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Shareholder Liability For Post Dissolution Corporate Taxes



Now that a Tax Clearance Certificate is no longer required to dissolve a California corporation, shareholders are not assuming liability for California tax liabilities. However, the Franchise Tax Board will attempt to collect the entire tax from any one shareholder without regard to percentage of ownership or whether that shareholder was an officer. That shareholder may be entitled to reimbursement from other shareholders, but may have to sue to get it.

“the Franchise Tax Board will attempt to collect the entire tax from any one shareholder without regard to percentage of ownership...”

First, the FTB will attempt to bill the corporation. Eventually, the FTB will come to a shareholder, conduct an interview and demand payment from that shareholder. However, if the shareholders did not take any assets from the corporation on dissolution, they cannot be held personally liable. The Ralite case (Appeal of Howard Zubkoff and

Michael Potash, Assumers and/or Transferees of Ralite Lamp Corporation (April 30, 1990) 90-SBE-004) held that the FTB must prove all of the following before a shareholder can be held liable for a corporation’s tax:

1. The corporation transferred property to the shareholders for less than full and adequate consideration.
2. At the time of the transfer and at the time the shareholder liability was asserted, the corporation was liable for the tax.
3. The transfer was made after the tax liability accrued.
4. The corporation was insolvent when the transfer was made, or as a result of the transfer.
5. The FTB had exhausted all reasonable remedies against the corporation.

When the FTB comes after the shareholder for the taxes, the shareholder should invoke Ralite and make it clear that he or she did not receive more value from the corporation than was due. If you have any questions about dissolutions of California corporations please do not hesitate to contact our office.

Success Story



One of Structure Law Group, LLP’s clients was sued by a vendor for non-payment. The client had not paid because the shipments it received were defective and the vendor was unable to fix the problems despite the client’s numerous requests. SLG’s attorneys attempted to resolve the matter without having to appear in court. When the vendor refused to compromise, SLG filed a motion attacking the lawsuit and further filed a cross-complaint stemming from the defective shipment and the resulting delays to the client’s project. Immediately after being served with the motion and cross-complaint, the vendor agreed to drop its lawsuit in its entirety without receiving any payment.

Reporting New Hires to the EDD - Important Information

California businesses must report new employees and certain independent contractors to the Employment Development Department (“EDD”) by completing forms DE 34 and DE 542, respectively.

All employees who are newly hired must be reported to the EDD on the “Report of New Employees” form DE 34 within 20 days of the employee’s commencement of work. This requirement applies to employees who are re-hired, or returning to work from leave of absence without pay, or termination if the former employee was removed from payroll records, or in instances where you or your company acquires an ongoing business and continues to employ any of the former owner’s workers. The EDD considers such workers to be new hires. If you are unable to file a DE 34 within the 20-day period, you may file an informal report or copy of the employee’s W-4 form to avoid any penalty.

Employers must also report independent contractors to the EDD by completing “Report of Independent Contractor(s)” form DE 542 within 20 days from the earliest of paying an independent contractor \$600 or more, or entering into a contract to pay an independent contractor \$600 or more in any

calendar year. This requirement is an annual requirement, so even if an independent contractor is reported in 2007, the contractor must still be reported again in 2008, provided the foregoing requirements are satisfied. Businesses, however, are not required to file form DE 542 for independent contractors who are corporations, partnerships, limited liability companies or limited liability partnerships. Keep in mind that filing form DE 542 is in addition to your requirement to report total annual payments to individual independent contractors to the Internal Revenue Service on Form 1099-MISC after the close of the calendar year. If you are unable to file form DE 542, an informal report may be filed to avoid any penalty.

Both forms DE 34 and DE 542 may be filed online at <https://eddservices.edd.ca.gov>. The information collected is used to identify unemployment claimants collecting excess unemployment benefits and by California’s Department of Child Support Services and Department of Justice to locate parents for purposes of collecting child support. (Source: Spidell’s California Taxletter Vol. 29, No. 1.)



