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BREAKING NEWS:

New Legislation Authored and Passed by Steve Oshins Creating the "Restricted LLC" and "Restricted LP"

Steve Oshins is a nationally renowned estate planning and asset protection attorney based in Las Vegas, Nevada, with clients all over the United States. We are pleased to announce that Steve recently authored new legislation, signed into law by the Nevada Governor on May 29, 2009, that creates two new forms of business entities not available in any other state. The new entities are called Restricted Limited Liability Companies and Restricted Limited Partnerships. The law is effective October 1, 2009.

I recently interviewed Steve about this new law that opens up an incredible opportunity for estate planners.

Phil Kavesh: In order to put the specific benefit of Restricted LLCs and LPs into the proper context, please start by explaining valuation discounts in general.

Steve Oshins: When planning for a client with a taxable estate, the estate planner often creates an LLC or LP in order for the client to transfer non-voting, minority or limited partnership interests to trusts for the client's descendants while retaining the voting control. The transferred interest is subject to a valuation discount to reflect the interest's lack of voting control and to recognize that there is no ready market to easily sell the interest to a third party.

The valuation discount enables the client to transfer a significant amount of wealth out of his or her estate by leveraging the $1 million gift tax exemption. The transfers are generally made by gift or installment sale to an irrevocable trust for the transferor's descendants or spouse and descendants.

Phil Kavesh: How is the valuation discount determined?

Steve Oshins: The appraiser reviews the provisions in the operating agreement or limited partnership agreement to determine the restrictions that would determine the appropriate discount. However, any restrictions on liquidation that are more restrictive than the applicable state default law are disregarded for

ABOUT THE AUTHOR

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Steve Oshins, Esq. is an attorney at the Law Offices of Oshins & Associates, LLC in Las Vegas, Nevada. He is listed in the Best Lawyers in America and has been named one of the Top 100 Attorneys in Worth Magazine. He valuation purposes and the applicable state default law is substituted in place of any such provisions, thus reducing the valuation discount. This happens pursuant to IRC §2704(b) and the Treasury Regulations related thereto.

Phil Kavesh: What does the Restricted LLC and Restricted LP law that you wrote do to increase the valuation discount?

Steve Oshins: My idea was to raise the valuation discount ceiling by increasing the applicable state law restriction in order to create a much higher ceiling with which the estate planners can design their LLC and LPs. I did this by drafting a Nevada statute creating a lock-up of all of the entity's assets for a ten-year period.

Keep in mind that this only creates a default provision. The draftsman can instead choose to lock the assets up for five years, three years, one year or whatever other period of time the draftsman selects as long as it doesn't exceed ten years. Alternatively, the draftsman might choose to restrict distributions except for any income or except for a certain percent of the value of the underlying assets or of enough to pay the members' income tax liability or whatever other creative drafting decision suits the client's needs.

Phil Kavesh: How much larger are the valuation discounts that you can now get for your client using this new law?

Steve Oshins: This depends upon how restrictive the operating agreement or limited partnership agreement is drafted. If it fully utilizes the ten-year lock-up provision, the additional valuation discount is huge.

In order to have some real data, I posed some hypothetical scenarios to two different business valuation appraisers. In one of the hypothetical scenarios, my question was how much larger the valuation discount would be if the draftsman fully utilized the ten-year lock-up provision. One appraiser estimated a range of an additional 10% to 30%+. The other appraiser estimated a range of an additional 15% to 35%.

This is the ADDITIONAL discount, so if the valuation discount would have been 35%, then my new law would allow for a valuation discount of between 45% and 70%. Both appraisers specified that the actual additional discount would depend upon many factors including the underlying assets in the Restricted LLC or LP.

Phil Kavesh: Do you think other states will follow suit and enact similar Restricted LLC and Restricted LP statutes?

Steve Oshins: I expect certain, more proactive states to immediately move forward with Restricted LLC and LP statutes. They'll have to do so in order to stop Nevada from having a monopoly on all valuation discount transfers. It will be interesting to see how the other states react to this over the next few years.

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