A Sincere DETERMINATION

How Paul Keiswetter’s belief in Petoskey Plastics turned it into one of the top manufacturers in the nation

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Sometimes it takes more than ideas, expertise, opportunity and even financial support to make a business succeed — make that most of the time.

Passion, perseverance and plain grit to pull themselves up by the bootstraps day in and day out — that’s what the entrepreneurs in this issue have in common. They never lose sight of the goal and are certain they will one day achieve it.

Take Paul Keiswetter of Petoskey Plastics. He personifies perseverance to its core, taking his father’s fledgling business and working diligently, doing whatever necessary, to transform it into one of the leading and most purposeful plastics manufacturers in the country.

Annerose Zorn-West of Juzo is no stranger to pursuing a long term vision in spite of obstacles and hardships. She took her family’s medical compression garment business from Germany to America, growing the business and honoring its 107-year-old history.

Scott McCafferty of WTWH Media, publisher of technical content across both digital and print platforms, didn’t let an early entrepreneurial setback stop him from finding the right opportunity and leading his team to success.

Determination to succeed truly connects these entrepreneurs, and the most successful entrepreneurs around the globe.

We hope you continue to enjoy this publication as much as we enjoy bringing it to you. Call or email me anytime if I can be of any help to you, or if you just want to chat, at 216.774.1102 or rmyeroff@cohencpa.com.

Randy Myeroff
CEO, Cohen & Company
EXPERT Q&A: POSITION OF STRENGTH
Finding and maximizing opportunities before and during a recession

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Empowering team members to enhance, and even create, the Cohen & Company story
While the leading economic indicators are not flashing red yet, some are yellow and may indicate an impending slowdown, says Leon LaBrecque, chief growth officer at Sequoia Financial Group. Below he shares how to not only be ready, but how to come out on the other side of a recession stronger than ever.

Taxonomics: What are we seeing today in terms of our economy, and will we see a recession soon?

LaBrecque: Recessions are a part of the natural ebb and flow of the economic cycle within a free-market economy. The eventual downturn is the price we pay for the upturns. Currently, the U.S. is experiencing the longest economic expansion in history. Confidence is up and regulatory burden is down; however, there are a few indicators already telling us to be cautious.

The U.S. unemployment rate in June 2019 was 3.7%, which is good but also causes wage growth. With wage growth high right now, that can lead to inflation, ultimately slowing business and spending. Consumer confidence is another area to keep an eye on, as it generally peaks and then tapers before the recession. For example, the consumer confidence index in October 2018 was 137.9 and down to 121.9 in June 2019. In comparison, preceding the 1991 recession, confidence peaked at 120.7 and dropped to 101.7 by the beginning of the recession. In the most recent downturn of 2008, confidence peaked at 111.9 and dropped to 90.6 by the beginning of the recession.

In terms of estimating when the next recession will hit, another key indicator to monitor is the U.S. treasury yield curve. When the one-year and 10-year curves invert in a meaningful way, this is called a yield curve inversion. It’s a relatively reliable indicator of a pending recession and often results in banks tightening credit, which, generally speaking, slows business. In each of the prior 11 post-WWII recessions, we saw a yield curve inversion. These three indicators combined often suggest the calm before the storm.

Taxonomics: When the next downturn occurs, what might be different this time?

LaBrecque: After analyzing the last 11 recessions, we see clear similarities among events occurring shortly before a recession, such as the Fed raising interest rates, a drop in unemployment levels and a spike in oil prices. But it’s more productive to focus on the unique circumstances surrounding each economic contraction to better understand how individual political, economic and policy factors interacted to facilitate a recession.

Amid all the positive, there is still a lot of uncertainty surrounding the U.S. economy. Some of that uncertainty stems from political concerns, such as trade tariff wars and the presidential election season. Other concerns are strictly financial, including the Federal Reserve Bank’s strategy for raising or lowering interest rates and whether or not they can do so without impacting the economy.
“Recessions are opportunities: they change how people think and act, and if you do it right you can thrive in them.”

Leon LaBrecque, JD, CPA, CFP™, CFA

This time around, the Fed has a new tool in its toolbox in the form of Treasury securities on its massive balance sheet. The Fed can stop the let-off of the bonds coming off the balance sheet, and thereby change rates and stimulate growth. Since the last recession we’ve also begun exporting more oil, so if oil prices spike, U.S. energy producers will actually make money instead of lose it. We have greatly increased debt as a nation, making it difficult to envision how the government could stimulate the economy during a recession without getting the country further into the red. Also, our relationship with China is different. We are much closer in terms of GDP, and the effects of the ongoing trade remain to be seen.

Taxonomics: What role, if any, will the Tax Cuts and Jobs Act (TCJA) play?

