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Jumpstart Our Business Startups (JOBS) Act

*Bart A. Basi, CPA/Attorney at Law
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Introduction

There is little or no doubt that small businesses are the driver for jobs growth in the country. As far as job creation is concerned in the past 15 years, nearly two-thirds of jobs created have come from start-ups and small businesses (those with under 500 employees). Start-ups can be a small family owned business, but can also be as big as Facebook and Google. Google launched its IPO a few years back and is now valued at or near \$200 billion. This start-up and small business growth is what leads the economy in job growth and expansion.

The JOBS Act of 2012

In April of 2012, President Obama signed the Jumpstart Our Business Startups (aka: JOBS Act of 2012). Much of what President Obama approved in the past regarding job creation and economic expansion has been tax related and targeted spending based. This law is nearly all securities related.

First, under Regulation A (referring to the set of regulations derived from the Securities and Exchange Act of 1933), the \$5,000,000 offering limits have been raised to \$50,000,000. Now,

companies of significant size can buy and sell under private issuance, whereas before the \$5,000,000 limit kept a tight lid on the markets for these companies. Bigger companies tend to have better management and higher survival rates making more practical investments for the non-management investors. However, with the government raising the limit, smaller companies can seek investor capital without the formality of SEC filings.

Advertising restrictions regarding Regulation D, Rule 506 before the JOBS Act were strict and generally affected the sale of many businesses including that of family businesses. Shortly after the Enron and WorldCom scandals occurred, the SEC targeted many brokerage firms advertising business stock sales. Advertising of small business/100% stock sales, were considered by the small business and brokerage profession to be below the radar and generally of no consequence. The SEC then began enforcing advertising and sale bans

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A CASE STUDY

The US Court of Appeals found that an IRS summons for an appraiser's report was in good faith and resulted in the appraiser's report being discoverable by the IRS. In the case, the taxpayer had an appraisal done of an area of land. The land was valued at over \$1,000,000. of which a charitable donation was made. The couple

deducted the gift as a charitable deduction over a period of years. The caveat was that the appraisal was done via the request by an attorney for the taxpayer. When the IRS called the appraisal into question, the taxpayer and attorney refused the summons due to attorney/client work product.

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based on federal authority of the 1933 and 1934 Act and subsequent court decisions. The Draconian advertising rules of the past have been softened, at least for rule 506. Advertising can now be targeted towards more accredited investors for offerings of no limit.

Another key provision of the law also affects Rule 506. Here, the broker involved in Rule 506 transactions is not required to be registered through the SEC to sell stocks relating to rule 506 and the advertising of stock sales under Rule 506. This alone is tremendous! While the Country Business Inc. (CBI) "No-Action" letter is still the authority a lot of brokers rely on to sell businesses, nobody will complain about this provision of the JOBS Act. For nearly a decade, brokers have been struggling with the issues of registration, advertising, and the size of the offerings, the JOBS Act definitely helps.

The Effect on Business Succession

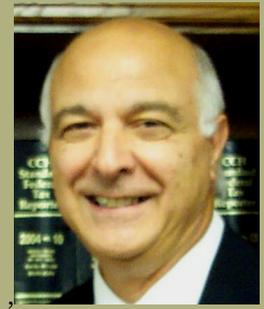
Leaving your business is an inevitability. The survival of your

business depends on you and your actions. While there are a number of options such as selling to key employees, passing on the business to the next generation, selling the business outright and such, no option is without its challenges. Opening new equity markets and leverage to business owners and buyers makes the transition all the more easy. Combined with the low capital gains rates and low interest rates, we are hands down in a prime time to sell a business and begin estate planning.

Conclusion

Small businesses could definitely use a boost when it comes to creating new jobs. The private issuance laws were and still are in need of updating to reflect inflation and the new paradigm in America reflecting technology and instant stock sales.

