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Buying Assets or Stock:
What are the Differences?

Bruce Rosen
BRosen@RECDC.com
(202) 577-3552

Peter Pokorny
Peter@RECDC.com
(703) 850-9099

- **Introduction** – Someone buying a business has two options, buy the assets used in the business or the stock or ownership interest in the business. In this article we'll use the term "*stock*" or "*shares*" to mean the ownership interest of a business including membership interests, which are the ownership interest of a limited liability company or "*LLC*" for short.

  There are significant differences between buying a company's assets or the owner's stock shares. Some of the key issues are set out below.

ASSETS:

What is it? Assets are tangible and intangible property, and for a business may include inventory, tools, copyrights, contracts, bank accounts, owned real estate and leased real estate. An asset sale may involve all or only some of a company's assets.

When is it typically used? The majority of business sales are asset sales. As discussed below, there are several reasons for this. And a business may sell assets it no longer needs for operations.

Advantages:

- The buyer does not take on known or unknown liabilities (unless specifically agreed to).

STOCK:

What is it? Shares or membership interest show ownership of a legal entity (a corporation or LLC). An individual or another business may own all of the shares. Or there could be several owners. A stock sale may involve all or only some of the ownership interest in a company.

When is it typically used? Sale of all 100% of the shares of a business are typical in mergers. The sale of only some of the shares lets a business get new capital (*i.e.*, new investors).

Advantages:

- A sale of 100% of the stock means the business continues operating exactly as before.

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ASSETS:

Advantages (cont.):

- The buyer of assets gets a current (market) basis in the purchased assets for tax purposes.
- The buyer may negotiate to purchase some (but not all) of the assets of the business, thereby obtaining what it needs for a lower price than if it had to buy everything the business owned.

Disadvantages:

- The buyer must make sure it lists in detail every asset it wants to buy. The seller may arguably retain anything not listed.
- Certain assets, like contract rights and leases, often require a third-party's consent to transfer the rights to a new owner. Fees may also arise.

STOCK:

Advantages (cont.):

- The buyer of stock gets to purchase assets which may have a low basis without making the seller recognize gain on the assets. This may let the buyer negotiate a lower purchase price.
- Buying all the stock ownership of a business automatically includes all of the businesses' assets.

Disadvantages:

- A buyer of all the shares in a business will require a longer due diligence period and have the seller make more representations and warranties, since the buyer will take over all of the company's known and unknown liabilities and obligations.
- It is harder to value the shares of a company that is not publicly traded then the value of tangible assets.

- **Your Transaction** – The issues discussed in this article may not necessarily apply to your transaction, and your transaction may raise issues not addressed in this article. In all cases, we advise you to consult an experienced business broker and experienced attorney to make sure the issues for your transaction are properly addressed.

WWW.RECDC.COM
DC ◆ MD ◆ VA ◆ PA

DC: (202) 577-3352
MD: (240) 252-3386
PA: (484) 437-4097
VA: (703) 740-1766