

**LEOPOLDUS
LAW**

THE

**LOAN-OUT
COMPANY**

*How entertainers, broadcasters, and on-camera
talent lend their services, and why it works*

BRANDON LEOPOLDUS, ESQ.

YOUR CAREER AFTER THE CAREER RUNS THROUGH A DIFFERENT STRUCTURE.

An athlete's earning window is short. The career that comes after it can be long. A punter with one career tackle can build one of the biggest podcasts in the world, and the retired player in the broadcast booth is often out-earning the roster he used to be on. The moment your income comes from being on camera, on air, or on the mic instead of on the field, you have entered the entertainment business, and the entertainment business has a standard structure the field never taught you: the loan-out.

A loan-out company is simple in concept. You form a corporation, you become its employee, and that corporation lends your services to the studio, network, production, or platform that wants you. They pay the company. The company pays you, and a good deal more than a paycheck: retirement contributions, deductions, and a wall between the business and your personal life. It is how actors, on-air talent, and broadcasters have been paid for decades, and it is not exotic. It is just done right, once.

This guide explains what a loan-out is, why the structure holds up when the tax authorities look at it, and where it fails. The difference between the two is not luck. It is whether you run a real company or a costume.

THE WHOLE GUIDE, IN ONE LINE

**IT ONLY WORKS IF YOU TREAT
THE COMPANY AS A COMPANY.**

WHAT A LOAN-OUT ACTUALLY IS

THREE PARTIES, NOT TWO

There is you, the talent. There is your loan-out company, which employs you and is the only place your services legally come from. And there is the buyer, the studio or network or production, which no longer hires you directly. It signs a deal with your company, your company agrees to furnish your services, and the buyer pays your company.

Because the buyer is contracting with a company rather than a person, it usually asks for one extra piece of paper: an inducement letter, in which you personally promise to actually show up and perform, and agree to the key terms, so the buyer has recourse to you and not just to your corporation. That letter is normal. It also matters legally, because the more the buyer controls you personally, the more the structure has to work to hold.

PAID PERSONALLY	PAID THROUGH A LOAN-OUT
You, as an individual, contract directly with the payer	Your company, which employs you and lends you out
Retirement: limited individual options	Retirement: corporate plans, potentially far larger contributions
Business deductions largely lost on a personal W-2 since 2018	Deductions taken through the company
Liability sits with you, personally	Liability walled behind the entity

The catch: it fits steady, six-figure-plus service income, and it must be run as a real company, not a shell.

WHY IT HOLDS UP, AND WHEN IT DOES NOT

THE ANSWER IS CONTROL

The tax authorities have one foundational objection to any structure like this. Income is taxed to the person who earns it, and you cannot dodge that by routing your earnings through an entity you control. That rule is almost a century old, and it is the hurdle every loan-out has to clear. Two athlete cases drawn on opposite sides show exactly where the line runs.

DISREGARDED: LEAVELL

The Tax Court disregarded a professional basketball player's loan-out and taxed his team salary straight to him, because the team dictated when, where, and how he played. His corporation's control over him was, in the court's word, illusory.

RESPECTED: SARGENT

A federal appeals court respected professional hockey players' corporations, refused to disregard them just because the players were on a team, and held that the earnings belonged to the companies, because the companies were real and actually conducted business.

Read those two together and the rule falls out. A loan-out works when your company is genuinely the one providing your services and is respected as a real business. It fails when someone else so completely controls your work that your company is a fiction. For a salaried athlete fully directed by a team, the loan-out is a hard sell. For an entertainer, a broadcaster, or an on-air talent who controls their own performance and works across productions, it is well-established and routine.

**THE FURTHER YOUR INCOME MOVES
TOWARD INDEPENDENT, SELF-
DIRECTED WORK, THE STRONGER
YOUR LOAN-OUT STANDS.**

WHAT THE LOAN-OUT BUYS YOU

DONE RIGHT, IT PAYS FOR ITSELF SEVERAL WAYS

RETIREMENT, AT A DIFFERENT SCALE

This is the big one. A corporation can sponsor retirement plans that let you set aside far more, pre-tax, than you can as an individual. Courts have recognized this as a legitimate reason to have a company.

REAL DEDUCTIONS

The company deducts the ordinary and necessary costs of earning your income: representation, travel, equipment, professional fees. What it cannot deduct is your life; personal expenses stay personal.

INCOME SMOOTHING

A company can hold and pay out income across time, which helps when a big year is followed by a quiet one, a rhythm every entertainer and athlete knows.

