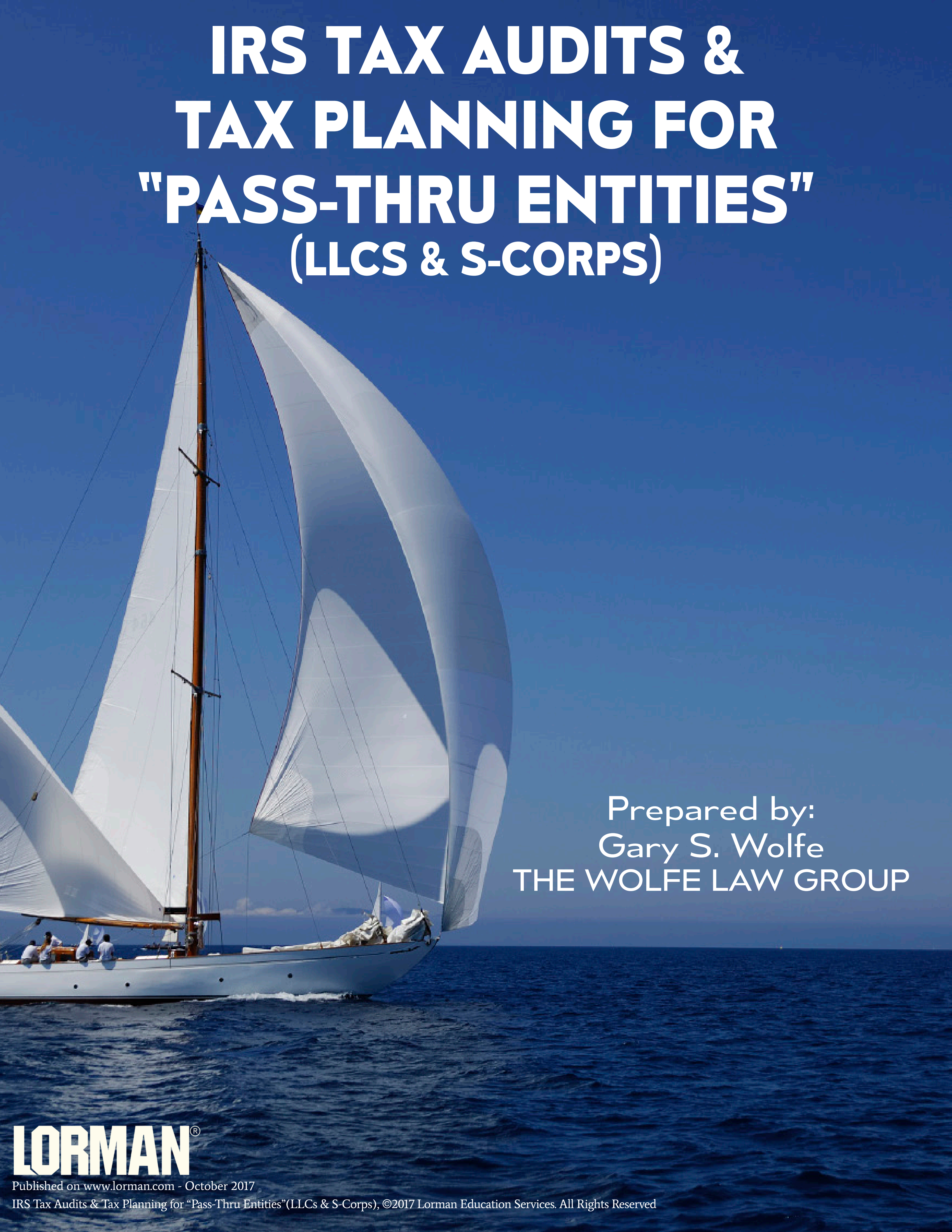
IRS TAX AUDITS & TAX PLANNING FOR "PASS-THRU ENTITIES" (LLCS & S-CORPS)



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THE WOLFE LAW GROUP

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Criminal Tax Evasion - Part 1
Criminal Tax Evasion – Part 2
Criminal Tax Evasion – Part 3
Criminal Tax Evasion – Part 4

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IRS Tax Audits & Tax Planning for "Pass-Thru Entities"

(LLCs & S-Corps)

By Gary S. Wolfe

Based on IRS tax audit statistics, LLCs and S-corporations tax planning strategies may both reduce IRS tax audit risk while providing asset protection from 3rd party creditors.

