

## Successful Strategies for Entrepreneurs to Enter & Exit Business Ownership...

Bankers Advocate Group

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### The Need for a Tax Minimization Analysis when Exiting Business Ownership...by Chris Curtin

Bankers Advocate Group will not take an engagement with either an Entering or Exiting Client unless a third party appraisal is an integral part of the business transfer process.

Equally important (especially for the Selling Client) is getting a TMA (Tax Minimization Analysis) done post appraisal and pre deal negotiations.

A deal can be structured many different ways, but negotiations cannot begin unless the tax ramifications are known in advance.

I have heard many horror stories of Sellers supposedly getting their agreed upon selling price, only to be unpleasantly surprised by a substantial tax bill.

What is a Tax Minimization Analysis? As part of your estate planning, the structure of the deal term

needs to be taken into account. A qualified tax attorney/CPA will not only recommend how to allocate different portions of the deal, but they will also look how the Exiting transaction "fits" with the other components of your existing estate planning.

Bankers Advocate utilizes and can recommend some of finest professionals when it comes to a TMA.

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### 16 Red Flags for Fraud in Your Business: What to Look For...by John Capizzi

John Capizzi, principal with Internal Audit Services offers these 16 "Red Flags" to detect fraud or embezzlement in your business. Be on the lookout for these telltale signs:

1. An employee under financial pressure
2. An employee with personality changes
3. An employee demonstrating poor money management
4. An employee living beyond their means
5. An employee with outside business interests
6. Poor company internal controls
7. Too much control in a single employee
8. Lax management
9. Failure to pre-screen employees
10. Records altered, missing or destroyed
11. Chronic shortages
12. Signatures on records appear to be forgeries
13. Employee drug or alcohol abuse
14. Employee gambling problems
15. Employee gives inadequate answers when questioned about missing supplies, property or funds
16. Customer or supplier complaints about shortages or discrepancies

If you have noticed one or more of these Red Flags, we recommend contacting John immediately at (561) 626-7746 or at:

[www.internalauditservices.com](http://www.internalauditservices.com)





*"With the change in the tax laws, up to \$100,000 in equipment cost can be expensed each year under Section 179 of the IRS Code"*

## Leasing: A Tool for All Size Businesses...by Rick Carney

The reason Fortune 500 companies use lease financing to acquire equipment is not much different than the reasons small businesses use lease financing. The most common reasons are budget constraints and convenience.

No matter the size of your company, preservation of working capital is important to you. With a lease there is not only the benefit of up to 100% financing but the leasing company can also make a deposit to an equipment supplier to initiate an equipment order. For larger companies this simple process can get caught

up in red tape but when a lease is used, the order and deposit are expedited with a one-page addendum to the lease.

Another item of particular interest regarding preservation of capital is the tax treatment of a lease. With the change in the tax laws, up to \$100,000 in equipment cost can be expensed each year under Section 179 of the IRS Code. This same deduction is available when equipment is acquired with a lease as long as the lease is

considered a capital or finance lease. As always, check with your accountant for your particular tax benefits.

And finally, one of the biggest benefits of leasing is the flexibility to structure a lease to fit your cash flow needs. Some of the options available include deferred payments, graduated and seasonal payment to name a few.

Structured leases have often been used by manufacturers installing income producing equipment as well as

*Continued on Page 6*

## Personal Goodwill... by Dr Bart Basi

Personal goodwill is a relatively new concept in the area of tax authority. It was given life in a recent court case. In the case, the owner of a C corporation desired to sell the business to another person by means of an asset

sale. Facing the detriment of being taxed twice on all of the assets (once at the corporate level) and once at the personal level), the owner and his counsel invented the concept of personal goodwill. In a dispute

with the IRS in court concerning the concept of personal goodwill, the court reaffirmed personal goodwill's existence.

Normally goodwill is

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written permission of the individual author."

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## Keyboard Shortcuts to Move Faster through Windows...by Chris Curtin

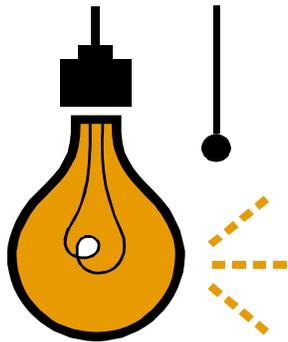
Many of us grew up in a DOS or Lotus environment where "/" became second nature. I still find hunting through long lists and multiple windows with a mouse very tedious. Here are some Windows XP shortcuts that can cut down on both time and frustration.

- + E            Opens Window Explorer
- + Pause      Opens Systems Property Box
- + U            Opens Utility Manager
- + D            Display Desktop
- + M            Minimizes All Windows
- Shift + □ + M    Maximize All Windows
- + R            Opens the Run...Prompt
- + F            Opens the Search File Window

- + F1            Displays Windows Help
- F1                Help Menu
- Alt + Tab:        Switch between Programs
- F5                Refresh a Window

Create your own keyboard shortcut by Right-Clicking on a Program's Icon or a Shortcut; go to Properties; click on the Shortcut Tab; enter you custom Keystroke combination in the "Shortcut Key" field. It will only let you assign key combos that are not currently in use.