LaBrecque: Unfortunately, parts of it likely won’t help companies trying to make their way through a recession. First, the TCJA changed the landscape for net operating losses (NOLs), which are important if your company is having an off year, because they generally help recover past tax payments. Now NOLs can no longer be carried back; they can only be used in the future to offset up to 80% of income, instead of 100% before reform. That effectively results in a tax increase for many corporations during a loss period. There are also new limits to the excess loss limitation deductions owners of pass-through entities can take. And in general, the complexities of how all the new reform rules work together is something that will make tax planning before, during and after a recession critical.

It’s important to note the TCJA, like a carton of milk, has an expiration date on many provisions. The full-expensing provisions, pass-through provisions and individual cuts all expire. A change in Washington could make those expirations highly likely.

Taxonomics: So how can businesses and individuals financially prepare for what’s ahead?

LaBrecque: A mentor of mine once said, “Recessions are opportunities: they change how people think and act, and if you do it right you can thrive in them.” I love that. But there are some steps to take first. It’s very important to be financially aware and savvy. Do a gut check by reviewing your finances now: income statement, balance sheet and cash flow. What is working? Where is there risk? How will business risk impact an owner’s personal financial situation and cash reserves? Lean-up on budgets, and dump unnecessary expenditures now. Ask, “If I didn’t have ‘X’, would I hire/purchase it now?” If the answer is no, it should be trimmed. Line up business loans before a downturn, when credit often tightens. Be in the best possible position.

Taxonomics: What other opportunities should business owners specifically be on the lookout for?

LaBrecque: Once in a solid financial position, owners can be opportunistic when a downturn hits. Consider strategically deferring large capital expenditures today, if possible. In recessions, prices tend to go down, and companies are more eager to sell, meaning there are often deals and discounts. Watch your competition. In a downturn, many businesses are unprepared. Seize this opportunity to buy them out, hire their employees or advertise when they stop. Look for new ideas. The best time to start a business is also during a downturn. Good people are out of work, companies have folded or spun off divisions, and there are opportunities in technology and product expansion. Never forget to build and protect the company’s team by being transparent and keeping all of the ‘A’ players, no matter what.

Taxonomics: What additional lessons learned can you share?

LaBrecque: To thrive in a recession, individuals must look at the past, learn from it — for better or for worse — and then act on those lessons. Then you’ll be better prepared for whatever the future has in store.
How Paul Keiswetter’s belief in Petoskey Plastics turned it into one of the top manufacturers in the nation
In a famous scene in the 1967 award winning film, “The Graduate” — two years before the founding of Petoskey Plastics by father and son Duke and Paul Keiswetter — a young Dustin Hoffman as Benjamin has the following exchange with a businessman at his graduation party:

**Mr. McGuire:** “I want to say one word to you. Just one word.”

**Benjamin:** “Yes, sir.”

**Mr. McGuire:** “Are you listening?”

**Benjamin:** “Yes, I am.”

**Mr. McGuire:** “Plastics.”

Pause.

**Benjamin:** “Exactly how do you mean?”

**Mr. McGuire:** “There’s a great future in plastics.”

McGuire was right. Synthetic plastic was invented in 1907 and some forms of this polymer based material were in use beginning in the late 1920s. But, in the 1960s innovations in chemistry and manufacturing positioned plastics to become the marketplace’s most ubiquitous material, replacing wood, metal and other materials in countless industries and products.

Today, plastics is the eighth largest industry in the world, generating over $430 billion in the U.S. alone and employing nearly two million people domestically, including suppliers.

Still, Hoffman’s character was not enthusiastic.

But for Paul Keiswetter — a young former Marine who served during the early days of the Vietnam War — things were different. He never attended college but was whip smart, charismatic and had risen to Chief of Orderlies for two Navy admirals. Now out of the military, Paul was looking for an opportunity as large as his ambitions.

When his father, Duke, told him in 1969 of the business potential he saw in a new product he had seen called plastic bags, Paul was all in for his father’s idea to buy a small facility in Petoskey, Michigan, and build a plastic bag manufacturing business together.

The opportunity signified another shot at business ownership for Duke, the former president of a Detroit-based laminated plastics manufacturer that went bankrupt when shareholders pulled the plug. At the age of 17, Paul witnessed his father being taken out of their home by ambulance after suffering a nervous breakdown following the bankruptcy.

But, after two-and-a-half years into their new venture, Duke bowed out of the struggling Petoskey Plastics, having no stomach for a second bankruptcy. “All Paul had when I was hired was this little building, a few customers and a box of bills,” recalls
Marilyn Cummings, Paul’s executive assistant for the last 45 years.

“I practically lived in my car,” says Paul of the early days when the threat of bankruptcy loomed like an immovable cloud over the company. “I would stop in a town with my Michigan Manufacturers Directory in hand, and anyone who had more than 100 employees, I’d call on them and ask if they used plastic bags. It wasn’t a great marketing plan. But, I believed something good would happen. I made a promise to myself: the day it’s over is the day the bank locks the front door. If they don’t lock the front door, I’ll continue fighting.”

