

# Contents

## PART I ORGANIZATION

<b>CHAPTER 1: INTRODUCTION</b> .....	<b>1-1</b>
1.1. Introduction .....	1-4.4
1.1.1. The Texas Business Organizations Code .....	1-4.4
1.1.1.1. New Vocabulary .....	1-6
1.1.2. Overview of LLCs .....	1-7
1.1.3. Introduction to Drafting LLC Documents .....	1-7
1.1.3.1. Certificate of Formation .....	1-8
1.1.3.2. The Company Agreement— The Roots .....	1-8
1.2. Comparison with Other Entities .....	1-11
1.2.1. Comparison to Corporations .....	1-11
1.2.2. Comparison to Partnerships .....	1-18.7
1.2.3. Other Differences .....	1-20
1.2A. Piercing the Veil, Fiduciary Duty, and Liability of Members/Managers under Agency Principles, Texas Water Code, and Texas Family Code .....	1-20
1.2A.1. LLC Veil Piercing .....	1-21
1.2A.1.1. Overview and Certain Statutory Provisions .....	1-22
1.2A.1.2. LLC Veil Piercing Decision Tree .....	1-27
1.2A.1.3. Piercing to Establish Liability; Veil Piercing Legislation Regarding LLCs .....	1-29
1.2A.1.4. Reverse Piercing .....	1-40
1.2A.1.5. LLC Piercing to Establish Personal Jurisdiction, Impose Statutory Liability or Defeat Bankruptcy Discharge .....	1-44.4
1.2A.2. Fiduciary Duty—LLCs .....	1-44.18
1.2A.2.1. An Overview .....	1-44.18
1.2A.2.2. Contractual Fiduciary Duties .....	1-44.19
1.2A.2.3. Fiduciary Duty Cases .....	1-44.28
A. Fiduciary Duty Cases— 2017 through 2016 .....	1-44.28

CONTENTS

	A1.	Fiduciary Duty Cases— 2016 through 2013 . . . . .	1-46.4
	B.	Fiduciary Duty Cases— 2015 through 2013 . . . . .	1-49
	C.	Fiduciary Duty Cases— 2013 through 2012 . . . . .	1-54
	D.	Fiduciary Duty Cases— 2012 through 2011 . . . . .	1-56
1.2A.3.		Liability of Members/Managers under Agency Principles, Texas Water Code, and Texas Family Code . . . . .	1-83
1.3.		History of the LLC; Amendments to BOC Affecting LLC . . . . .	1-86.5
1.3.1.		Historical Overview . . . . .	1-86.5
	1.3.1.1.	Generally . . . . .	1-86.5
	1.3.1.2.	History of LLCs in Texas before the BOC . . . . .	1-86.6
1.3.2.		2019 Amendments to BOC . . . . .	1-87
	1.3.2.1.	HB 3603 Amendments to Business Organizations Code . . . . .	1-87
	1.3.2.1.1.	Definitions (BOC Section 101.451(2)) . . . . .	1-88
	1.3.2.1.2.	Standing to Bring Proceeding (BOC Section 101.452) . . . . .	1-88
	1.3.2.1.3.	Demand (BOC Section 101.453(b)) . . . . .	1-88
	1.3.2.1.4.	Determination by Governing or Independent Persons (BOC Section 101.454) . . . . .	1-89
	1.3.2.1.5.	Stay of Proceedings (BOC Section 101.455) . . . . .	1-90
	1.3.2.1.6.	Discovery (BOC Section 101.456) . . . . .	1-90
	1.3.2.1.7.	Tolling of Statute of Limitations (BOC Section 101.457) . . . . .	1-90
	1.3.2.1.8.	Dismissal of Derivative Proceeding (BOC Section 101.458) . . . . .	1-91
	1.3.2.1.9.	Allegations after Demand Rejected (BOC Section 101.459) . . . . .	1-92
	1.3.2.1.10.	Payment of Expenses (BOC Section 101.461) . . . . .	1-92

1.3.2.1.11.	Application to Foreign Limited Liability Companies (BOC Section 101.462) . . .	1-92
1.3.2.1.12.	Closely Held Limited Liability Company (BOC Section 101.463). . . . .	1-93
1.3.2.1.12.1.	Definitions (BOC Section 101.463(b)and (c)). . . . .	1-93
1.3.2.2.	SB 1859 Amendments to the Business Organizations Code . . . . .	1-94
1.3.2.2.1.	Amendments Implementing Use of an Electronic Data System, including Block Chain and Distributed Ledger Technology, for Maintenance of Books and Records of a Domestic Entity (BOC Sections 1.002, 3.151, and 3.205) . . . . .	1-94
1.3.2.2.2.	Delayed Effectiveness (BOC Sections 4.052, 4052, 4054, 4.055, 4.056, 4.057(e) and 4.059). . . . .	1-95
1.3.2.2.3.	Reproduction or Electronic Transmission of Consent (BOC Section 6.205(b)) . . .	1-96
1.3.2.2.4.	Number & Qualifications [of Managers] (BOC Section 101.302(c)) . . . . .	1-96
1.3.2.2.5.	Supplemental Records Required for Limited Liability Companies (BOC Section 101.501(d)) . . . . .	1-96
1.3.2.2.6.	Penalty for Refusal to Permit Examination of Certain Records (BOC Section 101.503(a)) . . . . .	1-97
1.3.2.2.7.	Winding Up by Court Order [of a Series] (BOC Section 101.621) . . .	1-97
1.3.2.3.	HB 3609 Amendments to the Business & Commerce Code . . . . .	1-97
1.3.2.3.1.	Business & Commerce Code Section 71.103(a) . . .	1-97

CONTENTS

	1.3.2.3.2.	Business & Commerce Code Sections 71.103(b) and (c) and Section 71.104(b) . . . . .	1-98
1.3.3.	2021 Amendments to BOC . . . . .		1-98
	1.3.3.1.	SB 1203 Amendments to the Business Organizations Code . . . . .	1-98
	1.3.3.1.1.	Definition of “Member” (BOC Section 1.002(49)) . . . . .	1-98
	1.3.3.1.2.	Choice of Forum (BOC Section 2.115). . . . .	1-99
	1.3.3.1.3.	Certificate of Formation No Longer Controls Whether the LLC Is Governed by Managers or Members (BOC Section 3.010) . . . . .	1-99
	1.3.3.1.4.	Restated Certificates of Formation (BOC Section 3.0611). . . . .	1-100
	1.3.3.1.5.	Emergency Provisions (BOC Sections 3.251, 3.252, 3.255 and 3.2535) . . . . .	1-100
	1.3.3.1.6.	Delayed Effectiveness of Actions by Written Consent (BOC Sections 6.201 and 6.202) . . . . .	1-101
	1.3.3.1.7.	Regarding Conspicuous Indemnification and Exculpation Provisions (BOC Sections 8.002(a) and 8.005). . . . .	1-101
	1.3.3.1.8.	Acting as a Governing Person Does Not Constitute Transacting Business (BOC Section 9.251) . . . . .	1-102
	1.3.3.1.9.	Termination and Reinstatement (BOC Sections 11.001(3), 11.153, 11.254 and 11.359). . . . .	1-102
	1.3.3.1.10.	Reliance on Financial Information to Determine Solvency and New Statute of Limitations for Impermissible	

	Distributions (BOC Section 101.206) . . . . .	1-102.1
1.3.3.1.11.	Double Derivative Action . . . . .	1-102.1
1.3.3.2.	SB 1523 Amendments Registered and Protected Series LLCs . . . . .	1-102.2
1.3.3.2.1.	Amendment of Company Agreement (BOC Section 101.601(d)) . . . . .	1-102.3
1.3.3.2.2.	No Liability for Other Series (BOC Section 101.602(b)) . . . . .	1-102.3
1.3.3.2.3.	Protected Assets (BOC Section 101.603(b)) . . . . .	1-102.3
1.3.3.2.4.	Assets “Associated With” and “Assets Of” (BOC Section 101.602(c)) . . . . .	1-102.3
1.3.3.2.5.	Notice of Series (BOC Section 101.604) . . . . .	1-102.3
1.3.3.2.6.	Member or Manager Liability Authorized (BOC Section 101.606(b)) . . . . .	1-102.4
1.3.3.2.7.	Voting Rights (BOC Section 101.607) . . . . .	1-102.4
1.3.3.2.8.	Reliance on Financial Information to Determine Solvency and New Statute of Limitations for Impermissible Distributions (BOC Section 101.613) . . . . .	1-102.4
1.3.3.2.9.	Reinstatement (BOC Section 11.206(b)) . . . . .	1-102.4
1.3.3.2.10.	Modification by Company Agreement (BOC Section 101.054(a)) . . . . .	1-102.4
1.3.3.3.	SB 938 Waiver of Fees for Veterans . . . . .	1-102.5
1.3.3.4.	HB 3131 Mailing Address . . . . .	1-102.5
1.4.	Classification of the LLC for Federal Income and Texas State Franchise Tax Purposes . . . . .	1-102.5
1.4.1.	Classification of the LLC as a Partnership for Federal Income Tax Purposes . . . . .	1-103
1.4.2.	Federal Income Tax Consequences of Classification as a Corporation . . . . .	1-103
1.4.3.	Tax History of the LLC’s Classification as a Partnership . . . . .	1-104
1.4.4.	Understanding the Classification Rules Applicable to Domestic LLCs . . . . .	1-106
1.4.4.1.	LLCs Organized on or after January 1, 1997 . . . . .	1-107
1.4.4.2.	LLCs Organized before January 1, 1997, for Periods before January 1, 1997 . . . . .	1-108

CONTENTS

1.4.4.3.	LLCs Organized before January 1, 1997, for Periods on or after January 1, 1997 . . . . .	1-109
1.4.4.4.	Elections—First Time Elections and Changing an Election . . . . .	1-110
1.4.4.5.	Single-Owner LLC; Benefits of and EIN for . . . . .	1-113
1.4.4.5.1.	Overview . . . . .	1-113
1.4.4.5.2.	Employment and Excise Taxes . . . . .	1-115
1.4.4.5.3.	Unified Audit Rules . . . . .	1-116
1.4.4.5.3.1	TEFRA Unified Audit Rules for Tax Years of an LLC Ending on or before December 31, 2017 . . . . .	1-116
1.4.4.5.3.2	BBA Unified Audit Rules for Tax Years of an LLC Beginning on or after January 1, 2018 . . . . .	1-117
1.4.4.5.4.	Corporate Reorganizations . . . . .	1-117
1.4.4.5.5.	Consolidated Groups . . . . .	1-120
1.4.4.5.6.	Like-Kind Exchanges . . . . .	1-121
1.4.4.5.7.	Bankruptcy Remote Entity . . . . .	1-122
1.4.4.5.8.	Single-Member Requirement . . . . .	1-122
1.4.4.5.9.	Single-Member LLC in Community Property State . . . . .	1-124.1
1.5.	Election to Be Excluded from Subchapter K . . . . .	1-129
1.6.	Election to Be Taxed as an S Corporation . . . . .	1-132
1.7.	The 2017 Tax Act . . . . .	1-134
1.7.1.	2017 Tax Act’s Impact on the Choice of Entity . . . . .	1-134
1.7.2.	Section 199A—Deduction for Qualified Business Income . . . . .	1-136
1.7.3.	Section 1061—Applicable Partnership Interests (i.e., Carried Interests) . . . . .	1-141
1.7.3.1.	Introduction . . . . .	1-141

