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## To Hire Or Not To Hire



Tamara B. Pow, Esq.

Silicon Valley's job market has seen some upturn even as national employment stalls, thanks to an increase in venture capital and personal investing. If your company is hiring there are certain items you should keep in mind during the search and interview process.

**Looking for New Hires:** The first rule of hiring is to be wary of discrimination. You can hire anyone you want, as long as you do not discriminate based on age, race, nationality, gender, disability or any other protected class. Discrimination can show up or be inferred from many situations where it may not have been intended. For example, if you have one department that is always referring friends or family for open positions, you should check to make sure that all of those referrals are not all part of the same race or religion or the company may be found to be discriminating against people who are NOT part of that race or religion.

Anyone who is involved in recruiting new employees for your company should be well trained in employment laws. Employment ads should be carefully written to make sure they do not exclude any class of potential employees and they should also contain a

statement that your company is an Equal Opportunity Employer. In addition, you should be careful about where you advertise for new employees. For example, if you only place ads in a Chinese newspaper, your company could be considered to be discriminating against non-Chinese speakers if the position does not require Chinese language capabilities.

**Interviewing Potential Employees:** Once you have found potential employees to interview, you still must be careful of a discrimination claim in the questions you ask and the information you gather. If you require potential applicants to complete a job application, do not just download a form from the web. The questions you ask must be relevant to the position you are trying to fill. This means that even within your company one application may not be appropriate for all positions.

On the application and during the interview, avoid asking questions about age (including requesting date of birth), race, religion, nationality, disabilities, gender, marital status and whether or not the applicant has kids, is a single parent, etc. When conducting an interview, be prepared with a list of potential questions to ask as well as ones to avoid. Questions should be about a candidate's past job performance and qualifications, and careful emphasis should be placed on returning the conversation to an appropriate line of questions if the applicant volunteers information that may be considered discriminatory.



## Success Story

A client was concerned because, through no fault of their own, they tended to hire people of one nationality. SLG attorneys advised the client to advertise for open positions in local papers of various ethnicities as well as online. When a threat of discriminatory hiring was made, SLG's attorneys were able to quash the threat by showing the company made efforts to attract potential employees from different communities.

## California Minimum Tax For Corporations

The general rule is that every corporation that is formed or registered in California must pay \$800 per tax year, as a minimum franchise tax, regardless of whether it is active or inactive, making money or losing money. However, there are two exceptions to this rule that are good to review as we get closer to the end of the year.

***A corporation is not subject to the minimum tax in the first year that it is incorporated or registered in California.***

The first exception is the “first-year-free” rule. A corporation is not subject to the minimum tax in the first year that

it is incorporated or registered in California. In that first year, the corporation just pays income tax on its net income, with no minimum. It is important to note that the first-year-free rule only applies to corporations (both C corporations and S corporations) and LLCs that have elected to be taxed as corporations. The first-year-free rule does not apply to other LLCs, limited partnerships (LPs) or limited liability partnerships (LLPs).

The second exception is the “15-days-or-less” rule. This rule applies to corporations, LLCs, LPs and LLPs. These entities are not subject to the \$800 minimum franchise tax for any tax year which is 15 days or less in which they did not do business in California. For example, if a calendar year corporation is formed on or after the 17<sup>th</sup> day of December (a 31 day month), it will have a short year of 15 days or less and will not be required to file a tax return for that short period. This can be used for the first or last year of a company’s existence.

Both of these exceptions can be used by one corporation. So, a company that incorporates on December 17, 2011 does not have to pay the minimum tax for 2011 (15-days-or-less rule) or 2012 (first-year-free rule). [Source: Spidells CA Taxletter September 1, 2011, page 101 volume 33.9.]



## Tax Corner

### New IRS Guides For Auditing Consultants, Attorneys and Architects

The IRS has released a new audit guide for business consultants. If you are a business consultant, check out <http://www.irs.gov/businesses/small/> and you can look at exactly what the IRS is looking for when they audit your tax returns. In particular, there are sections on meals, travel and entertainment deductions, independent contractors vs. employees, and accounting for expense reimbursements.

The IRS also has an agent handbook for auditing attorneys that shows what agents are looking for in how attorneys report different types of income, account for costs advanced, and write-off meals, travel and entertainment.

