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**THE 29 KEY RULES IN THE CHECK-THE-BOX
REGULATIONS IN TABULAR FORM**

EXECUTIVE SUMMARY. As every tax practitioner is aware, the Check-the-Box Regulations are absolutely central to federal tax practice—and particularly to federal tax practice involving LLCs. Among other things, these regulations determine the types of federal tax regimens potentially available to LLCs and other entities and the procedures they must follow in electing among these regimens.

The rules contained in the Check-the-Box Regulations are clear, but because of their subject matter, they are very numerous. This and the complexity of the numbering system used by the U.S. Treasury Department in drafting federal tax regulations can make it very difficult to locate specific rules in the Check-the-Box Regulations on specific classification issues.

However, on the basis of my own study of the Check-the-Box Regulations, I believe that there are only 29 truly basic rules in them. I also believe that tax practitioners who obtain a solid understanding of these 29 rules will find it relatively easy to find and understand other, more specialized Check-the-Box rules.

The above 29 rules, together with a few preliminary notes are set forth in the table below.

**TABLE OF KEY PROVISIONS IN THE ENTITY CLASSIFICATION
REGULATIONS , TREAS. REGS. §§ 301.7701-1 THROUGH 4 (THE “CHECK-
THE-BOX REGULATIONS”)**

Preliminary notes.

1. Form of citations in the table. The Entity Classification Regulations (referred to here by the name normally applied to them by tax practitioners—i.e., as the “Check-the-Box Regulations”) are codified in the Code of Federal Regulations in 26 CFR § 301.7701-1 through § 301.7701-4. Specific provisions of the Check-the-Box Regulations are normally cited as, for example, “§ 301.7701-1(a).” However, for brevity, the citations in the table below will include only the number of the relevant subsection of the regulation in question and not the preceding “§ 301.7701-”. Thus, for example, the above § 301.7701-1(a) will be cited in the table simply as “Section 1(a).”
2. Text vs. paragraph in the table. In the table below, quotations of provisions of the Check-the-Box Regulations are within quotation marks; paraphrases of Check-the-Box Regulations provisions are within brackets.
3. Domestic business entity vs. foreign business entity. Section 301.7701-1(d) of the Check-the-Box Regulations provides that business entities will be defined as

domestic or foreign as provided in § 301-7701-5. Section 301-7701-5 provides in relevant part as follows:

A business entity (including an entity that is disregarded as separate from its owner under §301.7701-2(c)) is domestic if it is created or organized as any type of entity (including, but not limited to, a corporation, unincorporated association, general partnership, limited partnership, and limited liability company) in the United States, or under the law of the United States or of any State. Accordingly, a business entity that is created or organized both in the United States and in a foreign jurisdiction is a domestic entity. A business entity (including an entity that is disregarded as separate from its owner under §301.7701-2(c)) is foreign if it is not domestic. The determination of whether an entity is domestic or foreign is made independently from the determination of its corporate or non-corporate classification. See §§301.7701-2 and 301.7701-3 for the rules governing the classification of entities.

4. Definition and federal tax classification of associations. The term “association” is used frequently in the Check-the-Box Regulations but is not defined in those regulations. Associations have been defined for federal tax purposes in the relevant case law as “[bodies] of persons united without a charter, but upon the methods and forms used by incorporated bodies for the prosecution of some common enterprise.” *Hecht v. Malley*, 265 US 144 (1924). Under Internal Revenue Code § 7701(a)(3), “the term ““corporation”” includes *associations*, joint-stock corporations and insurance companies.” (Emphasis added.) Accordingly, an entity classified as an association is subject to federal income taxation under IRC Subchapter C unless it is eligible to make an S election and makes this election.

NUMBER OF THE PROVISION IN THIS TABLE	CITATION TO RELEVANT SECTION OF CHECK-THE-BOX REGULATIONS	ISSUE ADDRESSED	TEXT OR PARAPHRASE
1.	Section 1(a)(2) (first and second sentences)	When does a co-ownership arrangement constitute a business entity for federal tax purposes?	“A joint venture or other contractual arrangement may create a separate entity for federal tax purposes if the participants carry on a trade, business, financial operation, or venture and divide the profits therefrom. For example, a separate entity exists for federal tax purposes if co-owners of an apartment building lease space and in addition provide services to the occupants either directly or through an agent. Nevertheless, a joint undertaking merely to share expenses does not create a separate entity for federal tax purposes.”
2.	Section 2(a) (first sentence)	What is a “business entity” for federal tax purposes?	“For purposes of this section and § 301.7701-3, a business entity is any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner under § 301.7701-3) that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Internal Revenue Code.”