1.7.3.2.	Mechanics of Code Section 1061 . . . . .	1-143
1.7.3.2.1.	Applicable Partnership Interest . . . . .	1-143
1.7.3.2.2.	Exceptions . . . . .	1-147
1.7.3.2.2.1.	Employee of Another Entity Exception . . . . .	1-147
1.7.3.2.2.2.	C Corporation Exception . . . . .	1-148
1.7.3.2.2.3.	Capital Exception . . . . .	1-148
1.7.3.2.2.3.1.	Distributive Share . . . . .	1-148
1.7.3.2.2.3.2.	Disposition of API . . . . .	1-151
1.7.3.2.2.4.	Sale of API to Unrelated Party . . . . .	1-152
1.7.3.2.2.5.	Code Section 1061(b) . . . . .	1-153
1.7.3.2.3.	Recharacterization Amount . . . . .	1-153
1.7.3.2.3.1.	Formula for Calculating the Recharacterization Amount . . . . .	1-154
1.7.3.2.3.2.	Holding Period . . . . .	1-156
1.7.3.2.4.	Sales to Related Parties . . . . .	1-157
1.7.3.2.5.	Unrealized Gains and Losses . . . . .	1-159
1.7.3.2.6.	Gain Waivers . . . . .	1-159
1.7.3.2.7.	Installment Sales . . . . .	1-160
1.7.3.3.	Reporting . . . . .	1-160
1.7.4.	Section 163(j)—Limitation on Interest Deduction . . . . .	1-161
1.7.5.	Section 708—Repeal of Technical Termination of Partnership . . . . .	1-163
1.7.6.	Section 461(l)—Limitation on Excess Business Losses of Non-Corporate Taxpayers . . . . .	1-163
1.7.7.	Section 1446(f)—Withholding on Transfers by Non-U.S. Partners . . . . .	1-164
1.8.	Tax-Exempt Organizations as LLCs . . . . .	1-166

CONTENTS

<b>CHAPTER 2: FORMATION AND ORGANIZATION .....</b>	<b>2-1</b>
2.1. Introduction .....	2-3
2.1.1. Pre-formation Contracts.....	2-3
2.2. Texas Secretary of State Procedures.....	2-3
2.2.1. General.....	2-3
2.2.2. Execution.....	2-4
2.2.3. Entity Formation and Commencement of Existence .....	2-4
2.2.4. Filing Procedures.....	2-5
2.2.5. Filing Fees .....	2-6
2.2.6. Delayed Effectiveness of Filings.....	2-6
2.2.6.1. General.....	2-6
2.2.6.2. Subsequent Time or Date.....	2-6
Form 2-1. Delayed Effectiveness Provision: Specified Future Time and Date .....	2-7
2.2.6.3. Subsequent Events or Facts .....	2-7
Form 2-2. Delayed Effectiveness Provision: Specified Future Event or Facts .....	2-7
Form 2-3. Statement Regarding Delayed Effective Condition .....	2-8
2.2.7. Secretary of State Electronic Filings— SOS Direct.....	2-8
2.3. Names and Name Reservations .....	2-8.1
2.3.1. LLC Names .....	2-8.1
2.3.2. Similarity to Names of Other Texas Entities .....	2-9
Form 2-4. Letter of Consent to Use of Name.....	2-10
2.3.3. Reservation of Name .....	2-11
Form 2-5. Application for Reservation of LLC Name.....	2-11
Form 2-6. Notice of Transfer of Name Reservation .....	2-12
2.3.4. Registration of Name.....	2-13
Form 2-7. Registration of LLC Name .....	2-13
2.3.5. Assumed Names .....	2-14
2.4. Certificate of Formation .....	2-14
2.4.1. Basic Requirements .....	2-14
2.4.1.1. Formation and Existence of Filing Entities.....	2-14



2.4.1.2.	Formation and Existence of an LLC . . . . .	2-14
2.4.2.	Certificate of Formation: Manager-Managed LLC . . . . .	2-17
	Form 2-8. Checklist for the Formation of a New LLC . . . . .	2-17
	Form 2-9. Certificate of Formation for a Manager-Managed LLC . . . . .	2-23
2.4.3.	Member-Management Provision . . . . .	2-25
	Form 2-10. Certificate of Formation: Member- Management Provision . . . . .	2-25
2.4.4.	Professional LLC Provision. . . . .	2-25
	Form 2-11. Certificate of Formation: Professional LLC Provision . . . . .	2-25
2.5.	Amendments and Restatements of Certificate of Formation . . . . .	2-26
	Form 2-12. Certificate of Amendment to Certificate of Formation . . . . .	2-26
2.6.	Change of Registered Agent or Registered Office . . . . .	2-27
	Form 2-13. Change of Registered Office or Registered Agent . . . . .	2-28

**PART II  
OPERATIONS**

<b>CHAPTER 3:</b>	<b>COMPANY AGREEMENT . . . . .</b>	<b>3-1</b>
3.1.	General . . . . .	3-2
3.2.	The BOC’s “Default” Rules . . . . .	3-3
3.3.	Advisability of Adopting a Company Agreement . . . . .	3-8
3.4.	Form and Contents of the Company Agreement . . . . .	3-9
	3.4.1. Written Form . . . . .	3-9
	3.4.2. Contents of the Company Agreement . . . . .	3-10
3.5.	Adoption of Company Agreement . . . . .	3-11
	3.5.1. Member-Managed LLC . . . . .	3-11
	Form 3-1. Introductory Paragraph Regarding Adoption . . . . .	3-12
	3.5.2. Manager-Managed LLC . . . . .	3-12
3.6.	Amendment . . . . .	3-12
	3.6.1. Member-Managed LLC . . . . .	3-12
	Form 3-2. Amendments of Company Agreement by All Members . . . . .	3-12
	Form 3-3. Amendments of Company Agreement by Less than All Members . . . . .	3-13

CONTENTS

3.6.2.	Manager-Managed LLC . . . . .	3-13
	Form 3-4. Amendments of Company Agreement by Managers and Less than All Members (Manager-Managed LLC) . . . . .	3-14
3.7.	Form Company Agreement . . . . .	3-14
<b>CHAPTER 4: ORGANIZATION . . . . .</b>		<b>4-1</b>
4.1.	Drafting LLC Organizations Provisions . . . . .	4-3
4.2.	Formation of the LLC . . . . .	4-3
	Form 4-1. Formation—Certificate of Formation Precedes Company Agreement . . . . .	4-3
	Form 4-2. Formation—Company Agreement Precedes Certificate of Formation . . . . .	4-4
4.3.	Name . . . . .	4-4
	Form 4-3. Name . . . . .	4-4
4.4.	Offices and Registered Agent . . . . .	4-4
	Form 4-4. Offices and Registered Agent . . . . .	4-5
4.5.	Purpose . . . . .	4-6
	Form 4-5. Purpose—Cross-Reference to Certificate of Formation . . . . .	4-6
	Form 4-6. Purpose—Equivalent Limited-Purpose Provisions in Certificate of Formation and Company Agreement . . . . .	4-7
	Form 4-7. Purpose—Equivalent Limited-Purpose Provisions in Certificate of Formation and Company Agreement (with “Catch-All” Language) . . . . .	4-7
	Form 4-8. Purpose—Limited-Purpose Provision in Company Agreement, Notwithstanding Broad-Purpose Provision in Certificate of Formation . . . . .	4-8
4.6.	Term . . . . .	4-8
	Form 4-9. Term . . . . .	4-9
4.7.	Foreign Qualification . . . . .	4-9
	Form 4-10. Foreign Qualification . . . . .	4-9
4.8.	Limited Liability of Members and Managers . . . . .	4-9
	Form 4-11. Disclaimers of State-Law Partnership Status and Personal Liability . . . . .	4-10
4.9.	Definitions . . . . .	4-11
	4.9.1. General . . . . .	4-11

4.9.2.	Definitions of “Interest” or “Membership Interest,” “Membership Rights,” and “Member” . . . . .	4-11
	Form 4-12. Definitions of “Interest,” “Membership Rights,” and “Member” . . . . .	4-14
4.9.2.1.	Certain Limitations on Definitions of “Interest,” “Membership Rights,” and “Member” . . . . .	4-15
4.9.3.	Other General Definitions . . . . .	4-16
	Form 4-13. General Definitions . . . . .	4-16
4.10.	General Provisions . . . . .	4-18
	Form 4-14. General Provisions—Long Form . . . . .	4-18
	Form 4-15. General Provisions—Short Form . . . . .	4-21
4.11.	Post-Organization Communication with Clients . . . . .	4-23
	Form 4-16. Form of Post-Organization Reporting Letter to Client . . . . .	4-23
	Form 4-17. Alternate Form of Letter to New LLC Regarding Operational and Other Post-Formation Matters . . . . .	4-25
4.12.	Members without Financial Obligations and Members without Interests and Springing Interests of Members . . . . .	4-38
	Form 4-18. Springing Interest (Continuation of LLC upon Termination of Last Member) . . . . .	4-38

**CHAPTER 5: LIMITED LIABILITY COMPANY**

	<b>CAPITAL</b> . . . . .	<b>5-1</b>
5.1.	Drafting Capital Provisions . . . . .	5-2
5.2.	Initial Capital Contributions . . . . .	5-3
	Form 5-1. Initial Capital Contributions . . . . .	5-3
	Form 5-2. Initial Capital Contributions—Services . . . . .	5-4
5.3.	Subsequent Capital Contributions . . . . .	5-4
	Form 5-3. No Obligation to Make Subsequent Capital Contributions . . . . .	5-5
	Form 5-4. Specified Subsequent Capital Contributions . . . . .	5-5
	Form 5-5. Definition of “Commitment” (Maximum Contribution Obligation) . . . . .	5-6
	Form 5-6. Subsequent Capital Contributions at Discretion of Managers (with Limit) . . . . .	5-6
	Form 5-7. Subsequent Capital Contributions at Discretion of Managers (with Limit) (Short Form) . . . . .	5-7

CONTENTS

5.4. Penalties for Failure to Make Contributions. . . . . 5-8  
Form 5-8. Comprehensive Penalties for Failure to  
Make Contributions. . . . . 5-8.1  
Form 5-9. Comprehensive Penalties for Failure to  
Make Contributions (Short Form). . . . . 5-10  
5.5. Interest on, and Return of, Capital Contributions. . . . . 5-11  
Form 5-10. No Interest on, or Right to Require  
Return of, Capital Contributions . . . . . 5-12  
5.6. Capital Accounts. . . . . 5-12  
Form 5-11. Capital Accounts to Be Maintained. . . . . 5-13  
5.7. Loans by Members . . . . . 5-13  
Form 5-12. Loans—Terms to Be Agreed upon by  
Members and Managers . . . . . 5-13  
Form 5-13. Loans—General Terms Set Forth in  
Advance. . . . . 5-13

