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# Consulting-1-Introduction

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Any corrections, errors or additions? Please let us know!

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## 1. Success Models

Some people want wealth as a consultant. You can certainly achieve that. In fact, consulting is one of the most profitable businesses you can be in.

Others don't seek wealth, but time. They may only want to work two days a week, and have fun the other five. You can also achieve this in a consulting business.

The truly successful are those consultants who are working only as much as they want to, making as much as they want to, and are leading the life they want to.

This manual will hopefully give you the freedom to reach that success yourself - however you define it.

## 2. Crowded?

Throw a nickel up in the air, and odds are it will land on a consultant. Seems like every fourth person you meet nowadays is calling themselves a consultant. For many, it is a substitute for admitting that they are unemployed. Others have honestly decided that they want to be consultants. Few however are being very successful at it.

I don't mean by this that few are making good money. Many are making more money than they ever dreamed possible, but are not achieving success. They may have disintegrating families or a stressful life. Others are making very little money, but are successful.

## 3. Growth

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If there was a business to focus on that had a rosy future, consulting may very well be it. The demand for consultants continues to grow, and doesn't appear likely to diminish anytime in our lifetimes.

There are an incredible number of people starting small businesses now, a higher percentage than at any time this century. Most of them don't really know what they are doing, and turn to consultants for help and advice.

Large businesses are downsizing, rightsizing, spinning off and refocusing. I even heard one company calling it reverse employment. Whatever the term used, the end result is that there are usually less people to do the job, and an increasing amount and complexity of work. These businesses know that it makes much more sense to hire a consultant than to hire additional employees.

It may be a good idea to elaborate on these benefits and turn them into a sales sheet format. Include this when going for work at companies that might be looking for an employee, but should consider an independent consultant. You can browse the help wanted ads and send these companies a proposal.

Why? There are many complications and additional expenses when you hire employees. There are employer's contributions to Social Security, unemployment insurance, and workman's compensation plans. Typically there are a range of benefits that are expensive for the company, from child care to contributions to a retirement plan. The employee will need to be supervised and periodically evaluated. At some point they will expect promotions and raises. There is always the risk of asking the wrong question during a hiring interview and being sued for discriminatory hiring practices, and at the other end a risk of wrongful termination lawsuit if the employee must be fired. An independent contractor or consultant has none of these expenses or problems.

## 4. Change

The consulting field, like all others, is being swept by change. New focus areas include the Internet, ergonomics, and electronic commerce. Recently there was a huge number of consultants finding work to solve the Y2K problem. (The Year 2000 problem, in other words, that is caused by many computers using only the last two digits of the year, and thus not recognizing that Jan 1, 2000 is after December 31, 1999.) Of course, that fizzled out into a non-event. Still, it made a lot of consultants quite a lot of money.

Other areas of increasing focus - and work - for consultants include the boom in international trade, increasing intercultural work, new technologies in telecommunications, the shift to managed health care, alternative medicine's resurgence, and the changes brought about by changing demographics (the population getting older, immigration flows, etc).

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Of course, there is always work for management consultants to help companies find and keep that competitive edge, to streamline processes and operations, to teach managers.

## 5. Advantages

### High Income

Consulting is traditionally, and remains, one of the most highly profitable businesses one can start. Combine the high fees that many consultants command with their low overhead - their #1 asset after all is between their ears - and it's clear why many enjoy a very good lifestyle

According to Money Magazine, management consulting is #2 on a list of the top 10 home based businesses in terms of earning potential. For an average of \$3000-\$5,000 investment - much of that being in a computer system - successful consultants can look forward to up to \$300,000 per year in earnings.

The minimum wage for a consultant nationwide appears to be about \$45 an hour. There may be those who charge less, but they are probably not really consultants, but rather technicians for hire. The average appears to be \$100-\$200 per hour. The most expensive consultant that I know of gets \$3600 per hour, with a four hour minimum.

### Flexibility

There is a natural benefit built into the consultant's work, in that we are constantly having to learn new things. Every job should be exposing you to things to do and problems to solve that you have never done before.

In fact, if you find yourself doing the same thing over and over again, you really aren't consulting, you are a technician. Nothing wrong with being a technician, but a consultant should be constantly challenged to learn new things.

Your work will change from client to client and job to job. You might have to teach seminars at one client's place of business, lead a team in an exercise at another, study efficiency in a third, and send all of your time going through reference material at a fourth.

### Mental Challenge

Remember, consulting is problem solving. Your mind improves the more you challenge it, and consulting allows you to give it all the challenge it can handle.

You will also be challenged by working with people of very different personality styles. Your mind will have to learn to adapt quickly to achieve the best results.

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## Independence

For most of us, being our own boss is a new experience. It requires an entirely different attitude from being an employee. Whereas the employee is necessarily subservient to the boss, as an independent consultant your relationship will be more like a partnership. Oftentimes, one of the most valuable services you can provide as a consultant to your client is to tell them when they are doing something stupid. An employee would be afraid to, you must.

## Prestige

There is a natural prestige associated with being a successful consultant. You'll likely have articles published, have articles written about you, and perhaps even author books. You'll be a guest on radio talk shows. You may give public seminars, classes and talks. Over time, people will come to recognize you or your name, and you get to be known as an expert.

You'll be mixing, both professionally and socially, with the leaders of companies or organizations. If you're consulting to the head cheese, the lower ranks will likely show you respect as well.

You can of course also have all the trappings of wealth that tend to be status symbols among those who are impressed by such things. You can have the Jaguar or Rolls, the Rolex watch, the hand tailored clothes. Personally, those things mean nothing to me, but there is no doubt that having them would impress some.

## 6. Disadvantages

It's only fair that we mention the disadvantages of consulting as well as the advantages. They in particular may cause problems for the beginning consultant, used to being a wage slave. With experience and the right attitude, you will find these supposed disadvantages turning into pluses in your mind.

### Uncertain income

If you don't have consulting contracts, your income will drop off almost immediately. After you have been in business for some time, you may develop sources of long term and residual income, but as a self employed consultant your income is mostly determined by the size and frequency of your contracts.

### Lack of predictable routine

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Most people are used to a fairly regimental structure lifestyle. From the time we are toddlers, we are told when to get up, when to eat, when to work, when to take a break. In grade school, you are supposed to be in your seat at a certain time until class is dismissed. You get an occasional recess, and a lunch period.

Think about it. There is little difference between grade school and the modern workplace. You're on time to work instead of class, and coffee breaks substitute for recess.

When you are a consultant, you are now in charge of the next five minutes, the next five hours, the next five days of your life. They are literally yours to plan, to do with as you wish. For some, that's a blessing. The lack of structure can be scary for others.

### Risk of failure

You should become used to succeeding as a consultant, but you must also be prepared to fail. More accurately, your clients may fail.

Perhaps you are called in to increase profits for a business. Yet the company goes bankrupt. The temptation is to feel guilty about this, and count it as a black mark against you.

Reality however is different. You as a consultant are giving advice. Rarely do you have any control over the implementation of your ideas, or the operation of the companies or groups you consult with. If every one of your recommendations was acted on in just the way you suggested, and if the bankruptcy came about directly because you gave bad advice, then in fact you did blow it. Fine. Learn from it. Most likely though your clients did not act promptly on your advice, or had other problems in their organization that caused their downfall. Learn from them as well.

Some consultants have a much higher rate of client failure than others. If you are going to specialize in troubled business turn-arounds, for example, you can expect to save only a percentage of the businesses that call on you. Many are going to be too far gone to save. Your successes will be fewer, but they will be more dramatic as well. On the other hand, if you are consulting on learning how to use Windows for computer novices, your success rate may be 100%. Every one of the people you consult to learned the basics of how to use Windows.

### Many hats

As a self-employed consultant, you are responsible for everything in your business. You'll be in charge of the bookkeeping, the marketing, the filing, the actual consulting, and often even the cleaning of your floor.



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You may be called upon by a client to teach a seminar on something, and find yourself publishing manuals to support the seminar. You develop a marketing campaign for a client, and also help them learn how to back up their hard drive data. This is often much different from the wage slave world, where you might be hired as a specialist doing one thing. Being independent means being much more flexible, and much more willing to take on additional responsibilities and tasks.

## 7. Should You?

### Are you good enough?

There is a dark secret in the consulting world. Especially for those who shift into consulting from a full-time job, there is a rather unreal quality to this new field.

It's called "the fraud factor." If you were getting paid \$18 an hour in your past salaried life, what right do you now have to go in and charge \$180 an hour? What makes you deserve that kind of money? You don't even have a degree in the subject!

The fraud factor is like a little demon at the back of your mind, and it affects all consultants, no matter how experienced or well paid. You feel a little apprehensive about quoting rates. Your natural fear is that somebody is going to challenge you on your qualifications or how much money you charge. Challenge your experience.

Relax. It won't happen. I have been a successful consultant for years, and have never had somebody ask to see my degree, for instance. Which is good, because I don't have one.

You are getting paid for identifying and solving problems, and/or teaching others to do so. You are worth whatever the company that hires you agrees to.

Odds are, you have some experience, background or knowledge about the field you are going to be consulting in. You are good at what you do best. The only real difference between doing the work, and consulting, is that the consultant must show others how to accomplish the task.

You are a consultant when you say you are. You are a professional consultant when you have somebody pay you for your advice. There is no degree required, no certification, no requirements at all. Just you and your mind. Yes, you are good enough.

### Are you determined enough?

Realistically, it will be some time before you get enough consulting assignments to be self supporting, let alone be making any real income.

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In the beginning, it is easy to become discouraged. In fact, this "becoming a consultant" might seem like the stupidest idea you've ever had. You are tempted to give it up and go find a "real" job. If you stay with it and continue to market vigorously, you will start getting more and more contracts, and start making more and more money. I wish I could tell you it would take two months, or six, or ten. At some point though, you'll know. You'll be getting calls from referrals that you weren't expecting. You'll be winning better and better contracts. You'll realize that you really are a successful consultant.

### ***Press On.***

*Nothing in the World Can Take The Place of Persistence.  
Talent Will Not; Nothing Is More Common Than Unsuccessful Men  
With Talent.*

*Genius Will Not; Unrewarded Genius Is Almost A Proverb.  
Education will Not; The World Is Full Of Educated Derelicts.  
Persistence and Determination Alone Are Omnipotent.  
- Calvin Coolidge*

### **Are you resourceful enough?**

The terrible consultant knows nothing, and doesn't know where to find it. The bad consultant knows only a little bit, and tries to bluff their way through. The good consultant knows some, and knows some sources to get help. The great consultant may not know any more, but has an extensive network of contacts and a huge number of resources at their disposal. It's not what you know, but knowing where you can find out that counts.

One of the keys then is to begin gathering sources of information and potentially useful contacts. Start building your business library and your Rolodex™ or equivalent.



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# Consulting-2-Business Boot Camp

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Any corrections, errors or additions? Please let us know!

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## 1. Choose A Niche

Decide early on what your specialty is going to be. Don't try to be "everybody's consultant." You don't have enough resources to reach everybody. Specialize in a type of business you will consult to, or a geographic area you will saturate. Be a business consultant to dentists, or computer makers, or research non-profits. The choices are endless, but specializing will allow you to target your marketing and to become known in the field.

## 2. Plan Of Action

Whether or not you have a formal business plan, create a timetable plan of action for your business. Give yourself deadlines. If you don't, you are likely to find yourself among the millions of Americans who say they would like to start a business someday. The operative word is "someday." A sample POA is included at the end of this manual.

The habit of writing out POA (Plan of Action) will serve you very well, and will be of benefit not only in managing your own affairs but as a tool you can provide clients, and even instruct them in.

## 3. Get Legal

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The first step to getting your business started has to be to get your business license. This is usually a state or provincial government requirement, but the real reason to get one is Federal.

Once you are officially in business, you can deduct from your taxes any expenses associated with getting your business up and running. These include such things as equipment purchases such as computers, seminars and manuals, professional subscriptions and the like. If you are not yet in business, the same expenses are considered personal expenses, and not deductible. While it is possible to claim the deduction without having obtained your business license, the lack of one could be evidence for the IRS to disallow your deduction, and conversely having one is the simplest evidence should the deductions be questioned.

Note that you do not need to be making sales yet, and in fact you need not make any profits for some time. The IRS has a guideline that you should make a profit three out of five years or risk having the expenses termed hobby expenses instead of business expenses. This is a guideline only. If you could prove that you were seriously trying to run a business, could demonstrate vigorous marketing efforts for instance, but had not yet made a profit, there is little likelihood that you will lose the deduction.

In most states, the state business license is a relatively simple matter. You should also inquire about a resale number. This will allow you to purchase items from wholesalers without having to pay retail sales tax. You collect sales tax later from your customers and then forward that money to the State.

Your local city, town or county government may also require a business license in addition to the State license.

One word of caution - I cannot advise anybody to do anything illegal. However, if you are planning on operating a home-based business, be aware that many places have prohibitive ordinances in effect. Inquire anonymously what the restrictions are in your area, and then decide if you want to proceed or not. Many people are operating their business without the local license, just because of the stupid ordinances in effect. Paul and Sarah Edwards, prolific home business writers, estimate that only 1 in 15 home businesses is completely legal.

If your community does have bad restrictions on home based business, I encourage you to join a local association for home based business owners and work to get the rules changed. The zoning laws were an industrial age invention that have not kept up with the rapidly evolving post-industrial economy. The old idea of commercial staying in a commercial area, and residential in a residential, is being shaken by the huge movement towards home based businesses.

## 4. Business Taxes

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As mentioned, one of the main reasons for getting your license is to be able to take business deductions. You will be able to deduct almost all the expenses you incur in order to get your business up and running. These include such things as a computer, software, professional books, professional newsletter and magazine subscriptions, dues to belong to business associations, all your office supplies, etc.

You will also be able to take the home office deduction. This is a new change for many consultants as a result of the tax bill signed in 1997. Many were previously denied this deduction because of a clause called the Soliman Ruling, which said your home office had to be where you made your money. Prior to 1997, the IRS would say consultants actually made their money in the workplaces of their clients, and so disallow that deduction. Now, as long as your home office is an area used regularly and only for business, and you have no other office space, you can take the home office deduction. If your home office is 25% of your total living space, then 25% of your rent or mortgage, 25% of your utilities, etc are deductible from income earned by your business. Of course, as always, check with your accountant.

You will have to check with your state Department of Revenue (or whatever the state taxation authority is) to determine if your consulting service is subject to sales tax. If so, you'll need to charge your clients sales tax on your rates.

Most states don't charge sales tax on consulting services. However, the line can be very thin at times. In most states, if you charge clients for any physical product (for example, you bill them for each copy of an employee training manual you created for them) sales tax must be collected.

## 5. Client Protection

Another important reason to get your business license is to increase the likelihood that you will be hired as a consultant. Many businesses are afraid that the IRS might reclassify you as an employee, which would be very expensive and troublesome for them. One of the ways they can defend your independent contractor status is if you are fully set up as a business of your own - licenses, business name, business cards, etc.

## 6. Consulting Advice

One of the surprising things I've found as I have done consulting to consultants, is how reluctant many are to ask for advice and help. After all, we are in the business of convincing others how important and sensible it is to get outside help. Too many consultants however try to go it alone.

I'm not advocating employees, but rather that you enlist people to help you and help your business. At the very least, a consultant with expertise in areas you aren't expert in can help you build and grow your business.

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Besides your business consultant, you should seek out the opinion of a trusted core of people. Just like a large corporate CEO will have a board meeting with his or her department heads, you should have a body of people that you can turn to. I recommend you set up an advisory board for your business.

## 7. The Advisory Board

The following people are recommended to be on your Board. You can of course make adjustments, adding more strength in areas where you feel particularly weak. If you don't have much experience in or aptitude for sales, then perhaps you'll want to add a professional salesperson to your board.

### Business Consultant

Certainly a business consultant should be included. These people tend to specialize in one field or another, such as marketing, but most have a good grasp of business in general. More importantly, like you they are consultants, and so know what the consulting business is like, what is required, and can provide wonderful help.

### Banker

A banker can be a wonderful source of assistance and information. Not only can they be a valuable resource to have in your corner if you decide to get financing for your business, but they also can lead you to potential clients. Many people who are starting a business or expanding a current venture go to the bank for financing. The banker often looks over their business plan and sees that they need assistance in one area or another - assistance which they can be recommended to obtain from you.

While bankers normally cannot recommend a sole source of assistance and must maintain some degree of impartiality, you can certainly be on the list of two or three that the banker hands out.

Another advantage of having a banker in your corner is of course for financing assistance. Whether or not you will ever need to apply for a loan, your clients may. Having a good working relationship with a banker can be of great benefit, and give you a value to your clients that you otherwise wouldn't enjoy.

### Attorney

I like to have two attorneys that I can turn to. One I call my "tea drinking" attorney. This is your "Ben Matlock" type. Somebody that is easy to talk to, that will give you wise counsel, who can keep you out of trouble.

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The second attorney I call my "leg taking" attorney. Others might call this type of person a shark. He or she is the sort of lawyer that if you "sic" them on somebody, they won't let go until all the blood is drained. These folks are relentless, ambitious, and their bark is matched by their bite. You may not want to socialize with them, but if it comes to pressuring somebody to pay up an unpaid bill, or comply with an agreement, they are valuable. I have never had reason to use somebody like this to sue another, but want to know somebody that I can refer clients to when they need this kind of aggressive help.

### Accountant

Similarly, you may want to find two accountants to advise you. It would be nice to use just one, but the personalities of the two types are incompatible and usually impossible to find in any single individual.

The first accountant type is the Cautious Sam type. They make sure that all your "i's are dotted and t's are crossed." They can advise you on the dangers of any course of action, and are usually very meticulous in their record keeping and organization.

They will also cost you a lot of money, if you rely solely on them. Every year Money Magazine takes a couple's income and has different accounting and tax preparation people figure their taxes. Usually, and in every case in the 1997 April issue, the preparers cost the couple thousands of dollars. Either they were unaware of deductions that the couple were entitled to, or they were afraid to claim them.

So find yourself an "edge-pushing" accountant, especially for your taxes. This person loves finding new deductions that you might qualify for, and new ways to save you more money. They understand that the tax code is a small island, around it is a shallow area of court interpretations, and around that is a deep sea of possible deductions. They say "Let's try this. We probably won't get audited, and if we are, we might be able to win." How do you find these people? Ask others in business. I like to find somebody who is new and wants to make a name for themselves, or is old and hates the government. Ex-IRS agents and examiners are often great edge-pushers.

### Entrepreneurs

Include in your circle of advisors other entrepreneurs who are successful, or are on their way to success. There are no new problems in being self employed, and the wise entrepreneur will learn from the mistakes of others, rather than making their own.

Successful entrepreneurs are also your best source for financing. This financing source is not generally listed in any directory, but successful entrepreneurs fund many start-ups and expansions. This is called "Angel Financing." In most cases, these people have built a business from

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scratch to a position where now they have plenty of disposable income. There is no better place to put that extra money than in helping others to follow in entrepreneurship.

Where do you find Angels? Just look at local people who have built successful businesses. Ask them to come onboard as an advisor. As they come to believe in you and your business, then you may be able to present a proposal to them that makes business sense for both of you. No funding committees, and they usually don't want to take a majority position in your company, as venture capitalists would. Just a decent return for their money is all that is asked.

### Creative

You'll need at least one truly creative type. Somebody to design your logo, stationery, ads and brochures - as well as those of your clients.

### Technical

If you are going to be consulting in a field in which you don't know all the technical details, then having an expert or two on your advisory board can be very valuable. For instance, somebody who knows how to write scripts for a smashing good web site, or knows computer networking, or any other technical area. You as the consultant don't need to know all the answers, just have access to those who do.

### Small business specialist

If your market is going to be small businesses of one kind or another, having an advisor who is knowledgeable about that niche can help immensely. For instance, if you want to consult with restaurant owners, but have never owned a restaurant yourself, then you need to bring an experienced restaurateur onto your advisory board.

### Assembling the troops

The best way to use your advisory board is to have a meeting periodically, perhaps every month. Just as in a large corporate board meeting, you can then present where your company is at, which direction you seek to take it in, and gather advice and suggestions.

### Meeting payroll

This needn't cost very much. Most of the folks will come out for a monthly meeting if you buy dinner. You may have to actually pay the attorneys for their time, but with luck you'll convince them that the dinner and networking is worth it.



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You can also provide the people in your advisory board some no-cost ego strokes. Write each of them a testimonial about how valuable they are to you, on your letterhead. You might include them in a credits section in your brochure or company information sheet - or even on your letterhead!

### Taking advice.

Some of the advice you receive will be great. Some will be much less than great. Remember that you always have the responsibility to make the decisions.

### Secret Bonus

There is an added, and very significant, benefit to having all these people on your advisory board. Since they will begin to feel a part of your business, they begin to take a stake in your business in their minds. They will begin to look for ways to recommend you to others they come in contact with. They become a wonderful source of leads, and can be very influential in promoting you with other groups that they belong to.

## 8. Get Financing

Realistically, you are not likely to get bank financing to start your business - and that is probably good. Try constantly to operate in a non-debt way, and the money you make will go much further. It will also be much less stressful.

I speak from experience in this, and want to advise you also to avoid long-term, non-cancellable leases. I have made a few very bad business decisions, and all of them involved signing leases that locked me into things I wished later to be out of.

Many consultants have a self-financing business, which means really that clients pay you up front or immediately on delivery of your services. I personally work almost exclusively on a payment up front basis - but this is as a result of getting "stiffed" by a client for several thousand dollars. I let the client ride on their bill for a while, and then one day they were gone. Skipped town, house vacated, no forwarding address, etc. I probably could have paid to have them tracked down, and sued for what was owed to me, but odds are they didn't have anything worth suing for at that point. And I am fundamentally opposed to lawsuits anyway.

Whenever possible, get your clients to pay up front. If not possible, be vigilant and prompt in invoicing and be ready to cut your losses if they don't pay on time.

## 9. Get Protected

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## Legal Structure

When you get your business license, one of the things they will ask you is what the legal structure of your business is. There are pluses and minuses to each structure, and you'll have to decide this early on. You have four main choices:

- a sole proprietorship, or
- a partnership, or
- a corporation, or
- a limited liability company.

There are advantages and disadvantages to each. For most entrepreneurs, the easiest and usually most recommended form is that of a sole proprietorship.

The sole proprietorship simply means one owner, and is the "default" form. If you do nothing else, you will be set up as a sole proprietorship. The main feature of this form is that it is identified with and intertwined with you. If the business makes a profit, it automatically is income for you. If the business incurs a debt, it is your personal debt as well. If the business gets sued, you will be sued personally as well.

