



STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
CARVEL STATE BUILDING
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P.O. Box 8911
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DIVISION OF REVENUE

PROPOSED TECHNICAL INFORMATION MEMORANDUM 98-1

January 16, 1998

SUBJECT: "CHECK THE BOX" REGULATIONS

Public Comment shall run from February 1, 1998 through March 3, 1998 and comments must be received by March 3, 1998. Comments shall be made in writing to John Maciejewski, whose address appears at the conclusion of this Memorandum.

Purpose of Regulation -- The purpose of this regulation is to explain the relationship between the classification of organizations for federal and state tax purposes and the procedures for electing entity classification.

Authority to make regulations; general information --

- (i) The Director of Revenue is charged with the administration and enforcement of all state tax laws unless such duties are expressly conferred upon another agency. Title 30 Delaware Code §563
- (ii) Published regulations are made and promulgated pursuant to authority vested in the Director. 30 Del. C. §563
- (iii) As used in published regulations, references to a section (§) number refer to a section of the Delaware Code. References to a section (§) number preceded by a "1", as in §1.1900-1, refer to sections of regulations published by the Division of Revenue of this State.

REGULATION:

§1.1900-1 In general; Classification of organizations for federal and state tax purposes; election of entity classification.

- (a) **Meaning of terms --** Any term used in these regulations shall have the same meaning as when used in a comparable context in the laws and income tax regulations of the United States referring to federal income taxes, unless a different meaning is clearly required. Any reference to the laws of the United States or to the Internal Revenue Code shall mean the Internal Revenue Code of 1986 [26 U.S.C. § 1 et seq.] as amended and regulations and amendments thereto and other laws of the United States relating to federal income taxes, as the same may be or become effective, for the taxable year.
- (b) **Classification of entities --** The classification of entities for Delaware tax purposes shall be as prescribed for federal tax purposes. Unless inconsistent with Delaware law, the provisions of Sections 301.7701-1; 301.7701-2; and 301.7701-3 of the Regulations to the Internal Revenue Code of 1986 are hereby adopted for Delaware purposes.
- (c) **Election of corporation classification by certain business entities --** A business entity that is not classified as a corporation for federal tax purposes but which elects to be classified as a corporation pursuant to §301.7701-3 of the Regulations to the Internal Revenue Code of 1986 shall be classified as a corporation for Delaware tax purposes.
- (d) **Notice of election to be classified as a corporation --** Business entities electing to be classified as a corporation for federal tax purposes shall attach a copy of Internal Revenue Service Form 8832, "Entity Classification Election" to their Delaware Corporate Income Tax Return, Form 1100.
- (e) **Tax return requirements --**
 - (1) **In general --** Members or partners of a business entity which has not elected to be classified as a corporation and which does business in this State shall file income tax returns for all such tax years.
 - (2) **Special rules for non-electing, single member limited liability companies doing business in Delaware and their corporate members --** Notwithstanding other provisions of these regulations or regulations of the Internal Revenue Code to the contrary,
 - (A) a limited liability company (LLC) that has only a single, individual member and (i) does not elect to be classified as a corporation pursuant to these rules, and (ii) derives any income from sources in this State (determined in accordance with Title 30 Delaware Code §1124 as in the case of a nonresident individual), or (iii) has a member residing in this State, shall file partnership income tax information and business license and gross receipts tax returns for all such tax years.
 - (B) A corporation which is a single member of a non-electing limited liability company (LLC) and which is not exempt under Title 30 Delaware Code §1902(b), shall file corporation income tax and business license and gross receipts tax returns for all such tax years.
 - (3) The attached flow charts illustrate these principles.

- (f) Effective date of election -- An election made under this regulation shall be effective on the effective date determined under §301.7701-3(c)(1)(iii) of the Regulations to the Internal Revenue Code of 1986.
- (g) Effective date of this regulation -- This regulation is effective as of January 1, 1997.
- (h) Contact Person -- For more information about these regulations or the classification of entities, contact **John J. Maciejewski, Jr., Assistant Director, Office of Business Taxes, State of Delaware Division of Revenue, 820 N. French Street, Wilmington, Delaware 19801** or phone **(302) 577-8450**.

