Taking care of business, up to the minute

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If your enterprise is incorporated, did you know that you should maintain proper corporate minutes to help shield individual shareholders or business officers from personal liability for corporate obligations? Most business owners are unaware of this.

Properly maintained minutes may also assist your corporate entity in other challenges that might come from minority shareholders, fellow directors, employees or other governmental agencies.

Many shareholders have been surprised to learn that without an accurate and up-to-date corporate minutes book, the IRS, the courts, and other taxing authorities may allow creditors, plaintiffs, and other entities to sue for debts and actions of the corporation.

As a point of fact the U.S. Corporations Code, section 1500, states that each corporation must keep adequate and correct books and records of account. This applies to all minutes of the proceedings of its shareholders, board of directors and committees of the board. By law, senior management and the board of directors are also held accountable.

I always recommend maintaining an up-to-date minutes book if for no other reason than to help insulate you from an IRS challenge. Simply put, corporate minutes can be a godsend in an income tax audit examination. During an audit, the IRS scrutinizes corporate minutes for discrepancies between the corporate resolutions adopted by the shareholders and board of directors and the actions of the corporation. You may lose deductions and benefits if you do not conduct meetings that adopt resolutions supporting the actions taken by the corporation.

Without proper corporate records, the IRS may consider the shareholders to be operating as individuals and not as a corporation. As a result, the IRS can shatter the corporate shield and impose an individual tax rate that will likely be higher than the corporate one.

In such a case, business expenses claimed by shareholders, such as travel and lodging, may be disallowed. And disbursements may be considered dividends and taxed as such.

Experts recommend routine checkups of business records at least annually. Corporate minutes should provide a written record of important corporate transactions including:

- Key legal, tax, and financial decisions.
- Approval of bonuses or fringe benefits, such as group term life, disability or deferred compensation plans.
- Contributions and amendments to retirement plans.
- Lease agreements and rent payments.
- Reasonable compensation for officers and shareholder employees.
- Approval of dividends/distributions.
- Property and equipment additions or replacements if significant.
- Stock transactions or repurchase arrangements that coincide with stock record books.
- Contracts, approvals of loans or financing arrangements.
- Approval of "arms length" transactions with shareholders.
- Corporate restructuring or merger/sales agreements.

The reasonableness of compensation paid to employee shareholders continues to be a hot issue for taxing authorities. This holds true whether you operate a C or an S corporation.

Companies can deduct the compensation paid to employees so long as it is "reasonable." However, as of late the IRS has been successfully arguing that part of the amounts paid to highly compensated business owners is really nothing more than a disguised dividend and as such not deductible. Corporate minutes can establish that compensation is appropriate for the services performed.

As you might expect there is no guarantee that disputes will be settled in your favor, but having good minutes should provide you with a strong position to respond to challenges. It is also important that your minutes be complete, accurate, and up to date.

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