

## Inside This Issue

Crowdfunding Made Easy?  
Not So Much...

Success Story

Changes In Secretary of  
State Filing Times

Tax Corner

The Latest News at SLG

Real Estate Corner

Employment Corner

Dates to Remember

Did You Know?

*Structure Law Group is a sponsor of this year's C2SV festival, September 26th -29th. See inside for more details about the event and where to buy tickets.*



## Crowdfunding Made Easy? Not So Much...



**Robert V. Hawn, Esq.**

The new buzz word for financing hungry start-ups is crowdfunding (sometimes known as crowdsourcing). In this type of deal, an individual or group receive contributions from a large number of people. The process started with artists raising money for their projects. Their success led for-profit companies to look at crowdfunding to raise money. To encourage crowdfunding, Congress passed the JOBS Act last September. In response, the Securities and Exchange Commission released new regulations intended to encourage crowdfunding. One of the new regulations relaxes the public solicitation limitations that had been imposed for certain types of private financing deals.

Because start-up fundraising involves selling stock, start-ups have to comply with federal securities laws. To avoid the formal and expensive registration process, companies comply by using exemptions from this process. Under Regulation D, a commonly used exemption, you could not publicly solicit your stock. Here's where the SEC relaxed its requirements. For issuances involving financially sophisticated persons who are accredited (meaning, rich) investors, you can pub-

licly solicit your stock. Life is good!

Well, not so fast. The SEC said if you publicly solicit, you need to be sure the investor is actually accredited. So, what do you have to do?

In the past, most stock purchase documents merely had the purchaser state they are accredited. Under this new rule, that won't be enough. Instead, the issuer has to take "reasonable steps to verify that such purchasers are accredited investors." The SEC did not want to dictate what has to be reviewed to verify accredited status, but did make some suggestions. For example, if you are using income as a basis for accredited status, you can look at tax returns. If you are looking at net worth, you can look at bank statements, brokerage statements, and a consumer report as to liabilities from a nationwide consumer reporting agency. You can also accept a written statement from a registered broker-dealer, registered investment advisor, or attorney.

What this all means is that if you want to use crowdfunding to **sell stock**, you will need to be a lot more invasive in investigating the financial status of your investors. Investors may not be comfortable releasing this information. As a result, this newest revision from the SEC may not open the floodgates of capital to start-ups. Still, it adds an additional way of raising funds.

## Success Story

SLG was retained by a commercial tenant who had recently experienced a proverbial "train wreck" of a project involving significant tenant improvements. The property owner had imposed a hard deadline for completion of the improvements, and the contractor failed to meet the deadline. Negotiations soured and the contractor sued the tenant-client for failure to make certain of the payments for work done on the project. The client's former attorney had counseled the client to offer a settlement which the contractor refused. SLG took the case over, discovered a counter-claim, and took necessary steps to assert it. SLG litigated the case and not only completely defended the claim alleged against the client, but also received a significant award in the client's favor on the counter-claim against the contractor.

## Changes in Secretary of State Filing Times

The question I hear most from our small business clients in the initial meeting is, "How long will it take to form my company?"

For many years my answer was that we could have the filed Articles of Incorporation (for a Corporation), Articles of Organization (for an LLC), or Certificate of Partnership when forming in California within about a week. However, several years ago the California Secretary of State started to slow down and I had to tell clients that it could take several weeks. Unfortunately, in the last year or so the delays crept up to three months or more for the California Secretary of State to process and return a business filing.

California does provide a 24-hour expedited filing option, for an additional \$350 over the usual filing fees. I have often wondered whether it was the California budget crisis that was causing filing times to slow down because of lack of resources, or if the Secretary of State was purposefully taking longer to return routine filings in order to force virtually everyone to pay the "rush" fees.

Other states such as Delaware offer much faster turn-around

times, usually 24 –48 hours at no extra cost.

Governor Brown recently signed a bill (AB 113) to provide \$1.6 million in funding to the California Secretary of State to be used to eliminate the backlog of over 100,000 filings and speed up the business filing process. The stated goal was to reduce waiting times for a business filing to be processed and returned from three months to between 5 and 10 days by November, 2013. [Source: *Spidell's California Taxletter*, Vol 35.6, June 1, 2013, p.71]

We have already seen a reduction to about 2 weeks, so something is working. Hopefully this reduction in waiting times will allow business owners and inventors to start their business in California faster and less expensively (with no rush fees). In addition to benefiting the small business owners, this should also benefit the State as hopefully the State will collect more franchise taxes and will likely start collecting more payroll taxes and sales taxes from new businesses sooner.

By: Tamara B. Pow, Esq.

## Tax Corner



### Did your kids go to summer camp?

If your school age kids (under 13) went to summer day camp so you could work, those costs qualify for the dependent care credit. However costs of summer school and tutoring programs aren't eligible because they are for education, not care. [Source: *The Kiplinger Tax Letter*, Vol. 88 No. 14, July 3, 2013]

### Child and Dependent Care Expenses Credit

California has new substantiation requirements for the Child and Dependent Care Expenses Credit as of July 1, 2013. You must retain adequate records including the age of the child, identity and taxpayer ID of the care providers, documents showing the physical location of the care provider, and proof of payment. [Source: *Spidell's California Taxletter*, Vol. 35.8, August 1, 2013, p.93]

