The Series LLC

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People who own LLC's often ask, "how many LLC's should I have?". This question typically applies to investors and business owners who have multiple activities. The multiple LLC question is typically slanted more toward liability protection than tax saving. For example, you might own 10 rental houses, a gas station, a campground, and a large amount of cash. In this example, every distinct business or major business asset be segregated into a different limited liability entity. However, this is not always practical because of administrative costs, tax preparation fees, and government fees that must be paid for each LLC. Solution? The Series LLC.

The LLC acts of Delaware, Iowa, Illinois, Tennessee, Utah, Oklahoma & Nevada, provide for the creation of separate protected "cells" or 'series' within one limited liability "container" without the need to create separate entities.

The Same, but Better

Two elements of the series LLC allow it to act essentially the same way multiple LLC's would:

1. Liabilities of a particular series are enforceable only against the assets of that specific series, not the LLC generally or another series of the LLC., and,

2. Classes or groups of members can be established, having whatever rights the LLC Operating Agreement says they have.

Additionally, each series can have its own separate business purposes. A series can be terminated without affecting the other series of the LLC. A series can make distributions to its own members without regard to the financial condition of the other series.

Notice is Required

In order to obtain inter-series liability protection, each series must be treated separately and the public must be put on notice of the liability limitation. This is done for the most part by including the series limitations in the LLC's Certificate of Formation filed with the Secretary of State of domain. As with separate LLC's, separate records and accounting must be kept for series LLC's.

Tax Implications

Commonly, members of each series of an LLC will be identical, thus it is fairly certain that the series LLC as a whole will be treated as a single tax entity for federal tax purposes. On the other hand, if the series of an LLC have the same members, or identical or similar membership rights, or similar business purposes, each series may be treated as a separate LLC for income tax purposes. In either case, there should be only one filing with a state's secretary of state for the LLC.

Additionally, a formation state may recognize the series LLC, but the non-formation state may not. California, for example, requires each cell in the series to individually register and pay the Franchise Tax Board Fee as if each cell were a separate LLC.

3 Examples of Using the Series LLC

The series LLC is an excellent ownership entity for real property owners who own multiple real properties. Set up correctly, the LLC should offer all of the traditional liability protection of a single LLC. However, with a series, multiple assets can be protected while a single tax filing, tax required, and if the state of domain requires, franchise fee would be paid. This alone can save owners several thousands of dollars a year.

The series LLC can also compartmentalize business operations into separate divisions (cells). Using this strategy, key employees can be rewarded for their performance while protecting other divisions from potential downside of other divisions.

Finally, series LLC's can also be used for an acquisition instead of a traditional merger. For example, two or more companies wishing to collaborate can form a series LLC, with each company contributing its assets to a separate series, or with the owners of each company contributing their ownership interests to a separate series. The series LLC agreement can be drafted to determine exactly the rights and responsibilities which are maintained separately.

Series LLC's in Non-Series LLC States

An entity formed in one state cannot do business in another state unless it is first "qualified" to do business in the non-formation state by filing an application with the secretary of state of the non-formation state. Generally, once an entity qualifies to do business in the non-formation state, it becomes subject to the non-formation state's laws.

The exception is the internal operations of the series LLC and any inter-member dispute. Often, non-formation state courts will honor the regulations of the series LLC formation state on these matters. However, they typically will not allow the limited liability of obligations, duties and rights of anyone outside of the series LLC to be bound by its terms if they are separate and distinct from the non-formation state. As a general rule, you are typically better off just forming your entity in the state where it will reside, and if applicable, where its members reside.

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