Fifty years later, in a career that has spanned the modern age of plastics, Paul has overseen Petoskey Plastics’ growth into a $150 million powerhouse. It’s now one of the largest and most innovative privately owned plastic processors in the U.S. A pioneer in recycling, Petoskey Plastics was named Plastics News 2018 Processor of the Year, in part due to the company’s ability to align environmental sustainability with profitability.

Petoskey Plastics has more than 5,000 customers in 47 countries, including 30 Fortune 500 companies. Industries served include automotive, packaging, retail, medical and construction.

“Paul has a deeply diverse set of entrepreneurial skills,” says Tom Beard, a partner with Cohen & Company who has worked with Paul and Petoskey Plastics for 35 years. “He understands the technical, financial, sales and people aspects of his business. But, his greatest strength is his capacity to see an opportunity no one else sees and create a product that fills a need no one else knew existed.”

For his part, Paul is effusive about the long term relationship with Cohen & Company, whose work includes projects related to strategic tax planning, state and local taxes, setting up an IC-DISC for the company’s export sales, estate planning and more.

“They’ve been with us longer than 40 years,” says Paul, “and I can’t say enough about the value of the relationship. We love Tom Beard; and Shari McCarty, who does the technical tax work, is like family.”

Now at the age of 75, Paul remains high energy and has no specific timeline for retirement, but proudly knows that when he passes the reins of Petoskey Plastics to his 45-year-old son and executive vice president, Jason, the company will be in exponentially better shape than it was when he took the helm from his father.

Jason, who has a gift for dealing with people and a passion for sales that matches that of his father, knew nepotism would never be grounds enough for Paul to relinquish his leadership mantle. After all, Paul holds close his military belief in earned merit and believes strongly in doing what’s in the best interests of his 450 associates and their families. “I’ve worked in pretty much every position, from packing bags to operations to quality control to sales and management,” says Jason. “My challenge is that Paul is such a grand
example of leadership to both our customers and associates. I want to be fully ready to lead and have no desire to see my father leave until he’s ready.”

**Diligence Lays the Groundwork for Opportunity**

All those years ago, while Paul was driving across Michigan seeking customers, directory in hand, he was also sourcing suppliers of materials to manufacture plastic bags. At the same time, he was looking for bags made by other manufacturers he could potentially buy and sell to his own customers.

“Then the 1970s oil embargo hit, and Paul’s diligence paid off,” recalls Sue Maskuluk, the firm’s long-tenured corporate treasurer. Petroleum is fundamental to making plastic and plastic bags. “The price of plastic bags skyrocketed but people still needed them and they were scarce. Paul had sourced and come to agreements with so many suppliers that we were one of the few that could meet customer demand, and our profitability grew tremendously.”

Paul reflects on the effects of the oil embargo and the high volume of sales that resulted: “We used the money we made during this time to buy more equipment to make more and diverse products.”

**Knowledge Comes from “the Street”**

Paul has always believed a business owner must be out of their office, relentlessly speaking with customers and prospects at their workplaces and trade shows to create opportunities. Relationships matter.

An early years’ lesson: He cultivated a relationship with a Ford engineer who told him about a problem vexing the assembly line process. Plastic covers were placed on seats to protect them during assembly. However, as workers got in and out of the cars as they rolled down the line, the covers would constantly slip off or rip.

The Ford engineer also told Paul a firm that was working on the problem had built a machine that was close to a solution, but the company had just gone bankrupt. Paul realized that if he could buy that machine and get it to work, he would solve Ford’s problem, along with that of every other auto assembly line in Detroit.

Unfortunately, he couldn’t afford that machine and no bank would underwrite such a speculative purchase. Paul’s luck changed when he was introduced to a more seasoned manufacturing entrepreneur, whom he was told might sympathize with a younger entrepreneur’s plight.

Paul made the ask and discovered that, “If you are sincere, if people like you and you have a plan, sometimes people simply like to help other people out.” The entrepreneur agreed to finance the machine.

Paul worked with his small team to solve a key remaining technical problem. About a year later, he met again with the Ford engineer at the assembly line. He placed a cover on a seat and stepped back about 20 feet from the opened car doors. Paul ran as fast as he could, dove across the seat bench, slid right over it and out the other door, and the plastic cover was still intact.

Today Petoskey Plastics’ Slip-N-Grip® seat covers dominate both the car manufacturer and dealer plastic seat cover markets.

“Most product innovations build on previous innovations,” says Paul. “Your own as well as those
Challenge
Help minimize Petoskey Plastics’ state income tax liabilities on a new production facility in Indiana that knowingly would not be profitable for the first few years of operation.

