# Overtime: Considerations in the Possible Liquidation of a Closely held Entity and Other Alternatives

I. Game Fatigue

a. Entity was set up some time ago, and returns were filed by the accountant, and cash flow administered by the client, the client’s family office, or other advisors. It’s been a while since the attorney has reviewed the records.

b. Get Back in the Game: Introducing the need for a refresh and review

c. Copies of returns, records, entity documentation, cash flow distributions, management.

d. Outline of what you are looking for.

II. Dealing with Fumbles to Retain Possession

a. Incorrect entity formation documents

b. Administration inconsistent with purpose of entity as set forth in the documents

c. Cash flow distributions inconsistent with document formation

d. Non pro rata distributions

III. Calling an Audible

a. You have the lead and want to play it safe

b. The team is exhausted and wants to leave the field

c. There are more effective ways to win the game

d. We can increase the lead

IV. Playing it Safe

a. Terminating the Entity (see V. a. below re LLCs and Partnerships)

b. Transfer of control

i. Valuation

    ii. Techniques (gift or sale and optics on reporting)

c. Transfer of all remaining interests of creator

V. Team Fatigue

a. The Client is not willing to do what is necessary to validate the entity if challenged. OR, the players are fighting with each other; there is no team harmony. Consider the consequences of liquidation.

    i. Optics as to timing between date of formation and date of liquidation

    ii. Coordinating the income tax results on liquidation with the accountants; and reporting

    iii. Consistency with gift tax filings and timing

    iv. Who gets what assets and 704 (c) and 737 (disguised sales)

b. Transfer control to an LP or member to administer partnership or LLC

c. Status quo and documenting “faults:” How not to provide the roadmap to failure for the IRS

VI. Other ways to Win the Game

a. Consider income tax and basis issues with a testamentary discount

b. Section 731 and the step down in basis: preserving basis by lifetime transfers of entity interests

c. Increase in estate tax credits yielding entity discounts unnecessary: shifting the play calling to basis planning

VII. Increasing the Lead

a. G2 and G3 and Other trusts using the entity for their discount planning

b. Basis shifting after 7 years

c. Preserving the discount for use in sales to grantor trusts and other strategies.