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Texas



PRACTICE AREA: IC-DISCs, Series LLCs, Wills, Revocable/Irrevocable Trusts Medical Power of Attys etc, Oil/Gas Partnership Taxation; representation of taxpayers before the Internal Revenue Service. Private practice since 1985..

PROFESSIONAL EXPERIENCE: *Attorney at Law*, September 1986 to Present as Sole Practitioner Primarily involved with Federal income and estate tax matters for individuals, corporations and partnerships and also handling Corporate, Wills and Family Law matters; Expertise in private trust company and TEFRA litigation.

CERTIFIED PUBLIC ACCOUNTANT December, 1976, Individual, Corporate, Partnership and Estate/Trust Planning.

EDUCATION JD, South Texas College of Law, May 1984; Texas Bar 1985, Colorado Bar 1991; (Wyoming Bar 2002) MBA In Finance Ohio State University, June 1975; BS in Accounting University of Missouri, December 1972, (CPA Texas); N A S D Licensed Series 7 & 63; Insurance Group 1. (Inactive)

MEMBER: Texas, Colorado and Wyoming State Bars, USTax Court, Federal District Court, Southern District & Bankruptcy Court;

PRACTICE PROFILE

CURRENT ENDEAVORS: IC - DISCs, Series LLCs, Wills, Revocable/Irrevocable Trusts Medical Power of Attys etc, Oil/Gas Partnership Taxation; representation of taxpayers before the Internal Revenue Service.

INDIVIDUALS, COMPANIES, (Since 1985) Reporting To Client Companies, Individuals, Trust, Estates, etc., Compliance and Planning Matters Federal and State Income, Estate and Gift Tax Matters (Pro Series by Intuit); Representation Before the IRS on Examination and Adversarial Proceedings; Clients Predominately Oil/Gas Independent Drillers, Pipeline Companies and Individuals; Planning, Counsel in Probate Proceedings, and Preparation of Wills, Codicils, Trusts, etc.; Other Non-Criminal Legal Matters: Divorce, Incorporation, Partnership, LLC etc. Representation in State and Federal Courts, Bankruptcy Court, etc., Current Texas Gross Margin Tax

LAW FIRMS: (1) Tax Litigation Law Firm TEFRA (Since 1994). Four Attorneys; Preparing Refund Claims Initiating Adversarial Proceedings Against the IRS preparing Offers-In-Compromise, Financial Reporting Forms, etc., Various Research Topics, Usually Outside of TEFRA Procedural Matters; On Occasion Legal Procedural Matters in the Tax Court, Court of Federal Claims, District Courts;

(2) Estate, Gift and Wealth Planning Law Firm Two Attorneys; Preparing, Designing, Implementing and Supervising Execution of documents: Trusts, Wills, Power of Attorneys (Medical, Health Care, Directives, Agent to Control Remains, HIPPA) Deeds, etc. usually using proprietary software; Probating Wills, Advising clients on various financial matters, etc.

(3) ERISA Defense Law Firm Four Attorneys; Income Tax Compliance Representation of Attorney and Law Firm Before the IRS (Net Operating Loss Carryback, Failure to File/Pay Tax Penalties; Net Zero Interest Offset); Consulting on §409A Deferred Compensation Plan; Internal Accounting System Consulting Law Firm and Client Trust Accounts;

(Past Major Client-- Sold 2000) TRUST COMPANY: Reporting to President and Chairman of the Board; Design of Computerized Oil and Gas Trust Accounting System; Design of Tax Compliance Reporting System for Oil and Gas Trust Clients Implementation and Monitoring of Both Systems; Research and Consultation of Regarding Tax Compliance and Planning; Attorney Representing Trusts in Legal Matters Before Probate Courts.

PROFESSIONAL EXPERIENCE: *Attorney at Law*, September 1986 to Present as Sole Practitioner Primarily involved with Federal income and estate tax matters for individuals, corporations and partnerships and also handling Corporate, Wills and Family Law matters; Expertise in private trust company and TEFRA litigation.

CPA; Tax planning, compliance, and consulting with other members of the Firm regarding Oil & Gas taxation, Tax partnerships, Section 58(i), Estate, Gift, and Trust tax matters; International tax, Corporate restructuring, Net Operating Losses, Tax Benefit Rule, liquidations, mergers, consolidations, etc., also involved in many IRS examinations; Planning included top-heavy pension plans, Lotus, Symphony, Fastax, Dynatax and A-Plus systems. Harper & Pearson, CPAs. Tax research and compliance, dealing mainly with individuals, professional corporations and IRS examinations, international tax concerning FIRPTA and treaties, Subpart F, Netherland Antilles, etc. Client responsibility and functioned as consultant to staff regarding international, estate, gift and partnership tax matters; Alexander Grant & Co., CPAs. International tax matters relating to FIRPTA, Netherlands Antilles Corporations and tax treaties, in addition to other individual, corporate and partnership compliance matters; Pannel, Kerr, Forster & Co., CPAs. Conducting, reviewing and planning tax matters for a five-person tax staff. Practice involved tax compliance and research for corporations, partnerships, individuals and non-profit organizations. Coopers & Lybrand, CPAs; Arthur Young & Co., CPAs (St. Louis, Mo.) Audit and Tax Staff.