**CHAPTER 6: ALLOCATION AND DISTRIBUTION  
PROVISIONS . . . . . 6-1**

6.1. Taxation of the LLC . . . . . 6-4  
6.2. General Allocation and Distribution Concepts. . . . . 6-4  
6.3. Allocation Requirements—Code Section 704(b). . . . . 6-5  
6.3.1. Overview . . . . . 6-5  
6.3.2. The Three Alternative Allocation Tests . . . . . 6-6  
6.3.2.1. The First Test: Substantial  
Economic Effect and Capital  
Accounts . . . . . 6-6  
6.3.2.2. The Second Test: Partners’  
Interests . . . . . 6-8  
6.3.2.3. The Third Test: Nonrecourse Debt . . . . . 6-9  
6.3.2.4. Economic Effect Equivalence . . . . . 6-10.1  
6.3.3. Allocations to Members. . . . . 6-10.1  
6.4. Definitions . . . . . 6-11  
6.4.1. Distribution-Related Definitions . . . . . 6-11  
Form 6-1. Distribution Definitions. . . . . 6-11  
6.4.2. Allocation-Related Definitions . . . . . 6-12  
Form 6-2. Allocation Definitions . . . . . 6-13  
6.5. Basic Distribution Provisions . . . . . 6-17  
6.5.1. In General . . . . . 6-17  
6.5.2. Net Cash Flow from Operations . . . . . 6-18  
Form 6-3. Distributions of Net Cash Flow. . . . . 6-18  
Form 6-4. Distributions of Net Cash Flow  
to Pay Tax Liability of Members. . . . . 6-21

	Form 6-4.1. Distributions of Available Cash to Pay Estimated Tax Liabilities of Members . . . . .	6-22
6.5.3.	Distribution of Capital Proceeds . . . . .	6-23
	Form 6-5. Distribution of Capital Proceeds . . . . .	6-23
6.5.4.	Liquidation Proceeds . . . . .	6-24
	Form 6-6. Liquidation and Distribution (Capital Accounts Control) . . . . .	6-25
	Form 6-7. Liquidation and Distribution— Deficit Restoration Obligation. . . . .	6-25
	Form 6-8. Liquidation and Distribution (Cash Controls) . . . . .	6-26
6.6.	Basic Allocation Provisions . . . . .	6-27
6.6.1.	Basic Allocations of Profit and Loss . . . . .	6-27
	Form 6-9. Profit or Loss . . . . .	6-27
6.6.2.	Alternate Test for Economic Effect . . . . .	6-28
	Form 6-10. Alternate Test for Economic Effect . . . . .	6-30.2
6.6.3.	Minimum Gain Chargeback— Nonrecourse Debt . . . . .	6-30.4
	Form 6-11. Minimum Gain Chargeback . . . . .	6-30.5
6.6.4.	Minimum Gain Chargeback—Member Nonrecourse Debt . . . . .	6-30.6
	Form 6-12. Minimum Gain Chargeback— Member Nonrecourse Debt . . . . .	6-30.6
6.6.5.	Other Regulatory Allocations . . . . .	6-30.7
6.6.5.1.	Book Capital Accounts . . . . .	6-30.7
	Form 6-13. Adjustment of Book Value . . . . .	6-31
	Form 6-14. Tax Allocations— Tax Allocations for Assets with Book Value Different than Adjusted Tax Basis. . . . .	6-32
6.6.5.1.1.	Code Section 704(c) Allocations . . . . .	6-32
6.6.5.2.	Adjustment of Books as Required for Code Section 754 Election . . . . .	6-32.6
	Form 6-15. Code Section 754 Adjustment . . . . .	6-33
6.6.5.3.	Federal or State Withholding . . . . .	6-33
	Form 6-16. Withholding . . . . .	6-33

CONTENTS

	Form 6-16A. Withholding . . . . .	6-34
6.6.5.4.	Varying Interests of the Members . . . . .	6-34
	Form 6-17. Varying Interests. . . . .	6-36.4
6.6.5.5.	Amendment to Allocation Provisions. . . . .	6-36.5
	Form 6-18. Amendment to Allocation Provisions. . . . .	6-36.5
6.6.5.6.	Prior Law: Restrictions on Transfer of Interests to Avoid Constructive Termination of LLC under Code Section 708(b)(1)(B) . . . . .	6-36.5
	Form 6-19. Reserved. . . . .	6-36.6
6.7.	Complex and Disproportionate Distribution and Allocation Provisions . . . . .	6-37
6.7.1.	Distribution Preferences . . . . .	6-37
	Form 6-20. Distribution Preference . . . . .	6-37
6.7.2.	Disproportionate Allocation of Losses . . . . .	6-39
	Form 6-21. Disproportionate Allocation of Loss. . . . .	6-39
6.7.3.	Flips . . . . .	6-40
	Form 6-22. Flips on Sale (Capital Accounts Control) . . . . .	6-41
	Form 6-23. Flips on Sale (Cash Controls) . . . . .	6-43
6.7.4.	Targeted Allocations . . . . .	6-43
	Form 6-24. Targeted Allocations (Capital Accounts Control) Added Definitions to Either Appendix A or B . . . . .	6-45
6.7.5.	Distributions Tied to Internal Rate of Return . . . . .	6-47
	Form 6-25. Internal Rate of Return . . . . .	6-48
	Form 6-26. Internal Rate of Return . . . . .	6-49
	Form 6-27. Distribution Tied to Internal Rate of Return . . . . .	6-50
<b>CHAPTER 7: MANAGEMENT PROVISIONS. . . . .</b>		<b>7-1</b>
7.1.	Management Models . . . . .	7-3
7.2.	Tax Aspects. . . . .	7-4
7.3.	Manager-Management . . . . .	7-5
7.3.1.	General Provisions Regarding Manager-Management. . . . .	7-5

	Form 7-1. Manager-Management— Certificate of Formation . . . . .	7-5
	Form 7-2. Manager-Management— Company Agreement . . . . .	7-6
7.3.2.	Approval of Major Actions by Members . . . . .	7-6
	Form 7-3. Major Actions . . . . .	7-7
	Form 7-4. Major Actions—Examples . . . . .	7-8
7.3.3.	Selection, Tenure, and Removal of Managers . . . . .	7-10
	Form 7-5. Selection, Tenure, and Removal of Managers . . . . .	7-11
7.3.4.	Delegation to Committees and Individual Managers . . . . .	7-11
	Form 7-6. Delegation to Committees and Individual Managers . . . . .	7-12
7.3.5.	Officers . . . . .	7-12
	Form 7-7. Officers . . . . .	7-13
	Form 7-8. Officers (Short Form) . . . . .	7-14
7.3.6.	Actual and Apparent Authority . . . . .	7-14
7.3.7.	Limitations of Duties and Liabilities . . . . .	7-15
	7.3.7.1. Examples of Disclaimers of Duties and Liabilities . . . . .	7-16
	Form 7-9. Limitation of Managers’ Duties and Liabilities (Gross Negligence Standard) . . . . .	7-17
	Form 7-9A. Limitation of Officers’ Duties and Liabilities (Gross Negligence Standard) . . . . .	7-17
	Form 7-10. Limitation of Members’ Duties and Liabilities (Gross Negligence Standard) . . . . .	7-18
7.3.8.	Conflicts of Interest . . . . .	7-18.1
	Form 7-11. Conflicts of Interest—Negation of Company Opportunity Doctrine . . . . .	7-18.1
	Form 7-12. Conflicts of Interest— Affirmation of Company Opportunity Doctrine . . . . .	7-19

CONTENTS

7.3.9.	Indemnification . . . . .	7-19
7.3.9.1.	Examples of Indemnification Provisions. . . . .	7-20
	Form 7-13. Indemnification . . . . .	7-20
	Form 7-14. Indemnification (Short Form). . . . .	7-22
7.3.10.	Compensation and Reimbursement . . . . .	7-22.1
	Form 7-15. No Advance Agreement as to Compensation; Reimbursement Rights . . . . .	7-23
7.3.11.	Meetings and Voting . . . . .	7-23
	Form 7-16. Meetings of Managers. . . . .	7-26
	Form 7-17. Voting Ratio Linked to Sharing Ratios . . . . .	7-27
	Form 7-18. Voting Ratio Not Linked to Sharing Ratios . . . . .	7-27
	Form 7-19. Definitions of “Majority,” “Supermajority,” and “Unanimous Interests” . . . . .	7-27
	Form 7-20. Definition of “Sole Discretion”. . . . .	7-28
	Form 7-21. Meetings of Members . . . . .	7-29
7.3.12.	Meetings and Voting: General . . . . .	7-29
	Form 7-22. General Provisions Regarding All Meetings. . . . .	7-30
7.3.13.	Emergency Governance . . . . .	7-31
	Form 7-22A. Emergency Governance . . . . .	7-31
7.4.	Member-Management . . . . .	7-32
	Form 7-23. Member-Management—Certificate of Formation . . . . .	7-32
	Form 7-24. Member-Management—Company Agreement. . . . .	7-32
7.5.	Derivative Lawsuits . . . . .	7-33
<b>CHAPTER 8: TRANSFER AND BUYOUT PROVISIONS. . . . .</b>		<b>8-1</b>
8.1.	The BOC’s Default Rules for Transfers . . . . .	8-4
8.2.	Tax Aspects of Transfer Restrictions . . . . .	8-5
8.2.1.	Partnership Classification . . . . .	8-5
8.2.2.	Prior Law: Termination of the LLC. . . . .	8-5
8.2.3.	Basis Issues . . . . .	8-6
8.2.4.	Tax Consequences to Selling Partner. . . . .	8-8
8.3.	Definitions Relating to Dispositions of Interests . . . . .	8-8



