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## The High Price of Not Obtaining Tax Advice

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

### Introduction

Throughout my career as an attorney, I have seen many tax and legal situations which could have been easily avoided if the person had good tax counsel and advice early on. Recently, it has brought to my attention that many people in closely-held and family businesses do not consult any type of advisor when it comes to their tax or legal situation. Given the complexity of the tax and legal environment of businesses in this country, not having good counsel on tax and legal matters is comparable to walking blindfolded through a mine field. Sooner or later the individual is going to be destroyed.

Part of my passion in life is speaking at association gatherings and educating the members about taxes and other issues relating to their business. Most of the time, I also speak to the members (one on one) concerning their tax and business situation in private meetings. Their concerns range from the most complex situation concerning business succession down to the most basic principles of tax law. Here are some common situations that business owners run into when they are not under the advice of counsel:

### No Tax Strategy

Many people do not know about the upcoming changes in the tax laws that happen on January 1, 2013. As a consequence, the same people do not know capital gains and dividends are taxed lightly at 15% this year, but next year will be taxed at 20%. In addition dividends are also currently taxed at 15%, but will be subject to ordinary income rates next year. For those operating as a C corporation, it is absolutely imperative to know these facts.

Other people, and this is completely appalling, don't even file tax returns from year to year. Many of them reason that the government hasn't cracked down on them yet, maybe they can push it indefinitely. This is absolutely insane! Failing to file taxes year in and year out doesn't harm the government or their interest, but can put you out of business.

The fact is that there are a whole host of deductions available to businesses. On the other hand, there is also a whole array of pitfalls for the business owner as well.

Continued on page 2

## A CASE STUDY

In an IRS Letter Ruling, the IRS decided that two life insurance policies were not includible in the gross estate of a decedent. In the case, two trusts owned a limited partnership which owned two life insurance policies. On the two life insurance policies, the decedent removed the powers of

appointment and conversion from himself and placed the powers in his sister and his wife. Because the insured did not have power of appointment within himself, the insurance policies were not includible in his estate and were therefore not subject to estate tax.

Continued on page 3



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Among the most severe situation is being assessed taxes, penalties, and interest for years past and not being able to pay them, not having money to retire, and quite simply not seeing any part of your dreams come to fruition despite a lifetime of hard work.

**No Business Succession Plan**

There are many business owners operating their businesses well into their 60's that have not named a successor to their position. The fact is, as a consequence of being a living creature, people die. Their business on the other hand, does not have to. If you have a named successor and a business plan, your business can go on and also provide for loved ones in your absence.

Having a key employee or owner falling ill or passing suddenly can destroy any family business. Too often I hear of stories where the owner had the intention of passing the business to the next generation only to pass away suddenly without so much as a will. The fact is that the biggest danger to any small business is not competitors or money. The biggest threat to a small business is the finite existence of the people owning it. Ironically, some degree of business succession planning is necessary even if you have no intention of passing your business to the next generation. It is important to make your wishes known and to have a formal plan.

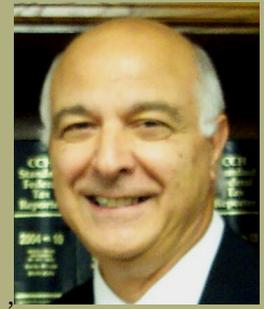
to carry out those wishes once you retire or pass away. Handing a business to the next generation with massive tax and accounts payable debt is not a good thing for your family.

**No Formalities or Even a Formal Entity**

The possibility of facing at least one lawsuit during the course of a business enterprise is almost assured. Basic mistakes and omissions are made by even some of the wealthiest, highest income people. Failing to have a corporate record book or even being not incorporated at all is a common occurrence when business owners find themselves served with a summons and complaint with their individual name on the lawsuit. Once this happens, the owners assets are fair game for those named as plaintiffs in the lawsuit.

