

**FAMILY FARM OWNERSHIP:
*WHAT IS THE RIGHT SOLUTION FOR
YOU AND YOUR FAMILY?***



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For IVY TECH
January 23, 2013

2013 Agriculture Seminar Series Sponsors



Topic Speaker

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FAMILY FARM OWNERSHIP: *WHAT IS THE RIGHT SOLUTION FOR YOU AND YOUR FAMILY?*

- Couple Assumptions:
 - Primary assets are Farmland
 - These plans work with other business assets, but not in exactly the same way.

Session Tips

- Please ask Questions, with some topics covered on PowerPoint, we may wait for a moment to get to the topic.
- General questions work better than your specific questions.
- If you have specific questions, meet me in the intermission or after the program.

Succession & Estate Planning

- What is Succession Planning?
- What is Estate Planning?
- What does the Form of Ownership have to do with planning?

Ownership & Planning?

- Ownership establishes Control for Planning
 - Owned in one name, controlled by that entity.
 - Owned in multiple names, a variety of legal issues involved in determining control.

Getting Started in Business Planning

- Step one
 - Coming here a good first step. Get educated about the issues.
- Step two
 - Start a conversation with your professional advisors, the attorney, accountant, broker, financial planner, and others
- Step three
 - Determine what information you are ready to share with spouse, those family members in the business, those family members not in the business.

PRIORITIZE THE ISSUES

- What is more important to you?
 - Simplicity in process
 - Security for your self, your business or others
- Avoid Procrastination
 - Easy to put off planning or preparing to plan

Advantages to Using a Business Entity for Succession Planning

- Existence is not defined by your lifetime
- Transfer of Ownership can be handled more easily
- Tax issues are more clearly handled

Disadvantages

- Formation is required
- Formalities are Demanded
 - Determined by the form of Business Entity
 - Proper documentation
 - Filing IRS Forms
 - Filing Biennial Report with State

ISSUES TO CONSIDER

- Liability for Losses
- Tax Issues
- Fringe Benefit Issues
- Control Issues

Liability for Losses

- The more complex a business entity the more protection it provides an investor
- A partnership has little protection
- A corporation has good protection, if the form is respected
- A Limited Liability Company can have very good protection

Jury Verdict Headline 1-22-13

- Verdict of \$7M – Tractor-trailer driver travels into on-coming lane – Decedent trucker struck head-on, family receives lost wages and benefits, pain and suffering.

Tax Issues

- Some entities have a tax burden on earnings (double taxation)
- Some entities have no tax burden, earnings pass through to the investor.
- Some allow Step Up in Basis Adjustments.

Fringe Benefits

- Retirement Accounts Flexibility Issues are different between different entities
- Medical Insurance Premiums taxed differently
- Differentiation of Salary and Dividend in corporate forms.

Control Issues

- Owners control is stronger with some entities
- Managers control is stronger with other forms
- Some types of entities allow a separation of profit/loss and appreciation of capital assets, while others do not

What to Expect in a Conference?

- Review the Ownership Options involved
- Determine the goals of the founder
 - Business Continuation
 - Family Purposes
 - Management Purpose
 - Transfer Ownership
 - Investment Purposes

Intermission



Types of Ownership

- Personal
- Partnership
- Corporate
- New Business Entity

See Table 1

Attached is Table 1, which shows the variety of entities, and the advantages and disadvantages of each

Personal Entities for Ownership

- Sole Proprietor
- Husband and Wife (T/E)
- Joint Ownership (T/C)
- Joint with Rights of Survivorship
- Trust Ownership
- Transfer on Death Ownership

History of Personal Ownership forms

- Sole proprietorships came from antiquity.
- Marriage forms came about in 1800s as women lost their status as property and began gaining equality and ability to own property
- Joint ownership came with partnerships
- Trust ownership has been around for over 400 years, but popular in past 30.
- Transfer on Death for real estate began in Indiana in 2009

Partnerships

- General Partnership
- Limited Partnership
- Family Limited Partnership

History of Partnership Ownership

- Partnerships began in ancient days
- Statutes governing partnership are more than a century old. To solve problems from unwritten partnerships
- Limited partnerships are for tax and liability purposes, so follow the imposition of taxes in the 1910s.
- Family Limited Partnerships are aggressive tax vehicles, still fighting with the IRS for approval.

