

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8414 SENATE LABOR & COMMERCE

Operating Costs

Personal Services. DOR will need the following positions to administer the employment tax program. All positions will be located in Juneau.

<i>Position</i>	<i>Range</i>	<i>Function</i>	<i>FY 95¹</i>	<i>FY 96 - 00</i>
Document Processor II	8	Process returns and payments. Data capture information.	\$16.5	\$33.0
Clerk Typist III	8	Data capture information and issue refunds.	16.5	33.0
Accounting Technician I	12	Reconcile payments and DOL information, collect delinquent accounts.	20.2	40.4
Tax Examiner I	12	Examine tax returns, compliance, taxpayer correspondence.	20.2	40.4
Seasonal Clerk Typist III ² (3 positions)	8	Answer phone calls, data capture information and issue refunds.	49.5	49.5
Total Personal Services			\$122.9	\$196.3

¹ Costs for half of FY 95. Positions will be hired beginning January 1, 1995.

² Three positions will be hired for the period January through June each year in conjunction with increased seasonal workload.

Contractual	<u>FY 95</u>	<u>FY 96 - 00</u>
Programming (FY95 only)	\$60.0	\$0.0
Phones (FY 95 only)	1.5	0.0
Regulations Promulgation (FY 95 only)	5.0	0.0
Forms	5.0	5.0
Communications	<u>5.0</u>	<u>5.0</u>
Total	<u>\$76.5</u>	<u>\$10.0</u>

Travel. DOR anticipates that this program can be administered at the office level and will not require field travel. DOR will perform compliance through exchange of information with DOL and IRS.

Equipment. One-time request for FY 95 to provision each of the seven positions with the following equipment.

Computers	\$28.0
Office Equipment	<u>10.5</u>
Total	<u>\$38.5</u>

Supplies. \$1000 for each of the seven positions.

Revenue

According to Department of Labor employment statistics for calendar year 1992, the following number of employees and self-employed persons will be subject to the employment tax. For purposes of calculating the impact of the bill's tax exclusion for employees under 19, we assumed that 15% of the workforce is under 19. Department of Labor does not maintain data on age of employees. Although statistics are not available, Department of Revenue estimates that 20,000 contractors doing business in Alaska will be subject to the employment tax. Total tax revenue for each year will vary depending on employment in the State.

This bill will generate the following revenue stream. Note that the revenue estimate for FY 95 reflects first quarter activity only because it is the only quarter in which the remittance due date falls within the fiscal year.

	FY 95		FY 96 - FY 00	
	Earnings ≥ \$1000	Earnings < \$1000	Earnings ≥ \$1000	Earnings < \$1000
Number of Employees	201,500	32,000	300,800	37,500
Adult Workforce Factor ¹	85%	85%	85%	85%
Adult Workforce	171,275	27,200	255,680	31,875
Number of Self-employed	14,300	7,000	21,300	0
Number of Contractors	13,400	6,600	20,000	0
Total	198,975	40,800	296,980	31,875
Tax Calculation Base ²	\$1000	\$500	\$1000	\$500
Gross Earnings (Total x Base)	\$198,975,000	\$20,400,000	\$296,980,000	\$15,937,500
Tax Rate	10%	10%	10%	10%
Tax Revenue	\$19,897,500	\$2,040,000	\$29,698,000	\$1,593,750

¹ Adjustment for 15% of workforce assumed under 19.

² Average earnings for employees earning less than \$1000 were not available from the Department of Labor. The median of \$0 and \$1000 or \$500 was chosen for calculating revenue generated from these employees.

<i>Employment Tax Revenue Summary</i>		
	FY 95	FY 96
Earnings ≥ \$1000	\$19,897,500	\$29,698,000
Earnings < \$1000	2,040,000	1,593,750
Total Revenue	\$21,937,500	\$31,291,750

FISCAL NOT

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BI

No. 1

Bill Version: SB 344

(S) Publish Date: 3-9-94

Revision Date: _____

Department Affected: Labor

Title: Employment Tax Collection

AFU: Employment Security

Componer Employment/Unemployment Services

Sponsor: Rules by Request

Requestor: Rules by Request

COMPONENT SERIAL NO. 1807

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	74.2	77.9	81.8	85.9	90.2	94.7
TRAVEL						
CONTRACTUAL	587.8	481.7	625.8	531.1	557.7	585.6
SUPPLIES	2.0	2.1	2.2	2.3	2.4	2.6
EQUIPMENT	7.5					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	671.5	561.8	709.8	619.3	650.3	682.8

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	671.5	561.8	709.8	619.3	650.3	682.8
1005 GF/Program Rec						
1006 GF/MHTIA						
1007 IA Receipts						
TOTAL	671.5	561.8	709.8	619.3	650.3	682.8

POSITIONS:

FULL-TIME	2.0	2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ none

ANALYSIS: (Attach a separate page if necessary)

(see attached)

Prepared by: Judy Knight, Director Phone: 465-2711

Division: Employment Security Date: 3/3/94

Approved by Commissioner: Charles W. Mannen

Agency: Department of Labor Date: 3/3/94

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Fiscal Note Analysis for

"An Act relating to the establishment, collection, and enforcement of an employment tax...."

This bill establishes a tax on individuals 19 or older who receive compensation for services performed or self-employment earnings from business activities in Alaska effective January 1, 1995. The tax will be 10% of the first \$1000 of compensation or earnings. Individuals will not be liable for more than \$100 total in a calendar year.

This bill separates requirements for reporting and remitting taxes for employers and self-employed individuals to capitalize on requirements already in place for employers to report employment security contributions to the Department of Labor (DOL). Taxes will be reported and remitted as follows. Under this bill, employers and self-employed individuals are required to withhold 10% of compensation or earnings until the \$100 tax limit is met.

The Department of Revenue (DOR) will be the lead agency for administering the employment tax. DOR will administer all aspects of the employment tax program for self-employed individuals since they have no reporting requirements to DOL.

DOL's role in administering this tax will be that of a servicing agency to DOR to collect and account for withholdings by employers. The two departments will work closely with each other to exchange tax information to ensure program compliance. The Employment Security tax unit will collect the employment tax for approximately 340,000 employees through the employers' quarterly reports for payment of unemployment insurance taxes. Revenues from the employment tax will be transferred to the Department of Revenue for deposit in the General Fund.

Employers will be required to furnish employees by February 1 a record of the amount of tax withheld from the employee's compensation in a preceding year. DOR envisions that employers will meet this requirement by including amounts withheld on the employee's W-2. Employers will pay a \$10 penalty for each failure to provide the record of withholding.

The records will be used as a basis for refunding employees who had more than \$100 withheld during the preceding year. DOR will be responsible for refunding tax overpayments, assessing taxes and penalties and enforcing tax collections.

Revenue projections are included in the fiscal note prepared by the Department of Revenue.

Operating Costs:

A 5% inflation factor, minus one-time items, was included in fiscal years (FY96-00) displayed on the fiscal note.

Effective date of January 1, 1995 is assumed.

Personal Services:

DOL will need two positions to administer the employment tax program. Both positions will be located in Juneau.

Accounting Technician I	40.4
Clerk III	<u>33.8</u>
Total Personal Services	74.2

These two positions will perform the following tasks: examine and process quarterly returns and payments from employers; reconcile payments from employer; respond to written and telephonic questions; and provide information and training to individuals who prepare quarterly reports.

Travel:

No travel required or anticipated specific to this additional tax collection.

Contractual Services:

Federal Cost Allocation Plan (Prorated share of tax operations)	290.0
Additional key punch items from quarterly reports for employment tax collection.	39.8
One-time reprinting of tax reporting forms, informational outreach to employers.	39.0
Communications expenses.	6.0
Data processing chargeback services.	50.0
Department indirect cost plan based on 12% of personal service costs.	26.5
Existing system data processing conversion programming contract.*	119.0
Postage & advertising.	<u>17.5</u>
Total contractual services:	587.8

Supplies:

Figured at \$1000 for each employee. 2.0

Equipment:

One-time requests for FY95 purchase of standard office equipment for two positions.	
Computers	5.0
Office equipment	<u>2.5</u>
Total equipment:	7.5

*NOTE: FY97 data processing programming contract to convert existing system to relational database (120.0).

Position Title		Accounting Tech II		No. of Positions	1	Range/Step	1-11	Barg. Unit	GCU
Time Status	FT	Staff Months	12	Location	Juneau		Election District	4	
Type of Expenditure			Amount		Justification This position will provide direct support for the Employment Tax program. This includes working with employer and employee inquiries in assisting with all aspects of the program. This position will act as the lead for the Accounting Clerk III position and will have direct responsibilities related to the accounting, forms design, and data processing workload for the employment tax program. Contractual services related to this position include funding for the departments indirect cost plan, phone and long distance costs, and data processing chargeback expenditures. Equipment and supplies include office furniture, personal computer and related software.				
Salary		\$32,808							
Benefits		13,785							
Premium Pay									
Other									
Total Personal Services			\$46,593						
Travel			0						
Contractual			5,500						
Commodities			500						
Equipment			3,750						
Other									
Total Cost			\$56,343						
Funding Source for Total Cost									
Federal Receipts	1002								
G. F. Match	1003								
General Fund	1004		56,343						
I-A Receipts	1007								
CIP Receipts	1061								
Other									

**Request For
New Position**

Agency Labor
 BRU Employment Security
 Component Employment/Unemployment Services

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 Revised Date _____

FY 95

Position Title Accounting Clerk III		No. of Positions 1	Range/Step 10B	Barg. Unit GGU			
Time Status FT	Staff Months 12	Location Juneau		Election District 4			
Type of Expenditure		Amount					
Salary	\$25,524	Justification This position will assist the Accounting Tech II position and respond to employer and employee inquiries, assist in forms design, and data processing information review. This position will have direct responsibilities related to the accounting of the employment tax program. Contractual services related to this position include funding for the departments indirect cost plan, phone and long distance costs, and data processing chargeback expenditures. Equipment and supplies include office furniture, personal computer and related software.					
Benefits	11,872						
Premium Pay							
Other							
Total Personal Services	\$37,396						
Travel	0	Contractual services related to this position include funding for the departments indirect cost plan, phone and long distance costs, and data processing chargeback expenditures. Equipment and supplies include office furniture, personal computer and related software.					
Contractual	4,500						
Commodities	500						
Equipment	3,750						
Other							
Total Cost	\$46,146						
Funding Source for Total Cost							
Federal Receipts	1002						
G. F. Match	1003						
General Fund	1004				46,146		
I-A Receipts	1007						
CIP Receipts	1061						
Other							

**Request For
New Position**

Agency Labor
 BRU Employment Security
 Component Employment/Unemployment Services

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FY 95

SENATE BILL NO. 344

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/9/94
Referred: L&C, JUD, FIN

title & reference

A BILL

FOR AN ACT ENTITLED

school

1 "An Act relating to the establishment, collection, and enforcement of an
2 employment tax; and providing for an effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 43 is amended by adding a new chapter to read:

5 CHAPTER 42. EMPLOYMENT TAX.

6 Sec. 43.42.010. TAX IMPOSED. (a) In each calendar year there is levied an
7 employment tax upon each individual who receives compensation for services
8 performed in this state as an employee, or receives self-employment earnings from
9 business activities conducted in this state. The tax on an individual is 10 percent of
10 the first \$1,000

11 (1) of compensation paid to that individual by an employer who has a
12 business situs in this state, for services performed in this state in the calendar year as
13 an employee of that employer;

14 (2) of that individual's self-employment earnings from business

1 activities conducted in this state in the calendar year.

2 (b) Under this chapter, the aggregate tax liability of an individual does not
3 exceed \$100 in a calendar year even if the individual receives both compensation for
4 services performed as an employee and self-employment earnings in that year.

5 Sec. 43.42.020. DETERMINATION OF BUSINESS SITUS. For purposes of
6 AS 43.42.010, an employer has a business situs in this state if at any time in the
7 calendar year an individual performs services in this state as an employee of that
8 employer.

9 Sec. 43.42.030. COLLECTION, REPORTING, AND REMITTANCE OF TAX
10 ON EMPLOYEE COMPENSATION. (a) An employer making payment of
11 compensation for services performed in this state shall withhold from the payment the
12 tax levied by this chapter. The employer shall withhold 10 percent of each such
13 payment until the full amount of the tax is collected, except that the last amount
14 withheld may be less than 10 percent if the lower amount will result in collection of
15 the full amount of the tax. The employer shall file a return and remit the taxes as
16 required by (b) or (c) of this section.

17 (b) Except as provided in (c) of this section, the return required by this section
18 must be filed, and the withheld taxes remitted, by the date the employer's regular
19 quarterly report of employment security contributions under AS 23.20 is required to
20 be filed. The employer shall file a return by reporting amounts withheld under this
21 section during the preceding calendar quarter, and any additional information required
22 by regulation adopted under AS 43.42.040(a), to the Department of Labor, on forms
23 provided by that department, together with the employer's regular quarterly report of
24 employment security contributions under AS 23.20. With each return filed under this
25 subsection, the employer shall remit the taxes required to be withheld under this
26 section during the preceding calendar quarter.

27 (c) An employer who is required to withhold and remit taxes under this section
28 but who is not subject to the reporting requirements of AS 23.20 shall file a return and
29 remit the taxes as required by this subsection. On or before the last day of the month
30 following each calendar quarter in which taxes were withheld under this section, the
31 employer shall file with the department a return, on forms provided by the department,

1 and shall remit the taxes required to be withheld during the preceding calendar quarter.
2 In the return, the employer shall report amounts withheld under this section during the
3 preceding calendar quarter and any additional information required by regulation
4 adopted under AS 43.42.040(a).

5 Sec. 43.42.040. ADMINISTRATION OF TAX ON EMPLOYEE
6 COMPENSATION. (a) After consultation with the Department of Labor, the
7 Department of Revenue shall prescribe, by regulation, any additional information that
8 must be included in a return filed under AS 43.42.030 in order for the Department of
9 Revenue to calculate, determine, collect, or enforce the tax levied by this chapter. The
10 Department of Labor shall include, on forms for reporting under AS 23.20, space
11 designated for reporting amounts withheld under AS 43.42.030 and for providing any
12 additional information required by Department of Revenue regulations. The
13 department shall coordinate with the Department of Labor to maximize the use of
14 existing reports to the department and to the Department of Labor.

15 (b) The Department of Labor shall provide to the Department of Revenue the
16 information collected under AS 43.42.030 that relates to the tax levied by this chapter.

17 (c) The department, by regulation, may establish procedures to authorize an
18 employer to not withhold from payment to an employee the tax levied by this chapter
19 if the employee provides to the employer, and the employer files with the department,
20 proof that the tax already has been withheld by an employer under AS 43.42.030 or
21 paid to the department under AS 43.42.050.

22 (d) The Department of Labor shall report to the Department of Revenue any
23 failure of an employer to timely report or remit the tax levied by this chapter. The
24 Department of Labor may not use the provisions of AS 23.20 to enforce the collection
25 or remittance of the tax levied by this chapter. Reporting forms and other records
26 relating to the tax levied by this chapter that are maintained by the Department of
27 Labor are prima facie evidence of timely reporting and remittance, or failure to timely
28 report or remit, under AS 43.42.030.