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3.	Section 2(a) (second sentence)	What is the federal tax classification of business entities with two or more owners?	“A business entity with two or more members is classified for federal tax purposes as either a corporation or a partnership.”
4.	Section 2(a) (second sentence before semicolon)	What is the federal tax classification of business entities with only one owner?	“A business entity with only one owner is classified as a corporation or is disregarded. . .”
5.	Section 2(a) (second sentence after semicolon)	What is the federal tax treatment of a disregarded entity?	“[If an] entity is disregarded, its activities are treated in the same manner as a sole proprietorship, branch, or division of the owner.”
6.	Section 2(b)	When is a domestic business entity classified as a corporation for federal tax purposes?	[Section 2(b) provides detailed rules for determining whether a domestic entity is a corporation for federal tax purposes. Among the most basic rules are (i) that an entity is a corporation if it is “a business entity organized under a Federal or State statute, or under a statute of a federally recognized Indian tribe, if the statute describes or refers to the entity as incorporated or as a corporation, body corporate, or body politic;” and (ii) if it is “an association (as determined under § 301.7701-3).” For the definition of an “association,” see Preliminary Note 4, above.]
7.	Section 2(b)(8)(i)	When is a foreign business entity classified as a corporation for federal tax purposes?	[Section 2(b)(8)(i) lists 86 specific types of foreign business entities that, except for certain narrow exceptions under Section 2(b)(8)(ii) and (d), are classified as corporations. Under Section 3(a), all other foreign entities are generally classified as associations but may elect to be classified as disregarded entities if they have only one owner and as partnerships if they have two or more owners.”
8.	Section 2(c)(1)	What is a partnership for federal tax purposes?	“The term partnership means a business entity that is not a corporation under [Section 2(b)] and that has at least two members.”
9.	Section 2(c)(2)(i)	What is a disregarded entity for federal tax purposes?	“Except as otherwise provided in this paragraph (c), a business entity that has a single owner and is not a corporation under paragraph (b) of this section is disregarded as an entity separate from its owner.” [The exception to the above rule is for single-owner entities that are banks under federal law.]
10.	Section 3(a) (first sentence)	Which types of business entities are “eligible entities”—i.e., entities that may elect their federal tax classification?	“A business entity that is not classified as a corporation. . . can elect its classification for federal tax purposes as provided in this section. Paragraph (b) of this section provides a default classification for an eligible entity that does not make an election.”
11.	Section 3(a) (second sentence, before comma)	What federal tax classifications may be elected by eligible entities with at least two owners?	“An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership.”
12.	Section 3(a) (second sentence, after comma)	What federal tax classifications may be elected by eligible entities with only one owner?	“[An] eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner.”

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13.	Section 3(a) (fourth sentence)	Must an eligible entity make an election if its default federal tax classification is the classification that its owner or owners want?	“[E]lections are necessary only when an eligible entity chooses to be classified initially as other than the default classification provided to it under Section 3(b) [quoted below] or when an eligible entity chooses to change its classification.”
14.	Section 3(b)(1)(i)	What is the default federal tax classification of a domestic eligible entity if it has two or more owners?	“Except as provided in paragraph (b)(3) of this section [concerning business entities already classified under pre-Check-the-Box Regulations], unless [a domestic eligible entity] elects otherwise, [it] is (i) [a] partnership if it has two or more members. . . .”
15.	Section 3(b)(1)(ii)	What is the default federal tax classification of a domestic eligible entity if it has only one owner?	“Except as provided in paragraph (b)(3) of this section [concerning business entities already classified under pre-Check-the-Box Regulations], unless [a domestic eligible entity] elects otherwise, [it] is (ii) [d]isregarded as an entity separate from its owner if it has a single owner.”
16.	Section 3(b)(2)(i)	What is the default federal tax classification of a foreign eligible entity?	“Except as provided in paragraph (b)(3) of this section [concerning business entities already classified under pre-Check-the-Box Regulations], unless the entity elects otherwise, a foreign eligible entity is -- (A) A partnership if it has two or more members and at least one member does not have limited liability; (B) An association if all members have limited liability; or (C) Disregarded as an entity separate from its owner if it has a single owner that does not have limited liability.” [Note. Under the above rules, (i) the default classification of a foreign multi-member LLC is that of an association, but, even though all of the members of the LLC have limited liability, the LLC may elect partnership status; and (ii) the default classification of a foreign single-member LLC is that of an association, but, even though the LLC’s member has limited liability, the LLC may elect to be a disregarded entity.]
17.	Section 3(b)(2)(ii)	What is the definition of limited liability for purposes of classifying foreign eligible entities?	[This definition is set forth in the four sentences of Section 3(b)(2)(ii). The first sentence provides that “a member of a foreign eligible entity has limited liability if the member has no personal liability for the debts of or claims against the entity by reason of being a member.”]
18.	Section 3(c)	With what procedural rules must eligible entities comply in making elections under the Check-the-Box Regulations?	[These rules are set forth in Sections 3(c)(1) and (2). In general, the election must be made by filing IRS Form 8832 and will be effective on the date specified in that form; but this date cannot be more than 75 days before the date of filing or more than 12 months after that date.]

