



Mesmer & Deleault, PLLC
41 Brook Street, Manchester, NH 03104

Seasons Greetings



“Tip of the Month”

LLC Asset Protection

The limited liability company (LLC) has an asset-protection feature that distinguishes it from the corporation. In a corporation, creditors can obtain judicial attachments or liens on the stock of corporate stockholders or on the assets of the corporation. Because the LLC is like a partnership, it does not have a stock or stockholders like a corporation.

Instead, the LLC has percentage interests or shares like pieces of a pie. Like partners, LLC members share the whole pie together. That means the creditors of an LLC member cannot get a judicial attachment or lien on that person’s share of the pie. All the creditor can get is a charging order on that LLC share interest.

A charging order is a court order that allows the creditor to take whatever income might be declared by the LLC as payable to the shareholder from LLC profits. If in their discretion, the other LLC members choose not to declare a distribution to members, the creditor will not actually get any money, but will get the IRS K-1 tax form.

The K-1 tax form is like a W-2 in that it tells the LLC shareholder how much taxable income was earned in the LLC. Whether or not the shareholder takes distribution of that income, the shareholder still has to pay the tax. That means the creditor who gets a charging order will have to pay the tax on money the creditor did not get. This is a disincentive to any creditor who might consider seeking an attachment of LLC assets.

Recently, a distinction was made between the single-member LLC and the multiple-member LLC. A creditor of a single-member LLC filed for a judicial attachment of LLC assets. The creditor argued that a mere charging order was not appropriate because the single-member LLC was not like a partnership. It was more like a sole proprietorship. The court agreed. The creditor was allowed to attach the assets of the LLC to cover the debt of the sole member.

As a result, it is highly recommended that anyone planning to form an LLC consider including at least one other member. That way, the LLC will have multiple members and will be more like a partnership. This should ensure the asset protection feature of the LLC, and should prevent creditors from getting attachments of the LLC assets.

Anyone who is now the sole member of a single-member LLC should consider adding another member for at least a small percentage interest in the LLC. This will confirm the partnership aspect and enhance asset protection.

If you have any questions about the LLC or asset protection, please give us a call at 668-1971 or contact us through the Internet at *Meslaw @ aol.com*. We’re here to help.

Happy Holidays!

Frank B. Mesmer, Jr., Esq.
Robert R. Deleault, Esq.

(603) 668-1971

Fax (603) 622-1445

Internet: Meslaw@aol.com

Web site: Meslaw@biz-patlaw.com