

The Newsletter



FAUCHER LAW

TAX & BANKRUPTCY

Often Better than a Business Bankruptcy:

Wind-Down Old Firm, File Personal Bankruptcy

The last thing most owners of failing businesses need is a business bankruptcy: they're expensive, invasive and often unnecessary. The owner's objective to avoid being personally hounded for the firm's debt can be achieved more simply. That's because every decision of a business in bankruptcy - whom to hire, which creditors to pay, etc - is subject to court approval. The business burns attorney fees the way an F-14 burns jet fuel because the owner needs an attorney to defend the owner's interests above creditors' interests. Few chapter 11 bankruptcies cost less than \$50,000 and most cost over \$100,000. Bottom line? *Most business bankruptcies costs money the owner doesn't have and leave the owner with less control.*

Step 1: DIY Liquidation. The bankruptcy process determines whether the debtor has assets that can be used to repay creditors, and which debtors and how much. But if a business is so "failed" that it no longer has enough cashflow or sellable assets to repay creditors, it doesn't need the Bankruptcy Court to distribute non-existent assets and close the firm.

Every business owner can steer the failed firm to its end themselves, perhaps with some help, but certainly without the invasive chapter 11 bankruptcy process. Will creditors who are stiffed be annoyed? Absolutely! So what? Let creditors assert their legal right and come after the firm with lawsuits for default. Creditors can take their winning legal judgments, which will take at least 6-12 months to obtain, and then levy the business's bank accounts. Who cares? Especially if there's no money in the account and no assets to take, which there won't be because the little money that was

left will be disbursed by the owner shutting down the business long before creditors obtain judgments.

Moreover, *if the business is incorporated, only it is on the hook for the debt, not the*

owner. Creditors will squawk at the owner for repayment, but that doesn't mean they can collect from the owner. This "veil" of corporate protection is a

INSIDE STORIES

- John Shares Great Yelp Review
- Sebastian Deconstructs IRS Notices
- Gourmet Grilled Cheese Sandwich Recipe

main benefit of incorporation. The firm is further "protected" from creditors by its unprofitability. Let creditors swoop around the firm's carcass, leaving threatening voicemails about how much is owed, but there's nothing left to take. Business owners should tell creditors they failed, they're sorry, they'd love to repay, but there's no money left (citing rising costs, falling demand, bad business conditions - all the economic forces currently contributing to the increase in bankruptcies) and they're throwing in the towel. Finally, formal dissolution of the firm should be filed with California's Secretary of State, and final business tax returns with the IRS and FTB.

The only time it makes sense to file a business bankruptcy is when there are many saleable assets (not relevant in personal service firms like attorneys, realtors) or a lot of money in business accounts or accounts receivable with which to repay creditors. These create the incentive for creditors to poke into the firm's closure.

Step 2: Personal Bankruptcy to Address Personal Guarantees.

Many business loans and credit cards are personally guaranteed which *gives creditors the legal right to pierce the corporate veil and come after the owner personally.* But this problem can be solved by filing personal bankruptcy for the owner, provided s/he meets the requirements to file chapter 7 bankruptcy. Personal bankruptcy is cheaper, faster, less invasive than business bankruptcy and usually discharges all personally-guaranteed business debt.

Step 3: Create New Corporation. Many clients want to continue being their own boss, even after a business has

...con't on page 2



Firm has more debt than it can repay? Call us.

...con't from page 1

failed. I recommend creating a new corporation for the business operations the owner decides to continue. This involves selling any tangible assets of the former business to the new business (at documentable market prices), which is easily done and not a roadblock to starting over, even in a similar business practice. US bankruptcy and corporate laws are designed to foster entrepreneurship and innovation. We want creative people to take risks and start all sorts of businesses. Which means many will fail – and our public policy gives those entrepreneurs a way to pick themselves up, learn from past mistakes, and try again. Keep in mind that Presidents as diverse as Lincoln and Trump made use of bankruptcy. While no one wants their business to fail, erratic economic conditions, unfavorable public policies, and technological shifts destroy companies all the time. I'm grateful we live in a country that allows business owners to move on relatively gracefully and try again.