I - Limited Liability Companies ("LLC's") & IRS Tax Audits

For individual taxpayers the IRS audit risk prior years:

1. All Taxpayers (2013), .96% (1 in 104);
2. Taxpayers earning over $1m (2013), 10.85% (1 in 9);
3. The audit risk for LLCs is 0.47% (4/10 of 1%; i.e. 1 in 250).

II – LLC's & S-Corporations

Both LLCs and S-Corporations are tax-reporting net income tax-paying entities. LLCs/S-Corporations pay a $800 minimum California tax, S-Corporations pay a 1.5% California corporate level tax, LLCs pay an annual "gross receipts tax", based on gross income:

Income / Tax
$0-$250,000 / $0
$250,000-$499,000 / $900
$500,000-$999,000 / $2,500
$1m – $4.99m / $6,000
$5m+ / $11,790

S-Corporations ("S-Corp") (Summary Tax Issues)

1. May not issue preferred shares. Voting and non-voting common stock may be issued, but in all other respects, S-Corporation's shares must be identical in their rights and privileges.

2. Neither a corporation nor a non-resident alien can be an S-Corporation shareholder.

3. The inside basis of appreciated assets held by the S-Corporation (fair market value in excess of adjusted tax basis) may be adjusted to FMV upon the deceased owner's death for the successor's benefit.

4. Owners of the shares of an S-Corporation obtain no owner level basis adjustments for entry-level debt (S-Corporation debt is not allocated as an upward basis adjustment among shareholders), thereby limiting the ability of S-Corporation shareholders to claim entity level losses passed through to them.

5. Distributions in kind of appreciated property from an S-Corporation to its shareholders is subject to a "deemed" sale treatment with gain recognition and taxation.

6. Contributions of appreciated property to an S-Corporation will result in recognition of gain to a shareholder.

7. A U.S. based S-Corporation, with outbound investment objectives may not establish and hold an 80% or more owned subsidiary to conduct operations abroad.

Limited Liability Companies ("LLC") Summary Tax Issues)

1. Various classes of interests in a LLC may be created without risk to the income tax classification of the LLC as a pass-through (one level of tax) entity (unlike S-Corporations).

2. The inside basis of appreciated property held by the LLC may be adjusted to FMV upon the death of the deceased owner.

3. LLC owners obtain owner basis adjustments for entity level debt, allowing them to claim entity losses passed through to them (unlike S-Corporations).

4. Distributions in kind of appreciated property from a LLC to its members do not trigger "deemed sale" tax treatment (i.e. gain recognition and taxation) (unlike a S-Corporation).

5. Contribution of appreciated assets to a LLC will not result in gain recognition.

6. Unlike an LLC, a limited partnership must have at least one general partner, subject to unlimited liability. In a LLC, all members will be directly protected against liabilities arising at the entity level under state law

7. All LLC members can participate in management without losing liability protection (not just general partners in the case of a limited partnership).

8. For cross-border transactions, unlike an S-Corporation, foreign non-resident alien investors may directly join with U.S. co-ventures in a single entity to conduct a U.S. business with pass-through tax treatment for both.

9. U.S. based investors may use a LLC to conduct a foreign business and have limited liability protection and one level of pass-through taxation.

III - S-Corporation/LLC - S-Corp (Manager) & LLC (Owner) Tax Planning Strategy

1. There is no self-employment tax (Social Security/Medicare) on net earnings distributed ultimately through an S-Corporation. In 2014 the tax savings was $18,130 (15.3% on $118,500, 2014 taxable wage base maximum). In 2017 tax savings are $19,461 (15.3% on $127,200, 2017 taxable wage base maximum).

2. The LLC may provide a single entity for inbound joint ventures between a U.S. and foreign person.

3. The LLC may hold outbound investment of U.S. based person with limited liability.

IV - LLC’s & Tax Planning (Current Law)

For tax year 2016, self-employment tax (i.e. a tax on net earnings from self-employment) which consists of Social Security Tax (FICA) and Medicare taxes are imposed on LLC members, but not on S-Corporation shareholders.

