

The Newsletter



FAUCHER LAW
TAX & BANKRUPTCY

Business Owners Pay Less & Debts Get Dumped

Why Personal Beats Firm Bankruptcy

In the last issue of **The Newsletter**, I wrote about how I was getting more calls about bankruptcy (even before coronavirus locked the country down). I also promised to explain in this issue why I almost always recommend a personal, rather than corporate, bankruptcy for struggling business owners. So here goes . . .

*** Most Businesses are Like Suitcases.** Most business owners have a corporation or a limited liability company. The firm is like a suitcase that the owner can take where she wants, open, and handle its contents. She can take some of the assets out of the company and sell them, just like she can take a pair of shoes out of the suitcase and sell those – but the proceeds belong in the suitcase, not in her hand, because it’s also a separate legal person or entity. If a company files chapter 7 bankruptcy (the simplest kind), then legal ownership of the firm – and the ability to open the “suitcase” – passes from the owner to a bankruptcy Trustee. The Trustee is appointed by the Bankruptcy Court to administer debts, typically by selling firm assets to pay firm creditors. But, unlike in a personal chapter 7, **there is no discharge of debts in a corporate chapter 7**. The Trustee will sell the corporate assets, pay the creditors some small portion of their claims, then return the company to the owner, emptied of all valuable assets but still full of the liabilities that weren’t paid. Sound useless? It usually is. Like herding cats.

*** DIY and Avoid Bankruptcy.** An owner could just dissolve the failing business, avoiding a chapter 7 bankruptcy process that often costs more than it would to manage the sale of company assets, payment of creditors, and dissolution. Occasionally, a client is a sole proprietor (no separate corporate entity) or has personally guaranteed firm liabilities. In these situations, I usually recommend filing for personal bankruptcy because all liabilities will be discharged, or wiped out – in practice, **both personal and business debts**.

The drawback is that the Trustee decides what to do with the corporation in a personal bankruptcy. Will he sell the ongoing business – the “suitcase”? Yes, if there’s a buyer, but there usually is not: the business’s revenue-generating ability almost always is dependent on the owner’s involvement (and the Trustee cannot compel the owner to keep working), and besides, who wants a failing business? Will he open the suitcase and sell firm assets? Not if there are more liabilities than assets; the Trustee needs to pay the corporate liabilities off before collecting money to pay the owner’s personal creditors. Most often, the Trustee abandons the corporation back to the owner.

INSIDE STORIES

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Check out a favorite **Peanut-y Pasta Recipe.** Page 2

*** Why Ever File a Business Chapter 7?** When creditors accuse the owner of fraud, having a bankruptcy Trustee administer asset sales demonstrates transparency, and decreases the odds of successful claims that the business owner should be liable for the corporation’s debts. It also makes sense to file a chapter 11 bankruptcy for a corporation if doing so gets the main creditor(s) to ease up on repayment requirements. However, most chapter 11 bankruptcies cost a *minimum* of \$50,000, and often double and triple that, because they eat up so much attorney time, for little benefit.

*** Advantages of Filing Personal Chapter 7.** A personal chapter 7 bankruptcy puts the failed firm in the hands of the Bankruptcy Trustee, providing a form of visible closure for the company. But, more importantly, the struggling business owner’s personal debts are wiped out. I rarely see an owner of a failing firm who doesn’t have big personal credit card balances, skipped mortgage payments, unpaid taxes, and past-due bills, all accumulated in an effort to keep their business afloat. A personal chapter 7 bankruptcy almost always discharges all unsecured debt, most back taxes (except payroll taxes, which can never be discharged in bankruptcy), and it will postpone most mortgage foreclosures. In contrast, **business bankruptcy does not erase firm liabilities or personal debts**. Creditors can and will continue to try to get paid. If you or your business faces these problems, please call me and we’ll find a solution that takes the specifics of your company and personal finances into account. **JDF**



My star Feline Paralegal, Sebastian, has his paws in all aspects of tax and bankruptcy. Follow his musings or (dare we say it?) mewings on Instagram @sebastian.the.feline.paralegal



How Pilot Took Off After Fall

Here’s a good result for a client whom I took through a chapter 7 two years ago, to deal with the financial impact of his business failing. He is also an example of what I discuss on Page One – why personal bankruptcy for the business owner is often better than bankruptcy for the business.

