

Evaluating Loss of Earnings to Self-Employed Business Owners in Personal Injury Litigation

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Overview

- Evaluating loss of earnings to self-employed business owners
- Appropriate financial documentation needed
- Analysis of financial records
- Methodologies for calculation of loss
- Mitigation earning capacity issues

Wage Earner vs. Self-Employed

- Earnings more correlated with industry and economy
- Lack of financial records for small businesses
- Earnings of business

Financial Documentation

- Financial Statements

- Income Statement
- Balance Sheet
- General Ledger



- Business Tax Returns

- Sole Proprietorship: Form 1040, Schedule C
- Partnership: Form 1065, K-1
- C Corporation: Form 1120
- S Corporation: Form 1120S, K-1
- LLC: ???

Financial Documentation

- Other Records

- Revenues and Expenses Documentation
- Labor Replacement Costs
- Payroll Records
- Documentation for
 - Income on Hourly Basis
 - Income on Commission Basis
 - Income from Products or Services



Analysis of Financial Records

- Differences Amongst Types of Financial Records

- Accrual vs. Cash Accounting

- Analyzing the Data

- Pre-Injury vs. Post Injury

- What to Look Out For

Summary of Profit and Loss Statements					
	2008	2009	2010	2011	2012
Income:					
Gross Receipts or Sales	\$ 620,000	\$ 650,000	\$ 635,000	\$ 475,000	\$ 660,000
Cost of Goods Sold:	\$ -	\$ -	\$ -	\$ -	\$ -
Gross Profit:	\$ 620,000	\$ 650,000	\$ 635,000	\$ 475,000	\$ 660,000
Expenses:					
Advertising	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000
Car and truck expenses	\$ 3,000	\$ 8,000	\$ 7,000	\$ 7,000	\$ 6,000
Contract labor	\$ 62,000	\$ 65,000	\$ 63,500	\$ 85,000	\$ 128,500
Depreciation	\$ 25,000	\$ 20,000	\$ 20,000	\$ 15,000	\$ 15,000
Insurance	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000
Legal and professional	\$ 1,000	\$ 2,000	\$ 1,000	\$ 2,000	\$ 1,000
Office expense	\$ 31,000	\$ 32,500	\$ 31,750	\$ 23,750	\$ 33,000
Rent or lease	\$ 20,000	\$ 40,000	\$ -	\$ 20,000	\$ 20,000
Repairs and maintenance	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000
Supplies	\$ 68,200	\$ 71,500	\$ 69,850	\$ 52,250	\$ 72,600
Taxes and licenses	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000
Travel	\$ 7,000	\$ 4,000	\$ 1,000	\$ 2,000	\$ 4,000
Meals and entertainment	\$ 2,000	\$ 1,000	\$ 2,000	\$ 1,000	\$ 2,000
Utilities	\$ 13,000	\$ 13,000	\$ 13,000	\$ 13,000	\$ 13,000
Wages	\$ 220,000	\$ 220,000	\$ 220,000	\$ 190,000	\$ 190,000
Officer Wages	\$ 100,000	\$ 105,000	\$ 110,000	\$ 70,000	\$ 70,000
Other:					
Education	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000
Contract services	\$ -	\$ -	\$ -	\$ 5,000	\$ -
Total Expenses:	\$ 570,200	\$ 600,000	\$ 557,100	\$ 504,000	\$ 573,100
Net Profit:	\$ 49,800	\$ 50,000	\$ 77,900	\$ (29,000)	\$ 86,900

Industry Analysis

- What would have revenues looked like but for the incident?
- Did the industry of the business increase or decrease?
- Should the industry be taken into account?

Damages

- Temporary Injury
 - Replacement Wages
 - Lost Revenues less variable costs (Saved Costs)
 - Lost Net Income
- Permanent Injury Requiring Change in Occupation
 - Lost Profits
 - Lost Earning Capacity
 - Replacement Wages / Management
 - Business Value?

Estimate Variable Expenses

- Three types of expenses in a business
 - Fixed Expenses
 - Variable Expenses
 - Semi-Variable Expenses



Common Size Profit and Loss Statements

	2008		2009		2010	
Income:						
Gross Receipts or Sales	\$ 620,000	100.0%	\$ 650,000	100.0%	\$ 635,000	100.0%
Cost of Goods Sold:	\$ -	0.0%	\$ -	0.0%	\$ -	0.0%
Gross Profit:	\$ 620,000	100.0%	\$ 650,000	100.0%	\$ 635,000	100.0%
Expenses:						
Advertising	\$ 5,000	0.8%	\$ 5,000	0.8%	\$ 5,000	0.8%
Car and truck expenses	\$ 3,000	0.5%	\$ 8,000	1.2%	\$ 7,000	1.1%
Contract labor	\$ 62,000	10.0%	\$ 65,000	10.0%	\$ 63,500	10.0%
Depreciation	\$ 25,000	4.0%	\$ 20,000	3.1%	\$ 20,000	3.1%
Insurance	\$ 2,000	0.3%	\$ 2,000	0.3%	\$ 2,000	0.3%
Legal and professional	\$ 1,000	0.2%	\$ 2,000	0.3%	\$ 1,000	0.2%
Office expense	\$ 31,000	5.0%	\$ 32,500	5.0%	\$ 31,750	5.0%
Rent or lease	\$ 20,000	3.2%	\$ 40,000	6.2%	\$ -	0.0%
Repairs and maintenance	\$ 1,000	0.2%	\$ 1,000	0.2%	\$ 1,000	0.2%
Supplies	\$ 68,200	11.0%	\$ 71,500	11.0%	\$ 69,850	11.0%
Taxes and licenses	\$ 5,000	0.8%	\$ 5,000	0.8%	\$ 5,000	0.8%
Travel	\$ 7,000	1.1%	\$ 4,000	0.6%	\$ 1,000	0.2%
Meals and entertainment	\$ 2,000	0.3%	\$ 1,000	0.2%	\$ 2,000	0.3%
Utilities	\$ 13,000	2.1%	\$ 13,000	2.0%	\$ 13,000	2.0%
Wages	\$ 220,000	35.5%	\$ 220,000	33.8%	\$ 220,000	34.6%
Officer Wages	\$ 100,000	16.1%	\$ 105,000	16.2%	\$ 110,000	17.3%
Other:						
Education	\$ 5,000	0.8%	\$ 5,000	0.8%	\$ 5,000	0.8%
Contract services	\$ -	0.0%	\$ -	0.0%	\$ -	0.0%
Total Expenses:	\$ 570,200	92.0%	\$ 600,000	92.3%	\$ 557,100	87.7%
Net Profit:	\$ 49,800	8.0%	\$ 50,000	7.7%	\$ 77,900	12.3%

Lost Profits / Earning Capacity

- Net Profit
- Officer Wages
- Non Cash Expenses
- Return on Investment

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Legal and professional	\$ 1,000	\$ 2,000	\$ 1,000
Office expense	\$ 31,000	\$ 32,500	\$ 31,750
Rent or lease	\$ 20,000	\$ 40,000	\$ -
Repairs and maintenance	\$ 1,000	\$ 1,000	\$ 1,000
Supplies	\$ 69,200	\$ 71,500	\$ 69,850
Taxes and licenses	\$ 5,000	\$ 5,000	\$ 5,000
Travel	\$ 7,000	\$ 4,000	\$ 1,000
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Total Expenses:	\$ 570,200	\$ 600,000	\$ 557,100
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- ### Mitigation Issues
- Labor Replacement
 - Labor Modifications
 - Deference
 - Business Focus

Questions?

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