Legacy M&A ADVISORS LLC

M & A UPDATE®

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Mike Ertel is a Certified M & A Advisor and a Principal Broker with Legacy M&A Advisors, LLC, a full-service M & A Advisory firm with an office in Tampa, Florida specializing in representing sellers and buyers of small- to mid-sized companies. Prior to joining Legacy M&A Advisors, LLC, Mike's business career spanned 30+ years with Fortune 500 and Fortune 1000 Companies, with senior management roles in Marketing, Operations and Logistics. Mike also served as President, COO of a mid-sized Manufacturing company headquartered in Tampa. Mike also holds a BS in Electrical Engineering and an MS in Industrial Administration, both from Purdue.

Disaster Planning for the New Year

Bart A. Basi, CPA/Attorney at Law
The Center for Financial, Legal & Tax Planning, Inc.

Introduction

The fact of the matter is that businesses in this country and all over the world face a gauntlet of peril. From rising fuel prices, rising commodity prices, clients filing bankruptcy on their payables, clients not paying, or even adverse credit climates, business is a challenging endeavor for any line of work. However, there are threats beyond the day-to-day issues.

It was just over a month ago that Superstorm Sandy swept through the Northeast. In its aftermath, approximately seventy-seven billion dollars ($77,000,000,000) of insured losses have been reported. Now, the hurricane that was all over, the news is now becoming part of our collective memory. The legacy it leaves behind on the businesses of the Northeast is unfortunately, ongoing. Many businesses in the area have shuttered and will never reopen. In this case, as in many, the terrible results of natural disasters are often felt for a long time.

New Statistics on Natural Disasters

In 2012 so far, the nation experienced a number of natural disasters. In fact, in the past 15 years, natural disasters have increased 40%. In terms, of human suffering, property loss, and potentially the loss of business and commerce in the wake of the hurricanes and other natural disasters, businesses need to be prepared.

Natural disasters are a fact of life on this planet. With earthquakes, volcanic eruptions, tidal waves, tsunamis, tornados, and such, at some point nearly everyone and every business will be touched by a natural disaster. The consequences can range from minimal (in a snow or ice storm), to severe (hurricanes), to termination and dissolution of the company, to even being dangerous to personnel. With disaster planning, the company can and should plan to continue in at least some capacity.

The absolute worst thing to do to prepare for a natural disaster is to do nothing at all. Upon learning that a major storm system is developing is not the time to begin your preparation for a disaster. The best thing a business owner can do to continue business is to begin preparation immediately and have the plan at the ready. The basics are presented in short form below.

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A CASE STUDY

Bona Fide Business Exception

A U.S. District Court in Indiana has held a husband and wife's transfers of membership interests in a limited liability company (LLC) to their children failed to qualify for the exception to the special valuation rules. The couple gave each of their children a 4.76% interest in the LLC over a three year period. The operating agreement of the LLC included restrictions on the transfer of ownership. An undeveloped plot of lake-front property was the primary asset of the LLC.

The IRS issued a deficiency partly because of the failure of the couple to determine the value of the gifts according to the IRC special valuation rules. One of the requirements to be exempt from the special valuation rules is that restrictions on transfers are a bona fide business arrangement. The court held the LLC was not a bona fide business because there was not any plan or actions on the part of the children or parents to improve, expand or develop the property. Nothing distinguished the LLC from an individual owning real estate outright.

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Cover Story

1) Written Instruments & Communication

Along with any disaster plan, written instruments are necessary. Reducing a plan to writing is a sure sign that the plan is being developed in a manner which is achievable. Ready.gov provides a written form for which your business can use to prepare and commit to paper. Check signing authority in an alternative person is a must. If the key person can't come in, there must be a back up.

2) Security

If you provide consumer goods such as groceries and other necessary supplies, security is a must. Over the past decades, whenever there is a natural disaster or riot, the first thing looted tends to be consumer goods stores. While it is illegal for the population to loot, police cannot always protect those businesses and prosecute the individuals responsible for the chaos. Reasonable measures must be take in order to, if not defend the store; provide footage for law enforcement to catch the individuals responsible for the crimes there committed.

3) Finances

Without the proper finances in place, your business could be shut down. Modern day financing relies heavily on electronic mediums such as credit card readers and telecommunications. The bottom line is, if there is no power, there is no money. The solutions to the situation may not be easy, therefore advanced planning is necessary.

Your employees will also need financial assistance during this time period as well. Two weeks of pay can ensure that employees 1) can pay their bills and endure, and 2) come back as they will be obligated to work for the pay advance you provided them with. This assurance is a good thing to have especially when key employees may be having second thoughts about returning after a large natural disaster.

Conclusion

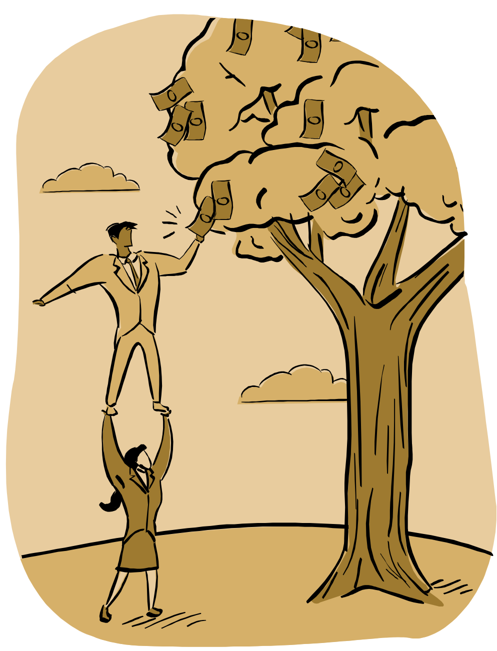
A whole wealth of information is provided at ready.gov for individuals and businesses. Just remember that alongside the business, individuals must be taken care of as well. If the individual employees cannot endure their own personal situation, they will be unwilling to stay. Ready.gov provides insight for personal readiness as well and should be followed despite any situation

Every business should have a disaster plan in place in order to survive a natural disaster ranging from the smallest to devastating. People face challenges and businesses do as well. It is important that a natural disaster does not become a personal or business bankruptcy, where a continuation is possible and necessary.

