

## Alberty.com - Fall 2002 Newsletter

We're sending this newsletter to you, as a customer of Alberty Publishing LLC, to bring you news about the law of limited liability companies and what's new at Alberty.com.

### Tax Planning for LLC Distributions

If an LLC is taxed as a partnership, a distribution made to its members is generally tax free under IRC §731. But you can't rely on this general rule in planning for either current or liquidating distributions – there are too many exceptions. It's important to evaluate the tax consequences of every distribution.

There are four different situations in which a member receiving a distribution from an LLC can recognize taxable gain or income.

- A distribution of money or marketable securities by an LLC causes the member receiving it to recognize gain under IRC §731(a)(1) if the amount distributed exceeds the member's adjusted tax basis in his or her interest in the LLC.
- A distribution of money or property causes the member receiving it to recognize ordinary income under IRC §751(b) if the LLC owns unrealized receivables or items of inventory that have appreciated substantially in value and the distribution isn't made proportionately to all members.
- A distribution of money or other property can cause the member receiving it to recognize gain under IRC §§707(a)(2)(B) or 737 if the distribution is deemed to be related to the contribution or if the member contributed property (other than the distributed property) to the LLC within seven years prior to the distribution.
- A distribution of money in liquidation of a dissociated member's interest in an LLC may cause the member to recognize ordinary income under IRC §736(a) if the LLC is engaged in providing personal services and the member had a right to participate in the LLC's management.

If the distribution liquidates the member's entire interest in the LLC or is made when the LLC is wound up, the member receiving the distribution can recognize a loss for tax purposes under IRC §731(a)(2) if the distribution consists solely of money, unrealized receivables, and inventory and the amount distributed is less than the member's adjusted tax basis in his or her interest.

A distribution to one member of an LLC can also cause other members to recognize taxable gain or income. This unpleasant result can happen in two situations.

- A distribution of property by an LLC to one member can cause another member to recognize gain under IRC §704(c)(1)(B) if the other member contributed the property to the LLC within seven years prior to its distribution.
- A distribution of unrealized receivables and substantially appreciated items of inventory to one member of an LLC will cause the other members of the LLC to recognize income under IRC §751(b) unless the other members receive their proportionate share of these ordinary income assets.

An LLC recognizes neither gain nor loss when it makes a distribution. But making a distribution has tax consequences to the LLC in three situations.

- If the member receiving a distribution recognizes gain or loss under IRC §731(a), the LLC's tax basis in its assets is adjusted (up or down) under IRC §734(b) if an IRC §754 election is made or is in effect.
- If the member receiving a distribution has income under IRC §751(b), the LLC's tax basis in its unrealized receivables and appreciated inventory is increased by the amount of the income.
- If the LLC is engaged in providing personal services and a member whose interest is liquidated has income under IRC §736(a), the LLC is entitled to either a deduction for compensation paid or to a reduction in the amount of net income allocable to its continuing members.

### **New Subscribers**

We're always happy to send this quarterly newsletter to new subscribers. If you enjoy our newsletter and know someone else who might also enjoy it, please reply to this e-mail and send us their name, street address, and e-mail address. You can also have them e-mail the required information to [subscriptions@alberty.com](mailto:subscriptions@alberty.com). In either case, we'll sign them up for a free subscription that can be canceled at any time.

If someone you know subscribes, we'll send you the next issue of this newsletter absolutely free! (Actually, we'll do that anyway, but we do appreciate your help.)

### **Subscription Info**

As a customer of [Alberty.com](http://Alberty.com), we'd like to continue sending you updates on the law of LLCs and about useful forms that can enhance your practice. But if you'd rather not receive our newsletters, just let us know by replying to this e-mail. A human being will be reading your e-mail, so just ask us to take you off our mailing list – no magic words are needed in the subject line. We don't sell our mailing list, so asking to be removed won't increase the amount of spam you receive.

We welcome your input or feedback about this newsletter. Please feel free to reply with any thoughts or requests. Thank you.

Alberty Publishing LLC  
Online Forms for the Legal Profession  
P.O. Box 11504 - Eugene, OR 97440  
(888) 930-7007 - fax (541) 344-5073

[www.alberty.com](http://www.alberty.com)