8.3.1.	Definitions of “Disposition” and “Encumbrance” . . . .	8-8
	Form 8-1. Separate Definitions of “Disposition” and “Encumbrance” . . . . .	8-8.1
	Form 8-2. Definition of “Disposition” (Includes “Encumbrance”) . . . . .	8-9
8.3.2.	Definitions of “Interest” and “Membership Rights” . . . . .	8-9
8.3.3.	Definition of “Assignee” . . . . .	8-10
	Form 8-3. Definition of “Assignee” . . . . .	8-10
	Form 8-4. Definition of “Assignee” (Expanded Version) . . . . .	8-10
8.3.4.	Definitions of “Affiliate,” “Family,” and “Control” . . . . .	8-11
	Form 8-5. Definitions of “Affiliate,” “Control,” and “Family” . . . . .	8-11
8.4.	Disposition and Encumbrance Provisions . . . . .	8-12
8.4.1.	General Considerations . . . . .	8-12
8.4.2.	General Provision Regarding Dispositions and Encumbrances . . . . .	8-13
	Form 8-6. General Provision Regarding Dispositions and Encumbrances . . . . .	8-13
8.4.3.	Prohibition on Any Dispositions or Admissions without Consent . . . . .	8-14
	Form 8-7. Prohibition on Any Dispositions or Admissions without Consent . . . . .	8-14
8.4.4.	Prohibition on Any Dispositions or Admissions without Consent; Involuntary Dispositions Addressed in Buyout Provisions . . . . .	8-15
	Form 8-8. Prohibition on Voluntary Dispositions or Admissions without Consent—Involuntary Dispositions Subject to Buyout Right . . . . .	8-15
8.4.5.	Right to Dispose of Membership Rights to Affiliates (and for Such Assignees to Be Admitted) without Consent; Prohibition on Other Dispositions and Admissions without Consent . . . . .	8-16
	Form 8-9. Right to Dispose of Membership Rights to Affiliates (and for such	

CONTENTS

	Assignees to Be Admitted) without Consent; Prohibition on Other Dispositions and Admissions without Consent. . . . .	8-16
8.4.6.	Right to Dispose of Interest without Consent; Prohibition on Dispositions of Other Membership Rights and Admissions without Consent. . . . .	8-17
	Form 8-10. Right to Dispose of Interest; Prohibition on Other Dispositions and Admissions without Consent. . . . .	8-17
8.4.7.	Right to Dispose of Membership Rights (and for Assignees to Be Admitted) without Consent, Subject to a Preferential Purchase Right of Other Members . . . . .	8-18
	Form 8-11. Right to Dispose of Membership Rights (and for Assignees to Be Admitted), Subject to a Preferential Purchase Right of Other Members . . . . .	8-18
8.4.8.	Right to Dispose of Membership Rights (and for Assignees to Be Admitted) without Consent, Subject to a Preferential Purchase Right of Company . . . . .	8-21
	Form 8-12. Right to Dispose of Membership Rights (and the Assignees to Be Admitted), Subject to a Preferential Purchase Right of Company . . . . .	8-21
8.4.9.	Other Types of Disposition Restrictions . . . . .	8-24
8.4.10.	Free Transferability of Interests. . . . .	8-24
	Form 8-13. Right to Dispose of Membership Rights without Consent . . . . .	8-24
8.4.11.	Additional Conditions to Approval of Dispositions and Admissions. . . . .	8-25
	Form 8-14. Additional Conditions to Approval of Dispositions and Admissions . . . . .	8-25
	Form 8-15. Additional Conditions to Approval of Dispositions and Admissions (Short Form) . . . . .	8-27
8.4.12.	Restrictions on Encumbrances. . . . .	8-28

	Form 8-16. Restrictions on Encumbrances of Membership Rights . . . . .	8-28
8.5.	Withdrawal of a Member . . . . .	8-29
8.5.1.	General Considerations . . . . .	8-29
8.5.2.	Definition of “Withdrawal” . . . . .	8-29
	Form 8-17. Definition of “Withdrawal” . . . . .	8-29
8.5.3.	Right to Withdraw . . . . .	8-29
	Form 8-18. Right to Withdraw; Payment on Installment Basis . . . . .	8-30
8.5.4.	No Right to Withdraw . . . . .	8-31
	Form 8-19. No Right or Power to Withdraw . . . . .	8-31
8.6.	Buyout Provisions . . . . .	8-31
	Form 8-20. Buyout Rights: Relevant Definitions . . . . .	8-32
	Form 8-21. Buyout Rights . . . . .	8-34
 <b>CHAPTER 9: WINDING UP AND TERMINATION . . . . .</b>		<b>9-1</b>
9.1.	Tax Aspects of Winding Up and Termination . . . . .	9-3
9.2.	Overview of BOC Provisions Requiring Winding Up and Termination . . . . .	9-3
9.3.	Events Requiring Winding Up and a Member’s Departure . . . . .	9-3
9.3.1.	Events Requiring a Winding Up . . . . .	9-3
9.3.2.	A Member’s Departure . . . . .	9-5
	Form 9-1. Winding Up—Member’s Departure Does Not Trigger Winding Up . . . . .	9-6
	Form 9-2. Winding Up—Member’s Departure Triggers Winding Up . . . . .	9-6
9.4.	Continuation of Business after Event Requiring Winding Up and Termination . . . . .	9-7
9.4.1.	Revocation of Voluntary Decision to Wind Up . . . . .	9-7
9.4.2.	Expiration of Period of Duration or Event Specified in Governing Documents Requiring Winding Up . . . . .	9-7
9.4.3.	Reinstatement of Terminated LLC . . . . .	9-8
9.4.4.	Effect on Creditors and on Contracts . . . . .	9-8
9.4.5.	Possible Modification of Events Requiring Winding Up . . . . .	9-8
	Form 9-3. Continuation Vote after Winding Up . . . . .	9-8.1
9.5.	Designation of Liquidators . . . . .	9-8.2
	Form 9-4. Designation of Liquidator—Manager- Managed LLC . . . . .	9-8.2
	Form 9-5. Designation of Liquidator—Member- Managed LLC . . . . .	9-9

CONTENTS

Form 9-6.	Designation of Liquidator—Excludes Departing Member . . . . .	9-9
9.6.	Winding Up and Distribution of Assets . . . . .	9-9
Form 9-7.	Winding Up and Distribution of Assets (Reference to Distribution Provisions) . . . . .	9-12
Form 9-8.	Winding Up and Distribution of Assets (Positive Capital Account Balances) (Short Form) . . . . .	9-14
Form 9-9.	Winding Up and Distribution of Assets (Sharing Ratios) (Short Form) . . . . .	9-14
9.7.	Certificate of Termination. . . . .	9-15
Form 9-10.	Obligation to File Certificate of Termination . . . . .	9-15
Form 9-11.	Certificate of Termination . . . . .	9-16
9.8.	Claims Resolution on Termination; Limited Survival after Termination. . . . .	9-17
 <b>CHAPTER 10: BOOKS, RECORDS, AND ACCOUNTING . . . . .</b>		<b>10-1</b>
10.1.	Introduction . . . . .	10-3
10.2.	Banking. . . . .	10-3
Form 10-1.	Bank Accounts—Manager-Managed . . . . .	10-3
10.3.	Records and Inspections. . . . .	10-4
10.3.1.	Books and Records . . . . .	10-4
Form 10-2.	Maintenance of Records— Member-Managed LLC (Short Form) . . . . .	10-4
Form 10-3.	Maintenance of Records— Manager-Managed LLC (Short Form) . . . . .	10-5
Form 10-4.	Maintenance of Records— Manager-Managed LLC (Long Form) . . . . .	10-5
10.3.2.	Inspection of Records and Confidentiality . . . . .	10-6
Form 10-5.	Inspection of Records and Confidentiality . . . . .	10-7
10.4.	Tax Returns. . . . .	10-8
Form 10-6.	Tax Returns—Member-Managed . . . . .	10-8.1
Form 10-7.	Tax Returns—Manager-Managed . . . . .	10-9
10.5.	Accounting Period . . . . .	10-9
Form 10-8.	Calendar Year Accounting Period Specified . . . . .	10-9
Form 10-9.	Fiscal Year Accounting Period Specified. . . . .	10-10

Form 10-10.	Year to Be Determined by Members . . . . .	10-10
Form 10-11.	Annual Accounting Period Established by Managers . . . . .	10-10
10.6.	Method of Accounting . . . . .	10-10
Form 10-12.	Method of Accounting—Manager-Managed . . .	10-11
Form 10-13.	Method of Accounting—Member-Managed . . .	10-11
10.7.	Federal Income Tax Audit Rules for LLCs. . . . .	10-11
10.7.1.	Audit Rules for Tax Years of an LLC Ending on or before December 31, 2017. . . . .	10-12
10.7.1.1.	LLCs Subject to TEFRA Unified Audit Rules . . . . .	10-12
10.7.1.2.	General. . . . .	10-12
10.7.1.3.	Revenue Ruling 2004-88 and Disregarded Entities. . . . .	10-14
10.7.1.4.	Tax Matters Member . . . . .	10-15
10.7.1.5.	Informational Reporting to Partners . . . . .	10-15
10.7.1.6.	Settlement Agreements . . . . .	10-16
10.7.1.7.	Statute of Limitation . . . . .	10-16
10.7.1.8.	Collection. . . . .	10-16
10.7.2.	Summary . . . . .	10-16.1
	Form 10-14. Tax Matters Member (Member-Managed) . . . . .	10-16.1
	Form 10-15. Tax Matters Member (Manager-Managed) for Tax Years on or before December 31, 2017 . . . . .	10-16.2
10.7.3.	BBA Unified Audit Rules for Tax Years of an LLC Beginning on or after January 1, 2018 . . . . .	10-16.4
10.7.3.1.	LLCs Electing Out of the BBA Unified Audit Rules . . . . .	10-16.5
10.7.3.2.	Partnership Representative. . . . .	10-16.6
10.7.3.3.	Information Reporting . . . . .	10-16.9
10.7.3.4.	Settlement Agreements . . . . .	10-16.9
10.7.3.5.	Statute of Limitation . . . . .	10-16.10
10.7.3.6.	Collection of Tax . . . . .	10-16.10
10.7.3.6.1.	Push-Out Election. . . . .	10-16.11
10.7.3.6.2.	LLC Pays the Increased Tax Liability from Imputed Underpayment . . . . .	10-16.13
10.7.3.6.3.	Grouping. . . . .	10-16.14

CONTENTS

10.7.3.6.4.	Amount of Imputed Underpayment Adjusted by Member Amended Returns . . . . .	10-16.16
10.7.3.6.5.	Member Pull In Election in Lieu of Member Amended Returns . . . . .	10-16.17
10.7.3.6.6.	Drafting Company Agreements For Tax Years Subject to BBA . . . . .	10-16.17
10.7.3.6.6.1.	Selecting the Partnership Representative . . . . .	10-16.17
10.7.3.6.6.2.	Duties of Partnership Representative . . . . .	10-16.17
10.7.3.6.6.3.	Indemnification/ Exculpation of Partnership Representative . . . . .	10-16.18
10.7.3.6.6.4.	List of Additional Items to Consider under the BBA Unified Audit Rules . . . . .	10-16.19
10.7.3.6.6.5.	Election for Early Application of LLC Audit Rules under the BBA . . . . .	10-16.20
	Form 10-15A. Tax Matters Member (Manager-Managed) . . . . .	10-16.21
	Form 10-15B. Tax Matters Member (Manager-Managed) . . . . .	10-16.24
	Form 10-15C. Tax Matters Member (Manager-Managed) . . . . .	10-16.28
10.8.	Tax Elections . . . . .	10-16.32
	Form 10-16. Tax Elections (Short Form) . . . . .	10-16.33
	Form 10-17. Tax Elections (Long Form) . . . . .	10-16.34
	Form 10-18. Tax Elections—Applies to Code Section 754 Only—For Use in Either Member-Managed or Manager-Managed LLC . . . . .	10-17
10.9.	Title to Property . . . . .	10-19

