

Tax Policy Directive #2

May 1992

Purpose: Tax policy Directives are intended to provide the general public with information concerning the Department's official position in regard to a specific issue. These directives may be relied upon by taxpayers until superseded by another policy directive, a change in statute or regulation, or a court decision that would render the policy directive void.

Subject: Limited Liability Companies

References: IC 6-3-1-10; IC 6-3-1-19; 45 IAC 3.1-1-20; IRC Regulations 301.7701-2 through 301.7701-4; Rev. Rul. 88-76, I.R.B. 1988-38, September 2, 1988.

Introduction

The purpose of this directive is to advise the public whether the Indiana Department of Revenue will classify such organizations as a corporation or a partnership for state tax purposes.

Discussion

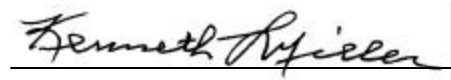
IC 6-3-1-19 provides that a "partnership" includes any unincorporated organization which is not a corporation within the meaning of IC 6-3-1. IC 6-3-1-10 provides, in part, that the term "corporation" includes all corporations and associations. 45 IAC 3.1-1-20 states: "The term 'corporation' is used in the Act in a general sense and includes any form of business association whose characteristics more nearly resemble those of a corporation than those of a trust or partnership...."

Additionally, the Internal Revenue Service has promulgated regulations that prescribe certain tests or standards to be applied in determining the classification of an organization for tax purposes (see sections 301.7701-2 through 301.7701-4). Pursuant to these regulations, the determination of whether an organization is to be treated as a partnership or a corporation for tax purposes depends on whether the organization possesses or lacks the four corporate characteristics of centralization of management, continuity of life, free transferability of interests and limited liability.

These regulations have been recently interpreted and applied by the Internal Revenue Service to the situation of a limited liability company (see Rev. Rul. 88-76, I.R.B. 1988-38, September 2, 1988). This ruling held that a limited liability company must possess at least three of the four corporate characteristics which are given equal weight, in order to be classified as a corporation for federal tax purposes. If the limited liability company possesses two or less of the four corporate characteristics, then it will be classified as a partnership for federal tax purposes.

Conclusion

Limited liability companies will be classified for Indiana income tax purposes in the same manner that they are classified for federal tax purposes.

A handwritten signature in cursive script, reading "Kenneth L. Miller", is written over a horizontal line. A vertical line extends upwards from the right end of the horizontal line.

Kenneth L. Miller
Commissioner