This is both the strength and weakness of the sole proprietorship. You have complete flexibility, and can instantly shift the direction, policies and focus of your company. Yet if there is a problem, the potential for the damage extending throughout your personal life is ever-present.

The partnership is USUALLY not recommended. It is like being married without being in love! You will know all the bad things there is to know about your partner. It can destroy friendships, and you are completely liable for whatever your partner does. If he or she orders a dozen Chinese junks, and then skips town with the money in your account, not only will you be out the money, but you will be liable for paying for the junks when they arrive.

Partnerships can work, when there is a clear division of responsibilities and abilities. If you are a good negotiator, salesperson and "people person", but your paperwork is usually a shambles, and your potential partner is meticulous and detail oriented, but fears selling and meeting strangers, the two of you are a natural match.

One other way a partnerships may be of benefit is if you need more money than you personally have. Your partner's contribution may be what you need to launch your business.

The thing to do if you do contemplate a partnership, is to have a clearly defined partnership agreement drawn up. Have it checked by a lawyer. The agreement should specify what happens if one of you decides to quit. What if either of your dies? Who will do what functions? How will decisions be made. What if you can't agree? Who will pay for what?

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These things all should be settled beforehand, before they have a chance to cause disruption in the business. Nothing kills a business faster than feuding partners.

The third form of business is the corporation. It is NOT a magic bullet, like some would have you believe. There are two main advantages to incorporation. First, you can have people invest in your company and raise money. Second, because the corporation exists legally as a separate entity, there is a liability shield between you and your assets and the business. If the company gets sued, you may not be. Company debts are separate from your own financial situation.

There are two main types of corporation, the subchapter C and subchapter S. (They refer to subchapters of the tax code).

The C corporation is your "standard" corporation. All the companies listed on the stock exchange are C corporations. You can have unlimited shareholders. If you sell 100,000 shares at \$10 each, you've got a million dollars in capital to work with. The investors can be people, mutual funds, companies, foreigners, whatever.

The disadvantage to the C corporation is that of double taxation. If your business earns \$100,000, the first thing that happens is that a corporate tax is paid. Then if you want to draw a salary (for in a corporation you are in fact an employee), you must declare that salary and pay personal income tax. The same money gets taxed twice before you get to spend any of it. Recognizing the unfairness of this to the small business, the S corporation was formed.

S Corporation income is simply reported on the personal income tax returns of the shareholders, just as income from a proprietorship or partnership would be. In exchange for this benefit, there are limits put on S corporations. You are limited to 35 shareholders (at the time this is written - it may be changed) and they have to be individual people.

Why should or shouldn't you incorporate? You should incorporate if you need the extra trademark protection, if you have significant assets to protect, or if you want to avoid the problems of a partnership but still take other people into your company.

The liability shield only becomes really important when you have a lot of assets that would be vulnerable to business loss or lawsuit. After you get that yacht and the second vacation home in the ritzy neighborhood, you should definitely think of incorporating. In the meantime, cover your liability with business liability insurance.

The newest form of business is the L.L.C., or Limited Liability Company (sometimes shown as Limited Liability Corporation). It combines many of the features of a partnership with those of an S Corporation. It allows the reporting on personal income tax returns of the "partners", but with the liability protection of a corporation. It lacks many of the restrictions that applied to S Corporations.

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Typically, you'll need two people to start an LLC, whereas a corporation in most jurisdictions can be a one-person show. Most LLC's also have an expiration date, when they will automatically dissolve unless renewed. A corporation on the other hand "lives" forever unless purposely dissolved.

For more information, I recommend you buy and read our Special Reports:

### R10510 Incorporate Yourself For Less!

No need for an attorney in most cases. This report covers the requirements - the advantages and disadvantages of incorporation - and how to file at minimum cost.

### R10512 Should You Be A Limited Liability Company?

L.L.C. is going to be almost as common as Inc. after business names. Find out why - and what advantages and drawbacks this business form has. It is particularly of interest for anyone thinking of being business partners with somebody.

## Insurance

The most important insurance you can have is general business liability insurance. This protects you if somebody claims your action or inaction has harmed them, and sues you for damages.

Shop around for insurance. You may find a tremendous difference between policies offered by companies, or even individual offices of a company, since many are individually owned and operated. You should probably have a million dollars of coverage or more, and the cost is relatively low. One of the drawbacks of being in business is that you become a more easily attacked target for lawsuits. You need liability insurance to protect against that.

If you are going to be doing consulting in a technical field, then you should also investigate whether errors and omissions (E&O) insurance would be appropriate. E&O insurance covers a higher degree of liability. Ordinary liability insurance protects against mistakes that an ordinary prudent person shouldn't have made. An example is that a prudent person would not have put a bottle of sulfuric acid near the edge on a top shelf. If you did, and it spilled, you'd be liable. If your business is delivering chemicals, you should have known that a bottle of sulfuric acid should be labeled with a particular hazardous material warning sticker. Your liability is now as an expert who should have known, not just a prudent person.

If you will be using your vehicle for business, you'll need to get a business 'rider' put on your policy, since your normal auto insurance will not cover business use. The same goes for your office. If you are homebased, make sure that your mortgage or renter's insurance is amended to include business equipment and stock that you might keep at home.

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Since you are going to be self-employed, you'll need to explore business interruption, health and disability insurance. Business interruption insurance covers the bills for those times when you cannot work for some reason. Health insurance protects your most valuable asset - you - and helps pay medical bills should you be sick or injured. Disability insurance will provide for you if you are permanently unable to continue working.

You should also explore the possibilities of an umbrella type policy. This is where your different coverages, such as auto, home, fire, property and business liability coverages are bundled together, with a lower policy than you'd pay buying each separately.

## Contracts

Another very important way to protect yourself is to make sure that you have contracts for any work you do, and that the contracts include clauses which limit your exposure.

Always get any agreements in writing. It doesn't matter if you call them contracts or not. The big reason for this ironclad rule of getting everything in writing is that people are not very good rememberers. You and your client may both be perfectly honest, but six months from now both of you will remember a conversation quite differently. Get it in writing.

## 10. Get Informed

The mark of a great consultant is the ability to solve problems readily, no matter what the difficulty. If you have experience in something, you may know the answer already. Without the experience, you must rely on either your network of contacts or your business library to find the answers.

## Business Library

You must begin immediately building a business library. I recommend that you start with one book:

Guerrilla Marketing, by Jay Conrad Levinson. There are a number of books in the Guerrilla Marketing series, and they are probably the best marketing books for small business ever written. Since marketing is the most important determinant of your success, you should begin here.

Other Recommended Books and Publications are found in the resource section at the end of the manual.

This comes from an old story, in which an inexperienced woodsman goes into the woods, and chops down 10 trees the first day. Well satisfied, he sleeps well but is dismayed the next day to only chop down



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9. He gets a good nights sleep, resolved to work harder the next day, but to his surprise, despite extra effort can only chop down 8. So it continues, day after day putting in more effort and longer hours but accomplishing less, till a stranger comes by and tells him to take a day off and sharpen his axe. "Can't take time off," he says. But finally relents and of course after the day sharpening his axe can now chop down more trees than ever.

Certainly there are many books you can buy in the business section of any bookstore. You can also check books out from the library, although to be really useful for you they should be in your library permanently, and where you can mark in the margins, highlight, etc.

Get in the habit of browsing through the books available at second hand stores, thrift shops and garage sales. Pick up any business books you can find, and any that relate to your area of specialization.

### Sharpening your axe

As a consultant, you should never pass up an opportunity to "sharpen your axe."

This is done by attending seminars on sales, on negotiation, on personal improvement, and other topics. If you find just one new technique or tip that you can use, it is more than worth the cost of the seminar. You should also get those motivational cassette tape programs and play them in your car when travelling.

They really do help. When you go to an appointment with a client, you must be at your peak emotionally, mentally, and physically. When others see you, you must appear constantly as one is happy and successful. People don't want to hire somebody who is a failure, or is looking down in the mouth.

### Networking

The other major asset besides your business library - and perhaps even more powerful - is your network of contacts. Your entire consulting career is really going to be a non-stop networking process. Your network - those people that you have access to - should be continually growing. There are three keys to effective networking that I'll pass on. They are indebtedness, continual expansion, and a refusal to keep score.

The refusal to keep score means that you don't try to figure out who benefits more from a networking arrangement. If you have given ten leads to a contact, and helped them out in other ways a large number of times, you don't "cut them off." This is one of those situations where the more you give, the more you'll eventually get.



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Your network should be continually expanding. Keep seeking more people that might be useful to you in some way - and even those whom you can see no use for. Certainly other consultants should be in your contact database, as should leaders in your area of business and your geographic area. But so should many ordinary people.

Your entries should keep expanding not only in the numbers of people, but the variety of people. You want people from all walks of life, from all areas of the country and even the world.

Your expansion should also be in the quality and quantity of data that you keep on your contacts. Harvey MacKay in his book "Swim With The Sharks Without Being Eaten Alive" talks about his MacKay 66, sixty-six things that he wants to know about each of his prospects and customers. He includes all manner of non-business related entries, such as where the contact went to school, and whether they were in the military. While these may not be directly business related, it allows you to build and cement relations. If one mentions that his daughter had just done well in a gymnastics match, you make a note of it. When you get in touch with that person, perhaps months in the future, you can ask how his daughter is doing with her gymnastics. It shows your attention to detail and makes that person feel like they are important to you.

The last key to successful networking is indebtedness. Not financial, but psychological. You want to establish a debt in people's minds - from you and to you. This simply involves asking for and providing information.

When you meet somebody new that you will add to your contact database, make sure that you get all the important data right, such as name, email, phone, etc. But also, ask them an appropriate question which allows them to help you in some way. It doesn't have to be important. Ask if they know of a good printer, or a place to get a good deal on a new muffler, etc. You'll probably get a clue of what to ask for from the contact's position and what they say. It really doesn't even matter what the answer is. The mere act of asking for help puts you to a tiny degree in their debt, and the act of giving help to you plants a psychological seed of caring for you in their mind. They will be more disposed to help you later on a more serious matter.

By the same token, if you find out the contact is searching for something or you can recommend a good deal, you help to create that subconscious debt. The more you can help, the larger the indebtedness. Remember though, never keep score!

There are of course other resources that you can tap into. There are small business development offices run by government bodies or Chambers of Commerce to turn to. The national and state/provincial governments have a large number of publications and offices to assist you in finding answers as well.

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## 11. Get Equipped

Home base

### Computer

You are going to need a computer to be successful in this business. There are simply too many details to manage and you will need to stay on top of all of them. You don't need the latest and greatest technology, but you will need a powerful enough system so that you are not limited from using up to date software. I recommend if you are going to buy one, that you get at least a 200mhz machine with at least 32MB RAM. That will be woefully slow compared to more modern machines - get the most that you can afford.

If you already have an older machine, fine, but plan on upgrading before the end of your first year. A laptop, notebook, or subnotebook computer would be even better, considering how mobile you are going to be.

You will need to have a good printer for preparing proposals and presentations that will impress your prospects and clients. I recommend that you get a color inkjet or bubblejet printer which is capable of 720 DPI. Even better would be a printer which allows you to create tabloid sized output in color. Tabloid size is 11 inch by 17 inch . Folded in half, you have the standard newsletter.

The most important piece of software on your computer will of course be your contact management software. There are many good programs on the market. I recommend Sharkware Pro for the more structured, since it includes the Mackay 66 built in, and Info Select for those who find fitting into a structured format difficult.

Other than your contact management software, any of the good software suites will prove more than enough for most people's needs . You may also want to invest in a program like Quickbooks for your bookkeeping rather than setting up a complete system with your your spreadsheet.

Business today operates by fax so you will need either a standalone fax machine or a fax /modem in your computer. You'll want to be able to fax proposals to prospects and clients, receive RFPs by fax and use it to stay in touch. You can also use one of the many Internet based fax services. I use Efax.com. They give you a free fax phone number - anybody can fax you at that number and the fax is attached to email and mailed to you. That allows you to get your faxes even when you are away from the office - anywhere you can get your email now you can also get your faxes. And it's free.

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A modem is necessary for two purposes. First, it is becoming as common for people to ask for your e-mail address as it used to be to ask for a phone number. Many people prefer to correspond by e-mail. You'll also need a modem because of this box:



That box represents how much advertising space you can buy for \$40 a month in most newspapers. Not much room to tell your story. Certainly not enough to educate the public on why they need you.

On the other hand, \$25-40 a month is the average charge to have your own Internet website, which is available 24 hours a day, 7 days a week to anybody interested in knowing what you can do for them. It's a "no-brainer" - you need to be on the Internet.

You should also have a cell phone, or at least a pager, so that clients can get in touch with you. Many of your jobs will be last minute things, so clients won't be content to just leave a message on your machine.

You'll want to have your telephone calls answered in a professional manner, so invest in a good voicemail system, or hire an answering service to answer in your name. You will probably want to have a separate line for your business calls, and perhaps a third line for your fax/modem.

### Private Mailbox

It is probably a good time to recommend that you start your business using the address provided by a local private mailbox company. Choose one that has been around for a while, and appears to be doing well. Hopefully they will stay in business, so you don't have to change your address. That is about the only problem with setting up a business with them.

The advantages of a private mailbox surely outweigh that risk. You get a business address in a commercial zone. It is a street address, because in some people's minds a PO box might be a fly-by-night ripoff. Your address might be 136 West 5th, Suite 105. Your "suite" is only the size of a shoebox, but that doesn't matter. A private mailbox can get delivery from private carriers. UPS, Airborne, Federal Express can't deliver to a PO Box.

You also gain a degree of insulation between you and those who might just want to "drop by" at odd hours. That is a security plus as well - we live in a strange world!

One last benefit is that a private mailbox company is typically a lot more customer service oriented. You can have them forward your mail anywhere you like. You can call down and ask what is in your mailbox. If nothing (or only bills) you might not need to make that trip today.

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## 12. Get Online

A consultant is expected to be up-to-date with the latest technologies and ways of doing business. You should try to stay on top of all the developments which are sweeping through all sectors of the economy .

Certainly e-mail is a necessity. It's getting to the point where people want your e-mail address just as frequently as they want your phone number . In fact, you can have several e-mail addresses depending on your company, and your clients. For instance, you could assign a different email to each client or project. That way, when messages come in they can be automatically sorted. You will also find it easier to maintain a record of all transmissions in each clients folder. You can also set up autoresponders to automatically send information about your business to those who might inquire.

We've already talked about how important a website is for your marketing. It is also important for your image. They are easy to design and you should be able to find any number of people who can design a good web page for you. Many of the modern word processing and graphics software packages allow you to design your pages in them, and then instantly convert them into HTML formulated web pages. Hosting services continue to fall in price, and you can have an entire webs space of 50 megabytes or more for around 50 dollars a month - often much less.

Your clients want to be able to get hold of you if they have a question or need assistance on short notice. A cellphone and pager can be extremely useful tools for the consultant, and paradoxically the easier you are to be gotten hold of, the less likely your clients are to call. If they know they can find you at any time, then there is no urgency. A pager can reduce the overall bill on your cellular service, since it allows you to see who wants to talk to you and then call via land line.

There are any number of other technology devices which can help your business. It is very easy to get into the trap of thinking that you need the latest and greatest of all the new technologies.. Instead, you should invest in those technologies which are actually going to make you more efficient, or increase your profits.

Some of the new technologies which might be of use to you include voice dictation, wireless modem, CD phone books and mapping systems, GPS and personal data assistants.

Voice dictation allows you to type much more quickly than most people can on the keyboard, and eliminates the risk of carpal tunnel syndrome, an affliction which injures many who type a lot. It also is of great use for those who cannot use a regular typewriter well, and works as well for those with a different accent or speech characteristic as it does for the standard person. The program actually learns how you speak.

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Wireless modems allow you to achieve freedom by permitting your laptop to access the Internet from just about anywhere. They are generally much slower than wired modems, but free you to get your email and faxes anywhere.

CD phone books and mapping systems give you a tremendous amount of data which is useful for preparing mailing lists and finding directions to an appointment. You will never be lost again if you have a GPS, or Global Positioning System receiver.

Personal data assistants are like electronic notebooks which can carry all of your important information in a very compact format. Many can link to your computer to allow uploading and downloading of data.

There are other technologies which also may help, and many more which are in development and concept stages which hold great promise for your work. The point is to carefully look at all new developments and see if and how they can be put to good use in your own company.

## 13. Get Organized

Odds are, if you are going to be an independent consultant, you will be operating solo. That of course means you have to do everything yourself. You will need to have good systems in place to help you manage your time, manage projects, manage clients, and manage your own business growth.

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# Consulting-3-Management

## Contents

1. Project Management
2. Client Management

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Any corrections, errors or additions? Please let us know!

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## 1. Project Management

Project management means the ability to track all the details involved in a project from beginning to end. You must make sure that time tables are created, milestone are established, and progress monitored.

## 2. Client Management

Client management is one of the more difficult management tasks that you will undertake. It is also one of the most important. Your success as a consultant often is dependent upon whether or not one person likes you and trusts your judgment.

### Maintain communications

Your clients are going to want to feel like they are the most important people in your life - even if they are simply client number 200 in your busy client list. Most are very happy, and willing to put up with all kinds of disappointments and delays, if they are at least kept informed. Certainly, bad news never improves with age, so make sure you go to them with any type of bad news. Set up a schedule that says no client will go more than X days without some kind of contact from you.

### Learn how to handle different types of people and ego.

There is a knack to managing people, and as a Webmaster you will need to develop this knack. We encounter a wide range of personality types in this business, from the wild and whacky visionary types, through the straight-laced engineer, all the way to the power-hungry executive. These are stereotypes of course, but believe me you'll meet these stereotypes. If you are doing this as a small business consultant, you'll also be dealing with many entrepreneurial types, who tend to be very optimistic and very independent.



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Here is a basic guide to basic personality types and how to get them on your side. You should of course always be honest and be yourself, but within that parameter you should have the flexibility to deal with others who are also "being themselves." These people management techniques are also extremely valuable when you are trying to sell them on your consulting service.

### Tough Gus

Find what they are most proud of, and praise it. These people often feel like their toughness has allowed them to survive in a rough world.

### Timid Tim

Feels inferior, and is afraid of being taken advantage of. Wears his feelings on his sleeve. Explain in greater detail, talk much slower, seek his advice, compliment him, and keep your promises to him meticulously.

### Wise Wanda

Thinks she is smarter. Is quick to dissect your proposals, finding fault with some and offering suggestions on how to improve. Compliment her, ask for her help and advice on something. These people love to have their advice sought. Flatter their intelligence, and they'll buy.

### Young Kid

There are some very young entrepreneurs out there. They want respect more than anything. Draw out their opinion, and get them to tell their story. Admire their go-get-em attitude.

### Middle Age

Usually quite proud of their accomplishments and material goods. Praise those things. Get them to share some of their contact sphere with you.

### Older Client/Prospect

Has a world of experience, and wants to tell people about 'em. Be a good listener. Make it clear that you regard them as somebody who has a wealth of wisdom to share, by asking their opinion on things not related to the business at hand.

### Talkative Terry

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Usually closes themselves before you finish any sales proposal. Can waste a lot of your time to channel their conversation. Cap their conversation by saying something like "You just said something very important" That may surprise, but they'll stop and listen. Then it's your turn again.

### Skeptical Sally

Get her to agree on minor points. Use proof statements and testimonials, especially from people she is likely to admire. Have statistics and facts on hand, even if you don't actually present them. She wants to know that you've done your homework.

### Stubborn Stu

He fights buying, and has a feeling of inferiority, even if well hidden. Get him to play a role reversal scenario, showing that your position would be his position then. Show the logic of coming around to your point of view. Facts are always a help. Then provide some kind of face-saving concession to make Stu feel like he has not lost.

### Opinionated Olive

She lacks self-confidence. Play on her weakness, letting her know that her opinion is very valuable. If you must correct her, make it non-personal. "I've found out that lots of people have that idea, but surprisingly ...."

### Sarcastic Sam

Super inferiority complex. Makes himself feel bigger by putting down others and their ideas. Feed his ego by listening and taking notes. Talk to him in a calm manner. The use of silence can totally disarm him.

### Lying Larry

Get concrete commitments, pin him down to specifics. Get things in writing, and incorporate penalties for nonperformance. Don't believe what he says, but what he does.

### Bantam Betty

She acts two inches taller than Napoleon. Compliment her on her knowledge. She is a strutter because nobody believes in her. Find out what she is self-conscious about, and treat it as if that doesn't matter at all to you, or is even a plus.

**Conservative Carl**

Opposed to change. He likes any institution as long as it is old. Show him that you too are conservative. Stress how you are building something to last. Avoid radical talk of revolutionary, change and new.

**Indifferent Irene**

She isn't too interested in all this. She may simply be acting bored because she doesn't understand what you are talking about, or she may honestly be bored by the whole idea. Become more forceful and enthusiastic. Stress the fun side, and draw them out with questions.

**Disorganized Dave**

Really is interested, but can't spare the time right now. He is busy, busy, busy, you know. Only he may not be getting much done. You'll need to lay out specific checklists and timetables to keep things on track. Flatter him into being in charge, but offer to do everything for him, "to help out, since he is so busy."

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# Consulting-4- Setting Fees

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6. Project Bidding
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9. Price Negotiation
10. Raising Your Fees
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12. Expenses
13. Price Options

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Any corrections, errors or additions? Please let us know!

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## 1. Overview

One of the most common questions asked by beginning consultants is "How do I set my fees?" There are many options, but most people set their fees in some combination of three basic ways. The first way is by the project, the second is scientifically determined by formula, and the third method is simple market comparison.

## 2. Project Based Fees

Setting fees by the project is how you should eventually be charging. It allows you a much greater earning potential, depending upon the pockets of your clients. Project fees allow you to charge one client much more than another client for the same amount of work. For instance, you might charge somebody who is starting a business on a shoestring a very tiny fee, but if a wealthy individual or big company wants your services you charge a very high rate.

Is this ethical? Is it right to charge one client much more than the other? The answer, like so many questions about ethics in consulting, depends on how you look at it. If you increase profits 10 percent for the tiny shoestring entrepreneur who takes your advice, you may be getting that person a few hundred extra dollars per month. On the other hand, if Bill Gates of Microsoft hires you as a consultant and your advice increases

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Microsoft profits by 10 percent, we are talking millions of dollars. The advice could be the same-but obviously it is worth much more money to the large company.

That is the key to project based fee setting. You need to estimate (yes, often that means guessing) how much your consulting is worth to the client. Perhaps more importantly, what do they perceive you're worth as?

### 3. Formula Fee Setting

The formula method of setting fees is more common and easier to understand. Get your pencil and paper ready, and you can substitute your own values for what we use.

