



## Family Limited Partnerships: Under Attack And An Uncertain Future

The Family Limited Partnership (FLP) has become a common vehicle used by families to reduce the value of the older generation's estates for estate tax purposes. Practically, the older generation creates a FLP by first creating a limited partnership and contributing to it various assets, such as real estate. The oldest generation has a small general partnership interest (1%-2%) and a large limited partnership interest (97%-98%) in the partnership. Over time the older generation gifts the limited partnership interests to the younger generation. Significant discounts can be taken into account for these gifts thereby leveraging the amounts that can be transferred to the younger generation. Over time a significant amount of wealth can be moved from the older generation to the younger generation.

The IRS has consistently taken the position that the transfer of wealth to successive generations through the use of a FLP is an abusive transaction because of the relationship of the parties. Many anti-FLP attacks have focused on increasing the value of the gifted interest in the FLP by challenging the valuation discount applicable to the transfer. Most recently, however, the IRS has stepped up its battle tactics by questioning the FLP as an entity and they have imposed a transfer tax on the underlying assets of the partnership at the death of the older generation in some recent landmark tax cases (notably Estate of Strangi (115 TC 478 (2000)), Estate of Thompson (TCM 2002-246) and Estate of Harper (TCM 2002-121)).

While some of the preceding discussion might discourage you from considering the use of the FLP as an estate planning tool, take heart. Recently, taxpayers have had a couple of wins of their own in Stone v. Commissioner (TCM 2003-309) and Kimbell v. U.S. (93 AFTR 2004-2400). However, this certainly can be a challenging area of the law that should be carefully approached with expert counsel.

In creating FLPs, consider the following guidelines:

- Organize and fund the FLP and make gifts of limited partnership interests before the death is imminent;
- Fund the FLP with actively managed assets;
- If only passive assets are available, document the reasons for the FLP, such as to provide creditor protection, to centralize investment authority or take advantage of an investment opportunity not available on a smaller scale;
- Do not transfer personal use assets to the FLP;
- Charge fair market value rent on any assets used by a partner;
- Do not transfer substantially all of taxpayer's assets to the FLP;
- Have more than one partner make substantial contributions;
- Transfer all assets legally into the name of the FLP;
- Do not transfer FLP interests until assets have been transferred into the FLP;

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## S U M M E R 2 0 0 4

For those of us who bristle at heat, humidity and the crush of crowds when traveling, spotting the end of summer on the horizon is an uplifting thing. Yet, everyone needs a holiday from time to time and autumn is my favorite season to venture abroad.

Until recently I understood that the name "Barry" was Gaelic meaning "spear" which evoked a manly pride that I rather enjoyed. While that is one interpretation of the name, another is that Barry is an Anglicized form of the Irish name Bairre, which is a pet form of FIONNBHARR (pronounced FIN-yar) meaning "fair hair". Sensing that my dear Jewish mother may have omitted critical information regarding our family tree, I decided to sleuth about the Emerald Isle this vacation in search of my true roots.

Yes, come October, I will cash in all of the air mileage points on my credit card; destination Ireland. Speaking of air mileage points, if you too enjoy the benefit of paying certain bills by credit card for the purpose of amassing air mileage or cash back bonuses, perhaps your heart will be warmed to hear that our firm will soon accept Visa and MasterCard payments. In the coming weeks watch for a message on your billing statement indicating that we are ready to accept credit cards.

In parting, let me say "sla/inte chugat" which is Gaelic for "good health to you." And, if you are curious, I will refrain from kissing the Blarney Stone on this adventure; I don't know where it's been.

Erin go braugh,

*Barry Rothman*

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- Establish and use separate bank accounts for the FLP;
- When possible, have more than one general partner;
- Require the general partners to prepare and distribute annual financials and calculate capital accounts;
- Make income distributions pro rata;
- In the partnership agreement, do not waive general partnership fiduciary duties;
- Do not use FLP assets to pay personal expenses of a partner;
- Avoid loans to partners, but if loans are made, they should be evidenced in writing at the same terms and conditions as a bank;
- Pay reasonable compensation to the partners;
- Timely file any federal and state filings;
- Do not be overly aggressive with valuation discounts.

When utilized correctly, FLPs can be very powerful estate planning and asset protection tools. However, when FLPs are ill-structured or misapplied they not only may fail to produce benefits but also may produce significant negative results including taxes, interest and penalties. Give us a call with your specific questions about FLPs and other estate planning tools. Whether you are creating, implementing, maintaining or defending the FLP, we have the estate and tax expertise to assist you. We look forward to talking to you soon.

About the author: Bob Stewart is Managing Shareholder of the firm and specializes in estate planning, trusts and probate as well as business law and taxation. He is highly regarded as a guest lecturer among industry, professional and civic groups and has been recognized through peer review to be preeminent in his field.

## Don't Be a Victim of Internet Theft

Recently we heard from a friend of the firm whose identity had been stolen and whose bank accounts had been robbed when she responded to a "spoofed" e-mail appearing to be from her bank and her credit card company. Because the e-mail was so professionally crafted, she was convinced that it was legitimately from the financial institutions she trusted, so she "updated" her profile with them. Our friend, who is a savvy businesswoman, unwittingly provided these internet thieves with all of the personal information that they needed to rob her of wealth and precious time as well as peace of mind.

Lest you think that it is only the naïve who are at risk, please understand that identity theft and internet fraud are occurring with increasing frequency as online shopping, banking, and other financial transactions increase in popularity and ease. According to the FTC, 27.3 million Americans have been victimized by identity theft in the past five years.

Our Special Counsel, Scott Fitzke, has expertise in this area and has prepared a very informative and helpful article on protecting yourself against this form of theft. While the article was too long for this issue, the topic is so timely and important, we would like to send you a copy at your request. To request your free copy of "Protecting Yourself Against Internet Fraud and Identity Theft" please call Scott Fitzke at (303) 694-2000. Don't be a victim, be informed.