EDUCATION JD, South Texas College of Law, May 1984; Texas Bar 1985, Colorado Bar 1991; (Wyoming Bar 2002) MBA In Finance Ohio State University, June 1975; BS in Accounting University of Missouri, December 1972, CPA, Texas; NASD Licensed Series 7 & 63; Insurance Group 1. (Inactive)

ORGANIZATION Texas, Colorado and Wyoming State Bars, US Tax Court, Federal District Court, Southern District & Bankruptcy Court;

Reference Redding & Associates at 713-965-9244. Tom Redding, Sally Gladney or both. More on request.

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Notice: Pursuant to Treasury Circular 230 Regarding Use of Written Tax Advice: As required by United States Treasury Regulations, this communication is not intended or written or to be used, and cannot be used, by any person for the purpose of avoiding penalties that may be imposed under United States Federal tax laws.

Re: *IRS Says It Can't Satisfy Member's Tax Liability Out Of Single Member LLC Assets*

Dear,

In an effort to stay in touch, I'd like to send you a letter from time to time, to keep in touch, but also to learn what issues you are facing so that I too can be alerted to current issues. This helps me anticipate problems and I learn of them before my clients ask me about them. Thank you for your time, and if there is some issue you'd like me to address, please call me.

I. Single Member LLC Asset Protection.

A Debtor argued that the Bankruptcy Trustee acts merely for her creditors and is only entitled to a charging order against distributions made on account of her LLC member interest. However, the charging order exists to protect *other members of an LLC from having involuntarily to share governance responsibilities with someone they did not choose, or from having to accept a creditor of another member as a co-manager.* A charging order protects the autonomy of the original members, and their ability to manage their own enterprise. In a single-member entity, there are no non-debtor members to protect. The charging order limitation serves no purpose in a single member limited liability company, because there are no other parties' interests affected.

The Albright case illustrates the weakness of a single-member LLC as an asset protection device. If a person wishes to protect its assets from potential creditors in bankruptcy, it might be better to form a multi-member LLC. The Albright court indicated that it might have reached a different conclusion if the LLC in question had at least one other member. In re Albright, 291 B.R. 538 (Bankr. D. Colo. 2003).

II. IRS' Position.

Given Albright, one would assume the IRS would try to seize the assets of a single member LLC to satisfy a member's tax liability. Apparently not.

In CCA_2011032112062926 on 4/22/2011, a portion of a letter to a taxpayer...

“ ---, this is to confirm your opinion that the Service can't levy on the property of a disregarded LLC to satisfy the tax liability of the LLC's sole member. As you've noted the sole member has no ownership interest in LLC's property under local law and disregarding the LLC for federal tax purposes doesn't allow the Service to disregard the entity for purposes of collection.

A levy might be made for distributions by the LLC that are based on the sole member's interest in LLC; e.g., if the taxpayer is supporting himself from the net income of the LLC the lien attaching to taxpayer interest in LLC should allow the Service to issue a levy notice to LLC for the distributions of that income. Compare *United States v. Moskowitz, Passman & Edelman*, 603 F.3d 162 (2d Cir. 2010) (frequent and

regular partnership “draws” which are advances or loans on annual profits are subject to alien any (maybe levied as salary or wages).”

It will be interesting to see if this position is not modified.

