A DECADE OF DOUBT: REVISITING THE TENNESSEE SERIES LLC

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INTRODUCTION

On June 1, 2005, Tennessee became the seventh state to adopt a new, innovative type of business entity, the Series Limited Liability Company ("SLLC").[1] The SLLC is one of the latest developments in a now burgeoning class of unincorporated business forms recognized in Tennessee, reflecting a nationwide trend of innovation and creativity in modern business law as a growing number of states[2] depart from the traditional four-entity system of business organizations.[3] While the SLLC has existed in Tennessee for almost a decade, questions remain as to the desirability and efficacy of the SLLC as a practical alternative to more traditional business forms. A SLLC allows its members to

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1 2005 Tenn. Pub. Acts 286. It is notable that Tennessee has two extant LLC acts. However, only the modern statute contains SLLC provisions.

2 As discussed *infra* Part I, twelve states, as well as the District of Columbia and Puerto Rico, have enacted SLLC statutes as of February 25, 2015.

3 Carol R. Goforth, *The Series LLC, and a Series of Difficult Questions*, 60 ARK. L. REV. 385, 385 (2007) (explaining that "[m]ost states have gone from a statutory regime in which there were four prevalent business models (the sole proprietorship, the general partnership, the limited partnership, and the corporation), to one in which there are at least two additional statutory options and as many as five new choices in some jurisdictions."); Michael E. Fink, *The Series LLC: Suggestions for Surviving Some Serious Uncertainties*, 72 U. PITT. L. REV. 597, 597 (2011) (suggesting that there has been a recent "explosion in business forms, particularly unincorporated entities.").

segregate assets in a way that provides clear and comprehensive liability protection under certain circumstances.[4] However, the potential for high costs[5] and uncertainty surrounding other important state and federal issues, such as piercing the corporate veil, foreign actions, bankruptcy, and taxation, threaten its viability.[6]

This Article examines whether the Tennessee SLLC is a viable alternative to traditional business entities. This analysis is of rising importance, since several hundred SLLCs now exist in Tennessee, demonstrating the entity's growing acceptance in the business community.[7] Part I of this Article will provide an introduction to the SLLC, describing the SLLC's general characteristics and development as an entity. Part II will explain how the particular features of Tennessee's SLLC statute enhance or detract from the SLLC's usefulness as a business form, including an evaluation of the SLLC's "internal" liability shields. Part III will assess uncertainties in the treatment of SLLCs concerning piercing the veil, bankruptcy, and foreign actions. Part IV will explore ambiguities in the tax treatment of SLLCs, including federal and state income taxation issues. Finally, the Article will conclude that Tennessee SLLCs represent a practicable alternative to more traditional business entities under certain circumstances.

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[4] Goforth, *supra* note 3, at 393 (stating that "the primary justification for the series LLC is to allow owners of an LLC to segregate activities or assets for liability purposes.").

[5] *Id.* at 395 ("[I]n a jurisdiction that requires specific and distinct filings for each series in an LLC, such as Illinois, the filing fees associated with forming the LLC and each series, and then amendments each time the management of a series changes, plus annual filings, might be as expensive or even more so than those associated with multiples LLCs."). Tennessee requires the maintenance of separate and distinct records for each series. TENN. CODE ANN. § 48-249-309(b)(1)(B) (2012).

[6] Goforth, *supra* note 3, at 398 ("[T]here are other major uncertainties associated with utilizing series LLCs rather than multiple business forms."); Daniel S. Kleinberger, *Series of Unincorporated Business Entities: the Mobius Strip and Klein Bottle of Business Entity Law*, BUS. L. TODAY, Feb. 2015, at 2 (commenting that "no one knows whether the internal shields will work in bankruptcy" and "the series as non-entity, non-person may be so counter-intuitive to judges as to encourage piercing [the corporate veil] . . . .").

[7] *See* J. Leigh Griffith & James E. Long Jr., *Series LLCs - December 2013 Update on Recent State Legislative and Taxation Developments,* 55 TAX MGMT. MEM. (BNA) 83, 88 (Mar. 24, 2014).

I. SERIES LLCS GENERALLY

SLLC provisions in limited liability company ("LLC") statutes permit the formation of one or more internal, independent series[8] within an LLC.[9] The result is a SLLC, a state law business structure[10] in which each series may have its own specific associated members, managers, assets, liabilities, and business purpose or investment objectives.[11] Some states further enhance the independent integrity, or "separateness," of the series concept by allowing each series limited liability in and of itself, specifically providing that the debts, liabilities, and obligations of one

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[8] Series may also be referred to as internal funds, portfolios, cells, or divisions. ALLAN G. DONN, BRUCE P. ELY, ROBERT R. KEATINGE & BAHAR A. SCHIPPEL, LIMITED LIABILITY ENTITIES 2015 UPDATE – SERIES LLCS, § 1 (2015), Westlaw VCWA0326 ALI-CLE 391 [hereinafter *A.L.I Series LLC CLE*]. ("'Series LLC' is the term used to describe a form of entity with internal funds, portfolios, cells, or divisions . . .").

[9] *See, e.g.*, TENN. CODE ANN. § 48-249-309 (2012) (Tennessee's SLLC enabling statute is a single provision housed within the state's LLC Act, codified at TENN. CODE ANN. § 48-249-309). *See* Goforth, *supra* note 3, at 387 n.8 ("[A]s with the LLP and LLLP, the series LLC is not described in a free-standing statute, but rather has been authorized by including special provisions in the basic statute . . . . [S]tates that have enacted series LLC provisions have done so by amending their general LLC statutes.").

