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Estate Planning Strategies / LLC

Plan Your Estate Around an LLC

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Estate planning should influence what type of business entity -- corporation, subchapter S corporation, general or limited partnership, or limited liability company (LLC) -- you choose. An LLC offers the dual advantages of limited liability for its owners (like a corporation) and pass-through income tax treatment (like a partnership). Because an LLC is a hybrid, it offers several unique estate planning benefits.

Facilitate Family Investments

You can facilitate family investments with an LLC because, as with general and limited partnerships, you can include family members. In addition, you can gift and bequeath LLC membership interests to family members.

If you properly structure and form an LLC in a state with restrictive laws regarding withdrawing members, interests in the LLC can enjoy the same discounts for minority interests and lack of marketability and control as partnership interests in closely held corporations do.

Effectively Use Trusts

Trust-centered estate planning has grown in popularity during the past few years because of its probate-avoidance advantages. If you are a closely held business owner considering a trust-centered estate plan, you need to evaluate whether a gift trust or a testamentary trust established for family members can own your business entity. You can use trusts as an ownership vehicle for an LLC just as for a partnership or C corporation. But with an S corporation, you should generally include special provisions in the trust agreement to designate it as a qualified subchapter S trust (QSST) or an electing small business trust.

When you die, a two-year or 60-day transfer rule on termination of the trust interest applies to your revocable- or living-trust-owned shares of stock in an S corporation. Thus, a successor trust must qualify to own the S stock or the company will lose its S status. These restrictions don't exist for LLC membership interests. Accordingly, an LLC enhances your ability to control a business interest in trust, to regulate income distributions and to pass business interests to other family members. (See "Postdeath Planning" above.)

Plan for Income Allocations

An LLC's inherent flexibility allows you to structure your estate plan to provide for a preferred cash flow or a shifting of income or appreciation. Unlike S corporations, LLCs can include multiple classes of ownership interests. An LLC interest may be subordinated, preferred, deferred or a shifting interest. But don't forget to consider the income-tax consequences.

Protect Your Assets With a Single-Member LLC

Most jurisdictions now allow single-member LLCs. At first, many states required two or more people to take part -- reasoning that a partnership can consist only of two or more people. While a partnership is not qualified to own S corporation stock, a single-member LLC can own S corporation shares if the LLC is disregarded as an entity under the check-the-box rules for federal income tax.

In this case, the single-member LLC is taxed like a proprietorship and the IRS treats the owner as the S corporation shareholder. Therefore, as long as the owner personally qualifies as an S shareholder, the LLC should be an eligible S shareholder. And though the IRS treats a single-member LLC like a sole proprietorship for income tax purposes, the LLC member still is entitled to limited liability. Thus, a single-member LLC can create an additional layer of liability protection -- much like a holding company.

Does an LLC Fit Into Your Estate Plan?

If an LLC makes sense from business, investment and income-tax standpoints, it may also dovetail nicely with your estate plan. After all, a single-member LLC can limit liability, protect personal assets and accomplish your estate planning objectives. If you have questions on using an LLC, please give us a call. We can explain how an LLC may fit into your estate plan. And for information on protecting your personal assets and limiting liability using a single-member LLC, please fax back page 6 for a complimentary copy of our Estate MiniPlanner, "Protecting Assets Through a Single-Member LLC."

Postdeath Planning

Often, an estate or revocable trust will receive assets on the owner's death, which may create a liability problem. These assets may include the direct ownership of a building or business, or a general partnership interest. To restrict any liability to the asset itself, and to protect other estate or trust assets, the personal representative, executor or trustee should consider forming a single-member LLC with that asset.

For example, assume a restaurateur dies while he's the restaurant's sole owner -- and the establishment passes to his estate. If the estate tries to form an S corporation, restrictions may limit shareholder eligibility and prevent the estate from implementing the restaurateur's estate plan. In this instance, a single-member LLC may afford liability protection and flexibility.