

Utah Legislature: Recent Developments Related to Low-Profit Limited Liability Companies

Enacting Legislation:

S.B. 148, Low-profit Limited Liability Company Act, 2009 General Session (Chief Sponsor: Senator Hillyard)

Effective Date:

March 23, 2009

Key Requirements to Form a L3C:

A low-profit limited liability company organized under Utah law shall:

- include in its name the abbreviation "L3C" or "l3c"
- state in its articles of organization that it is a low-profit limited liability company, and amend its articles if it ceases to be a low-profit limited liability company
- be organized for a business purpose that satisfies, and at all times operate to satisfy each of the following:
 - shall significantly further the accomplishment of one or more charitable or educational purposes within the meaning of Section 170(c)(2)(B), IRC
 - shall demonstrate that it would not be formed but for its relationship to the accomplishment of a charitable or educational purpose
 - may not have as a significant purpose the production of income or the appreciation of property
 - may not have as a purpose to accomplish one or more political or legislative purposes within the meaning of Section 170(c)(2)(D), IRC.

In the absence of other factors, the fact that a low-profit limited liability company produces significant income or capital

appreciation is not conclusive evidence of a significant purpose involving the production of income or the appreciation of property.

Ceasing to Operate as a L3C:

- If a low-profit limited liability company ceases to meet a requirement to be a low-profit limited liability company:
 - it ceases to be a low-profit limited liability company on the day on which the company no longer meets the requirement; and
 - if it continues to meet the requirements to be a limited liability company, continues to exist as a limited liability company that is not a low-profit limited liability company.
- A low-profit limited liability company's failure to meet a requirement may be:
 - involuntary
 - in order to convert to a limited liability company that is not a low-profit limited liability company, it may be voluntary.
- If a low-profit limited liability company ceases to be a low-profit limited liability company, it shall:
 - change its name to conform with Section 48-2c-106; and
 - amend its articles of organization in accordance with Section 48-2c-405.

Conversion or merger of a L3C:

To the same extent as a limited liability company that is not a low-profit limited liability company may do so, a low-profit limited liability company may:

- convert to or from another subject entity
- participate in a merger.

Potential Study Issues:

As part of a master study resolution request, Revenue and Taxation Interim Committee might include a discussion of low-profit limited liability companies in any discussions it may have of whether the property of a joint venture between a non-profit or charitable entity and a for-profit entity should be exempt from local property taxes.

Other States:

Utah is one of the first states to enact provisions providing for the organization of low-profit limited liability companies. Vermont is reported as the first to do so. A description of low-profit limited liability companies prepared by the Vermont Secretary of State can be found at: http://www.sec.state.vt.us/corps/dobiz/lc/lc_l3c.htm. Other states that have enacted legislation include Michigan and Wyoming. North Dakota passed legislation to study the creation of low-profit limited liability companies. An organization that promotes low-profit limited liability companies provides information on state legislative activity at: <http://www.americansforcommunitydevelopment.org/>.

Federal Taxation Related Issues:

The idea for developing a "low-profit limited liability company" entity was, at least in part, in response to concerns with federal regulations related to program related investments (PRI) and private foundations. The creation of a low-profit limited liability company is hoped to provide a permissible type of PRI.