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Susan L. Martin

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BUSINESS ENTITIES: A RECONSIDERATION FOR SMALL BUSINESSES

by

Susan L. Martin*

Traditionally, the ability to pass tax losses through to the business' owners, avoiding double taxation on earnings, was the main reason owners organized their businesses as pass-through entities rather than in the classic corporate form, the C corporation.[1] Moreover, avoiding the accumulated earnings tax, personal holding company status and reasonable compensation issues added to the attractiveness of pass-through entities.[2] The Tax Reform Act of 1986, that made the top corporate tax rate higher than the maximum rate for individuals for the first time ever,[3] was the crucial factor that impelled may small business owners to give up C corporation status in favor of a pass-through entity. Now, with the passage of the Omnibus Budget Reconciliation Act of 1993,[4] many small business owners are reexamining the legal organization of their companies.[5] A brief review of business entities will outline the options available to the small business owner and suggest factors to be considered before making a change.

The Sole Proprietorship and the Partnership

A sole proprietorship is the simplest form of business organization.[6] The business entity has no existence apart from the owner.[7] Its legal liabilities are the personal liabilities of the owner to the extent of all the owner's assets.[8] When sole proprietors figure their individual taxable income for the year, they must add in any profit, or subtract any loss, they may have from their businesses.[9]

When more than one person owns the business, they may run

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*Assistant Professor of Business Law, Hofstra University School of Business

it as a partnership.[10] A partnership is the relationship between two or more people who join together to carry on a business.[11] Each person contributes money, property, labor, or skill, and expects to share in the profits and losses of the business.[12] As in the sole proprietorship, the partners are personally responsible, to the full extent of all their assets, for the legal liabilities of the partnership.[13] A partnership is not a taxable entity; however, it must figure its profit or loss and file a return.[14] All losses and profits, even if they are not distributed, must be reflected on the partners' individual tax returns.[15] Partnerships have many advantages over other operating forms including the ability to structure varying economic interests by using multiple classes of equity interests and flexibility in allocating profits and losses.[16] Unlike shareholders of an S corporation, partners may disproportionately allocate certain items of income, loss, deductions, and credits. Thus, the partnership form has particular merit when the different interests of the partners call for distributions varying in amount, timing or type from a strictly proportional allocation. Furthermore, there are no limitations on the number of partners or on who can own a partnership interest.[17]

The disadvantage of personal liability associated with a partnership can be assuaged somewhat by insurance. Nevertheless, because of the tremendous liability potential entailed in operating a business enterprise in the form of a general partnership, this form of organization is rarely used outside of certain small businesses and professional organizations which, until recently, were required to be operated in the partnership form.

The Limited Partnership

Personal liability can be circumvented to some extent by using the limited partnership form. The great advantage of a limited partnership is that it permits its limited partners to enjoy both limited liability and the benefits of flow-through taxation.[18] Thus, limited partnerships have become the organizational form of choice for tax advantaged investments in real estate, oil and gas and other types of ventures which are either intended to generate substantial business losses for an initial period, or do not require the accumulation of earned income in order to expand the operations of the enterprise.[19]

A limited partnership functions in the same way as a general partnership but, in addition to the general partners who run the business, there are limited partners who have no part in daily business operations. The liability of a limited partner will not exceed the amounts already invested in the business and amounts the partner is obligated to contribute. Limited partners, however, pay a price for limited liability in that they forfeit the right to participate in the management of their business. If they violate this restriction, they can be held personally liable. The best a

partnership can do in approaching full limited liability is to have the general partner be a corporation. Having the general partner be an S corporation will limit the liability exposure of the S corporation's shareholders to their interests in the assets of the S corporation's assets; however, if the S corporation shareholders own their stock in the same proportion as their partnership interests, the corporation may be deemed a "dummy" or a "shell." Then, the limited liability will be lost. If the general partner is a C corporation, the partnership runs the risk of losing its partnership status and being taxed as a regular corporation if the corporation is deemed a "dummy." The corporation will be viewed as a "dummy" by the IRS if the limited partners own more than 20 per cent of the corporation or the corporate net worth is not at least 10 or 15 per cent of the total contributions to the partnership.

The C Corporation and the S Corporation

These difficulties can be avoided by organizing the small business as a corporation. The legal liability of the shareholders of the corporation is limited to their investment in corporation stock. It is this limited liability characteristic which has made corporations the business form of choice for the vast majority of business enterprises in the United States.

