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Business Entities Affect Taxes and M&A — How RIAs Weigh the Choice

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Mark T. Wilhelm

Mark Wilhelm, a partner with Troutman Pepper, was quoted in the September 20, 2024 *Financial Planning* article, “Business Entities Affect Taxes and M&A — How RIAs Weigh the Choice.”

The advisors whose breakaway moves from brokerages are driving the record volume of RIAs must “position themselves from the beginning for the most efficient way” to file as a business entity and “resist the urge to simply take a document that they found online or something that they’ve used before and use it again” to start a company, said Mark Wilhelm, a partner at the Troutman Pepper Hamilton Sanders law firm who works with RIAs. In some cases, advisors are more likely to fixate on retaining and building a client base or other aspects of opening an RIA.

“Any time that someone is starting a new business, they are really focused on the operations of their business,” Wilhelm said in an interview. “It’s not so exciting for an advisor to think about whether they themselves want to be formed as an LLC or corporation or how their entity is formed.”

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While the choice of business entity is “super-dependant” on individual factors, Wilhelm also said he would “suggest to any given person that forming as an LLC is probably the more efficient thing for them to do.” Since the parties structure most industry M&A deals as asset purchases, prospective RIA sellers ought to be considering the implications of their type of business entity in any transaction. The taxes paid by C-corporations as part of any M&A deal pose “a situation that owners should know about and be concerned about,” he noted.

“The buyer of that business is going to pay the company whatever the deal price is,” Wilhelm said, citing the example of a \$50 million transaction. “At that point the owner of the company wants the cash, because they want to get the \$50 million. It’s ultimately going to flow up to the owners. What the owners should be thinking about is, what’s the most tax-efficient way to get the money from the entity to themselves. ... If they have a c-corporation in particular, then that’s where that double taxation comes into play.”

Wilhelm compared the question of whether to file as a corporation or an LLC to that of a retirement saver weighing the merits of an individual retirement account against those of a company-sponsored 401(k) plan.

While it’s “not to say one is worse than the other,” but rather that “one provides a lot more flexibility” in the sense that 401(k) plan participants use the menu of investment options curated by their sponsor while IRA holders can

invest in “most anything,” Wilhelm said. Similarly, filing as a corporation carries requirements such as appointing a board of directors and company officers.

“There are a limited number of things that LLCs must do. It’s significantly smaller than corporations,” Wilhelm said. “It allows you to change it down the road much easier if you’d like to, because you’re not stuck with that big book of rules for corporations.”

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