

Message From Chris....

It's a New decade, and there's lots going on.... Often, growth is accompanied with debt (and debt forgiveness), the extension of credit, and a little tax/bankruptcy information thrown in. Here's some good, basic, "blocking and tackling information" for those out there growing. The questions below are ones I've recently been receiving from different areas of our economy. This is good stuff for everybody to know... (don't forget to click on my links below to also see my short video on this material).

Things To Remember

Question #1: *I'm a business person considering taking on debt in the form of mezzanine debt, what is that and what are its considerations?*

Answer: It's where a bank loans you money against your interest (whether a majority or minority interest) you hold in an entity - usually a form of unit ownership held in a limited liability company. It's secured against the unit ownership you hold, but it's really unsecured debt in the eyes of the bank. Accordingly, the rate of interest charged is pretty high, like all unsecured debt - at least higher than most other forms of debt. So, be aware. This isn't as common as it used to be, but it's still very much alive and well on a national level. If possible, you might want to instead look at obtaining a loan from your bank against your other hard assets, which can even be your accounts receivable.

Question #2: *I'm a business owner who needs a loan to purchase a major piece of equipment, what can I expect when working with my banker?*

Answer: Once qualified, your bank will want to file a financing statement (with the public filing authority) which secures their interest against such collateral. It will occur in the form of a UCC -1 (a Uniform Commercial Code, Form 1 filing) which is filed with the local jurisdiction's Central Filing Office. Until this UCC-1 is released by the later filing of a UCC-3, the bank continues to hold a valid security interest in such major piece of equipment (which will only occur once the loan is paid off).

Question #3: *Are there ever any problems with the filing of UCC-1's?*

Answer: Yes, due to a bad, inaccurate, incomplete, or poorly described collateral, the collateral interest held by the bank may either be: **1)** so vague as to render the bank's interest unenforceable against its own collateral, and/or **2)** so broad as to arguably also encumber other equipment you own, although unintentionally. Either way, both of the foregoing are a bad

outcome, so, be attentive to describing collateral in UCC financing statements. Use the unique serial numbers on each piece of equipment, if they're available.

Question #4: *I've had certain debt forgiven which all surrounded my previous bankruptcy. What should I know?*

Answer: Once forgiven and you're 1099'd, it's declared income, and you need to pay the appropriate tax rate upon such forgiven debt. So, plan accordingly. *Bankers, also be aware to ask this question.*

Question #5: *As I'm trying to make a fresh start in a new venture, I have unfiled tax returns from years past that led up to the granting of my recently received bankruptcy discharge. Will the taxes due and owing in connection with such previous tax years be included in my discharge?*

Answer: No, not if the tax returns for such previous tax years weren't done. Much to the surprise of many, such amounts are not discharged and made a part of your discharge if the returns were not made and timely filed. *This is something the banking community should also be aware of when writing new loans....*

What My Clients Are Saying

"Chris Griswold has a unique skill set for a Real Estate attorney. He is equally adept in the courthouse as well as in a transactional setting. We have worked with him in lease negotiations where we found him to be pragmatic and fair minded while representing his client. As result of working on the other side of the table with Chris, we engaged him to assist us with various lease enforcement issues. We have used many attorneys to assist us with FED's, collections etc. and Chris has by far been the most efficient and cost effective counsel we have ever used."
Jeff Norman / President / JAH Realty, L.P. / Oklahoma City, Oklahoma

The information presented within this article is of a general nature and is not intended to be relied upon as legal advice in any particular matter without first consulting qualified counsel.

**Chris Griswold, P.C.
Contact Information:**

1105 Myrtle Drive
Edmond, OK 73034
405.229.7595 (cell)
405.840.1019 (office)

chris@chrisgriswoldpc.com
www.chrisgriswoldpc.com