Like to talk about several concepts around advising in business continuation

Demographically, there have been many successful family owned businesses of various sizes where the owner, typically the father but not always, is now looking to retire and transition the business or if not at least take steps to put himself in place to transition the business

Entties involved can be all shapes and sizes, sole proprierotrships, LLCs, corporate entities, sole propretorships. Keep in mind that S corps were popular in the 80s. We wont talk much about that today but the S corp does present unique oppty and challenges.

**BUSINESS SUCCESSION PLAN**

There are a lot of books on this topic. Most involve family meetings and writing things down and all the things that don’t really happen in real life. Although good ideas

This concept is really I think more about trying to drive some focused thinking as an owner thinks of what to do with his business

**Identigy owners goals**

What does he want to run the business ? How does he see it? Out of the business with lots of retirement income? How will that come about?

Help drive some reality into thinking. If passing along to family will the business sustain paying you retirement income as well as sustaining itself?

**Developing Management**

Strengthen those employees who will remain after the transition as a way to keep them through the transfer in ownership

**Transferring Ownership**

Life insurance can provide the vehicle to fund a business transfer

Voting rights can be used to give or withhold control

**Minimize Tax**

Federal estate tax is 5.43M so will help take a lot of businesses out of estate tax. With portability of spouse, can transfer twice 10.8M. Indexed for inflation.

Still have state taxes. Some 15 states have death tax or inheritance tax. Can have low miminimims as low as 1M. These laws are changing

Much of what concentrate on is to minimize income taxes. Making sure that assets get stepped up basis

Can use a 303 redemption of stock from a close corporation to pay for estate, probabe, funeral costs etc. Redemption will not be treated as a dividend but a capital gain.

Even though the rates are the same, it has the effect of being tax free because the redemption is done with a stepped up basis. The owner has died so amounts to a tax free redemption.

6166- Estate tax is due on federal and often on state death taxes 9 months of death. Can defer business owners estate up to four years paying only interest. Thereafter have 10 years to make principal and interest

**Life Insurance in Business Succession**

Application at many points in the process.

Use life insurance as a way to transition business to children who want it and still provide fairness

Help with any estate tax/probate issues

Funding a retirement plan where life insurance is used to pay back money paid out in retirement

**Key Person Insurance**

Person can have any number of different positions in the company. Key person defined by statute to make sure the corp has an insurable interest and not just gaming on someone’s life. Usually quantified by salary or stock ownership. Some objective criteria although not always

Always should be purchased by the company with the company as beneficiary

Good time for this is when the owner is stepping down and transitioning to children or third party. Want to insure key people

**Buy Sell Agreement**

Agreement sets the value of the business and also keeps outsiders out. It’s a transition plan all of its own

In terms of the differences between cross purchase and stock redemption,

-no taxable gain to the deceased estate, there is a step up in basis on the stock and the amount the SH pay for the stock is their cost basis.

In stock redemption, the assets go back to the entity, which increases book value but cost basis does not increase.

Redemption not treated as dividend if qualifying redemption. Under IRC 303, generally will be treated as sale and capital gain.

Cross purchase generally is preferered because of the increase in basis in the shares.

Stock redemption is preferred where anticipated changes among a number of SH antiticpated.

Also stock redemption more convenient.

Also assets are available immediately for emergencies.

Having death proceeds paid to entity may subject proceeds to creditors if the entitiy is insolvent

Ownership ratios don’t change with stock redemption while cross purchase can change the ratio

**Disability**

**Can be devastating and worse than death. Also more likely to happen than death**