THE MONTHLY CEO ADVISORY™

DECEMBER 2021 VOLUME 2, ISSUE 12

Dear Friends,

I am pleased to provide you the December 2021 issue of ***The Monthly CEO Advisory™***.

My article this month is about the differences between Watchmakers and Beekeepers. It's easy to blame the external forces at work when it comes to turnover, engagement and entitlement but the answers or solutions are often found inside the company when the CEO looks in the mirror.

Leading a business is the single most challenging task someone could ever take on, and as you know, it is all consuming. This means that you likely have little time to learn about all the subjects you should. To make it easier for you, each of our articles are short (only one page) and include the following categories:

- Growth & Profits
- Tax News
- Human Resources Compliance
- Commercial Insurance
- Manufacturing Excellence
- Information Technology
- Company Benefits
- CFO Insights
- We Can Do Better
- Alternative Financing
- Social Media
- Insolvency Advising
- Estate Planning
- Mergers & Acquisitions
- Business Law
- Intellectual Property

Please feel free to pass along The Monthly CEO Advisory to others in your network who might benefit from learning something that could positively impact their business.

Please enjoy all the articles in this issue and thank you for allowing us to be part of your continuing business education, growth and success. Stay safe. Let's hope 2022 is better for all mankind.

Sincerely,

Ken Keller

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CEO

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Business Growth Opportunities to Consider in 2021

The Monthly CEO Advisory is a publication for business leaders. Please enjoy the articles, send us any suggestions of topics you would like to see covered and pass this on to others so that they might benefit. Thank you. Ken Keller

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BUSINESS GROWTH & PROFITS

WATCHMAKER OR BEEKEEPER? IT MATTERS

Low morale, low profits, lack of staff engagement, high turnover, rampant gossip – all can be attributed to a company being led by either a Watchmaker or a Beekeeper – care to guess which one is the culprit?

If you guessed Watchmaker, you're right. Why?

A Watchmaker, as referred to in James Fischer's book, *Navigating the Growth Curve*, is a person who wants things that are predictable, something they can control. They want to run their business like a precision machine. They believe that to be effective, a machine must be controlled by its operators. This is the overarching purpose of management – to control the enterprise. They further believe that the machine exists for a purpose conceived of by its builders. Its purpose is to make as much money as possible for its owners.

Nothing wrong with making money, but to have an intentional enterprise that provides sustainable profits over a long period of time, research suggests that the better approach lies in becoming more of a Beekeeper.

Beekeepers have one foot in the future. They have a natural facility to work with the dangerous sisters of growth: complexity and chaos. Beekeepers are more likely to let the collective intelligence of the team (or the 'hive') to be the operator instead of them. They understand that their business is a living intelligent thing, and if allowed, it will come up with far more ideas and better solutions than they ever could. The beekeepers business will continually self organize around and through its problems and challenges.

Beekeepers capitalize upon the intelligence of the team. To try and control causes anger, hostility and disengagement. This can be addressed by simply asking for input

This is a lesson that we can't seem to learn often enough.

Why? Because leaders tend to assume that they should know all the answers and that to ask for input may put them in a negative light in the eyes of employees.

So ego wins over intellect; that the knowledge and experience of one person is more valuable than the input of others, perhaps many others, all of whom may have decades of experience and expertise.

We would suggest that there is a Beekeeper in all of us but that in our day-to-day struggles to 'do the right thing', be 'responsible' and 'act like a leader', the Watchmaker takes over far more often than any of us would like.

As the CEO, you have to get past these fundamental questions that I consider to be all "head trash":

- How can my employees possibly know enough about the company to give me advice?
- They'll just use it as a 'bitch' session and I've heard enough of that
- I don't have time to take employee suggestions – I have my own issues to deal with
- If I ask for opinion, they'll expect me to do something with it and I have enough to do right now

Leadership is about learning and the best way to learn about how your company really thinks and feels is to ask your employees. Your job as CEO will get easier if you figure out what the people on your payroll think instead of trying to outthink or second guess them.

Visit StrategicAdvisoryBoards.com today to learn about nationwide peer groups on Zoom or call Ken Keller at 661.645.7085.

Learn about Strategic Advisory Boards:
https://youtu.be/cYTOZmVjaAM

Ken Keller

Ken Keller facilitates Strategic Advisory Boards, bringing small & midsize company CEOs together to improve planning, performance and growth to increase revenue, execute plans, and grow profits. SABs meet via Zoom and clients are worldwide, in just about any industry.

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TAX NEWS

A ROSE, BY ANY OTHER NAME

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We help clients in dealing with IRS collection and audit issues of individuals and small, midsize and large businesses throughout the United States.

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Ronald Reagan won the White House in 1980 partly by campaigning against incumbent Jimmy Carter and partly by campaigning against the 70% top income tax rate. Reagan preached a new gospel of "supply-side" economics, arguing that tax cuts would put money back in the pockets of ordinary Americans and unleash a wave of new economic activity and growth. And while Reagan's own running mate originally mocked it as "voodoo" economics, for forty years, that philosophy has influenced American tax policy, leading to more recent rounds of tax cuts in 2001, 2003, and most recently, 2017.

Of course, tax cuts aren't the only way the government can pump money into the economy. Sometimes it's more direct. For example, we spend north of $700 billion every year on national defense. That money doesn't just disappear into a black hole. It pays the salaries of 2.2 million active duty military personnel, 750,000 civilian personnel, and countless defense contractors. If you run a diner or a hardware store or a dental practice near a military base like Ft. Bragg, Ft. Campbell, or Ft. Hood, you benefit from that spending.

But sometimes Uncle Sam pumps money into pockets less directly, effectively passing a tax cut without actually cutting taxes. Businesses across the country may soon benefit from one of those moves.

