



Capital Notes

New Year's Update for Friends & Clients of Corporate Capital Resources

Corporate Capital Resources Newsletter 1st Quarter 2013



Kabuki Theater in Washington, DC

The Japanese art of the play with characters gesturing and grandstanding in narrowly defined roles has truly come to life in our legislative process. With much the same effect: a show for the folks, but little impact on reality. Some of the unchanged reality in this case: government borrowing over 40 cents of every dollar spent. Prior promises notwithstanding, there are now tax increases on 77% of all taxpayers, with the \$660 billion "raised" over 10 years able to fund a week's worth of current spending. All this and more from the "American Taxpayer Relief Act of 2012" passed at 2:00 AM on January 1st.

We agree with Senator Mike Lee (R-UT) who tweeted, "Even the best fiscal cliff deal will leave 99% of a dysfunctional system intact." The politicians are not the only ones postponing budgeting decisions. We are seeing companies delay their strategic planning given all of the current uncertainty; this is especially true for 'sequestration' in the defense contracting space where that issue was punted into March.

This is not the place to detail the permanent and impermanent features of the ATRA. There are sound planning opportunities still available relative to the coordination of business succession strategies; key executive compensation and estate plans, for example.

Quick Links

[Check Out Our Website](#)

[Meet Our Professionals:](#)

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It is probably wiser to proceed with some 'grandfathered' planning now than to await the good offices of the Kabuki players. A phone discussion with Lisa or Michael to review your options without obligation can be scheduled at **540-345-4190**.

Publications

Michael is now updating his discussion of Charitable Financial Strategies with ESOPs for the National Center for Employee Ownership. Just drop us an email if you would like to be copied on the revised article.

Lisa and Michael have co-authored two pieces for *Bank Director Magazine* on the use of stock bonus plans and ESOPs to maintain employee and key-executive benefits in a cash-challenged environment.

A link to the latest short article is:

<http://www.bankdirector.com/index.php/committees/compensation/stock-bonus-plans-for-community-banks/>. The earlier ESOP article is archived at the same website in the compensation section.

Chapter Six in the book, "Selling to an ESOP," which Michael co-authored earlier this year, is now in print. His discussion of the IRC Section 1042 tax-free ESOP rollover deals with strategies to counter increasingly volatile capital markets. The book can be ordered at <http://www.nceo.org/Selling-Your-Business-ESOP/pub.php/id/31/>.

"The ESOP Handbook for Banks" co-authored by the CCR team is available at: <http://www.amazon.com/ESOP-Handbook-Banks-William-Gust/dp/0982536445>.

Upcoming Speaking Engagements

CCR has a busy conference schedule this Spring. Michael and Lisa are speaking at the annual national conference of the NCEO in Seattle, April 23-26.

Lisa will chair an NCEO panel dealing with the competition for capital between ESOP stock purchase/repurchase requirements and the capitalization of companies. Her talk will outline strategies applicable to companies with strong balance sheet liquidity requirements such as those in banking, construction and manufacturing. Michael is speaking on the coordination of discriminatory key executive programs with ESOP continuity plans at the pre-conference program.

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Lisa is also speaking at the ESOP Association Tri-Chapter conference in Pinehurst, NC on issues related to ESOP designs using minimal leverage. Michael is partnering with the attorney Rick Mapp of Kaufman & Canoles to address strategies for mature ESOPs related to long term sustainability and the management of ESOP stock repurchase obligations.

Bill Gust will host a panel at the Pinehurst conference of considerable interest to ESOP companies confronting compliance issues; "What to Expect and How to Deal with a Department of Labor Audit." We are seeing an increasing number of DOL plan audits; if you would like the checklist of documents the Department typically asks to be produced, please email us and we'll send you a copy.

You Don't Know...What You Don't Know

The year 2012 produced a large number of engagements which revealed that some ESOP companies have been (appropriately) focused on their core business, but (inappropriately) not focused on their plan strategy and operation. While ESOPs as qualified plans share many attributes with profit-sharing and 401(k) programs, there are many divergences. Subchapter S ESOPs are particularly tax-efficient, but also particularly complex.

- A detailed ESOP stock repurchase study was undertaken for a 10 year-old Sub S ESOP which revealed that the "anti-abuse" rules of IRC 409(p) were incorrectly applied, the rules for payouts to former participants were misunderstood, and the increases in share price in recent years were unnecessarily exacerbating the buyback costs. Fortunately, no violations occurred, but unneeded costs and some confused participants did result...until an appropriate corrective strategy was put in place. The plan administrator is now "up to speed" relative to the issues discovered.
- Another S Corporation had delayed the implementation of a key executive deferred compensation program which was strongly recommended for key executive retention and rewards. This was seen as particularly well-suited to the company. Absent the discriminatory incentive outside the ESOP, an important manager left a key position -- requiring a painful adjustment of management responsibilities. Stand-alone ESOPs are not the answer, but the best ones are part of a well-coordinated strategy and work best often married with non-qualified plans for select personnel.

One of the best things ESOP companies can do is to invite a critical outside review of strategy and operations every few years by a set of expert eyes -- this can often take the form of a repurchase study which drills down into many plan features and can turn up compliance and strategy defects before they create real problems.

Some 2013 Changes at Corporate Capital Resources

Michael will be stepping up as President of the consulting group beginning this year. Lisa will be taking over duties involving the oversight of the broader management consulting effort of the team, and will be the new Senior Vice-President, Management Consultant. Tammy Mason continues as Vice President of Operations. Bill Gust and Bruce Stockburger will remain on as staff consultants.

Our array of corporate and management consulting services remains unchanged: CCR continues to grow as an independent national consultancy advising private shareholders relative to business succession strategies and liquidity events.

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