Form 10-19.	Title to Property—In Company Name . . . . .	10-20
Form 10-20.	Title to Company Property—Use of Nominee Permitted . . . . .	10-20
10.10.	Reportable Transactions . . . . .	10-20
10.11.	Tax Basis Capital Account Reporting. . . . .	10-26

**PART III  
MISCELLANEOUS**

**CHAPTER 11: MERGERS AND OTHER**

	<b>REORGANIZATIONS. . . . .</b>	<b>11-1</b>
11.1.	Introduction . . . . .	11-4
11.1.1.	History of Non-Corporate Mergers . . . . .	11-4
11.1.2.	History of TLLCA Merger Provisions. . . . .	11-4
11.2.	Entities with Which Texas LLCs May Merge . . . . .	11-5
11.2.1.	Domestic Entities and Non-Code Texas Entities . . . . .	11-6
11.2.2.	Foreign Entities . . . . .	11-8
11.3.	Dissenters Rights and Mergers with Multiple Survivors . . . . .	11-8
11.3.1.	Dissenters Rights . . . . .	11-8
11.3.2.	Mergers with Multiple Survivors. . . . .	11-8
11.4.	Merger Procedures . . . . .	11-9
11.4.1.	General Requirements . . . . .	11-9
11.4.2.	Plan of Merger . . . . .	11-10
11.4.3.	Certificate of Merger . . . . .	11-11
11.4.4.	Sample Forms . . . . .	11-11
11.4.4.1.	Merger with One Surviving Entity . . . . .	11-11
Form 11-1.	Plan of Merger—One Surviving Entity . . . . .	11-12
Form 11-2.	Certificate of Merger— One Surviving Entity . . . . .	11-13
11.4.4.2.	Merger with Multiple Surviving Entities . . . . .	11-14
Form 11-3.	Plan of Merger— Multiple Surviving Entities . . . . .	11-14
Form 11-4.	Certificate of Merger— Multiple Surviving Entities . . . . .	11-16
11.5.	Effectiveness and Effect of Merger . . . . .	11-17
11.6.	Related Transactions. . . . .	11-19
11.6.1.	Parent-Subsidiary Mergers or “Short-Form”	

CONTENTS

	Mergers . . . . .	11-19
11.6.2.	Interest Exchange. . . . .	11-20
11.6.3.	Conversions . . . . .	11-21
11.7.	Tax Consequences of Mergers and Other Reorganizations . . . . .	11-25
11.7.1.	Merger or Other Conversion of an Existing Entity into an LLC Taxed as a Partnership . . . . .	11-25
11.7.1.1.	In General . . . . .	11-25
11.7.1.2.	Merger or Other Conversion of General Partnership to LLC . . . . .	11-26
11.7.1.3.	Merger or Other Conversion of Limited Partnership into LLC . . . . .	11-29
11.7.1.4.	Merger or Other Conversion of Corporation into LLC . . . . .	11-30
11.7.1.5.	Division and Acquisitive Mergers . . . . .	11-38
	11.7.1.5.1. Acquisitive Partnership Mergers . . . . .	11-39
	11.7.1.5.1.1. Determining Which LLC Continues and Which LLC Terminates for Federal Tax Purposes . . . . .	11-39
	11.7.1.5.1.2. Tax Filing Requirements. . . . .	11-40
	11.7.1.5.1.3. Determining the Form of the Merger. . . . .	11-40
	11.7.1.5.2. Partnership Division . . . . .	11-44
	11.7.1.5.2.1. Basic Rules for a Division . . . . .	11-44
	11.7.1.5.2.2. Determining Which, if Any, LLC Continues as the Prior Partnership and Which, if Any, Terminates . . . . .	11-47
	11.7.1.5.2.3. Tax Filing Requirements. . . . .	11-47
	11.7.1.5.2.4. Determining the Form of the Division . . . . .	11-48
11.7.2.	Conversion of LLC into Corporation. . . . .	11-51
11.7.3.	Admission of New Members . . . . .	11-56
	11.7.3.1. Acquisition of Interest from LLC . . . . .	11-56
	11.7.3.1.1. Economic Consideration . . . . .	11-56
	11.7.3.1.2. Federal Income Tax	



	Considerations . . . . .	11-56
11.7.3.2.	Acquisition of Interest from Another Member . . . . .	11-58
	11.7.3.2.1. Federal Income Tax Consequences . . . . .	11-58
11.7.4.	Recapitalizing the LLC . . . . .	11-59
11.7.5.	Electing to Change an LLC’s Classification under the Check-the-Box Regulations . . . . .	11-60
	11.7.5.1. Corporation to Partnership . . . . .	11-61
	11.7.5.2. Partnership to Corporation . . . . .	11-61
	11.7.5.3. Corporation to Disregarded Entity . . . . .	11-61
	11.7.5.4. Disregarded Entity to Corporation . . . . .	11-62
11.7.6.	Change in Entity Classification as a Result of Change in Number of Members . . . . .	11-64
	11.7.6.1. Converting a Disregarded Entity to a Partnership . . . . .	11-64
	11.7.6.2. Converting from a Partnership to a Disregarded Entity . . . . .	11-66
11.7.8.	Taxpayer Identification Number after Change in Classification . . . . .	11-67

**CHAPTER 12: FOREIGN LIMITED LIABILITY COMPANIES . . . . . 12-1**

12.1.	Foreign LLCs Doing Business in Texas . . . . .	12-2
	12.1.1. General . . . . .	12-2
	12.1.2. Elimination of Definition of “Foreign Limited Liability Company” . . . . .	12-2
	12.1.3. Obligation to Register . . . . .	12-3
	12.1.4. Registration Procedure . . . . .	12-3
	Form 12-1. Application for Registration to Do Business for Foreign LLC . . . . .	12-4
	12.1.5. Registration Procedure for Foreign Professional LLCs . . . . .	12-6
	12.1.6. Failure to Register . . . . .	12-6
	12.1.6.1. Penalties . . . . .	12-6
	12.1.6.2. Protections for Foreign LLCs That Fail to Register . . . . .	12-7
	12.1.7. Choice of Law Applicable to Foreign LLCs . . . . .	12-7
	12.1.7.1. Texas Law . . . . .	12-7
	12.1.7.2. Law of Jurisdiction of Organization . . . . .	12-8

CONTENTS

12.1.8. Amended Application for Registration . . . . . 12-8  
Form 12-2. Application for Amended  
Registration for Foreign LLC . . . . . 12-8  
12.1.9. Withdrawal of Foreign LLC from Texas . . . . . 12-11  
Form 12-3. Application for Certificate of  
Withdrawal of Foreign LLC . . . . . 12-11  
12.1.10. Revocation of Certificate of Authority. . . . . 12-12  
12.2. Texas LLCs Doing Business Outside of Texas. . . . . 12-13

**CHAPTER 13: PROFESSIONAL LIMITED LIABILITY COMPANIES . . . . . 13-1**

13.1. General . . . . . 13-2  
13.1.1. History . . . . . 13-2  
13.1.2. BOC . . . . . 13-2  
13.2. Name. . . . . 13-2  
13.3. Formation . . . . . 13-3  
13.4. Professional Services . . . . . 13-3  
13.4.1. Definition. . . . . 13-3  
13.4.2. Joint Practice by Certain Professionals . . . . . 13-4  
13.5. Authorized Person . . . . . 13-4  
13.6. Restrictions on Managers, Officers, Employees, and Agents. . . . . 13-5  
13.7. Professional Relationships Not Affected by Use of the LLC. . . . . 13-5  
13.8. Exemption from Securities Laws . . . . . 13-5  
13.9. Foreign Professional LLCs. . . . . 13-6

**CHAPTER 14: TEXAS FRANCHISE TAX. . . . . 14-1**

14.1. Introduction . . . . . 14-2  
14.2. Former Franchise Tax . . . . . 14-2  
14.2.1. LLCs Subject to Franchise Tax . . . . . 14-2  
14.2.2. Exemption for Certain Small LLCs. . . . . 14-2  
14.2.3. Rate of Tax. . . . . 14-3  
14.2.4. Net Taxable Capital . . . . . 14-3  
14.2.5. Net Taxable Earned Surplus. . . . . 14-4  
14.2.6. Texas Franchise Tax Applicable to Members  
of the LLC . . . . . 14-6  
14.3. Franchise (Margin) Tax . . . . . 14-7  
14.3.1. LLCs Subject to Franchise Tax . . . . . 14-7  
14.3.2. Special Treatment of Certain Small LLCs. . . . . 14-8  
14.3.3. Rate and Computation of Tax . . . . . 14-9  
14.3.4. Revenue . . . . . 14-10  
14.3.5. Cost of Goods Sold Deduction . . . . . 14-11

14.3.6. Compensation Deduction. . . . . 14-12  
 14.3.7. Combined Group Reporting . . . . . 14-13  
 14.3.8. Tiered Partnerships . . . . . 14-14  
 14.4. Tax Treatment of LLCs by States Other than Texas. . . . . 14-15

**CHAPTER 15: COMPENSATION STRATEGIES FOR THE LLC . . . . . 15-1**

15.1. Introduction . . . . . 15-3  
 15.2. IRC Section 83: Stock Grants and Options . . . . . 15-5  
     15.2.1. Code Section 409A . . . . . 15-8  
     15.2.2. Proposed 83 Guidance . . . . . 15-12.1  
 15.3. Capital and Profit Interests . . . . . 15-12.3  
     15.3.1. Tax Consequences for Transfers of Interests  
         Prior to Date Effective Date under  
         Proposed 83 Regulations . . . . . 15-12.3  
     15.3.2. Tax Consequences For Transfers of Interests  
         If Proposed 83 Guidance Adopted. . . . . 15-18  
     15.3.3. Code Section 409A . . . . . 15-21  
     15.3.4. Recent Legislative Attempts to Treat Carried  
         Interest Allocations as Ordinary Income . . . . . 15-23  
 15.4. LLC (Partnership) vs. Corporation Compensation  
     Methods . . . . . 15-26  
     15.4.1. Corporation Context . . . . . 15-26  
         15.4.1.1. Stock Grants. . . . . 15-26  
         15.4.1.2. Stock Options. . . . . 15-26.1  
         15.4.1.3. Phantom Stock Plans . . . . . 15-26.2  
     15.4.2. The LLC Context. . . . . 15-26.3  
         15.4.2.1. Equity Interests . . . . . 15-27  
             15.4.2.1.1. “Full Equity Interest” . . . . . 15-27  
                 15.4.2.1.1.1. Code Section 409A . . . . . 15-28  
                 15.4.2.1.1.2. Proposed 83  
                     Guidance . . . . . 15-29  
         15.4.2.2. Point System or Unit  
             Compensation . . . . . 15-29  
                 15.4.2.2.1. Code Section 409A. . . . . 15-30  
         15.4.2.3. The Importance of Member  
             Involvement . . . . . 15-31  
         15.4.2.4. Debt Guarantees. . . . . 15-32  
         15.4.2.5. Equity Interest vs. Non-equity  
             Incentive Compensation. . . . . 15-32  
                 15.4.2.5.1. Code Section 409A. . . . . 15-33  
     15.4.3. Compensation Comparison Chart . . . . . 15-34