[10] The series concept is not limited to LLCs. Delaware, the first state to enact series LLC legislation, has also imported the series concept to statutory trusts and limited partnerships. *A.L.I. Series LLC CLE*, *supra* note 8, at § IV.A.

[11] Despite these entity-like attributes, series are generally not recognized as separate entities under state law. *Id.* ("A series is not designated as a separate legal entity, but is given entity characteristics. What it lacks is independent continuity of existence after the termination of the LLC."). Illinois and Iowa, however, treat a series "as a separate entity to the extent set forth in the articles of organization." Supplementary information, 75 Fed. Reg. 55,699, 55,703 (Sept. 14, 2010). *But see* SERIES OF UNINCORPORATED BUS. ENTITIES ACT § 102(18)(C) n.30 (Draft July 2015), *available at* http://www.uniformlaws.org/shared/docs/series%20of%20unincorporated%20business%20entities/2015AM_SeriesBusinessEntities_Draft.pdf (defining a protected series as a person but not an entity but noting the accompanying conceptual complexity of such a definition); SERIES OF UNINCORPORATED BUS. ENTITIES ACT § 102(a)(14) n.11 (Draft Nov. 2015), *available at* http://www.uniformlaws.org/shared/docs/series%20of%20unincorporated%20business%20entities/2015nov_SUBEA_Mtg%20Draft.pdf (noting drafters' concerns "that the current definition [of 'person' as used in the draft uniform law] is problematic with regard to some types of unincorporated business organizations.").

series may not be enforced against another series or the SLLC itself.[12] This "protected series"[13] concept is significant because it allows an entity to create an internal liability minimizing organizational structure comprised of distinct liability shields housed *within* a single parent or master entity.[14] Previously, an organizational structure comprised of several distinct entities was necessary to achieve a similar degree of limited liability with respect to creditors' access to assets.[15] This internal liability shield is the fundamental distinguishing characteristic of the SLLC[16] and has been described as "one of the most significant developments in the law of business organizations since the advent of the limited liability company."[17]

As of February 2015, twelve states, the District of Columbia, and Puerto Rico have enacted SLLC statutes providing internal liability shields within a LLC.[18] Additional states have enacted statues

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12 75 Fed. Reg. at 55,699 ("If the conditions enumerated in the relevant statue are satisfied, the debts, liabilities, and obligations of one series generally are enforceable only against the assets of that series and not against assets of other series or of the series LLC.").

13 The National Conference of Commissioners on Uniform Laws uses "protected series" as a term of art to describe a series that is insulated "from the judgment creditors of the series organization and of any other protected series of the series organization[]" by a statutorily granted internal liability shield. SERIES OF UNINCORPORATED BUS. ENTITIES ACT prefatory note—preliminary (Draft July 2015).

14 Thus, the series concept "establishes a new type of liability shield – rather than protecting the owners of an organization from vicarious liability for the organization's debts, . . . the 'internal shields' of a series protect the assets of one protected series from the judgment creditors of the series organization and any other protected series of the series organization." *Id.* "As a general rule the Series LLC itself does not engage in business but is merely the 'wrapper' and often the 'parent' of the various series within the LLC that are the entities engaging in business, holding assets or making investments." J. Leigh Griffith, *The LLC is the Entity of Choice for Tennesseans,* 57 TENN. CPA J. 3, 23 n.3 (2012).

15 *See* REVISED UNIF. LTD. LIAB. CO. ACT prefatory note (2006), *available at* http://www.uniformlaws.org/shared/docs/limited%20liability%20company/ullca_final_06rev.pdf.

16 *See* Griffith & Long, *supra* note 7, at 84; *see also A.L.I. Series LLC CLE*, *supra* note 8.

17 SERIES OF UNINCORPORATED BUS. ENTITIES ACT prefatory note—preliminary (Draft Mar. 2015), *available at* http://www.uniformlaws.org/shared/docs/series%20of%20unincorporated%20business%20entities/2015mar_SUBEA_Mtg%20Draft.pdf.

18 These states are: Alabama, Delaware, Illinois, Iowa, Kansas, Missouri, Montana, Nevada, Oklahoma, Tennessee, Texas, and Utah. ALA. CODE §§ 10A-5A-11.01 to -.16 (Supp. 2015); DEL. CODE ANN. tit. 6, § 18-215 (2013); D.C. CODE § 29-802.06 (2013);

authorizing series ownership, but prohibiting internal liability shields,[19] thus rejecting the notion of a "protected series." As a result, two levels of divergent legislative treatment have emerged among the states. First, there is a division between states that have and have not statutorily addressed SLLCs. Second, with respect to states that have enacted SLLC statutes, a division exists between states that bless the internal series with limited liability and those that do not.

