

SC REVENUE RULING #98-11

SUBJECT: Single Member Limited Liability Company
(Income Tax, License Tax, and Deed Recording Fees)

EFFECTIVE DATE: Applies to all periods open under the statute.

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

REFERENCES: S. C. Code Ann. Section 12-2-25 (Supp. 1997)
Chapter 44, Title 33

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1997)
SC Revenue Procedure #97-8

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 is 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 It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

BACKGROUND

A limited liability company (LLC) is an unincorporated business association that provides its owners (members) limited liability, flexible management, and financial alternatives. It is a popular form of business entity since a properly formed LLC can provide the favorable pass-through tax treatment of partnerships, and the limited personal liability of corporations.

South Carolina enacted its first Limited Liability Company Act in 1994. In 1996, a more flexible, second generation act, The South Carolina Uniform Limited Liability Company Act of 1996, was enacted. In 1997, South Carolina clarified the tax treatment of single member limited liability companies by adding Code '12-2-25(B).

The purpose of this document is to address questions that have arisen concerning the South Carolina tax implications of a single member limited liability company. Questions concerning the taxation of limited liability companies, other than single member LLCs, are addressed in SC Information Letters #96-25 and #96-15. Questions concerning conversion of a partnership to a LLC are addressed in SC Revenue Ruling #95-9.

LAW

South Carolina Code '12-2-25(A) contains general definitions pertaining to Title 12, including limited liability companies. The definitions provide the following:

(A) As used in this title and unless otherwise required by the context:

* * *

(3) 'Corporation' includes a limited liability company or professional or other association taxed for South Carolina income tax purposes as a corporation.

(4) 'Shareholder' includes any member of a limited liability company taxed for South Carolina income tax purposes as a corporation.

In 1997, Code '12-2-25(B) was added to clarify the tax treatment of single member limited liability companies.

(B) Single-member limited liability companies which are not taxed for South Carolina income tax purposes as a corporation...will be ignored for all South Carolina tax purposes.

INCOME TAXES

Based on the above statute, the following summarizes South Carolina's income tax requirements for single member LLCs.

Individual is Only LLC Member. If an individual is the only member of a single member LLC and the individual did not elect for federal purposes to have the LLC treated as a corporation, then it is treated as a sole proprietorship. The income from the LLC is reported on the single member's Form SC1040 - South Carolina Individual Income Tax Return.

Corporation is Only LLC Member. If a corporation is the only member of a single member limited liability company and the corporation did not elect for federal purposes to have the LLC taxed as a corporation (100% owned subsidiary), then it is treated as a division of the corporation. The income from the LLC is reported on the parents Form SC1120 or SC1120S - South Carolina “C” Corporation or “S” Corporation Income Tax Return.

Since South Carolina follows the federal “check the box” regulations, a single member LLC taxed as a corporation for federal income tax purposes will be classified as a corporation for South Carolina income tax purposes and deemed a corporation for all other tax purposes in South Carolina.

CORPORATE LICENSE FEES

Corporate license fees are imposed on corporations required to file an annual report. Code '12-20-20 provides that, with very few exceptions, every domestic corporation, every foreign corporation qualified to do business in South Carolina and any other corporation required by Code '12-6-530 to file income tax returns, must make a report annually to the Department. Since Code '12-2-25 provides that for purposes of Title 12, “corporation” includes a limited liability company taxed for South Carolina income tax purposes as a corporation, LLCs classified as corporations for federal income tax purposes must pay South Carolina corporate license fees.

Based on the above, the following summarizes South Carolina’s license fee requirements for single member LLCs.

Individual is Only LLC Member. An individual who is the single member of a LLC is not required to pay a corporate license fee unless the individual elects to have the LLC taxed as a corporation.

Corporation is Only LLC Member. A corporation who is the single member of a LLC is not required to pay a separate license fee if the LLC is treated as a division of the corporation since the division’s license fee is included in the entire corporation’s South Carolina license fee. If the LLC is taxed as a 100% owned subsidiary, then it is subject to a separate South Carolina corporate license fee.

DEED RECORDING FEE

South Carolina’s recording fee on deeds and other conveyances of realty is contained in Chapter 24 of Title 12. A recording fee is imposed by the clerk of court or register of deeds of each county for the privilege of recording a deed with respect to any deed

whereby any lands, tenements or other realty is transferred to another person. The fee is \$1.85 for each \$500, or fractional part thereof, of the realty's "value", as that term is defined in Code Section 12-24-30.

All deeds and conveyances are subject to the recording fee unless otherwise exempted. The exemptions from the deed recording fee are contained in Code '12-24-40. In general, if a single member LLC is disregarded and taxed as a sole proprietorship or division of a corporation, then all transfers between the LLC and its member are ignored and exempt from the deed recording fee. If a single member LLC is taxed as a corporation, then all transfers between the LLC and its member are not disregarded and are subject to the deed recording fee, unless specifically exempted.

For example, Code '12-24-40(8) provides that a transfer of realty to a corporation to become a stockholder of the entity, or as a stockholder of the entity, when no consideration (other than the stock in the corporation) is paid is exempt from the deed recording fee. This section also provides that a transfer of realty from a corporation to a stockholder is subject to the deed recording fee even if the realty is transferred to another corporation.

QUESTIONS

Questions concerning the taxation of limited liability companies should be directed to the Department of Revenue as follows: Income Tax - 803-898-5791, Corporate License Fees - 803-898-5705, and Deed Recording Fees - 803-898-5743.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III

Burnet R. Maybank, III, Director

Columbia, South Carolina

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