

Why Some Business Owners Think Now Is the Time to Sell A Capital Gain Tax Increase is on the Horizon

By Monty W. Walker CPA, CGMA, CBI

During President Obama's State of the Union address on January 24, 2012, he asserted that taxpayers making more than \$1 million should pay not less than 30 percent in federal taxes. This is a clear indicator President Obama believes that the federal capital gain rate should be increased to 30 percent for taxpayers with over \$1 million of taxable income.

On February 1, 2012 U.S. Senator Sheldon Whitehouse, democrat from Rhode Island, introduced a tax bill named "Paying a Fair Share Act of 2012". This act is known informally as the "Buffett Rule" tax bill. It applies only to taxpayers with income over \$1 million. The purpose of the act is to cause taxpayers making over \$1 million to pay at least 30 percent in federal tax. Taxpayers would calculate their taxes according to traditional methods and also by the tax calculation required under the Paying a Fair Share Act of 2012. The result of the two calculations would be compared and the taxpayer would then pay the larger of the two calculations. This act will likely gain little traction so its chances of becoming law are extremely low. But it is an indicator that not just President Obama is interested in increasing the capital gain rate.

Rate Impacted By Multiple Items

Notwithstanding that President Obama and certain congressional members want to see the capital gain rate increased, the Bush Tax Cuts, which were originally set to expire on December 31, 2010 and were extended for two years, are going to expire on December 31, 2012. If this happens, the regular top rate on capital gains will rise from 15 percent to 20 percent. In addition, an obscure provision of the tax code dealing with the limitation on itemized deductions will return in full force when the Bush Tax Cuts expire. This provision, known as the Pease limitation, increases effective tax rates on high-income taxpayers by reducing the value of their itemized deductions. For the Pease limitation, by 2013 the inflation-adjusted level of what is considered a high-income earner is expected to approach \$170,000. The Pease limitation will add about another 1.2 percentage points to the effective capital gains tax rate for high-income taxpayers. And that's not all. The health reform legislation enacted in 2010 imposed a new tax on the net investment income of high-income taxpayers, including capital gains, effective January 1, 2013. That adds another 3.8 percentage points to the capital gain tax rate. Without the repeal or the amending of this legislation, this

rate increase will apply even if another tax cut extension occurs.

Put it all together, and unless another tax cut extension occurs, the top tax rate on capital gains is currently scheduled to increase from 15 percent to 25 percent on January 1, 2013. Additionally, since 1978 the top capital gain rate has been increased to 28 percent on several occasions. So, if history is any indicator, the top capital gain rate does have a chance of going above 25 percent.

Obama and National Debt

Right now it appears President Obama has a better than 50 percent chance of being re-elected, notwithstanding poor approval ratings, a high unemployment rate and a stale economy. If he is re-elected, he has already made it clear that he believes the capital gain rate should be increased.

Even if a Republican is elected, the capital gain rate is likely to be increased, not just because of all the current rhetoric regarding the capital gain tax being considered a "rich people's tax", but because the low rates may have to be sacrificed to achieve other objectives, such as paying down the national debt.

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Ever Thought of Trading your business for another?

What are the benefits of a 1031 Exchange?

In a traditional sale, an owner traditionally recognizes a gain, taxed at either regular or capital gains rates. If a seller chooses to exchange a business or investment property for another business or investment property of a like-kind, no gain or loss is recognized under Internal Revenue Code Section 1031.

There are several types of exchanges including the following:

- Simultaneous Exchange
 - Delayed Exchange:
- STRICT LIMITATIONS**
- Build-to-Suit Exchange: (Improvement or Construction) allows improvements from proceeds of exchange
 - Reverse Exchange: acquire exchange property before relinquishing original investment (safe harbor if properly conducted, reasonable time)
 - Multi-asset Exchange: Both real and personal property

Benefits of such a transaction include the following:

- May maintain an equity position
- Taxes may be deferred or eliminated by this type of transaction,
- Gain from depreciation may be postponed,
- Owners who are burned out or would like a new or bigger opportunity can exchange their business, home or other property for a business and/or real property,
- Does not require financing