Tax Corner

- **Partnerships**
- **Appreciated Property.** A new revenue ruling cautions partnerships on paying off a partner with appreciated property: In Revenue Ruling 2007-40, the IRS stated that the transfer of an asset to satisfy a payment obligation to a partner is treated as if it had been sold by the partnership. Kiplinger Tax Letter, June 15, 2007, Vol. 82, No. 12.
- **Installment Sales.** Installment sales of partnership interests may not defer tax. Payments for accounts receivable and inventory, including appreciated real estate held for sale, are taxed up front in the year of sale, as ordinary income. Kiplinger Tax Letter, June 15, 2007, Vol. 82, No. 12.
- **Waiting For Partnership Profits.** Just because the partners have to wait for their share of partnership profits tied up in an escrow, doesn’t mean the IRS has to wait for its taxes. In the Burke case, the 1st Circuit

held that not having access to his profits doesn’t let a partner defer tax. In that case, the partners were in a lawsuit over how the profits were paid out. One partner ignored his K-1 from the partnership and showed zero income on his tax return, prompting an IRS audit. (Kiplinger Tax Letter, May 19, 2007, Vol. 82, No. 10.)

- **California Extends Employer Child Care Credits**

California has extended the Employer Child Care Contribution Credit and the Employer Child Care Program Credit to taxable years beginning before 1/1/2012 (AB 1282, Ch. 06-712). Between the federal credit of 25% and the California credit of 30%, employers can save more than 90% of the cost of providing childcare for employees. An employer will maximize the credit by providing employees with \$100 per month per child. (Source: Spidell’s California Taxletter, Vol. 29, No. 1, January 1, 2007.)



The Latest News at STRUCTURE LAW GROUP, LLP



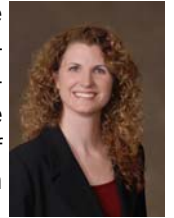
Congratulations to Rebecca

Rebecca McCracken (formerly Rebecca Pergrim), who has been working in our office for the past year, recently passed the California Bar Exam. Rebecca assists with both transactional and litigation matters. We are excited to have her on board now as a California attorney. Rebecca relocated to California from New York and is already licensed to practice in New York. Congratulations Rebecca! Please note Rebecca's new email address is rcm@structurelaw.com.



Completion of MBA

Esther Brumleve, Executive Director and Corporate Paralegal, recently completed her Masters in Business Administration. She graduated from the San Jose State University Graduate School of Business in May. She completed the program while working full time over the last 5 years. Congratulations Esther!



Baby Boom

Structure Law Group has two new members to welcome to its family. Cathy Wong gave birth to her first son, Brandon Richard Do, on April 5, 2007. Cathy is currently out on maternity leave and will be joining us again in September. We wish her all the best and we're looking forward to having her back. Tamara Pow gave birth to her third son, Owen Thomas Pow, on May 14, 2007. As many of you know, Tamara is temporarily working reduced hours but she can be reached when needed. Congratulations to Cathy, Tamara and their families!



Real Estate

- **1031 Exchanges**

1031 exchanges are available only for investment property. A recent Tax Court Memo disallowed the taxpayer's attempt to defer gain on the sale of their vacation home. (Source: Moore, TC Memo. 2007-134).

- **Home Builders Beware!**

The IRS is planning to target home builders for audits. It will be looking for inappropriate deferrals of income using the completed-contract method of account. (Source: The Kiplinger Tax Letter, Vol. 82, No. 8, April 20, 2007.)

- **Renting Real Estate To Your Corporation**

The 9th Circuit Court of Appeals recently upheld IRS rules disallowing the use of passive losses against rental income when the real estate owner also works more than 500 hours per year for the renting corporation, and more than 50% of the stock of the corporation is owned by five or less shareholders. However, there is still some tax savings available to the real estate owner – the rents are not subject to payroll taxes. (Source: The Kiplinger Tax Letter, Vol. 82, No. 7, April 5, 2007.)



Reminders And Other Items of Note

As many of you know, on May 18th we moved to our new office. We are settling in nicely to our new home. The new office is larger than our last and gives us the opportunity to spread out a little more, while continuing to grow the firm. Please make sure that you have updated your records with our new address.

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All phone numbers, fax numbers and email addresses remain the same. We look forward to seeing you in our new office.



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Dates To Remember

July 15	National Ice Cream Day
July 23	National Hot Dog Day
July 30	Father-in-Law Day
September 3	Labor Day - courts and government offices closed
September 9	Grandparent's Day
September 22	American Business Women's Day

Did You Know?

- Donald Duck comics were banned in Finland because he doesn't wear pants.
- A polar bear's skin is black and its fur is clear.
- Honey is the only food that doesn't spoil.
- Every day more money is printed for Monopoly than the US Treasury.
- The first novel written on a typewriter was Tom Sawyer.
- A duck's quack doesn't echo and no one knows why.

We appreciate your referrals!



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