



CUSHING & DOLAN, P.C.
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Small Business Jobs Act of 2010

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Depreciation Incentives Provide Planning Opportunities

- **The Act includes provisions to encourage businesses to make purchases in the next two years including:**
 - Section 179 expensing allowances Increased
 - Certain types of real property temporarily included in Section 179
 - 50% bonus depreciation allowance extended through the end of 2010

Section 179 Allowances Increased

- Annual expense allowance **increased** from \$250,000 to \$500,000
- Phase-out amount **increased** from \$800,000 to \$2,000,000
- Increases effective for 2010 and 2011
- Statutory limits set to decrease back to \$25,000 and \$200,000 in 2012
- New or used property is eligible

50% Bonus Depreciation Extended through 2010

- Previous provision expired on December 31, 2009
- Taxpayers are provided with the ability to take a 50% first-year depreciation deduction on qualified assets **placed in service** from January 1, 2010 through the end of 2010
- Qualified investments include tangible property with a recovery period of 20 years or less, water utility property, certain computer software, and qualified leasehold improvement property
- Only **new** property qualifies for bonus depreciation

Tax Planning Opportunities from Depreciation Provisions

- Taxpayers can utilize both the Section 179 expense allowance and the 50% bonus depreciation
- Property must be **placed in service** to be eligible
- Provisions may have significant effect on the timing of planned purchases or expansions by providing substantial incentive to push these decisions into the next 15 months

Small Business Tax Provisions

- **What is a Small Business?**

- A business (or individual) must have average annual revenues of less than 50 million dollars for the prior three years
- The business also cannot be publically traded

Other Small Business Provisions

- **Startup deduction limit increased**
 - Limit increased from \$5,000 to \$10,000
 - The phase-out threshold was also increased from \$50,000 to \$60,000
 - Increases apply for 2010 only
- **Exclusion for 100% of gain on certain small business stocks for window period**
 - Applies to §1202 stock
 - Applies to stock acquired after September 27, 2010 and prior to January 1, 2011
 - Prior law already provided for an increase in the exclusion from 50% to 75% for stock acquired after February 7, 2009 and prior to January 1, 2011
 - Stock must be held longer than five years to qualify

Other Tax Provisions of the Act

- **Temporary reduction in recognition period for built-in gains tax for S-Corporations**
 - Prior law shortened the usual 10 year holding period to 7 years
 - This Act further reduced the holding period to 5 years, if the 5th year precedes the tax year beginning in 2011
 - This may affect S-Corporations with C-Corporation built-in gains
- **The Act allows self employed persons to deduct health insurance premiums when calculating self-employment income**
- **Cellular phones removed from the definition of listed property**
 - Lifts the strict substantiation requirements of use and the additional limits placed on depreciation deductions
 - Relief applies to tax years beginning after December 31, 2009



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Maintaining Corporate Compliance

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Or alternatively.....

It's 11:00...Do you know where your
corporate minute book is?

Purpose of Utilizing Registered Business Entities?

Corporations

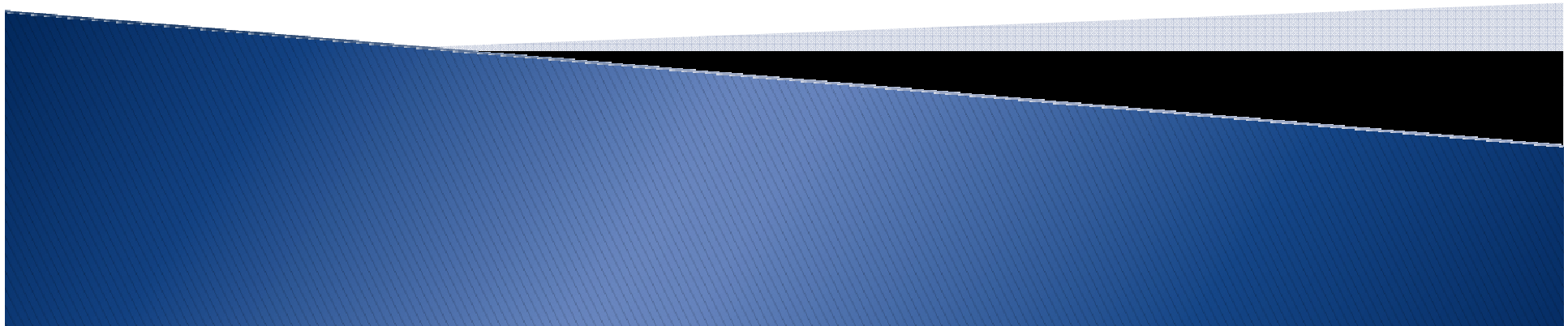
Limited Liability Companies

Limited Partnerships

Limited Liability Partnerships

Limited Liability

Corporate Veil



All business entities must follow

“Corporate Formalities”

- Vary By Type of Entity
- Vary by Jurisdiction

What Are Corporate Formalities?

- **Meetings**
- **Resolutions**
- **Minutes**
- **Approvals**
- **Stock Ledgers**
- **Stock Issuance**
- **Acceptance**
- **Amendments**

Why is it important to comply with corporate formalities?

Federal and State Law

Banks-Loans

Shareholders/Members

The IRS-Audit Request

Actions That Need To Be Documented

- Employment Agreements
- Officer's Salaries
- Equipment Purchase/Lease
- Property Purchase
- Cars
- Issuance of Dividends

Actions That Need To Be Documented

- Retirement Plans
- Medical Plans
- Selling Shares
- Loans
- Fringe Benefits
- Bonuses

Factors Leading to Veil Piercing

- confused intermingling of business assets
- thin capitalization
- nonobservance of corporate formalities
- absence of corporate records
- nonfunctioning of officers and directors

Attorney General v. M.C.K., Inc., 736 N.E.2d
373 (Mass. 2000)

Failure to maintain Corporate Formalities can lead to:

- Involuntary dissolution.
- Paying tax penalties on disallowed deductions.
- Shareholders becoming personally liable for the corporation's activities/debts.
- Allowing a creditor, the IRS or attorneys to pierce the corporate veil seize your personal assets.
- Estate tax includibility for family entities

Solution?

Cushing and Dolan's Business Law Department

- Protect Limited Liability
- Stronger Asset Protection
- Competent Business Counsel
- Cost Effective

Closely Held Businesses Face Greatest Risk

- They tend to treat their business like a sole proprietorship.
- They don't document business decisions
- They co-mingle funds and assets
- They don't know what documents they must maintain to stay in compliance...so they do nothing.

Cushing and Dolan Business Law Initiative

- Minutes
- Resolutions
- Filings
- Amendments
- Meetings
- Notifications



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