Not long after Tennessee enacted its SLLC statute, the Revised Uniform Limited Liability Company Act ("RULLCA"),[20] disclaimed the SLLC concept.[21] The RULLCA is a product of the National Conference of Commissioners on Uniform State Laws ("NCCUSL"), an organization focused on developing model statutes on which states may base their legislation, with an objective to create consistent rules and procedures among states and to "keep state law up-to-date by addressing important and timely legal issues."[22] The NCCUSL determined that the

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805 ILL. COMP. STAT. ANN. 180/37-40 (West 2014); IOWA CODE ANN. §§ 489.1201-1206 (West 2009);KAN. STAT. ANN. § 17-76,143 (Supp. 2014); MO. ANN. STAT. § 347.186 (West 2014); MONT. CODE ANN. § 35-8-304 (2013); NEV. REV. STAT. § 86.296 (2013); OKLA. STAT. tit. 18, § 2005.B, 2054.4 (2012); TENN. CODE ANN. § 48-249-309 (2012); TEX. BUS. ORGS. CODE ANN. § 101.601-622 (West 2013 & Supp. 2015); UTAH CODE ANN. § 48-3a-1201 to -1209 (Supp. 2015); SERIES OF UNINCORPORATED BUS. ENTITIES ACT prefatory note—preliminary n.2 (Draft July 2015). Most states, including Tennessee, are modeled after Delaware's Series LLC statute. Michael W. McLoughlin & Bruce P. Ely, *The Series LLC Raises Serious State Tax Questions but Few Answers Are Yet Available*, J. MULTISTATE TAX'N & INCENTIVES, Jan. 2007, at 6, 15 (Tennessee has "enacted provisions that are substantially similar to the Delaware statute and do not contain the specific separate-entity provisions found in the Illinois law.").

19 For example Minnesota, North Dakota, and Wisconsin "provide for a 'series' of ownership interests but do not provide the limited liability shield…." *A.L.I. Series LLC CLE*, *supra* note 8, at § IV.B; *see* MINN. STAT. ANN. § 322 B.03 subd. 44 (West 2011); N.D. Cent. Code § 10-32.1-02(48) (Supp. 2015); WIS. STAT. ANN. § 183.0504 (West 2014). Although the California statute does not use the term "series," its treatment of the Series LLC concept is in line with these states. *A.L.I. Series LLC CLE*, *supra* note 8, at § IV.B; *see* CAL. CORP. CODE § 17712.01 (West 2014). Other states have considered the Series LLC concept but rejected it for various reasons. These states include Maine and North Carolina. *A.L.I. Series LLC CLE*, *supra* note 8, at § IV.B.

20 REVISED UNIF. LTD. LIAB. CO. ACT (2006).

21 *Id.* prefatory note ("The new Act also has a very noteworthy omission; it does not authorize 'series LLCs.'").

22 *Id.* about NCCUSL.

time was not yet ripe to consider the series concept for adoption in the uniform LLC act because of the attendant risks and complexities of the SLLC[23] and "the availability of well-established alternate structures."[24]

Much has changed since the adoption of the RULLCA in 2006, however.[25] One such change is that a stand-alone[26] model uniform law, the Series of Unincorporated Business Entities Act,[27] is currently in development by the NCCUSL, although the Drafting Committee notes that several key issues still surround SLLCs.[28] Additionally, in 2011 the American Bar Association ("ABA") released a Revised Prototype Limited Liability Company Act (the "Revised Prototype Act")[29] to address emerging LLC issues, including SLLCs.[30] The Revised Prototype Act recognizes the series concept and provides model series provisions based on the Delaware and Texas statutes "in an effort to acknowledge a number of jurisdictions that have added series to their statutes."[31]

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23 In particular, the Drafting Committee was concerned about issues surrounding the series conceptually, particularly with respect to bankruptcy, foreign actions, taxation, and securities law. *Id.* prefatory note.

24 *Id.* Alternate structures include multiple single member LLCs and a limited liability holding company parent with subsidiary entities. *Id.* Such structures achieve comparable limited liability with the additional benefit of greater legal certainty.

25 *See infra* Part IV (discussing federal and state tax issues that arise after an LLC opts into the series structure).

26 This is in contrast to the current state law status quo, where Series LLC legislation is appended to the underlying LLC act. *See supra* note 9.

27 SERIES OF UNINCORPORATED BUS. ENTITIES ACT (Draft Nov. 2015). While earlier drafts applied the series concept to unincorporated business entities generally, the NCCUSL narrowed the scope of the November 2015 draft model act to address only limited liability companies (i.e., SLLCs). This narrower draft is tentatively named the Uniform Protected Series Act. *Id.* reporter's introductory note.

28 SERIES OF UNINCORPORATED BUS. ENTITIES ACT reporter's introductory note (Draft Mar. 2015) (listing key issues and the Drafting Committee's current approach to those issues). Of particular significance is whether the internal liability shields will be respected in states without protected series legislation. The Drafting Committee provided a frank warning that "with regard to the internal shields, the only thing we know for sure is that we know nothing for sure." *Id.*

29 REVISED PROTOTYPE LTD. LIAB. CO. ACT (2011), *available at* http://apps.americanbar.org/dch/thedl.cfm?filename=/CL590000/sitesofinterest_files/201105_business_law_llcs_rpllca_may_2011.pdf.

30 *Id.* preface.

31 *Id.*

Nevertheless, since Delaware passed the first SLLC statute nearly twenty years ago,[32] states' development of SLLC legislation has been piecemeal resulting in a varied legislative landscape.[33] This incomplete and disparate legal landscape raises serious issues for SLLCs conducting business in multiple states, particularly with respect to recognition of the internal liability shield. The central liability exposure, and thus a significant risk, for SLLCs in this context is "whether a forum state should defer to a foreign state's rules on an entity's ability to segregate its assets and its creditors' access to those assets."[34] The potential ramification of a SLLC operating in a non-recognition jurisdiction is that the forum state's courts may not defer to a foreign jurisdiction's grant of limited liability among series, resulting in a total elimination of structural limited liability within the entity. Such disregard of the SLLC internal liability shields would be devastating to the SLLC, allowing creditors to reach assets beyond the strategically segregated assets of the implicated series.[35]

Commentators agree that the negation of a SLLC's internal liability shields is a serious risk for SLLCs doing business in jurisdictions that do not recognize the SLLC as a state law entity or in jurisdictions

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[32] Delaware passed the first SLLC statute in 1996. DEL. CODE ANN. tit. 6, § 18-215 (2013).