Corporate Entities

- General Business Corporation
 - Corporation with “C tax status”
 - Corporation with “S tax status”
- Not for profit Business Corporation (N/A)

History of Corporations

- Corporations are a result of the need to build capital to create large businesses, such as railroad companies, steel mills. Came about in the 1800s.
- The tax status for corporations came from the imposition of corporate taxes, and demands for simplification, “C” tax status in the 1920s, “S” in the 1950s.

New Business Entity

- Limited Liability Company
 - Partnership aspects of tax and control
 - Corporate aspects of liability protection
 - More flexibility in structure than corporation
 - Fewer regulations in operation than corporations
 - Transfer of Ownership can be effectively restricted

History of LLC

- First allowed in 1977 in Wyoming by state legislature
- Federal Govt. approved the tax issues created by the LLC acts of the states in 1987
- Indiana has allowed LLC form of business since 1993
- Now the majority of new businesses are LLCs

ISSUES AFFECTING TAKING ADVANTAGE OF THE BUSINESS

- Gift tax, annual exclusion – now \$14,000 per year per donee
- Federal Unified Credit – has been a political football, maybe now stabilized at \$5,250,000 with portability.
- State corporate law on entity selection

Insurance for Liability Coverage

- Most farm owners carry a General Farm Policy of Insurance
 - Fire coverage for assets and improvements (house and barns, equipment)
 - Liability coverage for actions of farmer and employees
- Question the adequacy of the coverage
 - Insurance agents in the middle on this

Is Insurance Enough?

- Insurance is priced a risk of loss times likely damage, plus return for investor.
- Loss that exceeds the amount of insurance is borne by the insured.
- Protection from entity selection is one time cost most likely less than a year's premium.
- Entity protection is permanent, with occasional maintenance.

Conversion and Taxes

- Partnership to LLC
 - Can work, must follow state formalities to avoid liabilities
 - No gain or loss recognized by conversion
 - No adjustment to basis occurs if no change in shares
- Corporation to LLC
 - Corporate merger, asset exchange or liquidation

Transfer Purposes

- Move land into LLC for the purpose of transferring interests to family
 - Easier to transfer small units of ownership without tax consequences
 - Separate Management from Ownership for Valuation Purposes.

Examples

- Operation of Farm Trucking Business
 - Create a silo wall around the assets of the LLC
 - Insurance Policies
 - Trucks and other assets inside ownership
 - Protect the farm, equipment, and savings of the farm business from liabilities
- High Risks, Low Protection Cost

Examples Cont.

- Separate Farm Ownership from Farm Operation
 - Hold land in the family, or in Owner LLC
 - Set aside the operation into a second LLC
 - It hires the workers,
 - It pays the owner for earnings/rent
 - Low capital value so easy to transfer ownership to family members under Gift Tax Exclusion
 - Allow farming family members to share in operation, non-farming members to still end up with a share of ownership

Examples Cont.

- Single Member LLCs
 - Can choose the structure
 - Can choose the tax rules to live by:
 - Can be taxed as an individual
 - Can be taxed as a C corp.
 - Can be taxed as an S corp.
 - Choose tax rules to choose benefit structure.
 - IRS Form 8832 – Entity Classification Election
 - IRS Form SS-4 – EIN Application

Examples Cont.

- Set up an Investment Partnership
- Set up for one member to contribute farmland, a second to contribute future work.
- Set up an LLC to own Cross-purchase Life Insurance for business purposes or for ILIT

Estate Planning Purpose

- Create a Family LLC, similar to a Family Limited Partnership.
 - Allows Family to
 - 1 – Pass on Accumulated Resources
 - 2 – Reduce Potential Estate Taxes
 - 3 – Maintain Adequate Control over the Farm
 - Passes future growth in the assets to the family death tax free.

Versatile Entity

- There are lots of business advantages to engaging in a business planning session with an knowledgeable lawyer, accountant, or business planner.
- More options than most want to engage in.

- Most likely there are options that will allow you to meet the wishes you have for continuing the farming operation.

QUESTIONS?



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Thank You for Attending

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