

Simple, Effective, and Creative Uses of LLCs by Nonprofit Organizations

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Nonprofit organizations are increasingly incorporating wholly owned, single-member limited liability companies (“LLCs”) into their corporate structures to isolate liability risk stemming from a variety of activities and special uses. The LLC is a form of entity recognized by state law. The Virginia Limited Liability Company Act was first adopted in 1991, and has been updated on a regular basis to provide significant flexibility for the conduct of business and investment activities. Generally speaking, LLCs offer flexibility, limited liability protection, perpetual life, and pass-through tax treatment.

IRS letter rulings and other guidance over the past decade have brought clarity to a variety of key concepts that were the subject of confusion or uncertainty, including the following:

(i) a single-member LLC will be treated for federal income tax purposes as a “disregarded entity” (unless it specifically elects to be treated otherwise) (i.e., as far as the IRS is concerned, the LLC will not exist, but it otherwise will exist as a separate entity for purposes of state law); and

(ii) the IRS will treat the assets and activities of the single-member LLC as part of the parent charity’s assets and activities which, for practical purposes, means that a single-member LLC owned by a tax-exempt organization gets to piggy back on the parent’s tax-exempt status.

Setting up a single-member LLC in Virginia is a short and simple process. Articles of Organization are filed with the State Corporation Commission along with a \$100 filing fee. A written Operating Agreement is not legally required, but always recommended to memorialize the purpose of the entity, how it will be managed, and also to demonstrate that proper entity formalities are being observed. Other licensing and filing requirements may apply depending upon the nature of the LLC’s activities.

Single-member LLCs can be useful in a variety of situations. A nonprofit organization receiving a charitable gift of real estate may desire to hold title to the property through a single-member LLC to protect itself from liabilities that could arise from real estate ownership (e.g., environmental liability, premises liability, etc.). A charitable group organizing a fund-raising event may want to conduct the event through a single-member LLC to limit its liability exposure from personal injuries, slip-and-falls, social host liability, and other problems that could arise from the event.