Hoopes, Adams & Alexander, PLC
BUSINESS LAW • LITIGATION • ESTATE PLANNING

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Gift Tax Exemptions Create Succession Opportunity for Business Owners

Transferring a stake in your family business now spares your heirs from having to take on debt or sell the business to satisfy your estate tax bill

- Questions? Contact attorney Ronald P. Adams

As part of the 2010 Tax Relief Act passed in December, the lifetime gift tax exemption for 2011 and 2012 rose from $1 million to $5 million for individuals and from $2 million to $l0 million for married couples.

A February 19, 2011, *Wall Street Journal* article, "Family Businesses Catch a Big Break," has succinctly pointed out that business owners now have a chance to transfer a big chunk of their businesses to beneficiaries - even before handing over operational control of the business.

A Possible Golden Opportunity

This means that you can give away that much wealth without paying a cent in gift taxes. It can really be a golden opportunity to transfer wealth to the next generation at no tax cost.

However, this transfer of ownership can also bring about complex succession and estate planning issues that business owners should address before giving away a cent.

If you are a business owner and want to take advantage of this two-year rise in the gift tax exemption, here are questions you might ask yourself:

- Who will eventually lead the business?
- How can I treat my other heirs fairly?
- How do I pass down wealth without jeopardizing my own retirement security?

Start Planning Now

These are complicated questions. The answers will decide which estate planning strategies make the most sense for you and your family.

In our experience, such decisions typically can't be made in a matter of weeks or months. We recommend that, if you want to take advantage of the new gift tax exemptions, you should start planning now.

The main advantage of your transferring a stake in your family business now is that your heirs won't have to take on debt or sell the business to satisfy the estate tax bill incurred upon your death.

Give It Away, but Keep Control

Depending on your situation and objectives, the transfer can be structured so that you keep managing control for life, or for a set period.

To ensure that retirement plans remain secure, the transfer can stipulate that you retain a salaried position (employee, consultant or chairman) and have a profit-sharing or defined-benefit pension plan.

Also, you should earmark assets outside the company to accommodate beneficiaries who are not on the company payroll and achieve equity in distributing your assets. That way, the child who eventually takes over the business can manage it without having to consult with siblings, some of whom may insist upon large distributions.

Hoopes, Adams & Alexander, PLC, is a Chandler, Arizona, law firm offering services to Phoenix-area clients in the areas of estate planning, entity formation, commercial and real estate transactions, and civil litigation.