ROSEN HARWOOD
ATTORNEYS AT LAW

RH REVIEW
IS YOUR LLC READY FOR 2018?

IT'S TIME TO UPDATE! The IRS has issued new rules regarding how entities that are classified as partnerships for tax purposes, such as LLCs, will be audited. The changes are significant and apply to tax years beginning after December 31, 2017. Below are some of the major changes that may require an immediate update to your LLC's operating agreement.

"TAX MATTERS PARTNER"

The first major change is that the "tax matters partner" designated in the LLC Operating Agreement goes away with the repeal of the existing rules and is replaced with a "partnership representative" who has the *sole authority* to act on behalf of the partnership with respect to the IRS. In the event the LLC does not appoint a "partnership representative" and is under audit, the IRS will appoint a "partnership representative" for you, which does not have to be a member of the LLC. In addition, under the new rules, the "partnership representative" has significantly broader authority to bind the entity *without even discussing matters with the current owners*.

PARTNERSHIP (LLC) PAYS THE TAX

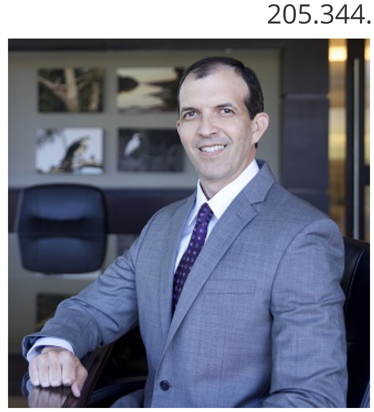
Previously, the IRS had to track down each member of the LLC to collect any tax assessments, and the applicable tax rate would be that of the individual. Under the new rules, the IRS can assess any tax adjustment at the entity-level in the year in which the audit is completed. This can result in members bearing a portion of the tax assessment related to earlier years in which they were **not** members or had a different ownership percentage. In addition, the assessment will be calculated at the higher of the maximum corporate or individual income tax rate.

EXCEPTION & PUSH OUT ELECTION

Certain partnerships (LLCs) with fewer than 100 partners can elect out of the new rules if each owner is either an individual, a C corporation, an S corporation, estate of a deceased owner, or a foreign entity that would be treated as a C corporation if it was domestic. However, if one of the owners of the LLC is another LLC, then the entity will not be eligible for this exception. In order to elect out of the new rules, there are certain steps that the entity must take. Entities that do not fit within the small partnership exception or fail to elect out of the new rules, have 45 days after receiving the final audit adjustment to pass the adjustment out to the owners of the year under review.

WHAT TO DO?

Contact us to review and revise your LLC agreements.
205.344.5000



Blake A. Madison
bmadison@rosenharwood.com

Emilee Scheeff
escheeff@rosenharwood.com