29 Sec. 43.42.050. REPORTING AND PAYMENT OF TAX ON SELF-
30 EMPLOYMENT EARNINGS. (a) An individual who is subject to the tax on self-
31 employment earnings levied by this chapter shall file a return with the department, and

1 with the return shall pay the tax, in the manner required by this section. The return
2 must be filed on a form provided by the department.

3 (b) Until the full amount of the tax levied by AS 43.42.010 has been paid, the
4 individual shall file a return for each calendar quarter in which the individual had self-
5 employment earnings, and make a payment of 10 percent of the individual's self-
6 employment earnings in that quarter.

7 (c) Returns must be filed and payments made, as required by (b) of this
8 section, on or before the following dates:

9 (1) April 15, regarding the first calendar quarter of a year;

10 (2) July 15, regarding the second calendar quarter of a year;

11 (3) October 15, regarding the third calendar quarter of a year;

12 (4) January 15 of the following year, regarding the fourth calendar
13 quarter of a year.

14 (d) The department may, by regulation, establish procedures under which an
15 individual who is subject to payment of tax under this section may provide to the
16 department proof that the tax levied by this chapter already has been withheld by an
17 employer under AS 43.42.030.

18 Sec. 43.42.060. PENALTIES AND INTEREST. In addition to other
19 applicable provisions of AS 43.05, provisions regarding civil penalties in
20 AS 43.05.220, interest in AS 43.05.225, and criminal penalties in AS 43.05.290 apply
21 to the failure to timely file a required return or report or to pay or remit taxes due
22 under this chapter.

23 Sec. 43.42.070. ENFORCEMENT OF THE TAX BY STATE AGENCIES.

24 (a) A person may not be issued an initial registration, license, or permit described in
25 (b) of this section, or a renewal of a registration, license, or permit described in (b) of
26 this section if that person has failed to file a return or pay or remit the tax due under
27 this chapter. If that person has filed an administrative or a judicial appeal regarding
28 the tax levied by this chapter, the registration, license, or permit may be issued or
29 renewed during the pendency of the appeal.

30 (b) The registrations, licenses, and permits that may not be issued or renewed
31 under (a) of this section are

- 1 (1) liquor licenses issued under AS 04;
2 (2) permits and licenses under AS 05;
3 (3) all registrations, licenses, and permits issued under AS 08;
4 (4) all commercial fishing licenses, including limited entry permits and
5 interim-use permits, required under AS 16.05.480;
6 (5) all business licenses issued under AS 43.70 or AS 43.75.

7 (c) Notwithstanding any provision of AS 04, AS 08, AS 16.05, AS 43.70, or
8 AS 43.75 to the contrary, a department, board, commission, or other state agency
9 issuing or renewing a registration, license, or permit described in (b) of this section to
10 a person shall require that the person submit proof of payment or remittance of the tax
11 levied by this chapter, or proof that an administrative or judicial appeal is pending,
12 before issuing or renewing that registration, license, or permit. However, if the person
13 submits a sworn affidavit, under penalty of perjury, that the person, at the time of
14 application for the registration, license, or permit, does not have an obligation to have
15 paid or remitted the tax levied by this chapter and is not in arrears in the payment or
16 remittance of the tax, the state agency may issue or renew the registration, license, or
17 permit without proof of payment or remittance.

18 (d) A department, board, commission, or other state agency described in (c)
19 of this section

20 (1) may adopt regulations to interpret or implement its duties under this
21 section;

22 (2) shall provide to the Department of Revenue information the
23 Department of Revenue requests to facilitate that department's determination,
24 collection, and enforcement of the tax levied by this chapter, unless the disclosure
25 would jeopardize the receipt of federal money.

26 Sec. 43.42.080. RECORD OF TAX WITHHELD FROM EMPLOYEES;
27 REFUNDS. (a) An employer who withholds tax under AS 43.42.030 shall furnish to
28 the employee before February 1 of each calendar year a record of the amount of tax
29 withheld from that employee's compensation in the preceding calendar year. The
30 employer shall pay to the department a penalty of \$10 for each failure to provide the
31 record required by this subsection.

1 (b) On or before April 15 of a calendar year, an individual may file with the
2 department, on forms provided by the department, a claim for the refund of any excess
3 tax withheld or paid for the preceding calendar year. The individual shall attach the
4 records provided by employers or other proof of payment acceptable to the department
5 to support the refund claim.

6 Sec. 43.42.090. REPORTING OF CERTAIN CONTRACTS; NOTICE TO
7 CONTRACTORS AND INDIVIDUALS. (a) Except as provided in (e) of this section,
8 if a service-recipient in this state contracted with a person who does not hold a
9 registration, license, or permit described in AS 43.42.070(b) for services to be
10 performed in this state, and made payment under the contract in a calendar year, the
11 service-recipient shall file a report on forms provided by the department and shall
12 provide the following information:

13 (1) the aggregate amount of payments made to the contractor during
14 the calendar year;

15 (2) the name and address of the contractor; and

16 (3) if the contractor is not an individual, the names and addresses of
17 all individuals receiving payment under the contract for services performed in this
18 state.

19 (b) The report required by (a) of this section must be filed with the department
20 before February 1 of the year following the year in which payment was made under
21 the contract for services performed in this state.

22 (c) Notwithstanding (a) of this section, a service-recipient is not required to
23 file a report under this section if the aggregate of payments made to the contractor for
24 services performed in the calendar year in this state total less than \$100.

25 (d) At or before the time payment is first made under the contract for services
26 performed in this state, a service-recipient shall furnish to the contractor and, if the
27 contractor is not an individual, to each individual who is to receive payment under the
28 contract for services performed in this state, a written notice of

29 (1) the obligation to pay the tax levied by this chapter;

30 (2) the name and address of the service-recipient; and

31 (3) the address of the department, for obtaining forms and information

1 regarding the tax levied by this chapter.

2 (e) The requirements of this section do not apply to a contract of \$25,000 or
3 less.

4 (f) For the purposes of this section, a "service-recipient" is the person who
5 contracted for services performed in this state, and includes state and municipal
6 agencies.

7 Sec. 43.42.800. REGULATIONS. The department may adopt regulations to
8 interpret and implement this chapter.

9 Sec. 43.42.900. DEFINITIONS. In this chapter

10 (1) "business activities" means activities or acts of a commercial,
11 occupational, professional, or like nature, that are engaged in or caused to be engaged
12 in with the object of financial or pecuniary gain, profit, or benefit; "business activities"
13 does not include

14 (A) providing services as an employee;

15 (B) furnishing or selling of property, services, substances, or
16 things by a person who does not represent to be regularly engaging in those
17 transactions;

18 (C) an individual's investment or banking activities relating to
19 that individual's personal property;

20 (2) "calendar quarter" means each of the three-month periods ending
21 March 31, June 30, September 30, and December 31;

22 (3) "compensation for services" means gross wages, salaries, tips, and
23 other remuneration paid to an employee by an employer; "compensation for services"
24 does not include

25 (A) remuneration for attendance at events such as tradeshow,
26 conventions, or educational or scientific workshops or seminars; or

27 (B) compensation earned by a prisoner under AS 33 at a rate
28 less than the minimum wage established under AS 23.10;

29 (4) "department" means the Department of Revenue;

30 (5) "employer" means a person making payment of compensation for
31 services who is required to deduct and withhold income taxes under provisions of

1 26 U.S.C. (Internal Revenue Code);

2 (6) "individual" means a natural person who was 19 years of age or
3 older on January 1 of a calendar year;

4 (7) "tax" means the employment tax levied by this chapter;

5 (8) "self-employment earnings" means gross receipts from a business
6 activity that are not paid by an employer.

7 * Sec. 2. REGULATIONS. Notwithstanding sec. 4 of this Act, the Department of Revenue
8 may proceed to adopt regulations to implement or interpret the provisions enacted by this Act.
9 Notwithstanding sec. 4 of this Act, a department, board, commission, or other state agency
10 affected by AS 43.42.070, enacted by sec. 1 of this Act, may proceed to adopt regulations to
11 implement or interpret its duties under that statute. Regulations adopted under this section
12 take effect under AS 44.62 (Administrative Procedure Act), but not before January 1, 1995.

13 * Sec. 3. Section 2 of this Act takes effect immediately under AS 01.10.070(c).

14 * Sec. 4. Section 1 of this Act takes effect January 1, 1995.

S B

3 4 6

March 29, 1994

TO: Sen. Tim Kelly
State Capital, Room 101
Juneau, Alaska 99801

The intent and purpose of SB346 is to curb the extensive welfare fraud taking place in the Anchorage Bingo Halls and Pull Tab Parlors.

At the present time when a welfare recipient wins a prize up to \$1,000.00, they sign the "Prize Receipt" with a phony name and social security number. Four of the seven Anchorage Bingo Halls condone and urge this practice, so the top gaming winners in the State appear to be Walter Hickel, Minnie Mouse, Daffy Duck and Hillary Clinton.

I play Bingo because I'm a Senior Citizen and I'm entitled. I've also been doing it in Alaska for over 50 years, so I hope I know what I'm talking about.

I've talked to a great many of the welfare recipients in the Bingo Halls, I like a lot of them, but I don't like what they're doing. I've had them tell me how they moved to Alaska just for the welfare benefits. I've heard young women say they need to get pregnant again soon to get more money. These are not just isolated cases. I'd say there is close to 5,000 welfare abusers in Anchorage alone, and it's not right, just as it's not right that a woman from Arkansas, dressed in her David Green mink, wins \$1,000.00, signs the prize receipt as Hillary Clinton, goes out and gets in her new car, drives to Safeway, picks up a couple of filets and some asparagus for dinner and pays with food stamps when she's got that \$1,000.00 Bingo win in her purse.

At this time of the month when the welfare checks come out, the recipients will clog the Bingo Halls until they have either lost everything and try to borrow money for necessities, or they hit big and buy new cars or go on trips.

SB346 will require a photo I.D. for any prize over \$100.00 and require that the Division of Gaming provide copies of the prize receipts to the Division of Health and Social Services, and for the amounts won to be deducted from a welfare recipients "dole". The abuses should, at least be severely curtailed, and should save the State at least enough money to hire a few more investigators in the Division of Gaming.

- LTR FROM SASHA HUGHES -

I realize a few Legislators (with D's after their names) want Alaska to be a welfare state, but I don't and I've been here longer than all of them.

Bingo is a great game. It was invented by the Catholic Church and perfected by the Indians and it doesn't need to be supported by the great Alaska Welfare system.

L (Sasha) Hughes
562-1189
Fax 276-0194

Department of Revenue

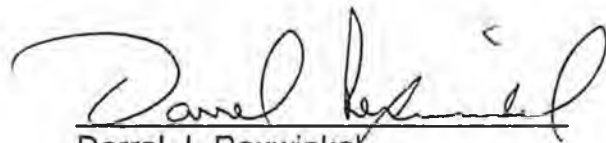
Bill Analysis

SB-346 "An Act requiring that charitable gaming permittees, operators, and vendors may not turn over a pull tab or bingo prize of \$50 or more to a person entitled to that prize unless the person provides certain information to the permittee, operator, or vendor and signs a receipt for the prize; requiring the reporting of winners of prizes of \$50 or more to the Department of Health and Social Services to ensure that recipients of services provided by the Department of Health and Social Services are reporting charitable gaming winnings and are eligible for those services."

AS 05.15.187(i) already requires a person who wins \$50 or more from a pull tab game to complete a prize receipt on a form approved by the department. However, these prize receipts cannot require the winner to provide their social security number. Prize receipts are annually submitted to the Department of Revenue.

SB 346 would require prize receipts to include the person's name, social security number and date of birth. A copy of this receipt would then be furnished to the Department of Health and Social Services, who would use this information to discover whether recipients of public assistance are properly reporting winnings from charitable gaming activities. SB 346 expands prize receipting requirements to include bingo games.

3/29/94
Date


Darrel J. Rexwinkel
Commissioner

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 346

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: An Act relating to charitable gaming and reports to DHSS BRU: Public Assistance Payments
 Component: APDC
 Sponsor: Labor and Commerce Committee
 Requestor: _____ COMPONENT SERIAL NO. 0220

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	UNKNOWN	UNKNOWN	UNKNOWN	UNKNOWN	UNKNOWN	UNKNOWN
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	UNKNOWN	UNKNOWN	UNKNOWN	UNKNOWN	UNKNOWN	UNKNOWN
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGES IN REVENUES	0	0	0	0	0	0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	UNKNOWN	UNKNOWN	UNKNOWN	UNKNOWN	UNKNOWN	UNKNOWN

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY94) impact: NONE

ANALYSIS: (Attach a separate page if necessary)

Senate Bill 346 requires charitable gaming permittees, operators, and vendors to report bingo and pull-tab prizes of \$50.00 or more to the Department of Health and Social Services. Winners would be required to sign a receipt that included identifying information, and operators would be required to forward a copy of each receipt to DHSS. DHSS would be required to review the receipts submitted by the vendors, determine whether prizes had been reported by recipients of needs-based assistance, and take action to recover any assistance paid in error as a result of a recipient's failure to report winnings.

Prepared by: Jan L. Hansen, Director *Jan L. Hansen* Phone: 465-2680
 Division: Division of Public Assistance Date: 3/20/94
 Approved by Commissioner: Margaret R. Lowe, M.Ed., Ed S. *Margaret R. Lowe* Date: 3/30/94
 Agency: Department of Health & Social Services

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ANALYSIS (cont.):

Bingo and pull-tab winnings count as income in public assistance programs. Public assistance recipients are required to report winnings to their eligibility worker, who takes action to make appropriate adjustments to their benefits. Failure to report bingo and pull-tab winnings is a significant potential cause of error in the administration of public assistance programs.

This legislation is aimed toward the problem of non-reporting of gaming prizes and would undoubtedly impact the accuracy of administration of assistance payments.

It is not possible to quantitatively assess the fiscal impact of this legislation on program costs. The savings that would be realized by discovery of unreported winnings could be offset by increased risk of federal fiscal sanctions if reports of winnings were received or processed too late to avoid overpayments. The Department has no information on which to assess the impact of this bill on each of the public assistance programs that would be effected. Savings in Food Stamp program costs are entirely federal. Federal fiscal sanctions are imposed if quality control error rates exceed federal targets for AFDC, Food Stamps, and Medicaid, even if the state discovers the errors and recovers the overpayments.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 346

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: An Act relating to charitable gaming and reports to DHSS BRU: Public Assistance Administration
 Component: Eligibility Determination
 Sponsor: Labor and Commerce Committee
 Requestor: _____ COMPONENT SERIAL NO. 0236

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	410.3	492.6	492.6	492.6	492.6	492.6
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	44.0	52.8	52.8	52.8	52.8	52.8
SUPPLIES	4.4	5.5	5.5	5.5	5.5	5.5
EQUIPMENT	88.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	546.7	550.9	550.9	550.9	550.9	550.9
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGES IN REVENUES	0	0	0	0	0	0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	235.0	236.9	236.9	236.9	236.9	236.9
1003 GF Match	235.0	236.9	236.9	236.9	236.9	236.9
1004 GF	76.7	77.1	77.1	77.1	77.1	77.1
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	546.7	550.9	550.9	550.9	550.9	550.9

POSITIONS:

FULL-TIME	11	11	11	11	11	11
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY94) impact: NONE

ANALYSIS: (Attach a separate page if necessary)

Senate Bill 346 requires charitable gaming permittees, operators, and vendors to report bingo and pull-tab prizes of \$50 or more to the Department of Health and Social Services. Winners would be required to sign a receipt that includes identifying information, and operators would be required to forward a copy of each receipt to DHSS. DHSS would be required to review the receipts submitted by the vendors, determine whether the prizes had been reported by recipients of needs-based assistance, and take action to recover any assistance paid in error as a result of a recipient's failure to report winnings.

