

the business owner[®] journal

expertise for the business owner



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From the Editor

This is it. The final run for the tape. You set goals for the year. Where is the list now? If you didn't make one, or can't find it, write a new one.

What is it you want to accomplish before this year is up? You have two months to get it done. Winners separate from the losers at the end of the race because they got it out. They're willing to push themselves farther and harder.

Your list should include year-end tax planning. The coming tax increases and special incentives — such as the Roth conversion options — make it a time to give tax and investment strategy some special thought. Take smart action where merited.

Sure, there are a lot of distractions that can divert your focus. The war, government budget deficits, an election season, all the people who want your time and money, and maybe your own budget deficits! But you can do only what you can do. Your list is clear. It contains things that are most important in your life right now. Right? Don't be distracted.

Look at your list. Circle the one or two things that would mean the very most if you could get them done by year-end. Now hold your right hand high and extend four fingers. It's the fourth quarter. This is where the ball game will be won or lost.

Go for the win.

Sincerely,



David L. Perkins, Jr.
Managing Editor
The Business Owner Journal



the business owner®

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Improve Employment Practices in the New Year

The new year provides an opportunity for employers to implement changes in employment policy to lower cost and legal exposure. Employees tend to more readily accept changes introduced at the beginning of a new year. Here are some you should consider:

- 1. Create a Good Employee Handbook.** A good one makes clear what's expected. It also clarifies company policy on important issues such as discrimination, sexual harassment, employment at will, vacation, and dispute resolution. A good handbook also helps in consistent application of policy. The result should be fewer claims and disputes.
- 2. Discontinue Automatic Annual Raises.** The logic of annual pay raises is rooted in the need to keep pace with inflation. But there's very little inflation today. There is talk of deflation, in fact. If you automatically raise salaries each year, you simply may be shifting profit from shareholders to employees. You're also nurturing a culture that emphasizes survival over productivity and accomplishment. Consider a new type of annual review: pay raises and/or bonuses contingent on job performance and/or overall company profitability. Put measurable employee performance standards in place and use them to calculate bonuses and raises to avoid, and defend against, discrimination claims.
- 3. Lengthen Waiting Period for Vacation Benefit.** A longer waiting period — such as six months — before new employees become eligible for vacation can reduce the amount of vacation pay you provide to short-term employees.
- 4. Reduce the Number of Paid Holidays.** Employers are not required by law to pay employees for federal holidays. To save money, consider cutting back on the number of paid holidays you provide.
- 5. Rationalize Employee Health Benefits.** Are employees bearing their fair share of premiums and deductibles? Is the plan providing adequate coverage, given the cost? Maybe it's time to get competing bids. Finally, consider providing a stipend to employees who obtain health coverage under a spouse's plan. Of course, this should be a stipend lower than the cost you incur by covering the employee.
- 6. Review Employment Status of All Employees:** Year-end is a good time to assess the status of exempt and non-exempt employees and make any

changes merited. Pay particular attention to office employees who perform mostly routine work, "leads" in manufacturing or service jobs, tech support, and retail managers who spend most of their time serving customers. Job descriptions for employees switched to non-exempt status should be revised to more accurately reflect their job duties. [tbo](#)

James J. McDonald, Jr. and Michael J. Lissau each contributed expertise for this article. McDonald is managing partner of the Irvine, California office of Fisher & Phillips LLP. Lissau is partner and employment law specialist in the Tulsa, Oklahoma office of Hall Estill.

"Failure is not fatal, but failure to change might be."

John Wooden



What *Not* to Do During a Sales Slump

As a tough economy lingers, many businesses find themselves stuck in a sales slump and don't know how to get out. David Mattson, CEO of Sandler Training, helps businesses with just that problem.

"Many businesses are paralyzed in today's difficult environment. They don't have a system for success or forget what they actually know, and are merely reactive," says Mattson. "This time can actually be a period of profit and productivity, but you must avoid knee-jerk reactions that will keep your company in a rut." Mattson offers these seven deadly sales sins to avoid now and forever:

- 1. Abandon your sales procedures.** When sales slow down, many businesses panic, forget what they know and start throwing ideas against the wall to see what sticks. They jump from activity to activity, neglecting their sales process. Stop there. A sales process tells you exactly what needs to happen to complete a sale. Imagine an emergency room. When a patient comes into triage, the hospital doesn't try multiple check-in procedures and leave its process to chance, or things would be chaos. There are procedures and orderly steps that need to be taken every single time to correctly treat a patient. The same is true in sales.
- 2. Focus on revenue only.** If you want to frustrate a sales team, focus *only* on numbers. What you really need to consider is revenue *and* behaviors. To achieve your sales goal, your business needs to know which behaviors need to take place to provide favorable sales results.
- 3. Stop prospecting.** If you want to lose long-term sales, try focusing only on your current customers. When a business gets to a certain size, employees feel that they can relax and are past needing to prospect. Don't fall for this trap. Very few people like to prospect. You don't have to like it; you just have to do it. While it is important not to neglect your existing customers, you always need to be on the lookout for new customers in anticipation of the peaks and valleys throughout the year.
- 4. Eliminate marketing and advertising.** When businesses see a decrease in sales, the first costs they tend to cut are marketing and advertising. That is a mistake. Now more than ever, companies must create mindshare with customers and prospects. An often-missed opportunity is simply follow-

ing up on all leads generated through marketing. For instance, research shows that only 2% of leads at trade shows are followed up on. Simply following up on leads could allow you to come out of the slump stronger than your competitors.