[33] While many states' Series LLC statutes are similar in the "internal association of assets to the series, the application of certain otherwise entity-applicable rules at the series level, and the enumeration of the powers of a series as distinct form those of the organization of which it is a component," differing treatment exists "with respect to numerous factors, including whether or not a particular series may be treated as an entity, . . . the ability of a foreign series LLC to qualify to transact business, . . . and the degree to which additional state filings (and fees) must be paid to the state . . . ." Thomas E. Rutledge, *Again for the Want of a Theory: The Challenge of the "Series" to Business Organization Law*, 46 AM. BUS. L.J. 311, 315-18 (2009) (footnotes omitted).

[34] CARTER G. BISHOP & DANIEL S. KLEINBERGER, LIMITED LIABILITY COMPANIES: TAX AND BUSINESS LAW ¶ 14.06[1][c], Westlaw (current through 2015). While states generally defer to foreign law with respect to determining liability of members and the foreign LLC itself, this is not the question implicated by Series LLCs operating in non-recognition jurisdictions. *Id.* Indeed, state "[statutes] do not address the LLC's liability for its own debts and obligations and do not provide, *inter alia*, that by private ordering a foreign LLC may *ab initio* and unilaterally determine that it is not wholly liable for the debts and obligations of its constituent components." Rutledge, *supra* note 33, at 331.

[35] *See* BISHOP & KLEINBERGER, *supra* note 34.

that recognize the SLLC but do not allow limited liability among series and the SLLC.[36] Indeed, the American Law Institute observed that, "[i]n states without series enabling legislation, it would clearly be preferable to use multiple legal entities notwithstanding the additional cost."[37] The current statutory environment, however, may not be determinative of the ultimate viability of the SLLC, as illustrated by the adoption, evolution, and ultimate ubiquity of the LLC despite a similarly uncertain beginning.[38] Meaningful guidance and consistency among the states are likely the cornerstones to a widespread adoption of the SLLC concept.[39]

To date, the number of SLLCs formed in the United States is relatively small but not insignificant.[40] A 2013 survey of states recognizing SLLCs revealed that at least 36,000 SLLCs have been formed nationwide, 362 of which were formed in Tennessee.[41] In 2012, 118 SLLCs were formed in Tennessee—nearly double the number of Limited Liability Partnerships formed in Tennessee over the same

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[36] Griffith & Long, *supra* note 7, at 86 ("Series LLCs formed in states that permit the protected series should not do business in those states and anticipate that the internal liability shields will be honored if there is a problem.").

[37] *A.L.I. Series LLC CLE*, *supra* note 8, at § VII.C.

[38] "Although the question at one time had currency, today we do not question that an LLC doing business in a foreign jurisdiction does so carrying with it the limited liability afforded it by the jurisdiction of organization." Rutledge, *supra* note 33, at 329 (footnotes omitted).

[39] McLoughlin & Ely, *supra* note 18, at 14.

> Similar to what occurred after the first LLC statutes were enacted, most businesses have been reticent to embrace the series LLC concept because of concerns regarding whether states without LLC statutes will respect the limited liability of the series, and uncertainty over federal and state tax treatment of the series. Once these issues have been settled, the series LLC likely will become a popular vehicle for certain business activities because it will allow businesses to achieve limited liability for separate activities without going through the burden and expense of establishing and maintaining multiple LLCs.

Id.

[40] Griffith & Long, *supra* note 7 ("While there is[] a meaningful amount of activity . . . at this point it does not appear to be a flood [of SLLC formations], but it is more than a trickle.").

[41] *Id.* The Survey was conducted in November 2013 and included Delaware, the District of Columbia, Illinois, Iowa, Kansas, Missouri, Montana, Nevada, Oklahoma, Puerto Rico, Tennessee, Texas, and Utah. *Id.*

period.[42] While this may suggest that SLLCs are gaining prominence as a viable option for organizing business in Tennessee, it should be noted that these entities represent only a small number of all new businesses organized in the state each year.[43] Indeed, Tennessee SLLCs comprised just 2.6% of Tennessee LLCs formed in 2012.[44]

SLLCs may prove valuable for businesses that benefit from compartmentalized activities.[45] As such, common uses include: real estate, mutual funds, venture capital, captive insurance, oil and gas ventures, franchises, and licensed businesses.[46] The primary advantage cited by SLLC advocates is administrative efficiency.[47] Because the liability shields allow internal structuring so that only one state law entity is involved, cost savings may be created when an entity would otherwise have to involve multiple entities in a parent/subsidiary or holding company type structure – duplicating administrative time and expense for each entity to achieve a similar limited liability outcome.[48] Specifically, the SLLC may create efficiencies related to fees incurred when forming, registering, promoting, and maintaining new entities and transferring assets among entities.[49]

These cost savings may be illusory, however. The SLLC approach may not actually result in less administrative time and expense,

[42] *Id.*

[43] For example, in 2012 there were only 60 limited liability partnerships and 211 limited partnerships formed in Tennessee while there were 4,847 for-profit corporations and 13,747 limited liability companies formed during the same period. TENN. SEC'Y OF STATE, BUSINESS ENTITY STATISTICS (2015), *available at* http://sos.tn.gov/products/business-services/business-entity-statistics-0.

[44] *See id.*

[45] Kleinberger, *supra* note 6, at 4 ("[A]n LLC with series can compartmentalize various divisions of an operating company or function as a holding company.").

