

Business Succession and Exit Strategies

As a successful business owner, you have accumulated wealth within your corporation. Now you have two very significant decisions to make as you begin the process of estate planning:

1. How to transfer ownership; and
2. How to protect your wealth from depletion due to estate taxes.

There are many options available to you as you plan for your estate and the eventual transfer of your business. These options should be carefully explored with a competent tax advisor. There are many legal and tax implications which may preclude you from using any one or indeed all of these alternatives because of your particular circumstances; or all of these suggestions may be feasible, yet one may be more appropriate than another. We provide these possibilities as a preliminary step in your estate planning process.

Outright Sale for Cash

If a qualified buyer is available, you may sell all or a portion of your company stock or its assets for cash to another party. You may also consider selling on an installment sale basis.

Buy-Sell Agreement

Owners of a business typically enter into an agreement for the surviving owners to purchase the interest of a deceased owner from the estate. This agreement is often funded through the purchase of life insurance. The structure of a Buy-Sell Agreement can take many forms and be funded in many different ways.

Tax-Free Exchange

Under certain circumstances, you may be able to effect a merger with another company, or be acquired by another company in a transaction that could qualify as a partial or complete tax free exchange.

Gifting

Interests in the family business may be transferred through annual exclusion gifts to family members or more quickly through the use of the owner's gift and estate tax exemption. Often the interests represent minority interests and may be entitled to discounted value enabling the owner to transfer a greater percentage than could otherwise be allowed.

Self-Cancelling Installment Note

You as the owner may sell the business to family members in exchange for a note that is to be canceled at death.

Recapitalization With Preferred Stock

The owner creates a preferred stock paying a dividend and exchanges current interest for dividend paying stock. Common stock is transferred by gift to family members. IRS rules have complicated this area and some former benefits or recapitalizations are no longer available.

Grantor Retained Annuity Trust

The owner transfers a business interest to an irrevocable trust retaining an income interest. After a time specified in the trust, the trust will terminate and the interest will belong to beneficiaries named in the trust. Termination of the trust must occur prior to the death of the owner. The interest transferred is discounted for gift tax purposes because of the income interest retained by the owner.

Charitable Remainder Trust and Charitable Remainder Trust Bailout

An owner may transfer a business interest to a charitable remainder trust to effect a sale of the interest to another party or back to the corporation (bailout). The owner retains an income interest as determined by the trust instrument. The owner is entitled to a current income tax deduction for a portion of the interest transferred. The trustee may sell without immediate capital gains tax consequences allowing the full proceeds of the sale to be reinvested to provide an income stream to the owner.

Sale of Stock to Employee Stock Ownership Plan

Where an ESOP has been or may be established, an owner may sell the stock to the ESOP in exchange for cash. If the owner timely reinvests the cash into qualified securities, the transaction may be tax-free.

There are many variations of these several transfer techniques, including "Cross-Purchase Agreements" and "Key Person Buyout Agreements," to name a few familiar terms. Your Financial Advisor can work with you and your advisors to help determine what may be appropriate in your situation.

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