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LEGAL AND TAX ISSUES IN BUYING AND SELLING A FINANCIAL SERVICES BUSINESS

Preparation:

Seller: Proper accounting

Review agreements for consequences of sale

Buyer: Due Diligence

Tax Planning

Introduction

Why tax planning is important

Object of tax planning

Computation of Seller gain

When gain is recognized (installment sale)

Structure of Buy Sell Transaction

Asset sale

Stock sale

Treating stock sale as an asset sale

Allocation of Purchase Price

Tax implications on seller

Tax implications on buyer

Forms of doing business – different entities

Sole proprietorship

C corporation

S corporation

Partnership

Limited liability company (check the box)

Lease and Land Use

Economics (Rent, CAM and Taxes)

Use provisions

Reasonableness of signage, alteration and similar provisions

Length of lease term and options

Provisions concerning assignment or subletting

Recapture rights of landlord

Limitations on enforceability of assignment provisions

Demolition rights or other provisions allowing Landlord to terminate
Status of security cage, safe and other equipment as trade fixtures
Guarantees (New York version of Good Guy Guaranty)
Check zoning/special use requirements
Check building violation status

Business and Regulatory Aspects of Entity Selection

Business Issues Relating to Choice of Structure of Transaction (Asset vs. Stock, etc.)

Purchase Agreement

- Purchase price
- Potential for Seller financing
- Allocation of purchase price (see tax planning, above)
- Included and excluded assets
- Representations and warranties:
 - Title to assets – free of liens
 - Condition of assets
 - Accuracy of financial statements
 - Taxes paid
 - No known material adverse facts
- Post closing escrow
- Covenants not to compete or solicit employees
- Potential successor liability
- Contingencies:
 - Licensing
 - Satisfactory lease and lease assignment
 - Accuracy of reps and warranties
 - Financing
- Sales tax liability (Existing and/or as result of transaction)
- If Seller financing, form of note and security arrangements