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19.	Section 3(c)(1)(v)(C)	Must an eligible entity that qualifies to make an S election file and that files an IRS Form 2553 applying to be an S corporation also file a Form 8832?	[Under Section 3(c)(1)(v)(C), the answer is no.]
20.	Section 3(f)(1)	Will a change in the number of owners of an eligible entity classified as association affect the entity's classification?	"The classification of an eligible entity as an association is not affected by any change in the number of members of the entity."
21.	Section 3(f)(2) (first sentence)	If the number of owners of a multi-owner eligible entity is reduced to one, what effect will this have on the entity's classification?	"An eligible entity classified as a partnership becomes disregarded as an entity separate from its owner when the entity's membership is reduced to one member."
22.	Section 3(f)(2) (second sentence)	If the number of owners of a single-owner eligible entity classified as a disregarded entity increases, what effect will this have on the entity's classification?	"A single member entity disregarded as an entity separate from its owner is classified as a partnership when the entity has more than one member."
23.	Section 3(g)(1)(i)	If an eligible entity classified as a partnership elects to be classified as an association, what federal income consequences will result?	"If an eligible entity classified as a partnership elects under paragraph (c)(1)(i) of this section to be classified as an association, the following is deemed to occur: The partnership contributes all of its assets and liabilities to the association in exchange for stock in the association, and immediately thereafter, the partnership liquidates by distributing the stock of the association to its partners."
24.	Section 3(g)(1)(ii)	If an eligible entity classified as an association elects to be classified as a partnership, what federal income consequences will result?	"If an eligible entity classified as an association elects under paragraph (c)(1)(i) of this section to be classified as a partnership, the following is deemed to occur: The association distributes all of its assets and liabilities to its shareholders in liquidation of the association, and immediately thereafter, the shareholders contribute all of the distributed assets and liabilities to a newly formed partnership."
25.	Section 3(g)(1)(iii)	If an eligible entity classified as an association elects to be classified as a disregarded entity, what federal income consequences will result?	"If an eligible entity classified as an association elects under paragraph (c)(1)(i) of this section to be disregarded as an entity separate from its owner, the following is deemed to occur: The association distributes all of its assets and liabilities to its single owner in liquidation of the association."

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26.	Section 3(g)(1)(iv)	If an eligible entity classified as a disregarded entity elects to be classified as an association, what federal income consequences will result?	“If an eligible entity that is disregarded as an entity separate from its owner elects under paragraph (c)(1)(i) of this section to be classified as an association, the following is deemed to occur: The owner of the eligible entity contributes all of the assets and liabilities of the entity to the association in exchange for stock of the association.”
27.	Section 3(g)(2)	What provisions of the Internal Revenue Code apply in determining the federal tax treatment of an entity that elects to change its classification?	“The tax treatment of a change in the classification of an entity for federal tax purposes by election under paragraph (c)(1)(i) of this section is determined under all relevant provisions of the Internal Revenue Code and general principles of tax law, including the step transaction doctrine.”
28.	Section 4(a)	What is the definition of a trust for purposes of the Check-the-Box Regulations?	“In general, the term "trust" as used in the Internal Revenue Code refers to an arrangement created either by a will or by an inter vivos declaration whereby trustees take title to property for the purpose of protecting or conserving it for the beneficiaries under the ordinary rules applied in chancery or probate courts.”
29.	Section 4(b)	What is the classification of business trusts under the Check-the-Box Regulations?	[Under Section 4(b), these trusts are generally treated as business entities.]

If you have comments on this column or wish to contact me for any other reason, please send me an e-mail at lawjmc@comcast.net or give me a call at (603) 228-0125. If you'd like to visit my website, the link is www.llcformations.com.