IDAHO Tax Commission
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To: All County Assessors

From: Rick Anderson – Property Tax Policy Specialist

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Purpose

The purpose of this memo is to let you know of a recent clarification on how you should determine the extent to which a taxpayer is eligible for the personal property exemption. Please use this clarification to make decisions on who is entitled to the exemption.

Background

Idaho Code §63-602KK(2) grants the personal property exemption to each taxpayer. This section of Code also attempts to provide guidance in determining a taxpayer by referring to "using the property in a common enterprise or a related group". Previously everyone's focus has been on the "related group test", a test that can be objectively determined because of the reference to section 267 (b) of the Internal Revenue Code. Up until this point little attention has been given to the "common enterprise test" because it seemed logical to use only the most objective test.

Common Enterprise Test

In discussions with our deputy attorney general it was pointed out that that a "common enterprise" analysis should also be made to determine the eligible taxpayer. The attorney sets forth that a two-step analysis should be made and the "common enterprise" analysis must be applied first and the "related group" test would only be applied if a common enterprise was identified.

The two-step analysis should ask two questions: 1) Are the organizations or individuals using the property in a common enterprise? and, 2) Are individuals or organizations within a relationship described in section 267 of the Internal Revenue Code. If individuals and entities are not using property in a common enterprise, then the analysis is complete and each receives the personal property exemption on the property it owns. If, however, a common enterprise is identified, the second part of the analysis must be used to determine whether the ownership between the entities falls within the relationships identified in IRC 267.

Need-less-to-say the term "common enterprise" must be explained so that it may be applied in the very first test. Legal has indicated that a common enterprise can be determined by examining whether or not the business has been organized with a common business scheme being apparent. Does the business scheme call for integration of businesses that would result in either horizontal or vertical commonality?

An example of horizontal commonality: The usual functions involved in a working potato farm are split between several LLC's, all of which own the property involved with the functions they perform. The operation of the business is no different than if all the functions were combined in just Potato Farm, LLC. Therefore the conclusion would be that all of these LLC's would only be entitled to one $100,000 exemption.

An example of vertical commonality: A business operation is split so that each step in a process is designated to a different LLC All the steps rely on the one below in order to produce the final product, or process. A rock quarry, a rock crushing operation, a concrete plant and finally a road construction operation each one being a separate LLC would be treated as one; all the LLC's would only be entitled to one $100,000 exemption.

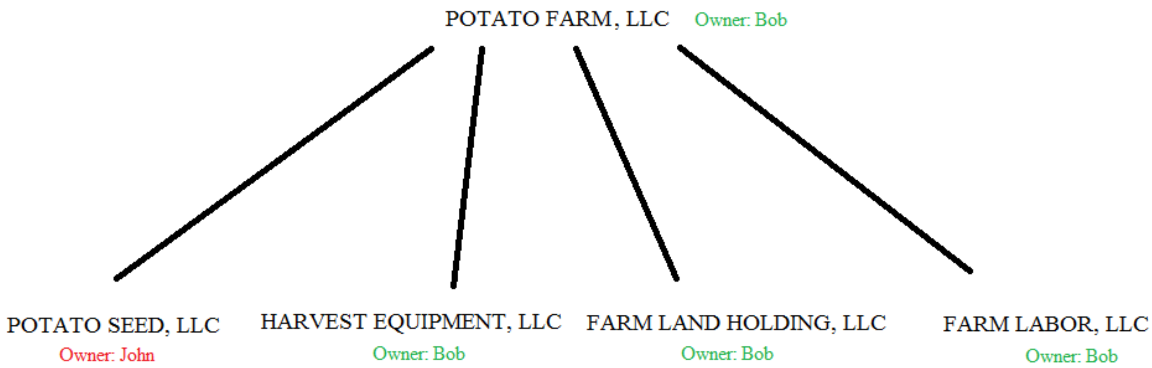
However many other types or combinations of ownership may and will occur. For example if the owner of the potato operation above also owns a used car business, he would be entitled to two $100,000 exemptions. The used car business would not be considered a common enterprise with the potato operation so each would be entitled to its own $100,000 exemption.

Common enterprises can also intersect with one another. For example if we found that John shares the ownership of the rock crushing operation above with the other owner, and John owns a dump trucking LLC and a separate gravel sales LLC then there would be two eligible $100,000; one exemption for John's three operations and one exemption for the four other vertically common operations.

It is important to note that mere ownership does not, by itself, determine whether entities are considered one taxpayer for the personal property exemption. Two businesses can have identical ownership and each receive the personal property exemption, so long as they do not operate as a common enterprise. Also, entities in a common enterprise can receive separate exemptions, so long as their ownership does not consist of a relationship identified in IRC 267. It is also important that the common enterprise analysis be performed first. Assessing owner relationships pursuant to IRC 267 without first identifying a common enterprise to apply those relationships to would produce ridiculous situations such as siblings splitting an exemption between their two businesses or a car dealership and a cattle ranch splitting an exemption because of common ownership.