Prepared by: Jan L. Hansen, Director
 Division: Division of Public Assistance
 Approved by Commissioner: Margaret R. Lowe, M.Ed., Ed.S.
 Agency: Department of Health & Social Services

Phone: 465-2680
 Date: 3/30/94
 Date: 3/30/94

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ANALYSIS (cont.):

The large volume of unsorted reports of winnings produced by this legislation creates a need for administrative positions to sort the information, match it against caseload listings, and disseminate it to eligibility workers. Eligibility workers must then check each report to determine if the information has already been reported and take any necessary action on each case. If overpayments occur, claims specialists must establish and execute recovery claims.

Assumptions:

- This legislation is effective 9/1/94.
- There are 180,000 prizes of \$50 or more awarded annually (Based on Department of Revenue estimates).
- One Administrative Assistant position and two Clerk III positions will be needed to accept and review prize receipts, match the receipts against public assistance records, and notify DPA field staff of public assistance matches.
- There are approximately 31,000 households receiving public assistance each month.
- If 3100 prizes of \$50 or more are awarded to public assistance recipients each month, 3100 case actions by field staff will be required each month. One eligibility supervisor, 4 eligibility technicians, and one support clerk will be required for caseload administration.
- 2 new claims specialists will be needed to establish overpayment claims and take action to recover the funds.

Calculations:

FY 95 (Eligibility/Support Staff - 10 months)

1	Eligibility Tech IV	R16	43.3
1	Administrative Assistant	R16	43.3
1	Eligibility Tech III	R15	41.0
3	Eligibility Tech II	R14	127.0
2	Eligibility Tech 1 (Claims Specialists)	R13	71.8
3	Clerk III	R08	83.9
	Equipment		88.0
	Supplies		4.4
	Office Space		44.0
	Total		546.7

ANALYSIS (cont.):

FY 96 through FY00 (Eligibility/Support Staff - 12 months)

1	Eligibility Tech IV	R16	52.0
1	Administrative Assistant	R16	52.0
1	Eligibility Tech III	R15	49.2
3	Eligibility Tech II	R14	152.5
2	Eligibility Tech 1 (Claims Specialists)	R13	86.2
3	Clerk III	R08	100.7
	Supplies		5.5
	Office Space		<u>52.8</u>
	Total		550.9

Position Title Eligibility Technician IV		No. of Positions 1	Range/Step R16	Bargaining Unit SS
Time Status FT	Staff Months 10 months	Location Anchorage		Election District
TYPE of EXPENDITURE		AMOUNT		
Salary		43.3		
Benefits				
Premium Pay				
Other				
Total Personal Services		43.3		
Travel				
Contractual		4.0		
Commodities		0.4		
Equipment		8.0		
Other				
Total Cost		55.7		
FUNDING SOURCE for TOTAL COST				
1002	Federal Receipts	24.0		
1003	GF Match	24.0		
1004	General Fund	7.7		
1005	GF/Program Receipts			
1006	GF/Mental Health Trust			
1007	I/A Receipts			
1061	CIP Receipts			
Other				
Justification This is the eligibility supervisor position needed to supervise the additional eligibility workers who will administer the additional case processing workload produced by SB 346.				

**REQUEST for
NEW POSITION**

AGENCY: Health and Social Services
 BRU: Public Assistance Administration
 COMPONENT: Eligibility Determination (0236)

Page 1 of 1

Revised Date:

FY95

Position Title Administrative Assistant		No. of Positions 1	Range/Step R16	Bargaining Unit GGU
Time Status FT	Staff Months 10 months	Location Anchorage		Election District
TYPE of EXPENDITURE		AMOUNT		
Salary		43.3		
Benefits				
Premium Pay				
Other				
Total Personal Services		43.3		
Travel				
Contractual		4.0		
Commodities		0.4		
Equipment		8.0		
Other				
Total Cost		55.7		
FUNDING SOURCE for TOTAL COST				
1002	Federal Receipts	23.9		
1003	GF Match	23.9		
1004	General Fund	7.9		
1005	GF/Program Receipts			
1006	GF/Mental Health Trust			
1007	I/A Receipts			
1061	CIP Receipts			
Other				
Justification This administrative assistant position is the lead worker needed to accept and review prize receipt information, match it against caseload listings, and disseminate it to eligibility workers.				

**REQUEST for
NEW POSITION**

AGENCY: Health and Social Services
 BRU: Public Assistance Administration
 COMPONENT: Eligibility Determination (0236)

FY95

Page 1 of 1
 Revised Date:

Position Title Eligibility Technician III		No. of Positions 1	Range/Step R15	Bargaining Unit GGU
Time Status FT	Staff Months 10 months	Location Anchorage		Election District
TYPE of EXPENDITURE		AMOUNT		
Salary		41.0		
Benefits				
Premium Pay				
Other				
Total Personal Services		41.0		
Travel				
Contractual		4.0		
Commodities		0.4		
Equipment		8.0		
Other				
Total Cost		53.4		
FUNDING SOURCE for TOTAL COST				
1002	Federal Receipts	23.0		
1003	GF Match	23.0		
1004	General Fund	7.4		
1005	GF/Program Receipts			
1006	GF/Mental Health Trust			
1007	I/A Receipts			
1061	CIP Receipts			
Other				
Justification This is the eligibility lead worker/case worker needed to administer the additional case processing workload produced by SB 346.				

**REQUEST for
NEW POSITION**

AGENCY: Health and Social Services
 BRU: Public Assistance Administration
 COMPONENT: Eligibility Determination (0236)

Page 1 of 1

Revised Date:

FY95

Position Title Eligibility Technician II		No. of Positions 1	Range/Step R14	Bargaining Unit GGU
Time Status FT	Staff Months 10 months	Location Anchorage		Election District
TYPE of EXPENDITURE		AMOUNT		
Salary		38.1		
Benefits				
Premium Pay				
Other				
Total Personal Services		38.1		
Travel				
Contractual		4.0		
Commodities		0.4		
Equipment		8.0		
Other				
Total Co.		50.5		
FUNDING SOURCE for TOTAL COST				
1002	Federal Receipts	21.7		
1003	GF Match	21.7		
1004	General Fund	7.1		
1005	GF/Program Receipts			
1006	GF/Mental Health Trust			
1007	I/A Receipts			
1061	CIP Receipts			
Other				
Justification This eligibility case worker position is needed to administer the additional case processing workload produced by SB 346.				

**REQUEST for
NEW POSITION**

AGENCY: Health and Social Services
 BRU: Public Assistance Administration
 COMPONENT: Eligibility Determination (0236)

FY95

Page 1 of 1

Revised Date:

Position Title Eligibility Technician I		No. of Positions 2	Range/Step R13	Bargaining Unit GGU
Time Status FT	Staff Months 10 months	Location Juneau		Election District
TYPE of EXPENDITURE		AMOUNT		
Salary		71.8		
Benefits				
Premium Pay				
Other				
Total Personal Services		71.8		
Travel				
Contractual		8.0		
Commodities		0.8		
Equipment		16.0		
Other				
Total Cost		96.6		
FUNDING SOURCE for TOTAL COST				
1002	Federal Receipts	41.5		
1003	GF Match	41.5		
1004	General Fund	13.6		
1005	GF/Program Receipts			
1006	GF/Mental Health Trust			
1007	I/A Receipts			
1061	CIP Receipts			
Other				
<p>Justification</p> <p>These eligibility claims specialist positions are needed to establish overpayment claims and take action to recover the funds.</p>				

**REQUEST for
NEW POSITION**

AGENCY: Health and Social Services
 BRU: Public Assistance Administration
 COMPONENT: Eligibility Determination (0236)

Page 1 of 1

Revised Date:

FY95

Position Title Eligibility Technician II		No. of Positions 1	Range/Step R14	Bargaining Unit GGU
Time Status FT	Staff Months 10 months	Location Fairbanks		Election District
TYPE of EXPENDITURE		AMOUNT		
Salary		38.1		
Benefits				
Premium Pay				
Other				
Total Personal Services		38.1		
Travel				
Contractual		4.0		
Commodities		0.4		
Equipment		8.0		
Other				
Total Cost		50.5		
FUNDING SOURCE for TOTAL COST				
1002	Federal Receipts	21.7		
1003	GF Match	21.7		
1004	General Fund	7.1		
1005	GF/Program Receipts			
1006	GF/Mental Health Trust			
1007	I/A Receipts			
1061	CIP Receipts			
Other				
Justification This eligibility case worker position is needed to administer the additional case processing workload produced by SB 346.				

**REQUEST for
NEW POSITION**

AGENCY: Health and Social Services
 BRU: Public Assistance Administration
 COMPONENT: Eligibility Determination (0236)

Page 1 of 1
 Revised Date:

FY95

Position Title Eligibility Technician II		No. of Positions 1	Range/Step R14	Bargaining Unit GGU
Time Status FT	Staff Months 10 months	Location Bethel		Election District
TYPE of EXPENDITURE		AMOUNT		
Salary		50.8		
Benefits				
Premium Pay				
Other				
Total Personal Services		50.8		
Travel				
Contractual		4.0		
Commodities		0.4		
Equipment		8.0		
Other				
Total Cost		63.2		
FUNDING SOURCE for TOTAL COST				
1002	Federal Receipts	27.2		
1003	GF Match	27.2		
1004	General Fund	8.8		
1005	GF/Program Receipts			
1006	GF/Mental Health Trust			
1007	I/A Receipts			
1061	CIP Receipts			
Other				
<p>Justification</p> <p>This eligibility case worker position is needed to administer the additional case processing workload produced by SB 346.</p>				

**REQUEST for
NEW POSITION**

AGENCY: Health and Social Services

BRU: Public Assistance Administration

COMPONENT: Eligibility Determination (0236)

Page 1 of 1

Revised Date:

FY95

Position Title Clerk III		No. of Positions 3	Range/Step R08	Bargaining Unit GGU
Time Status FT	Staff Months 10 months	Location Anchorage		Election District
TYPE of EXPENDITURE		AMOUNT		
Salary		83.9		
Benefits				
Premium Pay				
Other				
Total Personal Services		83.9		
Travel				
Contractual		12.0		
Commodities		1.2		
Equipment		24.0		
Other				
Total Cost		121.1		
FUNDING SOURCE for TOTAL COST				
1002	Federal Receipts	52.0		
1003	GF Match	52.0		
1004	General Fund	17.1		
1005	GF/Program Receipts			
1006	GF/Mental Health Trust			
1007	I/ Receipts			
1061	CIP Receipts			
Other				
<p>Justification</p> <p>Two clerical support positions are needed to accept and review prize receipt information, match it against caseload listings, and disseminate it to eligibility workers.</p> <p>One clerical support position is needed to support the additional case worker positions needed to administer the additional case processing workload produced by SB 346.</p>				

**REQUEST for
NEW POSITION**

AGENCY: Health and Social Services

BRU: Public Assistance Administration

COMPONENT: Eligibility Determination (0236)

Page 1 of 1

Revised Date:

FY95

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 346

Revision Date: _____ Dept. Affected: Revenue
 Title: "An Act requiring charitable gaming permittees, operators & vendors BRU: Revenue Operations
to report prize winners of \$50 or more to Health & Social Services ..." Component: Charitable Gaming Division
 Sponsor: Senator Kelly
 Requestor: Senate Labor and Commerce COMPONENT SERIAL NO. 1883

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
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FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ 0.0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Don Stolworthy, Director *Don Stolworthy* Phone: 465-2229
 Division: Charitable Gaming Division Date: March 25, 1994
 Approved by Commissioner: Darrel J. Rexwinkel *Darrel J. Rexwinkel* Date: March 25, 1994
 Agency: Department of Revenue

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130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 3, 1994

SUBJECT: Sectional summary of bill draft relating to limited liability companies (Work Order No. 8-LS1419\J)

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee
Attn: Kevin

FROM: *TLB*
Theresa L. Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill draft.

As a preliminary matter, note that a sectional summary of a bill draft should not be considered an authoritative interpretation of the bill draft and the bill draft itself is the best statement of its contents.

Section 1. Contains a new chapter on limited liability companies.

Sec. 10.50.010 states that a limited liability company ("company") may be organized for any lawful purpose.

Sec. 10.50.015 requires a company to comply with other applicable laws.

Sec. 10.50.020 requires a company name to contain certain words or abbreviations. Allows the name to use the name of a city, borough, or village but not to contain certain words or to otherwise imply the company is a municipality. Prohibits a person from adopting a name containing "limited liability company" unless the person is organized under this chapter or is registered as a foreign limited liability company under this chapter.

Sec. 10.50.025 requires a company name to be distinguishable on the records of the Department of Commerce and Economic Development ("department") from certain other names.

Sec. 10.50.030 authorizes certain persons to reserve a company name.

Sec. 10.50.035 establishes the procedure for reserving a company name.

Sec. 10.50.040 authorizes the holder of a reserved name to transfer the name to another person. Establishes how the transfer is accomplished.

Sec. 10.50.045 requires a company to maintain in this state a registered office and a registered agent for the service of process.

Sec. 10.50.050 establishes how a company may change its registered office or agent and how an agent may change the agent's address.

Sec. 10.50.055 establishes when a change of a registered office, a registered agent or the address of a registered agent becomes effective.

Sec. 10.50.060 authorizes a registered agent to resign. Indicates how the agent may resign and when the resignation becomes effective.

Sec. 10.50.065 appoints the commissioner of the department under certain circumstances as the agent of a company for the service of process, notice, or demand. Establishes how a person may serve the commissioner. Directs the commissioner to keep a record of documents served on the commissioner. States that this section does not affect the right to serve process, notice, or demand on a company in another manner permitted by law.

Sec. 10.50.070 authorizes one or more persons to organize a company. Establishes the procedure for organization.

Sec. 10.50.075 identifies what the articles of organization must contain, which includes certain information about any election to continue the company until a certain date or event.

Sec. 10.50.080 determines when a company's organization is effective. Provides that the company's existence terminates if its articles are nonconforming and not cured within the specified time.

Sec. 10.50.085 states that a company's existence continues until specified date or event, except under certain circumstances, if the company has made an election to continue until the certain date or event and the election is stated in the articles of organization. Prohibits revocation of an election unless certain specified persons revoke the election. Allows an election to expressly limit the membership terminations that can cause dissolution.

Sec. 10.50.090 establishes that articles of organization that are file-stamped and marked with the filing date are conclusive evidence that the company is organized.

