THE MANY ROLES OF AN EXITING OWNER

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Business owners do many jobs at their companies. From chief cook to bottle washer, the privately-held business owner understands that the buck stops with them. Now, despite the number of jobs that you perform at your company, those responsibilities technically fall under your role as an 'employee' of the business. Beyond being an employee, most owners also own and control a substantial part (if not all) of the equity in their businesses. And, technically, these business owners also serve as Chairman of the Board of Directors for their companies. It is these various roles that we want to review in this newsletter to assist you with considering what role you are playing when you are looking to exit your business.

<u>Private versus Public 'Roles'</u>

In a publicly-traded company the managers, board members and

shareholders are all [mostly] different people. In the ordinary course of event, it is the shareholders who own the business. These shareholders vote for a 'slate' of directors that are hired on behalf of the shareholders to run and oversee the business. It is this board of directors who hire and oversee the managers for the enterprise. Finally, the managers conduct their activities in a fiduciary capacity to 'increase shareholder value', reporting to the board and sharing profits, when they occur with the shareholders. A good job by the managers means higher earnings and a growing value for the company. Stock prices rise, shareholders make money, directors get re-elected and the managers get to keep their job. The value that the managers create ultimately belongs to the shareholders.

Technically, corporate governance of privately-held businesses is no different than those of publicly-traded companies. Privately-held business owners, however, hold all of the three (3) roles mentioned above. They are the shareholders, board of directors as well as the managers of the business.

<u>Why These Various Role Matter in an Exit Transaction</u>

The distinctions between your role as a manager, as a director and as an owner are an important part of the exit planning process. One the one hand, the person who will own your business after you likely wants to keep a professional working relationship with you as a key employee – i.e. CEO - of your business. After all, you know the most about the business and your next owner will want to have a 'neat and orderly transition' where they come into this knowledge. However, during an exit transaction, the same buyer also needs to negotiate with you as a selling shareholder, potentially spoiling your relationship with a tough negotiation session and then needing to 'live' with you in the business after the closing. Because owners do not make these distinctions in the exit process, they allow the various roles that they play to add to the complexity that already exists.

How You Can Receive Your Exit Compensation

There is a benefit to playing these many roles in a business and it can appear at the time of your exit. Given that you play many roles in your business, it is helpful to know that your exit proceeds can be received in a number of different ways. You see most owners envision getting paid for their stock ownership when they sell the business, turning over the company to someone else. In this case that owner is receiving their 'exit proceeds' as 'owner dollars'. However, in many business sales, there are deferred and contingent payments. These are payments that are not received at the closing but arrive at a later point in time. It is helpful to know that these exit proceeds can also be received by you as 'employee dollars'. These 'employee dollars' may include continued compensation (perhaps for an extended 'retirement' period) as well as pension income, continued perquisites for reliable service to the company, continued health benefits, as well as bonuses and profit-sharing.

In fact, if you are considering an 'internal' transfer of your company to managers or family members, it is helpful to know that these various ways of receiving income opens the door for a lot of creativity into how you structure the total amount of money that you get out of the company. In this regard, it is also helpful to know that 'employee dollars' are often much more tax efficient than dollars that are received as 'owner dollars' (this is primarily because 'owner dollars' are [generally] not tax deductible).

Concluding Thoughts

As mentioned, you wear many hats in the day-to-day running of your business. Experience shows that owners who recognize the different roles that they play and how these roles impact their exit transaction as well as their exit proceeds are better prepared to navigate the complexity that is inherent in all of these transactions. A solid understanding of these roles along with a little bit of creativity can lead to a higher probability of a successful exit transaction for you and your business.

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