Legacy M&A ADVISORS LLC

M&A UPDATE®

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Year End Tax Planning

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The Center for Financial, Legal & Tax Planning, Inc.

Introduction
So far at least, the consensus is that the economy will be relatively stable in 2015. With an average of 200,000 jobs being created each of the last 6 months and most economic indicators showing positives, next year should be better than last. Too often, business people wait until late in the year to do their strategic planning. While there are some actions that can be taken at that point, those who work proactively throughout the year implementing business and tax strategies perform far better than those who put planning off to the last minute. There is plenty of business and tax planning that should be planned and executed throughout the year.

Business Operations
According to the latest Beige Book report, the overall United States economy is continuing modest or moderate growth. Given this, businesses should work hard to increase revenue and look to hire additional staff. As of late, there has been a trend toward businesses hiring temporary staff ahead of hiring full time employees. While many businesses have never explored this option, it is worth developing a relationship with temporary labor organizations. While it is expected that business will continue to build and stabilize during 2015; it is therefore the appropriate time to ramp up labor and inventories.

Investments
Instinctively, businesses tend to cut investments when business is slow. Ordinarily, purchasing less in leaner times would be appropriate. However, given Internal Revenue Code Section 179, there is still an incentive to make additional investments. So far in 2014, the deduction has fallen to $25,000 and Congress has not reenacted the higher amounts. Given the importance of advanced depreciation, it is likely the limit will once again be increased to $250,000 to $500,000. We will have to monitor legislation to keep the readers updated.

Financing
The past economic down turn has also brought lower financing rates that are currently remaining in the recovery.

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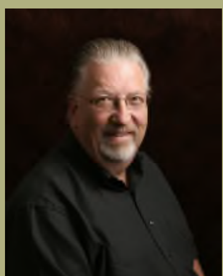

Mike Ertel is a Certified M & A Advisor and a Principal Broker with Legacy M&A Advisors, LLC, a full-service M & A Advisory firm with an office in Tampa, Florida specializing in representing sellers and buyers of small- to mid-sized companies. Prior to joining Legacy M&A Advisors, LLC, Mike's business 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.

A CASE STUDY

"The DPAD"

The IRS Chief Counsel determined that mobile billboards qualify for Code Section 199 **Domestic Production Activity Deduction**.

In this determination, the taxpayer submitted a fact pattern based on two sets of facts. The first set of facts were billboards that are permanently affixed to the ground as one would view along a roadside or interstate. The other set of billboards were manufactured to be set on trucks and driven around to advertise throughout an area.

The IRS's determined that permanent billboards do not qualify for the Domestic Manufacturing Deduction. The mobile boards on the other hand they are movable objects combining two or more materials and concepts together to get one advertising item. Therefore in a determination letter, the Chief Counsel acquiesced that mobile billboards do qualify for the Deduction.

This decision is quite indicative of how broad the IRS would like the definition of a manufacturer to be. It is definitely good for taxpayers!

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Financing of buildings and equipment may be eligible for lower refinancing rates. Check with your bank to see if your loans can be refinanced. Just be sure to check the fees and costs before committing to any refinancing.

Estate Planning

Many business people have complex estates. Along with the complexity, the average net worth of a business person is substantially higher than an employee. The 2015 estate tax exemption will be 5,430,000. It is best to begin estate planning early in the year so issues can be resolved throughout the year and the estate plan can have time to be implemented during the year. Please review your total estate value and start the process of a complete estate planning process now.

Succession Planning

Along with estate planning, comes business succession planning for those who own businesses. Business succession planning is not as simple as drafting a will. Business succession planning, when done properly, provides a smooth transition for the succeeding generation. The process includes the valuation of the business and the creation of legal documents, such as a buy/sell agreement (the most important legal document a business owner can have).

When succession planning is not done or is done improperly, it usually means the loss of the business and therefore the loss of your lifetime of hard work. Don't procrastinate, start the process now!

Conclusion

Beyond the items discussed herein, there is plenty that can be done to improve your financial and tax situation throughout the year. Too often people approach financial, tax, and business planning as an after-thought of running the operations of their business. Running a business without a plan to exit and retire is similar to driving a vehicle with no destination in mind. Proper planning and implementation of an exit, succession and tax strategy allows you to keep more of your hard earned wealth and allows you to have a better retirement when the time comes. If you are not sure where to start or how to start, please contact the experts at the Center to assist you in your exit, succession and tax planning strategies.

*We would like to point out, that at the time of this publication we are awaiting the passage of The Tax Increase Prevention Act of 2014. We believe the bill will become law. Within the law, will be an increase in the Section 179 Deduction and enhanced bonus depreciation (if it passes). Check with us later to see the tax consequences we will be dealing with for the remainder of 2014.

