

**BILL STALEY’S
Topic Summaries**

	Page
1. *** NEW *** Buying a Business from a Financially Distressed Seller	1
2. ***NEW*** Secret Techniques of a Business and Tax Attorney	1
3. *** NEW *** C2S: C Corporations Electing S Corporation Status .	2
4. Buy-Sell Agreements for Owners of Closely-Held Businesses: An Overview	2
5. Buy-Sell Agreements: Insurance Funding for C and S Corporations	2
6. “Disregarded Entities”: Working with Single-Member Limited Liability Companies and Qualified Subchapter S Subsidiaries	3
7. Dissolving Business Entities and Corporate Housekeeping.....	3
8. Don’t Let Living Trusts Cause Problems for Closely-Held Businesses ..	3
9. Don’t Treat S Corporation Distributions Like Partnership Draws	4
10. Family Limited Partnerships	4
11. Giving Stock to Employees – and Other Incentive Compensation Arrangements	4
12. Hot Tax Planning Tips and Strategies	5
13. Legal and Tax Planning for the Owner of a Going Business.....	5
14. Legal and Tax Planning for a New Business	5
15. Limited Liability Companies	6
16. LLPs – Registered Limited Liability Partnerships	6
17. Nonprofit Organizations in California – Recent Tax and Legal Developments	6
18. Nonprofit Organizations – Key Issues in the New IRS Form 990.....	6

19.	Planning for Large Charitable Contributions – Private Foundations, Charitable Lead Trusts and Donor-Advised Funds	7
20.	S Corporation Stock Basis and Distributions: Case Studies	7
21.	S Corporations and Estate Planning	7
22.	Selling the Business: Practical, Tax, Legal and Valuation Issues	7
23.	Selling or Buying Shares of a Closely-Held Business – From Start to Finish.....	8
24.	Structuring Businesses in Tough Times	8
25.	Structuring Businesses with the Estate Plan in Mind	8
26.	Succession Planning: Transferring a Business to the Next Generation ..	9
27.	The Top 5 Mistakes Business Owners Should Avoid	9
28.	Using LLCs to Avoid Problems After an Owner Dies	9

BILL STALEY'S Topic Summaries

Bill is interested in addressing groups of accountants, business owners and attorneys on these topics. He is very well received. For most of these topics, Bill has outlines prepared and can pinch hit on short notice. Please contact Bill Staley or Susan Rognlie at 818 936-3490.

1. ***** NEW *** BUYING A BUSINESS FROM A FINANCIALLY DISTRESSED SELLER**

Buy stock or assets. What drives the process. The *stalking horse* and break-up fees. *Assignment for the benefit of creditors* vs. bankruptcy. Gathering crucial info and achieving results in barely *controlled chaos*. Bankruptcy proceedings outside California. Due diligence, representations, indemnification and holdbacks. Assuming the seller's "cure" liabilities. Participating in the *bidding process*. Good faith deposit. Role of the *reorganization officer*. Being the *back-up* bidder. The buyer's exposure to the *seller's unpaid liabilities*. Buying *unwanted inventory* to liquidate after the closing.

2. *****NEW*** SECRET TECHNIQUES OF A BUSINESS AND TAX ATTORNEY**

S vs. C vs. LLC – which is best? Stock buy-backs: Entity purchase vs. cross-purchase -- which is best for C and S corps? Stock records – What you (and your assistant) must know. Living trusts and S corps – threats to S corp status. Living trusts when there are multiple shareholders – what the trust should say. Professional corp vs. LLP – which is best? S corp distributions – two more things that you need to know (to avoid piercing the corporate veil and to protect the S corp status). Dissolving an S corp after a sale or a death – the right way and the wrong way. When to use a holding company – and what kind of entities to use. Using S corps to avoid both personal holding company penalties and excess passive receipts penalties. Sell stock/buy assets – why? How to avoid sales tax in an asset sale.

3. *** NEW *** C2S: C CORPORATIONS ELECTING S CORPORATION STATUS

A checklist of *key issues*. Benefits of *electing S corporation* status. Benefits of *retaining C corporation* status. *When* to make the election. Selecting a *tax year* and minimizing the “*bunching*” problem for fiscal year C corporations. *Corporate-level* taxes on S corporations. How S corporation *shareholders* are taxed. The effects of S corporation *losses*. Tax *basis* in S corporation *stock*. When *distributions* from S corporations are taxable. Other considerations before the election is made. *Terminating the S corporation status* – on purpose and inadvertently. How *California* taxes S corporations. *Buy-sell agreements* and *stock option* plans for S corporations. *Selling S corporation stock*. *Limited liability* for S corporation shareholders.

