

Chapter 9

Entity Conversions Involving Limited Liability Companies

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§ 9.1 INTRODUCTION

A. Reasons for Conversion From One Entity to Another

Shareholders of corporations, partners in partnerships, and members of limited liability companies (LLCs) often want to convert from one form of entity to another. Robert R. Keatinge, “Choice of Entity,” in *Advanced Business Planning*, MINN. STATE BAR ASSOCIATION, at 6 (Sept. 16, 2005). Traditionally, such conversions were accomplished through a series of contributions and distributions of property out of the old organization and into the new organization. *Id.* With the advent of the LLC and revision to partnership laws, statutes have been amended to permit direct merger or conversion of one organization into another. *Id.* Several private letter rulings have considered the effect of a conversion of a partnership or other form of organization into an LLC. *Id.* (citing I.R.S. Priv. Ltr. Ruls. 9010027 (conversion of a limited partnership into an LLC); 9010067 (conversion of corporation into an LLC), 9129019 (merger of four partnerships into an LLC); 9210019 (merger of a Texas limited partnership into a Texas LLC); 9226035 (conversion of a state A general partnership to a state B LLC)).

Perhaps the most significant development motivating conversions among entity types is the fairly recent and rapid development of the LLC entity form. Wyoming created the first LLC statute around 1977, but the LLC form did not become the “preferred” choice of entity until the IRS issued rulings in the late 1980s clarifying the partnership tax treatment afforded to an LLC and, finally, in 1995, when all 50 states had enacted some form of LLC governing statute. The IRS’ “check the box” regulations in 1997 made the LLC the predominant and most desirable entity form and, as a consequence, many existing entities sought to convert to this structure for its tax advantages and flexibility.

Another changing area of the law motivating entity conversions are the statutes governing partnerships, limited partnerships, and limited liability partnerships. For example, Minnesota became one of the first states in January 2005 to adopt the Uniform Limited Partnership Act 2001.

B. Types of Conversions

In general, entity conversions are accomplished through one of the following methods:

- conversions upon formation (such as the conversion of a sole proprietorship or de facto partnership to an LLC);
- conversions between entity types;
- mergers of different entity types; or
- a change of entity domicile.

§ 9.2 CONVERSIONS AND MERGERS INVOLVING LLCs

A. Advantages of an LLC

The LLC business form has become the preferred entity choice for a variety of businesses. An LLC has tax advantages as a pass-through entity. Furthermore, and most importantly, the LLC provides flexibility and contractual advantages not found in other entity forms. Joseph F. Schlueter, “An Analysis of the Changing Landscape Regarding the Tax Treatment of Options, Warrants, and Compensatory Interests for Partnerships and LLCs,” in *The Effective Use of LLCs*, MINN. STATE BAR ASSOCIATION, at 5 (Oct. 11, 2005). An LLC is the only formal entity structure that can be tailored and customized to specifically meet the unique needs of the participants, and also remains flexible enough

to accommodate future changes in those needs. *Id.* at 6. (As an example, an LLC may have multiple classes of membership interests and retains its pass-through taxation. *Id.* On the other hand, a corporation with more than one class of stock will be taxed as a subchapter C corporation. *Id.*)

B. Tax Paradigms: “Assets Over,” “Assets Up,” and “Interest Over” Forms

Most LLC statutes permit the merger of LLCs with other LLCs, and many permit merger of LLCs with other business forms. Keatinge, *supra*, at 6. While the tax consequences of such mergers will differ depending on whether the parties to the merger are all partnerships or some are corporations, there are three basic paradigms for the tax treatment of mergers: the “assets over,” “assets up,” and “interest over” forms.

1. “Assets Over” Form

Under the assets over form, the assets of a disappearing entity are contributed by the disappearing entity to the surviving entity (the first step) in exchange for interests in the surviving entity (the second step) followed by a liquidating distribution by the disappearing entity to its members of interests in the surviving organization (the third step). *Id.* at 7. Under this form of merger, a terminating partnership will not recognize gain or loss upon contribution of its property to the resulting partnership in exchange for interests in the resulting partnership. *Id.* at 8 (citing I.R.C. § 721).