Google and Meta — formerly Facebook — are drawing increasing fire for dominating the digital marketing space. Together, they hoover up 54 cents out of every digital advertising dollar, like a desperate partier doing lines in a nightclub bathroom. But Meta's tone-deaf responses to their endless string of scandals have won them no friends on Capitol Hill. (We call them "outrages"; Facebook calls them "days that end in 'y'.") Seriously, if you can put Republican Senator Marsha Blackburn and Democratic Senator Richard Blumenthal on the same side of an issue, you're doing something.

Now Congress is considering antitrust action against the digital giants. How would that translate into "tax cuts"?

Well, if Congress and the DOJ break up Meta — specifically, separating the Facebook and Instagram platforms — competition should go up, and advertising costs should go down. That means thousands of small-to-medium-sized businesses will enjoy higher net profits, either because they spend less to get the same customers or get even more bang from their current ad spend. From where we sit, government action that puts money into business owners' pockets sounds an awful lot like a tax cut.

Ironically, while we can characterize shifting income from Silicon Valley to Middle America as a tax cut, it would actually mean more for Uncle Sam. Why? Because business owners generally pay a higher percentage of tax on their profits than Big Tech. Multinational companies like Google and Meta are famous for sidestepping tax on their billions in profits. From 2011-2020, Meta paid 12.7% in tax on $132.5 billion of income. But even if they paid the maximum corporate rate of 21%, that's significantly less than the maximum 37% for the small business owners who would benefit from lower ad costs.

As Congress starts to pressure Meta CEO Mark Zuckerberg, he looks more and more like a James Bond villain. (Don't be surprised if next time they haul him in to testify, he shows up petting a white cat on his lap.) But really, if Uncle Sam's antitrust action puts more money in your pocket, do you care if he keeps some of that windfall in the form of some tax dollars for himself?

COMMERCIAL INSURANCE

DOING A QUICK REVIEW OF YOUR COMPANY'S COMMERCIAL INSURANCE COVERAGE

It's that time of the year again. While others relax during the Holidays, many commercial insurance buyers and their brokers will be working on January 1st renewals. After completing a comprehensive risk analysis of your operations, this is the time to review and tune up your insurance coverage. A detailed review of coverage and limits will not only assure that your company is properly protected, but it may serve to reduce your overall insurance costs.

COMMERCIAL PROPERTY:

With the Covid driven cost increases for equipment, materials, and stock, it makes sense from a risk management and cost control perspective to do some research to determine the actual cost to replace your key business property today with like kind and quality (Replacement Cost).

It's also a good practice to compile the internal financial information needed to complete a Loss of Income Worksheet, then meet with your broker to complete the worksheet together. Discuss your Loss of Income risk profile, the coverage you need, and the limits you should carry in 2022.

GENERAL LIABILITY:

Be sure to account for any new locations you might now occupy, any significant changes to your business operations, any new products you are producing, or services you are providing. Any material changes should be reported by your broker, so they are covered.

To avoid problems at audit time, determine if your renewal policy will be auditable, and if there is a minimum earned premium endorsement included. Some businesses set their rating base projection (payroll or annual revenue) at 100% of what they anticipate, while others pull back 10-20% to avoid overpayment.

WORKERS COMPENSATION:

Work with your broker to develop your company's Workers Compensation story. Explain your risk management philosophy and your safety measures. If there are large claims, explain what happened, and what your company has done to prevent future claims. Share this information with the underwriters.

EMPLOYMENT PRACTICES LIABILITY (EPL):

In the renewal application note any employee training your company has done during the preceding policy year and disclose any incidents that occurred which might lead to a claim. Failure to do so at renewal could lead a denial of coverage if a claim occurs.

CYBER CRIME / LIABILITY:

Assess your company's 1st Party and Liability Cyber risk, then set appropriate limits. It's also a good time to list the Cyber security measures your company has in place and note any new measures you will be making in 2022. Sharing this information with carriers should serve to keep your Self-Insured Retention (SIR) and your premium down.

If your company has a January 1 renewal date, your insurance broker should have started the renewal process with you roughly three months ago. Even if they failed to do so, there is still time to alert them that you want to do a quick review of your insurance program and make adjusts before the end of the year.

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HUMAN RESOURCES COMPLIANCE

A TASTE OF 2022 CALIFORNIA LABOR LAWS

The New Year is just around the corner and there are a myriad of new labor laws that affect employers. In fact, the count is up to sixteen. JorgensenHR will be having our annual labor law update webinar in early December. I thought I would give you a taste of some of the new laws to whet your appetite for our webinar.

Here are four of the new laws that all employers should pay attention to in order to mitigate lawsuits, criminal liability and governmental fines and penalties.

Look for our 2022 Labor Law Update in your email and register.

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I work with top executives of companies with 20-2,000 employees, providing HR solutions including outsourced HR, monthly HR consulting, workplace investigations, and almost everything HR.

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Have a great holiday season and a prosperous new year!

AB 1003: CRIMINAL LIABILITY FOR INTENTIONAL UNPAID WAGES

This bill makes intentional "wage theft" by employers a form of grand theft and thus a felony on the state of California.

Effective January 1, 2022, intentional wage theft by an employer in any consecutive 12-month period—greater than either of the following amounts—is punishable as grand theft:

- $950 from any one employee; or
- $2,350 in total from two or more employees.

Wage theft is the intentional, illegal deprivation of wages, tips, benefits, or other compensation with the knowledge that they are legally due to the employee. Of note, the law also applies to wage theft from independent contractors.

