35th Annual

Tax Symposium

LEVERAGING THE ACCOUNTANT'S EXPERTISE IN M&A TRANSACTIONS

David B. Deutsch, Esq. and

David H. Freedman, Esq.

Maddin Hauser

Attorneys and Counselors

Maddin, Hauser, Roth & Heller, P.C.

One Towne Square, Fifth Floor, Southfield, MI 48076

p (248) 354-4030 f (248) 354-1422 maddinhauser.com

TODAY'S ROADMAP

- The Accountant Helps Drive the Deal
- What the Accountant Brings to Due Diligence
- Working Capital and Purchase Price Adjustments
- Earnouts and Contingent Consideration
- Financial Representations, Warranties and Covenants
- New SBA Requirements (SOP 50 10 8.1)
- Post-Closing Work and True-Ups
- What to Take Back to Your Practice



THE ACCOUNTANT HELPS DRIVE THE DEAL

THE ACCOUNTANT SHAPES WHAT THE BUYER PAYS



Builds the purchase price



Sets the working capital peg



Prices in debt-like items



Sizes synergies and integration costs

THE ACCOUNTANT SHAPES HOW THE DEAL IS BUILT

- Assists in structuring the transaction
- Sizes escrows, holdbacks and caps
- Keeps the deal on schedule
- Supports lenders, including the new SBA requirements
- Defines earnout metrics
- Contributes to the letter of intent (LOI), definitive agreement, exhibits and disclosure schedules

WHAT THE ACCOUNTANT BRINGS TO DUE DILIGENCE

DILIGENCE: TESTING THE SELLER'S STORY

- Quality of earnings (QoE)
- EBITDA validation
- Proof of cash and balance sheet review
- Debt-like and off-balance-sheet items
- Employee benefit obligations
- Forecast stress test
- Prepare UIA Form 1027



WORKING CAPITAL AND PURCHASE PRICE ADJUSTMENTS

WORKING CAPITAL: GETTING THE NUMBER RIGHT

- **Purpose:** deliver a normal level of working capital
- **Peg:** the agreed target working capital
- **Process:** estimate, final statement, review
- **Hierarchy:** which accounting rules control
- **Closing estimates:** same basis as the peg



EARNOUTS AND CONTINGENT CONSIDERATION

EARNOUTS: PAY FOR PERFORMANCE, NOT LAWSUITS

- Bridges valuation gaps
- Metric choice: revenue vs. EBITDA
- Definitions and accounting policies
- Structure: periods, caps and thresholds
- Buyer operating covenants
- Ambiguous terms drive litigation



FINANCIAL REPRESENTATIONS, WARRANTIES AND COVENANTS

THE SELLER'S FINANCIAL PROMISES

- ☑ Financial statements
- ☑ Assets and records
- ☑ Tax
- ☑ Undisclosed liabilities
- ☑ Negative covenants

NEW SBA REQUIREMENTS (SOP 50 10 8.1)

NEW SBA RULES: WHAT CHANGES FOR CLIENTS

- Change-of-ownership loans
- Lender QoE at **$3M+**
- **1.25x** historical debt service coverage
- Debt capped at business valuation
- Seller-side and buyer-side impact
- Earnouts and standby notes



POST-CLOSING WORK AND TRUE-UPS

THE TRUE-UP AND THE DISPUTES THAT FOLLOW

- **Buyer side:** prepares the closing statement
- **Seller side:** reviews and challenges it
- **Deadlines:** a missed date can make it final
- **Dispute notices:** raise it or waive it
- **Battlegrounds:** reserves, inventory and cutoff
- **Prepare UIA Form 1772**

RUNNING EARNOUTS AND PROTECTING CLAIMS



Tracking
Calculate as you go



Dispute Forum
Independent accountant or court



Operations
Watch buyer decisions



Indemnification Claims
Notice, baskets and caps

WHAT TO TAKE BACK TO YOUR PRACTICE

WHERE YOU ADD THE MOST VALUE

- **Engage early (pre-LOI)**
- **Documentation:** workpapers win disputes
- **Post-closing:** calendar every deadline
- **Stay engaged through the earnout**
- **Relationships:** partner with counsel

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QUESTIONS

Submit questions for presenters

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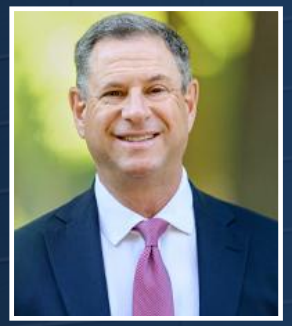
THANK YOU



David B. Deutsch, Esq.
Shareholder
(248) 208-0705 Phone & Fax
ddeutsch@maddinhauser.com



David H. Freedman, Esq.
Shareholder
(248) 351-7011 Phone & Fax
dfreedman@maddinhauser.com

Maddin Hauser
Attorneys and Counselors

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