The basis of the partners in the terminating partnership in their interests in the surviving partnership will be equal to their basis in their interests in the terminating partnership. The distribution of the interests in the surviving partnership to the partners of the terminating partnership will not trigger gain under IRC §§ 704(c)(1)(B) or 737.

Id. at 8–9 (citing I.R.C. § 722 & Treas. Reg. §§ 1.704-4(c)(4), 1.737-2(b)).

Partnership mergers under state law or in any form other than assets up, will be treated by default as an assets over merger. Keatinge, *supra*, at 12.

2. “Assets Up” Form

Under the assets up form of merger, the assets of the disappearing entity are distributed in liquidation to the members of the disappearing entity (step one), followed by a contribution by those members to the surviving entity (step two) in exchange for interests in the surviving entity (step three). Keatinge, *supra*, at 10. Under the assets-up form, partners could recognize gain when the terminating partnership distributes the assets to the partners. In contrast, under the assets over form, gain under Internal Revenue Code sections 704(c)(1)(B) and 737 is not triggered. Under the “assets up” form, because the adjusted basis of the assets contributed to the surviving partnership or LLC is determined first to be reference to Internal Revenue Code section 732, and then under Internal Revenue Code section 723, in certain circumstances, the adjusted basis of the assets contributed may not be the same as the adjusted basis of the assets in the terminating partnership. These circumstances occur if the partners’ aggregate adjusted basis of their interests in the terminating partnership does not equal the terminating partnership’s adjusted basis in its assets. Under the assets over form, because the resulting partnership’s adjusted basis in the assets it receives is determined solely under section 723, the adjusted basis of the assets in the resulting partnership is the same as the adjusted basis of the assets in the terminating partnership. Keatinge, *supra*, at 11.

3. “Interest Over” Form

Under the interest over form of merger a contribution of interests in the disappearing entity is made by the members of the disappearing entity (step one), in exchange for interests in the resulting entity (step two), followed by a liquidation of the disappearing entity (step three). *Id.* By default, interest over form partnership mergers are treated by the IRS as assets over mergers. RIN 1545-AX32, 2000-1 C.B. 455, 65 Fed. Reg 1572.

§ 9.3 CONVERSION OF A SOLE PROPRIETORSHIP INTO AN LLC

The most basic entity conversion involving an LLC occurs when a previously existing unincorporated business (i.e., a sole proprietorship) converts to an LLC.

Two developments made it possible to organize a sole proprietorship into an LLC (thereby obtaining the benefit of the LLC’s liability shield) while preserving the sole proprietorship tax status: (1) the Internal Revenue’s 1997 “check the box” regulations, and (2) the subsequent amendment of state LLC statutes permitting one member LLCs. Mark J. Silverman, Lisa M. Zarlenga, & Derek E. Cain, *Use of Limited Liability Companies in Corporate Transactions*, 449 PLI TAX 239, 292–93 (Oct.–Nov. 1999).

The “check the box” regulations, adopted in January 1997, specify that unless an election is made, a one-member LLC is disregarded for federal tax purposes. Treas. Reg. § 301.7701-3(b)(ii). If the one member is a corporation, the LLC is treated as a division of the corporation. *Id.* Prior to January 1, 1997, the entity classification regulations, referred to as the Kintner Regulations, applied a four-factor test for determining whether an entity was classified as a corporation or a partnership for federal tax purposes. A business entity was classified as a corporation if it had more than two of the following “corporate characteristics”: (1) limited liability, (2) centralization of management, (3) free transferability of interests, and (4) continuity of life. Treas. Reg. § 301.7701-2 (1996).

The conversion of a sole proprietorship into an LLC is a straightforward process. The owner transfers to the LLC all assets and liabilities of the sole proprietorship in exchange for 100 percent of the LLC membership interests. The sole proprietorship assets are transferred to the LLC pursuant to a bill of sale, and contracts, debts, and liabilities may be transferred to the LLC pursuant to an assignment and assumption agreement. See *infra*, Appendices A and B, respectively, for a sample Bill of Sale and Assignment and Assumption Agreement.