The steps you should take to put yourself in the best position to stay out of legal hot water in this area include:

- Require nonexempt employees to review and affirm by signature that their time entries are correct before submitting them to payroll;
- Enact policies to immediately correct any payroll errors brought to the company's attention, preferably with an option for same-day pay;
- Ensure that overtime hours are paid at the correct regular rate of pay, which can be complicated under California law;
- Correctly delineate what constitutes a nondiscretionary bonus versus a discretionary bonus.

AB 1033: CALIFORNIA FAMILY RIGHTS ACT

This bill expands the definition of "family member" under CFRA to include parents-in law. The measure also modifies procedural aspects of a DFEH pilot program for mediating CFRA disputes that applies to small employers.

SB 657: ELECTRONIC DOCUMENTS

This bill provides that in instances where an employer is required to physically post information, an employer may also distribute that information to employees by email with the document or documents attached. An employer is still required to physically display the required posting.

SB 807 EXPANDED RECORDKEEPING REQUIREMENTS

Effective January 1, 2022, employers must maintain and preserve all of the following for four years (an increase from the previous two-year requirement):

- Applications, personnel, membership, or employment referral records and files (four years from when they were made or received); and
- Applicants or terminated employees' personnel files (four years from when the employment action occurred).

The amended law also specifies the rules around record retention after a verified complaint is filed against an employer.

MANUFACTURING EXCELLENCE

FINDING AND DEVELOPING GREAT SUPERVISORS

One of the most challenging aspects of building a successful and sustainable manufacturing operation is to identify, train and develop great Supervisors. Most employees in a manufacturing company work on the shop floor and report to a Supervisor. Whether or not manufacturing employees "like" working for the company is really all about whether or not they like working for their Supervisor.

When looking for potential Supervisors, and as advice to new Supervisors, I suggest these three (3) primary criteria: Attitude, Communication, and Results.

ATTITUDE

The first challenge is to keep cool under pressure. Supervisors are pressed for results from management, are dealing with a broad range of personalities and skill sets on the shop floor, and are confronted with a series of problems on the shop floor throughout the day. The ability to keep cool when dealing with these stresses and crises is essential.

Secondly, play fair. There is nothing more corrosive on the shop floor than a lack of fairness. This is very hard to maintain due to past relationships, personal chemistry, sympathy for personal circumstances and other emotional hooks which will pull a Supervisor away from treating all employees fairly and equally.

And finally, the Supervisor must be reliable, honest, flexible and analytical. These are four words easily put to pen and ink, but a lifetime of hard work to put into practice. The Supervisor should be our role model of the ideal employee. He is always there when you need him. You know he is telling you the truth, and the full truth. He can adapt to changing circumstances on the fly. He does not over react to circumstances, but stops and analyzes the situation. He gathers relevant information and responds appropriately.

COMMUNICATION

Information is the life blood of the Supervisor and Manager's core tasks. Without clear, relevant and timely information, mistakes are made. Waste is created. Productivity and Quality fall short of targets and expectations.

First and foremost, the Supervisor must be a skillful and engaged listener. He comprehends what he is hearing and asks perceptive questions when he does not. He listens to his staff's concerns. He does not reject them off-hand, but welcomes good and bad news.

Secondly, he shares information. He shares the good and bad news from the shop floor with management, even if it reflects poorly on him personally. Without the free flow of information and ideas, success is difficult to achieve. He shares the company's values and objectives with his staff. He creatively interacts with his staff on the resources and methods needed to deliver on those objectives.

And finally, the Supervisor is able to speak well and to direct his staff well. He chooses the right words which communicate the true intent of the message. He provides the "why." He invites and responds appropriately to feedback.

RESULTS

At the end of the day, delivering results is the point. This is the core of every manufacturer's purpose and mission.

First of all the Supervisor must be able provide a proper environment. He must ensure his staff has what they need to be successful. A safe working environment. Skilled and capable colleagues. The right equipment, tools and materials where and when they are needed.

Secondly, the Supervisor must be skillful in working around roadblocks and dealing with problems. Roadblocks delay production. They alter standard processes, generate lost time and scrap. The shop floor is a challenging environment and presents problems throughout the day. The effective Supervisor has the experience, technical and interpersonal skills to overcome these problems and keep the process moving forward.

CONCLUSION

Supervision is not for the faint of heart. But for the right person with the right combination of experience, expertise and character, they are the key to mission success in every manufacturing enterprise.

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INFORMATION TECHNOLOGY

POOR PASSWORD SECURITY: HACKERS ALREADY HAVE YOUR PASSWORDS

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FOUNDER & CEO

FPA Technology Services, Inc. – "IT The Way It's Supposed To Be!" FPA provides fixed fee, worry free IT services focused on professional services firms such as RIAs, CPAs, Business Managers, Legal, Insurance, as well as Manufacturers & Distributors and Non-Profits.

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What if you were told protecting your online accounts was virtually impossible in today's cybercrime environment? According to Experian's Data Breach Industry Forecast, "Weak or stolen credentials continue to top the list of attack vectors, while traditional authentication continually fails to protect against cyberattacks."

Poor password security is frequently THE major cybersecurity weakness for both businesses as well as individuals. The reason many of these password security compromises occur is because cyber criminals have a variety of attack approaches — hacking to gain user data, using malware and phishing scams, using bots to systematically locate and attack weaknesses in cyber defenses — all just to gain access to users' credentials and other account information. If even just one of these attacks is successful, they essentially hold the keys to the kingdom.

You may ask: "How strong is my password?" If your password contains common mistakes like using all lowercase letters, pet or family members' names, the word "password" in it, or not using uppercase letters, numbers, or symbols, the answer is "not very." Strong password security is the antithesis of these things and should contain a mix of lowercase and uppercase numbers, symbols and, ideally, should lack any words that are found in the dictionary. And, we cannot emphasize this enough:

A SECURE PASSWORD IS ONE THAT IS NOT USED WITH MULTIPLE ACCOUNTS!

