Ownership of real estate

Make sure the right entity owns the real estate. **Interviewed by Steve Trusty**

The business is growing and you are thinking about expanding. You have decided to buy property instead of leasing. What are some important considerations before you make any decisions on a real estate purchase?

"The first step, before you sign any purchase agreements, is to make sure that you are properly setting up the ownership," says Isabel H. Goldberg, a principal at Coral Gables-based Berenfeld, Spritzer, Shechter & Sheer, LLP. "This is equally important whether you are looking at property for your own business, the corporation you head or even buying commercial property strictly as an investment to lease to others. You need to sit down with your financial adviser and consider all of the ramifications."

Smart Business talked with Goldberg for more insight into considerations when buying property for commercial use.

Isabel H. Goldberg, CPA
Principal
Berenfeld, Spritzer, Shechter & Sheer, LLP

Why is the ownership entity so important?

There are benefits and risks, along with numerous tax consequences to owning real estate. There may be economic or liability reasons to have an entity separate from the core business hold the title to a property. In the event of a downturn, it may be harder to work things out if everything is under one ownership umbrella. In the case of a lawsuit, it might be best to have the real estate protected under separate ownership. You and your financial adviser need to look at all the potential scenarios and structure the ownership to best leverage the financial benefits.

What are some considerations from a tax standpoint?

Ownership of real estate through a corporation that has not elected S status results in double taxation when it is sold at a gain. Splitting ownership between family members, even husband and wife, can cut future estate taxes. Because foreigners are subject to a different estate tax, they may find it beneficial to own the property through a foreign company.

What are the main advantages for owning your real estate?

Appreciation is one potential advantage. More control and flexibility are other considerations. A potential tax advantage is that the depreciation deduction may exceed the amount of any lease payment. You can receive tax deductions even if you have a positive cash flow.

What are the key considerations in figuring depreciation?

There is a difference between residential and commercial property. If property is rented out for use as a residence, the depreciation is figured over 27.5 years. Generally, commercial property is depreciated over 39 years. Commercial property includes offices, stores, manufacturing facilities and warehouses.

When figuring deductibility, also keep in mind that land is not depreciated. An allocation needs to be made between the land and the structure. Certain things like new wiring or elevators can be deductible over a seven-year period for a larger deduction. If your property is valued at $750,000 or more, it may pay to have a cost segregation study done to make sure you are taking advantage of the best deductions possible. This is best done at the time you acquire property, but can be worthwhile even if you have owned the property for some time.

Are there sales tax and property tax liabilities of which an owner should be aware?

One issue from a legal and liability standpoint is that if you own property in one entity and rent to another entity, Florida law states that sales tax is still due on the rental. The sales tax burden is always born by the tenant. The landlord collects the sales tax and submits it to the state. There are also tax ramifications on insurance and property taxes and how they relate to sales tax. It is important to explore all of these with your tax adviser. This is even more important if you own commercial property as an investor. If your tenant leaves and the proper sales taxes were not paid, the state is going to get them from you, the owner.

Are there things to consider if I have to restructure my real estate debt?

A restructuring can make you liable for taxes. Don't wait until you prepare your tax return to determine that. Talk to your adviser at the same time you are working with the lender. If nothing else, you will know what the liability will be. In the best case, you might find ways to structure the transaction and minimize the liability. <<

ISABEL H. GOLDBERG, CPA, is a principal in the Fort Lauderdale, Fla., office of Berenfeld, Spritzer, Shechter & Sheer, LLP. Reach her at (954) 728-3751 or IGoldberg@bsss-cpa.com.