
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING #95-9 (TAX)

SUBJECT: Conversion of Partnership to Limited Liability Company
(Income Tax, Sales Tax, and Documentary Stamp Tax)

EFFECTIVE DATE: Applies to all periods open under statute.

SUPERSEDES: All previous documents and any oral directives in conflict herewith.

REFERENCES: S.C. Code Ann. Section 12-36-510 (Supp. 1994)
S.C. Code Ann. Section 12-21-380 (Supp. 1994)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1994)
SC Revenue Procedure #94-1

SCOPE: A Revenue Ruling is the Department of Revenue's official advisory opinion of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

In 1994 the South Carolina legislature passed legislation providing for the formation of limited liability companies (LLCs). An LLC is an unincorporated business association that provides its owners (members) limited liability, flexible management and financial alternatives. It has become a popular new form of business entity since a properly formed LLC provides the favorable pass-through tax treatment of partnerships, and the limited personal liability of corporations.

Recently some issues have arisen concerning the conversion of a partnership to an LLC that is classified as a partnership for South Carolina income tax purposes.

Definitions and Assumptions

For purposes of this Ruling, the term "organization" means the partnership before the conversion and the LLC after the conversion, and the term "owner" means a partner before the conversion and a member after the conversion.

This ruling assumes that (i) the conversion from a partnership to an LLC does not involve the addition or removal of any owner or affect the amount of the organization owned by any owner, (ii) the LLC will continue the same business conducted by the partnership, and (iii) both the partnership and the LLC are organized under the laws of a state of the United States or the District of Columbia.

South Carolina Income Tax

In 1985 South Carolina adopted the Internal Revenue Code (with some exceptions) in order to conform its income tax provisions to those of the federal. Among the statutes adopted were those dealing with the tax classification of entities and the taxation of partnerships. Since South Carolina has adopted these provisions of the Internal Revenue Code, the Department will follow the federal income tax guidelines set forth in IRS Revenue Ruling 95-37 (IRB 1995-17, 10) concerning the conversion of a partnership to an LLC.

Therefore, with respect to the conversion of a partnership to an LLC as described above:

1. The conversion will be treated as a partnership-to-partnership conversion. This applies whether the resulting LLC is formed in the same state or in a different state than the converting domestic partnership. Therefore,
 - a. The partnership will not terminate under section 708 of the Internal Revenue Code;
 - b. If the owners' shares of organization liabilities does not change, there will be no change in the adjusted basis of any owner's interest in the organization;
 - c. If the owners' shares of organization liabilities change and cause a deemed contribution of money to the organization by an owner, then the adjusted basis of such an owner's interest in the organization will be increased by the amount of the deemed contribution;
 - d. If the owners' shares of organization liabilities change and cause a deemed distribution of money by the organization to an owner, then the adjusted basis of such an owner's interest in the organization will be reduced (but not below zero) by the amount of the deemed distribution, and gain will be recognized by the owner to the extent the deemed distribution exceeds the adjusted basis of the owner's interest in the organization; and
 - e. There will be no change in the holding period of any owner's total interest in the organization.
2. The taxable year of the converting partnership will not close with respect to all the owners or with respect to any owner.
3. The resulting LLC will not need to obtain a new taxpayer identification number.

Sales Tax

Every person engaged in the business of selling tangible personal property at retail must obtain one or more retail licenses. Section 12-2-25 provides that for all South Carolina taxes the term

“partnership” includes an LLC taxed for South Carolina income tax purposes as a partnership. Since it has been determined that the conversion of a partnership to an LLC is treated as a partnership-to-partnership conversion, the organization is still considered to be the same entity for South Carolina tax purposes and is not required to obtain a new retail license.

However, the Department advises that the new LLC obtain a new retail license for each retail location. If a retail license remains in the name of the partnership, the Department will assume that the general partner or partners are personally liable for any sales or use taxes the LLC fails to pay.

Because a new retail license is not required, the Department will waive the \$50 application fee for a retail license. In order to apply for a new license:

1. Obtain Form SCTC 111 - Business Tax Application. It is in the South Carolina Package X or can be ordered by calling (803) 737-5080.
2. Write on the top of the application “Partnership Conversion to LLC”.
3. Send it to License and Registration Section, Office Services Division, Department of Revenue, P.O. Box 125, Columbia, SC 29214.

Documentary Stamp Tax

Code Sections 12-21-380 and 12-25-10 impose state and county documentary tax upon deeds. The purchaser or grantee is liable for the documentary taxes. In addition, if it is impractical to seek payment of the tax from the purchaser or grantee, the Department may assess the seller or grantor for the tax. See SC Revenue Ruling #92-14.

Usually, a conveyance of realty by a partner to a partnership, as a contribution of partnership assets, is subject to the documentary tax. See SC Technical Advice Memorandum #89-8 and SC Private Letter Ruling #89-20.

Section 12-2-25 provides that for all South Carolina taxes the term “partnership” includes an LLC taxed for South Carolina income tax purposes as a partnership. As stated earlier, a conversion from a partnership to an LLC as described above will be treated as a partnership-to-partnership conversion. Therefore, when a partnership converts to an LLC, as described above, for South Carolina state tax purposes, it is the mere reorganization of a partnership.

Hence, for South Carolina tax purposes the property is still vested in the same partnership. No sale or transfer for consideration has taken place. Therefore, if a partnership converting to an LLC as described above conveys real property to the LLC, no documentary stamp tax will be due. (See SC Revenue Ruling #95-8 for a further discussion on the imposition of the documentary stamp tax on transfers of realty pursuant to the reorganization of a single entity.)

For questions concerning limited liability companies, contact Jean Croft at (803) 737-5007 or Deana West at (803) 737-4439.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III

Burnet R. Maybank, III, Director

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