The importance of cybersecurity can't be overstated and contributes to the best approach to prevent cybercrime. Our best advice is to act as though hackers already have your password. The reality is many of them actually already do.

As a Managed Security Service Provider (MSSP), we understand the challenges and threats businesses face in this increasingly dangerous digital world. To help keep your business and credentials as safe as possible, here are a few of the things you can do to increase the strength of your cyber defense.

USE A DARK WEB MONITORING SERVICE

The Dark Web is a part of the internet that can't be accessed via our standard browsers. And this is where hackers live. Dark Web monitoring is a great way to know if / when your credentials are available and being sold or bartered there. While there's not a lot you can do once they're there, the visibility of knowing which ones and when they appear gives you information to stay ahead of them.

USE TWO FACTOR AUTHENTICATION/ DUAL FACTOR AUTHENTICATION

Don't leave the safety of your organization and its data to the protection of basic password security alone. Two factor authentication (2FA), also known as dual factor authentication, is a type of multi-factor authentication method that is an incredible cyber protection tool. Without a doubt, adding 2FA to all of your logins is one of the strongest ways to ensure that no one can access your information without your authorization.

IMPLEMENT CYBER AWARENESS TRAINING ACROSS THE BOARD

In addition to 2FA, one of the best cyber defenses is having a solid human offense. What I mean by this is the idea of building a "human firewall" — which entails the use of a cybersecurity user awareness training program. This form of cybersecurity training aims to help users increase their knowledge about cyber threats and best practices so they can identify potential threats and know how to respond accordingly.

BOTTOM LINE

While cybercriminals are becoming more and more ingenious in their approach, simply tightening up your basic security controls, like strong passwords, can make all the difference in protecting yourself in this digital world. Remember, act like the hackers already have your passwords. Because in many cases, they already do.

COMPANY BENEFITS

2022 AFFORDABLE ACT COMPLIANCE

Changes to some Affordable Care Act (ACA) requirements take effect in 2022 for employers sponsoring group health plans. To prepare for 2022, employers should review these upcoming requirements and develop a compliance strategy.

The ACA's overall annual limit on cost sharing (also known as an out-of-pocket maximum) applies for all group health plans, whether insured or self-insured. Under the ACA, a health plan's out-of-pocket maximum for may not exceed **$8,700** for self-only coverage and **$17,400** for family coverage, effective for plan years beginning on or after January 1, 2022.

An employee's annual pre-tax salary reduction contributions to a health Flexible Spending Account (FSA) must be limited to **$2,850** for taxable years beginning in 2022

Health plans and health insurance issuers must provide a Summary of Benefits and Coverage **(SBC)** to applicants and enrollees to help them understand their coverage and make coverage decisions. Plans and issuers must provide the SBC to participants and beneficiaries who enroll or reenroll in a health plan. In the past SBCs were only required for health plans but in 2022 SBCs are now required for Dental and Vision plans also.

An Applicable Large Employer's (ALE) health coverage is considered affordable if the employee's required contribution to the plan does not exceed **9.61%** of the employee's household income for 2022.

The ACA requires ALEs to report information to the IRS and to their full-time employees regarding the employer-sponsored health coverage they offer. The IRS will use the information that ALEs report to verify employer-sponsored coverage and administer the employer shared responsibility provisions. This reporting requirement is found in **Code Section 6056**.

- Returns are due in early 2022 for health plan coverage offered or provided in 2021.
- Returns generally must be filed with the IRS by **February 28** (or **March 31**, if filed electronically) of the year after the calendar year to which the returns relate.
- Written statements generally must be provided to employees no later than **January 31** of the year following the calendar year in which coverage was provided.

Under both Sections 6055 and 6056, each reporting entity must file all of the following with the IRS:

- A separate **statement** for each individual; and
- A single **transmittal form** for all of the returns filed for a given calendar year.

Under Section 6056, entities will file Forms 1094-C (a transmittal) and 1095-C (an information return) for each full-time employee for any month. Entities reporting under both Sections 6055 and 6056 will file using a combined reporting method on **Form 1094-C** and **Form 1095-C**.

Employers are required to provide all new hires and existing employees with a written notice about the ACA's Health Insurance Exchanges. This notice must be provided **at the time of hiring**. In general, the notice must:

- Inform employees about the existence of the Exchange and describe the services provided;
- Explain how employees may be eligible for a premium tax credit or a cost-sharing reduction if the employer's plan does not meet certain requirements; and
- Inform employees that if they purchase coverage through the Exchange, they may lose any employer contribution toward the cost of employer-provided coverage, and that all or a portion of the employer contribution to employer-provided coverage may be excludable for federal income tax purposes.

Have a great holiday season and wishing you a healthy and prosperous New Year.

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MEDICAL A/R FACTORING

We have looked before at the challenges of carrying slow paying accounts receivable. Paying the discount fee to a credit card processing company seems like no big deal when you consider the alternative-waiting 30, 60 or 90 days to get paid if you don't have deep pockets and you have payroll and lots of other bills to stacking up.

Some reports estimate that more than 91% of businesses suffer from late payments.

Accounts Receivable Financing (aka Factoring) is one-way business owners speed up payment on their invoices. It's the oldest form of business funding-currently a billion-dollar industry.

There are lenders that specialize in offering this type of funding exclusively to the healthcare industry.

A medical provider's biggest asset is its accounts receivable-the payment it expects to get from Medicaid/Medicare, HMO's. private insurance companies, personal injury settlements or worker's compensation insurances.

As you can imagine (or even experience), due to the bureaucratic inefficiencies in our healthcare system, a medical provider may have to wait up to 90 days or more to get these claims paid and monetize this asset.

This hinders the provider's ability to conduct business, pay staff, order supplies, pay rent and grow the business to its potential.

