



ECHO HAWK  
& OLSEN

# FAMILY LIMITED ENTITIES

AND

OTHER USEFUL TIDBITS FOR THE ESTATE PLANNER

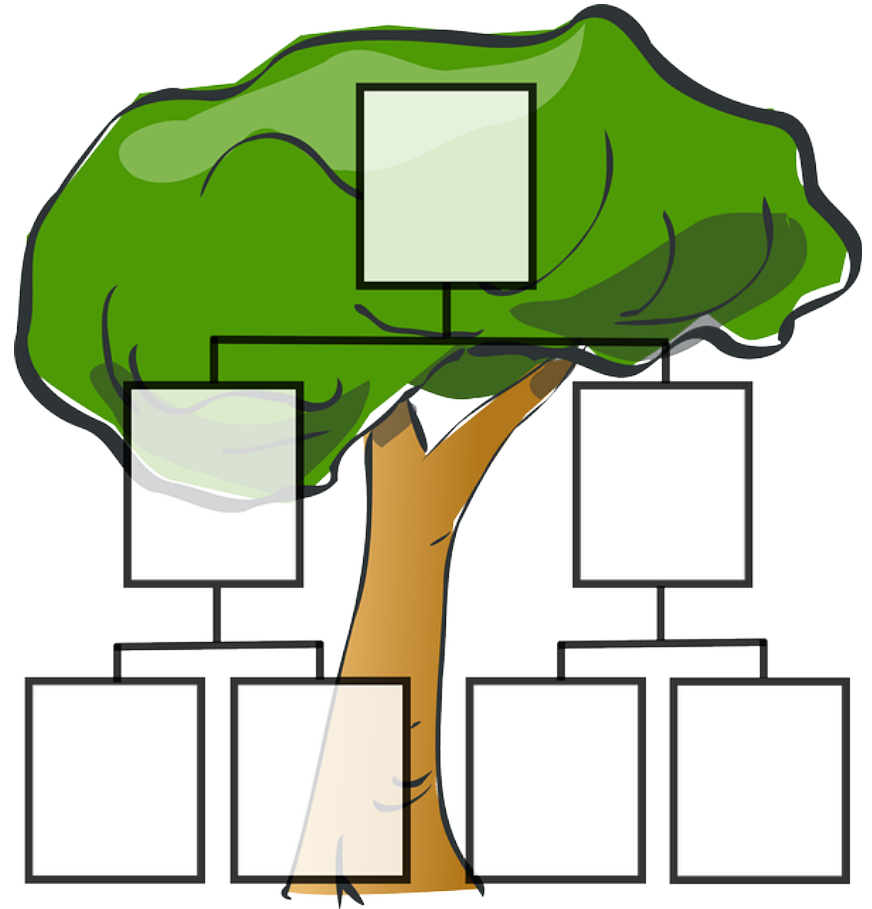
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# INTRODUCTION

- Family Limited Entities (FLP)
  - Used to centralize management of business and investment assets while achieving transfer tax savings, possibly income tax savings, and asset protection benefits.



# IDAHO UNIFORM BUSINESS ORGANIZATION CODE (UBOC)

- Effective July 1, 2015
- Integrated existing laws for consolidation purposes
- Combines business entities into Title 30

# SOME UBOC CHANGES

- Added Idaho Benefit Corporation Act, I.C. Sections 30-2001 through 30-2013.
- Amended LLC's standard of care back to Gross Negligence or Willful Misconduct from Reasonable Prudent Person
- Professional entities no longer need P.A., P.C., CHTD, PLLC, etc. in their names.
- Don't need an assumed business name if just dropping LLC, Inc., etc. from use of the name.
- Charging order on a sole member LLC. (30-25-503(f))

# IDAHO ENTITIES

- General Partnership/Limited Liability Partnership
- Limited Partnership/Limited Liability Limited Partnership
- Limited Liability Company
- Corporation/Benefit Corporation

# TAX TREATMENT OF ENTITIES



- Check the Box Regulations
  - Corporation/Association
    - Subchapter C
    - Subchapter S
  - Partnership (2+ members)
  - Disregarded entity
- Benefit of LLC is the possibility to elect as either disregarded entity, partnership, or corporation

# GENERAL PARTNERSHIP

- I.C. 30-23-101, et. seq.
- Possibility that partnership was formed whether intended to or not
- Partners share unlimited personal liability for the obligations of the partnership
- Owners are taxed only once
- Easy to convert Partnership into a LP, LLP, or LLLP



# LIMITED LIABILITY PARTNERSHIP

- I.C. 30-23-Part 9.
- General partnership where partners personal assets are generally shielded.
- Must file Statement of Qualification.
- Taxed like partnership





# LIMITED PARTNERSHIP

- I.C. 30-24-101, et. seq.
- LP must have 1+ general partners and 1+ limited partners
- Limited partners are normally not personally liable for the debts of the LP and can only lose the amounts they have invested into the partnership.



