



STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
CARVEL STATE BUILDING
820 N. FRENCH STREET
P.O. BOX 8911
WILMINGTON, DELAWARE 19899-8911

DIVISION OF REVENUE

TECHNICAL INFORMATION MEMORANDUM 98-1

April 24, 1998

SUBJECT: FINAL "CHECK THE BOX" REGULATIONS

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 §1.502.1, refer to sections of regulations published by the Division of Revenue of this State.

REGULATION:

§1.502.1 In general; Classification of organizations for 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.

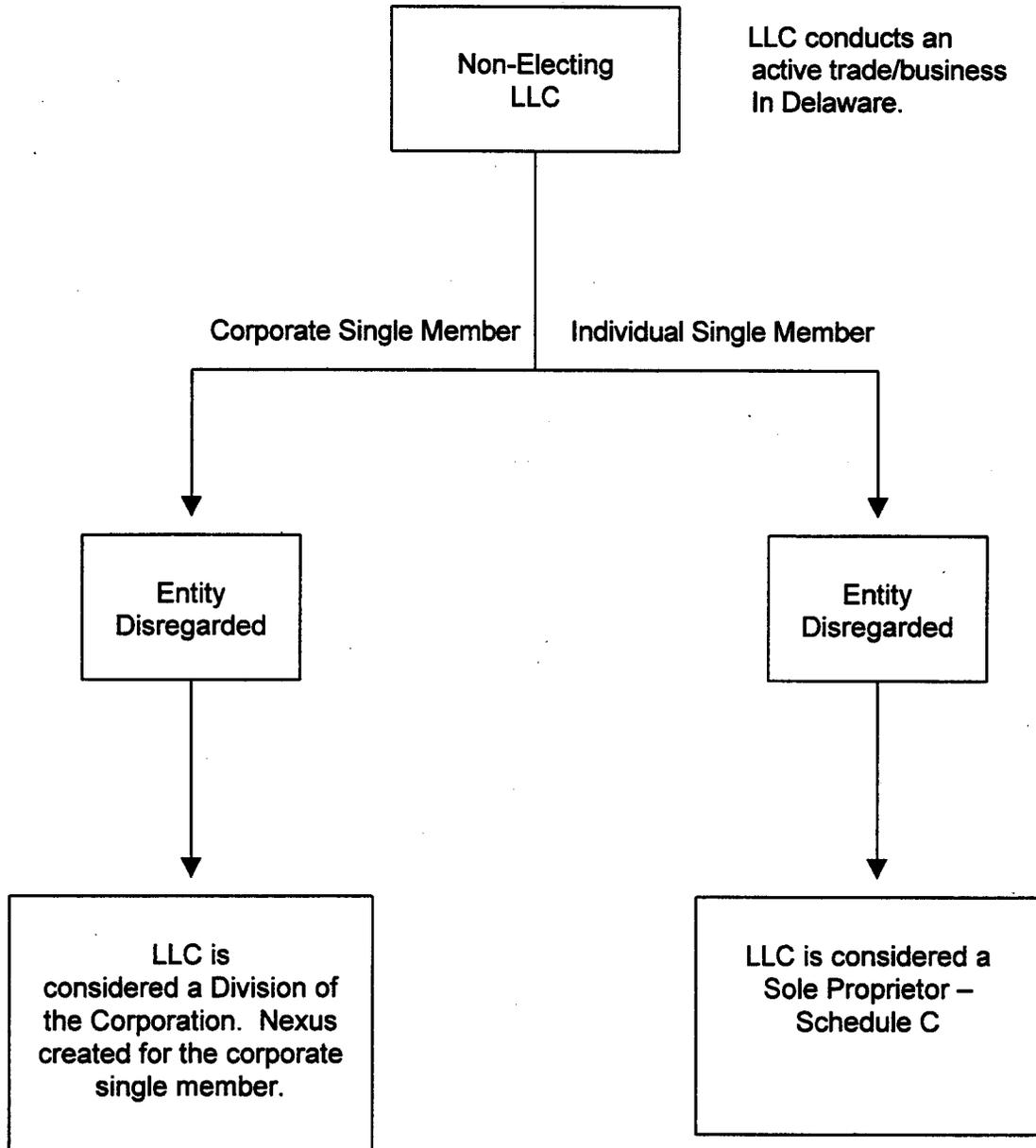
- (b) Classification of entities – The classification of entities for Delaware tax purposes shall be as prescribed for federal tax purposes. Unless inconsistent with Delaware law, the provisions of Sections 301.7701-1; 301.7701-2; and 301.7701-3 of the Regulations to the Internal Revenue Code of 1986 are hereby adopted for Delaware purposes.
- (c) Notice of election to be classified as a corporation – A business entity 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 its Delaware Corporate Income Tax Return, Form 1100, for its first taxable year ending after the date of this Regulation.
- (d) 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 be subject to the filing requirements of Title 30 of the Delaware Code for all such years in which the business entity does business in this state.
 - (2) Special rules for non-electing, single member limited liability companies doing business in Delaware and their members – Notwithstanding other provisions of these regulations or regulations of the Internal Revenue Code to the contrary,
 - (A) An individual who is the single member of a non-electing limited liability company (LLC) conducting business in this State shall be subject to the filing requirements of Title 30 of the Delaware Code for all years in which the LLC conducts business within this State.
 - (B) A corporation which is a single member of a non-electing limited liability company (LLC) conducting business in this state shall file corporation income tax and business license and gross receipts tax returns for all such years in which the LLC does business in this state.
 - (3) The attached flow charts illustrate these principles.
- (e) Effective date of this regulation – This regulation is effective as of January 1, 1997.
- (f) 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.

