Knowing the ABC's of Your "Series LLC's" (Part 1 of 2)

By James F. McDonough, Jr. on December 8th, 2011Posted in Business Classification, Business Tax, Taxes

Part One: John Doe and the Rabbit Hole

My colleague, an accountant, was crying the other day in a small corner near our coffee room. I asked him what prompted this surprising and lowly state. He mentioned that one of his clients, John Doe, has a business structure that includes over 20 attributed limited liability companies ("LLC's"). My colleague was frustrated because the business structure has activities interlinked between all of the companies. From an accountant's perspective, picture Alice staring down the rabbit hole of tax wonderland (or nightmares). Typically, the classic business structure had one master company that owns other entities, all operating and functioning independently. Each one of these sub-businesses are able to own their own separate "LLC" beneath the Master LLC. This is what John Doe has done, and consequently why my colleague has recently been filling his coffee cup with tears.

Delaware Has a Plan

Later that night, I started to think about the issue. I asked myself, "SELF! Would a Series limited liability company ("Series LLC") solve all of my colleague's turmoil? It was then that I remembered how Delaware has been handling this issue. Delaware has led the way and provided a very flexible statute that allows taxpayers to make one or more Series LLC's. Moreover, they allowed our friends offshore the ability to make segregated cells, in which the assets of one series are protected from the claims and liabilities of another series. Delaware requires a certificate to show that the assets of one series are separate from the other.

What Delaware does not require is a title to a particular property to be placed in the name of a particular series, opting instead to allow the property to be held by the LLC, a particular series or be attributed to a nominee of the series. Del. Code Ann. Tit. 6,§ 18-215(b) (2005 & Supp.2010). Why is this beneficial? It streamlines the ability to establish and separate property ownership (land), property development, construction, sales, and management without having to re-title the land. How does this apply to reality? Real estate development, for example, will be much easier without having to jump through hoops by re-titling, likewise with a cosmetic company working on its research and development, its product lines and sales force.

I came the next day to bring the good news to my colleague, but then I remembered he mentioned (in passing) that his client was based out of New Jersey. In all of my excitement to find a solution, I must have forgotten! As I went back to the drawing board, I was slightly disheartened by the fact that my colleague's tears would have to continue another day.