DETERMINING INCOME OF SELF-EMPLOYED PERSONS FOR THE PURPOSES OF CHILD SUPPORT IN NORTH CAROLINA

Charles W. Clanton
Wyrick Robbins Yates & Ponton, L.L.P.
Raleigh, N.C.

Jon G. Strickland
Lunsford & Strickland, P.A.
Raleigh, N.C.

This manuscript concerns issues arising in the determination of the income of self-employed persons, for the purposes of determining child support. For these purposes, we treat "self-employed persons" as including not only persons who operate as sole proprietors of a business, but also persons who own or control interests in business entities that are formally organized, such as closely-held corporations, limited liability companies, or partnerships.

This manuscript is organized in two parts. Part I discusses relevant statutes and case law. This section includes discussion of statutes and case law concerning the determination of income for the purposes of alimony, which may be instructive in some child support cases. Part II discusses practical financial issues in examining the evidence of income from a business. It is written for practitioners, and includes sample discovery requests and a sample document request for a subpoena.

I. Statutes and Case Law

A. Income for Purposes of Child Support.

1. Statute – N.C. Gen. Stat. § 50-13.4.

The child support statute refers to the "estates, earnings, conditions" of the parties rather than to their "incomes," and to the "other facts of the particular case."

> (c) Payments ordered for the support of a minor child shall be in such amount as to meet the reasonable needs of the child for health, education, and maintenance, **having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case.** Payments ordered for the support of a minor child shall be on a monthly basis, due and payable on the first day of each month. The requirement that orders be established on a monthly basis

does not affect the availability of garnishment of disposable earnings based on an obligor's pay period.

The court shall determine the amount of child support payments by applying the presumptive guidelines established pursuant to subsection (c1) of this section. However, upon request of any party, the Court shall hear evidence, and from the evidence, find the facts relating to the reasonable needs of the child for support and the relative ability of each parent to provide support. If, after considering the evidence, the Court finds by the greater weight of the evidence that the application of the guidelines would not meet or would exceed the reasonable needs of the child considering the relative ability of each parent to provide support or would be otherwise unjust or inappropriate the Court may vary from the guidelines. If the court orders an amount other than the amount determined by application of the presumptive guidelines, the court shall make findings of fact as to the criteria that justify varying from the guidelines and the basis for the amount ordered.

(c1) Effective July 1, 1990, the Conference of Chief District Judges shall prescribe uniform statewide presumptive guidelines for the computation of child support obligations of each parent as provided in Chapter 50 or elsewhere in the General Statutes and shall develop criteria for determining when, in a particular case, application of the guidelines would be unjust or inappropriate. Prior to May 1, 1990 these guidelines and criteria shall be reported to the General Assembly by the Administrative Office of the Courts by delivering copies to the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The purpose of the guidelines and criteria shall be to ensure that payments ordered for the support of a minor child are in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case. The guidelines shall include a procedure for setting child support, if any, in a joint or shared custody arrangement which shall reflect the other statutory requirements herein.

Periodically, but at least once every four years, the Conference of Chief District Judges shall review the guidelines to determine whether their application results in appropriate child support award amounts. The Conference may modify the guidelines accordingly. The Conference shall give the Department of Health and Human Services, the Administrative Office of the Courts, and the general public an opportunity to provide the Conference with information relevant to the development and review of the guidelines. Any modifications of the guidelines or criteria shall be reported to the General Assembly by the Administrative Office of the

Courts before they become effective by delivering copies to the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The guidelines, when adopted or modified, shall be provided to the Department of Health and Human Services and the Administrative Office of the Courts, which shall disseminate them to the public through local IV-D offices, clerks of court, and the media.

Until July 1, 1990, the advisory guidelines adopted by the Conference of Chief District Judges pursuant to this subsection as formerly written shall operate as presumptive guidelines and the factors adopted by the Conference of Chief District Judges pursuant to this subsection as formerly written shall constitute criteria for varying from the amount of support determined by the guidelines.

2. North Carolina 2006 Child Support Guidelines (Effective 10/01/2006)

The North Carolina Child Support Guidelines, on the other hand, employ the term "income," and contain a detailed definition:

Income.

The Schedule of Basic Child Support Obligations is based upon net income converted to gross annual income by incorporating the federal tax rates, North Carolina tax rates and FICA. Gross income is income before deductions for federal or state income taxes, Social Security or Medicare taxes, health insurance premiums, retirement contributions, or other amounts withheld from income.

(1) Gross Income. "Income" means a parent's actual gross income from any source, including but not limited to income from employment or self-employment (salaries, wages, commissions, bonuses, dividends, severance pay, etc.), ownership or operation of a business, partnership, or corporation, rental of property, retirement or pensions, interest, trusts, annuities, capital gains, social security benefits, workers compensation benefits, unemployment insurance benefits, disability pay and insurance benefits, gifts, prizes and alimony or maintenance received from persons other than the parties to the instant action. When income is received on an irregular, non-recurring, or one-time basis, the court may average or pro-rate the income over a specified period of time or require an obligor to pay as child support a percentage of his or her non-recurring income that is equivalent to the percentage of his or her recurring income paid for child support.

(2) Income from self-employment or operation of a business. Gross income from self-employment, rent, royalties, proprietorship of

a business, or joint ownership of a partnership or closely held corporation, is defined as gross receipts minus ordinary and necessary expenses required for self-employment or business operation. Ordinary and necessary business expenses do not include amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the court to be inappropriate for determining gross income. In general, income and expenses from self-employment or operation of a business should be carefully reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support obligation. In most cases, this amount will differ from a determination of business income for tax purposes.

Expense reimbursements or in-kind payments (for example, use of a company car, free housing, or reimbursed meals) received by a parent in the course of employment, self-employment, or operation of a business are counted as income if they are significant and reduce personal living expenses.

3. Case Law.

Hartsell v. Hartsell, N.C. Court of Appeals, No. COA07-884, filed March 4, 2008. In this opinion, the Court of Appeals approved the trial court's finding that the father had the capacity to earn at least $2,500 per month from his part-time grading business, in addition to his income from employment as a teacher. The father failed to provide tax returns for two years prior to trial. The trial court considered his income from the grading business in the year following separation, and his deposits into his bank account. This grading business income included proceeds of the sale of a truck. The minimum income figure determined by the trial court included part of the effect of these sale proceeds. The Court of Appeals stated that case law suggests that the trial court could properly consider income earned from the sale of the truck from his grading business, citing Burnett v. Wheeler, to the effect that the trial court may consider all available sources of income in arriving at gross income (see below; trial court considered retirement accounts, stock, and land in arriving at defendant's gross income). Compare this to the holding in McKyer v. McKyer (see below).

