



BEGGS & LANE RLLP
ATTORNEYS and COUNSELLORS at LAW
SINCE 1883

Merger & Acquisitions Roundtable

ITEN WIRED – Pensacola Beach

October 20, 2023



Agenda

- Introductions
 - Valuation of Company
 - M&A Timeline/Process
 - Typical M&A Types
 - Due Diligence
 - Tax Considerations
 - Typical Pitfalls
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Ryan Campbell, CPA, CGMA, CVA, MAcc

Ryan Campbell is the Partner-in-Charge of the Pensacola office at Anglin Reichmann Armstrong. He earned his Master of Accountancy in 2004 from the University of Alabama in Huntsville. In 2003, Ryan earned his Bachelor of Science in Business Administration-Accounting and graduated summa cum laude from Troy State University. He has over 20 years of experience in public accounting. In addition to expanding Anglin's client base in Pensacola, Ryan provides quality consulting services, including CFO and outsourced accounting services, business valuation, and advisory and accounting support. He also offers individual tax preparation and planning for high-net-worth individuals. Ryan represents the firm at various speaking engagements, such as webinars and conferences, to provide industry insight for clients and other firms. His industry focus includes construction, government contracting, manufacturing, professional services, and real estate.

Ryan serves as the Treasurer for the United Ministries of Pensacola and is a graduate of the Emerging Leaders Academy, Upstream Academy. **Ryan's dedication to his clients allows business owners to feel supported through difficult decisions by providing them with the most accurate industry knowledge and guidance.**



Partner-In-Charge, Anglin Reichmann Armstrong, Pensacola, Fl.

Robert L. Jones, III



Robert L. Jones, III is a partner in the firm and is a Florida Bar board certified tax attorney. He serves as Practice Group Manager for the firm's Corporate and Tax practices and is a member of the firm's Wills, Trusts and Estates practice group. Robert practices in the areas of tax law, corporate law, including mergers and acquisitions, healthcare, estate planning, including high-net worth estate tax planning, probate, not-for profit and charitable organizations, and business planning, from the creation of a business to succession planning.

Robert is a sixth generation Florida resident. Robert received a B.A. from the University of Florida. He was a member of Florida Blue Key and the Kappa Sigma Fraternity while at the University of Florida. Robert received his law degree from the University of Arkansas at Little Rock, College of Law, where he was an Editor of the UALR Law Review. Robert then received a Master of Laws degree in Taxation, from the University of Florida, College of Law, where he was the Managing Editor of the Florida Tax Review.

Partner, Beggs & Lane

Valuation of the Company

- The Valuation Formula
 - Value = Benefit Stream * Risk
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Benefit Streams

- Gross Receipts
 - Net Income
 - EBITDA
 - Free Cash Flows
 - Sellers Discretionary Earnings
 - Issues, Assumptions & Calculations to Benefit Stream
 - All of these are one year benefit stream
 - Assume companies are perpetual
 - Need to calculate a present value of future benefits
 - Create projections or capitalize based on historic
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Risk Factors

- Management Team
 - Level and amount
 - Bench strength
 - Company History
 - Consistency
 - Financial metrics
 - Capital
 - Leverage
 - Profit
 - Concentrations
 - Product
 - Customer
 - Area
 - Intellectual Property
 - Patents, Trademarks
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Typical Process of a Transaction

- NDA / Confidentiality Agreement
 - Initial Due Diligence
 - Letter of Intent (LOI) / Term Sheet
 - More Due Diligence
 - Definitive Agreement
 - Side Agreements such as employment agreement(s), non-compete agreements, lease agreement, etc.
 - Conditions to Closing
 - Consents (Lease Agreement, Subcontracts)
 - Closing
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3 Most Common Ways of Structuring an M&A Deal

- Stock Sale:
 - Buyer purchases selling shareholder's stock obtaining ownership of the selling entity.
 - Asset Sale:
 - Buyer purchases individual assets of the company while the seller maintains ownership of the entity.
 - Merger:
 - Various forms & flavors of company mergers utilizing both stock and assets with differing taxable and non-taxable results depending on the purpose & strategy of the merger.
 - Item of Note: The sale of Partnership/LLC member's interest can have components of both a "stock" (member's interest) sale and asset sale for Section 751 "hot assets"
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Stock Sale vs. Asset Sale

Stock Sale

- Sellers tend to prefer
 - Proceeds taxed at lower capital gain tax rates vs. ordinary rates
 - Limits seller's responsibility of future liabilities
- Buyer challenges of Stock Sale
 - Amounts paid for stock purchase are capital investments (time value)
 - More risk by purchasing stock including contingent risks / liabilities that may be unknown or undisclosed

Asset Sale

- Buyers tend to prefer
 - Amounts paid for assets eligible for depreciation / amortization
 - Current tax deductions & cash flow
 - Limits buyer's chances of inheriting potential liabilities.
- Seller challenges of Asset Sale
 - Proceeds received allocated to assets which can result in ordinary tax rates on certain assets & recapture items
 - Maintain corporate liabilities / risks

Proper Due Diligence Process is Essential

A critical step in the M&A process is understanding the implications of the transaction and how it can affect your company. As such, before a company decides which deal structure to move forward with, it should first conduct proper due diligence to analyze these considerations:

- Tax filings (or lack thereof) -Common SALT issue for omitted registrations & filings
 - Income Tax, Sales / Use / Local Tax, Improper Nexus Analysis – Statute never runs unless filed
- Entity elections & filings – S corp validity, LLC electing S corp, Change in entity status
- Personal Use of Auto considerations for company owned vehicles
- Target Net Working Capital, Escrow and Earn Out Provision Structuring (deal killer tease)
- Non compete agreements – both tax related and key employee acceptance
- Contingent liabilities and risk analysis for legal purposes
- Tax impact projections and analysis of after-tax proceeds to seller

Item of Note – Due diligence findings used for buyer leverage along with deal structure

Other Potential Tax Related Considerations for M&A Transaction

- If selling LLC / Partnership member's interest – Section 751 Hot Assets
 - Ordinary income tax treatment for Inventory, A/R, Depreciation Recapture
 - Cash basis taxpayers tax impact of Asset or Section 338(h)(10) sale
 - Transaction Costs – Expense vs. Capitalization Specific Rules
 - Bright Line Test, Safe Harbor Election, Facilitative (capitalize), Nonfacilitative (deduct)
 - Charitable considerations in year of sale
 - Gift of company stock before sale at FMV, Donor Advised Fund, Private Foundation
 - Planning of seller deductions and expenses to maximize tax benefit
 - Timing of bonus payments, professional fees, AL PTE tax payments; ESOP considerations
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Other Common Challenges and Deal Killers

- Seller's Representations and Warranties
 - Disclosure Schedules
 - Indemnification Provisions
 - Cap and Basket
 - Escrow
 - Representation and Warranty Insurance
 - Post-closing Employment
 - Earnouts & Financing
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QUESTIONS

THANK YOU

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