



SELMAN MUNSON & LERNER

Actions You Can Take Today to Position Your Business for Upcoming Tax Changes

If you have significant unrecognized capital gains or are considering a fundamental corporate transaction in the near-to-mid-term horizon, it may be worthwhile to consider accelerating your transaction into 2016, or consider other preemptive transactions to soften or avoid the blow of higher rates that may be coming. We have all seen articles about the tax law changes ahead, some with a January 1, 2017 effective date. Here are some examples of possible 2016 strategies:

S Corp Conversion Strategy to Accelerate Gain into 2016

An S corporation is planning to sell in 2017, but prefers a 2016 tax treatment. The S corporation shareholders could convert the S corporation to a limited liability company before year-end 2016. The conversion causes a deemed taxable liquidation of the S corporation. The S corporation recognizes the gain or loss as if it had sold its assets at 2016 tax rates.

If the shareholders later determine that they don't want the gain on the S corporation's assets recognized in 2016, they can reverse the tax effects of the conversion by electing to classify the LLC as a corporation and electing S corporation status for the LLC. The election must be filed no later than two months and fifteen days after the conversion (e.g. March 15, 2017). The effect of this later election would be to treat the LLC as a continuation of the S corporation for tax purposes, so there would be no tax effect to the conversion from a corporation to an LLC.

Convert Your LP to an LLC to Simplify Tax and Governance Issues

As you know, limited partnerships provide pass through tax treatment so that no federal is imposed on a partnership's earnings at the entity level. The LLC form provides the same pass-through treatment. Limited partnerships, however, do not provide the same level of liability protection as an LLC. A limited partner who participates in the management of a limited partnership may be classified as a general partner and thus risk exposure to unlimited liability. In contrast, an LLC provides limited liability protection for all of its owners, whatever their level of management participation. Moreover, a limited partnership, generally, must have at least one general partner who is personally liable for the debts of the entity. There is no such requirement for an LLC. In most cases the general partner of a limited partnership will be another entity. With an LLC as the operating entity, instead of an LP, there is no need for an additional general partner, thus simplifying the administration (and reducing the cost) of your entity maintenance.

If your company is considering a similar conversion, or you have other corporate transactions on the horizon, please contact us.

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