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.

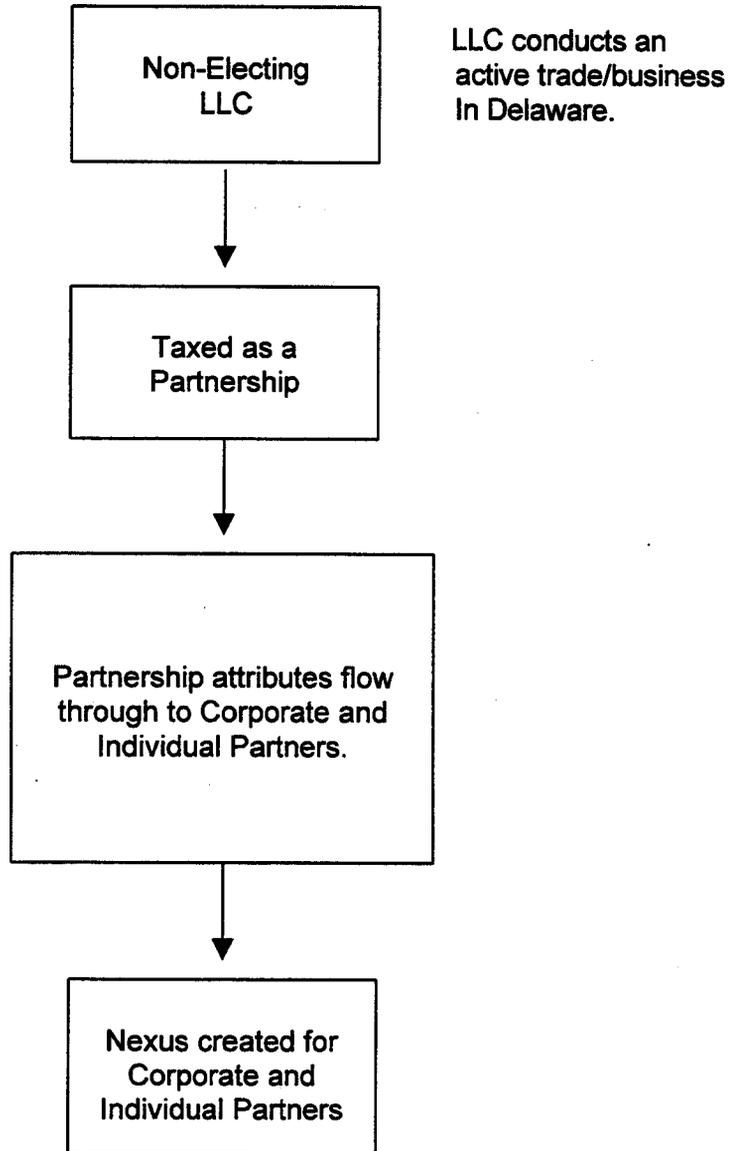


William M. Remington
Director of Revenue

**“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**