Always the starting point should be how much money to you want to make. Let's assume for this example that you want to make 50,000 dollars your first full year in the business. That would certainly be a modest and very do-able goal.

Next, decide whether you ought to work sold time or part time at your business. If you are going to work full time, that is 2,000 hours per year. We get 2,000 hours by assuming a 40 hour work week and a 50 week year (take two weeks' vacation-you deserve it). 50,000 dollars divided by 2,000 hours = \$25 per hour. This is your labor charge. Or you can look at it as the amount that you will draw from the business.

The next consideration is materials. Most consultants will not have any significant materials cost. You might have if part of your consulting work requires training manuals to be prepared for your clients, for example. If you to have some material cost, figure out what that cost is per hour and add it to your labor charge. Let's assume in our example that there is no materials cost.

Overhead can be a very large percentage of expenses for your business. Overhead includes such things as marketing time, rent or mortgage, printing costs, electricity, etc.. At the end of the year, you will probably have receipts and a very good idea of what you spend, but initially a good rule of thumb is to take half of the total you got when you added your labor and overhead charges, and call that overhead. In our example, the total of labor and materials is still \$25, so our overhead will be \$12.50.

Add the overhead to your labor and materials, and that is your cost rate per hour. For our example, it is \$37.50.

Now if you collected that, you would indeed be able to draw \$50,000. But that is your money, your "salary". Your business also needs to be making a profit over what it pays out in wages, so increase your base rate by a profit margin. How much profit margin is up to you, but perhaps 10-20%. Ours will be 20%, so let's add \$7.50 (20% of \$37.50) to give us \$45 per hour.

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It is a relatively common practice to round up to the next even \$25. You might quote \$50 per hour. It is also common to have a minimum charge, often a two hour, four hour, half day or whole day minimum.

Note that \$50 an hour is an exceptionally low rate to charge for a consultant, but then our example of a \$50,000 income was exceptionally low as well. The key is that the starting point for formula rate setting is how much money you want to make, and how many hours you want to put into it.

## 4. Market Method

The simplest way of determining prices is to spy on what the competition is charging. Call up several other consultants, and see what they charge. Pretend to be a prospect looking for a consultant. You can also see tables and studies of what consultants charge in the industry publications (such as Consulting Profits in the appendix).

As you do this, you'll be trying to determine what the average fee charged is. You'll find the high and the low rates, and then can figure for yourself an average.

So where do you want to place yourself relative to that average? Some might be surprised, but you should always price yourself above average. There are several major reasons for this:

1. People equate price with quality. They really do. If you are one of the higher priced consultants, you must be good. If you are low priced, there must be a reason why you can't command higher fees. That's what goes through prospects' minds. It's the same reason why, if somebody asks you how business is going the only good answer is "fantastic!" People want to hire consultants who are obviously successful - nobody wants a loser.
2. If you are relatively highly priced, you have room for some concessions where you see fit. If you are already operating on a thin margin, you don't have any space to go down at all before you are operating at a loss.
3. Part of your reputation and success will be dependent on your image. You make more money, you can afford to look like you are successful. You'll be able to eat at better restaurants, drive a nicer car, pay admission prices for more prestigious social events - where you will meet people who are willing to pay high fees for a good consultant. If on the other hand you can only afford cheap restaurants and almost-free social events, how many people at those are likely to pay a hefty fee? This is not a judgement call against poorer people, but realistically they are not your market.



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4. People who pay more tend to be easier to work with. It is a true statement that the people who want to quibble about price are also those who will want to quibble about everything else you do. If they feel they are paying more than they can comfortably afford, they are anxious about their decision, and so constantly seek to find fault.

5. There is also a mercenary reason. If somebody is willing to pay you \$100 per hour, and you only charge them \$50 per hour, what are you really doing? You might as well take \$50 each and every hour you work and toss it out the window. If you can afford to do that, then I've got a better idea. Wrap up \$50 each hour and send it to 1713 E 3rd Street, Port Angeles WA 98362. You should always charge as much as the market can bear, or you are simply losing money.

Some typical consulting fees for comparison.:

(Note - These are for rough comparisons only! Use your own market figures instead - each market is different.)

Consulting per day, on-site \$750-\$2500

Consulting per day, off site (research, paperwork, etc) \$500-\$2500

Keynote or other brief speech \$500-\$5000

Half-day workshop \$1000-\$3500

Full-day seminar \$2500-\$5000

Executive retreat, per day \$2500-\$7500

Systems implementation (an example would be succession planning)  
\$10,000-\$50,000

Employee or customer surveys \$15,000-\$100,000

Strategy formulation \$50,000-\$150,000

Organization or department diagnosis \$50,000-\$200,000

Organization redesign/restructuring \$100,000-\$500,000

## 5. Integrated Method

For best results, you should do both the market and cost based or scientific approaches, and then compare. If the market approach shows that slightly above average consulting fees should be around 100 dollars, and your scientific method figuring came up with 200 dollars, you have a problem. Perhaps your expectations are a bit optimistic and you are trying to make too much money in too little time. Or your overhead and perhaps materials expenses are too high. Look carefully at where

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adjustments to your figures can be made. The alternative-and it may be workable - is to simply accept the fact that your figures are high and position your self as worth every penny of it.

If on the other hand you find your calculations much lower than the average consulting fee in your area, you should always raise your fee to at least the average or slightly above. Perhaps you are forgetting something, or are under estimating your overhead expenses.

## 6. Project Bidding

Many consulting assignments require you to quote an entire project rather than a hourly fee. Usually such is the case with government and larger corporation consulting jobs, where the practice is to respond to a Request for Proposals (RFP). In these cases you are bidding in a blind auction with other consultants. The contracting party will make a selection based on the bids received.

Note that in most cases they are not required to go with the lowest bid, but rather with the consulting firm which is most qualified, has the best assortment of services, or has a more reasonable bid figure. Many consulting firms lose bids because they low-ball their bid hoping to undercut the others. They are shooting themselves in the foot, because their bid looks unrealistically low and therefore suspicious.

Bidding on a RFP requires some knowledge of your abilities and how long it will take you to perform a given set of tasks. The RFP will typically describe what is to be performed. Always assume that something will take longer than what you think it will. If you bid on a job thinking you can accomplish it in 20 hours and it takes 200 instead, you will be working 180 hours for free. In rare cases you can renegotiate your bid, but there usually must be some circumstances beyond your control which causes the work to be much larger than originally proposed.

How do you find the RFP's? Look at the government agencies and corporate entities that you would like to work for, and then send a letter asking how you can be placed on their bidder's list. The bidder's list contains all the firms who want that type of assignment, and usually they are sent an RFP when consultants are needed. You can also find RFP announcements in the classifieds of the newspaper, especially business journals and financial papers. In some cases, the office simply posts the RFP's on a publicly accessible bulletin board or clip board. A few are now putting their bid information on the Internet or local public access networks.

## 7. Price Positioning

How high you set your fees will determine of course how much money you can make, but also what type of clients you will serve. A Fortune 500 company executive is not likely to risk ridicule by suggesting that a

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\$50 an hour consultant be hired, when the normal fee for consultants hired by these firms can be closer to \$300 per hour. Similarly, if you want to help people get started in their own small business, most won't be able to afford you if you quote fees in the hundreds of dollars per hour range. This is not to say that one type of client is a better class of person, only better payers. The choice of course is yours. Consider carefully how your pricing structure positions you in the eyes of potential clients.

## 8. Quoting Fees

While the most common way of quoting fees is an hourly, there are many consultants who instead quote by the day, expressing it as a Per Diem rate.

In most cases, you should avoid simply quoting a rate until you understand what the job is going to involve. An exception to this might be your initial consultation fee.

There are many - perhaps even the majority - who use a "free initial consultation" approach as a marketing ploy. I personally think that they are both making a mistake and being slightly devious.

Either your time is worth something or it is not. It takes just as much time for you to travel to a first time meeting with somebody as it does a twentieth meeting. By assigning a price to the initial consultation, you are clearly signaling that your time is worth something. By inference, so are you.

Won't not having a free initial consultation scare off some prospects? The only ones likely to be scared off are those who want to pick your brain for free, and never intend to actually hire you.

In fact, I think setting a fee for an initial consultation actually helps you get clients. This gets into the slightly devious accusation I made. You see, both you and your prospects know that your purpose in any "free initial consultation" is to get them into a paid session. This smacks of a high pressure sales situation to many prospects - a situation they will avoid.

They also know that you are not likely to be very helpful in that "free initial consultation," and what they want most is help.

Your purposes in a "free initial consultation" are to get them into a paying position, not to solve their problem. That is exactly the opposite of what a consulting position should be, so why go through the sham? Why not charge a reasonable fee, and if you and the client can solve their entire problem in one session, consider it a job well done! You won't have wasted any time, will have made some money, and will have a very grateful client. Believe me, clients are often surprised and impressed when you don't waste their time and money. The referral business you gain will be worth it.

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Odds are, you will need more than that first session in order to solve the problem. My normal practice is to quote a set fee for the first session. I don't watch the clock during that first session, but after a while you'll have an internal clock that tells you when something is dragging on. Most of my initial sessions take from 1 to 2 hours, and I tell my clients that up front.

I also tell them that if we both decide we need to work more on this, then I will prepare a written proposal on what I can do, and what it will cost. If they accept the proposal, all they have to do is sign and date it, and we have an agreement (which also is a legal contract.) This proposal process gives me a chance to go away, think about things a bit, do some estimations on time & costs, and perhaps do some background research so I will know more about what I am getting into. I find it invaluable. The time also allows me to craft the proposal in such a way that it almost sells itself to the client.

## 9. Price Negotiation

Sometimes a client will balk at the price, indicating that they can't afford it. Here is another time that some consultants shoot themselves in the foot. They say "OK, you cant afford X per hour, I'll go down to Y per hour." Stupid. What you are really saying to that prospect is "I jacked up the fees to get as much out of you as I could, but since you caught me, I'm actually willing to work for much less." You'll never be able to get your regular fees again - not out of that client at least, and you'd be surprised how quickly other prospects will learn that you can be bargained down.

If a prospect really can't afford your fee, what to do? If you want to work with that prospect, instead of cutting your fee, offer a reduced package. The same rate applies, but you can cut your services down to the bare essentials to make it fit their budget. I sometimes present a "menu" of services, which they can pick and choose based on how much it will cost them. Just like they would order from a menu in a restaurant, keeping an eye on the price column.

Another way to offer a lower price without hurting your reputation and fee structure is to have a very clearly defined discount program. For instance, those businesses which have a business license less than 6 months old qualify for a 25% discount. This is something I use, because it allows me to appear helpful to new small businesses but also has a cut-off point. There is no negotiation, either you qualify or not.

## 10. Raising Your Fees

Since we are talking about adjusting your fees, this is a great time to talk about a practice I strongly recommend. Every year, no matter what, raise your fees. This will accomplish two things:

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It will make you more money. Obvious. But since your overhead is not likely to be much higher, the more money is mostly extra profit.

It will allow you to go after better clients. Alan Weiss, consultant and author of Million Dollar Consulting, says " When you do raise fees, one thing almost always happens: You lose the bottom 15% of your market, both current and potential. But that's okay. We talked...about growing at the top of your market by abandoning the bottom end of your market, and nothing will do that faster than a fee increase. It is difficult at first to turn down business. 'Gee,' the client will say, 'we really want to use you, but we can't possibly afford that amount.' There is obviously no conceptual sale here based on value, and may never be. Some clients aren't interested in value, they are only interested in activity and budget. Those are the ones who will fall by the wayside as a result of fee increases, and that is well and good."

I do not believe in raising current client's fees in the middle of a project, and I think that current clients should always pay less than new clients. My fees go up a certain amount every year. But I communicate to all my clients that this is happening, and delay its effect for one year.

For instance, let's assume (just for purposes of example) that my fee for 1997 was \$65 per hour. In 1998 it will go up to \$75 per hour, and in 1999 up to \$90 per year, and \$110 in 2000. A client I acquired in 1997 will get to keep the 1997 rate through 1998, when their fee will go up to \$75. In 2000 their rate will be \$90, while new customers will pay \$110. In this way, current customers always get a good deal, but I can continue to increase my income.

The same applies if you operate from a basis of project fees or per client fees. Simply increase what you were charging a percentage every year.

## 11. Add-On Work

Make sure that your policy is clear in this regard - your fee covers what is in your agreement. Additional work will mean additional fees. If you aren't careful, some clients will pile on all sorts of extra work without extra income. For instance, if part of your assignment is to lead training workshops, they might ask if you can also prepare and provide workbooks that can be used to supplement the material. Of course you can do that, but it will mean many hours of extra work.

The simplest way to handle this is with a standard reply. If a client asks if you can do something extra, say "Sure, I'll prepare a proposal." That lets them know that there will be a charge, and they can either accept or decline the additional expense.



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This is not to say that you need to nickel and dime your clients. If you want to do something extra without charge, there is nothing wrong with that. We all do it, either because it increases our total value to the client or because we particularly value this client. Just don't get roped into doing extra work for nothing involuntarily.

## 12. Expenses

Some consultants are like lawyers, charging for every phone call, every second of billable time. I think that is a big mistake. Clients will not think highly of you, and relationships will not be strong. Remember, consulting is a relationship business.

I live in Port Angeles. Most of my clients are in the Seattle/Tacoma/Olympia urban areas. It's a 2.5 to 3 hour trip from my home to "the city." Yet I don't charge my clients for any of that time - after all it is my choice to live in this beautiful spot. I look out my back window and have the Olympic Mountains, and I can see the buildings in Victoria, Canada across the Strait of Juan de Fuca from my front window. So that is my compensation for the trip.

If somebody wanted me to consult with them in Sacramento or Minneapolis, of course that would be a different story. It is quite normal to expect such extraordinary travel expenses to be compensated for. I would avoid charging things like local mileage though.

The way I normally work expenses is to include an allowance in the agreement for such ordinary expenses as postage on the client's behalf, photocopying, telephone long distance charges on their behalf, etc. With most small business clients, a \$100 monthly allowance is more than enough to cover most expenses. My contract provides that I can spend up to that amount without getting approval for each item, but spending more than that in one month will require direct permission from my client. This works out well, because the client knows up front how much I will cost them, in consulting fees and expenses.

One of the big fears of people about hiring consultants is that it might be a blank check. Quote hourly fees, and the first thing they think of is "what if this takes a lot of hours?" State that all expenses must be compensated for, and they think "How much will that cost me?" You must reassure them that hiring you is not going to blow their budget all out of kilter.

## 13. Price Options

### Hourly



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The way most people think of getting paid and charging, perhaps because we have been brainwashed by the wage slave world of jobs. It is quite common to have one rate for time spent in your office working, where it probably more efficient, and time spent working onsite at the client's place of business.

### Per Diem

A rate per day, assuming a reasonable amount of time invested.

Minimum - You may set a minimum number of hours or portions of a day.

### Per Session

You charge by the session, regardless of the time involved. While occasionally you might spend longer than you had hoped, clients like it because they don't have to worry about the clock. They also don't have to wonder what the bill will be.

### Project

Your fee is based on the total job, regardless of the number of hours it takes to complete. Clients like this also since it is a fixed expense, although with many the quotation for the whole task may be frighteningly high.

### Retainer

A great alternative to normal time-based billing is a monthly retainer. I found this to be the most popular with my clients, since it is something they can count on and budget for monthly, just like any other recurring bill. You'll have to figure out how much time on average you will spend on this client, and make sure it is reasonable. Almost always however, consulting retainers give the client a break over regular time billing. Nice thing is, you can count on the retainer month after month, and so you know your bills will be paid.

Another benefit of the retainer is that the time invested per month into any given client is likely to decrease with time. You might work like a dog the first month or two, but then put in fewer and fewer hours as your recommendations are implemented and begin bearing fruit. Your compensation per hour soars, usually to far more than an hourly rate would have been. . The client (or more likely their accounting people) get used to paying your invoice for a set amount month after month. It becomes a budgeted for item.

### Contingency

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Bad. Bad, Bad. It's easy to believe that this is a good way to go. Your client will probably be happy, since if a target or projection is not met, they owe you nothing. It is a very bad idea.

The reason is simple. You are a consultant. You give advice. The client doesn't have to implement anything you say. I had a client tell me that they wanted to see if I could increase profits 40% for them. If we met that goal, they would pay me half of the increased profits. I told the client "Fine, move out of the President's Office and have everybody report to me from now on." Of course he wouldn't do that. But unless you have total control in the client's organization, you cannot control the outcome. It is too easy for you to be "disqualified" from receiving a contingency fee.

### Percentage

A percentage fee is almost as bad. The only difference is that with a contingency fee, it's all or nothing. With a percentage fee, any increase in profits would get you something in pay. You might work very hard for a few dollars though. The basic flaw applies - you don't have control.

### Equity

If you want to work with a particular client, and they don't have deep enough pockets to afford your fees, you can certainly take an equity position in their company. You'll need to set them up as corporation if they aren't already, and have an agreed amount of stock given to you as compensation.

Admittedly, this is a gamble. The company might go belly up sometime in the next few years. Or it might just struggle along, and the value of your equity could go down instead of up. You never know. Imagine though if you could have landed 5% of the equity in Microsoft when they were first getting started. Equity positions might just be your retirement check!

### Barter

Another way to work with clients who have little or no money in their budget to hire you. Nothing wrong with driving around on new tires in exchange for an hour of consulting time.

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# Consulting-5-Marketing

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Any corrections, errors or additions? Please let us know!

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## 1. Understanding The Game

Marketing for a personal services company, like a consulting service is an interesting challenge. You have nothing tangible to sell, no tires to kick, no really compelling pictures you can put in a brochure.

It all boils down to a game of numbers, and a game of chicken and egg. Numbers, because like all sales situations, you must be prepared for rejection from the majority of people you approach. Chicken and egg, because it is also true that people tend to hire those who are well-known consultants, and you can't get to be a well-known consultant if you don't get hired.

If you don't blow your own horn, someone else will use it for a spittoon.

Unless you make yourself well-known. This is no game for those who are shy or for some reason hesitant about self-promotion. You must make yourself such a large image, that when they think of hiring a consultant they can't miss you.

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This doesn't mean you should be pompous, act like some important big-shot, or be pretentious. In fact, some of the best self-promoters are among the quietest, most "ordinary-folk" types around. Always nice, always willing to help others, but always looking for ways to promote as well.

Of course, you can't make yourself well known to everybody, unless you commit some major crime and make it on the evening news. So the first move in the game is to define your playing field.

## 2. Define Your Playing Field

I recommend that you specialize in some area of consulting, and in one type of client. My specialty is entrepreneurs, so my focus is constantly on those wanting to get set up in business for themselves. I also have special focus concentrations on three fields: international trade, webmasters, consultants, and Internet marketing. Sounds pretty scattered, but remember that I have been doing this for some time. Each niche was built up over time, and is continuing to be built.

## 3. It's A Campaign

That may be the second thing to understand about the game of marketing your services. It is going to take time. How long will depend on how vigorously you market, and how many contacts you already have. It may be six months, it may be a year before you are bringing in enough money to start enjoying this.

Time is yours to use. Don't panic when after two months of running ads and mailing letters you have nothing to show for it. On average, it takes 9 impressions of somebody seeing your ad, reading your name, hearing about you before they are ready to buy. Too many would-be entrepreneurs give up just about when things were going to start turning around for them.

So plan on your marketing campaign to be a long-term, even lifetime, thing you must be committed to. Don't give up. Don't ever give up. Don't even think about giving up.

## 4. Home On The Farm

One concept that works very well is borrowed from the field of real estate. You probably get regular newsletters and other mailings from a particular Realtor. You get a Christmas card and a New Years calendar from her. You may never even have met this individual, but she seems to have an interest in you. That is because you live in her "farm", the part of town she claims as hers.

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*In the early stages of growing your company your survival and success will depend 90 percent on selling. So you and any staff, must talk about your company and its product everywhere you go - on sale calls; in line at the movies; at PTA Meetings. For the next few years you've a mandate for nonstop selling.*

*- Alan Gregerman, in Success Magazine*

What she is aiming for, of course, is that when it comes time to list your house or begin looking for one of your own, you can't think of real estate without thinking of her.

The idea is the same in consulting. Like a Realtor, any one message you send to a prospect is likely to arrive when they are NOT in the market to buy your services. But you persist. You know that unless you are constantly finding ways to make them aware of you, you might as well have disappeared from the face of the earth. You must work your "farm" on a regular, ongoing basis.

## 5. Making A List And Checking It Twice

First thing to do is to lay out the fence lines of your farm. You can't afford to market to everybody, so specializing in a type of client and a geographic area helps. These are your farm boundaries. It certainly doesn't mean that if called you won't work with somebody from elsewhere. It only gives you a way to concentrate your marketing efforts.

If you are going to concentrate on clients who are dentists on the east side of the city, that is your farm. Your next step is to make a list of these people.

You can compile such a list from the Yellow Pages, but a more modern way is to use a CD phone directory, like Select Phone. It can give you all the dentists (or any other type of business) within XX miles of a certain spot, or all of them in a particular zipcode, etc.

You might also decide to have a market "farm" which extends far beyond your local area. Recognizing that there will be additional expense involved for travel and communications, you can pick any particular sector and compile a list of the companies that do business in that sector.

You can also rent a list from any competent mailing list broker. You should be able to describe your target prospect to the broker, who can then suggest lists which will best hit the target. These lists might come from association memberships, from credit card purchase files, or even from magazine subscriptions. Different lists can be merged together. For instance, a broker can merge a dentist list with one that shows owners of yachts. Now you have a list of well-heeled dentists.

However you get your list, it won't do any good unless you use it.

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## 6. Targeting The Tigers

Let's assume that your target market, your farm, was all the computer software firms in the Seattle area. Certainly you have enough target firms to make a reasonable farm.

Now draw a line through the top 20% of the firms. They are the leaders, but they are less likely to hire you until you have top-notch credentials and a substantial record of success behind you.

The leaders in all likelihood already think they know how to do things, and usually have a number of consultants already.

What you want to target is those under the top 20%. This is where you will find the "tigers," those working extra hard to catch up to and pass the leaders. The owners of these companies are the most eager to find some way to boost their business.

You can still, and probably should, market to the top players in any field, but you'll get faster results going after those with ambition to knock the top players off the top.

## 7. Marketing Warfare

If that sounds rather violent, don't be surprised. The entire field of marketing is dominated by the warfare metaphor. The best marketing books are called Guerrilla Marketing. We speak of advertising campaigns, offensives and defensives.

Continuing the warfare metaphor, the steps to marketing success are:

### Identify targets:

This is the process of building your lists.

### Prepare weapons:

Next you have to prepare mail packages to go out to those prospects that are on your mailing list. We'll cover what should go into the mailing shortly.

