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Limited Partnerships: Estate Planning Vehicle for the Family Farm

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Comment

Limited Partnerships: Estate Planning Vehicle for the Family Farm

I. INTRODUCTION

In seeking an estate plan, the farm owner wishes to minimize estate taxes in order to insure that the farm will continue under family ownership after his or her death.[1] This is usually accompanied by a desire to treat all children equally, but to make it possible for one of the children eventually to acquire full ownership of the farm.[2] The parents' goals can be translated into the following estate planning objectives: (1) freezing the size of the parental es-

1. Congressional concern that families of deceased farmers and ranchers were being forced to sell their land to pay estate taxes led to the enactment of I.R.C. §§ 2032A and 6166 as part of the Tax Reform Act of 1976, Pub. L. No. 94-455, §§ 2003 to 2004, 90 Stat. 1520. STAFF OF JOINT COMM. ON TAXATION, 94TH CONG., 2D SESS., GENERAL EXPLANATION OF THE TAX REFORM ACT OF 1976, 537, 544 (Comm. Print 1976), *reprinted in* 1976-3 (vol. 2) C.B. 549, 556. Section 2032A provides a special use valuation of farmland for estate tax purposes. *See* Comment, *An Analysis of the "Actual Use" Valuation Procedure of Section 2032A*, 56 NEB. L. REV. 860 (1977); Comment, *The Family Farm and Use Valuation—Section 2032A of the Internal Revenue Code*, 1977 B.Y.U. L. REV. 353. Section 6166 is an estate tax deferral provision, permitting installment payments to be spread out over a period of 15 years. *See* Ludtke, *Planning for Family Corporate Control*, 58 NEB. L. REV. 644 (1979). Farms held in family corporations or partnerships are eligible for the estate tax benefits of sections 2032A and 6166. I.R.C. §§ 2032A(g); § 6166(b). Sections 2032A and 6166 have been criticized as measures which will hasten the demise of the "family" farm by making it possible for families with large land holdings to buy out their smaller neighbors. Hjorth, *Special Estate Tax Valuation of Farmland and the Emergence of a Landholding Elite Class*, 53 WASH. L. REV. 609, 612-13 (1978). *Cf.* Kelley, *Estate Tax Reform and Agriculture*, 7 U. TOL. L. REV. 897, 898-902 (1976) (urging the need for reform to ease the tax burden on farm estates). There are so many restrictions placed on the farm family making the section 2032A election that its effectiveness as a relief measure has been questioned. *See* Bock & McCord, *Estate Tax Valuation of Farmland Under Section 2032A of the Internal Revenue Code: An Analysis of the Recently Proposed Treasury Regulations*, 1978 SO. ILL. U.L.J. 145.
2. Kelly, *The Farm Corporation as an Estate Planning Device*, 54 NEB. L. REV. 217, 252-55 (1975).

tates;[3] (2) transferring responsibility for management to the child chosen to be successor operator;[4] and (3) dividing farm ownership among all the children in an effort to achieve equality of treatment while making it possible for the successor operator eventually to become full owner.[5]

The corporation has been a favored means of achieving these estate planning goals.[6] It has the advantages of familiarity and of an established body of legal authority, but it also has numerous disadvantages.[7] Compliance with corporate formalities often proves burdensome to the farm family,[8] and taxation may be burdensome as well. When property is initially transferred to the corporation, it may be necessary to recognize gain,[9] and corporate

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3. *See* Cooper, *A Voluntary Tax? New Perspectives on Sophisticated Estate Tax Avoidance*, 77 COLUM. L. REV. 161, 170-87 (1977); Kelly, *supra* note 2, at 245-50.
4. *See* Kelly, *supra* note 2, at 253-54.
5. *Id.*
6. Eastwood, *The Farm Corporation from an Income Tax Viewpoint: Friend or Foe?*, 54 NEB. L. REV. 443, 444-47 (1975); Kelly, *supra* note 2, at 220.
7. Corporate farming is restricted in a number of states. Only North Dakota prohibits corporate farming altogether. N.D. CENT. CODE § 10-06-01 (1976). A number of other midwestern states, however, permit only family members or a limited number of persons to be stockholders in farm corporations: IA. CODE ANN. §§ 172C, 172C.4 (West Supp. 1978-1979) (non-family farm corporations not permitted to increase landholdings until 1980); KAN. STAT. ANN. § 17-5901 (1974) (10 or fewer stockholders); MINN. STAT. ANN. § 500.24 (West Supp. 1979) (family members must own majority of voting stock); MO. STAT. ANN. §§ 350.01 to .030 (Vernon Supp. 1979) (family members must own 50% of voting stock); OKLA. STAT. ANN. tit. 18, §§ 951-956 (West Supp. 1978-1979) (10 or fewer stockholders or family members); S.D. COMP. LAWS ANN. §§ 47-9A-1 to -23 (Supp. 1978) (family members must own majority of voting stock); WIS. STAT. ANN. § 182.001 (West Supp. 1978-1979) (15 or fewer stockholders or family members). Other states impose additional burdens on farm corporations. *E.g.*, NEB. REV. STAT. § 76-1503 (Reissue 1976) (corporations required to report landholdings); TEX. REV. CIV. STAT. ANN. Art. 7150 K (Vernon Supp. 1978-1979) (only farm corporations with 10 or fewer stockholders or composed of family members entitled to agricultural land valuation); W. VA. CODE § 11-12-75 (1974) (special tax on corporations holding more than 10,000 acres of land). *See* Morrison, *State Corporate Farm Legislation*, 7 U. TOL. L. REV. 961 (1976).
8. *E.g.*, ALI-ABA MODEL BUS. CORP. ACT § 33 (1953) ("business and affairs of a corporation shall be managed by a board of directors"); NEB. REV. STAT. § 21-2035 (Reissue 1977) (same); ALI-ABA MODEL BUS. CORP. ACT § 31 (1953) (minority representation through cumulative voting optional); NEB. REV. STAT. § 21-2033 (Reissue 1977) (minority representation through cumulative voting mandatory); ALI-ABA MODEL BUS. CORP. ACT § 28 (1953) (annual stockholders' meetings); NEB. REV. STAT. § 21-2027 (Reissue 1977) (same); ALI-ABA MODEL BUS. CORP. ACT § 46 (1953) (requirement of minutes and records of stockholder and board of director meetings); NEB. REV. STAT. § 21-2050 (Reissue 1977) (same). For a discussion of corporate formalities and the farm corporation, see Comment, *Sole Proprietors' Quandry: Opening the Close Corporation*, 54 NEB. L. REV. 527 (1975).
9. *See* Eastwood, *supra* note 6, at 448. If the liabilities which encumber the property contributed to the corporation exceed its basis, gain must be recog-

distributions which the stockholders cannot justify taking out in the form of salaries are subject to taxation at both the corporate and stockholder levels.[10] Should the family desire to terminate the corporation, it may find itself prevented from doing so by the prospect of incurring a substantial capital gains tax on liquidation.[11]

The disadvantages of the corporation have led to increased interest in the partnership as a device for achieving the estate planning objectives of the family farm.[12] Although partnership

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nized to the extent of the excess. I.R.C. § 357(c). In addition, the transfer of growing or harvested crops or finished cattle to the corporation may be treated as an assignment of income if expenses incurred in raising them have already been deducted. Knobbe & Ridenour, *Mid-Stream Incorporation in Agriculture: Deflection of "Income" to Corporate Transferee*, 7 U. TOL. L. REV. 863 (1976).

10. Corporate profits are taxed at the corporation level under I.R.C. § 11. Profits distributed in the form of dividends are taxed to the stockholders under I.R.C. § 61. *See* Eastwood, *supra* note 6, at 473 n.104 (discussion of reasonable salaries). Double taxation may be a critical factor if the parents retire and move away from the farm, making it necessary to pay their retirement income to them as dividend rather than salary. The double taxation of corporate profits may be avoided by making a subchapter S election to have income taxed directly to stockholders. I.R.C. § 1372. However, the subchapter S corporation has limited usefulness as an estate planning device since only one class of stock is permitted. I.R.C. § 1371(a)(4). Subchapter S taxation is also extremely complex and carries with it the additional hazard of inadvertent loss of the subchapter S election. *See* Eastwood, *supra* note 6, at 478-88.

11. Liquidating distributions are treated as payments in exchange for stock. I.R.C. § 331. Therefore, the stockholders must recognize gain to the extent the property received exceeds their basis in their stock. The stockholders may elect a special one-month liquidation under I.R.C. § 333, which requires the recognition of gain only to the extent the stockholders receive stock, cash or securities exceeding their ratable share of accumulated earnings and profits. Earnings and profits, and thus the amount of gain that must be recognized, may frequently be quite high, particularly if accelerated methods of depreciation have been used. I.R.C. § 312(k). *See* Eastwood, *supra* note 6, at 504-25. In addition, the corporation may be required to recognize gain if it distributes to the stockholders harvested crops or finished cattle, for which growing expenses have already been deducted. *Id.* at 509-13; Knobbe & Ridenour, *supra* note 9, at 873-76.