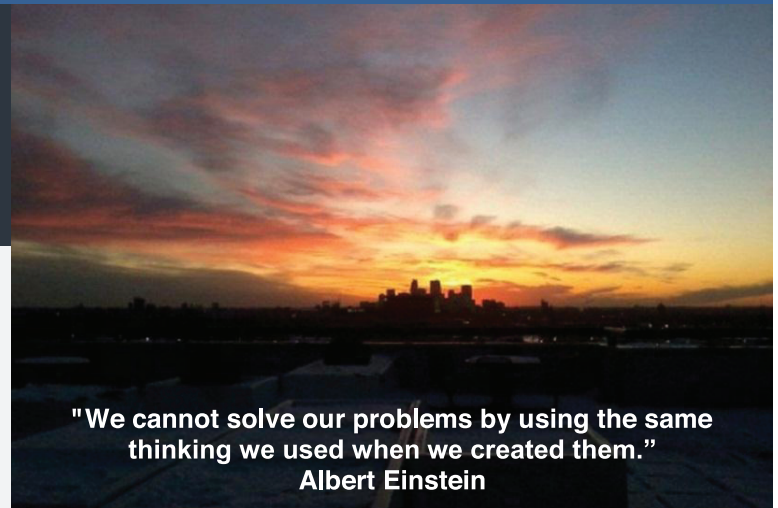
References

United States Internal Revenue Service, Publication: Form 8824, Like-Kind Exchanges, <http://www.irs.gov/pub/irs-pdf/f8824.pdf> (November 25, 2011) Small Business Review, A Primer on 1031 Exchange, Todd R. Pajonas,,

<http://smallbusinessreview.com>

Author: Michelle Olmstead, Sunbelt Business Broker, attorney and entrepreneur, to assist you in your plan to buy, sell or exchange a business.

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"We cannot solve our problems by using the same thinking we used when we created them."

Albert Einstein

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History shows this has happened before. In the 11 years from 1922 to 1933 the maximum capital gains rate was 12.5 percent. In 1934-35, it was raised to 31.5 percent and in the following two years it was raised to 39 percent. This was the response Franklin D. Roosevelt (an Obama hero) had to the deficits facing the country after the Depression.

Now or Later

With all the current talk about capital gains tax, the pending expiration of the Bush Tax Cuts and the additional tax associated with the 2010 health care legislation, now is the time to take action by any entrepreneur considering selling his/her business during the next few years. A 15 percent capital gain tax rate is certainly much more appealing than the risk of experiencing a 25 to 30 percent rate.

About the Author:

Monty W. Walker is the senior principal of Walker Business Advisory Services, a CPA Firm with a national practice focused on providing business transition planning and business transaction support services. These services are provided to Entrepreneurs and their various advisors, such as Business Intermediaries, Accountants and Attorneys, to manage the unique financial, tax, planning and procedural matters associated with buying, selling and transitioning the ownership of a business.

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*These articles are not deemed to be legal or tax advice provided by either the author or Sunbelt, it is merely the opinion of the author at the time of publication.

Sales Trends Sales of Small Firms Are Still Up

2011 saw a rise in business transactions and the trend in 2012 is continuing

According to
BizBuySell
Insight
Reports



Quarter 1
2012
Results

Summary of
First Quarter
2012 sales at
Sunbelt
Midwest, MN

We've had some record setting deals this quarter, one business sold from list to close in 17 days! We also have record buyer inquiries on our website, buyers are active & banks are beginning to lend again. Sellers working with creative financing are building buyer confidence. Once again here at Sunbelt Midwest, deals are happening!

