

TALES FROM THE TRENCHES

BY BARRY C. MCGUIRE

March, 2010

IT'S JUST PAPERWORK, RIGHT?

The phone message sounded very concerned. A member was interested in jumping right into quick-turn creative deals, probably fix and flip. He wanted to use his existing corporation in order to get the best tax treatment on expected profit. His brother-in-law had big pile of cash not doing anything and was ready to invest on a joint venture basis. So far this sounded okay. Our member had construction expertise; the brother-in-law had the money, what was the issue?

The issue was his corporation. He was using it for a sideline business run mostly on a cash basis. It wasn't very active. Record-keeping was spotty to say the least. He usually didn't file his annual return with Alberta Registries until it was at least two years late and only after he got those annoying notices saying that if he didn't file they were going to strike him off the corporate register! In fact, he had just received one of those notices in the mail two months ago but had not yet done anything. With luck, his corporation would not yet be, 'struck off the register'. The missing annual returns would have to be filed but he would not have to go through the laborious and expensive process of reinstating his corporation.

Worse yet, it turns out that our member had not filed a corporate tax return with the Canada Revenue Agency, (CRA), for at least 10 years, it could have been more, he just didn't remember. The CRA takes a dim view of this practice. Here is an excerpt from the CRA website:

News release

Director and corporation fined for not filing tax returns

Thunder Bay, Ontario, December 17, 2009 ... On December 7, 2009, Premier Floor Fashions Inc., 1561272 Ontario Inc. and Steve Dukarich, a director of both companies, of Thunder Bay, pleaded guilty in the Ontario Court of Justice in Thunder Bay to six counts of failing to file tax returns. They were fined a total of \$6,000. In addition to the fines imposed by the courts, individuals or corporations, convicted of failing to file tax returns, are still obligated to file the tax returns and pay the full amount of taxes owing, plus interest, as well as any civil penalties that may be assessed by the Canada Revenue Agency (CRA).

It can be worse. The fines can be higher. Occasionally, when a taxpayer ignores the CRA they can do some jail time. This is serious business. It was most likely the small, cash nature of his business that had not already caused the CRA to descend on him like a ton of bricks.

We suggested he immediately file voluntary returns, pay any tax owing plus penalties and interest and get back in good standing.

Right now he doesn't know what to do. His cash business meant terrible record-keeping. Since the CRA hasn't caught up to him so far he is considering just letting his corporation die and forming a new corporation for his fix and flip real estate business. Maybe the CRA won't ever bother him. Our member asks, "what do you think?" My answer, "I don't know". It's impossible for any professional, lawyer or accountant to answer that question.

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SUMMARY:

1. You must keep your corporation up to date with Alberta Registries or you will be struck off the corporate registry.
2. You must file your corporate tax returns with the CRA or face the possibility of fines, penalties and potentially jail time.
3. Don't incorporate if you can't handle paperwork; it's all part of your real estate business.

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