APRIL 2014

VOLUME 3 • ISSUE 2

Green Hasson Janks

Entertainment

Featuring people, news and business issues for the entertainment and media industry.

IS FRAUD THREATING YOUR INVESTMENTS?
WATCH FOR THESE RED FLAGS!

By Ilan Haimoff

If you have an investment in an entertainment company, keep in mind that according to the Association of Certified Fraud Examiners, approximately 5 percent of the revenue of a typical company is lost to fraud! The risk of fraud appears to rise if the company is privately held and has fewer employees.

Although you may not be an expert in fraud, you can help to protect your business and your investments by being aware of certain red flags that may indicate an increased risk for fraud. If you see any of these red flags, you may want to consider speaking with an expert for further analysis.

Examples of Employee Red Flags

- Employee lifestyle changes: expensive cars, jewelry, homes, clothes
- Significant personal debt and credit problems
- Behavioral changes: these may be an indication of drugs, alcohol, gambling, or just fear of losing the job
- High employee turnover, especially in areas which are more vulnerable to fraud
- Refusal to take vacation or sick leave
- Lack of segregation of duties in the vulnerable area

Examples of Management Red Flags

- Reluctance to provide information to auditors
- Managers engage in frequent disputes with auditors
- Management decisions are dominated by an individual or small group
- Managers display significant disrespect for regulatory bodies
- There is a weak internal control environment
- Accounting personnel are lax or inexperienced in their duties
- Decentralization without adequate monitoring
- Excessive number of checking accounts
- Frequent changes in banking accounts
- Frequent changes in external auditors
- Company assets sold under market value
- Significant downsizing in a healthy market
- Continuous rollover of loans
- Excessive number of year-end transactions
- High employee turnover rate
- Unexpected overdrafts or declines in cash balances
- Refusal by company or division to use serial numbered documents (receipts)

In This Issue

Continued from page 1

- Compensation program that is out of proportion
- Any financial transaction that doesn't make sense - either common or business
- Photocopied or missing documents

Examples of Cash Red Flags

- Excessive number of voids, discounts and returns
- Unauthorized bank accounts
- Sudden activity in dormant banking accounts
- Taxpayer complaints that they are receiving non-payment notices
- Discrepancies between bank deposits and posting
- Abnormal number of expense items, supplies or reimbursement to the employee
- Presence of employee checks in the petty cash for the employee in charge of petty cash
- Excessive or unjustified cash transactions
- Large number of write-offs of accounts
- Bank accounts that are not reconciled on a timely basis

Examples of Payroll Red Flags

- Inconsistent overtime hours for a cost center
- Overtime charged during a slack period
- Overtime charged for employees who normally would not have overtime wages
- Budget variations for payroll by cost center
- Employees with duplicate Social Security numbers, names and addresses
- Employees with few or no payroll deductions

Examples of Purchasing and Inventory Red Flags

- Increasing number of complaints about products or service
- Increase in purchasing inventory (such as video or merchandise) but no increase in sales
- Abnormal inventory shrinkage
- Lack of physical security over assets/inventory
- Charges without shipping documents
- Payments to vendors who aren't on an approved vendor list
- High volume of purchases from new vendors
- Purchases that bypass the normal procedures
- Vendors without physical addresses
- Vendor addresses matching employee addresses
- Excess inventory and inventory that is slow to turnover
- Purchasing agents that pick up vendor payments rather than have it mailed

If you identify the above red flags, keep in mind that further analysis may be required to determine if fraud is occurring, and if so, how significant it may be. If you are interested in learning more about fraud risk assessments, please contact Ilan Haimoff at Green Hasson Janks at *ihaimoff@ghjadvisors.com*. &

CALIFORNIA TAX LAW CHANGES PROVIDE BIG SAVINGS FOR THE ENTERTAINMENT INDUSTRY

by Akash Sehgal

With competition for businesses heating up across state and national borders, California passed legislation in 2013 providing favorable income tax sourcing rules for revenue generated from the performance of services and the licensing of intangible assets. Prior to the passing of the 2013 legislation, both service revenue and income from the licensing of intangible assets were sourced to California if a greater proportion of the cost associated with the performance of the service or the management and maintenance of the intangible was incurred in California. This sourcing method was referred to as "Cost of Performance."