12. *See* Ludtke, Partnerships and Corporations in Farm and Ranch Operations, *in* 29th Annual Tax School: Program Materials (Taxation Section, Wisconsin State Bar, Dec. 1978). *See generally* Abbin, *The Partnership Capital Freeze—An Alternative to Corporate Recapitalization*, 13 U. MIAMI EST. PLAN. INST. ¶ 1807.2 (1979); Jordan, *Estate Planning for Partnerships*, 115 TRUSTS & ESTATES (pt. 1) 536-39, (pt. 2) 588-91, 641-42 (1976); Kurzman, *Estate Planning Considerations on the Organization of Business: Proprietorships, Partnerships, Corporations*, 34 N.Y.U. INST. FED. TAX. 1433 (1976); Landis, *The Utility and Effect of the Partnership in Family Planning*, 24 N.Y.U. INST. FED. TAX. 339 (1966); Nash, *Family Partnerships—A Viable Alternative?*, 13 U. MIAMI EST. PLAN. INST. (1979); Schriebman, *Family Partnerships Can Blend Tax Savings with Fulfillment of Estate Planning Objectives*, 3 EST. PLAN. 164-68 (1975-1976); Schriebman, *Family Partnership as an Estate Planning Device Must Pass IRS*

taxation is often complex and uncertain,[13] it is usually more advantageous to the farm family. The partnership functions as a conduit, permitting farm income to flow through and be taxed to the individual partners.[14] Generally, both formation[15] and liquidation[16] of the partnership can be achieved without recognition of gain.

Two types of partnerships are authorized by state law: general[17]

Muster: Some Guidelines, 4 EST. PLAN. 16-19 (1976-1977). Most of these articles are of limited usefulness in planning a farm or ranch estate in that the family partnership is perceived as an income splitting device rather than as a device for transferring control to the succeeding generation while preserving the family business unit.

13. Partnership taxation permits individuals to be more flexible in structuring their financial arrangements, which leads to increased tax complexity to prevent or deter tax avoidance. The tax results of many arrangements are uncertain because partnership taxation has not accrued an extensive body of interpretive case law. Zeitlin, *Foreword* to 1 W. MCKEE, W. NELSON & R. WHITMIRE, FEDERAL TAXATION OF PARTNERS AND PARTNERSHIPS v-vii (1977).
14. I.R.C. § 701 provides: "A partnership as such shall not be subject to the income tax imposed by this chapter. Persons carrying on business as partners shall be liable for income tax only in their separate or individual capacities." However, the character and amount of income are determined at the partnership level, I.R.C. §§ 702(b), 703, and most elections affecting taxable income must be made at the partnership level. I.R.C. § 703(b). If a partnership takes on too many corporate attributes, there is a danger that it will be taxed as an association, *i.e.*, that a corporate tax will be imposed. I.R.C. § 7701(a)(3). Corporate characteristics which will lead to loss of partnership tax status include continuity of life, centralization of management, limited liability, and free transferability of interests. Treas. Reg. § 301.7701-2(a)(1) (1960). These characteristics are more likely to be present in a tax shelter limited partnership than in one formed to conduct a business. *See* 1 W. MCKEE, W. NELSON & R. WHITMIRE, FEDERAL TAXATION OF PARTNERS AND PARTNERSHIPS ¶ 3.06 (1977) [hereinafter cited as MCKEE]. Nevertheless, they should be kept in mind whenever a limited partnership agreement is drafted.
15. If an individual is relieved of liabilities on formation of the partnership, it may be necessary to recognize gain. I.R.C. §§ 752(b), 731(a). *See* § II-C-1 of text *infra*. The contribution to the partnership of assets such as harvested crops or finished livestock may be treated as an assignment of income. 1 MCKEE, *supra* note 14, ¶ 4.02[2].
16. Under I.R.C. § 731(a), a partner receiving a liquidating distribution from a partnership recognizes gain only to the extent that distributions of cash exceed his or her adjusted basis in the partnership. The partner is not required to recognize gain on receipt of a liquidating distribution of property other than cash unless the distribution changes his or her proportionate interest in partnership "hot assets." I.R.C. § 751(b). "Hot assets" consist of substantially appreciated inventory and unrealized receivables, a category which includes payments for services and inventory, and recapture amounts under the various Code provisions. I.R.C. § 751(c)-(d). For a discussion of the intricacies of the "hot asset" problem, see 2 MCKEE, *supra* note 14, at 21-3 to -51; 1 A. WILLIS, PARTNERSHIP TAXATION 547-68 (1976).
17. The Uniform Partnership Act, [hereinafter cited as UPA] has been enacted in 48 States and the District of Columbia. In Nebraska, it is codified at NEB. REV. STAT. §§ 67-301 to -343 (Reissue 1976).

and limited.[18] Both are subject to fewer operating formalities than are corporations.[19] By issuing classes of partnership units, with characteristics analogous to common and preferred stock, it is possible to use either partnership form to achieve the same type of capital structure that is possible in a corporation.[20] Limited partnerships, however, are more similar to corporations than are general partnerships. They were created as an alternative means of achieving the corporate characteristics of limited liability and separation of ownership and management.[21] For example, in a family farm limited partnership, the child chosen to operate the farm would be a general partner, personally liable for partnership debts,[22] and the non-farm children would be limited partners, liable for partnership debts only to the extent of their partnership interests.[23] Depending on whether or not they have reached re-

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18. The Uniform Limited Partnership Act (1916) [hereinafter cited as ULPA] has been enacted in 49 States and the District of Columbia. In Nebraska, it is codified at NEB. REV. STAT. §§ 67-201 to -232 (Reissue 1976). The Revised Uniform Limited Partnership Act was issued in 1976. It has not yet been adopted in any state but incorporates provisions enacted in several states. For a discussion of the new Act, see *Symposium: Limited Partnership Act*, 9 ST. MARY'S L.J. 441 (1978).
19. The only formality that must be complied with is filing a certificate of limited partnership. In Nebraska, it must be filed in the County Clerk's office. NEB. REV. STAT. § 67-202(1)(b) (Reissue 1976). The certificate reveals greater detail about the financial arrangements between the partners than do articles of incorporation. *Compare* NEB. REV. STAT. § 21-2052 (Reissue 1977) (articles of incorporation) *with* NEB. REV. STAT. § 67-202 (Reissue 1976) (certificate of limited partnership). Among other things, the certificate must state the amount contributed by each limited partner, the amount of any future contributions the limited partners have agreed to make, the time at which contributions are to be returned, the rate of return the limited partners will receive on investment, and whether limited partners have a right to receive property rather than cash in return for their contributions. ULPA § 2; NEB. REV. STAT. § 67-202 (Reissue 1976). Once the certificate is filed, however, the only formality that must be complied with is amending the certificate whenever there is a change in the financial arrangements between the partners. ULPA § 24(2); NEB. REV. STAT. § 67-224(2) (Reissue 1976). *See* notes 98-99 & accompanying text *infra*. For a discussion of factors to consider in forming a limited partnership, see Coleman & Weatherbie, *Special Problems in Limited Partnership Planning*, 30 SW. L.J. 887 (1976).
20. Abbin, *supra* note 12, ¶ 18.01; Ludtke, *supra* note 12, at 2.
21. Limited partnerships were developed as a means of providing limited liability to investors during an era when it was necessary to obtain a special corporate charter from the state in order to do business in corporate form. A. BROMBERG, CRANE & BROMBERG ON PARTNERSHIP 143-45 (1968) [hereinafter cited as CRANE & BROMBERG]; Coleman & Weatherbie, *supra* note 19, at 887-88.
22. A general partner in a limited partnership is personally liable for partnership debts to the same extent that a partner in a general partnership is. ULPA § 9(1); NEB. REV. STAT. § 67-209(1) (Reissue 1976).
23. Limited partners become personally liable only if they participate in control of the business. ULPA § 7; NEB. REV. STAT. § 67-207 (Reissue 1976). *See* § IV-

tirement age, the parents might serve as either general or limited partners, or both.[24] In contrast to a general partnership in which all partners have an equal voice in management[25] and a right to dissolution,[26] the limited partnership provides a means of excluding the non-farm limited partners from control[27] and of preventing them from dissolving the partnership.[28] As a result of the many parallels between limited partnerships and corporations, the limited partnership provides an attractive and flexible alternative for estate planning the family farm.

II. FREEZING THE SIZE OF THE ESTATE

A. Corporate Recapitalizations

One of the primary objectives of an estate plan is to freeze the size of the parent's taxable estate, that is, to limit it to its present size while conveying to the children any future appreciation in value. For a corporation, this may be achieved, either on formation or during a recapitalization, by issuing two classes of stock—common and preferred.[29] The preferred stock has a fixed liquidation value, which prevents it from appreciating in value, and an established rate of return. In contrast, the common stock has no established liquidation value or rate of return; it receives what remains after the preferred has been satisfied. Any appreciation in value or increase in distributible profits adheres to the common stock.

B of text *infra*. They are liable to the partnership to the extent of their contributions and of any contributions agreed to but not actually made. ULPA § 17; NEB. REV. STAT. § 67-217 (Reissue 1976).

24. It is permissible for the same individual to be both a general and a limited partner. ULPA § 12; NEB. REV. STAT. § 67-212 (Reissue 1976). *See* § IV-B of text *infra*.
25. UPA § 18(e).
26. *Id.* § 31(b).
27. *See* § IV-C-2 of text *infra*.
28. *Id.*
29. *See* Ludtke, *supra* note 1, at 671-76. *See also* Ehrlich, *Corporate Recapitalization as an Estate Planning Business Retention Tool*, 34 N.Y.U. INST. FED. TAX. 1661 (1976). If preferred stock is issued during a corporate recapitalization, it is I.R.C. § 306 stock, which means that proceeds from its sale will be taxed as ordinary income to the extent of corporate earnings and profits. The stock retains its ordinary income character when it is disposed of by gift. I.R.C. § 306(c)(1)(C). Ordinary income treatment can be avoided only if the stockholder terminates his or her entire interest in the corporation. I.R.C. § 306(b). If carryover basis takes effect, the preferred stock will no longer lose its ordinary income taint at the stockholder's death, I.R.C. § 306(b)(3), at least to the extent it does not receive a fresh start step up in basis. I.R.C. § 1023(h) (the carryover basis provision, I.R.C. § 1023, was enacted in 1976, but was amended by P.L. 95-600 which temporarily suspended it so that it applies only to decedents dying after December 31, 1979; due to pending repeal legislation, it is doubtful that carryover basis will ever take effect).

