



Newsletter

JULY 2007

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Our office will be closed for the following holidays:

July 4th, 2007 – Independence Day

September 3rd, 2007 – Labor Day

Our next newsletter will be mailed out the beginning of October 2007.

Remember if you have an article that you would like to contribute to our newsletter just fax it to us for our review. We must receive the article no later than September 15th for our October newsletter.

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LIMITED LIABILITY COMPANIES (LLC)

A limited liability company (denoted by L.L.C. or LLC) is a legal form of business company offering limited liability to its owners. It is similar to a corporation, and is often a more flexible form of ownership, especially suitable for smaller companies with a limited number of owners. Unlike a regular corporation, a limited liability company with one member may be treated as a disregarded entity, so the member is often singled-out as a person performing the actions of the LLC. A limited liability company with multiple members is typically treated as a partnership for tax purposes, thereby avoiding double taxation. An LLC can elect to be either “member managed” or “manager managed.”



Management Structures

Choosing to operate as member management creates a flat member or partnership structure. Choosing manager management creates a two-tiered management structure potentially convertible into a corporation, with the attendant tax consequences. LLCs use IRS Form 1065 and Schedule SE (Self-Employment Tax). It is often incorrectly called a “limited liability corporation” (instead of company). LLCs are organized with a document called the “articles of organization”, or “the rules of organization” specified publicly by the state; additionally it is common to have an “operating agreement” privately specified by the members.

Operating as an LLC form of partnership does not mean that appropriate federal partnership tax forms are not necessary, or not complex. As a partnership the entity's income and deductions attributed to each member are reported on that owner's tax return.

LLCs can lose their tax advantage without the partnership structure. The possible label "disregarded entity" for income tax purposes singles out the one-member owner for an LLC as actually earning income and deductions directly. It is the owner, then, who reports as a business proprietor, rather than as an LLC operating an active trade or business. An LLC passively investing in real estate and owned by a single member would have its income and deductions reported directly on the owner's individual tax return on a Schedule E tax form. And an LLC owned by a corporation – in other words, an LLC with a single corporate member – would be treated as an incorporated branch and have its income and deductions reported on the corporate tax return, creating double taxation.

Advantages

No requirement of an annual general meeting for shareholders.

No loss of power to a board of directors.

Much less administrative paperwork and recordkeeping.

Pass-through taxation (i.e., no double taxation), unless the LLC elects to be taxed as a corporation using IRS Form 8832.

Limited liability, meaning that the owners of the LLC, called "members," are protected from liability for acts and debts of the LLC.

Using default tax classification, profits are taxed personally at the member level, not at the LLC level.

Checked-the-box taxation. An LLC can elect to be taxed as a sole proprietor, partnership, S-corp or corporation, providing much flexibility.

LLCs in some states can be set up with just one natural person involved.

Membership interests of LLCs can be assigned, and the economic benefits of those interests can be separated and assigned, providing the assignee with the economic benefits of distributions of profits/losses (like a partnership), without transferring the title to the membership interest (i.e., SEE VA and Delaware LLC Acts).

LLCs in some states are treated as entities separate from their Members (See VA LLC Act), whereas in other jurisdictions case law has developed deciding LLCs are not considered to have separate juridical standing from their members (See recent D.C. decisions).

Disadvantages

Many states, including Alabama, California, Kentucky, New Jersey, New York, Pennsylvania, Tennessee and Texas, levy a franchise tax or capital values tax on LLCs. (Beginning in 2007, Texas has replaced its franchise tax with a "margin tax".) In essence, this franchise or business privilege tax is the "fee" the LLC pays the state for the benefit of limited liability. The franchise tax can be an amount based on revenue, an amount based on profits, or an amount based on the number of owners or the amount of capital employed in the state, or some combination of those factors, or simply a flat fee, as in Delaware. Effective in Texas for 2007 the franchise tax is replaced with the Texas Business Margin Tax. This is paid as; tax payable = revenues minus some expenses with an apportionment factor.

It may be more difficult to raise capital for an LLC, as investors may be more comfortable investing funds in the better-understood corporate form with a view toward an eventual IPO.

Although there is no public requirement for an operating agreement, members who operate without one may run into problems.

Some people, such as new business people, may not be familiar with the governance of LLCs. Unlike corporations, they are not required to have a board of directors or officers.

The principals of LLCs use many different titles – e.g., member, manager, managing member, chief executive officer, president, partner – some of which are not correct. As such, it can be difficult to determine who actually has the authority to enter into a contract on the LLC's behalf.

All income members receive is taxed at ordinary income rates and subject to FICA tax.

History by Country

United States

LLCs were first enacted by the state of Wyoming but can now be created under the laws of any U.S. state. They were chiefly inspired by the GmbH, a type of business organization available in many Latin American countries.