LIABILITY SEPARATION

The entity puts a wall between your professional dealings and your personal assets, the same protection covered elsewhere in this series.



DID YOU KNOW?

This is not exotic. It is how actors, on-air talent, and broadcasters have been paid for decades. The structure only needs to be done right, once.

THE TAX ENGINE: C-CORP, S-CORP, OR LLC

THE RIGHT FORM DEPENDS ON YOUR INCOME, YOUR BUYERS, AND YOUR PLANS

Many loan-outs are formed as LLCs or corporations that elect S corporation treatment, which lets you take a reasonable salary and draw the rest as distributions, managing employment tax, and can layer on the qualified business income deduction for pass-through entities. Some buyers, though, and networks in particular, prefer or require you to be a C corporation, a more traditional structure they are comfortable contracting with. Which fits is a judgment call to make with your CPA, not a default.

/ THE GUARDRAIL: SECTION 269A

One guardrail you should know about. The IRS has a specific tool aimed at exactly this kind of company: it can reallocate the income of a personal service corporation that was formed principally to dodge tax and that performs substantially all of its services for a single other entity. That is not a reason to avoid a loan-out. It is a reason to have a real business purpose, real substance, and, ideally, more than one client. Structure it to be a company, and it is treated like one.

THE TAKEAWAY

This is a judgment call between you and your CPA, made for your actual income and your actual buyers. Not a default template, and not a decision to make alone.

OPERATE IT LIKE A REAL COMPANY, OR LOSE IT

EVERY ADVANTAGE IN THIS GUIDE RESTS ON ONE CONDITION

The company has to be real. The cases that disregard loan-outs are the ones where the corporation existed on paper and nowhere else. So do the unglamorous things, and do them consistently.

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- Give the company its own bank account, and route the money through it, from the buyer to the company to you.

 - Put yourself on real payroll, with real withholding, and take a reasonable salary.

 - File the corporate returns, keep the minutes, and observe the formalities.

 - Sign your deals through the company, and keep the contracts and the inducement letters clean.
-

And understand what the inducement letter does to the analysis. The more a buyer requires you personally to guarantee and perform, and the more it controls how you do the work, the closer you drift toward the salaried-athlete problem where the loan-out gets disregarded. For most entertainers and broadcasters that control never gets that far, but it is why the structure and the paper have to be handled by someone who knows where the line is.

**A LOAN-OUT IS NOT A FORM YOU
DOWNLOAD. IT IS A COMPANY YOU
RUN.**

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**THE LOAN-OUT IS
THE OLDEST TRICK
IN THE
ENTERTAINMENT
BUSINESS, FOR
ONE REASON. IT
WORKS.**

BRANDON LEOPOLDUS, ESQ.

Founder, Leopoldus Law, APC

THE LAYERED STRUCTURE FOR CREATORS

IF YOU ARE NOT JUST TALENT BUT A CREATOR, ONE COMPANY IS USUALLY NOT ENOUGH

An athlete producing a documentary, a broadcaster launching a media company, an entertainer making a film. The professional pattern is to layer entities.

1

YOUR PERSONAL LOAN-OUT

Holds your services and your name.

2

A SEPARATE PRODUCTION COMPANY

Holds the business you are building.

3

EACH INDIVIDUAL PROJECT

A film, a series, a slate, often gets its own entity, so a lawsuit or a loss on one project cannot reach the others or reach you.

The money flows in an intentional line: from you or your investors into the production company, and from there into the project entity that actually spends it. Each layer segments liability, keeps the intellectual property clean, and makes the whole thing sellable later.

TWO THINGS THAT RIDE ALONGSIDE

Insurance built for production, errors-and-omissions coverage and production policies, because the entity walls off the assets but the policy pays the claim. And protecting the brand itself, the character, the name, the mark you are building, secured with trademark and rights work before the project gets big enough to be worth copying.

CLASSIFICATION AND THE GUILDS

TWO MORE REALITIES SHAPE HOW A LOAN-OUT GETS USED

/ WORKER CLASSIFICATION

California uses a demanding test to decide whether someone is an employee or an independent contractor, and it puts the burden on the hiring side to prove contractor status. The entertainment world has its own wrinkles and exemptions, and a loan-out changes the picture because you become the employee of your own company, but the classification question is live and worth getting right rather than assuming.

