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Passthrough Entities

IRS Examining Whether Series LLCs Sub Accounts Are Separate Entities

The Internal Revenue Service is actively working on a series limited liability corporation project to determine whether sub accounts of the LLCs are separate entities for federal tax purposes, an IRS official said March 6.

Dianna Miosi, IRS Office of Chief Counsel, said that IRS has received numerous comments suggesting that the sub accounts be treated as separate entities. She was speaking at a panel discussion addressing recent developments in partnership taxation at the 33rd annual Federal Bar Association Tax Law Conference.

The panelists were discussing the "series LLC" or "protected cell company" that was created by Delaware in 1996 and adopted by six additional states. Delaware allows each series to have a separate business with separate members, separate property rights, separate profit and loss sharing from the properties, and limited debt enforceability.

Miosi said that the IRS has not decided on the type of guidance that should be issued on the topic.

Section 108 Issues

Steven Schneider, Goulston Storrs P.C., spoke about questions that have arisen with issues from the proposed partnership equity for debt regulations issued in October (REG-164370-05) (211 DTR G-1, 10/31/08) . These included whether the rules of Internal

Revenue Code Section 108(e)(8) would be coordinated with Section 704(c)(1)(C), since both generally involve the contribution of a built-in loss asset; whether the income should be treated as a Treasury Regulation Section 1.704-2(f)(6) first-tier item; and how the noncomp options rules on convertible debt should interact with the proposed rules, he said.

Robert Crnkovich, PricewaterhouseCoopers LLP, explained that because of the economy, debtors would like their debt “crammed down” or cancelled pursuant to recently enacted tax code Section 108(i). A discussion took place as to effect of the cancellation because of the limited window allowing for a deferral and the acceleration rules and types of events that would trigger the acceleration.

Curt Wilson, of the IRS Office of Chief Counsel, said that the IRS was still meeting with the Treasury Department on providing guidance for Internal Revenue Code Section 108(i) issues. Other items on the 2008-2009 IRS-Treasury Business Plan that should be out by the end of the plan include the Section 704(c) remedial final regulations; the Section 704(b) related partner substantiality proposed regulations; the Section 706 varying interest proposed regulations; and the Section 704/Section 465 deficit capital account restoration obligation and at-risk “Hubert” final regulations.

He said he would be surprised if the Section 721 partnership equity for services proposed regulations would be done this year. One other project that Wilson focused on was the Section 7701 extensions of time to file entity classification elections. Wilson said that the IRS spent over 9,000 hours last year dealing with the issue, and he said that IRS is looking at a truncated process to deal with the elections.

Other panelists on the partnership panel included Paul Kugler, KPMG LLP, Jonathan Cornwell, IRS Office of Chief Counsel, Steve Schmoll, IRS Office of Chief Counsel, and Monte Jackel, PricewaterhouseCoopers LLP.

Subchapter S Corporations Panel

A panel on significant developments of S corporations examined the final regulations (T.D. 9428) (202 DTR G-1, 10/20/08) that raised the threshold amount and altered the monitoring in open account debts.

Donna Young, IRS Office of Chief Counsel, said the government raised the threshold amount from $10,000 to $25,000 and eliminated the proposed daily “running balance” determination of the threshold amount as a compromise. Curt Wilson explained that IRS wanted to reach a balance and did not want to create a significant burden.

Sam Starr, PricewaterhouseCoopers LLP, discussed the proposed regulations (REG-102822-08) (151 DTR G-1, 8/6/08) for Subchapter S corporations that reduce tax attributes under tax code Section 108(b) in taxable years in which they also exclude discharge of indebtedness income from gross income under Section 108(a).

Laura Fields, IRS Office of Chief Counsel, said that IRS was seriously looking at the comments, including whether prior Subchapter C corporation losses can be used. She said that another commenter suggested that the IRS have penalties for shareholders who do not comply by not giving amount information or by giving incorrect information to the IRS.

Other panelists on the Subchapter S panel included Paul Kugler, Curt Wilson, and Laura Howell-Smith, Deloitte Tax LLP.

By Robert T. Zung