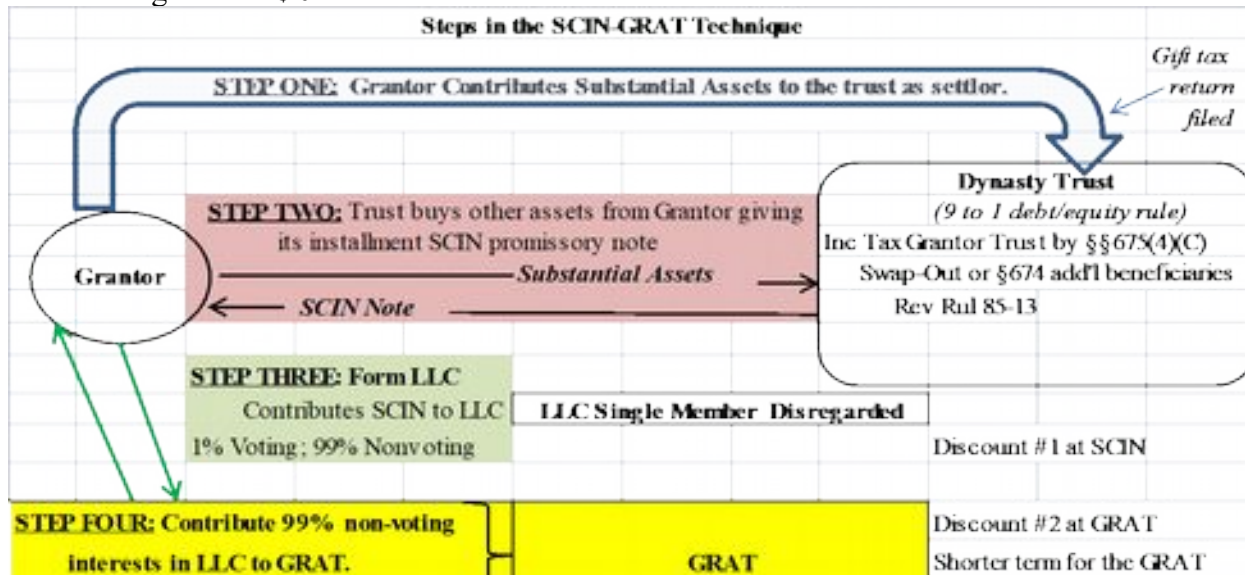
This letter contains only general information and is not, by means of this publication rendering accounting, business, financial, investment, legal, tax or other professional advice or services and is not a substitute for professional advice or services and should not be used as a basis for any decision.

Re: The SCIN-GRAT Technique, Especially Appropriate for Older Grantors.

This SCIN-GRAT uses two well known and documented techniques used to coordinate family gifting and tax efficiency.

The first is known as a Self Cancellling Installment Note, or “SCIN” for reference. It is an installment note with a provision stating that if the Seller dies before the end of the note, then the note is deemed paid in full and the buyer need no longer make payments. The buyer pays a premium for this feature, a result of a “bargained for consideration” negotiation.

The second is known as a Grantor Retained Annuity Trust, or “GRAT” for reference. Low interest rates at this time makes this technique attractive. The GRAT is an irrevocable trust into which a contribution of property is made by the Grantor, but the Grantor requires the trust pay to the Grantor an annuity until the end of a set term or the Grantor’s death, whichever comes first. There are many requirements. If the Grantor dies before the end of the term, the property is included in his taxable estate and little has been accomplished. Otherwise, the trust owns the property, usually distributed to the trust beneficiary, and nothing is included in the Grantor’s estate. Its attraction comes from the applicable federal interest rates the IRS uses for the computation of the gift which is now 3%. In a “ZEROED-OUT GRAT” the annuity rate is set so high the taxable gift is \$0.



STEP ONE: The Grantor forms a Dynasty Trust and contributes substantial assets, say closely held family company’s stock. The Trustee then purchases from the Grantor more of the stock, or some other asset, in exchange for a SCIN.

STEP TWO: The Grantor forms an LLC contributing the SCIN note as capital, and in exchange receiving back a 1% voting membership interest and a 99% non-voting interest.

STEP THREE: The Grantor forms a GRAT and contributes the 99% non-voting stock to it.

POSSIBLE SCENARIO #1: Grantor dies before either the GRAT or the SCIN terms end. *RESULT: The property is owned outright by the Dynasty Trust and no part of it is in the Grantor's taxable estate, although payments made and retained by the Grantor will be in the taxable estate.*

POSSIBLE SCENARIO #2: Grantor dies after the GRAT's term ends, but before the SCIN's term ends. *RESULT: The GRAT distributes property to the beneficiary, the 99% nonvoting interest in the LLC, which in turn owns the SCIN. The documents are written so that the GRAT terminates before the SCIN.*

POSSIBLE SCENARIO #3: Grantor dies after the GRAT's and the SCIN's term ends. *RESULT: The GRAT distributes its 99% nonvoting interest in the LLC to the beneficiary. The LLC has received the benefit of the SCIN. The Dynasty trust keeps the property it acquired from the Grantor and none of it is in the taxable estate of the Grantor.*

RE: NEW TEXAS LEGAL ENTITY; THE "SERIES" LLC

The State of Texas has created a novel and extraordinarily flexible type of entity called a "Series LLC". Seven other states currently have this entity namely, Delaware, Illinois, Iowa, Nevada, Oklahoma, Tennessee and Utah.

