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Crowdfunding and Your New Business



Robert V. Hawn, Esq.

On April 6, 2012, President Obama signed into law the Jumpstart Our Business Startups Act, or "JOBS Act." One of the innovations contained in the new law is the implementation of "crowdfunding."

This funding method theoretically allows a company to raise capital through the internet from a large number of previously unknown investors free of many regulatory constraints.

Qualifying companies can raise up to \$1,000,000 per year. In any twelve-month period, an unaccredited investor (e.g., an investor with a net worth of less than \$1,000,000, or an annual income over the last 2 years and upcoming year of less than \$200,000 or \$300,000 with the investor's spouse), can purchase shares valued at up to 10% of the investor's annual income or net worth, not to exceed \$100,000. Smaller limits exist if the investor has an income or net worth of less than \$100,000. Net worth does NOT include the positive value of an investor's residence.

Any purchase must be through an SEC-approved funding portal or broker. Only the

portal or broker can advertise the crowd-sourced investment opportunity. The portal or broker must also conduct a background and securities enforcement regulatory history check on each company officer, director, and 20% or greater stockholder. The SEC will create a list of necessary disclosures required to be made by the portal or broker related to risks, investor education materials, and other items.

For its part, the company must provide a number of disclosures to the investors. These include, among other things, the contact information of each officer, director, and 20% or greater stockholder, and a description of the ownership and capital structure of the company including the name and ownership level of any holder of more than 20% of any class of the company's stock. The company must describe its financial condition, which, depending on the amount to be raised, must be certified by its CEO, or reviewed or audited by an independent CPA, and must file annually reports of its operations and financial statements with the SEC.

The SEC is required to release rules around December of this year. These rules will hopefully enable companies to determine whether current rules, or the JOBS Act, provide a more efficient route to capital.

Success Story



SLG represented a start-up venture that was targeted by the founders' former employer, which was also a competitor. The founders had not taken any information or materials from their former employer but were nevertheless accused, and millions of dollars of damages were sought. SLG vigorously defended the client through trial and prevailed in obtaining a judgment against the competitor. When the competitor appealed the judgment, SLG defended its client through the appeal and prevailed again.

New Rules for Reporting Change of Real Property Ownership

If you own California real estate in a business entity, watch out. As of January 1, 2012, there are some new rules and some higher penalties regarding reporting a change of ownership or control of real property in California. The good news is that the required period for reporting has been extended from 45 to 90 days. The bad news is that the maximum penalty is now \$5,000 for property eligible for the homeowners exemption and \$20,000 for property not eligible for the homeowners' exemption.

A change of ownership can happen in one of two ways:

- 1. Change in control of a legal entity:** If real property is owned by an entity and any person or entity gains control of that entity through direct or indirect ownership of more than 50% of the voting stock of a corporation or a majority interest in a partnership or LLC, the real property owned by that entity is considered to have undergone a change in ownership and must be reappraised.
- 2. Cumulative Transfers by Original Co-Owners:** If real property is owned by an entity and over time voting stock or ownership interests representing more than 50% of the

total interests are transferred by the original co-owners (in one or more transactions), the real property owned by that entity is considered to have undergone a change in ownership and must be reappraised.

There is no change of ownership when the direct or indirect proportional interests of the transferors and transferees do not change.

For legal entity transfers, the Form BOE-100-B Statement of Change in Control and Ownership of Legal Entities must be filed with the Board of Equalization in three circumstances. The personal or legal entity acquiring control of an entity must file when there is a change in control and the legal entity owned California real property on the date of the change. The entity must file when there is a change in control and it owns California real property. An entity must also file upon request by the Board of Equalization.

[Source: Spidell's California Taxletter, Volume 34.2, February 1, 2012]

Tax Corner

Electronic K-1 Forms:

The IRS now allows partnerships to provide K-1 forms to the partners electronically, so long as the partners approve first and the partnership informs the partners that they can have a paper form sent to them if they opt out of electronic delivery. *Revenue Procedure 2012-17*.

State Disability Insurance – 2012

The State Disability Insurance contribution rate for 2012 is 1.0%. The State Disability Insurance taxable wage limit is \$95,585. This is the maximum amount of wages that is subject to the State Disability Insurance contribution. This means the maximum yearly contribution amount per employee is \$955.85.