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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

- **With an average of 200,000 jobs being created each of the last 6 months and most economic indicators showing positives, next year should be better than last.**
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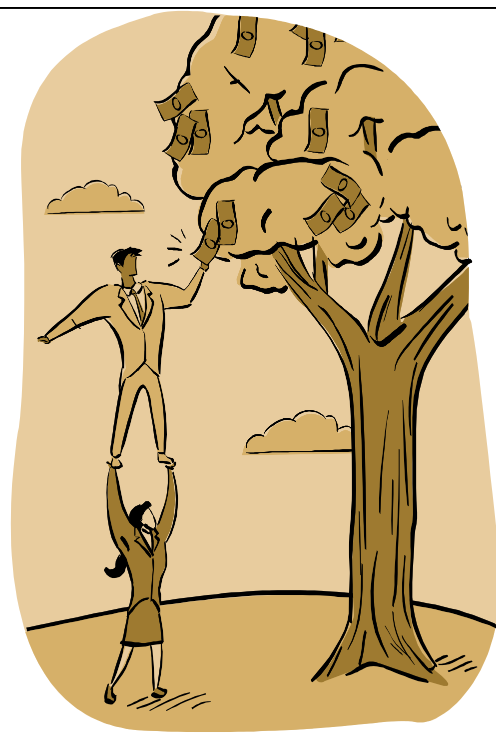

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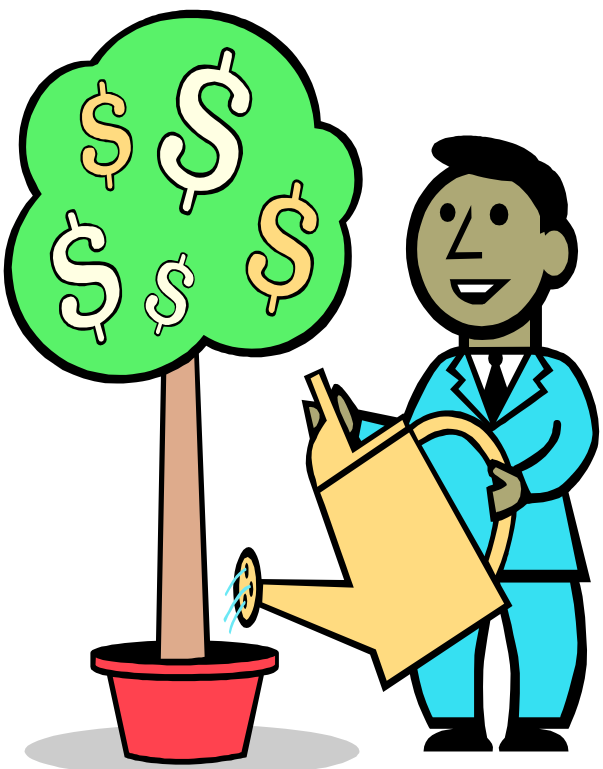
A CASE STUDY CONTINUED:

Editor's Comment: This is important because it illustrated the broadness of the deduction and what the IRS and Congress intend on allowing it to apply to, a plain reading of the text and regulations imply a wide cast net, but maybe not this wide. Kudos to the IRS for issuing this determination for manufacturing companies.



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What's In A Letter of Intent (LOI)?

When you're selling your business, an important step in the process is receiving a letter of intent (LOI) from a qualified buyer. The terms of an LOI can still be negotiated, but once signed by both parties, it's a little bit like getting engaged; both parties pretty much commit to each other that they will forsake all others and work diligently to get this deal closed. Here are the typical elements of an LOI.

1. Identifies the Buyer. Typically, the buyer may be an operating company or a new holding company incorporated for the purpose of completing the transaction. When assessing the buyer, business owners need to ensure that the buyer making an offer has the financial backing and capabilities to complete the transaction.
2. Defines the Type of Transaction. The LOI will typically state whether the transaction is being completed as a stock sale or an asset sale. Each has different due diligence and tax implications for both the seller and the buyer. The LOI will also typically identify what assets and operations are being purchased and if there are any assets,
3. Defines the Purchase Price /Consideration. Most sellers would prefer to get all cash at closing, but the larger the deal, the more likely the buyer will not be willing to do this. Typically, the consideration may include some cash at closing, possibly some non-cash consideration such as equity in the acquiring company, and possibly some future payments based in part on the continued success of the business, such as an earn-out and/or a sellers note. It's important for the seller to assess the likelihood of receiving each element of the consideration, as well as the after tax consequences.
4. Sets the Buyer's Conditions Precedent. A buyer will likely have a number of conditions in the LOI that need to be satisfied before closing. A smart buyer will include the required net working capital and FMV of capital assets that are to be included as part of the deal in the LOI, as well as a "dollar for dollar" reduction in the purchase price if working capital or capital assets don't match the values pegged. A smart seller will ensure that this clause also allows for an upward revision dollar for dollar if a higher value of working capital or capital assets is delivered.
5. Defines Required Due Diligence. There are three objectives to due diligence: a) to vet valuation assumptions, b) to identify the cost savings or revenue-increasing opportunities of the combined entity, and c) to identify any "hair" your company may have that may reduce the purchase price.
6. Specifies Timing and Closing Steps. A quick close is always better than a slow close. Experienced and motivated buyers are able to close a transaction in 45 to 60 days after the LOI is signed, but a more typical time line is 90 to 120 days.

Accepting an LOI is an important milestone which marks the beginning of an intensive and time-critical process where the seller needs to be as involved as the buyer. Remember that signing LOI is not a contractual obligation, but still a big step that should not be taken lightly. You are essentially committing to see the purchase and sale process through, so backing out without a good reason will send a message to all potential buyers that you're not ready to sell.
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.

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Frequently Asked Questions…

Q. Should I incorporate?

A. The three worded, simple question many small business owners ask of us! The legal profession will answer, in blank, "YES!" The accounting profession would generally answer, "Maybe." Your creditors cringe at the thought. The fact of the matter is that some businesses would just face more burden being incorporated as opposed to operating as a sole proprietorship. Other business owners are crazy for not being incorporated. You must examine your individual situation to find the best possible business structure.

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.

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.