* * * * *

4. BUY-SELL AGREEMENTS FOR OWNERS OF CLOSELY-HELD BUSINESSES: AN OVERVIEW

When is a buy-sell agreement necessary? What events should *trigger* a buy-out? Who should be entitled (or required) to buy the shares? Should the purchase be *optional* or *mandatory*? How to *value* the shares? When does *life insurance* make sense as a method of funding the purchase price? Who should own the insurance? How to structure installment payments. Assuring that all *community property interests* are bound by the agreement. How to *avoid deadlock*. The use of *alternative dispute resolution* methods. The special role of buy-sell agreements for *S corporations*. A *user-friendly checklist* to jump-start the process.

5. BUY-SELL AGREEMENTS: INSURANCE FUNDING FOR C AND S CORPORATIONS

Using *life insurance* to fund buy-sell agreements. Tax issues in the choice between *entity-purchase* and *cross-purchase*. When an entity purchase “*wastes basis*.” Tax considerations in making *gifts* of shares. Transferring policies in the cross-purchase arrangement. Policies held in *escrow*. Simplifying the buy-sell arrangement with a “*first-to-die*” policy and a “*guaranteed annual increase*” rider. Tax consequences when an insured shareholder *walks* away from the business.

6. “DISREGARDED ENTITIES”: WORKING WITH SINGLE-MEMBER LIMITED LIABILITY COMPANIES AND QUALIFIED SUBCHAPTER S SUBSIDIARIES

Federal and California *tax laws* recognizing single-member LLCs. Corporate laws *permitting* single-member LLCs. California corporate laws *limiting* the use of LLCs. *Creating* and *terminating* Qualified Subchapter S subsidiaries. *Traps* and *unsolved mysteries* involving “Qsubs.” S corps owning C corps. The relationships among S corps and *affiliated groups* filing *consolidated returns*. *Employment tax* and *EIN issues* for disregarded entities. *Merging* disregarded entities. How the new rules affect *choice of entity* decisions. *When to use* “disregarded entities.”

7. DISSOLVING BUSINESS ENTITIES AND CORPORATE HOUSEKEEPING

Preliminary *tax* analysis. Why dissolve ASAP? Why wait? Special S corporation issues. The *tax-free* liquidation of an S corp. Traps in dissolving a *subsidiary* into a parent. Problems with *cash method* and *installment sale* receivables. Avoiding useless *capital loss*. *Sales tax* and *property tax* issues. Avoiding *director liability*. When shareholders will be *liable for claims* against the dissolved corporation. An overview of the liquidation *process*. Special issues in liquidating a *general partnership or LLP*. Comparison of the liquidation rules for *LLCs* and *limited partnerships* vs. corporations. Dissolving *nonprofit* corporations. How to keep good records of *stock ownership* and stock transfers. Keeping *minutes*.

8. DON'T LET LIVING TRUSTS CAUSE PROBLEMS FOR CLOSELY-HELD BUSINESSES

Adding a spouse's name on a *stock certificate* can have surprising consequences. How to achieve estate planning goals without creating problems with the other shareholders. Proper *stock records* after the death of a spouse.

9. DON'T TREAT S CORPORATION DISTRIBUTIONS LIKE PARTNERSHIP DRAWS

The corporate law limitations on distributions. Distributions and “piercing the corporate veil.” Distributions vs. partnership draws. How the “one class of stock” eligibility rule affects distribution planning. How to fix botched distributions. Taxable distributions from S corps – a good idea? Distributions followed by losses in the same year. Distributions \neq salary. When corporations pay estimated taxes for shareholders. What buy-sell agreements should say about distributions. Redemption, distribution and attribution – for tax and corporate law purposes. Distribution timing and exercising stock options.

10. FAMILY LIMITED PARTNERSHIPS

Update a recent court challenges by the IRS. How this popular vehicle can still be used to facilitate gifts and joint investments, to reduce gift and estate taxes and to protect assets. Choosing a general partnership, a limited partnership, a limited liability company or an S corporation. Value engineering and minority discounts. Property tax issues. How the “Chapter 14” estate valuation rules affect this technique. Combining FLPs and GRATs for triple discounts. Trusts as partners. Charging orders. Family partnership interests in bankruptcy proceedings. When to use multiple entities or a “series LLC.”

11. GIVING STOCK TO EMPLOYEES – AND OTHER INCENTIVE COMPENSATION ARRANGEMENTS

The downside of letting employees acquire stock. Getting bargain-priced stock to employees without increasing their taxes. Special *stock option* concerns for S corporations. *Alternate incentive compensation plans*, including *phantom stock* plans and *performance share* plans. Deferred compensation techniques for the highly-compensated employee. Why *incentive stock options* seldom make sense for closely-held businesses. When to be concerned about federal and California *securities law issues*. The use of “*Rabbi trusts*” to protect the participant’s benefit.