Opportunity
The company had production facilities in other states that were already fully functional and profitable. Since significant amounts of inventory were being shipped from Indiana, a portion of the non-Indiana profits would be allocated to Indiana and taxed, even though that facility was not yet profitable. After Cohen & Company tax advisors researched the state’s tax laws, the firm worked with Petoskey Plastics to petition Indiana to file separate accounting for the state, which would isolate the Indiana facility from the profit of the company’s other facilities. The successful petition meant the company would not be liable for income tax in Indiana until that specific facility became profitable. The money saved in income tax meant more money to reinvest for capitalization and additional resources to help get the new facility up and running more quickly.

Aligning Profit, Social Benefit and Passion
Petoskey Plastics is a company clearly never hesitant to take the lead in a new area. As an avid outdoorsman and conservationist, Paul steered the company into recycling in 1978, long before it was viewed with the importance it is today. “But, the only way you can focus on sustainability is if you can figure out how to make a profit,” Paul says.

Today, Petoskey Plastics annually re-uses more than 30 million pounds of postconsumer materials that would otherwise likely end up in landfills. Even more impressively, its innovative Greencore Closed Loop program means customers give Petoskey Plastics their postconsumer plastic, who then recycles it and manufactures new product for their customers. Both Petoskey Plastics and its customers save money, and the environment benefits.

The company’s passion for its products, associates and customers is obvious. But what continues to fan the fire inside Paul to charge ahead, when many of his contemporaries are ready for retirement?

He laughs and says, “Maybe I just have too much materialism in my metabolism? No, it’s just that I still see so much growth opportunity for the company. It’s taken 50 years to get here, and I’m 75 and still work at least 40 hours a week. Why would anyone want to retire at 65?”

One thing is for sure, when Paul is ready, Jason will be prepared to lead with the same passion and drive that has fueled Petoskey Plastics from the beginning.
Founded in pre-WWI Germany, Juzo reflects an American tale of perseverance and innovation.
The improbable 107-year history of Juzo tells a remarkable tale of perseverance. A 30-year-old single mother in 1980, with two young children in tow and barely speaking English, Annerose left Germany to carve a foothold in America for her family’s enterprise. It was a bold, life altering gamble.

“I was in a new country and not prepared,” says Annerose, from Juzo’s office complex on what is now known as Zorn Drive. “Back then there was no internet to do research and overseas phone calls were expensive. I had to swim or sink, whatever it took to succeed. Long days, lots of travel. It was all about the business.”

Today, Juzo is a global operation, with sister manufacturing companies in the U.S. and Germany, and offices in Great Britain, Sweden, Italy, Canada, France, Belgium and Holland. And those two kids in tow, daughter Petra and son Walter, now in their 40s, play prominent roles in daily domestic operations.

Against Great Odds

The Zorn family is committed to the operational management example set by Annerose’s father, Hans Julius. Against the odds, he resurrected the company from the rubble of WWII, fleeing then Russian-occupied East Germany after the family business had been confiscated by the government.

In 1949 in a small second-floor, one-room apartment in post-WWII West Germany, Hans Julius began to rebuild his company from scratch. He was an organizational genius, establishing measurement standards for the nascent compression industry by working closely with physicians and technicians. At night, he fixed and calibrated a portfolio of machines used to produce what were state-of-the-art compression garments at the time.

Hans Julius’ business obsession came from a place of deep, personal understanding. He, himself, had been born with severe scoliosis of the spine, requiring him to wear an aid every day of his life.

“He developed compression stockings to be not only therapeutically effective, but to be so comfor-
table that you forget you are wearing them,” says Annerose. “We live by that philosophy to this day.”

Modern day Juzo manufactures and markets a range of medical compression products, from standard legging designs to custom made therapy garments, for patients with debilitating circulatory, venous and lymphatic conditions where limbs tend to get larger than usual. Over the years, Juzo compression products have been used in the treatment of vascular diseases, varicose veins, wound care, diabetes, orthopedics and burns.

To help offset the stigma sometimes associated with wearing visible medical aids, the company offers products in multiple colors and styles.

Juzo even makes a niche product for horses. Although the equine brand is a small part of the business, the rationale behind it becomes poignant after Annerose shares the dream of her younger self: “Before I came to America, I wanted to be a veterinarian.”

No Choice
Tragedy played a fateful hand in Juzo’s future. Hans Julius’ lifelong fear that the Russian army would cross into West Germany, led to the family’s great leap of faith.

“Having lived through the loss of the company once, my father always felt we needed another leg to stand on,” says Annerose. So, Hans Julius groomed Annerose’s younger sister to expand the company’s reach onto American soil.

“My sister was eager to open a U.S. distribution channel,” recalls Annerose. “I was more interested in production.” But before plans could start, her sister developed Cushing Syndrome in 1977 and died two years later at the age of 24.