Sec. 10.50.100 authorizes a company to amend its articles at any time and indicates the procedure for doing so.

Sec. 10.50.105 authorizes a company to restate its articles and establishes the procedure for doing so.

Sec. 10.50.110 declares that the members of a company manage the company, unless an operating agreement names a manager for the company or the chapter provides otherwise. Declares that if an operating agreement authorizes a manager for the company, the manager has the exclusive power to manage the company to the extent of the authorization.

Sec. 10.50.115 requires over one-half of the members to approve before a manager is appointed, removed, or replaced, unless an operating agreement provides otherwise.

Sec. 10.50.120 allows a manager to be other than an individual or a company member, unless a company operating agreement provides otherwise.

Sec. 10.50.125 establishes how long a manager holds office.

Sec. 10.50.130 declares that a member who is not a manager of a company that is managed by a manager does not have a fiduciary duty of a manager to the company or to other members when acting solely as a member, unless an operating agreement provides otherwise.

Sec. 10.50.140 requires the members and the managers to account to the company and hold as trustee for the company certain identified benefits obtained without the described consent, unless an operating agreement provides otherwise.

Sec. 10.50.145 establishes what authorization is required for company affairs, depending on whether the company is managed by its members or by managers.

Sec. 10.50.155 indicates that a person may become a company member if the person acquires a company interest in certain ways.

Sec. 10.50.160 establishes when a person's admission to membership in the company is effective.

Sec. 10.50.165 establishes the conditions for an assignee of a company interest to become a company member.

Sec. 10.50.170 establishes the rights, powers, and liabilities of an assignee who becomes a member.

Senator Robin Taylor

March 3, 1994

Page 4

Sec. 10.50.180 establishes that when an assignee of a member's entire membership interest becomes a member with respect to the assignor's entire interest, the assigning member ceases to be a member, unless otherwise provided in an operating agreement.

Sec. 10.50.185 states that a person's company membership terminates if the person withdraws voluntarily from the company. Authorizes a member to voluntarily terminate a company membership at any time, unless an operating agreement provides otherwise.

Sec. 10.50.190 establishes that, if a company has a definite term or undertaking, the voluntary withdrawal of a member before the end of the term or the accomplishment of the undertaking is a breach of the operating agreement, unless the operating agreement provides otherwise.

Sec. 10.50.195 establishes that a company can recover damages from a member who withdraws wrongfully. Authorizes the company to offset the damages against a distribution owed to the member and to pursue other remedies against the member.

Sec. 10.50.205 states that, except as otherwise provided in an operating agreement for the removal of a member, a person's company membership terminates if the person assigns all of the membership interest and if a majority of the members who have not assigned their interests authorize the removal of the member.

Sec. 10.50.210 states that a person's company membership terminates if the member dies or is declared incompetent by a court, unless otherwise provided in an operating agreement.

Sec. 10.50.215 states that the company membership held by a trust or trustee terminates when the trust terminates and that a company membership held by an estate terminates when the estate's entire company interest is distributed by the estate, unless otherwise provided in writing in an operating agreement or by the written consent of all of the members.

Sec. 10.50.220 states that the company membership of a member that is a separate limited liability company terminates when the member dissolves and begins to wind up, unless otherwise provided in writing in an operating agreement or by the consent of all members. Also states that the membership of a corporate member terminates when the corporation is dissolved and 90 days elapse without reinstatement, unless otherwise provided in writing in an operating agreement or by the consent of all members.

Sec. 10.50.225 identifies other events that terminate a company membership.

Sec. 10.50.240 provides that secs. 10.50.185 - 10.50.225(a)-(b) don't apply to the termination of a membership unless the member is also a company manager, if an election has been made to continue the company until a certain date or event.

Sec. 10.50.250 states that a company member is an agent of the company for the purpose of conducting the company's affairs, except under certain circumstances, including where the articles name a manager for the company. If a manager is named, the manager is an agent of the company for the purpose of conducting its affairs, except in certain circumstances. Establishes when a member's or manager's act binds the company.

Sec. 10.50.255 states that an admission or representation by a company member about the company is evidence against the company, except in certain circumstances, including where the articles name a manager for the company. If a manager is named, an admission or representation by a manager is evidence against the company under certain circumstances, and the admission or representation by a member acting solely as a member is not evidence against the company.

Sec. 10.50.260 indicates when a company is charged with the knowledge of or a notice given to a member or manager.

Sec. 10.50.265 states that a company member is not liable, solely by reason of being a member, for a company liability.

Sec. 10.50.275 authorizes a company to issue company interests for property, services, or a promissory note or other obligation to contribute property or services.

Sec. 10.50.280 states that a member's promise to contribute property or services to the company is enforceable only if the promise is in a writing signed by the member. Makes the promise enforceable even if the member is unable to perform because of death, disability, or other reason, unless otherwise provided by an operating agreement. Requires a company member who has not made the required contribution of property or services to contribute cash equal to the shortfall. States that an assignor of a company interest remains liable for a contribution even if the assignee becomes a member with respect to the assigned interest, unless otherwise provided in an operating agreement.

Sec. 10.50.285 prohibits the compromise of a company member's obligation to make a contribution, unless otherwise provided in an operating agreement.

Sec. 10.50.300 declares that, unless otherwise provided in writing in an operating agreement, members are to be repaid their contributions to capital and share equally in the assets of the company after liabilities are satisfied.

Sec. 10.50.305 requires interim distributions to members to be made according to an operating agreement, if an operating agreement provides for the distributions. The operating agreement may authorize different interim distributions for different classes of members.

Sec. 10.50.310 requires interim distributions to members to be equal, unless an operating agreement provides for the distribution.

Sec. 10.50.315 indicates at what times a company member is entitled to an interim distribution.

Sec. 10.50.320 directs a company to distribute to a terminated member any distribution that the member was entitled to receive before the termination, except where the member is removed or the termination does not cause dissolution. In addition, directs the company to distribute to the terminating member the amount of the member's company interest. Establishes the amount of the interest if a company operating agreement does not establish the amount or how to calculate the amount. If an election has been made to continue the company until a certain date or event, the distribution provisions don't apply unless the member is also a company manager.

Sec. 10.50.325 prohibits a member from demanding and receiving a distribution in other than cash, unless otherwise provided in an operating agreement. Prohibits a company from compelling a company member to accept assets in a form other than cash under certain circumstances.

Sec. 10.50.330 states that a company member entitled to receive a distribution becomes a creditor of the company and is entitled to all available creditor remedies.

Sec. 10.50.350 states that property transferred to or otherwise acquired by a company is the property of the company and not of the members individually. States that a company may acquire, hold, and convey property in the name of the company. States that when the company acquires an interest in real property the company holds the title and not the members individually.

Sec. 10.50.355 indicates how a company's property may be transferred, depending on whose name the property is held in and whether the company has a manager.

Sec. 10.50.360 authorizes a company to recover its transferred property if the company proves certain facts, unless certain circumstances exist.

Sec. 10.50.365 authorizes, under certain circumstances, the transfer, free of company or member claims, of company property held in the name of a person other than the company.

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Sec. 10.50.370 states that a company interest is personal property.

Sec. 10.50.375 authorizes the assignment of a company interest. States that an assignment entitles the assignee to receive, to the extent assigned, only the distributions to which the assignor is entitled. States that an assignment does not dissolve the company or entitle the assignee to participate in the management and affairs of the company, to become a member, or to exercise member rights. The assignor continues to be a member unless the assignee becomes a member with respect to the interest. Allows a written operating agreement to vary the terms of the section. States that certain activities of a member do not amount to assignments and do not terminate the membership or the rights and powers of the member, unless otherwise provided in an operating agreement.

Sec. 10.50.380 authorizes a court to charge a member's company interest for payment of a judgment creditor against the member. Indicates the effect of the charge.

Sec. 10.50.385 states that in the case of a member's death or incompetency the member's legal representative has the rights of an assignee of the member's company interest.

Sec. 10.50.390 states that if a member (not an individual) terminates or is dissolved, the member's legal representative or successor has the rights of an assignee of the member's interest.

Sec. 10.50.400 identifies the events that dissolve a company and require winding up of its affairs.

Sec. 10.50.405 authorizes the superior court to order a company's dissolution under certain circumstances.

Sec. 10.50.410 indicates who may wind up a company's affairs, unless otherwise provided in an operating agreement.

Sec. 10.50.415 identifies the acts that a person winding up a company's affairs may perform.

Sec. 10.50.420 establishes when, how, and under what circumstances a member or manager can bind a company that is dissolved and winding up its affairs.

Sec. 10.50.425 establishes the manner and priority for the distribution of a company's assets upon its winding up.

Sec. 10.50.430 allows a company to file articles of dissolution with the department after it dissolves. Describes what the articles must state.

Sec. 10.50.435 establishes how a company after its dissolution may dispose of the known claims against it. Declares under what conditions a known claim against the company is barred.

Sec. 10.50.440 establishes how a company after its dissolution may dispose of unknown claims against it. Declares that unknown claims are barred unless the claimant takes certain action within three years after the later of certain events. Authorizes the claimant to enforce a claim against the company's undistributed assets or against company members under certain circumstances; limits a member's total liability.

Sec. 10.50.500 authorizes a company to merge or consolidate with or into a domestic or foreign limited liability company, subject to the law applicable to the other company and unless otherwise provided in an operating agreement.

Sec. 10.50.505 authorizes the rights of, or interests in, a party to a merger or consolidation to be exchanged for or converted into cash, property, obligations, rights or other interests of, or interests in, the surviving or resulting company.

Sec. 10.50.510 establishes what member or other approval is required before a company may approve a proposed merger or consolidation. Authorizes a party to a merger or consolidation to abandon the merger or consolidation as provided in the merger or consolidation agreement.

Sec. 10.50.515 requires the company surviving or resulting from a merger or consolidation under this chapter to file articles of merger or consolidation with the department. The articles must be signed by each company that is a party to the merger or consolidation.

Sec. 10.50.520 describes what the articles of merger or consolidation must state.

Sec. 10.50.525 requires articles of merger or consolidation to be signed by a company that is a party to the merger or consolidation.

Sec. 10.50.530 states that articles of merger or consolidation constitute articles of dissolution for a company that is not the surviving or resulting company in a merger or consolidation.

Sec. 10.50.535 indicates when a merger or consolidation takes effect.

Sec. 10.50.540 states that a merger or consolidation agreement may amend a company's operating agreement or adopt a new operating agreement for the company, if the company is the surviving or resulting company in a merger or consolidation. Authorizes an approved merger or consolidation agreement to provide

that a company's operating agreement will be the operating agreement of the company that is the surviving or resulting company. States when an amendment to an operating agreement or the adoption of a new operating agreement under this section is effective. States that this section does not limit the accomplishment of a merger or other matter covered by the section by other means allowed under an operating agreement, another agreement, or another law.

Sec. 10.50.545 describes the general effects of merger or consolidation. These include the termination of companies that are not the surviving or resulting companies and the transfer of the applicable rights, privileges, immunities, powers, franchises, restrictions, disabilities, and duties of the participating companies to the surviving or resulting company.

Sec. 10.50.550 describes the effects of merger or consolidation on the property of the participating companies.

Sec. 10.50.555 describes the effect of merger or consolidation on the liabilities of the participating companies.

Sec. 10.50.560 declares that creditor rights and liens on the property of a company that is a party to a merger or consolidation are not impaired by the merger or consolidation.

Sec. 10.50.565 states that upon a merger or consolidation a company's interests that are to be converted or exchanged into other property under the merger or consolidation agreement are converted as provided by the merger or consolidation agreement. States that the former holders of interests so converted have the rights provided in the merger or consolidation agreement or otherwise provided by law.

Sec. 10.50.590 defines "limited liability company" for secs. 10.50.500 - 10.50.590.

Sec. 10.50.600 states that, subject to this state's constitution, a foreign company's organization, internal affairs, and the liability and authority of its managers and members are governed by the law of the jurisdiction where the company is organized. Prohibits the department from denying registration to a foreign company because of differences between the law of this state and the jurisdiction where the foreign company is organized.

Sec. 10.50.605 requires a foreign company to register with the department before conducting affairs in this state. The foreign company is required to deliver an application for registration to the department.

Sec. 10.50.610 requires the registration application to be signed by a person who is authorized to sign by the law of the jurisdiction where the company was organized.

Sec. 10.50.615 describes what the registration application must state.

Sec. 10.50.620 prohibits the department from filing the registration of a foreign company unless the company name satisfies certain requirements.

Sec. 10.50.625 authorizes a foreign company to amend its registration by filing articles of amendment with the department.

Sec. 10.50.630 establishes what the articles of amendment must state. Authorizes the amendment of the application in any way as long as the amended application only contains provisions that are otherwise allowed by this chapter to be contained in an application for registration at the time of the amendment.

Sec. 10.50.635 requires a foreign company to maintain an agent in this state for the service of process. Indicates which persons qualify to be an agent.

Sec. 10.50.640 establishes the procedure for changing a foreign company's registered agent or the agent's address.

Sec. 10.50.645 provides guidelines for when the change of registered agent or agent address for a foreign company becomes effective.

Sec. 10.50.650 describes how a registered agent of a foreign company may resign as the registered agent. Requires the department to mail a copy of the resignation to the company. Indicates when the resignation becomes effective.

Sec. 10.50.655 authorizes a foreign company to cancel its registration by filing an application for cancellation with the department.

Sec. 10.50.660 describes what an application for cancellation must state.

Sec. 10.50.665 describes the form, manner, and execution of an application for cancellation of the registration of a foreign company.

Sec. 10.50.670 states that the cancellation of a registration does not terminate the authority of the department to accept service of process on the foreign company with respect to causes of action arising out of the company's conduct of affairs in this state.

Sec. 10.50.675 prohibits an unregistered foreign company conducting affairs in this state from maintaining a action or other proceeding in a court of this state until it has registered. States that the failure to register does not impair the validity of the company's contracts or acts, affect the rights of another party to a company contract

to maintain an action or other proceeding on the contract, or prevent the company from defending an action or other proceeding in a court of this state.

Sec. 10.50.680 states that a foreign company that conducts affairs in the state without being registered appoints the department as its agent for service of process with respect to a cause of action arising out of conducting affairs in this state.

Sec. 10.50.685 provides for service on the commissioner in the manner provided under sec. 10.50.065(b) and under certain circumstances. Requires the commissioner to keep a record of the processes, notices, and demands served on the commissioner. States that this section does not affect the right to make service in another manner permitted by law.

Sec. 10.50.690 states that a foreign company conducting affairs in this state without registration is liable to the department for certain fees and penalties.

Sec. 10.50.700 states that a foreign company that conducts affairs in this state without registration is subject to a civil penalty and authorizes the attorney general to recover the penalty.

Sec. 10.50.710 authorizes a court, under certain circumstances, to issue an injunction against a foreign company conducting affairs in the state in violation of this chapter. Indicates how long the injunction may continue.

Sec. 10.50.715 states that a member or manager of a foreign company is not liable for the debts and obligations of the company solely because the company conducts affairs in this state without registration.

Sec. 10.50.720 lists the transactions that do not constitute conducting affairs for a foreign company in this state.