Corporate profits are taxed to the corporation. When the profits are distributed as dividends, the dividends are taxed to the shareholders. In effect, corporate income is taxed twice, once to the corporation and again to the shareholders. This double taxation is the primary drawback to the traditional C corporation form. This has been particularly true during the years from 1986 through 1992 when the corporate tax rate, 34 per cent, has been higher than the maximum individual marginal rate, 31 per cent.

To keep the advantage of corporate limited liability while avoiding double taxation, many business owners chose to be generally exempt from federal income tax.[20] Its shareholders then include on their separate returns, their share of the corporation's income, deductions, losses, and credits. A corporation making this choice is an S corporation.[21] To be eligible for S corporation status, several requirements must be met. The most significant of these is that there can be no more than 35 shareholders; there can be only one class of stock (no preferred stock, for example); only individuals, estates, and certain trusts (not partnerships and corporations) can be shareholders; and, shareholders must be citizens or residents of the United States.[22]

It is relatively easy for a qualifying corporation to elect S corporation status. The corporation merely files a two page form (Form 2553) any time during the previous tax year or during the first two and a half months of the tax year to which the election is to apply.[23] It is also very easy to

terminate S corporation status: a mere statement to the Internal Revenue Service (IRS) is enough to revoke the S corporation.[24] This does not imply that one can go back and forth between the S and the C corporate forms, and that is why the decision to give up S status should be made only after thorough consideration of all possible ramifications of such a decision. If a corporation's status as an S corporation has been terminated, it generally must wait five tax years before it can again become an S corporation.[25] If a C corporation converts to S corporation status, the business is subject to a mixed form of taxation: income from business operations will receive pass-through treatment, whereas large capital gains income or passive investment income may have corporate level taxes imposed.[26]

Use of the S corporation may be of particular benefit during the first years of the corporation's existence when it may be operating at a loss. Individual shareholders may benefit from a reduction in their taxable income when that loss is passed through to them. On the other hand, it should be recognized that the fledgling operation organized as an S corporation instead of as a partnership in order to achieve limited personal liability, may be getting a merely illusory advantage. It is unlikely that creditors will advance funds to a business with no track record without obtaining the personal guarantees of the shareholders.

Another time when it is advantageous to be organized as an S corporation arises when a business anticipates realizing large capital gains. If the business becomes very successful and the owners decide to sell, an S corporation would incur only a single tax on the profits from the sale instead of the double taxation that would occur for a C corporation.[27] Furthermore, an owner's cost basis in S corporation stock rises as the owner pays taxes on undistributed income, lowering the owner's taxable gain when the stock is sold.[28]

Since the late 1980's there has been an astounding growth in S corporations.[29] More than forty-two per cent of all corporate tax returns are filed by S corporations, representing over eleven per cent of corporate net income.[30]

Nevertheless, a C corporation has some distinct advantages. For example, it can accumulate its earnings for use in possible expansion or for other bona fide business reasons;[31] whereas, all profits, whether or not they are distributed, are passed through to the S corporation shareholders as taxable income. This advantage is tempered by the possibility of incurring an accumulated earnings tax.[32] The accumulated earnings tax applies to corporations that attempt to aid shareholders in avoiding income tax by retaining earnings and profits in the corporation rather then distributing them.[33] If a corporation allows earnings to accumulate beyond the reasonable needs of the business, it may be subject to an accumulated earnings tax.[34] Generally an accumulation of earnings and profits is in excess of the reasonable needs of the business if it is more than a prudent business person would consider appropriate for present

business purposes and for reasonably anticipated future business needs.[35] IRS guidelines suggest that an accumulation of $250,000 or less is generally considered within the reasonable needs of a business.[36] A reasonable amount is $150,000 or less, however, in the case of a business whose principal function is performing services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting.[37] If earnings are accumulated beyond these amounts without regular distributions being made to shareholders, the corporation will have to demonstrate a bona fide business reason for not doing so.[38] If the corporation is unable to do so, the corporation will be liable for the accumulated earnings tax.[39]

In J.H. Rutter Rex Mfg. Co., Inc. v. Comm'r,[40] for example, the corporation, which manufactured work pants and work shirts and other casual clothing items, asserted that it needed to retain large amounts of accumulated earnings in order to cover the expenses associated with swiftly changing styles.[41] It pointed to the costs of adapting its manufacturing facilities and retraining workers to respond to the needs of its customers.[42] Thus, it attempted to justify its retention of earnings and profits of $1,188,723 in 1977 and $1,582,018 in 1978.[43] The United States Court of Appeals for the Fifth Circuit noted that the relevant inquiry in assessing business plans to retool and retrain is "'whether the company's plans appear to have been a real consideration during the tax year in question rather than simply an afterthought to justify the challenged accumulations.'"[44] The court then held that there were no specific plans by Rutter for training and improvements and, therefore, the only amounts not subject to the accumulated earnings tax were those actually spent for machinery purchases, $200,665 in 1977 and $875,937 in 1978.[45]

