Table of Contents

CHAPTER 1. AN OVERVIEW OF THE LIMITED LIABILITY COMPANY AND LIMITED LIABILITY PARTNERSHIP (WITH AN HONORABLE MENTION FOR LIMITED PARTNERSHIPS)

§ 1:1 Introduction
§ 1:2 Origins and proliferation of the limited liability company
§ 1:3 Fundamental characteristics of the limited liability company
§ 1:4 The professional limited liability company
§ 1:5 The limited liability partnership

CHAPTER 2. ENTITY CLASSIFICATION FOR FEDERAL AND STATE PURPOSES, INCLUDING CLASSIFICATION OF SERIES LLCS

I. IN GENERAL

§ 2:1 Introduction
§ 2:2 The history: Revenue Procedure 95-10 and the four critical characteristics

II. DON'T "CHECK-THE-BOX" REGULATIONS

§ 2:3 Introduction
§ 2:4 Eligible entity
§ 2:5 —Entities classified as corporations
§ 2:6 —Election
§ 2:7 —Protective election
§ 2:8 —Change of election
§ 2:9 LLCs created before 1997
§ 2:10 Single-member LLCs (SMLLCs)
§ 2:11 Foreign entities

III. SERIES LLCS

§ 2:12 Introduction
§ 2:13 Overview of Proposed Regulations
§ 2:14 Definitions in Proposed Regulations
§ 2:15 The basic rules of the Proposed Regulations
§ 2:16 Single entity/multiple entities in the Proposed Regulations
§ 2:17 Who are the owners under the Proposed Regulations?
§ 2:18 Information statements
§ 2:19 Proposed Regulations questions and issues
§ 2:20 Practical considerations
§ 2:21 Conclusion

IV. REVENUE RULINGS 99-5 AND 99-6

§ 2:22 Conversion of disregarded entity into partnership and vice versa
§ 2:23 —Revenue Ruling 99-5, disregarded entity to partnership

§ 2:24 Revenue Ruling 99-6, partnership converts into disregarded entity

V. CLASSIFICATION CHANGE TO OR FROM CORPORATION

§ 2:25 LLC classified as partnership converts into corporation
§ 2:26 LLC classified as corporation converts into partnership
§ 2:27 LLC classified as disregarded entity converts into corporation
§ 2:28 LLC classified as corporation converts into disregarded entity
§ 2:29 Timing

VI. STATE CLASSIFICATION/TAXATION

§ 2:30 Generally

Appendix 2A. Entity classification election

CHAPTER 3. FEDERAL INCOME TAXATION BASICS FOR BUSINESS LAWYERS

§ 3:1 Introduction and current events in taxation
§ 3:2 What is income and when is it taxed?/*Moore* case
§ 3:3 Calculating taxable income/expenses and depreciation
§ 3:4 Tax rates
§ 3:5 Limitations on the deduction of losses
§ 3:6 Capital gains and losses
§ 3:7 Deduction for abandonment and worthlessness
§ 3:8 Section 199A
§ 3:9 Employee status
§ 3:10 OBBBA

Appendix 3A. OBBBA Effective Dates

CHAPTER 4. CHOICE OF ENTITY AND PLANNING CONSIDERATIONS

§ 4:1 Introduction including Corporate Transparency Act, SALT Cap Workarounds, DAOs, SAFEs, SAFTs, and Token Warrants, Basics of Choice on Entity Decision

I. GENERAL PARTNERSHIPS

A. ADVANTAGES OF GENERAL PARTNERSHIPS

§ 4:2 Contributions and distributions
§ 4:3 Single level of tax
§ 4:4 Partnership debt included in partners' bases
§ 4:5 Special allocations
§ 4:6 Section 754 election
§ 4:7 Service partners
§ 4:8 Creditor of Debtor-Partner

B. DISADVANTAGES OF GENERAL PARTNERSHIPS

§ 4:9 Liability/New partnership audit rules
§ 4:10 Management and fiduciary duties
§ 4:11 Mutual agency

§ 4:12 Transfers
§ 4:13 Medical expenses
§ 4:14 Dissolution
§ 4:15 Employment taxes and liability issues/Independent contractors
§ 4:16 I.R.C. § 708
§ 4:17 Real estate development with appreciated property

