

Newsletter

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Professional Legal Assistors

5525 Canoga Avenue

Suite 304

Woodland Hills, CA 91367-6648

(818)347-0101 / (800)621-7008

fax (818)347-1823 / (888)232-9022

Email: dottie@biz-usa.com

Visit us at:

<http://www.biz-usa.com>

This is our last newsletter for this year so we would like to begin by wishing you a HAPPY HALLOWEEN, HAPPY THANKSGIVING, a VERY MERRY CHRISTMAS and a TRULY PROSPEROUS NEW YEAR.

Our office will be closed for the following holidays:

October 12th, Columbus Day

November 26th & 27th for Thanksgiving

December 24th & 25th for Christmas

December 31st & January 1st for New Year's

Our next newsletter will be mailed out the beginning of

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HOW TO FIND SECRECY IN OFFSHORE HAVENS

Do visions of shady characters come to mind when you hear or read about money safely stacked in those sunny offshore havens?

More and more sophisticated Americans, most of whom are also quite law-abiding, know it's smart and



legal to relocate assets in other countries. Particularly favored are those with rigid bank secrecy laws that insure investors exceptionally strict privacy and strong shield against creditors. It is a smart strategy. Funds harbored in an array of foreign banks (as well as foreign finance subsidiaries of U.S. corporations), are generally safe from creditors in the United States. Offshore havens, in fact, can be the absolute safest way to protect your assets.

Consider that when you bank within the United States, your financial affairs are exposed to the IRS, other governmental agencies, and any creditor or litigant waving a subpoena for your records. It's far different when you bank outside the United States. Your financial records can then only be divulged with your express permission. Your best bet: An offshore bank (which is simply any foreign bank). This includes Canadian or Mexican banks, although you may prefer banking elsewhere. It's perfectly legal to bank offshore, with two cautions:

*You must declare to the IRS all income from

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January 1999.

Remember if you have an article that you would like to contribute to our newsletter just fax it to us for our review. We must receive the article no later than December 15th for our January newsletter. ♦

LLC'S ARE THE PREFERRED ENTITY TO HOLD REAL ESTATE

By J.Eric Kirkland, Esq.

It is not prudent to take title to investment land or income producing property in your own name. One reason: if the rental duplex or office building or shopping center experiences a personal injury or suffers property damage or gets hit with a contract claim, you wouldn't want your assets on the line. Further, the Limited Liability Company ("LLC") will allow you to deduct business related expenses through the LLC and have the company taxed like a flow through partnership (avoiding the double tax of a "C" corporation, which is a tax both at the corporate level and on distributions eagerly characterized by the IRS as "disguised dividends").

The tricky part, or risky part if you will, is the operating agreement. The law doesn't require one but if the company doesn't have one then material business decisions require a 100% vote of the members, a result a majority contributor will not appreciate.

The operating agreement is designed to address such as capital contributions, percentage ownership, management rights and duties, additional contributions, percentage ownership, adding a member, selling assets owned by the LLC, loans by the LLC, Internal Revenue Code provisions, tax treatment/methods of accounting, dissolution of the entity, etc. Naturally, this document can be relatively expensive.

As to liability, LLC's provide a "corporate shield" that's tougher to pierce than a "C" or "S" corporation, whether you're meticulous with minutes, resolutions and the like, or not. They also allow the investor/owners to manage without losing that liability shield. They also allow special allocations of profits and losses to the owners (i.e., allocations of profits and losses disproportionate to the relative percentage

ownership interests of the members, unlike an "S" corporation). LLC's also allow a recognition of tax basis for LLC borrowed money to finance real estate for the purpose of deducting losses. Finally, LLC's are universally recognized. LLC laws are on the books in every state.

In sum, hold your commercial property in an LLC. Do this by first creating the company, then convey title to it. Finally, do a separate LLC for each building or property owned for reasons of liability, and to facilitate the bookkeeping and accounting. ♦

ANATOMY OF A TRADEMARK

TRADEMARKS HAVE TWO PARTS

Think of every product or service name as containing two different parts:

*The first part of the name specifies a particular company's version of a product or service (Cadillac vs. Toyota, Blue Shield vs. Kaiser Permanente) This part of the name – always capitalized because it serves as a proper adjective – is the trademark.

*The second part of the name specifies the kind of product or service (for instance automobile or health plan). This part of the name – a common noun – is never protectible.

Put somewhat differently, think of products and services as having a first and last name. The last name identifies the group (the noun) while the first name uniquely specifies a member of that group (the trademark as proper adjective).

As is normally true with first names, trademarks often appear by themselves, without reference to the type of product or service involved. But be aware that the correct way to refer to a mark is to use both first and last names. This is especially important to remember if your mark becomes well known, since the continued use of the mark by itself rather than as the name of a particular brand of that product or service. This is just another way of saying that the mark can become generic.