- 5. Act like Hercules.** If you really want to kill sales, create an atmosphere of learned helplessness. In fact, many sales managers do this and don't even realize what they have done. The sales manager steps in and micro-manages the day-to-day processes of the sales teams to "save the day." This tactic could backfire. Instead, managers need to empower their sales people to close deals within parameters, and be responsible and accountable for their own progress.
- 6. Believe that you're "past that."** If you want to drive a business into the ground, forget what you did that made the business successful. Remember what made clients and prospects fall in love with your company, then go back to that.
- 7. Stop planning for seasonal slowdowns.** If you want to stay in a sales rut, don't plan ahead for seasonal slowdowns. Leaders should anticipate months or times of year when sales trend down, and feed the sales funnel before these occur. If you know your business will be slow during the holidays, feed your sales funnel now.

By avoiding these deadly sales sins, you just may come out of 2010 stronger than ever. [tbo](#)

This article was written by David Mattson, CEO of Sandler Training (www.sandler.com).



PROFESSIONAL DEVELOPMENT

Growing Your Business!

By Mark LeBlanc

Reviewed by David L. Perkins, Jr.

Every how-to book offers the promise of helpful information, but in most cases, it's buried in 250 pages of text.

Not this one.

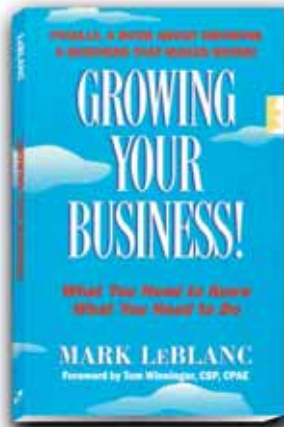
Growing Your Business! is more than brief. It's about six inches tall and four inches wide, with large font and ample line spacing to boot. I read it just because the risk-reward proposition is so favorable. That is, it offered me the promise of useful information and downside risk of no more than 15 minutes of my time.

Darned if this book's lessons didn't speak to me.

I've read literally hundreds of books, most about business. I've been going through a period of burnout, cynicism about the lack of real wisdom, lack of valuable and actionable information behind the interesting title and attractive cover.

Growing Your Business! gets straight to the point. I like that. No, I love it.

The author's message is to focus on three things: booking new business, collecting cash and taking more money home. If you want to continually make more money,



you must continually focus on these three things. Yes, you must deliver your service and handle administrative duties such as collections, but your job is to figure out how you can get work done while continually focusing on growing these three activities.

Growing Your Business! author Mark LeBlanc says business owners tend to get distracted by all kinds of things that don't contribute directly to booking new business, collecting cash, and taking more money home. Focus on these three essentials and the unproductive activities automatically fall away.

I like Mark LeBlanc's advice. It's simple. Makes sense to me. Here's another one that make a lot of sense:

Set goals monthly. Setting goals and having focus is important. Most of us do it the first of each year. So when you're off track by the third week of January, why let another 11 months go by?

What kinds of goals should you set each month? Just one: bookings. Each month, set a goal for bookings. LeBlanc calls it your "optimistic number" for the month. Then work each day to hit your optimistic number. [tbo](#)

LETTERS TO THE EDITOR

In your May/June issue you had an article "No Reason to Fear New Health Care Legislation." Start interviewing some of your readers now. I know of several businesses that have received premium increases of over 50% when they have had a relatively lean year for claims. And you think this is nothing to fear? This is bad legislation for our entire small business community. Usually your publication has pretty good insight, but you sure missed this call.

*Jim Schlepfforst, President
T. F. Ehrhart Company*

We would love to hear from you. Send your comments and questions to editor@thebusinessowner.com.

As a business owner of 35 years, I have enjoyed reading *The Business Owner Journal* for years and usually find some value in each publication. I am concerned [that] you could print "No Reason to Fear New Health Care Legislation." The author clearly never owned a business, had to meet payroll or deal with increasing benefits challenges. Health care reform is necessary, but for starters, this isn't reform. I don't have time to go into all the reasons this is bad legislation, but I know it's not going to make my life as a business owner any easier.

Considering your publication is intended to speak exclusively to small business owners, you dropped the ball on this one.

*Jim Landis, President/CEO
Communication Systems, Inc. (CSI)*

Minority Shareholder Barriers to Sale

If you don't own 100% of your company, you should assess whether you have some shareholder-related issues that could hinder a sale. First, if the parties choose to effect the sale by purchase of stock¹, any minority shareholder could hold up the deal if you don't have agreements in place that force them to accept terms agreed to by the controlling shareholders. This is because buyers almost always want to buy 100% of the outstanding stock. They don't want to become partners with someone they don't know. They also want to own all the stock to maximize the money they can make with the investment.

If you don't own 100% of your company, you should assess whether you have some shareholder-related issues that could hinder a sale.

If a minority shareholder refuses to accept sale terms negotiated by the controlling shareholders, many buyers will just back away entirely. Getting the holdout(s) to agree to the deal quickly becomes YOUR problem. Enticing a minority shareholder to go along with you can become costly. It's just too easy for him or her to hold out until you start offering to pay a premium. Any premium paid comes out of YOUR take.

