

Alberty.com - Spring 2001 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.

LLC Reorganizations

As mentioned in our last newsletter, many commentators cite the ability to participate in tax-free reorganizations as an advantage of using a corporation rather than an LLC as a form of business organization. This is misleading because, while the tax-free reorganization provisions of the Internal Revenue Code apply only to corporations, LLCs can participate in tax-free transactions that accomplish the same results as the tax-free reorganizations most commonly used by closely-held corporations. As we discussed in our winter newsletter, LLCs, as well as corporations, can participate in tax-free mergers. This newsletter looks at tax-free divisions, recapitalizations, and changes of state of organization.

Divisions of corporations are tax-free under IRC §355. For example, in a tax-free spin-off, a corporation transfers some of its assets to a new subsidiary in exchange for the subsidiary's stock and distributes this stock on a pro rata basis to its own shareholders, resulting in the creation of two corporations owned by the same shareholders. Although IRC §355 applies only to corporations, a spin-off involving an LLC is also tax free in most instances. An LLC can transfer some of its assets to a new subsidiary LLC in exchange for a member's interest in the subsidiary in a transaction that is tax-free under IRC §721. The LLC can then distribute the member's interest in the subsidiary to its own members, and this distribution will generally be tax-free under IRC §731. The result will be the creation of two LLCs, each with the same members.

An LLC is also able to participate in what is in effect a tax-free split-off, or the creation of two LLCs, one of which is owned by one or more of the members of the LLC and the other of which is owned by other members of the LLC. In order to accomplish this, an existing LLC creates a subsidiary LLC, but in this case distributes the member's interest to only some of its members in liquidation of their interests. The creation of the subsidiary and distribution of the member's interest are again generally tax free under IRC §§721 and 731.

An LLC spin-off or split-off will not be tax-free if the distribution of the member's interest in the subsidiary LLC results in gain or income to the members of the distributing LLC because the distribution is treated as part of a disguised sale of property to the distributing LLC under IRC §737 or the distribution results in a change in the members' interests in unrealized receivables and inventory items under IRC §751.

A recapitalization of an LLC that creates a new class of members' interests does not qualify for tax-free treatment under IRC §368(a)(1)(E), which is limited to recapitalizations of corporations, and the exchange of one form of member's interest in an LLC for another form appears to be a taxable exchange under IRC §741. Nevertheless, the IRS has ruled that the conversion of a partnership to a limited partnership or limited liability company is tax free so long as the business of the partnership is continued, no partner is relieved of liabilities, and all partners' interests in capital and profits remain the

same. A recapitalization of an LLC that meets these requirements and is structured like the conversions considered in those rulings may also be tax free.

An LLC can change its state of organization in the same way as a corporation. To do this, a new LLC is created in the new state of organization, and the LLC organized under the law of the old state is merged into the new LLC. Although the transaction is not covered by IRC §368(a)(1)(F), the transaction will be tax free to both the LLC and its members, and the old LLC will be treated as having continued for tax purposes under the rules applicable to mergers of LLCs.

New Shopping Cart Feature

We've upgraded and improved the process for purchasing LLC forms from Alberty.com. Our new secure online ordering system utilizes a shopping cart feature to make it easier for you to locate, learn about, and order the forms you want. The new system also really streamlines the process of purchasing multiple forms.

With our new ordering process, forms are delivered to you via e-mail, avoiding the need for you to download them as in the past. Forms can still be purchased 24 hours a day, seven days a week, and are e-mailed to you immediately if you order them from our secure server. Forms can also be purchased by telephone, fax, or mail using the simple steps outlined on the How to Order page of our Web site.

Those of you who purchase forms from our site on a regular basis may want to register as a customer on our secure online server. This will allow you to return to Alberty.com and place additional orders without the need to input billing information, which can be a real time saver.

We're proud of our new upgrades and hope you'll visit our site soon and try out the new secure online ordering system.

Continued CD-ROM Offer

A complete set of the Alberty Publishing forms is now available for purchase at our Web site, although we continue to offer the forms for purchase on an individual basis. The CD-ROM contains all 33 of our LLC forms and costs \$199, plus a \$5.95 shipping and handling charge. This represents a discount of over 60 percent from the price of purchasing all the forms individually.

By way of saying thanks to the customers who have supported us during our first two and half years of operations, we're continuing to offer purchasers of the CD-ROM a full credit for all forms purchased from our Web site in the past. For example, if you've purchased \$100 worth of forms, the CD-ROM can be yours for only \$99 plus the shipping and handling charge.

Our secure online ordering system can't compute the credit for prior purchases, so to take advantage of this offer, you must reply to this e-mail and supply us with your current mailing address. We'll send you the CD-ROM along with an invoice for the purchase price net of a credit for your prior purchases.

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

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