SYNOPSIS

Under Internal Revenue Service regulations, a per se corporation is required to be classified and taxable as a corporation.

Any organization that is not a corporation is taxable as a partnership if it has at least two members or a sole proprietorship if it has a single owner. Both partnerships and sole proprietorships are "eligible entities".

Existing entities are classified as they were prior to the effective date of the regulations. Newly organized eligible entities are, by default, partnerships if they have at least two members or sole proprietorships if they have a single owner. A single owner entity may not be a partnership or pass-through entity.

Under the federal "check the box" regulations, eligible entities may elect to be classified as associations taxable as a corporations. Corporations and certain foreign, insurance, banking and other listed associations may only be taxable as corporations.

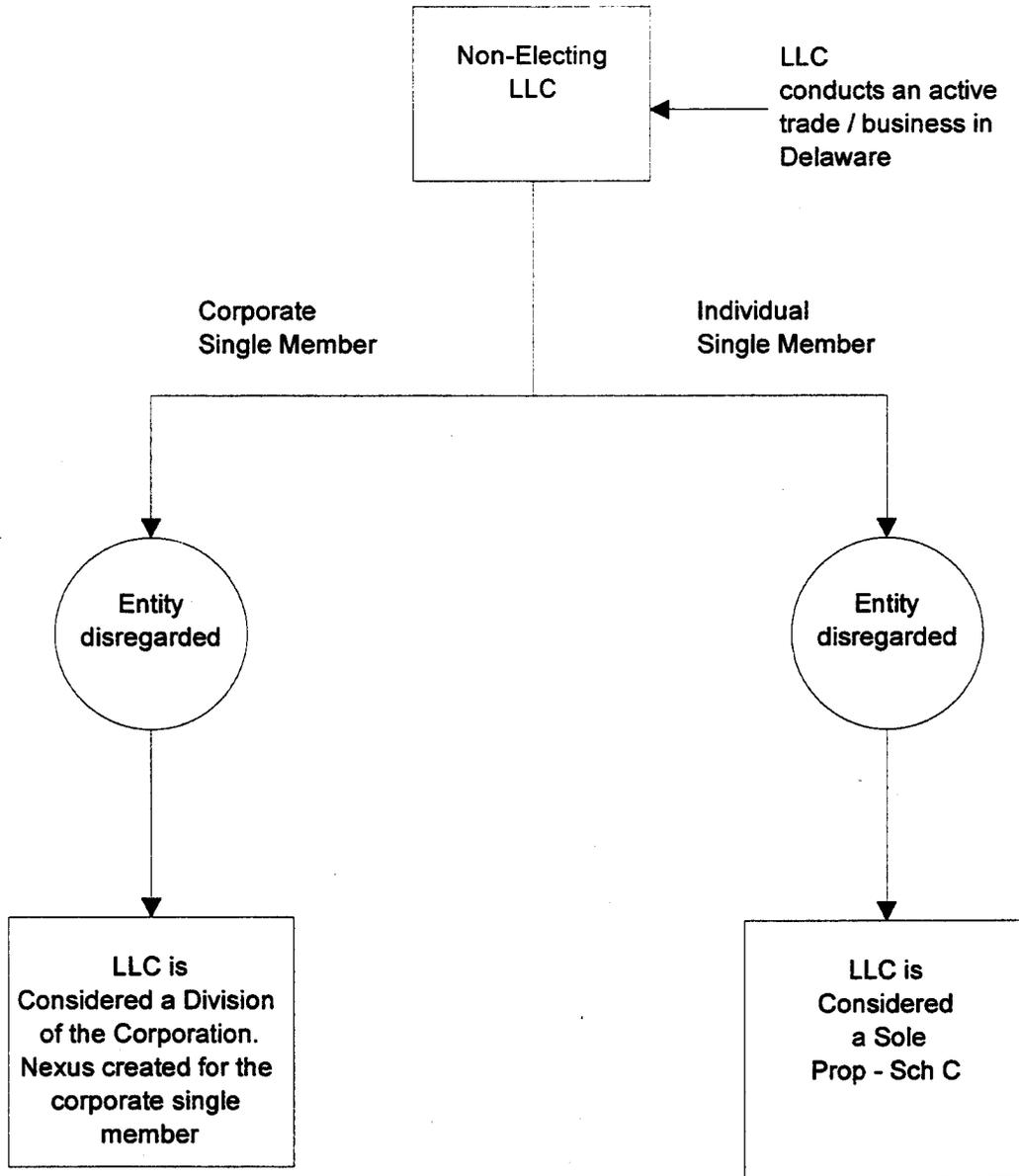
Limited Liability Companies, except single owner LLC's, are by default taxable as partnerships. An LLC is an eligible entity which may make the election to be taxable as a corporation.

