SECTION B

The Record
BUSINESS

TUESDAY, JUNE 19, 2007

THE MARKE

DOW	S&P 500
26.50	1.86
Close: 13,612.98	Close: 1,531.05

ASK A LAWYER

Structure of business sale has tax impact

Q. What income tax considerations should I be aware of when selling my business?

The sale of a business is a complex event. As the buyer and seller negotiate a contract, conduct due diligence and approach a closing, countless issues arise, such as getting the landlord's consent to assign a lease, verifying inventory, and communicating about the sale with customers, vendors and lenders. One important and often overlooked issue involves the income tax consequences of the sale.

The structure of the deal as a stock sale or an asset sale has important tax implications. A seller often would prefer a stock sale because generally the sale proceeds will be taxed at long-term capital gain rates – typically 15 percent, rather than the higher rate for ordinary income.

Stock sales, however, have significant disadvantages for a buyer: (1) A buyer assumes all of the company's liabilities, known or unknown, and (2) a buyer will not be able to depreciate assets based on what the buyer paid for the business. Due to these drawbacks, the majority of closely held business sales are asset sales.

In an asset sale, the buyer and seller must allocate the purchase price among the assets being purchased, some of which are ordinary income items and some of which are capital gain items. The purchase price allocation, which must be reported to the Internal Revenue Service, is often a difficult negotiation because the buyer's and seller's interests are adverse. The buyer wants to assign relatively high values to depreciable assets (such as furniture, fixtures and equipment) and immediate deduction items (such as an employment contract for the seller). The seller wants to assign relatively high values to intangibles (such as the customer list or trademarks) and other long-term capital gain items (such as real estate and goodwill).

Buyer's and seller's representatives should negotiate the allocation of the purchase price as early as possible in a transaction to avoid difficulties as the closing approaches. The true economics of a business sale can be understood only after resolving and quantifying the underlying income tax issues.

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LEADS

A listing of new local businesses

Company	Type	Address	Telephone
CRE Brand	Advertising agency	2 Executive Drive, Fort Lee	201-947-7747