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Elements of Business Asset Protection

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I break asset protection down into two categories, business and personal. Both are extremely important, but each category has its own problems with its own unique planning and implementation solutions. Today's topic will concentrate on the elements of business asset protection.

As I have said before, asset protection involves planning first. Planning includes discussing all of the issues related to the business or person and determining which, if any, of them cause you to sleep less at night or worry you. Once we have determined what risks you are most concerned with, then we can develop a plan that will, if implemented properly, give you peace of mind and a freedom to do things that you were reluctant to do before because of your risks. Once a plan is developed it needs to be implemented with legal structures such as business organizations, trusts and contracts. Once the legal structures are created they need to be properly funded and then accounted for thereafter. This involves coordination with attorneys and accountants. The last ingredient is to monitor the proper operation and tax reporting of the legal structures implemented.

For a business, asset protection involves breaking down the business into its economic components. A manufacturing business's economic components can be the office building or plant, the equipment used to manufacture the business's income producing products, inventory, accounts receivable, intellectual property (patents, trademarks, copyrights and other intangibles), goodwill and sometimes key employees. A service business's economic components can be the office building, the accounts receivable, any intellectual property and key personnel. It is important to understand the current legal structures that are in place for the business. Some of the key questions or issues that need to be addressed in this regard are:

- Is it a corporation under state law and if so have annual minutes been kept up as required by Texas law?
- Is it taxed as a "C" corporation or an "S" corporation?
- If it is not a corporation, is it an LLC, Limited partnership, general partnership or sole proprietorship?
- What will be the income tax consequences of asset protecting this business?

Once these questions are answered, planning recommendations can be made for restructuring the business for maximum asset protection. Along with the recommendations will be the income tax consequences, if any, related to implementation of the planning. Let's look at a test case.

This business is called XYZ Manufacturing. It is a Texas corporation taxed as a C corporation. It owns its plant where XYZs are manufactured. The land and buildings are worth \$1,000,000. The company also owns equipment used in manufacturing XYZs that are worth \$2,000,000. The company also has utilized the patents of the owner since inception to manufacture XYZs. The company has 40 employees working in 2 shifts.

What are the asset protection risks of this business?

- A major risk exposure is the potential loss of the \$3,000,000 worth of plant, land, buildings and equipment to a products liability suit.
- A disgruntled employee that has a potential sexual harassment or equal opportunity suit.
- Additionally, if the company doesn't carry workers compensation insurance, unlimited liability for an employee who gets hurt on the job.
- Possible loss of the patents to a creditor.
- If the owner were to get sued for a personal liability, his stock could be attached and the creditor gain total control of the business

What other issues are presented?

- What will be the income tax consequences of implementing an asset protection plan?
- What are the additional expenses that will be incurred in the planning and implementation?
- What are the ongoing costs of implementation?

This article has been a brief overview of some of the basic business asset protection issues we see at WealthKeepers. We offer a 1-hour initial conference at no charge to discuss your asset protection issues. At the end of that conference we can usually quote you a fixed fee to prepare your asset protection plan and can offer you common fees of attorneys experienced in the preparation of the legal structures needed to implement your plan.

James C. Mulder is an attorney with over thirty years of experience in Wealth Transfer, Tax and Asset Protection Planning. He is Board Certified in Estate Planning and Probate Law and in Tax Law by the Texas Board of Legal Specialization. He is one of only fifteen attorneys in the Houston area that are Board certified in both Estate Planning and Probate Law and Tax Law. Mr. Mulder concentrates his practice in Wealth transfer, tax, and asset protection planning. The implementation of such planning includes the preparation of very comprehensive wills, trusts, business organizations and family partnerships. Mr. Mulder has prepared over 1,000 asset protection plans.