

LEGAL SERVICES

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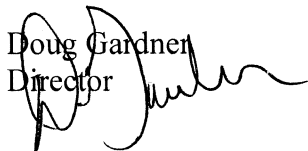
MEMORANDUM

March 22, 2011

SUBJECT: Proposed amendments to AS 04.21.035
(Work Order No. 27-LS0282\M)

TO: Senator Lesil McGuire
Attn: Esther Tempel

FROM: Doug Gardner
Director



Currently, AS 04.21.035 is an exception to the protections against individual liability offered to partners of properly registered and maintained LLPs and to members of properly registered and maintained LLCs. In other words, partners of LLPs and LLCs--notwithstanding the fact that they have complied with AS 10.50 (LLCs) or AS 32.06 (LLPs)--are not relieved of the obligation or the liability otherwise imposed upon a liquor license holder under Title 4.

LLCs and LLPs are two approaches that have been used throughout the U.S. in recent years to combine the federal tax benefits of partnerships with the non-liability of the shareholders of corporations.¹ Both LLCs and LLPs are being used to capture the traditional non-liability of shareholders of corporations. Currently, Title 4 treats LLCs differently than how LLCs are treated elsewhere in Alaska law. SB 78 deletes reference to LLCs from AS 04.21.035, thereby allowing members of LLCs to rely on AS 10.50.265 for purposes of liability when the LLC holds a liquor license under Title 4, and allows LLCs to be treated consistently in Alaska law. By removing LLCs from AS 04.21.035 and leaving LLPs in the statute, a person who wants to manage liability under AS 04.21 would be able to form as an LLC rather than as an LLP as long as all the LLC requirements in AS 10.50 are met.

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¹ LLCs can elect for federal tax purposes the pass-through taxation of partnerships, where the partner is taxed on partnership income, but the partnership itself is not. In general (there are exceptions), a corporation is taxed on corporate income, and the shareholders are taxed on their dividends.