The Court of Appeals also held that the trial court's finding of the father's capacity to earn was not an imputation of income, but rather a finding of present earnings, equivalent to finding that the father had the ability to continue to earn the specified amount from his part-time business.

State ex rel. Williams v. Williams, 179 N.C. App. 838, 635 S.E.2d 495 (2006). This opinion is of interest for its reiteration of two principles – that the trial court must find the obligor's income as of the time of trial, and that the court must take into account a party's gift income, including the provision of benefits or living expenses from a third party. The trial court in this case based its finding of the father's income on an eighteen-month-old bankruptcy filing, because it found that to be the most believable statement of his income. The Court of Appeals held that the trial court had considered earning capacity for the father, not actual income, and that to do so the trial court was required to make a finding that he was deliberately depressing his income or indulging in excessive spending to avoid family responsibilities. This required a finding as to his actual income at the time of trial.

The mother in this case received certain support from her parents, which the Court of Appeals described as gift income. This included payment of her rent and provision of a vehicle for which her father made the payments. The Court of Appeals, citing Spicer v. Spicer (see below) for the principle that income includes any maintenance received from third parties, remanded for the trial court to take into account the mother's gift income.

McKyer v. McKyer, 179 N.C. App. 132, 632 S.E.2d 828 (2006). This case involves a modification of child support coinciding with a change of primary physical custody from the father to the mother. In the parties' equitable distribution case, the former marital residence was distributed to the mother and ordered sold, and had in fact been sold at the time of the child support modification. The father contended that the mother's receipt of the proceeds of the sale of the residence should be considered as non-recurring income within the meaning of the Child Support Guidelines. In its opinion, the Court of Appeals stated that North Carolina courts have never addressed the question whether the conversion of an asset to cash renders the cash income in the context of child support, but courts in other jurisdictions have routinely held that it does not. In addition to citing several out-of-state opinions, the Court referred to federal and state income tax law, to the effect that proceeds from the sale of an asset are considered taxable income only to the extent the seller profits from the sale. The Court then held that "the mere fact that non-recurring payment has occurred, in the absence of evidence that the payment was 'income' at all, is alone insufficient to establish that the payment was necessarily non-recurring income." The Court did not define what would make the payment "income." However, it expressly reserved the question of how to treat (if it had been raised) the type of "gain" that the mother experienced from the sale of the residence (the mother sold the property for a greater amount than was anticipated in the equitable distribution order). Compare this to the treatment of the sale of the truck from the grading business in Hartsell v. Hartsell (see above).

The trial court in this case included an educational grant in the father's income. The Court of Appeals stated that the question of whether educational grants are income under the Child Support Guidelines has not been addressed in North Carolina, and did not decide the question. It remanded for further findings, as whether this grant was from a means-tested assistance program, whether it reduced the father's personal living expenses, or whether there were limits on the use of the funds.

Diehl v. Diehl, 177 N.C. App. 642, 630 S.E.2d 25 (2006). In this case, the trial court found that the father's evidence of his income at the time of trial, his 2003 income tax returns, were "highly unreliable," and that he had not presented adequate evidence of that income. The returns contained several improper deductions and at least one incidence of "major incorrect reporting." As a result, the trial court determined the father's 2003 income by averaging his income from his two prior tax returns. The Court of Appeals held that under the circumstances of this case, this was not an abuse of the trial court's discretion.

Holland v. Holland, 169 N.C. App. 564, 610 S.E. 2d 231 (2005). This opinion illustrates the proper treatment of accelerated depreciation under the Child Support guidelines, as well as the necessity of finding current income. The father was employed as a farmer, who owned his own farming operation in addition to managing his parents' farm. The trial was held in August and September, and the trial court found the father's income based on his prior year's income, taken from his tax return. The Court of Appeals stated that it would have been difficult to compute the father's current year income accurately because of the timing of his harvest and sale of crops, and that the trial court could have used the prior year's income to determine his income for the purposes of child support. However, it remanded for specific findings to support that use of the prior year's income.

The Court of Appeals further ruled on the proper treatment of the accelerated depreciation claimed on the father's prior year's returns. The trial court had added back to his income the entire amount of this accelerated depreciation, which the Court ruled was error. The accelerated component of the depreciation figure is the difference between the accelerated depreciation figure and the amount that the father would have been entitled to deduct as straight-line depreciation (computed by taking the purchase price of the asset and dividing it by its depreciable life as set by the Internal Revenue Code). The Court held that it was error for the trial court to fail to exercise its discretion in ruling on the deductibility of the straight-line depreciation as a reasonable and necessary business expense, and directed recomputation of the father's income in accord with the decision in Lawrence v. Tise (see below). This effectively directs the allowance of straight-line depreciation in most cases.

DeBruhl v. DeBruhl, 168 N.C. App. 595, 608 S.E. 2d 416 (2005). This is an unpublished opinion that deals with imputed income, rather than the determination of actual income. It is of interest because of the manner in which the trial court determined the potential income of the defendant. In this case, the trial court determined the defendant's potential income by considering his standard of living and the amount of money passing through his bank account. It found that he had an earning capacity at least in the amount of what he spent from his checking account over an eleven-month period, and the Court of Appeals ruled that there was no abuse of discretion.

Spicer v. Spicer, 168 N.C. App. 283, 607 S.E. 2d 678 (2005). The defendant in this case, who was disabled as a result of an accident, lived with his parents rent-free. The trial court applied the Guidelines to his recurring income, and found that the benefit of a rent-free residence reduced his expenses and should be attributed to him as part of that income. The Court of Appeals held that this was not imputing potential income to the defendant; instead, the court was considering his housing as form of gross income.

Cauble v. Cauble, 133 N.C. App. 390, 515 S.E.2d 708 (1999). The Court of Appeals approved the trial court using a parent's percentage share of the gross income of his family's closely held corporation rather than the income he received from the corporation in determining his child support obligation under the Child support Guidelines, because the parent had a 51% ownership interest in the company, which gave him the authority to make decisions as to the disbursements of any funds owned by the company. The profits of the company were available to him by virtue of his controlling interest.

The Court also held that the fact that the company used the accrual method of accounting did not prevent the company's reported income from being used for child support purposes. The defendant argued that the accrual method creates fictional income, not income actually available to the defendant. However, the Court of Appeals held that accrual accounting figures represent income that is taxable for federal tax purposes and therefore properly considered "gross receipts" under the Guidelines. The trial court has discretion under the Guidelines to make adjustments to these income figures.