Jim so loves flying that he made a living piloting the rich – he once flew for Lee Iacocca, chatting with the famed Chrysler CEO throughout the four-hour flight – and he did maintenance on private planes.

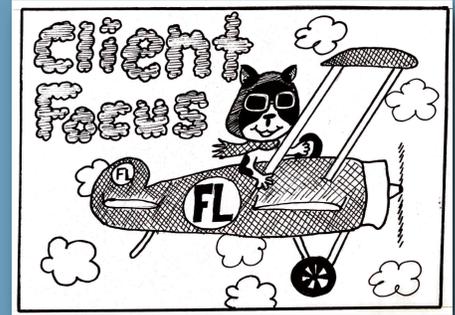
But Jim’s business took a nosedive when a long-time maintenance client failed to pay a \$200,000 bill. Jim couldn’t make payroll or pay other bills. While he was trying to get the deadbeat client to pay, Jim raided prepaid charter flight money and stopped remitting payroll. Oops! I counsel against failing to pay payroll taxes because the consequences are so dire. But, like many cashflow-strapped business owners, Jim thought the setback was temporary. It wasn’t. He had to lay off employees, hold off more and more creditors, and eventually close up shop when there was nothing left to borrow from. The company ended up owing \$2 million in non-tax debt, \$220,000 in payroll taxes, and had several lawsuits filed against it. (It turns out that Hollywood producers who have prepaid for charter flights to Hawaii get steamed when there’s no flight and no refund.)

Taking the company through bankruptcy would have been far more expensive than taking Jim through personal bankruptcy, particularly given the many lawsuits

filed against the company which would need to be defended against. The company is currently a paper fiction with a few assets such as flight licenses, but no way to exploit them because of the liabilities. Creditors can go after the company, but there’s no money to take.

So, it wasn’t worth Jim or the company’s time to go through corporate bankruptcy. Moreover, Jim had many personal guarantees on loans to the company; I was able to discharge those for Jim in personal bankruptcy. He also still owed the payroll taxes because those can never be discharged. Jim lost his house in the personal bankruptcy – the proceeds from the sale of the house paid the payroll taxes.

That was all two years ago. Happily, Jim recently started a new company – charter flights only, no maintenance work – and is making good money once again. He recently wanted to know if he could buy a house and not have creditors come after it. Absolutely. His high income allows him to qualify for a high interest, “no document” loan that isn’t based on credit history. Post-bankruptcy, people keep what they earn and buy. This is what Congress intends with our bankruptcy laws: an opportunity to start again in case of business failure or financial ruin.



Peanut-y Pasta: Perfect for Meat or Veggie* Lovers

Karen loves this recipe because it can be made with chicken, or in a vegetarian/vegan version. It tastes like it takes a lot of time and effort to make, but it doesn’t. Bonus points: my daughters loved this when they were little *and* adults found it unusually flavorful for a dish that kids adored.

