Succession Planning- Successor to Franchise Agreement

Succession planning is one of the most difficult steps any business owner must accomplish during their lifetime. Dealers have worked a lifetime building a business and ultimately need to make the difficult decision to pass control to someone else. Succession planning is an enormous undertaking but done right it can save heirs millions in taxes and lessen the stress on those that follow. As if succession planning was not complicated enough, the automobile manufacturer franchise agreement adds an additional layer of outside forces that can cause complications and create circumstances that will be out of the dealer's control. This article addresses only one aspect of succession planning.

One of the most important steps for dealers is naming a franchise successor before death. Recently, we have seen some interesting actions by the manufacturers when it comes to approving the successor to the franchise agreement The manufacturers' potential lack of cooperation can add costs, time and complications to the process. On the surface it seems like a pretty simple task. After establishing succession plan goals and making some key plan decisions, now is the time to legally name the successor to each of the franchises. This could be a family member, a general manager, a partner in the dealership or some other new person added to the mix. No matter who will be named, each of the franchise agreements requires their own set of steps to complete.

The dealer's last will and testament likely will not matter when it comes to naming the successor. In the absence of having a legally approved successor, the manufacturer will likely pull out all the stops to make the transfer from the estate (upon death the estate is now the owner, unless held in a trust or by other means) to the intended successor, "difficult". Difficult may mean new facility upgrades, the manufacturer naming a new general manager, CSI improvement targets, new net working capital requirements, denial of the planned successor, and commitments to meet other demands that could ultimately cost large sums of money. The manufacturer may even give the estate a short period of time to meet these demands. Many older franchise agreements lack an expiration date. In this case once the dealer passes away and the ownership moves to the estate, a change in control provision can be triggered allowing the manufacturer to establish a new set term for the new franchise agreement.

The bottom line is that dealers need to plan for the franchise successor while they are alive. Having the approved successor named, trained and ready to take over will prove to be one of the most valuable succession planning steps a dealer can accomplish. This will provide a smooth transition and preserve the value of the franchise for the heirs of the estate. Succession planning is complex, has many elements and is time consuming. It will require a commitment of time, resources and more importantly making those tough decisions now. We suggest working with your attorney, financial advisors and accountants to properly address all of these complicated steps. Allowing ample time and doing it in a methodical, tactical manner will make what may appear next to impossible a manageable process.

TAX TIP

TIPS FOR YEAR-END GIVING

Individuals and businesses making contributions to charities should keep in mind some key tax provisions that have taken effect in recent years, especially those affecting donations of clothing and household items and monetary donations.

You should be aware of the following information:

- Contributions are deductible in the year made. Thus, donations charged to a credit card before the end of 2012 count for 2012. This is true even if the credit card bill isn't paid until 2013. Also, checks count for 2012 as long as they are mailed in 2012.
- Check that the organization is qualified. Only donations to qualified organizations are tax-deductible. a searchable online database available on IRS.gov, lists most organizations that are qualified to receive deductible contributions. In addition, churches, synagogues, temples, mosques and government agencies are eligible to receive deductible donations, even if they are not listed in the database.
- For individuals, only taxpayers who itemize their deductions on Form 1040 Schedule A can claim deductions for charitable contributions. This deduction is not available to individuals who choose the standard deduction, including anyone who files a short form (Form1040 or 1040EZ). A taxpayer will have a tax savings only if the total itemized deductions (mortgage interest, charitable contributions, state and local taxes, etc.) exceed the standard deduction. Use the 2012 Form 1040 Schedule A to determine whether itemizing is better than claiming the standard deduction.
- For all donations of property, including clothing and household items, get from the charity, if possible, a receipt that includes the name of the charity, date of the contribution, and a reasonably-detailed description of the donated property. If a donation is left at a charity's unattended drop site, keep a written record of the donation that includes this information, as well as the fair market value of the property at the time of the donation and the method used to determine that value. Additional rules apply for a contribution of $250 or more.
- The deduction for a motor vehicle, boat or airplane donated to charity is usually limited to the gross proceeds from its sale. This rule applies if the claimed value is more than $500. Form 1098-C, or a similar statement, must be provided to the donor by the organization and attached to the donor's tax return.
- If the amount of a taxpayer's deduction for all noncash contributions is over $500, a properly-completed Form 8023 must be submitted with the tax return.
- And, as always it's important to keep good records and receipts.

Rules for Clothing and Household Items

To be deductible, clothing and household items donated to charity generally must be in good used condition or better. A clothing or household item for which a taxpayer claims a deduction of over $500 does not have to meet this standard if the taxpayer includes a qualified appraisal of the item with the return. Household items include furniture, furnishings, electronics, appliances and linens.

Guidelines for Monetary Donations

To deduct any charitable donation of money, regardless of amount, a taxpayer must have a bank record or a written communication from the charity showing the name of the charity and the date and amount of the contribution. Bank records include canceled checks, bank or credit union statements, and credit card statements. Bank or credit union statements should show the name of the charity, the date, and the amount paid. Credit card statements should show the name of the charity, the date, and the transaction posting date.

Donations of money include those made in cash or by check, electronic funds transfer, credit card and payroll deduction. For payroll deductions, the taxpayer should retain a pay stub, a Form W-2 wage statement or other document furnished by the employer showing the total amount withheld for charity, along with the pledge card showing the name of the charity.

These requirements for the deduction of monetary donations do not change the long-standing requirement that a taxpayer obtain an acknowledgment from a charity for each deductible donation (either money or property) of $250 or more. However, one statement containing all of the required information may meet both requirements.

When meeting with you ATA representative you should be able to supply him/her with the above information.