



North Carolina Law Life

Yes, an LLC Can Be Taxed as an S-corp, But Why?

By: Donna Ray Berkelhammer. Tuesday, April 10th, 2012

We are sometimes asked to form a **limited liability company** for a new **North Carolina** business that wants to be taxed like an S-corporation. Yes, we can do that, but why?

The primary reason for a company to do this is because it wants the operational and organizational flexibility of the LLC, but it also wants to reduce self-employment taxes. We find this to be an extremely cumbersome method of doing business and accounting.



We are firm believers in the **KISS principle** (Keep It Simple, Stupid). If you want your business to be taxed as an S corporation, why not just use a **corporation** rather than a limited liability company? Or start as an LLC and when you are making so much money it makes sense to be taxed as an **S-corp**, why not convert the entity? This is a good problem to have.

The LLC entity eliminates many of the formalities that a corporation must observe to preserve its corporate status. The LLC does not require bylaws, a board of directors, meetings or minutes, for example.

Tax (Photo credit: 401K)

But electing to be taxed as an S-corporation takes away much of this benefit.

To be taxed as a small business corporation, all the members of the LLC must meet the requirements of S-corporation shareholders. There cannot be more than one class of membership interests, more than 100 members, and the members cannot be corporations, partnerships, LLCs or non-resident aliens. In addition, the S-corp must comply with all the withholding and reporting requirements of an employer, which is not necessary if an LLC has no employees other than its members. It will also have to make quarterly estimated tax payments. The entity will have to file a tax return itself, where the LLC does not necessarily file a return at the entity level.

Any new company that wishes to be taxed as an S-corporation has two months and fifteen days after the LLC is formed to file the S-corp election with the **IRS**.

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