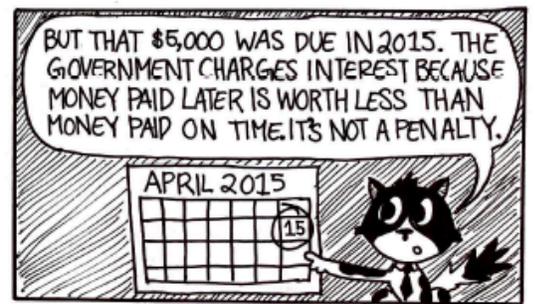
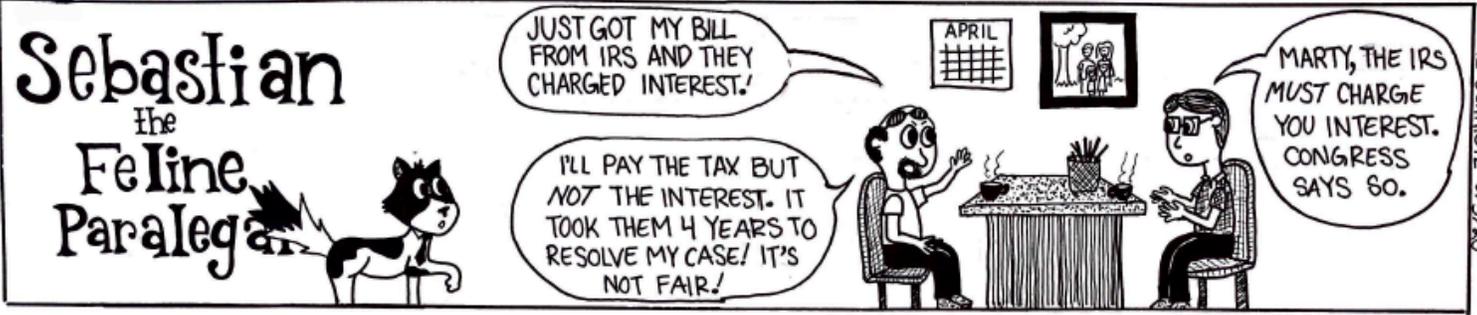
- 1) Cook linguini according to package directions. Drain pasta, saving cooking water in another large pot for chicken, and set aside pasta in a very large bowl.
- 2) Cut chicken into bite-size pieces and boil in water used to cook linguini for approximately 7-9 minutes, or until done. Drain and add to bowl with linguini.
- 3) In a food processor, process garlic, vinegar, brown sugar, soy sauce & peanut butter for 1 minute. With motor running, slowly add sesame oil through feed tube and process until sauce is well blended. Then add chili oil in same manner. **NOTE! If you want a less spicy sauce, add only 1 TBS of chili oil at first, and taste to see if you want more heat.** Remember pasta and veggies will absorb much of the spiciness. Kids usually tolerate 1 TBS chili oil, and most adults 4 TBS chili oil. If you prefer less “kick,” substitute sesame oil for the remaining chili oil. Pour sauce into bowl with chicken and linguini, and toss.

4) Cook asparagus, carrots & green beans in boiling water for about 6-7 minutes until firm tender. Drain well and add to pasta mixture. Add cucumber & scallions and toss everything together. Sauce takes about 1 hour to be absorbed by pasta. Serve room temperature. Refrigerate leftovers, which hold 2-3 days. **Makes 10-12 portions.**

* Omit chicken and increase veggies for a vegetarian version.

1 lbs linguini	2 TBS light brown sugar
3-4 boneless, skinless chicken breasts	½ cup soy sauce
1 lbs thin asparagus, cut to 1-inch lengths	14 TBS sesame oil
1 lbs green beans, trimmed, cut to 1-inch length	3 TBS hot chili oil
1 lrg cucumber, seeded & cut into 1/2-inch dice	12 TBS creamy peanut butter
4-5 scallions, chopped	5-6 cloves garlic, minced
3-4 carrots, cut into ¼-inch discs	2 TBS red or white wine vinegar

SOPHIE SCHNIETZ 3/3/20



**FAUCHER FAMILY FARMS
SNAPSHOTS
CREATING A NEW 'PECKING ORDER'**

I am the proud farmer of 10 new chicks! Well, they were chicks in February. They are now little hens. My flock was reduced by half this winter by some nasty raccoons who outsmarted me. I won't integrate the lil' girls with my five older hens until the little ones are almost fully grown. Hens form tight-knit groups and bully new members. Ever heard the term "hen-pecking"? Well, that's what happens when new hens are placed in an older flock.



The Intern wonders whether these chicks could displace her as office Intern in the future.

Imagine our daughters' surprise (Rose, 20, back from Emory University, and Sophie, 24, evacuated from her Peace Corps service in Rwanda, Africa) when they find live chicks in their Easter baskets this year!



Sebastian, my star paralegal, considers joining me in pursuing a secondary career in animal husbandry.

WORTH A THOUGHT

"Anybody who knows about capitalism knows that bankruptcy is an essential part of capitalism."

— Joseph Stiglitz



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 results. Have other legal issues? Call us.

We'll find the lawyer who's right for you, your friends or family.

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Business Vs. Personal

Unpacking Bankruptcy Options



I hope this issue of **The Newsletter** finds you and yours well and staying safe. As promised in the previous issue, the first in this new and expanded format, I explain this time how a business bankruptcy is like a suitcase – in my case, one filled with **The Intern**, as **Sebastian**, **my Feline Paralegal**, seemingly ponders my suitcase analogy.

You'll also meet a **private pilot** whose story helps illustrate how a personal bankruptcy proceeding is often preferable to a business bankruptcy. **Faucher Family Farms** has hatched some new residents, and Karen's **pasta recipe** is one I believe should appeal to everyone who may be sheltering in place at your place.

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