C. CONVERSION TO LLC

§ 4:18 Generally

II. LIMITED LIABILITY PARTNERSHIPS (LLPS)

A. ADVANTAGES OF LLPS

§ 4:19 Generally/Corporate Transparency Act advantage
§ 4:20 Liability protection
§ 4:21 Ease of conversion
§ 4:22 Discrimination rules

B. DISADVANTAGES OF LLPS

§ 4:23 Generally
§ 4:24 Scope of liability protection
§ 4:25 Interstate transactions
§ 4:26 Lack of uniformity: law undeveloped

C. CONVERSION TO LLC

§ 4:27 Conversion to LLC

III. LIMITED PARTNERSHIPS

A. ADVANTAGES OF LIMITED PARTNERSHIPS

§ 4:28 Liability protection
§ 4:29 Management, agency, and dissolution
§ 4:30 Transfers
§ 4:31 State taxes and self-employment taxes
§ 4:32 Estate planning for families
§ 4:33 Creditor protection
§ 4:34 Well-established law

B. DISADVANTAGES OF LIMITED PARTNERSHIPS

§ 4:35 Complexity
§ 4:36 One-person limited partnerships
§ 4:37 State taxation
§ 4:38 Medical expenses
§ 4:39 Public trading
§ 4:40 Accrual accounting

C. CONVERSION TO LLC

§ 4:41 Generally

IV. LIMITED LIABILITY LIMITED PARTNERSHIPS (LLLPS)

§ 4:42 Generally
§ 4:43 Advantages and disadvantages of LLLPs
§ 4:44 Conversion to LLC

V. C CORPORATIONS

A. ADVANTAGES OF C CORPORATIONS

§ 4:45 Liability protection
§ 4:46 Stock transfers
§ 4:47 Reorganizations
§ 4:48 Administration/fiduciary duties
§ 4:49 Lower corporate rates
§ 4:50 Medical benefits
§ 4:51 Control
§ 4:52 Different classes of stock
§ 4:53 Qualified small business stock/ESOPs
§ 4:54 Passive loss and at risk rules, new I.R.C. § 461(l)
§ 4:55 Ordinary losses allowed on I.R.C. § 1244 stock

B. DISADVANTAGES OF C CORPORATIONS

§ 4:56 Double taxation of income/distributions
§ 4:57 Corporate losses
§ 4:58 Net operating losses
§ 4:59 Fiduciary duties/oppression/formalities
§ 4:60 Contributions
§ 4:61 Service providers

C. CONVERSION TO LLC

§ 4:62 Generally

VI. S CORPORATIONS

§ 4:63 Generally

A. ADVANTAGES OF S CORPORATIONS

§ 4:64 Still a corporation but with a single level of tax and flow through of losses
§ 4:65 Administration
§ 4:66 Ordinary losses allowed on I.R.C. § 1244 stock
§ 4:67 Self-employment/employment taxes
§ 4:68 Public offering
§ 4:69 I.R.C. §§ 704(c) and 751
§ 4:70 Subsidiaries and LLCs
§ 4:71 Real estate development with appreciated property

B. DISADVANTAGES OF S CORPORATIONS

§ 4:72 Qualification requirements
§ 4:73 Tax differences with partnership
§ 4:74 Contributions and distributions

§ 4:75 One class of stock limitation
§ 4:76 Service providers
§ 4:77 State taxation
§ 4:78 Corporate-level tax
§ 4:79 Medical insurance
§ 4:80 Accrual accounting

C. CONVERSION TO LLC

§ 4:81 Generally

VII. LIMITED LIABILITY COMPANIES (LLCS)

§ 4:82 Generally, including updates for Corporate Transparency Act, DAOs, SAFEs, SAFTs, Token Warrants