How can you find out whether you have the legal right to "drag along" minority shareholders in a stock sale transaction? If the selling entity is a corporation, such a provision could reside in Articles

of Incorporation (aka Certificate of Incorporation), bylaws or shareholders agreement (if one exists). If the selling entity is an LLC, check out both the articles of organization and the operating agreement.

True, most private-company purchases are effected by asset purchase, but some are effected by stock purchase. For example, in case of a C-corporation seller, the shareholders may attempt to dictate that the sale be completed by stock purchase to reduce the tax burden. Also, title² transfer and contract assignment problems can often be alleviated by effecting the sale by stock purchase. Finally, public companies may at times prefer a stock purchase to minimize future depreciation expense (and maximize reported earnings).

What can you do if you're the majority shareholder and you aren't protected by "drag along" provisions? First:

1. Buy out your minority shareholders now.
2. Obtain, today, an option to buy the minority shares in the future at a price that's economical for you and fair for them.
3. Get them to agree to "drag along" provisions (they may ask for "tag along" provisions in return, but that's probably okay).
4. Remove any elements that dictate purchase/sale by stock.

Second, minority owners can hold up asset sale transactions if a so-called super-majority provision exists in your governing documents. In most states, a simple majority of the outstanding shares is all that is required for the shareholders of a company to approve a sale of all, or substantially all, of the assets, but that can be changed (usually only a higher approval percentage can be required) in the governing documents. If your governing documents do not stipulate a higher threshold, you're clear. But if yours stipulate, for example, that a 75% vote is necessary, then you could have a problem if the consenting shareholders own less than that.

Where can super-majority provisions exist? The same places as "drag along" provisions. If the selling entity is a corporation, look in the Articles of Incorporation (aka Certificate of Incorporation), bylaws or any shareholders agreement. If the selling entity's an LLC, look in the articles of organization or the operating agreement.

The best time to avoid minority shareholder problems when selling your business is when you sell or issue shares in the first place or invest in and/or buy the company. This is when you have leverage. Options are often few when the deal is negotiated and you need the approval of minority shareholders. The power shifts to the minorities and often the only thing that will loosen the logjam is money. Your money. **tb**

continued on next page

The best time to avoid minority shareholder problems when selling your business is when you sell or issue shares in the first place or invest in and/or buy the company.

The Real Crime of Federal Economic Responsibility

October 11, 2010

We're all shocked by the current federal budget deficit, but any economist will tell you that a budget deficit is normal, even functional, during times of war and economic recession. The real crime of federal economic irresponsibility is that we ran federal deficits during the 30-year period prior to Obama's election. That we spent more than we brought in and failed to "save for a rainy day" during the incredible stretch of peace and economic prosperity during the 80s, 90s and 2000s.

In the 1980s we racked up more than \$2 trillion in debt. Reagan years! A Republican president was in office nine of the 10 years. Democrats controlled the House nine of the 10 years, and Republicans controlled the Senate for six of the 10 years.

During the 1990s we spent more than we brought in nine of the 10 years. They were great years economically! The only year with a surplus was under the Clinton administration.

During the unprecedented economic expansion of the 2000s, we spent more than we took in each and every year! Way more. Federal debt nearly doubled, rising from \$6 trillion to \$11 trillion! Republicans controlled the White House for eight of the 10 years, controlled the House for seven of the 10, and enjoyed total federal control for four full years, i.e., occupied the Oval Office and controlled both the House and Senate all at the same time. I focus only on the Republicans here because they seem to be the ones who most vehemently blame the other.

So the next time you share your outrage over the size of the current federal deficit, the terrible economic climate, or the threat to our free-market system and way of life, consider the real crime of federal economic irresponsibility is that we ran deficits during the long periods of peace and economic prosperity in the 80s, 90s and 2000s. If it weren't for this, our large current deficit would not be a problem. Deficit spending is functional and necessary during times of broad economic recession and war. [tbo](#)

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Armand Paliotta, a business law and transaction law partner with the Oklahoma City-based law firm of Hartzog Conger Cason & Neville, and Kenneth F. Albright, a tax lawyer and transaction lawyer partner at the firm of Albright, Rusher and Hardcastle, each contributed expertise for this article.

Forget Lower Taxes Without Lower Spending

November 1, 2010

I'm sick and tired of people talking about taxes. Our federal, state and local governments must raise enough money from taxes to pay for their expenditures, or they'll default on payments to people like you and me. So if we want lower taxes — and we all do — we need lower government expenditures.

If you look at the deficits being racked up at the federal level, the answer is not lower taxes. Lower taxes will just increase the deficit and add to the burden we leave to our children. We need lower spending.

Tell your U.S. senators and congressional representatives that you want radically lower spending, and that if it's not delivered, you'll vote for someone new. Now the reality is that lower government spending will harm the economy, but we have to do it. Either we deal with it now or we leave it to our children. [tbo](#)



"I'm taxes."

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¹ Units, in the case of an LLC.

