Legacy M&A ADVISORS LLC

M&A UPDATE®

March 2015 Volume 10, Issue 3

ZOMBIE APOCALYPSE OR BUSINESS SUCCESSION: BE READY FOR BOTH!

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

Introduction

From rising fuel prices, rising commodity prices, clients filing bankruptcy on their payables to clients not paying due to adverse credit climates, business is a challenging endeavor for any line of work. The fact of the matter is that someday, someone other than you will be in charge of your business. Whether it be your retirement, a natural disaster or acts of civil disobedience, you need to be prepared for them with succession and disaster plans at the ready.

It was just 2 and a half years 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. 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 felt for a long time or even possibly forever.

New Statistics on Natural Disasters

In 2014 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 in the wake of the hurricanes and other natural disasters, businesses need to be prepared.

Natural disasters are a fact of life all over the 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 dissolution of the company, and even being dangerous to personnel. With disaster planning, the company can and should plan to continue in at least some capacity.

Continued on page 2

A CASE STUDY

Third Party Payroll Provider

The IRS has posted guidance regarding third party payroll providers. The guidance warns that companies must do their due diligence, must follow through with what their providers are doing with their money, and realize that the companies are ultimately responsible for payroll taxes being paid.

Due to the increasing complexity of payroll taxes and the inefficiencies it creates, many firms are sourcing out their payroll functions. This in and of itself works well. The problem is that while payroll services are an up and coming industry, the problems are up and coming as well. Too often we read cases where the company and its accounting department are well intentioned and appropriately pay their taxes and fees to their third party payroll service. Sometimes the payroll service, illegally of course, will convert the funds for their own use. This may go on for potentially years before a company realizes they are being swindled. In the meantime, typically the payroll service will tell the company to ignore IRS notices as they have the situation under control. The unscrupulous also have no issue with changing your address within the IRS so you may not even get notices. The liability piles up until the IRS sends an agent. It is at that point the company realizes the extent of the situation and they realize they are on the bill for often LARGE withholding liabilities.

Continued page 3

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.

Cover Story

Planning for the Worst

The absolute worst thing you can do in preparation for a natural disaster or your retirement 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 and should do to continue business during and after a disaster is to begin preparation immediately. Talk to the people who are going to be helping with the disaster plan. Contact secondary suppliers. Think about where business will be conducted in the event the primary location is unavailable. The following basics of disaster and succession planning are presented in short form, herein below:

1) Written Instruments and Communication

Along with any disaster/succession plan, written instruments are a necessity. Reducing a plan to writing is the first step to make a plan achievable.

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. Reasonable measures must be taken in order to, if not defend the store; provide footage for law enforcement to detain the individuals responsible for the crimes 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 business. The solutions to the situation may not be easy. Two options exist 1) a backup generator or 2) a remote business location where company business can be conducted.

Also, your employees will need financial assistance during this time period as well. Two weeks of pay can ensure that employees can pay their bills and endure.

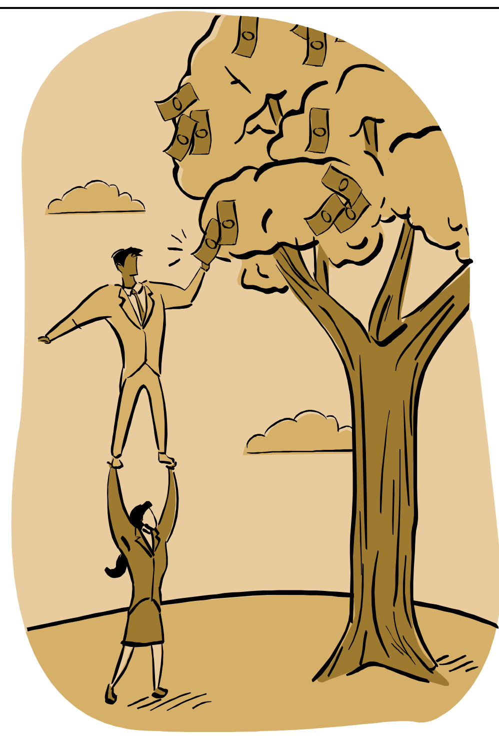
Conclusion

While business succession is much more in depth than planning for a natural disaster, every business should have a disaster and business succession plan in place. It is important that a natural disaster does not become a personal or business bankruptcy when a continuation is entirely 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

