

OSHINS 11

ELEVEN ESTATE PLANNING “MYTHS”, “OPPORTUNITIES”,
“CONUNDRUMS” AND “UNINTENDED CONSEQUENCES”
ASSOCIATED WITH OUR MOST POPULAR PLANNING
TECHNIQUES

Orange County Estate Planning
Council
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THINKING OUTSIDE THE BOX

- FLPs/LLCs
 - ◇ A Panacea or Bain
- Trust Design Strategies
 - ◇ “Custom”
 - ◇ “One Size Fits All”
- Irrevocable Trusts
 - ◇ A Powerful Income Tax Shelter
 - ◇ Simpler Than Revocable Trusts
- Economic Substance – 10% Myth
 - ◇ SCOTUS v. Analogies
- CSTs v. Portability

OSHINS 11 - #1

FLPs and FLLCs THE LAW OF UNINTENDED CONSEQUENCES

The “Good”, The “Bad” and The “Ugly”

CLIENT’S PRIMARY GOALS*

- Transfer Tax Savings
- Retention of Control

*There are multiple ancillary benefits

THEORETICAL v. PRAGMATIC APPROACH

- ❑ Theory Often Espoused by Some Planners/Commentators
- ❑ “I Want to Give My Kids My Property; but I Don’t Necessarily Want Them to Enjoy it.”

THEORY DISINGENUOUS

- ❑ What You Really Meant Was:
 - ◇ I Want to Save Taxes; and
 - ◇ I Don’t Want Them to Enjoy (or Control) the Property Now.

TRANSFER RESTRICTIONS

- ❑ During the Wealth Shifting Process
 - ◇ Enhanced Discounts
- ❑ From the Viewpoint of the Inheritors – Next Generation(s)
 - ◇ Those Restrictions are Very Real
 - ◇ Often Viewed as Reprehensible
 - ◇ Negative Impact on Beneficial Enjoyment

PRACTICE MANAGEMENT

- ❑ Review All FLPs / LLCs
 - ◇ Do Your Clients Know the Restrictions in the Agreement?
 - ◇ Do Their Children Know Them?
 - ◇ Do You (and Other Advisors) Know Them?

AT THE NEXT GENERATIONAL LEVEL

- Do You Want to be Partners with Your Siblings?
- Will Family Units Want to be Partners?

INHERITORS DO NOT WANT

- Shared Controls
- Same or Shared Investments
- Same Distribution Patterns
- Inefficient Income Tax Planning
- Same Advisors
- Additional Costs / Unnecessary Complexities
- Sibling Scrutiny

THE POTENTIAL HARM TO YOUR CLIENT'S FAMILIES

- Substantial
 - ◇ Tax
 - ◇ Family Harmony
 - ◇ Value of Inheritances Sharply Reduced

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FLPs AND LLCs TAX CONSIDERATIONS

TRANSFER TAXES

- Review the Redacted IRS Audit Request Handout
 - ◇ Principal IRS Attack is Under IRC §2036
 - ◇ Will Your Client's Entities Comply?
 - ◇ Will Clients Want to Go Through This Type of Audit?
- Advisor Caveats

ESTATE AND GIFT TAX DISPARITIES

- Estate Tax
 - ◇ IRC §2036
 - ◇ IRC §2035 Adds 3 Years
- Gift Tax
 - ◇ There is No IRC §2536
 - ◇ IRC §2035(b) Exception

INCOME TAXES

- Carryover Basis
- Low/Negative Basis Depreciable Real Estate
 - ◇ No Viable Exit Strategy
 - ◇ IRC §1031 “Lock-in”
 - ◇ Reduced I/T Shelter – No Depreciation

WHAT DO CLIENTS BELIEVE THE EXIT STRATEGY IS?

- Family Entity Owns Appreciated Assets of Equal Value
 - ◇ Blackacre
 - ◇ Whiteacre
 - ◇ Publically Traded Stocks
- Three Children

**MANY CLIENTS ARE NOW
DISENCHANTED WITH FLPs
ANYWAY**

OSHINS 11 - #3

**IS THERE A “PERFECT TRUST”
DESIGN STRUCTURE?**

CLIENT'S PRINCIPAL OBJECTIVES*

- Reduce or Eliminate Taxes
- Creditor Protection
- Pass Wealth the "Right Way"

*Of course, there are other goals such as management if the beneficiaries are incapable, inactive, etc...

