



National Association
of Tax Professionals

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