The Court affirmed the trial court's disallowance of certain deductions on the books of the company for bad debt and for depreciation as an exercise of its discretionary power under the Guidelines to determine that certain business expenses are "inappropriate for determining gross income for purposes of calculating child support." The basis for the trial court's disallowance of these deductions is not entirely clear, although it apparently disallowed the bad debt deduction because it found that the bad debt figure did not represent actual cash dollars flowing out of the company.

The defendant in this case also owned 100% of another corporation that reported a substantial loss, but the trial court did not consider that loss in the calculation of the defendant's income, and the Court of Appeals reversed the trial court on that basis. (The order contained no findings or conclusions concerning this corporation.) The Court of Appeals referred to evidence concerning the amount of the reported loss that resulted from the deduction of accelerated depreciation and the amount of the loss that resulted from straight-line depreciation, but did not mandate how the depreciation was to be treated on remand, stating only that the straight-line component could be deducted from income in the trial court's discretion.

Burnett v. Wheeler, 128 N.C. App. 174, 493 S.E.2d 804 (1997). The defendant in this case, a pilot, moved for modification of a child support order after he retired from his employment with an airline and became self-employed. He reported his income as $29,000 per year, after deducting $52,000 in business losses. The trial court found his income to be at least $77,000, after making findings as to the value of retirement accounts, stock and land that he owned. It was unclear whether the trial deducted the business losses from the defendant's income. The Court of Appeals held that the trial court had not imputed income, but that it had instead found that the defendant's total income "from all available sources" equaled $77,000. It held that this was within the court's discretion despite its "ambiguous" treatment of the business losses. This case is of interest because the opinion does not show that the trial court made findings as to the amount of actual income generated by any of these assets. The opinion only shows that the trial court made findings as to the values of the assets.

Barham v. Barham, 127 N.C. App. 20, 487 S.E.2d 774 (1997); *aff'd per curiam*, 347 N.C. 570, 494 S.E.2d 763 (1998). See discussion of this case below. In separate sections of the opinion, the Court of Appeals addressed the issue of encumbered cash reserve funds held within a corporation, of which the plaintiff owned one-half of the stock, for child support purposes and for alimony purposes. The Court held that the reserves should be included in gross income for child support purposes under the Child Support Guidelines because they are not "ordinary and necessary expenses required for self-employment or business operation." The cash reserves are available for income purposes pursuant to the Guidelines because the plaintiff voluntarily chose to pledge them to the bank for financing.

Lawrence v. Tise, 107 N.C. App. 140, 419 S.E.2d 176 (1992). In this case dealing with rental income from real estate, the Court of Appeals holds that under the Child Support Guidelines straight-line depreciation is a permissible deduction in calculating income. In the Guidelines, accelerated depreciation is expressly not allowed in computing a parent's income, but neither the Guidelines nor case law addresses the question of the deductibility of straight-line depreciation. The Court holds that the trial court is vested with the discretion to deduct form a parent's monthly gross income the amount of straight-line depreciation allowed by the Internal Revenue Code.

The Court further held that losses incurred on rental properties are also deductible from the parent's income under the Guidelines, to the extent that the losses were due to "ordinary and necessary expenses" (the Guidelines language). Although not expressly defined in the Guidelines, "ordinary and necessary expenses" includes repairs, property management and leasing fees, real estate taxes, insurance and mortgage interest. Mortgage principal payments are not deductible from income.

The Court also held that expenses incurred by an employee in the course of his employment (as opposed to ordinary and necessary expenses of self-employment) that are not reimbursed by the employer are not deductible from income for child support purposes.

B. Income for Alimony Purposes

1. Statute – N.C. Gen. Stat. § 50-16.3A.

In N.C.G.S. Section 50-16.3A, the "earned and unearned income" of each spouse is listed in the factors that the court is to consider in determining the amount and duration of alimony. The parties' "earnings and earning capacities" are listed separately as another factor:

> (b) Amount and Duration.--The court shall exercise its discretion in determining the amount, duration, and manner of payment of alimony. The duration of the award may be for a specified or for an indefinite term. In determining the amount, duration, and manner of payment of alimony, the court shall consider all relevant factors, including:
>
> **(2) The relative earnings and earning capacities of the spouses;**
>
> **(4) The amount and sources of earned and unearned income of both spouses, including, but not limited to, earnings, dividends, and benefits such as medical, retirement, insurance, social security, or others**;
>
> **(15) Any other factor relating to the economic circumstances of the parties that the court finds to be just and proper**.

Subsections (2), (4), and (15), taken together, indicate that for alimony purposes the court may consider a broad range of financial benefits received by each party. Even if a particular benefit is not found to be income, it could still be considered as "any other factor relating to the economic circumstances of the parties."

2. Case Law.

Walker v. Walker, 143 N.C. App. 414, 546 S.E.2d 625 (2001). The Court of Appeals held that, in calculating the appropriate amount of alimony, the trial court properly considered the financial benefits received by the supporting spouse from his corporation, of which the defendant was the one hundred percent shareholder.

These benefits included health insurance, the purchase of a vehicle for his use, all expenses related to his vehicle, and some of his personal entertainment expenses.

<u>Glass v. Glass</u>, 131 N.C. App. 784, 509 S.E.2d 236 (1998). The Court of Appeals, in holding that severance pay should be included as income for the purposes of determining alimony, referred for authority to the inclusion of severance pay in the definition of income in the Child Support Guidelines and stated that “[t]here appears to be no good reason to employ a different definition of income for the purposes of a child support award than for an alimony award.”

<u>Barham v. Barham</u>, 127 N.C. App. 20, 487 S.E.2d 774 (1997); *aff'd per curiam*, 347 N.C. 570, 494 S.E.2d 763 (1998). The plaintiff (supporting spouse) owned one-half of the stock of the corporation for which he worked. The amount of money that he could draw from the corporation was limited by an agreement with a creditor bank in which a certain portion of the corporation's cash reserves were encumbered and could not be paid out as salary. The trial court found his income, for the purposes of child support and alimony, to be the actual amount that he drew from the corporation. The Court of Appeals reversed, holding that the encumbered cash reserve funds should be included in gross income for both child support and alimony purposes because they are not ordinary and necessary expenses of business operation. The cash reserves are available for income purposes because the plaintiff chose to pledge them to the bank for financing. In regard to alimony, the Court described the encumbrance of the cash reserves as a voluntarily assumed business investment, and stated that the burden of plaintiff's business investment should not be placed upon the dependent spouse.

