



# Newsletter

APRIL 2010

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*Dottie Randazzo*

Our office will be closed for the following holidays:

April 19<sup>th</sup> – 28<sup>th</sup> – Spring Vacation

May 31<sup>st</sup> – Memorial Day

Our next newsletter will be mailed out the beginning of July 2010.

Remember if you have an article that you would like to contribute to our newsletter just fax it to us for our review. We must receive the article no later than June 15<sup>th</sup> for our July newsletter.

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## DELAWARE LLC FRANCHISE TAXES ARE DUE

The 2009 Delaware LLC Franchise Tax fees need to be paid now. Due date is June 1<sup>st</sup>. They are \$250 for all Delaware LLCs. These taxes must be filed online at [www.corp.delaware.gov](http://www.corp.delaware.gov).

**OFFICE CLOSED FOR SPRING  
VACATION APRIL 19<sup>TH</sup>  
THROUGH APRIL 28<sup>TH</sup>. THE  
OFFICE WILL REOPEN ON  
APRIL 29<sup>TH</sup>.**



## NEVADA CORPORATIONS THAT ARE QUALIFIED TO DO BUSINESS IN CALIFORNIA

If you have a Nevada corporation that is qualified to do business in California, but you aren't doing business in Nevada, you can dissolve the Nevada corporation, and we can convert the foreign qualification in California to a corporation doing business in California.

Nevada corporations now cost more yearly to have. The minimum annual filing fee is \$125, \$200 mandatory business license fee and \$110 agent fee, equals \$435 per year. I would like to remind you that you aren't getting any "privacy" for that money as Nevada post EVERYTHING regarding your corporation on their website.

If you choose to not do anything with your Nevada corporation it will go into default status after the due date of your annual list. It will be in default status for 1 year. During that time you just need to pay the annual fee, business license and \$75 late penalty to bring it current.

After 1 year in default the corporation then goes into revoked status. When it is in revoked status you can bring it current by paying back annual fees and late penalty in addition to a \$300 reinstatement fee. You will also need to submit an Agent Acceptance form signed by your agent so that the state knows that you do have an agent.

## **FRANCHISING YOUR BUSINESS**

If you own a small business that provides a quality product or service, someone eventually will pop the question: Why don't you franchise! Indeed, franchising can be an effective method to expand your brand on a regional or national basis. Franchisees agree to pay you an initial franchise fee, ongoing royalties, and advertising costs. They also cover their own business start-up expenses. In return, you provide the franchisees with a brand name and goodwill, an operations manual and training, and the benefit of your experience and know how. However, before you hire a franchise attorney to start drafting the necessary documents, you should pause and ask yourself these five questions:

(1) Will my franchisees be profitable? You should be confident that your franchisees can succeed financially when implementing your business concept. While you cannot guaranty their success, you do need to provide them with the tools to succeed. Also, remember that franchisees may not be able to immediately replicate the earning that you make at your own store. Franchisees face a learning curve, incur start-up expenses, and (unlike you) must pay royalties and advertising fees.

(2) Is my concept teachable? The franchisees must be able to replicate your system in their local community. If your business concept is extremely specialized, complicated, or based primarily on your own skills, then franchising may not be advisable. You need to be able to train operators with diverse backgrounds and skill so that a standardized product or service is achieved.

(3) Do I have the time and money to franchise? Franchising is not a part time or inexpensive endeavor. You will need start-up capital to have the Franchise Disclosure Documents prepared, to develop an operations manual, and to develop and implement a franchisee training program. Of course, some of this work (e.g., writing the operations manual) can be done yourself. You also will need to hire staff at the appropriate time to manage the growth of your system.

(4) Are you ready for a career change? Once you begin franchising, your job will consist of selling businesses and managing a system of independent operators. Your days as a shopkeeper will be behind you. Make sure you are comfortable with being a founder, leader, and manager.

(5) Is franchising the best growth strategy for my brand? Franchising is a fast way to roll out your brand, but you hand over some of the control to the independent operators. Franchisees often have their own opinions on how things should work. On the other hand,

the option of expanding through company-owned stores gives you more control, but the upfront costs are greater. There is no infusion of franchisee money.

