



**CUSHING & DOLAN, P.C.**  
ATTORNEYS AT LAW

## **Small Business Jobs Act of 2010**

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# Depreciation Incentives Provide Planning Opportunities

- **The Act includes provisions to encourage businesses to make purchases in the next two years including:**
  - Section 179 expensing allowances Increased
  - Certain types of real property temporarily included in Section 179
  - 50% bonus depreciation allowance extended through the end of 2010

# Section 179 Allowances Increased

- Annual expense allowance **increased** from \$250,000 to \$500,000
- Phase-out amount **increased** from \$800,000 to \$2,000,000
- Increases effective for 2010 and 2011
- Statutory limits set to decrease back to \$25,000 and \$200,000 in 2012
- New or used property is eligible

# 50% Bonus Depreciation Extended through 2010

- Previous provision expired on December 31, 2009
- Taxpayers are provided with the ability to take a 50% first-year depreciation deduction on qualified assets **placed in service** from January 1, 2010 through the end of 2010
- Qualified investments include tangible property with a recovery period of 20 years or less, water utility property, certain computer software, and qualified leasehold improvement property
- Only **new** property qualifies for bonus depreciation

# Tax Planning Opportunities from Depreciation Provisions

- Taxpayers can utilize both the Section 179 expense allowance and the 50% bonus depreciation
- Property must be **placed in service** to be eligible
- Provisions may have significant effect on the timing of planned purchases or expansions by providing substantial incentive to push these decisions into the next 15 months

# Small Business Tax Provisions

- **What is a Small Business?**

- A business (or individual) must have average annual revenues of less than 50 million dollars for the prior three years
- The business also cannot be publically traded

# Other Small Business Provisions

- **Startup deduction limit increased**
  - Limit increased from \$5,000 to \$10,000
  - The phase-out threshold was also increased from \$50,000 to \$60,000
  - Increases apply for 2010 only
- **Exclusion for 100% of gain on certain small business stocks for window period**
  - Applies to §1202 stock
  - Applies to stock acquired after September 27, 2010 and prior to January 1, 2011
  - Prior law already provided for an increase in the exclusion from 50% to 75% for stock acquired after February 7, 2009 and prior to January 1, 2011
  - Stock must be held longer than five years to qualify

# Other Tax Provisions of the Act

- **Temporary reduction in recognition period for built-in gains tax for S-Corporations**
  - Prior law shortened the usual 10 year holding period to 7 years
  - This Act further reduced the holding period to 5 years, if the 5<sup>th</sup> year precedes the tax year beginning in 2011
  - This may affect S-Corporations with C-Corporation built-in gains
- **The Act allows self employed persons to deduct health insurance premiums when calculating self-employment income**
- **Cellular phones removed from the definition of listed property**
  - Lifts the strict substantiation requirements of use and the additional limits placed on depreciation deductions
  - Relief applies to tax years beginning after December 31, 2009



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## Business Law Initiative

# Maintaining Corporate Compliance

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Or alternatively.....

It's 11:00...Do you know where your corporate minute book is?

# Purpose of Utilizing Registered Business Entities?

Corporations

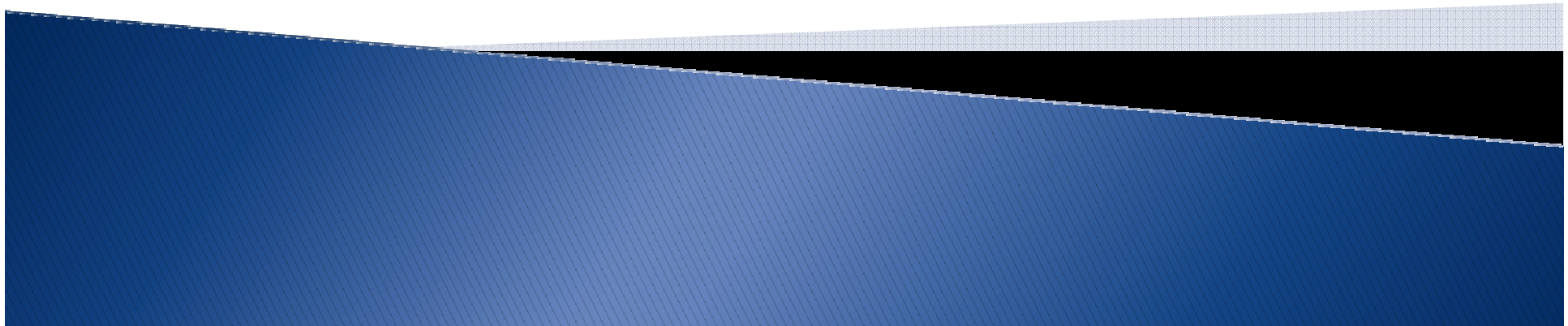
Limited Liability Companies

Limited Partnerships

Limited Liability Partnerships

**Limited Liability**

**Corporate Veil**



All business entities must follow

## “Corporate Formalities”

- Vary By Type of Entity
- Vary by Jurisdiction

# What Are Corporate Formalities?

- **Meetings**
- **Resolutions**
- **Minutes**
- **Approvals**
- **Stock Ledgers**
- **Stock Issuance**
- **Acceptance**
- **Amendments**

# Why is it important to comply with corporate formalities?

**Federal and State Law**

**Banks-Loans**

**Shareholders/Members**

**The IRS-Audit Request**

# Actions That Need To Be Documented

- Employment Agreements
- Officer's Salaries
- Equipment Purchase/Lease
- Property Purchase
- Cars
- Issuance of Dividends

# Actions That Need To Be Documented

- Retirement Plans
- Medical Plans
- Selling Shares
- Loans
- Fringe Benefits
- Bonuses

# Factors Leading to Veil Piercing

- confused intermingling of business assets
- thin capitalization
- nonobservance of corporate formalities
- absence of corporate records
- nonfunctioning of officers and directors

Attorney General v. M.C.K., Inc., 736 N.E.2d  
373 (Mass. 2000)

# Failure to maintain Corporate Formalities can lead to:

- Involuntary dissolution.
- Paying tax penalties on disallowed deductions.
- Shareholders becoming personally liable for the corporation's activities/debts.
- Allowing a creditor, the IRS or attorneys to pierce the corporate veil seize your personal assets.
- Estate tax includibility for family entities

# Solution?

Cushing and Dolan's Business Law Department

- Protect Limited Liability
- Stronger Asset Protection
- Competent Business Counsel
- Cost Effective

# Closely Held Businesses Face Greatest Risk

- They tend to treat their business like a sole proprietorship.
- They don't document business decisions
- They co-mingle funds and assets
- They don't know what documents they must maintain to stay in compliance...so they do nothing.

# Cushing and Dolan Business Law Initiative

- Minutes
- Resolutions
- Filings
- Amendments
- Meetings
- Notifications



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