² Title means ownership. Problems could arise in a business purchase or sale transaction if ownership of a key asset, or agreement, is not transferrable to the new owner and parties wish to effect the transaction by a purchase of all the assets of the business (rather than a purchase of all the stock). A way to get around the problem is to effect the business purchase by a purchase of the shares of stock in the company so the ownership, i.e., title, of said asset does not need to be changed.

Litigation First Step: Secure E-Evidence

What's the smartest thing to do when you first sense you could have a legal dispute on your hands? Secure the electronic evidence.

Many court verdicts today pivot on the quality and quantity of electronic evidence: emails, website visits, document downloads and electronic transfers of confidential information. Just as the scent of a fox weakens over time for bloodhounds of the four-legged type, digital trails disappear over time for bloodhounds of the binary type.

We live in the information age. We work in a service economy. For most companies today, intellectual assets make up a significant portion of the asset base.

- Customer and prospect databases
- Pricing models and estimation programs
- Drawings and designs
- Proprietary processes and formulas

Electronic data are difficult to protect, but these are some basic things business owners can do.

They can take years and big dollars to develop but can be transferred to competing hands in a matter of seconds.

Dr. Gavin Manes, digital forensics expert and CEO of Avansic, says employee theft of confidential data is shockingly common. "Electronic data [are] difficult to protect because virtually every employee uses a computer, has ready access to confidential data, and has multiple options for

transferring and/or making a copy of proprietary data," he explains. "But there are some basic things employers can do to reduce the risk of breach." Particularly:

1. Have every employee acknowledge in writing that:
 - a. Certain intellectual assets are proprietary and confidential, and are the sole and exclusive property of the business, though the employee may use — and even modify, improve or develop — such from time to time.
 - b. None of the company's intellectual property may be copied, transferred or used in any way or for any reason, except as directed by the company in the service of company objectives.
 - c. Departing employees shall not retain any copies of any of the company's data or electronic assets

of any type, in any form or format, without the prior written consent of the company.

- d. Employees who violate any of these policies can expect the company to defend and protect itself to the fullest extent of the law.
 - e. All data on company computers used by the employee are and shall be the exclusive property of the employer.
2. Do not let employees use their own computer(s) for work purposes. They should be issued or assigned a company computer.
 3. Issue company cell phones and company-owned cell numbers to employees who have regular contact with customers and prospects so that when they leave the company, they won't retain the contact information on the phones.
 4. If you suspect a breach, immediately collect and secure the digital evidence. Doing so will require an expert in digital forensics.
 5. If a theft occurs, don't be afraid to exercise your legal obligations to the fullest extent necessary to protect yourself.

Yes, the risk is real. Yes, your employees will agree to confidentiality and non-disclosure agreement provisions like this. Resistance by one might be your first sign of a problem.

Where can you find help drafting such an agreement? Find an expert in digital forensics. Talk to your legal counsel, get a referral from your accountant or trade association, or contact Avansic (avansic.com), experts in e-discovery and digital forensics. **tbo**



The Business Owner Journal **Accumulates Accolades**

The Business Owner Journal is receiving considerable recognition for its revamped print and electronic publication for owners of small and midsize U.S. businesses.

The Association of Marketing and Communication Professionals chose *The Business Owner Journal* for three "2010 Hermes Creative Awards," including a Platinum "Hermes"

The Association of Marketing and Communication Professionals chose *The Business Owner Journal* for three Hermes Creative Awards.

for Writing and Overall Editorial Content. Stephanie Coit, publisher of *The Business Owner Journal*, accepted the award alongside her peers from organizations such as Cisco Systems, Booz Allen Hamilton, American Express, GEICO, Symantec and Wells Fargo.

Hermes Creative Awards are an international competition for creative professionals involved in the concept, writing and design of traditional materials and programs, and emerging technologies. Hermes Creative Awards are administered and judged by the Association of Marketing and Communication Professionals. The international organization comprises several thousand marketing, communication, advertising, public relations, media production, Web and freelance professionals. The association oversees awards and recognition programs, provides judges and sets standards for excellence.

The International Academy of the Visual Arts (IAVA) recently honored us with two Silver "Communicator" awards.

The International Academy of the Visual Arts (IAVA) recently awarded *The Business Owner Journal* with two Silver "Communicator" awards, one each for best Business-to-Business Publication and Overall Publishing. IAVA member-voters include

executives from organizations such as Coach, Disney, *The Ellen DeGeneres Show*, Estee Lauder, HBO, MTV, Sotheby's Institute of Art, Victoria's Secret, *Wired* and Yahoo!

The Communicator Awards are the leading international awards program honoring creative excellence for communication professionals. Founded by communication professionals more than a decade ago, the Communicator Awards receive more than 9,000 entries from companies and agencies of all sizes, making them one of the largest awards programs of their kind in the world.

At the 2010 Editorial and Marketing Awards Gala in Washington, D.C., the Specialized Information Publishers Foundation recognized *The Business Owner Journal's* Web-based offerings (TheBusinessOwner.com) with Honorable Mention for "Best Interactive Content." Winners in other categories included Harvard Health Publications and *Nonprofit Business Advisor* (a John Wiley publication).

The Specialized Information Publishers Foundation (SIPF) is a nonprofit foundation affiliated with the Specialized Information Publishers Association (SIPA), an international trade association dedicated to advancing the interests of for-profit subscription newsletter publishers and specialized-information services. SIPF promotes specialized-information publishing through outreach to academic and professional institutions, facilitation of research, and recognition of excellence in the field through its annual Editorial and Marketing Awards.

