

# JOHN CUNNINGHAM'S LLC NEWSLETTER FOR TAX AND FINANCIAL PROFESSIONALS

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## THE BIG NINE

### NINE TASKS THAT CPAs, EAs AND OTHER TAX AND FINANCIAL PROFESSIONALS SHOULD OFFER TO HANDLE FOR THEIR LLC FORMATION CLIENTS

If you are a CPA, an EA or other tax or financial professional and your clients (let's call them Mary and John) ask you to help them to form an LLC, what tasks should you normally offer to perform for them?

The short answer is, "nine of them" - unless, of course, Mary and John want to limit your engagement. I'll list all nine tasks below and, where useful, I'll briefly comment on them. As you'll see, many of these tasks deserve detailed discussion. I'll provide this discussion for each relevant task in later issues of this Newsletter.

- 1) Reach Agreement with Mary and John on the Scope of Your Engagement and Your Fee. As you'll see below, the list of things you do for Mary and John can be very short or very long. All of you should agree in advance what tasks the list will contain and what Mary and John will pay you to perform these tasks....
- 2) Handle Ethical Issues. The first ethical issue is always competence. For example, you shouldn't agree to conduct a tax choice-of-entity analysis for Mary and John unless you are reasonably expert at making these analyses.

Another issue always arises when, as in the case of Mary and John, two or more persons ask your help in forming an LLC. When this happens, you must first determine which of these persons is to be your client and which is not. If the answer is two or more of them, you must address with them potentially tricky issues of "joint representation."

- 3) Get the Business Facts. You have to get the basic facts about the business of Mary and John that are relevant to your tasks. To do this well, you'll need a good checklist of factual questions. I'll provide this checklist in a later issue of this Newsletter.
- 4) Do a Tax Choice-of-entity Analysis. You have to perform a tax choice-of-entity analysis for Mary and John. That is, you have to decide which of the three principal federal income tax regimen regimens (i.e., taxation under Subchapters C, K and S) is best for them (a) for federal income tax purposes; (b) for Social Security Tax purposes; and (c) for state and multi-state income tax purposes.
- 5) Resolve Any Conflicts as to Best Federal Income Tax Regimen. If one federal income tax regimen is best for Mary and John for one type of tax, while

another is best for another, you have to help them resolve the conflict. For example, for federal income tax purposes, Mary and John may need partnership taxation, but for Social Security Tax avoidance, they may need Subchapter S. You've got to help them decide which type of tax is more important to them on a net basis in the short, middle and long term, and you have to help them choose their federal income tax regimen accordingly.

6) Do a Check-the-Box Analysis. You have to perform a "Check-the-Box analysis." That is, on the basis of the Check-the-Box Regulations, you have to tell Mary and John which types of state-law entities that are available to them under the governing state law can qualify for the federal income tax regimen that is best for them.

For example, under the Check-the-Box Regulations, if Mary and John want partnership taxation but they also want to use a state-law business corporation to conduct their business, they've got a problem. This is because under Check-the-Box, corporations can't qualify for partnership tax. You have to help Mary and John solve this problem.

7) Identify and Handle Financial Issues. You have to identify and help Mary and John handle the financial issues relevant to their LLC's formation. In particular, in connection with the formation of multi-member LLCs, you may have to help them negotiate these issues between themselves and with other parties to the formation. You may also have to review drafts of operating agreement provisions that address these issues so that you can ensure that they meet Mary's and John's needs.

The relevant operating agreement provisions may to include, among others, those addressing:

- The fiscal year and accounting method of the LLC;
- Capital contributions, allocations of income and loss, and interim and liquidating distributions to the members; and
- Buy-sell arrangements.

It may also be appropriate for you to advise Mary and John about:

- The accounting procedures they should set up to ensure that their LLC maintains sound financial records and the software they should use for that purpose;
- Financial issues in their business plan (whether they have written up a plan or merely carry on in their head); and
- How they should handle payroll issues, including payroll reporting.

8) Handle Tax Issues within the Chosen Federal Income Tax Regimen. You have to handle the tax issues that arise for Mary and John within the federal income tax regimen you've helped them choose. For a single-owner business, these issues will usually be few and simple. But for multi-member LLCs

classified as partnerships or Subchapter S corporations for federal tax purposes, they can be numerous and complex.

For example, a common and often difficult partnership tax issue is how to handle tax distributions. (Another tax function in LLC formations that is very basic but that can be complex in some situations is the obtaining of tax identification numbers.)

9) Help Mary and John Find a Good LLC Lawyer. Finally, once you've finished your tax and financial tasks, Mary and John may want you to help them find a good lawyer to handle their LLC legal needs.

If you'd like to see where the above nine tasks fit within the overall job of forming LLCs and what types of tasks are usually handled by lawyers, click on the "articles" link in [www.cunningham-seminars.com](http://www.cunningham-seminars.com) and then click on Item 21.

For any other questions you may have relating to this issue of the Newsletter, please feel free to give me a call at (603) 228-0125 or to send me an e-mail at [lawjmc@comcast.net](mailto:lawjmc@comcast.net).

I will greatly appreciate any comments you may have about this issue.

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