Most providers turn to their local banks for working capital loans but as we know, banks have strict requirements and hindrances that can make it difficult to qualify. If they can approve you, it may not be for a line size large enough to support the growth curve you are on.

HOW MEDICAL FACTORING WORKS

Medical factoring is a type of invoice factoring where a Factor provides a medical provider with an advance based on the provider's outstanding accounts receivable.

The factor advances funds and waits for the invoice to be paid from third party insurance carriers. Medical factors will consider any provider that bills third party insurance carriers including doctors, doctor groups, home healthcare companies, medical transport and translation companies, imaging centers, labs, urgent care centers and more.

WALK ME THROUGH THE PROCESS

- A medical provider establishes a relationship with a factor.
- A medical provider submits bills to the 3rd party insurance carrier.
- A medical provider submits a copy of those billings to their factor.
- The Factor analyzes the invoices and uses historical collections and industry standards to establish the Expected Collectable Value or ECV.
- The Factor will advance up to 80% of the ECV. Funds can be wired or ACH'd into the provider's bank account the same day.
- The remaining 20% is set aside in a reserve account to protect for any bad debts. Once the bill is paid by the 3rd party insurance carrier, the factor returns the reserve minus a factor fee of 1-3% per month.

The beauty of medical factoring is that it is determined solely by the provider's ability to generate claims (invoices) thereby providing access to capital for smaller or non-bankable providers. There is no set line amount. The more you grow, the more you can factor.

Some A/R lenders will fund in 2nd position, as juniors behind an existing bank or SBA.

- No early termination penalties.
- Annual revenues from $1-$40 million. (smaller considered)
- Flexible fee structure – client has total control of cost of funds.

Let us get you an offer today!

WE CAN DO BETTER

WHY RACE MATTER'S TO ALL OF US

Paul Mitchell
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"I want to tell you a story. I'm going to ask you all to close your eyes while I tell you the story. I want you to listen to me. I want you to listen to yourselves. Go ahead. Close your eyes, please. This is a story about a little girl walking home from the grocery store one sunny afternoon. I want you to picture this little girl. Suddenly a truck races up. Two men jump out and grab her. They drag her into a nearby field and they tie her up and they rip her clothes from her body. Now they climb on. First one, then the other, raping her, shattering everything innocent and pure with a vicious thrust in a fog of drunken breath and sweat. And when they're done, after they've killed her tiny womb, murdered any chance for her to bear children, to have life beyond her own, they decided to use her for target practice. They start throwin' full beer cans at her. They throw them so hard that it tears the flesh all the way to her bones. Then they urinate on her. Now comes the hanging. They have a rope. They tie a noose. Imagine the noose going tight around her neck and with a sudden blinding jerk, she's pulled into the air and her feet and legs go kicking. They don't find the ground. The hanging branch isn't strong enough. It snaps and she falls back to the earth. So they pick her up, throw her in the back of the truck and drive out to Foggy Creek Bridge. Pitch her over the edge. And she drops some thirty feet down to the creek bottom below. Can you see her? Her raped, beaten, broken body soaked in their urine, soaked in their semen, soaked in her blood, left to die. Can you see her? I want you to picture that little girl.

Now imagine she's white."

This is dialogue from a 1996 movie "A Time to Kill." It is a famous courtroom scene that happened in the south when a black father was on trial for shooting the white men for the torture and rape of an innocent young black girl, his daughter. In the movie he was acquitted based on the statement, "imagine she's white." It seems that is what has to happen these days. I have to respect the jury's decision in the Kyle Rittenhouse case, but it reminds of this dialogue in a reverse way. "A 17-year old's mother drives her son across state lines with an assault rifle to a protest of people because he wants to protect others' rights, doesn't believe in their cause, and kills two people. Now imagine he's black" Do we really think the outcome would be the same? Would Ahmaud Abery's killers been convicted if there was no video? And what would have happened if that was a white man jogging in a black neighborhood and he was followed and killed? Wendell Berry said, "We have to be able to imagine lives that are not our own." In this, perhaps, we can find true justice.

CFO Insights

BUSINESS CYCLES – HOW THEY IMPACT BUSINESS VALUATION

Selling Your Business. *A series of articles providing information to business owners who are starting to think about exiting their business.*

Supply and demand drive all capital markets, including the markets for privately held businesses. The ebb and flow of supply vs demand creates buyer's and seller's markets. There is a relatively consistent 10-year cycle for business sales, where the first three years of a decade are a buyer's market, the next five years are a seller's market with the final two years, being indeterminate. Will the 2020's repeat? Time will tell. See **The Baby Boomer Tsunami**™ below.

Your business is performing well. You are emotionally and financially ready to sell. However, your investment banker informs you that recent sales of similar businesses indicate that the market is softening suggesting a buyer's market. As a result, she is lowering her multiple range from a 5.5x – 6.0x to a 4.5x – 5.0x, a 1x reduction. Given that EBITDA is $2 million, that is a $2 million reduction in valuation. What do you do?

The first step is to work with your financial planner to reassess your financial readiness given the reduction in expected proceeds from the sale.

The second step is to evaluate the businesses that have recently sold to determine if there are competitive advantages that your business has that these sold businesses did not. If these advantages are identified, work with your investment banker to determine what incremental value these create and determine how you market these advantages to prospective buyers.

The third step is to evaluate the risks and costs of deferring the sale until markets recover. Will the business be able to sustain revenue growth and margins that exceed competitors? Are there regulatory, technology, competitor, etc. risks that may impact revenue growth or EBITDA? Are you emotionally able to continue to lead your business to perform at peak levels?