There was little time for grief. Hans Julius turned to Annerose and confided that he had invested all of his retirement funds into U.S. real estate. She
recalls the somber tone in her father’s voice:
“You have to go,’ he told me. What could I say?”

Annerose had received technical training from a
German textile school and eventually co-chaired
the board for European Quality Mark Association
for Medical Compression Hosiery. But there was
no professional roadmap for what was ahead.

“I had no choice but to work in the family business,”
she says. “But once I experienced firsthand the
difference our products made in the lives of patients,
that’s when I developed my passion for what we do.”

She recalls a four-year-old boy — a burn victim —
from Holland who required a custom made
upper-garment for scar management and pain relief.

“We, as a company, contributed to this little boy
getting his mobility back,” she says. “I was young and
it showed me the life changing impact we could have.”

For many years to follow, Juzo received 100 tulips
from Holland annually.

**Staying Competitive**

Over the past 39 years, Juzo has grown its North
American business following an operational model
of product innovation and company reinvestment.

“We’re constantly working to integrate innovative
technology,” says Walter, vice president of operations.
“We combine feedback from medical professionals
and patients to develop durable and comfortable
products that fit individual therapeutic needs. We’re
not just making widgets. We’re making a product that
affects somebody’s life and health every day.”

Gone are knitting machines operated by cams,
pulleys and levers. In recent years, Juzo has
upgraded its entire base of manufacturing tech-
nologies with custom made, precision equipment
using pneumatics and electronics, along with a
cutting edge testing lab.

“It’s a whole different ballgame,” says Walter. “We
work with very specialized equipment and proprietary
techniques that give us the flexibility to make unique
modifications. Today, rather than shaving off a piece
of metal, you make an adjustment on a computer.”

As a result, Juzo produces about 14,000 computerized
stock codes that help capture and program user
information, including size, color, compression class
and style variables like open or close toed footing.

Things have evolved in many respects for the
growing company. Juzo’s North American plant
recently installed a wind turbine and solar panels,
and uses environmentally friendly products in its
production processes.
The decision to fund a foreign subsidiary with debt or capital is important as U.S. taxpayers re-examine their international tax structures in light of the Tax Cuts and Jobs Act. U.S. parent companies that loan money to a foreign subsidiary can repatriate profits through interest payments, which are taxable to the parent company but often deductible by the foreign subsidiary. However, some countries have thin capitalization rules, which can delay or deny this deduction if the subsidiary is too highly leveraged.

When a U.S. C Corporation funds a foreign subsidiary by contributing capital, the profits are repatriated as dividends. While the dividends are not deductible by the foreign subsidiary, the U.S. corporation may receive a 100% dividends-received deduction for these foreign dividends.

The most tax efficient way to capitalize a foreign subsidiary will depend on the specific situation, but companies must remember to balance their business and profit repatriation goals with both foreign and U.S. tax considerations.

“By minimizing our carbon footprint, we’re able to reduce air contaminants known to weaken the circulatory system and contribute to lung and heart disease,” says Petra Zorn, considered heir apparent to her mother’s position. “We’ve tried to make as many green choices as possible.”

In addition, the company operates Juzo Academy, an educational platform for physicians and therapists who work with their products.

But a growing business also brings new challenges. With sales representatives now in 20 states, the company must manage their growing tax obligations, including income, sales and franchise taxes, among others, from multiple locations with different compliance standards.

“That’s gotten very complex,” says Juzo CFO Peter Constantino, who works closely with Cohen & Company on a range of tax and audit needs. “Cohen has been an invaluable partner to us.”

Mike Kolk, a tax partner at Cohen & Company and close advisor to Juzo, is working with Constantino on a nexus study that will evaluate Juzo sales activities nationwide to determine state filing requirements. “Mike brings a strong blend of expert tax advice along with general business experience,” says Constantino, a former Cohen & Company partner himself.

“Annerose, Petra and Walter have taken Juzo to heights I don’t think even they imagined were possible,” says Kolk. “They are touching the lives of others.”
Most businesses with multistate operations are well aware of the landmark *Wayfair* decision, which has significantly changed the state sales tax landscape. But for many it is still too soon to recognize the full impact.

The primary issue revolves around state sales tax — when it is owed, to whom and whose job it is to collect it — once a sale is made across state lines. The 2018 Supreme Court case *South Dakota v. Wayfair* addressed these issues head on, spurred by ever increasing online commerce. However, while online sales may have sparked this sweeping decision, the blurring of state boundaries for all sales are now in question.

“The *Wayfair* decision impacts all businesses, whether online retailers or remote sellers in other industries transacting business over state lines,” says Sara Britt, a tax director at Cohen & Company focused on state and local tax issues. “But this decision affects more than tax collection processes; it is one that ultimately will shape key business decisions and even potentially customer relations.”