Sec. 10.50.730 authorizes a court action to be brought by or against the company in the name of the company.

Sec. 10.50.735 prohibits a person from bringing a court action on behalf of a company in the name of the company unless the requirements of the section are met. Sets out these requirements.

Sec. 10.50.740 prohibits a company from asserting the lack of authority of a company member or manager to bring court action on behalf of a company as a defense to the action or as a basis for bringing a subsequent action on the same cause of action.

Sec. 10.50.800 declares that, unless an operating agreement provides otherwise, a company member or manager is not liable to the company or the company members

for damages or other relief for an act or a failure to act on behalf of the company unless the act or failure to act amounts to gross negligence or wilful misconduct. Provides that an operating agreement may limit or eliminate the personal liability of a company member or manager for breaches of duty under secs. 10.50.130 - 10.50.140 or subsec. (a).

Sec. 10.50.805 authorizes a company to use an operating agreement to authorize the company to indemnify a company member or manager for judgments, settlements, penalties, fines, or expenses incurred by the person under certain circumstances.

Sec. 10.50.810 states that a company member is not a proper party to a proceeding by or against the company just for being a member, except in certain circumstances.

Sec. 10.50.820 states that a company operating agreement may authorize a company to issue a certificate as evidence of a company interest and to authorize and provide for the assignment or transfer of the interest represented by the certificate.

Sec. 10.50.830 establishes how a document is to be delivered to or filed with the department.

Sec. 10.50.840 establishes the department's procedure and criteria for filing documents. Prohibits the department from filing a document if the section's requirements are not met.

Sec. 10.50.850 establishes who is to sign documents filed with the department and how the documents are to be signed. Authorizes a person to sign as an attorney-in-fact.

Sec. 10.50.855 establishes a procedure for obtaining a court order to direct the department to file certain documents.

Sec. 10.50.860 directs the department to charge fees for filing and other services it provides under the chapter.

Sec. 10.50.870 requires a company, unless otherwise provided in writing in an operating agreement, to maintain certain described records at its principal place of business.

Sec. 10.50.875 authorizes a company member to inspect and copy the company's records under certain conditions.

Sec. 10.50.880 requires certain persons to disclose to a member under certain circumstances true and full information of all matters that affect the members of a company.

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Sec. 10.50.890 states that a company's failure to maintain a required record or information does not make a member or manager liable for the company's obligations.

Sec. 10.50.900 authorizes the department to adopt regulations to implement the chapter, in addition to any regulations the department is required to adopt under this chapter.

Sec. 10.50.910 authorizes a company organized and existing under this chapter to conduct its affairs and exercise the powers granted by this chapter in another jurisdiction, subject to the laws of that jurisdiction.

Sec. 10.50.920 declares the chapter's support of the principle of freedom of contract and enforceability of operating agreements. States that the rule that statutes in derogation of the common law are to be strictly construed does not apply to the chapter.

Sec. 10.50.990 defines terms for the new chapter.

Sec. 10.50.995 gives the new chapter a short title.

Section 2. Amends the for-profit corporations code to prevent that code from prohibiting a limited liability company from using "limited" in its name.

Section 3. Describes how a section of the new chapter amends the Alaska Rules of Civil Procedure.

Section 4. Makes the Act effective January 1, 1995.

If I may be of further assistance, please advise.

TLB:gc
94-165.glc

MEMORANDUM

HUGHES THORSNESS
GANTZ POWELL & BRUNDIN
ATTORNEYS AT LAW

TO: Senator Tim Kelly
Senate Labor & Commerce Committee
ATTN: Josh Fink (Via Fax 465-3756)

FROM: Robert L. Manley
Chairman, Working Group on Limited Liability Companies
Composed of Members of the Tax Law and Business Law
Sections of the Alaska Bar Association

RE: Senate Bill 347
Limited Liability Companies

DATE: March 22, 1994

I am writing to provide you with some additional information on limited liability companies. LLC's are a relatively new form of business entity in the United States. At the present time, 37 states have enacted LLC legislation and legislation is pending in a number of other states. Enclosed for your reference is a brief bibliography on the subject.

LLC is a business entity which combines the best features of a corporation and a partnership. Like corporate shareholder, LLC owners are not responsible for company liabilities beyond their investment. Like a partnership, there is no corporate double taxation. Rather, owners (like partners) incur federal income taxation at the individual level based on the profits and losses allocated to them.

The proposed legislation is drawn largely from a prototype act drafted by a working group of the Business Law Section of the American Bar Association with input from the Alaska Department of Labor & Commerce. The Alaska working group has modified various provisions to conform with Alaska procedure and additional developments in the law.

At this point, the lack of LLC legislation puts Alaska at a competitive disadvantage in attracting investment from outside. This is particularly so with foreign investors who are familiar with the limited liability company format because it is commonly used in European, Asian and South American countries.

An LLC can provide investors with conduit tax treatment, limited liability for investors, and freedom from many of the restrictions imposed on S-corporations and limited partnerships. As indicated LLC legislation is particularly important to facilitate foreign investment. At the present time, non-resident aliens may not be S-corporation shareholders. Thus, in order for those investors to secure limited liability, they must operate as C-corporation shareholders (subject to double taxation) or as limited partners in a limited partnership (giving up operational control).

LTRS OF SUPPORT / INFORMATION

HUGHES THORSNESS
GANTZ POWELL & BRUNDIN
ATTORNEYS AT LAW

On the estate planning side, the primary asset of many small businessmen is the S-corporation stock of their business. The tax laws governing S-corporations prohibit many types of estate planning trusts from acting as S-corporation shareholders. Thus, the businessmen must accept certain limitations on estate planning if they also want corporate liability protection and the avoidance of double taxation. Even where businesses could organize as S-corporations, the partnership-type conduit tax treatment available to LLC's provide significant advantages in the allocation of tax attributes among investors, the ability to create tax basis by loans to the company and in areas of the passive loss and at-risk tax limitations.

The LLC is also useful to major corporations participating in joint ventures. Most large corporations create corporate subsidiaries which in turn form a partnership or joint venture. That way, profits and losses are allocated in the partnership among the two subsidiary corporations and the subsidiary corporations are able to transfer income to the parent corporations by way of dividends subject to the wholly owned subsidiary deduction. This, however, creates an extra legal entity and additional accounting complications both operationally and for the consolidated tax return.

We urge your support of this important piece of legislation.

2512:KSKM

LIMITED LIABILITY COMPANIES BIBLIOGRAPHY

By: Robert L. Manley

1. L. Ribstein and R. Keatinge, Limited Liability Company, (Shepards / McGraw-Hill 1992).
2. R. Keatinge, L. Ribstein, S. Hamill, M. Gravelle, and S. Connaughton, The Limited Liability Company, a Study of the Emerging Entity, 47 Business Lawyer 375 (1992). An 85-page article covering most of the relevant tax and non-tax issues.
3. Special Study, Limited Liability Company (LLC) Can Be Preferred Choice of Entity (RIA/Federal Tax Coordinator, August, 1992). A 10-page article covering basic entity choice issues including a good checklist of federal tax consequences to consider in making a choice of entity.
4. F. Wirtz and K. Harris, The Emerging Use of the Limited Liability Company, 1992 Taxes 337 (1992). A 20-page article covering basic classification issues, entity comparison and the conversion of existing entities into limited liability companies.
5. C. Price, Tax Aspects of Limited Liability Companies, 1992 Journal of Accountancy 48 (1992). A brief summary of limited liability company issues.
6. R. Platner, Limited Liability Companies Are Increasingly Popular, 20 Taxation for Lawyers 225 (1992).

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Matthew P. Heaney (602) 382-6239

March 21, 1994

VIA FACSIMILE

Mr. Robert Manley
509 West Third Avenue
Anchorage, Alaska 99501

Dear Bob:

I enjoyed talking to you this morning regarding Arizona's experience with its limited liability company statute. I understand that the Alaska legislature is considering adopting limited liability company legislation and that elements of the banking industry have expressed concern about the liability and signing authorization aspects of the legislation as they relate to banking activities.

As we discussed, I am not aware of any banks in Arizona that have had difficulties with these issues. I noted that our firm represents banks and that we provided educational seminars to these clients when the legislation was passed. We advised the banks that, from a liability perspective, they should assume that an LLC is analogous to a closely-held corporation. If the bank does not feel comfortable lending to a closely-held corporation on the basis of the corporation's assets, the bank will usually require security or personal guarantees. The same result applies in the case of an LLC.

With respect to signing authorization, I understand that the Alaska legislation is based on the ABA Prototype Act, which specifically provides that a manager in a manager-managed LLC has the authority to bind the LLC, and that a member in a member-managed LLC has the authority to bind the LLC. A bank can review the publicly-filed Articles of Organization to determine whether the LLC is manager-managed or member-managed, the same way that a bank will review the publicly-filed Articles of Incorporation in the case of a corporation. The diligence then required in confirming that the party signing has appropriate authority is the same diligence that is required in determining whether a corporate officer has the requisite authority, e.g., a review of LLC/corporate records and the receipt of appropriate certificates.

Snell & Wilmer

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March 21, 1994
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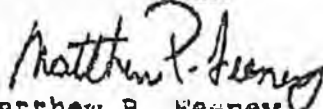
In short, LLC signing authorization does not present any unique problems.

More important than the foregoing two issues, in my judgment, is the fact that over 35 states have adopted LLC legislation and the remaining states have legislation pending. The legislation has proven to be workable in the states in which it has been adopted. A Uniform Limited Liability Company Act is also in the process of being drafted. In short, LLC's are here to stay. States that choose not to adopt LLC legislation may find themselves at a competitive disadvantage in the area of capital formation.

Please feel free to call me at (602) 382-6239 if you have any questions or comments.

Very truly yours,

SNELL & WILMER


Matthew P. Feeney

MPF:mo
cc: Daniella Lopez

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March 21, 1994

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By Fax 907/465-3834

Danielle Lopez
Office of Rep. Brian Porter
House of Representatives
Alaska State Legislature
Alaska State Capitol
Juneau, AK 99801-1182

Re: Alaska Limited Liability Company Act

Dear Ms. Lopez:

I spoke this morning with Robert Manley regarding the Alaska Limited Liability Company Act, which I understand is based on the ABA Prototype Act. From my discussion with him, I understand that there is some question with regard to the operation of LLCs. In my experience, there have not been any problems with respect to the operation of limited liability companies (LLCs).

By way of background, I am a member of the committee that drafted the Prototype, chair of an American Bar Association (ABA) Subcommittee on LLCs, the ABA Liaison to the National Conference of Commissioners on Uniform State Laws drafting committee drafting a Uniform Limited Liability Company Act and co-author of *Ribstein and Keatinge on Limited Liability Companies*, a two-volume treatise on the subject. This is not to indicate that I am particularly wise, but rather to support the fact that I spend a fair amount of time discussing the development of LLCs around the country with others working in this area. With the exception of the change of some documents to reflect the new type of organization, the development of LLCs has not caused a change in the manner of conducting commercial or real estate transactions. Now that more than thirty-six states have LLC legislation, use of LLCs is becoming more regularized and lenders and title insurance companies have developed ways of dealing with LLCs.

The Prototype Limited Liability Company Act is based primarily on the Revised Uniform Limited Partnership Act. As such, many of the authority issues are exactly the same as those for a limited partnership. We did not include the identification of a specific member or manager in the articles of organization for the same reasons that no person other than the organizer is identified in the articles of incorporation under most corporation acts. As in all transactions with any type of business organization, the lender

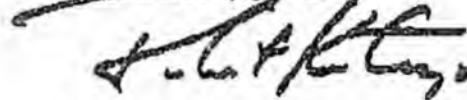
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Danielle Lopez
March 21, 1994
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will need to satisfy itself with the authority of person executing documents, whether it is an officer of a corporation, a general partner in a general or limited partnership or a member of a member-managed LLC or a manager of a manager-managed LLC. Once lenders and others have focused on this similarity, they seem to have no trouble dealing with LLCs.

I think that the "newness" of LLCs will not cause a problem for lenders and others dealing with the entity. If you have any questions in this regard, please contact me.

Sincerely yours,



Robert R. Keatinge

encl.

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March 21, 1994

Senator Tim Kelly
Alaska State Legislature
State Capitol Building
Juneau, Alaska 99801

Dear Senator Kelly:

We are in support of SB 347 providing for the formation, registration and regulation of limited liability companies (LLC). We feel that the LLC offers business owners the desirable benefit of protection from personal liability for the debts of the business. The LLC also allows for a great deal of flexibility in making day-to-day business decisions such as business structuring and acquisitions, financing techniques, distributing earnings to members, providing compensation and fringe benefits, managing cash flow, and estate planning.

In addition, the more states that recognize limited liability companies, the more useful this type of entity is to business operations with interstate activities. It is our understanding that, at the current time, 37 states have adopted limited liability company legislation.

We ask that you support this legislation.

Sincerely,



John A. Letourneau
Tax Director

:mmb

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March 21, 1994

Senator Tim Kelly
Alaska State Legislature
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In addition, the more states that recognize limited liability companies, the more useful this type of entity is to business operations with interstate activities. It is our understanding that, at the current time, 37 states have adopted limited liability company legislation.

We ask that you support this legislation.

Sincerely,



Christy K. Morse
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March 21, 1994

REPLY TO:

Anchorage

Senator Tim Kelly
Chairman
Senate Labor & Commerce
State Capital, Room 101
Juneau, AK 99801-1182

Re: House Bill 420

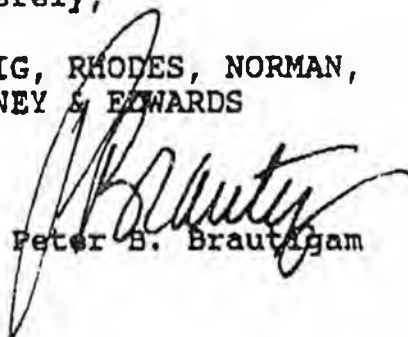
Dear Senator Kelly:

This letter is sent in regard to the Sponsor Substitute for Senate Bill 347 which deals with a new form of business entity, limited liability companies. I am very much in favor of this bill. Having a limited liability business entity would provide Alaskan business investors with partnership tax treatment along with corporate-type limited liability.

Sincerely,

HARTIG, RHODES, NORMAN,
MAHONEY & EDWARDS

By:


Peter B. Brautigam

PBB/kp

kp\docs\578\kelly.ltr



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FEB 25 RECD

February 22, 1994

Senate Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Re: Limited Liability Company Bill

Dear Sirs:

On February 17, 1994 the Board of the Alaska Society of Certified Public Accountants unanimously voted to endorse the introduction of legislation allowing businesses to form and operate as a Limited Liability Company in the State of Alaska.

The membership of the Alaska Society of Certified Public Accountants is State wide. The Board is representative of the membership.

In order for the State to continue to grow through new commerce, it is important that there is flexibility in the type of entity a business can form. The State should be able to offer the same type of entities as any other state offers (right now there over 30 States that allow Limited Liability Companies).

We look forward to the passage of this law in a swift and expedient manner. Businesses that want to operate as a Limited Liability Company may not wait for the legislature, and will seek an operating "home" in some other state.

