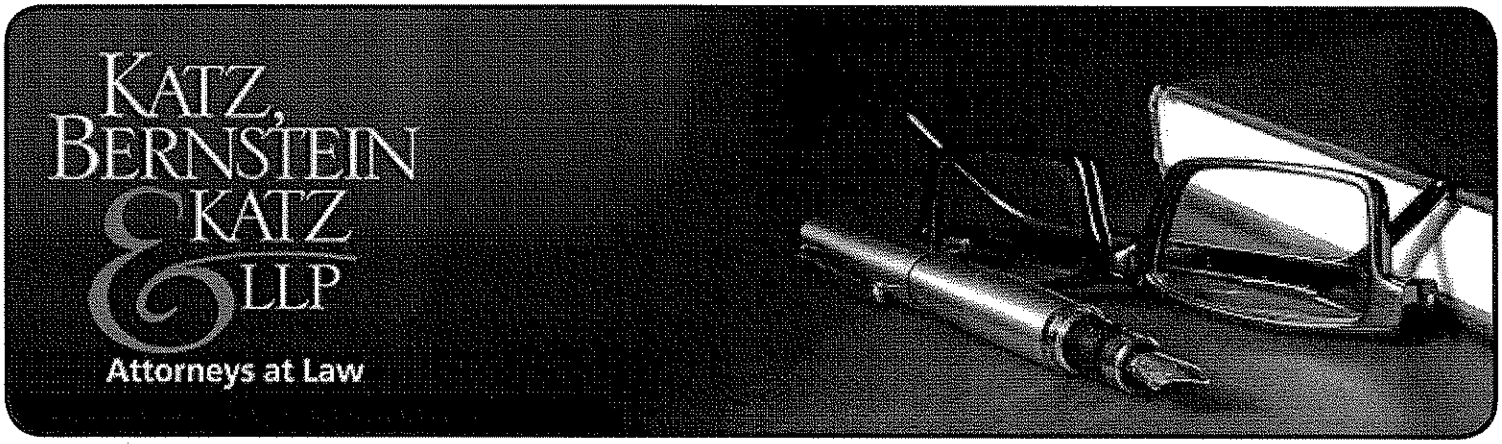

The Role of the Tax Attorney in Diverse Business Transactions

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When it comes to making various business decisions, executives typically turn to their accountants and attorneys. Whether a merger, acquisition, purchase, sale, real estate transaction or institutional investment: this is decidedly a wise course of action. However, while executives do recognize their need for professional advice in these matters, they sometime fail to put out a wide enough net and rein in the advice of an experienced tax attorney. You might ask, *Is that really necessary for many transactions?* And the answer would be a resounding, *Yes*. In fact, the failure to seek this counsel early in a business transaction can create a host of tax impacts which can spiral into an unwieldy and costly scenario. Understanding the role of the tax attorney, and how this professional interfaces with other members of the professional team, is a lesson every business owner should learn.

The Knowledge Base of the Tax Attorney

To best appreciate the contribution a tax attorney can make, it is valuable to know the scope of this professional's knowledge base and areas of practice. The most highly regarded tax attorneys understand the intricacies of the tax code and how it applies to a broad range of areas. These include: business formations; purchases, sales, mergers and acquisitions; shareholder, partnership and compensation agreements; real estate transactions and financing; and the estate and gift tax implications of all of the above. Furthermore, these "specialists" can raise questions and introduce considerations which, when clearly assessed, can make the difference between a sound decision over the long-term, or an ill-fated one over the short- or long-term. For example, consider how a tax attorney might assess a business' possible acquisition or disposition.

One issue which would arise in both the acquisition or disposition of a business is whether to buy assets or stocks. In these transactions, the buyer and seller would hold a different point of view. Purchasing stock, for instance, gives sellers a favorable long term capital gain treatment, but the buyer would have to pick up the assets within the corporation at the seller's tax basis rather than at the buyer's cost. Conversely, if structured as an asset deal, the buyer would get cost basis for all assets acquired, but for the seller, the tax consequences would range from double tax to a single tax impact wherein a good part of income will be ordinary income rather than capital gain.

From the outset, using the wrong approach could ultimately negate the overall economics of the deal for either or both parties. An experienced tax attorney, well-versed in the various tax impacts, can view the transaction from both sides, anticipating potential objections of either party, thereby helping to alleviate obstacles and facilitate the transaction. In effect, this professional is capable of putting together a package which accommodates the concerns of both parties.

A similar result is achieved when the tax attorney lends his/her expertise in a real estate transaction. For example, the way an acquisition is structured, that is as an S-corporation, C-corporation or Limited Liability Company, (LLC), can have a tremendous effect on the flexibility of the purchaser. Generally, when used for the acquisition of real estate, an LLC offers the liability protection afforded by a corporation, while providing the most flexible income tax treatment to the owner. In addition to recognizing the tax implications of how a real estate transaction is structured, the tax attorney understands how the structure of a business transaction can be beneficial when developing a client's succession and estate plan.

The Teaming of Accountant and Tax Attorney

You might be wondering how your accountant would feel about the tax attorney's intervention. The most qualified CPAs will openly welcome a reputable tax attorney and many will solicit this input without any prompting from their clients. They understand that their alliance with an experienced tax attorney only serves to strengthen their client relationships and that, in fact, the two professions are strong complements to one anther. Additionally, most sophisticated business executives understand that their accountants can not possibly be fully versed in the ongoing machinations of the dynamic and changing tax code. This is especially true today and going forward as the accountant steps further into the role of overall business advisor. When trusted advisors work together, a win-win situation results for client and professionals alike. In fact, drawing from our own experience at Katz, Bernstein & Katz, we are routinely called upon by accountants to assist in their clients' business matters.

Criteria for Selecting a Tax Attorney

As with any professional relationship, assessing the credentials of a tax attorney is critical to gaining the best advice. Seek out professionals who, in addition to having law degrees with a concentration in taxation, also have experience in business planning and operations. Their experience should extend to having tried cases before various courts governing taxation matters. Another valuable credential is the tax attorney's direct experience in dealing with the Internal Revenue Service at all administrative levels including Audit, Collection, and Appeals Divisions. Finally, a tax attorney whose expertise is routinely tapped by other professionals and professional associations is indicative that he/she is looked to as an expert in the field. Affiliations with institutions of higher education, for example, as a professor in taxation, is further evidence of a professional whose knowledge of this highly specialized area is both broad and current.

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