CONSEQUENCES OF NOT PLANNING PROPERLY

*"The old refrain, "All I want is a simple will," helps explain why so many people, **including many advisors who should know better**, so often overlook trusts when planning for the transfer of wealth as an inheritance within the family. In the rush to achieve simplicity, **such persons fail to realize the enormous, unnecessary and irretrievable loss of assets (to taxes, divorce, and creditors) that many families will suffer for failing to appreciate the protections that a trust can provide** when passing wealth from generation to generation. To quote from an excellent article on the subject, "trusts should be the vehicles of choice for all dispositions to individuals."*

* Ronald D. Aucutt, *Structuring Trust Arrangements for Flexibility*, 35 U. Miami Inst. Est. Plan., Ch. 9 (2001)

WISH LIST

- Control
- Use and Enjoyment
- Ability to Change
- Creditor and Divorce Protection
- Tax Savings
- Avoid Complexity

**SHOW "WISH" LIST
TO CLIENTS**

PROCESS

- Obtain All Components of the “Wish” List
- For Competent, Capable, Mature Beneficiaries
- For Others
 - ◇ Compress Controls or None at All
 - ◇ Adjust Guidance

IS THERE A SINGLE “BEST” TRUST DESIGN STRATEGY?

- Maximum Benefit Trust
 - ◇ Entitlements
 - ◇ Force-outs
- Fully Discretionary Trust
 - ◇ Requires an “Independent Trustee”
- Professional Trustee

MAXIMUM BENEFIT TRUST COMPONENTS

- Pay the Income Annually or More Frequently
- HEMS
- Power to Withdraw Greater of 5% or \$5,000
- Staggered Distributions
- Beneficiary Can Be Sole Trustee

DISCRETIONARY TRUST COMPONENTS

- Fully Discretionary
- Dynastic
- Beneficiary-Controlled (at Proper Time(s))
- "Use" Concept
- Amendable - Broad SPAs – "Re-Write Powers"
- Favorable Situs
- Requires an Independent Trustee

TRADITIONAL “MAXIMUM BENEFIT TRUST” PROCESS

- Give Menu of Available Options
- Client (With Guidance) Selects Options
- Law of Unintended Consequences
 - ◇ More is Not Always Better
- Informed Client
 - ◇ Does Client Really Understand Full Impact of Choices?

“PERFECT TRUST” DESIGN PROCESS REVERSE ENGINEERING

- Start With the “Wish” List
 - ◇ How Do We Obtain All Components
- Trust Design Always Preserves Protections and Simplicity
- May Make Minimal, But Meaningful Alterations Based on Inheritor’s Profile
 - ◇ Adjust Controls and Guidance

MAXIMUM BENEFIT TRUST

TAX AND CREDITOR SHELTER INEFFICIENCIES AND FLAWS

Violates “Wish” List

PAYS OUT INCOME AT LEAST ANNUALLY

- ❑ Force-outs Terminate “In-Trust” Shelters
 - ◇ Transfer Tax Inefficient – Leakage
 - ◇ Income Tax Inefficient
 - ◇ Creditor Exposed

ASCERTAINABLE STANDARD “HEMS”*

- “Support Trust” Issue**
- Relies on Spendthrift Trust Provision
- Exception Creditors
 - ◇ Statutorily Created – See Restatement 2nd
 - ◇ Judicially Created – Bacardi v. White, 463 So. 2d 218 (Fla. 1985); Garretson v. Garretson (306 A. 2d 737 (Dela. 1973))
- Contempt Concern

* Some State Statutes Protect HEMS Trusts; Will That Be Respected By Judges In Other Jurisdictions If There Is No Other Contacts With The Governing Law States?

**Steven J. Oshins, Asset Protection Other Than Self-Settled Trusts: Beneficiary Controlled Trusts, FLPs, LLCs, Retirement Plans and Other Creditor Protection Strategies; The 39th Annual Heckerling Institute on Estate Planning, University of Miami School of Law, June 2005.