For more Keyboard shortcuts, go to Knowledge Article #301583 at [www.microsoft.com](http://www.microsoft.com).



### The FACT Act and the Destruction of Employee Documents...by Diane Geller, ESQ

The rule, proposed in April 2004, was a result of the Fair and Accurate Credit Transactions (FACT) Act, which was signed into law December 2003 as part of the battle against the growing crimes of consumer fraud and identity theft. In 2003, identity theft translated into nearly \$48 billion in losses to businesses, nearly \$5 billion in losses to individual victims and almost 300 million hours spent by victims trying to resolve the problem, according to the Federal Trade Commission (FTC). The FACT Act Disposal Rule applies to

virtually every business and private employer in the U.S.

The rule with respect to the disposal of documents came into effect on June 1, 2005 and requires every employer with one or more employees to appropriately dispose of any documents—whether paper, electronic or other format—that contain consumer information.

"The rule does not address when you get rid of [the information], it just describes how you get rid of it," says Katherine Armstrong, an attorney at the FTC.

The FTC does not specify how information must be

disposed of, but it says that reasonable measures must be taken to protect against unauthorized access to or use of the information. Shredding, pulverizing or burning paper records so consumer information is unreadable would be appropriate disposal methods.

Information stored electronically, such as on computer discs or hard drives, could be overwritten or wiped clean using tools you can purchase or obtain for free on the Internet, or even, as the FTC suggests, by taking a hammer to the disc or hard drive containing the information. Any company,

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## The FACT Act... (Continued)



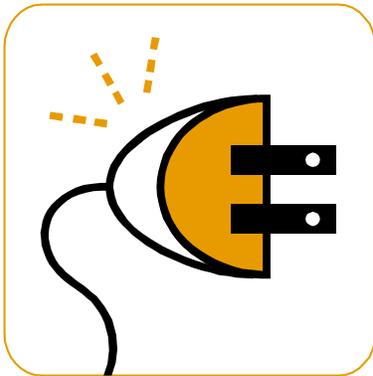
regardless of industry or size, that possesses or maintains consumer information for a business purpose will be subjected to the rule. In fact, a FTC representative has said that even an individual who employs a nanny is subject to the rule.

finest up to \$1,000 per violation. In addition to federal and state law enforcement, employees or identity theft victims could file a private or class action lawsuit against the employer.

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Failure to comply could result in federal fines up to \$2,500 per violation and state

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of the white population was born before 1950, but only 10 percent of Hispanics.

✚ New figures from the Census Bureau show that Hispanics accounted for about half the population growth in the U.S. last year. Births have now overtaken immigration this decade as the largest source of Hispanic growth. One region where the trend is well illustrated is Cook County, including Chicago. There are now more Hispanics in Chicago than in New Mexico or Colorado.

✚ As of March 2005, the undocumented population has reached nearly 11 million including more than 6 million Mexicans, assuming the same rate of growth as in recent years.

✚ About 80 to 85 percent of the migration from Mexico in recent years has been undocumented.

✚ Hispanics accounted for half of the 2.9 million U.S. population growth between 2003 and 2004, according to new data from the Census Bureau. The Hispanic population, which can include any race, jumped 3.6 percent in the year ended July 1, 2004 -- more than three times that of the total population, which grew 1.0 percent, and more than four times the 0.8 percent growth for whites.

✚ Since the mid-1990s, the most rapid growth in the number of undocumented migrants has been in states that previously had relatively small foreign-born populations. As a result, Arizona and North Carolina are now among the states with the largest numbers of undocumented migrants.

✚ Although most undocumented migrants are young adults, there is also a sizeable childhood population. About one-sixth of the population-- some 1.7 million people-- is under 18 years of the age.

✚ The latest numbers put the Hispanic population in the U.S. at about 41.3 million, or about 14.1 percent of the total. One-

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## America's Changing Hispanic Demographics & Marketing Strategies...

NPR recently ran a series on the changing Hispanic demographics based on the most recent census data and data from the Pew Hispanic Trust. The growing Hispanic population in the US and its ramifications on business fascinates me.

Here are some bullet points from both NPR and Pew and how some businesses are marketing to the Hispanic Community.

✚ The role that Hispanics play as contributors to

Social Security will increase substantially in the next several decades. While the white labor force is projected to fall from 100 million in 2005 to about 94 million in 2050, the Hispanic labor force is projected to more than double, increasing from 19 million in 2005 to about 46 million in 2050. While fewer white workers will be contributing, many more Hispanics will be paying Social Security taxes by the middle of the century.

✚ More than 25 percent

## Personal Goodwill...(Continued)

attributable to the company itself, but personal goodwill is different. Personal goodwill is goodwill attributable to the owner and not the company. This type of goodwill comes through personal relations, personal knowledge, and other intangibles based on the owner of the business.

