

Administration of Family Limited Partnerships

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Throughout the past decade family limited partnerships (“FLP’s”) have become an increasingly popular technique among high wealth families because FLP’s can provide significant estate planning, asset protection and business succession benefits. If, however, the formalities of the FLP are not adhered to, the limited liability of the FLP can be jeopardized, and the Internal Revenue Service could take the position that the FLP is illusory, thereby preventing the desired tax consequences, and possibly creating additional taxes, interest and penalties.

In order to maximize the advantages of an FLP and avoid, or substantially reduce, Internal Revenue Service or creditor challenge, the FLP should adhere to the following formation and administration guidelines:

- The FLP’s general partner, on behalf of the FLP, should open a checking account to deposit FLP income and pay FLP expenses. Furthermore, only the officers and/or managers of the general partner should have authority to act on behalf of the FLP and draw on the checking account.
- Only investment assets should be transferred to the FLP. Accordingly, no personal assets (such as a principal residence, automobile, jewelry, or other personal effects) should be transferred to the FLP.
- Contributions of capital to the FLP by partners should be made pro rata based on each partner’s respective interest in the FLP.
- Distributions of FLP assets to partners should be made pro rata based on each partner’s respective interest in the FLP.
- All written correspondence from the FLP should be on FLP stationery.
- To gain maximum estate tax benefits, the person who owns a substantial portion of the interests as a limited partner should not: (i) own an interest in the general partnership, or (ii) have the power to remove the general partner or vote for a new general partner.
- Although the State of Florida does not require the FLP to file a state income tax return, the FLP must file an intangible tax return for all intangible assets owned by the FLP.
- The FLP, its general partner, and the limited partners must adhere to the form of the FLP, including but not limited to:
 - Dealing with the FLP as a separate and distinct entity;

- Labeling all FLP assets with the FLP's federal tax identification number;
- Not commingling FLP assets with that of any partner, or any other individual or entity; and
- Acting reasonably based on its intent, purpose and legal obligations.

The benefits of forming an FLP can be extremely beneficial for high wealth families. In doing so, however, the FLP must be maintained in accordance with the guidelines set forth above in order to avoid challenge by the Internal Revenue Service or other creditors.

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