As a tax-planning strategy, an LLC may be wholly-owned by an S-Corporation. LLC earnings are distributed to the LLC member, S-Corporation. There is no self-employment tax on the S-Corporation/LLC distribution (a 2016 tax savings of $18,130). 2017 tax savings; $19,461)

In 2016, high earners FICA/Medicare Taxes (Employer/Employee Share).

1. Social Security (FICA Tax), 12.4% tax on net earnings up to $118,500;

2. Medicare Tax (Self-Employment Tax), 2.9% Medicare tax on unlimited net self-employment earnings: $118,500 earnings, plus 2.9% tax on excess earnings (i.e. over $118,500).

In addition, in 2016 high earners additional increased taxes:

1. Medicare Tax (Net Investment Income), 3.8% tax for taxpayers with income over $200,000 (individual), $250,000 (husband and wife) on lesser of net investment income or modified adjusted gross income;

2. Medicare Tax (Earned Income), 0.9% tax on earned income (wages over $200,000 individual, $250,000 husband and wife). This tax is imposed on employee's share of Medicare tax, and is disclosed on Form 1040.

3. Phase-out in itemized deductions, adds up to 1.19% to marginal tax rates. Itemized deductions are reduced by 3% of adjusted gross income (AGI) over $250,000 for singles, $300,000 for couples, not to exceed 80% of total itemizations (medical expenses, investment interest deductions, casualty losses are all exempt). The phase-out is based on the amount of AGI and net taxable income (i.e. what is left after itemized deductions).

4. Phase-out of Personal Exemption, loss of exemption adds as much as 1.05% per exemption. Personal exemptions are reduced by 2% for each $2,500 of AGI over the $250,000/$300,000 thresholds, and disappear once AGI exceeds $372,500 (singles), $422,500 (couples).

"Net Income" Tax Planning Strategy

As a tax-planning strategy, investment income may be lessened by "net-income" taxation for LLCs & S-corps:

Tier #1, the LLC receives investment income, distributes net income (i.e. income less expenses) to the S-Corporation (member/manager), which in turn distributes their net income to the S-Corporation shareholders.

Tier #2 distribution to the S-Corporation shareholder is subject to a lesser risk of an IRS tax audit (than an individual taxpayer) and with proper tax planning less additional tax due to the phase-out of the itemized deductions and personal exemptions.

V - Tax Advantage of LLC's

A. Estate Planning

1) Members can gift interests in family-owned businesses to children and others without losing control because the recipient does not have free transferability of interest.

2) At the death of a member, the remaining members can elect a stepped-up basis of the decedent's share of LLC assets.

3 An LLC can provide the estate planning benefits of a family limited partnership without the general partner assuming liability.

B. Compared to C Corporations:

(1) Lower taxes – no double taxation.
(2) No excess compensation problems.
(3) No accumulated earnings tax.
(4) Allows special allocations.
(5) Wide range of management structures available.

C. Compared to Sole Proprietorships:

(1) Limited liability.
(2) Can take in investor(s) without giving up control.
(3) Can give investor(s) tax benefits without liability.

D. Advantages over S Corporations:

(1) Can have an unlimited number of owners (members).
(2) No restrictions on who can be a member.
(3) No built-in gains tax.
(4) No tax on excess net passive investment income.
(5) Can have special allocations.
(6) LLC debt – even nonrecourse debt – is allocated to members, thus increasing basis.
(7) Member's basis is stepped-up at a death of member.
(8) S corporations are subject to certain restrictions on both the number and types of shareholders. There are no restrictions on who may be a member of a LLC or the number of members.
(9) S corporations are not permitted to specially allocate income or loss. LLCs may specially allocate income or loss.
(10) S corporations may not have more than one class of stock outstanding. LLCs can have an almost infinite variety of classes or series of interests.
(11) S corporations are subject to certain penalty taxes for built-in gains and excess passive income. These penalty taxes do not apply to LLCs.
(12) S corporations doing business in California are subject to a one and one-half percent net income tax. LLCs which are classified as partnerships for federal income purposes are not subject to this tax.
(13) On the death of a shareholder or sale of stock, an S corporation does not adjust the basis of its assets. An LLC, since it is taxed as a partnership, can elect to adjust the basis of its assets on the death of a member or on the sale of a membership interest.
(14) A shareholding of an S corporation is not entitled to basis for debts of the S corporation for purposes of using S corporation losses. However, a member of an LLC is entitled to basis for the LLC's debt under IRC section 752 even though that debt will be nonrecourse to the member.

