" copies for 2003 must be filed with the Social Security Administration, and forms W-2G and form 1099-R for 2003 "A" copies must be filed with the IRS.

2004, March 15
- C and S corporations must file 2003 calendar year tax return today or form 7004 for an automatic six-month extension. In either case, taxes for 2003 are due today. S corporations must also provide each shareholder with a K-1.
- C corporations that wish to covert to the S corporation form for 2004 must file form 2553 today and obtain signatures of all stockholders.

2004, March 31
- Electronic filings of forms 1098, 1099, W2 and W-2G and are due today.

2004, April 15
- Individual tax returns and payments are due today. File form 4868 for an automatic four-month extension.
- Individuals must make the first payment for 2004 estimated tax if income taxes are not being paid through withholding or if the withholding is not sufficient.
- Partnerships must file a 2003 calendar year return (form 1065) by today and provide each partner with a copy of schedule K-1. File Form 8736 for an automatic three-month extension.
- C corporations must deposit the first installment of 2004 estimated taxes today, if on a calendar year basis.
- IRA Contributions: Last day to make 2003 contributions.

2004, April 30
- Employers must file form 941 to report income tax withholding and FICA taxes for the first quarter of 2004.

2004, May 31
- Annual statement to IRS regarding 2003 account balances for IRA and SEP due today.

2004, June 15
- Individuals must make the second payment for 2004 estimated tax if income taxes are not being paid through withholding or if the withholding is not sufficient.
- C corporations (calendar basis) must deposit the second installment of 2004 estimated taxes today.

2004, July 15
- Partnerships that filed an automatic three-month extension must file 2003 form 1065 today.

2004, July 31
- Employers must file form 941 to report income tax withholding and FICA taxes for the second quarter of 2004.

2004, August 15
- Individuals who filed for an extension must file their 2003 returns by today and pay any tax, interest and penalties due. If you have a valid reason for needing an additional extension, you may file form 2688. If extension is granted your new deadline will be October 15.

2004, September 15
- Individuals must make the third payment for 2004 estimated tax if income taxes are not being paid through withholding or if the withholding is not sufficient.
- C corporations and S corporations that filed for a 2003 extension must file their 2003 tax return by today.
- C corporations must deposit the third installment of estimated income tax for 2004 for today.

2004, October 1
- Deadline for establishing a SIMPLE IRA.

2004, October 15
- Individual 2003 tax returns are due for persons who filed for and were granted an additional two-month extension.
- Partnership 2003 tax returns are due today if an additional three-month extension was granted.
- IRAs: Last day for re-characterizing an IRA contribution for 2003 if you filed your 2003 return on time.

2004, October 31
- Employers must file form 941 to report income tax withholding and FICA taxes for the third quarter of 2004.

2004, December 15
- Corporations (calendar year) must pay last installment of 2004 estimated tax.

2004, December 31
- Last day to set up an IRA.
- Deadline for establishing many self-employed retirement plans.
- Last day to contribute to a charity for 2004.

2005, January 15
- Individuals must make the third payment for 2004 estimated tax if income taxes are not being paid through withholding or if the withholding is not sufficient. ❑

Note 1: This calendar is not meant to be comprehensive and includes only dates deemed by The Business Owner *editors to apply to the most subscribers. Readers should not rely on this list but, with the assistance of a tax professional, investigate and confirm all dates that apply to them.*

Note 2: Some dates may be different for taxpayers not on a calendar year.

Place Controls on Who Owns Your Company Stock, continued from cover

Precaution #4. Include in the investment agreement that even in the event that right of first refusal rights may go unexercised from time to time, all shares held by any buyer (no matter how such shares were acquired or received) will be bound by the investment agreement and by the written legend on the stock certificate.

Precaution #5. Indicate in the agreement that the stock *cannot* be encumbered, e.g., used as collateral for a loan. That way, you eliminate the risk that the shareholder's creditor becomes an owner via a foreclosure on the collateral.

Remember, these precautions also apply to stock option agreements with key executives, as well as gifts of stock to your children. *Why?* That executive or family member may get divorced and you could wind up with his or her ex-spouse as a disgruntled and troublesome minority owner.