**Brass Tax**

It was the 1992 decision in *Quill Corp. v. North Dakota* that said state sales tax could only be collected if a company had a physical presence, such as a brick and mortar building or sales force, in the state. In the approximately two-and-a-half decades since *Quill*, states slowly eroded the traditional idea of physical presence claiming online and other activities should also be included. These included click through nexus (nexus created through links on a third party website that receives commission from the retailer) and affiliate nexus (nexus created through the in state presence of an affiliate of the retailer).

With the explosion of online shopping and a virtually borderless business environment, several states took an even more aggressive position to disregard *Quill*. They enacted economic nexus standards, which required sellers who exceeded a certain dollar or transaction threshold in a state to collect sales tax on the state’s behalf, regardless of any type of physical presence. Colorado took a different approach altogether and enacted a use tax notice and reporting requirement. This required out of state businesses not collecting sales tax to notify customers of their use tax obligations and provide a report to the state that identified Colorado purchasers. Colorado’s notice and reporting requirement ultimately paved the path for *Wayfair*.

“The *Wayfair* decision resulted in removing the physical presence mandate,” says Britt. “It opened up new possibilities for states looking to cash in, giving them the power to say when out of state businesses must charge, collect and remit sales tax.”
The decision means businesses will need to get on board quickly. At this point, nearly all states with a sales tax have enacted legislation drawing a bright line to determine when out of state sales are taxable. Most impose annual thresholds of either $100,000 or 200 or more transactions, with some effective for the 2018 tax year.

It may be a significant effort for businesses to come up to speed, so Britt recommends taking it in baby steps. The first critical step — even before registering with any new states — is to evaluate whether the business had prior physical presence in a state but did not collect sales tax. The business will also need to consider the expanded form of presence, which includes click through and affiliate nexus, as well as whether any notice and reporting requirements were exceeded.

If the business had a sales tax collection or use tax notice and reporting requirement in prior periods, it will need to determine whether to remediate the prior period liability through a voluntary disclosure agreement (VDA) or similar program, if available. Registering before addressing prior period liability will eliminate the ability to remediate.

“First, clean up sales tax obligations from the days of the Quill regime,” says Britt. “Once that is taken care of, then companies can look at processes, procedures and activities surrounding sales tax collection in light of Wayfair and create a business plan before doing anything further.”

On Notice

While it may seem daunting, determining state tax obligations and how to comply may be the most straightforward part of Wayfair’s implications. There are likely even tougher business decisions ahead.

In addition to determining in which states a business may have liability, a thorough review of an entity’s current accounting system and staffing is necessary to determine whether the company can accurately handle sales tax in multiple states and localities with the resources currently on hand. Third party software to help maintain sales tax rates and even additional staff to handle monthly sales tax compliance may be necessary.

If a business is noncompliant, the sales tax liability that belongs to customers will become the company’s liability. That could lead to a tricky business decision, deciding whether or not to go back to your customers to collect sales tax at a later date.

There are, however, two potential areas of relief from the new tax rules to consider: exemption certificates and marketplace facilitators. Companies can ask customers for a valid, properly executed state tax exemption certificate, common with many resale organizations and manufacturers. Once on file, the seller is generally relieved of liability if the transactions are later found to be taxable under audit. For online companies, the marketplace facilitator rules most states have in place may help reduce the compliance burden. These rules require the facilitator, generally a larger fulfillment center such as Amazon, to collect and remit tax versus the actual seller.

But the ramifications of Wayfair aren’t entirely tax focused. They also impact financial statements and M&A transactions. If a company has nexus and sells taxable goods in a state, it must be recorded as a liability on the books, not a contingency, as was possible before Wayfair. Additionally, noncompliance is becoming a significant issue to identify early on during transactional due diligence.

“Wayfair has expanded the reach and depth of our examination,” says Britt. “Buyers don’t want to inherit these liabilities, and generally expect some kind of purchase price adjustment or indemnification in return. Sellers need to have their house in order before going to market if they want to maximize their value. There’s a lot at stake.”

Tip of the Iceberg

The impact of Wayfair could be significant to other types of state and local taxes, says Britt. Just as the Quill physical presence standard ultimately was applied to nonsales tax, its reversal in Wayfair could be just as broadly applied in the future to include areas such as income and withholding taxes.

Questions also remain about the decision’s applicability to local sales taxes, especially those that are self-administered, and about compliance requirements in years when a company does not exceed the state’s economic nexus threshold.

“The decision in Wayfair is far reaching for any business with sales in more than one state,” says Britt. “Manage your compliance requirements and customer relationships. Work with your internal and external teams now to create a solid plan before states come knocking.”