"Our staff has worked incredibly hard to enhance both the quality of the content and the look and feel of the product," said publisher Stephanie Coit. "We take great pride in our work, and it is an honor to serve owners of small and midsize U.S. companies with the information they need to survive and thrive." **tb**

The Specialized Information Publishers Foundation recognized *The Business Owner Journal's* Web-based offerings for "Best Interactive Content."

Small Business Jobs Act of 2010

On September 25, the Small Business Jobs Act of 2010 became law. Here are the provisions you should know about:

Extension of Aggressive SBA Loan Programs

You might be able to reduce debt service burden by refinancing your debt. If you need additional working capital, or need to purchase equipment or fund improvements to your facilities, aggressive-support SBA programs have been extended through year-end and, in some cases, enhanced. You might be surprised at what banks are willing to do with government guarantees standing behind them. Here's a summary of the SBA elements of the new law:

1. Waiver of up-front fees¹ through December 31, 2010
2. Renewal of 90% guarantees
3. Renewal of the increase in the maximum size loan to \$5 million (\$5.5 million on 504 loans)
4. Increases of 7(a) "express" working capital loans from \$300,000 to \$1 million

Call your banker or find an SBA loan-packaging specialist like David Laughrey (laughreyco@cox.net).

Renewed Capital Expenditure Incentives

In an effort to get businesses spending money again, the government has rolled out new incentives to buy equipment and make improvements. If you have taxable income and the ability to fund expenditures, here's your chance to reduce the present value of the taxes you pay on profit.

- *Extension and expansion of the Section 179 deduction:* Small businesses² may immediately write off 100% of the cost of up to \$500,000 of new or used equipment purchased or 50% of leasehold improvement expenditures made in 2010 or 2011. It can be used only to reduce taxable income, i.e., it cannot be used to book a profit and thereby gain a tax refund.
- *Bonus depreciation:* Businesses of any size can write off half the cost of purchases of new equipment made in 2010 or 2011 **even if such causes a net loss.**

Unused Tax Losses Can Now Be Carried Back Five Years

Any sole proprietorship, partnership or non-public corporation with \$50 million or less in average annual gross receipts for the prior three years can now carry back unused losses for five tax years rather than just one. This means you can use current losses, or unused losses from 2008 or 2009, to offset taxable income reported as far back as 2006. Talk to your accountant about whether you can file amended statements and earn a refund.

Allow Rollovers from Elective Deferral Plans to Roth Designated Accounts

The bill contains language that would allow 401(k) and 403(b) plan participants to roll their account balances into a Roth account. The amount of the rollover would be includable in taxable income except to the extent it is the return of after-tax contributions. If the rollover is made in 2010, the participant can elect to pay the tax in 2011 and 2012.

100% Exclusion from Capital Gains Taxes on Small-Business Investments

An individual who invests in a newly formed C-corporation after September 23, 2010 and holds the stock for more than five years will pay no tax on any gain he or she may realize thereafter, subject to a limit of the greater of 10 times the original investment or \$10 million of gain. Additionally, the new legislation shields the taxpayer from AMT treatment on the gain. It is unfortunate that LCC and S-corporation stock appears not to apply.

Employees No Longer Required to Log Personal Calls

Although most employees and employers ignored the rule, employees have been required to log personal calls they make on employer-issued cell phones, and log and report and pay taxes on the benefit. This requirement has been eliminated. [tbo](#)

Note: This legislation (The Small Business Jobs Act of 2010) is more than 200 pages of text that is at times a bit difficult to understand. The language is also subject to interpretation by agencies such as the Internal Revenue Service. Little in the way of explanatory guidance has been provided in this article. As such, this summary is a "best effort" attempt to provide a summary of the parts of that are most relevant to owners of small and midsize U.S. companies.

¹This is a waiver of the SBA guarantee fee that normally must be paid to the SBA on origination. It's either 2.5% or 3.5% of the loan amount, depending on the size of the loan. The borrower may still have to pay an up-front fee to the institution that originates the loan.

²We were unable to determine the exact definition of "small." At the time of this writing, it appears — for most business types — to be 500 or fewer employees or annual revenue below about \$10 million, but indications are that these could change.

Expanded 1099 Obligation: Ignore for Now

New legislation radically expands your obligation to annually issue 1099s. This is not good. Complying with the existing 1099 obligation is costly and time-consuming. The new law is expected to increase the burden fivefold at the very least. Most accounting professionals, such as Eide Bailly, LLP partner Dan Cunningham, say the new law is virtually certain to be repealed. All say it's ridiculous and unworkable. For this reason, and because there's enough time before you're required to do anything under the new law, we suggest you ignore it entirely — at least for now.

By way of background, as the owner of a business, you've been issuing 1099-MISC forms to individuals and partnerships that you pay \$600 or more for non-wage/salary services (including rent, lease payments, prizes, awards, directors fees) or \$10 or more in royalty payments. The new law requires you in 2013 (for 2012 tax year purchases) to begin issuing them to companies, too, and for purchases of products/goods.

New legislation radically expands your obligation to annually issue 1099s.