Dr. Bart A. Basi is an attorney, CPA, and the Senior Advisor of The Center for Financial, Legal & Tax Planning, Inc, a full service company specializing in financial, legal & tax matters. Basi is a nationally recognized author, lecturer, and advisor on how to structure deals to minimize taxes. Tax structure makes the difference between getting the deal done and watching the deal fall apart. Many of you may be familiar with Basi and the topics he covers in the Financial, Legal & Tax Advisory which may be read in various industry-specific trade publications.

Points of Interest

- **Many businesses in the [Northeast] have shuttered and will never reopen.**
- **Reducing a plan to writing is a sure sign that the plan is being developed in a manner which is achievable.**
- **It is important that a natural disaster does not become a personal or business bankruptcy, where a continuation is possible and necessary.**



Legacy M&A Advisors, LLC
1101 Channelside Drive, Suite 315
Tampa, FL 33602-3614

The Center for Financial, Legal & Tax Planning, Inc.
4501 W. DeYoung St., Suite 200
Marion, Illinois 62959

A CASE STUDY CONTINUED:

Editor's Comment:

Gifting is one way to transfer wealth to the next generation. Gifting can be used to reduce estate tax liability by giving away assets equal to the annual exclusion every year. When the assets being gifted are LLC units or corporate stock, the value of the gift can be discounted because of minority shareholder status and the lack of marketability of the shares. However, as the above case illustrates, these discounts appear to be limited to businesses that are operating for a profit or plan to make a profit; not for an individual transferring non-productive properties.

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4501 W. DeYoung St., Suite 200
Marion, Illinois 62959

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1101 Channelside Drive, Suite 315
Tampa, FL 33602-3614

Win-Win, Or No Deal

Sometimes in the process of buying or selling a business, buyers – and sellers – get caught up in negotiating the best possible deal for themselves and lose sight of their ultimate objective, which is presumably to buy – or sell – a successful, ongoing business and maintain – or even improve – its prospects for a highly successful future.

In a lot of ways the sale of a business resembles the sale of real estate, but it differs in one important respect: In most real estate sales, the buyer and seller have little or no common interest following the sale. In many cases, the buyer and seller of real estate may never even meet face-to-face.

Contrast that with a business acquisition, where in almost every case the Buyer and Seller become somewhat co-dependent to successfully transfer and transition the business and its employees, its customers and its vendors. Most business sales will not be fully successful without the continuing goodwill of the Seller following the closing.

Thus, it only makes sense that both parties would want the other to leave the closing table feeling like they got a very good deal. Anything less is simply leaving the door open for future difficulties.

From experience, I believe the only realistic negotiating style in acquiring an ongoing business is: Win-Win, Or No Deal. In other words: If it isn't a good deal for the Buyer, and/or it isn't a good deal for the Seller, it isn't a good deal. Period.

If you , or someone you know, may be thinking about buying or selling a business, and who might benefit from a free, confidential, consultation with us, please contact me directly at 813.299.7862, or mertel@lmaallc.com

Mike Ertel, CBI, M&AMI, CM&AA
Managing Director, Broker
Legacy M&A Advisors, LLC
813.299.7862 Direct

Legacy M&A Advisors, LLC
1101 Channelside Drive, Suite 315
Tampa, FL 33602-3614
Phone: 888-864-6610
Fax: 866-353-0382

The Center for Financial, Legal & Tax Planning, Inc.
4501 W. DeYoung St., Suite 200
Marion, Illinois 62959
Phone: 618-997-3436
Fax: 618-997-8370
Satellite Office:
Longboat Key, FL 34228
Phone and Fax: 941-383-3338

We're on the Web!

www.taxplanning.com
www.legacymandaadvisorsgroup.com

Frequently Asked Questions…

Q: I have a business which I would like to establish a value for. Is there a commonly used formula or multiple I can use in order to value my business?

A: Quite simply, there is no easy way under the Internal Revenue Code or literature available to value a business in a proper manner using a simple multiple of revenue or formula. While there are various methods to value a business, qualitative factors must be considered along with the quantitative. If you are having your business appraised, it is best to deal with a trained professional to get a number where the business can be sold or valued for estate tax purposes depending on your situation.

Q: If I have the desire to bring my children into the business, is there any course of action that is recommended?

A: The answer to this question is that no one course of action fits all situations. As a general rule, engaging the successors in the business and having them take business courses and technical courses is never a bad idea. At any rate, challenging, testing, and grooming them is a much better endeavor than a walk-in type succession.

Q: What is the latest news with the estate and gift tax exemption?

A: The latest consensus is that Congress and the President will either avoid The Fiscal Cliff or shortly after January 1, 2013 arrive at n agreement. We do not expect a decreased estate and gift tax exemption.