- **Whether it be your retirement, a natural disaster or acts of civil disobedience, you need to be prepared for them with succession and disaster plans at the ready.**
- **The absolute worst thing you can do in preparation for a natural disaster or your retirement is to do nothing at all.**
- **While business succession is much more in depth than planning for a natural disaster, every business should have a disaster and business succession plan in place.**



Legacy M&A Advisors, LLC
970 Lake Carillon Drive, Suite 300
Saint Petersburg, FL 33716

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

A CASE STUDY CONTINUED:

Editor's Comment: Do not put blind trust into people with your money! The IRS suggests that companies utilize third party payroll services verify that payroll taxes are being paid to the US Treasury. The IRS recommends: Do not substitute the third party service's address for your address, contact the IRS about notices as soon as possible, know the rules about reporting, and be familiar with the due dates.

I would further say that the company should from time to time call and ask in order to verify if there are any withholding liabilities if you are using a third party provider. I don't want to discourage anyone from using a third party payroll service, but be sure that your taxes are getting paid!

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

Legacy M&A Advisors, LLC
970 Lake Carillon Drive, Suite 300
Saint Petersburg, FL 33716

Ten ESOP Fables – Debunked – Part II

There are many misconceptions about ESOPs today, sometimes in the business press, and sometimes by professionals from various fields. With all this misinformation and misconceptions about ESOPs, it can be difficult – if not impossible – for the average business owner to make an informed decision about whether setting up an ESOP makes sense for himself, his company, and his employees.

This is the second in a series of articles that will attempt to dispel ten common misconceptions, or fables, about ESOPs.

ESOP Fable #2: ESOPs are only applicable to very large corporations.

There is a commonly held notion that the benefits offered by Employee Stock Ownership Plans are available only to the largest of corporations. In reality, most ESOPs are found in companies with fewer than 100 employees. Of course, the larger ESOPs from companies such as Publix Supermarkets, United Airlines and W.L Gore of Gore-Tex get the headlines; but ESOPs can be found in companies with as few as ten employees.

ESOP Fable #3: If I sell to an ESOP, I will lose control of the company.

One of the major fears a business owner may have is a presumed loss of control after selling an interest in his or her company to an ESOP. In reality, however, the ESOP Trustee is empowered to vote all of the shares of stock owned by the plan, and in most ESOP sales the selling owner will elect to be the Trustee of the ESOP, or will appoint someone to be the Trustee in whom he has complete confidence. This means if you sell your shares to an ESOP, you can maintain full control of the company, for as long as you choose.

Only in certain circumstances, such as the liquidation of the business, do employees actually vote their shares of stock. Thus, the fear of having to consult employees and have them vote on every corporate decision is simply unfounded.

Next month's article will tackle: ESOP Fable #4: My employees cannot afford to buy my company.

As ever, if you know of a business owner who's thinking of selling or buying a business and who might benefit from a ***free***, ***confidential***, consultation with us, have them contact me directly.

Mike Ertel, CBI, M&AMI, CM&AA
Managing Director, Broker
mertel@lmaallc.com
813.299.7862 Direct

Legacy M&A Advisors, LLC
970 Lake Carillon Drive, Suite 300
Saint Petersburg, FL 33716
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 am exchanging property in a 1031 "like-kind-exchange." Can I exchange my one property for more than one property?

A. Yes. As long as the property being exchanged is within the same class, you may exchange the property for more than one property. When dealing with real estate, you can exchange one property for up to 3 properties.

Q: I just opened a business and formed it as a Limited Liability Company under my state's laws. For federal tax purposes, how do I classify my LLC?

A: An LLC may be classified for federal tax purposes as a sole proprietorship, a partnership, or a corporation. If the LLC has only one owner, the LLC will automatically be treated as a sole proprietorship unless another election is made by the owner. On the other hand, if the LLC has two or more owners, it will be classified as a partnership unless an election is made. The election is made on IRS Form 8832. Unless the election is made, the classification will be the default classifications.

Q: My business is in arrears on its payments. What is my best course of action?

A: There is no one standard answer for this situation. With that said, generally it is best to not ignore the obligations which you may be in default on. Calling the creditor, being forthright, and knowing your rights are tantamount to survival and recovery in the process. If a creditor does not know you're willing to work with them, they have no choice but to pursue other legal options against you.