CRAIN'S CLEVELAND BUSINESS

Building a charitable legacy from a business sale

By LAURA MALONE

When owners of closely held businesses meet with their trusted advisers, two important and interrelated questions guide the discussions: 1) "What is the best strategy for exiting my business?" 2) "How can I maximize the financial and tax benefits from that exit?"

In enlightened discussions, owners may choose to address more than tax savings and net proceed increases. They may want to talk about reallocating some of their tax savings toward giving back to the community or figuring out how to manage wealth in a way that won't alter their children's values.

A donor advised fund (commonly known as a DAF) is that point of intersection where the owner's personal and social interests intersect in simple, tax-smart and meaningful ways. Many owners find the donor advised fund affords them the opportunity to ensure the same sense of enduring significance as a private foundation but without the labor and oversight that private foundations require.

Furthermore, they can offer a level of privacy that is not available in the public tax filings of a private foundation.

How does the business owner benefit?

Because donor advised funds are sponsored by public charities, gifts of closely held stock, real estate, or other assets qualify for the highest benefits available, including:

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- Immediate and maximum income deduction at the highest percentages of adjusted gross income;
- Avoidance of capital gains on gifts of long-term appreciated stock or other property;
- No estate taxes on the asset;
- Potential reduction of alternative minimum tax or possible avoidance of net investment income tax; and
- Tax-free philanthropic growth.

Won't the owner lose control?

Savvy business owners understand the difference between ownership of a business and control of a business. Often, the owner is only gifting non-voting shares or a portion of the asset that is not large enough to impact the owner's business control.

Could this 'kill the sale/deal'?

Because the gift must be made before any formal, legally binding agreement to sell or merge the company, gifting the shares to the donor advised fund and the subsequent transition of those shares to the buyer can take place without slowing down the transaction process. Most buyers hardly notice the DAF charity's involvement in the transaction.

Professional legal/tax advice is necessary to avoid an IRS challenge of these favorable tax benefits. However, thanks to the simplicity and cost-effectiveness of DAFs, business owners now have a meaningful way to ensure that they will be remembered over successive generations.

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