<u>Patton v. Patton</u>, 88 N.C. App. 715, 364 S.E.2d 700 (1988). In approving the trial court's holding the defendant in contempt with respect to an alimony order, the Court of Appeals included fringe benefits from his corporation and the growth of the retained earnings of the corporation as evidence of the defendant's ability to pay. The trial did not make a specific finding as to the defendant's ability, and the Court of Appeals held that the findings nevertheless were sufficient to support the order, where in addition to his salary that defendant was also paid by his company in the form of fringe benefits, and the retained earnings of the defendant's corporation had increased by $22,000 since the entry of the alimony order.

<u>Patton v. Patton</u>, 78 N.C. App. 247, 337 S.E.2d 607 (1985); *rev'd in part*, 318 N.C. 404, 348 S.E.2d 593 (1986); *appeal after remand*, 88 N.C. App. 715, 364 S.E.2d 700 (1988). In determining the supporting spouse's present income for purposes of alimony, the Court of Appeals approved the consideration of historical salary and various financial benefits received as a result of ownership of a company. The trial court considered gross income received by defendant six years prior to the hearing from his closely-held corporation; money received from a profit-sharing plan two years prior to the hearing; money deposited in defendant's personal checking account the year prior to the hearing; and fringe benefits including an entertainment budget and use of a car.

Ahern v. Ahern, 63 N.C. App. 728, 306 S.E.2d 140 (1983). The Court of Appeals, affirming an alimony award against the sole owner of a drug company, held "[t]hat his actual income, as distinguished from his mere salary, justifies the award is too obvious for debate." The Court referred to various findings as to both the assets of the parties as well various aspects of the parties' lifestyle, some of which were paid for by the company. These findings included the value of the parties' residence; that "his company owes him $125,000 in retained earnings;" that his equity in the company was $412,000; that his wife had the use of credit cards and a bank account; that he and his wife entertained at exclusive clubs; that they took expensive vacations; that he contributed to the living and education expenses of their grown children. "Though many of these and other living expenses were paid for by his company, under some accounting or legal theory not understood by us, they nevertheless bespeak, beyond question, real income far beyond the salary received, which fully justifies the award made." The opinion further indicates that the owner's control of the company, along with the historical lifestyle "largely at the company's expense" supported a finding that the company could increase the owner's salary if he so chose.

Quick v. Quick, 305 N.C. 446, 290 S.E.2d 653 (1982). In reversing an alimony order, the Supreme Court held that the finding as to the supporting spouse's monthly income was insufficient for a variety of reasons, and referred to a number of findings that (apparently) should have been made, including whether the spouse's stock in a closely-held corporation was marketable, whether he had the ability to liquidate corporate assets and use the proceeds to pay alimony, and whether he could arrange his corporate affairs in a way that would increase his personal earnings. One of the more important aspects of this case appears to be that the Court felt that the trial court's valuation of the supporting spouse's stock in the company was "highly questionable." (The value was based on the book value of the assets, which apparently included extensive unencumbered real estate, which was recorded on the books with considerable depreciation.)

The Supreme Court also upheld the trial court's refusal to quash a subpoena for corporate records. The Court cautioned that parties should not be able to engage in "fishing expeditions" to obtain corporate records that have no relation to the issues in the case. However, where a spouse's true worth and income is at issue, and he owns stock in a closely-held corporation, the corporation's business records may be directly relevant and are subject to subpoena.

Bowes v. Bowes, 287 N.C. 163, 214 S.E.2d 40 (1975). The trial court in this case entered an order for alimony that contained a finding that the defendant had failed to exercise his reasonable capacity to earn because of a disregard of his obligation to provide support for his wife and child. This Supreme Court opinion, affirming the Court of Appeals' reversal of the order, discusses the burden of proof and the sufficiency of the evidence to support an award based on earning capacity rather than actual earnings. The opinion cites prior case law to the effect that an award should be based on actual earnings if the supporting spouse "is honestly engaged in a business to which he is properly adapted and is in fact seeking to operate his business profitably." In order to base an award on earning capacity, there must be sufficient evidence of the intent to avoid reasonable support obligations. The evidence will ordinarily be circumstantial.

The defendant, a grading contractor, was the principal shareholder of a corporation that he formed about a month after separation. The separation was apparently by his choice. After separation and incorporation, his earnings declined significantly, and his corporation was operating at a loss at the time of hearing. The Supreme Court held that this evidence was not sufficient to support the plaintiff's claim that the defendant intentionally fixed a low corporate wage for himself or that he failed to make a good faith effort to increase corporate earnings. (The plaintiff had testified as to reasons for the earnings decline, mainly increased expenses.) The Court also ruled that the facts that prior to trial the defendant authorized a corporate loan to his son for a down payment on a house, and took certain trips with his daughter, were insufficient evidence of diversion of corporate earnings, despite these facts being inconsistent with his low corporate salary and corporate losses. They may raise the inference that he was diverting corporate funds, but they are insufficient to establish it as fact.

The Supreme Court rejected the plaintiff's contention that she could shift the burden of proof to the defendant by making out a prima facie case that he intentionally depressed his income. The burden of proof remains throughout the case on the party claiming the intentional depression of income. The defendant was under no duty to offer any explanation to counter the plaintiff's evidence.

II. <u>Financial Issues</u>

A. <u>Types of Entities and Their Income Tax Reporting Requirements</u>

1. Sole Proprietorships

These are unincorporated single owner entities reported on an individual's individual income tax return on Schedule C. The net income on this schedule is the taxable income to the owner. Owners do not send themselves W-2s but can have a spouse as an employee and the spouse's earnings from the sole proprietorship would be reported on a W-2. Owners owe self-employment tax on the net earnings from the sole proprietorship. If both a husband and a wife own the business, it is not a sole proprietorship, but a partnership. A single member LLC is a disregarded entity for tax purposes and files a Schedule C.

2. C Corporations

A C corporation is a separate legal entity. A C corporation files form 1120 or 1120A. C corporations pay corporate income taxes on taxable income. If the entity pays dividends to shareholders, the corporation receives no tax deduction (dividends do not reduce a corporation's taxable income) and those dividends are generally taxable to the shareholders. This is referred to as double taxation, tax at the C corporation level and tax at the shareholder level. Closely held C corporations generally avoid paying tax on their taxable income by paying out all of the net income to the shareholders as taxable compensation. This would be reported to the shareholders on their W-2's.