### Problems with Ordinary Goodwill

When selling an S. Corp, partnership, sole proprietorship, or other pass through entity through an asset or stock sale, ordinary goodwill does not present any problems. The sale of the goodwill gets taxed once at the seller's level as a capital asset. The rate on the gain is presently 15%.

However, when selling a C Corporation through an asset sale, ordinary goodwill potentially creates a tremendous tax burden that is not present during a stock sale. During the sale, ordinary goodwill is taxed at the corporate level. Since C corporations do not get the benefit of the lower capital gains tax rates, the capital gain is taxed at the corporation's ordinary

rate. This rate can be as high as 39% at certain income levels. Once ordinary goodwill is taxed at the corporate level, it is given to the seller usually in the form of a dividend distribution. When given to the seller, it is taxed at the dividend rate of 15%. This means that of every \$100 given to the selling corporation as part of an asset sale, potentially \$48 of it will be paid to the federal government as taxes. In addition, we might have to deal with state taxes.

### How Personal Goodwill is Used

When a seller is in the position described above, it is most advantageous to split personal goodwill off from other goodwill. During the asset allocation, assets are assigned values. There will be value given to inventory, equipment and among other things, goodwill. During this phase, the seller must include a provision stating that some of the goodwill being sold is personal goodwill. This amount should be based on a reasonable and objective estimation of the two values while keeping in mind

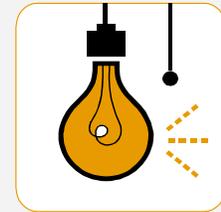
more personal goodwill means fewer taxes, but also raises the potential of the amount being lowered on an audit by the IRS.

### Conclusion

When appropriate, personal goodwill can provide large tax savings to taxpayers. Being a relatively new concept, it is important that the allocations to personal goodwill are reasonable and objective as there is not much guidance through cases at this point. Although personal goodwill is not a well-established concept, valuations of companies and assets are well established and can be used to value personal goodwill. The Center specializes in reducing tax burdens upon disposition of assets and liquidations of companies with personal goodwill and other leading edge techniques.

Dr. Basi holds an MBA in Accounting and Finance, a PhD in Economics, and has completed post-graduate work in taxation at Stanford University. He lectures, writes, researches, and advises on tax and succession planning. He can be reached at (618) 997-3436 or:

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*"When appropriate, personal goodwill can provide large tax savings to taxpayers."*

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*Are there any specific questions or topics you would like addressed in the September Newsletter?*

*Please contact us with any article or subject requests.*

**Leasing: A Tool for All Size Businesses... (Continued)**

hotels and vegetable producers who have seasonal businesses. Most leasing professionals would be happy to customize a lease for their

customers. Just be sure to ask what payment and residual/buyout options might be available.

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**About Bankers Advocate Group...**

Bankers Advocate Group is a Boutique Sales, Mergers and Acquisitions firm specializing in companies with enterprise values of \$1-20 million dollars. We design and help implement both Entering and Exiting Business Ownership strategies for

Entrepreneurs.

We have a very talented group of professionals that can help improve your businesses profitability and cash flow. This can lead to an improved lifestyle and a more successful exit from business ownership.

We use the **E<sup>4</sup>** symbol to represent how we help entrepreneurs throughout the complete cycle of business - Evaluating, Entering, Enhancing & Exiting Business Ownership...

**America's Changing Hispanic Demographics... (Continued)**

in-five kids under the age of five is now Hispanic.

 In past years, Hispanic population growth has been due to immigration, but last year was the first in which Hispanic births outnumbered immigrants.

*The previous bullet points listed the numbers, now here is what businesses are doing to tap into the fast growing Hispanic Market.*

Some banks and lenders are offering illegal immigrants home loans and financing programs that do not require Social Security cards or proof of U.S. citizenship. Instead, undocumented migrants must prove they are gainfully employed and that they are paying U.S. taxes via Individual Tax Identification Numbers from the IRS. There are no federal or state restrictions on lending to illegal

immigrants.

A number of lenders and mortgage brokers are tailoring lending programs toward documented and undocumented Hispanics -- and more banks are looking to get in on the action.

That includes New South Federal Savings Bank, which plans to expand an undocumented-oriented program dubbed Casa Mia into the Phoenix, Houston and Atlanta markets. The Alabama-based bank just rolled out the Casa Mia program in its home state.

Milwaukee-based mortgage insurer MGIC Investment Corp. also has launched a program that offers mortgage insurance to lenders that offer loans to undocumented immigrants.

A study by the National Association of Hispanic Real Estate Professionals concludes that undocumented Latinos could add \$44 billion in new

mortgages to the U.S. housing market. The study said undocumented immigrants are discouraged from home ownership because traditional loan programs require identification and legal status.

Tax Preparation services are finding ads on Hispanic radio stations to being very productive.

A search of "marketing to Hispanics" on Yahoo produced 408,000 pages. Many of these are industry specific. There is much data available on the subject and I would recommend you doing research and see how your business can profit from the surging Hispanic population.

Information and quotes for this article came from:

[www.npr.org](http://www.npr.org)  
[www.pewhispanic.org](http://www.pewhispanic.org)



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