Contact Sara Britt, JD, at sbritt@cohencpa.com to discuss how Wayfair may impact your business.
WTWH Media balances a hard charging work ethic with a West Coast vibe to perpetuate success
Scott McCafferty was born to be an entrepreneur. But he’ll be the first to admit he’s needed lots of help along the way in growing his 12-year-old venture, WTWH Media, LLC, headquartered in Cleveland, Ohio.

Even the company’s name, short for Willing To Work Harder, says as much about McCafferty’s zest for business as it does his mission. He works tirelessly to provide a sophisticated technical platform that delivers content in multiple formats — print, podcast, webinar, social media, video and live educational forums — while delivering an attractive ROI to marketers.

Launched in 2006, WTWH Media has grown from a small staff of six sharing a single office space, to 93 employees with over $20 million in revenue. This August marked the ninth consecutive year the Cleveland-based company was ranked among the Inc. 5000, a list of the fastest growing privately owned companies in America.

As cofounder and managing partner, McCafferty is part uber salesman and part visionary. Over the past decade, his company has made inroads into the rapidly changing media sales industry. But the path has not always been clear cut.

**Learning from the Past**

“I was probably wired to do something from an entrepreneurial standpoint,” says McCafferty, now 52, who launched his first business, a mail order catalog for college students called Joe College, at age 25. In his words, the venture was a “complete and colossal failure,” which he attributed to undercapitalization and not fully understanding his customers’ needs.

Rattled, it took McCafferty 10 years to recover, yet he was not defeated. During those interim years, he earned his MBA from John Carroll University and worked as an independent sales representative selling media for up to nine separate publishers. Business was good enough to employ three sales subcontractors, which allowed McCafferty to train them his way, ensuring they understood the nuanced marketing needs of advertisers and sponsors. He would not make the same mistake twice.

Back then, print was still the dominant medium for promoting a company’s products and services. But McCafferty recalls hearing more and more inquiries about internet facing media channels.

“The company’s mission would be dedicated to providing high-value digital content to narrow technical markets while delivering measurable ROI for his media-buying clients. In 2006, WTWH Media took root in the design engineering market with a website that offered in depth content covering niche markets, including semiconductors, factory automation, packaging and materials handling. Early sales presentations to prospective advertisers and sponsors were promising. They liked the polished look of the website.

But McCafferty knew he had a major problem. “We didn’t have enough online traffic to meet customer demand,” he says.

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To remedy the shortfall, WTWH Media embraced a unique growth model. They sought, and continue to seek, to either build websites organically in adjacent markets, or acquire existing competitive sites with established audiences owned by smaller companies that just might be looking for resources through creative deal making.

“Early on I was able to buy two websites for a reasonable amount and leveraged cash flows to pay for them,” says McCafferty.

McCafferty has “rinse and repeated” that growth model multiple times over the past 12 years. To date, WTWH Media has created over 45 technical websites and seven print publications covering disciplines like robotics, fluid power, renewable energy, hospitality, life sciences and electronics engineering.

Since 2018, WTWH Media has merged with Harbor Communications and acquired Engineers Garage to expand its brand and leverage diverse industry platforms and technical expertise.

**Leverage, Leverage, Leverage**

Like any entrepreneur, McCafferty has assumed his share of calculated risks.

Aside from the Harbor merger, most WTWH Media websites were built or acquired largely using leveraged funding strategies rather than straight out cash transactions. “We never bought our way to growth,” he explained. “We’ve acquired assets with existing audiences then monetized them through our sales efforts.”

A few years back, McCafferty had a chance meeting with American billionaire investor philanthropist David Murdock at a social event. During a private moment he asked Murdock how he went about financing the 100 or so businesses in his portfolio. The response apparently made an impression.

“Today, if I can strike a good deal, I do the deal and figure out how to pay for it later,” says McCafferty.

Now a California resident, McCafferty’s hard driving spirit was nurtured early on in Cleveland, where he was one of seven children born to a deputy bailiff and a school teacher. In his teens, he caddied at a nearby county club, which got him thinking.

“Who were these people playing golf three days a week and driving a Mercedes? I found that the majority of folks I grew up caddying for owned their own businesses. I think that set the idea of trying to do something on my own.”

And there were times when he and his wife were indeed on their own. Like at the height of the 2008 financial meltdown when their bank asked for greater security to continue the company’s line of credit.

“When this business was launched, we used our Manhattan Beach house in California as a big credit card,” says McCafferty. “So we had some wiggle room from an equity standpoint and were able to secure our line of credit.”

Ever the optimist, McCafferty is quick to add: “Was there a challenge? Yes. Was there a solution? Yes.”

That’s how McCafferty approaches any challenge in life. When something stops working, find a new way. For example, for the first eight years, McCafferty’s wife served as chief financial officer from their West Coast residence. But a growing family and an expanding media operation called for a systematic upgrade of their accounting resources. So, around 2015, McCafferty hired Brian Korsberg, a former senior accountant at Cohen & Company.