### Launch attack:

Get them in the mail. Follow up with phone calls if you are good on the telephone or if you have promised to do so.

### Infiltrate:

You need to be out there physically as well, joining groups where your targets are likely to be members, attending their trade shows, etc.

### Secure objective:



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All you need to do is get one client. Frankly, it doesn't even matter how much you get paid by this one client - do it pro bono for a charity if you like. But you are going to need references and success stories.

Once you do have a client, do everything you possibly can to make them happy. Remember, this first client is the springboard to future success. What if you blow it with the first one? No worry. It just means that the next one will be your springboard, but you will save a lot of time if you capture the first one as a satisfied client.

### Interrogate & enlist:

Ask that first client if they know of anybody else who could use your consulting services. Ask them to help you grow your business. Most will be more than willing to pass along a good word. Get a testimonial written up from that satisfied client recommending you to others, and include that in your next mailings.

### Acquire new targets:

As you go along, you should be continually adding new contacts and new prospects to your database "farm." As you find out about them, send them a mailing and begin follow-up. Companies come and go, needs arise and change, and you should be always marketing, always trying to get more client prospects.

### Repeat:

Once you start actually consulting, don't slack off.  
Repeat the entire cycle over and over and over again.

## 8. Belonging

If you are going to do business with the executives in business or government, or even nonprofits, you have to become a person to them. You have to be where they are, or at least be part of something they identify with.

You should certainly join the Chamber of Commerce, the local Home Based Business Association (or if there is none in your area, a national group like the Olympic Home Based Business Association), and any community business groups.

You should also join any trade associations that your prospects are likely to belong to. If you are targeting the real estate professionals, for instance, you need to join the Association of Realtors. In some cases you will not be able to join as a full member if you don't meet the professional requirements, but most groups have an auxiliary or associate membership status. In most cases, you still get to go to all the

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meetings, trade shows and conventions, but not vote. Your prospects will see you at those events, you don't need to bring up the fact that you are just an associate member.

## 9. Nickel Dime Marketing

There is a marketing techniques which takes almost no money but may very well be your most effective. It is actually two techniques or two behaviors which if you carry them out religiously will reap huge rewards. They must however be a commitment which you invariably carry through with.

First, make a commitment that every day - weekends and holidays included -you will give out five business cards. Or 5 fliers or five sales sheets or five brochures. This must always happen.

If it is 11 p am at night and you have only given away 3, you had best head to an all night supermarket and find somebody to give to cards to.

The key is that it must be done every day. The first time that you do not do this, that old demon procrastination will sneak in. It is just like a New Year's resolution - if you don't carry through every day it will not turn into a habit. If you do, however, accomplish something as simple as passing out five every day, at the end of the first year at least 2000 people will know about you. Five times three hundred sixty-five is 1,825, and some of those business cards will get passed on or posted on bulletin boards.

Now for the ten, or dime part. Every business day, before you begin working, you should have a contact list drawn up . Your contact list should include at least ten people that you will contact that day. You cannot stop working that day until you have reached those ten people. By mail, e-mail, fax, phone or in person is not the real important thing.

What is important is for you to get in the habit of contacting other people. It is very easy in your own business, especially a home business, to "cocoon". To sit there fiddling with your computer display settings, wishing that the phone would ring so you would finally start making some money. If you contact ten people every business day there will be another twenty-five hundred or so people who know about you. More importantly, you will not lose valuable contacts, friends, and prospects by lack of staying in touch.

I can just about guarantee that if you will only do the nickel and dime marketing faithfully, you will have little need for more expensive methods. Your clients base will continue to grow and improve and you will be well on your way.

## 10. Circles

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While on the subject of wasting time, let's be clear about your time management and how marketing must fit into that time. There is only one more important thing than marketing for you to accomplish in any day, and that is making sure that your client is happy. Marketing is the second most important thing.

I recommend that you set aside a certain block of time every day in which you will do your marketing. At least one hour per day will be required. Ideally, you should spend two to three hours a day for marketing.

This should go on even if you have a good, regularly paying client. Many a consulting firm has gone broke because they counted on revenue from a client who either terminated them unexpectedly or went broke themselves. Don't put all of your eggs in one basket.

What will you do with your marketing time? That will include such things as follow-up letters for your clients, direct mail pieces to prospects, meetings for marketing purposes such as Chamber of Commerce luncheons, and of course telephone work.

Think of circles of people. You should spend time developing a number of contact circles or networks. One will be other consultants that you can call on for advice or for overload work help. Another circle of contacts will be those who also are well connected, either politically, through business, or social grouping. Yet another circle of contacts will be information resources providers.

A special circle of contacts are what Dr. Jeffrey Lant calls his Mandarin circle. Like the ancient Mandarins of China, the goal is to have other people do everything possible for you. This network is composed of those individuals who can help you in some way for a fee. For instance, if a client needs a brochure designed, you could do it yourself, but why? Have a desktop publisher who does good work do that for you, and then sell the product to your client taking a small commission for yourself.

You are limited in the amount of time that you have available. The more people that are doing things for you, the less you will have to do yourself. Your best utilization of time is to be giving advice (consulting), marketing your consulting services, or creating new products and services to market and deliver.

## 11. Get Back To Me

Part of your marketing success will be determined by how well you communicate. How well you communicate with your clients so they stay happy. How well you communicate with your networks so that they don't slip away. How well you communicate with your prospects, so they are clear about the benefits of using your service.

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Most of us don't communicate very well at all. Some like to talk, but that doesn't mean they are good communicators. The ability to listen is far more important than the ability to talk.

Fortunately, these communications skills can be easily acquired. There are many books and tapes on effective communications, and I encourage you to study them. Everything from the tone of your voice through your vocabulary and body language all are important factors. You need to study, learn and understand.

One of the best skills to develop is that of skillful listening.

A good listener is worth their weight in gold, and you can become a good listener.

Let's take an initial consultation as a typical scenario. You meet the prospective client, and settle into your chairs. Take out a notepad and pencil. This is important. You need to take notes, because that more than anything tells the other person that you are really listening and paying attention.

Ask them to explain their situation to you, and then shut up and let them go. Most will be more than happy to tell you the whole story. You can continue to show interest to ask a few questions that have simple answers in this process, but you don't want to interrupt their flow.

After they are done, summarize in a very short form what you believe they told you. You don't need all the details, just describe the substance of what you understood. Then lead them through the next part of the consultation with a few probing questions - questions that are not easily answered by a yes or no.

Don't be afraid to not say anything. Silence is something that most people deal with by trying to fill it. If your client tells you something, simply nod your head and be quiet, and the client will shortly say something again, often blurting out what they really hadn't intended talking about. These spontaneous silence-fillers can be a great help in determining what the real problems are.

The next stage is to set some accomplishment goals. If the client needs A, B, and C done, try to find out what a good timetable for accomplishment would be, and what the budget would allow. More importantly, work to define what success would be like in each of the goal areas. The more definite and measurable, the better.

As the two of you develop a consensus on what needs to be done by when, continue to take notes on each item. Then it is time to wrap up that meeting. Tell the prospect that you will submit a proposal to them that gives them the way to accomplish their goals, and options. Now you can go away and put that proposal together.

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If you do this right, then at the end of the meeting the client feels they have been listened to. Since you both agree on the goals and what success meeting the goal would mean, your client is ready to sign.

Of course, once you have a deal, the real communication needs escalate. Use the same techniques in each meeting, and you'll usually do well.

The only exception is if you are expected to make a presentation. We'll cover presentation skills shortly, but for now let me give you one plug. If you have any problem or insecurity about getting up in front of others and speaking, you should go to a Toastmasters meeting. You'll probably want to join, because there is no other way to become an accomplished speaker so quickly and at the same time having so much fun.

## 12. Follow-up

If there is one thing and one thing only that you learn about marketing here from what I have written, I hope it is this:

### Follow-up!

It is also the biggest failing of business today. I could go to almost any business in town and ask them how much money they spend on advertising. They could look in their books and tell me down to the penny. If I asked that same shop owner how much they spend to keep the customers they all ready have, odds are I will get a blank confused look. Those who are a bit sharper, will mention that they send out Christmas cards. But follow-up marketing is so easy and inexpensive compared to other marketing methods, and it is much more effective.

Study after study has shown that getting a purchase from an existing customer is much easier and less costly than getting orders from the public at large. In fact, the average customer is worth 8 to 10 times their initial purchase. If somebody pays one hundred dollars for a consultation, they are worth at least \$800 to \$1,000 to you. They are worth that in repeat and referral business - but only if you stay in touch with them, and continue to market to them.

In order to do this effectively, something should remind you that it has been six weeks since you talked to that person, or whatever the maximum interval you want to have between contacts.

A tickler file works as well as anything. A tickler file is simply a date card file (real or in a computer) that has 365 index cards in it. If you are using real cards, 3x5 is a convenient size. If you are using a computer to run everything, I recommend a program called Info Select. Whichever way you set up your system, the tickler file works like this:

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Everybody has their own card. Every one of your clients, everyone of your networks. On that card you put their name, and how many days it should be between contact with you. You can have varying rates for active clients, inactive clients, casual network people, active lead referrers, etc. That is up to you. I recommend that you don't let any of those intervals be longer than 4 months.

Everytime you make contact, you simply move the card back in the card file the appropriate number of days. It helps to have a calendar handy that has the day of the year function. Every day, before you start the day, you make up your contact list. You can of course do much of it several days ahead if you like. Simply look in your tickler file for the date, and list the people to contact that day. Remember dime marketing - here it is automatically taken care of.

My schedule:

Days Contact Type

2 Active clients with email

2 Active order placers with email

5 Active order placer without email

5 Active clients without email

7 Members of my associations with email (I have several associations I run, including the Olympic Home Based Business Association, the Global Trade Society, Golden Dragon Society, Learnhow.to Insiders Club, Biz\$hop Entrepreneurs Network, and a few others)

15 Active network with email

30 Inactive clients with email

30 Members of my associations without email

30 Prospects with email permission

30 Seminar attendees with email

30 Media network

30 Inactive network with email

30 Casual inquirers with email

50 Inactive clients without email

50 Active network without email

60 Seminar attendees without email



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60 Prospects without email permission

90 Inactive network without email

120 Casual inquirers without email

365 "Dead" File - people with whom I've lost touch, or whom more than a year has gone by without any response from them. I try once a year to locate and renew them, by email preferably.

This may seem like a terribly complex way of doing things, but it really is incredibly simple. It can get costly to stay in touch with everybody by mail or phone, which is why I much prefer e-mail nowadays. Even so, the return is worth far more than the cost even with regular mail.

The form that contact can take is quite varied. The methods I prefer are e-mail, telephone, postcard, newsletter, and letter, in that order. That also tends to correspond exactly to the amount of work and cost for each method. Call me cheap and lazy!

In actuality, people receive a variety. Almost everybody will get a newsletter from time to time, almost everybody gets a catalog at least once a year.

## 13. Renewing Old Friends

Think back on your life. How many friends have you let slip away due to lack of contact? You can fit them right in to the tickler file, so it will never happen again. I just slip them in under either active or inactive networks, depending on how much I value contact with them.

## 14. Get Famous

Do you know any famous consultants? Ted Nichols, Tony Robbins, Dan Kennedy, Tom Peters, Dotty Walters? These are but a few of the more famous consultants. They may or may not be any smarter in their consulting. There are undoubtedly hundreds of other consultants who could give just as wise advice as these. Yet these people command extremely high consulting fees based largely upon their prominence.

Odds are, you know them not because of their consulting, but because of their writing, speaking, and public appearances.

How well known they are automatically brings clients to them. It allows them to charge high fees and command respect. It is not the quality of their consulting which made them famous, although certainly they are good. Rather it is their ability to achieve fame which carries their consulting firms above the competitors.

There are many ways to establish your own reputation, and good solid consulting work helps. But it is not enough. You need to how turn on the publicity. You need to produce written material that can continue to sell for you 24 hours today, seven days a week, 365 days a year. You need to

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get in front of people and make presentations. You need to appear as a guest on media shows. The combination of these can make all the difference between a struggling consultancy and a thriving one. Make the difference between you having to constantly seek out new clients, and you being able to pick and choose your clients.

## 15. Personal Branding

Catch phrases and trends tend to come and go in the consulting field. One of the hottest phrases these days is the epitome of this self promotion. It's called "personal branding".

Think of a woman who seems to be able to do anything around a home. Who do you think of? Martha Stewart. Think of somebody's who is tops in the field of motivational training, and in the sales of motivational tapes. Odds are you think of Tony Robbins.

Both of these people have made such an impact that their names spring to mind. What they have created is a personal brand, just as Camaro is a car brand or as Nabisco is a food brand name.

Just like those consumer brands, they make sure that the brand name is first and foremost on everything that they do. They are unceasing in their promotion activities. Their name is in front of you all over the place. There are many competitors in any field, what personal branding tries to do is make sure one name pops into a prospect's head when thinking of hiring a consultant.

Personal branding is an extremely valuable part of your marketing. No, you may never achieve the prominence of Tony Robbins. Or Zig Ziegler. But you just might! Even if your fame is somewhat less than theirs, achieving a level of fame automatically helps all of your other marketing efforts. The more prominent you are, the less of the other - and usually more expensive - methods you will have to employ.

The key then is not to be shy at all about promoting yourself. Plaster your name on everything that goes out from your office. Put your name in big letters on your work. Yes, it might look egotistical, but what it really is just smart marketing.

Dr. Jeffrey Lant publishes a huge, densely packed book on the subject, which is recommended, called "The Unabashed Self Promoter's Guide - What Every Man, Woman, Child and Organization in America Needs To Know About Getting Ahead By Exploiting The Media." The book has been called one of the best business books in America. Dr. Lant is certainly not shy about self-promotion himself, and has carved out a niche as a non-profit fundraising consultant and as a small business consultant.

How do you get famous? There are many paths, but all have one common element - it takes work to get yourself in front of the public.

## 16. Pro Bono

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At some point, most consultants take on free, or pro bono, work. There is nothing wrong with that. Zig Ziglar, the noted sales trainer and consultant, now gets tens of thousands of dollars per speech - yet reportedly did over 2000 free speeches before he got his first paid speaking gig.

You should take every opportunity in the early stages to get in front of the public, to let people know who you are. Later, when you are famous, you will be able to command high fees for doing so.

Yet I still recommend you to continue free work for those who can't afford your then high fee. In particular, if you have an opportunity to do some advising for a charity, a church, a service group that is doing good deeds, then by all means help all you can.

Not only will you be doing good for your fellow earth dwellers, but you'll also be creating good feelings towards you and your business. You never know when those good feelings might translate into good money. But don't do it for the money. All of us need to help others more.

Of course, there is nothing wrong with making sure that your contribution is mentioned in the literature the good cause puts out. There is nothing wrong with sending out a press release about what the group is doing and your part in it. Don't make it too much about you, but rather about the cause and event, and it will have a better chance of being published.

## 17. Seminars and Talks

There is probably no better method of self-promotion than to get up in front of a group and talk. While this may seem frightening at first, it really does get easier each time you do it. It may even end up being fun!

If you are self-conscious at all about your speaking ability, then I strongly recommend you check out the local chapter of Toastmasters. This is a club for people who want to learn how to speak in public, and the meetings are almost always enjoyable.

You'll get to practice and receive for free suggestions and critiques that are worth thousands of dollars. Even many accomplished professional speakers continue to go to Toastmasters meetings for the help and the good times.

Then begin to talk. It doesn't matter where, it doesn't matter how much they pay you (likely nothing to begin with). This is a craft and an art, and you need to practice. There are all kinds of local groups, community organizations, and social clubs that are looking for speakers for their luncheons and meetings. Just contact them and ask who is in charge of speakers, and you're likely to get a slot rather quickly.

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Once you have practiced giving some presentations, it is time to start getting paid for them. There are really four avenues to success, and you can go down all of them at the same time (although #4 is not likely till you get some success in other areas).

1. Community college continuing education programs offer a wonderful chance to teach adults. You are generally NOT allowed to promote your own business there (even passing out a business card is often a no-no), but you get paid by the hour or by the number of students. And you don't need an advanced degree to teach continuing education classes.

2. There are private adult education companies, such as Learning Exchange in Sacramento and Seattle, Open U in Minneapolis, First Class in Washington DC, etc. They are always looking for good new seminar ideas, and they allow you to do back of the room sales. These companies do all the marketing (mostly including you in their catalog) and registration. You just show up and speak, for a percentage (about 25%) of the registration fees.

3. You can arrange and put on your own seminars. Find a place to hold it, then promote and advertise like crazy. If successful, the big advantage is that you don't split with anybody else.

Another is that you are working on your Personal Branding. It will require a lot of work to market and promote, and there is some risk in doing it this way. But what is that old saying about the more risk,.....?

4. You can sign on with a Speakers Bureau to pitch you as a speaker to conventions, business trainers and others. They will take a hefty percentage, but again you are relieved of the marketing. Obviously, the more famous you are already, the more eager the bureaus will be in signing you up.

Speaking also gives you a great opportunity for BOR (back of the room) sales and follow-on consulting work. I still continue to speak at community colleges and private adult learning centers, despite the relatively low pay, because I usually get at least one consulting assignment from each class. A few of those will continue on to be long-term clients.

## 18. Articles

If you have a published article, guess what? You are now an expert! It is not difficult to do, and can work wonders for your credibility.

Look especially at articles for whichever niche market you are going after. If you want to consult with computer software companies, then you'll want to pitch your article ideas to the trade magazines and newsletters that serve the software industry.

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Always pitch an idea first. The best way to do this is a query letter. Simply describe what your article would be about, and why you are a good person to write it. If the editor likes the idea, they will send you a letter back or call you telling you to go ahead. It may be 'on spec' - meaning they can always reject it later and not pay you, but as your writing skills and reputation grow, more and more will be on a straight fee basis.

Trade publications are always looking for good articles from people of interest to their readers. A good source to find these publications is Writer's Market, which also has articles on how to write your query letter.

Not only will you get paid for these articles in most cases, but you'll also be able to use the article as a marketing tool. The publication may provide 'tear sheets,' or you can simply make a photocopy of the article. Always be sure that you have the right to do so when negotiating with the editor - even though you wrote the article, if you sell it with all rights you'll have to get permission to reproduce it.

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# Consulting-6-Operations

## Contents

1. Follow-up
2. Keeping Balance
3. Contracts & Agreements
4. Time Usage

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Any corrections, errors or additions? Please let us know!

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### 1. Follow-up

### 2. Keeping Balance

### 3. Contracts & Agreements

### 4. Time Usage

## Time Study – Consultants

Where does all the time go? Where should you spend your time?

As an independent consultant, professional speaker or trainer, you probably already know the key skills needed to develop and maintain your business.

You need to have a specialized knowledge base, or a market niche that distinguishes you from your competition.

You need to know how to sell your services. You need to find, cultivate and maintain relationships with new prospects as well as existing clients to ensure you have a steady stream of business.

And finally, you need to know how to administer the business. This includes billing, writing reports, keeping records, tracking expenses, paying taxes and so on.

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But transcending these is the issue of time. What key priorities should you be focusing on? How do you spend your time compared to others? Are you maximizing your productive time and minimizing time wasters?

The information for this time study was gathered from a small, portable electronic device called a TimeCorder. This device, about the size of a videocassette, allows individuals to easily track the time they spend on different activities.

The TimeCorder is programmed with 26 pre-coded activities, each one corresponding with a letter of the alphabet. Whenever a time-study participant presses a button, time starts recording on that activity, like a stopwatch. When the person changes from one activity to another by pressing another pre-coded button, the time stops recording on the previous activity and automatically starts on the current one. It's like a chess clock in reverse and about as simple to use as the average doorbell.

In addition to measuring cumulative time, the TimeCorder also tracks the number of occasions each activity occurs. By dividing cumulative time by the number of occasions, a typical duration is derived. It is the average length of time an activity occurs, expressed in minutes.

## TIME STUDY RESULTS – LONG HOURS!

The first thing we discovered about consultants, speakers and trainers is that they put in a lot of hours. Typically their work week is 60 hours long. This includes lunch and breaks, plus travel time and other miscellaneous activities. It also includes work done at night or on weekends.

Consultants and trainers may work long hours but this is more than they would like. In fact, when they provided estimates of where they would ideally like to be spending their time, the total was only 54 hours per week.

Now let's look at how the total hours break down by category. In tracking their time, consultants, speakers and trainers tracked 26 activities. The activities have been grouped into 6 major categories for

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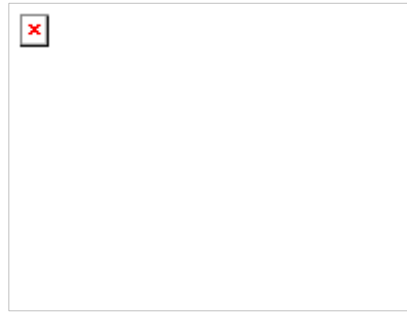
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analysis; selling, customer service, planning, administration, travel and other. The pie chart below shows how these break down. A discussion of each category follows.



## PLANNING HOURS

Planning takes up about 4 hours per week, or 6 % of the time.

Within this category, planning one's day and strategizing takes 1.2 hours per week. That means successful consultants allocate 15 minutes per day for determining their main activities and reviewing how they've done.

The other planning activities that people tracked include developing new products / services / topics and supervising staff. The 2 hours per week developing new business ideas (3% of the week) is comparable to a larger organization spending about 3% of its budget on research and development. This is considered a good target.

## SELLING HOURS

The selling category consists of activities designed to seek out new business. People tracked such activities as marketing, networking, preparing quotes, making sales calls, making sales presentations and writing articles, books or columns.

On average, these add up to 9.7 hours per week or 16 % of the entire 60-hour work week. Consultants tend to be a little higher at 11 hours per week, while the professional speakers and trainers spend a little less time on selling, only 8 hours per week. Typically both groups make about 16 sales calls to prospects each week. Each of these calls lasts an average of 7 minutes. (It's possible that in fact some of these were voice mail messages that were left.)

Sales meetings don't occur that often, just twice per week. But when they do occur, they are in-depth meetings, averaging 78 minutes each. As a comparison, sales reps we've studied only spend 31 minutes in their sales meetings. This is quite a bit shorter than consultants and speakers.

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However, for consultants and trainers selling goes beyond phone calls and presentations. Speakers spend about 2 1/2 hours per week writing articles, books and columns. Meanwhile consultants spend even more time than this; 4.5 hours per week, on marketing related activities. Networking is another way that professionals broaden their reach. Typically both groups spend 1-2 hours per week connecting with others.

One of the challenges for independent consultants is how much time they should devote to writing proposals. While this is a necessary part of the business, those who are successful find ways to minimize activity spent in this area. The average is only 45 minutes per week.

