
IRS Issues Long Awaited Regulations on Series LLCs

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On September 15, 2010, the IRS issued its proposed regulations on series LLCs. Generally, the proposed regulations provide that a series of an LLC can be treated as a separate entity for federal income tax purposes.

Currently, ten states, including Nevada, Texas, Delaware and Illinois allow for the creation of series LLCs. A series LLC is one that has separate series or classes with rights, powers and duties with respect to specified properties or obligations of the LLC. A series may have a separate business purpose or separate investment objective. Delaware provides that the debts, liabilities and obligations and expenses of a particular series are enforceable only against the assets of that series and not against the assets of the LLC generally, or assets of any other series. A series generally has the power and capacity to hold assets, contract, grant liens and security interests, sue and be sued.

The proposed regulations provide that a series may be treated as a separate entity under local law. A series statute as defined is one that explicitly permits the members or participants of the series to have rights, powers, or duties with respect to that series, the series to have separate rights, powers or duties with respect to specified property and obligations and the segregation of assets and liabilities such that none of the debts and liabilities of the series or of any other series are enforceable against the assets of a particular series.

Although certain state statutes provide that the series limitations do not apply if the series does not maintain adequate books and records, the IRS does not consider any failure to elect or failure to qualify for liability limitations should affect its characterization for federal income tax purposes.

Further, the state's failure to include language that would permit individual series to enter into contracts, to be sued or to hold or own property does not affect the income tax characterization of the series.

If a series elects to be treated as a separate entity for federal tax purposes, a statement may need to be filed annually by the series to provide certain identifying information to ensure the property assessment and collection of tax.

The proposed regulations do not provide how a series should be treated for federal employment tax purposes or for purposes of employee benefits.

If you would like more information on series LLCs, please contact Phil Jelsma at 619.699.2565 or e-mail to pjelsma@luce.com.