

Tony Forberg, Esq.



NEWS

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WE ARE MOVING

Effective November 26, 2007, our office is moving to:

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Q & A

What is pass-through Tax mean?

Pass-through taxation allows the income or loss generated by the business to be reflected on the personal income tax return of the owners. This special tax status eliminates the possibility of double taxation.

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OUR NEW WEBSITE

We have published our new website, to provide more information to our existing, and our future clients. Check www.forberglaw.com for more information.

Myths and Facts

Limited Liability Company

Before the advent of the Limited Liability Company (also referred to as “LLC”), the limited partnership or a corporation were the primary form of business entity used to achieve the tax status and limited liability features now offered by the LLC.

Both Corporation (including an S corporation), and Limited Partnerships have disadvantages, which LLC can instead provide advantage.

LLC v. Limited Partnership:

Although Limited Partnership allows pass-through tax treatment, flexibility in financial structuring, and limited liability for limited partners, at least one person, generally, general partner, must be fully liable for the obligations of the business, and limited partners may not take part in control of the business without jeopardizing their limited liability

LLC v. S Corporation

Although an S Corporation allows a pass through tax treatment and limited liability for shareholders, S Corporation status limits the owners flexibility in structuring their financial arrangements because of the requirements that the corporation have no more than one class of stock and that items of income, gain, loss, deduction, or credit must be taken into account with the shareholder's pro-rata share of the corporation's stock. Also only individuals, estates, certain types of trusts, and certain tax exempt

organizations are permitted to be an S Corporation shareholders, and an S corporation will lose its pass-through tax status treatment if an ineligible entity becomes a shareholder.

However, an LLC can have different classes of ownership, such as income, gain, loss, and other items may be allocated disproportionately to ownership[without affecting the LLC's pass through tax treatment. Also, unlike an S corporation, any “person”, i.e. an individual, partnership, limited partnership, trust, estate, association, corporation, other limited liability company, or any entity whether domestic or foreign, can be a member of an LLC.

LLC provides a better liability protection than a corporation because LLC members are not required to maintain the same degree of formality in conducting the LLC's affairs as corporate shareholders. Failure to observe corporate formalities is a common basis for imposing alter ego liability on the shareholders of a corporation.

Contact our office, and find out if LLC is the right entity for your business.

Is LLC Right For Me? Ideal Businesses for an LLC

An LLC is particularly advantageous in the following situations:

- Start up Businesses
- Existing unincorporated investments
- Joint ventures



- Estate planning

Not so Ideal Businesses contemplating an LLC

- Existing incorporated business
- Businesses planning on going public
- Professional Practices
- Certain Regulated Businesses

LLCs and Real Estate Investments

Liability Protection

Courts generally have respected LLCs as separate legal entities, and afforded them liability protection. It is well established that an LLC is superior to most other forms of entities in terms of liability protection. An LLC protects its owners from being held personally liable and responsible for the company's debts, obligations, and liabilities, and the most an investor can lose is the amount that he or she invested in the company.

Multiple Real Estates and LLC

Although LLC can be advantageous to various types of businesses, LLC is particularly attractive to real estate investments, because LLCs combine limited liability and flexible management with the ability to pass through losses and deductions, make special allocations, and avoid double taxation on the sale of appreciated assets.

Multi-Series LLC

Isolating liability among several assets is particularly useful to the owner of real estate, when some of the properties may be more susceptible to liability than others. A series LLC has advantages that are not available to Corporations, or partnerships, and is especially useful for

businesses or individuals who own multiple properties.

- May be used in lieu of forming multiple LLCs or subsidiaries
- Provides superior asset protection by segregating liabilities
- Can reduce legal, accounting, and administrative costs and taxes
- Allows tax free transfers within the LLC
- Ease of adding or dissolving a series (such as a real property)

Asset Protection For LLC Members

A creditor has no right to seize property within an LLC to satisfy the debt of a member. In a properly drafted LLC agreement, a creditor has no right to vote or inspect the books and records of the LLC. A creditor's rights are limited to receiving distributions of cash or other property made from LLC to its members. In most closely held business arrangements where one member has a creditor problem, a cooperative manager will retain profits inside the LLC and makes no distributions which might be taken by a lurking creditor. If the manager does not order distributions of cash or property, then the creditor gets nothing. More importantly, a creditor with acting charging lien on a member's interest in an LLC may incur income tax liability, which may prompt a creditor not to charge a lien on a member's interest in the LLC.

Costs

Cost of forming an LLC is largely dependent on the complexity of the operating agreement, number of members and investors, number of real estate properties (if a real estate LLC), and other factors. Legal fees in preparing an LLC starts from \$1,500 plus costs i.e. state filing fees.



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