## CUSTOMER SERVICE HOURS

Customer service activities are where consultants, trainers and speakers earn their income. For consultants, this encompasses client work at their own office or at the client's site. For speakers, it's delivering speeches and seminars, generating non-speaking revenue, conducting customer research and adapting existing material.

For both professions, customer service equates to 20 hours per week, or 34 % of the time. So the most successful consultants only spend one-third of their time delivering customer service. This may not seem like a lot, but as you'll see there are numerous other activities you must do to manage your business.

For speakers and trainers, delivering speeches and seminars represents only half of their 20 hours of customer service. Typically they're running 3 sessions of 3 hours each per week. The balance of their service time is spent on preparation.

Some speakers also try to generate non-speaking revenue. However, this is only a very small part of their business, taking up just about 1 hour per week.

The consultants' billable time is divided between working from a home-based office and working at their clients' location. In fact, just a little more than half of the time spent on service (11.1 out of 19.6 hours) is actually outside of their own office.

## ADMINISTRATION HOURS

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Administrative activities are those lower priority activities that don't directly generate revenue, but are a necessary part of the job. They include billing, photocopying, buying supplies, going to the post office, dealing with associates, general administration, paperwork, personal training, professional reading and cleaning up the office.

Employees in large corporations spend about 20 % of their time, or 10 hours per week on administrative activities. Consultants, speakers and trainers spend about the same percent (21%) on this category. But their work week is much longer, so the actual hours are longer, adding up to 13 hours per week on administration.

No matter what the group, either employee or independent, the biggest time gobbler for most people is an activity called "general administration and paperwork". Depending on the person, this might include filling out government forms, writing reports, sending service updates, updating databases, and even fixing a computer problem. We're constantly told that administration and paperwork are among the biggest time hurdles. Those who are good at managing their time find ways to minimize paperwork. They delegate to others, they automate them or they standardize them.

Another activity within the administration category is personal training. It's important. After all how can your business improve if you don't improve? That's why consultants and trainers spend an average of 2.3 hours per week on their own training.

Finally, working with associates takes up 2.5 hours per week, usually running 5 occasions of 30 minutes each.

## TRAVEL HOURS

Most of the participants in our study work in a local area. For them, overnight trips are not a priority. Nonetheless travel activities still add up to 6.5 hours per week. This breaks down to 9 trips averaging 45 minutes each. This is much longer than sales reps whose trips only average 20 minutes or so. This is probably because sales reps visit different clients en route, whereas a consultant or trainer makes one longer trip to a single client or prospect during the day.

## OTHER HOURS

The "other" category consists of taking time off for lunch or breaks. It also includes personal business activities such as banking, calling a spouse or friends. Finally, it includes miscellaneous business activities that weren't covered elsewhere in the list we provided to participants.

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In the case of this group, miscellaneous time is relatively small, adding up to only about 45 minutes per week. This equates to 1% of the time. This is much lower than other employees, for whom miscellaneous time usually averages about 6%. What this means is that the activity lists for the consultants, speakers and trainers were pretty well all-inclusive. Whatever small time wasters they experienced were recorded under another activity.

Lunch and breaks usually average about 5 hours per week, consisting of 12 breaks of about 23 minutes each.

The biggest surprise in this category is community work or pro bono activities. The consultants didn't measure this activity as such, but the speakers and trainers did. On average, they spend a whopping 5 hours per week on these activities. This may be because a couple of the participants were involved in high profile projects for their local speakers' association. But they are also the ones who are busy with client bookings. Successful entrepreneurs recognize that a) giving back to their communities will pay dividends in the long term and b) volunteering increases their profile over the short term.

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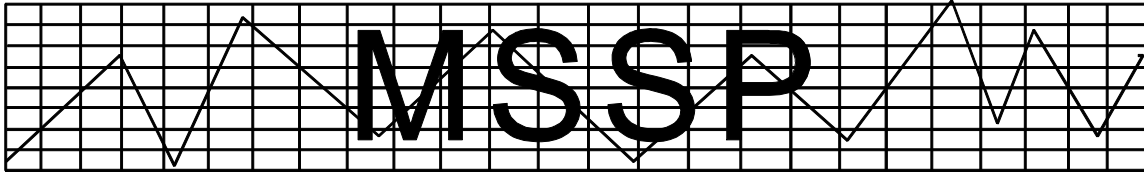
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## Market Segment Specialization Program



# Business Consultants

The taxpayer names and addresses shown in this publication are hypothetical. They were chosen at random from a list of names of American colleges and universities as shown Webster's Dictionary or from a list of names of counties in the United States as listed in the United States Government Printing Office Style Manual.

This material was designed specifically for training purposes only. Under no circumstances should the contents be used or cited as authority for setting or sustaining a technical position.



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## **Business Consultants**

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## OBJECTIVES

Upon completion of this audit techniques guide, the examiner will be able to:

1. Identify and develop issues frequent and/or unique to the market segment.
2. Conduct an examination consistent with other market segment examinations throughout the Service.

## Other Required Material

You will need to obtain a copy of Publication 1976 (09/1996), *Independent Contractor or Employee?* IRS Catalog Number 22927M.

The public can order this IRS Publication by calling 1-800-829-3676.

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# **Market Segment Definition and Overview**

## **INTRODUCTION**

Business Consulting is one of the fastest growing industries in the world today. This trend is a result of many changes occurring in the world economy. During the past two decades, the business community has been downsizing which has caused displacement of many workers. These displaced workers have created a growing industry now known as "consulting". Some of these former employees are now contractors who are engaged by the same company and/or industry which previously employed them.

## **MARKET SEGMENT DEFINITION**

What is "consulting"? The dictionary defines consulting as being employed in giving professional advice, either to the public or to those practicing a profession. Treasury Regulation section 1.448-1T(e)(4)(IV) defines the field of consulting as "the provision of advice and counsel," but exclude sales and brokerage services, "or economically similar services." The distinction between the two is based on the facts and circumstances, but a significant factor is whether the taxpayer's compensation is contingent on the outcome of a particular transaction. Thus an economic analyst, data processing consultant, management consultant, or financial planner is performing "consulting" activities; while a securities broker, computer sales agent, recruiter, advertising agent, or insurance broker is not, although these activities may include some element of "advice and counsel."

Consulting in the practical sense can be anything. It is a common buzzword in the business world. Many people call themselves a consultant, when in reality they may be a broker, a salesperson, a retailer or engaged in a business which is a hybrid. One of the issues facing the industry is an influx of new entrants, many of them managers and executives who have been downsized. They open up shop independently or in collaboration with others. For many displaced workers, consulting is something they say they are doing in the interim while searching for a job. The Bureau of Labor Statistics estimates 8.5 million people worked as independent contractors, independent consultants, or free-lance workers, accounting for 6.7 percent of all U.S. workers in their Current Population Survey (CPS). There are an estimated 5 million home-based workers who called themselves consultants. However, the National Bureau of Professional Management Consultants reported that 70 percent of new consultants drop out in the first year.

Most professions can support a consultant. Consultants find a niche in an industry and provide services within that niche. See Exhibit A for the CPS breakdown of industries and occupations in which independent contractors, independent consultants, or free-lance workers are employed. Consultants are problem

solvers. Most consultants have the ability to decipher a problem and find a solution which they present to their client. Some examples of the fields in which consultants work include:

Accounting	Fund raising
Advertising	Import/Export
Aerospace	Information management
Agriculture/farming	Insurance
Arbitration	Labor relations
Auditing	Litigation
Aviation	Management
Business and business planning	Marketing
Career and vocational counselors	Organizational development
Communications	Personnel
Construction projects	Political
Convention and conference	Public Relations
Meeting planning	Public Speaking
Customer Service	Safety
Data Processing	Sales management/promotion
Engineering	Security
Financial management	Taxes
	Training

The consulting industry is very broad and does not have an overall regulatory body or specific licensing guidelines. However, some consultants hold degrees, certifications or a professional license within the industry that they work.

Consulting is a way of doing business within a particular industry. In general, most of the industry consultants are compensated under a "pay as you go" system. However, contingency fees are a new development in the way some large firms are billing. In these "value based arrangements," the consultant makes the upfront investment in work and doesn't charge the client until the promised benefits are realized.

Since the industry is so diverse, consultants may be able to find guidance in their area of expertise within a consulting association specific to their profession. See Exhibit B for a sample of the various associations available in the United States.

## **COMMON PRACTICES**

Consultants commonly use a "rolodex" system and strategic alliances in order to fulfill their contracts. A "rolodex" system is a collection of companies and/or other individuals with different expertise that a person can refer to in order to obtain various services needed by their company. Normally, there is an informal agreement to make use of each other's services whenever possible. A strategic alliance is an affiliation with other companies whose expertise varies from their own. This is done with the intent of providing full service to a client. Each



affiliate works as a member of a team to fulfill the requirements of a contract. (Thus, these alliances can provide one stop shopping for a client and act as a virtual company.)

## **RETURNS EXAMINED**

This audit techniques guide is based on examinations of sole proprietors, corporations and partnerships completed by Revenue Agents. Background information was obtained from published books and periodicals.

## **INTERNAL CONTROL**

As part of every examination, the examiner needs to evaluate and document the internal control of the business. This is very important in determining the agent's level of reliance on the taxpayer's books and records for the scope and depth of the examination. See Exhibit C for a sample questionnaire.

## **CONCLUSION**

The explosion of the consulting industry is a change in how business is done in a global economy. This audit techniques guide is a tool to be used by examiners to assist in identifying frequent and unique issues associated with the business consulting industry.

This guide is set up to provide the examiner information on each potential issue that may arise in an audit within this industry. Each issue includes an introduction to the issue, pre-audit suggestions, audit techniques to assist in the issue and a law section describing the legal background for each issue.

# POTENTIAL ISSUES

## TRAVEL

### Introduction

There is extensive travel inside and outside the United States within the consulting field. This industry lends itself to significant travel because many consultants have a specialized niche and a broad geographical client base.

Potential areas of concern:

1. Spousal/Family travel
2. Personal travel, particularly out of the United States

### Pre-Audit

When an examiner is performing a pre-audit analysis, he or she should expect to see a separate line item for travel. If no travel expense is reflected on the return, the examiner may want to follow-up to determine if travel expense may be incorrectly characterized on the return. The taxpayer may fail to allocate between the personal and business nature of the expense, as required under Internal Revenue Code section 274. The examiner will also need to prepare pertinent interview questions and request specific documentation on the Information Document Request. See Exhibits D and E.

### Audit Techniques

A thorough interview is very important to find out where the taxpayer's client base is located and how often the taxpayer travels. The examiner should be alert to companion/family travel in and outside of the United States. The examiner can focus on extended travel beyond the actual business purpose and companion travel by testing the large, unusual or questionable items and sampling a time frame (i.e. 1 month).

### Law

To be deductible under IRC section 162(a)(2), an employee's traveling expense must be: (1) ordinary and necessary, (2) incurred in pursuit of a trade or business, and (3) incurred while away from home. *Commissioner v. Flowers*, 326 U.S. 465 (1946), 1946-1 C.B. 57.

An employee's tax home is generally considered to be located at, or in the vicinity of, the employee's regular (or principal if more than one regular) place of business; while performing services there, an employee may not deduct the cost of meals and lodging, even if the employee maintains a permanent residence elsewhere. Rev. Rul. 93-86, 1993-2 C.B. 71; Rev. Rul. 75-432, 1975-2 C.B. 60; Rev. Rul. 60-189, 1960-1 C.B. 60.

If the employee has no regular or principal place of business, the employee's tax home is the employee's "abode in a real and substantial sense." If the employee has neither a regular or principal place of business, nor an abode in a real and substantial sense, the employee is an itinerant and effectively is never away from home. Rev. Rul. 73-529, 1973-2 C.B. 37; Rev. Rul. 71-247, 1971-1 C.B. 54; Rev. Rul. 60-189.

If the employee has two or more regular places of business, the tax home is located at the principal place of business. Rev. Rul. 93-86; Rev. Rul. 75-432; **Markey v. Commissioner**, 490 F.2d 1249 (6<sup>th</sup> Cir. 1974). Thus, expenses of travel incurred while discharging duties at a location that is removed from the principal post of duty (i.e., incurred at the non-principal place of business) are deductible if the other requirements of IRC section 162(a)(2) are met. The location of an employee's principal place of business is a question of fact; important factors include: total time ordinarily spent at each of the business posts, the degree of business activity at each post, and whether the financial return with respect to each post is significant or insignificant. Rev. Rul. 54-147, 1954-1 C.B. 51.

The employee is treated as being "away from home" during any period of employment at a single location only if the employment is temporary. Rev. Rul. 93-86. For this purpose, employment that is realistically expected to last for 1 year or less, based on an objective determination at the time employment is begun, is treated as temporary (in the absence of facts or circumstances indicating otherwise). However, an indefinite or regular work location does not necessarily become temporary because of brief and infrequent work assignments to other locations. **Blatnick v. Commissioner**, 56 T.C. 1344 (1971). Finally, an employee is not "away from home" unless the employee is at the assigned work location long enough to require an overnight stay. **United States v. Correll**, 389 U.S. 299 (1967), 1968-1 C.B. 64.

IRC section 274(d) provides that no deduction shall be allowed under IRC sections 162 or 212 for any expenditure away from home unless the taxpayer substantiates by adequate records or by sufficient evidence corroborating his or her own statement the amount, time, place and business purpose of the expenditure. IRC section 274 and Treas. Reg. sections 1.274-5T(c)(1) and 1.274-5A(c)(1) require that the elements of any expenditure must be recorded "at or near the time" when the expense was incurred. Although not required, these sections contemplate that the taxpayer will maintain a diary, travel log, trip sheet, or

similar documentation while the taxpayer has current knowledge of the travel expenditure. The taxpayer may rely on "other sufficient evidence", but that evidence must be as specific and detailed as to the elements of the expense as the "adequate records provision."

IRC section 274(c) provides rules for the substantiation of foreign travel. For travel outside the United States that is entirely in pursuit of a trade or business, the entire amount of expenses incurred are deductible. However, if a portion of travel is for nonbusiness activities, the taxpayer must allocate her/his travel expenses between personal nondeductible costs and deductible business expenses. No such allocation is required if less than 25 percent of the time spent outside the United States was for nonbusiness activities of the taxpayer.

IRC section 274(m)(3), effective for taxable years after 1993, disallows the deduction of travel expenses incurred with respect to a spouse, dependent, or other individual accompanying the taxpayer unless that individual is an employee of the taxpayer who is traveling for a bona fide business purpose, whose expenses would otherwise be deductible.

Note well that there are also special rules in IRC section 274(m)(1)(A) for luxury water transportation and under IRC section 274(h) for conventions or seminars held outside of North America or on a cruise ship.

## Research Materials

Below list is not designed to be all-inclusive.

- ***Charron v United States***, 97-2 USTC □ 50,852
- ***Pasharikoff v Commissioner***, TCM 1997-208
- Revenue Ruling 79-425, 1979-2 CB 81
- Revenue Ruling 75-169, 1975-1 CB 59
- ***Commissioner v. Flowers***, 326 U.S. 465 (1946), 1946-1 C.B. 57
- Rev. Rul. 93-86, 1993-2 C.B. 71
- Rev. Rul. 75-432, 1975-2 C.B. 60
- Rev. Rul. 60-189, 1960-1 C.B. 60
- Rev. Rul. 73-529, 1973-2 C.B. 37
- Rev. Rul. 71-247, 1971-1 C.B. 54
- ***Markey v. Commissioner***, 490 F.2d 1249 (6<sup>th</sup> Cir. 1974)
- Rev. Rul. 54-147, 1954-1 C.B. 51
- ***Blatnick v. Commissioner***, 56 T.C. 1344 (1971)
- ***United States v. Correll***, 389 U.S. 299 (1967), 1968-1 C.B. 64

## **Uniform Issue Numbers**

- 274-03-00 - Traveling
- 274-08-00 – Substantiation
- 274-09-00 - Foreign Conventions
- 274-10-01 - In general
- 274-13-03 - Luxury Water Transportation
- 274-13-04 - Spousal Travel

## **INDEPENDENT CONTRACTOR VS. EMPLOYEE**

### **Introduction**

The independent contractor versus employee issue is prevalent in many industries. The consulting industry is no exception.

Potential areas of concern are:

1. A former employee coming back to a company as an independent consultant with a minimal break in service.
2. The continued use of the same strategic alliances.

The first potential issue has evolved due to the downsizing taking place in the business world over the past decade. Many employers, in an effort to lower costs, have terminated specialized employees and then hired them back as independent consultants. This allows the employer to lower their costs in payroll and employee benefits.

The second potential issue may arise when a consultant obtains a client for which they do not have all the resources themselves to fulfill the contract. To meet the needs of their client they form business relationships [strategic alliances or use of a "card catalog system"(see glossary of terms)] with other individuals. This can lead to an employee/employer relationship.

### **Pre-Audit**

First area of concern - During the pre-audit phase, this issue may not be apparent from the face of the return. If the return being examined is an individual return, the examiner will want to obtain IRPTRO from IDRS to determine the source of the gross receipts from consulting. The examiner will also want to prepare interview questions to address this potential area. See Exhibit E.

Second area of concern - When the examiner is reviewing the return during the pre-audit phase of the examination, the examiner needs to be alert to large

consulting or contract expenses, or expenses for other services. If the individual incurs significant unreimbursed expenses, this would be a factor in determining an employer/employee relationship. The examiner will want to prepare interview questions. See Exhibit E.

## **Audit Techniques**

When the examiner decides to pursue this issue, the first step is to determine if the individual has a safe haven as an employer under Section 530. The examiner must supply the individual with publication 1976 to assist him/her in this determination. See Exhibit G. See Exhibit H for a questionnaire/workpaper to aid the examiner in reaching a conclusion, as to whether, the individual meets the requirements for treatment under Section 530. If the individual does not qualify for the Section 530 relief, the examiner may go forward with the development of this issue.

First area of concern: This issue is a facts and circumstances issue. The examiner will need to analyze the individual's answers to the interview, as well as the contract (written or oral) between the individual and his or her major client to see if an employee/employer relationship exists. The examiner will want to be alert to behavioral control, financial control and the relationship of the parties. See Exhibit H for more details.

Second area of concern: This issue is also a facts and circumstances issue which the examiner will want to develop based upon behavioral control, financial control and the relationship of the parties. See Exhibit H for additional details.

## **Law**

Section 530 of the Revenue Act of 1978, provides relief for individuals involved in controversies over their employment status with the Internal Revenue Service. Section 530 is not part of the Internal Revenue Code, but may be found in Public Law 95-600 of the Revenue Act of 1978, 1978-3 C.B. 119. The purpose of Section 530 is to shield employers who had a reasonable basis for treating workers as independent contractors from employment tax consequences arising from employment status reclassification by the Service. (IRC section 530 deals with education individual retirement accounts.) Section 530 has been amended by subsequent legislation, specifically; section 1706 of the Tax Reform Act of 1986, Pub. L. No. 99-514, 1986-3 C.B. (Vol. 1) 1, 698, and section 1122 of the Small Business Job Protection Act of 1996, Pub. L. No. 104-188, 1996-3 C.B. 155, 166.

Section 530 should be addressed as early as practical where the employment status of a consultant is at issue exists. Discuss with the individual the reasons why he or she believes they were treated as either an independent contractor or as an employee. Failure to correct an individual's improper treatment of their



"employee" during an examination provides the taxpayer a "safe haven." Thus, it is important to correct employee status.

Section 530(a)(1) terminates an employer's liability for employment taxes under subtitle C, which includes FICA, FUTA, and income tax withholding, and any interest or penalties attributable to the liability for employment taxes. Section 530 provides that, for employment tax purposes, an individual will be deemed not to be an employee unless the employer had no reasonable basis for treating the individual as an independent contractor.

To qualify for relief under Section 530, an individual must meet three general requirements:

1. Required Forms Filed - All Federal tax returns required to be filed by the individual, with regards to the treatment of individuals as independent contractors, must be filed timely.
2. Consistent Treatment –
  - a. The treatment of an individual as an independent contractor must be consistent with the treatment by the employer of any individual holding a substantially similar position.
  - b. A substantially similar position exists when the job functions, duties, responsibilities, the party controlling functions, and the exercise of the duties and responsibilities are substantially similar.
3. Reasonable Basis - Reasonable basis is established under Section 530(a)(2) if the individual can show reasonable reliance on one of the following:
  - a. Judicial precedent, published ruling, technical advice with respect to the individual, or a ruling issued to the individual.
  - b. Reliance on a past Internal Revenue Service audit, if that audit entailed no assessment attributable to the individual's treatment of those holding positions substantially similar to that held by the individual whose treatment is at issue.
  - c. Reliance on a private letter ruling issued to the taxpayer to establish a reasonable basis under Section 530(a)(2).
  - d. A long-standing, recognized practice of a significant segment of the industry based on the geographical location in which the individual does business. For example, *in General Investment Corporation v. United States*, 823 F.2d 337 (9<sup>th</sup> Cir. 1987), the court held that a mining company had a reasonable basis for treating miners as independent contractors because the taxpayer had substantiated that the practice of treating miners as independent contractors was both long standing and well recognized within a significant segment of the local mining industry.

The determination of whether a consultant is an employee or independent contractor is a factual question to be determined upon the consideration of the facts and the circumstances and the application of the law and regulations to a particular case. See *Professional & Executive Leasing v. Commissioner*, 89 T.C.

225, 232 (1987), *aff'd*, 862 F.2d 751 (9th Cir. 1988) and *Simpson v. Commissioner*, 64 T.C. 974, 984 (1975). Guides for determining a consultant's status are found in three substantially similar sections of the Employment Tax Regulations; namely, sections 31.3121(d)-1, 31.3306(i)-1, and 31.3401(c)-1, relating to the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and the Federal income tax withholding, respectively.

In general, it should be noted that IRC section 3121(d)(2) requires the application of the common law rules in determining the employer-employee relationship. In determining whether an individual is an employee under the common law rules, the most important question is the amount of control the person or entity has over the individual hired to perform the services. This control question has been broken down into three areas of inquiry: 1) behavioral control; 2) financial control; and 3) relationship of the parties. Within these areas of inquiry, there are certain factors which indicate the level of control over the individual employed. These factors are set forth in Exhibit F.

These factors have been developed based on the examination of cases and rulings considering whether an individual is an employee. The degree of importance of each factor varies depending on the occupation and factual context in which the services are performed. See Rev. Rul. 87-41, 1987-1 C.B. 296. These factors are not to be applied mechanically as a scorecard, but are to be used as an aid in applying the common law rules. Having determined the relevant factors, consideration must be given to the relative weight of these factors in determining the consultant's status. The auditor will then need to weigh the facts and circumstances of each case and determine a consultant's status accordingly.