LAPSING POWER TO WITHDRAW “5% OR \$5,000” ANNUALLY

- Estate Tax Exposure
- Creditor Protection Adversely Impacted
- Income Tax Inefficient PLR 9034004
- Administrative Nightmare
 - ◇ Expense
 - ◇ Added Complexities

DISTRIBUTES ASSETS AT SPECIFIED AGES

- Force-outs Terminate “In Trust” Shelters
- At What Age Do You Distribute From a By-Pass Trust?
- Multiple “Bite of the Apple” Alternative
 - ◇ Distribute to a BCT

THE ANATOMY OF THE PERFECT TRUST

Component Analysis

1. Fred Keydel and Harvey Wallace; Design Strategies for Dynasty Trusts; ACTEC March 6, 1999
2. Ronald D. Aucutt, *Structuring Trust Arrangements for Flexibility*, 35 U. Miami Inst. Est. Plan., Ch. 9 (2001)
3. T. Calleton, N. McBryde and R. Oshins, *Building Flexibility and Control Into The Estate Plan— Drafting From The Recipient’s Viewpoint*, NYU 61st Institute on Federal Taxation
4. Richard A. Oshins and Steven G. Siegel, The Anatomy of the Perfect Modern Trust – Parts 1 & 2, Estate Planning (Jan and Feb 2016)

THE PERFECT TRUST PHILOSOPHY

- “Own Nothing; But Control Everything”*
- Satisfies All Components of the “Wish” List
- Legal Title Creates Exposure to Predators and the Taxing Authorities

*Quote attributable to John D. Rockefeller

THE PERFECT TRUST

Dynastic; Discretionary (with distribution discretion in the hands of an Independent Party who can be fired and replaced); **Beneficiary Controlled Trust** (unless (i) controls are undesirable or (ii) impermissible under law to avoid the taxing authorities and other claimants); **where the use of trust assets rather than distributions are encouraged** (unless distributions are beneficial or desirable); **situed** in a trust-friendly jurisdiction.

MORE IS NOT ALWAYS BETTER

COMMON COMPONENTS

- Do These Help?
 - ◇ Pay Out Income at Least Annually
 - ◇ Ascertainable Standard (“HEMS”)
 - ◇ Lapsing “5 or 5” Power
- If They Do Not Improve the Trust Then Why Use Them?

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THE “USE” TRUST

“USE” TRUST KEY CONCEPTS*

- Keep “Legal Title” In Trust Wrapper
- Just “Use” Trust Assets
- Available to All Beneficiaries
 - ◇ To Primary Beneficiary on a Preferential Basis

* See Richard A. Oshins, Megatrusters™; Representation Without Taxation; NYU 48th Inst. On Federal Taxation, Ch 19 (1990); §19.02

RESULT ALL COMPONENTS OF "WISH" LIST

- Full
 - ◇ Control
 - ◇ Use and Enjoyment
- Full
 - ◇ Shelter
- Avoids Complexity

"USE" TRUST EQUALS SIMPLICITY

- Similar to a Revocable Trust
- Except
 - ◇ No Gratuitous Transfers
 - ◇ Income Tax Return for Non-Grantor Trust

HOW SIMPLE IS THE “USE” TRUST?

- ❑ Simpler than Outright
 - ◇ Long Term
- ❑ What is Complex?

DISTRIBUTIONS ARE PERMISSIBLE, BUT DISCOURAGED

- ❑ Unless there is a Compelling Reason to Make Them
 - ◇ Distributions are Needed
 - ◇ Wanted
 - ◇ Makes Sense
- ❑ Separate the Fruit From the Tree

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TRUSTS AS THE QUINTESSENTIAL INCOME TAX SHELTER

TRUSTS OFFER SUBSTANTIAL INCOME TAX
PLANNING OPPORTUNITIES NOT AVAILABLE
WITH OUTRIGHT TRANSFERS

- ❑ Rethinking Trusts as an Income Tax Sheltering Strategy
 - ◇ Misperception – Because of Compressed Trust Income Tax Brackets Trusts Are Inefficient
- ❑ Virtues
 - ◇ Sprinkling to Low Brackets
 - ◇ State Income Tax Avoidance Opportunities
 - ◇ Basis Planning

BASICS

- ❑ Sprinkling
 - ◇ Bracket Leveling
 - ◇ 65-Day Rule
- ❑ State Income Taxes
 - ◇ Compounding – The 8th Wonder of the World*

