From the desk of Jeanne M. Kerkstra, Esq., CPA

Viewpoint
LLC Alphabet Soup

A major asset protection technique that has been evolving, and continues to evolve, is the multi-series LLC. At this time, Delaware and Illinois allow for multi-series LLC's. Delaware has the advantage because you are able to hold both personal and real property as husband and wife, tenants by the entirety ("TBE"). In Illinois, unfortunately you can only hold your personal residence as TBE.

Recently, the California Franchise Tax Board has ruled that each series under a multi-series LLC is to be treated as a separate entity, and consequently each must pay the franchise tax — at $800 a pop. Now it must be remembered that tax treatment is often quite different than debtor-creditor treatment.

The California Franchise Tax Board relied on a 1949 case. See *National Securities Series, et al. v. Commissioner of Internal Revenue*, 13 T.C. 884, 1949 WL 110 (Tax Ct). In this case, the Trust beneficiaries were able to voluntarily disassociate themselves from said Trust. Further, the Board relied on a Revenue Ruling with similar facts ~ shareholders of a regulated investment company could redeem or liquidate their shares at any time. See Rev. Rul. 55-416.

That is not the case under Delaware law ~ a member is not allowed to voluntarily disassociate. However, as usual, California makes it difficult and expensive to operate in it.

As the California Franchise Tax Board points out, the treatment of foreign multi-series LLC's is unsettled. Notwithstanding the position of the Board, it is important to note that many asset protection techniques are means by which to set up legitimate hurdles for creditors. It is a means to improve negotiation.

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