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New law allows for record valuation discounts

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A new Nevada law allows for the transfer of assets out of an estate anywhere in the country at record-level valuation discounts.

On Oct. 1, Nevada SB 350 went into effect, allowing for the creation of two new legal entities: the Nevada Restricted LLC and LP.

The new forms of business entities allow for advanced asset protection and estate planning, where assets are moved out of a taxable estate and transferred to a limited liability company or a limited partnership.

The law takes advantage of federal Treasury Regulation §25.2704-2(b), which says that a restriction that is less restrictive than those that would apply under state law is disregarded in valuing interest for transfer tax purposes under the Internal Revenue Code.

Until October, the majority of the states followed some form of the Uniform Laws and had similar default restrictions in place, said estate planning expert Steve Oshins, a partner at Oshins & Associates in Las Vegas, who authored the new law.

Now, the new Nevada entities create a ceiling that locks in the underlying assets for up to 10 years, which can create “significantly” higher valuation discounts than can be obtained under any other state law, Oshins said.

Most importantly, he emphasized, the new law doesn’t have a residency requirement, so anyone across the country can take advantage of it. Oshins has already done so himself, getting five different clients “pre-sold” on the new entities and filing the day the law took effect.

Jonathan B. Alper, a solo in Heathrow, Fla. who specializes in asset protection, said the new law will be helpful for two reasons.

First, in order to defend an asset protection plan, “you need to show courts a motive other than to hide money from creditors, and because the restricted LLC and LP are effective for estate tax purposes, that provides a viable motive,” he said.

In addition, a creditor can only get a lien on distributions from an LLC or LP, and because the new entities limit distributions, “this law will make it more difficult for a creditor to demand that the LLC or LP make distributions and [therefore] enable debtors to protect their assets,” Alper said.

Bernard Krooks, an estate planner and partner at Littman Krooks in Manhattan and White Plains, N.Y., said he will “absolutely” use the new law for the appropriate client and estate planning situation.

The new law “is for a client with high net worth,” he said – over the \$3.5 million threshold but definitely in the \$10 million range.

Mark J. Soss, a sole practitioner in Lakewood Ranch, Fla. with a corporate planning and estate planning practice, said he would also advise clients to take advantage of the new law.

“This new law is great from an asset protection standpoint,” Soss said.

How to do it

The state of Nevada has made it easy to create the new entities, noted Kristen E. Simmons, an attorney at Oshins’ firm.

All you have to do is designate the business’ desire to operate as a restricted LLC or LP on the articles of organization that are filed with the secretary of state and designate how long the discount period should last, Simmons said. Without a designation, it will default to the full 10 years.

No Nevada residency is required, although the LLC or LP needs a registered agent in Nevada, a service that Simmons says the firm often provides for out-of-state clients.

For moving entities from another state to Nevada to take advantage of the new law, the state “allows a merger or a conversion from another state LLC,” she added, charging a flat fee.

“The costs of moving an entity are so de minimus,” Oshins said. “We aren’t going to move [an entity] unless it’s going to save a family at least a few hundred thousand dollars, so the fees don’t really matter.”

Oshins had two different business valuation appraisers run some hypotheticals to give a sense of how much additional valuation discount could be realized if someone fully utilized the 10-year lock-up period.

Assuming a typical valuation discount in the 35 percent range, the first appraiser estimated an additional 10 to 30-plus percent, while the second estimated 15 to 35 percent, Oshins said.

That means that the total valuation discount could range from 45 to 65-plus percent, or even 50 to 75 percent, depending on the appraiser.

“If you multiply that by a \$10 million transaction, it gets very significant,” he said.

Simmons is currently working on creating a restricted LLC for a client. Even though she isn't using the full 10-year valuation period, her client will get an additional 10 to 20 percent valuation discount, for a total valuation discount of 50 to 60 percent.

"We are very happy with the results," she said.

Other states to follow?

Prior to the enactment of the law, a number of states were tied for the lowest valuation discount rate, Oshins said. He expects other states will follow Nevada's lead and enact similar laws.

Krooks said some states may wait and see how the IRS responds to entities created under the new law before they enact their own version.

"Other states aren't going to jump on the bandwagon until they see the IRS is going to respect [this law]," he said. "If and when that happens, other states will definitely try to enact a similar form of asset protection and may even try to undercut Nevada."

You can read the new law in its entirety here: [Nevada SB 350](#).

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