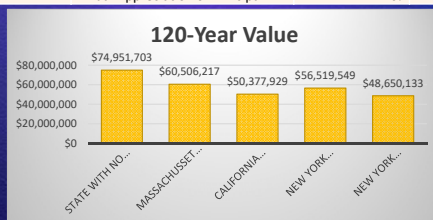
*Power of Compounding Attributed to Albert Einstein

COMPARISON OF PAYING STATE INCOME TAXES AND NOT PAYING THE OVER TIME

Impact of State Income Tax on Dynasty Trusts

This model compares the impact of state income tax for a dynasty trust over the period of 120 years. The hypothetical trust has one group of stock that pays annual dividends at a constant rate (x% of principal). The stock's value grows by y% per year. We assume that all dividends, after tax, are reinvested in the same stock. All income is in the form of dividends, so it is taxed as ordinary income. We compare the ultimate impact of the state income tax by comparing the value of the trust assets depending on whether the trust is situated in New York (outside New York City and within New York City), California, Massachusetts, or in a state that does not impose an income tax. The income tax rates are based on 2014 state rates, updated for 2015 when available, and 2015 Federal income tax rates.

Trust Principal	\$1,000,000
Annual Dividends	6%
Annual Appreciation of Principal	0%



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ADVANCED PLANNING USING TRUSTS ESPECIALLY GRANTOR TRUSTS

- Basis Bump Planning – Upstream and Lateral
- Monitoring Grantor Trusts
- Downstream Planning
- Tax Burn Planning

REVERSE AND LATERAL PLANNING USING GPAs* - RULES

- IRC §2041 Inclusion
- IRC §1014 Basis of Property Acquired From a Descendent
- Previously Transferred Assets
 - ◇ Carryover Basis

*Alternative - Delaware Tax Trap

BASIS BUMP PLANNING

- Many People Will Die With Unused AEA
- Expand List of Permissible Distributees of Trusts
 - ◇ E.g., Parents, G/Ps; In-laws; Siblings...
- Most Clients Will Want to Help Needy Parents/In-laws
- Distribution Standards Can Vary
 - ◇ Preferential Beneficiaries – Happiness
 - ◇ Secondary - Need

INDEPENDENT TRUSTEE OR TRUST PROTECTOR CAN GIVE, TAKE AWAY AND DESIGN GPAs

- Formula GPA
- Ordering of Best Assets – e.g., -
 - ◇ Low Basis/Negative Basis Depreciable Commercial Real Estate
 - ◇ Capital Gain Assets
- Ordering of Specific Assets

PREVENTING EXERCISE OF GPAs

- Can Require Prior Notice of Exercise –
Treas. Reg. §20.2041-3(b)
- Can Require Consent of a Non-Adverse Party –
IRC §2041(b)(1)(c)(2)
- Beneficiary Does Not Have to Know of Existence of
the Power – *Estate of James C. Freeman*

ILLUSTRATION:

- Client Doctor/Business Owner Owns Office Building
- Beneficiary Grantor Trust – IRC §678
- FMV \$5 Million – Basis \$1 Million
- Parents, In-laws, Spouse Are Also Beneficiaries of Trust
- All (5) Pre-decease Client

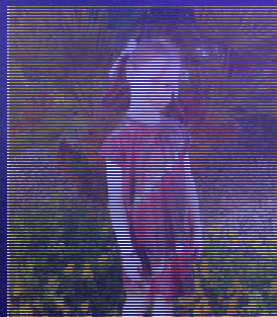
Query- What is the Value of the Multiple Basis Step-ups?

