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RRBB Announcements

RRBB Happenings

Len Friedman was asked to be an expert panelist at the NJ Family Law Retreat last month in Savannah Georgia. The panel discussion was a case study on Equitable Distribution issues.

Brian Zucker was very active these last few months on the investment banking/hedge fund circuit. He had a chance to spend some time at the NIBA Conference (National Investment Bankers Association) in Florida. Then he headed out to the very popular SALT Conference in Las Vegas last month.

A New Look for www.RRBB.com!!

We've just completed our refresh/overhaul of our website, and it looks great! We have given it an easier to read style and even more informative. The work on our new design also includes an enhanced, more mobile friendly format and overall improved aesthetics.

Take a minute to check it out. www.RRBB.com

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Big Benefits of Buy–Sell Agreements

Important planning tool for business owners

A buy–sell agreement can be critical to a business owner intending to sell the business interest or needing to accommodate other changes within the organization. Typically, it can help ease a transition in leadership to the younger generation.

Basic concept: The buy–sell agreement protects your family's interests in the event you become disabled or die prematurely and establishes ground rules for a sale. Such an agreement is often funded with life insurance. It is viable for virtually every type of business entity, including C corporations, partnerships, S corporations and limited liability companies.

Although some variations exist within the basic framework, there are three main types of buy–sell agreements. They are as follows:

1. Cross-purchase agreements: With this agreement, a business owner agrees to sell his or her interest to the remaining co-owners or partners. Because this is the simplest form of a buy–sell agreement, it may be suitable for a small business with just two or a handful of owners. However, another type of agreement may be preferable for a business with numerous owners.

2. Entity-purchase agreements: As the name implies, this form of buy–sell agreement—sometimes called a "redemption agreement"—requires the business owner to sell his or her interest directly to the entity. Therefore, the ownership interest is effectively absorbed by the business operation.

3. Hybrid agreements: This method combines the first two types of buy–sell agreements. Generally, the owner is initially required to offer his or her interest to the entity. If the entity declines or cannot make the purchase, other co-owners or partners are able to purchase the shares. Note: A hybrid agreement may also enable key employees—such as longtime company officers—to buy the interest.

Some of the benefits are almost instantaneous, while others prove to be valuable over time. For example:

- Upon the death or disability of the owner, a ready-and-willing buyer is obligated to purchase shares at a fixed price or formula. Absent such an agreement, the estate or the disabled owner may be forced to sell the business at a bargain-basement price.
- The buy–sell provides a smooth transfer of the business in a manner agreed upon by the owners in advance of the triggering event. This can minimize disruptions to customers or clients while the business is in the process of recovering.
- The proceeds from the sale of a deceased owner’s interest can go toward certain estate settlement expenses (e.g., estate taxes and estate administration costs). In addition, part of the proceeds may be allocated to help pay the living expenses of the deceased owner’s family members. If the owner is disabled, the proceeds may be used to pay all of the family’s living expenses.
- The price established in the buy–sell agreement may be used to provide a valuation for federal estate-tax purposes (but see your tax adviser for more details).

Be aware that state law may have an impact on buy–sell agreements. Nevertheless, the benefits are almost universal. Reminder: This is not a do-it-yourself proposition. You should rely on your business advisers for assistance in this area.

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IRS Issues Warnings on 2016 Tax Scams

Avoid schemes on new “Dirty Dozen” list

As evidenced by the list of the "Dirty Dozen" tax scams recently released by the IRS, the tax swindlers are getting smarter every year. Here is a summary of the 12 notorious scams to watch out for in 2016.

1. Identity theft: A crook can steal your Social Security number and use it to file a fraudulent tax return or for some other nefarious purpose. Identity theft remains the top concern of individuals.

2. Telephone scams: You might receive a telephone call by someone impersonating an IRS agent. They could threaten you with arrest, deportation, license revocation or some other action.

3. Phishing: Beware of someone posing as a person from an organization or company you trust. They may contact you via e-mail purporting to be a bank, credit card company, tax software provider or government agency.

4. Tax-preparer fraud: Of course, the vast majority of tax professionals provide honest, high-quality service. But there are some bad apples in the barrel that perpetrate tax-refund scams, identity theft and other schemes.

5. Offshore accounts: Individuals have tried to evade U.S. taxes by hiding income in offshore banks, brokerage accounts or nominee entities, and then using debit cards, credit cards or wire transfers to access the funds.

6. Inflated refund claims: Don’t be lured in by a tax professional promising you a tax refund that is too good to be true. The scam may spread by flyers, advertisements, phony storefronts and word of mouth—even through community groups or churches.

7. Fake charities: Following a disaster, scammers representing bogus charities may contact you to solicit money or financial information. They even go after the disaster victims.

8. Falsely padding deductions: The IRS warns taxpayers to avoid the temptation to falsely inflate deductions or expenses on their tax returns. False numbers may reduce tax liability or increase a refund.

9. Business credits: Con artists may promote scams involving business credits, such as the fuel credit or research credit, where such credits are not available.

10. Falsified income: Some people falsely increase the income they report to the IRS to maximize refundable credits such as the earned income tax credit and child tax credit.

11. Abusive tax shelters: Abusive tax schemes have evolved from simple structuring of abusive domestic and foreign trust arrangements into sophisticated strategies that often benefit from financial secrecy laws in foreign jurisdictions.

12. Frivolous tax arguments: The IRS continues to come across individuals using frivolous arguments that taxes should not have to be paid, including objecting to owing tax on moral, religious or ethical grounds.

Have you been targeted by con artists? Don’t be overly proud or foolish. If you have any questions about the legitimacy of an arrangement or an action, contact your professional tax adviser for assistance.