Rutter indicates the need for careful documentation. If business owners want to retain earnings in the traditional corporation for future expansion or retooling or retraining, then business meeting minutes should reflect such plans. Such before-the-fact evidence will make it more likely that the IRS will make allowances for retained earnings.[46]

In assessing the double tax disadvantage of the C corporation, it should also be recognized that many small business owners can take all the profits out of the business as salary as long as the salary does not exceed the value of services provided.[47] In that case, there will not be any profits on which to pay corporate income taxes. If, however, the owners of a new business take relatively little in salary during the early years and then, suddenly, when the business becomes more successful, increase their compensation dramatically, the IRS could elect to treat only part as salary and declare the rest to be dividends subject to double taxation.[48] The United States Supreme Court has held that

> extraordinary, unusual and extravagant amounts paid by a corporation to its officers in the guise and form of compensation for their services, but having

> no substantial relation to the measure of their services and being utterly disproportionate to their value, are not in reality payment for service, and cannot be regarded as 'ordinary and necessary expenses' within the meaning of [the predecessor of I.R.C. § 162].[49]

This problem, too, can be mitigated by good record keeping. Corporate minutes that reflect a business plan not to compensate fully for services rendered during a growth period, but then to increase officers' salaries or to provide bonuses in later years in order to make up for undercompensation, can be important evidence that compensation is reasonable and not disguised dividends.[50]

Taking all the profits of the business out as salary also will not work if the company grows beyond the services provided by the owner. In addition, it will not be helpful in eliminating double taxation if the business grows and the owner wants to sell it. Double taxes will be owed on the profit. Realistically, this will not be a problem for very small businesses where the owner is the business and has nothing to sell beyond his or her own services.

There are other savings that can also be realized through a C corporation. For example, the corporation can deduct as a business expense the premiums for up to $50,000 of group life insurance and the premiums for long-term disability insurance.[51]

The Limited Liability Company

Limited liability companies are the newest business entities and, therefore, probably the least familiar to the small business person. They may become, however, arguably the most advantageous form of business organization given their income tax benefits, their limited liability for all participants, and their flexibility.[52]

The first state statute authorizing the limited liability company was enacted in 1977 in Wyoming.[53] It was adopted in order to attract South American investors for a mining operation.[54] Limited liability companies are similar to subchapter S corporations without the latter's disadvantages of disallowing foreign investors, subsidiaries and multiple classes of stock and without a limit on the number of investors.[55] A limited liability company also resembles a limited partnership without the latter's disadvantages of requiring personal liability and capitalization on the part of the general partner and without a complicated agreement.[56]

Other states did not quickly follow Wyoming's lead in authorizing the limited liability company because of the uncertainty created by the Treasury Department's inconsistent treatment of the partnership classification of limited liability companies. However, in 1988, the IRS issued a Revenue Ruling[57] classifying a Wyoming limited liability company as a partnership for federal tax purposes.[58] The IRS took the following factors into consideration in making its

determination. There are six basic characteristics of a corporation: associates; an objective to carry on business for profit; continuity of life; free transferability of an interest; centralized management; and liability for corporate debts limited to corporate property.[59] If an organization lacks two of the latter four characteristics, it will be classified as a partnership.[60] In the instant case, Wyoming law provided that upon the death or withdrawal of any member, the business would dissolve unless all the remaining members consent to continue it.[61] Therefore, the company lacked the corporate characteristic of continuity of life.[62] Secondly, under the Wyoming statute, company members cannot assign all the attributes of their interests in the company unless all the other members approve the assignment.[63] Therefore, the company lacked the corporate characteristic of free transferability of interests.[64] Without those two characteristics, the company was classified as a partnership for federal tax purposes.[65]

The reason for the popularity of this new form of business organization is that it helps shield the organization's members from liability extending beyond their investment in the business while allowing them to qualify for partnership tax treatment if it is structured, as described above, without all the attributes of a corporation.[66] Generally, the debts and liabilities of a limited liability company, no matter how they arise, remain solely those of the company and no member of the company is personally obligated for those debts and liabilities.[67] Another important characteristic of a limited liability company is the flexibility it gives its members in contractually deciding how business will be conducted.[68] For example, members can decide in their agreement about classes of equity, duties and liabilities of members and managers, allocation of profits, losses and assets, dissolutions and mergers.

