

# Taxes

## Impact/Strategies When Selling a Business

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# Entity Structure of the Business



LLC\Partnership

S Corporation

C Corporation

# Entity Structure-LLC/Partnership

## ADVANTAGES

- Flexibility with allocations and distributions
- Admitting a new partner - Section 754 Election
- Profits interest

# Entity Structure-LLC/Partnership

## DISADVANTAGES

- Greater reporting complexity
- Individual state tax filings
- Self-employment issues



# Entity Structure-S Corporation

- Eligible shareholder restrictions
- Distribution and allocation restrictions
- Built-in gains tax
- Individual state tax filings

# Entity Structure-C Corporation

## ADVANTAGES

- Section 1202 (qualified small business stock)
- Fringe benefits for shareholders are not limited
- State tax benefits
  - Deduction of state income tax
  - Income allocated to state where entity does not file

# Entity Structure-C Corporation

## DISADVANTAGES

- Double taxation on earnings and on subsequent sale
- Net investment income tax (NIIT) on sale of C corporation stock (Medicare Tax)

# Impact of Recent Legislation

- 20% Pass through deduction
- 21% C corporation rate
- Will these provisions be temporary or permanent?



# Effective Top Federal Tax Rate

C Corporation - no distributions	21.0%
- with distributions	39.8%
Passthrough - with 20% deduction	29.6%
- without 20% deduction	37.0%

# Who is the Potential Buyer?

- Private equity or public company acquisition - stock purchase (focus on earnings)
- Closely-held buyer - (focus on tax benefit of step-up) asset purchase
- Sale of S corporation stock - Section 338(h)(10) election

# Stock Sale vs. Asset Sale

- Potential haircut on sale of stock; no write-off of intangibles for buyer
- Potential ordinary income on sale of assets - depreciation recapture; cash basis receivables



# Other Consequences of Sale

- Sale of the business to strategic buyer - Earn-out as part of sales proceeds; installment sale options
- Sale of business to key management - Seller financing; installment sale option
- Sales tax; transfer taxes



# Sale to Family

- Sale and/or gifting to family; estate tax considerations; seller financing; discounts
- Gift tax returns (even on a sale)
- Tax basis step-up with transfer on death; carryover basis for lifetime gifting

# Allocation of Purchase Price

- What is most advantageous to the buyer?  
To the seller?
- IRS Form 8594, Asset Acquisition Statement
- Shareholder goodwill versus corporate goodwill on the sale of C corporation stock

Questions?