Generally, the parents retain the preferred stock, which at the time of issuance represents nearly all of the capital investment in the farm, and give the lower value common stock to the children.[30] Since the common stock is usually voting while the preferred is non-voting, difficulties arise if the parents are not ready to release control at the time the gifting program is initiated. If the parents retain the common stock for a period of time before giving it to the children, it will increase in value and the purpose of the recapitalization will have been defeated.[31]

B. Limited Partnership Units

1. *Creating the Partnership Units*

Although it would be possible to freeze the parents' estates through use of traditional partnership accounting methods,[32] it may be conceptually easier for family members to understand the various interests in the limited partnership if a system of partnership units is used.[33] The partnership units may be issued in certificate form, similar to corporate stock.[34] The use of units rather

30. Unless the rate of return on the preferred stock approximates the market rate of return, the Internal Revenue Service may discount the value of the preferred, correspondingly increasing the value of the common stock and, consequently, the amount of gifts to the children. Rev. Rul. 74-269, 1974-1 C.B. 87.
31. *See* Ludtke, *supra* note 1, at 673-76.
32. Partnership interests are defined in terms of interests in capital, profit and loss, and a great deal of flexibility is possible in defining the various interests. A partner's capital interest is measured by his or her capital account. Initial contributions in exchange for the interest are entered on the partnership books and are increased to reflect income and decreased to reflect losses and distributions. On dissolution, partnership property is distributed among the partners in accordance with their capital accounts. *See* McKEE, *supra* note 14, ¶ 6.05.
33. Abbin, *supra* note 12, ¶ 1801.1; Ludtke, *supra* note 12, at 2. Identifying capital interests through a system of partnership units is not foreign to the limited partnership form. Units are frequently used as a means of marketing interests in limited partnership tax shelter investments.
34. In the past, uncertainty has existed as to whether use of partnership units would be considered a corporate characteristic, thus causing a limited partnership to be taxed as a corporation. Treas. Reg. § 301.7701-2(a)(1), (3) (1960); Outlaw v. United States, 494 F.2d 1376, 1385 (Ct. Cl.), *cert. denied*, 419 U.S. 844 (1974). However, in Phillip G. Larson, 66 T.C. 159, 184 (1976), the court rejected the argument that partnership units are a significant corporate characteristic. Recently, the Service filed an acquiescence in *Larson*, Rev. Rul. 79-106, 1979-12 I.R.B. 21, in which it stated that partnership units would not be treated as " 'other factors' that have significance (independent of their bearing on the six major corporate characteristics) in determining the classification of arrangements formed as limited partnerships." To the extent that use of partnership units bears on the corporate characteristic of free transferability of interests, it may still present some dangers. Phillip G. Larson, 66 T.C. 159, 184 (1976). *See* note 14 *supra*.

than percentage adjustments on the partnership books will make transfers to family members easier.[35] In addition, possession of the partnerships units will provide evidence that a transfer of ownership has been completed.[36]

In designing an estate plan for the family farm, two types of partnership units may be used: frozen units and growth units.[37] The frozen units are similar to corporate preferred stock, and the growth units are similar to corporate common stock. Thus, frozen units would have a fixed liquidation value and growth units would have a right to participate in the farm's appreciation in value.

In contrast to common stock, which is generally voting stock and which carries with it the right to control the corporation,[38] it is not necessary that either frozen or growth partnership units carry with them the right of control. The identity of the successor operator as general partner and of the parents and the non-farm children as limited partners is established in the partnership agreement and is not dependent on the type of units held by the partners.[39] Therefore, it is possible for the parents to allocate the units among family members to achieve their estate planning objectives without concern as to whether a particular distribution

35. Gifts may be made to family members simply by transferring the certificates representing the partnership units and amending the certificate of limited partnership to demonstrate the change in ownership. *See* § III-A-3 of text *infra.*

36. Although possession of the partnership units will not be conclusive evidence that a gift has been completed, it will be more persuasive evidence than a percentage adjustment on the partnership books, particularly if the recipient of the gift is a limited partner who will not participate in the management of the business or display other "incidents of ownership." Treas. Reg. § 1.704-1(e)(1)(iii) (1960). In order for a gift of a limited partnership interest to be treated as completed for income tax purposes, the limited partner's right to dispose of his or her interest must not be subject to "substantial restrictions." Treas. Reg. § 1.704-1(e)(2)(ix) (1960). *See* notes 102-05 & accompanying text *infra.* Whether a gift of a partnership interest has been completed for income tax purposes is not determinative of whether a gift has been completed for estate tax purposes. The includability of gifted property in the estate is governed by the estate tax provisions. Aldrich v. United States, 346 F.2d 37, 39 (5th Cir. 1965). *See* notes 125-36 & accompanying text *infra.*

37. *Cf.* Abbin, *supra* note 12, ¶ 1801.01 ("frozen units" and "regular units").

38. Although common stock is usually voting and preferred stock is non-voting, thus enabling the holders of the common stock to control the corporation, that need not always be the case. Preferred stock may also be given voting rights. ALI-ABA MODEL BUS. CORP. ACT § 16(F) (1953); NEB. REV. STAT. § 21-2015(f) (Reissue 1977). *See* Ludtke, *supra* note 1, at 674.

39. The ULPA contains no provisions regulating the type of financial arrangements that may be made between the partners. The only provision for differentiating between the partners is that the certificate of limited partnership must set forth the name and address of the partners and designate whether they are general or limited. ULPA § 2(a)(iv); NEB. REV. STAT. § 67-202(a)(iv) (Reissue 1976).

will alter control of the farm operation. For example, the parents may wish to convey most of the growth units to the successor operator since future appreciation in the value of the farm, other than that resulting from inflation, would be attributable to his or her efforts. Depending on the size of the estate, the parents may wish to retain all the frozen units, or retain only a portion of the frozen units, dividing the remainder among the successor operator and the other children. If the parents wish to permit non-farm children to participate in the future appreciation of the farm's value, they may convey growth units to them to the extent of the desired participation. By retaining the frozen units, which have a fixed liquidation value, and conveying the growth units to the children, the parents will be able to limit the size of their estate to its value at the time the partnership is formed.[40] Through a program of gifting frozen units to their children, they may even be able to reduce the size of the estate.

2. Providing Retirement Income for the Parents

Use of partnership units provides a means of freezing the parents' estates, but it does not solve the problem of providing retirement income for parents who have no significant alternative sources of income. Where the parents retain all the frozen units, there should be little difficulty in providing them with retirement income. If, however, some of the frozen units are given to the non-farm children, the problem becomes more complex and no entirely satisfactory solution is apparent.

a. Parents' Retention of All the Frozen Units

If the parents retain all the frozen units and give only the growth units to the children, their retirement can be provided for by establishing a rate of return on the frozen units high enough to meet their needs. This may be accomplished by making guaranteed payments,[41] by allocating a fixed percentage of income to the frozen units, or by some combination thereof. At least a partial guaranteed payment might be preferable if it is anticipated that net farm income will be subject to severe fluctuations.[42] The suc-

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40. If the frozen units have a fixed liquidation value and a low rate of return, it may be possible to discount their value below face for estate tax purposes. Treas. Reg. § 20.2031-3(a)-(c) (1958); *id.* § 20.2031-2(f)(2) (factors to be considered in valuing corporate stock include degree of control represented by the block of stock and dividend-paying capacity).
41. A guaranteed payment is a payment determined without regard to partnership income and is deductible by the partnership. I.R.C. § 707(c). Guaranteed payments may be made in return for the use of capital contributed by a partner. *Id. See* 2 MCKEE, *supra* note 14, ¶ 13.03.
42. Total net farm income decreased each year from 1974 through 1976. ECO-

cessor operator's salary would also be provided by guaranteed payment,[43] and income would be allocated to the children holding the growth units only after the needs of the parents and successor operator have been met. An income allocation scheme should not be established, however, whereby non-farm children holding growth units never receive any income or distributions, since that might be treated as evidence that the parents never actually parted with control of the children's units.[44]

b. Frozen Units Held by Children as Well as by Parents

If the parents retain only a portion of the frozen units and give a portion of them to the non-farm children and the successor operator, providing a comfortable retirement income for the parents becomes more complicated. If a generous income allocation is tied to the frozen units, family relationships may be strained. The successor operator presumably will not mind providing for the parents' needs, but when the frozen units are conveyed to the non-farm children, he or she may resent paying substantial portions of the farm income over to them, particularly if they have relatively high incomes from other sources. Conversely, if income is taxed to the

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NOMIC RESEARCH SERVICE, U.S. DEPT. AGRIC., AGRIC. INFO. BULL. NO. 411, BALANCE SHEET OF THE FARMING SECTOR 1977, at 30 (1977). It dropped 17% in 1976. *Id.* at 19. During 1976, the cost of living for an intermediate-budget family of four rose 6 percent. U.S. BUREAU OF THE CENSUS, DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 1977, at 484 (1977).