[46] *See* Griffith & Long, *supra* note 7, at 85; McLoughlin & Ely, *supra* note 18, at 9; SERIES OF UNINCORPORATED BUS. ENTITIES ACT (Draft Mar. 2015).

[47] *See, e.g.*, Griffith & Long, *supra* note 7, at 85; *A.L.I. Series LLC CLE*, *supra* note 8, at § VII.A; McLoughlin & Ely, *supra* note 18, at 8.

[48] Griffith & Long, *supra* note 7, at 85.

[49] *Id.*

especially in jurisdictions that require fees for each series.[50] Additionally, SLLCs must meet statutory recordkeeping requirements for each series to maintain the liability shield granted by the statute.[51] In light of this, commentators "question what a [SLLC] can accomplish that a number of traditional LLCs cannot accomplish."[52]

II. THE TENNESSEE SLLC

A. *Formation and Establishment of Series*

Like most states, Tennessee principally modeled its SLLC statute, T.C.A. § 48-249-309, on Delaware's SLLC statute.[53] To form a SLLC in Tennessee, one must form a traditional LLC pursuant to T.C.A. § 48-249-201 either concurrently or prior to the establishment of a series.[54] This traditional LLC functions as an "umbrella entity,"[55] which converts to a SLLC once one or more series are established within it.[56] A series of a SLLC in Tennessee may consist of "specified property or obligations

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50 Illinois and California both take this approach. *See* Goforth, *supra* note 3, at 395-96.

51 *See, e.g.*, TENN. CODE ANN. § 48-249-309(b)(1)(B) (2012) (Tennessee requires SLLCs to maintain separate and distinct records to receive the benefit of the statutory internal liability shield).

52 Griffith & Long, *supra* note 7, at 84.

53 Goforth, *supra* note 3, at 406 n.9 ("Of the six other states, which as of the date of this article have adopted series LLC provisions, five clearly modeled their statutes on the Delaware approach: Iowa, Nevada, Oklahoma, Tennessee, and Utah."); Dominick T. Gattuso, *Series LLCs: Let's Give the Frog a Little Love*, 17 BUS. L. TODAY, July/Aug. 2008, 33 ("Today, Illinois, Iowa, Nevada, Oklahoma, Puerto Rico, Tennessee, and Utah have added provisions to their LLC statutes authorizing the Series LLC. With the exception of Illinois, these states adopted provisions similar to Delaware's Series LLC provision.").

54 TENN. CODE ANN. § 48-249-309(a) (2012) ("**The LLC documents** may establish, or provide for the establishment of [a series].") (emphasis added). Since the LLC documents must establish or provide for the establishment of a series, an LLC must be formed either before the establishment of a series, or concurrently with the establishment of a series.

55 Jennifer Avery et al., *Series LLCs: Nuts and Bolts, Benefits and Risks, and the Uncertainties That Remain*, 45 TEX. J. BUS. L. 9, 10 (2012) ("A Series LLC begins with the formation of an LLC, which, for the sake of clarity, will be referred to in this article as the 'Umbrella LLC.'").

56 *Id.* ("The Umbrella LLC may, provided it meets certain statutory requirements discussed below, form one or more series within itself. . . ."); TENN. CODE ANN. § 48-249-309(a) (2012).

of the LLC, or profits and losses associated with specified property or obligations [of the LLC]."[57] Tennessee law does not restrict or limit the number of series a SLLC may create, nor does it establish a maximum or minimum quantity of assets that any given series may hold.[58] This enhances the desirability of SLLCs in Tennessee, since SLLCs are relatively inexpensive to form and may contain any type or quantity of property, assets, or obligations.

In addition, a Tennessee SLLC is not required to file a certificate of designation or any form of separate document with the Tennessee Secretary of State when a new series is formed, aside from the initial notice of limitation of liability of a series included in the LLC documents[59] when the first series is established.[60] All that is required in Tennessee to establish a new series is the amendment of the LLC documents.[61] This stands in stark contrast to SLLCs in Illinois, where a SLLC is required by law to file a "certificate of designation for each series which is to have limited liability . . . ."[62] Accordingly, Tennessee's SLLC statute makes it comparatively easy to add or remove additional series. However, the practical effects of this advantage are limited, as Tennessee requires a SLLC to maintain separate and distinct records and

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[57] *Id.*

[58] *Id.* (noting that a LLC may establish "one (1) or more designated series."). No provision of the Tennessee SLLC statute limits this number or sets forth restrictions concerning quantities of assets.

[59] In Tennessee, "'LLC documents' means either, or both: (A) An LLC's articles; and (B) If the LLC has an operating agreement, whether written or oral, its operating agreement[.]" TENN. CODE ANN. § 48-249-102(16) (2012).

[60] TENN. CODE ANN. § 48-249-309(b)(2) (2012) ("[T]here shall be no requirement that any specific series of the LLC be referenced in such notice. The fact that articles that contain the notice of the limitation on liabilities of a series is on file with the secretary of state shall constitute notice of such limitation on liabilities of a series.").

[61] TENN. CODE ANN. § 48-249-309(a) (2012) ("The LLC documents may establish, or provide for the establishment of, one (1) or more designated series. . . ."). This assumes the notice of limitation of liability has already been filed and that the SLLC will immediately begin to maintain separate records upon the establishment of a new series. Since no particular series need be mentioned in notice of the limitation of liability, it does not need to be amended when new series are created. TENN. CODE ANN. § 48-249-309(b)(2) (2012).