Despite its advantages, the newness of this form of business organization may make small business owners reluctant to consider it even in states where it is already available. A body of statutory law and judicial interpretation has not yet developed and, therefore, variations of transferability and continuity of life provisions may not assure pass-through tax status. Another disadvantage is that if a limited liability company intends to do business outside the state in which it has been organized, it may not be assured of recognition in foreign jurisdictions.

Currently, at least thirty-two states have enacted statutes recognizing limited liability companies.[69] It is likely that additional states will be adopting the Limited Liability Company Act in the near future.[70]

Reconsidering the Business Entity

All these considerations make it extremely important for small business owners to seriously assess the present and projected size and success of their enterprises before making

any changes in the legal form of their businesses. After the Tax Reform Act of 1986 was enacted, the desirability of electing S corporation status, both for existing C corporations as well as for new businesses, substantially increased. This was primarily true because, for the first time since Subchapter S was enacted into law in 1958, the maximum rate of tax for individuals (31 per cent) was less than the maximum corporate rate (34 per cent).

Today, however, small business owners are looking at a maximum marginal rate for individuals of 39.6 per cent and a maximum corporate rate of 35 per cent.[71] That scenario is causing many of the approximately 1.6 million small business owners in the United States who operate their enterprises as S corporations to consider going to back to the pre-1986 approach of switching their profitable businesses from S to C corporate status in order to take advantage of the lower corporate rates. One business owner who operates his 150-employee business as an S corporation estimates that he will pay an additional $115,000 in income taxes on profits of approximately $1 million. The increase in individual tax rates may also make limited liability companies look somewhat less attractive than they did some few short months ago. Nevertheless, while small business owners are understandably upset about the new tax law, they should recall that the new marginal rate for S corporations (and limited liability companies) is no higher than it was before 1986.

Precipitous actions should be avoided and some tax practitioners are reporting that although they are having loud and vehement cries of unfairness from their small business clients, they have not experienced a rush of conversions. Before making a final decision on a possible shift, an accountant or tax attorney should be consulted to work up the actual tax savings available for each type of status, taking into consideration present business profits, losses, credits, and deductions, as well as the business' future possibilities. In addition to these personal reasons suggesting caution, possible additional changes in the law also indicate the wisdom of a wait-and-see attitude. Health care reform may affect different business entities differently. Furthermore, the S Corporation Reform Act of 1993[72] has been introduced in the United States Senate. This bill, if enacted, would make S corporations more attractive in a variety of ways.[73] Another factor to consider is the increasing availability and familiarity with the limited liability company. All these changes will probably make 1994 a year for small businesses to seriously reevaluate their operating status.

ENDNOTES

1. William M. Ruddy, Partnerships: Combination Can Provide Flexibility of Partnership with S Corporation Advantages, 18 Tax'n for Law. 186 (Nov./Dec. 1989).

2. Id. at 186.

3. I.R.C. §§ 1 & 11 (1986) (setting maximum rates on individuals at 31% and on corporations at 34%).

4. Pub. L. No. 103-66, 107 Stat. 312 (Aug. 10, 1993).

5. Eugene Carlson, Enterprise: Some Small-Business Owners Reconsider Tax Status, Wall St. J., Nov. 16, 1992, at B2.

6. I.R.S., U.S. Dep't of Treas., Pub. No. 334, Tax Guide for Small Business 4 (1991).

7. Id.

8. Id.

9. Id.

10. I.R.S., U.S. Dep't of Treas., Pub. No. 334, Tax Guide for Small Business 4 (1991).

11. Id.

12. Id.

13. See, e.g., Dan L. Goldwasser, Structuring a New Business Enterprise, ALI-ABA Postgraduate Course in Fed. Sec. Law (1990).

14. I.R.S., U.S. Dep't of Treas., Pub. No. 334, Tax Guide for Small Business 4 (1991).

15. Id. at 96-97.

16. See, e.g., Richard E. Levine & Jeffrey A. Markowitz, Choosing the Proper Form of Legal Entity to Own Real Estate, ALI-ABA Course of Study, Creative Tax Planning for Real Estate Transactions: Strategies for the '90s (1990); William M. Ruddy, Combination Can Provide Flexibility of Partnership with S Corporation, 18 Tax'n for Law. 186 (1989).