43. Guaranteed payments may also be made in the form of a salary, in return for services rendered to the partnership. I.R.C. § 707(c).

44. Such a scheme may have adverse effects on both the income and estate taxation of the partnership. Under the family partnership rules, the right of a limited partner to receive distributions of income is a factor considered in determining whether the gift of a partnership interest has been completed for income tax purposes. Treas. Reg. § 1.704-1(c)(2)(ii)(a) (1960). This right may be restricted in the partnership agreement by providing for the managing partner to retain amounts necessary to meet the reasonable needs of the business. In a family farm limited partnership, the successor operator rather than the parent donating the interest could be given authority to determine what is necessary to meet the reasonable needs of the business. Since the family partnership rules are aimed at preventing the donor from splitting income with family members, such an arrangement should be less suspect than if the parent had the ability to govern distributions. Still, if the income allocation scheme results in income being taxed to the limited partners without their receiving actual distributions, a strong inference will be created that the parent has not parted with control, particularly where the parent is receiving substantial income distributions. *See, e.g.*, Henry S. Reddig, 30 T.C. 1382 (1958); Treas. Reg. § 1.704-1(e)(2)(v) (1960) ("[t]he actual distribution to a donee partner of the entire amount or a major portion of his distributive share of the business income for the sole benefit and use of the donee is substantial evidence of the reality of the donee's interest . . . ."). For a discussion of the estate tax consequences, see notes 125-36 & accompanying text *infra*.

non-farm children, but the successor operator is given discretion not to make distributions of money which correspond to the income taxed to them, they will resent paying taxes on income they never received.

There is no requirement that income be taxed to the partners in proportion to their capital contributions.[45] As long as the allocations in the partnership agreement have "substantial economic effect,"[46] they will be honored by the Internal Revenue Service. The difficulty arises in determining what type of allocation has substantial economic effect.[47] If the parents have parted with control and stepped down as general partners, it may be difficult to justify giving them a greater economic return on their capital investment then that given other limited partners holding similar interests.[48]

In order to avoid burdening the successor operator with relatively high payments to non-farm children and thereby fostering family resentment, it may be necessary to establish a very low rate of return for the frozen units. Rather than stating the rate of return as a percentage of taxable income it seems advisable to state it as a percentage of an amount fixed by a formula. The formula should first provide for compensation to the successor operator for managing the limited partnership, since the partnership will be his or her primary source of income.[49] The amount of the successor

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45. "A partner's distributive share of income, gain, loss, deduction, or credit shall, except as otherwise provided in this chapter, be determined by the partnership agreement." I.R.C. § 704(a).

46. A partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) shall be determined in accordance *with the partner's interest in the partnership* (determined by taking into account all facts and circumstances), if—

> . . . .
>
> (2) the allocation to a partner under the agreement of income, gain, loss, deduction, or credit (or item thereof) does not have substantial economic effect.

I.R.C. § 704(b) (emphasis added).

47. *See* 1 McKee, *supra* note 14, ¶ 10.02; Kamin, *Partnership Income and Loss Allocations Before and After the Tax Reform Act of 1976*, 30 Tax Law. 667 (1977).

48. Although the family partnership rules appear to sanction higher income allocations to the parent who has given partnership interests to family members, those rules only apply to the extent the income is attributable to services rendered by the parents. I.R.C. § 704(e). Where the parent is a limited partner and is no longer rendering services to the partnership, the higher allocation may no longer be justified. If the parent receives greater income per partnership frozen unit than other limited partners, he or she may be treated as not having fully parted with control of the units given the other limited partners, resulting in adverse income and estate tax consequences. *See* note 44 *supra*; notes 125-36 & accompanying text *infra*.

49. The best method of compensating the successor operator would be to provide a salary in the form of a guaranteed payment, determined without regard to partnership income. I.R.C. § 707(c). If desired, the guaranteed payment

operator's salary should be established in the partnership agreement, which should also provide for annual raises or cost of living increases. After the successor operator's salary and other partnership expenses are deducted, the remaining income could be allocated among the partners, including the successor operator, according to their proportionate interests. Instead of distributing all the income taxed to them to the limited partners, the successor operator could be given the discretion to retain amounts necessary to meet requirements for farm operating capital.[50] This should be an acceptable approach if the non-farm children have been given growth units and are to share the appreciation in value of the farm with the successor operator.

Alternatively, if the successor operator is to primarily benefit from any appreciation in value, then the income used to make capital improvements or purchase equipment should be taxed solely to him or her. The remaining income would then be taxed to the limited partners. Some flexibility should be given the successor operator in determining what capital expenditures to make, but care must be taken to insure that he or she does not expand the operation, the growth of which would accrue largely to him or her, with funds supplied, in effect, by the non-farm children. For example, the successor operator might be given discretion to purchase equipment and buildings necessary to operate the farm as it existed at the time it was contributed to the limited partnership, but not to farm additional land which he or she has acquired. If the parents want to provide the successor operator with the opportunity eventually to acquire complete ownership of the farm, he or she may be allocated additional income as necessary to make the purchases. However, if the successor operator wishes to acquire additional land, the purchase should be financed from his or her salary and share of partnership income, not through reduction of the other partners' distributive shares.

Once income is taxed to limited partners who are not sharing in appreciation in value of the farm, they should be entitled to distributions of that income. Otherwise, family relations will be strained when non-farm children, who may be in higher tax brackets than the successor operator, incur increased tax liability for income they never receive. Although the bases of their partnership interests would be increased by the amount of the undistributed

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could be supplemented with a percentage income allocation. For a discussion of problems that may arise if a guaranteed payment is combined with a percentage income allocation, see 1 McKEE, *supra* note 14, ¶ 13.03[3].

50. Treas. Reg. § 1.704-1(e)(2)(ii)(a) (1960) permits such an arrangement without adverse tax consequences under the family partnership tax provisions. *See* note 44 *supra*.

income,[51] thus reducing potential gain on eventual disposition, this may provide little solace to the limited partner faced with the need to procure funds to pay the current tax. This source of friction may be reduced by providing for income distributions in amounts necessary to pay any additional tax resulting from allocations of partnership income. Such a solution, however, may create an inference that the limited partners are not bona fide partners under the family partnership rules.[52]

(1) Guaranteed Payment to the Parents

If the rate of return on the frozen partnership units is kept low, the problem remains of how to insure the parents a comfortable retirement income. One possibility would be to provide a guaranteed payment to the parent for the use of the contributed capital.[53] It would seem that such a payment is justifiable on business grounds, as an inducement to the partners holding the major capital interest to leave that interest in the partnership. There is a danger that provision of a guaranteed payment to the parents may lead to inclusion of the value of all the partnership interests in their estates on the theory that they have reserved a life estate.[54] However, if the guaranteed payment is not so large that it results in the parents receiving substantially all of the partnership income other than that paid the successor operator as salary, this danger should be reduced.

(2) Consultant's Fees

Another means of providing retirement income for the parent would be to provide for payment of a consultant's fee.[55] Neither state partnership law nor federal tax law prevents a limited partner from transacting business with the partnership in other than

51. I.R.C. § 705(a).
52. *See* 2 A. WILLIS, *supra* note 16, § 52.06. Treas. Reg. § 1.704-1(e)(2)(ii)(*a*) (1960) authorizes retention of income to meet the "reasonable needs of the business," however.
53. I.R.C. § 707(c). Guaranteed payments are deductible by the partnership.
54. The Service has taken the position that if the donor of the limited partnership interests receives a guaranteed payment which represents substantially all of the income from the business, that is a factor which indicates a retained life estate for purposes of I.R.C. § 2036(a). Tech. Adv. Memo. 7824005 (Mar. 2, 1978). *See* § IV-B-2 of text *infra*.
55. A consultant's fee is deductible by the partnership as an ordinary and necessary business expense, I.R.C. § 162(a), and is taxed as compensation income to the recipient. If the partnership is denied the deduction on the ground the consultant's fee is not a bona fide business transaction, it should be possible to recharacterize the fee as a guaranteed payment under I.R.C. § 707(c) or to treat it as income taxed directly to the parent under I.R.C. § 702.

his or her capacity as a partner.[56] Although the consulting activity could lead to loss of limited liability for the parent through participation in the management of the business,[57] such a loss would ordinarily have little practical effect for the parent will generally be personally liable for all major partnership debts.[58] If the consultant's fee absorbs most of the partnership income other than that paid the successor operator as compensation for services, there may again be a danger that all the limited partnership interests will be includible in the parent's estate because he or she has retained the right to income from the interests.[59] Such treatment would seem unlikely, however, if the payments are reasonable in amount.

The major disadvantage of the consultant fee arrangement is that payments will be treated as earned income for social security purposes.[60] If payments exceed the annual exempt amount, they will be applied to reduce social security benefits.[61]

(3) Lease Agreement With the Parents

One means of providing retirement income that would not run afoul of the income and estate tax rules would be for the parents and the partnership to enter into a lease arrangement. The parents would retain a portion of the farmland and then lease it to the partnership.[62] The lease arrangement has two disadvantages.