A conversion to an LLC benefits the former sole proprietorship with limited liability in lieu of personal liability to the sole proprietor.

§ 9.4 CONVERSION OF A PARTNERSHIP INTO AN LLC

A. Methods of Conversion

A partnership is converted into an LLC through one of the following methods:

1. The partners can contribute their partnership interests to an LLC in exchange for LLC membership interests. This exchange is followed by a liquidation of the partnership and a distribution of partnership assets (the LLC membership interests) to the partners. Finally, the partnership goes through the process of dissolution. This is the “interest over” form.
2. Alternatively, a partnership could transfer its assets and liabilities to an LLC in exchange for 100 percent of the LLC membership interests. This transfer is followed by a liquidating distribution of

the partnership's assets (the LLC membership interests) and liabilities to the partners resulting in dissolution of the partnership. This is the "assets over" form.

Under either method outlined above, the partnership is essentially the organizer of the LLC. MINN. STAT. § 322C.0201, SUBD. 1. The partnership will have to follow the ordinary LLC formation process, including filing articles of organization with the Secretary of State. *See* MINN. STAT. § 322C.0201.

B. Contributions

In general, conversion is treated as a tax-free contribution of property from the existing partnership to the newly-formed entity. Subject to any restrictions in the operating agreement (and only when authorized by the board of governors or pursuant to a member control agreement), an LLC may accept contributions, make contribution agreements, and make contribution allowance agreements. *See* MINN. STAT. § 322C.0110. Accordingly, a person or entity is permitted to make a contribution to an LLC in the following ways:

- by paying money or transferring the ownership of an interest in property to the LLC, or rendering services to or for the benefit of the LLC; or
- through a written obligation signed by the person or entity to pay money or transfer ownership of an interest in property to the LLC or to perform services to or for the benefit of the LLC.

However, no purported contribution is to be treated or considered a contribution, unless the contribution is accepted on behalf of the LLC in the manner prescribed in the operating agreement and the contribution and its value are both accurately reflected in the required records of the LLC.

C. Terms of Membership Interests

All membership interests of an LLC must be of one class and without series *unless* the operating agreement establishes more than one class or series within classes. By contrast, a corporation with multiple classes of stock requires the corporation to be taxed as a C corporation, carrying the income tax penalty of double taxation, while remaining nowhere near as flexible as an LLC in the ability to adopt future changes. *See* Schlueter, *supra*, at 6.

All membership interests must also be ordinary membership interests entitled to vote as provided by Minnesota law and have equal rights and preferences in all matters unless the operating agreement has fixed the relative rights and preferences of different classes and series. *See* MINN. STAT. § 322C.0110, SUBD. 1.

All membership interests must share profits and losses and be entitled to distributions.

D. Advantages of Conversion of a Partnership to an LLC

The primary advantages of conversion to an LLC are flow-through taxation and limited liability for LLC members. Conversion to an LLC does not produce taxable gain for a former partner, so long as his or her interests in the new LLC remain equivalent to his or her interests in the terminating partnership. *See* Rev. Rul. 95-37, 1995-17 I.R.B. 10.

E. Tax Treatment of the Conversion of a Partnership to an LLC

General and limited partnerships may convert without incurring termination as long as subsequent to the conversion, the former partnership's business continues and each partner's interests in the profits, losses, and capital of the new partnership remain the same. *See* Rev. Rul. 84-52, 1984-1 C.B. 157, at 158.

The partners are deemed to exchange their old interests for the new interests; *their outside bases will not change if their shares in the new partnership's liabilities remain the same*. Consistent with treating LLCs as partnerships for tax purposes, the [IRS] has ruled privately, that partnerships converting to LLCs do not terminate solely be reason of the conversion.

Keatinge, *supra*, at 5 (emphasis added) (citing Rev. Rul. 84-53, 1984-1 C.B. 159; Priv. Ltr. Ruls 9029019, 9119029 & 901002789).