12. HOT TAX PLANNING TIPS AND STRATEGIES

Using business entities to *isolate liabilities* and *minimize taxes*. When to use “*Q-sub*s” or *single-member LLCs*. Dangers in doing business with “*series LLCs*.” Preserving net operating *loss carryforwards* when subsidiaries merge into parents. Avoiding tax traps in *liquidations*. Avoiding the *excess passive receipts tax* on S corporations. Getting appreciated assets out of S corporation with *no tax* -- when the outside basis equals the value of the inside assets. Avoiding other *common S corporation traps*. The “*disappearing basis*” problem when shares are sold -- and how to avoid it. How best to handle an *earn-out* or *contingent purchase price*. Best ways to use “*golden handcuffs*.” Isolating liabilities and avoiding tax problems for businesses conducted by *tax-exempt entities*.

13. LEGAL AND TAX PLANNING FOR THE OWNER OF A GOING BUSINESS

Organizing the business to *minimize liabilities and taxes*. Operating the business to *minimize taxes of C and S corporations*. Compensating non-shareholder employees. The dangers of using the *employer's stock as compensation*. Avoiding problems when conducting activities outside California. Protecting the business and the owner's personal assets. Key issues in *leases*. Pitfalls of issuing stock – and stock options. Protecting rights to *trademarks and trade secrets*. For those buying or selling businesses, how to avoid common tax traps. Transferring a successful business to the next generation. How to take cash from the business after retiring. The techniques available to minimize income, *estate and gift taxes*.

14. LEGAL AND TAX PLANNING FOR A NEW BUSINESS

Choosing a *name* for the business and its products. Alternative legal forms of doing business. Should the business be conducted by a limited liability entity? *Achieving limited liability*. The role of *liability insurance*. Legal and tax consequences of *buying a business*. The *employer's liability* for actions of employees. *Dangerous personnel practices*. Reducing workers' compensation insurance premiums. Raising capital. When a *buy-sell agreement* is necessary. Maintaining corporate records. Protecting *trade secrets* -- and respecting an ex-employers rights. Products liability issues.

15. LIMITED LIABILITY COMPANIES

The extraordinary benefits of *taxation like a partnership* and *liability protection like a corporation*. California vs. *out-of-state limited liability companies*. How the limited liability company differs from a partnership or corporation. When you *can* use limited liability companies for *licensed activities*. *Converting* a partnership or corporation to a limited liability company. The *single-member LLC* -- tax and liability issues. *Series* limited liability companies. Limited liability companies vs. limited liability *partnerships*.

16. LLPS – REGISTERED LIMITED LIABILITY PARTNERSHIPS

A no-brainer for California attorneys, accountants and architects? Achieving *liability protection like a corporation*. The position of the *New York* courts. The *insurance* issues. How the limited liability partnership differs from a general partnership or a limited liability company. *Converting* a partnership or professional corporation to an LLP.

17. NONPROFIT ORGANIZATIONS IN CALIFORNIA – RECENT TAX AND LEGAL DEVELOPMENTS

The role of the Attorney General. The new California *Nonprofit Integrity Act* (“SB 1262”). The role of the CPA. The *liability exposure* of officers, directors and volunteers. When the new rules require *audits*, *audit committees* and *compensation committees*. *Unrelated business income tax* and *private activity* issues. Making audited financial statements and tax returns available for *public inspection*.

18. NONPROFIT ORGANIZATIONS – KEY ISSUES IN THE NEW IRS FORM 990

New rules for *compensation* reporting. *Corporate governance* and *policy* changes driven by the new reporting regime. Special emphasis on certain activities. Organizations subject to *special scrutiny*. Areas of *extra-strength disclosure*, and what that means to operations. How to *get ready* for the new reporting regime. Will the IRS *back off*?

19. PLANNING FOR LARGE CHARITABLE CONTRIBUTIONS – PRIVATE FOUNDATIONS, CHARITABLE LEAD TRUSTS AND DONOR-ADVISED FUNDS

How they differ. The benefits of each. How to set up each. Special tax rules that apply to *private foundations*. The two types of *lead trusts*. The effect of the IRS scrutiny of *donor-advised funds*. Lead trusts compared to GRATs. The effects of *low interest rates* on various techniques.

20. S CORPORATION STOCK BASIS AND DISTRIBUTIONS: CASE STUDIES

How stock basis is affected by corporate-level tax items. Distributions in loss years. Refinancing real property in an S corporation. Priority rules for allocating basis in years with both distributions and losses. Ordering rules for releasing losses suspended by basis, at risk and passive activity limitations. Ordering rules for shareholders who made loans to the S corporation. Effects of basis restoration and distributions when shareholders bought in or made loans at different times.