This means collecting tax ID numbers and issuing 1099s each year to Walmart, Sam's Club, Office Depot, Apple Computer, the janitorial company, the bank, suppliers of raw materials, the phone company, the gas company, the catering company, the restaurant down the street, etc.

The purpose of the legislation is to provide more information to the IRS so it can reduce the number of tax cheats — mainly smaller companies that don't report all their income. The IRS views tax cheating as a serious problem — only because it lowers tax revenue, but tax cheating begets more tax cheats. This is because when taxpayers see others cheat, they are discouraged that not everyone pays their fair share, so they begin to cheat (and the cycle accelerates). Few believe the literal billions in additional forms sent the IRS each year will help without the addition of tens of thousands of new IRS workers, if not hundreds of thousands. Of course, the last thing we need is more government spending.

The new law was included in the Patient Protection and Affordable Care Act signed into law earlier this year — Section 9006, to be specific.

The American Institute of CPAs (AICPA) has written a letter to the U.S. Senate that states: "We believe section

9006 of the Act should be repealed because the provision imposes extremely burdensome information reporting requirements on business taxpayers that cannot be justified in terms of the limited utility such information reports will provide to the government."

The letter goes on to say: "The expansion of information reporting may prove to be so burdensome to small businesses that we believe it will significantly contribute to the hurdles to growth and formation that businesses face."

There's plenty here to get your blood boiling, but do yourself a favor and ignore it for now.

It should be repealed before it goes into effect. Just keep in touch with your accountant, and if you wish, write or call your U.S. senators and congressional representatives to share your thoughts. [tbo](#)

Most accounting professionals, such as Eide Bailly, LLP partner Dan Cunningham, say the new law is virtually certain to be repealed.



Higher 2011 Rates May Merit Acceleration

Tax rates are scheduled to be higher next year. It might be time to reverse your usual tax strategy. Instead of deferring tax, it may make sense for some taxpayers to accelerate income into 2010, defer expense into 2011 and pay tax at the current lower rates. The majority of the potential increases are due to the scheduled expiration of cuts enacted in 2001 and 2003 at the end of the year. Particularly:

Capital gain: Top-level rate will increase from 15 percent to 20 percent (18 percent for property held five+ years).

Dividend: Top-level rate will rise from 15 percent to as high as 39.6 percent.

Ordinary Income: Marginal rates will increase at all income levels. The top marginal rate will increase to 39.6 percent (from 35 percent).

Personal Exemption: Phaseout will be reinstated.

Itemized Deductions: "Pease" phaseout reinstated

Child Tax Credit: Reduced from \$1,000 to \$500

Marriage Penalty Relief: Eliminated

Taxes will be even higher in 2013 when new Medicare taxes enacted as part of the 2010 healthcare bill take effect. Unearned income such as capital gain, dividend and interest that exceeds \$200,000 for single filers and \$250,000 for joint filers will be subject to a new 3.8 percent tax. The employee share of Medicare tax on earned income above these thresholds will also increase — from 1.45 percent to 2.35 percent. Altogether this means the top rate for capital gains will rise from 15 percent this year (2010) to 23.8 percent in 2013, and the top rates for dividend and interest income will go from 15 percent this year to 43.4 percent in 2013.

Legislation Expected to Temper the Increases

Lawmakers plan to enact legislation that will temper the tax increases. The president and many Democrats have voiced support for extending the tax cuts for income below \$200,000 for single filers and \$250,000 for joint filers, and for capping the top capital gain and dividend rate at 20 percent. Republicans generally support extending the tax cuts for everyone, at least temporarily. Congress has adjourned for the November 2 elections, so legislation won't be finished until November at the earliest. It could even be delayed until early 2011. If you are considering accelerating tax in 2010, you should begin preparing now so you can act quickly once legislation is enacted.

Things to Think About Before Acting

Accelerating income and deferring deductions can be a powerful strategy, but you need to be careful. There are many reasons when the strategy will NOT make sense. You should make sure the tax increases will apply to you. The tax cuts are likely to be extended for many taxpayers, and could be extended temporarily for everyone.

The time value of money should not be forgotten. You lose the ability to invest any money you spend on taxes now instead of later. If you planned on holding an asset for several years, you might not want to take the bait just to avoid a small bump in capital gains rates. Why not let it continue to appreciate tax-free? And if the asset is something you could pass on to your heirs without ever selling, they may be better off using the step up in basis at death.

Acceleration of tax also might not make sense if it will push you into a higher tax bracket this year than you will be in the future, such as in retirement. And remember to consider the alternative minimum tax. If you're subject to the AMT, you may not benefit from any acceleration of income or capital gains.

Maximize 2010 Taxable Income?

The uncertainty makes tax planning difficult, but there are definitely situations where you may want to increase income and delay deductions to take advantage of the low 2010 rates. Talk to an advisor and make sure you're comfortable with the political and economic analysis. You should prepare your strategies now so you can act once the legislative outlook becomes more clear.

At the personal level, you might be able to accelerate self-employment income, consulting income, retirement plan distributions, the exercising of non-qualified stock options or incentive stock options, and Regular IRA to Roth conversions. The deferral of personal deductions is accomplished in many cases by simply deciding when to make the payment. You may be able to defer deductions for things like charitable contributions; deductible investment expenses such as investment advisory and custodial fees; and professional fees like tax planning and preparation, accounting, and legal fees.