**To be continued....**

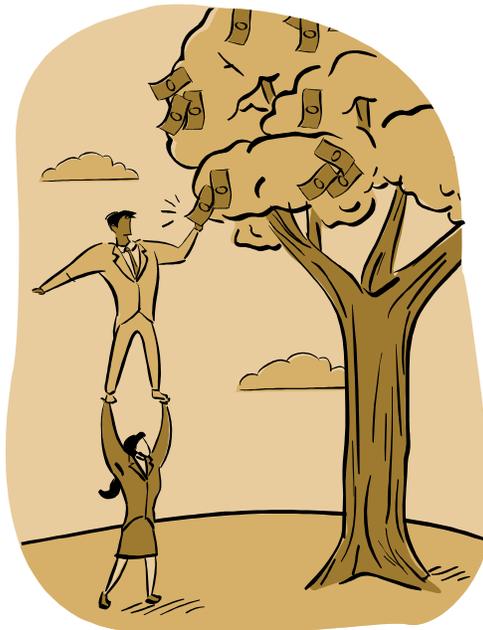
The fact of the matter is that small business owners need advice the most, but sometimes do not receive it at all. Tax and legal advice does not have to be expensive or time consuming. Not being advised on these matters can be extremely detrimental. Next month, three easy solutions will be discussed in order to get the uncounselled business person on a track where they can be better prepared to deal with their business, tax, and legal issues. By just doing three simple, inexpensive processes, business owners can start to plan for the future.



*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**

- **Given the complexity of the tax and legal environment of businesses in this country, not having good counsel on tax and legal matters is comparable to walking blindfolded through a mine field.**
- **There are many business owners operating their businesses well into their 60's that have not named a successor to their position.**
- **The possibility of facing at least one lawsuit during the course of a business enterprise is almost assured.**



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## A CASE STUDY CONTINUED:

**Editor's Comment:** It pays to have professionals who know what they are doing. Here, had the decedent retained the right of appointment, these life insurance policies would have become entirely taxable to the estate, and would have been absolutely no more benefit to the decedent's estate. When shopping for life insurance policies and setting them up, you must pay attention to the potential value of the estate, the cash position of the estate, and legal contingencies with life insurance policies, including power of appointments.



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## HOW SOON SHOULD YOU START WORKING WITH A BUSINESS BROKER/M&A ADVISOR?

A business owner who is thinking about selling his business sometime in the next few years recently asked me: "How soon should I begin working with a business broker?" My response was: "Probably a lot sooner than you think!"

The most common mistake I see business owners make when it comes time to sell their business is waiting too long. It's been said that most business owners spend more time planning their annual vacation that preparing for the sale of their business – and some don't even take an annual vacation!

The process of analyzing and recasting the company's financial records, preparing the necessary marketing materials, identifying and screening qualified buyers, negotiating the letter of intent, completing due diligence and financing, and closing the deal for a small- to mid-sized company can take up to 12 months, and sometimes longer.

Frequently, the buyer will want the seller to stay on for several months – sometimes up to 6-12 months - to assure a smooth transition.

Lastly, to maximize the selling price the seller may need to clean up some aspects of the business and its financial records which can take 6-12 months, and sometimes longer.

Adding it all up, if you'd truly like to maximize the selling price of the business you've spent a great part of your working life building, and completely retire from it one day, you need to start at least 2-3 years in advance.

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

I'd be happy to provide a free copy of my white paper entitled, Value Drivers To Maximize the Selling Price of Your Business.

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## Frequently Asked Questions...

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**Q: When I sell my business, what assets can I expect to keep in the transaction?**

**A: When a business is sold, the asset purchase agreement dictates which assets are sold and which assets are kept by the seller. Typically, the cash and accounts receivables are not sold along with the other assets as the seller keeps these in order to pay outstanding debts of the business and provide the buyer with free and clear ownership. It must be remembered that an asset sale means the corporate structure is still in existence and may have to be dissolved after the sale.**

**Q: I am interested in selling my business, but I do not have children and my key employees are looking to go elsewhere. What should a business owner do in this situation?**

**A: The best thing to do in this situation is to not panic and do something reckless like sell the assets at a low value. Most businesses have some intrinsic value within them. At a minimum, an advisor should be consulted in order to get the best possible value for the business. In this situation, 1) the key employee and employer should consider entering into a mutually beneficial employment contract, and 2) a written plan should be developed, with the key employee, as to how to proceed to grow and develop the business.**

**Q: Even though it is mid-year, is there any tax or business advice for the business owner that would be worthwhile for the current tax year?**

**A: No matter what time of the year it is, there is always an opportunity to be gained through business and tax planning. The subject of which will be discussed in the next newsletter.**

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