GENERIC NAMES CAN'T BE TRADEMARKED

If the name of a service or product does not operate to

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distinguish one company's version of that service or product from all other versions of that same service or product, then it is not considered to be a mark. Another way to think of it is that if a word is used in a mark to mean exactly the same as the dictionary definition of the common term for a product or service, it is generic.

For example, "diet cola" describes a group of carbonated soft drinks with cola flavoring and some form of sugar substitute. That makes it generic and not a trademark because it could refer to any of several brands. But add "Shasta" to diet cola, and it qualifies as a trademark because it specifies one particular brand of the several diet colas available on the market.

An example that illustrates the problem of using a trademark without its last name is Roller Blades. Many people think that's the name of the product. But "Roller Blades" is merely the trademark of one company that makes in-line skates, which is the generic term for roller skates that look like ice-skates. If people continue to use Roller Blades to mean the product and not one brand of it, it will become the generic term, just as yo-yos, aspirin, linoleum, dry ice and so on. Examples of terms that have always been generic are lite beer, super glue, softsoap, matchbox cars and supermarket. ♦

CALIFORNIA FRANCHISE TAX BOARD

The California Corporations Division of the Secretary of State will not let you file corporate articles without paying a minimum franchise tax fee at the time of filing. This fee is called a "privilege tax". You are taxed for the privilege of doing business in California. The minimum franchise tax that you are required to pay is determined by your anticipated gross sales for the first year. If your corporation anticipates doing more than \$1,000,000 in gross sales the first year the minimum franchise tax fee is \$800.00. If the corporation anticipates doing less than \$1,000,000 in gross sales the first year the minimum franchise tax fee is \$600.00. Another minimum payment is due 4 months after the articles are filed. In March of the following year you will pay, when filing your franchise tax return, any additional money due for the year before and the minimum payment for the following year. California Franchise Tax Board 800-852-5711 . ♦

offshore accounts, just as you declare income from an American bank. There are no income tax savings to investors who follow these reporting requirements. But unlike US. Banks, foreign banks do not issue 1099 forms to the IRS, so the IRS has less opportunity to know about your offshore accounts.

* You must also declare when \$5,000 or more goes into or out of your foreign account. Smaller transfers retain their privacy.

As you can see, the purpose of a foreign account is not to avoid taxes, but to give you greater privacy and asset protection.

Foreign accounts have several small disadvantages: First, is inconvenience. You can bank by mail, and this is no more difficult than when you bank in another city or state within the United States. You must, however, wait longer for your checks to clear and to withdraw funds. Collection fees are also charged, but this can be avoided by having your offshore bank pay you in U.S. funds, payable through an American correspondent bank. Finally, your account will not be insured as are accounts with an FDIC insured bank. This is their major disadvantage.

A big plus with an offshore bank: Deposits smaller than \$5,000 will be undocumented. If you instruct someone to send you funds directly to your offshore bank, the IRS only knows about this income if you voluntarily report it. The IRS has even less chance to know about it if you spend your money offshore. Another advantage: Since offshore banks are not regulated by the more restrictive United States laws, they can and do offer substantially higher interest rates. Caution: If you have more than \$400 of interest or dividend income from offshore accounts you must answer the question on Schedule B of your tax return (interest and dividend income) that asks whether you have an account in a foreign bank. Tip: You can legally answer "no" if your foreign accounts, in aggregate, do not exceed \$5,000. Another strategy to avoid reporting: Place your accounts with a U.S. Military banking facility overseas. This is an ideal solution if you're in the military.

Does risk make you hesitate to go offshore with your

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money? Foreign banks are generally healthier than United States banks. Still, it's difficult to have confidence in the banking system of another country, particularly those in small countries. The solution? Diversity. Spread your cash among several offshore havens. Absent a world economic crisis of unprecedented proportions, it's not likely they will all go through an economic disaster that could jeopardize your assets.

You have over 1000 offshore banks to choose from. You also have your pick of many excellent tax havens – the Bahamas, Barbados, British Islands, Cayman Islands, Hong Kong, Isle of Man, Netherland Antilles, Mariana Islands, Montserrat, Panama and Vanuata – as just a few. Banks in these tiny havens are as stable as those in Switzerland and other larger countries, and frequently offer more advantages. Investigate every haven before you invest. ♦

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ADDRESS CORRECTION REQUESTED

Incorporation, once incorporated, an IBC may operate with a single shareholder. Also, there need only be one director/officer of the Corporation who may be a citizen of any country. All of the foregoing capacities may be filled by a corporate entity rather than an individual, if desired. ♦

RESELLER NUMBERS

Nevada corporations will not be able to obtain a California Reseller number from the California Department of Equalization unless the Nevada corporation is qualified to do business in the state of California. ♦

BANK ACCOUNTS FOR NEVADA CORPORATIONS

A Nevada Corporation wishing to open a bank account in California may run into some difficulty. We have found that Bank of America is the only bank that will open a bank account without asking for qualifying documents from the California Secretary of State qualifying the Nevada corporation to do business in California. ♦



