

## **Alberty.com - Winter 2001 Newsletter**

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

### **LLC Reorganizations**

An often-cited disadvantage of LLCs as compared to corporations is that LLCs cannot participate in tax-free reorganizations. While it is true that IRC §368(a)(1) applies only to corporations, LLCs can enter into tax-free transactions that accomplish the same results as the types of tax-free reorganizations most commonly used by closely-held corporations. LLCs can enter into tax-free mergers, recapitalizations of LLCs should be tax-free if properly structured, and an LLC can change the state in which it is organized in a tax-free transaction.

This newsletter will briefly consider LLC mergers. Recapitalizations and changes of state of organization will be dealt with in a later newsletter.

Most state LLC statutes authorize mergers of LLCs. For example, Section 904 of the Uniform Limited Liability Company Act permits an LLC to merge with another LLC, or with another entity. Under Section 906 of the Uniform Act, the effect of a merger of LLCs is similar to a merger of corporations – the existence of the merging LLC ceases, all property of the merging LLC vests in the surviving LLC, and the surviving LLC becomes responsible for all of the debts and liabilities of the merging LLC.

For federal income tax purposes, a merger of LLCs is tax-free to the members of the LLCs as well as the LLC themselves, so long as both are taxed as partnerships. If two LLCs are merged, the LLC whose members own more than 50 percent of the capital and profits of the surviving LLC is deemed to continue in existence under IRC §708(b)(2)(A), and the other LLC is deemed to have terminated. The regulations provide that if the members of neither LLC own more than 50 percent of the capital and profits of the surviving LLC, both LLCs are deemed to have terminated, and the surviving LLC is treated as new entity.

If an LLC is deemed to be a continuing entity, it will not realize gain or loss on the merger, and its members will be treated as continuing to hold interests in the same entity. Neither the basis nor the holding period of the interests of the members of the continuing LLC will be affected by the merger.

If an LLC is deemed to have terminated in a merger, the LLC is treated for federal income tax purposes as if it transferred all of its assets to the continuing LLC in exchange for a membership interest in the continuing LLC and then liquidated and distributed the membership interest to its members. The transfer of assets from the terminating LLC to the continuing LLC is tax-free under IRC §721, and the constructive liquidating distribution is tax-free to both the terminating LLC and its members under IRC §731. Since no gain or loss is realized by members of the terminating LLC, their basis and holding periods are unaffected.

There can be tricky capital account issues that need to be addressed in the merger documents. The capital accounts of the members of the merging LLC will be based upon the agreed value of the merging

LLC as set forth in the merger documents. The capital accounts of the members of the surviving LLC may need to be adjusted as permitted under Reg. §1.704-1(b)(2)(iv)(f) to reflect the pre-merger agreed value of the surviving LLC.

Alberty Publishing Form 6.1 contains a complete set of documents for the merger of two LLCs, including provisions dealing with capital accounts. This form can be purchased at [www.alberty.com](http://www.alberty.com).

### **Special CD-ROM Offer**

As a result of numerous requests, we will soon be offering a complete set of the Alberty Publishing LLC forms on a CD-ROM, as well as continuing to offer the forms for purchase individually. The CD-ROM contains all 33 forms we publish dealing with the organization, operation, transfer, and termination of LLCs. The price of the CD-ROM will be \$199, plus a \$5.95 shipping and handling charge, which represents a discount of over 60 percent from the price of purchasing all the forms individually.

The CD-ROM will not be available for purchase on our Web site for a couple of months, but we're currently offering it for sale to our existing customers. If you purchase the CD-ROM now, we'll give you full credit against the purchase price for all forms you have 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.

If you want to take advantage of this special offer and purchase the CD-ROM, let us know by e-mail, fax, telephone, or letter, and be sure to give us your current mailing address. We'll send you the CD-ROM along with an invoice for the purchase price less a credit for your prior purchases.

### **Subscription Info**

As a customer of [Alberty.com](http://www.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 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)