

*A common sense approach  
to the practice of law*

## Surviving a Bad Tax Haircut

By Guest Author, Norman M. Golden, EA

Norman is a local Enrolled Agent with an expertise in the continually-changing field of taxation. For more information on Norman and his company, please visit his website at [www.Goldentax.com](http://www.Goldentax.com), or follow him on Twitter @NormanMGoldenEA.

It's hard to believe that it is already November and 2011 is almost over. Tax Season will be here before we know it, and while we cannot slow down or stop time, we can do something about reducing our tax liabilities. Tax evasion is certainly a big no-no, but tax avoidance is definitely legal. Learned Hand, the famed federal judge said, *"Any one may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one's taxes."*

Confirm that your records are up to date – It is helpful to use a personal financial program like Quicken or an electronic spreadsheet like Excel, even paper and pencil works; anything is better than the shoebox of unorganized receipts. Here are just a few things to consider for surviving a bad "haircut".

### **Gains and losses on the sale of securities –**

While you are taxed on your net capital gains, your

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## Planning For and Understanding Long-Term Care

By Jaclyn Smith

The vast considerations necessary to determine Medi-Cal eligibility can often seem like a daunting world of questions regarding whether Medi-Cal is the right thing for an individual or family member. Attempting to understand the application process, understanding the determinations Medi-Cal makes when looking at exempt and non-exempt assets, and wondering how to drive through the wall of uncertainty as changes that are imminent can be even more overwhelming.

On December 6<sup>th</sup>, 2011, we will be offering our second **Medi-Cal: Planning for and Understanding Long-Term Care** workshop this year. This class will provide an overview on California's Medicaid program, called **Medi-Cal**, covering eligibility, determination of assets that are exempt and non-exempt, proper planning op-

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### **REFERRALS**

Referrals constitute a majority of our business. If you have a family member, friend or co-worker that needs our assistance, please feel free to give them our number. Rest assured they will receive the same ingenuity, integrity, and common sense approach that you received. Referrals are the greatest compliment we can receive. Thank you!

## Why Every Business, Small or Large, Needs to Protect Trade Secrets

By David Rosenbaum

Is your business really good at what it does? Does it have dedicated customers who value the service or product? Has it earned this customer goodwill because of unique processes the business uses? Have you invested in training your employees in these processes or have you al-

lowed them to develop strong relationships with the dedicated customers? If your answer is yes to these questions, then you probably have a trade secret to protect.

A good product or service provided to a customer creates loyalty. This loyalty becomes the life of the business. When an employee leaves,

she takes knowledge with her including, in some cases, the knowledge of what makes your business so special. A recent example came to me from a person who had been working in a copy store. Clients had been coming to her saying they really liked the work she did, but were dissatisfied with the owner and the way he con-

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## Why Every Business, Small or Large, Needs to Protect Trade Secrets

ducted business. They encouraged this employee to go out and open her own shop. Was the employee allowed to open her own store and call every customer she had met at the old store to tell them to come to the new place?

In another case, the employee had great relationships with customers. She had learned how the business worked and some of the special process techniques involved in making the end product. The owners of the business began focusing on different aspects and products, and in this employee's mind, were not giving the proper attention to this side of the business. Believing that she had built up the business by her great skills, she left. She opened up her own business knowing who all the potential customers would be and all about the technology behind the product.

Proper attention to trade secrets could have protected both of these businesses from the impending competition.

A trade secret is "information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use, and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. It need not be in writing but may be in the employee's memory. There is no time limit on a trade secret's protection, but it is extinguished when disclosed publicly or to persons who are under *no obligation* to protect its confidentiality.

Under California law, everything that an employee acquires by virtue of his or her employment (other than compensation for services) belongs to the employer whether acquired lawfully or unlawfully, or during or after the expiration of the term of his employment. This includes trade secrets.

Examples of trade secrets include: a confidential list of customers

because its disclosure would allow a competitor to solicit more selectively and more effectively; information related to cost and pricing, marketing strategy and manufacturing, as well as market research if it relates to needs of numerous and diverse buyers, rather than a single customer; a company's "project binders" for proposed projects (containing plans and measurements, detailed cost estimates, subcontractor bids, etc.) when the information is not generally known by competitors in the business.

Reasonable steps to protect confidentiality may include: securely storing the information through the use of password protect or locked file cabinets, restricting access to the information to only those that need to know, using confidentiality or non disclosure provisions in employment contracts and/or handbooks.

Remember, your trade secrets are the life blood of your business. They are the "value added" component which makes you better than others. Take steps to protect, or one

## Medi-Cal: Planning For and Understanding Long-Term Care

(Med-Cal—Continued from page 1)

tions and techniques to provide guidance as to whether one can qualify for Medi-Cal and how to approach the overwhelming considerations of whether Medi-Cal nursing home care should be considered for you, a family member, a parent or spouse. By the time a person considers what type of care is needed, it may be difficult to obtain Long-Term Care Insurance or pay the premiums required for Long-Term Care coverage. Alternatively, private pay may not be an option as

the rising cost of nursing home care increases every year. In today's society, more and more people may be leaning on the resources available through California's Medi-Cal program, and deciding whether this program can provide for long-term care needs.