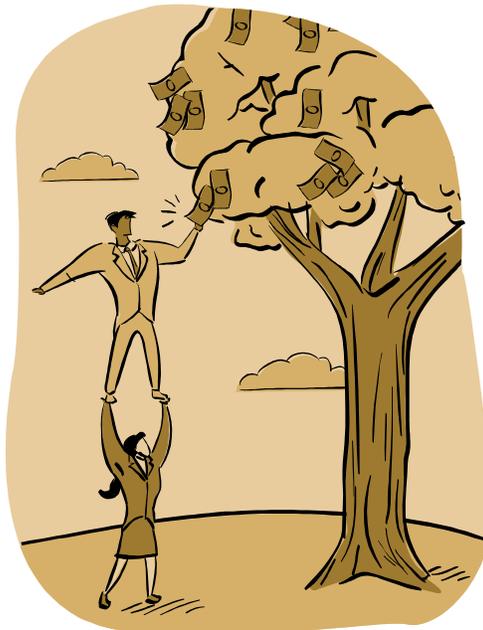
The JOBS Act has been referred to as the "IPO On Ramp" and hopefully will prove to be such. With these relaxed rules in place, there should be further growth of small businesses and start-ups.



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

- **As far as job creation is concerned in the past 15 years, nearly two-thirds of jobs created have come from start-ups and small businesses.**
- **Advertising can now be targeted towards more accredited investors for offerings of no limit.**
- **The JOBS Act has been referred to as the "IPO On Ramp" and hopefully will prove to be such.**



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A CASE STUDY CONTINUED:

Editor's Comment: Had this document been prepared in anticipation of litigation, it could have qualified for work product doctrine exception. The court in this opinion gave a scathing review of the taxpayer's strategy to withhold the evidence as completely improper. It is important that the public understands that if an appraisal is done, the end product is discoverable by courts. This case is a good example of why a solid appraisal by a qualified appraiser should be done in every instance.



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VALUE DRIVERS TO MAXIMIZE THE SELLING PRICE OF YOUR BUSINESS – PART 2

This is the second in a series of articles outlining the steps any business owner can take to maximize the value of his/her business when it comes time to sell. If you'd like to see previous articles in this series, visit our website at www.lmaallc.com. If you'd like a copy of the complete list of value drivers, e-mail me directly at mertel@lmaallc.com and request the Value Drivers list.

3. Favorable Sales & Profit Trends

Buying a business is a lot like buying any other investment, such as stocks or real estate: Everyone wants to buy it when it appears to be going up, and some will even pay a small premium based on this future growth potential. Conversely, few people want to buy stocks or real estate when it appears to be falling, and/or will discount it heavily based on its perceived future decline.

4. Defensible Niche

Ideally, there should be good reasons why your customers do business with you that would be difficult, if not impossible for your competitors to ever match. When the barriers to competitive entry are perceived to be very high, buyers will pay a premium price.

5. Lack of Customer Concentration

When the loss of any one customer would not have a material effect on the business, buyers will pay a premium. Conversely, when one or a very few customers represent 25% - 50% - 80% of a company's business, this can be a deal killer for many buyers and their lenders.

6. Strong Management Team; Near- Absentee Owner

A new buyer will likely not know everything there is to know about your business, and will look at the strength of the current management team to see if they can be counted on to help him/her manage the business once the current owner departs. This is especially true when it comes to customer relationships. How likely is it that some/many current customers will quit doing business with the company once the current owner leaves? A Seller who fails to develop his/her management team, and insists on doing everything him/herself, and appears to be indispensable, may optimize the business' cash flow in the short term, but at the same time may make his/her business unsalable.

To be continued...

If you know of someone who's thinking of selling or buying a business and who might benefit from a free, confidential, consultation with us, have them contact me at: mertel@legacymandaadvisors.com.

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Frequently Asked Questions...



Q: I am interested in giving my employees some kind of employee ownership. What do you recommend?

A: While I cannot recommend or give out legal advice via newsletter, one item of interest would be an employee stock ownership plan or an ESOP. In an ESOP, the owner of the company can carefully craft ownership limits and details for their employees. Once the employee resigns, employee is compensated for their shares and the shares can then again be resold to another.

Q: Once again we face the peril of capital gains tax rates and estate tax burdens rising. What is a good game plan to follow?

A: We have faced the possibility of increased tax rates form year to year in the past. My opinion is that the estate tax will not be a factor as the exemptions will be increased from time to time. The capital gains and dividends tax, historically, has fluctuated form time to time as well. If one is thinking about selling their business, 2012 is not a bad time to do it because of the low capital gains rate. However, retirement and family needs must be observed as well.

Q: I am thinking about making purchases of large equipment. mHow much may I deduct immediately under Section 179 in the year 2012?

A: The Section 179 deduction, in 2012 is \$139,000. No news has been announced of a push in Congress to raise the limit for this year.

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