E. Advantages over Limited Partnerships:

LLCs provide advantages over limited partnerships. These advantages include:

1. A limited partnership must have at least one general partner who is personally liable for the debts of the entity. An LLC does not have or need a general partner.

2. Limited partners who participate in the management of the limited partnership can be classified as general partners and face unlimited liability. In general, members are not liable for the debts of an LLC.

F. Advantages over General Partnerships:

1. Limited liability of members.

2. Can participate without risking liability protection.

An LLC's principal advantage over a general partnership is that no member is personally liable for the debts of the partnership. Typically this restriction does not apply to professional LLCs where the members are liable for their own negligence and the negligence of subordinates. This liability protections may further be limited by judicial doctrines or piercing the corporate veil.

VI - LLC: Tax Issues (Federal Tax Law)

The "check the box" regulations of the federal tax laws provide that an LLC with two or more members may choose to be taxed as either a partnership or a corporation. The LLC must file an election to be taxed as a corporation or it will automatically be treated as a partnership. (Treas. Reg. §301.7701-3)

A single-member LLC may choose between tax treatment as a corporation or being disregarded for tax purposes (i.e., a disregarded entity). (Treas. Reg. §301.7701-3) A single-member LLC must file an election to be taxed as a corporation or it will be automatically treated as a disregarded entity.

In general, a domestic one-member unincorporated entity does not need to file anything in order to obtain "disregard" treatment, but an incorporated entity formed outside the United States may need to elect "disregard" treatment if it is not listed in the check-the-box regulations as a "per se" corporation. A single-member entity that is disregarded as an entity separate from its owner will be taxed as a sole proprietorship, division, or branch of its owner.

The major differences in treatment between a single-member LLC and an LLC with more than one member is that the latter LLC must file a partnership tax return (IRS Form 1065). As a result, the members of a multi-member LLC must report their share of the LLC's income or loss on their individual tax return (IRS Form 1040) based on the amounts reflected on the LLC's Schedule K-1.

For a single-member LLC that is treated as a disregarded entity, there is no Schedule K-1, and therefore its member reports the LLC's income or loss directly on his or her individual tax return. The IRS permitted the disregarding of a two-member LLC when one of the members had no economic interest. (IRS Letter Ruling 199911033)

For California tax purposes, the distinction is minimized, because, a single-member LLC that is disregarded as an entity separate from its owners must nevertheless file an LLC tax return in California (FTB Form 568), pay the $800 annual franchise tax, and pay the LLC gross receipts fee.

With respect to an LLC owner's federal tax liability, the IRS Chief Counsel said that the IRS may not levy on the assets of a single-member LLC that is disregarded for federal tax purposes to satisfy the tax liability of the owner. (IRS Chief Counsel Advice 199930013 July 30, 1999) However, the IRS has ruled also that the owner of a single-member LLC that is disregarded for federal tax purposes is the "employer" for tax purposes and is therefore liable for nonpayment of payroll taxes. (IRS Chief Counsel Advice 199922053 June 15, 1999)

VII - LLC's and California Tax Law

Even though a single-member LLC is disregarded as an entity separate from its owners, however, it must still file an LLC tax return in California (FTB Form 568), pay the $800 annual franchise tax, and pay the LLC gross receipts fee. (Rev & T C §§23038 and 17942; FTB Notice 2000-5 May 12, 2000) (available at the Franchise Tax Board's Web site at www.ftb.ca.gov/legal).

Disregarded treatment applies only for income and franchise tax purposes. It does not apply for purposes of California sales and use, property, and documentary transfer tax laws. Documentary transfer taxes will not be imposed on a transfer between a single-member LLC and its member that changes only the method of holding title to the realty if proportional ownership interests in the realty are not changed by the transfer. (Rev & T C §11925)

VIII – LLC Tax Compliance

Tax Filings

For federal tax purposes, the income and deductions of a single-member LLC owned by an individual will be reported on Schedule C of the individual's Form 1040. If the member is a corporation or partnership, the income will be reported on the member's Form 1120, 1120S, or 1065 (and ultimately, for a partnership, on the partner's own Form 1040).

