Barley Snyder

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JOBS Act Becomes Law

By: Kimberly J. Decker

The President recently signed into law legislation that aims to make it easier for small companies to raise capital through "crowdfunding". Crowdfunding will permit private companies to raise up to $1.0 million in a 12 month period through a registered broker or a registered funding portal. Investors would be limited in the total amount they could individually invest, with investors with an annual income or net worth of less than $100,000 topping out at a maximum investment of $2,000, although individuals above that threshold will be able to invest as much as 10% of their net worth or annual income. For those of you doing the math, actually raising $1.0 million could require the involvement of up to 500 investors, which is where we get the term "crowdfunding". Unlike most small offerings, this type of offering would permit public advertising and in fact, a crowdfunding offering would require the involvement of either a registered broker or a registered funding portal. Advertisement of the offering would go through the broker or portal. Also, securities sold under the crowdfunding provisions are exempt from state securities registration requirements, which can become burdensome to comply with if a company is selling securities in several states. Of course, an opportunity of this sort does not come without a little bit of pain. The company would be required to provide certain required information about the company, including its financial results, business plans, intended use of proceeds and a description of certain risks of investing in the company along with other information. The company would also be obligated to provide annual results of operations to both investors and the Securities and Exchange Commission, and while brokers and portals cannot be compensated based on the success of the offering, they will be able to charge a fee of some nature for their services. While $1.0 million will go a long way for some companies, keep in mind that the "net" isn't likely to be the entire $1.0 million - the broker or portal will certainly require compensation, and disclosures are likely to need legal review and drafting. Also, the financial statement requirements may require the help of an accountant. Finally, there are a lot of companies that need more than $1.0 million, and the new law does nothing to relieve the requirements for larger offering amounts, which will still be mostly limited to 35 "typical" investors plus an unlimited number of high net worth/high earning investors. Also, an investor cannot transfer securities acquired in a crowdfunding offering for one year from the date of purchase, except in limited circumstances.

We don't have the full picture yet for the requirements of crowdfunding. The Securities and Exchange Commission has about nine months to pass regulations that may impose additional requirements on the use of the crowdfunding technique.

Take Note: Most people don't realize that notes, bonds, common stock, preferred stock, limited partnership interest, membership interests in a limited liability company and similar interests are all examples of a "security". If you (or your company) sell a security, federal and state law requires that you first register the security or comply with an exemption from the registration requirements. Securities law issues are complicated. Please call us if you have any questions.

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Property Tax Assessments: Should you appeal?

By: Daniel M. Frey

Do you want to lower your property taxes? Would it surprise you to learn that you could do so at little to no net cost? There may be an opportunity to do exactly this if your property is currently assessed too high. Your property's tax assessment forms the basis for all of your real estate taxes. The assessment, which is different than the appraised value of your property and in most cases does not equal 100 percent of the fair market value of your property, is established by the County once every few years and remains fixed as property values move up and down. So if your assessment is too high (either because it was originally assessed too high or because of a decrease in your property's value), you are paying too much in taxes each year that the assessment remains the same. The assessment will remain the same until the property is changed (improvements are added or removed), the County undergoes a county wide reassessment, or your file an appeal of your assessment. County wide reassessments usually occur only once or twice a decade although in some counties, a county wide reassessment has not occurred in nearly 20 years. If you lower your assessment, you will lower your real estate taxes until the next County wide reassessment occurs which could be several years. You are entitled to challenge the assessment every year if you believe the assessment is too high. The amount of costs involved in the appeal are often far less than the total savings you will receive if the appeal is successful. In most cases, the only costs are an appraisal of the property and legal fees.

To determine whether an appeal is appropriate, you must first estimate what your property is worth. Then, find the common level ratio[1] for your county below:

- Adams - 100%
- Berks - 73.2%
- Lancaster - 76.5%
- York - 83.7%

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[1] The common level ratio is used to determine assessments in the years following a county wide reassessment. In the first two years following the county wide reassessment, your assessment should equal 100 percent of the fair

market value of the property. In all subsequent years, the assessment should equal the common level ratio then in effect multiplied by the fair market value. The common level ratio, which is determined by the state, varies by county and changes in July every year.

Now multiply your estimated fair market value by the common level ratio. For example, if your property is located in York County and is worth $500,000, multiply $500,000 by .837 and your assessed value should be $418,500. This figure should be close to your assessed value. If it is significantly lower than your assessed value, you may want to consider challenging your assessment. If you are unsure what your assessed value is, check your most recent property tax bill or call your County's assessment office and ask.

Another way to determine if your assessment is too high is to take the assessment and multiply it by the number listed below for the County in which the property is located:

- Adams - 1
- Berks - 1.37
- Lancaster - 1.31
- York - 1.19

Again, if your property is located in York County and is assessed at $500,000, you multiply $500,000 by 1.19 and your property is being taxed as though it is worth $595,000. If the figure is higher than what you believe the property is currently worth, it might make sense to appeal your assessment.

So how do you challenge your tax assessment? The process is started by filing an appeal to the County's Board of Assessment Appeals. The Board will review your assessment and determine if it is too high. For a successful appeal, you will most likely need a recent appraisal of the property. If the Board's decision is not satisfactory, you can appeal this decision to the Court of Common Pleas which then determines the fair market value and applies the common level ratio to establish your new assessment.

Keep in mind that any reduction in your assessment will most likely result in tax savings not just in the year in question but in future years as well. While in general you can not receive a refund for past taxes paid if your assessment is too high, your assessment will be reduced for future years which will save you money. To determine how much savings you could receive, determine your local milage rates and multiply these by the difference between the current assessment and what you believe the assessment should be and you can determine the savings for one year. For example, if the combined millage rates in your municipality (School, County and Municipal millage rates) are 25 mills (or 2.5%), you would save $250 for every $10,000 that you reduce your assessment.