/ THE GUILDS

If your work falls under a union, your pension and health contributions and your minimums flow through that system, and the loan-out has to be set up so that getting paid through your company does not cost you the union benefits you earned. It can be done, and it is done all the time, but it is a place where a generic corporate setup goes wrong. Build the loan-out with the guild rules in view, not as an afterthought.

THE RULE

Classification and guild rules are not paperwork to handle after the deal. They are part of designing the loan-out itself, before you sign anything.

WHAT TO DO NEXT

IF YOUR INCOME IS COMING FROM BEING ON CAMERA, ON AIR, OR BEHIND A PROJECT

- Confirm the work is really loan-out-eligible: service income you largely control, not a fully directed salary.

 - Form the loan-out in the right shape for your income and your buyers, and make the tax election with your CPA.

 - Set up real payroll and a corporate retirement plan, which is where much of the value lives.

 - Run every deal through the company, with clean contracts and inducement letters.

 - If you are producing, layer a production company and per-project entities, and carry production insurance.

 - Protect the brand with trademark and rights work before the project gets big.

 - If you are in a guild, build the structure so it preserves your union pension and health.
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THE SAME STRUCTURE THAT PAYS ACTORS AND ANCHORS WILL CARRY YOUR SECOND CAREER.

— ABOUT THE AUTHOR

BRANDON LEOPOLDUS, ESQ.

Founder, Leopoldus Law, APC

Brandon Leopoldus umpired in professional baseball before he ever practiced law. Five leagues. Seven playoff series. Two All-Star games. One championship series. One infamous appearance on SportsCenter. That path, through the minor leagues and an Olympic family, is the lens he brings to every matter at Leopoldus Law, APC.

100+

ATHLETES ADVISED

25+

SPORTS

3

LEAGUES LAUNCHED

6

PRO TEAMS

4

GOVERNING BODIES

Leopoldus Law is a sports and entertainment boutique in Culver City, California. Brandon forms and structures loan-out companies for athletes moving into broadcast and media, and for entertainers and on-camera talent, and coordinates them with the entities, tax planning, and intellectual property that make the structure hold.

He sits on the board of the Sports Lawyers Association and teaches Sports Law at Loyola Law School. The firm works with athletes, entertainers, and the people who advise them. Sports clients only. No exceptions.

— A NOTE ON HOW TO USE THIS GUIDE

This guide is educational. It explains how loan-out companies are commonly used by entertainers, broadcasters, and on-camera talent, and it is written to make you a sharper client, not to replace one. It is not legal or tax advice for your situation, and reading it does not make Leopoldus Law your lawyer.

Tax rules, classification law, and guild requirements change and depend on facts this guide cannot know. Form and operate your loan-out with your own attorney and CPA. If you would like that attorney to be us, reach out.

REACH OUT

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ENDNOTES

- 1 *Lucas v. Earl*, 281 U.S. 111, 114-15 (1930) (income is taxed to the person who earns it; the tax cannot be escaped by anticipatory arrangements that keep the earnings from vesting in the earner).
- 2 *Leavell v. Commissioner*, 104 T.C. 140, 151-56 (1995) (a professional basketball player's loan-out corporation was disregarded and his team salary taxed to him individually because the team, not his corporation, controlled the manner and means of his services).
- 3 *Sargent v. Commissioner*, 929 F.2d 1252, 1256-59 (8th Cir. 1991) (respecting professional athletes' personal service corporations where the individual was a genuine employee of the corporation and a contract recognized the corporation's controlling position, and holding the assignment-of-income doctrine inapplicable where the corporation is respected as a separate entity carrying on business).
- 4 I.R.C. § 401 (qualified pension, profit-sharing, and stock bonus plans); see *Sargent v. Commissioner*, 929 F.2d 1252, 1259 (8th Cir. 1991) (a corporation is recognized for tax purposes even if formed to take advantage of richer corporate retirement plans).
- 5 I.R.C. § 162(a) (ordinary and necessary business expenses); id. § 262(a) (personal, living, and family expenses are not deductible).
- 6 I.R.C. §§ 1361-1362 (S corporation eligibility and election).
- 7 I.R.C. § 199A (qualified business income deduction for pass-through entities).
- 8 I.R.C. § 269A (the IRS may reallocate income and deductions of a personal service corporation formed or availed of principally to avoid or evade tax where substantially all of its services are performed for one other entity).
- 9 *Dynamex Operations W., Inc. v. Superior Court*, 4 Cal. 5th 903, 955-57 (2018); Cal. Lab. Code § 2775 (the ABC test for classifying a worker as an employee rather than an independent contractor).

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