You and **The Success Team**™ will evaluate this information and with their advice, you will decide if proceeding with the sale immediately makes sense, or if delaying is a better course of action. While this may not be an easy decision, you will know that with **The Success Team**™ advising you, you will have the information you need to make an informed decision.

There is another phenomenon that we are currently in the middle of which **B2B CFO**® calls **The Baby Boomer Tsunami**™. Baby Boomers own about 4 million businesses (that have employees), more than any generation before them. With the US population moderating, generations following the Baby Boomers are unlikely to exceed this level of business ownership. During the 20-year period beginning in 2010 and ending in 2030, approximately 60% or 2.4 million of these companies are likely to be put on the market due to retirement or death. This compares to an expected 200,000 businesses which are typically sold during a 20-year period. This increase in business sales may impact the normal buyer's vs seller's markets through the 2020's. **The Success Team**™ can help you determine how **The Baby Boomer Tsunami**™ will impact your exit strategy.

Are you ready to sell your business? Would you like to learn more about how much your business is worth? If you are ready to start planning your exit now or would just like to know more about what exit planning is all about, please call me.

Donald Stevens,
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I provide strategic, financial, and operational advisory services to the owners of privately held businesses. My goal is to help business owners achieve their success, as they define it.

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SOCIAL MEDIA

CLAIM YOUR $5,000 TAX CREDIT: ADA WEBSITE COMPLIANCE 11/29/21

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Hopefully during the pandemic, you've been able to take advantage of some of the state and federal relief programs that have rolled out since the start of COVID, including the Paycheck Protection Program (PPP), the Economic Injury Disaster Loan (EIDL), Restaurant Revitalization Fund (RRF), the Shuttered Venue Operator Grant (SVOG), and other city and state grants.

In addition to these programs, there are also tax write-offs that could help you widen your profit margins – or possibly flip the books from red to black. In this article, we're going to focus on the often-overlooked $5,000 ADA website compliance tax credit.

WHY THE ADA APPLIES TO BUSINESS WEBSITES

When many think of the Americans with Disabilities Act of 1990, there is a misperception that ADA compliance applies only to physical public spaces, however, this is inaccurate. ADA compliance applies to all spaces that are open to the public – and in today's world, this includes the digital space that is your business website.

TAX CREDIT ELIGIBILITY AND FILING

Any small business that made the effort to accommodate people with disabilities may be eligible for the Disabled Access Credit. Other credits and deductions that fall under ADA accessibility compliance include the Barrier Removal Tax Deduction and Work Opportunity Tax Credit.

There are, however, certain requirements your small business must meet to take advantage of the Disabled Access Credit. As defined by the IRS, an eligible small business must have (1) earned no more than $1 million and (2) had 30 or fewer full-time employees in the given tax year. That's it – just two requirements.

The tax credit will cover up to 50 percent of expenses related to ADA compliance, including making improvements to your website. One catch, however, is that these expenses must fall between $250 and $10,000 for the tax year. The good news is that you can claim this tax credit each year you spend money on accessibility improvements.

To claim these accessibility-related deductions, you can fill out an IRS form 8826. Per form 8826, reasonable and necessary expenditures must fall under any of these four categories:

- Removal of barriers preventing access to your business by individuals with disabilities
- Implementation of audio alternatives, such as providing qualified sign language interpreters for the hearing impaired
- Implementation of text alternatives such as taped texts and text-to-speech for the visually impaired
- Modification of equipment or devices for people with disabilities

To make sure your expenses qualify under the Disabled Access Credit and to avoid any snafus with the IRS, you should speak with your accountant or tax specialist.

A FEW POINTERS TO GET YOU STARTED

Reach Out to an ADA Website Accessibility Specialist

Contacting an ADA website accessibility expert is your best bet to keep your business safeguarded against potential compliance lawsuits. In addition to avoiding lawsuits, following website accessibility best practices can boost online exposure, increase revenues, and garner goodwill from the public. You can read more about the additional advantages of having an ADA compliant website here.

If you're concerned about ADA website compliance, reach out to our accessibility experts in Camarillo, CA today. We'll audit your website to create a concrete plan of action tailored to your business needs.

INSOLVENCY ADVISING

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Who's gonna fill their shoes?
Who's gonna stand that tall?
Who's gonna play the Opry
And the Wabash Cannonball?
Who's gonna give their heart and soul
To get to me and you?
Lord, I wonder who's gonna fill their shoes

— George Jones

In many instances I serve in the capacity of a Chief Restructuring Officer (CRO) for a company going through growing pains. One engagement was with a shoe company that was one of the first to incorporate social action in their for-profit mission. For every pair of shoes sold, they would donate a pair to a deserving person in a developing country.

At first the company employed grass roots marketing efforts and experienced moderate success. One of the best approaches to marketing was assigning brand ambassadors to colleges all over the U.S. The brand ambassadors would promote the shoes with concerts, giveaways, and other unique offerings.

Although fashion was important, doing social good became paramount and eclipsed comfort and style as a footwear choice.

Sales plodded along until an international telephone carrier featured the company in a national commercial that underscored the brands international reach. After the commercials aired, sales rose twenty-fold. The overnight growth spurt wreak havoc on all the company's systems. Although the PR was unbelievable, the supply chain and finance functions were overwhelmed.

For many of the employees this was their first job. The finance function was run by people just out of college and did not have experience in running basic finance functions. As an example, the reporting package to the bank was substandard and further requests for documentation proved concern. The A/R, A/P and Inventory support did not match the balance sheet. The margins were not accurate. The A/R aging showed inaccuracies and lack of collection efforts.

OUR GOALS WERE TO:

- Implement financial policies, procedures and controls.
- Train staff
- Prepare a zero-based multi- departmental budget that provided a blueprint for the growth.