### Consider a Cost Segregation Study before Agreeing to an Asset Purchase Price Allocation

A corporation bought the assets of a competitor and agreed to an allocation of the purchase price in the purchase contract. Later the buyer had a cost segregation study done on the assets showing they were eligible for faster depreciation. The 11th Circuit Court of Appeals just upheld an earlier Tax Court decision that, despite the cost segregation study, the buyer must stick with the allocation in the purchase contract. (*Peco Foods*, 11th Cir.) [Source: *The Kiplinger Tax Letter*, Vol. 88 No. 15, July 19, 2013]

### Larger Companies Won't Have To Provide Health Coverage To Workers Next Year

The new employer mandate stating that employers with 50 or more full-time employees must provide health insurance to their employees or face stiff penalties has been delayed until 2015. However, there's no delay on the rule that individuals who go without health insurance must pay a fine. This will take effect on January 1, 2014. [Source: *The Kiplinger Tax Letter*, Vol. 88 No. 14, July 3, 2013]

## The Latest News At



### SLG Welcomes Summer Ludwick!



**Summer Ludwick, Esq.**

We're excited to announce that Summer Ludwick has joined Structure Law Group! Summer's practice focuses mainly on business and commercial real estate transactions.

Summer represents businesses and individuals in the purchase, sale, exchange, leasing and financing of office buildings, R&D space, industrial and warehouse, retail, hotels, apartments, common interest associations, and sustainable or LEED certified buildings. She is proficient in asset-based deal structuring, and the preparation of operating, joint venture, development and shared ownership agreements. Summer also handles an array of corporate matters, including entity formation, purchase or sale of business assets, bulk sales, loan documentation, and advice and preparation of agreements involving on-going business matters.

Summer was also recently selected as one of the **2013 SuperLawyers Northern California Rising Stars**.

Summer is a real asset to the Structure Law Group team. Having her on board allows us to provide a higher level of service to our clients, and adds significant strength to our real estate and corporate service areas. Summer can be reached at (408) 441-7500 or [sludwick@structurelaw.com](mailto:sludwick@structurelaw.com).



Structure Law Group is a proud sponsor of the inaugural C2SV conference to be held in San Jose at the end of September. This combination conference and music festival features many of the thought leaders creating our new economy. Among the speakers is SLG's Bob Hawn, who will be discussing with our client, Social Media Gateways, the creation of a lean start-up and the process of building a revenue positive company on minimal outside funding. See [c2sv.com](http://c2sv.com) for tickets and information.

## Real Estate Corner

### New Filing Requirement for §1031 exchange of California property

Starting January 1, 2014, if you exchange California property for out-of-state property you will be required to file an information return with the FTB for the year of the exchange and every subsequent year that the gain is deferred. Regardless of your state of residency at the time of the exchange, if you are a California resident when the out-of-state property is later sold, all of the gain is taxable in California. If you were a California resident at the time of the exchange but you are a nonresident when it is sold, the previously untaxed California gain is taxable to California. *"If you exchange out-of-state property for California property you must reduce the California basis on the property by the amount deferred, even if you were a nonresident at the time of the exchange."* The new filing requirements will help the FTB track these exchanges. [Source: *Spidell's California Taxletter*, Vol. 35.7, July 1, 2013]



## Employment Corner

### DOL Issues Model Affordable Care Act Notices

Whether or not companies offer health insurance to their employees, employers must tell employees by October 1, 2013 that they can buy coverage through state-based exchanges. The DOL has issued a model notice that employers can give to their employees to explain coverage options. It can be found at [www.dol.gov/ebsa/healthreform](http://www.dol.gov/ebsa/healthreform).

The DOL has also updated the template for the Summary of Benefits and Coverage that all employees must receive. This can be found at [www.dol.gov/ebsa/healthreform/#summaryofbenefits](http://www.dol.gov/ebsa/healthreform/#summaryofbenefits). Even though the play-or-pay mandate of the Affordable Care Act has been delayed until January 1, 2015, employers must start distributing these items in 2013. [Source: *The HR Specialist*, Vol. 11, No. 8, August 2013]



1754 Technology Drive  
Suite 135  
San Jose, California 95110  
Phone: 408-441-7500  
Fax: 408-441-7501  
E-mail: slgadmin@structurelaw.com  
www.structurelaw.com

Business Transactions • Corporations • Mergers & Acquisitions • U.S. Market Entry  
Limited Liability Companies • Partnerships • Tax Planning • Real Estate • Employment  
Debt Financing • Banking Law • Creditor's Rights • Insolvency • Business Litigation

## Dates To Remember

Labor Day (Courts and government offices closed)	September 2
Grandparents' Day	September 8
International Day of Peace	September 21
First Day of Autumn	September 22
Columbus Day (Some courts and government offices closed)	October 10
National Boss Day	October 16



Mark R. Figueiredo, Esq.



Tamara B. Pow, Esq.

## Did You Know?

- Leonardo Da Vinci could write with one hand and draw with the other at the same time.
- A rainbow can only be seen in the morning or late afternoon because the sun cannot be more than 40 degrees above the horizon.
- The baseball glove was invented in Canada in 1883.
- Neil Armstrong's first step on the moon was with his left foot.
- Douglas Engelbart introduced the first computer mouse at the Fall Joint Computer Expo in San Francisco in 1968.



Robert V. Hawn, Esq.



Jack W. Easterbrook, Esq.

*We appreciate your referrals!*

*Check out our blog!*  
[www.sanjosebusinesslawyersblog.com](http://www.sanjosebusinesslawyersblog.com)