# LIMITED LIABILITY LIMITED PARTNERSHIP

- I.C. 30-24-101, et. seq.
- General partners as well as limited partners personal assets are generally shielded
- Check the box on the Idaho Secretary of State Certificate of Limited Partnership to elect as LLLP
- Our preferred Family Limited Entity of choice



# LIMITED LIABILITY COMPANY

- I.C. 30-25-101
- Characteristics of sole-proprietorship, partnership, and corporation
- Tax choice alternatives
- Generally members do not have personal liability for the acts of the LLC
- Creditor provisions more favorable than LLLPs



# CORPORATION

- I.C. 30-29-101, et. seq.
- Unless corporation is an S Corporation, corporation is subject to double taxation
- More formal governance structure
- Possible to have Benefit Corporation, I.C. 30-Chapter 20.



# FLP TAX ADVANTAGES



- By placing property into a FLP, it is possible to get property outside of the gross estate
- FLP provides valuation discounts
- Contingent upon giving up sufficient right of benefit and control

# ESTATE AND GIFT TAX PROVISIONS

- **26 U.S.C. Section 2036(a)** – Gross Estate shall include the value of all property to the extent the decedent has retained:
  - (1) the possession or enjoyment of, or the right to the income from the property, or
  - (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom

# WAYS TO AVOID 2036(a)

- Fund FLP with active management assets.
- Avoid immediate pre-mortem funding.
- Never commingle FLP assets with personal assets.
- No discretionary distributions.
- Have limited partners make payments for their partnership interest.
- Never have the FLP pay personal expenses.

# WAYS TO AVOID 2036(a) Continued

- Do not transfer personal use assets to the FLP.
- Use caution when Power of Attorney has been created to avoid potential pitfalls.
- Keep detailed recordkeeping.
- Make sure that the donor has adequate assets outside of the FLP to cover living expenses.



# VOTING RIGHTS – 26 U.S.C. 2036(b)

- The retention of the right to vote (directly or indirectly) shall be considered a retention of the enjoyment of transferred property.
- Section 2036(b) focuses on controlled corporations. So transfer of a voting stock to a FLP where transferor is also general partner implicates statute.
- Section 2036(b) could also be avoided by creating nonvoting stock.

# FLP VALUATION/DISCOUNTS



- Lack of Control Discount
- Marketability Discount
- Premiums
- Going Concern Value v. Liquidation Value
- Business Appraisals

# FILING GIFT TAX RETURN

- In order to close the statute of limitations on any gift, a gift tax return must be filed. Limitation closes within 3 years of filing.
- In order for the limitations to be triggered, you must provide adequate information to apprise the IRS of the nature of the transfer or gift.
- My practice is to advise clients to always file a gift tax return even if the gift might be fully covered by the annual gift tax exclusion.

# SPECIAL VALUATION RULES

## 26 U.S.C. Chapter 14

- 2701 – applies special valuation rules to certain transfers of interest in corporations and partnerships.
- 2702 – applies special valuation rules to certain transfers of interests in trusts.
- 2703 – disregards (for valuation purposes) certain options, restrictions, and agreements (including buy-sell agreements) for valuing certain interests in businesses and other property.
- 2704 treats the lapse of certain voting and liquidation rights as a taxable transfer and disregards certain restrictions on the right to liquidate.

# ANTICIPATED IRS REGULATIONS

- Section 2704(b) contemplates the enactment of regulations to restrict the valuation discounts claimed for such transfers.
- Chatter has been that new regulations will be forthcoming.
- Proposed regulations will likely be effective at their date, “Grandfathering” preexisting transfers of interest in family-owned entities.
- May want to consider taking advantage of the valuation discounts sooner rather than later.

# ANTICIPATED IRS REGULATIONS

- Speculated changes:
  - Limit the application of discounts applied for lack of control (minority interest) and lack of marketability
  - Apply only to passive entities
  - Add additional restrictions in addition to restrictions on liquidation

# MISCELLANEOUS USES FOR ENTITIES

- LLCs for holding Real Estate
- Asset Protection
- Junction Box for holding life insurance for multiple buy-sell arrangements

# QUESTIONS