OUR ACCOMPLISHMENTS:

- Enabled staff to perform their required functions
- Delivered detailed budget
- Allayed concerns of bank and board
- Company was ultimately bought by a large equity fund

Many of the team have moved on to new roles and responsibilities. I still keep in touch and check in on their progress. The consistent theme they shared is the appreciation they had for the guidance and support that fostered their ability to "stand tall and fill the shoes" of the roles that they were responsible for.

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December 2021, the end of another pandemic year. How is it already December? This is a big celebratory month but many are also scrambling to do last minute tax planning in case Biden's tax reform goes into effect in January.

While estate planning attorneys, especially those who do advance tax planning, dream of a having a crystal ball, unfortunately, they don't exist. By now you've probably heard about President Biden's tax reform bill. His bill proposes to change many different types of taxes. This article only addresses the Federal Estate Tax (FET).[1] Please consult your CPA and a tax attorney for more details.

Not only is the amount of FET exemption uncertain at this point, but we also never know what the law will be when we die.[2] However, many people are rushing to do tax planning in anticipation of the tax changes that ***may*** take effect January 1, 2022.

Currently, the combined lifetime gift and FET exemption is $11.7M per person. This means if you have less than that, there will be no estate tax if you die now. There is also currently no California inheritance tax.

However, the proposed tax reform, if passed, will likely lower this exemption by about 50% starting January 1, 2022. This means there is a use it or lose it option for the exemption we will lose. In other words, you would need to gift over approximately $6.4M to take advantage of the current law. In addition, this must be done before the new law goes into effect. If the Biden tax reform doesn't pass, the FET will revert to the pre-Trump law in January 2026 (which will be approximately $6.4M).

Tax planning means that you gift money out of your estate – and put it in one of many types of irrevocable trusts now – so that if you die, you've reduced or eliminated your tax burden. Many people who have a large estate don't want to give up control and opt to wait until they're older to do tax planning. Alternatively, they choose to buy life insurance to pay for the estate taxes. This is a personal decision.

If your estate is over $5.5M (per person), including life insurance and all your assets, please consult your CPA and a tax attorney soon. If you choose to do tax planning, many attorneys will be overwhelmed with client work and may not accept new clients.

As you may know, we do not do estate tax planning. If you would like a referral list, please contact us.

On a more fun note, most of us, especially if we have kids, look forward to December for the festive holidays. The past almost 2 years have been tough. Everyone needs a little time to rest, rejuvenate and spend time with family and friends. Whatever holiday you celebrate, we hope your holidays are filled with joy, giving and treasured time with those you love, safely.

1 Read this Forbes article for a recent summary of Federal Estate Tax changes and planning options.

2 Read this The Balance article for an overview of the Federal Estate Tax from 1997 to today with a great chart.

BUSINESS MERGERS & ACQUISITIONS

THINKING OF SELLING YOUR BUSINESS IN 2022? THREE FUNDAMENTAL QUESTIONS

For business owners that have successfully navigated the past two tumultuous years, 2022 may be the ideal time to sell. With fewer quality businesses for sale and Private Equity raising $1.5 Trillion in new capital, there is tremendous demand for quality businesses. However, as only 20-30% of companies brought to market actually sell, business owners must be prepared, realistic and committed to the M&A process. If you are thinking about selling your business in 2022, here are three questions to ponder.

AM I PSYCHOLOGICALLY AND FINANCIALLY READY TO SELL?

We often meet sellers that have owned their businesses for 15+ years and consider them children (sometimes preferring them to their spouses and kids!). Business owners dedicate so much time to their businesses at the expense of their families, personal lives, or hobbies, they sometimes lack post-exit plans. Further, cash flows generated by these businesses often fund living expenses for the entire family and, as such, the owner can't afford to sell. While a business owner may express a desire to transition into their next life phase, they may not be psychologically or financially ready. Before we take a business to market, owners must have convincing answers to the questions "why sell now?" and "can I afford to sell?"

AM I COMMITTED TO THE M&A PROCESS AND CONTINUING TO GROW THE BUSINESS?

Even under ideal conditions, successful M&A processes can take 9-12 months. We ask that owners commit a year to the process and focus on growing the business during that time. Businesses that sell for the highest multiples tend to have increasing profits for three-plus years. If financial performance declines, buyers will be wary of 'catching a falling knife' and will make low-ball offers or even walk away.

I have an 84% close rate on my M&A transactions. For the other 16%, business performance tanked while on market and buyers withdrew offers. Sellers seeking to maximize outcomes must demonstrate stable-to-increasing profits, especially while on market.

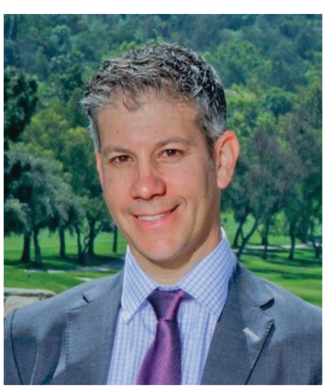
Successful sellers build a 'deal team' which typically includes the company CFO, CPA, corporate attorney, wealth manager and M&A Advisor, who quarterbacks the process while owners focus on running/growing their businesses.

AM I OPEN-MINDED ON DEAL STRUCTURE AND POTENTIAL BUYERS?

All sellers desire 100% cash at closing, and we strive for this. However, we advise sellers that accepting 15-30% of total consideration in a seller note or buyer equity has many benefits, including increasing the buyer pool (demonstrates confidence in the business's future), getting a 'second bite of the apple' (via Private Equity buyer's subsequential sale), as well as potential tax advantages by spreading proceeds over multiple years. A business owner that demands all cash or insists on not working with a certain type of buyer (e.g., private equity) reduces the buyer pool and may become an impediment to the sale process.