[62] 805 ILL. COMP. STAT. ANN. 180/37-40(b) (2014).

accounting for the assets of each individual series, adding time and expense to the process.[63]

B. *Permitted Activities and Business of a SLLC*

In Tennessee, T.C.A. § 48-249-309 makes it clear that each series of a SLLC is to be managed as if it were a completely separate LLC.[64] However, Tennessee law is silent as to whether an individual series of a SLLC may, in its own name: sue and be sued, contract with others, hold title to assets, or grant security interests in its property. The lack of clear, statutory language to this effect detracts from the desirability of SLLCs in Tennessee as compared to other states like Illinois, whose SLLC statutes expressly permit these kind of these activities.[65] Delaware's SLLC statute, like Tennessee's, was once silent on this issue. However, in 2007, Delaware's SLLC statute was amended, and now explicitly permits a series of a SLLC, in its own name, to "contract, hold title to assets (including real, personal and intangible property), grant liens and security interests, and sue and be sued."[66] Unlike Delaware, Tennessee has not yet amended its SLLC statute to explicitly allow a series to contract, hold title, grand liens, and sue in its own name.

Even though Tennessee's SLLC statute does not expressly allow a series to contract, hold title to assets, sue and be sued or grant liens, the statute does not, from a textual perspective, prohibit a SLLC from participating in these types of activities. In fact, these types of activities may be implicitly permitted by the law's mandate that each series be managed as if it were a separate LLC, since individual LLCs may individually participate in all the aforementioned activities.[67]

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63 TENN. CODE ANN. § 48-249-309(b)(1)(B) (2012).

64 Wendell Gingerich, *Series LLCs: The Problem of the Chicken and the Egg*, 4 ENTREPRENEURIAL BUS. L.J. 185, 189 n.34 (2009) ("The Tennessee statute, like the Illinois' statute, more explicitly treats each series as a separate LLC with regard to management, voting rights, and termination of the series.").

65 805 ILL. COMP. STAT. ANN. 180/37-40(b) (2014) ("Each series with limited liability may, in its own name, contract, hold title to assets, grant security interests, sue and be sued and otherwise conduct business and exercise the powers of a limited liability company under this Act.").

66 6 DEL. CODE ANN. § 18-215(c) (2015); *compare* 6 DEL. CODE ANN. § 18-215 (2004) *with* 6 DEL. CODE ANN. § 18-215 (2007) (Note language added in 2007).

67 TENN. CODE ANN. § 48-249-309(f) (2012); TENN. CODE ANN. § 48-249-104 (2006) (noting that LLCs in Tennessee have the power to: sue and be sued, contract, grant security interests in its property, and hold property).

Furthermore, T.C.A. § 48-249-309(b) contains a catch-all liability provision, absolving any series of a SLLC from all liabilities, "contracted for or otherwise," of another series.[68] It would be illogical for the legislature to absolve a series of any liability arising from the contracts of another series, yet not permit a series of the SLLC to contract at all. Therefore, the catch-all liability provision of Tennessee's SLLC statute strongly implies that a series may contract.

In addition, each series of an SLLC has "separate rights, powers [and] duties," which arguably includes the ability to contract, sue, grant security interests, and other such concomitant activities.[69] Therefore, while the language of Tennessee's SLLC statute does not prohibit a series from contracting, suing, and granting security interests in its property, amending Tennessee's SLLC statute to include more definite language, as Delaware has done, could enhance the value of a Tennessee SLLC as an entity by providing clarity. Such an amendment would also add value by more closely aligning Tennessee's SLLC statute with Delaware's and Illinois' SLLC statutes, which, in turn, would make authority from these jurisdictions more persuasive in Tennessee courts.

C. *Liability Shields*

In order for the liability shields created by the "separateness" of the Tennessee SLLC statute to apply, a Tennessee SLLC must: (1) provide for the establishment of one or more distinct series in the LLC documents; (2) maintain separate and distinct records for any series, along with the assets of each series; and (3) set forth, in the articles of the LLC, a notice on the limitation of liabilities of a series.[70] A notice of limitation of liability is required, and is deemed sufficient as long as it is included in the articles of the LLC, which are filed with the Tennessee Secretary of State.[71]

In Tennessee, "the debts, liabilities, obligations and expenses incurred . . . with respect to a particular series . . . *shall be enforceable against*

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68 TENN. CODE ANN. § 48-249-309(b)(1) (2012).

69 TENN. CODE ANN. § 48-249-309(a) (2012).

70 TENN. CODE ANN. § 48-249-309(b)(1)(A)-(C) (2012).

71 TENN. CODE ANN. § 48-249-309(b)(2) (2012).

the assets of such series only, and not against the assets of the LLC generally, or any other series of the LLC . . . ."[72] This language establishes the "internal" liability shields of a SLLC. The "internal" liability shields derive their power from the fact that the assets in one series of a SLLC are shielded from the liabilities or obligations of another series.[73] Tennessee's SLLC statute particularly emphasizes that each series of a Tennessee SLLC is legally distinctive, or separate, from any other series in the SLLC, as well as the SLLC generally, for purposes of third-party liability.[74] In other words, the assets in one series of an SLLC cannot be used to satisfy the obligations of another series or the SLLC generally.[75] In this aspect, Tennessee's SLLC statute departs from Delaware's SLLC statute, which is silent on this subject, and more closely resembles Illinois' SLLC statute, which also emphasizes that each series is legally distinct.[76] Furthermore, each established series of a Tennessee SLLC is treated as a separate LLC in pertinence to each series' voting rights,[77] management,[78] distributions,[79] and termination.[80]

While this legal distinction or "separateness" of each series is perhaps the most important feature of a SLLC[81] and endemic to every SLLC statute, Tennessee's SLLC statute goes beyond most in clarifying

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[72] TENN. CODE ANN. § 48-249-309(b)(1) (2012) (emphasis added).

