Mueller Prost PC
CPAs + Business Advisors

BUSINESS OWNER'S PERSPECTIVES Winter 2012

LEGISLATIVE UPDATE

Get Going Now on Estate Planning

Estate planning can be a complex and emotional endeavor on several levels - personal, legal and financial. For this reason, some business owners avoid the estate planning process altogether. Doing so, however, can be a big mistake, especially now.

Here's why: After a decade of tax cuts that resulted in the complete elimination of the federal estate tax in 2010, the *Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2011* restored the federal estate tax for tax years 2011 and 2012. The current exemption is a generous $5 million per person or $10 million per married couple.

Surprising to many, the lifetime gift tax and generation skipping transfer (GST) tax exemptions also jumped to $5 million for 2011 and 2012. (Note that this increased lifetime exemption is separate and in addition to the annual gift tax exclusion of $13,000.)

However, unless Congress takes further action, the estate and gift tax exemptions will drop to a more meager $1 million on January 1, 2013, where they stood back in 2001. In addition, the maximum estate and gift tax rate will rise from 35 percent to 55 percent on this date.

Time Is of the Essence

By acting before the end of 2012, you have a rare opportunity to make larger lifetime gifts - up to $5 million if you're single or $10 million if you're married - free of estate, gift and GST tax. This opportunity is also of particular interest to same-sex couples who are unmarried and don't qualify for federal gift or estate tax marital deductions.

Given this short window, it's crucial to review your estate and gift plan to aggressively take advantage of these increased exemptions before the end of 2012.

It's also important to review the language in your estate plan documents, which might result in unintended consequences in light of this legislation. For example, your current plan may state that an amount "up to the federal estate tax exemption" should be transferred to a trust for your children, with the balance passing to your spouse.

If your estate is valued under $5 million, this language might inadvertently pass the entirety of your estate's value to your children and bypass your spouse altogether. Now is the time to adapt the language in your plan documents accordingly.

Consider Business Value

For closely held business owners, business valuation is another issue to consider in light of the increased estate and gift tax exemptions.

Generally, the IRS tends to frown upon valuation discounts for marketability or lack of control for family transactions. Basically, these discounts are perceived by the IRS as more of a wealth transfer and tax reduction strategy than as legitimate adjustments required to reflect the value of a closely held business.

Because of this perception, there is talk that the Obama administration is considering legislating away these discounts, which would result in much higher business valuations for certain family transfers. By transferring business assets before 2013, you can take advantage of family valuation discounts while they are still firmly in place and recognized by the IRS.

What About Clawback?

Some people have expressed fear of a "clawback" by the IRS after 2012. They are worried that after the estate tax exemption drops to $1 million, a recalculation of transfers made in 2011 and 2012 might result in an additional tax.

Several legal and tax experts have examined the legislation and weighed in on this question, and the consensus seems to be that there will be no tax clawback. Of course, tax law is complex, and Congress can be very unpredictable.

The bottom line? All indicators point to this year being a once-in-a-lifetime opportunity for gift and estate tax savings. So prepare to meet with your tax and legal advisors soon.

Our tax team can help you create a plan to take advantage of the increased estate, gift and GST exemptions. Contact us to schedule an appointment.

WORD TO THE WISE

Stay True to Your Investment Strategy

With wild stock market fluctuations now the "new norm," many business owners are worried about their investments. You might be one of them, wondering what you should do - buy, sell, hold or bail out of the financial markets completely?

Without a doubt, you need guidance. But that guidance shouldn't come from a news report, a hasty call to your broker or an e-mail from a golfing buddy.

Sound investment direction should come from a carefully crafted investment strategy that is part of a financial plan that doesn't hinge on the daily ups and downs of the Dow Jones Industrial Average. Your investment strategy should be developed in the context of your financial goals, age, stage of life and tolerance for risk, among other important factors.

Crafting a Financial Plan

If you already have a financial plan, it's a good idea to revisit it periodically. If you don't have a plan, here are some things to consider when crafting one:

Find a great partner. Choosing a financial planning partner is a critical decision. In the process of crafting a financial strategy, you'll be sharing the intimate details of your life and finances - your hopes, dreams and thoughts about money.

As with many relationships of this nature, finding the right fit is key. You'll want to work with someone who is credentialed in the financial planning arena, has a stellar reputation and strong people skills.

Ask your CPA, attorney or friends for recommendations. Call and chat with a few prospective advisors. When you've narrowed your choices by phone, arrange a face-to-face meeting with those you like so you can see how you might work together.

Assess your goals. In *The 7 Habits of Highly Effective People*, Stephen Covey reminds readers to "begin with the end in mind." What are your financial goals? How much money do you need, or want, to be financially independent, to provide for your family or to leave a philanthropic legacy? The answers to these questions will ultimately drive your financial strategy.

Look at the big picture. You own more than the cash you have available to invest in securities, so consider all of your assets as you plan. Your financial strategy must be created with your entire asset pool in mind, including your business.