3. S Corporations

S corporations are corporations that have elected to be taxed as S corporations. The election is filed on form 2553. The effect of the S election is to cause the income and losses from the corporation to be passed through to the individual shareholders. The shareholders can have two sources of income from the corporation, the pass through income or loss and wages paid to the shareholder from the corporation. The pass through income or loss is reported to the shareholder on form 1120 S form K-1. The wages are reported to the shareholder on form W-2.

4. Partnerships

A partnership is an entity formed by two or more individuals or entities. There may or may not be a partnership agreement. A partnership files form 1065 and each partner is allocated a share of income or loss, which is reported on form K-1. This information is then reported on each partners' individual tax return. Partners do not get a W-2 for their services. "Salary" to a partner is shown on the K-1 as guaranteed payments.

5. Limited Liability Companies

Limited liability companies are separate legal entities that make an election to file either as a partnership or as a corporation. The determination of whether they are treated as an corporation or as a partnership depends on the type of entity selected on Form 8832 "Entity Classification Election". Without an election, the classification for tax purposes is a partnership. They can elect to be taxed as an S corporation if they elect first to be a corporation (using form 8832) and then filing form 2553, the S corporation election form.

B. Methods of Accounting

An accounting method is a set of rules used to determine when income and expenses are reported for tax purposes. You can use a different method of reporting for financial statement reporting purposes and tax purposes. For instance many businesses qualify to use the cash method of accounting for tax purposes, but will use the accrual method of accounting for financial statements provided to government agencies or lending institutions.

1. Cash Method

Under this method, the business includes in gross income all items of income that are actually or constructively received during a year. Constructive receipt means that the income is made available to the business without restriction.

Question 1: If a business receives a check on December 31 but does not deposit the funds until January 1, is it income in the previous year or in the current year?

Question 2: If a customer mails a check to a business on December 30, but the business does not receive the funds until January 1, when is it income for the business?

Under the cash method, expenses are generally deducted in the year paid. There are some exceptions to this rule for long-term prepayments of expenses. An expense that is paid in advance is only deductible in the year to which it applies unless the expense qualifies for the "12 month rule". The "12 month rule" allows a deduction for an amount paid as long as the rights or benefits do not extend beyond the earlier of, 1) 12 months after the right or benefit begins or 2) the end of the tax year after the tax year in which the payment is made.

Income is more easily manipulated under the cash method of accounting.

2. Accrual Method

Under the accrual method of accounting, income is included in the year in which all events that fix the right to the income have occurred and the amount can be determined with reasonable accuracy. Under this method, you report the income on the earliest of the following dates:

- When the payment is received.
- When the income is due the entity.
- When the income is earned.

Under the accrual method of accounting expenses are deducted or capitalized when all the events that fix the fact of the liability and determination of the liability amount have been met.

a. Hybrid methods of accounting

These methods include a combination of both cash method and accrual method.

b. Other Accounting Related Issues

Other issues to note include accounting for long-term contracts. A long-term contract is any building, installation, construction, or manufacturing contract that is not completed in the same tax year that it is started. For tax purposes, they may be accounted for using the completed contract method and the percentage of completion method. The completed contract method of accounting recognizes income from a long-term contract when the job is completed. Therefore the recognition of the income can be shifted into one year. The percentage of completion method recognizes income based on part of the total contract revenue and part of the total contract costs are recorded in each period based on relative cost or effort applied in each period.

c. Inventory Accounting

Generally businesses are required to use the accrual method of accounting if inventories are a significant income component of the business. There are exceptions to this rule. Certain qualifying small business taxpayers can continue to use the cash method of accounting even if they must account for inventories. A qualifying small business taxpayer must have average annual gross receipts less than $10,000,000 and they meet certain other requirements.

C. <u>Basic Financial Statements</u>

There are four traditional financial statements, the balance sheet, the income statement, the statement of cash flows and the statement of stockholder's equity. These statements indicate the financial status of an entity at certain points in time and the results of operations during a specified period. While the balance sheet and income statement will almost always be provided, the statement of cash flows and stockholder's or partner's equity statement is generally omitted in small closely held businesses. With additional information, a statement of cash flows can be created from the 2-year comparative balance sheets and income statements. In the case of a sole proprietorship sometimes the only statement provided is the income statement or the form Schedule C from the tax return. The other statements will need to be created.

1. Balance Sheet

The balance sheet is the financial statement that presents the assets, liabilities and equity or partners capital of a business at a particular point in time. It is sometimes referred to as a statement of financial condition.

2. Income Statement

The income statement summarizes the revenues and expenses over a period of time.

3. Statement of Cash Flows

The statement of cash flows outlines the net cash used during a period. The statement is broken down into operating, investing and financing activities, and it reconciles beginning and ending cash and cash equivalents shown on the balance sheet.

4. Statement of Equity

The statement of equity generally lists the activities within the equity section of the balance sheet, including proceeds from the issuance of shares or equity interests, redemption of equity interests, and the impact of the current year's earnings/loss on the retained earnings of the corporation.

5. Other Schedules and Statements

These include Statements of Operating Expenses and the In Progress Job Schedule for Percentage of Completion Accounting. The Statement of Operating Expenses gives more extensive detail of the expenses and the In Progress Job Schedule is included in financial statements that utilize the percentage of completion method of accounting. It shows the jobs that are open at the end of a reporting period and the status of completion of those jobs.

a. Levels of Financial Statement Assurance

(i) Audit

An independent auditor expresses an opinion, or can disclaim an opinion, regarding the fairness with which the financial statements present the financial position, the results of operations, and the changes in financial position, in accordance with generally accepted accounting principles.

(ii) Review

The accountant expresses limited assurance in the report on the reviewed statements indicating that there are not any material modifications that must be made to the statements in order for them to be in accordance with generally accepted accounting principles. The review is less in scope than an audit requires less work by the accountant.

(iii) Compiled Statements

Compiled statements are management's representations presented in financial statement form. The accountant provides no assurance on these statements, but simply takes the data from the company and puts it in specific order.

Financial statements are presented on a historical cost basis, which means that items are typically recorded at their historical costs and not at the current fair market values. They are prepared, unless otherwise stated, on a going concern basis. There is not a provision for income taxes on transactions that have not occurred.

D. What is a Forensic Examination

Forensic procedures are designed to find assets and/or income that were not disclosed on the original financial data. While forensic procedures are generally used to determine the value of a closely held company, the procedures can also be used to identify income or expenses that have an effect on child support and post separation support/alimony.