Very truly yours,

William D. Arnold
President

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 22, 1994

SUBJECT: Sectional summary of SB 347 (Work Order No. 8-LS1419J)

TO: Senator Tim Kelly
Chair, Senate Labor and Commerce Committee
Attn: Josh

FROM: *TB*
Theresa L. Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Contains a new chapter on limited liability companies.

Sec. 10.50.010 states that a limited liability company ("company") may be organized for any lawful purpose.

Sec. 10.50.015 requires a company to comply with other applicable laws.

Sec. 10.50.020 requires a company name to contain certain words or abbreviations. Allows the name to use the name of a city, borough, or village but not to contain certain words or to otherwise imply the company is a municipality. Prohibits a person from adopting a name containing "limited liability company" unless the person is organized under this chapter or is registered as a foreign limited liability company under this chapter.

Sec. 10.50.025 requires a company name to be distinguishable on the records of the Department of Commerce and Economic Development ("department") from certain other names.

Sec. 10.50.030 authorizes certain persons to reserve a company name.

- SECTIONAL ANALYSIS -

Sec. 10.50.035 establishes the procedure for reserving a company name.

Sec. 10.50.040 authorizes the holder of a reserved name to transfer the name to another person. Establishes how the transfer is accomplished.

Sec. 10.50.045 requires a company to maintain in this state a registered office and a registered agent for the service of process.

Sec. 10.50.050 establishes how a company may change its registered office or agent and how an agent may change the agent's address.

Sec. 10.50.055 establishes when a change of a registered office, a registered agent or the address of a registered agent becomes effective.

Sec. 10.50.060 authorizes a registered agent to resign. Indicates how the agent may resign and when the resignation becomes effective.

Sec. 10.50.065 appoints the commissioner of the department under certain circumstances as the agent of a company for the service of process, notice, or demand. Establishes how a person may serve the commissioner. Directs the commissioner to keep a record of documents served on the commissioner. States that this section does not affect the right to serve process, notice, or demand on a company in another manner permitted by law.

Sec. 10.50.070 authorizes one or more persons to organize a company. Establishes the procedure for organization.

Sec. 10.50.075 identifies what the articles of organization must contain, which includes certain information about any election to continue the company until a certain date or event.

Sec. 10.50.080 determines when a company's organization is effective. Provides that the company's existence terminates if its articles are nonconforming and not cured within the specified time.

Sec. 10.50.085 states that a company's existence continues until specified date or event, except under certain circumstances, if the company has made an election to continue until the certain date or event and the election is stated in the articles of organization. Prohibits revocation of an election unless certain specified persons revoke the election. Allows an election to expressly limit the membership terminations that can cause dissolution.

Sec. 10.50.090 establishes that articles of organization that are file-stamped and marked with the filing date are conclusive evidence that the company is organized.

Sec. 10.50.100 authorizes a company to amend its articles at any time and indicates the procedure for doing so.

Sec. 10.50.105 authorizes a company to restate its articles and establishes the procedure for doing so.

Sec. 10.50.110 declares that the members of a company manage the company, unless an operating agreement names a manager for the company or the chapter provides otherwise. Declares that if an operating agreement authorizes a manager for the company, the manager has the exclusive power to manage the company to the extent of the authorization.

Sec. 10.50.115 requires over one-half of the members to approve before a manager is appointed, removed, or replaced, unless an operating agreement provides otherwise.

Sec. 10.50.120 allows a manager to be other than an individual or a company member, unless a company operating agreement provides otherwise.

Sec. 10.50.125 establishes how long a manager holds office.

Sec. 10.50.130 declares that a member who is not a manager of a company that is managed by a manager does not have a fiduciary duty of a manager to the company or to other members when acting solely as a member, unless an operating agreement provides otherwise.

Sec. 10.50.140 requires the members and the managers to account to the company and hold as trustee for the company certain identified benefits obtained without the described consent, unless an operating agreement provides otherwise.

Sec. 10.50.145 establishes what authorization is required for company affairs, depending on whether the company is managed by its members or by managers.

Sec. 10.50.155 indicates that a person may become a company member if the person acquires a company interest in certain ways.

Sec. 10.50.160 establishes when a person's admission to membership in the company is effective.

Sec. 10.50.165 establishes the conditions for an assignee of a company interest to become a company member.

Sec. 10.50.170 establishes the rights, powers, and liabilities of an assignee who becomes a member.

Sec. 10.50.180 establishes that when an assignee of a member's entire membership interest becomes a member with respect to the assignor's entire interest, the assigning member ceases to be a member, unless otherwise provided in an operating agreement.

Sec. 10.50.185 states that a person's company membership terminates if the person withdraws voluntarily from the company. Authorizes a member to voluntarily terminate a company membership at any time, unless an operating agreement provides otherwise.

Sec. 10.50.190 establishes that, if a company has a definite term or undertaking, the voluntary withdrawal of a member before the end of the term or the accomplishment of the undertaking is a breach of the operating agreement, unless the operating agreement provides otherwise.

Sec. 10.50.195 establishes that a company can recover damages from a member who withdraws wrongfully. Authorizes the company to offset the damages against a distribution owed to the member and to pursue other remedies against the member.

Sec. 10.50.205 states that, except as otherwise provided in an operating agreement for the removal of a member, a person's company membership terminates if the person assigns all of the membership interest and if a majority of the members who have not assigned their interests authorize the removal of the member.

Sec. 10.50.210 states that a person's company membership terminates if the member dies or is declared incompetent by a court, unless otherwise provided in an operating agreement.

Sec. 10.50.215 states that the company membership held by a trust or trustee terminates when the trust terminates and that a company membership held by an estate terminates when the estate's entire company interest is distributed by the estate, unless otherwise provided in writing in an operating agreement or by the written consent of all of the members.

Sec. 10.50.220 states that the company membership of a member that is a separate limited liability company terminates when the member dissolves and begins to wind up, unless otherwise provided in writing in an operating agreement or by the consent of all members. Also states that the membership of a corporate member terminates when the corporation is dissolved and 90 days elapse without reinstatement, unless otherwise provided in writing in an operating agreement or by the consent of all members.

Sec. 10.50.225 identifies other events that terminate a company membership.

Sec. 10.50.240 provides that secs. 10.50.185 - 10.50.225(a)-(b) don't apply to the termination of a membership unless the member is also a company manager, if an election has been made to continue the company until a certain date or event.

Sec. 10.50.250 states that a company member is an agent of the company for the purpose of conducting the company's affairs, except under certain circumstances, including where the articles name a manager for the company. If a manager is named, the manager is an agent of the company for the purpose of conducting its affairs, except in certain circumstances. Establishes when a member's or manager's act binds the company.

Sec. 10.50.255 states that an admission or representation by a company member about the company is evidence against the company, except in certain circumstances, including where the articles name a manager for the company. If a manager is named, an admission or representation by a manager is evidence against the company under certain circumstances, and the admission or representation by a member acting solely as a member is not evidence against the company.

Sec. 10.50.260 indicates when a company is charged with the knowledge of or a notice given to a member or manager.

Sec. 10.50.265 states that a company member is not liable, solely by reason of being a member, for a company liability.

Sec. 10.50.275 authorizes a company to issue company interests for property, services, or a promissory note or other obligation to contribute property or services.

Sec. 10.50.280 states that a member's promise to contribute property or services to the company is enforceable only if the promise is in a writing signed by the member. Makes the promise enforceable even if the member is unable to perform because of death, disability, or other reason, unless otherwise provided by an operating agreement. Requires a company member who has not made the required contribution of property or services to contribute cash equal to the shortfall. States that an assignor of a company interest remains liable for a contribution even if the assignee becomes a member with respect to the assigned interest, unless otherwise provided in an operating agreement.

Sec. 10.50.285 prohibits the compromise of a company member's obligation to make a contribution, unless otherwise provided in an operating agreement.

Sec. 10.50.300 declares that, unless otherwise provided in writing in an operating agreement, members are to be repaid their contributions to capital and share equally in the assets of the company after liabilities are satisfied.

Sec. 10.50.305 requires interim distributions to members to be made according to an operating agreement, if an operating agreement provides for the distributions. The operating agreement may authorize different interim distributions for different classes of members.

Sec. 10.50.310 requires interim distributions to members to be equal, unless an operating agreement provides for the distribution.

Sec. 10.50.315 indicates at what times a company member is entitled to an interim distribution.

Sec. 10.50.320 directs a company to distribute to a terminated member any distribution that the member was entitled to receive before the termination, except where the member is removed or the termination does not cause dissolution. In addition, directs the company to distribute to the terminating member the amount of the member's company interest. Establishes the amount of the interest if a company operating agreement does not establish the amount or how to calculate the amount. If an election has been made to continue the company until a certain date or event, the distribution provisions don't apply unless the member is also a company manager.

Sec. 10.50.325 prohibits a member from demanding and receiving a distribution in other than cash, unless otherwise provided in an operating agreement. Prohibits a company from compelling a company member to accept assets in a form other than cash under certain circumstances.

Sec. 10.50.330 states that a company member entitled to receive a distribution becomes a creditor of the company and is entitled to all available creditor remedies.

Sec. 10.50.350 states that property transferred to or otherwise acquired by a company is the property of the company and not of the members individually. States that a company may acquire, hold, and convey property in the name of the company. States that when the company acquires an interest in real property the company holds the title and not the members individually.

Sec. 10.50.355 indicates how a company's property may be transferred, depending on whose name the property is held in and whether the company has a manager.

Sec. 10.50.360 authorizes a company to recover its transferred property if the company proves certain facts, unless certain circumstances exist.

Sec. 10.50.365 authorizes, under certain circumstances, the transfer, free of company or member claims, of company property held in the name of a person other than the company.

Senator Tim Kelly

March 22, 1994

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Sec. 10.50.370 states that a company interest is personal property.

Sec. 10.50.375 authorizes the assignment of a company interest. States that an assignment entitles the assignee to receive, to the extent assigned, only the distributions to which the assignor is entitled. States that an assignment does not dissolve the company or entitle the assignee to participate in the management and affairs of the company, to become a member, or to exercise member rights. The assignor continues to be a member unless the assignee becomes a member with respect to the interest. Allows a written operating agreement to vary the terms of the section. States that certain activities of a member do not amount to assignments and do not terminate the membership or the rights and powers of the member, unless otherwise provided in an operating agreement.

Sec. 10.50.380 authorizes a court to charge a member's company interest for payment of a judgment creditor against the member. Indicates the effect of the charge.

Sec. 10.50.385 states that in the case of a member's death or incompetency the member's legal representative has the rights of an assignee of the member's company interest.

Sec. 10.50.390 states that if a member (not an individual) terminates or is dissolved, the member's legal representative or successor has the rights of an assignee of the member's interest.

Sec. 10.50.400 identifies the events that dissolve a company and require winding up of its affairs.

Sec. 10.50.405 authorizes the superior court to order a company's dissolution under certain circumstances.

Sec. 10.50.410 indicates who may wind up a company's affairs, unless otherwise provided in an operating agreement.

Sec. 10.50.415 identifies the acts that a person winding up a company's affairs may perform.

Sec. 10.50.420 establishes when, how, and under what circumstances a member or manager can bind a company that is dissolved and winding up its affairs.

Sec. 10.50.425 establishes the manner and priority for the distribution of a company's assets upon its winding up.

Sec. 10.50.430 allows a company to file articles of dissolution with the department after it dissolves. Describes what the articles must state.

Sec. 10.50.435 establishes how a company after its dissolution may dispose of the known claims against it. Declares under what conditions a known claim against the company is barred.

Sec. 10.50.440 establishes how a company after its dissolution may dispose of unknown claims against it. Declares that unknown claims are barred unless the claimant takes certain action within three years after the later of certain events. Authorizes the claimant to enforce a claim against the company's undistributed assets or against company members under certain circumstances; limits a member's total liability.

Sec. 10.50.500 authorizes a company to merge or consolidate with or into a domestic or foreign limited liability company, subject to the law applicable to the other company and unless otherwise provided in an operating agreement.

Sec. 10.50.505 authorizes the rights of, or interests in, a party to a merger or consolidation to be exchanged for or converted into cash, property, obligations, rights or other interests of, or interests in, the surviving or resulting company.

Sec. 10.50.510 establishes what member or other approval is required before a company may approve a proposed merger or consolidation. Authorizes a party to a merger or consolidation to abandon the merger or consolidation as provided in the merger or consolidation agreement.

Sec. 10.50.515 requires the company surviving or resulting from a merger or consolidation under this chapter to file articles of merger or consolidation with the department. The articles must be signed by each company that is a party to the merger or consolidation.

Sec. 10.50.520 describes what the articles of merger or consolidation must state.

Sec. 10.50.525 requires articles of merger or consolidation to be signed by a company that is a party to the merger or consolidation.

Sec. 10.50.530 states that articles of merger or consolidation constitute articles of dissolution for a company that is not the surviving or resulting company in a merger or consolidation.

Sec. 10.50.535 indicates when a merger or consolidation takes effect.

Sec. 10.50.540 states that a merger or consolidation agreement may amend a company's operating agreement or adopt a new operating agreement for the company, if the company is the surviving or resulting company in a merger or consolidation. Authorizes an approved merger or consolidation agreement to provide

that a company's operating agreement will be the operating agreement of the company that is the surviving or resulting company. States when an amendment to an operating agreement or the adoption of a new operating agreement under this section is effective. States that this section does not limit the accomplishment of a merger or other matter covered by the section by other means allowed under an operating agreement, another agreement, or another law.

Sec. 10.50.545 describes the general effects of merger or consolidation. These include the termination of companies that are not the surviving or resulting companies and the transfer of the applicable rights, privileges, immunities, powers, franchises, restrictions, disabilities, and duties of the participating companies to the surviving or resulting company.

Sec. 10.50.550 describes the effects of merger or consolidation on the property of the participating companies.

Sec. 10.50.555 describes the effect of merger or consolidation on the liabilities of the participating companies.

Sec. 10.50.560 declares that creditor rights and liens on the property of a company that is a party to a merger or consolidation are not impaired by the merger or consolidation.

Sec. 10.50.565 states that upon a merger or consolidation a company's interests that are to be converted or exchanged into other property under the merger or consolidation agreement are converted as provided by the merger or consolidation agreement. States that the former holders of interests so converted have the rights provided in the merger or consolidation agreement or otherwise provided by law.

Sec. 10.50.590 defines "limited liability company" for sections 10.500 - 10.50.590.

Sec. 10.50.600 states that, subject to this state's constitution, a foreign company's organization, internal affairs, and the liability and authority of its managers and members are governed by the law of the jurisdiction where the company is organized. Prohibits the department from denying registration to a foreign company because of differences between the law of this state and the jurisdiction where the foreign company is organized.

Sec. 10.50.605 requires a foreign company to register with the department before conducting affairs in this state. The foreign company is required to deliver an application for registration to the department.

Sec. 10.50.610 requires the registration application to be signed by a person who is authorized to sign by the law of the jurisdiction where the company was organized.

Sec. 10.50.615 describes what the registration application must state.

Sec. 10.50.620 prohibits the department from filing the registration of a foreign company unless the company name satisfies certain requirements.

Sec. 10.50.625 authorizes a foreign company to amend its registration by filing articles of amendment with the department.