Asking yourself these questions is just the first step in your decision-making process about franchising. If you are interested in franchising, then do your research. Talk to an experienced franchise attorney or consultant. Meet with your accountant. Attend a franchise trade show and talk to system owners. Stop by local franchised businesses and chat up the owners. Franchising involves a substantial commitment of time and money, but a well managed system creates a valuable royalty stream far into the future.

*Scott March is a franchise attorney licensed in California, Hawaii and the District of Columbia. His website is at [www.marchlaw.com](http://www.marchlaw.com). Scott can be reached at 415-230-5335.*

## **IRS PERILS FOR TRUST AND JOINTLY-HELD PROPERTY**

Property held in trust is not ordinarily subject to seizure for payment of the tax liability of the grantor, but this rule can be ignored under two circumstances:

- When the grantor conveyed the property to the trust solely to defeat the rights of the IRS, and the transfer constitutes a fraudulent conveyance, or
- When the grantor retains control over the trust property, or has the right to revoke the trust, as is commonly the case with a living trust.

If you conveyed the property into the trust well before you incurred the tax liability you should have no problem. More important, however, is to use an irrevocable trust so you do not have control. The IRS closely examines trusts to determine if the taxpayer has sufficient control to allow the IRS to reach the trust assets as an alter-ego of the taxpayer.

Another problem area is jointly-owned property. Creditors of one spouse can force the sale of jointly-held property. The IRS enjoys even broader powers. If a husband and wife, for example, own a home in joint tenancy, or as tenants-by-the-entirety, the IRS can then force the sale of the entire property even though only one spouse has the tax liability. The IRS – of course, must remit to the non-liable spouse his or her half of the net proceeds. Even when the IRS seizes a partial interest, such as the husband's interest, buyers of the husband's interest can then petition the court to partition the property and order it sold with the proceeds divided.

As a matter of policy, the IRS seldom forces the sale of jointly-owned marital property when only one spouse owes taxes. Nevertheless, your business protection is to convey jointly-held property beyond IRS reach before a lien is placed against it.

Joint bank accounts are even more perilous. The IRS levies the entire funds in a joint account and then leaves it to the non-liable joint-owner to prove they contributed equally to the account. The bottom line: Never put your money into a joint account with another person unless are absolutely certain the individual is free of tax problems. This applies even to spouses.

Also beware of filing a joint return with your spouse. You may pay a slightly higher tax when filing singly, but the tradeoff is that the IRS cannot then collect from both spouses. When you file singly, your spouse has no danger of an IRS assessment and can safely hold the marital assets.

If you do file separate tax returns, you have no liability for your spouse's unpaid taxes. But the IRS can take your share of jointly-owned real estate, savings or checking accounts, stocks and bonds, and even automobiles and other jointly-held assets. Therefore, you will want to protect this property by taking these assets out of your spouse's name before they are levied or liened by the IRS. Should you file

jointly, then the tax liability can be collected, in whole or in part, from either spouse. This is the big danger with joint returns – you cannot easily protect assets since neither spouse can provide a safe harbor. Notwithstanding possible tax-savings under a joint filing, spouses should especially file singly when:

- One spouse has on-going tax problems – continuing audits or tax liabilities.
- One spouse has tax filings that may cause serious civil or criminal problems.
- One spouse has most of the assets in his or her name, and the other spouse the greater possibility of tax exposure.

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**The great Big Black Things that have loomed against the horizon of my life, threatening to devour me, simply loomed and nothing more. The things that have really made me miss my train have always been sweet, soft, pretty, pleasant things of which I was not in the least afraid.**

**Elbert Hubbard**

**A person with a hundred interests is twice as alive as one with only fifty and four times as alive as the man who has only twenty-five. What are you interested in? Are your interests confined to your food, your home, your business, your clothes, your immediate family? If you would be free from nervous tension and live a healthier life, widen your interests, broaden yourself. There is a rich world around you in books, paintings, music, sports and most important, people.**

**Norman Vincent Peale**

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**Talk is by far the most accessible of pleasures. It costs nothing in money, it is all profit, it completes our education, founds and fosters our friendships, and can be enjoyed at any age and in almost any state of health.**

**Robert Louis Stevenson**

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