

Biz For Sale:

IF YOU'RE SELLING YOUR BUSINESS, HERE ARE SOME TIPS TO HELP YOU GET THE BEST PRICE IN A DOWN ECONOMY

The past 18 months have been extremely difficult for participants in the mergers and acquisitions community. Purchase and sale transactions in 2009 were at their lowest levels since shortly after the dot-com bubble burst at the beginning of this decade.

Although the economy is showing signs of recovery in 2010, many industries remain depressed and unemployment remains high. Many economists and dealmakers are cautiously optimistic about the future, but down in the trenches things are still very tough. As a result, a business owner who might otherwise desire to develop an exit strategy for his or her business is likely working 24/7 just to keep the business afloat. From the "glass half full" perspective, however, the depressed economy presents the foresighted owner with an opportunity to get her house in order, so that when market conditions improve she will be in the best position possible to seal a deal quickly. You should begin preparations to sell your business at least 12 months prior to the date on which you anticipate completing a sale.

As the owner of your company, the first thing you should do is step back for a moment and consider how indispensable you are to the business. Buyers, especially financial buyers, generally prefer acquisition targets without significant "key man" risks. Start now to wean the company from you by developing a plan to delegate authority and automate company operations. If you don't, you will likely find yourself saddled with a burdensome employment or consulting agreement after the sale is complete in order to mitigate the buyer's perception that your departure would lead to the company's imminent demise.

In a similar vein, does your bottom line reflect your company's true profitability? Many entrepreneurs find it difficult to separate their personal financial situation from their company's. Although it may be tempting to run personal expenses through the company's books in order to obtain expense deductions, this practice often clouds the true performance of the company and can limit your re-

turn on the back end once you are ready to sell. Adopt tax strategies for your company that are transparent and, above all, legal and that won't require your buyer to do back flips in order to get a true understanding of the business' financial position and results of operations.

Does your company own the real estate on which its facilities are located? If so, you may want to consider spinning off the real estate to a separate company owned by you (as opposed to being owned by the operating company). Buyers often do not want the real estate associated with an operating business unless the property has some strategic value. Also, if your business is a corporation, there are very good tax reasons to transfer land ownership to a non-corporate entity. Finally, the real estate component of the transaction can also be another source of income for the owners through the negotiation of a valuable long-term lease of the facility to the buyer.

As you begin to consider a sale, be sure your company is properly positioned from a tax standpoint. Sit down with your tax adviser and discuss the tax ramifications resulting from either an asset sale by the company or a sale of the equity by the owners. Generally (for tax and other reasons), buyers prefer asset sales and sellers prefer equity sales. Further, the legal treatment of a transaction often does not coincide with how the transaction is treated for tax purposes. For example, to meet both buyer and seller preferences, an equity sale for state law purposes can be treated as an asset sale for income tax purposes. While a full discussion of income tax treatment is beyond the scope of this article, it is imperative to involve your tax adviser as early in the sales process as possible.

Make sure there are no skeletons in your closet before you commence negotiations with your buyer. Do you have audited financial statements for your business? If not, consider engaging a certified public accountant to conduct an audit of your company as of your most recent fiscal year, or at the very least take steps to put the company's financial affairs in order so that an audit can be conducted quickly later. Most buyers (or the lender providing the financing to the buyer for the acquisition) will require at least one full year of audited financial statements. An audit requires a thorough review and cross-check of the company's books and records, and will likely result in certain additional management controls being put in place for your business.

You should also prepare for the legal due diligence review that the buyer (and its lender) will conduct on your business. Make sure your contractual relationships are all documented and well organized. Do you operate with "handshake" agreements? If so, take the time to enter into written, legally-binding agreements with your vendors and customers, even if these agreements are fairly simple. Also, make sure none of your important agreements is set to expire shortly before or after the time you expect the transaction to close.

Finally, if you have not already done so, consider preparing a procedures manual for your business and engaging an attorney to prepare an employee handbook and significant company policies. The existence of well-drafted manuals, handbooks and policies will give your business credibility and make the transition to new ownership less difficult. You should do this well in advance of closing to give your management team and employees adequate time to adjust to any new procedures or protocols that may need to be implemented. **AB**

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