Keep in mind while the focus of this seminar is the examination of income of business entities, employees can also utilize techniques to hide income from a spouse. Common areas of abuse are expense reimbursement accounts, salary or bonus deferral, retirement contribution plans and employee benefit plans such as § 125 Plans.

1. Why consider a forensic examination

(a) The owner/spouse may use the business income to acquire personal assets that are hidden from the spouse.

(b) The owner/spouse may have use business funds to pay for personal expenses.

(c) The owner/spouse may get income from the business that is hidden from their spouse and or from the taxing authorities.

(d) The fair market value of the business interest may be affected by the use of business assets or funds for non-business expenses or additional perquisites to the owner.

2. What Are We Looking For?

(a) Hidden Income

Hidden income includes cash and non-cash transactions for a person or entity that are reported to taxing authorities but not readily apparent for other purposes. Hidden income includes:

(i) Depreciation and expensing allowed for tax purposes. Depreciation can be defined as the allowance for wear and tear, deterioration, or obsolescence of property. Depreciation generally recovers the cost of property over a period of time. The expensing elections under Section 179 basically allow the business or owner to expense the purchase of equipment all at once.

(ii) Pass through entity distributions. S corporations, Partnerships and Limited Liability Companies (generally treated as Partnerships for tax purposes) distribute income to owners that may not be apparent on tax returns.

(iii) Businesses will often rent equipment or lease the office or warehouse space from the owners or relatives of the owners. While some of these leases are arms length, they can be used to hide income from spouses.

(iv) Closely held businesses will often loan money back and forth between the owners and the business. This cash flow will not be apparent on the tax returns without additional analysis.

(b) Unreported Income

Unreported income includes cash flows to the individual or entity that are not reported for either financial reporting purposes or for income tax purposes. Examples of unreported income include:

(i) Cash not reported as earned in the business.

(ii) Earnings from parking cash in offshore asset protection vehicles.

(iii) The business may have a contract with a related company to provide goods at a less than arms length price.

(c) Overstated Expenses

Business expenses are often open to wide interpretation of the business owner. Many times the company's outside accountant does not challenge these expenses because they have not been hired to "audit" the numbers. They have been hired to prepare the income tax returns. This does not mean that the expense should be accepted without question in determining the real economic income of the business owner.

E. <u>What to ask for in Discovery</u>

In order to review any business you must have enough information to indicate a pattern of income and expenses if one exists. If you suspect any of the above items, then you should try to get financial data before the start of the problems. Sometimes a business will have unreported income for the life of the entity. That is just how the business is run. Knowledge of the unreported income by the non-owner spouse can have consequences with the IRS and innocent spouse relief. Realize that this can be a serious problem, but this subject is beyond the scope of this seminar.

In almost all engagements the following materials should be obtained:

1. Five years of tax returns for the entity and the individuals. The business tax returns should include all form K-1s for partnerships and S corporations.
2. Internally prepared or outside accountant prepared financial statements. Check for the existence of interim financial statements.
3. Detailed accounts receivable and accounts payable list at the end of each of the five-year periods if available.
4. Detailed fixed asset lists for all the periods that you have financial statements.
5. Copies of any buy/sell agreements or partnership agreements, including any changes in the ownership of the entities over the period examined.
6. Copies of operating leases, including any real estate leases.
7. An entire general ledger for the years in question. While this is probably very voluminous, there is really no other good way to trace items into accounts without this detail. You can request specific accounts to get the details, however, this may not identify the other side of the journal entry. You can request a backup of the accounting records electronically, however this tends to be met with great resistance.
8. Inquire as to the capitalization policy of the company when purchasing assets.
9. Appointment books or calendars if the income of the business is dependent on the scheduling of appointments or events.
10. Copies of loan documents with financial institutions.
11. Copies of insurance documents.
12. All bank statements including cancelled checks, or copies of cancelled checks and records of deposits for all periods.
13. Get monthly statements for all company credit cards.

F. Understanding a Cash Business

1. Cash businesses are tricky but not impossible to understand or examine for hidden or unreported income.

In dealing with a cash business, keep in mind that the answers will not be exact, or infallible. The key is finding some indication that the cash has not been properly reported.

There are two starting points in uncovering the unreported cash:

(a) You need to know the typical markup on the products or processes.
(b) You need to know the ordinary costs that the business normally incurs.

2. Understanding The Markup

For example take Fred's Fine Painting. Fred is an established painting contractor. He employs 7 to 20 people. Fred has a home with a $130,000 mortgage, three kids, two cars (only one of which is paid off), gives $30 per week to the church, and takes three nice vacations a year. Fred's wife makes $16,000 per year. The details from his Schedule C are shown in the appendix.

Question-How does the family maintain their lifestyle on ~$40,000 per year.

3. Understanding the Ordinary Expenses of the Business

Are the ordinary expenses of the business higher than benchmarks or of what you feel may be reasonable. Take for example a Laundromat. The owner claims to gross only $4,000 per month on one-dollar loads of wash and dry, or about 2,000 wash/dry loads per month. A review of the utility bills, along with knowing the types of washers and dryers can head you in the right direction.

Each washer takes 20 gallons of water and 2 KWH of electricity and each dryer takes another 3 KWH. Reviewing the utility bills you find:

Electricity: 25,000 KWH at 14.0¢ per KWH

Water: 100,000 gallons at 2.5¢ per gallon

After adjusting for non-income producing use of utilities, you determine that 2,000 wash/dry loads should have used no more than 10,000 KWH and 40,000 gallons of water. It appears that the owner is not reporting the cash on 3,000 loads a month or $6,000.

For other cash businesses you need to think creatively.

For bars, look to the number of bottles of liquor or kegs of beer bought versus what was sold.

For lawn services, look to gallons of gas bought or lawn clippings dumped.

For restaurants, look to the underlying ingredients in the main entrees to back into the unreported income.

If you don't have experience in a certain industry, ask other professionals or even ask other business owners in the same industry. They usually know all the tricks of the trade and once you convince them you are not with the IRS they usually will be more than happy to help.

G. Initial Review of Tax Returns

Keep in mind that even if the IRS does not audit a tax return it does not mean that every expense listed is a reasonable and necessary business expense.

Obtain five years tax returns if available. If the taxpayer cannot locate them, request them directly from the IRS with form 4506. Remember that this request could take three to six months.

After obtaining the tax returns, set them side by side and look for the following items:

(a) Review the basic information at the top of the return. When was the business started? If the business is less than three years old, they may still be operating at a loss due to the financial problems of getting a business started.

