

Answering “ObamaCare”
An Essay on Effective Business Strategy

by John Mark

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About the Author

John Mark has an extensive background in the sale of products and services. They include janitorial services and supplies, a restaurant, new and used cars and trucks, bookkeeping, accounting, tax preparation services and business consulting. Most of these businesses he started himself, including ***Small Business Institute***, an Oklahoma corporation founded to provide start-up advice, organizational strategy and consulting services to business owners. John Mark is the author of [***The Secret to Selling - The Master Key to Success in Sales and Marketing***](#).

John Mark is also the author of [***How to Publish Your First Book - A Do-It-Yourself Guide to Self-ePublishing***](#). He has published several hundred eBooks authored by others at *Amazon*, *Google Books*, and *Lulu* (which also markets via *Apple iTunes* and *Barnes & Noble*) through his corporation ***My Co.*** Additionally, John Mark helps new authors prepare, edit, and publish their own books.

Objective

ObamaCare is the newest concern many businesses must face. My objective is to offer suggestions to business strategy that might lessen the effect and burden this legislation will bring. ***It isn't always advantageous to stay big - sometimes breaking one big business into smaller businesses is the answer.*** The paperwork may increase a bit – but the net result can be well worth the trouble. We'll consider the issue at hand, and a line of attack or two you may want to implement to protect your investment.

Another saying I like to use: *Tax evasion is illegal – tax avoidance is good business.*

Introduction to *ObamaCare*

Big government may have its advantages, but the many disadvantages can threaten the viability and success of many businesses. "*ObamaCare*" is one of many threats to companies now in our immediate future that must be addressed. "The Patient Protection and Affordable Care Act (Obamacare) was signed into law March 23rd, 2010 and upheld by a supreme court ruling on June 28, 2012. The bill includes unprecedented preventative care and protections including insurance companies no longer being able to deny individuals for preexisting conditions or to drop them from coverage when they get sick. ...coverage starts Jan 1st, 2014"¹

So what about "*ObamaCare*"? The most affected by this colossal burden will be big businesses. It will be important as the legislation of this regulation evolves to becoming the law of the land to pay attention to where any relief may come. Most often, businesses with less than 25 employees are exempt from these kinds of employer burdens.

Taken from <http://obamacarefacts.com/obamahealthcare-summary.php> (emphasis mine): "ObamaCare helps small businesses under 25 full-time employees insure employees, *if they choose*, through tax credits, while employers with over 50 full-time employees will *have to pay* a percentage of their employees health care or a penalty." ObamaCare includes "...a tax on employers with over 50 full-time employees who do not supply their employees with affordable quality health care ... ObamaCare is paid for itself via 21 new taxes most of which are on larger businesses ... some of the larger small businesses and their employees may be affected by some of the new taxes as well as the mandate to buy insurance for full-timers."²

"The ObamaCare small business Medicare tax hike is a .9% increase on the current Medicare part A tax. Small businesses making under \$250k in taxable profit don't have to pay this ObamaCare small business tax increase."³ I will discuss strategy that will help limit the profit of the small businesses created to shelter a big business from increased taxes.

"Small Businesses with over 50 employees that choose not to provide insurance (employers must pay at least 60% of covered health care costs), provide insurance that is too expensive, or insurance that doesn't meet the minimum standards set forth by ObamaCare (must provide the minimum benefits of a "bronze" plan bought on the ObamaCare health insurance exchange) and cannot exceed 9.5% of family income for the employee will have to pay an "employer responsibility requirement" penalty ... The "mandate" is really a shared responsibility fee, or penalty. The penalty for small businesses not covering their workers is \$2000 per employee and \$3000 if they purchase health insurance through the exchange with premium credits (the first 30 workers are excluded from the penalty) ... 96% of all firms in the United States - or 5.8 million out of 6 million total firms - have under 50 employees and Will not Be Penalized

for choosing not to provide health coverage to their employees ... Of course for a small business this means being able to offer your employees more attractive packages and receiving better tax breaks for doing so. For larger small businesses it means that they have to provide insurance for their employees or pay a penalty. Either way small business is vital in providing affordable quality health care to Americans."⁴

You Have Choices

During my ownership and management of a business consulting firm in Oklahoma, I found a common answer to problems businesses were encountering the bigger they got. My favorite saying was, *“If big businesses would act like small businesses, they’d be more successful.”* Big business can easily become top-heavy with expensive management micromanaging it’s workers becoming more and more ineffective and drastically reducing the bottom line. Big business is more affected by government regulations which certainly can have a draining effect on hoped-for profits. Sometimes, big business should take a look at the advantages of small business and make necessary adjustments. The important message I want to get across is – ***you have choices!***

I’ll use an actual situation I was involved in as an example of how I saved a considerable amount of money for one of my clients. A locally owned construction company was having to pay exorbitant Workers’ Compensation Insurance premiums, keeping them from being competitive with their smaller competitors. State law requires employers to cover their employees with this insurance, but exempts owners of companies from having to cover themselves. Instead of whining about the seeming unfairness of the law, I offered a solution. Break up your big company into small companies that no longer require insurance coverage. I set up small one-man corporations for each of the workers. Instead of one company having multiple employees requiring coverage, the big company contracted with the small companies to provide the same services they performed, but now no longer employees of the big company.

