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True Ups on Business Sale/ Acquisition

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Selling (and purchasing) a business can be a milestone in anyone's career. While it is an exciting time for both the buyer and seller, there are items both parties should be aware of that can complicate the closing of a deal in the 11th hour. Ensuring all loose ends are accounted for can make for a smooth transition during and after the sale of a business.

No one wants to close a business sale and find out later there are still open items or missed transactions that were not included in the sales contract. These loose ends can become a headache for all parties and defeat the purpose of hiring professionals to close the sale efficiently and correctly. While no one has a crystal ball, there are some common items that are routinely missed when a business is sold. If accountants and attorneys can work together, a good sales agreement can be created to address all relevant issues. Some of the more common items that are left out of sales agreements include treatment of payroll, payroll taxes, accrued vacation time built up under old ownership, employee benefits, employee retirement packages, working capital, and merchant services. Contracts may address the date of closing and who is responsible for certain expenses after a date in time, but what if the sale occurs on a date other than year-end and there are several employees who have accrued vacation time? Who is to stop them from deciding to take vacations the day after the sale? Will the first week of business for the new owner consist of paying out new employees' vacation time while the business owner scrambles to fill their roles?

Here are some helpful points to consider when providing consulting services on the sale of a business:

- Ensure there is an agreement on who is responsible for paying out employees' accrued vacation time through the date of sale.
- Understand each employee's contract and agreement with the business so there is clarity when the buyer takes over.
- Calculate the amount of payroll and payroll taxes as of date of closing and identify who will be responsible for them.

- Explain exactly what cash and inventory is expected to be on hand as of date of closing (and what amount of the purchase price is allocated to these). This helps the seller understand what they need to use so they don't give away free inventory and helps the buyer understand what to expect so they can plan when to order more inventory after they take over.
- Include language on how to handle the transition of merchant services after sale. It is common for there to be a length of time it will take for the merchant service to create and offer a new contract to the buyer and send a representative to re-program the machines so they deposit sales into the buyer's bank account. Some of this can be set up before the closing of the sale, but anticipate some of the buyer's sales to be deposited into the seller's merchant services account while it is transitioned. A procedure on how to handle these sales proceeds and related fees should be understood by both parties.
- Agree on how to handle cash that will be left in the register for the buyer (working capital agreement).
- Ensure the seller has disclosed all current contractual obligations of the business so the buyer understands their obligation and options when they close on the sale.

These are just some examples of points professionals should be aware of and plan for when performing services for the sale of a business. While the issues are not complex in theory, they can be just as important on the day of closing or the next morning when the buyer opens the doors for business. Many sales occur outside of the calendar year end; therefore, there will be necessary adjustments or" true-ups" that cannot be missed or your client may be left with an empty shop and paid vacation due!

For additional consultation on business succession and litigation or valuation services, please contact Offutt Barton Schlitt, LLC.