(b) Check the business code listed on the return. This business code is based on the North American Industry Classification System. The business description can be found in the instructions to the tax return or found at the following website: www.census.gov/epcd/www/naics.html

(c) Check the accounting method chosen for tax purposes. Keep in mind that the business may use one method to report their financial results to outside users like banks or lenders and use a different method for reporting for tax purposes. Generally a taxpayer that can use the cash method over the accrual method will choose the cash method.

(d) Proceed down each line on the front of the return and look for trends in the numbers. Dropping the numbers into a spreadsheet can make this analysis easier, but may not be necessary for a general overview. If the numbers are entered into a spreadsheet, ratios and other relationships can be calculated that may indicate potential irregularities.

(e) Review the sales and other revenue to determine the trend. Did the revenue suddenly drop after the taxpayers separated? Check to see if there are other sources of income listed and if so, are there additional details in the schedules of the tax return.

(f) Check to see if the business utilizes inventory in its operations. Flip back to the balance sheet of the business, (usually the fourth page of the tax return unless the business is a sole proprietorship and does not have a balance sheet) and check to see if the inventory balance at the end of the year changes from year to year.

(g) Review the officer's compensation or guaranteed payments to the partners. Who is getting the compensation?

(h) Note to ask the total number of employees included in the other salary amount.

(i) Question bad debts for a cash basis business. Cash basis businesses do not recognize revenues until payment is received.

(j) Note interest expense on the front of the return and then check the balance sheet for the existence of loans.

(k) Large increases in depreciation expense can indicate expensed assets on a C corp and sole proprietorship return. S corporations and partnerships will list expensed assets on the schedule K as section 179 expense deductions. Don't forget about looking for expensed software.

(l) Check the employee benefits and pension and retirement plan lines on the return. If there is a balance in any of these accounts check to see if the owner listed any plans or perquisites in their financial disclosures.

(m) Check to see if the return lists the details behind the "Other deductions" line.

(n) S corporations and Partnerships will report certain other items such as interest, dividends, capital gains and losses, charitable contributions, section 179 expense and tax credits separately on Schedule K of the returns.

(o) Check the ownership interest in the corporation or partnership. Has the interest decreased during the periods reviewed?

(p) The balance sheet already gives you a two-year comparison that is helpful in analyzing what occurred over the last year. Note that the balance sheet may list accounts receivables and accounts payables that indicate that the business reports on accrual basis. If the return denotes cash basis everywhere, there will have to be an adjustment from accrual to cash basis within the return.

(q) Analyzing the changes in the balance sheets between the beginning and end of the year indicate the sources and uses of cash. This is helpful if there are not formal financial statements including a statement of cash flows.

(r) Generally the balance sheet lists assets in order of their liquidity. Review attached schedules to determine additional details.

(s) The existence of loans to and from a shareholder should be evidenced by notes but many times are not.

(t) Schedule M-1 below the balance sheet reconciles the differences between the income on the books with the income on the tax returns. This section can include adjustments for differences between reporting on the accrual basis for financial statement purposes and cash basis for tax purposes. Look for the meals and entertainment amount. For tax purposes only 50% of this amount is deductible. This other 50% is usually listed on this schedule.

(u) Schedule M-2 on a C corporation reconciles the retained earnings of the business including income and distributions from the corporation during the year. For an S corporation, the M-2 is an analysis of the Accumulated Adjustments Account. The AAA tracks the undistributed net income in an S corporation. If the business has always been an S corporation, then the AAA will just represent the tax basis retained earnings of the business. For a partnership, the M-2 is an analysis of the partner’s capital account.

H. **“Red Flag” Areas of Review**

(a) Salary

A business owner that operates as an S corporation is able to withdraw money from the corporation through distributions without paying FICA and Medicare. Changes can affect the valuation.

(b) Changes in Capital

Changes in the shareholder’s or partner’s capital account should be examined along with the source of the funds contributed and the destination of the funds withdrawn.

(c) Automobile Expenses

This is an obvious area of abuse. Obviously autos for non-employees is an area to review. Are the autos needed in the business?

(d) Travel and Entertainment Expenses

Expenses should be reviewed which may require inquiries of the business owner.

(e) Personal Expenses

These expenses are usually buried in other categories such as miscellaneous.

(f) Suspense Accounts

This account represents amounts that company personnel may not know where to classify an expense item until the end of the year. The use of a suspense account generally shows up in an interim company financial statement.

(g) Petty Cash

While a minor account, this can add up to several thousand dollars if the petty cash fund continually gets replenished without additional documentation.

(h) Utilities

The review of utilities over a period of years can identify increases that could be for personal assets. Review at least one year’s entries in a general ledger.

(i) Fixed Assets

Sometimes personal assets are bought by the company and put into fixed assets. Did the accounting firm really need a waverunner?

(j) All Employee Benefits

Review the policies to check for coverage of non-employees.

(k) Interest Payments

Review of interest payments can reveal payments for personal assets.

(l) Shareholder Loans

Shareholder loans can be used for legitimate purposes such as when the business needs a cash influx or when a shareholder may need an advance from the company for a business trip and the loan will later be reclassified to correct expense accounts. A business can also use a shareholder loan account to record payments to shareholders instead of recording distributions. This occurs when the shareholder does not have enough tax basis to cover the distribution taken, and otherwise the distribution would be considered taxable to the shareholder.

(m) Family Employees

Businesses often hire family members to work within the business. While this is not always an area of abuse, it can be a method used to funnel taxable income to lower tax bracket family members or to sympathetic family members in a messy divorce.

(n) Rental Payments

Review rent and lease payments for reasonableness and to determine if any of the lessors are family members or close friends. Excessive rent payments to family and friends reduces the income available for support or for the valuation of the business.

(o) Repairs and Maintenance

This is a good account to review to discover personal assets of the owner. The owner may have work done on an undisclosed asset that shows up in the review of this account.

(p) Prepaid Expenses

A review of prepaid expenses can identify if a business owner has utilized prepaid expenses for more than 12 months or expenses. For example, paying for 2 years of liability in advance will reduce income in the current year.

(q) Miscellaneous Expenses

This account can obviously be overused and is a good place for a bookkeeper to park a transaction until they can discover a better place to put the expense.

(r) Inventory Accounting

Differences in inventory accounting can have a significant impact on the reported earnings of the business. The difference in using the FIFO (first in first out) versus LIFO (last in first out) inventory accounting method can significantly change reported net income.

(s) Non-Recurring Expenses

Check for non-recurring expenses like moving costs. These expenses are valid business deductions but since they do not generally occur each year, they should not be considered in considering the future earning potential of the business or business owner.