Briefly, a series LLC is an LLC whose company agreement establishes one or more LLC substructures called a "Series," each of which has a statutory "internal liability shield" that protects it from claims against other series and from claims against the LLC itself. The law provides that the "Parent" LLC, or called the "Host" LLC, will be protected from claims against each of the other series.¹ Each "Cell" associated with the series LLC is considered a separate entity, with its own separate assets and liabilities. It is unusual for a series LLC to be used in operating companies, including real estate development companies, but perhaps quite useful for managing many rental real estate properties.

Advantage. Many entities can be formed under an umbrella entity with only one filing with the Secretary of State of Texas. Thus, someone owning 30 separate rental real estate properties could establish a separate entity (the "Host") and then 30 "Cells," but pay only 1 filing fee with the Secretary of State instead of 30 separate fees, or a \$375.00 fee rather than \$11,250, not to mention the attorney fees. Each of the 30 entities would have its own separate assets and liabilities.

Advantage. Another advantage, is that each "Cell" can have different: (i) owner than the "Host", (ii) federal income tax elections; (iii) Employer Identification Number (or none at all); (iv) tax returns or be combined with the "Host" in one tax return, (v) different company agreements, (vi) different accounting methods...etc..

§101.602, Enforceability of Obligations and Expenses of Series Against Asset... The debts, liabilities, obligations and expenses incurred, contracted for, or otherwise existing with respect to a particular series shall be enforceable against the assets of that series only, and shall not be enforceable against the assets of the limited liability company generally or any other series... only if: (1) the records maintained for that particular series account for the assets associated with that series separately from the other assets of company or any of the series; (2) the company agreement contains a statement of the limitations, and (3) the company's certificate of formation contains a notice of these limitations.

§101.603, Asset of Series... Assets associated with the series may be held directly or indirectly including being held in the name of the series, in the name of the limited liability, through an nominee, or otherwise...

¹ Note that the word "owned" is not used, so what "associated" means is not defined. The law refers to assets being "associated with" a series rather than "owned" by it indicating that the law does not intend the series to actual entities within the normal meaning of business organization law.

if the records of the series are maintained in a manner so that the assets of the series can be reasonably identified by separate listing or other objectively determined methods.

A series limited liability company is formed by stating so on the certificate of formation. This "Host" or "Parent" or "Holding Company" among other terms, is the traditional business entity. The substructures, "Cells" are not formed by the Secretary of State and indeed the only paperwork filed with the Secretary of State is an assumed name certificate. The statute does require however separate company agreements for the Cells.

Of course, it is very unclear how the courts in other states will treat the entity or entities. Therefore, it is recommended that true operating companies not use this structure until the law becomes clearer. Nonetheless, the structure seems to be most adaptable to rental real estate where the assets and the liability, like a mortgage, are easily identified.

Be sure to contact your attorney on this technique.

Re: Reduce Risk by Segregating Assets in a New Entity
(And Not Triggering An Income Tax!)

The Problem: Often business owners want to segregate valuable assets from potential adverse liabilities generated in the operation of a business. For example, a bakery will likely own: (1) equipment used in its operations; (2) the factory building and (3) a fleet of delivery trucks and vehicles. If all of these are owned by the same company, then liabilities arising from an accident involving the trucks could result in the loss of the factory building to satisfy a judgment. This is true for any asset held by the company, especially if the company has been in business for many years and has accumulated other assets not directly involved in the baking operation. A better arrangement would be for the trucks to be in a new company and then lease them to the bakery, which is in the old corporation.

If property is transferred from the company, then the company would be treated as having sold the property triggering an income tax at the corporate level, and then the shareholders would pay another tax at their level, probably taxed as dividends.

A Solution: Assume that a new entity was formed to be the holding company parent, that is, holding all the stock of the old company, and then a second new company was formed, whose stock was also held by the new holding company parent, then the trucks could be held in the new subsidiary company while all the other old assets were retained in the old subsidiary company.

The IRS has ruled in a private letter ruling that this arrangement was "F" reorganization and there would be no income tax to any of the parties to the reorganization. The IRS's opinion stated that since the ownership has not changed, the business has not changed and the assets have not changed either, then nothing really happened, so the transaction is a tax-free reorganization.

This is a viable way to do some asset protection reorganizing at not a tax cost. There is some estate planning that can be done here as well. Some assets needing protection might be placed in an entity for different purposes, such as factoring of accounts receivable, buildings, equipment, marketable securities, etc., and more.

This letter contains only general information and is not, by means of this publication rendering accounting, business, financial, investment, legal, tax or other professional advice or services and is not a substitute for professional advice or services and should not be used as a basis for any decision.