CALIFORNIA TAX LAW CHANGES PROVIDE BIG SAVINGS FOR THE ENTERTAINMENT INDUSTRY

Continued from page 2

For tax years beginning on or after January 1, 2013, revenue generated from the performance of services and licensing of intangible assets are sourced to California to the extent that the recipient's customer benefits from the service in California. This method of revenue sourcing is called "Market Based Sourcing." What does this change mean for the California entertainment industry? It created a significant tax savings opportunity for California based businesses, by design creating incentive for businesses to conduct operations in California.

For entertainment companies and those that support the industry, revenues for pre and post production service income, royalty income from the license of trademarks, trade names, etc., and advertising revenue from digital media are subject to the Cost of Performance and Market Based Sourcing rules. Under the Cost of Performance approach utilized prior to 2013, revenue from pre and post production services and advertising from digital media would have been sourced and taxed in California if the services were performed in California. Revenue generated from the licensing of intangible assets was sourced and taxed in California if the intangible asset itself was managed and maintained in California. California based businesses bore a heavy tax burden under a Cost of Performance approach as a majority of their services were performed in California regardless of where their customer was located or benefiting from the service.

The Market Based sourcing approach may allow these same businesses the opportunity to significantly reduce the amount of revenue that is subject to tax in California without having to change their day to day revenue generating activities. To the extent that the business can identify where their customer receives the benefit of the service, then the business can allocate revenue to California based on the proportion of the benefit that is received in California. In cases where the business cannot identify where their customer receives the benefit a reasonable approximation can be employed such as applying the US population census estimates to the service income generated. Income from the licensing of intangible income should be sourced based on where the license is used. To the extent that the license is utilized in many states, then a reasonable allocation method may be employed.

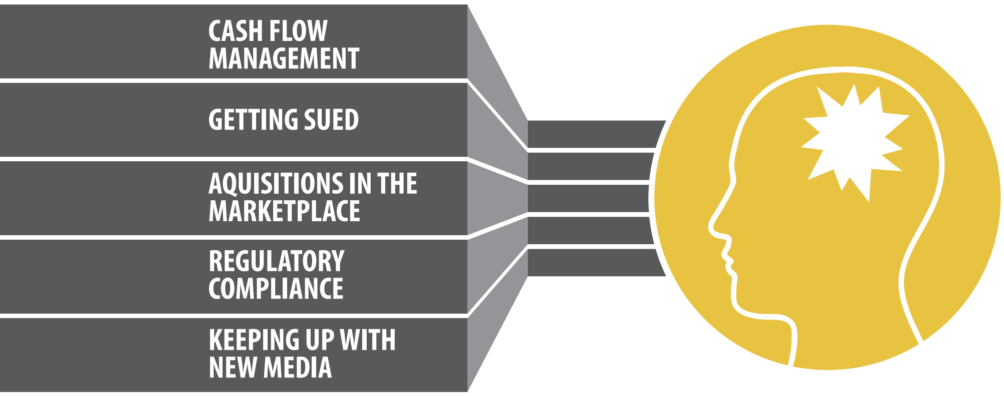
Understanding the application of the Cost of Performance and Market Based Sourcing rules can be complicated when talking conceptually. Real life examples can help provide some clarity.

Take for example a digital media company that generates advertising revenue from its customers based on internet viewership whether on popular search engine sites such as Google and Yahoo or on multimedia sites such as YouTube. Under the Cost of Performance approach, the digital media company would be subject to tax on 100% of its revenue if its services were performed primarily in California. Under the Market Based Sourcing approach, the digital media company can look to where its customer benefits from its service. Generally, viewership of digital media content can extend to many different states if not many foreign countries. Under California tax law, the company's customer is presumed to benefit in all jurisdictions where viewership occurs. Assuming viewership is limited to the US, the digital media company could allocate revenue to California based on the most current US population census estimates. The current California population census estimate is 12.1%. In this example, the change to Market Based Sourcing resulted in a decrease in the California tax of this digital media company by almost 88%.

Another example would be service income generated by production companies from pre and post production services. Under the Cost of Performance approach, this income would have been sourced to California if the services were performed in California. Under a Market Based Sourcing approach, pre and post production services are typically allocated to California based on box office estimates for films and Nielsen ratings for television programs. Like in the prior example, the allocation of revenues subject to California income tax could decrease dramatically.