CONTENTS

- 15.5. Phantom Income and Distributions . . . . . 15-38
  - 15.5.1. Tax Affected Distributions. . . . . 15-38
    - 15.5.1.1. Separate Calculations for Each Member. . . . . 15-38
    - 15.5.1.2. Standard Distribution Rate. . . . . 15-39
    - 15.5.1.3. Highest Incremental Tax Rate . . . . . 15-41
  - 15.5.2. Self-Employment Tax . . . . . 15-43
    - 15.5.2.1. Calculating Self-Employment Income . . . . . 15-44
    - 15.5.2.2. Application of Self-Employment Tax to LLC Members. . . . . 15-44.1
- 15.6. Fiduciary Duties, Inspection Rights, and Other Duties to Equity Holders . . . . . 15-44.2
  - 15.6.1. *Five Star Concrete, L.L.C. v. Klink* . . . . . 15-45
- 15.7. Securities Law Issues . . . . . 15-46
- 15.8. Member Exit Strategies: Buyout Arrangements. . . . . 15-46
- 15.9. Covenants Not to Compete. . . . . 15-47
- 15.10. Forms: Equity and Non-Equity-Based LLC Compensation Plan. . . . . 15-48
  - 15.10.1. Equity Incentive Plan. . . . . 15-48
    - Form 15-1. Equity Incentive Plan . . . . . 15-49
  - 15.10.2. Unit Grant Agreement . . . . . 15-54.14
    - Form 15-2. Unit Grant Agreement . . . . . 15-54.14
  - 15.10.3. Employee Incentive Compensation Plan. . . . . 15-54.22
    - Form 15-3. Communications, LLC: Employee Incentive Compensation Plan . . . . . 15-54.22

**CHAPTER 16: OPTIONS AND CONVERTIBLE INTEREST FOR LLCs TAXED AS PARTNERSHIPS . . . . . 16-1**

- 16.1. Introduction: Noncompensatory Call Options and Convertible Preferred Interests . . . . . 16-3
- 16.2. Noncompensatory Call Options: Defined and Example. . . . . 16-4
  - Form 16-1. Noncompensatory Option Agreement. . . . . 16-5
  - 16.2.1. Tax Consequences of Issuance and Exercise of Call Option . . . . . 16-8.3
    - 16.2.1.1. Partnership . . . . . 16-15
    - 16.2.1.2. Option Holder . . . . . 16-17
  - 16.2.2. Tax Consequences of Lapse of Call Option. . . . . 16-18
    - 16.2.2.1. Partnership . . . . . 16-18
    - 16.2.2.2. Option Holder . . . . . 16-19
  - 16.2.3. Tax Consequences of Exercise of Option . . . . . 16-20
    - 16.2.3.1. Option Holder . . . . . 16-21

	16.2.3.2.	Partnership . . . . .	16-22
	16.2.3.3.	Cash Settled Options . . . . .	16-37
16.2.4.		Drafting Considerations in the Partnership Agreement . . . . .	16-38
	16.2.4.1.	Capital Account Maintenance under Code Section 704(b) . . . . .	16-39
		16.2.4.1.1. Book-Up . . . . .	16-43
		16.2.4.1.2. No Book-Up . . . . .	16-46
	16.2.4.2.	Code Section 704(c) . . . . .	16-48
	16.2.4.3.	Tax Distributions . . . . .	16-49
16.2.5.		Ancillary Tax Considerations . . . . .	16-49
	16.2.5.1.	Code Section 704(c) . . . . .	16-50
	16.2.5.2.	Code Section 752 . . . . .	16-51
	16.2.5.3.	Code Section 751 . . . . .	16-52
	16.2.5.4.	Holding Period . . . . .	16-52
	16.2.5.5.	Original Issue Discount . . . . .	16-53
	16.2.5.6.	Code Section 708 . . . . .	16-53
	16.2.5.7.	Disregarded Entities . . . . .	16-53
16.3.		Convertible Preferred Membership Interests . . . . .	16-54
	16.3.1.	Description of Convertible Preferred Interests . . . . .	16-54
	16.3.2.	Example: Convertible Preferred Interests . . . . .	16-55
	16.3.3.	Real Deals . . . . .	16-56
	16.3.4.	Tax Consequences of Issuance and Exercise of Convertible Preferred Interests . . . . .	16-56
		16.3.4.1. Tax Consequences of Issuance of Convertible Preferred Interests . . . . .	16-57
		16.3.4.1.1. Preferred Holder as a Partner . . . . .	16-57
		16.3.4.1.2. Partnership, A and B . . . . .	16-58
		16.3.4.1.3. Tax Consequences of Partnership Operations Prior to Conversion . . . . .	16-59
	16.3.4.2.	Tax Consequences at Exercise of the Conversion Right of the Preferred Convertible Interest . . . . .	16-60
		16.3.4.2.1. Capital Accounts . . . . .	16-60
		16.3.4.2.2. Tax Consequences of Capital Account Adjustments . . . . .	16-65
		16.3.4.2.3. Code Section 752 . . . . .	16-67
		16.3.4.2.4. Code Section 704(c) . . . . .	16-69
		16.3.4.2.5. Code Section 708 . . . . .	16-72

CONTENTS

	16.3.4.2.6.	Code Section 705 . . . . .	16-72
	16.3.4.2.7.	Nonrecourse Deductions . . . . .	16-73
	16.3.4.2.8.	Excess Nonrecourse Liabilities . . . . .	16-73
	16.3.4.2.9.	Convertible Debt. . . . .	16-74.1
16.3.5.		Drafting Issues for Convertible Interests . . . . .	16-75
	16.3.5.1.	Form 16-2 Revaluation . . . . .	16-81
	16.3.5.2.	Tax Distributions . . . . .	16-82
		Form 16-2. Selected Provisions Applicable to Allocations and Distributions . . . . .	16-82
16.4.		Examples from Final Regulations . . . . .	16-97
<b>CHAPTER 17: SERIES LLCs. . . . .</b>			<b>17-1</b>
17.1.		Series Limited Liability Company . . . . .	17-5
	17.1.1.	Statutory Provisions . . . . .	17-5
	17.1.2.	The Basic Concept of Series . . . . .	17-6
		17.1.2.1. The Fundamental Concept . . . . .	17-6
		17.1.2.2. The Entity Issue . . . . .	17-6
		17.1.2.3. The Second Fundamental Concept . . . . .	17-7
		17.1.2.4. Interface between Chapter 101 and Subchapter M . . . . .	17-8
		17.1.2.5. Members Associated with a Series . . . . .	17-9
		17.1.2.6. Drafting Notes . . . . .	17-10
17.2.		Establishment of Series, Limitations of Liabilities, and Powers . . . . .	17-10
	17.2.1.	Establishment of Series . . . . .	17-10
	17.2.2.	Limitation on Liability. . . . .	17-11
	17.2.3.	General Powers . . . . .	17-13
	17.2.4.	Name of Series. . . . .	17-14
17.3.		Liability of Members and Managers, Classes, Governing Authority, and Applicability of Other Chapters . . . . .	17-14.1
	17.3.1.	Liability of Members or Managers for Obligations and Duties . . . . .	17-14.1
		17.3.1.1. Liability of Members or Managers for Obligations . . . . .	17-14.1
		17.3.1.2. Duties of Members or Managers . . . . .	17-14.1

17.3.2.	Classes or Groups of Members or Managers . . . . .	17-15
17.3.2.1.	Classes or Groups of Members or Managers . . . . .	17-15
17.3.2.2.	Additional Classes or Groups of Members or Managers . . . . .	17-15
17.3.2.3.	Permissible Additional Series of Membership Interests without Vote . . . . .	17-15
17.3.2.4.	Grant of Special Voting Rights . . . . .	17-15
17.3.2.5.	Drafting Notes . . . . .	17-16
17.3.3.	Governing Authority . . . . .	17-16
17.3.3.1.	Series Company Agreement Controls . . . . .	17-16
17.3.3.2.	Default Governing Authority for a Series . . . . .	17-16
17.3.3.3.	Drafting Notes . . . . .	17-17
17.3.4.	Applicability of Other Provisions of LLC Chapter to Series . . . . .	17-17
17.3.5.	Effect of Ceasing to be Series Manager or Series Member . . . . .	17-17
17.3.5.1.	Effect of Ceasing to be a Series Manager . . . . .	17-17
17.3.5.2.	Effect of Ceasing to be a Series Member . . . . .	17-17
17.3.5.3.	Drafting Notes . . . . .	17-18
17.4.	Distributions and Allocations . . . . .	17-18
17.4.1.	Member Status with Respect to Distributions. . . . .	17-18
17.4.2.	Record Date for Allocations and Distributions. . . . .	17-18.1
17.4.3.	Distributions. . . . .	17-18.1
17.4.3.1.	Distributions are Permissible. . . . .	17-18.1
17.4.3.2.	Prohibited Distributions. . . . .	17-18.1
17.4.3.3.	Liabilities Excluded from Calculation of Permitted Distribution . . . . .	17-18.1
17.4.3.4.	Inclusion in Calculation Fair Value of Property Subject to Nonrecourse Debt . . . . .	17-18.2
17.4.3.5.	Liability of Series Member for Distributions Made in Violation of	

CONTENTS

	Sec. 101.613(b) . . . . .	17-18.2
	17.4.3.6. Compensation Not Included in Distribution Definition. . . . .	17-18.2
17.5.	Winding Up and Termination . . . . .	17-18.3
17.5.1.	Authority to Wind Up; Effect of Winding Up and Termination . . . . .	17-18.3
17.5.2.	Termination of Series; Notice of Termination and Effect of Termination . . . . .	17-18.3
17.5.3.	Events Requiring a Winding Up . . . . .	17-18.4
17.5.4.	Procedure for Winding Up and Termination of a Series; Rationalization of Terms. . . . .	17-18.4
	17.5.4.1. Applicability of Other BOC Chapters to Winding Up and Termination of a Series . . . . .	17-18.4
	17.5.4.2. Persons Responsible for Winding Up and Terminating a Series . . . . .	17-18.5
	17.5.4.3. Winding Up Taken in Accordance with BOC Sec. 101.617 Does Not Affect Limitation on Liability . . . . .	17-18.5
17.5.5.	Procedure for Revoking a Voluntary Decision to Wind Up a Series. . . . .	17-18.5
17.5.6.	Procedure for Cancellation of an Event Requiring a Winding Up of a Series. . . . .	17-18.6
17.5.7.	Continuation of Business upon Revocation or Cancellation. . . . .	17-18.6
17.5.8.	Winding Up by Court Order . . . . .	17-18.6
17.6.	Open Issues with Respect to the Series LLCs . . . . .	17-18.7
17.7.	Drafting Notes . . . . .	17-18.11
17.8.	Forms for Series LLCs . . . . .	17-18.12
	Form 17-1. Certificate of Formation Provision Setting Forth Authorizing Series and Limitations on Liabilities of Series. . . . .	17-18.13
	Form 17-2. Provision Authorizing Manager of Manager-Managed Limited Liability Company to Designate Separate Series and Classes of Members and Interests. . . . .	17-19
	Form 17-3. Provision Designating Separate Series of Members and Interests. . . . .	17-21
17.9.	Federal Tax Consequences of Series Limited Liability Companies . . . . .	17-25
	17.9.1. Federal Tax Significance of Classification. . . . .	17-26