EXCHANGES WITH GRANTOR TRUSTS BY “OWNER” OF TRUST INCOME

- Rev. Rul. 85-13
- Trust Owns Low/Negative Basis Assets
- Client Owns Assets – FMV Less Than Basis
- Exchange
 - ◇ Step-up For Decedent
 - ◇ Preservation of Basis Transferred to Trust

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CASCADING BDITS



3.1.1 Discretionary Distributions of Income and/or Principal. The Independent Trustee, in its sole, absolute and unreviewable discretion, shall have the power, the exercise of which shall be absolutely binding on all persons interested now or in the future in this trust, to distribute to or apply for the benefit, enjoyment or use of any one or more of the following permissible distributees:

- A. The primary beneficiary,
- B. The spouse of the primary beneficiary,
- C. The descendants of the primary beneficiary who are then living (even though not now living),
- D. Any then living spouse of any such descendant who is then deceased (provided such spouse was living with such descendant at the time of such descendant's death or was unable to do so for reasons of health), and/or
- E. Any trust for the primary benefit of any one or more of the above-described permissible distributees (even one created by the Independent Trustee hereunder), whether now existing or hereafter created, except...

so much of the income or principal, or both, of the trust estate, in equal or unequal proportions, and at such time or times as such Independent Trustees shall deem appropriate for such beneficiaries' benefit, care, comfort, enjoyment or for any other purposes, after taking into consideration their income or other resources...

STRATEGY

- Independent Trustee Sets Up BDITs
 - ◇ For Spencer's New Business
 - ◇ For Katie's Existing Business
- Sharing Not Desirable
 - ◇ Controls
 - ◇ Fruits of Sweat Equity

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HOW TO ENERGIZE AND INVIGORATE CLIENTS

CLIENT OWNS SOLE PROPRIETORSHIP PROCESS

- Entity for Creditor Protection
- Tax Consequences Control Entity Selection

IT HELPS TO EVALUATE THE ESTATE PLANNING PROCESS IN THE CONTEXT OF A BUSINESS DECISION

- Would You Ever Recommend a Business Entity That Could Be Pierced By Creditors?
- Would you Ever Recommend a Business Entity That Would Be Subjected to Unnecessary Taxes?
- Why Would a Client Want and/or an Advisor Suggest (or Summarily Accept) Wealth Transfers That Unnecessarily Expose Wealth to Claimants and the Taxing Authorities?

COMMON GOALS

- Business Entity
 - ◇ Creditor Protection
 - ◇ Tax Avoidance
- Estate Planning
 - ◇ Creditor Protection
 - ◇ Tax Avoidance

ADVISOR'S ATTITUDES BUSINESS PLANNING v. ESTATE PLANNING

- In Business Planning - Advisors Never Would Summarily Accept a Client's Pushback Regarding the Implementation of an Entity
- Why Does a Passive Attitude Occur With Regularity in the Context of Trust Planning?

CLIENT CAN GIVE CHILDREN A "GIFT" THAT THEY CANNOT CREATE FOR THEMSELVES

- The Trust "Wrapper"
 - ◇ Valuable "Gift" Your Client Can Give to Their Children
 - ◇ Control, Shelter, Simplicity
- Clients Relate to Income Tax Sheltering
- Law of "Unintended Consequences"
- Appreciation and Respect Given to Asset Inherited in Trust

OSHINS 11 - #8

ECONOMIC SUBSTANCE AND THE “10%” MYTH*

*See “The Reality of Sale and the 10% Funding Method” Originally published in the TM Estates, Gift & Trust Journal, Jerome M. Hesch; Elizabeth Carrott Minnigh; and Richard A. Oshins, 42 Tax Mgmt. Est., Gifts & Tr. J. (Jan./Feb. 2017); **Note Sales, Economic Substance and “The 10% Myth”**- Jerry Hesch, Dick Oshins and Jim Magner- LISI Estate Planning Newsletter #2412 (May 9, 2016) at <http://www.leimbergservices.com> © 2016 Leimberg Information Services, Inc. (LISI). Reproduction in Any Form or Forwarding to Any Person Prohibited – Without Express Permission; “*The Reality of Sale Conundrum*”, Jerome M. Hesch, NAEPC 51st Annual Conference, Nov. 7, 2014; *Risk, Ownership, Equity: 2011 Erwin N. Griswold Lecture*, Charles I. Kingson, Tax Lawyer, Vol. 64, No.3 (http://www.americanbar.org/content/dam/aba/publishing/tax_lawyer/ttl-spr11-02-Kingson.authcheckdam.pdf)

THE 10% RULE OF THUMB

- Theoretical Safety Net
- Ratio 9:1
- Based on Analogies
- Not Cases, Rulings or Administrative Analysis

IF THE SUPREME COURT
DOES NOT BELIEVE IN THE
10% SEEDING GIFT, WHY
SHOULD YOU?



