



Two Corporate Communications Your Client May Be Getting

One should be ignored. The other must be reviewed and answered carefully. Find out which is which and how to help your client respond.

Odds are your corporate clients – at least some of them – are getting unwelcome mail in the two categories described below. For one kind of message, the right answer is no answer. For the other, a careful answer is definitely in order.

Corporate service solicitation and scams

Recent users of the Web site of the Illinois Secretary of State's Business Services would have seen the following red, bold warning:

WARNING! A non-governmental firm called "Illinois Corporate Compliance" is contacting Illinois businesses in an attempt to collect a \$150 fee to file corporate meeting minutes. Please be aware that corporations are NOT required by law to file minutes with ANY government or private entity. It is recommended that corporations do NOT reply to the solicitation.

Terry McConville, assistant general counsel with the Illinois Secretary of State and member of the Institute of Illinois Business Law, notes that "the Sec-

retary of State's office has had corporate representatives walk into its office and attempt to pay this fictional fee to file corporate minutes. We anticipate hearing from people down the line who have been scammed and who won't be happy to find out that they still owe their annual corporate fees."

Illinois is one of a number of states whose corporations have been victims of this kind of scam. California companies have been receiving a "Disclosure Statement" from the "Board of Business Compliance, Annual Minutes Division, (Shareholders and Directors)" that asks companies to submit the disclosure statement, with names of officers and directors, for purposes of preparing corporate minutes with a check for \$125.

Problem is, there is no "Board of Business Com-

pliance" in California. A similar notice, purportedly from "California Corporate Services," is being sent as a form similar to California's Annual Report form and requesting a fee of \$150.

Like Illinois, Washington was concerned enough to post a notice on its Web site of a solicitation from the "National Business Registry" seeking \$487 to register with the "National Corporation Registry" (which does not exist). Similar deceptions have been reported in Colorado, Georgia, Indiana, Massachusetts, Nevada, Oregon, and Texas.

These scams take advantage of the fact that a company's address and contact information are public information and can be used by unscrupulous people to the company's disadvantage. If your client receives a solicitation, don't assume it's official without reviewing it first.

Some disclose in the fine print that they have not been approved or endorsed by a government agency. But the disclaimer is hard to spot. More obvious is the solicitation of money for a nonexistent service. If there's any doubt, you can review the state's Web site to find which forms are official and even contact the state to confirm that the solicitation is not official.

State questionnaires

Your client may get another type of corporate correspondence from a state, and this one should not be ignored. This correspondence is in the form of a questionnaire. The questionnaire never asks for money directly, but the purpose is most certainly financial. Ignoring it or answering carelessly can cost your client.

Why are states sending these questionnaires and how do they decide whom to send them to? The answer is based on your client's activities in a state.

When a company transacts business in any state other than its state of organization, it may

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be required to file tax returns and/or “qualify to do business” in that state. So, if your client is a Delaware corporation but has its offices and manufacturing plant in Illinois, your client is required to file Illinois tax returns, obtain authority to transact business here, and appoint an Illinois agent who can accept service of process if your company is sued here.

If a company has offices in another state or does a significant amount of business in another state, it’s usually easy to determine that the company must file tax returns or to “qualify to do business” there. But what if your client has a one-time event in another state? What if a client’s sales people occasionally enter a state to solicit orders? Does your client have to “qualify” to do business in that state? File a tax re-

turn there?

Unfortunately, there’s no “bright line” test applicable to every state. Although there are factors common to most states, each state has its own laws that govern when a company must qualify.

In tough economic times such as these, states often send out questionnaires to companies that might be transacting business in the state. Each state would like your client to be qualified and registered for taxes in their state, because that generates additional taxes and fees.

The questionnaires contain questions that, while seemingly matter-of-fact, bear careful scrutiny. For example, a question that asks when your client started “doing business” in the state is loaded. As is noted above, “doing busi-

ness” can depend on a variety of factors and can be different for qualification and for tax registration.

Likewise, overly broad answers will not help your client. They can result in a letter from the state assessing significant amounts of tax or demanding that your client qualify to do business in that state, even when the company’s activities do not require qualification. And many state questionnaires have boxes to check with optional answers that favor the state, and not your client.

Your client should view this type of questionnaire as an effort by the state to find additional taxpayers and should consult with tax advisers and attorneys to assist in preparing an appropriate response. Answering incorrectly could result in major exposure to taxes, penalties, interest, and filing fees. ■