

Tax Characterization of Series Limited Liability Companies

By **Kenneth E. Werner**

Delaware law, as well as the laws of a number of other states, permits limited liability companies (“LLCs”) to be formed with multiple “series.” Each series within the relevant LLC represents a legally separate portion of the assets of the LLC, and the assets of each series are only available to satisfy the liabilities to creditors of that series. In effect, from the point of view of legal and economic efficiency, these laws are intended to permit the same type of limited liability protection to be obtained for the assets in each series as if each series were formed as a separate LLC, although the actual degree to which the limited and separate liability of each series will be applied in practice has not yet been tested.

Since the profits and losses with respect to each series are intended to be isolated from each other under state law, most tax practitioners thought that, particularly where the series did not have identical owners, each series should be considered a separate entity (and filer) for tax purposes, despite the fact that a series LLC is only a single legal entity. The Internal Revenue Service (“IRS”) has now indicated that it agrees with this position.

In Private Letter Ruling 200803004 (available at <http://www.irs.gov/pub/irs-wd/0803004.pdf>), the IRS ruled that a series LLC with a number of different series would have each series considered as a separate entity in order to determine its tax classification. A series with only a single owner that doesn’t elect otherwise will be disregarded as an entity separate from its

owner, a series with more than one owner that doesn’t elect otherwise will be treated as a partnership, and a series that elects to be treated as association taxable as a corporation will be so treated (whether it has one or more owners).

While a private letter ruling is only binding with respect to the taxpayer that requested it, we believe it is likely that the IRS will continue to follow this position, and expect separate tax reporting for each series within a multiple series LLC. Accordingly, taxpayers conducting business through multiple-series LLCs should confirm that current and past tax reporting conforms with this position.

If you have any questions regarding the matters discussed in this memorandum, please call your usual contact at Richards Kibbe & Orbe LLP, or the person listed below.

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The IRS ruled that a series LLC with a number of different series will have each series considered as a separate taxable entity.

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