One temptation I have to address quite often that businesses easily fall for is “contract labor”. The problem is that if you employ any individual to perform any task you legally have the right to direct and/or control, whether or not you chose to exercise that right, you are their employer no matter what you call them. This is the quickest way to get into big trouble with not only the Workers’ Comp. people, but the State Unemployment agency, IRS, Social Security Administration, and perhaps other taxing agencies I’m forgetting about. Reclassifying contract workers to employees is a recipe for devastating results.

Choosing a small business structure as an option to keeping your business big may very well provide options not available to big businesses. As one reads through the explanation of ObamaCare, it is obviously confusing and sometimes doesn’t seem to track well. The number of employees making up each small business should be carefully planned, whether 10, 25, 30, 50 or whatever is best. We’ll use three scenarios to illustrate strategies you may want to consider.

Scenario One

This scenario could work well for a construction business: ABC, Inc. has 15 workers hired to perform services ABC offers its customers. If ABC pays any of these individuals for services rendered, they are by law defined as employees whose pay is subject to withholding for income tax, Medicare and Social Security tax (as well as employer matching taxes), State income tax, state and federal unemployment taxes, and Workers' Comp. Insurance.

Alternative: The 15 workers each create their own corporations (or LLC's if preferred). These corporations in turn contract with ABC to perform certain services (whether billed hourly or by the job – it doesn't matter). ABC no longer pays individuals for services rendered, and is no longer obligated to pay taxes and insurance premiums mentioned. Each of these 15 workers become employees of their own businesses and handle their own taxes. I have strategy to lower costs for each of these contractors, but that'll be discussed with them individually as opportunity arises.

Scenario Two

Now we'll consider a big businesses that has considerable numbers of workers which would not fit the scenario described above. One thing to keep in mind: There is neither prohibition nor law that limits the number of businesses you own. If you own one large business, there is nothing that would prohibit you from splitting it up into smaller companies, each a legally created and operated entity.

Instead of keeping a large number of workers as employees, ABC, Inc. decides to create separate staff leasing companies (which also can be owned by you, the owner of ABC, Inc.). These agencies are contracted to hire your workers. In other words, in this scenario, you own a business with 250 employees. You decide to limit each company to 25 employees per company. You create 10 separate entities (corporations or LLC's – *not sole-proprietorships and not partnerships*) which each hire 25 workers who will work at ABC, Inc.'s business. In other words, ABC, Inc. contracts with these 10 companies to provide the workers who will staff your business. Each of these 10 staff leasing companies are independently and individually responsible to hire, manage, pay each employee as well as handle the withholding taxes, insurance, etc. as required. The profits of these individually owned (by you) and operated companies can be strictly structured by the amount of money contracted between your primary company. This can be simply based on a cost-plus basis (the same as any other staffing agency would charge).

Scenario Three

This scenario is along the line of Scenario Two – only you don't own the staffing companies. This would further insure *arms-length transactions*, something we want to

have throughout the implementation of our strategies. Let's say ABC, Inc. has 200 employees. Within the company are competent and trustworthy managers who are offered the opportunity to run their own staff leasing companies which will provide workers for ABC. Each will contract with ABC and the fees it will be paid will be based on each worker's agreed upon rate of pay, whether hourly or by salary, bonus incentives, or whatever you agree upon. The number of staff leasing companies to create will be determined by how many employees need to be removed from ABC's payroll and on to the staffing agencies' payroll.

The decision as to how many employees can be hired by each staffing agency must be carefully considered. "For a staffing firm with 50 full-time equivalent employees, a penalty kicks in for failure to provide coverage for employees who average 30 or more hours a week in a given month. The penalty is \$2,000 for each full-time employee in excess of 30 full-time employees."⁵

Conclusion

I am all for submission to government, especially if not doing so might cause financial hardship, exorbitant penalties, or even legal action that could make you a guest of the Department of Corrections. Submission to the government doesn't always mean laying down like a doormat and letting it run roughshod over you. The more government wants to legislate the way you do business, the more we want to consider strategies that will bring the least costly outcome. I can't help thinking about the *David and Goliath* metaphor. David didn't use a giant spear to handle his enemy. He used 5 little stones – one for the big guy, and four more in case his big brothers showed up. That's what we're doing here – instead of fighting the giant with giant resources that may or may not work – we'll break up our armor into small innocuous parts and handle our business that way.

It's up to you to decide what is best for your enterprise. Experts need to be consulted to determine the best plan of attack. If limiting the size of each contracting agency to 10 employees is the way to go – then go for it. Perhaps limiting them to 25 would work better. It's your choice. And that's the real point I want to get across – ***you have a choice!*** Use it wisely.

¹ *ObamaCare Summary: A Summary of Obama's Health Care Reform*
(<http://obamacarefacts.com/obamahealthcare-summary.php>)

² *ObamaCare* (<http://obamacarefacts.com/obamacare.php>)

³ *Ibid*

⁴ *Ibid*

⁵ *Obamacare and the Healthcare Staffing Industry* from an article posted by Tim Teague on Thu, Jul 05, 2012 (<http://info.whatisbluesky.com/blog/bid/183884/Obamacare-and-the-Healthcare-Staffing-Industry>)