17.9.2.	Important Definitions . . . . .	17-27
17.9.3.	Overview of Proposed Regulations . . . . .	17-28
17.9.4.	Proposed Regulations' Treatment of a Series as a Juridical Entity . . . . .	17-30
17.9.5.	Proposed Regulations' Treatment of Series Organization. . . . .	17-32
17.9.6.	Status of Members and Managers Associated with a Series. . . . .	17-34
17.9.7.	Classification of the Series under the Check-the-Box Regulations. . . . .	17-34
17.9.8.	Issues Not Addressed in Proposed Regulations . . . . .	17-35
	17.9.8.1. Foreign Series . . . . .	17-35
	17.9.8.2. Employment Taxes. . . . .	17-35
	17.9.8.3. Employee Benefits . . . . .	17-36
	17.9.8.4. Tax Matters Partner and Return Signatory . . . . .	17-36
17.9.9.	Planning Possibilities. . . . .	17-36
17.9.10.	Effective Date . . . . .	17-37
17.9.11.	Lack of Other Guidance. . . . .	17-38
17.10.	Texas Franchise Tax Consequences of Series Limited Liability Companies . . . . .	17-40

**CHAPTER 18: CONTRIBUTED BUILT-IN-LOSS PROPERTY AND BASIS ADJUSTMENTS. . . . . 18-1**

18.1.	Introduction: Special Tax Rules Applicable to Partnerships with Property with Built-In Losses and Basis Adjustments . . . . .	18-4
18.2.	Contribution of Built-In Loss Property . . . . .	18-6
	18.2.1. General Rule . . . . .	18-6
	18.2.2. Impact . . . . .	18-6
	18.2.2.1. Repeal of Ceiling Rule. . . . .	18-6
	18.2.2.2. Prohibition on Transfer of Built-In Loss . . . . .	18-8
18.2.3.	Proposed Regulations—General Explanation . . . . .	18-8
	18.2.3.1. Tax Basis Effects . . . . .	18-8
	18.2.3.2. Computation Allocation of Partnership Items . . . . .	18-9
18.2.4.	Proposed Regulations—Specifics . . . . .	18-9
	18.2.4.1. Section 704(c)(1)(C) Property . . . . .	18-9
	18.2.4.2. Section 704(c)(1)(C) Partner . . . . .	18-10
	18.2.4.3. Section 704(c)(1)(C) Basis	

CONTENTS

	Adjustment . . . . .	18-10
18.2.4.4.	Operations Rules . . . . .	18-10
18.2.4.4.1.	Basis Adjustment Unique to Section 704(c)(1)(C) Partner . . . . .	18-10
18.2.4.4.2.	Accounting for Section 704(c)(1)(C) Basis Adjustment . . . . .	18-10
18.2.4.4.3.	Code Sec. 704(c)(1)(C) Partner’s Distributive Share . . . . .	18-10
18.2.4.4.4.	Basis Adjustment for Depreciable or Amortizable Property . . . . .	18-11
18.2.4.4.5.	Transfers of Code Sec. 704(c)(1)(C) Property by the Partnership . . . . .	18-12
18.2.4.4.5.1.	Distribution to Contributing Partner . . . . .	18-12
18.2.4.4.5.2.	Distribution to Non-Contributing Partner . . . . .	18-13
18.2.4.4.5.3.	Distribution in Liquidation of Contributing Partner . . . . .	18-14
18.2.4.4.6.	Transfers of Section 704(c)(1)(C) Partner’s Partnership Interest . . . . .	18-15
18.2.4.4.7.	Transfer of Section 704(c)(1)(C) Property by the Partnership . . . . .	18-17
18.2.4.5.	Reporting . . . . .	18-22
18.2.4.6.	Effective Date . . . . .	18-22
18.3.	Section 704(c) Layers . . . . .	18-22
18.3.1.	Introduction . . . . .	18-22
18.3.2.	Section 704(c) Layers . . . . .	18-23

18.3.3.	Proposed Regulations . . . . .	18-23
18.3.3.1.	No Netting of Layers . . . . .	18-23
18.3.3.2.	Separately Account for Each Layer . . . . .	18-24
18.3.3.3.	Use of Any Reasonable Methods . . . . .	18-24
18.3.4.	Effective Date . . . . .	18-24
18.4.	Mixing Bowl Rules . . . . .	18-24
18.4.1.	Conform Regulations for Seven-Year Period . . . . .	18-24
18.4.2.	Computation of Period . . . . .	18-24
18.4.3.	Constructive Tax Termination . . . . .	18-25
18.5.	Special Basis Adjustment Rules under Section 732 . . . . .	18-25
18.5.1.	Accounting for Section 743 Adjustment . . . . .	18-25
18.5.2.	Accounting for Section 704(c)(1)(C) Basis Adjustment . . . . .	18-25
18.5.3.	Special Basis Adjustments and Substantial Built-In Loss . . . . .	18-25
18.6.	Special Basis Adjustment Rules under Code Sec. 734(b) . . . . .	18-26
18.6.1.	General . . . . .	18-26
18.6.1.1.	Substantial Basis Reduction Defined . . . . .	18-26
18.6.1.2.	Test Applied Separately for Each Distribution . . . . .	18-26
18.6.1.3.	Code Sec. 734(b) Adjustment from Substantial Basis Reduction Limited to Distribution . . . . .	18-27
18.6.2.	Section 704(c)(1)(C) Basis Adjustment . . . . .	18-27
18.6.3.	Tiered Partnerships . . . . .	18-28
18.6.4.	Securitization Partnerships . . . . .	18-29
18.7.	Special Basis Adjustments under Code Sec. 743 . . . . .	18-29
18.7.1.	General . . . . .	18-29
18.7.2.	Substantial Built-In Loss . . . . .	18-29
18.7.2.1.	Mandatory Adjustment . . . . .	18-29
18.7.2.2.	Substantial Built-In Loss Defined . . . . .	18-30
18.7.2.3.	Impact of Section 704(c)(1)(C) Basis Adjustment on Code Sec. 743 Adjustment . . . . .	18-30
18.7.2.4.	Tiered Partnerships . . . . .	18-30
18.7.3.	Subsequent Transfers . . . . .	18-30
18.7.4.	Treas. Reg. Sec. 1.743-1(j)(3) . . . . .	18-33
18.7.5.	Return Filing Requirements . . . . .	18-35

CONTENTS

18.7.6.	Transferee Special Rules . . . . .	18-35
18.7.7.	Tiered Partnerships . . . . .	18-35
18.7.8.	Anti-Abuse Rule . . . . .	18-36
18.7.9.	Electing Investment Partnerships. . . . .	18-36
	18.7.9.1. Definition of Electing Investment Partnership . . . . .	18-36
	18.7.9.2. Trade or Business. . . . .	18-37
18.8.	Section 755 for Substituted Basis Transfers. . . . .	18-37
18.8.1.	Allocation between Classes of Assets . . . . .	18-37
18.8.2.	Proposed Regulations Alter the Basis Allocation Rules in Substituted Basis Transactions . . . . .	18-38
	18.8.2.1. Positive Basis Adjustments Permitted Even if Overall Net Loss . . . . .	18-38
	18.8.2.2. Negative Basis Adjustment Permitted Even if Overall Net Gain . . . . .	18-38
18.8.3.	Allocations Within a Class. . . . .	18-40
	18.8.3.1. Special Rules for Increase . . . . .	18-40
	18.8.3.2. Special Rules for Decrease . . . . .	18-41
18.8.4.	No Basis Decrease to Stock of a Corporate Partner or Stock of a Corporation Related to a Partner . . . . .	18-41
18.8.5.	Effective Date . . . . .	18-42
18.9.	Examples from Proposed Regulations . . . . .	18-42
<b>CHAPTER 19 SECTION 199A. . . . .</b>		<b>19-1</b>
19.1.	Introduction to the Section 199A Deduction . . . . .	19-6
19.2.	Ancillary Consequences of Section 199A Deduction . . . . .	19-10
	19.2.1. Items Impacted by Section 199A Deduction. . . . .	19-10
	19.2.2. Items Not Impacted by the Section 199A Deduction. . . . .	19-11
19.3.	Steps In Computing Section 199A Deduction . . . . .	19-12
19.4.	Taxable Income Ceiling on Section 199A Deduction . . . . .	19-16
	19.4.1. 20% of Taxable Income Limitation . . . . .	19-17
19.5.	Calculating Amount of the Section 199A Deduction. . . . .	19-18
	19.5.1. Section 199A Deduction: Taxable Income Equal to or Less than Threshold Amount. . . . .	19-18
	19.5.1.1. Total QBI Amount . . . . .	19-19
	19.5.1.2. Qualified REIT Dividends and Qualified	

	PTP Income . . . . .	19-19
19.5.2.	Section 199A Deduction: Taxable Income Exceeds Threshold Amount. . . . .	19-20
19.5.2.1.	Taxable Income Exceeds Ceiling Amount . . . . .	19-21
19.5.2.1.1.	Determining the QBI Component . . . . .	19-21
19.5.2.2.	Taxable Income within Phase-In Range . . . . .	19-24
19.5.2.2.1.	Determining the QBI Component . . . . .	19-24
19.5.2.2.2.	Adjustment to QBI Component For Taxable Income Within The Phase-In Range . . . . .	19-25
19.5.2.2.3.	Adjustment to QBI Component For Taxable Income Within Phase-In Range And One or more of the Trades or Businesses Is an SSTB. . . . .	19-26
19.5.2.2.3.1.	Individual Engaged Only In An SSTB . . . . .	19-26
19.5.2.2.3.2.	Individual Engaged in Multiple Trades or Businesses One of Which Is an SSTB . . . . .	19-28
19.6.	QBI – Defined. . . . .	19-28
19.6.1.	Qualified Items. . . . .	19-29
19.6.2.	Items Not Taken Into Account as Qualified Items. . . . .	19-30
19.6.2.1.	Qualified REIT Dividends and Qualified PTP Income and Qualified Cooperative Dividends. . . . .	19-30
19.6.2.2.	Section 1231 . . . . .	19-30
19.6.2.3.	Dividends. . . . .	19-32
19.6.2.4.	Interest . . . . .	19-32
19.6.2.5.	Annuities . . . . .	19-32
19.6.2.6.	CFC Income. . . . .	19-32
19.6.2.7.	Notional Principal Contracts . . . . .	19-39
19.6.2.8.	Compensation . . . . .	19-39