The final message: Get good legal advice before selling, transferring, or giving options on any ownership position, including warrants and convertible securities sold to investors to raise capital for your business. And, if you now have minority owners, check with your lawyer to be sure their stock or stock options comply with the above precautions. ❑

Coming Up in *The Business Owner*

Power of Time and Compounding of Investment Returns
■
Effective Recordkeeping for the Small Business
■
Organizing Your Income Statements
■
Getting the Most out of Your Advisors
■
Responsibilities of Company Board Members
■
Corporate Books and Records – What to Do, Not Do

The Business Owner's Big Three
■
What NOT To Do When Selling Your Business
■
Family Limited Partnerships
■
Company Officers and Non-Officer Employees
■
Health Insurance for the Business Owner, Family and Employees
■
"Roll-Ups"

If you need to renew, or have any comments or questions, just call us at (800) 634-0605 or email info@TheBusinessOwner.com.

Qualifying For Higher Ed Financial Aid, continued from page 3

Saving/Wealth of Your Child: The more assets the student-applicant has, the less aid he or she is likely to receive. Often, the child has limited funds and the education bills are considerable – from elementary schools through post-secondary school. As such, you have discretion as to when and where to spend funds held in the child's name or for the benefit if the child, such as funds held in custodial accounts such as the Coverdell ESA/Educational IRA, QTP/529, UGMA, UTMA, and trusts.

To Do: Consider how your decisions on when and where to apply funds might impact the financial aid application. Simple decisions, such as whether to use such funds for private high school tuition or college prep expenses (i.e. BEFORE the college aid applications) might impact your plans.

Type of Assets: Certain asset types are not considered or counted by financial aid agencies. Wealth held in the form of cash value within life insurance policies, deferred annuities, and personal property such as coin collections, don't have to be reported on financial aid applications … for either you or your child.

To Do: When considering how to compensate or gift wealth to your child, include in your analysis the impact that various means could influence the assessment of need. If your goal is to begin providing some long-term funds for your child, insurance policies or precious metals might be an option to consider. ❑

Educating the Second Generation

If your son attends college and is assigned a first-semester roommate who drinks alcohol, a recent study shows that his grade point is likely to suffer. How much? If your son did not drink alcohol in his senior year of high school, his grade point would likely be one grade point lower if he rooms with a "drinker". If your son did drink alcohol as a high school senior, his college grade point would likely be two grade points lower (e.g., a 2.0 rather than a 4.0) if he rooms with a "drinker" his freshman year.

The study, by Harvard University economics professors Michael Kremer and Dan Levy, examined 1,357 students at a large state university that randomly assigns freshman roommates. They found no meaningful correlation between any other roommate characteristics including: high school grades; admissions test scores; family economic, social or educational background; religion; personal habits; and degree of similarity with the roommate.

In addition, the apparent "alcohol affect" only occurred for boys. The grades of girls did not seem to be affected by whether their freshman roommate was a drinker. ❑

2003 Index of Articles

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Important Dates in U.S. Tax History

1862 Abraham Lincoln enacts emergency measure to pay for Civil War: Minimum three percent tax rate.

1872 Lincoln's income tax law lapses.

1894 Two percent federal income tax enacted.

1895 Income tax ruled unconstitutional by U.S. Supreme Court in Pollack v. Farmer's Loan and Trust.

1909 16th amendment that authorizes Congress to collect taxes on income is proposed.

1913 Wyoming casts 37th vote, ratifying the 16th amendment. One in 271 people pays one percent rate.

1926 Revenue Act of 1926 reduces taxes: Too much money being collected.

1939 Revenue statutes codified. One out of 32 citizens pays four percent rate.

1943 One out of three people pays taxes. Withholding on salaries and wages introduced.

1954 875-page Internal Revenue Code of 1954 passes. Considered the most monumental overhaul of federal income tax system to date. 3,000 changes to tax rules.

1969 Tax Reform Act: Major amendments to 1954 overhaul.

1984 Reagan Tax Reform Act: Most complex bill ever, requires over 180 technical corrections.

1986 Tax Reform Act reduces tax brackets from five to two.

1993 Clinton's Revenue Reconciliation Act passes by one vice presidential vote.

1996 Four bills make over 700 changes, including medical savings accounts and SIMPLE plans.

1997 Taxpayer Relief Act brings more than 800 changes. Child tax credit, Roth IRAs, capital gains reduction, breaks for higher education enacted.

2001 The Economic Growth & Tax Relief Reconciliation Act of 2001 creates 441 changes. Lowers tax rates, repeals estate tax, increases contribution limits on 401(k)s and IRAs.

2003 The Jobs and Growth Tax Relief Reconciliation Act of 2003 accelerates 2001 Act's rate cuts; temporarily increases child credit; temporarily lowers rates on capital gains and dividends; increases write-offs for equipment.

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