



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

Presented by:  
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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

Or Table in Lobby

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