A. ADVANTAGES OF LLCS

§ 4:83 Generally
§ 4:84 Liability protection/pierce the veil/reverse piercing
§ 4:85 Series LLCs
§ 4:86 Simplicity and lack of formalities
§ 4:87 Modern statutory architecture: Transfers/information rights/fiduciary duties and oppression/derivative actions
§ 4:88 At risk rules and nonrecourse debt
§ 4:89 The single-member LLCs (SMLLC)
§ 4:90 Single-member LLCs—When is one, one?
§ 4:91 —Need for operating agreement
§ 4:92 Single-member LLCs and Like-kind exchanges
§ 4:93 Single-member LLCs—Employer identification numbers and employment taxes, IRS collections, state law considerations
§ 4:94 —Ancillary probate/state estate tax considerations
§ 4:95 —100% penalty
§ 4:96 —Converting single-member LLC to multi-member LLC
§ 4:97 —Consolidated returns and reorganizations
§ 4:98 Community property states
§ 4:99 Issues for two+-member LLCs/deadlocks
§ 4:100 Transfer taxes
§ 4:101 Start-up expenses
§ 4:102 Agency and management
§ 4:103 Operating agreements/perpetual life/judicial dissolution/buy-sell provisions
§ 4:104 Creditor protection for multiple and single-member LLCs: Charging orders/bankruptcy
§ 4:105 Bankruptcy remote entities
§ 4:106 Nonbusiness usage

B. DISADVANTAGES OF LLCS

§ 4:107 General partnership similarities
§ 4:108 Corporate classification and conversion
§ 4:109 Interstate transactions
§ 4:110 Lack of uniformity and developing law
§ 4:111 State taxation/SALT Cap Work-Around

§ 4:112 Death of a member/estate planning for families
§ 4:113 Use by professionals
§ 4:114 Classifying LLC interests for employment tax purposes/liability considerations/W2 partners
§ 4:115 Pre-acquisition investigation
§ 4:116 Passive loss rules and I.R.C. § 461(i)
§ 4:117 Public offering
§ 4:118 Real estate development with appreciated property
§ 4:119 Partnership audit rules

C. THE CHOICE OF ENTITY DECISION

§ 4:120 Generally
§ 4:121 Charts comparing the state tax treatment of LLCs and LLPs

CHAPTER 5. ASSET PROTECTION AND GIFT AND ESTATE TAX PLANNING USING LIMITED PARTNERSHIPS AND LIMITED LIABILITY COMPANIES

I. INTRODUCTION

§ 5:1 Introduction

II. ASSET PROTECTION/NONBUSINESS USE

§ 5:2 Business purpose/Nonbusiness usage
§ 5:3 Classification of LLCs holding personal-use assets
§ 5:4 Protection from creditors
§ 5:5 Management and transfer benefits
§ 5:6 Family home
§ 5:7 Possible purposes

III. A VERY BRIEF INTRODUCTION TO THE TAX ASPECTS OF FLLES

§ 5:8 Basic estate and gift tax considerations
§ 5:9 I.R.C. §§ 761(b) and 704(e)
§ 5:10 Minor children as partners/LLC members
§ 5:11 Basis

Appendix 5A. Family Limited Liability Partnership Agreement

Appendix 5B. Family Limited Liability Company Agreement

CHAPTER 6. PARTNERSHIP TAX ALLOCATIONS FOR THE BUSINESS LAWYER

§ 6:1 Introduction
§ 6:2 The partnership entity
§ 6:3 Substantial economic effect rules
§ 6:4 Capital accounts
§ 6:5 Economic effect test
§ 6:6 *—"Regular" rules*
§ 6:7 *—Alternative economic effect rules*
§ 6:8 *—Economic effect equivalence*

§ 6:9 Substantiality
§ 6:10 Allocations of nonrecourse deductions
§ 6:11 Conclusion