As a business owner, some of your individual income may come from a pass-through business structure such as a partnership or S corporation. You can consider accelerating revenue and deferring the recognition of expense

continued on next page

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at the entity level. But be careful because accounting method and other depreciation decisions can affect deductions and income recognition for years into the future.

Take Gains Before the New Year?

If you have an appreciated asset or stock with a sizable built-in gain, you may want to consider realizing it before year-end. Come January 1 the top rate is scheduled to rise from 15 percent to 20 percent (18 percent if held at least five years). Even if you want to continue to own the asset or investment, you may be able to trigger the gain and pay tax without changing position. For stock and other securities, you can just sell it and buy it back immediately because there's no wash sale rule for capital gains. Flipping other types of assets may be complicated. If you want to recognize gain but keep some control or use of an asset, you must satisfy rules that determine whether ownership has actually been transferred.

Diversification Opportunity

Do you have a large, appreciated asset that accounts for an inordinate share of your wealth? If you're bearing inherent risk from a lack of diversification because you're avoiding tax on a sizeable capital gain, now might be the time to sell and reinvest the money.

Accelerate Sale Installments

If you sold your business in an installment sale that extends beyond 2010, you may want to recognize the income ahead of schedule. Deferred income on most installment sales made after 1987 can be accelerated by pledging the installment note for a loan.

Converting to a Roth IRA

Now may be the perfect time to consider a rollover from a traditional retirement account such as a 401(k) or Individual Retirement Account (IRA) into a Roth IRA. The \$100,000 AGI limit on making a rollover has been eliminated. When you convert, you must pay tax on any realized appreciation, but you don't have to pay tax again if distributions are made correctly. If converting makes sense for you (see "Convert to Roth Before Year-End?" and "Roth Conversion Decision Made Easy," both in the September/October 2010 issue of this publication), it might make sense to do it in 2010 and pay the tax at lower 2010 rates. A special rule this year allows you to recognize the income from 2010 rollovers in 2011 and 2012, so if you want to recognize the income now, you must make that election on

your return. The values of the assets in your retirement accounts are now likely depressed, so the gain could be lower now than it might be in future years. Be careful, though, because a large conversion can generate a lot of income, which could affect other tax items tied to AGI (including how much of your Social Security benefits is taxed).

Acceleration of Employee Stock Vesting

If you've granted restricted stock to employees, you might consider accelerating the vesting into 2010. Employees recognize income at the vesting date. You can also accelerate the vesting of non-qualified deferred compensation (NQDC). If vesting is accelerated to a date prior to 2013, employees could avoid the additional 0.9 percent in Medicare taxes that goes into effect in 2013.

C-Corp Strategies

Top dividend rates are scheduled to rise from 15 percent this year to ordinary income treatment in 2011, i.e., with tax as high as 39.6 percent! C-corporations that pay dividends might consider accelerating their dividend schedule so shareholders can enjoy the lower rate. If the corporation isn't ready to distribute cash, it could issue a note to shareholders or have shareholders immediately re-contribute the dividend back to the corporation in the form of a new capital contribution or loan. Keep in mind that mere bookkeeping entries may not be sufficient to accomplish the actual distribution and trigger the tax. Also, distributions of income from the corporation generally will be taxable as a dividend only to the extent they represent earnings and profits (E&P). Distributions exceeding E&P will eliminate basis in capital. This may not make sense because the basis would be more valuable when tax rates are higher. If basis is exhausted, the distribution can be capital gain, but be careful — shareholders may have different bases in their shares. [tbo](#)

"Be the change that you want to see in the world."

Mahatma Gandhi

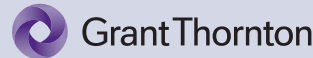
Visit the Business Guidance Tax section for more tax articles.