To comply with California's tax reporting requirements, a single-member LLC need only complete FTB Form 568, side 1, and pay the annual LLC tax and LLC gross receipts fee. The single owner would include the various items of income, deductions, credits, and other tax attributes of the LLC on his or her tax return. Single owners should compute Schedule P to determine the LLC's credit limitation.

Avoidance of Consolidated Return Restrictions

Treatment of a one-member LLC as a disregarded entity allows corporate owners of single-member LLC's to treat them as branches or divisions, rather than as subsidiaries, for tax purposes, thus relieving them of the tax and administrative burdens imposed by the consolidated return regulations. Filing a consolidated return may *defer* the tax consequences of a transaction between a parent and its corporate subsidiaries, but structuring the same transaction between a parent and its single-member LLC subsidiary would *avoid altogether* any such tax consequences because of the single-member LLC's status as a disregarded entity.

Foreign corporations may not be included as members of an affiliated group in filing a consolidated return. (IRC §1504(b)(3)) Because single-member LLCs treated as flow-through entities are disregarded for tax purposes, however, the income and losses of foreign businesses owned by a single-member LLC may be offset against income of their U.S. parent outside of these consolidated return restrictions.

S Corporation

S corporation stock may be transferred to a single-member LLC without terminating the S Corporation election. (See IRS Letter Ruling 9739014)

Estate Planning

If real estate is held by an LLC and the LLC's operating agreement permits the interest in the LLC to pass to successors in order to prevent an inadvertent termination of the LLC, probate usually can be avoided.

Single-member LLCs have other advantages in estate planning. For example, if two or more executors are required to administer a decedent's estate, practical problems sometimes arise when an executor is unavailable. The executors could cause the estate to form a single-member LLC, with the executors serving as the LLC's officers. This structure provides the executors with some additional degree of protection from liability and (consistent with the LLC's operating agreement) allows one officer to act instead of requiring joint action by all the executors.

Reorganizations

An LLC taxed as a partnership normally may not participate in a tax-free reorganization because Subchapter C (which allows tax-free reorganizations such as mergers, divisions, and recapitalizations) applies only to corporations. (IRS letter Rulings 9409014, 9409016) No analogous set of rules permits LLCs to participate in tax-free reorganizations and mergers. However, an LLC owned solely by a corporation is treated as a branch or division of the corporate parent for tax purposes. Therefore, a single-member LLC owned solely by a corporation should be eligible to participate in tax-free reorganizations under Subchapter C.

IRC §1031 Nonrecognition Exchanges

The IRS has long taken the position that any transfer of property to or from an entity – even a wholly owned entity – simultaneously with or shortly before or after a tax-free exchange under IRC §1031, would disqualify the transaction from nonrecognition treatment. (Rev Rul 77-297, 1977-2, Cum Bull 304; Rev Rul 77-337, 1977-2 Cum Bull 305. See also *Magneson v Commissioner* (1983) 81 TC, 767 aff'd (9th Cir 1985) 753 F2d 1490)

Both the property surrendered and the property acquired must be *held* for productive use in a trade or business or for investment. IRC §1031(a). Although this provision does not specify a minimum holding period, the IRS takes the position that if the relinquished property was acquired immediately before the exchange or if the replacement property is disposed of immediately after the exchange, the taxpayer held the property primarily to dispose of it rather than for productive use in a trade or business or for investment.

The courts, particularly the Tax Court and the Ninth Circuit, have been more liberal in allowing transactions involving transfers of property to or from a controlled entity contemporaneously with an exchange to qualify for nonrecognition under IRC §1031, but the IRS has not acquiesced in those decisions. (See *Magneson v Commissioner, supra; Bolker v. Commissioner* (1983) 81 TC 782), aff'd (9th Cir 1985) 760 F2d 1039) Moreover, Congress amended IRC §1031 immediately after those cases were decided to undermine the foundation of the court decisions. (IRC §1031(a)(2)(D))

In at least two private rulings, the IRS ruled that a taxpayer's transfer of replacement property directly to the taxpayer's wholly owned, single-member LLC in the second leg of a IRC §1031 exchange would not disqualify the taxpayer from receiving nonrecognition treatment. (IRS Letter Rulings 9807013, 9751012) The IRS concluded that, because the single-owner LLC is disregarded as an entity (unless it elects to be taxed as a corporation), the transactions in question would be viewed as if the taxpayer itself had directly received the replacement property, and therefore satisfied the holding requirement of IRC §1031.