Architects can look for a list of examination issues that also apply to landscape architects. There are also new audit guides for fishermen and indoor tanning salons. All audit guides can be found at <http://www.irs.gov/businesses/small/article/0..id=108149.00.html>. [Source: The Kiplinger Tax letter, vol 86 no 15, July 22, 2011]



### Out of State LLCs and California Franchise Fees

Once again California has ruled that LLCs owe California tax if the managing member is a California resident. LLCs are subject to two types of tax in California, the annual franchise fee of \$800 and the gross receipts fee based on revenue. The gross receipts fee is only incurred on income from California sources. However, if an LLC is considered to be doing business in California, it will have to pay the \$800 minimum tax. So, if you form a Delaware LLC to hold Texas real property, but you are the managing member and you are a California resident, you will be subject to the California franchise tax. Also, if you are a nonmanaging member of a non-CA LLC, your presence in California may be enough (if not purely passive) to cause the LLC to be considered to be doing business in California and therefore subject to the requirements to register in California and pay the franchise fee. If an LLC has a California member, the FTB actually presumes that the LLC is doing business in California and the LLC must present facts to show that it is not.

[Source: Spidells CA Taxletter, page 94-95 volume 33.8, August 1, 2011.]

## Homemade Pumpkin Pie

If you dare! Here is a recipe for truly homemade pumpkin pie made with real pumpkin.

### Ingredients:

1 pastry crust  
 2 large eggs  
 1 can evaporated milk  
 1 3/4 cups fresh pumpkin puree (instructions below)  
 3/4 cup sugar  
 1 Tablespoon dark molasses  
 1 teaspoon ground cinnamon  
 1/2 teaspoon ground ginger  
 1/4 teaspoon ground cloves  
 1/2 teaspoon salt

### Directions:

- Preheat oven to 425 degrees.
- Line pie dish with pastry crust.
- In a large bowl mix eggs, milk, pumpkin puree, sugar, molasses, cinnamon, ginger cloves and salt.

- Pour filling into prepared crust and bake at 425 degrees for 15 minutes. Reduce temperature to 350 degrees and cook for another 45-50 minutes.
- When a knife comes out clean, the pie is done.
- Cool completely on a wire rack.

### How To Make Pumpkin Puree from A Fresh Pumpkin

- Split a medium pumpkin crosswise, remove and discard seeds and fibers.
- Place pumpkin, cut side down, on lightly greased baking sheet. Bake at 325 degrees until tender, about 1 hour.
- Scrape pulp away from skin and throw away skin.
- Place pulp in blender or food processor with a metal blade and process in batches, until smooth.
- Measure 1 3/4 cups puree for recipe. Remaining puree can be stored in the freezer for up to six months.



## Reminders And Other Items Of Note

### Dissolution of Entities in 2011

If you want to dissolve an entity to avoid paying California franchise taxes for 2012, now is the time to consider winding up before year end.

### Formation of New Entities

If you are planning on forming a new entity before the end of the year, please note that if the entity is formed during the last two weeks of the year and does not do any business until January 1, 2012, it will not incur taxes for 2011.

### Opportunity

Don't forget that the 100% exclusion of capital gain from the sale of qualified small business stock ("QSBS") was extended until the end of 2011. QSBS acquired after September 27, 2010 and before January 1, 2012 and held for at least five years is eligible for this special tax exclusion.

## Employment Corner

### New Labor Board Regulations

According to a new law adopted by the National Labor Relations Board (NLRB), beginning on **January 31st** most private employers will be required to display a poster in their workplaces notifying employees of their right to form and join a union. Employers must display this poster where other workplace notices are posted. All employers subject to the NLRB will be required to display the poster whether or not they have unions. The Board has chosen not to assert its jurisdiction over very small employers with an annual volume of business that is not large enough to have more than a slight effect on interstate commerce. The notice will be available for download from the NLRB website <https://www.nlrb.gov/poster>. Failure to post the notice may be treated as an unfair labor practice under the National Labor Relations Act. However, employers will not be fined for failing to post the notice because the NLRB does not have the authority to levy fines.





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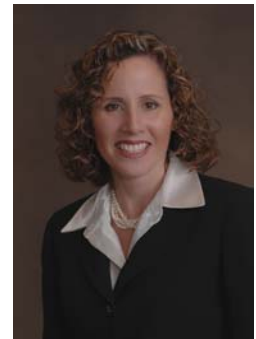
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## Dates To Remember

October 10	Columbus Day—some courts and government offices closed
October 16	National Boss Day
October 31	Halloween
November 8	Election Day
November 11	Veterans Day - courts and government offices closed
November 25	Thanksgiving
December 25	Christmas Day



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## Did You Know?

- The first jack-o-lanterns were made from turnips.
- Samhainophobia is the fear of Halloween.
- According to superstition, if your birthday falls on Halloween, you have been blessed with the gift of communicating with those who have passed away.
- There are no words in the dictionary that rhyme with orange.
- Halloween is the 3rd biggest party day of the year behind New Years and the SuperBowl.
- Magician Harry Houdini died on Halloween in 1926 as a result of a ruptured appendix.



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