

Danziger & Markhoff LLP Notches Another ESOP Client Win

Danziger & Markhoff LLP, a nationally-recognized business and tax oriented law firm located in the New York City metropolitan area, recently represented the seller in the sale of a portion of the seller's business to a newly-formed employee stock ownership plan, or ESOP.

An ESOP is a retirement plan specifically designed to invest primarily in stock of the employer that sponsors the ESOP. ESOPs are governed by well-established tax laws. ESOPs provide attractive economic and tax benefits to business owners while furnishing retirement benefits and performance incentives to employees.

The seller in the recent transaction was an entrepreneur who over many years built a successful business from the ground up in a highly competitive industry. The buyer was an independent trustee selected to represent the interests of the ESOP participants.

The transaction was entirely seller financed, which simply means that the ESOP paid for its purchase of the seller's stock using a promissory note issued to the seller. The note will be paid down using tax-deductible contributions to the ESOP and/or dividends paid on shares of stock held by the ESOP.

Our ESOP team achieved all of the selling shareholder's objectives in the ESOP transaction, including:

- Packaging multiple business entities for a single stock sale – all of the seller's business entities were aggregated under a newly-formed holding company in a tax-free reorganization, thereby unlocking the overall value of the business in the sale of holding company stock to the ESOP.
- Sell less than 100% of the stock to the ESOP – the selling shareholder decided exactly the percentage of the holding company stock he wanted to sell. He decided to sell less than 100%.
- 2024 tax deduction for a transaction closing in 2025 – in 2025, one of the existing entities established a precursor plan effective January 1, 2024; a tax-deductible contribution was made to that plan for 2024; that plan was merged with the ESOP, and the ESOP was assumed by the holding company in 2025.

- Compressed time to close before 2024 tax deadline in 2025 – our ESOP team, comprised of corporate and employee benefits attorneys together with ESOP consultants, successfully structured, negotiated and drove the transaction to closing within the time period allotted.
- Defer tax on gain from ESOP stock sale – seller elected to defer (and potentially eliminate) all capital gains tax on the stock sale using a Section 1042 rollover.
- Dealing with union employees – a business entity with some union employees was included in the ESOP transaction, but participation in the ESOP was limited to non-union employees.
- Seller retained control of the business post-sale – seller retained control of the holding company board of directors and continued as the most senior officer of the business post-sale.
- Additional, stock-based incentives for key employees of the business – the ESOP transaction included the adoption of a “stock appreciation rights” (SAR) plan to provide certain key employees with stock-based cash incentives to help grow the value of the business after the transaction
- Post-transaction ongoing ESOP administration – our ESOP consultants will handle all annual administration details of the ESOP post-transaction.

The ESOP transaction closed, and the 2024 contribution to the precursor plan was made by the deadline thereby securing a 2024 tax deduction. That plan was recently merged with the ESOP, and the seller received the first installment payment on his seller promissory note.

Are you exploring succession alternatives for your business? If you’d like to consider an ESOP solution please feel free to reach out to one of the attorneys on our ESOP team:

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