SOCTUS “REALITY OF SALE”
CRUCIAL QUESTION

“Based on all of the facts, can it be reasonably expected that the purchaser will be able to meet its financial obligations on the promissory note?”

IS IT REASONABLE TO ASSUME THAT THE NOTE WILL BE PAID IN ACCORDANCE WITH ITS TERMS?

- That is What Occurs in the Real World
- Comports With Academia
- Follows the Judicial Analysis of the Income Tax Cases Including Several SCOTUS (and Other) Cases
- Makes Economic Sense
- Makes Common Sense

ECONOMIC REALITY

With respect to the issue of economic substance, any IRS attack would have "...to deal with the four Supreme Court cases...*Clay Brown, Frank Lyon, Consumer Life, and Cottage Savings*. Each upholds a transaction with no nontax motive, no nontax economic effect, and no nontax profit."*
(Citations omitted)

* Kingson, p. 642

SCOTUS CONCLUSIONS*

- Sale for a Note Payable Solely Out Of Earnings - Respected
- Risk Shifting – Not Essential
- Tax Consequences Are Meaningful
 - ◇ Factor Considered in Real World Transactions
 - ◇ Tax Benefits Increase the Economic Result

*Quotes in slides that follow are from *Comm'r v. Clay Brown et. al.*, 380 U.S. 563 (1965)

NOTE PAYABLE SOLELY OUT OF EARNINGS

“To require a sale for tax purposes to be a financially responsible buyer who undertakes to pay the purchase price from sources other than the earnings of the assets sold or to make a substantial down payment seems at odds with commercial practice and common understanding of what constitutes a sale.”* (Emphasis Supplied)

**Clay Brown*, Justice White, Majority Opinion

RISK SHIFTING

“...[R]isk-shifting of the kind insisted on by the Commissioner has not heretofore been considered an essential ingredient of a sale for tax purposes.”*

(Emphasis Supplied)

*Clay Brown, Justice White, Majority Opinion

TAX CONSEQUENCES MATTER – MAJORITY OPINION

“...[T]he Commissioner, however, ignores as well the fact that if the rents payable by *Fortuna* were deductible by it and not taxable to the Institute, the Institute could pay off the purchase price at a considerably faster rate than the ordinary corporate buyer subject to income taxes, a matter of considerable importance to a seller who wants the balance of his purchase price paid as rapidly as he can get it.”* (Emphasis Supplied)

*Clay Brown, Justice White, Majority Opinion

TAX CONSEQUENCES MATTER – CONCURRING OPINION

“Were it not for the tax laws, the respondent’s transaction with the (Institute) would not make sense, except as one arising from a charitable purpose. However, the tax laws exist as an economic reality in the businessman’s world, much like the existence of a competitor. Businessmen plan their affairs around both, and a tax dollar is just as real as one derived from another source.”* (Emphasis Supplied)

**Clay Brown, Justice Harlan, Concurring Opinion*

ECONOMIC REALITY IN THE REAL WORLD - COMPARE

- A Taxable Sale of a \$6 Million Business
 - ◇ Buyer Who Must Pay 40% Income Tax on Earnings
- A Tax-free Buyer
 - ◇ Charity
 - ◇ Grantor Trust

GUARANTEES AS “SEED” MONEY

- Guarantor With the Economic Wherewithal to Pay if Called
- Must be Paid if Business Implodes
- Need Not be for Full Amount of the Note
- Complies With Community Standards

OSHINS 11 - #9

THE “DOUBLE LLC”

* See Richard Oshins and David Handler, “Estate Planning with Disregarded Entities”

CONCEPT DESIGNED TO MEET THE 10% RULE OF THUMB - FACTS

- ❑ IDGT is “Seeded” With \$1 Million
- ❑ LLC #1 has \$15 Million of Assets
- ❑ LLC #2 has \$225 Million of Assets
- ❑ Permissible Discounts – 40%

EACH LLC IS A “DISREGARDED ENTITY”

- ❑ A Disregarded Entity is a Single Owner Entity for Income Tax Purposes IRC § 7701
 - ◇ For I/T Purposes it Does Not Exist
- ❑ Rev. Rul. 2004-77
 - ◇ A DE Can be Owned by Two Owners Such as an Individual and a Grantor Trust

