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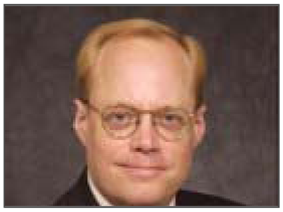

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THE TAX LAWYER

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Like A Jedi, Sell A Business, Real Estate Or Stock This Year

DarthMouse (Photo credit: Kingchief)

The 15% capital gain rate ends December 31, 2012, soaring to ***23.8%*** in 2013. See No Matter Who Wins The Election, Higher Taxes Are Certain. That's one reason this year-end will be a busy one. See Looming Tax Hike Motivates Owners to Sell. With rate spreads like that you can save some serious money, even if you aren't quite as successful as George Lucas–who recently sold to Disney. See George Lucas's Jedi Estate Planning.

Real estate or stock are easy to sell if you have a buyer, but businesses are a different story. Business owners often talk of selling out to retire, move away, capitalize on a hot market or just do something else. And big business or small, taxes should influence how you sell.

The legal and tax rules that apply to business sales are surprisingly consistent. First, consider the type of business entity. See C or S Corporation Choice is Critical for Small Business. If you operate a proprietorship, partnership, or limited liability company (LLC), you generally can sell with a single level of tax. If you invested $20,000 to start and later sell it for $50,000, your gain of $30,000 is taxed at your personal tax rate.

But for corporations the tax rules are more complex. Most are C corporations taxed at up to 35%. Corporate distributions are then subject to a ***second*** tax to shareholders. S corporations, which file an S election, are taxed more like partnerships.

Buyers want to buy assets not stock for two reasons. First, buying stock means being on the hook for every past corporate liability. Buyers can avoid many liabilities by buying the assets and leaving the corporate shell.

Second, buyers buy assets to get a new tax basis in those assets. Higher basis means higher depreciation in the future. If you buy stock, you can't depreciate it and are stuck with a low asset basis locked inside the company.

Sellers, on the other hand, prefer to sell stock, not assets. The reason is taxes. If a C corporation sells its assets and distributes the proceeds to shareholders, the combined corporate and shareholder tax rates can exceed 50%. A shareholder's sale of stock might incur one tax as low as 15%.

Planning ahead helps. If you have a C corporation and don't discover these rules until you are ready to sell you'll be sorry. You may be able to orchestrate a tax-free deal, but there are high transaction costs and you dramatically limit the buyers that can qualify. If you consider your business structure years before you sell, you can produce a far more efficient tax result when the time comes.

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