The planning involved when a determination is made that an individual, parent, spouse or family member would like to obtain the services Medi-Cal can provide is whether that individual wants to protect and preserve their assets while still qualifying for Medi-Cal benefits. Often times, this is espe-

cially important to married couples who are unable to qualify for Long-Term Care insurance or who are unable to pay premiums for such coverage.

If you are looking to obtain a better understanding in this area, or may be considering Medi-Cal nursing home care for you, a family member, a parent or spouse, we invite you to join us for our workshop!

## Surviving a Bad Tax Haircut

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net capital losses are limited. The deduction of net losses is limited to no more than \$3,000 in any one year; the remainder can be carried over to the next year. Capital losses, either carried over from 2009 or realized in 2010, can be offset by capital gains. So, if you have realized a large capital gain in 2010, consider selling other capital assets that have unrealized losses and use them to offset the gains.

**Medical expenses**— Two limitations apply for deducting medical expenses. First, you must itemize your deductions, and, second, your deduction is the amount that your total medical expenses exceed 7.5% of your Adjusted Gross Income (AGI is line 37 of Form 1040). For example, if your AGI is \$100,000 the 7.5%

“haircut” is \$7,500, so you will not have a medical deduction until you have at least \$7,501 in deductible medical expenses. Many people do not deduct medical expenses because either their Standard Deduction is greater than their itemized deductions or their medical is less than the haircut. If you’re in that situation, consider “bunching” your medical expenses. For example, take a couple with a 14-year old son who needs braces now, and a 12-year old daughter who will need braces next year. Their AGI is \$100,000, their year-to-date medical expenses are \$2,000 and the orthodontist has quoted \$3,500 for each child. If you have the son’s work done now, you will have \$5,500 in deductible medical expenses, but no deduction because \$5,500 is less than their haircut. However, if it

makes medical sense also to have your daughter’s work done before the end of the year, the deductible medical expenses will be \$9,000 which result in a \$1,500 deduction.

**Miscellaneous Itemized Deductions**— The most common of these expenses are unreimbursed employee expenses, fees for tax preparation and tax advice, safe deposit box fees and investment fees. These expenses are subject to a 2% haircut, so use the same approach towards medical expenses.

The best approach to tax, and especially, year end, planning, is to have a copy of your last tax return, up-to-date records, and an idea of what next year might look like. Things don’t always work as planned, but at least you can attempt to minimize the tax impact of a bad haircut.

## Why Every Business, Small or Large, Needs to Protect Trade Secrets

day you will see a past employee taking away your business.

If you have questions on what may be your trade secrets, how to



take steps to protect them, or have an employee who has left your company and is using your hard work, call our office.

## Upcoming Events

### **MEDI-CAL: PLANNING FOR AND UNDERSTANDING LONG-TERM CARE**

**Tuesday, December 6, 2011  
9:00 to 11:00AM and 3:00 to 5:00PM  
2070 Pioneer Court, San Mateo**

This free workshop will provide an overview on Medi-Cal and will highlight issues pertaining to exempt and non-exempt assets, eligibility and planning for the needs of long term care.

### **ANNUAL TOY AND FOOD DRIVE**

**November 7th—December 15th  
2070 Pioneer Court, San Mateo**

San Mateo County Trial Lawyers Assoc. and Samaritan House have come together for LAWYERS WITHOUT SIDES for their annual drive to collect your non-perishable food items and unwrapped toys for children. Please donate today!

### **COMING IN JANUARY 2012**

**Shredding Party for Our Maintenance Members  
Date To Be Determined  
2070 Pioneer Court, San Mateo**

We invite our Maintenance Program members to bring their old tax returns, ancient records and bills to our office. An invitation will be sent to you in December.

Coming in January 2012

**Maintenance Members, clean out your garage and make a paper donation to charity.** McDowall Cotter invites our Maintenance Program Members to participate in a New Year's Shredding Party. Bring those old tax returns, ancient records and bills to our office (limit is 5 banker boxes). *Goodwill* will be here to pick up your to-be shredded material. *Goodwill Shredding Services* is AAA-NAID certified, HIPAA/FACTA compliant, and will provide a certificate of destruction for shredded documents. A Shredding Party invitation will be sent to our Maintenance members in December- watch for yours!



### A Common Sense Approach to the Practice of Law

McDowall Cotter has served clients in the greater San Francisco Bay Area for more than half a century. In that time, we have established a reputation, in the courts and in the community, for ingenuity, integrity, and a common-sense approach to the practice of law.

It has been said that in some ways we are an old-fashioned law firm. We believe in civility, value long-term relationships, cultivate a healthy work environment, and provide the highest quality legal representation in matters large and small. And we agree — we are old-fashioned, but then again we've been old-fashioned for more than fifty years and still somehow we remain ahead of our time.

Our services include:

- Defending Businesses and Individuals in Civil Lawsuits
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- Trust Contests
- Trustee Challenges
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- Personal Injury Lawsuits
- Partition Actions
- Construction — Mechanic's Liens
- Trademark Applications

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