



## Seller Beware – Buyer Scams

### Introduction

Business sellers frequently sell their businesses under less than perfect circumstances. These less than perfect circumstances can be the result of contingencies that arise during negotiations and/or at the last minute in a business sale. Imperfect circumstances can also be caused by a multitude of other factors such as bank loans falling through, buyers becoming disinterested, and the like. Sellers without a doubt face peril when selling their business even under circumstances when the buyer is a good faith buyer.

Recently, our office was informed of a specific scam facing business sellers, Ron Johnson, Treasurer of the International Business Brokers Association (IBBA) also wrote an article on the subject in a recent IBBA

publication. Ron stated that certain groups of individuals have been masquerading as good faith business buyers only to swindle business sellers out of their cash, business, livelihood, and good name.

### How the Scam Works

The scam varies by each individual scammer, but the scammers tend to have common earmarks which make them identifiable as scammers. Initially, an individual contacts a business (which is held for sale) representing him or herself to be a representative of a private equity group (PEG) or an investor generally. Upon gaining initial contact information, the individual then makes a full price offer for the business. If a business broker

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## A CASE STUDY

The IRS has issued guidance concerning the relationship of Health Savings Accounts and the ERISA rules in a Field Assistance Bulletin. The Department of Labor has recently announced that contributions to employee's HSA's will not invoke ERISA rules.

**Editor's Comment:** The IRS and Department of Labor share concurrent jurisdiction over ERISA. Most employee fringe benefit plans fall under ERISA rules. The HSA is different in that HSA's are personal health care vehicles, not group health insurance programs. In order for the employer to not be subject to

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or other professional starts asking questions in an attempt to aid the seller and fulfill his or her professional obligation, the scammer quickly gets the professional out of the transaction telling the seller that the professional is unnecessarily complicating the purchase.

Once the seller is without the representation of a professional, then the seller and his or her business becomes easy prey for the scammer. The scammer, acting on behalf of a buyer, then makes a full price offer for the stock, not the assets of the company. Offering to purchase a company's stock instead of its assets 1) makes the transaction infinitely less complicated and 2) makes the taxes due from the seller considerably less than if it were an asset sale. From our own experience at The Center, we can assure you, buyers almost never voluntarily purchase stock. Since the price and tax contingencies are eliminated by a full price / stock purchase offer, the offer also prevents CPAs and attorneys from entering or scrutinizing the transaction.

Once this happens, the seller and company are essentially in the jaws of the scammer. Frequently, from this point, the buyer's financing will not come through on time, but yet the buyer / scammer convince the business owner to relinquish control of the business. The buyer then gains control of the business. Typically, the buyer will run up the accounts payable, factor the accounts receivable, spend all of the cash, and leverage all of the credit. Once the buyer / scammer is finished, they leave town often with millions of dollars in their pockets while leaving the owner with no cash and a ruined business.

### **How to Protect Yourself**

As indicated previously in this article, one of the scammer's priorities is to eliminate the professionals of the seller from the transaction. The first and best defense from being scammed is to be well represented by professionals and allow them to do their jobs. Preferably, your professionals should have



extensive experience in dealing with business transactions including buying and selling a business. A good professional will not blindly allow a scammer to walk off with your business and will require any buyer to display good financial ability.

Additionally, sellers need to be advocates for themselves. If what a buyer seems to say is too good to be true, it likely is too good to be true. Again, because of tax angles, liability, and a host of other problems, buyers are reluctant to purchase stock; and, they are especially reluctant to buy a company at full offering price. If the buyer is making claims which are untrue or seem to be untrue, it is often best for the seller to proceed with precaution or refuse the deal entirely.

### **Conclusion**

Selling your business while abandoning or going without professional guidance is a very dangerous thing to do. While it is rare to encounter scams as described above, even good faith deals need representation to make sure all of the contingencies are covered. If you are buying or selling a business, be sure to consult professionals who are experienced in buying and selling businesses. Individuals who are members of the IBBA and /or employees of The Center for Financial, Legal, and Tax Planning, Inc. are well versed in all aspects of buying and selling businesses.

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**ERISA rules, the employer must not: limit the ability of eligible individuals to move their funds to another HSA, impose conditions on how HSA funds can be used, make or influence investment decisions with respect to contributed funds, represent the plans as an employee welfare benefit, and not receive any payment or compensation in connection with an HSA.**

### **Points of Interest**

- **Sellers without a doubt face peril when selling their business even under circumstances when the buyer is a good faith buyer.**
- **...certain groups of individuals have been masquerading as good faith business buyers only to swindle business sellers out of their cash, business, livelihood, and good name.**
- **The first and best defense from being scammed is to be well represented by professionals and allow them to do their jobs.**

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### **Avoiding Common Mistakes in M&A – Exiting Without a Plan**

As the generation of Baby Boomers approaches retirement, it has been estimated that over the next twenty years retiring business owners will be seeking to successfully exit their businesses, with an aggregate value in the trillions of dollars.

Without the assistance of an experienced M&A advisor and a comprehensive transition plan & process to maximize the value of their business and ultimately their own personal wealth, many of these business owners will typically:

- Exit their companies as a result of pressure from outside circumstances, not as a result of their own desires
- Exit their companies on a timetable that's forced on them, instead of one that meets their needs
- Undervalue their companies and leave hard earned wealth on the table
- Pay too much in taxes
- Lose control of the process by being reactive rather than proactive
- Fail to realize their business and personal goals
- Suffer unnecessary personal stress

From experience, we recommend that our selling clients begin the process 2-3 years before they believe they will really need to sell the business. While some businesses have sold in as short as six months, the average tends to be closer to a year, with some businesses requiring 2-3 years before finding the right buyer and the right deal. In addition, some business may benefit from making a few changes/improvements to their business to command the best price and terms and it may take from a few months to a year or more to implement those changes.

If you know of a business owner who's thinking of selling and who might benefit from a free consultation with us, have them contact me or any of the M&A professionals at [www.bradwaygroup.com](http://www.bradwaygroup.com)

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## Frequently Asked Questions...

**Q. If I lease office furniture with the option to buy, when do I depreciate the purchase price?**

**A.** You must first determine whether the agreement is a conditional sales contract or a lease agreement. If you gain equity or title in an item as you lease it, the agreement more resembles a conditional sales contract. Payments under such an agreement are not deductible in the same way as rent. You should start depreciating the furniture as of the date of the acquisition if you are holding a conditional sales contract.

On the other hand, if the agreement is a true lease agreement, it is appropriate to expense the payments as they are made as rental expense.

**Q. Are business gifts deductible?**

**A.** Generally yes; however, business gifts are limited to an amount of \$25. If the person giving the gift exceeds this amount, the excess is nondeductible.

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