



**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 in the Coming 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 and clients not paying to adverse credit climates, business is a challenging endeavor for any line of work. However, there are threats even beyond the day-to-day and year-to-year challenges.

It was just 5 months 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, once they shuttered, never reopened. In this case, as in many, the terrible results of natural disasters are often suffered at length.

### New Statistics on Natural Disasters

In 2012 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 the potential 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 (as in a snow or ice storm), to severe (hurricanes), to termination and even 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.

## A CASE STUDY

### Employer Provided Cell Phones

In a Notice, the IRS has caught up with the times making cellular phones a non taxable item. The Small Business Jobs Act of 2010 removed cellular telephones from treatment as listed property, a designation that imposes strict substantiation requirements on employers. In doing so, Congress left the

collection tasks up to the IRS, but left the implication that the IRS should take a reasonable stance. In the notice, the taxability of employer provided cell phones was ended when the device is being used for business purposes. If the device is given to an employee for non business use or compensation, it remains taxable to the employee.



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**Planning for the Worst**

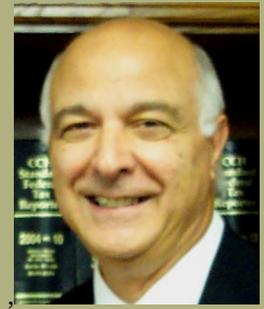
The absolute worst thing to do in preparation for a natural disaster is to do nothing at all. Waiting until it is broadcast on the radio or seeing a major storm system develop on the news is not the time to begin your preparation for a disaster. At that point, communications and electrical systems may already be failing area wide. Critical supplies needed for business continuation may have already been sold out of stores. Therefore, secondary protocol in people, location, and supply is absolutely necessary at all times. Out of state suppliers and friendly competitors should be reviewed for viability in these potential circumstances.

The best thing a business owner can do to continue business during and after a disaster is to begin preparation immediately. Talk to the people who are going to be players in the disaster plan. Talk to secondary suppliers. Think about where business will be conducted in the event the primary location is not available. The basics will be presented in Part II, next month.

**Conclusion**

As stated, next month we will discuss disaster planning for businesses. Before winding up, I would like to add that 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 AND FEMA provide insights for personal readiness as well and should be followed despite any situation.

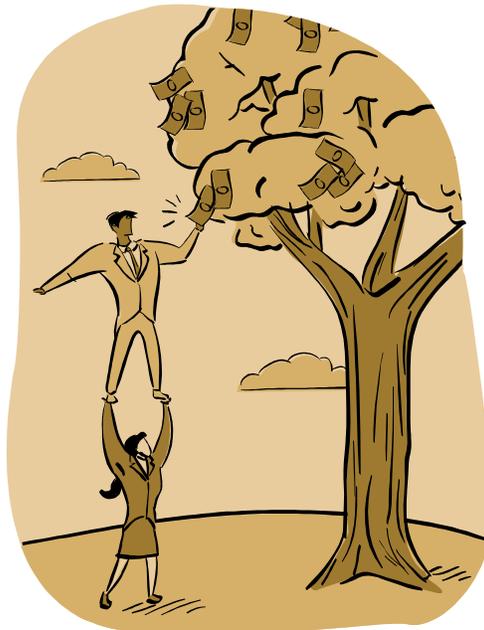
**LINK TO FEMA WEBSITE**



*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**

- **The fact of the matter is that, businesses in this country and all over the world face a gauntlet of peril.**
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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:

Editors Comment: Finally, the IRS is taking a reasonable stance on employer/employee usage of cell phones. Now that cell phones have become mainstream and, in most cases, necessary for employment and business, the substantiation issue is made more reasonable. On the other hand, there is still the requirement that employer provided cell phones are used only for business purposes. Employers would be well advised to have a written policy that states this clearly proves the phone is to be used only for business purposes. This can be done easily by inserting a page in the policy manual regarding cell phone usage and having the employees initial the page.



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

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

## Mixing Apples and Oranges in the Sale of a Business

Most everyone has heard that the three most important factors in determining the value of real estate are Location, Location, and Location. It is equally true that the three most important factors in valuing an ongoing business are Cash Flow, Cash Flow, and Cash Flow.

Most sources agree that the market value of an ongoing business is usually best estimated as a multiple of its cash flow. There are several sources for arriving at the appropriate multiple, from published handbooks to proprietary databases of sold comparables to one's own experience with the sale of comparable businesses.

A problem which frequently arises in negotiating an agreed upon sales price - either inadvertently or by design - is that buyers, sellers and intermediaries end up using the "right" multiple for the "wrong" cash flow. Essentially, they're mixing apples and oranges.

In my experience, it's very common that a business owner will enter the negotiation thinking that his/her business is worth ten - (or more) - times its annual cash flow. In part, I believe this is because the business owner is applying the price/earnings (P/E) ratio of a publicly traded company which is a widely published ratio, not realizing that the multiple for his privately held business will be much lower, and that his/her "earnings" are not calculated the same way as the earnings of a publicly traded company.

Similarly, I've seen shrewd buyers apply the "right" multiple of historic Sellers Discretionary Earnings (SDE) to the target company's projected EBITDA (Earnings before Interest, Taxes, Depreciation and Amortization), perhaps realizing - and perhaps not - that they, too, are mixing apples and oranges.

There are many variations on this common error, and there are many definitions of "earnings" or "cash flow." Even within the profession of business brokers and M&A advisors, these concepts are not universally understood, nor consistently applied.

The sale of a business is one of the largest - if not THE largest - financial transaction in a business owner's career, so it pays to be well advised. Mistakes made in this process are very costly, and you have no chance to recover.

If you know of someone who's thinking of selling or buying a business and who might benefit from a free, confidential, consultation, have them contact me directly at 813.299.7862, or [mertel@lmaallc.com](mailto:mertel@lmaallc.com)

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



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## Frequently Asked Questions...



**Q: My father just passed away. Will I have to pay estate taxes on the value of the estate?**

**A: Generally, the heir does not pay the estate tax. If there is an estate tax due, the estate is responsible for the estate taxes due on the gross value of the estate. This year, the estate tax exemption is \$5,250,000.**

**Q: How do I deduct expenses from an estate to arrive at the true value of the estate?**

**A: The estate can deduct estate expenses from the estate itself using form 706 or it can use form 1041 to deduct expenses from the income of the estate.**

**Q: Can a business be passed from one generation to the next by the use of a simple will?**

**A: It is a really bad idea to approach business succession in this manner. If a business is passed down through a will, it could be subject to probate, a process that takes 6 months or longer. Also, details emerge in the transition process which are best dealt with during the life of the owner.**

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