Financial, Legal & Tax Advisory

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Buy-Sell Agreements

In all the business planning you have done, you may not have taken into consideration what happens to your business if you retire, move on, - or in the worst-case scenario, become incapacitated or die. Having a buy-sell agreement can help establish a clear plan to handle any of these events. Without a buy-sell agreement, your company could face major tax hassles down the road, as well as many other financial and/or legal difficulties. A buy-sell agreement is a legally binding contract that stipulates how a partner's share of a business may be reassigned if that partner were to die or otherwise leave the business.

Buy-sell agreements are commonly used by sole proprietors, closed corporations, and partnerships. Most buy-sells require that the business shares be sold back to the company or the remaining members of the business. In the case of the death of a partner, the estate must agree to sell. In most instances, life insurance policies are used to fund the purchase of the shares. There are typically two types of buy-sell agreements: cross-purchase and entity-purchase agreements. In a cross-purchase agreement, the remaining owners or partners purchase the shares of the business that is for sale.

With an entity-purchase agreement (also known as a redemption), the business entity itself will purchase the share of the business for sale. In some instances, there can be a mix of the two (hybrid), where some shares are purchased by individual owners and the remainder bought by the company. When a sole proprietor dies, a key employee may be designated as the buyer or successor. The key benefit of having a buy-sell agreement is to help owners manage potentially difficult situations in ways that protect the business along with their own personal and family interests. Having a buy-sell agreement can prevent a deceased owner's estate from selling their interests to an outside party.

Another key component of a buy-sell agreement is to establish the means of assessing the value of the company. A buy-sell agreement can lay out how the company should be valued, what methods should be used, what should the valuation date be, how are the appraisers selected, etc. A buy-sell agreement should include crucial information, and the following pieces of information should be spelled out within the buy-sell agreement:

- a list of triggering buyout events
- a list of partners or owners involved and their current equity stakes.
- a recent valuation of the company's overall equity
- a funding instrument, such as life insurance policies
- tax and estate planning considerations for the individual partners and surviving beneficiaries.
- Some examples of triggering events in which a buy-sell agreement could come into play are:
- Death
- Disability
- Termination of Employment
- Divorce
- Bankruptcy
- Pledging of an Owner's Interest

The tax advantages associated with QOZs are undoubtedly a great way to defer capital gains. However, there are many complexities associated with the process, including eligibility, timing, and funding. At The Center for Financial, Legal, and Tax Planning, Inc., we specialize in this type of investing. For any questions regarding QOZs, feel free to reach out at our website, www.taxplanning.com, or by phone at (618) 997-3436.

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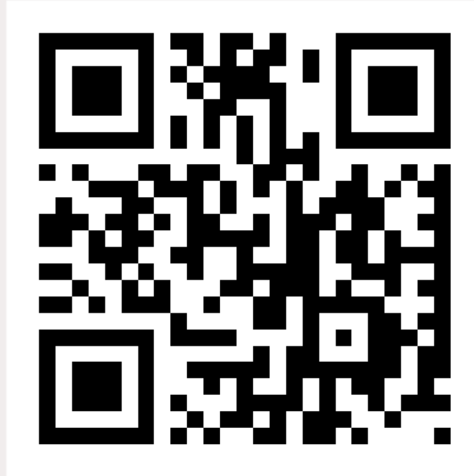

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