In Revenue Ruling 95-37, the [IRS] ruled on a conversion of a general partnership into an LLC. The general partnership contributed all of its assets to the LLC in exchange for all the ownership interests in the LLC, with the LLCs assuming all of the obligations of the partnership. The partnership then dissolved, liquidated, and distributed membership interests to the partners in the same proportion as their interests in the partnership. *The ruling stated that the conversion of a general partnership to an LLC is analogous to the conversion of a general partnership interest to a limited partnership interests under Revenue Ruling 84-52*. It went on to hold that no termination would result under [Internal Revenue Code] section 708, that, except as provided in [Internal Revenue Code] section 752, no gain or loss would be recognized by members on the contribution, and that the resulting LLC may use the same employee identification number as the partners.

Keatinge, *supra*, at 14 (emphasis added) (citing Rev. Rul. 95-37, 1995-1 C.B. 130; Rev. Rul. 84-52, 1984-1 C.B. 157).

§ 9.5 CONVERSION OF A CORPORATION INTO AN LLC

A. General Requirements

A corporation may become a domestic LLC, and a domestic LLC may become a corporation, in each case pursuant to a plan of conversion. MINN. STAT. § 302A.682.

Pursuant to Minnesota Statutes section 302A.682, a plan of conversion must contain:

- (1) the name and form of the organization and the jurisdiction of the organization's governing statute before conversion;
- (2) the name and form of the organization and the jurisdiction of the organization's governing statute after conversion;
- (3) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and
- (4) the organizational documents of the converted organization as they are to be in effect upon completion of the conversion.

B. Board Approval

A resolution containing the plan of conversion must be approved by the affirmative vote of a majority of the directors at a meeting of the board of directors of the converting corporation. MINN. STAT. § 302A.684, SUBD. 2. The plan must then be submitted at a regular or a special meeting to the owners of the converting organization. *Id.*

Written notice must be given to every owner of the converting organization, whether or not entitled to vote at the meeting, not less than 14 days or more than 60 days before the meeting. The written notice must state that a purpose of the meeting is to consider the proposed plan of conversion. A copy or short description of the plan of conversion must be included in or enclosed with the notice.

C. Articles of Conversion

Upon receiving board approval for a plan of conversion, Minnesota law requires that articles of conversion be prepared. MINN. STAT. § 302A.686. The articles of conversion must contain:

- (i) the plan of conversion;
- (ii) a statement that the corporation is converting into another organization;
- (iii) the name and form of the converted organization and the jurisdiction of its governing statute;
- (iv) the time the conversion is effective under the governing statute of the converted organization;
- (v) a statement that the conversion was approved as required by this chapter;
- (vi) a statement that the conversion was approved as required by the governing statute of the converted organization; and
- (vii) if the converted organization is a foreign organization not authorized to transact business in this state, the street address of an office that the secretary of state may use for the purposes of [Minnesota Statutes] section 302A.691, subdivision 3

MINN. STAT. § 302A.686. The articles of conversion must be signed on behalf of the converting organization and filed with the Secretary of State.

Filing of the articles of conversion is also deemed to be a filing with the Secretary of State of the articles of incorporation or the articles of organization of the converted organization.

The Secretary of State then issues a certificate of conversion and a certificate of incorporation or a certificate of organization to the converted organization or its legal representative.

Provided in the eFormbook is Form 9-03, Sample Articles of Conversion: Corporation to LLC.

D. Effective Date of Conversion

Conversion is effective when the articles of conversion are filed with the Secretary of State or on a later date or at a later time specified in the articles of conversion.

E. Abandonment of Conversion Pursuant to Minnesota Law – MINN. STAT. § 302A.689

After a plan of conversion has been approved and before the articles of conversion are delivered to the Secretary of State, it may be abandoned (1) as provided in the plan, or (2) except as the plan prohibits.

If articles of conversion have been filed with the Secretary of State, but have not yet become effective, the converting organization can file articles of abandonment with the Secretary of State that contain:

1. the name of the converting organization;
2. the provision of this section under which the plan is abandoned; and
3. if the plan is abandoned by board resolution, the text of the resolution abandoning the plan.

F. Effect of Conversion

A converted organization is for all purposes the same organization as the converting organization when it was originally incorporated or organized.