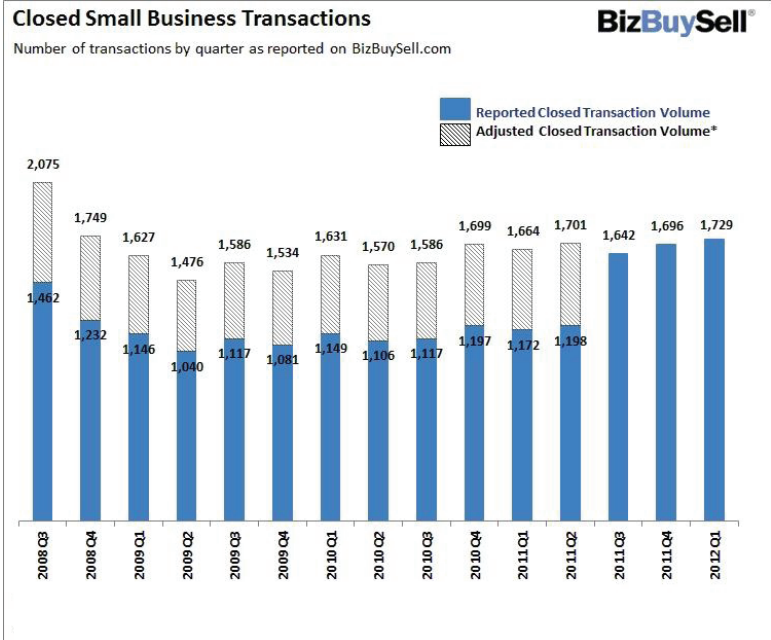
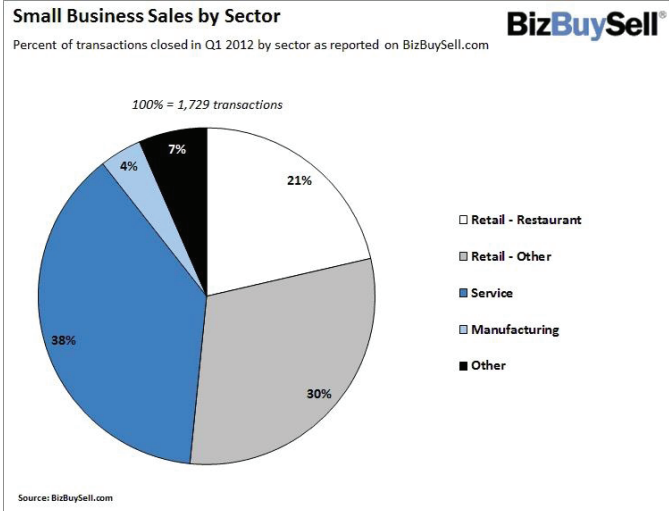
The 1,729 businesses that were reported sold in the first quarter of 2012 mark the largest number of transactions since the fourth quarter of 2008, making this quarter **the most active in over three years.**

"While we are not out of the woods yet, economic factors are slowly improving and have given the business-for-sale marketplace a nice boost to start 2012."

A main driver of the increase in transactions is that business owners were willing to accept lower prices than in previous average sale price as a multiple of both revenue and cash flow decreased compared with the same period last year. The average sale price as a multiple of annual revenue fell over 10 percent to 0.59, the lowest since the financial crisis at the end of 2008. The average sale price as a multiple of cash flow decreased by 4.7 percent to 2.36.

Statistics from BizBuySell.com and Quotes from "Mike Handelsman, group general manager of BizBuySell.com and BizQuest.com"

View the full report at
http://www.bizbuysell.com/news/media_insight.html



Looking to grow your business instead of sell? Inner Circle Midwest is a peer to peer advisory group where business owners can share experience and knowledge to help each other to grow their businesses. Ask any Sunbelt agent for more information about our affiliation with Inner Circle Group.



Advantages to Working with a Business Broker

Schedule a no obligation confidential consultation today!

- Relationships with top lenders to finance your sale
- Nationwide marketing
- Success fee based - most often we get paid when you get paid
- Confidential marketing that reaches over 10,000 people with specific interest in buying a business.
- All we do is sell businesses - all of our brokers sell business, full time and that is what keeps us as experts in the field of business brokerage.

Business Sales

○ 2012 Updates

Sunbelt Midwest proudly supports the following organizations; please view their websites to find out more about their causes and how you could help.

can-do-canines.org



Pauladelmanendowmentfund.com



Upcoming Events



These events are part of our **Knowledge Luncheon** series. **Knowledge Luncheons** are conveniently held between **11am-2pm** to accommodate your busy schedule.

- **June 7th, 2012, 11:30am-1:30pm**
The Art Of The Deal – in Edina, MN
- **June 6th, 2012**
St. Cloud, MN
- **July 26th, 2012**
Rochester, MN

Keep an eye on our website at www.sunbeltmidwest.com to reserve your seats and to learn about upcoming events.

1300 Godward Street
Suite 6300
Minneapolis, MN 55433
612-455-0880 ph
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www.sunbeltmidwest.com

Event Location & Registration

Location:
To Be Announced, call for details

Register by calling
612-238-1288 or
Register online at
www.sunbeltmidwest.com