CONTENTS

	19.6.2.9.	Guaranteed Payments for Services . . . . .	19-34
	19.6.2.10.	Section 707(a) Payments for Compensation . . . . .	19-35
19.6.3.		Adjustments in Computing QBI . . . . .	19-35
	19.6.3.1.	Wage Expense . . . . .	19-35
	19.6.3.2.	Allocation of Item among Multiple Businesses . . . . .	19-36
	19.6.3.3.	Section 751(a) and (b) Gain or Loss . . . . .	19-36
	19.6.3.4.	Guaranteed Payments for Capital . . . . .	19-36
	19.6.3.5.	Section 481 Adjustment. . . . .	19-37
	19.6.3.6.	Suspended Losses . . . . .	19-37
	19.6.3.7.	NOLs and Section 461(l). . . . .	19-38
		19.6.3.7.1. NOLs . . . . .	19-39
		19.6.3.7.2. Section 461(l) . . . . .	19-39
		19.6.3.8. Treatment of Deductions . . . . .	19-40
	19.6.4.	Effective Date . . . . .	19-41
19.7.		Trade or Business . . . . .	19-41
	19.7.1.	Trade or Business Defined. . . . .	19-42
	19.7.2.	Aggregation of Multiple Trades or Businesses . . . . .	19-44
		19.7.2.1. Requirements for Aggregation. . . . .	19-45
		19.7.2.2. Items Aggregated. . . . .	19-49
		19.7.2.3. Reporting Requirements . . . . .	19-49
		19.7.2.4. Effective Dates. . . . .	19-51
19.8.		Trades or Businesses that Do Not Qualify for the Section 199A Deduction. . . . .	19-51
	19.8.1.	SSTB . . . . .	19-51
		19.8.1.1. SSTB Includes Trade or Business Defined in Section 1202(e)(3)(A) . . . . .	19-52
		19.8.1.1.1. Performance of Services in the Field of Health . . . . .	19-54
		19.8.1.1.2. Performance of Services in the Field of Law . . . . .	19-56
		19.8.1.1.3. Performance of Services in the Field of Accountancy . . . . .	19-56
		19.8.1.1.4. Performance of Services in the Field of Actuarial Science . . . . .	19-56
		19.8.1.1.5. Performance of Services in the Field of Performing Arts . . . . .	19-57
		19.8.1.1.6. Performance of Services in	

	the Field of Consulting . . . .	19-57
19.8.1.1.7.	Performance of Services in the Field of Financial Services. . . . .	19-59
19.8.1.1.8.	Performance of Services in the Field of Athletics . . . . .	19-60
19.8.1.1.9.	Performance of Services in the Field of Brokerage Services. . . . .	19-61
19.8.1.1.10.	Any Trade or Business in which the Principal Asset is Reputation or Skill of an Employee or Owner . . . . .	19-61
19.8.1.2.	Services in Investing, Investment Management, Trading, or Dealing in Securities, Partnership Interests or Commodities . . . . .	19-63
19.8.1.3.	<i>De Minimis</i> Exception . . . . .	19-66
19.8.1.4.	Anti-Avoidance Rules . . . . .	19-67
19.8.2.	Trade or Business of Performing Services as an Employee. . . . .	19-69
19.8.2.1.	Misclassified Employees . . . . .	19-70
19.8.2.2.	Officers as Employees . . . . .	19-70
19.8.2.3.	Anti-Avoidance Rule . . . . .	19-71
19.8.3.	Effective Dates. . . . .	19-72
19.9.	Cap For Section 199A Deduction. . . . .	19-72
19.9.1.	W-2 Wages. . . . .	19-72
19.9.1.1.	W-2 Wages Allocable to QBI. . . . .	19-73
19.9.1.1.1.	First Step. . . . .	19-73
19.9.1.1.1.1.	Calendar Year Requirement. . . . .	19-73
19.9.1.1.1.2.	Wages Defined. . . . .	19-74
19.9.1.1.2.	Second Step . . . . .	19-76
19.9.1.1.3.	Third Step. . . . .	19-76
19.9.1.2.	Allocations of W-2 Wages by an RPE to Its Owners . . . . .	19-77
19.9.1.3.	Effective Date . . . . .	19-77
19.9.2.	UBIA of Qualified Property. . . . .	19-77
19.9.2.1.	Qualified Property Defined . . . . .	19-78
19.9.2.2.	UBIA Defined . . . . .	19-78
19.9.2.2.1.	UBIA Not Adjusted for Depreciation or	

CONTENTS

	Amortization . . . . .	19-78
	19.9.2.2.2. Basis Adjustments under Section 734(b) or Section 743(b) . . . . .	19-79
	19.9.2.2.3. Additions to Basis . . . . .	19-80
19.9.2.3.	UBIA for Qualified Property Transferred in Non-Recognition Transactions . . . . .	19-80
19.9.2.4.	Anti-Avoidance Rules . . . . .	19-81
19.9.3.	Depreciable Period Defined . . . . .	19-81
	19.9.3.1. Additional Depreciation . . . . .	19-82
	19.9.3.2. Non-Recognition Transfers of Qualified Property . . . . .	19-82
19.9.4.	Section 1031 Like-Kind Exchanges . . . . .	19-83
19.9.5.	Partnerships and S Corporations . . . . .	19-84
19.9.6.	UBIA of Qualified Property Acquired from a Decedent . . . . .	19-85
19.9.7.	Effective Date . . . . .	19-85
19.10.	Reporting Under Section 199A for RPEs and PTPs . . . . .	19-85
19.10.1.	Computational and Reporting Rules for RPEs . . . . .	19-86
	19.10.1.1. Computational Steps . . . . .	19-86
	19.10.1.2. Reporting Steps . . . . .	19-87
19.10.2.	Computational and Reporting Rules for PTPs . . . . .	19-88
	19.10.2.1. Computation Rules . . . . .	19-88
	19.10.2.2. Reporting Rules . . . . .	19-88
19.10.3.	Computational and Reporting Rules for Trusts, Estates and Beneficiaries . . . . .	19-88
	19.10.3.1. Computation Rules . . . . .	19-88
	19.10.3.2. Tax-Exempt Trusts with UBTI . . . . .	19-90
	19.10.3.3. Charitable Remainder Trusts . . . . .	19-90
	19.10.3.4. Split-Interest Trusts . . . . .	19-91
19.10.4.	Effective Date . . . . .	19-91

**PART IV  
APPENDICES**

- APPENDIX A: COMPANY AGREEMENT OF A  
MANAGER-MANAGED TEXAS LIMITED  
LIABILITY COMPANY (LONG FORM) . . . . APP A-1**
- APPENDIX B: COMPANY AGREEMENT OF A MEMBER-  
MANAGED TEXAS LIMITED LIABILITY**



COMPANY (LONG FORM) ..... APP B-1

**APPENDIX C:** COMPANY AGREEMENT OF A  
MANAGER-MANAGED TEXAS LIMITED  
LIABILITY COMPANY (SHORT FORM).... APP C-1

**APPENDIX D:** COMPANY AGREEMENT OF A MEMBER-  
MANAGED TEXAS LIMITED LIABILITY  
COMPANY (SHORT FORM) ..... APP D-1

**APPENDIX E:** COMPANY AGREEMENT OF A SINGLE-  
MEMBER TEXAS LIMITED LIABILITY  
COMPANY ..... APP E-1

**APPENDIX F:** IRS FORM SS4: APPLICATION FOR  
EMPLOYER IDENTIFICATION  
NUMBER ..... APP F-1

**APPENDIX G:** COMPARISON OF STATE LLC FEES AND  
OTHER INFORMATION ..... APP G-1

**APPENDIX H:** TEXAS SECRETARY OF STATE FILING FEES  
APPLICABLE TO LIMITED LIABILITY  
COMPANIES UNDER THE BUSINESS  
ORGANIZATIONS CODE ..... APP H-1

**APPENDIX I:** IRS REVENUE PROCEDURE 95-10 ..... APP I-1

**APPENDIX J:** PRIOR LAW ON FEDERAL TAX  
CLASSIFICATION ..... APP J-1

**APPENDIX K:** CHECK-THE-BOX REGULATIONS ..... APP K-1

**APPENDIX L:** IRS FORM 8832..... APP L-1

**APPENDIX M:** LEGAL OPINIONS REGARDING  
TEXAS LLCs ..... APP M-1

**APPENDIX N:** AGREEMENT AND PLAN OF  
LIQUIDATION SOLELY FOR FEDERAL  
INCOME TAX PURPOSES ..... APP N-1

**APPENDIX O:** TREASURY REGULATIONS  
NONCOMPENSATORY PARTNERSHIP  
OPTIONS ..... APP O-1

**APPENDIX P:** PROPOSED TREASURY REGULATIONS  
COMPENSATORY PARTNERSHIP  
OPTIONS ..... APP P-1

**APPENDIX Q:** PROPOSED REGULATIONS FOR SERIES  
LLCS ..... APP Q-1

**APPENDIX R:** REVENUE PROCEDURE 2012-29,  
2012-28 IRB, 06/26/12 ..... APP R-1

**APPENDIX S:** VEIL PIERCING CASES: EXTENDED

CONTENTS

**DISCUSSION . . . . . APP S-1**

**APPENDIX T: FIDUCIARY DUTY CASES: EXTENDED  
DISCUSSION . . . . . APP T-1**

**APPENDIX U: AMENDMENT TO LLC PROVISIONS OF  
BOC PRIOR TO 2017 . . . . . APP U-1**

**APPENDIX V: EXAMPLES CONTAINED IN FINAL  
TREASURY REGULATIONS UNDER  
SECTION 199A . . . . . APP V-1**

**APPENDIX W: PROVISIONS FOR LLC OPERATING  
AGREEMENT WHEN S CORPORATION  
ELECTION MADE FOR COMPANY. . . . . APP W-1**

**PART V  
LLP AND LLC CASES**

LLP and LLC Cases . . . . . LLC Cases-1

**PART VI  
INDICES**

Cumulative Table of Texas Business Organizations Codes . . . . . INDEX-1

Cumulative Table of Internal Revenue Code Citations . . . . . INDEX-10

Miscellaneous Codes . . . . . INDEX-20

Cumulative Table of Treasury Regulations . . . . . INDEX-26

Cumulative Table of Revenue Rulings and Revenue Procedures . . . . . INDEX-44

Table of Cases . . . . . INDEX-48

References . . . . . INDEX-58

Subject Index . . . . . INDEX-64

Forms Index . . . . . INDEX-83