



## CLOSELY-HELD BUSINESSES

Closely held businesses need practical tax and corporate legal advice to meet their unique needs. The issues raised by these businesses must be approached comprehensively, understanding all of the dynamics of the business as well as management's cost-benefit perspective. Our tax and corporate lawyers work with closely held businesses daily. This extensive experience enables us to quickly and efficiently address closely held business needs, particularly with respect to:

- Entity planning
- Financing
- Executive compensation
- Succession planning
- Exit strategies

Our broad-based approach is especially critical in the family-held business situation, where sound counseling must integrate income tax planning and estate planning with general business planning.

### Entity Planning

Our corporate lawyers assist in choosing and structuring the appropriate entity for the proposed venture and drafting organizational documents that capture the practical objectives of the venture's founders. We are well versed in all aspects of Subchapter S of the Internal Revenue Code and the special problems associated with making and maintaining a corporation's S election. Our experience in the partnership area helps us structure creative partnership and limited liability company (LLC) arrangements to accomplish our clients' varied objectives. We understand and take advantage of the considerable flexibility that the partnership and LLC entities provide. Our extensive experience with shareholder agreements, LLC operating agreements, partnership agreements and voting trusts enables us to assist our clients in developing creative ways to plan the management of a closely held enterprise.

## **Financing**

As a business grows, it often needs additional capital. Our business lawyers advise our clients on conventional bank loans, government loan programs, venture capital investments, private placements, initial public offerings and joint ventures. All of this advice is provided with an understanding of the unique concerns of a closely held business such as maintaining control, limiting personal guarantees, keeping family information confidential, and estate planning.

## **Executive Compensation**

We have implemented a wide variety of employee benefit plans for our clients, and we regularly address the issues that arise in the administration of these plans. Closely held businesses often seek innovative ways to compensate and motivate key executives. We have designed phantom stock plans, LLC profit interest arrangements, restrictive equity plans, SERP and other "excess benefit" plans, rabbi and secular trusts, and other deferred compensation arrangements to meet our clients' objectives. Our attorneys are well versed in tax and ERISA rules/compliance requirements applicable to these plans and frequently counsel our clients in this area. We have recently been actively engaged in counseling clients on establishing and maintaining compliance with the complex rules governing certain nonqualified deferred compensation arrangements, under Section 409A of the Code.

## **Succession Planning**

Our business lawyers provide in-depth planning for our clients in order to facilitate the orderly and tax-advantaged succession of family businesses from generation to generation. This planning can include:

- Buy-sell agreements
- Funding arrangements to provide estate liquidity in the event of the business owner's death and to adequately provide for family members not involved in the business
- Family partnerships
- Deferred compensation arrangements and
- Various tax-leveraged means of transferring an interest in a business such as installment sales, private annuities, sales to grantor trusts, grantor annuity trusts a/k/a GRATS and other estate freeze techniques

We are sensitive to the fact that succession planning should not be driven solely by legal considerations. Non-legal issues often need to be addressed if family business owners will be successful in passing their business to the next generation. These issues include: management succession, retiring the head of a family business, building relationships with family partners, the role of non-family executives, the impact of divorce on the family business, training the next generation and compensating the family. We routinely bring these issues to the attention of our clients and facilitate the discussion of these sensitive subjects. At times, we will organize family business retreats to

address these issues with our clients and their families outside the business location. We have also worked with clients to create boards of advisors who bring accountability and outside views to the privately held corporation and can be helpful in succession planning.

We understand the unique issues presented in administering the estate of a closely held business owner. Our tax attorneys have regularly and successfully addressed such issues as the valuation of closely held business interests for estate tax reporting purposes, the application of minority and lack of marketability discounts to these business interests, qualifying for special estate tax deferral and installment payment provisions available to closely held business interests and making use of available postmortem income and estate planning opportunities. We feel that our expertise in estate administration causes us to be more thoughtful in planning with our clients during their lifetimes.

## **Exit Strategies**

You may decide at some point that it is time to realize some of the value of your closely held business. In these situations, our closely held business lawyers are ready to assist, whether you decide to:

- Sell the business (to third parties or insiders);
- Borrow against the business;
- Initiate a public stock offering; or
- Find a strategic investor

Our closely held business lawyers are also experienced in marshalling the resources of the rest of the firm to assist their clients. Riker Danzig offers expertise in [employment law](#), [environmental law](#), [intellectual property](#), [litigation](#), [bankruptcy](#), [real estate](#), [estate planning and tax](#), among other areas. Finally, we realize that closely held business people require responsive and personalized advice from their attorneys, and we pride ourselves on our ability to provide it.