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TAX & WEALTH ADVISOR ALERT: PLANNING FOR SUCCESS WITH A BUSINESS SUCCESSION PLAN (PART I)

Many closely held businesses involve family members. The owner of such a business may wish to sell the business to some third party on or prior to death, or, more likely, may desire to transfer the business to the owner's children. Although some business owners may believe little or no planning is required for this type of transaction to take place, the opposite is true. To successfully transfer a family business to the next generation, the owner should commence planning for succession as soon as the owner has a good indication of which family members may be interested in succeeding to the ownership of the business, and more importantly, which of them will best be able to lead the business into the future.

In order for a transition to proceed as the owner desires, an effective business succession plan must be in place. When commencing the planning, the business owner should remember four key factors:

1. Succession planning is a process, not an event. Accordingly, the plan should be reviewed as time passes to see if changes to the plan are necessary.
2. Communicating with family members and key employees regarding the plan and involving them in the succession plan may help foster the future good and unity of both the family and the business.
3. While estate tax planning issues must be kept in mind when considering a succession plan, the plan must first fulfill the needs of the owner and the family, as well as those of the business.
4. The retirement income needs of the owner must also be reviewed and considered in determining the proper structure for the succession plan.

In developing a succession plan for the owner and the business, the owner should work with an experienced planner. Together, they will have much "homework" to do, including reviewing a wide variety of information, starting with the historical and proforma financial statements of the business and the personal financial statements of the owner. In addition, a number of legal documents, including existing wills, trust agreements, buy/sell agreements, employment contracts, leases, corporate documents, partnership or limited liability company agreements, and any pre-nuptial agreements, must be reviewed. Further, they should consider information regarding the business's capital structure, debt and cash flow, the owner’s present retirement income needs, the owner’s desires as to when and to whom the business should be transferred, and what other assets are available for family members not active in the business.

All of this information is important in determining the “right” succession plan for the owner and the business. Once these and other pertinent facts are analyzed by the owner and the planner, they must then take all of these pieces and combine them to create a customized succession plan or “picture” of what the owner would like to see occur in the future upon the transition of the family business to future generations.