TAXES

2010 Tax Information

PERSONAL EXEMPTION	\$3,650 per person (none if filing as a dependent)
EXEMPTION PHASEOUT	There is no phaseout for exemptions in 2010. (Phaseout scheduled to return in 2011.)
MAXIMUM SALARY DEFERRALS	\$16,500 for 401(k), 501(c), 457 and 403(b) plans. (\$22,000 if over 50) \$11,500 for Simple, \$14,000 if 50 or older.
MAX. RETIREMENT PLAN CONTRIBUTIONS	IRA (Regular¹ and Roth²): \$5,000; \$6,000 if 50 or older Defined Contribution Plans: \$49,000 Defined Benefit Plans: \$195,000 ¹ Phaseout of deductibility of IRA contributions begins at \$89,000 (MFJ); \$56,000 (S, HH, MFS) ² Roth phaseout begins at \$105,000 AGI (S); \$167,000 (MFJ); \$0 (MFS)
STANDARD MILEAGE RATES	Business: 50 cents; Charity: 14 cents; Medical/Moving: 16.5 cents
ITEMIZED DEDUCTION PHASEOUT	There is no phaseout for itemized deductions in 2010. (Phaseout scheduled to return in 2011.)
PAYROLL TAXES	6.2 % Social Security tax levied on first \$106,800 in wages. 1.45 % Medicare tax levied on all wages Household help: SS tax levied only after \$1,700 paid.
KIDDIE TAX (Children under 19)	First \$950 not taxed; \$950 to \$1,900 at child's rate; over \$1,900 at parents' rate. (Kiddie tax also applies to college students under the age of 24 who do not provide over 1/2 of their own support.)
FOREIGN INCOME EXCLUSION	\$91,500
SECTION 179 LIMIT	\$500,000 (This is reduced by amount of sec 179 property that exceeds \$2 million.)
CAPITAL GAINS RATES*	Assets held 1 year or less: taxed at ordinary income rates Assets held more than 1 year: taxed at 15% (zero for taxpayers in 10% or 15% brackets)
CHILD TAX CREDIT	\$1,000 for each child under age 17. Phaseout begins at \$75,000 AGI (S); \$110,000 (MFJ), and \$55,000 (MFS).
AMT RATES	26% of income up to \$175,000 (\$87,500 (MFS)); 28% thereafter
AMT EXEMPTION	\$33,750 (S, HH); \$45,000 (MFJ); \$22,500 (MFS) Phaseout of exemption begins at \$150,000; \$112,000 and \$75,000, respectively. (As this issue went to print, Congress was considering a 2010 AMT "patch" that would significantly increase these exemption levels in 2010.)
QUALIFIED DIVIDEND INCOME	Taxed at 15% (zero for taxpayers in 10% or 15% brackets)
ANNUAL GIFT EXCLUSION	\$13,000
ESTATE TAX EXCLUSION	Estate tax temporarily repealed for 2010
RETIREMENT PLAN WITHDRAWALS MANDATORY	Age 70 1/2 (Required minimum distributions are reinstated for 2010 after a one-year waiver for 2009.)
HOME SALE EXCLUSION	\$250,000(S), \$ 500,000 (MFJ) (You must include gain on a pro-rata basis for any years after 2009 that your home was not used as your principal residence.)

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For Single, Head of Household, Married Filing Joint/ Surviving Spouse, and Married Filing Separate Returns: If you can be claimed as a dependent by another taxpayer, your standard deduction cannot exceed the greater of \$950 or earned income plus \$300.

SINGLE

Taxable Income	Tax Rate
\$0 — \$8,375	10%
\$8,376 — \$34,000	15%
\$34,001 — \$82,400	25%
\$82,401 — \$171,850	28%
\$171,851 — \$373,650	33%
Over \$373,650	35%

* Standard deduction \$ 5,700 (+\$1,400 for each spouse age 65+ or blind, \$2,800 for each spouse age 65+ and blind.)

HEAD OF HOUSEHOLD

Taxable Income	Tax Rate
\$0 — \$11,950	10%
\$11,951 — \$45,550	15%
\$45,551 — \$117,650	25%
\$117,651 — \$190,550	28%
\$190,551 — \$373,650	33%
Over \$373,650	35%

* Standard deduction \$8,400 (+\$1,400 for each spouse age 65+ or blind, \$2,800 for each spouse age 65+ and blind.)

MARRIED FILING JOINT/ SURVIVING SPOUSE

Taxable Income	Tax Rate
\$0 — \$16,750	10%
\$16,751 — \$68,000	15%
\$68,001 — \$137,300	25%
\$137,301 — \$209,250	28%
\$209,251 — \$373,650	33%
Over \$373,650	35%

* Standard deduction \$11,400 (+ \$1,100 for each spouse age 65+ or blind, \$2,200 for each spouse age 65+ and blind.)

MARRIED FILING SEPARATE RETURNS

Taxable Income	Tax Rate
\$0 — \$8,375	10%
\$8,376 — \$34,000	15%
\$34,001 — \$68,650	25%
\$68,651 — \$104,625	28%
\$104,626 — \$186,825	33%
Over \$186,825	35%

* Standard deduction \$ 5,700 (+ \$1,100 for each spouse age 65+ or blind, \$2,200 for each spouse age 65+ and blind.)
If you can be claimed as a dependent by another taxpayer, your standard deduction cannot exceed the greater of \$950 or earned income plus \$300.

CORPORATE TAX RATES

Taxable Income	Tax Rate
\$0 — \$50,000	15%
\$50,001 — \$75,000	25%
\$75,001 — \$100,000	34%
\$100,001 — \$335,000	39%
\$335,001 — \$10,000,000	34%
\$10,000,001 — \$15,000,000	35%
\$15,000,001 — \$18,333,333	38%
Over \$18,333,333	35%

INCOME TAXES FOR ESTATES AND TRUSTS

Taxable Income	Tax Rate
\$0 — \$2,300	15%
\$2,301 — \$5,350	25%
\$5,351 — \$8,200	28%
\$8,201 — \$11,150	33%
Over \$11,200	35%

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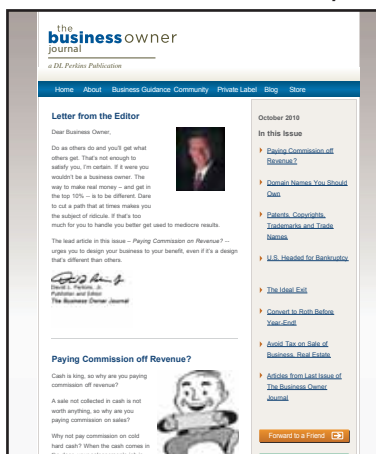
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