

The Legal Strategist

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SECOND QUARTER 2012

TEXAS ESOTERIC FACTS

- ◆ Oscar, the Academy Award statuette, was named for Texan Oscar Pierce, whose niece worked in Hollywood for the Academy of Motion Pictures Arts and Sciences. When she saw the gold statuette, she reportedly said, "Why, that looks just like my Uncle Oscar."

This quarter's topic concerns the pros and cons of purchasing a business in either an Asset Purchase or a Stock Purchase. Please note that there may be significant tax implications depending on the form of sale. Each transaction is different; what may be suitable for one particular purchase may not be suitable for another. As with any transaction, what may be good for the buyer may not necessarily be good for the seller, and visa versa.

The Feature Topic is a cursory review. If you would like more information on this, or any other topic previously covered in our newsletter, which can be viewed on [The Legal Strategist](#) tab of our web site, please contact our office to set up a consultation.

Scott Barrett

FEATURE TOPIC: Asset Purchase v. Stock Purchase



In making the decision to purchase or sell an existing business, it is necessary to determine whether it will be a purchase of the assets of the business or the ownership interest (stock, units, membership shares, etc.), hereafter referred to as "stock", of the business entity. An Asset Purchase involves the purchase of the selling company's assets -- including facilities, vehicles, equipment, and inventory. A Stock Purchase involves the purchase of the selling company's stock only.

ASSET PURCHASE: As a general rule, the buyer of a business will favor an Asset Purchase rather than a Stock Purchase. The biggest reason for this philosophy is that with an Asset Purchase, the buyer is not buying or assuming the liabilities, either known or unknown, of the seller. As the name implies, the buyer only purchases the assets of a the seller's business,. There is no sale of any stock or other ownership interest in the company. The buyer buys, and the seller sells, only the specific assets identified in the Asset Purchase Agreement.

Any assets not included in the Asset Purchase Agreement remain the property of seller. The buyer must create a new entity that will own the purchased assets, or use an already existing entity for the transaction. The seller of assets retains ownership of the shares of the stock in the business, and as a result, the seller also retains any existing or future obligations and liabilities of the business, except those specifically transferred to the buyer as part of the sale.

From an accounting perspective, the buyer records the assets and liabilities at the fair market value assigned to them as part of the transaction. This may increase or decrease the carrying value and/or amount of annual depreciation with respect to individual assets and liabilities. From a tax perspective, the existing business recognizes a gain or loss based on the difference between the sales price and the carrying value of the assets and liabilities.

STOCK PURCHASE: In a Stock Purchase, all of the outstanding shares of stock of the business are transferred from the seller to the buyer. Although there may be cases where a party to a contract with the business has a right to object, the buyer in effect steps into the shoes of the seller, and the operation of the business continues in an uninterrupted manner. Unless specifically agreed to, the seller has no continuing interest in, or obligation with respect to, the assets, liabilities or operations of the business.

From an accounting perspective, the business's assets and liabilities are not adjusted, they continue to be carried and/or depreciated in the same manner as before the transaction. From a tax perspective, the seller recognizes a gain or loss based on the difference between the sales price and the current basis in the stock.

CONCLUSION: The choice between an Asset Purchase or a Stock Purchases can be a difficult one. To further complicate the matter is what is good for one party is generally bad for the other. There are also many tax issues involved. However, the most important factor involved in either form of purchase is due diligence. The more diligence you perform, the clearer which form of purchase will be the best for your particular transaction.

If you would like more information on the differences and appropriate uses of Asset Purchases Agreements or Stock Purchase Agreements, please contact [Scott Barrett](#) to set up a consultation.