56. State partnership law provides: "A limited partner also may loan money to and transact other business with the partnership, and, unless he is also a general partner, receive on account of resulting claims against the partnership, with general creditors, a pro rata share of the assets." ULPA § 13; NEB. REV. STAT. § 67-213 (Reissue 1976). Under federal tax law, "[i]f a partner engages in a transaction with a partnership other than in his capacity as a member of such partnership, the transaction shall, except as otherwise provided in this section, be considered as occurring between the partnership and one who is not a partner." I.R.C. § 707(a).
57. ULPA § 7; NEB. REV. STAT. § 67-207 (Reissue 1976).
58. *See* notes 118-24 & accompanying text *infra*.
59. *See* note 54 *supra*; notes 125-36 & accompanying text *infra*.
60. 42 U.S.C.A. § 403(f) (West Supp. 1979). I.R.C. § 1402(a)(5)(B) provides that income from a trade or business carried on by a partnership constitutes net earnings from self-employment and would thus be applied to reduce social security benefits under 42 U.S.C.A. § 403(f) (West Supp. 1979). However, a limited partner's distributive share of partnership income is excluded from self-employment income, and thus would not affect social security benefits. I.R.C. § 1402(a)(12).
61. 42 U.S.C.A. § 403(f) (West Supp. 1979). *See* 20 C.F.R. §§ 404.446 to .447 (1978).
62. The rental payments would be deductible by the partnership under I.R.C. § 162(a)(3) and would be ordinary income to the parents. I.R.C. § 61(a)(5). They would not, however, constitute earned income for social security purposes unless the parents materially participated in producing crops or livestock on the land. I.R.C. § 1402(a)(1). A land lease may be easier to arrange than a lease of machinery and equipment. Although the lease of machinery

First, any appreciation in the value of the retained land will be included in the parents' estates at death, thus subverting one of the major objectives of the estate plan. Second, retention of the land may cause recapture of investment tax credit[63] on formation of the partnership. Although investment tax credit recapture is not required when there is a "mere change in the form of conducting the trade or business,"[64] it is required if "[s]ubstantially all the assets (whether or not [investment tax credit] property) necessary to operate such trade or business"[65] are not transferred to the new entity. If the land withheld is an integral part of the farm operating unit, the parents may be required to recapture investment tax credit on the machinery and equipment. On the other hand, if the piece of land withheld is separable from the primary farm unit, it may be possible to establish that it is not "necessary to operate such trade or business,"[66] and thus avoid recapture.

(4) Installment Purchase of Parents' Partnership Units

An installment purchase[67] of the parents' units would enable the successor operator to increase his or her ownership of the farm while providing the parents with retirement income. It would not be necessary for the successor operator to purchase all the parents' units. The portion purchased would depend on the financial capabilities of the successor operator and the needs of the parents.

An installment purchase has a number of disadvantages, however. The installment payments would not be deductible and would be made with money already taxed to the successor operator. Although the parents' income from the payments would be

already owned by the parent may not require recapture of investment tax credit, *see* Treas. Reg. 1.47-2(b)(1) (1967), newly acquired machinery and equipment would not be eligible for the credit unless leases entered into were for less than half the useful life of the machine and the parent assumed responsibility for maintenance and other deductible expenses equalling 15% of the rental income from the machine. I.R.C. § 46(c)(3). This in turn could lead to the lease being characterized as a material participation lease and cause rental payments to the parents to be characterized as earnings from self-employment. *See* note 60 *supra*.

63. I.R.C. §§ 38, 46.
64. Treas. Reg. 1.47-3(f)(1)(i) (1967).
65. *Id.* § 1.47-3(f)(1)(ii)(*c*). In Rev. Rul. 76-514, 1976-2 C.B. 11, the Service required a dentist who had exchanged his dental and office equipment for corporate stock, but had retained the building in order to lease it to the corporation, to recapture investment tax credit. The dental and office equipment represented 70% of the value of the business and the building represented 30%. *Id.*
66. Treas. Reg. § 1.47-3(f)(1)(ii)(*c*) (1967).
67. I.R.C. § 453 permits the recognition of gain to be spread over the installment payment period.

treated as capital gain,[68] they might, after retirement, be in a lower income bracket than the successor operator. Any installment obligations outstanding at the selling parent's death would be treated as income in respect of a decedent,[69] and would not receive the fresh start adjustment to basis which might be available if the parent held the partnership units at death.[70] The successor operator would receive a cost basis in the partnership units, but it would be necessary to make a special election in order to take advantage of that basis in depreciating partnership property,[71] an election which would greatly complicate partnership tax record keeping.[72]

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68. A partnership interest is a capital asset. I.R.C. § 1221. The holding period of the partnership interest includes the holding period of property contributed to the partnership. I.R.C. § 1223(1).
69. I.R.C. § 691(a)(4). The obligations are valued at their fair market value at the date of decedent's death. I.R.C. § 453(d). This should result in a discount from face value, particularly if the interest rate is below the market rate.
70. Income in respect of decedent items are not entitled to a fresh start increase in basis under I.R.C. § 1023(h). Thus if property held on January 1, 1977, is sold on the installment basis instead of passing through the estate, estate tax must be paid on the obligations, but the gain which must be recognized over the course of the installment payments is not eliminated. The beneficiary who recognizes the gain is entitled to an income tax deduction for estate tax attributable to the obligation. I.R.C. § 691(c).

    An interesting problem is presented if the installment obligations are bequeathed to the successor operator who is making the installment purchase. It is unclear whether the resulting "merger" of the debtor and creditor eliminates the need to recognize potential gain or results in cancellation of indebtedness income to the successor operator. *Cf.* Jack Amman Photogrammetric Eng'rs, Inc. v. Commissioner, 341 F.2d 466 (5th Cir. 1965) (contribution of installment obligations to the corporate obligor does not result in recognition of gain or loss by the corporation); Nebraska Seed Co. v. United States, 116 F. Supp. 740 (Ct. Cl. 1953) (dicta to the effect that when a third corporation acquires the debtor and creditor corporations, a disposition requiring recognition of gain occurs); Gladys G. Wilkinson, 49 T.C. 4 (1967) (an I.R.C. § 453(d) disposition occurred where the corporate obligor liquidated its obligations to the stockholder creditors, who assigned them to a partnership).
71. The purchaser of a partnership interest may make an election under I.R.C. § 754 to have the basis of partnership property adjusted in the manner provided in I.R.C. § 743(b). The basis of partnership property is increased with respect to the purchasing partner to the extent his or her basis for the purchased interest exceeds his or her "proportionate share of the adjusted basis of the partnership property." *Id. See* 2 MCKEE, *supra* note 14, ¶¶ 24.01 to .06.
72. Since the basis adjustment is made only with respect to the purchasing partner, the partnership must keep two sets of records for each asset. In a farm operation containing a great deal of depreciable property, the record keeping burden would be greatly enhanced.

C. Formation of the Partnership

1. Liabilities in Excess of Basis

The rapid appreciation in value of agricultural land[73] has frequently led to its being mortgaged far in excess of its original cost basis. If farm property encumbered with liabilities is contributed to a partnership, the contributing parent is relieved of the portion of the liabilities assumed by the other partners.[74] The amount of liabilities of which the parent is relieved is treated as a cash distribution to the parent,[75] who is required to recognize gain to the extent the distribution exceeds his or her basis in the contributed property.[76] This provision corresponds to that requiring recognition of gain when property encumbered with liabilities in excess of basis is contributed to a corporation.[77] However, the problem occasioned by liabilities in excess of basis may not be as critical on formation of a partnership. For example, if the parent contributes property with a $1,000 basis and subject to a $2,000 liability to a corporation, the parent must recognize $1,000 gain.[78] If the same property is contributed to a partnership in which the parent is allocated fifty percent of the losses, no gain is recognized.[79]

If liabilities exceed the basis of the property the parent contributes to the limited partnership, the problem may be alleviated to a degree by allocating losses to the parent.[80] Partnership liabilities are apportioned among the partners according to their interests in partnership losses.[81] The greater the share of losses allocated to

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73. The per acre value of farmland in 1977 was 13.3 times its value in 1942. *See* ECONOMIC RESEARCH SERVICE, *supra* note 42, at 48-49; Hjorth, *supra* note 1, at 614-18.
74. Treas. Reg. § 1.752-1(c) (1956). *See* notes 81-82 & accompanying text *infra*.
75. I.R.C. § 752(b).
76. I.R.C. § 732(b). Gain recognized is capital gain providing the holding period requirements are met. I.R.C. §§ 1221, 1223.
77. I.R.C. § 357(c).
78. Gain recognized equals the amount by which liabilities assumed or taken subject to exceed the adjusted basis of the contributed property. *Id.*
79. The parent is relieved of $1,000 of the liability which is assumed by the other partner. This results in a constructive cash distribution of $1,000 which reduces his or her initial basis in the partnership interest to zero, but does not require the recognition of gain. Had the contributed property been encumbered with a liability of $3,000, however, the parent would have been required to recognize $500 of gain.
80. If the successor operator is also contributing property to the partnership, it has been suggested that the release of liabilities problem may be avoided by having the successor operator borrow against his or her property and contribute the property, together with the liability and the borrowed money, to the partnership. This increases the total liabilities in the partnership, thereby reducing the amount of liabilities of which the parent will be relieved. Ludtke, *supra* note 12, at 13-14.
81. If the contributing partner is personally liable for the liability assumed or

the parent, the greater his or her share of liabilities, and the greater the chance that he or she will not be relieved of sufficient liabilities to require recognition of gain. Not all losses may be allocated to the parent, however, since loss allocations, like profit allocations, must have substantial economic effect.[82]

2. Contribution of Spouse

If both parents are alive at the time the limited partnership is formed, contributions of the farm property should be made in both their names. If farm property is held in both their names and was acquired through their joint efforts, no gift should result if partnership units are issued to the wife as well as the husband.[83] Individual circumstances would govern how many units could be issued to the wife in each instance without incurring a gift tax.[84] Even if a spouse has not contributed toward the acquisition of the farm property, it may be possible to achieve overall tax savings by making him or her a gift of partnership units at the time the partnership is formed.[85]

III. TRANSFER OF OWNERSHIP

A. Making Gifts of Partnership Units

1. Valuation of Gifts

Partnership interests are valued for both estate and gift tax purposes by taking into account many of the factors used to value stock in closely held corporations.[86] Among factors to be consid-

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taken subject to by the partnership, it is apportioned among the partners in accordance with their share of partnership losses, except that a limited partner's share may not exceed his or her capital contribution. Treas. Reg. § 1.752-1(e) (1956).

