The LLC is the Entity of Choice for Tennesseans

By Leigh Griffith, CPA, JD, LLM

The most common forms of business LLEs in Tennessee are (i) corporations; (ii) LLCs; (iii) LPs; and (iv) LLPs. Although all of these are viewed as providing limited liability, LLPs formed in Tennessee and many other states are designed only to protect against malpractice liability. The partners of a LLP formed under Tennessee law, for example, would be liable for lease obligations, loans to the LLP, etc. but not for the malpractice of other partners. Other states, such as Delaware, provide full liability protection equivalent to that of a corporation or LLC. Many of the LLPs operating in Tennessee are formed in a state with a full liability shield and simply qualify to do business in Tennessee. The effectiveness of the full liability shield in states without the equivalent shield is not totally free from doubt. Eligible corporations may elect S corporation status and achieve federal pass-through status while domestic LLCs, LPs and LLPs automatically have federal pass-through tax status unless they affirmatively elect otherwise.

Clearly, in Tennessee the LLC is the business entity of choice. In Tennessee 12,326 LLCs; 5,169 for profit corporations; 80,869 LPs and 62 LLPs were formed in 2011. The number of active Tennessee LLCs is now approaching 201,869 for profit corporations; 8,308 LPs and 339 LLPs active in Tennessee as of Jan. 1, 2012. Interestingly almost two-thirds of the active LLPs formed in Tennessee were formed in 2011.

A potentially emerging form of LLC is the Series LLC. A Series LLC is a type of LLC in which series, functionally segregated from each other, are created within the LLC by internal documentation. For liability purposes, each series within the Series LLC is obligated only for its own liabilities and, therefore, a liability that arises in one series does not impact any other series. Good internal accounting records are paramount to assuring the recognition of this limited liability structure, including appropriate records clearly demonstrating which assets, liabilities and members are associated with each series. Auditors will need to verify the integrity of these records. At the current time Tennessee, seven other states and the District of Columbia have statutes permitting the formation of Series LLCs. There is some uncertainty as to whether the per series limited liability protection will be honored in some of the states without such legislation. Nevertheless, the Series LLC may be very useful for commonly owned activities undertaken in Tennessee or for activities that would otherwise be undertaken in a single entity.

About the Author
J. Leigh Griffith, CPA, JD, LLM is an attorney with Waller Lansden Dortch & Davis, PLLC. He can be reached at lgriffith@wallerlaw.com.

Endnotes
1 A Registered Limited Liability Limited Partnership is generally used by professional service organizations. Many states do not recognize the LLC as an appropriate vehicle in which to practice a profession.
2 Other forms of LLEs include limited liability, limited partnerships and certain business trusts as well as REITs and RICs.
3 As a general rule the Series LLC itself does not engage in business but is merely the “wrapper” and often the “parent” of the various series within the LLC that are the entities engaging in business, holding assets or making investments.