APPENDICES

Appendix ST. Agreement Introduction
Appendix ST-1. Outline for Drafting Operating Agreements
Appendix ST-2. Sample Tax Matters Partner Language
Appendix ST-3. Personal-Use Asset LLC Agreement
Appendix ST-4. Sample Agreement for LLC Electing to be Taxed as an S Corporation
Appendix AK. Alaska LLC Operating Agreement
Appendix AZ. Arizona LLC Operating Agreement
Appendix CA. California Single Member LLC Operating Agreement
Appendix CA-1. California LLC Operating Agreement
Appendix CO. Colorado LLC Operating Agreement
Appendix CT. Connecticut LLC Operating Agreement
Appendix DE. Delaware Non-series LLC Operating Agreement
Appendix DE-1. Delaware Series Voting Nonvoting LLC Operating Agreement
Appendix FL. Florida LLC Operating Agreement
Appendix GA. Georgia LLC Operating Agreement
Appendix IA. Iowa LLC Operating Agreement
Appendix IL. Illinois Member Managed LLC Operating Agreement
Appendix IL-1. Illinois Manager Managed LLC Operating Agreement
Appendix IL-2. Illinois Manager Managed LLC Operating Agreement with Common and Preferred Interests
Appendix IL-3. Illinois Not-For-Profit Manager Managed LLC Operating Agreement
Appendix IL-4. Illinois Manager Managed Series LLC Agreement
Appendix IL-5. Illinois Separate Member Managed Series Agreement
Appendix IL-6. Illinois Separate Manager Managed Series Agreement
Appendix KY. Kentucky LLC Act Overview
Appendix KY-1. Kentucky LLC Standard Articles of Organization
Appendix KY-2. Kentucky Professional LLC Articles of Organization
Appendix KY-3. Kentucky Articles of Organization for a Professional LLC Previously Organized as a General Partnership
Appendix KY-4. Kentucky LLC Articles of Correction
Appendix KY-5. Kentucky LLC Articles of Amendment
Appendix KY-6. Kentucky Single Member LLC Operating Agreement
Appendix KY-7. Kentucky Manager-Managed LLC Operating Agreement
Appendix KY-8. Kentucky Articles of Merger/Agreement and Plan of Reorganization
Appendix KY-9. Kentucky LLC With Trust

Appendix MA. Massachusetts LLC Operating Agreement
Appendix MA-1. Massachusetts LLC Operating Agreement Provisions with Respect to Definitions
Appendix MA-2. Massachusetts LLC Operating Agreement Provisions with Respect to Capital Accounts and Tax Matters
Appendix MA-3. Massachusetts LLC Operating Agreement Provisions with Respect to Indemnification
Appendix MA-4. Massachusetts LLC Agreed Value Stipulation
Appendix MA-5. Massachusetts Single Member LLC Operating Agreement
Appendix MD. Maryland Single Member LLC Operating Agreement
Appendix MD-1. Maryland Internet Company LLC Operating Agreement
Appendix MD-2. Maryland Second Generation LLC Operating Agreement
Appendix MD-3. Maryland Software Company LLC Operating Agreement
Appendix MI. Michigan Manager-Managed Model LLC Operating Agreement
Appendix MN. Minnesota Member-Managed LLC Operating Agreement
Appendix MN-1. Minnesota Governor-Managed LLC Operating Agreement
Appendix MS. Mississippi Manager Managed LLC Operating Agreement
Appendix MS-1. Mississippi Member Managed LLC Operating Agreement
Appendix NC. North Carolina LLC Operating Agreement
Appendix NJ. New Jersey Manager-Managed LLC Operating Agreement
Appendix NJ-1. New Jersey Single Member LLC Operating Agreement
Appendix OH. Ohio LLC Operating Agreement
Appendix OK. Oklahoma LLC Operating Agreement
Appendix OR. Oregon LLC Articles of Organization and Operating Agreements
Appendix PA. Pennsylvania Single-Member LLC Operating Agreement
Appendix RI. Rhode Island LLC Operating Agreement
Appendix RI-1. Rhode Island Multi-member LLC Operating Agreement
Appendix SC. South Carolina LLC Operating Agreement
Appendix SC-1. South Carolina Single Member LLC Operating Agreement
Appendix TN. Tennessee Board-Managed LLC Operating Agreement
Appendix TN-1. Tennessee Manager-Managed LLC Operating Agreement
Appendix TN-2. Tennessee Member-Managed LLC Operating Agreement
Appendix TX. Texas S Corp LLC Operating Agreement
Appendix TX-1. Texas LLC Operating Agreement
Appendix UT. Utah LLC Operating Agreement
Appendix VA. Virginia LLC Operating Agreement
Appendix WA. Washington Manager Managed LLC Operating Agreement
Appendix WA-1. Washington Member Managed LLC Operating Agreement
Appendix WA-2. Washington Restaurant LLC Operating Agreement
Appendix WI. Wisconsin LLC Operating Agreement

Table of Laws and Rules

Table of Cases