



## **Tax-Effective Corporate Minutes**

By Christy Morrow

As you may or may not be aware, one of the requirements for a corporation to maintain its existence is that the shareholders and board of directors meet at least annually. As a result of this meeting, corporate minutes should be kept to make sure the corporation is respected as a separate legal entity. The corporation's attorney generally prepares these minutes, but legal advisors by nature do not frequently consider all of the tax issues that need to be addressed.

The main reason corporate minutes should be tax-effective is to help support the corporation's stance that payments to shareholders are deductible and that earnings held in the corporation are reasonable. If a specific need is not spelled out in the corporate minutes for accumulated earnings, an accumulated earnings tax may be assessed on the corporation. If there are any dividends paid to the shareholders, the corporate minutes should document the amount considered and the amount paid. Dividends should be paid annually unless there is a clearly stated reason for not paying them.

When it boils down to a review by the IRS, the area with the most emphasis is compensation. Not only should the officers and directors be elected annually, but bonuses, retirement plan contributions, and salaries of these officers should be documented. The IRS will attack the compensation of C corporation's shareholder/officer if it is unreasonable. Complete corporate minutes ratify the actions taken by the officers and reduce the risk of challenge.

Another area of interest to the IRS is loans to or from shareholders/officers. A loan agreement should be prepared with written terms for both parties. The IRS may deem it a dividend if the agreement is not executed and abided by. The corporate minutes should include the reason for borrowing or loaning the money, officers authorization of the loan, and a summary of the loan terms (interest rate and repayment schedule).

1244 stock must be designated in the corporate minutes as such. Any loss sustained by an individual who owned 1244 stock at the time loss may take an ordinary loss on their income tax return. The IRS reviews the minutes and stock certificates of these corporations to insure that they identify the stock as code section 1244 stock and that the stock was issued to the individual claiming this special treatment.

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The use of employer provided automobiles is a commonly attacked by the IRS. The use of the automobile should be included in compensation or the IRS may deem them constructive dividends. Clearly documenting in the corporate minutes that the personal use of the company's automobile is intended to be part of the owner's compensation may go a long way in securing the deduction made by the corporation.

Charitable contributions made by corporations are only deductible in the year paid. If the corporation uses the accrual method of accounting, they may claim a current year deduction for a donation made up to 2 ½ months after year-end. The only way to perfect this deduction is to document the approval of the contribution by the corporation's board of directors by the end of the current year and an election to claim the deduction on the current year return is attached to the return.

As you can see, there are many issues that may be challenged by the IRS if the annual meeting is not held and well documented. These issues are the same reason a corporation would want to hold it's annual meeting one or two months before year-end. This is an excellent tax planning session. The current year's operations can be reviewed, the legal and tax advisors can meet, and changes made before year-end. By documenting these actions in minutes, they become an important part of a corporation's tax records.

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