Barley Snyder has attorneys with experience handling tax assessment appeals throughout central Pennsylvania. If you believe your assessment is too high, give us a call to see if we can help lower your assessment and lower your taxes.

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Consider Converting Your C Corporation Now (and Save Income Taxes!) While Asset Values and Tax Rates are Low

By: Dara C. Bachman and Alex E. Snyder

If your business is currently operating as a C corporation and you do not know the reason why (other than because it has always operated as a C corporation), this article is directed at you.

For federal tax purposes, corporations are classified as either subchapter C or subchapter S corporations. While there are many differences between the treatment of C corporations and other types of entities, perhaps the most notable is that C corporations are subject to two levels of taxation. The corporation is taxed on its income, and the corporation's shareholders also pay taxes when distributions are made. Both an S corporation and a Limited Liability Company (LLC) do not pay tax at the corporate level (thereby eliminating the double tax), which could save your business and its shareholders federal income taxes presently and upon an eventual sale.

Now is a great time to consider converting your C corporation to an S corporation or an LLC. As most business owners are aware, asset values are currently deflated, which would decrease any taxable gain realized as a result of conversion. In addition, Congress continues to discuss increasing income tax rates on capital gains and dividends, which would increase the income tax implications of a conversion at a later date.

Conversion from a C corporation to an S corporation is as easy as making an election with the IRS to be treated as an S corporation (a so-called "S election"). However, only certain businesses may file an S election. An S corporation may have no more than 100 shareholders (though certain family members are considered to be a single shareholder for purposes of this requirement). Further, generally only individuals, non-profit entities and certain kinds of trusts can qualify as shareholders.

Historically, business owners of a C corporation often viewed the "built-in gains tax" as a reason not to make an S election. The built-in gains tax is a tax upon the sale of assets owned by an S corporation if those assets are sold within 10 years of the S election to the extent the assets were appreciated when the C corporation made its S election. Even if the built-in gains tax is a concern, with the current environment of deflated asset values, the potential built-in gains tax liability on a C to S conversion is likely to be relatively low.

If a conversion from a C corporation is of interest, and an S election is not a viable option, you may wish to consider converting to an LLC. Such a conversion is not as simple as electing S status. For federal tax purposes, upon conversion from a C corporation to an LLC, the corporation is taxed at the entity level as if it had sold all of its assets for fair market value and the shareholders are then treated as having received liquidating distributions of the proceeds. In other words, unlike converting a C corporation to an S, there are income tax consequences to converting a C corporation to an LLC. However, depressed asset values, unused net operating losses or capital loss carryovers (which can be used to offset gain) and historically low rates on distributions from the corporation to its shareholders may all help to minimize the income tax implications of converting from a C corporation to an LLC.

In addition to avoiding double taxation, a benefit of converting to an LLC is that the assets of the entity will receive an increase in basis to their current fair market value. This means that if the owners later sell the LLC, the gain realized upon the sale will be less.

If, after reading this article, you are wondering why your business is a C corporation and whether you can reduce income taxes through conversion to an S Corporation or LLC, you should ask your tax advisor if a conversion is right for you.

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Series LLC: What is it?

By: Troy B. Rider

A series limited liability company, commonly known as a series LLC, is a special form of a limited liability company that provides liability protection across multiple "series" or "cells" each of which is protected from liabilities arising from the other series if certain requirements of state law are followed. In overall structure, the series LLC is comparable to a corporation with several subsidiaries. Although each cell of a series LLC can own distinct assets, incur separate liabilities, and have different managers and members, a series LLC usually pays one filing fee to be formed under state law, thereby decreasing costs.

Delaware was the first state to introduce the series LLC but a few other states have followed suit. Currently, Delaware, Iowa, Oklahoma, Nevada, Illinois, Tennessee, Utah, Wisconsin and Texas enacted some form of Series LLC legislation.

One of the primary benefits of a series LLC is that it permits the operation of multiple separate business activities within a single legal entity. A series LLC also permits the reduction of administrative burdens and costs compared to the alternative of forming multiple companies. In Delaware, for example, the fees required to form a series LLC and the annual tax payable by a series LLC are the same as those imposed on a non-series LLC.

Series LLCs do have some drawbacks. Since they are relatively "new", there is a lack of case law on interstate recognition. For example, how will a series LLC formed in Delaware will be treated in a non-series LLC state such as Pennsylvania. In addition, there is uncertainty in the tax treatment of a series LLC and utilizing a series LLC in a secured transaction. Due to each "series" having separate assets and liabilities, it may be unclear whether the debtor is the individual series or the series LLC.

Despite being relatively unproven, series LLCs have frequently been used by investment funds since, under applicable securities laws, a series LLC may be the sole registrant but may register interests in all the series of the series LLC. This can dramatically reduce the costs and burdens of filing multiple registration statements. In addition, series LLCs could be considered an ideal entity under any of the following scenarios:

• Holding multiple parcels of real property in liability-segregated cells.

• Facilitating an equity compensation program in a business with multiple divisions. With each division segregated into a separate series, the series LLC can give the key employees of each series some sort of equity interest tied to that series only rather than equity interests in the entity as a whole. Such structure rewards employees in productive divisions and protects them from the potential downside of other divisions.

• Facilitating a business combination. For example, rather than undertaking a traditional merger, two companies wishing to join forces might form a series LLC, with each company contributing its assets to a separate series, or with the owners of each company contributing their ownership interests to a separate series. Even though series LLC's are a "new" player to the entity selection game, they may be advantageous in certain circumstances. Accordingly, you should consult an experienced advisor before deciding to utilize a series LLC.

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