Sec. 10.50.630 establishes what the articles of amendment must state. Authorizes the amendment of the application in any way as long as the amended application only contains provisions that are otherwise allowed by this chapter to be contained in an application for registration at the time of the amendment.

Sec. 10.50.635 requires a foreign company to maintain an agent in this state for the service of process. Indicates which persons qualify to be an agent.

Sec. 10.50.640 establishes the procedure for changing a foreign company's registered agent or the agent's address.

Sec. 10.50.645 provides guidelines for when the change of registered agent or agent address for a foreign company becomes effective.

Sec. 10.50.650 describes how a registered agent of a foreign company may resign as the registered agent. Requires the department to mail a copy of the resignation to the company. Indicates when the resignation becomes effective.

Sec. 10.50.655 authorizes a foreign company to cancel its registration by filing an application for cancellation with the department.

Sec. 10.50.660 describes what an application for cancellation must state.

Sec. 10.50.665 describes the form, manner, and execution of an application for cancellation of the registration of a foreign company.

Sec. 10.50.670 states that the cancellation of a registration does not terminate the authority of the department to accept service of process on the foreign company with respect to causes of action arising out of the company's conduct of affairs in this state.

Sec. 10.50.675 prohibits an unregistered foreign company conducting affairs in this state from maintaining a action or other proceeding in a court of this state until it has registered. States that the failure to register does not impair the validity of the company's contracts or acts, affect the rights of another party to a company contract

to maintain an action or other proceeding on the contract, or prevent the company from defending an action or other proceeding in a court of this state.

Sec. 10.50.680 states that a foreign company that conducts affairs in the state without being registered appoints the department as its agent for service of process with respect to a cause of action arising out of conducting affairs in this state.

Sec. 10.50.685 provides for service on the commissioner in the manner provided under sec. 10.50.065(b) and under certain circumstances. Requires the commissioner to keep a record of the processes, notices, and demands served on the commissioner. States that this section does not affect the right to make service in another manner permitted by law.

Sec. 10.50.690 states that a foreign company conducting affairs in this state without registration is liable to the department for certain fees and penalties.

Sec. 10.50.700 states that a foreign company that conducts affairs in this state without registration is subject to a civil penalty and authorizes the attorney general to recover the penalty.

Sec. 10.50.710 authorizes a court, under certain circumstances, to issue an injunction against a foreign company conducting affairs in the state in violation of this chapter. Indicates how long the injunction may continue.

Sec. 10.50.715 states that a member or manager of a foreign company is not liable for the debts and obligations of the company solely because the company conducts affairs in this state without registration.

Sec. 10.50.720 lists the transactions that do not constitute conducting affairs for a foreign company in this state.

Sec. 10.50.730 authorizes a court action to be brought by or against the company in the name of the company.

Sec. 10.50.735 prohibits a person from bringing a court action on behalf of a company in the name of the company unless the requirements of the section are met. Sets out these requirements.

Sec. 10.50.740 prohibits a company from asserting the lack of authority of a company member or manager to bring court action on behalf of a company as a defense to the action or as a basis for bringing a subsequent action on the same cause of action.

Sec. 10.50.800 declares that, unless an operating agreement provides otherwise, a company member or manager is not liable to the company or the company members

for damages or other relief for an act or a failure to act on behalf of the company unless the act or failure to act amounts to gross negligence or wilful misconduct. Provides that an operating agreement may limit or eliminate the personal liability of a company member or manager for breaches of duty under secs. 10.50.130 - 10.50.140 or subsec. (a).

Sec. 10.50.805 authorizes a company to use an operating agreement to authorize the company to indemnify a company member or manager for judgments, settlements, penalties, fines, or expenses incurred by the person under certain circumstances.

Sec. 10.50.810 states that a company member is not a proper party to a proceeding by or against the company just for being a member, except in certain circumstances.

Sec. 10.50.820 states that a company operating agreement may authorize a company to issue a certificate as evidence of a company interest and to authorize and provide for the assignment or transfer of the interest represented by the certificate.

Sec. 10.50.830 establishes how a document is to be delivered to or filed with the department.

Sec. 10.50.840 establishes the department's procedure and criteria for filing documents. Prohibits the department from filing a document if the section's requirements are not met.

Sec. 10.50.850 establishes who is to sign documents filed with the department and how the documents are to be signed. Authorizes a person to sign as an attorney-in-fact.

Sec. 10.50.855 establishes a procedure for obtaining a court order to direct the department to file certain documents.

Sec. 10.50.860 directs the department to charge fees for filing and other services it provides under the chapter.

Sec. 10.50.870 requires a company, unless otherwise provided in writing in an operating agreement, to maintain certain described records at its principal place of business.

Sec. 10.50.875 authorizes a company member to inspect and copy the company's records under certain conditions.

Sec. 10.50.880 requires certain persons to disclose to a member under certain circumstances true and full information of all matters that affect the members of a company.

Senator Tim Kelly
March 22, 1994
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Sec. 10.50.890 states that a company's failure to maintain a required record or information does not make a member or manager liable for the company's obligations.

Sec. 10.50.900 authorizes the department to adopt regulations to implement the chapter, in addition to any regulations the department is required to adopt under this chapter.

Sec. 10.50.910 authorizes a company organized and existing under this chapter to conduct its affairs and exercise the powers granted by this chapter in another jurisdiction, subject to the laws of that jurisdiction.

Sec. 10.50.920 declares the chapter's support of the principle of freedom of contract and enforceability of operating agreements. States that the rule that statutes in derogation of the common law are to be strictly construed does not apply to the chapter.

Sec. 10.50.990 defines terms for the new chapter.

Sec. 10.50.995 gives the new chapter a short title.

Section 2. Amends the for-profit corporations code to prevent that code from prohibiting a limited liability company from using "limited" in its name.

Section 3. Describes how a section of the new chapter amends the Alaska Rules of Civil Procedure.

Section 4. Makes the Act effective January 1, 1995.

If I may be of further assistance, please advise.

TLB:lmb
94-096.lmb

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HEADLINE: TAXES;
The Many Advantages Of a Hybrid Company

BYLINE: By Jan M. Rosen

BODY

NEW YORK and New Jersey are expected to enact legislation soon allowing privately owned businesses and partnerships to organize as limited liability companies, which combine the tax advantages of a partnership with the legal protection of incorporation.

California and a dozen other states are considering similar proposals, and 31 states already recognize limited liability companies -- so named because liability for such things as legal judgments against a company or bankruptcy are limited to the entity's assets like a corporation. These businesses do not put their owners' personal assets at risk beyond their original investment.

"It's the wave of the future; it provides more flexibility with protection from liability," said Assemblywoman Harriet Derman, Republican of Metuchen, who is sponsoring the measure in New Jersey and expects passage this month.

Accounting firms, for example, are eager to avoid a repeat of "the fiasco when Laventhol & Horwath went under," and partners were personally liable for millions of dollars owed by the partnership, she said. That bankruptcy, which led to a snarl of litigation, caused some managers of other firms to voice doubts about accepting partnerships, if offered.

Kenneth J. Norcross, a partner in Pitney, Hardin, Kipp & Szuch in Morristown, N.J., said that limited liability companies could be useful for "everything from new ventures at A.T. & T. down to the corner deli."

With partnerships, income and losses flow directly to the partners, avoiding corporate taxation, but partners' personal assets can be at risk for their firm's liabilities.

To protect themselves from liability, business owners can incorporate. But they will face Federal corporate taxation unless the business meets the rigorous requirements for an S corporation: no more than 35 partners, no foreign partners and only one class of stock.

Family businesses often want two classes of stock, voting shares for the family members active in the business and nonvoting for those who are not. Thus, they are precluded from a S corporation, but they could set up a limited liability company.



Most existing corporations are not likely to want to convert, Mr. Norcross said, because they would face "an exit tax" for dissolving their current incorporation.

He predicts, however, that when the legislation passes in New York, New Jersey and California -- all important states for business -- there will be a rush to adopt the new form, which is already permitted in other big business states, including Illinois, Texas, Florida and Delaware.

Brian L. Schorr, a partner in Paul, Weiss, Rifkind, Wharton & Garrison, and co-chairman of a drafting committee for the measure pending in Albany, said, "I think it has broad application in real estate, joint ventures, theatrical investments, high technology and venture capital," as well as oil and gas, replacing both actively managed partnerships and passive investment partnerships. However, attention should be given the state tax treatment of limited liability companies, Mr. Schorr said.

The measures pending in New York and New Jersey, like the one recently adopted in Delaware, are flexible, allowing businesses to tailor their limited liability companies for their own purposes, Mr. Schorr pointed out. But to qualify for the same tax breaks as partnerships, he cautioned, the limited liability companies must comply with Internal Revenue Service requirements.

SUBJECT: CORPORATIONS; PARTNERSHIPS

NAME: ROSEN, JAN M

GEOGRAPHIC: NEW YORK STATE; NEW JERSEY

ENTERPRISE

Partnership, Corporation Aren't Only Ways to Start Out

Forming as a Limited Liability Company Offers Best of Both Worlds

By JEFFREY A. TANNENBAUM

Staff Reporter of THE WALL STREET JOURNAL
 Robert H. Kane's start-up enterprise is a mouthful: Octagon Communications Limited Liability Co.

The name doesn't exactly have a ring to it. It's rather awkward on stationery and business cards. It even fails to convey the company's intended business: investments in rural cellular-telephone companies.

But loud and clear, the name conveys something else: a new form of ownership that Mr. Kane and his seven partners expect will serve them well. Their enterprise—to be based in Denver—is neither a traditional partnership nor a traditional corporation. Rather, under Colorado law, it is a "limited liability company," or LLC. **Growing Interest**

Mr. Kane and his partners expect to enjoy the best of both worlds: the tax advantages of a partnership and the legal safeguards of a corporation. Yet they face none of the drawbacks associated with forming a so-called subchapter-S corporation, which also is taxed much like a partnership. For example, S corporations can't have corporate shareholders, but LLCs can. "If some corporation ever wants to offer me millions of dollars for my interest, I'll be able to sell it," Mr. Kane says.

Not yet worth millions, Octagon doesn't even have an office. But it is in the forefront of a movement toward the LLC as a form of ownership for small U.S. businesses and joint ventures. "Interest in the LLC concept is growing remarkably fast," says John R. Maxfield, a Denver lawyer who helped write the LLC law there.

Fast, anyway, by the slow-paced standards of lawmaking. In 1977, Wyoming became the first state to authorize LLCs. It took until 1988 for the Internal Revenue Service to confirm that the new Wyoming entities would be treated as partnerships for federal tax purposes.

To date, only five other states—Colorado, Florida, Kansas, Virginia and, most recently, Utah—have followed Wyoming in authorizing their own LLCs, according to an American Bar Association survey. But lawyers in many other states report growing interest because of the IRS ruling. Two ABA panels are studying the topic, as is the National Conference of Commissioners on Uniform State Laws, a group allied with the ABA. Meantime, moves are afoot to introduce LLC statutes in Arizona, Illinois, Maryland, Michigan, Nevada, Ohio, Oklahoma and Texas, the ABA survey found.

"I'm stunned by the amount of excitement generated by these entities," says Barbara C. Spudis, a Chicago attorney and the head of one ABA panel on LLCs. **Flexibility of a Partnership**

One appeal of LLCs is that, as with partnerships, any income flows through untaxed to the individual owners. Such owners don't avoid personal taxes, but they do avoid corporate taxes. Regular corporations face higher maximum taxes in the first place. And if the corporations pay dividends, owners are taxed again.

Of course, S corporations avoid double taxation—but they don't enjoy all the advantages of partnerships when it comes to juggling income and deductions. For example, the 20% owner of an S corporation

normally must pay taxes on 20% of any income. By contrast, partnership members are free to divvy up any income and tax liability as they see fit. Thus, equal partners might change the allocations of profit or loss year to year to fit their individual tax needs. LLCs offer the same freedom.

With LLCs, as with regular corporations, only the company's assets, and not the owners' personal assets, are at risk in business-related lawsuits. In partnerships, so-called limited partners enjoy such protection, but general partners don't. And limited partners face restrictions on how active they can be in the business. LLCs are designed to protect all partners while imposing no limits on their activity.

Not surprisingly, lawyers in a few states say LLCs are an easy sell. Since Colorado's LLC statute went into effect in April 1990, 250 LLCs have been organized there, an official says. Forming an LLC usually costs \$1,000 to \$5,000 in attorney and filing fees, depending on complexity, says Mr. Maxfield, the Denver lawyer.

But some state programs have drawbacks. Florida LLCs are exempt from federal corporate taxes but subject to the state's 5.5% corporate-income tax. Since Florida has no personal income tax affecting partnership income, "that 5.5% is enough to scare people off," says Jose M. Sariego, a Miami lawyer.

Moreover, the IRS has yet to give its imprimatur to any state LLC program except Wyoming's, though a few LLCs elsewhere have gotten favorable private-letter rulings. And lawyers say it's unclear how

enterprises treated as LLCs in their home states will be treated in states without LLC laws. Of the states without LLCs, Indiana alone explicitly recognizes LLCs organized elsewhere. "There has been no litigation on LLCs," says Robert R. Keatinge, a Colorado lawyer who heads the other ABA panel on LLCs. "And nobody wants to be the test case."

Benefit for Foreigners

Still, proponents say the LLC raises little risk for enterprises operating only in their home state or outside the U.S. And it's ideal for foreign investors—normally barred from S corporations.

LLCs don't limit the number or type of owners, as S corporations do, except for a two-owner minimum. But because of other restrictions, only closely held enterprises are suited to be LLCs. For example, if any owner leaves, the others must all formally agree to keep the enterprise going. "If you have 200 members, it's hard to get everybody to sign off on anything," Mr. Keatinge says.

But even closely held companies face uncertainties on a number of technical and procedural issues, such as whether the conversion of a partnership into an LLC amounts to a "termination" under tax law, which might increase tax liability. IRS rulings are still awaited. In the meantime, warns Ms. Spudis, the Chicago lawyer, many LLC investors are entering uncharted territory.

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Limited Liability Companies:

Gaining Momentum

By Thomas Earl Geu

The limited liability company (LLC), a unique and relatively new form of unincorporated business organization, is available by statute in 24 states and is being considered to some extent in almost every other jurisdiction. An LLC is a hybrid form of business created by combining the organizational and tax attributes of partnerships and corporations in a unique mix.

In many respects the LLC resembles its organizational cousin, the limited partnership, because it may qualify for partnership "flow through" federal income taxation while retaining limited liability for its members. Unlike a limited partnership, however, an LLC is not required to have a general partner with "unlimited" liability. In that regard the LLC more closely resembles the S corporation, which also approximates the "flow through" income taxation. Conceptually, therefore, the LLC may be analogized under existing law to a combination entity consisting of a limited partnership with an S corporation general partner. The LLC, however, carries much less tax and organizational baggage and complexity than a combination entity. In short, the LLC seems to be an efficient and flexible form of business that allows its members both limited liability and partnership federal income tax treatment.