A conversion becomes effective when:

1. If the converted organization is a corporation, the converted organization has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities, of a corporation.
2. If the converted organization is an LLC, the converted organization has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities, of an LLC.
3. All property owned by the converting organization remains vested in the converted organization.
4. All debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization.

Any action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred.

All rights, privileges, immunities, and powers of the converting organization remain vested in the converted organization.

G. Effect on Shareholders – MINN. STAT. § 302A.691

When a conversion becomes effective, each share or membership interest in the converting organization is deemed to be converted into shares or membership interests in the converted organization or, in whole or in part, into money or other property to be received under the plan by the shareholders or the members. This is subject to any dissenters' rights.

In general, the basic methods for converting a corporation into an LLC are:

1. The shareholders can contribute their shares of stock in the corporation in exchange for LLC membership interests, followed by a liquidating distribution of the corporation's assets into the LLC, *see* Priv. Ltr. Ruls. 9404021 & 9409016;

2. A corporation can contribute all of its assets and liabilities to an LLC in exchange for LLC membership interests, followed by a liquidating distribution of the LLC membership interests to the shareholders; or
3. The corporation can dissolve and liquidate by distributing all of its assets, liabilities, and business to the shareholders, followed by a contribution of the assets, liabilities, and business to an LLC in exchange for LLC membership interests. Any corporate conversion should be carefully analyzed because there could be taxable gain to the corporation and/or the shareholders.

H. Tax Treatment of the Conversion of a Corporation to an LLC

Since the Internal Revenue Code and corresponding Treasury Regulations generally do not provide for a tax-free reorganization of a corporation into an LLC, the conversion of an existing corporation to an LLC requires the liquidation of the corporation.

Due to the dual taxation of C corporations, conversion transactions can lead to a tax loss.

However, a conversion transaction might not generate a tax loss in the stock of an S corporation. Losses pass through to S corporation shareholders and reduce the tax basis of their stock, leaving less opportunity to recognize a loss on liquidation. Moreover, S corporations already pass through losses to their investors, so the LLC form would not add a benefit in that respect.

For federal tax purposes, neither the former corporation nor the resulting LLC recognize any gain from the contribution of corporation property to the LLC for purposes of conversion. As a result of the conversion, the former corporation takes a substituted basis in the interests of the new LLC, equivalent to its basis in its former assets, now contributed to the LLC. Shareholders of the former corporation recognize gain upon distribution of the LLC interests in complete liquidation, and have a basis of the fair market value of the new LLC's interests. *See* Priv. Ltr. Rul. 97011029.

[Private Letter Ruling] 9701029 describes in detail the tax consequences of the conversion of a corporation into an LLC. Under the private letter ruling, the merger of a corporation into an LLC is treated as a transfer by the corporation of its assets to [the] LLC in exchange for [the] LLC's assumption of the corporation's liabilities and the corporation's receipt of interests in the LLC, followed by a distribution of the LLC interests to the shareholders in a taxable liquidation of the corporation under [I.R.C.] § 331. Neither the corporation nor the LLC recognizes gain as a result of the contribution of the property to the LLC, and the corporation takes a substituted basis in the interest in the LLC equal to its basis in the assets contributed to the LLC. The corporation and the shareholders will recognize gain on the distribution of the LLC interests to the shareholders in complete liquidation. The shareholders will take a fair market value basis in the LLC interest. The distribution in liquidation will constitute a termination of the LLC under [I.R.C.] § 708(b)(1)(B) and will constitute a transfer within the meaning of [I.R.C.] § 743, and because the LLC had made an election under [I.R.C.] § 754, the LLC will adjust the basis of its assets under [I.R.C.] §§ 743 and 755 as a result of X's liquidation. The private letter ruling also discusses the consequences of the termination of the LLC for tax purposes under the former regulations under [I.R.C.] § 708.

Keatinge, *supra*, at 23 (citing Rev. Rul. 68-289, 1968-1 C.B. 314; Rev. Rul. 69-6, 1969-1 C.B. 104; Rev. Rul. 86-73, 1986-1 C.B. 282; I.R.C. §§ 721 & 722).

