

Business Opportunities in Changing/Challenging Environments



James D. Vail

What opportunities are our clients currently taking advantage of; and what opportunities are on the horizon?

I. Current Environment – lower business values, lower asset values and LOW interest rates.

1. Money is cheap – if you can get it. What to buy?
 - what is your best use of capital; organic growth, business acquisition, cap ex, refinance?
 - other businesses (competitors, market extension, finance deals);
 - refinance real estate debt and other corporate debt (but be prepared to post more collateral);
 - Section 179 – can now expense \$500K of capital expenditures, rather than depreciate these purchases;
2. Real Estate.
 - Challenge real estate taxes;
 - Real estate is cheap – acquisitions and leasing; plan for future growth;
3. Business Succession Planning.

The combination of historically low interest rates and low enterprise values makes this a perfect time to consider business succession; lower gift tax rates – values are low; freeze enterprise values at current level and transfer appreciation to next generation. If you think your business or other investments will appreciate at more than 1-2%, then now is the time to work on your succession planning – GRATS, sales to defective grantor trusts.

II. As Economy Improves.

1. Consider whether it's time to sell the business; owners should always consider selling unless the business is a lifestyle company; learn what advisors and potential buyers think about your business – what needs improving; ultimately there will be an exit.

Business Opportunities
in Changing/Challenging Environments

- A. Why improving economy may be the time to sell.
- Company performance is likely to improve, providing more value to buyer;
 - Easier access to capital for potential buyers means there will be more competition for the company; supply and demand;
- B. Issues to consider as you think about selling.
- Value – get realistic (get third party opinions, advisors, investment bankers);
 - Work with advisors to prepare normalized financial statements and projections– what would your business look like in the hands of a strategic buyer or a financial buyer;
 - Always consider the after-tax value of a disposition; many different ways to get the best after-tax result;
 - Shareholder agreements – transfer restrictions; voting requirements;
 - Identify key contracts with vendors and customers; are they assignable or not; may affect value; change of control provisions;
 - Bank covenants; change of control provisions;
 - Review key employment contracts;
 - Recognize that not all current employees may remain with the buyer (including you, your family and long-time employees);
 - Review employee options and non-equity rights to participate in sale proceeds;
 - Third party leases;
 - Health insurance;
 - Environmental issues;
 - Intellectual Property;
 - Regulatory/Licensure issues;
 - Collective bargaining agreements;
 - FLSA compliance;

Business Opportunities
in Changing/Challenging Environments

- Sales tax compliance – nexus questions;
2. Take some of your wealth off the table.
 - If the great majority of your wealth is tied up in your business, consider drawing some out and diversify even if you have to increase a line;
 - It may be better to pay a bit of interest to enable you to diversify your investment;
 3. Many of you reduced your workforce; now you have to keep the good people.
 - consider long-term deferred compensation planning based upon growth in company value;
 4. Isolate your liabilities; if you are entering a new line of business or acquiring a business that presents substantial exposure; take advantage of single member LLCs.

Business Opportunities
in Changing/Challenging Environments