

ERSOP[®]

Advanced Topics:

- Partners
- IRS Audits
- Additional Funding Sources
- IRAs vs. ERSOPs

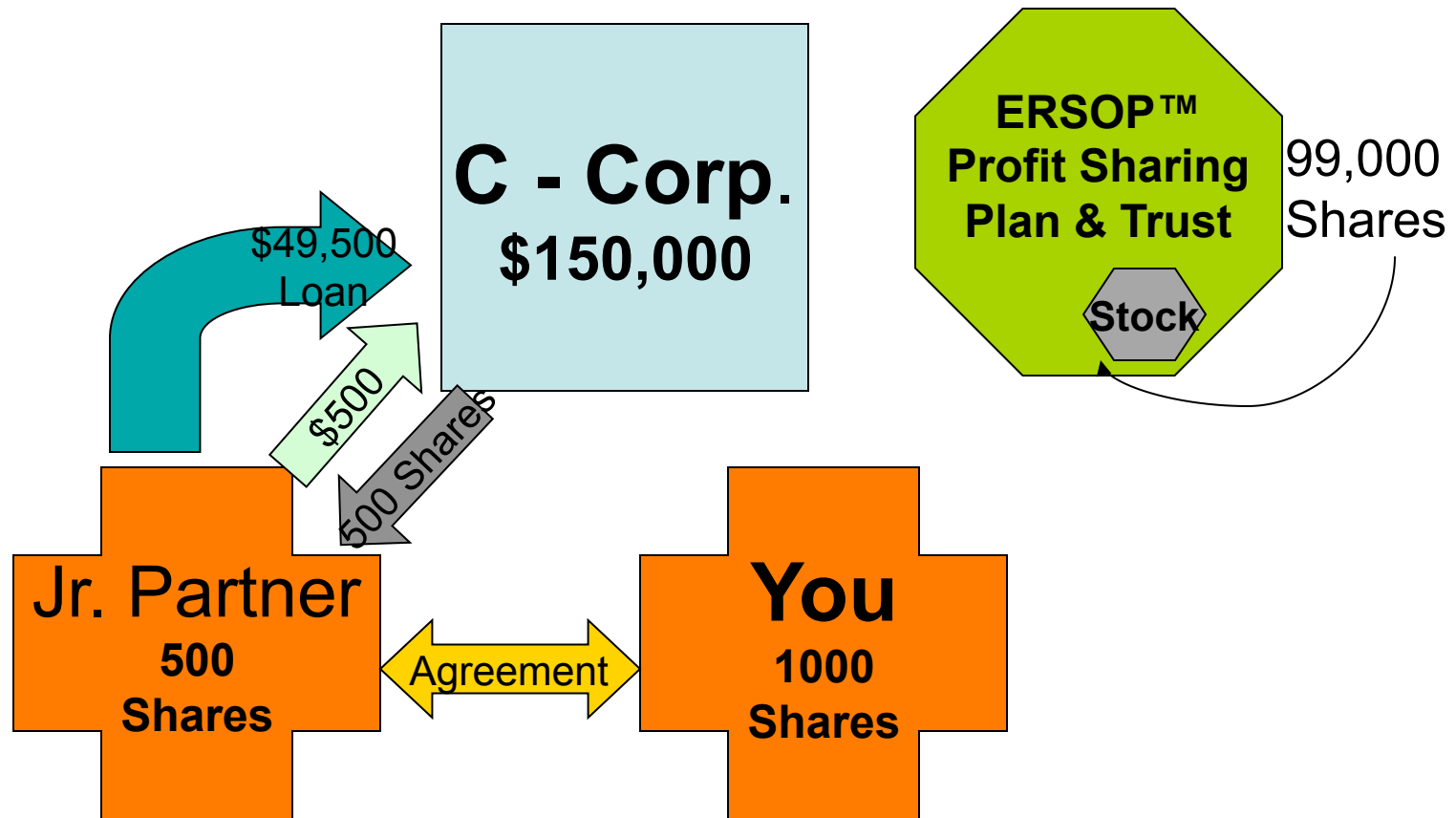
Partners

- Pistols for two and brandy for one!
- Partnerships destroy families and friendships — making great fodder for Hollywood.
- Inject retirement funds, especially in disproportionate amounts, and . . .