82. I.R.C. § 704(b). A loss allocation may not have substantial economic effect unless it results in reduction of the partner's capital account. 1 McKEE, *supra* note 14, ¶ 10.02[2].

83. If the wife actively participates in farm management and performs services in operating the farm, it should be possible to establish that she is the bona fide owner of a portion of the property for estate and gift tax purposes. *See* United States v. Neel, 235 F.2d 395 (10th Cir. 1956); Craig v. United States, 451 F. Supp. 378 (D.S.D. 1978); Estate of Everett Otte, 31 T.C.M. (CCH) 301 (1972); Tech. Adv. Memo. 7907018 (Nov. 7, 1978).

84. Among factors which have been cited as establishing the wife's contribution are gardening and canning, egg marketing, decision-making regarding machinery and livestock purchases, and harvesting assistance. Craig v. United States, 451 F. Supp. 378, 380-81 (D.S.D. 1978).

85. *See* Serota, *Planning Transfers Between Spouses for Maximum Estate and Gift Tax Benefits Under the New Law*, 4 EST. PLAN. 66, 69 (1977).

86. Treas. Reg. § 25.2512-3(a) (1958). *See* Rev. Rul. 59-60, 1959-1 C.B. 237, *modified*, Rev. Rul. 65-193, 1965-2 C.B. 370.

ered are the value of the partnership assets, the rate of return on investment, and the degree of control represented by the interest to be valued.[87] In order to establish the value of the underlying assets, the farm property, both real and personal, should be appraised at the time it is contributed to the limited partnership. Once a per unit liquidation value is established, the appraised value of the farm property can be used to determine the number of frozen units to issue.

Since the frozen partnership units have a fixed liquidation value and a relatively low rate of return, it should be possible to discount their value below the stated liquidation value.[88] Even if the units contain an incentive feature, *e.g.*, a right to participate in appreciation in value if left in the business for an extended period of time, a discount may be available because of the length of time which must lapse before the appreciation may be realized.[89]

The value of the growth units may be more difficult to determine. At the time they are issued, they have no underlying asset value and are arguably valueless. But if the growth units are transferred to a family member together with frozen units, it may no longer be possible to discount the value of the frozen units since the owner would have a right to participate in the farm's future appreciation in value.[90] It is also possible that units transferred to the successor operator will be assigned a higher value than other growth units because the successor operator will have control of the farming operation and will have a degree of discretion in reinvesting profits to increase the value of the farm.[91]

2. *Taking Advantage of the $3,000 Annual Exclusion*

The purpose of dividing partnership interests into two classes of units is to facilitate transfer of ownership from one generation to the next. Sufficient units should be issued on formation of the partnership to establish the gift tax value of each at $1,000 or less.

87. Treas. Reg. §§ 25.2512-3(a), 25.2512-2(f) (1958).
88. A rate of return for the frozen units below the market rate of return for invested capital should permit a discount for the frozen units. Although there is no authority in the partnership area, such a test has been applied to discount the value of corporate preferred stock for gift tax purposes. Rev. Rul. 74-269, 1974-1 C.B. 87. A discount of the value of the frozen units probably will have the effect of increasing the value of the growth units, however. *Id.*
89. Treas. Reg. § 25.2512-2(f) (1958) (this should be an "other relevant factor"). *See* Rev. Rul. 59-60, 1959-1 C.B. 237, *modified*, Rev. Rul. 65-193, 1965-2 C.B. 370.
90. Treas. Reg. § 25.2512-2(f) (1958).
91. *Id.* A factor negating an increase in value for the growth units may be that the farm has lost the services of an experienced operator and has been turned over to an unproved successor. *Cf.* Rev. Rul. 59-60, 1959-1 C.B. 237, 239, *modified*, Rev. Rul. 65-193, 1965-2, C.B. 370 (loss of key corporate management).

Each parent will then be able to make annual gifts of up to $3,000 to each child without incurring any gift tax.[92] Together, the parents will be able to give each child $6,000 annually.[93] If the husband's partnership interest is substantially larger than that of the wife, the parents may wish to give only the husband's partnership units to the children and elect to split the gift.[94] In this manner, they will be able to reduce the larger estate while continuing to give each child up to $6,000 annually without incurring any tax.[95]

3. Mechanics of Transfer

One method of insuring that the recipients of the partnership units will be treated as bona fide owners for income and estate tax purposes is to observe carefully the formalities of transfer. The Uniform Limited Partnership Act (ULPA) requires that the certificate of limited partnership be amended to reflect any change in the financial arrangements between the partners.[96] Thus any increase or decrease in a partner's interest appears to require amendment of the certificate. Since amendment of the certificate would also be an evidentiary factor[97] in establishing that the recipient of a unit is its true owner, the partners should take steps to insure that this requirement is not overlooked.

An amendment of the certificate requires the sworn signature of all partners, limited and general.[98] If a program of annual gift giving is contemplated, the procedure may be cumbersome, particularly if some of the limited partners are in distant locations. This problem may be resolved, however, by giving the parent or the successor operator a power of attorney to amend the certificate for the

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92. I.R.C. § 2503(b).
93. The annual amount conveyed to each child may be further increased if the parents wish to make $6,000 in gifts to the child's spouse.
94. I.R.C. § 2513(a). Both spouses must consent to split the gift in the manner prescribed in I.R.C. § 2513(b).
95. Although the growth units will have little initial value, they should qualify for the $3,000 annual exclusion as gifts of present interests. I.R.C. § 2503(b). The recipients will have the right to immediate possession and enjoyment of the units in addition to their rights as general or limited partners under state law. *But see* Estate of John McClure v. United States, 44 A.F.T.R. 2d — (Ct. Cl. 1979) (beneficial interests in land trust held future interest; court suggested in footnote that partnership interests would also be future interests if partnership had no business purpose).
96. The certificate must be amended whenever "[t]here is a change . . . in the amount or character of the contribution of any limited partner." ULPA § 24(2)(a); NEB. REV. STAT. § 67-224(2)(a) (Reissue 1976).
97. There are a number of other factors which require amendment of the certificate, including the admission of new general or limited partners. ULPA § 24(2)(b)-(d); NEB. REV. STAT. § 67-224(2)(b)-(d) (Reissue 1976).
98. ULPA § 25(1)(b); NEB. REV. STAT. § 67-225(1)(b) (Reissue 1976).

non-farm limited partners.[99]

B. Transfer of Ownership to Successor Operator

1. Gift or Income

If the successor operator has worked for some time on the farm prior to the formation of the partnership and if there is an understanding that he or she will eventually receive a share in the business for services rendered, there is a possibility that transfers of partnership units to the successor operator will be treated as compensation income rather than as gifts. Determination of whether a transfer represents a gift or compensation income hinges on whether it arises out of a "detached and disinterested generosity" or out of business motives[100]—not a very definitive test.[101] However, where the successor operator has drawn a salary prior to the formation of the partnership and adequate provision for compensation is made in the partnership agreement, a gift of partnership units should not be recharacterized as compensation, particularly in view of the family relationship between the parties.

2. Buy-Sell Agreements

Unless the family holdings are extremely large, the parents will probably want to make it possible for the successor operator to acquire full ownership of the property. The purpose of giving the other children limited partnership interests is to treat them fairly, not to fragment ownership of the family farm. Therefore, it seems advisable to provide a mechanism which will enable the successor operator to buy out the other limited partners but restrict the ability of the other partners to force a buy out at an inopportune time.

Caution should be exercised lest the buy-sell agreement be made too restrictive, however. Under the family partnership income tax regulations, if a limited partner's "right to transfer or liquidate his interest is subject to substantial restrictions," he will not be recognized as a bona fide partner.[102] This provision should,

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99. Coleman & Weatherbie, *supra* note 19, at 917. REVISED UNIFORM LIMITED PARTNERSHIP ACT § 204 eliminates the requirement that each limited partner sign whenever a new limited partner is admitted. In Rev. Rul. 79-106, 1979-12 I.R.B. 21, the Service stated that "the limited partners being required or not being required to sign the partnership agreement" would not be considered a corporate characteristic. *See* note 14 *supra*.

100. Commissioner v. Duberstein, 363 U.S. 278, 285 (1960).

101. *Id.* at 285. In Dexter v. United States, 306 F. Supp. 415 (N.D. Miss. 1969), compensation income to a family member was found where the father had promised his daughter the "homeplace" in return for caring for him. *Id.* at 426.