21. S CORPORATIONS AND ESTATE PLANNING

Estates as shareholders of S corporations. Dangers in the standard *living trust*. Sales of S corporation stock by qualified subchapter S trusts (“*QSSTs*”). The *obligation to support* issue and *QSSTs*. When to use an electing small business trust (“*ESBuT*”). *Community property* interests of nonresident aliens. Custodians and nominees. *GRATs*, *defective grantor trusts* and *Crummey trusts* as shareholders. *Tax-exempt* shareholders. How paying *life insurance premiums* and receiving *life insurance proceeds* affect stock basis. How *S corporation subsidiaries* (“*Qsubs*”) and *single-member LLCs* affect estate planning with S corporations.

22. SELLING THE BUSINESS: PRACTICAL, TAX, LEGAL AND VALUATION ISSUES

Will the financial statements and records survive *due diligence*? What story does EBITDA tell? Are there *gaps* in stock records? Cleaning up the *asset side* of the balance sheet. Traps lurking in *buy-sell agreements*. It’s still a C corp? *Keeping key employees* during the sale process. Is it necessary to buy the company to get its *key information*, use its critical *processes*, use similar *brands*, copy its *forms* and *designs*? Using the Section 338(h)(10) election. Finding buyers. Strategic vs. financial buyers. The roles of private equity groups.

23. SELLING OR BUYING SHARES OF A CLOSELY-HELD BUSINESS – FROM START TO FINISH

Who should buy – the company, other shareholders, the next generation of family or management, or an ESOP? *Valuing* the shares. Setting the *payment terms*. Unwinding the relationship of a *long-time owner* and employee – cars, health insurance, memberships, expense accounts, covenants not to compete, trade secrets, raiding employees and customers. Defining the role of a new shareholder and employee. Making a proposal. How to *structure the documents*. Keeping records of the transaction that will survive *future due diligence reviews*.

24. STRUCTURING BUSINESSES IN TOUGH TIMES

How recent tax law changes affect the *choice of entity*. Limited liability companies and limited liability partnerships – and when to use them. When is a *sole proprietorship* or a *general partnership* the best choice? When to use a *limited partnership with a corporate general partner* or a *limited liability company* instead of a corporation. The advantages and disadvantages of the *S corporation election*. Charging orders and LLCs taxes as S corporations. Techniques to *minimize the double tax* in a C corporation or an S corporation subject to the *built-in gains tax*. How to *limit liability* without sacrificing tax benefits. Using *multiple entities* to achieve the parties' objectives – without creating intolerable complexity.

25. STRUCTURING BUSINESSES WITH THE ESTATE PLAN IN MIND

Why the *family limited partnership* should be a limited liability company. How the S corporation election can help the next generation *buy into the family business*. How to use a second class of stock to *retain control* of an S corporation – and not lose S status. Why a C corporation makes the most sense if an *ESOP* is used to buy out the senior generation. Why LLCs are best for *bringing the next generations in on a ground floor* opportunity. The roles of buy-sell agreements and “Crummey” trusts in stock gifts. The concerns of a successor trustee or executor with a sole proprietorship or general partner interest. Using a *single-member LLC* to limit risks. *Defective grantor trusts* and *GRATs* as S corporation shareholders. What a *successor trustee* needs to know about S corps. Cash in a *consolidated group* of C corporations – how to get it out for use in the estate plan. The *family foundation* – corporation or trust?

26. SUCCESSION PLANNING: TRANSFERRING A BUSINESS TO THE NEXT GENERATION

A case study approach to achieving a smooth transition from the current managers (often the founders). Why the owners need a succession planning team and how to assemble the team. How the team helps the owners to identify and solve the *business, finance, income tax, property tax and estate planning issues*. An analysis of several common situations: when some or all of the children are active in the family business; when no children are interested in the business or there are strong non-family managers; when the children are uncommitted either way. When to use *ESOPs, spin-offs, buy-sell arrangements, partnership freezes, life insurance, charitable remainder trusts and family foundations*. Avoiding the common trap of *a badly-timed sale*. The *planning and implementation process*: getting it done without getting overwhelmed.

27. THE TOP 5 MISTAKES BUSINESS OWNERS SHOULD AVOID

Protect the business and the owners' personal and business *assets* by using the right business entities. *Organize* the business to *minimize liabilities and taxes* -- today and when the business is sold. *Operate* the business to *minimize liabilities and taxes*. Avoid problems when conducting activities *outside California*. Do's and don'ts of *raising capital*.

28. USING LLCs TO AVOID PROBLEMS AFTER AN OWNER DIES

When rental property is held as *tenants in common*, problems arise when the original owners die. Often the best solution is to put the property into a *limited liability company* with one manager for each of the original owners. Each family would elect *its own manager*. An intermediate step might be to put the property into a *general partnership*, and to have each original owner set up her own "family limited partnership" to hold her interest in the general partnership. Making a *sole proprietorship* acceptable to a successor trustee or executor by using a *single-member LLC*.

[End of list.]