Origins: The Limitada Model

LLCs are also similar, and owe their origin, to other types of recognized business organizations. For example, the legislative history of the seminal 1977 Wyoming LLC act expressly compared the LLC to the partnership association adopted in Pennsylvania in 1874, in Michigan in 1877 and in several other states. The LLC is also similar to "limitada," a Latin American business form that in turn is similar to the German GmbH.

Partnership associations largely became extinct as viable business entities because they generally placed a cap on the maximum number of members; suffered from the lack of widespread availability of enabling or registration provisions to facilitate interstate business; and, after the advent of the federal income tax, suffered from uncertain tax treatment.

The limitada, by contrast, was viable in foreign jurisdictions when Wyoming adopted its LLC act in 1977; and its viability continues today. The attributes of the limitada generally include management by an "administrator"; limited liability; and continuous life for at least 20 years without limitation by death, separation or dissociation of its members.

The limitada was, in fact, the genesis for the original Wyoming legislation, which was prompted by the request of an oil company to make

the benefits of the limitada available in this country. The limitada was also important in Florida's enactment of the second LLC act. The Florida legislative committee examining the act heard testimony that the LLC would encourage international investment from Central and South America by giving investors from that region a familiar investment vehicle in the United States. Thus the LLC, at least in a sense, evolved from the old partnership association in the United States, and its development was encouraged by the success of limitadas and similar organizations in the western hemisphere and in other civil law nations such as France, Germany, Greece and Saudi Arabia.

Neither Wyoming nor Florida LLCs were immediately popular with business planners. Only two Florida LLCs were formed in the first year after enactment of enabling legislation. Wyoming LLCs formed at an average rate of only three a year between 1978 and 1988. In 1988, however, the IRS issued Rev. Rul. 88-76, which classified a Wyoming LLC as a partnership for federal tax purposes. Since the issuance of Rev. Rul. 88-76, neither the IRS nor state legislatures have looked back. Two states adopted LLC acts in 1990, four in 1991, 10 in 1992, and legislation has been introduced in more than 20 states in 1993. The increase in the number of states

"Thus the LLC, at least in a sense, evolved from the old partnership association in the United States, and its development was encouraged by the success of limitadas and similar organizations in the western hemisphere and in other civil law nations such as France, Germany, Greece and Saudi Arabia."

adopting LLC legislation led the National Conference of Commissioners on Uniform State Laws (NCCUSL) to appoint a committee to draft a uniform LLC law, which could be approved as early as August 1994.

Federal Income Tax Classification

One way to understand the LLC is to look at the criteria that distinguish an organization taxed as a partnership from an organization taxed as a corporation (an "association" in tax classification parlance). In addition to an aid in understanding the LLC, tax classification is a critical factor in entity choice.

The primary source for determining whether a business organization will be taxed as a partnership or a corporation is Treas. Reg. § 301.7701, which lists six basic characteristics usually found in corporations: (1) associates (members), (2) an objective to carry on business and to divide the gains therefrom, (3) continuity of life, (4) centralized management, (5) liability for debts limited to corporate property and (6) free transferability of interests. The first two "major characteristics" are common to both partnerships and corporations and are ignored in distinguishing the two entities.

To be classified as a corporation for federal income tax purposes, an organization must have at least three of the last four characteristics. To be classified as a partnership, therefore,

the LLC must *fail* at least two of the four tests for corporations.

- **Continuity of life.** An organization lacks continuity of life, according to Treas. Reg. § 301.7701-2(b), if the death, insanity, retirement, resignation or expulsion of any member of a general partnership, or of the general partner of a limited partnership, causes a dissolution. The fact that the remaining members may agree to continue the partnership does not necessarily mean that the organization possesses continuity of life. The continuity of life standard was applied to a Wyoming LLC in Rev. Rul. 88-76 and the IRS ruled that the LLC lacked continuity of life.

The Wyoming LLC statute provided that the LLC dissolved at the death, retirement, resignation, bankruptcy, expulsion, dissolution or any other event terminating a member's membership unless *all* remaining members consented to continue the business under a right to do so stated in the organizational documents. Newly proposed tax regulations, however, would allow a majority (rather than all) of the remaining general or limited partners in a limited partnership to continue business after a dissolution event involving a general partner without that organization being deemed to have continuity of life. Presumably the same rule would apply to an LLC classified as a partnership for tax purposes.

- **Free transferability of interests.** Federal regulations provide that free transferability of interests exists if

substantially all of the complete interests in the partnership, including governance and economic rights, can be transferred "without the consent of other members." The regulatory language does not require all other members to consent to the transfer. As a result the IRS informally has ruled in PLR 9210019 that a Texas LLC requiring only the majority vote of the other members to transfer a "complete interest" lacked free transferability.

- **Centralized management.** Centralized management exists if a group that does not include all members has the exclusive authority to make management decisions on behalf of all members. The Wyoming LLC in Rev. Rul. 88-76 vested management in three of 25 members. Therefore the IRS ruled that the LLC had centralized management.

Recent LLC rulings help to define the parameters of centralized management. In Rev. Rul. 93-6 (Colorado), the IRS ruled that centralized management existed in a five member LLC, where all five members were elected managers. The IRS reasoned that the act vested management authority in managers rather than members and, thus, that membership alone did not permit management authority. Therefore, the five "managers" constituted centralized management even though the "managers" were also the only members of the LLC. Further, in Rev. Rul. 93-5 (Virginia) the IRS stated that centralized management could result from the use of various techniques

that concentrate power in fewer than all members. The ruling identified the use of proxies as among the several techniques that can result in centralized management.

• **Limited liability.** Almost by definition, and in almost all cases by express design, an LLC will possess limited liability. In most cases limited liability is one of the reasons for organizing an entity as a limited liability company. The regulations state that an organization possesses limited liability if no member is personally liable for debts or claims against the LLC.

Based on these four "major characteristics," it is relatively easy to obtain partnership classification of an LLC for federal income tax purposes. The importance of the tax factors to the LLC form of business has led to a variety of approaches to drafting statutes. These approaches are usually labeled either "bulletproof" or "flexible." Bulletproof statutes *mandate* failure of at least two of the four major corporate tax attributes, most commonly continuity of life and free transferability.

Flexible statutes, by contrast, allow the members to pick and choose which tax classification characteristics they want the LLC to fail. Thus, LLCs organized in compliance with flexible statutes grant the members discretion in structuring the LLC. LLCs organized under flexible statutes, however, will not "automatically" meet the partnership classification requirements. Nonetheless, even flexible statutes provide "default" provisions that will govern in the absence of agreement to the contrary. These default provisions *usually* result in partnership classification. Obviously, planners in states that have flexible statutes must be very careful to structure the LLC so that it qualifies as a partnership for federal income tax purposes if such treatment is important to the members of the LLC.

Partnership Taxation Advantages

Although a comparison of S corporation taxation and partnership taxation is beyond the scope of this article,

a basic understanding of a few of the tax differences is necessary to understand when to use an LLC instead of an S corporation. Two of the big advantages of partnership taxation when compared to S corporations are eligibility and special allocations.

The S corporation eligibility requirements are very specific and severely limit the businesses that may avail themselves of S status. The most important of these eligibility requirements are the requirements that only domestic corporations (those formed in the United States) qualify for S status, that S corporations have no more than 35 shareholders, that each shareholder be an individual or a limited type of trust (a qualifying trust), that none of the shareholders is a nonresident alien, that the corporation have only one class of stock, and that the corporation timely elect and file to be taxed as an S corporation.

Although perfection of the election might seem perfunctory, complications may arise because the statute governs both when and by whom the election must be made. S status terminates whenever any of the eligibility requirements cease to be met. This could occur, for example, when the 35 member limitation bumps into a second or third generation estate plan, when a decedent fails to craft a trust as a qualifying trust or when it is necessary to seek more equity capital for a growing concern. Limitations exist on the percentage amount of passive revenue that may be received by an S corporation before risking termination. Limited liability companies do not suffer from these limitations when they are taxed as partnerships.

Another major advantage of partnership taxation, compared to S corporation taxation, is that income and loss may be specially allocated to different partners (within statutory parameters). S corporation shareholders must receive their pro rata share of the corporation's income and loss. The availability of the special allocation is probably most important in capital intensive organizations, including real estate transactions,

where pass-through loss treatment may be an important factor in the investment decision.

Other differences between the federal income taxation of S corporations and partnerships include different tax treatment on liquidation and basis treatment of a member's or shareholder's debt.

Unfortunately, tax questions arise when an LLC is classified as a partnership, in part because several tax issues turn on the distinction between general and limited partners. The distinction between general and limited partners creates interpretive questions because an LLC member is neither a limited nor a general partner. There are also unresolved tax issues concerning accounting method, passive loss limitations, at-risk limitations, the unified audit rules, and self-employment taxes. Even so, the combination of partnership tax treatment and organizational flexibility are generally viewed as advantages of the LLC compared to the S corporation, and in many instances these more sophisticated tax issues will not be determinative of entity choice.

Estate and gift tax valuation issues also may be important in the selection of an entity for a closely held (especially family) business. The troublesome valuation issues that arise in the use of other organizations also exist for LLC use. One of the valuation pressure points, for example, is IRC § 2704(b), a successor to the old anti-freeze § 2036(c). Section 2704(b) imposes valuation limitations in the family business setting when there are greater liquidation restrictions by agreement than according to state law. This places a premium on the careful crafting of the LLC. Further, administrative rulings like Rev. Rul. 93-12, which deals with minority discount, would apply by analogy to the LLC.

Finally, state tax treatment of LLCs may be important in entity selection. Indeed, state revenue loss projections because of LLCs have been hotly contested in many state legislatures. Revenue projections may vary widely, depending on the assumptions used

"One problem with the use of LLCs is their 'extra-territorial' use in multi-state business. Fortunately, this problem is becoming less important as more states adopt LLC legislation that provides for registration of foreign LLCs."

concerning which entities will choose or convert to the LLC form. A lack of uniformity characterizes the state tax treatment of LLCs. Several states simply mirror the federal income tax scheme and classify LLCs as partnerships for state tax purposes. Delaware, Minnesota and other states require LLCs to pay a minimum annual filing fee or tax. Florida and Texas tax LLCs essentially as corporations under their income or business franchise taxes. In other states, like Illinois, the taxing structure is more complicated and somewhat ambiguous.

Multi-State LLC Operations

One problem with the use of LLCs is their "extra-territorial" use in multi-state business. Fortunately, this problem is becoming less important as more states adopt LLC legislation that provides for registration of foreign LLCs. When an LLC does business in a state that does not statutorily recognize LLCs, a risk exists that the forum (non-adopting) state will not recognize the limited liability of the LLC granted by the adopting state.

"Comity," as a general matter, requires the forum state to recognize and admit the operation of the laws of the domiciliary state (the state of organization) when those laws are not contrary to its own public policy. Matters of comity, therefore, often involve difficult policy issues unique to the forum state. Two lines of reasoning exist to resolve the problem:

- The forum state may recognize the limited liability of the LLC because it already recognizes by statute the limited liability of corporations and limited partnerships.

- The forum state may reason that the public policy of the state is to grant limited liability only by express statute and, in the absence of statute, that the forum state does not recognize the limited liability of LLCs. Ultimate resolution of this "comity" issue also may involve general conflicts of laws, full faith and credit due process and the commerce clause.

State Operating Provisions and Choice of Entity

The various state LLC acts address the same organizational issues addressed by statutes governing other business organizations. LLC statutes, for example, address formation, contributions, filing, agency powers of members, governance rights of members, liability of members, organizational record and information requirements, sharing and allocation of profits and losses, the identification of dissolution events, effect of occurrence of dissolution events, and rights on liquidation.

Because of the present lack of uniformity in state LLC acts, it is not possible to state general principles that apply in every state. However, a common statutory LLC pattern does exist:

1. Almost all state acts provide for two organizational documents, usually identified as the "articles of organization" and the "operating

agreement." The authoritative weight given these documents is consistent with flexibility, one of the hallmarks of the LLC. As a result, many matters may be agreed on by the members. A trend may be developing that the operating agreement serves as the basic organizational document (like the limited partnership agreement) and the articles serve only a notice function (like the certificate of limited partnership). Several states more closely follow the corporate model, however, under which the articles play a far greater role in the hierarchy of authority than that just described.

2. Except in a few states, governance and agency authority is vested in the members unless otherwise provided in the organizational documents. The documents usually may vest governance in either "managers" or in "members."

3. The statutes provide for dissolution on the happening of specified events and at the end of a term of years (usually 30). Whether the parties may continue the business after dissolution or may avoid dissolution altogether is uniquely a matter of the particular state law and also has federal income tax implications.

4. Upon dissolution or withdrawal of a member, the statutes provide for a "buy-out" or "put" of that membership interest, much like that afforded by the Revised Uniform Limited Partnership Act.

5. States have treated voting and profit sharing either on the basis of membership (one person/one vote, per capita) or on the ratio of the

member's original contribution or capital account to the total original contribution or the total capital accounts of all members (pro rata). Again, the voting and profit sharing arrangements may vary in the LLC documents.

6. One of the most important state law LLC attributes is the limited liability of members. Particularly in LLCs with a small membership, however, there are several ways this advantage may be nullified in the normal course of business, much as limited liability is subject to nullification in the close corporation context. Tort liability, for example, will accrue to any individual member who has personal responsibility in the commission of the tort. Contract liability for the debts of the organization is often dealt with contractually by using guarantees and similar arrangements. "Piercing the veil" issues, although generally an open question for LLCs, also may be addressed by courts. Finally, creditors and others might attempt to assert the law of agency in an attempt to find personal liability.

Rules of thumb for LLC use are difficult to state because of the flexible LLC structure. Nonetheless, commentators have suggested the LLC be used for real estate investment, receivables financing, corporate joint ventures and entrepreneurial and family businesses. Most states also allow professionals to organize as, and use, LLCs subject to the state's professional corporation act.

Foreign investors may favor LLCs over unfamiliar forms of business such as the corporation. The comfort level of foreign investors may play an increasingly important role, given the current status of the North American Free Trade Treaty. Finally, many knowledgeable lawyers believe that the LLC choice is most appropriate to organizations that otherwise would choose a different flow-through tax entity such as a partnership, limited partnership or S corporation.

Conclusion

The limited liability company is an important organizational

development for business planners. It offers many advantages over other business organizations. It is, however, only an additional arrow in the business planner's quiver of available organizations and clearly not a panacea. Indeed, the demise of other business forms due to the LLC is probably greatly exaggerated, because most LLCs will suffer the disadvantages of lack of free transferability of interests and lack of perpetual life. As a result, many, perhaps most, entities choosing to operate as C corporations before the advent of LLCs probably will continue to choose C corporation status. Moreover, federal income tax classification as a partnership brings the LLC under the same package of "tax shelter" rules designed to combat abusive limited partnerships. These rules include, for example, the publicly traded limited partnership rules, the passive activity loss limitations and the at-risk rules.

The primary advantage of the LLC may be its efficiency in accomplishing business planning goals that already can be accomplished by using a combination of other organizations.

Although the LLC form of business is an extremely important addition to the existing menu of business entities, the LLC is neither the first nor the last business form to evolve through time. LLC use must be matched carefully to client needs, just as the use of more familiar organizations must be matched to client needs.

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