To recap, to increase the probability of a successful M&A process, sellers must be:

- Psychologically and financially ready to exit
- Committed to the process, growing the business and building a deal team
- Open-minded to deal structures and potential buyers



Kevin Berson

President & Founder, Kinected Advisors

We are an integrated M&A Advisory and Consulting firm helping owners of companies with revenues between $5M-$50M plan and execute the sale of their businesses at the highest possible value.

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If you have any questions about your readiness to sell or your potential business valuation, please contact me as I'd love to confidentially share my perspective.

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HOW TO START A SOLE PROPRIETORSHIP

Sole proprietorships are the easiest and simplest business entity a business owner can create. So easy, in fact, that it's possible to create one without even knowing it! At its core, all it takes to create a sole proprietorship is the simple act of exchanging goods or services for money. But if you've done your research and decided that a sole proprietorship is the right entity for you, there are some steps you should take to do it right.

Here are the basic steps to form a sole proprietorship in California:

1. PICK A NAME (REQUIRED)

Your business name can't be too similar to another registered business, so do your due diligence and search the internet, the Secretary of State website, and the U.S. Patent & Trademark Office to make sure your name isn't already taken.

2. FILE FOR A FICTITIOUS BUSINESS NAME (SOMETIMES REQUIRED)

If you're using a business name that doesn't include your own last name, you are required to apply for a Fictitious Business Name, otherwise known as a "Doing Business As" or "DBA" name, with your local county clerk. For example, the name "Bob Smith Consulting" or "Smith Consulting" would not require an FBN; the name "Horizon Consulting" would. After you apply, you will have to publish a statement in a newspaper for a few weeks.

3. GET YOUR LOCAL BUSINESS LICENSE (REQUIRED)

Almost all businesses are required to get a local business license in the city your business is headquartered in, and in some cases, additional cities in which you do a lot of business. This is for tax purposes. It will almost always include a zoning clearance, as well. See your city's website for more specific filing information.

4. OPEN A BUSINESS BANK ACCOUNT (HIGHLY RECOMMENDED)

Sole proprietors are not legally required to open a business bank account because there is no legal separation between you and your business. However, any advisor would likely tell you that opening one is a very good idea, and indeed the IRS recommends it. It will save you time and money in the long run, and make bookkeeping and taxes much easier.

5. GET ANY OTHER REQUIRED LICENSES (REQUIRED)

Depending on your industry and location, you may be required to get additional permits or licenses. For example, if you will be selling goods, you will likely be required to get a California Seller's Permit. See https://www.calgold.ca.gov/ for a search tool that will help you determine what other licenses you may need.

6. GET AN FEIN (REQUIRED IF HIRING EMPLOYEES)

If you will be hiring employees, you are required to get a Federal Employer Identification Number, which is like a social security number for your business. Even if you are not legally required to get one, you can choose to get one in order to avoid putting your personal social security number on documents. Getting one is free and easy to do yourself. The IRS also has a handy tool to determine if you need one.

As always, remember to check with your advisors to make sure a sole proprietorship is right for you, that you're in compliance, and that your tax structure is set up in your benefit.

If you'd like to learn more about starting a new business, ABL can help.

INTELLECTUAL PROPERTY

TRADEMARK CANCELLATION PROCEEDINGS

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Trademark cancellation is a legal proceeding for eliminating a federally registered trademark from the United States Patent and Trademark Office (USPTO) records. The USPTO provides administrative procedures for contesting the validity of a registered trademark through a procedure known as a cancellation proceeding. The proceeding requires filing a "Petition to Cancel" an already registered trademark. The cancellation proceeding is essentially a micro-lawsuit within the USPTO and in front of the Trademark Trial and Appeal Board (TTAB) which decides if a registered trademark should be canceled.

On way this comes up is if you file a trademark application to register a trademark at the USTPO, but the USPTO rejects your trademark application because there is an existing registered trademark for similar goods/services. The cancelation proceeding is useful to cancel a registered trademark that perhaps should not have been obtained and is now being cited by the USPTO against your pending trademark application for registering your trademark. As such, a cancellation proceeding is useful to eliminate an interfering trademark registration.

Another way this comes up is if you receive a cease and desist latter from another party claiming infringement of their trademark registration. You can fight such a claim in civil court, of course, but a cancelation proceeding against the opponent's registered trademark provides leverage in defending against such a claim. In other words, the cancelation proceeding can be used to weaken the opponent's threatening trademark infringement litigation.

The cancelation proceeding is initiated by filing a petition where the petitioner lays out the causes of action followed by a discovery period for the parties to conduct discovery (i.e., exchange evidence). This period is then followed by a trial period in which each party is granted a number of days to take testimonial depositions followed by a number of days to take rebuttal depositions. Finally, the parties submit written briefs on the facts and law, and the TTAB issues a ruling on whether the registered mark should be cancelled.

The grounds upon which cancellation can be obtained depend on certain factors, for example, the period of time the registration has been in force. For registrations less than five years old, cancellation can be had on any multiple grounds which renders the term unsuitable to be a trademark. Some examples may include: merely descriptive, generic, confusingly similar to another mark, likelihood of confusion, lack of ownership, abandonment, and fraud on the PTO. For registrations more than five years old, there are fewer options but some exemplary grounds upon which cancellation may be had are: genericness, abandonment, and fraud on the PTO.

The cancellation proceeding may be a cost effective procedure for a cost conscious client in challenging a competitor's trademark registration.

EXPLORING THE PROFIT ZONE

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- You will assess how you are doing in each activity to get you started on making things better.
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- If you are interested in participating, email me questions and for a calendar invite and Zoom link:

  Ken.Keller@StrategicAdvisoryBoards.com
- Reserve your space now for webinars: August 25 @ 9amPT, September 22 @ 9amPT, October 27 @9am PT