

## How to Survive Judgments, Tax Liens and Lawsuits

Judgments, tax liens and lawsuits all have one thing in common; **those who control them are after your assets**. If you don't have assets the tables are turned and actually lean in your favor. Every day in business is a risk, no different than being in the stock or commodities market. It is a risk for each side and for every winner there is a loser. Somehow the average entrepreneur thinks "there is no way I can fail," in spite of the statistics quoted by the Small Business Association (SBA) sharing that 95% of all startups go out of business within the first 5 years.

In Las Vegas there is no rule that says that if you win some money, you are required to "let it ride" every time. You actually can put some to the side and use only part of the winnings to continue to play. This is also true in business life. Certain laws provide access to your assets for creditors and if you have already made a mistake, moving or making an attempt to otherwise hide your assets would be viewed as fraudulent and rightfully so. If, however, you plan ahead for the best case AND the worst case scenario, that is just good business sense.

**Preplanning versus oops** - (For preplanning see our white paper, "[Protect Your Business from Tax Liens, Judgments and Lawsuits](#)." This article will deal with events that are already in motion.)

- The first thing to do is "circle the wagons" if you are being attacked. Don't leave assets lying around that can easily be grabbed. Cash sitting in bank accounts is an easy target. You are better off having inventory or paying down your critical expenses for survival such as rent, bank payment or key supplier, than having money sitting in an account. Banks who are generally secured come ahead of everyone, at least until the taxing bodies actually lien.

**Personal guarantees have no real value until the day of reckoning.** The value of the guarantee can and does change on a daily basis. Until a suit or lien is actually filed, you are spending money or earning money which keeps the value of your guarantee changing constantly. Many entrepreneurs use all of their money to keep their business going when they hit hard times. (A bit crazy when you think about it, like throwing all your valuables into a boat that is leaking water.) However when the day of reckoning comes and everyone wants to split up those valuables, if there is nothing left you are actually in the best possible position to negotiate settlements.

- Although there are exceptions, people without assets shouldn't be declaring bankruptcy. They have nothing to protect. People with assets will find themselves having those assets liquidated to pay the creditors.

**If you are not incorporated, do so immediately.** This is your protective layer that insulates you personally from most lawsuits, judgments and even some taxes. Without this protection you are personally liable for all debts of the business. This will only help from today forward, but in most cases within a few months old bills will have been retired and replaced by new bills generated under the new corporation thus protecting you personally. (LLC's versus corporations is another topic for another white paper, but whichever you choose just do something at this point.) It is common for owners to lend their troubled business money to survive. This is usually done informally and without any more than a personal check to the business. On a list of who gets paid and in what order, the officer loans come 10<sup>th</sup> which is last.

- Instead of being the victim, you can actually move to a first position by formally lending the money to your company. This requires all the usual paperwork for a secured note, but compared to losing the money is rather easily accomplished and well worth the time.

**If you have a bank or other secured party, stay close to them.** You might see them as the enemy, but in fact they can help you protect your business assets through their secured position. Even if they are owed more than the assets are worth, this would only add to their cooperative posture. They actually want to see you succeed and be healthy since this is when they can also make money. With the bank having tied up all your assets as security, there is no leverage left for the rest of the creditors. Under these circumstances they even come ahead of the IRS or State taxing bodies. This can change after a lien is filed and recorded, but even then the bank could move before the taxing bodies could do any damage.

- Since accounts receivable can be attached, discounting for collection and shorter terms can help reduce exposure. Also if your bank has ALL of your assets secured, that would account for receivables which insulates them from other creditors including taxing authorities.

The advantage the tax authorities have is that in many instances they can also chase the responsible party (you) personally as well. Again however, if you have no assets it becomes another negotiation. Arrangements can be made for payments over time or settlements for pennies on the dollar if you are positioned properly.

**A couple more ideas to help you protect yourself:**

- If you don't have a bank you can also protect machinery and equipment by selling it to a leasing company and leasing it back. This also will generate cash for your business to help in moving forward.
- Depending on your circumstances instead of increasing inventory to protect cash, you may be better off actually reducing inventory to Just In Time (JIT). This also generates much needed cash and lowers the value someone could get by liquidating the inventory through a bankruptcy.

Your Profit Authority Advisors invites you to give us a call; let us strategize with you, and evaluate your situation. We can help you create a strategy that will protect your business. Our next goal? Get you into and keep you in the "Green Zone" of growth and profitability.