For example, if your business value is somewhat volatile or inconsistent, you may want to invest your personal wealth more conservatively. If you already have a fair amount of risk in certain areas, you'll want to balance that elsewhere.

Be realistic about risk. Many business owners would say they are comfortable with investment risk. But beware: A tolerance for risk in business doesn't necessarily translate to a tolerance for risk when it comes to personal finances. Also, it's all right for your risk tolerance to change over time. If you have college tuition for your children or retirement looming, your appetite for investment risk may be diminished.

Don't listen to your pals. Your friends may have your best interests at heart, but listening to their investment tips, warnings or money-making schemes may not be a good idea. Despite what they may tell you, their circumstances, goals and risk tolerance are likely to be different from yours. Stick with your own strategy, created with your specific circumstances in mind.

Focus on the Long Term

Remember, when you're armed with a financial plan, market volatility becomes much less of an issue. Your plan will accommodate short-term ups and downs in the market and, most importantly, help you reach your long-term financial goals.

Looking for a solid financial and investment strategy? We can recommend local professionals who can help.

PROTECTING YOUR BUSINESS

Top Tips for Online Security

According to the U.S. Department of Commerce, roughly $10 billion in online transactions are executed via the Internet each year, and the number of online financial transactions is growing daily. Unfortunately, as the number of these transactions increases, so does cybercrime.

Many business owners think their company is too small or obscure to attract the attention of cybercriminals, or that they don't store any data of particular value.

That's probably what one small furniture maker thought - until the company's network was hacked, its proprietary designs were stolen and another company beat them to market with similar pieces. It's likely that the thieves weren't even associated with the competitor - they simply found valuable information and exploited it to their advantage.

What's at Risk?

The most significant cyber threats to businesses include hacking and malware, lost or stolen hardware, rogue employees and natural disasters. While you may not be able to completely isolate your business from these threats, you can diminish the likelihood of a significant breach by increasing awareness of the problem and adopting more sophisticated security practices.

Secure your network. To be effective, security practices must be updated frequently. Antivirus and anti-spyware software is essential, but it only works if you keep it current. Be sure to install software updates as soon as they are issued to take advantage of any security fixes included.

But sometimes it's difficult to identify your own weak spots. Investing in an annual security review conducted by an outside expert may be helpful. This expert can also educate you and your colleagues about the latest threats and how to combat them, as well as best security practices.

Limit access to data. All employees do not need access to all systems. For example, there's no reason for anyone outside the finance or accounting departments to have access to the company's financial data, and only those in R&D should be able to access research-related information. Creating limited access via passwords and network segregation reduces the likelihood that an insider will inadvertently create a security problem.

Address data storage issues. For online merchants, the security bar is extremely high, particularly when it comes to data storage. The Payment Card Industry (PCI) Security Standards Council provides resources for merchants to increase data security. Note that most states have enacted laws that require companies to notify customers of security breaches involving personal information.

Educate your employees. Experts in the field of cybercrime refer to online security as a "team sport." Training your team to use good security practices is a must. For example, employees are generally aware that they shouldn't give out their personal information in response to an e-mail, but they may not be aware of the risks of sharing sensitive business information.

Keep cybercrime top of mind via regular training sessions reminding employees about simple steps they can take - changing their passwords regularly or being aware of business "phishing" scams, for example.

Perfect online security is impossible. But it's important to take steps to protect your business - and your customers - as best you can.

Cybercrime can destroy your business value. We can help you identify ways to protect your investment.

Pay Your Taxes — All of Them!

Of course, you'd expect your CPA to tell you to pay your taxes. But with the turbulent economy, business owners are sometimes tempted to take some shortcuts with the IRS.

One very dangerous example of this is not paying employees' federal income tax withholding. The scenario typically unfolds like this: The business has hit a rough patch, revenues are a bit iffy and cash flow particularly tight. So the owner chooses to pay employees and vendors, but delays remitting the federal payroll tax withheld from the employees' wages.

Bad idea! The owner is essentially borrowing money from the IRS without permission. Needless to say, Uncle Sam doesn't look kindly on this practice. In fact, the IRS is becoming extremely aggressive in looking out for this offense.

Hello, IRS Agent

If the government notices that you have missed or are short on your weekly payroll withholding deposits, an IRS agent is likely to appear at your door. If the agent is not convinced that you are willing and able to pay, he or she can literally padlock your doors and prevent you from doing any further business.

The penalty for not remitting your withholding payments is 100 percent of the amount due, and the government can assess that penalty *personally* against individuals responsible for making withholding payments for the business. This includes the owner, corporate officers, controllers and bookkeepers - whomever the IRS believes had a part in making the decision not to pay the withholding tax.

What to Do?

If you have already missed a payroll withholding deposit or are about to miss one, contact your CPA for advice on how to proceed. This is not the time to ignore the problem and hope it will go away - because the IRS is not a friendly lender.

It's crucial to meet all tax obligations. Let us help you work out a plan.