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THE FAMILY LIMITED PARTNERSHIP IT HAS ITS PLACE, BUT NOT ALWAYS

Introduction

Many people have heard of what is known as The Family Limited Partnership, otherwise known as the FLP. The amazing thing, the terms Family Limited Partnership and FLP do not appear in the Internal Revenue Code or any of the accompanying regulations. Quite simply, an FLP is a limited partnership or a Limited Liability Company (LLC) that is utilized largely in estate planning offering some benefits to the users, with some substantial downsides.

Nuts and Bolts

An FLP allows the general partner to fund the device, transfer value to heirs, keep general control over the assets, and utilize various other strategies to reduce gift and estate taxes. In practice, an FLP is similar to a trust in so far as assets are transferred for the current and future benefit of another while allowing the grantor/general partner to keep control over the assets. The FLP differs from a trust in that it provides for additional tax and nontax advantages while offering potential unlimited life and can keep operating after the grantor's/general partner's death. While the trust still has a well established place in estate planning, the FLPs niche in estate planning is a little less established, but not devoid of advantages.

The Limited Partnership (the LP portion of FLP) is a legitimate business entity set up under state statute. Legally, the General Partner is potentially liable for all the debts and claims against the entity to the extent of the business assets in the LP and personally held assets. The Limited Partners, on the other hand, are not subject to personal liability and are only liable for debts and claims to the extent of their investment in the FLP. The General Partner's liability can be largely absolved by having the general partner shares owned through an S Corporation or a Limited Liability Company.

Benefits

While the tax benefits of the FLP are substantial, the non tax benefits cannot be overlooked. Not only are the nontax benefits important for the family business, making an effort to achieve the nontax benefits is important to gain the tax benefit advantages as well.

Consolidation of management is a benefit of the FLP structure. Instead of setting up separate trusts, separate bank accounts, and separate brokerage accounts, the FLP can use one central account. The consolidation also has the effect of reducing investment expenses and unifies the investment as well. Unifying the investment, in the manner of an FLP, also provides longevity to the investment insofar as the FLP can be operated post death by a family member to provide greatest return.

The FLP also provides the benefit of creditor protection. Assets involved in businesses, especially a closely-held business owned by a minority non-voting shareholder, are often not attractive to creditors or potential ex-spouses.

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