

Verne, B. Michael

From: [Redacted]  
Sent: Sunday, April 04, 2004 8:25 AM  
To: Verne, B. Michael  
Subject: LLC Control

Mike, I have an LLC that is being formed with three owners, holding the following LLC interests.

- A - 49.5%
- B - 46.5%
- C - 4%.

Each of A, B and C are contributing some contracts into the LLC. The profits of the LLC will be allocated with the contributor of a specific contract getting 75% of the profits of that contract. The remaining 25% profit from each contract goes into the general capital account, and then gets distributed in proportion to the LLC interest holdings set out above. It is anticipated that under this formula, A will get slightly less than 50% of the total profits of the LLC in the first 18 months, which is the best available information. B and C would take smaller percentages. It is also possible for additional contracts to be added at a later date, although there are none planned at this time. In addition, the contributed contracts have different terms and renewals, so the "book" of contracts in the LLC may change over time, and at some point either A or B might obtain the right to 50% or more of the profits, but that is far from certain and will depend on the contract performance and whether the contracts are renewed, dropped, new ones are added, etc. . . . Given that scenario, I think that we don't have a controlling person from the "percentage of profits" test.

As to dissolution, if the LLC is dissolved, the contract contributor will take back the contract (and related assets). Any other assets (including new contracts obtained by the LLC -- not contributed by A, B or C) will be distributed in proportion to the LLC interest holdings set forth above. At the instant of formation, we can assume that if there were a windup at that time, A might have the right to 50% or more of the assets on dissolution (A and B are contributing most of the assets, and C gets its share mainly because of "sweat equity" it will need to devote through the life of the venture). However, as the venture continues over time, we don't know if anyone will have the right to 50% or more of the assets on dissolution. That will depend on whether various contracts contributed by interest holders are still "in the venture" at that time, have expired, etc. . . . In short, at any future time it could be A who gets 50%, B who gets 50%, or nobody who gets 50% on dissolution.

In this situation, I think I can take the approach that the LLC is not controlled by anyone, so no filing is required for its formation. Please let me know (email or phone, [Redacted]) if you think I've missed anything with this analysis, or if you have questions.

Thanks for your help.

Jon

[Redacted]  
Washington  
ph [Redacted]

Agree -  
B. Michael  
4/5/04