**PRACTICE TIP**

Another option is to maintain the existing corporation for established operations while transferring new business into an LLC. Although this method does not convert an existing corporation to an LLC, it avoids liquidation of the corporation.

Under either method of conversion, however, both the corporation and its shareholders could recognize gain with respect to appreciated assets distributed by the liquidated corporation. I.R.C. §§ 331 & 336. Although an existing corporation's shareholders' capital losses can be used to offset total recognized gain resulting from the liquidation of the corporation, the resulting tax consequences may still outweigh the advantages sought by conversion.

§ 9.6 CONVERSION OF AN LLC INTO A CORPORATION

In very limited circumstances, certain advantages may support the conversion of an LLC to a corporation.

The tax rates on taxpayers with “qualified production activities income” were further reduced in 2004. There is a deduction from taxable income (or, in the case of an individual, adjusted gross income) that is equal to a portion of the taxpayer’s “qualified production activities income.” For taxable years beginning after 2009, the deduction is equal to nine percent of the lesser of (1) the qualified production activities income of the taxpayer for the taxable year, or (2) taxable income (determined without regard to this provision) for the taxable year. For taxable years beginning in 2005 and 2006, the deduction is three percent of income and, for taxable years beginning in 2007, 2008, and 2009, the deduction is six percent of income. The deduction is limited to 50 percent of the W-2 wages paid by the taxpayer during the calendar year that ends in such taxable year. Thus, in taking advantage of the reduced rates, the amount of W-2 wages paid by a taxpayer is important. Keatinge, *supra*, at 2 (citing I.R.C. § 199).

Minnesota Statutes sections 322C.1008 through 322C.1010 set forth the procedures required to convert an LLC to a corporation; the procedure is the same as discussed *supra* in section 9.5 for conversion of a corporation to an LLC with the difference being that a corporation is the surviving entity. The tax consequences of such a conversion must be *carefully* analyzed.

Upon an LLC becoming a corporation, the treatment of change will turn on the method used to incorporate the LLC. Revenue Ruling 84-111 explains the concepts attributable to the incorporation of a partnership. Under Revenue Ruling 84-111, the form of the incorporation determines the tax consequences. There are three methods in which an LLC may be incorporated, in addition to incorporation by operation of law such as through statutory merger or conversion, an LLC may be incorporated by: (1) the contribution of assets by the LLC to the corporation followed by a distribution of the stock of the corporation in liquidation (although the term “assets over method” is not used in Revenue Ruling 84-111, the transaction in which the disappearing organization makes a contribution to the surviving entity followed by a distribution of the interests in the surviving entity in liquidation of the disappearing entity is described in the partnership merger regulations as the “assets over method”); (2) a distribution of the assets of the LLC in liquidation followed by a contribution of the assets to the corporation (the “assets up method” described in Revenue Ruling 84-111); or (3) the contribution of the interests in the LLC to the corporation in exchange for interests in the surviving organization, followed by the liquidation of the LLC (either in fact or constructively as a result of it having only one member). Keatinge, *supra*, at 24–25 (citing Rev. Rul. 84-111, 1984-2 C.B. 88).

When an LLC treated as a partnership for tax purposes merges with or converts into a corporation, there is a risk of recognition of gain if the LLC is subject to liabilities or if the members do not own 80 percent or more of the stock of the corporation after the merger or conversion. If the members do not own at least 80 percent of the stock, the gain deferral provisions of Internal Revenue Code section 351 will not apply and the members will recognize gain or loss measured by the difference between their basis in the assets contributed and the fair market value of the stock received. *Id.* at 25.

§ 9.7 MERGER OF CORPORATION INTO AN LLC

A. General Requirements

A Minnesota LLC can merge with another LLC or a corporation under Minnesota law. *See* MINN. STAT. §§ 322C.1001–322C.1015. A merger practically results in a conversion of the LLC to a corporation where the corporation is the surviving entity. Partnerships, on the other hand, cannot merge with LLCs or corporations under Minnesota law, although some states (Delaware, for example) permit LLC and partnership mergers.