While the above examples deal primarily with advertising revenue and pre and post production service income, the Market Based Sourcing rules apply to all types of service revenue. Therefore, it is imperative that California based businesses assess their current income tax sourcing approach on each of their revenue streams to determine whether opportunities exist to reduce their California income tax burden. &

5 THINGS THAT KEEP INDEPENDENT TV & MOTION PICTURE PRODUCTION COMPANIES UP AT NIGHT



Based on their experience and discussions with industry experts, Ilan Haimoff and *Jonathan Blinderman, Esq. of Glaser Weil et al* have collaborated to identify the 5 key areas of concern for CFOs of production companies:

Cash Flow Management

The complexity of the business and the its volatile nature can make it a challenge to predict the timing of license fees, tax credits and other cash receipts. Additionally, CFOs must manage expectations of profit participants, investors, vendors, consultants and subcontractors. Unexpected expenses can also lead to late nights and extra antacids. Well drafted agreements, adequate risk management and timely reporting go a long way toward mitigating these issues.

Getting Sued!

Considering the nature of the industry, there is always a risk of facing lawsuits which could have a direct financial impact on the company or a public relations impact. Even meritless claims can cause heartburn, as substantial costs can be associated with responding to the most trivial of claims. Risk management, adequate contingencies and addressing issues as soon as discovered will lead to fewer sleepless nights.

Acquisitions in the Marketplace

Growing consumer appetite for creative fresh new content keeps quality content producers in high demand. This may be a good thing for investors but it's not necessarily fun for employees and contractors who have to put in long hours to create watchable material. A high pressure, fast paced environment can increase the likelihood of potential claims, including wage, hour, work discrimination and hostile work environment claims.

Regulatory Compliance

Keeping track of reporting requirements is critical to the continuance of a successful business. However, as time and resources are stressed and regulatory demands increase, the potential exists for missing deadlines, especially in dealing with state or foreign tax credits. As government seeks every revenue stream possible, even minor violations can lead to material costs.

Keeping Up with New Media

In the constant pursuit of new revenue streams, some worry that they might miss the boat and lose an opportunity to make money in the new media space. The fast pace of updating content in new media can lead to additional exposure, with creators becoming more likely to skirt copyright, trademark, name and likeness and privacy rights of individuals. &

GREEN HASSON JANKS AT SXSW

Green Hasson Janks' music practice leader Cedar Boschan spoke at the South by Southwest (SXSW) music conference this March in Austin, Texas. Cedar's program featured a visual presentation that focused on music royalty trends.

Cedar moderated a panel of top business management professionals, including Gerri Leonard of Leonard Business Management, Laura Merry of Nigro, Karlin, Segal, Feldstein & Bolno and Lynise Levine of GSO Group. Their discussion covered the Songwriters' Equity Act, income streams such as crowdfunding and offered practical desktop audit tips.

Twitter users interacted with the panelists, presenting questions using the hashtag #SXSWroyalties.

GREEN HASSON JANKS TEAM TALKS SERVICE OVERSEAS

Fieldwork in Frankfurt

by Peter Klass

I traveled to Frankfurt to conduct a home video distribution audit at the local large studio branch office. My work consisted of meetings with finance and operations personnel to review the local home video distribution processes and analyzing supporting documentation for sampled transactions. During my two week stay in Frankfurt, I collaborated with Tobias Knuff, a senior auditor from our HLB affiliate Dr. Dienst, Zerfass & Kollegen GmbH. Tobias proved to be a great help in translating agreements and invoices along with providing guidance on German accounting practices. After work my colleague would often join me in exploring the local culture including the medieval timber-framed houses contrasting with towering skyscrapers and Frankfurt's famed cider pubs. The successful collaboration with our HLB affiliate lays the groundwork for future opportunities to work in Germany.

My First Film Royalty Audit

by Tobias Knuff
Senior Auditor, HLB Dr. Dienst, Zerfass & Kollegen GmbH

When my boss told me that we received a request to give support in a royalty audit of the large studio from our HLB affiliate Green Hasson Janks in Los Angeles, I was very excited. The United States film studios are famous in Germany and to have the chance to work on a royalty audit for the first time is an amazing opportunity. I was looking forward to collaborating with Peter Klass from Green Hasson Janks. I have never worked on a film royalty audit before, so I wanted to be well prepared for this job. I read the book "Movie Money" co-written by *Steven Sills*, Partner, Green Hasson Janks. With the help of this book I got a behind the scenes look into "Hollywood Accounting." When Peter and I met for the first time at the large studio office in Germany, Peter explained the audit process that would take place over the next few days. I translated agreements and invoices for Peter and reviewed them for issues relating to our audit. Due to the invoices and agreements, we also realized the main differences between German and American business practices. My first film royalty audit was a very exciting experience and I learned a lot about the film business.