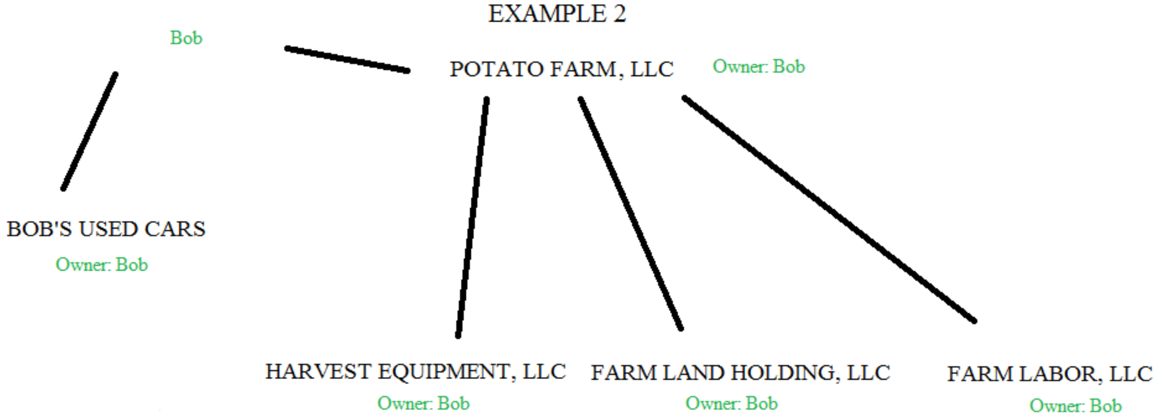
In conclusion we present the examples discussed in the memo in chart form. Please see the following diagrams.

EXAMPLE 1



So long as Bob and John are not related in a manner identified in IRC 267, two exemptions exist. One for Potato Seed, LLC. The other for all of Bob's businesses, because they are in a common enterprise and all owned by him.

EXAMPLE 2



Here, two exemptions exist. Potato Farm, LLC and it's subsidiaries are in a common enterprise and share ownership as described in IRC 267, so one exemption applies to all of them together. However, Bob's Used Cars is not involved in the common enterprise, so receives its own exemption, even though it shares ownership with the other companies.

EXAMPLE 3

ROAD CONSTRUCTION, LLC Owner: Bob

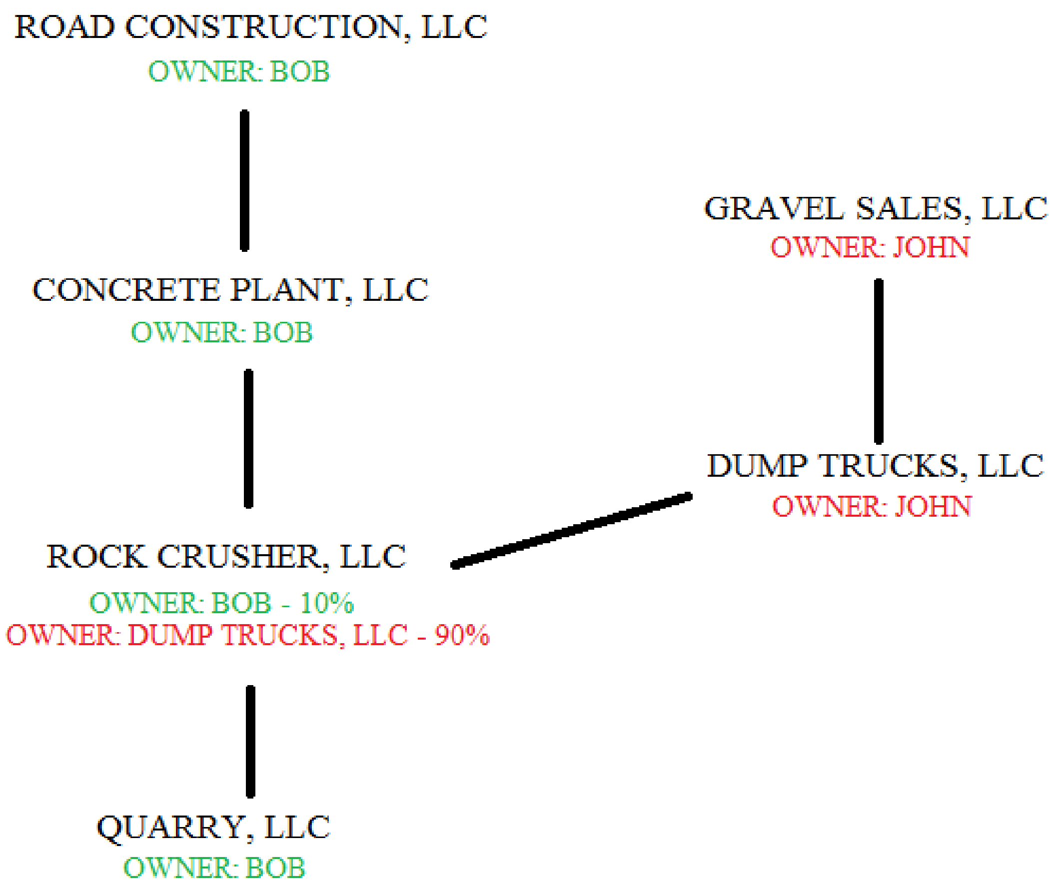
CONCRETE PLANT, LLC Owner: Road Construction, LLC

ROCK CRUSHER, LLC Owner: Concrete Plant, LLC

QUARRY, LLC Owner: Rock Crusher, LLC

Here, one exemption exists for all of the entitites because they are in a common enterprise, due to their vertical commonality, and are all constructively owned by Bob pursuant to IRC 267.

EXAMPLE 4



This is an example of how common enterprises can intersect with one another. The companies Bob owns completely receive one exemption; John's companies also receive one exemption, including Rock Crusher, LLC because John's ownership interest in that company falls within IRC 267.