JDF

Recent Client Yelp Review

I'm always so glad to be of help – no one should pay the IRS what they don't owe. Thanks Janette F. for this glowing review from March 2025!

In 2020 I sold my business. I paid all the capital gains taxes. Just as I was settling into retirement, the IRS sent a letter that I owed taxes on commissions paid to the buyer of my former business. To say I went down a rabbit hole would be putting it mildly. I spent over a year sending documentation, letters and making phone calls to various IRS agents proving the sale. There was never an agent that could connect the dots. I filed a Tax Court case disputing the taxes allegedly owed and had an appointment with an appeals officer. I was drowning in frustration. I was worn down.

After my call with the appeals office I became very angry and I decided I was not prepared to pay a large amount I did not owe. I needed someone in my corner. I literally found John by searching the internet. I think an angel was sitting on my shoulder when I made that call as John was a Godsend. We had a few calls, emails and I sent documentation as he requested. I think what made me feel so much better was his calm demeanor. He didn't sugarcoat anything. Best of all, he has worked on the

End of an Era Faucher Family Farms Closes

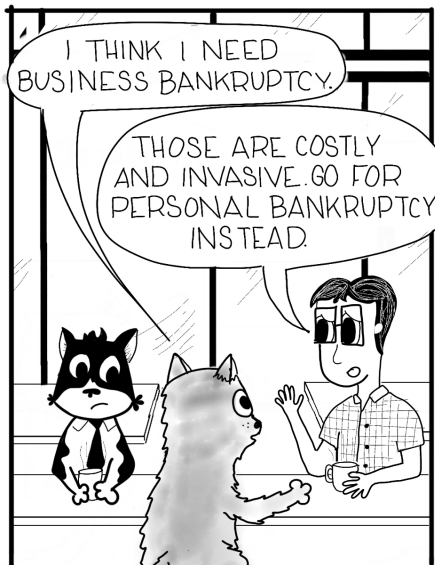
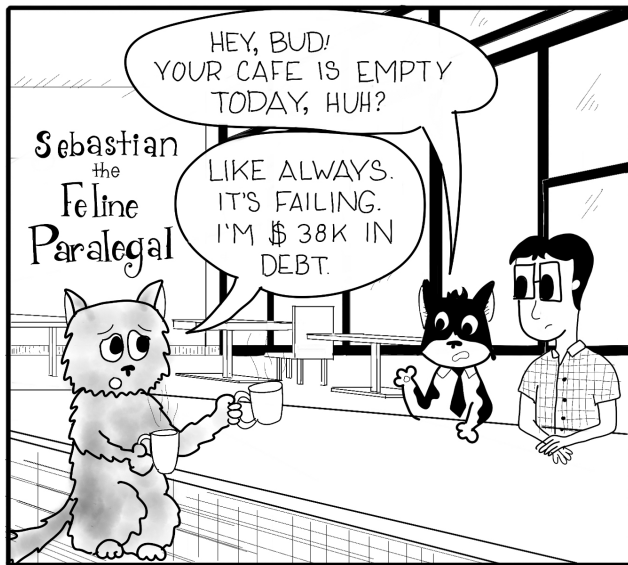
"It truly hurt to say good-bye to my girls, but they've gone to a good friend and are getting the chance to see a bit more of the world," John opined when asked about this momentous decision to close the coop door on Faucher Family Farms after 12 years of hen husbandry. He has also cancelled his subscription to *Chickens* magazine.