A merger involving a Minnesota LLC requires a plan of merger that is approved by the governors and members, and filing of articles of merger with the Secretary of State. A plan of merger must be approved by each constituent organization. Under Chapter 322C, a plan of merger must be approved by all of the members of a constituent LLC. MINN. STAT. § 322C.1003.

A plan of merger must contain the following four required provisions:

1. the name of the LLC, the name(s) of each constituent organization involved, and the name of the surviving organization;
2. the terms and conditions of the merger;
3. the manner and basis for converting the ownership interests of the constituent organization into ownership interests of the surviving organization (or ownership interests of any other entity), and/or into cash or other property; and
4. any amendments to the articles of organization or articles of incorporation of the surviving organization.

After the plan of merger has been approved on behalf of each constituent organization in the merger, articles of merger must be signed on behalf of each constituent organization and filed with the Secretary of State, together with a \$60 filing fee. MINN. STAT. § 322C.1004, SUBDS. 1–4. The articles of merger must contain a copy of the plan of merger, and must state that the plan has been approved on behalf of each constituent organization.

B. Tax Treatment

[Private Letter Ruling] 9404021 considered a merger between an LLC and a corporation. In the ruling, a Louisiana corporation (P) had a wholly owned subsidiary (S). P formed another subsidiary (H) and P and H formed a Louisiana LLC which was equally owned by P and H. S was then merged with the LLC. The ruling held that the merger of S with and into the LLC would be treated as: (1) a transfer by S of its assets to the LLC in exchange for the LLC's assumption of S's liabilities and S's receipt of an increased interest in the items of income, gain, deduction, or loss of the LLC; followed by, (2) a distribution of S's interest in the LLC to P in

complete liquidation of S within the meaning of [I.R.C.] § 332. The initial transfer of S's assets to the LLC would be tax free under [I.R.C.] § 721 and the subsequent liquidation would be tax free under [I.R.C.] § 332. Thus, as a result of the fact that the assets and liabilities stayed within an affiliated group of corporations, the taxpayer was able to move assets from a corporation to a passthrough entity without the current recognition of gain. Transactions of this sort could be useful where licensing, nontax tax law, or state taxation would be more favorable if applied to an LLC than to a corporation.

Keatinge, *supra*, at 23–24 (citing Rev. Rul. 69-6, 1969-1 C.B. 104 and Priv. Ltr. Ruls. 9404021 & 9409016).

§ 9.8 MERGER OF AN LLC INTO A CORPORATION

A. Generally

Due to the fact that Minnesota law permits mergers of LLCs with other LLCs and corporations, a merger practically results in a conversion of the LLC to a corporation where the corporation is the surviving entity. Minnesota law permits the merger of a corporation with an LLC. MINN. STAT. § 302A.601, SUBD. 4. Therefore, a merger with an LLC may practically result in a conversion of the corporation to an LLC where the LLC is the surviving entity. Remember, a conversion of this sort will require careful tax analysis.

B. Tax Treatment

The tax treatment of the merger of an LLC into a corporation will vary depending on the form of merger; the form of incorporation of the LLC will determine the tax consequences of the merger. Rev. Rul. 84-111, 1984-2 C.B. 88.

§ 9.9 CONVERSION OF A LIMITED LIABILITY PARTNERSHIP INTO AN LLC

The conversion of a limited liability partnership (LLP) to an LLC proceeds in the same manner as the conversion of a general partnership to an LLC. One difference, however, is that the statement of qualification must be canceled in conjunction with the conversion. MINN. STAT. §§ 323A.1001(e) & 323A.0105(d).



COMMENT

The Uniform Partnership Act of 1994 (codified at Minnesota Statutes chapter 323A) includes an LLP within the definition of "partnership." MINN. STAT. § 323A.0101(8).

§ 9.10 CHANGE OF ENTITY DOMICILE

A. Purposes

In certain circumstances, the owners of an entity may desire to change the domicile of the entity, i.e., with regard to an LLC, the members may wish to change a Minnesota LLC to a Delaware LLC.

B. How Accomplished

An entity's domicile can be accomplished via (1) formation of an entity of the same name in the new state, coupled with (2) merger of the existing entity into the new entity.

**COMMENT**

The merger provisions in each state must be complied with to properly effect the change.