CHECKLIST FOR BUSINESS PURCHASES OR SALES

1. What is to be Purchased or Sold?
   (a) Assets or the Business Entity (corporation, LLC, partnership)?
   (b) If Assets, which assets?
      (1) Inventory
      (2) Accounts Receivable
      (3) Equipment, furniture, fixtures
      (4) Land/Building
      (5) Goodwill, intangibles, trade secrets

2. Terms of Payment: Total Purchase Price $__________
   (a) Down $__________
   (b) When paid and who will hold
   (c) When Balance Due
   (d) Promissory note - terms
   (e) Seller’s debt assumed or paid off
   (f) UCC security interest in assets/stock – if default occurs
   (g) Letter of credit
   (h) Closing date __________

3. Inventory -- Use, Verification, Control
   (a) Separately listed items or in bulk
   (b) Special treatment (refrigeration?)
   (c) Who is to check inventory
   (d) Normal resupply and control prior to closing
   (e) Unsuitable, unusable or obsolete inventory

4. Check Prior Performance Records
   (a) What records to be made available
   (b) For what prior periods
   (c) Unusual pricing arrangements
   (d) Discounts
   (e) Worker’s Compensation claims
   (f) Employee records and policy manuals
   (g) Is (was) there a business plan
5. **Check Accounts Receivable -- Verification and Aging**
   (a) Who to collect accounts after closing
   (b) Final list as of when __________
   (c) Check payables if stock purchases
   (d) Who is to determine if bad accounts

6. **Coordinate Furniture, Fixtures and Equipment**
   (a) All to buyer
   (b) If not, what is seller to keep
   (c) Value to be shown on separate list
   (d) Computers and related files and records

7. **Review Warranties on Equipment**
   (a) Which equipment
   (b) Types of warranties
   (c) If no warranties and one important machine, consider cash escrow for performance.

8. **Consider Covenant Not to Compete**
   (a) Who is prohibited from doing what
   (b) For how long - time
   (c) What area covered
   (d) Consideration allocated to covenant
   (e) State law may limit enforceability
   (f) IRC § 197 requires 15-year amortization by buyer (see # 25, below)
   (g) May be self-employment income to seller

9. **Review Leases**
   (a) Get copy -- check expiration date
   (b) Are leases assignable
   (c) Check for assignments and subleases
   (d) Renegotiation of lease possible
   (e) Zoning allows intended use
   (f) Ask for copy of detailed building floorplan

10. **Check Union Contracts and Commitments**
    (a) Pending union claims or violations
    (b) Fringe benefits in excess of union contract
    (c) Labor abuses (past)
    (d) Overtime -- Department of Labor
11. Review Qualified Retirement and Fringe Benefit Plans
   (a) Copies furnished for all plans
   (b) Should plan or benefit be assumed
   (c) Cost to fund and maintain
   (d) Approval letter received from agency
   (e) Annual reports filed
   (f) Performance of plan administrator

12. Bulk Sales Law Compliance
   (a) Is there a bulk sale of inventory
   (b) Are there inventory creditors
   (c) If so, Seller or Buyer to comply
   (d) Claims to be handled in advance or how

13. Review Pending or Expected Litigation
   (a) What and how to handle
   (b) Projected costs

14. Seller Financing
   (a) What is to happen if there is a default in Buyer payments
   (b) Rights of inspection during payment period
   (c) Collateral or security for Seller financing
       (1) Assets or entity interests sold
       (2) Real estate of Buyer
       (3) Accounts receivable
       (4) Inventory or equipment
       (5) Personal guarantees
       (6) Covenant that Buyer will not compete with defaulted business
   (d) Filing (perfection) of security interests for Seller financing
   (e) Personal guaranty of payment (see # 15, below)
   (f) Standby letter of credit

15. Personal Guaranties of Payment by Buyer
   (a) On what and for how long
   (b) Guaranty provided by whom
   (c) Security for performance
   (d) Credit check of guarantor
   (e) Cash escrow to be established
The Tax and Business Professionals
Checklist for Business Purchases

(f) Two signatures on an escrow-type bank account with arbitration provisions
(g) Continuance of representations (how long)

16. Review Employment Agreements, Bonus Policies, and Deferred Salary Arrangements
(a) With whom
(b) For how long
(c) Deferred salary arrangements
(d) Transition problems

17. Review Conduct of Business Until Closing
(a) Operations as normal
(b) Discussions with employees, by whom
(c) Announcements and communications
   (1) Trade accounts
   (2) Customers
(d) Incurrence of new debt pending closing
(e) Accidents and insurance coverage kept in force

18. Insurance Policies
(a) Are policies available
(b) Can coverage be arranged
(c) Is existing coverage adequate

19. Representations and Warranties
(a) Representation - - Statement of present, past or existing fact true at some point (Example, there have been no tax audits, lawsuits, and the like)
(b) Warranties - - Guarantee that a certain condition exists or will continue (Example, Seller will maintain certain assets to pay unexpected claims)
(c) Consider indemnification provisions for breach of warranty or incorrect representations (see # 21, below)