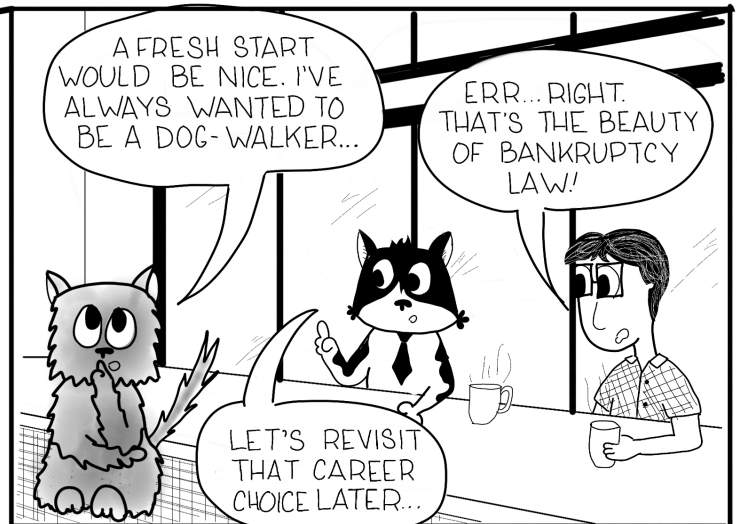
other side as an IRS attorney. It seemed he could understand and communicate with IRS employees in a way I never could.

John talked to the Appeals Officer but decided the case needed to go to the court. Soon he was dealing with the IRS attorneys (who have more discretion to settle cases). I was on the way to the airport when John called and said "It's over, the IRS just conceded". I was stunned and speechless, frankly I didn't believe it. Within weeks I signed the paperwork stating zero taxes due as did the judge. It was over!

Just the other day, I received the last accounting of hours from John and a refund check of money he didn't use. I have dealt with attorneys for business sales I have done. But I have not known any so calm, so direct, factual and honest. I will refer John Faucher to anyone who needs him. I highly recommend him.



Sophie Schmitt 9/25



Grilled Cheese

This is a great after-school snack or ballgame party food. Karen also makes it for dinner, with a cup of soup when we're in the mood for comfort food.

Instructions:

- Add 1 ½ Tbsp butter & olive oil to a skillet and heat over medium-low heat. Add diced onions, salt, pepper, fresh thyme, and 1 tsp fresh rosemary to the hot skillet and sauté, stirring often, until onions are soft and starting to brown, about 10 minutes.
- Stir brown sugar into the onions and cook another minute; transfer onions to a plate.
- Spread one side of two pieces of bread with a little mayonnaise.
- To the same skillet, add remaining butter and rosemary, at medium heat. Swirl to coat the bottom of the skillet with melted butter. Add both pieces of bread, mayonnaise side down, and cook until bread is golden brown and crunchy, about 2-3 minutes.
- As soon as bread is in skillet, add a bit of cheese to the top of each piece of bread. Once it starts to melt a little, sprinkle a couple tablespoons caramelized onions over top of one piece of bread.
- When bread is golden brown, sandwich the pieces of bread together and cook on low until cheese is fully melted. Transfer to a plate, repeat with remaining bread and ingredients.

16 Slices good quality bread

24 oz. Gruyere cheese sliced thinly OR grated, at room temperature

8 slices thin muenster cheese at room temp

2 tsp fresh thyme minces

2 tsp brown sugar

6 Tbsp butter divided

Mayonnaise for spreading

12 oz White Cheddar Cheese sliced thinly or grated, at room temperature

4 yellow onions diced

4 tsp fresh rosemary minced

Salt and pepper to taste

2 Tbsp olive oil

Serves 4-6

WELCOME TO FAUCHER LAW

John D. Faucher
worked for 10 years as
an IRS trial
attorney and has been
in private practice
since 2008. He and
his team speak the
legal language. They
know the **tax and
bankruptcy systems**
and can help you get
the best result. Have
other legal issues? Call
us. We'll find the
lawyer who's right for
you, your friends, or
family.

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Failing Business?

Go For Personal Rather Than Business Bankruptcy

That's right. I rarely recommend taking a failing business through bankruptcy. Often there's a solution that costs less, and gives the business owner more



control over the winding-down of operations, than bankruptcy. The remedy I usually propose is a combination of (1) closing the failing business and walking away from the debts, (2) personal bankruptcy for business owners with personal guarantees on business debt, and (3) creating a new corporation for business operations the owner plans to continue. This issue of *The Newsletter* explains why these options can be better and cheaper than bankruptcy for the troubled businesses. Also inside, a rave review from a recent client, Sebastian works his "comic" genius on the topic of dealing with business debt with solutions other than bankruptcy, and a gourmet grilled cheese recipe (because Karen doesn't cook anything "plain").