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GIFTING OPPORTUNITIES HAVE NEVER BEEN THAT GOOD..

Addendum to the September/Fall 2002 issue of Value Added

Owners of closely-held businesses now have an opportunity they should not pass up: Gifting. The times have never been as favorable for gifting as they are now.

Gifting in this short article refers to giving a minority stake in your business to your intended beneficiaries, presumably your children. With that ownership, your children cannot make major business decisions, but are entitled to dividends should your business distribute them. If a buy-out offer comes along, and you decide to sell, then the minority owners, of course, get their share of the proceeds. Even if your children are not interested in learning the business and are un-likely to succeed you as managers, they can hold minority shares.

The primary reason for gifting is to lighten up your estate. When you and your spouse die, the then current value of your estate will most likely be taxed by state and federal governments through estate or transfer taxes. Current law includes the fiction that the federal estate tax will sunset in 2010, to be reinstated at the punitive 2000 rates if Congress fails to act. With deficit spending back in favor, it is unwise to count on a repeal of the estate tax. For one thing, Congress has yet to dislike any tax sufficiently to repeal it. History also teaches us that the political make-up of Congress and the Administration makes no real difference.

Every dollar you remove from the value of your estate at death will undoubtedly save money on your estate tax bill. By gifting now, you remove not just the current value of gifted assets from your estate, but their future appreciation as well, and you should, accordingly, make every effort to do so.

Annual gift exclusions of $11,000 per donee are available, and such annual programs are a good place to start, particularly for a modest business. Even for the smaller gifts, a gift tax return should be filed[a]. Your legal and/or accounting advisors will need to advise you on larger gifts requiring the payment of a gift tax, on the assumption that the tax paid now will save a greater tax in the future, because it would otherwise be computed on appreciated assets.

The current environment is particularly conducive to gifting because the fair market value of closely-held business interests, like that of most financial assets, is down as sales transactions have become more difficult to complete: Fleet Bank recently observed that volume alone in the M&A market had sunk to levels reminiscent of the early nineteen nineties!

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[a] A valuation report needs to be attached to each return, hence my advice here is not without ulterior motive, since I am a business appraiser and the valuation of gifts is an important part of my practice.