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Lower LLC filing fees opens up a number of business opportunities

As 2017 drew to a close, the changes to federal tax code took over news headlines and many missed a material change to Illinois filing fees when Gov. Bruce Rauner signed SB 867 into law. The bill slashed the filing fees charged by the state for limited liability companies or LLCs.

The new law will benefit businesses of all sizes looking to incorporate in Illinois and provide cost savings for existing Illinois LLCs.

Historically, individuals have turned to S corporations as a quick fix to form a new entity due to the lower filing fees for an S corporation compared to an LLC. With the passage of this legislation, Illinois entrepreneurs and small-business owners now have the stronger asset protection mechanism and other benefits of an LLC available at a lower cost.

Slashing fees

The LLC fees in Illinois were previously among the highest in the nation and have now been reduced to levels in line with many "business-friendly" states. For example, the fees to file articles of organization for a new LLC were \$500 and have been reduced to \$150 under the new law. And the annual report filing fees were also reduced from \$250 to \$75.

Other LLC filing fee reductions under Senate Bill 867 include the following:

Articles of organization, was \$500, now \$150.

Application for admission, was \$500, now \$150.

Restated articles of organization, was \$500, now \$150.

Articles of organization-series, was \$750, now \$400.

Application for admission-series, was \$750, now \$400.

Articles of amendment, was \$150, now \$50.

Amended application for admission, was \$150, now \$50.

Application for withdrawal — domestic, was \$25, now \$5.

Name reservation, was \$300, now \$25.

Cancel name reservation, was \$100, now \$5.

Transfer name reservation, was \$100, now \$25.

Name registration application, was \$300, now \$50.

Registered name renewal, was \$100, now \$50.

Assumed name — change, was \$100, now \$25.

Assumed name — cancel, was \$100, now \$5.

Annual report, was \$250, now \$75.

Reinstatement application, was \$500, now \$200.

Petition for refund, was \$15, now \$5.

Statement of Termination, was \$25, now \$5.

Application for withdrawal — foreign, was \$100, now \$5.

Any other document, was \$100, now \$5.

Asset protection

When properly structured and maintained, members of an LLC and the shareholders of a corporation are both protected from personal liability for business debts and claims. Important differences, however, arise when the creditors of a business try to recover amounts they are owed.

When a creditor of an LLC seeks to recover debts of a member, the creditor's rights are limited to charging order protection or foreclosure in Illinois. Many

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clients look to Delaware to form LLCs due to its debtor-friendly jurisdiction and because in Delaware charging orders are the exclusive remedy to a creditor of an LLC.

A creditor must obtain a charging order from a court which would allow the creditor to reach assets distributed to the member but does not allow the creditor to



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step into the debtor's shoes.

In contrast, a creditor of an S corporation shareholder has the ability to obtain some amount of control over the corporation. The creditor may simply attach a judgment to the shares of the debtor's stock to gain all the rights that the debtor had in the corporation, including rights to sell the shares, voting rights and the right to review books and records.

This can have devastating results if the debtor is the sole shareholder or majority shareholder of the corporation since control of the business may be lost if a creditor attaches a judgment against an interest in the corporation.

Tax features

Both LLCs and S corporations offer features that are favorable

to clients.

For example, both are "pass-through" entities with no tax at the entity level. Rather all tax attributes of the business pass through to the owners who then report them on their personal tax returns.

LLCs are often taxed as partnerships; however, an LLC may file a Form 2553 election to be treated as an S corporation for tax purposes. While the pass-through features are similar, an active owner of an entity taxed as an S corporation has fewer withholding requirements for Medicare and Social Security which can translate to income tax savings.

Often service businesses elect to have an LLC taxed as an S corporation. However, holding real estate in an S corporation may pose a problem when you look to transfer property out of the entity.

The IRS treats the transfer of property out of an entity differently depending on whether the entity is treated as an S corporation or partnership for tax purposes. When transferring property out of an entity taxed as an S corporation, the IRS treats this transaction as a "sale."

This creates tax implications for the shareholders because a sale triggers depreciation recapture. The property owner must recapture any depreciation that had been deducted. In contrast, the transfer of property out of an entity taxed as a partnership (typically an LLC) is typically not considered a sale.

Instead, the IRS treats such a transfer as a distribution which does not trigger depreciation recapture. This distinction can translate to dramatic tax savings when properly handled.

This new legislation should make LLCs more affordable for Illinois entrepreneurs and small businesses.

— A special thanks to former Chuhak & Tecson P.C. law clerk Andrew J. Erickson for his contribution to this column.