20. Matters often Subject to Warranties or Representations
(a) Entity in "Good Standing" and qualified to do business
(b) Authority to sell and deliver assets or stock
(c) Financial information accurate
(d) Title to Assets valid

Checklist for Business Purchases or Sales, P. 4
(e) Third Party Rights - no unknown claims, commissions, or encumbrances
(f) Government Consents, if needed, obtainable.
(g) Hazardous substances or conditions
(h) Litigation - pending or likely
(i) Licenses and Permits - liquor licenses, etc.
(j) Compliance with applicable laws
(k) Payment of Taxes
(l) Bulk Sales Act
(m) Employee Relations
(n) ERISA (Employment & Retirement Income Security Act)
(o) Personnel matters - violations of employee protection laws, overtime pay, etc.
(p) Assumption of Contracts - any? which ones?
(q) Brokerage and Finders fees
(r) U.S. persons - special laws for Resident or Non-Resident Aliens
(s) Capitalization & Ownership of Stock and Assets
(t) Condition and list of assets accurate
(u) No conflict with existing Court or administrative orders
(v) No material omissions

21. **Indemnification, Escrows, and Set-Offs**
   (a) Indemnifying party agrees to defend claims and pay; may want to specify who to handle claims and how settlement to be accomplished to avoid litigation
   (b) Indemnification for damages and costs from breach of warranty or incorrect representations (see # 19, above)
   (c) Does Indemnifying Party have sufficient liquid assets to pay
   (d) Escrow - funds set aside to pay claims
   (e) When and how will funds be held and disbursed; who to decide when and how much
   (f) Signatures required to release escrowed funds
   (g) Set-Off - reduction in payments because a condition exists (e.g., equipment fails), seller does not provide promised assistance, or unexpected claim arises
   (h) If set-off allowed, future installment payments are reduced accordingly
22. **Legal Opinions**
   (a) Seller or Buyer's attorney(s) may be asked to provide legal opinion as to seller or buyer
   (b) Affords some additional due diligence on part of Seller or Buyer's attorney
   (c) Legal opinion needed if prior or pending significant litigation or administrative law problems (i.e. pending tax audit)

23. **Major Liability Areas**
   (a) Product Liability - if stock purchased, claims for prior product liability continues
   (b) Environmental liability - an emerging area. Watch for CERCLA (Comprehensive Environmental Response, Compensation & Liability Act). Here the Government has incredibly broad powers
   (c) Unpaid Taxes - Seller should not assume
      (1) Escrow funds for payment
      (2) Order IRS transcripts for record of payments
   (d) Bulk Sales Act - Designed to protect creditors of Seller
      (1) List of Creditors
      (2) Schedule of Property to be purchased
      (3) Preserve records for six months
      (4) Notify creditors as to who to pay what, often notice done jointly
   (e) Accounts Payable - if a entity sale

* * * * * Tax Considerations * * * *

24. **Asset Allocations (IRC § 1060)**
   (a) Form 8594 to be filed by both buyer and seller
   (b) Unless parties agree otherwise, purchase price must be allocated among various classes of assets using "residual method"
   (c) Consideration allocated to goodwill must be identified
   (d) Buyer must indicate if seller gave covenant not to compete or buyer entered into employment or management agreement with seller and the maximum consideration therefore
   (e) Allocation controls basis for both gain and depreciation
   (f) Better to allocate values in purchase agreement and, within reason, allocate more to amortizable or depreciable assets
   (g) Subsequent, unilateral allocations likely to be challenged by IRS
(h) Land not depreciable or amortizable
(i) Consider completing and signing Form 8594 at Closing

   (a) Amortization of intangibles over 15 years for:
      (1) Goodwill
      (2) Going concern value
      (3) Work force in place
      (4) Books, records, and operating systems
      (5) Patents, copyrights, formulas, know-how
      (6) Customer base
      (7) Licenses and permits
      (8) Covenants (promises) not to compete
   (b) An exception -- Some software amortizable over 36 months

26. Recapture of Depreciation
   (a) Will Seller be subject to Recapture
   (b) Amount and effect on sale
   (c) Recapture income not subject to installment reporting

27. Deductibility of Salary & Other Payments to Sellers
   (a) Recharacterization of management, salary, or other payments
      (Covenant not to Compete) by IRS may result in additions to the
      non-deductible allocations to the purchase price
   (b) Can the person or entity to perform services actually provide
      service or compete?
   (c) Contingent Installment payments of Covenants
      (1) Covenant payments not amortizable until incurred
      (2) Imputed interest may be imposed

28. Installment Reporting
   (a) Fixed or contingent sales price
   (b) Maximum or minimum amount
   (c) Imputed interest on certain contingent deferred payment amounts
29. Gain or Loss Characterization
   (a) Capital gain or loss on sales of capital assets
   (b) Ordinary income from sale of inventory, accounts receivable, recapture items

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