Determination of employee vs. independent contractor status is relevant with respect to the following federal tax issues: (1) whether an individual is liable for the employee's share of the FICA tax; (2) whether business expenses must be itemized and are subject to the 2 percent floor on miscellaneous itemized deductions of IRC section 67 or are subject to the adjusted gross income additions of IRC section 62(c) and the itemized deduction limitation of IRC section 68; (3) whether the firm's qualified pension plan must treat the individual as an employee for qualification purposes; and (4) whether the individual has a right to continuing health care coverage after termination for purposes of Consolidated Omnibus Reconciliation Act of 1986, P.L. 99-272 (COBRA). In addition, employee status is also relevant for purposes of determining coverage under or liability for workers' compensation benefits, federal and state civil rights laws, the Fair Labor Standards Act (regulating minimum wage and overtime pay), the national Labor Relations Act (providing employees with the right of collective bargaining), the Occupational Safety and Health Act (regulating safety in the workplace), and the Americans with Disabilities Act (requiring employers to make special accommodations for disabled employees).

For further assistance regarding employment tax issues, contact the employment tax coordinator. For further assistance regarding Section 530 issues, contact the Area Counsel offices or Employment Tax Branch 1 of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities).

## **Other Information**

The examiner should inquire about any Classification Settlement Programs available to the individual. See Chapter 6, Classification Settlement Program (CSP) of IRM 104.6, *Employment Tax Handbook*, for more information.

## **Research Materials**

Below list is not designed to be all-inclusive.

- Misc-Doc: Training Guide - Worker Classification
- Audit Technique Guide for Trucking Industry - Chapter 5
- ***Ren-Lyn Corporation v United States***, 97-1 USTC 50,385 [968 F.Supp 363 (N.D. Ohio 1997)]
- ***La Nails Inc. v United States***, 98-1 USTC 50,438
- Rev. Rul. 87-41, 1987-1 CB 296

## **Uniform Issue Numbers**

- 3121-05-00 Employer vs. not Employer
- 3121-04-01 Employee vs. non Employee

## **MEALS AND ENTERTAINMENT**

### **Introduction**

Given the considerable travel usually required in this industry, there may be a sizeable expense for meals/entertainment.

Potential areas of concern:

1. Personal (i.e.: lack of business purpose)
2. Is the applicable percentage limitation being applied properly (currently 50 percent limitation)
  - a. Travel status meals/entertainment should be limited if not being reimbursed by client.  
(See reimbursed expenses)
  - b. Meals/entertainment in non-travel status

## **Pre-Audit**

The examiner may want to pay particular attention to the limitation of meals and entertainment while in travel status (because many taxpayers are unaware that the limitation applies to meals while in travel status). If no meals/entertainment expense is reflected on the return, the examiner may want to follow-up to determine if the expense may be incorrectly categorized on the return. The taxpayer may have failed to apply the appropriate percentage limitation. During the pre-audit analysis, the examiner will want to prepare pertinent interview questions and request specific documentation on the Information Document Request. See Exhibits D and E.

## **Audit Techniques**

Sample to verify that the taxpayer is complying with IRC section 274. When the examiner reviews the sample, he or she should inspect for substantiation purposes, and verify that the taxpayer has properly applied the limitation to all unreimbursed meals and entertainment.

## **Law**

To deduct meal and entertainment expenses, the taxpayer must establish that the expense was one that was "ordinary and necessary" in carrying on his trade or business. IRC sections 162(a) or 212. The taxpayer must also show that the expense was either "directly related to" or "associated with" the active conduct of such trade or business. IRC section 274(a)(1)(A) and Treas. Reg. section 1.274-2(a).

IRC section 274(d) provides that no deduction shall be allowed under IRC section 162 or 212 for meal or entertainment expenses unless the taxpayer substantiates these expenses by adequate records or by sufficient evidence corroborating his or her own statement. To deduct such expenses, the taxpayer must record: 1) the amount of the expense and a description of each separate expenditure; 2) the time and place the entertainment or meal was provided; 3) the business purpose of the activity, including a description of any business benefit derived or expected; 4) the nature of the business discussion; and 5) the business relationship to the person or persons entertained.

IRC section 274 and Treas. Reg. sections 1.274-5T(c)(1) and 1.274-5A(c)(1) require that the elements of any expenditure be recorded "at or near the time" when the expense was incurred. Although not required, these sections contemplate that the taxpayer will maintain a diary, travel log, or similar documentation while the taxpayer has current knowledge of the travel expenditure. The taxpayer may rely on "other sufficient evidence," but that

evidence must be as specific and detailed as to the elements of the expense as the "adequate records" provision.

Under Rev. Proc. 2000-9 I.R.B. 280, expenses of traveling away from home may be deemed substantiated. The amount of meal expense deemed substantiated by employees, who are reimbursed by their employers (or another payor) is the lesser of the payor's allowance for meals for the day or the amount computed at the M&IE rate for the locality for such day. Section 4.02. The amount that may be deducted on an employee's or self-employed individual's income tax return (after including any reimbursement received) is the amount computed at the M&IE rate for the locality of travel for the day of travel. Sections 4.03 and 7. There is a special provision for taxpayers working in the transportation industry (including truckers). Section 4.04.

IRC section 274(n) generally requires that the amount of an otherwise allowable deduction for the cost of business entertainment and meals be reduced by a flat 50 percent, unless these expenses are being reimbursed by a client.

## **Research Materials**

Below list is not designed to be all-inclusive.

- *Commissioner v Heininger*, 320 U.S. 467 (1943).
- *Charron v United States*, 80 AFTR2d 97-6948.
- Revenue Ruling 63-144, 1963-2 CB 129

## **Uniform Issue Numbers**

- 274-01-00 Entertainment, amusement or recreation
- 274-03-00 Traveling
- 274-08-00 Substantiation
- 274-12-00 Business Meals
- 274-13-01 Entertainment
- 274-14-00 Applicable Percentage Limitation

## **PERSONAL SERVICE CORPORATION**

### **Introduction**

Consulting is a qualifying field within the meaning of personal service corporations. Many businesses that describe their services as consulting may not necessarily meet the definition of consulting outlined in the Treasury Regulations. The definition under Treasury Regulation section 1.448-1T(e)(4)(IV) states that

the performance of services in the field of consulting means the provision of advice and counsel. This does not include services such as sales or brokerage services, or economically similar services.

**Significant area of concern:**

Does a C corporation meet the definition of a qualifying personal service corporation? Reasons for concern:

1. Some C corporations may want to be considered a personal service corporation in order to be able to use the cash method of accounting.
2. Some C corporations may not want to be considered a personal service corporation in order to take advantage of the graduated tax rates.

**Pre-Audit**

Examiners need to be aware that, as stated in the overview, consultants can be anything. Many businesses use the word consulting to describe their services when, in fact, they are not only providing advice and counsel, but are also providing other services. This potential issue is driven by the facts and circumstances. As a result, a thorough interview is vital. See Exhibit E. See also Exhibit D for sample Information Document Request.

**Audit Techniques**

Review the stock record book to verify stock ownership.

Review contracts to verify the facts and circumstances which have been obtained in the interview.

If a determination is made that the taxpayer is a personal service corporation other issues to consider may include:

1. Passive Activity Rules (There is an audit techniques guide available.)
2. Taxable Year (generally a calendar year)
3. Employee-Owner compensation deduction limitation (if an election has been made to use a taxable year, other than a calendar year).
4. Personal Service Corporation formed to avoid or evade income tax.



## **Law**

### **Accounting Method**

IRC section 448 denies certain entities the use of the cash method of accounting. A "qualified personal service corporation" is an exception to the rule of IRC section 448. To qualify as a qualified personal service corporation, the corporation must meet a "function test" and an "ownership test."

The "function test" requires that 95 percent of the entity's activities involve the performance of services in one of the areas listed in Treas. Reg. section 1.448-1T(e)(4)(i). Consulting is one of the areas listed in this regulation. Treas. Reg. section 1.448-1T(e)(4)(iv) defines "services performed in the field of consulting" as the provision of advice and counsel and excludes performance of sales or brokerage services, or economically similar services. In determining whether the services performed fit within this definition, this section advises that you must look to all the facts and circumstances, which include the manner in which the taxpayer is compensated for the service provided. The regulation provides examples to illustrate the distinction between consulting and sales or brokerage services.

The "ownership test" requires that 95 percent of the entity's stock be owned directly or indirectly by active or retired employees engaged in providing such services, their estates, or any other person acquiring the stock by reason of their death. Indirect ownership may be held through a partnership, S-Corporation, another personal service corporation, or a grantor trust and community property laws are disregarded. No other attribution rules apply. Treas. Reg. section 1.448-1T(e)(5)(iii) and (iv).

### **Tax Rates**

IRC section 11(b)(2) does not allow personal service corporations the advantage of using the graduated tax rates. There is a set percentage applied to the taxable income. See Code for applicable personal service corporation.

### **Passive Losses**

The passive activity loss limitations of IRC section 469 apply to personal service corporations to insure that passive losses may not be offset against active income. IRC section 469(a)(2). This section adopts the definition of "personal service corporation" set forth in IRC section 269A, with certain modifications. IRC section 469(j)(2)(A) substitutes "any" ownership of stock for the 10 percent requirement in the definition of "employee-owner." The performance of any services for a corporation renders the person an employee for this purpose, even if that person would be considered an independent contractor for other purposes. Treas. Reg. section 1.441-4T(h)(1). The attribution rules of IRC section 318 generally apply in determining ownership in the personal service corporation,

again modified so that "any" stock interest in a corporation who has "any" interest in the personal service corporation will cause the employee to be considered an "owner" in that corporation.

To determine whether the corporation is a personal service corporation, you must determine whether any "employee-owners" owned more than 10 percent of the stock, by value of the corporation on the last day of the testing period, which is generally the preceding taxable year. You must also determine if the performance of personal services was the principal activity during the testing period. This determination depends on whether more than 50 percent of the corporation's compensation costs during the testing period were attributable to personal service activities. Treas. Reg. section 1.441-4T(f). The final determination is whether the personal services provided by the personal service corporation are "substantially" performed by employee-owners. This determination is made by determining if more than 20 percent of the corporation's compensation costs were attributable to services performed by employee-owners. Treas. Reg. section 1.441-4T(g)(1). If all these criteria are met, the corporation is a personal service corporation and is subject to the passive loss limitations.

### **Taxable Year**

In general, for a personal service corporation, the calendar year is required for the taxable year for all taxable years beginning after 1986. IRC section 441(i). The definition of what constitutes a personal service corporation is the same analysis as discussed above to determine the application of the passive loss limitations under IRC section 469.

### **Employee-Owner Compensation Deduction Limitation**

IRC section 280H limits the deduction allowed for amounts paid by a personal service corporation to employee-owners. This section is only applicable if the corporation has made an election under IRC section 444 to use a taxable year other than the required taxable for a personal service corporation and has failed to meet minimum distribution requirements for the taxable year.

### **Tax Avoidance by Personal Service Corporations**

Under IRC section 269A, the Service has the power to allocate income, deductions, credits, exclusions and other allowances between a personal service corporation and its employee-owners. Three conditions must be satisfied before reallocation may be made under this section. These requirements are: 1) substantially all of the services of a personal service corporation are performed for or on behalf of one other corporation, partnership, or other entity; 2) the principal purpose of using the personal service corporation is the avoidance or evasion of Federal income tax by reducing income or increasing deductions that would not otherwise be available; and 3) the allocation is necessary to prevent the avoidance or evasion of Federal income tax or clearly reflect the income of the personal service corporation or any of its employee-owners.

Under this section, "personal service corporation" means a corporation the principal activity of which is the performance of personal services and such services are substantially performed by employee-owners. Generally, "employee-owners" is any employee of the corporation who on any day during the taxable year owns more than 10 percent of the outstanding stock of the corporation. For purposes of determining "employee-owners," the constructive stock ownership rules of IRC section 318 apply, with certain modifications.

Note that safe harbor protection is provided for certain personal service corporations under Proposed Treas. Reg. section 1.269A-1(c). Generally, a personal service corporation will be deemed not to have been formed or availed of for the principal purpose of avoiding or evading Federal income taxes if the reduction in Federal income tax liability of each employee-owner does not exceed certain amounts.

## **Uniform Issue Number**

- Exception to graduated tax rates
- 269A-02-01 Personal Service Corporations
- 269A-02-02 Employee-Owner
- 280H-00-00 Limitations on certain amounts paid to employee-owner by personal service corporations electing alternative taxable year
- 441-07-00 Taxable year personal service corporation
- Election of taxable year other than required year
- Taxpayer qualified to make election
- Cash Limitation
- Qualified personal service corporation exception
- Function test
- Ownership test
- Disallowed loss and credit (passive activities)

# **NOT-FOR-PROFIT**

## **Introduction**

Examiners need to consider the not-for-profit issue when examining business consultants. This is an area which can easily lend itself to abuse. The use of the word "consultant" in a business title provides an air of legitimacy to the business purpose.

An example of a possible abuse in this area, could be the writing off of a second residence and associated expenses in an exclusive resort. The taxpayer states that he is in the business of health consulting providing services to clients at the resort. The taxpayer is deducting expenses while having little or no revenue.

## **Pre-Audit**

When an examiner is reviewing a tax return and there are small gross receipts, large expenses and large losses, the examiner needs to be alert to the potential not-for-profit issue. This is a Schedule C and/or Subchapter S issue. As such, the examiner will want to run transcripts to review the taxpayer's loss history. A thorough interview is critical in developing this issue. See Exhibit E.

## **Audit Techniques**

The examiner needs to review all the facts and circumstances gathered during the initial interview and the review of the returns, in order to determine if the activity is for profit or not-for-profit. No one factor is determinative.

## **Law**

The "hobby loss" rules of IRC section 183 limit the deduction by taxpayers of expenses from activities that are not engaged in for profit. A taxpayer may deduct expenses that fall under IRC section 183 only to the extent of gross income from the activity during the taxable year. Thus, losses attributable to activities not engaged in for profit are disallowed.

"Activity not engaged in for profit" is defined as any activity other than one with respect to which deductions are allowable for the taxable year under IRC section 162 or paragraphs (1) or (2) of IRC section 212.

IRC section 183(d) creates a presumption of profit intent if a taxpayer's gross income from an activity exceeds the deductions from that activity for at least 3

taxable years out of 5 taxable years ending with the relevant taxable year. There is no negative inference from the failure to meet the presumption test. The taxpayer may establish profit motive even though he fails the test required for the presumption. The Service may rebut the presumption of profit.

IRC section 183 applies to deductions attributable to "an activity." The taxpayer must segregate activities and allocate income and expenses between multiple activities to determine the applicability of IRC section 183.

Although the determination of intent of the taxpayer is subjective, objective facts are used to determine this intent. No one factor or counting of factors is conclusive, and all facts and circumstances must be taken into account to determine profit motive. Treas. Reg. section 1.183-2(b) indicates the following factors are relevant in determining profit intent:

1. Manner in which the taxpayer carries on the activity - Carrying on the activity in a businesslike manner and maintaining complete and accurate books and records may indicate a profit intent.
2. Expertise of taxpayer or advisors - Study of business practices within an activity and consultation of advisors may indicate profit intent if the advice or study is followed by the taxpayer.
3. Time and effort expended by taxpayer in activity - Substantial time spent in the activity with little or no personal or recreational aspects may indicate a profit intent.
4. Expectation that assets used may appreciate -Profit includes appreciation and may indicate profit intent.
5. Success of taxpayer in carrying other activities - Ability to convert unprofitable into profitable activities in the past may indicate profit intent even though no current profit.
6. Taxpayer's history of profit or loss with respect to activity.
7. Amount of occasional profit earned - Large occasional profit may indicate profit intent.
8. Financial status of the taxpayer - Lack of substantial income or capital from other sources may indicate profit intent.
9. Elements of personal pleasure or recreation - The presence of personal motives in carrying on an activity may indicate that the activity is not engaged in for profit, especially where there are recreational or personal elements involved.

Other miscellaneous factors that may indicate profit intent include the presence of advertising and profit sharing with others engaged in the activity.

## **Research Materials**

Below list is not designed to be all-inclusive.

- T.D. 7198, 1972-2 CB 166
- *Brown v Commissioner*, TC Memo 1983-291
- *Ladner v Commissioner*, TC Memo 1982-207

## **Uniform Issue Numbers**

- Activities not engaged in for profit
- Deductions allowable
- Separate activities
- Presumption that activity is engaged in for profit

## **REIMBURSED EXPENSES**

### **Introduction**

Reimbursed expenses are expenses which the taxpayer will recoup directly from their client. These are very common in the consulting industry. They can include travel, meals, products and advertising, among others. Examiners may find one or more of the following scenarios in the taxpayer's accounting system:

1. The taxpayer will reflect the reimbursed funds as income and then take a corresponding deduction.
2. The taxpayer will net the income and the associated expense through one account.
3. The taxpayer will not record the income but will deduct the related expense.
4. Reimbursements provided under nonaccountable plans are taxable wages subject to employment taxes. Reimbursements provided under accountable plans that are in excess of substantiated expenses are taxable wages subject to employment taxes if excess is not returned within a reasonable period of time. See section 62 of the Internal Revenue Code.

Based on these scenarios, the examiner will want to be alert to the tax effect of reimbursed expenses given the taxpayer's method of accounting.

Since reimbursed expenses are very common in this industry, the examiner needs to determine who is responsible for the 50 percent limitation on business meals

and entertainment. If the taxpayer is not being reimbursed the limitation applies to the taxpayer.

## **Pre-Audit**

Reimbursed expenses may be reflected on the tax return in various ways. Some taxpayers differentiate reimbursed expenses as a separate line item, while others include the deduction on the return under the specific expense.

- The scenario of most concern is the deduction of the expense without the inclusion of the reimbursement as income.
- The other area of importance is, who is responsible for the 50 percent limitation on business meals and entertainment.

During the pre-audit analysis, the examiner should prepare interview questions pertaining to reimbursed expenses. See Exhibit E. Additionally, the examiner may want to choose potential reimbursable expenses and request an appropriate sample on the initial Form 4564, Information Document Request. See Exhibit D.

## **Audit Techniques**

The examiner should choose a sample of invoices or contracts and trace the income and reimbursed expenses to the books. This analysis will verify that the income is reported and that a corresponding expense may be deducted.

Additionally, while sampling invoices or contracts, the examiner can verify that the taxpayer has properly applied the percentage limitation to all unreimbursed meals and entertainment.

## **Law**

IRC section 61 is used for the inclusion of income from whatever source derived. IRC section 162 allows a deduction for all ordinary and necessary expenses incurred while carrying on a trade or business.

Treas. Reg. section 1.274-5T(h) discusses the reporting and substantiation of certain reimbursements of persons other than employees. This includes reimbursement arrangements with a client or customer.

IRC section 274(n) generally requires that the amount of an otherwise allowable deduction for the cost of business entertainment and meals be reduced by a flat 50 percent, unless these expenses are being reimbursed by a client.



## **Uniform Issue Numbers**

- Gross income versus not gross income
- Reimbursement for expense - non employee
- 162-00-00 Business Expenses
- 274-01-00 Entertainment, amusement or recreation
- 274-03-00 Traveling
- 274-08-00 Substantiation

## **GLOSSARY OF TERMS**

**Downsizing** — The term used by companies who are permanently eliminating jobs in an effort to decrease costs.

**Hybrid Company** — A consulting firm that not only provides consulting services, but also provides other services or goods. An example is: a computer consulting firm that provides computer consulting services, as well as, the sale and installation of the computer hardware and/or software that they have recommended.

**Job Broker** -- Firms who provide independent consultants to various subcontractors.

**Networking** — A marketing tool used by consultants to generate word-of-mouth referrals. This is done by engaging in activities with other professionals in various industries.

**Reimbursed Expenses** -- Expenses incurred by the taxpayer which are billed to their client.

**Rolodex System** — A collection of companies and/or other individuals with different expertise that a person can refer to in order to obtain various services needed in their company. Normally, there is an informal agreement to make use of each other's services whenever possible.

**Strategic Alliance** -- An affiliation with other companies whose expertise varies from their own. This is done with the intent of providing full service to a client. Each affiliate works as a member of a team to fulfill the requirements of a contract. Such an alliance allows members of the alliance to provide "one stop shopping" for a client and creates a virtual company.

**Value Based Arrangement** -- A payment arrangement used by some consultants where the consultant makes the up-front investment in work and does not charge the client until the promised benefits are realized.

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**DEMOGRAPHICS****EMPLOYMENT BY INDUSTRY**

Total	8.456(million)
Percent	100.0
Agriculture	5.7%
Mining	2.%
Construction	20.7%
Manufacturing	4.7%
Transportation and public utilities	5.1%
Wholesale and retail trade	13.6%
Finance, insurance, & real estate	8.4%
Services	41.4%
Public administration	.2%

**EMPLOYMENT BY OCCUPATION**

Total	8.456(million)
Percent	100.0
Executive, administrative, and managerial	20.7%
Professional speciality	17.9%
Technicians and related support	.8%
Sales occupations	17.9%
Administrative support, including clerical	3.9%
Services	9.1%
Precision production, craft, and Repair	17.9%
Operators, fabricators, and laborers	6.8%
Farming, forestry, and fishing	5.1%

Summarized from Tables 6 & 7 of the 1997 CPS - Employed persons with alternative work arrangement, by occupation and industry respectively.