17. Ruddy, supra note 15, at 187; Avi O. Liveson, Partnerships vs. S Corporations: A Comparative Analysis in Light of Legislative Developments, 5 J. Partnership Tax'n 142 (1988).

18. Goldwasser, supra note 13, at 730.

19. Id.

20. I.R.C. §§ 1371-79 (1991).

21. I.R.C. § 1361 (1991) (S Corporation Defined).

22. Id.

23. Tax Guide for Small Business, supra note 10, at 108.

24. Id. at 109.

25. Id. at 108.

26. I.R.C. §§ 1374 & 1375 (1988).

27. See, e.g., Tax Report: S Corporations are her to stay even if personal-tax rates rise, Wall St. J., Feb. 17, 1993, at A1.

28. Id.

29. 139 Cong. Rec. S16433-02, S16442 (daily ed. Nov. 19, 1993) (statement of Sen. Danforth).

30. Id.

31. I.R.C. § 535(c)(1) (1991).

32. I.R.C. §§ 531-37 (1991); see also Tax Guide for Small Business, supra note 10, at 105. The accumulated earnings tax is equal to the sum of 27½ percent of the accumulated taxable income not in excess of 100,000 plus 38½ percent of the accumulated taxable income in excess of $100,000. 26 I.R.C. § 531 (1991).

33. I.R.C. § 532(a).

34. Tax Guide for Small Business, supra note 10, at 105.

35. Treas. Reg. § 1.537-(1)(a) (1991).

36. Tax Guide for Small Business, supra note 10, at 105.

37. Id.

38. Id. Bona fide business uses would include specific and possible business plans for the accumulated funds or an amount that would be required to buy back the corporation's stock from a deceased shareholder's estate. Id.

39. Id.

40. 853 F.2d 1275 (5th Cir. 1988).

41. Id. at 1277-78.

42. Id. at 1294.

43. Id. at 1279.

44. Id. at 1292 (quoting Exempt Carriers, Inc. v. United States, 644 F.2d 1027, 1028 (5th Cir. 1981).

45. Id. at 1294.

46. See, e.g., Mary Rowland, Your Own Account: Perils of Small-Business Success, N.Y. Times, Jan. 10, 1993, § 3 (Business), at 17.

47. I.R.C. § 162(a) (1988) authorizes a deduction for all ordinary and necessary expenses in carrying on a business including a reasonable allowance for salaries for personal services actually rendered.

48. See, e.g., Klamath Med. Serv. Bureau v. Comm'r, 29 T.C. 339 (1957), aff'd, 261 F.2d 842 (9th Cir. 1958); Northlich, Stolley, Inc. v. U.S., 368 F.2d 272 (Ct. Cl. 1966); Irby Constr. Co. v. U.S., 290 F.2d 824 (Ct. Cl. 1961).

49. Botany Worsted Mills v. U.S., 278 U.S. 282, 292 (1928).

50. See generally, Graham, Unreasonable Compensation: What It Is, How to Avoid Disallowance, 10 Tax'n for Acct. 260 (1973).

51. Id. If the corporation pays the premiums, the benefits will be taxable, whereas if the individual pays the premiums, the benefits are not taxable. Id.

52. See Wayne M. Gazur & Neil M. Goff, Assessing the Limited Liability Company, 41 Case W. Res. L. Rev. 387 (1991).

53. Wyo. Stat. ch. 15 (1977).

54. Fall Meeting Program September 23-27, 1992 Williamsburg, Va.: Limited Liability Companies, Bus. L. Section Newsletter (N.Y.S.B.A.), Fall/Winter, 1992, at 5.

55. Id.

56. Id.

57. Rev. Rul. 88-76, 1988-2 C.B. 360.

58. Id. See also Rev. Rul. 93-6, 1993-3 I.R.B. 8 (holding that limited liability company organized pursuant to Colorado Limited Liability Act, Colo. Rev. Stat. §§ 7-80-101 through 7-80-913 (1990), was partnership for federal tax purposes by lacking free transferability of interests and continuity of life); Rev. Rul. 93-5, 1993-3 I.R.B. 6 (holding that limited liability company organized pursuant to Virginia Limited Liability Company Act, Va. Code Ann. §§ 13.1-1000 through 13.1-1073 (Michie 1991), was partnership for federal tax purposes by lacking free transferability of interests and continuity of life).

