

## HOW LONG SHOULD RECORDS BE KEPT?

During the past decade, the way some businesses handled their business records made the wrong kind of headlines.

As a result, the retention of business records is now subject to increased scrutiny and, in some cases, increased regulation. The trend is for records be kept longer than previously.

Proper record retention is not only a matter of avoiding liability – it is critical to the efficient operation of your business. Lost records can result in lost time, lost business and lost tax advantages. Poor record retention can compound the difficulties a business may face if it has to recover from a disaster such as fire, storms or a successful hacker attack on its computer systems.

Having an appropriate record retention policy and assuring that it is implemented are more important than ever. The question is, “What records do you have to keep – and for how long?” The answer depends on the type of record being considered. Business records fall into several categories.

### TAX RECORDS

The IRS normally has three years after your return is due or filed, whichever is later, to commence an examination. If a substantial amount of income is omitted from the return, the period is extended to six years. Many advisers suggest that you can dispose of tax records after seven years.

But some tax records need to be kept longer. Copies of prior tax returns and elections they contain should probably be preserved indefinitely. Records supporting the cost basis in assets owned, such as buildings and long-lived equipment, should be retained until at least three years after the asset is disposed of. Carry-forward items, like records supporting net operating losses, should be retained until seven years after the year in which the carry-forward item is deducted on a return.

As part of each year’s filing, you must maintain supporting documentation of almost every item of income and expense that you claim. You must be able to produce receipts, invoices, canceled checks or bank records that support all expense items. You should also keep sales slips, invoices or bank records to support all income items.

## **INSURANCE POLICIES, KEY CONTRACTS, LEASES**

These records should be retained for at least 10 years after they have expired. If the business has intellectual property that is important to its operations, documents evidencing ownership of that intellectual property, including patents, trademark registrations and supporting documents, should all be retained permanently.

Depending on the nature of your business, it may also be wise to retain insurance policies permanently since claims can occasionally arise from acts that occurred many years in the past. (This is particularly true of environmental claims.) Keep a copy of the policy to establish the potential for coverage.

## **CORPORATE GOVERNANCE DOCUMENTS**

Keep all records associated with the formation of your business, such as articles of incorporation, partnership agreements, LLC documentation and business licenses. These documents should be retained permanently. Ideally, copies – if not originals – should be in the hands of the business's attorneys.

Save bylaws and minutes of all board meetings. Shareholder records should include stock registers and records of all share issuances and redemptions. Also keep copies of all contracts and leases. And do not forget proprietary information such as formulas, trade secrets, patent information and designs.

## **ACCOUNTING RECORDS**

Your business probably has an adequate accounting system to capture routine transactions. If you construct a building for your own use, you need to capture all of the costs associated with the project. When you buy a vehicle, computer or piece of office equipment, retain all purchase documents, assign an inventory number, and set up a depreciation schedule.

If you acquire another business, not only should you keep records of the purchase transaction, but you may also need to gain control of the accounting records from the prior owner, particularly if you are assuming a liability for events that may have occurred before you purchased the business.

It is best to keep payroll records permanently.

## TRAVEL AND ENTERTAINMENT

Tax law contains specific record-keeping requirements for travel and entertainment expenses. The rules can be complex. In general, capture where, when, who, how much and the business purpose for each expense.

Ask your CPA to help you design a standard expense report form for all employees who incur these expenses. Require each employee to submit the form, with appropriate receipts, to receive reimbursement. If you have employees who drive on company business, require an auto log showing the miles driven for each trip. It is best to keep these documents permanently.

## EMPLOYMENT RECORDS

A number of government agencies have a say in what records you need to retain with respect to current and former employees, as well as job applicants.

**IRS** – The Internal Revenue Service says you must keep records relating to payments made to employees, employer tax reports and tax deposits for at least four years.

**DOL** – The Department of Labor requires that you keep payroll records, collective bargaining agreements, and sales and purchase records for three years. Other employee records, including pay rate, hours worked, time cards, bonuses, withheld taxes, etc., should be kept for at least two years.

**INS** – U.S. Immigration and Naturalization Service Form I-9, Employment Eligibility Verification, must be signed by the employee and the employer and be readily available until three years from date of hire or one year after termination.

**OSHA** – Occupational Safety & Health Administration says that a log and summary of occupational injuries and illnesses must be kept for at least five years.

**ERISA** – The Employee Retirement Income Security Act requires that most corporate and employee pension plan records be kept indefinitely.

**ADA** – The Americans with Disabilities Act states that you must keep personnel and employment forms relating to hiring, promotion, demotion, transfer, layoff, termination, rates of pay, etc., and selection for training for at least one year.

**ADEA** – The Age Discrimination in Employment Act requires you to keep payroll records for at least three years and personnel records for at least one year.

## **BANK STATEMENTS AND CANCELED CHECKS**

Bank statements and canceled checks generally may be discarded after seven years. However, if canceled checks might be required to establish a tax basis or to evidence other significant transactions, copies should be kept indefinitely, preferably with the other documents related to the transaction in question.

## **CORRESPONDENCE**

The length of time correspondence should be retained differs, but most correspondence should be kept for at least three years.

Correspondence and other documents relating to particular contracts should be retained for as long as the contracts remain in force and for seven years afterward. The same is true for important assets, including intellectual property that is essential to the business. In general, you should retain correspondence that is not general in nature for as long as other documents related to the subject matter of the correspondence are retained.

## **ELECTRONIC RECORDS**

Email messages and other information that exists only in electronic form are as much business records as paper documents and must be retained with the same care. Companies should carefully back up their computer systems and archive email. Given the increasing reliance on email and its role in many lawsuits, the importance of preserving the integrity of electronic information is clear.

Payroll records, ledgers, journals and other financial and statistical information may be converted to electronic form and retained in that manner. However, correspondence, memoranda and other similar documentation should be retained in the original format, as should all contracts, leases, agreements and other legal documents.

The record retention policy should address electronic records as well as print, including provisions for periodic backup and archiving of e-mail and other electronic information, and transfer of electronic information to a read-only format where appropriate. Document disposition when the retention period has expired should also be addressed.

*If you have questions regarding record retention, please contact us at 251.473.5550.*