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**TAP INTO
YOUR ROLE**
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AS CPA

in mergers & acquisitions



By Gordon L. Meicher, CPA

When most people think of mergers and acquisitions, they envision large company deals, such as the recent merger of DuPont and Dow Chemical. A CPA can play a critical role in such large acquisitions. However, a CPA can also play a crucial role in small deals. These deals typically involve an individual/entrepreneur or small company. This is when the need for a CPA is greatest.

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"SETTING A SALES PRICE THAT IS AGREEABLE TO YOUR CLIENT CAN TAKE HUNDREDS OF HOURS OF CPA TIME."



The CPA's role with the seller

As a CPA, your role in mergers and acquisitions (M&As) depends on whether you're working for the buyer or representing the business being acquired in the sale. Let's assume you are working for the seller. The first step is to tell him or her to stay silent about his or her plans.

This may seem counterintuitive, as you want as many buyers bidding up the price as possible. However, selling a small or medium-size business is much different than an auction. As the CPA involved in the transaction, imagine you are an employee or customer of the business. What future do you have working for a partner who will be gone in a year? A client interviewing a new CPA firm isn't likely to hire your firm if he or she knows new ownership will occur in the future. The same principles apply to all businesses.

Recently, we helped a client sell a business to a synergistic buyer. The deal took two years to complete, and it closed at 9 a.m., on a Friday. At 11 a.m., the public and the seller's 22 employees were shocked to find out about the sale. Nonetheless, the business continued operating after the sale, and everyone turned out to be significantly better because confidentiality was maintained.

Determine potential buyers and sales price

So, how should you help your client without disclosing his or her plans to sell? First, determine possible buyers. Normally, we start with competitors or businesses in related industries. Previously, we had a carpentry business merge with a remodeling business. We also had a boat selling business merge with a business that installed piers. This created many synergies and a great deal cross-selling.

Furthermore, you might look at whether employees of your client's business can acquire the business. However, this is very risky and seldom works. The reason is, even if the employees are earning \$100,000-plus, they're probably spending their compensation or placing their savings in an inaccessible retirement account. Generally, the only way for employees to acquire the business is for the selling owner to finance it, which I seldom recommend.

The problem with selling a business on contract is if the business fails, the seller has little or no security. If you sell land or real estate, there's generally an unencumbered asset to securitize the payment. I've seen people try to take back businesses with sale taxes and payroll taxes in arrears. This isn't pretty.

Let's say your client has an interested buyer or two. Before releasing anything or having more than an initial conversation,

have your client obtain a confidentiality agreement. This lets the potential buyer know your client is serious, and it provides some degree of certainty that the prospect will not divulge any information or that your client plans to sell the business. Attorneys have told me that these agreements are difficult and potentially expensive to enforce. However, they're better than nothing. The old axiom that attorneys are great preventive medicine clearly applies here.

Setting a sales price that's agreeable to your client can take hundreds of hours of CPA time. When we work with a client, we help them determine a realistic value for the business. We have two certified valuation analysts on staff who assist us with this this matter.

Unfortunately, many clients view their sales price for the business as something they need to retire. Selling a business is entirely different than quitting a government job with a defined benefit plan. The price must be obtainable and rational. Having said that, the selling price can always go down, but it can never go up once it's established.

Facilitate, close the deal

When negotiating with your client or the buyer, remember that the primary goal has nothing to do with price or numbers. Your role as a CPA is to facilitate the deal. As a CPA, you can't get someone to pay too much for a business, no matter how hard you advocate. The other side always has someone just as smart or smarter than you. This rule of being a facilitator applies whether you're representing the buyer or the seller.

Now there's a willing buyer and a willing seller. The next step is for the buyer to prepare a letter of intent. Once both parties have signed the letter of intent, the transaction has reached a "bright line date," where many expenses must be allocated to the sale, whether the expenses are considered inherently facilitative to the deal.

At this point, the buyer begins in earnest due diligence. When representing the seller, provide all information requested in a matter of fact manner. Never say something like, "2013 would have been a better year except for ..." Simply provide the information, and respond fairly and accurately to any inquiries.

The final legal documents are prepared after the buyer's due diligence. Generally, one attorney will prepare the documents according to the terms agreed to in the letter of intent and as modified by the due diligence. Assuming the buyer's attorney has drafted the sales document, the seller's attorney, the seller and you review the agreement. When reviewing the final sale document, look down the road and exclude provisions that could put your client at risk.

Finally, the deal is closed, and at this point, the transaction becomes public knowledge.

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