[73] *Id.* (noting that no legal liability, debt, or obligation of one series, shall be "enforceable against . . . the assets of the LLC generally, or any other series of the LLC"); Avery et al., *supra* note 55, at 10 ("[E]ach [series] within a Series LLC is shielded from the liabilities of the other [series].").

[74] TENN. CODE ANN. § 48-249-309(b)(1) (2012).

[75] TENN. CODE ANN. § 48-249-309(b)(1) (2012).

[76] Gingerich*, supra* note 64, at 189 n.34. ("The Tennessee statute, like the Illinois' statute, more explicitly treats each series as a separate LLC with regard to management, voting rights, and termination of the series.").

[77] TENN. CODE ANN. § 48-249-309(d) (2012).

[78] TENN. CODE ANN. § 48-249-309(f) (2012).

[79] TENN. CODE ANN. § 48-249-309(e) (2012).

[80] TENN. CODE ANN. § 48-249-309(g) (2012).

[81] Avery et al., *supra* note 55, at 10. (noting that "[t]he liability limitation is the most important feature of a Series LLC."). This "liability limitation" comes from the separateness of each series; the fact that the liabilities of one series cannot be enforced against another. TENN. CODE ANN. § 48-249-309(b)(1) (noting that no legal liability, debt, or obligation of one series, shall be "enforceable against…the assets of the LLC generally, or any other series of the LLC").

the separateness of each series.[82] T.C.A. § 48-249-309's exacting emphasis on the separateness of each series increases the likelihood that a court will honor the limited liability of a series in Tennessee, since the plain language of the statute clearly and unambiguously protects the assets of one series from being used to satisfy the debts, obligations, and liabilities of another series.[83] In this situation, "[w]here the language contained within the four corners of a statute is plain, clear, and unambiguous, the duty of the courts is simple and obvious, 'to say *sic lex scripta*, and obey it.'"[84] Therefore, while questions remain about the enforceability of a SLLC's liability shield in general, the nature and clarity of the language in the Tennessee SLLC statute increases the likelihood that a court will give effect to the limited liability of series in Tennessee, as compared to other states.

D. *Conclusion*

Overall, while Tennessee's SLLC statute contains a few hybrid features, T.C.A. § 48-249-309's close resemblance to Delaware's SLLC statute enhances the utility of a SLLC as an entity, as Tennessee can look to Delaware, where SLLCs were first adopted, for guidance and precedent when issues arise.[85] While Tennessee would be well-served by

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[82] Tennessee's statute goes further than most, as most states who have adopted SLLC statutes have modeled their statute on Delaware's statute, which is silent as to when a series of a SLLC is to be treated as a separate LLC, while Tennessee, in this particular area, follows the Illinois approach, which vehemently states that each series is to be treated as a separate LLC. *See* Gingerich*, supra* note 64, at 189 n.34 ("The Tennessee statute, like the Illinois' statute, more explicitly treats each series as a separate LLC with regard to management, voting rights, and termination of the series."); Gattuso, *supra* note 53 ("Today, Illinois, Iowa, Nevada, Oklahoma, Puerto Rico, Tennessee, and Utah have added provisions to their LLC statutes authorizing the Series LLC. With the exception of Illinois, **these states adopted provisions similar to Delaware's Series LLC provision**.") (emphasis added).

[83] TENN. CODE ANN. § 48-249-309(b) (2012).

[84] Schering-Plough Healthcare Products, Inc. v. State Bd. of Equalization, 999 S.W.2d 773, 776 (Tenn. 1999) (quoting Miller v. Childress*,* 21 Tenn. 319, 321–22 (1841)). The phrase "sic lex scripta" is translated as "so is the law written." Fed. Express Corp. v. Woods, 569 S.W.2d 408, 411 (Tenn. 1978).

[85] Gingerich, *supra* note 64, at 185 ("Delaware introduced the series LLC to the rest of the country. . . .").

amending its SLLC statute to expressly allow a SLLC to partake in "any lawful business, purpose or activity," as Delaware has done, the efficacy of SLLCs formed under T.C.A. § 48-249-309 is enhanced by the particular language of Tennessee's SLLC statute pertaining to formation, the addition of series, and liability shields, as discussed *supra*.[86]

While questions concerning the treatment of SLLCs in piercing the corporate veil, bankruptcy, and foreign actions raise doubts about the usefulness of SLLCs for their intended purposes; T.C.A. § 48-249-309 provides clear protection from liability for a series in regular civil actions against either another series or the SLLC generally. This benefit alone, when combined with the advantages and popularity of traditional LLCs, arguably establishes the Tennessee SLLC as a worthwhile, valuable entity, particularly in matters such as estate planning where there is little risk of bankruptcy, piercing the corporate veil, or out-of-state operations.

III. RESPECTING ENTITY SEPARATENESS: PIERCING THE VEIL, BANKRUPTCY, AND FOREIGN ACTIONS

The principle problem with SLLCs, aside from federal and state income taxation issues, derives from the fact that SLLCs are relatively untested in courts of law, both in Tennessee and abroad.[87] In particular, there is little to no precedent in Tennessee to provide guidance concerning how Tennessee courts would treat SLLCs in cases involving piercing the veil, foreign actions, or bankruptcy. The question, currently, is whether this ambiguity is so significant as to deter potential SLLC members from using SLLCs as a business form in Tennessee.