59. Treas. Reg. § 301.7701-2(a)(1) (1983).

60. Larson v. Comm'r, 66 T.C. 159 (1976).

61. Rev. Rul 88-76, 1988-2 C.B. 360. The unanimous consent rule can be very burdensome on a business. The IRS has proposed a change in Treas. Reg. §301-7701-2(b)(1) so that only a majority of the remaining partners would have to vote to continue the business. See John Cederberg, Continuity of Life, 1 Limited Liability Company Rep. 93-101, 93-102 (1993).

62. Id.

63. Id.

64. Id.

65. Id.

66. Martin I. Lubaroff, Donald A. Bussard, Eric A, Mazie, C. Stephen Bigler & James G. Leyden Jr., Out in Front, Bus. L. Today, Jan./Feb., 1993, at 39.

67. Id. at 40.

68. Out in Front, supra note 66, at 39-40.

69. Ala. Code § 10-12-1 (1993); Ariz. Rev. Stat. Ann. tit. 29, ch. 4 (1992); Ark. Code Ann. § 4-32-103 (Michie 1993); Colo. Rev. Stat. tit. 7, art. 80 (1992); 1993 Ct. H.B. 6974 (signed by Governor Jun. 23, 1993); Del. Code Ann. tit. 6, subtit. II, ch. 18 (1992); Fla. Stat. tit. XXXVI, ch. 608; 1992 Ill. Legis. Serv. 87-1062 (West); 1992 Iowa Legis. Serv. 2369 (West); Ga. Code Ann. § 14-2-1109.1 (1993); Idaho Code § 53-61 (1993); Ill. Rev. Stat. ch. 305, para. 54-1 (1993); Ind. Code § 23-18-1-1 (1993); Iowa Code § 4.1 (1993); Kan. Stat. Ann. § 17-7601 (1992); La. Rev. Stat. Ann. § 9:3431 (West 1993); Md. Code Ann., [Corps. & Ass'ns], tit. 4A (1988); Mich. Comp. Laws § 450 (1993); Minn. Stat. ch. 322B (1992); 1992 N.J.S.B. 890, 205th Legis., 2d Sess. (signed by Governor Jul. 30, 1993); N.M. Stat. Ann. § 53-19-1 (Michie 1993); Nev. Rev. Stat. tit. 7, ch. 86 (1991); N.C. Gen. Stat. § 57C-1-01 (1993); N.D. Cent. Code § 10-32 (1993); Okla. Stat. tit. 18, ch.32 (1992); R.I. Gen. Laws § 7-16-1 (1992); S.D. Codified Laws Ann. § 47-34 (1993); Tex. Rev. Civ. Stat. Ann. art. 1528n (West 1992); Utah Code Ann. tit. 48, ch. 2b (1992); Va. Code Ann. tit. 13.1, ch 12 (Michie 1992); W. Va. Code ch. 31, art. 1A (1992); Wyo. Stat. § 17-15 (1993).

70. It is unclear, however, whether New York will be one of those even though bills authorizing limited liability companies are making their way through committees in both the Senate (S. 27, 215th G.A., 1st Sess. (N.Y. 1993)) and the House (A. 8676, 215th G.A., 1st Sess. (N.Y. 1993)) and the Governor's position is that if the bill is revenue neutral, it will be enacted. The problem arises because the New York bills have been amended to require that notice of the formation of a limited liability company must be published in two newspapers for six consecutive weeks. A. 8824, 215th G.A., 1st Sess. (N.Y. 1993). Such legal advertising is not required in any other state and can cost a business up to $2000. This requirement has caused legal wrangling with much lobbying being done by newspaper publishers who stand to gain substantially if the law is enacted as amended. See John Riley, It's a Matter of Fine Print - Requirement of Legal Ads Stalls Business Bill in Albany, Newsday, May 29, 1992, at 45 (city ed.).

71. Pub. L. No. 103-66, 107 Stat. 312 (Aug. 10, 1993).

72. S. 1690, 103rd Cong., 1993-94 Reg. Sess.

73. The Act would, inter alia, (1) improve shareholder limitations by increasing the allowable number to fifty; permitting tax exempt organizations, financial institutions, nonresident aliens and more types of trusts to own S corporation stock; (2) permit more than one class of stock; (3) allow S corporation shareholders to have the same fringe benefits position as C corporations shareholders. 139 Cong. Rec. S16433-02, S16441 (daily ed. Nov. 19, 1993) (statement of Sen. Pryor).