A Practitioner’s Look at Limited Liability Companies (LLC) and Their Entities

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Learning Objectives
At the end of this course, you will be able to:

• Define a Limited Liability Company (LLC)
• Apply the check-the-box rules
• Differentiate between single member LLC and multi-member LLC taxation options
• Determine the pros and cons of different entity types
Limited Liability Company

Definition, terms, and concepts

• An LLC is a separate legal entity organized under state law
• An LLC is not recognized for federal income tax purposes
• Single member LLC (SMLLC) – one owner
• Multi-member LLC – more than one member
• Professional Limited Liability Company (PLLC)
Limited Liability Company
Definition, terms, and concepts

• Member – Owner of LLC interest
• Managing Member(s) – Member with responsibilities of management
• Operating agreement – Written or oral rules governing conduct of business and management of entity
• Unit – share of ownership
• Default, disregarded and elected classification
Limited Liability Company
Definition, terms, and concepts

• When do you need an EIN?
  • Multi-Member LLC
  • SMLLC electing corporate status
  • Subject to federal excise taxes
  • Payroll
• IRS Pub 3402 – Tax Issues for Limited Liability Companies
Why an LLC?

- Limited liability protection for the members
- Flexibility in taxation
- No restrictions on ownership
- Management flexibility
- No requirements for annual minutes or annual meeting
- Beware! State treatment is not consistent, nor is international treatment
Single Member LLC Considerations

• Schedule C – Disregarded Entity Default Treatment
  • Simple and low-cost
  • No payroll for owner member
  • All income is subject to SE tax
  • Losses are fully deductible up to At-Risk limits
  • Easy in; Easy out
Single Member LLC Considerations

• Corporation Classification
  • Tax election to be treated as a corporation
  • Double taxation of profits
• Salary
• Fringe benefits
• Lower audit risk
Single Member LLC Considerations

- Election to be treated as an S – Corporation
  - Taxation of profits – no SE
  - Reasonable salary
  - Fringe Benefits – limited
  - Lower audit risk
  - Be aware of basis and debt basis
Multi - Member LLC Considerations

• Partnership – Disregarded entity default treatment
  • Taxation of profits
    • Active trade or business, all profits subject to SE
    • Passive LLC member, no SE.... maybe!
  • TC Memo 2017-16 Hardy
• Disproportionate allocations
• Guaranteed payments
• Debt basis
• Tax free liquidation
Multi-Member LLC Considerations

- Classification as a C – Corporation
  - Salary; fringe benefits
  - Double taxation issues
- Election to be treated as an S – Corporation
  - Taxation of profits – no SE
  - Reasonable salary; fringe benefits
  - Basis and debt-basis issues
Form 8832 – Entity Classification

• Check the box rules:
  • Domestic entities can choose their tax classification
  • Not always required in first year of LLC
  • Unincorporated entity to S-Corporation, not required – only need to file Form 2553
• Late Entity Election (Rev Proc 2009-41)
• 60 month limitation after changing classification
Form 2553, the S-Corporation Election

- Eligibility – shareholder rules apply, beware of ownership limitations and disproportionate distributions
- All members must sign the election form
- Late election (Rev Proc 2013-30)
- Revoking the election
Which entity is right for your client?
This Little Piggy Hot Dog Cart

• Business owner forms an LLC to operate a hot dog cart – what should he elect?
• Add a cart and an employee, what then?
• Add another cart and more employees, now what?
• Need additional capital, how should it be financed?
• What about a silent investor?
Truckers “R Us” Trucking Company

• 2 people form an LLC to operate a trucking company - what to do?
• Add more trucks and hire employees, what then?
• Continue to grow – additional trucks and employees, what then?
• What if one member stops working in the business?
• What if one member sells his ownership to the other member?
What about going from a Corp to an LLC? Taxable!!

Considered to be corporate dissolution
What we did for the last hour!

• Defined a Limited Liability Company (LLC)
• Reviewed the check-the-box rules
• Differentiated between single member LLC and multi-member LLC taxation options
• Determined the pros and cons of different entity types
For More Information

National Society of Accountants
More information is available including additional materials at:
Booth in Vendor Hall
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