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## **LIST OF ASSOCIATIONS**

American Association of Insurance Management Consultants  
American Association of Political Consultants  
American Association of Professional Bridal Consultants  
American Association of Professional Consultants  
American Consultants League  
American Institute of Consulting Engineers  
American Society of Agricultural Consultants  
American Society of Architectural Hardware Consultants  
American Society of Consulting Planners  
American Society of Irrigation Consultants  
Association of Consulting Actuaries  
Association of Image Consultants International  
Association of Independent Consultants  
Association of Internal Management Consultants  
Association of Noise Consultants  
Association of Outplacement Consulting Firms  
Association of Professional Communication Consultants  
Association of Professional Writing Consultants  
Association of Profile Consultants  
Association of Quality Management Consultants  
Association of Trial Behavior Consultants  
Consultant's Network  
Consultants Institute  
Consultants on Gender and Development  
Creative Business Consultants  
Independent Computer Consultants Association  
Independent Educational Consultants Association  
Institute of Certified Professional Business Consultants  
Institute of Employment Consultants  
Institute of Roofing and Waterproof Consultants  
Institute of Tax Consultants  
Insurance Consultants Society  
International Association of Career Consulting Firms  
International Association of Merger and Acquisition Consultants  
International Association of Registered Financial Consultants  
Investment Management Consultants Association  
National Association for Church Management Consultants  
National Association of Business Consultants  
National Association of Career Development Consultants  
National Association of Legal Search Consultants  
National Association of Management Consultants

## **EXHIBIT B (2 of 2)**

National Association of Medical Legal Nurse Consultants  
National Association of Vision Program Consultants  
National Council Acoustical Consultants  
National Institute of Certified Moving Consultants  
National Society of Environmental Consultants  
Professional and Technical Consultants Association  
Public Relations Consultants Association  
Sales Promotion Consultants Association  
Society of Catering and Hotel Management Consultants  
Society of Medical-Dental Management Consultants  
Society of Mortgage Consultants  
Society of Pension Consultants  
Society of Professional Management Consultants  
Society of Risk Management Consultants



## INTERNAL CONTROL QUESTIONNAIRE

	<u>Yes</u>	<u>Answers</u> <u>No</u>	<u>N/A</u>	<u>Comments</u>
<b>GENERAL</b>				
1. Are general ledgers kept up to date and balanced monthly?	_____	_____	_____	_____
2. Are internal financial statements prepared and are they reviewed by an owner or officer?	_____	_____	_____	_____
3. Are the bank accounts reconciled monthly and by whom?	_____	_____	_____	_____
4. Are journal entries approved and adequately explained?	_____	_____	_____	_____
5. Are all employees who are involved in record keeping or custody of assets, or in some position of trust, adequately bonded?	_____	_____	_____	_____
6. Are all employees required to take annual vacations?	_____	_____	_____	_____
7. Are personal transactions of management completely segregated from the business?	_____	_____	_____	_____
8. Are all bank accounts in the name of the Taxpayer recorded on books	_____	_____	_____	_____

Add Other Appropriate Steps:

## EXHIBIT C (2 of 3)

	<u>Answers</u>			
	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>Comments</u>
<b>CASH RECEIPTS</b>				
1. Is mail opened by someone other than the bookkeeper?	_____	_____	_____	_____
2. Is listing of mail receipts prepared by someone other than the bookkeeper?	_____	_____	_____	_____
3. Is listing reviewed and reconciled to cash receipts journal by someone other than the bookkeeper?	_____	_____	_____	_____
4. If cash registers or other mechanical devices are used in recording transactions, are cash register tapes saved and reconciled to cash receipts journal?	_____	_____	_____	_____
5. Are cash receipts deposited intact daily and by whom?	_____	_____	_____	_____
6. Is a detailed duplicate deposit slip prepared and receipted by a bank?	_____	_____	_____	_____
7. Are recorded cash discounts and allowances periodically reviewed by an officer or owner?	_____	_____	_____	_____
Add Other Appropriate Steps.				

## EXHIBIT C (3 of 3)

	<u>Yes</u>	<u>Answers</u> <u>No</u>	<u>N/A</u>	<u>Comments</u>
<b>Cash Disbursements</b>				
1. Are all disbursements made by pre-numbered checks?	_____	_____	_____	_____
2. Who has signature authority?	_____	_____	_____	_____
3. Is check signing in advance prohibited?	_____	_____	_____	_____
4. Are voided checks retained and accounted for?	_____	_____	_____	_____
5. Are petty cash disbursements evidenced by supporting vouchers?	_____	_____	_____	_____
Add other Appropriate Steps				

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## EXHIBIT D

FORM 4564	Department of the Treasury Internal Revenue Service  INFORMATION DOCUMENT REQUEST	Request Number
TO: (Name of Taxpayer and Company, Division or Branch)	Subject	Submitted to:
	SAIN Number	Dates of Previous Requests

### Description of Documents Requested

NOT ALL OF THESE ITEMS SHOULD BE REQUESTED IN EVERY CASE. EXAMINERS SHOULD USE THIS AS A GUIDE AND REQUEST ONLY THE ITEMS THAT ARE APPROPRIATE AND RELEVANT FOR THEIR SPECIFIC CASE

#### Travel

- Appointment Book/Calendar
- Brochures, itineraries for conventions/seminars
- Regular substantiation i.e. tickets, hotel bills, etc.

#### Reimbursed Expenses

- Request client contracts or invoices. The reason for this is to:
  1. Verify that the taxpayer is reporting the income so that they can take the corresponding deduction or to verify that the taxpayer is properly netting the income from reimbursed expenses vs. the incurred expense.
  2. To verify that the expenses is not subject to the limitation because it has been reimbursed.

#### Meals/Entertainment

- Appointment Book/Calendar
- Client contracts/invoices (This is to verify that the expense is not subject to the limitation because it has been reimbursed.)

#### Personal Service Corporation

- Request a sample of each type of contract.
- Stock Record Book

#### Independent Contractor vs. Employee

- Contracts between the taxpayer and clients.
- Contracts between the taxpayer and individuals who provide services on a regular basis.

	Name and Title of Requester	Date
FROM:	Office Location	

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## **INTERVIEW QUESTIONS**

NOT ALL OF THESE QUESTIONS WILL BE APPROPRIATE IN EVERY CASE. EXAMINERS SHOULD USE THIS INFORMATION AS A GUIDE AND ASK ONLY THOSE QUESTIONS WHICH ARE APPROPRIATE AND RELEVANT FOR THEIR SPECIFIC CASE

### Travel

- Who are your major clients?
- Where is your client base located geographically?
- How often do you or your employees travel?
- Who travels for the company? Are they allowed to bring a companion? If so, who and why?

### Reimbursed Expenses

- How are reimbursed expenses run through your accounting records? (The examiner may want to ask the taxpayer to walk them through a transaction.)

### Meals/Entertainment

- Do you have a policy on meals and entertainment?
- Do your clients reimburse for meals and entertainment?
- Are you aware that the applicable percentage limitation applies (currently 50%) to meals and entertainment even while in travel status?
- How are these reflected in your accounting records?

### Personal Service Corporation

- What are the business activities? (Get specific details on each business activity.)
- What percentage of time and/or gross receipts apply to each business activity?
- What type of finished product does the taxpayer deliver?
- How is the contract price determined? (hourly rate, commission, contingent)
- Is the corporation closely held? If so, by whom?
- What percentage of time do the shareholders/employees work for this corporation?
- What does each stockholder do?
- What percentage of your employees perform consulting services?

### Not for Profit

- How long have you been in business and what is your profit/loss history?
- Why did you get into this business?
- Questions need to be asked concerning the 9 relevant factors at Treasury Reg. 1.183-2(b) (Tax examiner will want to read the regulations in depth)
  - Manner in which the taxpayer carries on the activity. (Is it performed in a business-like manner?)
  - Taxpayer's expertise
  - Time and effort expended by the taxpayer on the activity



## EXHIBIT E (2 of 2)

- Expectation that assets used in the business will appreciate
- Success of taxpayer carrying on other similar or dissimilar activities
- Taxpayer's history of income/losses with respect to the activity in question
- The amount of occasional profits, if any, which are earned
- Financial status of the taxpayer
- Element of personal pleasure or recreation

### Independent Contractor vs. Employee

(Note: The primary area of concern is control)

First potential issue:

- How did you get into this business?
- Who are your major clients?  
(Follow-up questions if it appears the issue may be present i.e.: one major client) -The examiner should tailor their questions to incorporate behavioral control, financial control and the relationship of the parties. See EXHIBIT F regarding the categories of evidence.

Second potential issue:

- Review with taxpayer what makes up the contracting expense, consulting expense, etc.
- How many different individuals and/or corporations provide these services?  
(Follow-up questions if it appears the issue may be present, i.e.: one or few individual providing services to the taxpayer.)
- The examiner will need to ask questions regarding behavioral control, financial control and the relationship of the parties. See EXHIBIT F for the categories of evidence.

## **EMPLOYEE OR INDEPENDENT CONTRACTOR**

### **Behavioral Control**

#### **A. Instructions**

1. Type of Instructions:
    - a. When to do the work
    - b. Where to do the work
    - c. What tools or equipment to use
    - d. What workers to hire to assist with the work
    - e. Where to purchase supplies or services
    - f. What work must be performed by a specific individual (including ability to hire assistants)
    - g. What routines or patterns must be used
    - h. What order or sequence to follow
  2. Prior Approval
    - a. Requirement to secure prior approval before taking certain actions
  3. Degree of Instruction
    - a. Extent of the detail of the instructions given to the worker
    - b. Effect on the worker in the event of noncompliance
  4. Presence of Instructions or Rules Mandated by Governmental Agencies or Industry Governing Bodies
    - a. Did the business impose the instructions or rules only in compliance with governmental or governing body regulations
    - b. Did the business adopt more stringent rules or regulations than those imposed by governmental agencies or governing bodies
  5. Instructions by Customer
    - a. Did the business pass on instructions given by the customer
  6. Suggestions vs. Instructions
    - a. Is compliance with suggestions mandatory
  - \*7. Business Identification
    - a. Reason for requiring the worker to wear a uniform or placing business name on vehicle, i.e. reassurance to customer, security purposes
    - b. Who incurs the expense
  - \*8. Worker's Occupation
  - \*9. Nature of the Work
    - a. Degree of direction and control required by virtue of the work itself
- \*These aspects may be neutral in the determination of the worker's status

**B. Evaluation Systems**

1. Measurement of Compliance with Performance Standards
  - a. Influence on worker's behavior in performing the details of the job

**C. Training**

1. Type of Training
  - a. What procedures to follow in performing the task
  - b. What method to use
  - c. Updates on company policies, governmental rules or regulations, statutes, orientation, general information sessions
  - d. Is attendance mandatory
  - e. Is the worker compensated for attending the training

**Financial Control**

**A. Significant Investment**

1. Nature of Business
  - a. Type of business
  - b. What assets are normally acquired for the business
  - c. How the assets are normally acquired, i.e. purchased, leased
  - d. Other expenditures normally encountered in the business
  - f. How are the cost determined, i.e. FMV or FRV, arm's length transaction

**B. Reimbursed v unreimbursed expenses**

1. Who bears the costs of the assets and expenditures mentioned above
2. Which expenses are not reimbursed

**\*C. Availability of Services**

1. Whether the worker advertises his/her services
2. Location of the business
3. Whether the worker is available to work for the relevant market

**D. Method of Payment**

1. Salary or hourly
2. Flat fee
3. Commission

**E. Realization of Profit or Loss**

1. Freedom of choice to make decisions which have an impact on the worker's ability to realize a profit or loss

\*These aspects may be neutral in the determination of the worker's status.

**Relationship of the Parties**

**A. Intent of the Parties**

1. Contractual Relationship
  - a. Consider substance over form
2. Information Returns
  - a. Form W-2
  - b. Form 1099
3. Incorporation
4. Benefits
  - a. Paid vacation days
  - b. Paid sick days
  - c. Health insurance
  - d. Life and/or disability insurance
  - e. Tax-qualifies retirement plan; Sec 403(b) annuity; other pension plan
  - f. Cafeteria plan
  - g. Status determined by state or federal agencies for purpose of providing benefits
5. Discharge/Termination
  - a. Limitation on ability of the business to terminate worker
  - b. Limitation on ability of the worker to terminate working relations ship
  - c. Worker's liability as result of non-performance
  - d. Business's rights in non-performance by worker
6. Regular Business Activity v Services Performed by Worker

**B. Term of the Relationship**

1. Definite v Indefinite Period
  - a. Long-term
  - b. Temporary
  - c. Written contract

**Facts of Lesser Importance**

- A. Full-Time v Part-Time
- B. Place of Work
- C. Number of Work Sites
- D. Hours of Work

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## **Internal Revenue Code Section 530**

### **A. Reporting Consistency**

Did the business timely file all required tax returns with respect to the worker (including information returns, Forms 1099) for the period under examination on a basis consistent with the business's treatment of the worker as not being an employee?

### **B. Substantive Consistency**

Worker, or Class or Workers, currently treated as independent contractors.

1. Duties:
  - a. Current
  - b. Previous
2. Responsibilities
  - a. Current
  - b. Previous
3. Supervisor or Manager & Title
  - a. Current
  - b. Previous
4. Degree of supervision & control required
  - a. Current
  - b. Previous

### **C. Reasonable Basis**

1. Safe Havens:
  - a. Prior Examination
    - i. Type of examination
    - ii. When was the examination conducted
    - iii. Were same class or workers currently under consideration, treated as independent contractors during the period covered by the prior examination
    - iv. Did taxpayer reasonable rely on the prior examination
  - b. Judicial Precedence or Published Ruling
    - i. When did the business begin
    - ii. When did the business first begin treating its workers as independent contractors
    - iii. Facts in the case similar to the business's situation

## EXHIBIT G (2 of 2)

- iv. Date of the ruling
  - v. Did taxpayer reasonably rely on the ruling
- c. Technical Advice Memorandum, Private Letter Ruling, or other Determination Letter
- i. To whom/what entity was the ruling issued
  - ii. Were the facts materially misstated or omitted
  - iii. Any substantial change in the facts since the ruling was issued
  - iv. Did taxpayer reasonably rely on the ruling
- d. Long Standing Recognized Practice of a Significant Segment of the industry
- i. When did the business begin
  - ii. When did the business first begin treating its workers as independent contractors
  - iii. How were the workers treated previously
  - iv. Define the industry
  - v. How long has the industry existed
  - vi. When did the industry begin this practice
  - vii. Define the geographic/metropolitan area of the industry
  - viii. How prevalent is the practice in the industry
    - 1) Number of firm engaged in this practice
    - 2) Number of workers involved
    - 3) Homogeneity of the industry
  - ix. When did the industry's practice change, if applicable
  - x. Did taxpayer reasonably rely on the industry practice
2. Other Reasonable Basis:  
(More than mere "good faith" is required for section 530 relief. "Good faith" may be basis for not asserting penalties.)



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**Make More  
Profits**

With

# Biz\$hop

# R10107 Contracts and Agreements In Plain English

## Contents

1. Intro
2. What is a Legal Contract?
3. Letter of Agreement
4. On Lawyers
5. Signatures
6. Liability Exclusion Clauses
7. Conditional Clauses
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9. Why Write A Contract?
10. Automatic Contracts
11. What Needs To Be In The Contract?
12. Sample Sales Rep Contract
13. Sample Consulting Contract
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Any corrections, errors or additions? Please let us know!

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## 1. Intro

Every day, you make contracts - verbal, written or understood. You buy your morning coffee. You hand the cashier your money, and expect that he or she will hand you a coffee in exchange. That is a contract you enter into with the coffee shop.

You get into your car and drive. You are entering into a contract with the state that you will abide by all the laws in exchange for the use of the highways the state built (though you paid for them with your taxes).

Contracts like these occur without us even thinking of them. Others are more complicated, and need to be carefully considered before signing. A signature on a wrong contract can obligate you for years to come, drive you into bankruptcy, cause terrible consequences, and other scary things.

Almost every time I have had real trouble, it has been because I signed a contract I shouldn't have in retrospect.

This report will cover what you should consider, what constitutes a legal contract, and alternatives.

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Remember that a contract has to be an agreement between two parties. If you don't agree to a clause in a contract, don't sign it! EVERYTHING IS NEGOTIABLE.

**Caution** - I am not a lawyer, nor am I considered a legal expert. The information presented in this report is correct to the best of my knowledge, gathered from my own reading on the subject. I am not however providing legal advice. If you need legal advice, please consult an attorney or other professional.

## 2. What is a Legal Contract?

In order for a contract to be legal, it must meet the following conditions:

1. The parties must be identified
2. The parties must be responsible
3. There must be compensation
4. There must be agreement
5. There must be an expiration date

## 3. Letter of Agreement

A letter of agreement can be a simpler alternative to drawing up a contract for goods or services you plan to provide a client. Usually, you prepare and sign two copies of the agreement, then send them to your client. He or she then signs both, sends one back to you, and keeps the other.

Nowadays, a contractor sometimes faxes a signed copy to a client, who in turn signs the fax copy and either faxes or mails it back to the contractor. In any case, a letter of agreement should include a description of the services to be performed or product to be delivered, the deadline for completion, the fees to be charged, and when payment is expected.

It is always good practice to have a letter of agreement follow any agreement made verbally in a meeting or on the telephone or by email. Just precede it with a note indicating that "This is to confirm the agreement reached on (when) by (method).

## 4. On Lawyers

Lawyers would love to have you believe that you must have legal counsel before making any contract. In fact, while it may be a good idea, it is also prohibitively expensive to submit everything for review. We are engaged in contracts, written or verbal, all day long. We contract with the manufacturer of our breakfast cereal, with the operator of the city bus, with the vendor of our newspaper, and so on. Every financial transaction is a contract or the fulfillment of a contract.

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The reality is that most contracts take place with a minimum of paperwork, an absence of legal counsel, and are fulfilled without a hitch.

In fact, oftentimes the attempt to formalize things into a complexly written contract is going to create more suspicions than it clears up, and in many cases will kill a potentially profitable deal.

Let the lawyers at any contract and they will so muddy the waters with legalese (legal phrases and terms) that neither party feels they understand what they are to sign.

I am not saying lawyers are bad. They understand the law, and want by nature to protect against all possible hazards. They know that other lawyers will attack the document they create to find loopholes and contradictions, should the issue ever go to lawsuit. Lawsuits are a very real danger in the US, where we have an overwhelmingly high per capita lawyer count - most of them involved in litigation (suing).

The analogy I use is that your lawyer advising you how to protect yourself from other lawyers is like a gangster extorting protection money, so that other gangsters won't come in and break up your place.

One solution is to keep the lawyers out of it. We can do that in several ways:

1. Make the agreement in plain language, so there is very little room for misunderstanding.
2. Make sure the obligations of both parties are quite clear.
3. Include a binding arbitration clause in any contract.

### Nevertheless

I am not a lawyer, and I recognize that some things are more complicated than others. Laws vary from jurisdiction to jurisdiction, and may be interpreted in different ways. There may also be specific situations that are so legally and financially hazardous (such as purchasing an existing business) that extra care is required.

If you feel that you do need specific help on the legalities of something, or if you would feel more comfortable, then I encourage you to consult with a qualified attorney for their opinion.

## 5. Signatures

It is very important that whoever signs the agreement or contract has the authority to do so. If contracting with an individual or sole proprietorship, that is automatic. If contracting with a partnership, corporation or limited liability company however, you must be assured that whoever signs has the authority to bind the company to the agreement.

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You can simply ask who has the authority to contract for the company. If you are assured that the person who is about to sign has that authority, you should also make sure that they sign using the corporate form of signature. Otherwise, they could possibly be obligating only themselves personally.

### Corporate Form of Signature #1

\_\_\_\_\_  
Signing Persons Name

For Company Name

### Corporate Form of Signature #2

\_\_\_\_\_  
Company Name

by \_\_\_\_\_

Signing Persons Name

### Seals

This is a holdover from ancient tradition, when a wax impression of a metal seal was required for a signature to be official. An ancient custom, but some states still give credence to the seal. These days, seals are often just a small red sticker or wafer affixed next to the signature. These are available from most office supply stores.

These types of documents are said to be made "under seal." In reality, there is no additional standing for such documents. If you must sign a document that specifies it is to be given or executed "under seal," and you don't have a little red seal, simply draw a circle around the little s on the signature line. If no s is printed, just draw a circle around a small s.

## 6. Liability Exclusion Clauses

### "Not responsible for...."

We see these signs everywhere, and numerous clauses appear on most contracts that appear to attempt to limit liability.

The courts have generally frowned on such clauses, and held them in many cases to be without effect. Many jurisdictions have simply enacted legislation that makes such disclaimers worthless.

The real benefit of such clauses is actually psychological - If there is a warning not to tip the soda machine, but somebody does anyway and gets hurt, they may be too embarrassed at doing so despite the warning to sue. It is more of a deterrent to suing, rather than a protection. The fact that there was such a warning or notice of "not responsible for..." may be a factor if it ever goes to court, but will not in itself reduce your liability. In any case, if there is to be any effect, the conditions under which liability is reduced must be clearly known by both parties before any contract is entered into.

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## 7. Conditional Clauses

You may put in clauses that will automatically void the contract unless certain conditions are met. This is commonly done in real estate contracts. For instance, you may have a clause that says

"This agreement is conditional on the purchaser arranging adequate financing to complete the purchase on acceptable terms to the purchaser"

No financing, no deal.

If you have a conditional clause, you need to make sure there is some way to verify if the condition has been met, and what will happen if the contract becomes void because of that. For instance, if there was any deposit money paid, when that will be returned, etc.

## 8. Binding Arbitration

If there was one thing that I want to stress more than any other, this would probably be it.

Who would you expect fairer treatment from - a judge or jury sitting with two batteries of attorneys arguing from a profit motive - or an impartial panel of a few ordinary citizens making common sense decisions? Which should cost you less? If you win, which system would take the majority of your settlement as expenses?

Did you know that legal fees may take 90% of the settlement in many cases?

Obviously, there has to be a better way, and that better way is to use alternative forms of settlement, such as mediation, arbitration and other pragmatic techniques known as "alternative dispute resolution."

This is not just an anti-lawyer fringe movement - more than half of the companies that comprise the Fortune 500 have signed pledges of alternative dispute resolution for any conflicts with each other. More than twenty-five major insurance companies have signed a similar commitment. In all, companies accounting for more than one quarter of the GNP have promised to take all reasonable steps to stay out of court with each other.

Why is this better?

Often times, the dispute is not about substantial legal

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issues, but just because two executives got mad at each other. Once the two principals stop talking, the chance of a solution being found on their own becomes almost nil. Arbitration offers a way to work past the emotion, and find an equitable solution - AND DOES IT FOR ABOUT ONE-TENTH THE COST of a lawsuit!

Binding arbitration simply means that both sides will present their case to a recognized impartial person or panel, and both sides agree to abide by the decision that is rendered.

Arbitrators may be other business people, may be lawyers, may be judges, or ordinary citizens who have been trained in mediation and dispute resolution. There are associations and recognized standards for arbitrators, and they are almost always much faster and much less expensive than litigation.

Remember - all a lawsuit does is make two lawyers rich!

## 9. Why Write A Contract?

Verbal contracts usually are just as valid as written ones. If some contracts don't have to be in writing, why write them?

1. To make a true record of the agreement. People hear what they want to hear and believe what they want to believe. Their interpretation of what was agreed to may be greatly different than yours.
2. To provide for longevity of the contract. Memories fade, sometimes very quickly. The people in companies can change, and who you made a verbal agreement with may be long gone when it comes time to be paid.
3. To provide equity. If you have a signed contract from a reputable firm to purchase x amount over the next x years, you can often obtain financing and vendor supplies based on that contract.

The Statue of Frauds legally requires that any contract which by its terms cannot be performed completely within one year must be put into writing. Any contract for the sale of goods valued at over \$500 must also be put into writing for it to be enforceable.