TRANCHE #1

- ❑ Client Sells 99% Non-Controlling Interest in LLC #1 to IDGT
- ❑ Sales Price Just Under \$9 Million
 - ◇ 40% Discount
- ❑ Purchase Price Does Not Exceed 10% Rule of Thumb

TRANCHE #2

- ❑ Client Sells 99% Non-Controlling Interest in LLC #2 to LLC #1
- ❑ Sales Price Just Under \$135 Million
 - ◇ 40% Discount
- ❑ LLC #1 is Worth \$15 Million and Does Not Have Debt
- ❑ The 9:1 Ratio is Honored

DOES IT WORK?

- Vote
 - ◇ Yes or No
 - ◇ Voting “It’s Risky” is Not Permissible
- Technically it Works
- Bulls, Bears and Pigs
 - ◇ Don’t Get Slaughtered

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TENANTS IN COMMON

FACTS

- Wealthy Clients Have Children Who Need Financial Help
- Parents Own a Home That the Child Lives In Rent-free
- Is the "Use" of the Home a Gift Subject to Ch.12?

"NOW YOU SEE IT; NOW YOU DON'T"

- Transfer Some Ownership to Child as a Tenant in Common
- Rights of Co-tenants
 - ◇ Each Co-tenant is Entitled to Possession of the Entire Property
 - ◇ The Co-tenant Who is in Possession Does Not Have to Pay Rent

OSHINS 11 – #11

SPOUSAL PLANNING

CREDIT SHELTER TRUSTS GENERALLY TRUMP PORTABILITY

CLIENT DIES AND TRANSFERS UNUSED AEA TO CREDIT SHELTER TRUST DURING SPOUSE'S LIFETIME

- Consider Upstream and Lateral Planning
 - ◇ Add Parents; In-laws; Siblings; etc...to List of Potential recipients of Credit Shelter Trust
- GPAs of Others Potentially improve the Value of Spouse's Inheritance
 - ◇ A Benefit Without a Cost
- Most Clients Will Want to Help Needy Parents
 - ◇ Different Distribution Standards Permissible

DURING SPOUSE'S LIFETIME con't.

- Income Tax Benefits
 - ◇ Sprinkling
 - ◇ State Income Tax Avoidance
- Creditor Protection
- Forms Spouse's Pre-nup
- Can Enable Descendants to Participate Immediately

AT AND AFTER SPOUSE'S DEATH

- Appreciation Protected From Spouse's E/T
- GST Tax Efficient
- Ability to Control Identity of Remainder Beneficiaries
 - ◇ Similar Philosophy as a QTIP
- Do Not Lose Exemption as a Result of Remarriage
- Actually CST Less Complex Than Portability

BASIS BUMP PLANNING FOR NEXT GENERATION

- ❑ I/T OR T/P Can Give Spouse a GPA to Improve Children's Inheritances
- ❑ GPA Allocated to Selected Low Basis Assets
- ❑ Avoid Basis Step-down
- ❑ Results
 - ◇ Same Basis Benefits as Perceived Portability Virtue Without Negatives
 - ◇ Think of the Value Enhancement to Next Gen

IMPORTANCE OF SEPARATE BUSINESS ENTITIES

- ❑ Permits Segregation of Assets to Enable Better Planning
 - ◇ Tax
 - ◇ Creditor Protection
- ❑ Illustration – Building, or Equipment Leasing Entity v. Operating Entity
 - ◇ E.g., Physician's Equipment or Office Building Which is Leased to Professional Entity
 - ◇ At the Death of Each Parent, the Trust Can Obtain a New Basis
 - ◇ Expansion of Income Tax Sheltering

PRACTICE MANAGEMENT CONSIDERATIONS

- ❑ Basis Planning Should be an Integral Part of Trust Design
 - ◇ Upstream Planning Can Often Produce Dramatic Tax Benefits
 - ◇ Dynastic Trust Planning
 - Continue Basis Planning Downstream
 - Many Descendants Will Die With Unused AEA
- ❑ The Next Generation and Future Generations Will Be Receiving More Valuable Inheritances
- ❑ Consider Decanting to “Re-Write” Trusts