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Consider a second LLC for your crop real estate



Farm & Family

By STACEY LEE

THIS month, we will continue on with the estate planning scenario of Joel and Kim, dairy farmers in their mid-50s, who were first introduced in the May edition of *The Farmer*.

The June magazine article addressed the operating assets of the farming operation, which we set up as a limited liability company and transferred 30% of the LLC membership interest to the farming son. This strategy fulfilled the clients' initial goals of beginning a farm succession plan, providing a level of liability protection, and retaining an income stream, as well as management control for Joel and Kim.

We now are moving on to address Joel and Kim's real estate, of which they own 640 tillable acres, with limited pastureland. They live on the farm, and all of their acres are classified as agricultural homestead. The clients also own and utilize a confinement facility for their dairy operation, and two machine sheds are used for general storage.

Based on the clients' initial goals of farm succession over the next 10 years, bringing their farming son into the dairy farming operation, and consideration of the non-farming heirs, we began the design phase for their real estate.

Dairy real estate LLC

First, Joel and Kim transferred the dairy confinement facility and the minimal pasture acres into a separate LLC in exchange for Joel and Kim each owning a 50% membership interest in the dairy real estate LLC. The dairy real estate LLC would rent the real estate to the dairy operation LLC (addressed in May's article).

A separate checking account was set up, a federal identification number was obtained, and a separate partnership tax return is required.

The advantages to establishing and using the dairy real estate LLC are as follows:

- The net cash rents received are not subject to self-employment taxes.
- It provides rental income to Joel and

Key Points

- Crop real estate could go into an LLC or FLP and benefit from tax advantages.
- For consistency and tax reasons, second LLC was prepared for this dairy farm.
- Tap your county assessor for information when doing estate planning.

Kim without regard to the dairy operations, where their farming son was taking on more responsibilities and more of the share of the operational income each year.

- It provides an income stream for retirement years.

- It provides for liability protection limited to the assets within the dairy real estate LLC (shielding the cropland acres in most instances).

In addition, Joel and Kim retained all decision-making authority for the dairy real estate assets. They included a buy-sell agreement that addressed the clients' succession plan by giving their farming son the ability to purchase the LLC membership interest, with the purchase price calculated according to the stated terms. These terms would apply even if Joel and/or Kim would become disabled or die.

Life insurance was also implemented to assist with the purchase of the LLC membership interest upon the death of Joel and/or Kim.

Note that the purchase price would be paid to either the surviving spouse, or if there was no surviving spouse, the farming heirs' siblings. This strategy makes it possible for the dairy farming heir to be able to buy into the dairy real estate and ultimately have the decision-making authority needed for the succession plan to succeed. In addition, it takes into consideration the clients' goal of also providing for the non-farming heirs.

Crop real estate, sheds

For the crop real estate (640 tillable acres) and sheds, we discussed with the client whether to use another LLC, or fund their land into a family limited partnership. Note that up to this point, the farming heir's involvement centered around the dairy operation. Joel and Kim are currently operating the grain farming operation on their own, but wanted to leave the door open for their farming heir to branch into the grain

farming operation as well.

Using either an LLC or an FLP for the crop real estate would create the same advantages as listed above for the dairy real estate LLC.

In addition, an LLC or an FLP would provide a vehicle for lifetime transfers of the crop real estate down to the clients' children at discounted values, which would ultimately reduce the size of the clients' estate for estate tax purposes.

At this time, due to the current federal and Minnesota estate tax laws and to maintain consistency within the clients' estate plan, the clients decided to fund their crop real estate into another LLC.

Again, if or when Joel and Kim are ready to begin gifting or selling the LLC membership interests to their children, this can be accomplished through the LLC, while still providing options for the farming heir to rent or purchase the crop real estate should he choose to join the grain farming operation, while still considering the non-farming heirs.

Note that if Joel and Kim decide to transfer LLC membership interests to their children, any net cash rent distributions must be made according to the LLC membership percentages.

Homestead classification rules

There have been numerous changes to the Minnesota ag homestead classification rules in recent years. These changes have directly impacted the amount of qualifying farmland that can pass through Minnesota estate tax-free.

How the land is owned, whether there is an entity involved, and where the owner lives are just some of the factors that need to be evaluated. Please be sure to work with your estate planning team, as well as your local county assessor, when working on your estate plan.

Next month's article will address the differences between using a revocable living trust vs. a will as the foundational document of Joel and Kim's estate plan. Stay tuned!

Please feel free to email your questions and comments to Miller Legal at comments@millerlegal.com.

Lee is an attorney at law and CPA with Miller Legal Strategic Planning Centers PA, Tyler. Visit the firm's website at www.millerlegal.com.