Although IRC §6110(k)(3) prevents these rulings from being used or cited as precedent, they do constitute substantial authority for purposes of the accuracy-related penalty rules. (See Treas. Reg. §1.6662-4(d)) The letter rulings also reflect the Service's position with respect to the use of single-member LLCs in connection with IRC §1031 exchanges under the check-the-box regime (it is unlikely that the IRS would adopt an audit or litigating position contrary to these rulings).

In addition to limiting liability, a transfer of the replacement property directly to the taxpayer's wholly owned LLC, rather than transferring the property to the taxpayer and then to the LLC, will avoid duplicative transfer of taxes and fees (e.g., recording fees and escrow fees). Thus, in a multiple-party exchange involving a qualified intermediary, the escrow instructions should direct the escrow officer to transfer title to the taxpayer's wholly owned LLC and bypass both the intermediary and the taxpayer.

A taxpayer could possibly avoid transfer taxes and fees by transferring his or her entire interest in a wholly owned LLC that holds real property to the buyer of the relinquished property in exchange for real property.

For a single-member LLC disregarded as a separate entity, the transaction would be characterized as if the taxpayer transferred the property directly to the buyer. The buyer, who would become the sole owner of the LLC, could choose to continue holding the property in the LLC or liquidate the LLC and distribute the property tax free under IRC §731.

Exchanges of partnership interests do not qualify for nonrecognition treatment (IRC §1031(a)(2)(D)) The check-the-box regulations clearly provide that a single-member LLC is to be disregarded as an entity (unless an election is made to be treated as a corporation). Therefore, the transfer of interests in single-member LLCs should be deemed a transfer of the underlying assets and such transfers should qualify for nonrecognition treatment.

Conversion of Existing LLC to a California Single-Member LLC

The conversion of a disregarded single-member LLC into a multi-member LLC taxed as a partnership, may result in a taxable sale. (See Rev Rul 99-5, 1999-5

Int Rev Bull) If a new member or members contribute cash or property and the original member does not receive any of the contributed cash or property as part of the transaction, generally no gain or loss will result to the members. However, to the extent that cash or property is distributed to the original member as part of the transaction, that portion is treated as a taxable sale of the LLC's assets. The transaction is treated as if the new member buys the assets directly from the original member and then contributes the assets to the new LLC.

Converting a multi-member LLC taxed as a partnership into a single-member LLC (e.g., on the withdrawal of a 1-percent member who is no longer needed for purposes of having a California LLC) may cause a taxable event to occur. See Rev Rul 99-6, 1999-5 Int Rev Bull. If a new member purchases the membership interests of the original members, it is treated as a sale of the original members' membership *interests* and the LLC terminates.

The new member is deemed to have purchased *assets* directly from the original members. If an existing member acquires all of the other members' interests, the LLC terminates and the departing members are deemed to have sold their *interests* to the remaining member. The remaining member is deemed to have received a distribution of his or her share of the LLC's assets immediately before the transaction. Gain may result to the extent that any money distributed exceeds the remaining member's adjusted basis in the LLC interest.

IX - Limited Liability Companies: California Laws

Effective January 1, 2004, §17001(t) of the California Corporation Code defines a "limited liability company" as an entity having one or more members. The statutory definition does not require an LLC to be organized for a business purpose.

Section 17102 expressly permits members to create different classes of membership, each with its own rights, powers and duties, including rights, powers and duties senior to those of others classes.

Section 17103 gives members the power to vary their respective voting rights in the articles of organization or a written operating agreement. However the statute requires that a majority in interest of the members must approve an amendment to the articles of organization, and all members must be given the right to vote on a dissolution or merger of the LLC.

