

The Importance of Properly Structuring Business/Investment Entities Regarding Taxes, Liability Protection and Succession Planning

By Dennis F. Gorman, Esq., CPA

When choosing the proper type of legal entity when you are starting a new business, the choice of entity is very important. Not all entities enjoy the same protections and entities are certainly treated differently for income tax purposes. It is critical to have someone involved in this process who understands the tax as well as the legal ramifications of the various entity types. Likewise, existing business owners/entities/groups should periodically review their legal structures to ensure that they are adequately protected from liability and are minimizing taxes.

If your business entity may ultimately pass to your heirs, a further consideration is the proper entity structure to facilitate an orderly transfer of the business entities to your various heirs in the most tax efficient manner. If these issues are not addressed by the business owner then you may be adding to the unfortunate statistic that *only* one in four businesses make it to the next generation.

Are you continuing to use real estate trusts to hold commercial or investment real estate? These entities do not afford optimum insulation from liability! Depending upon the type of real estate trust employed, you may also be subject to tax at the highest individual marginal tax rates. While it is not always easy to unwind limited partnership arrangements, are you concerned about the ongoing complexity that your limited partnership generates? There are more modern alternatives available today.

Limited Liability Companies ("LLC's") offer flow through income tax treatment with superior liability protection. In my view, these are the modern day alternatives to realty trusts and to limited partnerships. In many cases, they are also the modern day alternative to corporations, even S corporations. S Corporations do achieve many flow through income tax benefits, however, they do not enjoy *all* of the tax benefits, which LLC's offer.

I have written several articles comparing LLC's and S Corporations. If you are interested in more information on this topic, visit my biography, and view the articles listed thereunder.

While historically there were concerns that LLC owners incur unnecessary self-employment taxes, there are fairly recent IRS

regulations which allow the restructuring of LLCs with multiple classes of members to virtually eliminate this potential for additional self-employment taxes. You can find the link to an article on this topic on my bio page at www.fletchertilton.com.

When forming a new entity, the following areas must be, at least, thought about when deciding on a choice of entity:

- Liability protection;
- State and federal income tax treatment of the entity and owners;
- Personal property taxes;
- The ability of an owner's creditors to seize the entity's ownership interests;
- Estate and gift tax impact during business succession planning;
- Entities going public.

CONCLUSION

If you purchase your next business entity at a bookstore or online without the benefit of having an experienced professional knowledgeable in all the above areas advising you, then you may be making a critical mistake. You may save a few dollars in the short run, but you could end up costing your entity or yourself major additional expense in the future. The professionals at Fletcher Tilton are more than happy to assist you with your business entity needs.

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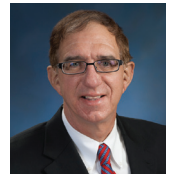
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