Look at the Legal Structure When Buying a Business

Over the course of the last few months, several SCORE clients have requested help in purchasing an existing business. Counselor Scott Jones reported last week that two of his business clients in the past several weeks have successfully closed on their business deal. Among many considerations when purchasing an existing business, Scott relates that it is important to find out how the company is structured legally. The type of business structure used will affect your purchasing strategy as well as the eventual price. Here are some general considerations:

**Sole Proprietor:** Under a sole proprietorship, the business is owned in an individual capacity. The assets are held in the name of the owner, individual, or individuals who own the business. When buying a sole proprietorship, you should determine if you are buying just the assets or both the assets and liabilities.

**Partnership:** Under a partnership, the business is owned by a group of two or more entities. This could prove more difficult; therefore it is important to see the partnership agreement to make sure that the people you are dealing with have the authority to act on behalf of the partnership.

**Corporation:** When you are buying from a corporation, it is important to determine the best way to structure the purchase. You must determine if you are going to buy the corporation itself (stock purchase) or buy only the assets, leaving the original corporation intact. In most situations, you may be much better off buying the assets of the corporation rather than the stock. The following are advantages of purchasing the assets alone:

✔ It helps you avoid the liabilities of the existing business,
✔ It may give you significant tax advantages,
✔ It helps you avoid acquiring unwanted assets from the corporation, and
✔ You are generally able to get a higher tax basis for depreciable assets, which means there is less taxable gain to report if you sell the assets later.

There are some circumstances when purchasing the stock of the corporation has its advantages. One common situation is when the corporation has a uniquely valuable asset that can't be transferred. An example of this would be a lease with an option to renew that is not freely assignable. The availability of keeping the current location may make it more advantageous to purchase the corporation's stock.

If you are considering the purchase or sale of a business, contact SCORE, mentors to America’s Small businesses. They provide free, confidential counseling as well as informational seminars. For
example, next Tuesday evening’s SCORE seminar will be taught by Attorney Mark Utz of the Wendland and Utz Law Firm on the topic of Choosing a Legal Business Entity and is offered through Rochester Community Education.

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