Limited Liability Companies

Presented by the National Association of Tax Professionals
Objectives

• Tax aspects of forming an LLC
• Operating an LLC
• Classifications
• Default classifications
• Elections for non-default classifications
• Changing the classifications
LLC—Introduction

• Basic idea
• LLC=Legal entity, not a tax entity
• LLC is
  • Separate entity unless disregarded
  • Organized/established under state law
  • Offers liability protection
LLCs—Members

• Called members, not partners/shareholders—regardless of tax treatment selected
• Members have interests, not shares
• Basic rights
  • Economic interest
    • Right to receive a share of income, etc.
    • Freely transfer
  • Voting or management rights
    • Not freely transferred
      • Usually requires approval of other members
LLCs—Members

- Members/Persons
  - Defined by state law
  - Can include individuals, partnerships, corporations, trusts, estates, legal entities
  - Can include foreign individuals

- Management
  - By themselves or by a manager
  - As defined by state law
Operating an LLC

• Articles of Organization
  • Filed with state

• Name of LLC
  • Must contain LC or LLC
  • Professionals may be required to use PLLC

• Purpose of the LLC
  • General
  • Specific
Operating an LLC

• Registered Agent
  • Must be state resident

• Duration
  • Most states require duration stated

• Management
  • Member managed
  • Manager managed
Operating an LLC

• Continuation after a dissolution event
  • Usual dissolution events:
    • Death, dissolution, retirement, resignation, insanity or bankruptcy of a member
  • Must be stated in articles
Operating an LLC

• Operating Agreement—What it must cover
  • Definitions
  • Permitted businesses of entity
  • Management
    • Should detail parameters
  • Member’s rights
  • How to withdraw from LLC
Tax Classification of the LLC

• Default classifications
  • Unincorporated entities
    • Single member LLC
      • Disregarded entities
    • Multi-member LLC
      • Partnership

• What if the client wants something other than the default?
Tax Classification of the LLC

• Election (check the box)
  • Form 8832
  • Attach to entity’s return for year chosen
  • What if no return for LLC? Form 8832 is attached to the “member’s return”

• Mechanics of the election
  • Who signs? Each member or manager authorized by the operating agreement
Late Election

- Rev Proc 2009-41
  - Entity failed to obtain its desired classification solely because Form 8832 was not filed
  - Due date for entity’s tax return has not passed, or
  - All returns were timely filed and consistent with the desired classification
  - Reasonable Cause
  - Three years and 75 days from the effective date has not passed
  - Write across top of Form 8832 “Filed Pursuant to Rev Proc 2009-41”
Eligible Entities

• Election can not be changed within first six (6) months
  • Will be waived if change in ownership greater than 50%
  • Example box
• Definition of eligible entity
• Ineligible Entity
  • Organized entities as corps, banking, etc.
Changing the Classification

• Examples of permissible “Changes in Classification”
  • Partnership to corporation
  • Corporation to S corporation

• Not Permitted:
  • Single member to partnership
  • Partnership to single member
  • Corporation to partnership
LLCs

• Come to the NATP Booth for a handout on LLC’s