England, Wales and Northern Ireland

In 2002, the UK legislated limited liability partnerships (“LLPS”) into existence, which approximate LLCs in the USA (unlike private company limited by shares, Ltd. or P.L. C.). Member partners were taxed at the partner level, yet the LLP provides limited liability for the member partners.

Japan

Japan passed legislation in 2006 creating a new type of business organization, *godo kaisha*, a close variant of the American LLC.

Poland

Sp. Z o.o. is a Polish language term for limited liability company, the equivalent of ‘Ltd’ or ‘Limited’. ‘Sp’ is abbreviation for *spolka* (company); ‘z’ means with; the first ‘o’ means *ograniczona*, limited; the second ‘o’ means *odpowiedzialnoscia*, liability.

LLC REQUIREMENTS

Member Information

- Members required - One.
- Member can be one or more members which may be individuals, partnerships, limited partnerships, trusts, estates, associations, corporations, other limited liability companies or other business entities.
- Residence Requirements - No provision.
- Age Requirements - None.

Officer Information

- Officer Titles - Chief Executive Officer, Manager, and Member (this varies state to state).

TRADEMARK OFFICE ACTIONS

Office actions are letters from the USPTO that set forth the legal status of a trademark application. They are issued by trademark examining attorneys who are assigned to each

application. There are several types of office actions: examiner’s amendments, priority actions, non-final office actions, final office actions, and suspension letters. Please read below for a definition of each type, as well as information on how to respond to them.

Types of Office Actions

1. Examiner’s Amendment

An examiner’s amendment is a written confirmation of an amendment made to an application. The trademark examining attorney assigned to the application will make the amendment after consultation with an applicant or the applicant’s attorney. The examiner’s amendment is merely a written confirmation of the agreement between the examining attorney and the applicant as to the amendment, and it is also a notice that the amendment will be made. The applicant need not respond to the examiner’s amendment unless the applicant wishes to make further changes to the application.

2. Priority Action

A priority action is a letter in which an examining attorney sets forth specific requirements that the applicant must meet before an application can be approved for publication. An examining attorney will issue a priority action after consulting with an applicant or the applicant’s attorney. Unlike an examiner’s amendment, the priority action does not confirm resolution of the issues; instead, it explains the requirements still outstanding.

The applicant must respond to a priority action within 6 months from the date the priority action is mailed. If the applicant fails to do so, the application will be declared abandoned. Please note that examining attorneys have no discretion to extend the time for filing a response to an office action.

The benefit of a priority action is that, if the applicant responds within 2 months, the application will be given priority in processing.

3. Office Action

An office action is a letter in which an examining attorney sets forth the legal status of a trademark application. In such a letter, an examining attorney will inform an applicant if the search of the Trademark Register yielded any conflicting marks. The examining attorney will also send an office action to issue substantive refusals to registration (such as a likelihood of confusion, mere descriptiveness, etc.) that arise, as well as to make any procedural requirements.

Applicants must respond to an office action within 6 months from the date the office action is mailed. If applicants fail to do so, their applications will be declared abandoned. Please note that examining attorneys have no discretion to extend the time for filing a response to an office action.

There are two types of office actions: non-final and final. A non-final office action raises new issues and usually is the first phase of the examination process. An examining attorney will issue a non-final office action after reviewing the application for the first time. If a new issue arises after the applicant responds to the first non-final office action, the examining attorney will issue another non-final office action that sets forth the new issue(s) and continues any that remain outstanding. A final office action is the last office action that an examining attorney issues. It makes "final" any outstanding issues. An applicant's only response to a final office action is a) compliance with the requirements or b) appeal to the Trademark Trial and Appeal Board.

Suspension letters

A suspension letter suspends the action on an application. An application may be suspended for a variety of reasons. These include waiting for the disposition of a cited prior pending application to be determined or waiting for an assignment of ownership to be recorded. Applicants do not have to respond to suspension letters.

How to Respond to Office Actions

There is no set form or required format for responding to an office action. Applicants should address each issue raised by the examining attorney. Applicants should also be sure to include the **applicant's name, mark, serial number, Law Office and Examining**

Attorney in the body of the response.

Responses to office actions must be **received within 6 months from the mailing date** on the office action. There are **no extensions** to this deadline. Examining attorneys have no discretion to extend the time period for filing. **If applicants do not submit a timely response to an office action, their applications will be declared abandoned.**

* * * * *

Are your desires purely selfish? Do your taste run to a grand home, automobiles, fine clothes, an abundance of amusements, and so forth? If so, look around you at people who have such things in superabundance. Are they any happier, do you think, than you are? Are they any better morally? Are they any stronger physically? Are they better liked by their friends than you are by your friends?.... Carnegie said, "Millionaires rarely smile." This is substantially true.

B.C. Forbes

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