

# The Importance of Corporate Minutes

When a business decides to incorporate, benefits and rights accrue to the corporation, its shareholders and officers under state law. These advantages include, for example, limited liability to the shareholders, and tax advantages for operation as a corporation. Without maintaining accurate corporate minutes, these benefits and rights may be lost. Corporate minutes set the policies for the board of directors, and officers of the corporation, these directions provide a means for the corporation to maintain its corporate status. Of course, corporate minutes may be a bothersome task, but they may be the proof needed to support a position if the IRS challenges an item on the corporate tax return, or if a third party desires to disregard the corporation for purposes of a law suit.

A corporation does provide limited liability to its officers, directors, and shareholders. However, improperly recorded minutes can result in "piercing of the corporate veil." This means officers, directors, and shareholders can be named in a lawsuit, which may hold them personally liable for corporate debts.

Corporate minutes also help distinguish between expenses and dividends. Expenses may be written off, while dividends are not deductible. If a discrepancy exists, the IRS, generally, will take a position adverse to the question of the expense which may change the expense to a dividend resulting in double taxation for the shareholders. In addition, if a corporation fails to keep minutes, the IRS can consider the shareholders of a closely-held corporation as individuals not operating as a corporation. This may lead to an allocation of net income to the shareholders at higher individual tax rates.

Corporate minutes may support justification of reasonableness of an employee's salary rather than a disguised dividend. Also, minutes can justify increases in salary due to job performance or exceptional skills. The imposition of an accumulated earnings tax may be waived if the corporation shows that accumulation was for a valid business purpose. A properly maintained minute book also substantiates fringe benefits, and employment law liabilities.

While accurate corporate minutes may help to prove the existence of a corporation in a lawsuit, they can settle internal disputes as well, for example, the acceptance of contracts, approval of mergers, authorization of loans, and compliance with governmental regulations. The corporate minutes are in place to inform and to protect the employees of a corporation. Basic topics for inclusion in the minutes:

- Ø Election of the board and officers
- Ø Statement of corporate policies
- Ø Declaration of dividends
- Ø Authorize contracts involving the corporation
- Ø Compensation of officers and key employees

- Ø Loans to or from officers or shareholders
  - Ø Plans liquidating or reorganizing the company
  - Ø Intended use of corporate retained earnings
  - Ø Purchase, lease or sale of assets, including property
  - Ø Write off of accounts receivable as bad debts
  - Ø Acquisition or sale of treasury stock
  - Ø Investigation of new business opportunities
  - Ø Start of business operations in other states
  - Ø Initiation, amendments & termination of retirement plans
  - Ø Issuing and selling stock
  - Ø Approval of financial statements
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