Employment Corner

Tax Rules For Tablets

The IRS has announced that the same tax free rules that apply to employees' cell phones and smart-phones also apply to tablets (i.e. iPads). If employers have a noncompensatory business reason for providing employees with phones, the phone's business use is a tax-free working fringe benefit and their personal use is a tax free de minimus benefit. If an employee uses their personal cell phone for business, you can reimburse them for their basic monthly phone charges and employees don't need to keep records of their business and personal use. [Source: *The HR Specialist*, March 2012, Vol. 10, No. 3]



Top 13 Outrageous Reasons for Missing Work

According to a recent article published by The HR Specialist, CareerBuilder surveyed more than 2,600 employers and 4,300 employees and found that 29% of workers have admitted to playing hooky from the office. The top reasons for calling in sick when employees were well, were errands and plans with family and friends. According to this article, the prime time of the year when companies say employees call in sick is the first quarter.

As part of the survey, employers shared some of the most unusual excuses employees gave for missing work:

- Employee's 12-year-old daughter stole his car and he had no other way to work. Employee didn't want to report it to the police.
- Employee said bats got in her hair.
- Employee had a headache after going to too many garage sales.
- Employee said a refrigerator fell on him.
- Employee was in line at a coffee shop when a truck carrying flour backed up and dumped the flour into her convertible.
- Employee said a deer bit him during hunting season.
- Employee ate too much at a party.
- Employee fell out of bed and broke his nose.
- Employee got a cold from a puppy.
- Employee's child stuck a mint up his nose and had to go to the ER to remove it.
- Employee hurt his back chasing a beaver.
- Employee drank anti-freeze by mistake and had to go to the hospital.
- Employee was at a bowling alley and a bucket filled with water crashed through the ceiling and hit her on the head.



[Source: *The HR Specialist*, www.thehrspecialist.com]

Real Estate Corner

California is Focusing on Section 1031 Exchanges:

In addition to looking at the usual Section 1031 exchange requirements, California is focusing on auditing Section 1031 exchanges in order to make sure that gains on the disposition of non-California replacement property are sourced to California if the replacement property was received in a California deferred exchange. According to the Franchise Tax Board, these are some common Section 1031 audit issues:

- Failing to report other property received in the exchange (known as "boot").
- Failing to meet the technical requirements of a 1031 exchange.
- The relinquished and/or the replacement property were not held for investment or for productive use in a trade or business.
- Gains not being properly sourced to California on sale of non-California property that was received as a result of an exchange out of California property.

This last issue may take some taxpayers by surprise. If a taxpayer sells California property as part of an exchange, the gain is deferred, meaning it is not recognized at the time of the sale. If the taxpayer exchanges ***“California is focusing on auditing Section 1031 exchanges...”*** into out-of-state property, California still expects to receive those taxes when the out-of-state property is later sold in a taxable sale. If the taxpayer is a California resident when the out-of-state property is sold, the full amount of the gain is taxable because California residents are taxed on their income from all sources. However, if the taxpayer is not a California resident when the out-of-state property is sold, the previously unrecognized California gain is still taxable to the Franchise Tax Board.

Source: *Spidell's California Taxletter*, Volume 34.2, February 1, 2012





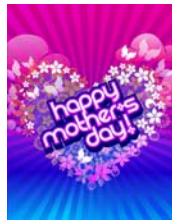
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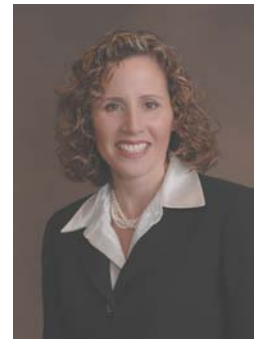
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Dates To Remember

Earth Day	April 22
Administrative Professionals Day	April 25
Mother's Day	May 13
Armed Forces Day	May 19
Memorial Day (Courts and government offices closed)	May 28
Father's Day	June 17
Summer Begins	June 20



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Did You Know?

- People with blue eyes can see better in the dark.
- Each American throws out 4.5 pounds of trash a day.
- Experts say one of the biggest sleep distractions is the internet because it is available 24 hours a day.
- Ten percent of snorers have sleep apnea.
- In 75% of households, women manage the finances.
- The average person consumes 9 pounds of food additives every year.



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your referrals!*

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