102. Treas. Reg. § 1.704-1(e)(2)(ix)(1960). Substantial restrictions include "where the interest of the limited partner is not assignable in a real sense or where

however, leave open the possiblity that the right to liquidate or sell the interest may be made subject to reasonable restrictions such as a right of first refusal by the successor operator.[103]

If the successor operator is unable to purchase, the agreement should provide that the other limited partners also have a right of refusal before the interest may be sold. However, provisions preventing the limited partner from selling or liquidating the interest for a prolonged period in order to provide the successor operator time to acquire sufficient financial stability to buy out the interests may violate the family partnership regulations.[104] In addition, although the tests are not identical, the inability of a limited partner to dispose of his or her interest might result in inclusion of that interest in the parent's estate.[105]

If the non-farm limited partners cannot be forced to hold their interests for a given length of time, then some incentive must be provided to encourage them to do so. One method would be to give them some growth units as well as frozen units. This would enable them to participate in the appreciation in value of the farm and might prevent a decision to cash out and invest the money at a higher rate of return. Another alternative would be to provide that if an interest is held for ten or fifteen years, the frozen units would be allocated a portion of the land's appreciation in value. The disadvantage of this approach is that any increase in value of the frozen units will correspondingly increase the value of the parents' estates. On the other hand, by that time the parents' estates may have been substantially reduced through gift or sale, and an increase in value might help offset cost of living increases caused by inflation.[106]

The buy-sell agreement should provide that if a limited partner dies, the successor operator or the other limited partners have an option to purchase the interest at a price equal to its fair market value. Such a provision would prevent the partnership units from being dispersed to yet another generation without the successor operator ever having the opportunity to acquire full ownership of the farm. If this provision is to be effective, it should be coupled with a provision preventing limited partners from giving their units to other family members without first offering them to the successor operator at the price specified in the agreement.[107]

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such interest may be required to be left in the business for a long term of years." *Id.*

103. Lawson, *Family Partnerships*, 346 TAX MNGM'T (BNA) A-15.

104. Treas. Reg. § 1.704-1(e)(2)(ix) (1960). *See* note 102 *supra*.

105. *See* notes 125-36 & accompanying text *infra*.

106. *See* note 42 *supra*.

107. *See* notes 102-04 & accompanying text *supra*.

IV. MANAGEMENT CONTROL

The limited partnership provides a flexible vehicle for transferring responsibility for management from one generation to the next. In a corporation, business affairs are managed by the board of directors and duties of management are carried out by the officers elected by the board.[108] When a corporation is formed or recapitalized pursuant to an estate plan, the parents usually give the children the common stock, which carries with it the future appreciation in value of the business. Since the common stock is usually the voting stock, the children will thereby gain the right to elect the board of directors and manage corporate affairs. Voting agreements among stockholders are often necessary to insure that management control will be passed to the child designated as the successor operator. In contrast, in the limited partnership, control is not dependent on whether a partner holds frozen or growth partnership units. Management is the responsibility of the general partner(s), and their identity is established in the partnership agreement.[109]

A. Selecting the General Partner

If the parents have not reached retirement age at the time the limited partnership is formed, they may wish to serve for a time as both general and limited partners.[110] If they are ready to retire, the successor operator may initially be named sole general partner. If the successor operator's spouse actively participates in operating the farm, it would also seem advisable to make him or her a general partner. Designating the spouse as general partner would be a means of demonstrating that property acquired during the marriage was acquired through the joint efforts of both spouses and should be divided between their estates.[111]

Once the general partners are designated, state law does not provide the limited partners with power to remove them.[112] Although that power may be granted in the partnership agree-

108. ALI-ABA MODEL BUS. CORP. ACT § 33 (1953); NEB. REV. STAT. § 21-2035 (Reissue 1977).

109. ULPA § 2(a)(IV); NEB. REV. STAT. § 67-202(a)(IV) (Reissue 1976). *See* note 39 *supra*.

110. ULPA § 12; NEB. REV. STAT. § 67-212 (Reissue 1976).

111. *See* notes 83-84 *supra*.

112. This is not one of the enumerated rights of the limited partners. ULPA § 10; NEB. REV. STAT. § 67-210 (Reissue 1976). The REVISED UNIFORM LIMITED PARTNERSHIP ACT §§ 302, 303(b)(5)(v) provides that the right to vote to remove a general partner will not result in loss of limited liability. It is not clear whether such a provision would lead to loss of limited liability under ULPA § 7, however. *See* Coleman & Weatherbie, *supra* note 19, at 908-09; CRANE & BROMBERG, *supra* note 21, at 147-48 & n.37.

ment,[113] it should not be granted without careful consideration since such a provision will introduce into the limited partnership many of the management problems of the corporate form. If some degree of control over the general partners is thought necessary, a unanimous vote of all the limited partners should be required to remove a general partner. Unless the family has only two or three members, presumably all members could not be prevailed upon to remove the general partner in the absence of fraud or mismanagement. Additional control may be given the limited partners by requiring the unanimous approval of all the partners before the general partner will be permitted to sell all or substantially all of the partnership assets.[114]

Even if the agreement does not give the limited partners the right to vote to remove the general partner, state law protects them against a mismanaging or defrauding general partner. The ULPA provides that the general partner may not, without the consent of the limited partners, "[d]o any act in contravention of the certificate, . . . [d]o any act which would make it impossible to carry on the ordinary business of the partnership, . . . or [p]ossess partnership property or assign their rights in specific partnership property, for other than a partnership purpose."[115] In addition, the general partner has a fiduciary duty to the other partners with respect to management of the partnership and its property.[116] Mismanagement may result in the successor operator being held accountable for losses sustained by the limited partners or in the limited partners being able to force dissolution.[117]

B. The Problem of Control

1. Parental Control and Limited Liability

The ULPA is silent as to whether the limited partners have a

113. Rev. Rul. 79-106, 1979-12 I.R.B. 21, provides that "the limited partner's right or lack of the right to vote on the removal and election of general partners" is not a factor of "critical importance" in determining whether a partnership is taxable as a corporation. *See* note 14 *supra*.

114. This is not provided as a right under the ULPA but such a right could be established under the partnership agreement. REVISED UNIFORM LIMITED PARTNERSHIP ACT § 303(b)(5)(ii) provides that a provision of this nature will not lead to loss of limited liability, but results under ULPA § 7 are uncertain. *See* note 112 *supra*. In Rev. Rul. 79-106, 1979-12 I.R.B. 21, the Service held that the right to vote on the sale of substantially all of the assets is not a significant corporate characteristic. *See* note 14 *supra*.

115. ULPA § 9; NEB. REV. STAT. § 67-209 (Reissue 1976).

116. ULPA § 9; UPA § 21(1); NEB. REV. STAT. §§ 67-209, 67-321(1) (Reissue 1976).

117. ULPA § 10(1)(c); UPA § 332(1)(c); NEB. REV. STAT. §§ 67-210(1)(c), 67-332(1)(c) (Reissue 1976). *See* § IV-C of text *infra*.

right to participate in control of the business.[118] Even though it is probable that a court would interpret its silence to mean that limited partners have no right of control,[119] the partnership agreement should state that they have no right to control or to act on behalf of the partnership.

As a general rule, limited partners are liable for partnership debts only to the extent of their partnership interests.[120] Although the ULPA is silent as to the right of limited partners to participate in control, it does provide for the consequence of such participation: "A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business."[121] In determining the existence of control, courts have generally examined whether third parties actually relied on a limited partner's liability in extending credit to the partnership or whether the limited partner participated in managing the day-to-day affairs of the business.[122]

If the parents have retired to become limited partners but continue to live near the farm, they may lose limited liability through continued participation in day-to-day management. But whether the parent has participated in control to an extent sufficient to lose limited liability will be of little practical significance. Even after the parents retire as general partners, it is probable that creditors will require their continued personal liability on partnership debts. And, in the typical family farm situation, limited liability will provide the parents little protection against tort judgments since the limited partnership units will represent their only major asset, and they will be liable for tort judgments against the farming operation to the extent of that asset.[123]

Limited liability will be significant, however, to non-farm limited partners who earn a livelihood from sources other than the farm operation. For them, it is important that they be held liable for partnership debts only to the extent of their partnership interests. Loss of limited liability by one partner does not affect the

118. ULPA § 10; NEB. REV. STAT. § 67-210 (Reissue 1976).

119. *See, e.g.*, Donroy Ltd. v. United States, 301 F.2d 200, 204-05 (9th Cir. 1962) (dicta); Merrick v. New York Subways Adv. Co., 14 Misc. 2d 456, 458, 178 N.Y.S.2d 814, 818 (1958).

120. ULPA §§ 1, 17; NEB. REV. STAT. §§ 67-207, -217 (Reissue 1976).

121. ULPA § 7, NEB. REV. STAT. § 67-207 (Reissue 1976).

122. *See, e.g.*, Gast v. Petsinger, 228 Pa. Super. Ct. 394, 402, 323 A.2d 371, 375 (1974). *See generally* Coleman & Weatherbie, *supra* note 19, at 897-906.

123. For a discussion of the similarly illusory benefit of limited liability in the corporate context, see Hazen, *The Decision to Incorporate*, 58 NEB. L. REV. 627, 631-35 (1979).

status of the other limited partners,[124] and given the fact that the non-farm children will be removed from day-to-day farm operations, they should have little difficulty maintaining limited liability.

