

Massachusetts authorizes Single Member LLCs

Recent legislation enacted immediately into law by Governor Mitt Romney has significantly changed the Commonwealth's laws regarding the use of Limited Liability Companies (LLCs). Any of our clients who have created business entities using the LLC format should be aware of this important change. Almost all other states amended their LLC laws several years ago to allow for Single Member LLCs. Massachusetts has only now followed suit.

Prior statutes required that all Massachusetts LLCs have at least two members. This was in contrast with a Massachusetts corporation, which could have only one shareholder. This created an inconvenience in that a small interest (usually 1%) of LLC had to be issued to a third party (usually a spouse, child or trusted friend). This necessitated their signature on most LLC documents, and a general obligation to keep them "in the loop" as far the LLC's business was concerned.

If you already have a Massachusetts LLC with a minority member, you may want to consider having that person's interest liquidated or reacquired. A spouse can pass the interest tax-free to another spouse, and the cost of such liquidation in most small businesses is minor at best.

If you have considered a Massachusetts LLC in the past, now may be the time to use this vehicle. Instead of a corporation, or the unprotected Sole Proprietorship, an individual can now create an LLC with only himself/herself as Member and/or Manager. This means protection against third party creditors at a relatively low cost.

Furthermore, no additional income tax filings will be required for a single member LLC if it elects to be taxed as a "disregarded separate entity" and form 8832 is filed with the IRS. This means limited liability plus tax filings on Schedule C of the individual's 1040. A single member LLC may also be taxed as an S Corporation if a timely election is made on Forms 8832 and 2553.

Lastly, the new LLC statute also tightens language regarding indemnification and personal liability of Members and managers. These changes make the LLC even more attractive.

If you are interested in learning more about the Massachusetts Limited Liability Company, contact Cooley, Shrair, P.C.