Retained Earnings

Retained earnings does not represent a "bucket of cash" that the owner can access at any time. The undistributed earnings of the business are a part of the retained earnings account, however, so are other non-encumbered assets within the company.

Sample Request for Production of Documents

1. With respect to any business and any business entity (corporation, partnership, proprietorship, limited liability company, or otherwise) in which you hold or held an ownership interest of five percent (5%) or greater at any time since January 1, ______, and/or that you operated during that time, (specifically including, but not limited to, the businesses known as [names of companies controlled by opposing party], produce the following:

(a) All federal, state, and/or local tax returns and filings (with schedules) for the period January 1, _____ through the date of production (including income, franchise, intangibles, property, and all other taxes).

(b) Any and all evidence of tax payments for the period January 1, ______ through the date of production;

(c) Any and all financial statements (audited or unaudited), profit/loss statements, balance sheets, and/or monthly statements for the period January 1, _____ through the date of production.

(d) Any and all loan applications, loan agreements, closing statements, promissory notes, security agreements, financing statements, deeds of trust, and all other documents relating to any loan or indebtedness of this business and/or any indebtedness connected to this business.

(e) Any and all general ledgers for the period January 1, _____ through the date of production.

(f) Any and all accounts receivable ledgers for the period January 1, _____ through the date of production.

(a) Any and all accounts payable ledgers for the period January 1, _____ through the date of production.

(b) Any and all documents that evidence or show what vehicles are owned or leased by the business either as of the date of your separation from the Plaintiff or currently, and/or the monetary value of any or all of those vehicles.

(i) Any and all documents that evidence, concern, or relate to any offer to sell or offer to buy or offer to exchange:

(i) your interest in this business,

(ii) any assets of this business,

(iii) any stock in this business.

(j) Any and all depreciation schedules, fixed asset schedules, property and equipment schedules, or amortization schedules for any part of the period _____ through _____. This request is intended to cover all documents that, taken together, will list the equipment and other fixed assets of the business, show the depreciation claimed on those assets over time, and/or show the original purchase price of those assets.

(k) Any and all documents that evidence, reflect, or relate to any contract or agreement between the business and any clients or third party, between the business and you, and/or between you and any clients or third party.

(l) Any and all documents that evidence, reflect, or relate to any rights in intangible personal property owned or held by or through the business, including, but not limited to, accounts, contract rights, intellectual property rights, copyright and patent rights, computer programs, computer software, and/or proprietary rights with respect to products or processes.

(m) For the period January 1, _____ through the date of production, any and all documents that show payments made to you or on your behalf, whether by way of salary, commission, incentives, consulting fees, management fees, other income, reimbursement of expenses, provision of benefits, or use of facilities or equipment.

(n) For the period January 1, _____ through the date of production, any and all documents that show purchases or payments by the business for items used by you or your family.

(o) Any and all documents that evidence agreements between shareholders or partners relating to the business, including all shareholder agreements, stock purchase agreements, buy-sell agreements, or other similar documents.

(p) Copies of all corporate minute books, articles of incorporation, by-laws, stock ledgers, and partnership agreements.

(q) Any and all documents that evidence any restriction on the transfer of any ownership interest in the business and/or that establishes any price or consideration for the transfer of any ownership interest.

(r) Any and all other documents that evidence or reflect the monetary value of this business and/or to any person's opinion of the monetary value of this business at any time.

(s) For the period January 1, _____ through the date of production, all correspondence with, and all documents exchanged with or received from, any accountant, financial advisor, or business consultant.

Sample Interrogatory

1. Describe with particularity all benefits and things of monetary value that you or any of your family have received from any of your businesses (see definition below) during the period January 1, ______ through the date of your answer to this interrogatory. "Your businesses" means any business or entity in which you have or had a beneficial ownership interest of five percent (5%) or greater, expressly including the businesses known as [names of businesses controlled by opposing party]. This interrogatory expressly includes all payments made by any of these businesses on your behalf or for your benefit, all services and labor provided for your benefit, and all items of which you were permitted the use or enjoyment. "Describe with particularity" includes description of the monetary value of the benefit or thing that was received and the time period during which it was received.

Sample Document Request for a Subpoena

EXHIBIT A
DOCUMENTS AND THINGS TO BE PRODUCED
SUBPOENAS TO [company president] AND [company bookkeeper or controller]

[Note: include time limitations in requests numbers 7 through 19]

Produce all of the following documents and tangible things for and/or relating to the business known as [name of company]:

1. All documents that evidence or relate to its formation;

2. All documents that evidence or reflect its ownership and/or the identities or ownership percentages of its owners;

3. All documents that evidence or reflect the identities of any of the officers, directors, and/or employees;

4. All stock certificates, stock ledgers;

5. All articles of incorporation and all bylaws;

6. The corporate minute book and all records of all meetings of shareholders or directors and other corporate actions;

7. All annual or year-end financial statements and all monthly or quarterly statements (including all income statements, balance sheets, profit/loss statements);

8. All general ledgers;

9. All statements from all bank accounts, brokerage accounts, certificates of deposit, credit lines, and all other accounts with any financial or investment institution;

10. All payroll records;

11. All documents that evidence, reflect or relate to any transaction, contract, subcontract, or other financial relationship with [name of opposing party], any member of his family, and/or any business controlled by [name of opposing party];

12. All documents that evidence, reflect, or relate to any transaction, contract, subcontract, or other financial relationship with [names of other companies controlled by opposing party];

13. All contracts, work orders, and purchase orders in effect at any time;

14. All documents that evidence or reflect any payments made by this business/entity;

15. All documents that evidence or reflect any payments received by this business/entity;

16. All documents that evidence or reflect any vehicles owned by this business/entity, and all documents that evidence or reflect the source of the funds for the acquisition of those vehicles;

17. All depreciation schedules and asset lists, meaning all documents that, taken together, show the assets of this business/entity, the date of purchase, the purchase price, and the depreciation taken on those assets;

18. All documents and other tangible things that evidence or reflect any or all benefits or things of value given to or received by [name of opposing party] or any member of his family from this business/entity, including, but not limited to: retirement benefits, payment of expenses, use of vehicles, payment for gasoline or travel expenses, maintenance of vehicles, improvements to real property, or maintenance of real or personal property, purchases including, but not limited to, appliances, electronics, furniture, or improvements to real property;

19. Complete copies of all credit card applications, loan applications, and other applications for any extension of credit prepared, signed or submitted at any time;