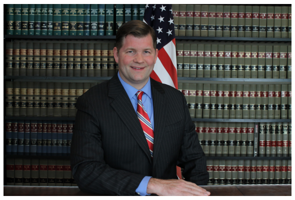

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Selling Your Business to Nonfamily

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What is special about selling your business to nonfamily?

When you sell your business to a family member, your objective may be to keep the business within the family and make it as easy as possible for your relative to make the purchase. When you sell your business to nonfamily, however, your primary objective may be to get the highest possible price for the sale while delaying recognition of capital gain for as long as possible by maintaining a stock position in the acquiring company. When you sell to nonfamily, you may not be subject to the same level of scrutiny the Internal Revenue Service (IRS) applies to transactions between related parties.

Sales considerations

Selling shares or assets

One negotiating point is whether the sale of your business is to be a sale of shares (stock) or of assets. Each option has tax consequences for both parties, and there are reasons why you may favor one transaction over the other at any given point in time. When the business is sold in a stock deal, the buyer assumes ownership of the assets and liabilities of the corporation. Unknown or contingent liabilities could cause concern for the buyer and affect the sales price. In an asset sale, the buyer acquires tangible property or equipment but the liabilities remain with the seller. With a sole proprietorship, the only possible arrangement is to sell assets, because the business itself is not a separate entity.

Using a buy-sell agreement when selling to nonfamily

A buy-sell agreement is a legal contract you can enter into today to arrange for the future sale of your business. You can set the terms for the sale of your business at a time when there may be no pressure to sell. Because it is a legal contract, the courts can be called upon to enforce the contract if either party fails to perform as agreed. Once you enter into a buy-sell agreement, you can't sell or give your business to anyone other than the buyer named in the agreement, so you need to coordinate the agreement with any estate planning you may be conducting.

Selling to another corporation

Another corporation might be a potential buyer of your business, especially in these days of mergers and acquisitions. The acquiring company may offer you cash for your business or may propose a stock swap whereby you exchange stock in your own company for that of the acquiring company. When you receive cash, you will have to recognize a gain or loss on the sale transaction. If the transaction is a stock swap, you may be able to avoid recognition of gain on the sale by holding the stock of the acquiring corporation until your death.

Structuring tax-free sales

When the buyer of your business is another corporation (usually a large publicly held corporation), a stock swap can result in a tax-free sale. This can be especially favorable to you if your business has appreciated in value since you initially invested, because you can avoid capital gains tax. Federal securities regulations may require you to hold the stock of the acquiring company for a specified length of time before you can resell it, and the value of the stock may decrease before you are allowed to sell. You might defer your capital gain indefinitely by holding the stock of the company until your death. However, your estate must include the value of the stock, subjecting it to estate tax.

Structuring taxable sales

A taxable sale can be structured by selling assets to the purchasing corporation. Specific assets for sale must be identified, and any gain or loss must be determined for each. Assets are classified in one of three categories: capital assets, Section 1231 assets, and all other assets. The asset classification determines whether the gain or loss is treated as either capital or ordinary. Certain tax rules apply if the business is liquidated after the sale of assets, and S corporations may be subject to the built-in gains tax under Internal Revenue Code Section 1374.

Using charitable remainder trusts

A charitable remainder trust is a special planning technique that can allow you to establish an irrevocable trust and use your business to provide an income stream to benefit you and/or your spouse (or another person), with a remainder interest to a qualified charity as beneficiary.

Example(s): *You contribute your business stock to a charitable remainder trust and receive a charitable deduction. The trust sells the stock, invests the proceeds, and pays an income stream. At the end of the payment term, the remainder of the trust passes to the charitable beneficiary. You are receiving a charitable deduction and supporting the qualified charity of your choice.*

The major tradeoff is that the charitable remainder trust must be irrevocable, meaning you can't change your mind once it is set up. There are different types of charitable remainder trusts, and the IRS publishes a list of qualified charities. Of course, you should consult an experienced legal practitioner to assist you in setting up any such trust.

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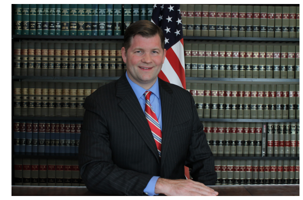

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