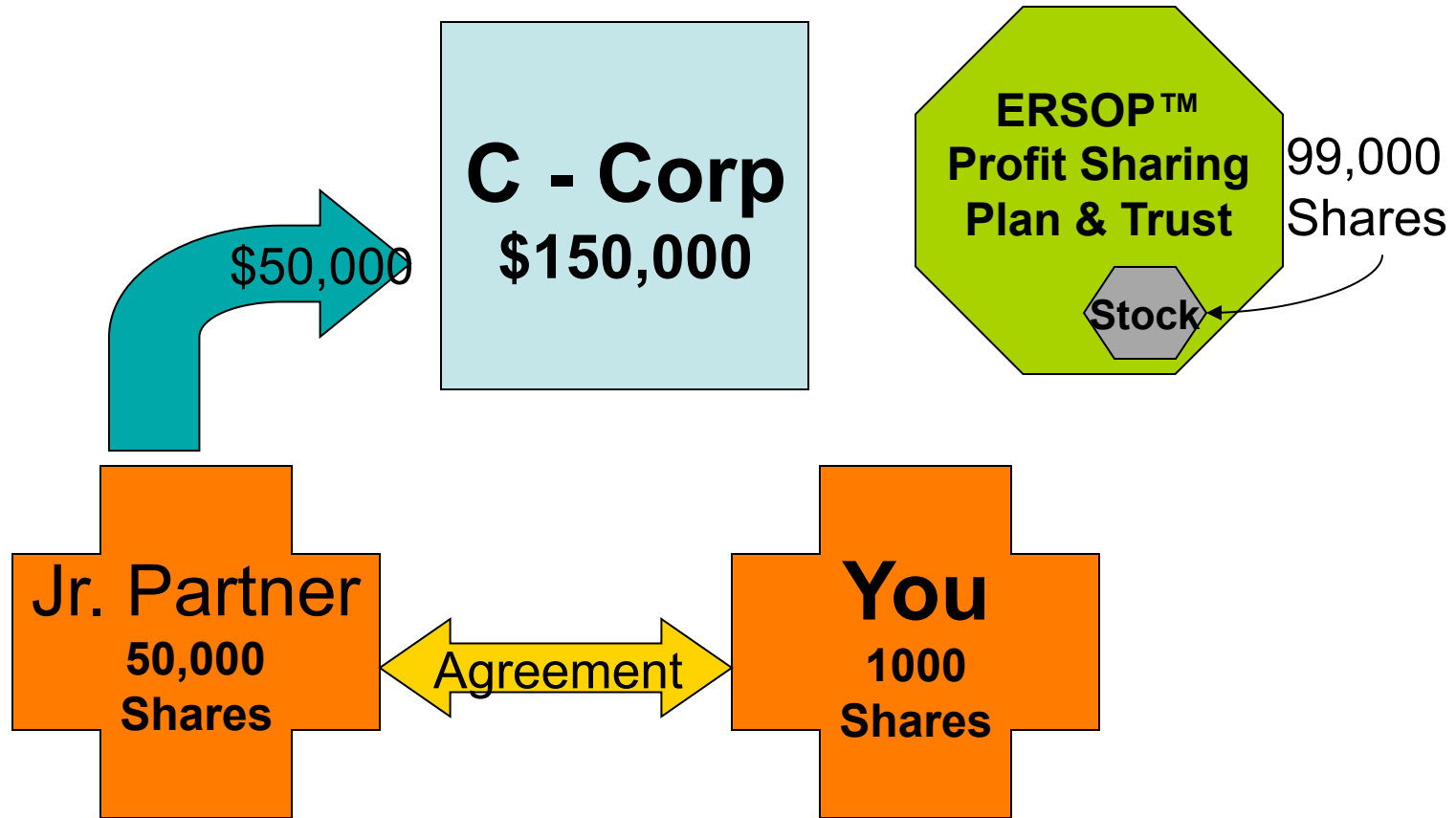
Asymmetric Ownership

- The following illustrate two solutions:
 - “Sr. partner” with \$99,000 in retirement funds and \$1,000 in personal funds
 - “Jr. partner” with \$50,000 in all personal funds.
 - 1st example: they agree to retire Junior’s loan when the stock in the ERSOP® plan is retired to treasury stock thereby maintaining proportionate shareholding.
 - 2nd example: they agree to retire proportionate stock when the “exit strategy” is exercised.

