What You Need to Know and Frequently Asked Questions

PRIVATE RETIREMENT PLAN

SETUP

California Code of Civil Procedure exempts certain types of assets from creditor claims. One such exempt asset is a “private retirement plan.” While a private retirement plan includes in its definition ERISA-qualified plans (like 401k and profit-sharing plans), it also includes money set aside for retirement needs outside of an ERISA-qualified plan.

To qualify your assets for the exemption of a private retirement plan, we will first draft a private retirement plan and a private retirement plan. A legal entity (like a corporation or an LLC) should act as the sponsor of the plan. You will transfer your assets to this legal entity and the entity will in turn transfer the assets to the retirement trust.

The assets are transferred to the legal entity and then to the retirement trust via an assignment agreement.

Because it may be burdensome to have the plan administrator have direct control over your assets, we recommend establishing a Delaware LLC which will be owned by the private retirement plan, and transferring assets (via an assignment agreement) to the Delaware LLC. You can act as the LLC manager and retain direct, day-to-day control over the LLC’s assets and bank accounts. The plan administrator will only hold the LLC interest which will not require any action on their part.

MAINTENANCE

Once established, there is no day-to-day management of the retirement trust as it does not hold any active assets or bank accounts. Other than paying an annual fee to a professional plan administrator (if one has been appointed), no action is required.

While the funds in the private retirement plan are ultimately yours, you should not withdraw the funds until the need for asset protection has passed. Withdrawing money from the plan prior to retirement defeats the argument that the plan was established for a retirement need and void the exemption of the plan assets. If you do need to withdraw assets from the plan, we can structure the withdrawal as a loan, which you will need to repay at a later time.

TAXATION

The private retirement plan is comprised of two documents: the retirement plan and the retirement trust. The plan provides guidance for the administrator and the trust holds the

We structure the retirement trust to be ignored for income tax purposes and to be ignored for gift tax purposes. This means that for income tax purposes the assets transferred to the retirement trust remain your assets. You will need to continue to pay income taxes associated with these assets. The trust will not have an income tax liability and will not need to file a tax return.

Private retirement plans are not taxed the same as ERISA-qualified plans or IRAs and are not subject to the same restrictions and limitations. Contributions to and distributions from private retirement plans are not taxable. There are no contribution limits and you are allowed to discriminate against rank and file employees.

UNWINDING

Please let us know when you are ready to unwind your retirement plan. We will assign the ownership of the plan's assets from the retirement trust to you and will terminate the appropriate legal entities and the trust.

FREQUENTLY ASKED QUESTIONS

I already participate in a defined benefit plan through my company how is the private retirement plan different?

The private retirement plan is not taxable and is not subject to the various restrictions and limitations of ERISA. For example, there are no limitations on how much you can contribute, you do not have to cover your employees, and there are no required minimum distributions.

Are my existing 401k, IRA and other retirement assets protected as well?

Your ERISA-qualified plans are exempt from creditor claims if there is at least one non-owner employee vested in the plan. You and your spouse do not count. Children are ok. IRAs are not ERISA-qualified. IRAs (and this includes all types of IRAs) may be protected under California law. California uses a subjective standard to determine whether the funds in your IRA are exempt, and the standard is always applied favorably as to your creditors. For most of our clients, their IRAs are not protected.

What type of assets can be held in the private retirement plan?

The private retirement plan can hold any asset. If your personal residence will be transferred into the PRP you will need to pay fair market value rent to continue to live in your residence.

I have partners in my business, will they be affected by the retirement plan?

If your existing business will act as the sponsor of the retirement plan, then all employees of such business will be allowed to participate in the plan. Usually rank and file employees do not choose to participate because there is no tax benefit in contributing assets to the private retirement plan. Only an asset protection benefit.

The private retirement plan will have no impact on your business partners. They are not required to contribute to this plan, and if they do, it will have no impact on their contributions to taxable plans like IRAs or 401ks.

Who is the Trustee of the Private Retirement Trust?

Any person can act as a trustee of a private retirement plan. Our preference is to appoint a professional pension plan administrator as the trustee. That typically costs about $950 per year.

How do I replace the Trustee?

The plan documents allow the legal entity that has sponsored the plan to change the trustee of the private retirement trust at any time. We can help with the necessary paperwork.

Who can be the beneficiaries of the plan and may I change the initial designations?

Only an employee of the legal entity that is sponsoring the plan can be a beneficiary. Your remainder beneficiaries may be a spouse, children or your living trust. You can always change the designated remainder beneficiary.