

December 22, 2009

Year-End Limited Partnership/Limited Liability Company Administrative Considerations

Here is a compiled list of administrative issues for owners of Texas limited partnerships or limited liability companies ("LP/LLC") to consider as December 31 approaches. Although some of these issues are not necessarily time-sensitive, year-end is a good time to consider whether your entity is in compliance with state and federal requirements.

- Ensure that the LP/LLC's activities, transactions, capital infusions (capital contributions or loan proceeds) and distributions are accurately reflected in the entity's records;
- Avoid causing the LP/LLC to make any distributions not in compliance with the terms of its LP/LLC agreement or applicable law (a common mistake is allowing an LP/LLC to make disproportionate distributions to a founding owner or to leave insufficient assets in the LP/LLC to satisfy creditors);
- Do not commingle LP/LLC assets with personal assets (e.g., using the LP/LLC's checking account as your personal account) and do not use LP/LLC assets to pay for personal expenses;
- Keep separate books and records for LP/LLC sufficient for it to comply with its income tax, Texas margin tax, and other tax reporting obligations and to determine accurately each partner/member's capital account;
- Always retain sufficient cash and other liquid assets for your living expenses outside the entity;
- Comply with Texas margin tax requirements (as applicable);
- Prepare and file necessary federal, state, and local income tax returns and complete other reporting requirements (e.g., Schedule K-1);
- File necessary forms for any employees, such as Forms W-2 and W-3 (if wages and other compensation paid to an employee exceeds \$600 in any calendar year), Forms 940 or 940 EZ—Employer's Annual Unemployment (FUTA) Tax Return, and Form 941—Employer's Quarterly Federal Tax Return, as applicable;
- Conduct regular meetings of owners and record minutes of meetings;
- Review the LP/LLC agreement to insure compliance with its management provisions (for example, does the LP/LLC requirement necessitate additional approvals with respect to "major decisions" or other key decisions?; are the notices (if any) required by the LP/LLC agreement of decisions actually being sent?);
- Review salaries and compensation of managers, officers, or employees, as applicable, to ensure compensation is reasonable;
- Consider and review (i) indemnification provisions in LP/LLC agreement and (ii) insurance policies to determine whether there is adequate coverage; and
- Review and maintain the records relating to the business, affairs, and financial condition of the entity, including:
 - state filings (e.g., periodic reports);
 - federal, state, and local income tax returns;
 - current list of the name and address of each partner or member (including classes or groups of interests) and percentage or other interest owned by each partner or member; and

- executed copies of any powers of attorney or documents that establish a class or group of interests.

Transition to the Texas Business Organizations Code. The Texas Business Organizations Code (the “TBOC”) (enacted in 2003 and generally effective January 1, 2006) combined the laws found in a number of Texas statutes (including the Texas Revised Limited Partnership Act, and the Texas Limited Liability Company Act), standardized filing requirements and fees for Texas entities, made numerous substantive changes to the law, and implemented new terminology. To date, the TBOC has only governed (i) Texas entities formed on or after January 1, 2006, and (ii) Texas entities formed before January 1, 2006 that voluntarily “opted in” to the TBOC. Texas entities formed before January 1, 2006 that have not “opted in” to the TBOC have continued to be governed by the statutes under which they were formed.

Effective January 1, 2010, the statutes in effect prior to the TBOC will be repealed, and the TBOC will *automatically* govern all Texas entities, regardless of the formation date, subject to certain transitional rules. If an entity is not currently governed by the TBOC, it does not need to take any action; the TBOC will automatically apply and the entity’s formation documents will be deemed to comply with the TBOC without amendment. However, if the entity’s formation documents do not comply with the TBOC, it must conform its formation documents to the TBOC *when it next files an amendment to its formation documents*. In addition, although most of the TBOC changes are relatively minor, you should consult with your attorney to ensure that you understand the impact of the new rules.

If you have any questions, please feel free to contact one of the attorneys listed below.

[Rice M. Tilley, Jr.*](mailto:rice.tilley@haynesboone.com)
817.347.6611
rice.tilley@haynesboone.com

[John M. Collins](mailto:john.collins@haynesboone.com)
214.651.5564
713.547.2002
john.collins@haynesboone.com

[William D. Ratliff*](mailto:william.ratliff@haynesboone.com)
817.347.6608
william.ratliff@haynesboone.com

[J. Mitchell Miller](mailto:mitch.miller@haynesboone.com)
214.651.5363
mitch.miller@haynesboone.com

[Thomas J. McCaffrey](mailto:thomas.mccaffrey@haynesboone.com)
713.547.2107
thomas.mccaffrey@haynesboone.com

[James O. Wyss*](mailto:james.wyss@haynesboone.com)
817.347.6629
james.wyss@haynesboone.com

[Danika H. Mendrygal](mailto:danika.mendrygal@haynesboone.com)
214.651.5757
danika.mendrygal@haynesboone.com

[Jamie L. Harris](mailto:jamie.harris@haynesboone.com)
214.651.5301
jamie.harris@haynesboone.com

[Rebecca E. Whitacre](mailto:rebecca.whitacre@haynesboone.com)
214.651.5112
rebecca.whitacre@haynesboone.com

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