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SO YOU WANT TO OWN A HORSE

There are many different ways to own a horse. The simplest form of ownership is sole proprietorship; that is, a one person owned and operated enterprise. The beauty of sole proprietorship is the centralization of management, which all of us would like to have in our horse endeavors. You are your own boss, you can make your own decisions, and you don't have to consult with somebody else.

Anybody who has been in the horse game and has been involved with partners has, from time to time, had difficulty of deciding what trainer to use, what event to compete in or what stallion to breed to. To the extent that you should make those decisions on your own without any consultation, that's a lot nicer.

One of the primary disadvantages of sole proprietorship is the succession of management in the event of your disability or death. That should be taken care of through adequate estate planning or by the preparation of a successor-to-be, in case of your absence. This is a point, which often is not considered when one enters the horse business as an individual proprietor.

Another disadvantage is that, of course, you have to adequately capitalize the business yourself. On the other side of the ledger, you receive all the tax benefits.

Finally, a sole proprietor does have unlimited liability. This is, without a doubt, one of the biggest negatives. For this reason, the individual should have adequate business liability insurance.

Moving into the multiple ownership forms of business, we have joint ownership and syndication.

Joint ownership occurs when two or more individuals own one or more related assets as tenants in common. This means that rather than owning interest in a third entity such as a partnership, you in fact own an undivided interest in a piece of the asset itself. The advantage is that this is often done on a more informal basis. Each individual can take care of his own tax situation on a individual basis.

I would like to point out that, except for stallion syndicates or racing, from the Internal Revenue Service's standpoint, any other joint ownership in the equine industry is treated as a partnership for tax purposes. Thus, the joint owner can find himself penalized later on for failing to file a partnership tax return.

The next type of ownership would be joint ventures and partnerships. A joint venture is an association created by co-owners of a business enterprise; a partnership is an association of two or more individuals who are co-owners of a business. What is the difference?

The difference is that a partnership contemplates a longer life and more involvement, whereas a joint venture can be thought of as more of a one-shot deal; for example, if you purchase a horse for a short period of time, then syndicate him. This is more in the nature of a joint venture.

Among other things a joint venture agreement or general partnership agreement should provide for is, division of management among the partners, as I indicated earlier.

With respect to a partnership or joint venture, you should leave the decision-making to the individual who has the talents for that type of decision. This should be included in a partnership agreement and thought should be given to whom your partners are.

Also, in a partnership or joint venture agreement, adequate provision should be made for the evaluation of a partner's interest upon death, resignation, withdrawal or expulsion. If any of those events occur, the partnership agreement should provide that, if you can't agree on what the partner's interest is, there are appraisal rights made through the agreement.

Another form of ownership is the limited partnership. It is a partnership, which is composed of one or more general partners, the general partner (having unlimited liability the same as a general partner in a general partnership) and one or more limited partners (having limited liability). The limited partner is only liable for the amount that he has agreed, by contract, to pay to the partnership. That's the extent of his obligation, in contrast to the general partnership.

The limited partnership can be both public and private, and it is this form of business operation that is becoming more and more popular in the equine industry. Tax benefits in all these partnerships are the same as tax benefits that flow through to the individual partners.

Finally, there is a corporate ownership. A basic definition of a corporation is: an entity owned by shareholders who have placed management authority in the hands of corporate officers.

Again, there are both public and private corporations. A private, closely held corporation, as opposed to the public corporation, is a company in which the management is vested in the hands of beneficial owners.

The major reason for incorporating is that of limited liability. In contrast to sole proprietorship, partnership, joint ownership or joint venture, the shareholders of a corporation are limited in their liability. Tax benefits, however, do not normally flow through the corporation to the shareholders unless 100% of the shareholders elect to be an S corporation.

If you have specific questions, please call Patrick J. Hurley at (800) 996-1040.