“As controller, I’ve been able to use my experience to assist in WTWH Media’s growth,” says Korsberg.

Soon after arriving, Korsberg identified a need for expert advice in the area of federal and state tax rules. He suggested moving those functions to Cohen & Company in Cleveland. In addition to providing state and local tax support, over the past few years Cohen & Company has consulted in the areas of ownership structure and risk mitigation.

“It’s a very laid-back, comfortable environment to work in — a West Coast mentality right here in Cleveland,” says Patrick Walsh, a tax manager at Cohen & Company who works closely with WTWH Media. Walsh has attended several events where sandals, shorts and t-shirts were the dress code. “Scott’s a great salesman, but above that he’s an advocate for his business and employees.”

**Open-Book Management Style**

In a 2016 blog titled, “Why People Matter,” McCafferty writes: “I’m constantly reminded that the underlying success or failure of our business rests in the people who do the work.”

McCafferty is not shy to admit that launching and marketing websites “comes naturally” to him. But...
building an organization, management structure and team atmosphere is “something I’m still learning.”

“You can have the greatest idea in the world,” he says. “But unless you have a team to execute it, your idea isn’t going far. One of the most satisfying aspects of the business for me is hiring someone out of college and watching them develop.”

To help promote an atmosphere of trust and transparency, the company holds periodic team meetings and publishes online quarterly metrics — sales activity by person, social media footing, web traffic — to keep everyone informed of how the business is doing. And maybe keep the pressure up a little.

“You have to trust your coworker,” says McCafferty. “We don’t punch a clock here so you have to put in a good effort.”

While the business of media sales has gotten more technically sophisticated, McCafferty notes the endgame remains the same.

“An advertiser wants to see what they’re getting for their marketing dollars,” he says. “It comes down to how you can better refer traffic to one site, aggregate an audience to a webinar, or how many downloads of a white paper you can deliver.”

“In the media business, you’re either all in, or you’re dying.”

Minimizing Growing Pains

Challenge

Assist in managing growth, progress and state tax exposure liability for an expanding business.

Opportunity

WTWH Media enjoyed significant growth over the years, both organically and via strategic acquisitions across the country. Upon joining the company, the new controller realized this rapid growth could result in potential tax exposure in non-filing states. He immediately consulted with Cohen & Company, which had just been hired as the company’s accountants, to identify any potential state and local tax risks. As a result, the team decided the best course of action for one state in particular was to enter into a voluntary disclosure agreement (VDA) to begin filing but waive potential penalties and interest owed, in the event of a state inquiry. The key to success was putting a strategic plan in place before filing for the VDA, allowing a thoughtful approach to identifying any available income exclusions to reduce liability, and allowing time before year end to amend owner tax returns and obtain available tax credits for taxes paid to other states.
“We’ve thought long and hard over the past 40 years about what has set us apart from the competition,” explains Randy Myeroff, Cohen & Company CEO. “We have been successful largely because of our ability to engage, teach, inspire and improve the lives of others — employees and clients alike. That stems from the foundational principles that unite us. We want everyone on our team, as we continue to grow in size and capability, to understand the ‘Cohen Way’ and to be a part of carrying on the legacy.”

The principles Myeroff refers to center around four key beliefs that create positive momentum and ultimately lead to exponential results:

**Great people, first.** Honesty, integrity, compassion and kindness are everything. Celebrate each individual’s unique stories, backgrounds, perspectives and ideas.

**Teamwork.** Everyone matters and will be heard, respected, supported and valued. Building meaningful relationships is critical to satisfaction.

**Competitive spirit and courage.** Innovate and always do exceptional work. Encourage each other to exceed expectations. Take personal initiative to be disciplined and accountable.

**Adaptability and optimism.** Change can occur quickly; stay open minded, agile and supportive. Trust and assume the best in each other. Smile, express gratitude and be humble yet confident. Have fun and embrace the journey.

“It’s simple: the right balance of knowledge and trust is powerful,” says Myeroff. “Add that to truly living our foundational principles, and the value you can consistently deliver to clients goes through the roof. Each and every person at our firm must be committed to making that happen. You have to want it and own it.”

Spreading that optimism has been a top priority for Myeroff and other firm leaders. To amplify the message, they hosted a series of town hall meetings in each office as well as small group, in person discussions to listen and learn firsthand how the firm is living out these principles, and where there is room to improve.

“The notion of shared responsibility is both an obligation and a privilege,” says Myeroff. “We love how our team has truly embraced that to drive the firm forward.”

Mission statements and mantras permeate corporate America, typically reflecting what a company is about and what it aspires to be. Finding words that resonate is the easy task. Cohen & Company works deliberately and tirelessly to not only share its vision and values, but to truly share the responsibility for making those come to life.