

**JOHN CUNNINGHAM'S LLC NEWSLETTER
FOR TAX AND LEGAL PROFESSIONALS**

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**NEW HAMPSHIRE NON-TAX CHOICE OF ENTITY MADE EASY—
A FOUR-TABLE METHOD**

EXECUTIVE SUMMARY. Non-tax choice of entity is the process whereby lawyers choose the best business organization type for clients starting new businesses. The choices include, for example, LLCs and corporations. For many businesses, the process is a critical one with high legal stakes. For most businesses, it can be performed competently by knowledgeable lawyers through the use of the four tables set forth in Exhibit A to this newsletter. New Hampshire accountants should have at least a general familiarity with these tables.

DISCUSSION

- 1) Introduction. The business organization law background of the tables in Exhibit A is complex, and I will discuss various specific aspects of this background in detail in future newsletters. However, I believe that for lawyers generally familiar with New Hampshire business organization law, these tables will be largely self-explanatory. Thus, in this newsletter, I will provide only a brief introduction to the key concepts in the tables.
- 2) Entities available to individuals that want to form single-owner businesses. There are three types of business entities (also known more technically as “business organization forms”) available and potentially useful to New Hampshire *individuals* who want to start *single-owner* businesses. These are:
 - a) Sole proprietorships;
 - b) Single-member LLCs; and
 - c) Single-shareholder corporations.
- 3) Entities available to entities that want to form single-owner businesses. There are three types of business entities available and potentially useful to New Hampshire *entities* (e.g., corporations and LLCs) that want to start *single-owner* businesses. These are:
 - a) Divisions (i.e., administrative units of entities to which are assigned entity assets or operations);
 - b) Single-member LLCs; and
 - c) Single-shareholder corporations.
- 4) Entities available to groups of two or more founders that want to form multi-owner businesses. There are seven main types of business entities potentially useful to *groups of two or more New Hampshire individuals or entities* that want to start *multi-owner* businesses. These are:
 - i) General partnerships that are *not* registered with the New Hampshire Secretary of State as limited liability partnerships (“LLPs”);

- ii) General partnerships that *are* registered with the New Hampshire Secretary of State as LLPs;
 - iii) Limited partnerships that are *not* registered with the New Hampshire Secretary of State as limited liability limited partnerships (“LLLPs”) and whose general partners are *not* corporations or LLCs;
 - iv) Limited partnerships that *are* registered with the New Hampshire Secretary of State as LLLPs);
 - v) Limited partnerships whose general partners *are* corporations or LLCs;
 - vi) Multi-shareholder corporations; and
 - vii) Multi-member LLCs.
- 5) The five business organization law factors. There are five main types of business organization law factors that lawyers should consider in choosing among the various types of entities potentially useful to individuals who want to form single-owner businesses; entities that want to form single-owner businesses; and to groups of two or more individuals or entities that want to form multi-owner businesses. These factors and the questions that lawyers should ask about them are set forth below. Exhibit A, Table 1 lists these factors and briefly states the types of business founders (“founders”) for whom they may be important.
- i) Liability shields. In the business in question, can the founders benefit from having a liability shield? If so, which of the types of business entities available to them will provide them with the best such shield?
 - ii) Charging order protections. Can the founders benefit from statutory charging order protections in conducting their business? If so, which of the types of entities available to them can provide these protections?
 - iii) Management structure. Which of the types of management structures available to each of the various types of business entities available to the founders will provide the founders with the best management structure?
 - iv) Continuity of life. Which of the types of business entities available to the founders will provide the founders and their successors with the best continuity of entity life if the founders die (if they are individuals) or if they are dissolved (if they are entities)?
 - v) Ease of transfer of business assets. Do the founders want to be able to transfer multiple business assets of their businesses to third parties by gift, sale or otherwise upon the founders’ death or dissolution or at some other time before the dissolution of their business? If so, which type of business entity available to them will best facilitate such a transfer?
- 6) How to use the tables to perform non-tax choice of entity analyses. In order to perform a non-tax choice of entity analysis:
- a) Lawyers should first decide which of the above five business organization law features their clients need. Some clients may need none of them; some may need all. As noted, basic guidelines for this decision are set forth in Exhibit A, Table 1.
 - b) Lawyers should then determine from Exhibit A, Tables 2, 3 or 4 which of the business entities available to their clients will provide the greatest number of these features to the greatest degree.

If you have comments on this column or wish to contact me for any other reason, please send me an e-mail at lawjmc@comcast.net or give me a call at (603) 228-0125. If you'd like to visit my website, the link is www.llcformations.com.

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