

PRACTICE TIP

Capitalize the Single-Member LLC
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Section 8834(a) of the Pennsylvania Revised Uniform Limited Liability Company Act, which became effective in 2017, provides that a member of a limited liability company is not liable for its debts and obligations “solely by reason of being or acting as a member or manager,” and that “[t]his subsection applies regardless of (1) whether the company has a single member or multiple members” Among other things, this means that a member of an LLC is not liable for the company’s debts, just because it is his single member LLC.

This legal development alone, however, does not mean that the limited liability status of future single member limited liability companies is assured. A legal advisor who is alert to the distinctives of a single member LLC has a significant role to play in this area. Unlike corporations and partnerships (including LLCs treated as corporations or partnerships), a single-member LLC which is a disregarded entity for tax purposes is not required to include a balance sheet in its tax returns. That is, in Schedule C of the individual tax return, there is no segregation of assets of the business from the assets of the individual.

The practical significance of this is clear. For corporations and partnerships, an accountant or other professional tax return preparer will at a minimum inquire of the member what assets and liabilities the business has, and should point out the need to assign and segregate assets appropriately. The tax preparer, accountant or otherwise, who prepares an individual’s tax return is not required to prepare a company balance sheet, and may not be relied upon to play that role.

When an attorney is asked to organize a single member LLC, a principal purpose of the engagement is to obtain limited liability for the business owner. It is therefore vitally important for that attorney to attempt to make certain, after the entity is formed with the Department of State, that the assets of the business are actually conveyed to and held and controlled by the Company. While determining a dollar amount that is necessary to capitalize a particular venture may not be the lawyer’s expertise, the attorney can make certain that the client knows that the assets of any existing business should be transferred by deed and/or bill of sale or assignment to the LLC. Where the business itself is starting fresh, it should be stressed with the client that monies be placed in separate accounts owned by the LLC, and that vehicles, real property and other assets be transferred into the name of the new LLC. Assets utilized in the business, but not owned by the LLC should be the subject of leases or similar written agreements.

Some attorneys may go so far as to advise that the company maintain a balance sheet, in addition to the customary profit and loss statement, on an annual basis, even where none is required for tax return purposes. A balance sheet would have the added benefit of evidencing solvency, since where an entity’s liabilities exceed its assets, a transfer of an asset to the member or any other third party may give rise to a degree of personal liability or constitute a voidable transaction.