2. *Parental Control: Estate Tax Consequences*

Although parental control may have little practical significance for purposes of limited liability, it may be of extreme importance for estate tax purposes. The Service has asserted that in a limited partnership created as part of an estate plan, the interests of the limited partners are includible in the gross estate of the general partner who gave them the interests.[125] The Service relied on section 2036(a) which requires inclusion in the gross estate of gifted property to which the decedent retained either "(1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any other person to designate the persons who shall possess or enjoy the property or the income therefrom."[126]

If the parent manages partnership property as a general partner, or exercises actual control as a limited partner, it is possible to conclude that he or she has retained the right to control, possession, and enjoyment of the property within the meaning of section 2036(a). There are factors, however, which militate against using section 2036(a) to include all the limited partnership interests in the parent's estate. The farm limited partnership would be formed not solely for estate tax purposes but for the legitimate business purposes of acquiring management assistance and transferring control on the parent's retirement.[127] The parent would not retain absolute control over the property, but would exercise control in conjunction with the successor operator and would be subject to a fiduciary duty to the other partners.[128] The limited partners would have the ability to transfer their partnership interests subject to the successor operator's, not the parent-donor's, right of first re-

124. ULPA § 7 addresses the loss of liability by a limited partner, not loss of liability by the limited partners as a whole.
125. Tech. Adv. Memo. 7824005 (Mar. 2, 1978). In the only court case dealing with whether a partnership interest given to a family member may be included in the donor's gross estate, the court did not address the issue of section 2036(a). It held that although the donor's spouse was not a partner for income tax purposes, she was a partner for estate tax purposes, since her ownership of the interest was determined by state law. Aldrich v. United States, 346 F.2d 37 (5th Cir. 1965).
126. I.R.C. § 2036(a).
127. In the technical advice memorandum, the Service emphasized that the limited partnership served no business purpose. Tech. Adv. Memo. 7824005, at 8. *See* Abbin, *supra* note 12, ¶ 1806.1.
128. ULPA § 9; UPA § 21(1); NEB. REV. STAT. §§ 67-209, 67-321(1) (Reissue 1976).

fusal.[129] And the successor operator, not the parent, would have control over farm income if, as contemplated, he or she has some discretion in determining distributions to be made to the limited partners.[130]

Authority from the corporate area supports the proposition that all of the partnership units should not be includible in the parent's estate even if the parent serves as general partner. In response to the United States Supreme Court decision in *United States v. Byrum*,[131] Congress amended section 2036 to require that corporate stock which the decedent had transferred subject to retention of the voting rights be included in the decedent's gross estate.[132] In a subsequent amendment,[133] Congress provided that not all stock to which the decedent retains voting rights is includible—only stock in a twenty percent controlled corporation.[134] The Joint Committee Explanation stated, however, that the amendment does not require inclusion of stock which the decedent had given away simply because the decedent remained in control of the corporation: "[W]here the decedent owned both voting and non-voting stock and transferred the non-voting stock to another person, the rule does not apply to the non-voting stock because of the decedent's ownership of the voting stock."[135] The Joint Committee Explanation clearly indicates that control of a business entity does not, without more, require inclusion in the parent's estate of interests in the entity given to other family members. The rationale underlying the Joint Committee Explanation should be as applicable to limited partnerships as to corporations. Therefore, control exerted by the parent as general partner should not result in all partnership property being included in his or her estate unless the parent completely disregards the partnership form, treating the farm as though it were a sole proprietorship.[136]

C. Dissolution of the Limited Partnership

1. Death or Bankruptcy of a General Partner

Under the ULPA, the death or retirement of a general partner

129. *See* notes 102-07 & accompanying text *supra*.
130. *See* text accompanying notes 50-51 *supra*.
131. 408 U.S. 125, 148-50 (1972) (retention of voting rights of stock given to children does not require inclusion in the gross estate under section 2036(a)).
132. Tax Reform Act of 1976, Pub. L. No. 94-455, tit. XX, § 2009(a), 90 Stat. 1893.
133. Revenue Act of 1978, Pub. L. No. 95-600, tit. VII, § 702(i)(1)-(2), 92 Stat. 2931.
134. I.R.C. § 2035(b).
135. JOINT COMM. ON TAXATION, 95TH CONG., 2D SESS., GENERAL EXPLANATION OF THE REVENUE ACT OF 1978, 434, 435 (Comm. Print 1978).
136. *See* Priv. L. Rul. 7837003 (May 31, 1978) (ranch includible in estate where rancher formed corporation pursuant to an estate plan but continued to act as though it were a sole proprietorship).

dissolves the limited partnership, unless the certificate provides that the remaining general partners may continue the business, or unless all the limited partners consent to its continuance.[137] If the parent is initially a general partner, the purpose of the estate plan would be defeated if the limited partnership were dissolved at his or her death. Therefore, the certificate should give the successor operator, as remaining general partner, the right to elect to continue the business.[138]

In order to protect the limited partnership from being taxed as a corporation,[139] the certificate should provide that the limited partnership will be dissolved on the bankruptcy of a general partner.[140] Since the effect of a limited partner's bankruptcy is unclear under the ULPA,[141] the certificate should provide that bankruptcy of a limited partner will not cause dissolution.

2. *Ability of the Limited Partners to Force Dissolution*

Since one of the purposes of the estate plan is to make it possible for the successor operator to hold the family farm together as a single operating unit, it is necessary to protect against the possibility that a non-farm limited partner may be able to force dissolution of the partnership and an eventual sale of the farm. It is unclear under state law precisely what right to dissolution a limited partner has. The ULPA provides that a "limited partner shall have the same rights as a general partner to . . . [h]ave dissolution and winding up by decree of court."[142] The UPA, which defines the dissolution rights of a general partner, has two sections on dissolution. The first states the causes of dissolution, providing among other things that the partnership may be dissolved at the express

137. ULPA § 20; NEB. REV. STAT. § 67-220 (Reissue 1976).

138. The parties may wish to differentiate in the certificate between the death of the successor operator and the parent, perhaps providing that the death of the parent would not cause dissolution if the successor operator elected to continue, but that the consent of all the limited partners is necessary to continue after the death of the successor operator.

139. A corporate characteristic that could lead to the partnership being taxed as a corporation is continuity of life. Treas. Reg. § 301.7701-2(a)(1) (1960). *See* note 14 *supra*.

140. It is not clear that bankruptcy of a general partner will cause dissolution of a limited partnership, although it will cause dissolution of a general partnership. UPA § 31(5); NEB. REV. STAT. § 67-331(5) (Reissue 1976).

141. UPA § 31(2)(5) states that dissolution is caused by the bankruptcy of any partner. But whether this provision applies to limited partners, which ULPA § 1, Official Comment states are not "partners" but "members of an association," is unclear. *See* CRANE & BROMBERG, *supra* note 21, at 518. The creditor of a limited partner may be able to force dissolution if the return on the partnership investment is inadequate to discharge the debt. *Id.* at 248.

142. ULPA § 10(1)(c); NEB. REV. STAT. § 67-210(1)(c) (Reissue 1976).

will of any partner in contravention of the partnership agreement.[143] If this section is controlling, even an express provision in the partnership agreement that limited partners have no right to dissolution would be ineffective. The second section sets forth grounds for dissolution by decree, one of which is that a partner has "willfully or persistently" breached the partnership agreement making it "not reasonably practicable to carry on the business in partnership [form]."[144] Since the ULPA gives limited partners the same rights as general partners to have *dissolution by decree of court*, it is arguable that they are entitled to dissolution only if it is not "practicable to carry on the business,"[145] not simply because they want out.[146] Although courts have granted dissolution to limited partners in contravention of the partnership agreement, they have done so under circumstances in which it was not practicable to continue the business.[147] Because the ULPA provision is not clear, the limited partnership agreement should contain a provision prohibiting dissolution by the limited partners. If a court interprets the ULPA to permit a limited partner to force dissolution in contravention of the agreement, the remaining partners will be entitled to damages and to continue the partnership, provided they purchase the disgruntled partner's interest.[148]

Although a limited partner may be able to force dissolution, there seems little incentive to do so, since the liquidation value of the frozen units is fixed and he or she would be unable to realize any appreciation in the value of the farm property by forcing dissolution. The same amount of money could be realized by forcing the successor operator to exercise his or her right of first refusal pursuant to the buy-sell agreement.[149]

V. CONCLUSION

The limited partnership may be used in the same manner as a corporation to achieve the estate planning objectives of the family farm. It also provides the farm family with a more advantageous form of taxation and more relaxed operating formalities than the

143. UPA § 31(2); NEB. REV. STAT. § 67-331(2) (Reissue 1976).
144. UPA § 32(d); NEB. REV. STAT. § 67-332(d) (Reissue 1976).
145. *Id.*
146. It has been suggested that this is the better interpretation of the ULPA's dissolution provisions. CRANE & BROMBERG, *supra* note 21, at 516-17.
147. Wallace v. Sinclair, 114 Cal. App. 2d 220, 250 P.2d 154 (1952); Lust v. Kolbe, 31 Md. App. 483, 356 A.2d 592 (1976); DeLong v. Marston, 308 Mich. 63, 13 N.W. 2d 209 (1944), Silverman v. Kolker, 149 N.J. Super. 162, 373 A.2d 442 (1977).
148. UPA § 38(2)(b); NEB. REV. STAT. § 67-338(2)(b) (Reissue 1976).
149. *See* § III-B-2 of text *supra*. Of course, if the successor operator is financially unable to purchase the disgruntled partner's interest, dissolution will become a more attractive alternative.

corporation. Despite its advantages, the limited partnership is not a cure-all for the farm family's estate planning problems. Neither the federal law of partnership taxation nor the state law of partnerships presents an extensive body of established legal authority, and the resolution of many key issues is not clear. But for those willing to depart from established estate planning techniques in the interest of achieving greater flexibility, the limited partnership provides some promise as a solution to problems in planning the family farm estate.

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