SHOULD YOU RESTRUCTURE YOUR WINE COMPANY OWNERSHIP AND MANAGEMENT

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Like many other businesses, we have found that family-owned wineries and owners of vineyard properties spend significant time building their business, yet fail to devote sufficient time on how retirement, death, or incapacity of the owners will have on maintaining the business if and when their children take the reins. Given the newly proposed U.S. Treasury Regulations to close estate tax valuation discounts on family businesses, you should immediately focus on your long-term business objectives before adverse changes are made by the federal government in valuing family businesses. By focusing on your long-term business objectives before it's too late, you can have your business continue into the next generation with family members carrying out your business plan and culture, while passing on more assets to your children should the proposed Treasury Regulations go into effect as soon as January 1, 2017. Failing to immediately focus on long-term succession planning by gifting interests in your family business to your children may result in your business declining, fragmenting, or dissolving during the next generation's ownership.

Many owners of wineries or vineyard properties have created a management structure that has successfully grown their business. But what will happen to the long-term viability of their business should an unforeseen event occur to a senior member of a family business? We have found that by devoting substantial time to consolidate management, while at the same time providing flexibility for future management for the second generation when the owners have reached the age to cut back or retire, the family business can continue to survive and thrive. There are several steps to consider in family-owned wineries and owners of vineyard properties to preserve the wealth that has been established for future generations. Some of these steps include:

1. **Segregating Managerial Control of the Business Into Family Units.** Many family

wineries and owners of vineyard properties have siblings or relatives who have worked well together to build a family business. Although many owners have more than one child that intends on being involved in the business following the retirement, incapacity, or death of the parents, some children have no interest in continuing to build and maintain the business. Before too many children or grandchildren inherit stock in a family corporation (or interests in family limited partnerships or limited liability companies), you should consider forming a separate family unit for each owner's interest before the business becomes too diluted with differing objectives and goals by family members. We have found that by creating Limited Liability Companies ("LLCs") for each original owner of the business, you have the flexibility to carry out your business and estate planning objectives.

2. **Providing Second and Third-Generation Family Members With Greater Management Responsibilities.** An LLC can designate a specified number of persons to act as successor managers, as well as grant such successor managers control over the Family LLC's business. The LLC agreement offers considerable flexibility and can be customized to accommodate the Owner's particular business and estate planning objectives with respect to his or her own family. Such an agreement can segregate and consolidate internal voting rights within the Family LLC, ensuring that each family member is represented with respect to voting matters (without over-encumbering such management with too many participants).

3. **Providing Each Owner With the Flexibility to Shift Equity in the Business to Their Family Members, While Retaining Managerial Control Over the Family's Collective Equity Interests in the Business.** An Owner can gift certain interests in the business to his or her children or grandchildren, yet continue to manage the family's entire interest. Such an ownership and management structure enables the owners to implement their estate planning objectives before December 31, 2016 with minimal disruption to the business, reduce their respective gift and estate tax liabilities (by increasing valuation discounts) provide additional asset protection and, most importantly, improve the likelihood of preserving the business for the owners and their respective families. Proposed Treasury Regulations (supported by The White House and, following the December 1 hearings, will result in final regulations by the end of the year) will increase estate taxes on the death of owners, with the snowball effect of potentially forcing your heirs to liquidate the business or sell to non-family members.

By creating family limited liability companies to hold their respective stock or interests in a business, each owner can control his or her Family LLC, while also offering maximum flexibility from an economic, management, and tax standpoint. After this is created, each owner can transfer ownership interest in their Family LLC to family members as part of his or her overall estate plan. Serious consideration should be given for the Family LLC entering into a buy-sell agreement that restricts transfers of stock, while also permitting the business and/or Family LLC to buy-out another Family LLC upon the occurrence of certain events.

The advantages of such a structure provide consolidation, continuity, and flexibility of management of the business on a long-term basis, notwithstanding the death, incapacity or retirement of an Owner. This structure also enables the Owners to implement their respective estate planning objectives with minimal disruption to the business. We have been successful in restructuring family wineries and vineyard owners' businesses to solidify owners' objectives to maximize continuity in future generations as well as reducing gift and estate taxes. If you are interested in discussing ways to successfully manage your business generationally with minimal disruption to your business, please contact us as soon as possible (and before the Proposed Treasury Regulations might become final by the end of the year).