

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

Viewpoint
The Uphill Battle with Single Member LLC's

Limited Liability Companies ("LLC's") have grown to be darlings in the industry. They offer limited liability against creditors while at the same time avoiding the double taxation of C corporations. However, in 2003 in *In re Albright*,¹ the concept of single member LLC's was stung. A bankruptcy court allowed a Chapter 7 trustee to liquidate the property in an individual debtor's limited liability company. The Court held that the Colorado law protected "other members" and, therefore, did not protect sole members. From that point on, we urged our clients to follow the recommendation given in *In re Albright* and have a second de minimis member.

Now in *Littriello v. United States*,² again single member LLC's are hammered. In *Littriello*, the single member did not have strong facts to support his case. First, the LLC's net income was reported on the single member's Schedule C. We would have recommended, at a minimum, that he obtain a separate FEIN (federal identification number) and file a separate tax return for the entity. This would bolster the separation between the member and the entity. Also, in *Littriello*, the debt sought by the IRS was over a \$1 million in employment taxes, which is definitely the bad boy of taxes and which presents the sting of personal liability.

In *Littriello*, the Court examines how the rules are ambiguous for "check the box" election for entities to be "disregarded entities". Because the single member in *Littriello* did not check the box, he was not treated as a corporation. To him this was good news because he avoided double taxation. However, the Court found that he could not be treated on the flip side as a partnership because by definition a partnership must have two partners, and he was a sole member. Therefore, the Court allowed the IRS to assess personally the single member of the LLC for the LLC's million dollar employment tax liability.

Subsequent to the *Littriello's* single member incurring the employment tax liability, the IRS has proposed regulations to help clarify the "check the box" election, which would afford single member LLC's the same protection as partnerships. However, the Court found that these proposed regulations did not afford the *Littriello's* single member any protection.

We continue to urge our clients who have single member LLC's to add at least a second de minimis member? member, obtain a separate FEIN and file a separate tax return for the entity. These steps will help bolster the LLC's creditor protection along with the IRS' proposed regulations.

Although currently LLC's are the darlings, the tax laws surrounding their treatment are evolving. Protect yourself and your assets by coming in to talk to us about whether your businesses are properly structured. Let us make certain that you are indeed protected not only on paper but in fact - where it counts.

¹ 291 B.R. 538

² 484 F.3d 372

<p>Jeanne M. Kerkstra, Esq., CPA KERKSTRA LAW OFFICES LLC 53 W. Jackson Blvd. Suite 1530 Chicago, IL 60604 312.427.0493 312.675.0500 (fax) jmk@kerkstralaw.com</p>	<p>KERKSTRA LAW OFFICES LLC Problem? Solved.®</p> <p>asset protection • estate planning corporate work • business succession planning forensic investigation • litigation and more</p>
---	--

This material is intended for educational purposes only. The conclusions expressed are those of the author and do not necessarily reflect the views of Kerkstra Law Offices LLC. While this material is based on information believed to be reliable, no warranty is given as to its accuracy or completeness. Concepts expressed are current as of the date appearing in this material only and are subject to change without notice.

TAX ADVICE NOTICE: The Internal Revenue Service (IRS) now requires specific formalities before written tax advice can be used to avoid penalties. This communication does not meet such requirements. You cannot contend that IRS penalties do not apply by reason of this communication.

Posted: Archived