SPECIAL NOTE: The 1997 Delaware Corporate Income Tax Returns and instructions were prepared and mailed erroneously identifying the "Check the Box" regulations as Technical Information Memorandum 97-9. The correct number is Technical Information Memorandum 98-1.

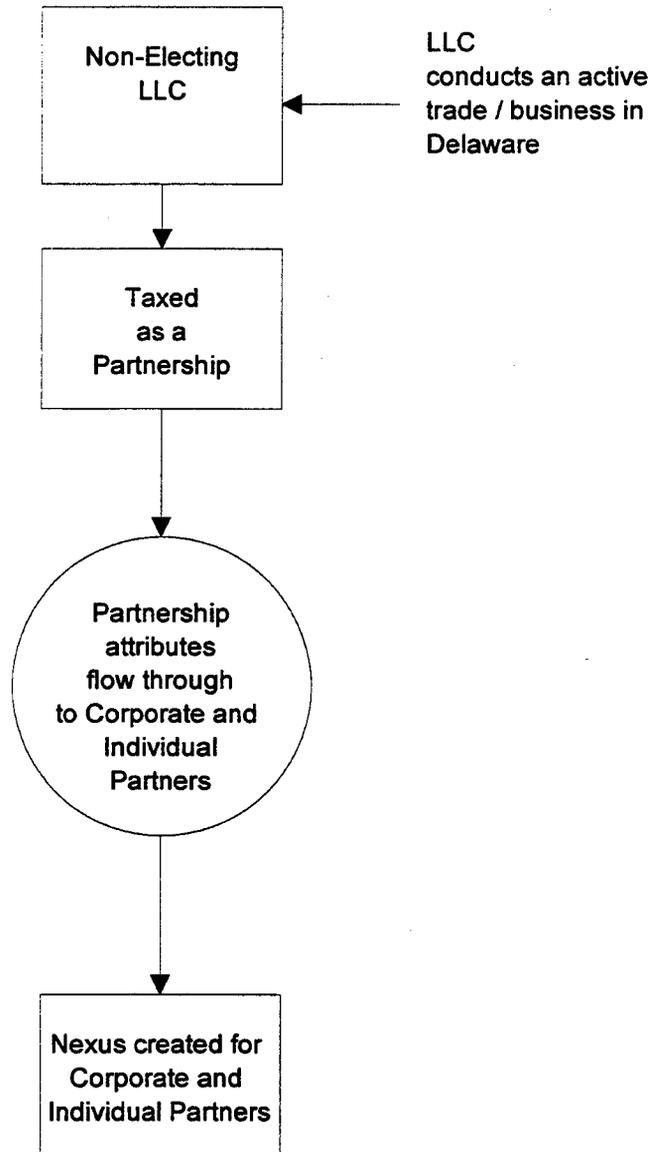


William M. Remington
Director of Revenue

"Check the Box" Diagram Non-Electing Single Member LLC



**"Check the Box" Diagram
Non-Electing
Multiple Member LLC**



"Check the Box" Diagram Electing Single / Multiple Member LLC