Adding a Jr. Partner w/o 401(k) Stock and Loan



Adding a Jr. Partner w/o 401(k) All Stock



A Word About IRS Audits

- For 4 decades the IRS has threatened to audit every qualified plan ever three years. In their best three years they audited ~1%. Therefore; any plan has a 1/300 chance of being audited each year. With that in mind:
 - The corporation is very, very important.
 - Valuations are important.
 - Keep all required annual administration and filings up to date.
 - Do not talk to the IRS; that is what we are for.
 - Do not panic.
- The Holy Grail is a “no change” audit closing letter.
 - 45 ERSOP® Plan clients, in addition to the one on the following page, have received “no change” audit closing letters SINCE the issuance of the October 1, 2008 IRS’ ROBS Memorandum.
- SDCooper Company clients have fared very, very well.

No Change IRS Audit Letter

Internal Revenue Service
1500 Ormsby Station Ct.
Louisville, KY 40223

Department of the Treasury

Date: AUG 15 2006

Person to Contact/ID Number:

, Inc.
Lane
, KY

Contact Phone Number:

270-

Form Number:

Form 5500-EZ

Name of the Plan:

, Inc., Profit Sharing Plan & Trust

Plan Number:

001

Plan Year(s) Ended:

March 31, 2005

Taxpayer Identification Number:

Dear Sir or Madam:

We have completed our examination of your return(s) for the above year(s), and have accepted the return(s) as filed. However, during the examination, we noted certain items indicated on the enclosure, which require your attention.

If you have any questions, please contact the person whose name and telephone number are shown above.

Thank you for your cooperation.

Sincerely yours,



Michael D. Julianelle
Director, EP Examinations

Enclosure:

List of items requiring attention

Letter 1744 (Rev. 6-2004)

Additional Funding Sources

- Loans
 - SBA
 - Non SBA
 - Non-collateral lenders
- Angels — nice venture capitalists
- Venture Capitalists — strictly business Angeles
- Partners — discussed earlier
- Family — see most of the above.

IRAs vs. ERSOPs

1. 1974 ERISA passed.
2. 1978 Prohibited Transaction enforcement given to the Department of Labor.
3. From the Swanson Case to the Peek and Fleck Case.
4. What to do if your did?

The Three Rules of ERISA Section 408(e)

1. If such acquisition, sale, or lease is for adequate consideration (fair market value),
2. If no commission is charged with respect thereto” . . . “to or from a disqualified person,”
3. If the plan is an “eligible individual account plan” as defined in section 407(d)(3)-
 - Profit Sharing
 - Pre-1974 Money Purchase Pension,
 - Stock Bonus,
 - Thrift & Savings,
 - or ESOP

This is why you cannot use a self-directed IRA as the “Plan”

- ERISA §407(d)(3) **excludes** IRAs from the definition of “eligible individual account plans” (which are permitted to invest into the stock of the employer.)
- IRC §408(e)(2)(A): an IRA ceases to qualify as an IRA if “the individual for whose benefit any individual retirement account is established *** engages in any transaction prohibited by IRC §4975.
- However, the money in most any IRA may be rolled over into an ERSOP® or ROBs Plan.

This is why you cannot use a self-directed IRA? – cont.

- **Lawrence F. Peek, et ux., et al. v. Commissioner, 140 T.C. No. 12, Code Sec(s) 408; 4975; 6662; 7491.**
 - The issues for decision in these consolidated cases are: (i) whether Mr. Fleck's and Mr. Peek's personal guaranties of a loan to FP Company were prohibited transactions under section 4975(c)(1)(B);²
 - ² Because we hold that **the loan guaranties were prohibited transactions**, we need not and do not reach the additional questions of whether prohibited transactions occurred (i) when FP Company made payments of **wages** to Mr. Fleck and Mr. Peek (which the IRS contends were prohibited transactions under section 4975(c)(1)(D)), or (ii) when FP Company made payments of **rent** to an entity owned by Mrs. Fleck and Mrs. Peek (which the IRS contends were prohibited transactions under section 4975(c)(1)(E))