

South Dakota Limited Liability Companies

Nature

Limited Liability Companies (LLCs) created in South Dakota have legal personality separate from their members, and combine features of corporations and partnerships.

Formation

LLCs are created in South Dakota with the filing of the Articles of Organization with the South Dakota Secretary of State, and the issuance of the Certificate of Organization.

Operating Agreement

The corporate governance rules for LLCs and the powers and duties of the Members and Managers, etc., are set-forth in an Operating Agreement, which is not required to be filed with the South Dakota Secretary of State.

Annual Reporting Requirements

Annual Reports are filed with the South Dakota Secretary of State. There is no requirement to file a shareholder register with the South Dakota Secretary of State.

Ownership and Management

The shareholders of LLCs are typically referred to as “members”, whose ownership interest is reflected in a membership certificate. The Managers of LLCs are charged with executive responsibility, LLCs can be Member-Managed or Manager-Managed.

Charging Orders

Creditors of the member of a South Dakota LLC is a “Charging Order,” which gives creditors the rights to attach the proceeds of distributions, but creditors cannot force distributions.

IRS Check-the Box Rules

If the LLC elects to be treated as a “C” corporation by checking the box” and obtaining a Federal tax ID number, IRS Form SS-4, and completing IRS form 8832, it will be treated as a non-transparent US corporation subject to US tax on world-wide income, requiring the LLC to file a US corporate tax return, Form 1120.

Single Member LLCs

A single member US LLC with one member which does not “check the box” and does not elect to be treated as a corporation will be treated as a disregarded entity and considered fiscally transparent pursuant to IRS Default Classification Rules (Form 8832). From a US tax perspective, this means that the LLC is disregarded and “passes through” its profits and losses to its member.

Multiple Member LLCs

An LLC with two or more foreign (non-US) members which does not “check the box” and does not elect to be treated as a US corporation may be treated as a US partnership (if the attributes of a partnership are present), and if so should obtain a US tax ID number.

US Corporate Taxation

Domestic corporations, which are created or organized under the laws of any state, are subject to Federal income tax on worldwide income at a rate of 21%. There is no state corporate income tax in South Dakota.

US Estate Taxes Reporting

Membership interests in US LLCs are considered US situs assets for purposes of US estate tax. Non-US residents holding US LLC interests directly may be liable for US estate tax inclusion.

Reporting

Foreign owned US LLCs are required to file IRS Form 5472 annually with the IRS disclosing the foreign beneficial owner for years in which there is a reportable transaction. FBARs must be filed for LLCs that hold foreign bank accounts. The Corporate Transparency Act (CTA) requires the disclosure of beneficial ownership to FINCEN.

Notice

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