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Don't make these mistakes when you sell your business

What could be more disheartening in going through the process of selling your business than getting ready to sit at the table with the "perfect" buyer who is willing to pay more than you had hoped for, and suddenly it all comes apart?

It does not have to be this way. With the proper planning and attention to detail, mistakes can be avoided. Here are three areas of weakness that we have seen cause deals to crash … and strategies on how to avoid this.

1. Intellectual property – can you prove it's yours?

Business owners have been surprised to find out that employees, former employees or vendors actually control or own certain intellectual property that they "assumed" belonged to the company. You don't want a buyer to be interested in your company based on certain IP, and then find out you don't really own it.

There are steps to protect your IP and assure potential buyers that you have control on patents, copyrights, trademarks, licenses, etc., but it is not unusual for others to stake a claim to what you believe is proprietary and protected property.

Here is an example of what can happen and how to be proactive and avoid a situation like this.

Some years ago, the owner of a consumer goods company known for innovative product design was getting ready to sell the business. The company's advisor proactively requested an inventory of all patents, trademarks, and copyrights. Much to the owner's horror there was no control in this area, no locatable records, logbook or files. After doing some digging it turned out that many of the copyrights had expired, and two of the key patents were created by an outside contractor and there was no record of a work for hire agreement. Over the next three months the owners had an inside team working with the law firm to gather their records in one place and bring everything up to date, including paying outstanding fees.

The good news is that the client benefited; when the company finally went up for sale, all the records were in perfect order and prospective buyers were impressed with the excellent record keeping.

Tip: Put Intellectual Property controls in place immediately and be sure they are maintained on a regular basis.

> Business owners sometimes shift their focus away from managing their business to managing the sale transaction process. When an owner becomes distracted by the sale process itself, neglecting their role in what made the company successful in the first place, they are taking their eyes "off the ball." This distraction can often cause the business performance to falter and give buyers an excuse to renegotiate value.

2. Taxes – are you SURE you did it right?

Finding out that you did not pay the proper company taxes during a business sale transaction process can vastly alter the outcome. In recent years taxing authorities have become more aggressive, many states are now asserting nexus. Companies are finding out that they may not have paid significant taxes. Attention should be given in particular to sales/use tax prior to starting a transaction.

In the recent sale of a company, a state determined that the business should have been collecting use tax on software services it was providing to customers. The owners reached out to their tax advisors who assured them they did not have any obligation to the nearby state. In contrast, the buyer's attorney insisted that the tax, penalties and interest that had accumulated over the past 10-plus years amounted to a number that exceeded the value of the transaction. This created a negotiation with the state taxing authority, which granted tax amnesty, if certain de minimis penalties were paid.

Tip: Put tax monitoring systems and controls in place as part of your daily operation well before considering a sale; this way you will be well prepared to avoid a potentially costly mistake.

3. Don't take your eye OFF the ball

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Owners need to continue doing the things they have been doing to make the business successful. Your assembled team of advisors will manage the process and keep it moving forward without overly distracting you from your primary mission of keeping your business running successfully.

TIP: Keep your focus on running the business during the sale process, let your team of advisors manage the process and consult with you as needed.

One mistake can mean millions lost

You only sell your business once, and you cannot afford to make a mistake. Not planning properly or not having certain controls in place can cost an owner millions of dollars. Between paying back taxes and fees or not having the actual value in your company that you thought you had can impact the offer on the table. Don't wait to plan properly – many of the areas that buyers view as valuable can have procedures and controls put in place on Day

One or any day – the point is to put them in place and maintain them.

Your advisors will be critical in ensuring you get the maximum value for your business. Plan early and bring on knowledgeable, trusted M&A, legal and accounting experts who can help you strategize, execute and negotiate the sale. The investment in these professionals will ensure you keep your business performing and the deal gets done!

This is the third part in a series of articles on best practices for mergers and acquisitions in textile fiber-related industries. The next edition of this series will focus on assessing the value of your team. Part I, "Do I sell or do I grow?," appeared in Issue 2, 2021, of IFJ. You can find this article at fiberjournal.com/do-i-sell-or-do-i-grow/. Part II, "6 essential tips to prepare a business for sale and maximize what you get," appeared in Issue 3, 2021, of IFJ. You can find this article at fiberjournal.com/6-essential-tips-to-prepare-a-business-for-sale.

About Len LaPorta

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