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Series LLCs – The IRS Weighs In

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If you own or operate a business through a limited liability company (LLC), in recent years you may have heard talk of the "series LLC." In general, a *series LLC* is an LLC that may hold separate assets in two or more separate *series*, and each separate series may be owned by one or more separate persons in varying percentages. In many respects, each series is like a separate subsidiary.

If certain organizational and operating requirements are satisfied, then the liabilities with respect to a particular series are enforceable against the assets of such series only, and not against the assets of the LLC generally or any other series, and none of the liabilities with respect to the LLC generally (or any other series) are enforceable against the assets of such series.

Several states, including Delaware and Nevada, allow for the formation of series LLCs. The series LLC can be an appealing entity for the conduct of business. If a real estate enterprise, for example, owns and operates an office building and an apartment building, each building may be held by a separate series within one series LLC and hence protected from liabilities that arise from the operation of the other building. This liability shield is achieved without having to form and maintain a separate LLC to hold each building. Further, the owners of the series LLC may choose to own each series in identical proportions, or they may own each series in varying proportions. And all this within a single legal entity. In these respects, the series LLC can simplify and reduce administrative burdens and expense.

Beginning with the enactment of the first series LLC laws, there has been uncertainty as to how a series LLC should be treated for tax purposes. Should each series be treated as a separate tax entity, or should multiple series be combined into a single tax entity? As state and federal tax authorities have turned their attention to the series LLC, there is growing certainty with respect to its tax treatment. Some years ago, the California Franchise Tax Board announced its position that, for California tax purposes, each separate series in a series LLC is generally treated as a separate LLC and should pay the annual taxes and fees that California imposes on LLCs. The IRS may soon align itself with California in this regard. Last month, the IRS issued proposed regulations that address the treatment of series LLCs for federal tax purposes. In general, the regulations indicate that each separate series in a series LLC may be treated as a separate entity. Presumably, this will mean a separate federal tax return will need to be filed, and K-1s issued, on behalf of each separate series. contact us.

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