

Small Business Sale Norms – The Asset Purchase Structure

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When considering the sale or acquisition of a small business, the structure of the deal plays a critical role in defining its tax treatment, liability exposure, ease of execution, and post-closing dynamics. While larger, more complex transactions often involve stock sales or mergers, the overwhelming majority of small business transactions are executed as asset purchases.

This article provides a comprehensive overview of the asset purchase structure—the most common framework used in small business sales—and explains why it continues to be the preferred model for buyers and sellers in the Main Street and lower middle market.

What is an Asset Purchase?

An asset purchase is a type of business acquisition in which the buyer acquires selected assets of the business, rather than taking ownership of the company itself (i.e., its corporate stock or membership interest).

In contrast to a stock purchase, where the buyer inherits the entire legal entity (including all liabilities, contracts, and tax history), an asset purchase allows the buyer to cherry-pick which assets to acquire and typically avoid assuming unwanted liabilities.

Advantages for Buyers

Clean Slate, Minimal Liability

Perhaps the most compelling benefit to the buyer is the ability to avoid historical liabilities. In an asset sale:

- The seller retains the business's legal entity, including any obligations, lawsuits, tax exposures, or unresolved disputes.
- The buyer steps into operations with a fresh legal structure, significantly reducing risk.

Customized Asset Selection

The buyer can selectively acquire assets that are relevant to the ongoing business—typically:

- Equipment and machinery
- Inventory
- Intellectual property (e.g., trade names, trademarks, proprietary processes)
- Customer databases
- Websites, social media accounts, and domain names
- Leasehold improvements

This flexibility allows the buyer to exclude obsolete, overvalued, or non-performing assets, optimizing the purchase price and future efficiency.

Potential Tax Benefits

Asset purchases may offer certain tax advantages, especially in relation to asset depreciation and amortization. However, the specifics of how these benefits apply to any given transaction can be complex and depend on various factors. Buyers should consult with a qualified tax professional to understand the potential tax impact based on the deal structure and asset allocation.

Norms and Considerations for Sellers

Exclusion of Cash and Receivables

In almost all small business asset sales, the seller retains all cash in the business bank accounts, as well as accounts receivable (A/R). These working capital components are generally excluded from the transaction, which means:

- Buyers must plan to inject working capital into their new entity to fund operations post-closing.
- This can be a point of friction in negotiations, particularly for buyers unfamiliar with business acquisitions, as the total investment exceeds just the purchase price.

While excluding working capital is the norm, some deals do include a negotiated level of A/R or cash to ease transition burdens.

Seller Pays Off All Debts and Liabilities

To deliver a clean asset sale, the seller is typically required to:

- Pay off all bank loans, credit lines, and credit cards
- Resolve outstanding obligations with vendors, landlords, and taxing authorities

- Remove liens or UCC filings associated with the business

These clean-up tasks are often managed during the escrow period and verified by the buyer and their legal counsel during due diligence.

Transfer of Intangible Assets

A major part of modern business value lies in intangible assets, and the asset purchase structure allows for their seamless transfer. These commonly include:

- The business or trade name
- Websites and digital assets
- Customer goodwill
- Licenses and permits (to the extent assignable)
- Vendor or supplier relationships

It's important to ensure a clear transfer of ownership for all brand assets and digital platforms. Buyers should verify domain name ownership, social media admin rights, and any licensing or IP registrations prior to closing.

Non-Compete and Transition Agreements

Non-Compete Clauses

To safeguard the buyer's investment and provide operational continuity, asset purchase agreements generally include:

- Prohibit the seller from starting or joining a competing business
- Enforceable within a defined geographic area and duration (typically 3–5 years)
- May also include non-solicitation provisions covering customers and employees

Transition Support

Most sellers agree to provide some level of transition assistance, which may include:

- Buyer training on systems and operations
- Customer introductions
- Help with vendor and landlord relationships

Transition periods range from a few weeks to several months, and are either included in the deal price or compensated separately.

Final Thoughts

The asset purchase structure is, by far, the most common and pragmatic approach to small business sales—offering a balance of risk mitigation, tax

efficiency, and operational simplicity. For buyers, it offers protection from legacy liabilities and the ability to start clean. For sellers, it allows for a straightforward exit strategy with clear delineation of responsibilities.

That said, no two deals are identical. Buyers and sellers should each assemble a qualified transaction team—including a business broker, M&A attorney, and CPA—to evaluate the structure, negotiate the terms, and ensure the deal supports their financial and strategic goals.