

John Buhl, Reporter
State Tax Notes
703-533-4413 (office)
571-205-8117 (cell phone)
john_buhl@tax.org

Nevada Enacts Unique Estate Planning Law
by John Buhl

Date: Jun. 4, 2009

A newly enacted Nevada estate planning law allows the establishment of restricted limited liability companies and limited partnerships, giving taxpayers the ability to obtain higher valuation discounts for calculating transfer taxes.

Steven J. Oshins of Oshins & Associates LLC, Las Vegas, drafted the restricted LLC and limited partnership (LP) language in SB 350, which Gov. Jim Gibbons (R) signed into law on May 29. Oshins told Tax Analysts that the new law is the first of its kind and something other states may emulate.

"I would expect that some of the more proactive states such as Delaware and Alaska" would consider similar legislation, said Oshins, who called the new law "groundbreaking."

Oshins said the provisions use language in Treasury Regulation 25.2704-2(b). In determining the value of interests transferred from an entity to a family member, the Treasury regulation disregards "applicable" restrictions on the ability to liquidate the transferred interests. The regulation defines applicable restrictions as "more restrictive than the limitations that would apply under the state law generally applicable to the entity in the absence of the restriction."

Under the new Nevada law, a taxpayer can receive a potentially higher valuation discount than in any other state, Oshins said, adding that the provisions may encourage taxpayers from other states to set up restricted LLCs and LPs in Nevada.

According to analysis on the Oshins & Associates Web site, a transfer that fully uses the new law could potentially increase the valuation discount by between an estimated 10 percentage points and 35 percentage points for a restricted LLC.

State officials reported that the bill would have "no adverse fiscal impact," Oshins said. Oshins also said Nevada would likely collect more fees from the creation of the additional LLCs.

The legislation, which passed both houses of the Legislature without opposition, generated little debate among lawmakers, Oshins said. "I expected there to be more [debate] with this law simply because no other state has it."

Oshins also told Tax Analysts that the Treasury green book, released on May 11, proposes a

change to the regulation that would essentially negate the Nevada restricted LLC and LP law.

Asked if the provisions could be viewed as fostering tax avoidance or complicating the state's tax laws, Oshins replied, "Our job is to try and do the best job we can for our clients . . . to embrace the available tools out there."

If the restricted LLC and LP option is removed, "we'll go on to something else," Oshins said.