## 10. Automatic Contracts

It may surprise you that both parties do not need to sign a contract (in some cases) for it to be legally binding.

That exception is when both parties are merchants, defined as any person who normally deals in goods of the kind being sold or who because of occupation represents himself or herself as having knowledge or skill about the goods.



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In that event, if one party sends the other a written confirmation of an oral contract, and the recipient does not object within ten days of receipt, the contract will be deemed enforceable by the Uniform Commercial Code.

So if you ever get a letter saying something like

"this is to confirm the terms of our oral agreement made on....."

realize that you must very promptly respond if you don't agree with everything that is in the letter!

## 11. What Needs To Be In The Contract?

Historically, there are certain legal elements that every contract must have to make it enforceable in court. Note that I didn't say that they were required to make the contract valid, because you can have a valid contract that a court won't enforce. For instance, a contract that requires you to do something illegal or clearly impossible is not enforceable, though written up and signed in a valid manner.

These are the elements that you want to have to get the court to at least recognize that you have a contract. You'll have to go to court to enforce it, or submit it to binding arbitration, whichever your contract requires.

1. Identify the parties.
2. Consideration
3. Terms
- 4 Execution.
- 5 Delivery.

### 1. Identify the parties

In the old days of legalese, most contracts used phrases like "party of the first part" and "party of the second part." This is not required at all, nor does it make sense to most people when they try to read it.

Simply use the formal names of the people making up the contract and a short abbreviation after that in parentheses. For example, World Enterprises might be followed by (World), letting you know that the contract will be using the single word World rather than the full corporate name.

Individuals' names are also commonly shortened. Frank A. Johnson (Johnson) would tell you that the last name would be used throughout the agreement, but that it stood for Frank A. Johnson as opposed to anyone else in the Johnson family.

To help in identification, it is also customary to give the parties' street address, but this is not required.

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## 2. Consideration.

This is simply what you receive or give up for the agreement. Generally speaking, it will be your promise to do or not to do something. While most of us think of contracts as involving money, many do not. There simply must be some sense of a transfer of value. As an example, a marriage contract involves the exchange of affection, intimacy and all the rest that goes along with marriage, but neither spouse "pays" the other any money. Goods and services can be bartered, with no cash involved at all.

Whatever the consideration, it should be acknowledged in the contract. If you don't want to mention how much the consideration is (or is worth) for secrecy's sake, don't. Sometimes, you'll want to keep your competition in the dark about what you are doing, what you are spending and how much you are making. That is fine. Instead, you can say, "For and in consideration of the mutual promises and benefits to be derived by the parties." That phrase is sufficient to make the contract consideration legal. You do not need to put a token dollar amount like "For one dollar..." unless that is the true and only consideration paid.

## 3. Terms of the agreement.

This is the main part of your agreement. State as clearly as possible what the parties are agreeing to. The language you use should be adequate to allow a stranger reading the contract to understand what everyone is supposed to do. Why? If the contract ever goes to court, the stranger will be a judge. If it goes to arbitration, the arbitrators will be strangers. You want to make sure that they read the clauses exactly the way you intend.

## 4. Execution.

This simply means that the contract must be signed properly. To be signed properly, the signature of somebody authorized to obligate must be put on the document, the contract must carry a date of signing, and there must be an expiration date.

Things get confusing when you have corporations and partnerships. It's best if you get everyone on the other side to sign. If not, then you must make sure you get the authorized party to sign. If you are dealing with a corporation, an officer or director of the corporation may have signing authority. In a partnership, one person or all partners may be required. If someone is signing on behalf of another individual, make sure he or she is authorized in some legal fashion to do so. A power of attorney would be evidence of such authority.

Witnesses are not required to make a contract valid or enforceable, since a contract is an agreement between the two parties. The only exception is wills, when a lack of witnesses can be an issue. Witnesses may also be required by authorities in order to record the contract. The number required if a contract is to be recorded differs among jurisdictions. If you want to be safe, two witnesses and a notary will cover just about any jurisdiction. Of course, you could always call your local court clerk and ask!

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## 5. Delivery

The delivery of the contract is an old formality, but it is still a necessity. Even though the contract is signed, unless you delivery it before the opposing party cancels, you don't have a valid contract.

The signatures of both parties may not be obtained at the same time. For instance, you may make a proposal, sign your copy, and give the other side some time to think it over. If they sign it, it still does not become a legal contract until they deliver a copy back to you with their signature attached.

## 12. Sample Sales Rep Contract

The attached sample contracts are for you to study and use when making up your own agreements. Comments may be on the forms, they will be in italics and perhaps a different color.

### Independent Sales Agreement Between Steve Veltkamp, Independent Representative, and \_\_\_\_\_, Owners of \*\*Company\*\*

*I always use agreements. They are just as enforceable, and the word contract scares some people off. Remember - and this is very important - absolutely everything is negotiable. The quality of the agreement rests more on what you negotiate than the words you put into it. Rates, territories, exclusivity, customers, EVERYTHING is negotiable! For that reason, use this only as a guide. This is a very good agreement for me, not all clients will be willing to give this much.*

1) It is mutually agreed that Steve Veltkamp can offer on an exclusive wholesale basis all products of \*\*Company\*\* to all language schools, and retail outlets/stores in Asia, from the border of Turkey and Greece to the International Date Line, excluding Russia. Steve Veltkamp can also offer all products of \*\*Company\*\* directly to consumers on a retail, non-exclusive basis. \*\*Company\*\* will not entertain requests from other distributors or agents within Steve Veltkamp's territory.

*This first clause sets out the basics of the agreement. The important points are that it spells out the region, the exclusivity, and the customers to be served.*

2) \*\*Company\*\* agrees to pay Steve Veltkamp 25% commission on all first-order sales, and 15% on all repeat sales based on wholesale cost. House accounts are to be made a part of Steve Veltkamp's account list with a 10% payable commission rate. Sales credit for commissions are based on all order sent in by Steve Veltkamp or received directly by \*\*Company\*\* from Steve Veltkamp's territory. A bonus of \$50 will be paid for each \$1000 of orders sold to the agreed upon territory.

*The terms of compensation. House accounts are those that the client already has in the territory*

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3) **\*\*Company\*\*** agrees to pay on the 15th of each month all commissions to Steve Veltkamp on shipments of orders received from and paid by the customers to whom shipped within the agreed territory. Along with the payment will be a statement of account listing sales, invoice numbers, dates, payments and shipments.

*When we get paid. The documentation allows me to check on orders against what I think should be coming in. It helps me identify problem areas, customers that need follow-up to find out why they are not ordering, etc.*

4) **\*\*Company\*\*** will provide Steve Veltkamp weekly with a summary of invoices for products shipped to his territory. Steve Veltkamp will forward orders on a frequent basis, as close to daily as practical, and will forward monthly an account activity report with orders placed, payments received, and summary of conversations and correspondence with customers and prospects.

*The flow of information back and forth is essential. This flow keeps both sides aware of what is going on, satisfies both sides that the other is living up to the deal, and allows for customer feedback*

5) **\*\*Company\*\*** will provide Steve Veltkamp, at no cost, with any required samples, sales literature, sales aids and order forms. Steve Veltkamp will ensure that provided materials are used prudently to promote sales.

*Normal clause. This is the only up-front cost to your client, and how you get the necessary sales items.*

6) **\*\*Company\*\*** is totally liable and responsible for shipping, invoicing, billing and collecting on all shipped merchandise and for any legal claims sought after by a dissatisfied customer. If a decision is made by **\*\*Company\*\*** not to ship a product within 30 days of order receipt, it is the responsibility of **\*\*Company\*\*** to advise both the customer and Steve Veltkamp.

*You are not responsible for all the shipping, billing etc. If you take these on, there should be extra compensation. If there is going to be a backorder, I need to know that so I can make sure my customers are happy.*

7) **\*\*Company\*\*** is responsible at all times to keep Steve Veltkamp informed as to price and product changes, out-of-stock conditions, shipment delays, back orders, names and locations of distributors, and other pertinent information. Steve Veltkamp is responsible to inform **\*\*Company\*\*** of any observed or possible conditions which will affect the sales or delivery of **\*\*Company\*\*** products, either positively or negatively.

*More on information flow. I am the direct link with the customers, so can provide feedback. I also can inform client of political problems, economic issues, etc. in the foreign country that client may not be aware of. Client needs to let me know of special sale prices, etc.*

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8) **\*\*Company\*\*** guarantees and will unconditionally stand behind the quality and satisfaction of its products. **\*\*Company\*\*** will stipulate a return policy in order for Steve Veltkamp to advise customers at time of sale.

*I personally will not represent a product that the company doesn't guarantee, period. My customers' satisfaction with me is more important than any one sale.*

9) **\*\*Company\*\*** will provide Steve Veltkamp with current price lists, shipping terms, sales concessions allowed and other sales terms. Any price changes, special promotional packages or allowances which are offered by **\*\*Company\*\*** in the term of this agreement will be transmitted expeditiously to Steve Veltkamp, and restated on the monthly statement of account from **\*\*Company\*\***.

*This just says that they'll provide details, such as what is the lowest price I can sell the product for, what is the highest, what terms I can offer, what incentives, etc.*

10) Steve Veltkamp will pay all of his own expenses, with the exception that postage or telephone charges for the placement of orders will be reimbursed at cost.

*Assures client that I am not an expense, but a positive asset and business partner*

11) Steve Veltkamp agrees not to sell or represent any lines or products competitive with those of **\*\*Company\*\***.

*Non compete clause, again a reassurance to client*

12) Steve Veltkamp will endeavor to keep **\*\*Company\*\*** informed of location and travel plans, as well as providing **\*\*Company\*\*** with an address and phone number where Steve Veltkamp will be reachable.

*How can I be contacted? A reassurance to client that they can.*

13) This agreement is cancelable by either party with thirty (30) days notice to the other party. This agreement will remain in effect until terminated by either party, or for a period of two(2) years from the date of signatures below.

*Any contract to be enforceable must have an expiration date.*

14) In the event of termination by either party, **\*\*Company\*\*** will continue to pay commissions, according to the stipulations within this agreement, to Steve Veltkamp on all sales received by **\*\*Company\*\*** within 90 days of termination.

*Because I will have done the sales job to sell the products prior to my termination, I should still get the commission*



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15) In the event of disagreement, both parties agree to avoid litigation or other harmful actions against the other party, and to rely on negotiation and conciliation. Should disagreement persist, both parties agree to submit for a ruling to a recognized arbitration body.

*Important - keep fights out of the hands of lawyers!*

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_,

For **\*\*Company\*\***

Steve Veltkamp, for Biz\$hop

## 13. Sample Consulting Contract

*This agreement also serves as the proposal. I tell the client what I will do for them, what they will do for me, and a few common points in the form of a question and answer section. They need only sign and deliver it to make it a formal agreement. I always say agreement, rather than contract - it scares people less.*

### WHAT BIZ\$HOP WILL DO FOR YOU

- 1) Evaluate your strengths and weaknesses, identifying those that can be improved for your business.
- 2) Develop a training program to assist you in marketing your \_\_\_\_\_
- 3) Provide training in the areas of direct mail, market identification, media selection, Internet marketing, and other areas as desired.
- 4) For the first three months, Biz\$hop will work as a partner to you. I will develop and write a Marketing Plan that outlines marketing strategy and weapons to be employed, along with the costs involved. The marketing plan will focus on low-cost and high-impact "Guerrilla" methods.
- 5) Develop a Marketing Calendar that schedules marketing expenses and where focused.
- 6) Coordinate the implementation of the Marketing Calendar to ensure that marketing material is submitted in a timely manner for publishing.
- 7) Obtain media kits for likely media and make recommendations for selection.
- 8) Place advertising in selected media, as directed by client or as specified in the Marketing Calendar. Ad space will be negotiated at the most favorable rates obtainable.
- 9) Design new printed materials concepts for approval. These will include such ideas as newsletters, brochures, combinations, coupons, and direct response.
- 10) Develop a method of capturing customer data for future use.
- 11) Design a direct marketing campaign proposal, and implement it if approved, including design of mailing pieces.
- 12) Design Internet Web campaign, including Web pages and supporting systems to establish an on-line presence.
- 13) Explore legal requirements that might affect our marketing effort.

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## Biz\$hop

Your Success Shop

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(360)452-2418  
1-800-949-8029  
Fax: (530)690-7531  
success@bizshop.com

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ICQ 7382122

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14) Develop and present creative ideas for improving customer base and average sale.

15) Develop advertising campaign proposals

16) Explore tie-ins with other local businesses and organizations

17) Prepare press releases as frequently as newsworthy events permit

18) Develop a promotional kit that can be mailed to press interests

19) Query magazines and newspapers for article possibilities

20) Write articles for media which respond favorably

21) Prepare interview guide for any media contacts

22) Submit cost estimates for any extraordinary expenses for approval.

Extraordinary expenses are any costs not normally associated with marketing or which exceed \$100 in any one month. Any single cost over \$100 is also considered an extraordinary expense. NO extraordinary expense will be incurred without your approval.

*This assures the client that they are not facing an open-ended expense.*

*Many clients worry that you will cost them more than they at first thought. I like to put everything in a clear, reassuring manner.*

23) Develop a customer follow-up program proposal to increase repeat/referral business.

24) Conduct market research as necessary.

25) Provide consultation by phone or in person on public relations, marketing and general business topics.

The above represent a comprehensive, ongoing program of promotion and assistance. The pace of accomplishment depends on time and funds available, the information supplied by you the client, resources of Biz\$hop, and your desires as the client.

Certainly not everything will be done in the first month. Results may not be seen for some time - such is the nature of marketing. You as the client have the right not to renew this agreement if at any time you feel that progress is not being made.

*These two clauses are important, since they serve as a counter to unrealistic expectations, and establish a standard of simple satisfaction with the effort being made.*

**Note that Biz\$hop will provide advice - you as the business owner must retain the final decision making authority.** Biz\$hop will not go ahead with any project until you have given your approval, unless otherwise agreed to in advance. You may accept Biz\$hop's advice, initiate more discussion and adjustment, or reject Biz\$hop's advice entirely. You as the business owner are of course in charge and responsible for making the decisions, and for the responsibility of the results of any decisions made.

*Critical clause for reducing your liability. What the client does is entirely their responsibility. This essentially reduces your vulnerability as a client to almost zero in the event that something goes very wrong.*

## WHAT YOU WILL DO FOR BIZ\$HOP

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- 1) Provide Biz\$hop with all the materials and information necessary for accurate public relations and advertising writing.
- 2) Place all advertising through Biz\$hop.

*This assures control of the marketing effort, in addition to increasing profits through our advertising agency.*

- 3) Provide Biz\$hop with marketing budget parameters, so that it can make proposals.
- 4) Pay Biz\$hop a marketing retainer of \$\_\_\_\_\_ per month, payable in advance, until canceled. This month by month agreement is your guarantee of satisfaction - if you aren't satisfied you simply don't renew! Notification by either party that they do not intend to renew shall be done in writing and delivered by the 25th of each month. Notification not to renew may be complete or with modified terms of continuance. If terms are to be modified, early notification is desired so that mutually satisfactory terms can be negotiated. If no satisfactory terms are agreed to by the 28th of each month, this agreement will be considered canceled and all work by Biz\$hop will cease.

*This is the most important phrase for the client. It removes almost all of the risk to them. If they are not happy, then nothing need continue. My risk is also eliminated, by obtaining payment in advance.*

- 5) Pay for all normal expenses associated with the fulfillment of the Marketing Plan, to include such items as materials, postage, telephone, printing, etc. Such expenses will be detailed and billed by Biz\$hop prior to the 1st each month, and will be payable within 10 days. Normal expenses will not exceed \$100 per month without your prior approval.
- 6) Pay for any extraordinary expenses agreed to, upon billing.
- 7) In the event of cancellation or non-renewal, pay for any expenses incurred up to the date that notice of cancellation is received by Biz\$hop.
- 8) Consider proposals made by Biz\$hop and decide the plan of action in a reasonably prompt manner, informing Biz\$hop as soon as possible thereafter.
- 9) Advise Biz\$hop of any events, developments, or changes which may affect the implementation of the Marketing Plan.

*We need to approach the marketing effort as a partnership, so communication between us is critical.*

### QUESTIONS:

#### How will documents be handled?

Mail or fax will be the normal methods, with hand delivery of any particularly confidential or sensitive documents. Fax signatures will be acceptable and binding on any document once original signatures are obtained on this agreement.

#### Where will meetings take place?

Normally at your location, or at Biz\$hop offices in Port Angeles or any other location, as you prefer. Most meetings should run under 90 minutes.



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### What about the distance?

With modern technology, we can be as closely linked to somebody across the world as across the street. Biz\$hop will remain in close contact, with fax, 800 number and meetings. I choose to live in the quieter setting of Port Angeles, but you will not be penalized by my choice. Transportation from Port Angeles to Seattle, ferry tolls or long distance calls between us will NOT be billed to you. I am frequently in Seattle, so we can set up a meeting with ease given a few days notice, and often on short notice.

### What is Biz\$hop's status?

Biz\$hop and its principal Steve Veltkamp are independent contractors and in no way are your employees. This contract and supporting agreements do not in any way restrict Biz\$hop from work with other companies, nor do you purport to specify how Biz\$hop is to perform the work. You are under no obligation to provide any employee benefits, nor provide workspace, tools or materials. Biz\$hop will be responsible for its own tax reporting and payment.

### Can any work be delegated?

Biz\$hop reserves the right to contract with other service providers to accomplish tasks. However, the requirement to perform satisfactorily is entirely Biz\$hop's. There will be no interaction between you and Biz\$hop subcontractors - Biz\$hop will answer directly to you for performance.

### Who owns things?

Marketing materials prepared by Biz\$hop for you are yours to use for marketing the contracted business only. Biz\$hop retains the copyright and may contest use by other people or companies not owned by you, or by you in an enterprise unrelated to this contract. All materials you provide remain your property and will be returned on demand.

*This is one of the concessions clauses - I am willing to pass ownership of all materials to my client if they insist. In any negotiation, you have to be able to give a little on something. I'd rather give in on the copyright than lower my fees!*

*Other concessions I am willing to 'give' on at little or no cost to me are a non-compete and/or nondisclosure clause, the location of meeting space, the physical storage of marketing materials, etc.*

### What is the guarantee?

Nobody can guarantee that an editor will print a particular story, or that an advertisement will produce a certain measured response. Biz\$hop does guarantee that you will be satisfied with the efforts and quality of work performed, or you can simply not renew the contract. That is the reason for the unusual month to month nature of our agreement. Biz\$hop knows you will be satisfied!

### What about unforeseen circumstances?

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In the event of accidents, acts of God, serious illness, or other circumstances which prevent the performance of this contract, Biz\$hop will not be held liable for any damages resulting. If unusual circumstances do prevent performance, you will be notified as quickly as possible and any retainer paid for that month will be prorated and refunded.

### What about promotion?

Biz\$hop will not use your name, any success achieved, or any other particulars about our relationship without your express permission. Biz\$hop hereby gives permission to you to publicize that Biz\$hop has been retained for marketing and public relations work, if desired.

*Some clients are anxious that others not know they've called in outside help. Others are eager to proclaim their association with Biz\$hop. This clause satisfies both.*

### What happens if we disagree?

First, we'll try to work it out. If we cannot settle our differences, of course the contract can simply not be renewed. If this will not satisfy the disagreement, both parties agree that:

*Any controversy or claim arising out of or relating to this contract, or the breach therefore, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. and judgment upon the award rendered by the Arbitrator(s) may be entered in any Court having jurisdiction thereof.*

*Important - keep fights out of the hands of lawyers!*

### What about the laws?

Both parties will be governed by the laws of the State of Washington.

### Is this the agreement?

Yes! The signature of both parties to this document and delivery of copies with both signatures will constitute this as a legal agreement. Biz\$hop believes your satisfaction should be guaranteed, or you will always have the right to simply not renew our month to month agreement. The agreement is subject to modification, proposed by either party, before renewal and so the more complicated provisions of standard contracts can be done away with.

Signatures will also as time goes on be obtained on numerous supporting documents, such as the Marketing Plan and cost proposals. Once signed, those documents will become attachments to and part of this agreement.

### For how long?

Biz\$hop works on a strict month to month basis. Renewal will be assumed unless notification is made by the 25th of the month prior. If renegotiation is required, an agreement must be reached by 28th for work to continue. This contract will expire in any case on \_\_\_\_\_, if work is to continue past then, we'll make a new agreement!

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For Biz\$hop, this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

For , this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

## 14. Pre-Paid Legal

Everyone has lawyer jokes. Even lawyers. Yet there is no doubt that they are here to stay, and they are expensive to use. A smart individual will look for a way to cut legal expenses.

PrePaid Legal plans may be at least part of the answer. Just like health insurance/HMO's charge a regular premium in exchange for greatly reducing your cost should you need a doctor, prepaid legal plans use premiums to cut costs should you need a lawyer.

The largest company in this field is Pre-Paid Legal Services, Inc. and it is ranked as one of the strongest companies in the country (ahead of Microsoft!).

Their plans in most states are \$25 per month. In exchange for that, you get:

- Access to one of the top legal firms in your state. This is your Provider Attorney Firm.
- Unlimited toll-free consultation with Provider Attorney Firm for personal or business-related legal matters.
- Two business letters from your Provider Attorney Firm on your behalf a year.
- Phone calls, unlimited number of subjects.
- Contract and document review. Unlimited number up to 10 pages for personal matters, including one business document per year.
- Will prepared at no charge with yearly reviews and updates.
- Representation for moving traffic violations.
- Representation for certain motor vehicle related criminal charges.
- Driver's license assistance (up to 2.5 hours).
- Personal injury/Property damage collection assistance of \$2000 or less.
- Civil lawsuit or job-related criminal charge pre-trial and trial services, starting out at 75 hours per year and increasing over 5 years to 335 hours per year.
- In most states, up to 50 hours of Provider Attorney services for IRS audits.
- 25% discount from standard hourly rates for any legal service not included above - including pre-existing conditions!

There is legal assistance for the poor, and the rich have private attorneys. Now the middle class can get protection - and equal justice - at an affordable price.

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Of interest to most entrepreneurs should be the fact that they also a lucrative business opportunity. When you become an associate, you can earn money both directly and residually. They pay three years commissions - **in advance** - for each client you sign up. I know of no other company that does this! Pre-Paid Legal Services can do it because they have an exceptionally high retention rate - once people sign up, they tend to stay clients for many years.

Protect yourself. Make money for yourself.

If you are interested in either becoming a covered member of Pre-Paid Legal Services Inc, or in becoming a sales associate, contact Biz\$hop and we'll get an information package out to you.

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