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Using a Business Entity to Reach Family Goals

By: Dana E. Bookbinder

Families who are looking to minimize exposure to estate tax or long term care bills through gifting assets have the opportunity to utilize business entities to accomplish their goals. Corporations, partnerships, and limited liability companies each receive different tax incentives and liability treatment for the owners or investors. Attorneys who assist clients in their choice of business or estate planning entity must weigh all facts relating to their clients' cases.

A Limited Liability Company (LLC), like a Family Limited Partnership (FLP), can be created for estate tax planning purposes. The advantage to these entities is that the interests in the company which are transferred from one LLC member to another can be discounted for IRS gift tax purposes. The discounts are based on the fact that the interest in the LLC cannot be sold on the open market and the individuals receiving the gifts usually lack management control. With the discount, parents can gift assets to children and base their gift tax liability on only a partial value of what had actually been transferred. By doing so, they remove assets from their estates for estate and gift tax purposes. Now, a smaller percentage of their estates will be subjected to estate tax when they eventually pass away, which will reduce the applicable tax rate and of course, the tax itself.

LLCs and Family Limited Partnerships should work not only for estate planning purposes but also for Medicaid eligibility purposes. For instance, if a parent places an asset into such an entity and then transfers much of his interest in the entity to his children, thus limiting his ability to withdraw or liquidate the asset, the asset should not be considered part of his estate for tax purposes or countable for Medicaid purposes. Of course, the transfers themselves are subject to a period of ineligibility for Medicaid as if the gift had gone directly from the parent to the child. Income from the assets placed into the investment vehicles, however, may be considered countable for Medicaid eligibility purposes. Also, the discounts which are applied for estate planning purposes to transfers of assets held in a business entity should technically apply for Medicaid

purposes. Finally, because the business instruments are not trusts, transfers into them should be subject to the three year lookback period rather than the five year lookback period which is imposed upon transfers into trusts for Medicaid purposes.

The legal advisor must consider all options when working with families who are planning to establish their own businesses or those who seek to protect assets from taxes or long term care expenses. In estate or asset protection planning, utilizing a business entity is just one of many options which can yield substantial savings for clients.



Begley & Bookbinder, P.C. is a law firm that concentrates on Estate & Tax Planning, Elder Law, Estate Administration, Guardianship and Will Contests, Real Estate, as well as Medicaid Planning. We are based in Moorestown, NJ, with offices in Stone Harbor, Lawrenceville & Philadelphia, PA.

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Our web site contains a library of firm newsletters, articles, on-line forms for Medicaid, Estate Planning and Guardianship, as well as our upcoming speaking engagements, our products, and other relevant information.

If you are interested in having an Elder Law Attorney from Begley & Bookbinder speak at an event, please contact Laura Dickens at (856) 787-4233.

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