In addition to the successful collaboration, it was also a great experience for me to show Peter some nice places in Frankfurt, especially the famous cider pubs, where we had a lot of very interesting discussions about the differences between Germany and the USA. I hope that there will be further possibilities for collaboration in future. &

IN THE NEWS

Ilan Haimoff's royalty audits article is featured in LES Insights. Click here to read the full article.

Q&A WITH LISA A ALTER, ESQ.
Copyright Grant Termination Expert

Interviewed by Green Hasson Janks' Cedar Boschan

Many Green Hasson Janks entertainment clients - especially music clients - have sophisticated copyright grant termination strategies. A most distinguished expert on this complex topic is New York attorney Lisa A. Alter. In the interview below, Ms. Alter graciously shares with our readers some of her intricate knowledge.

Cedar M. Boschan: What is a copyright grant?
Lisa A. Alter: A copyright grant is a conveyance of any or all rights in an original work of authorship (such as books, compositions, motion pictures and sound recordings) that arise under copyright.

Boschan: Many entertainers earn a living from copyright grants to publishers, film studios and record companies. Why would one want to terminate a copyright grant?
Alter: Termination rights can be very valuable. Typically, the author (or heirs) may be receiving only a fraction of the income derived from the exploitation of the copyrights under the grant. Once rights have been terminated and recaptured in the U.S., the author or his/her heirs may self-administer the works, enter into an administration deal on terms more favorable than the original grant, renegotiate terms with the original grantee (perhaps for the world), or sell all or a portion of the copyrights to either the original grantee or a third party.

Boschan: Who may terminate a copyright grant?
Alter: The author, or if the author is deceased, the author's statutory heirs may terminate a grant of copyright...
If the author leaves no surviving spouse, child or grandchild, the author's executor, administrator, personal representative or trustee may terminate a grant in the author's place.

Boschan: Works for hire cannot be recaptured. How can one tell if one's copyright is a work for hire?
Alter: Just because a contract says that a copyright is being created as a work made for hire does not mean that it is, in fact, a work made for hire. The rules are different depending on whether the work was created before Jan. 1, 1978 or on or after that date...
[For more details, click here.]

Boschan: After a copyright grant is terminated, what, if any, rights does the original assignee retain?
Alter: After a grant of copyright is terminated, the original assignee will retain the rights to derivative works created during the term of the grant.

Boschan: Does this apply in the USA only, or throughout the world?
Alter: Statutory termination is limited to the United States. If a grant was a worldwide grant (whether made in the U.S. or abroad) the grant will terminate in the U.S. but continue outside the U.S.

Boschan: Do you help clients recapture foreign copyrights?
Alter: We frequently are asked to assist clients in asserting rights in the so-called "British Reversionary Territories" that were part of the United Kingdom in 1911. Depending on the date of the relevant grant made by an author, rights may automatically revert to the author's heirs 25 years after the death of the author. Keep in mind that for most of the BRTs the date of the grant is critical. For example, in England the reversionary right only applies to grants made by an author on or before June 1, 1957.

Boschan: How does the possibility of reversion impact the value of a copyright?
Alter: The possibility of recapture of copyrights certainly will increase the value of those works for authors and heirs. ... [for more details, click here]. However, the possibility of termination or reversion will undoubtedly have a negative impact on the value of a copyright for a grantee seeking to sell its assets. For example, if a music publisher has a large catalog of compositions that includes songs which may, in the future, be subject to termination, a potential purchaser of the catalog may want to discount the value of the catalog to compensate for the potential loss of U.S. rights. Alternatively, a portion of the purchase price may be held back until the period for serving notice of termination closes without notice being served.

Lisa A. Alter is a partner in the firm of Alter & Kendrick, LLP in New York City. Her practice is focused primarily in the area of copyright law, with a particular emphasis on domestic and international music copyright issues.

For more information contact Lisa Alter at lisa.alter@alterandkendrick.com or (212)707-8377. &

To submit future topics or provide feedback, please contact Ilan Haimoff at ihaimoff@greenhassonjanks.com

10990 Wilshire Blvd, 16th Floor
Los Angeles, CA 90024
310.873.1600
greenhassonjanks.com/entertainment