

FAMILY LIMITED PARTNERSHIPS

by Neil R. Lubarsky, Esq.

One of the most attractive Estate Planning and Asset Protection tools available to legally avoid paying estate taxes is the **Family Limited Partnership**. A family limited partnership allows you to achieve all of the following:

- 1) Give assets to children or grandchildren at gift and estate tax values of only 50%-85% of the assets' original value, thereby saving hundreds of thousands of dollars, and, in the case of large estates, sometimes millions of dollars of estate taxes.
- 2) Give gifts to children or grandchildren in a manner restricting their access to the funds.
- 3) Remove appreciation on assets placed in a family limited partnership from your estate.
- 4) Retain income from assets whose value you wish to reduce for estate tax purposes.
- 5) Protect the assets placed in a family limited partnership from attack by your or your children's future creditors.
- 6) Obtain substantial estate tax savings even if you only gift minimal interests in the family limited partnership to others.
- 7) Obtain substantial estate tax savings even if you die shortly after establishing the family limited partnership.
- 8) Increase the amount of assets you can annually remove from your estate without having to utilize any unified credit.

A family limited partnership is created when assets, such as real estate or securities, are placed in a limited partnership. Parents are generally named as limited partners, while one or more of the children are named as general partners.

The most significant benefit from using a family limited partnership is its ability to dramatically lower the taxable value of an estate. Estate tax savings from the establishment of a family limited partnership by parents can total hundreds of thousands and sometimes millions of dollars. These savings can often be recognized even when the children have been gifted only a small percentage of the existing limited partnership interests prior to the parents' death.

The courts recognize that owning a limited partnership interest is not as valuable as owning an asset outright, and have therefore generally allowed discounts in the range of 15%-50% in valuing limited partnership interests for both gift and estate tax purposes. The courts have recognized such discounts in valuing limited partnership interests for two reasons: lack of marketability and lack of control. A limited partnership interest is ordinarily difficult to sell, and a limited partner ordinarily does not have the legal authority to sell his limited partnership interest without the approval of the general partners, thereby making a limited partnership interest worth less than the value of the underlying assets. In addition, a limited partner does not have control over the assets contained in a limited partnership, making the ownership of limited partnership interests less valuable for gift and estate tax purposes than direct ownership of the underlying assets.

The estate tax savings available from the use of a family limited partnership are extensive, and should be considered by any individual or couple presently having assets which might be subject to estate taxation. The use of a family limited partnership allows an individual to effectively transfer to his or her children substantially more than the amount of assets ordinarily exempted from estate taxation, without estate taxes being imposed. The use of a family limited partnership can also serve to significantly reduce the effective estate tax rate on any part of the estate which may still be subject to federal estate tax.

Family limited partnerships are also extremely useful when parents want to make gifts to children without those gifts being subject to the future creditors of the children. Under most circumstances, if a partner of a limited partnership is sued and loses the lawsuit, the creditor cannot reach the underlying assets of the partnership.

In addition, family limited partnerships can be set up to protect the assets of individuals, such as doctors, corporate directors, real estate developers and contractors, who have substantial liability exposure. If, for example, an individual places assets in a family limited partnership, giving some or all of the limited partnership interests to his children, and such individual is later sued for an act which occurred after the partnership was established, or is later sued for an act which occurred before the partnership was established but for which liability was not reasonably envisioned at the time of

the establishment of the partnership, the assets contained in such limited partnership will, under most circumstances, be protected regardless of the validity of or legal outcome of the claim.

As of September 2016, proposed regulations have been issued, which may become effective as early as December 1, 2016, to limit the estate tax savings from the use of this technique. Anyone interested in using family limited partnerships to reduce estate taxes, or anyone having an interest in an existing family limited partnership or limited liability company in which various family members own interests, should talk to an estate planning attorney immediately.

Neil R. Lubarsky is an estate planning, elder law, and tax attorney admitted to the Bar in New York and Connecticut with offices at 2900 Westchester Avenue in Purchase, New York. He has been utilizing sophisticated planning techniques for his clients' benefit for over 35 years, and can be reached at 914-997-8558.