Section 17151 expressly provides for management of an LLC by on or more managers (who do not have to be members). However, the articles or organization must include a statement to the effect that the LLC is to be managed by managers and not all its members. While it is necessary to include the number or names of managers, it the LLC is to be managed by a sole manager, the articles must also include a statement to that effect. (See also §17051(a)(5))

However, regardless of any management restrictions placed upon members in the operating agreement, §17157 provides that unless a statement regarding management by other than all members is included in the articles of organization, every member will be an agent of the LLC, and the act of any member will bind the company unless the acting member has no authority to so act <u>and</u> the third party involved had an actual notice of the member's lack of authority.

Section 17152 required that where management has been vested in one or more managers pursuant to a statement in the articles of organization, the manager(s) shall be elected by a vote of a majority in interest of the members, and may be removed at any time by a similar vote, with or without cause. Unless a term is specified, managers shall serve until such time as their successors have been elected and qualified.

Pursuant to §17154, managers may appoint officers to serve at the managers' pleasure (subject to any rights under an employment contract).

Section 17202 gives members the right to vary the allocation of profits and losses from the proportion of each member's contribution.

Under the default rule set forth in §17301(a), a membership interest or an economic interest is assignable in whole or in part, provided a majority in interest of non-transferring members consent.

Unless the members have provided otherwise, §17301(a) also states that an assignment of an economic interest entitles the assignee to receive, to the extent assigned, the distributions and allocations to which the assignor would be entitled. The assignor continues to be a member, and to have the right to exercise any rights and powers of a member (including the right to vote in proportion to the interest in current profits that the assignor would have absent the assignment), until such time as the assignee is admitted as a member.

Sections 17100(a) and 17303(a) together provide that a person acquiring a membership interest either directly from the LLC or as an assignee of a current member may become a member only upon the consent of a majority in interest of the members (excluding the vote of the person acquiring membership interest) and the completion of the steps needed to make the acquiring person a party to the operating agreement, unless the members have otherwise provided in the articles or operating agreement.

Section 17303 also states that once admitted as a member of the LLC, an assignee has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member. Upon admittance, the new member also becomes liable for the assignor's obligations to make additional capital contributions and to return any lawful distributions made to the assignee. However, the assignee/member does not become obligated for any liabilities unknown to him or her at the time he or she became a member and that could not be ascertained from the articles or operating agreement. In any event, the assignor's liability continues regardless of whether or not the assignee of his or her membership interest becomes a member.

Section 17301(b) prevents an assignee of an economic interest from having any liability to the LLC for capital contribution or the return of unlawful distributions solely as a result of the assignment, except to the extent assumed by agreement, until such time as he or she becomes a member.

Under §17100 (c), LLC members may provide in the operating agreement for the termination of a member's membership interest or economic interest and the return of such terminating member's contribution, which provision shall be enforceable unless a member establishes that the provision was unreasonable under the circumstances existing at the time the agreement was made. However, the statute also provides that if a member's economic interest in the LLC is terminated pursuant to the operating agreement, such terminating member may demand and shall be entitled to receive a return of his or her contribution. This provision raises a potential valuation problem under IRC §2704(b) if the operating agreement more severely restricts the right to a return of capital contributions.

Section 17252(a) places no limit on member's ability to restrict a member's right to withdraw: the articles or operating agreement may provide either that a member may withdraw from the LLC only at the time or upon the happening of events specified in the operating agreement of that a members may not withdraw at all. However, notwithstanding any restriction placed upon a member's right to withdraw, §17252(a) gives a member the power to withdraw at any time by giving written notice. In the event a member so withdraws in violation of the operating agreement, the LLC may offset any damages it suffers from the breach against any amounts otherwise distributable to the withdrawing member.

Unless otherwise provided, a withdrawing member is not entitled under §17252(a) to any payment for his or her membership interest, and subsequent to his or her withdrawal, a member shall have only the rights of an economic interest holder with respect to distributions. The withdrawn member shall no longer be a member of the LLC.

In 1998, the California legislature amended §17350 to require dissolution of an LLC only upon the happening of the first to occur of the following:

1. At the time specified in the articles of organization, if any, or upon the happening of the events, if any, specified in the articles of organization or a written operating agreement.

2. By the vote of a majority in the interest of the members, or a greater percentage of the voting interests of members as may be specified in the articles or organization or a written operating agreement.

3. Entry of a decree of judicial dissolution.