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When Are Noncompetes Enforceable?

Protection when an employee leaves

How can you stop an ex-employee from giving away trade secrets or pilfering your top clients? One possibility is to have the employee sign a "noncompete agreement" restricting what he or she can do. But such agreements are not always completely enforceable, and your firm may have to go to court to protect its interests.

Background: An employer may request a noncompete to be signed as a condition of employment or upon "separation from service" (e.g., quitting, being fired or retiring). For instance, signing the agreement may entitle a departing employee to receive a severance package. The noncompete will generally limit employment activities in the same field for a designated period of time.

However, the agreement cannot be overly restrictive and must be carefully worded. In other words, you cannot bar an ex-employee from pursuing his or her livelihood. Typically, an individual may be allowed to join a competing firm, but will be prohibited from contacting former clients or customers. The language in the agreement should be approved by an experienced attorney.

The enforceability of a noncompete, or a clause in a more substantive employment contract, generally depends on whether the restrictions are "reasonable" or not. When assessing the reasonableness of a noncompete agreement, the court will weigh the following factors:

- the length of time the agreement remains in force
- the scope of the geographic area restricting the employee
- the reason for the employee’s departure
- whether the agreement restricts activities not in competition with the company
- whether the agreement prevents the employee from working in his or her chosen field

A court’s decision on the violation of a noncompete usually turns on the extent of the employee’s knowledge and his or her actions. For example, an employee may claim that he or she has no knowledge of trade secrets or other confidential information, but only "general knowledge" of the business. In that case, the burden of proof is on the company to establish that the knowledge includes trade secrets or is otherwise confidential.

If a court finds that the employee has only general knowledge or that the agreement is simply designed to hinder the competition, there is no legitimate business interest being protected. As a result, the noncompete is not likely to be enforceable.

Other factors include whether or not the employee has received some "consideration" as part of the agreement (e.g., remuneration or other benefit). If an employer requires an employee to sign a noncompete agreement after starting employment and there is no consideration for signing it, many courts will invalidate the agreement.

Finally, consider the prevailing laws of the jurisdiction. About one-third of states impose some restriction on the enforceability of noncompete agreements because they interfere with an individual's basic ability to work and make a living. California, Louisiana, Alabama, Florida, Oregon and Michigan are states known for such restrictions.

In summary: It is important to handle noncompetes with extreme care and due diligence. Obtain professional advice with respect to your company's situation.

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How to Inject Cash Into Your Business

Tax break for qualified small business stock

Does your small business need a quick cash transfusion? One idea is to acquire more stock yourself or issue stock that is available to outside investors. Fortunately, the new tax law signed late last year—the Protecting Americans from Tax Hikes (PATH) Act—restores a big tax incentive for investing in a small business.

Specifically, the PATH Act restores the 100% tax exclusion for "qualified small business stock" (QSBS). As long as certain requirements are met, an investor can exclude 100% of the gain from tax that would have otherwise been incurred. This can be a prime attraction to investors.

Background: The tax break for QSBS has a long history. Prior to 2009, an investor could exclude capital gains tax on 50% of the gain from the sale of QSBS held at least five years. But the capital gains tax for investors in QSBS was 28%. In other words, you could exclude half of your gain from tax, but then the effective tax rate was still 14%, just 1% lower than the usual long-term capital gains tax rate of 15%.

Subsequently, the QSBS exclusion was raised to 75%. Then it was boosted to 100% for QSBS acquired after September 27, 2010, and extended through 2014. However, the 100% exclusion was scheduled to revert to 50% for 2015, barring any further legislative action.

Now the PATH Act has restored the 100% exclusion retroactive for QSBS acquired on or after January 1, 2015. What's more, this tax break is now permanent. Investors do not have to worry about future changes.

But there are strict rules concerning the tax break for QSBS. To qualify for the exclusion, the following requirements must be met:

- The stock must have been held for five years and issued after August 10, 1993.
- The stock can't be acquired in exchange for other stock.
- The issuing corporation must be a C corporation.
- At least 80% of the corporation's assets must be used in the active conduct of a qualified trade or business.
- Certain businesses involving real estate or personal services (e.g., law, health, financial services, etc.) are excluded.
- The corporation can't have more than $50 million in assets at the time the stock is issued.

Note that no current tax is due on a gain from the sale of QSBS if the investor rolls over the proceeds into new QSBS within 60 days. But you typically would not do this if you can benefit from the 100% exclusion.

Huddle with your professional advisers to see if this makes sense for you and your small company. It can provide an injection of capital when needed.

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Facts and Figures

Timely points of particular interest

Emotional Distress—Damages for physical injury or illness are exempt from tax, but not costs attributable to emotional distress. In a new case, the Equal Employment Opportunity Commission (EEOC) awarded payment for damages to a USPS worker on a discrimination charge. But the EEOC judge stated the damages were caused by emotional distress, not physical pain. Thus, the Tax Court ruled they were taxable.

Training Improvements—Is it time for your business to change its training methods? According to a 2015 survey by InterCall, a firm specializing in online meetings, one-third of the respondents said their company's training sessions were not a productive use of time and another third said they were not interesting or engaging. By using technology, your company can make training more dynamic and beneficial.

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Camping Out for a Tax Credit

Do you have a child younger than 13 whom you are planning to send to day camp this summer? The cost may qualify for the dependent care credit if it enables you (and your spouse, if married) to be gainfully employed. The credit is generally equal to 20% of the first $3,000 of qualified expenses for one child or $6,000 for two or more children.

What's more, this tax break is also available for the cost of a specialty camp such as ones for athletes or children with other talents. But the cost of an overnight camp does not qualify.

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