

## **Use Single-Member LLCs For Business and Estate Planning**

Over the past several years, the use of a new type of entity -- the limited liability company (LLC) -- has increased dramatically for both business and estate planning purposes. LLCs are popular because they allow a business owner (known as a member) to combine the limited liability protection afforded to corporations with the pass-through tax treatment of partnerships.

The use of LLCs may become even more widespread as more states allow single-member LLCs, which are taxed as proprietorships. Previously, a person seeking limited liability protection had to form a sole shareholder corporation. Let's take a closer look at single-member LLCs.

### **Single-Member LLC Advantages**

A single-member LLC owner's liability is limited to the amount contributed to the company, subject to some statutory exceptions. The owner will not be held personally liable beyond the amount contributed. But in jurisdictions not authorizing single-member LLCs, the limited liability of the member of a single-member LLC created in another state may be an issue.

Single-member LLCs offer many advantages over sole shareholder corporations. For instance, a single-member LLC can allow income, losses and deductions to flow through to the individual owner, avoiding tax at the business entity level. A single-shareholder corporation may be taxed as either a C corporation or an S corporation. With a C corporation, income is taxed at both the corporate and shareholder levels. A newly created S corporation generally allows pass-through taxation, but LLCs are more flexible and, unlike S corporations, types of owners are not restricted.

A single owner can form a sole proprietorship if liability protection is not a concern. But a sole proprietorship offers little protection against creditors, while a single-member LLC offers some protection. A judgment creditor of a single-member LLC may become an assignee of the LLC member's rights but does not become an LLC member. An assignee may be able to reach the distributions an LLC makes to the member with a charging order but cannot force a distribution. If the LLC makes no distributions, then the creditor will receive nothing.

If owners are later added to the business, a single-member LLC offers the option of partnership tax treatment. LLC members also may participate in management without possibly losing limited liability protection -- unlike limited partners in a partnership who would lose such protection.

### **LLCs and Your Estate Plan**

The benefits of using an LLC can be an integral part of estate planning. You can enhance these benefits by using an LLC in conjunction with trusts to:

- Retain some control over interests you give away,
- Control the timing and payment of income distributions,
- Facilitate giving interests to family members, and
- Possibly discount the gift tax value of interests transferred to family members.

In a jurisdiction that does not permit single-member LLCs, a second member often may be a spouse or trust having as little as a 1% interest.

Creating special classes of membership or ownership interests in an LLC can facilitate obtaining one of the primary objectives of estate planning -- removing or reducing an estate's asset appreciation at the lowest tax cost.

Minority interest and lack of marketability discounts are available for such LLC interests, as for other entities, such as family limited partnerships. But use caution when creating special classes of ownership interests, because the Internal Revenue Code contains special valuation provisions that apply to the creation of such interests.

### **Weigh Your Options**

When considering a choice of entity in business or estate planning, consider the many benefits LLCs offer. For help, contact a professional advisor with any questions you have about how an LLC may fit into your planning.