



DID YOU KNOW?

Did you know an S corp election by an LLC may NOT be effective if the LLC agreement contains the standard partnership tax provisions?

More and more frequently we are seeing limited liability companies (taxed as partnerships by default) electing to be taxed as S corporations. I, for one, have seen LLC agreements for S corporations that still contain the standard partnership tax provisions (e.g., liquidating distributions in accordance with capital accounts).

The IRS has ruled that such provisions in an S corporation's LLC agreement cause it to violate the single class of stock requirement for S corps since the outstanding units do not confer identical rights to distribution and liquidation proceeds. [PLR 201930023](#) and [PLR 201904001](#)

Bottom Line: If converting a LLC taxed as a partnership to an S corp, be sure to eliminate any legacy partnership tax provisions in the LLC Agreement and be vigilant for such provisions in the LLC agreement of a potential acquisition target.

If you have any questions, please contact the author or one of Taft's Tax attorneys.



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Whatever you do, always give 100%. Unless you're donating blood. — Bill Murray