

Tax Return Traps

It's February, and most business owners are in the process of getting their 2010 tax information in order. If you aren't, you should be. Due to the current economic downturn, a number of businesses ran at a loss for 2010. So if your business has a net loss for the year, and you shouldn't owe any tax, you don't need to file those pesky returns, right? Wrong.

So What Happens If I Don't File With The IRS?

If you don't file a federal tax return, the IRS will file one for you. It's called a substitute return, and it does not include all of the good stuff that you want on your business tax return, like exemptions, credits and expense deductions. They base this substitute return on information that they get from other sources (i.e. not you). The IRS even states on its website that the substitute return they file for you "may overstate your real tax liability" (<http://www.irs.gov/businesses/small/article/0,,id=108330,00.html>). And you don't want to leave how much you owe up to the IRS. Additionally, if the IRS assesses taxes with this substitute return, they can start the collection process, which may include placing a levy on wages or bank accounts, and even filing a federal tax lien on your property. So even if your business shows a loss for the year, file that tax return each and every time. You'll be glad you did.

If your business has not properly complied with federal income tax withholding laws and regulations regarding employees, the picture can get very dark for you as an employer. As an employer you can be subject to criminal and civil sanctions for willfully failing to pay employment taxes. And in certain circumstances you can be individually liable for those sanctions due to willful non-payment. So make sure you pay those withholding taxes for your employees when they are due.

What Can Happen If I Don't File With The State/Local Government?

If you don't file the appropriate documents with your state and/or local government with regard to whatever business tax laws apply in your locale, there can be consequences that may not be readily apparent. And you may not get any more notice than a letter in the mail.

For example, in Texas, if your business does not file a franchise tax return and the related paperwork with the Comptroller's office, your company will be listed as not in good standing. Sounds like a slap on the wrist, right? It's not.

Even if you don't owe any franchise tax for the year, if you don't file the paperwork within the prescribed time limits, the Texas Comptroller is required to forfeit the corporate privileges of the company. What does that mean? It means that your company is denied the right to sue or defend in court in Texas, and each director or officer of your company can be personally liable for debts of the company under certain circumstances. Additionally, if you don't file that zero tax due return and related paperwork, the Texas

Comptroller may also forfeit the right for your company to do business in Texas. This can happen without going before a judge, without a hearing of any kind. All you will receive is a letter in the mail.

If you get one of these forfeiture notices from the Texas Comptroller's office, that's not the end of what can happen. If you haven't cleared up the problem within a certain amount of time after you receive the forfeiture notice, the company's charter, certificate or registration can be forfeited by the Texas Secretary of State's office. What's the big deal with that you ask? Once that happens, your company has lost its right to use its name with the Texas Secretary of State. And your company's name may or may not be available when you get your issues cleaned up. So make sure that you open and read all your government issued mail, and most importantly, respond to it promptly.

What Do I Do If I Get One Of Those Forfeiture Notices?

Call your business lawyer immediately if you receive a notice of forfeiture or any similar document. He or she will be able to guide you through the process of what to do.

For instance, in Texas if you receive a forfeiture notice, all is not lost. There are provisions in the Texas Tax Code that allow a company to file any delinquent reports, along with paying any back taxes that may be due (along with penalties and interest), in order to revive the company.

How Do I Prevent This Situation From Happening To My Business?

Make sure that all your company's filings are up to date with the IRS and with state and local governments. Be certain that each government agency that your business is required to report to has your proper address, phone number, email address, and contact person. Double check that your registered agent with the Secretary of State is the proper person and that their correct address is listed. And stay in communication with your CPA regarding your business' tax status. You will want to have a conversation with your CPA on at least a quarterly basis to ensure that your business is meeting its tax reporting requirements.

You will also want to meet at least once a year with your lawyer. If you haven't done this in awhile, have your lawyer do a review of your corporate status, both with your books and with the proper state agencies. Also, if you have any changes in officers, directors or ownership, you will want to inform your lawyer and have him or her check to make certain that the filings with the state are up to date.

Keeping your records up to date and having regular checkups of your business by your CPA and your lawyer can help you to avoid any inadvertent tax problems with your business.

This article was written by Seth J. Hinkley. Mr. Hinkley has been advising business owners on multiple aspects of corporate and business law since 1997. This is not legal advice and does not give rise to an attorney-client relationship. If you have any questions regarding the issues discussed in this article please contact Mr. Hinkley at:

Seth J. Hinkley
HINKLEY LAW, PLLC
4301 Yoakum Boulevard
Houston, Texas 77006
(281) 364-8490
seth@hinkleylaw.com
www.hinkleylaw.com