A. *Piercing the Veil*

In Tennessee, the doctrine of piercing the veil applies to limited liability companies as well as corporations.[88] The same basic tests that are utilized in Tennessee when piercing the veil of limited liability of a corporation apply to a creditor who is attempting to pierce the veil of

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[86] 6 DEL. CODE ANN. § 18-215(c) (2012).

[87] *See* Gingerich, *supra* note 64, at 185 ("[T]he series LLC has not seen a dramatic increase in popularity, largely because of the glaring lack of case law interpreting the series LLC statutes . . . ."); *see also* Goforth, *supra* note 3, at 399 ("The biggest problem now is that there are no reported decisions dealing with this question.").

[88] *See* Edmunds v. Delta Partners, L.L.C., 403 S.W.3d 812, 828 (Tenn. Ct. App. 2012) ("The doctrine of piercing the corporate veil applies equally to cases in which a party seeks to pierce the veil of a limited liability company . . . .").

limited liability of a LLC.[89] These tests and conditions may vary according to the circumstances of an individual case, and the matter is particularly within the province of the trial court.[90]

However, studies suggest that the veil is pierced less often in the LLC context than with closely held corporations.[91] In addition, several scholars have commented that SLLCs may be more susceptible to piercing than regular LLCs.[92] As a general rule, absent a reason to pierce the veil, the members, owners, employees, or other agents of a Tennessee limited liability company have no personal liability for the debts or obligations of the company.[93]

Tennessee precedent states that the separate identity of a corporation may be disregarded upon a showing that the corporation is a sham, or dummy, where necessary to accomplish justice[94] or where the corporation is the "alter ego" of the shareholders.[95] While these tests appear to be broad, Tennessee courts have applied the principle of piercing the corporate veil with great caution, and each entity is given the

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89 *Id.* at 829 (quoting In re Steffner, 479 B.R. 746, 755 (Bankr. E.D. Tenn. 2012) ("Despite the inapplicability of the remedy's name, the 'corporate veil' of a Tennessee limited liability company may also be pierced, utilizing the same standards.")).

90 *See* Muroll Gesellschaft M.B.H. v. Tenn. Tape, Inc., 908 S.W.2d 211, 213 (Tenn. Ct. App. 1995) (citing Elec. Power Bd. of Chattanooga v. St. Joseph Valley Structural Steel Corp., 691 S.W.2d 522 (Tenn. 1985)).

91 *See* Geoffrey C. Rapp, *Preserving LLC Veil Piercing: A Response to Bainbridge*, 31 J. CORP. L. 1063, 1071 (2006) (noting that a "study produced slightly fewer than 1600 corporate veil piercing cases based on a time frame that spanned many decades; in less than one decade, there were 61 LLC veil piercing cases.").

92 *See* Goforth, *supra* note 3, at 398 ("Series LLCs might also be more prone to piercing."); *see also* Avery et al., *supra* note 55, at 15 ("Series LLCs also may be more susceptible to courts piercing the corporate veil.").

93 *See* TENN. CODE ANN. § 48–217–101(a)(1) (1995); TENN. CODE ANN. § 48–249-114(a)(1)(B) (2006).

94 *See Muroll Gesellschaft*, 908 S.W.2d at 213.

95 *See* Eric Fox, *Piercing the Veil of Limited Liability Companies*, 62 GEO. WASH. L. REV. 1143, 1169 (1994) ("The factors typically mentioned in the corporate veil-piercing context include . . . operation of the corporation as an alter ego for the shareholders."). *See generally* George W. Kuney, *Don't Mistake the Proxy for the Rule: Alter Ego Liability in Tennessee,* 11 TENN. J. BUS. L. 131 (2010) (explaining Tennessee "alter ego" liability).

presumption of corporate regularity.[96] The plaintiff bears the "burden of proving facts sufficient to justify piercing the corporate veil."[97]

As of the date of this Article, no directly relevant case law exists concerning piercing the veil in the SLLC context.[98] Courts in bankruptcy or other actions may hesitate to treat an individual series of a SLLC as a separate legal person because of concerns about equities.[99] Furthermore, Tennessee courts may be more likely to take this approach with LLCs, as Tennessee decisional law supports piercing in the corporate form where an unfair device is used to achieve an inequitable result.[100] In particular, under Tennessee law, "a court may disregard the corporate entity in order to impose liability against a related entity, such as a parent corporation or a controlling shareholder, where the two entities are in fact identical or indistinguishable and where necessary to accomplish justice."[101]

As mentioned *supra*, a court may perceive any inequities created by the liability shields of a SLLC as a justification for piercing. For example, a SLLC may move a particularly risky asset into one series and several very profitable assets into another. Were the risky asset to create a significant liability, one unsatisfied by the assets of that particular series, a creditor may argue that it is unfair to let the SLLC escape liability

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96 *See* Edmunds v. Delta Partners, L.L.C., 403 S.W.3d 812, 828 (Tenn. Ct. App. 2012) (quoting Schlater v. Haynie, 833 S.W.2d 919, 925 (Tenn. Ct. App. 1991) ("The principle of piercing the fiction of the corporate veil is to be applied with great caution and not precipitately, since there is a presumption of corporate regularity.").

97 *Schlater*, 833 S.W.2d at 925.

98 *See, e.g.*, Goforth, *supra* note 3, at 399-400 ("The biggest problem now is that there are no reported decisions dealing with this question. We simply do not know whether courts will be more or less inclined to pierce the veil for series LLCs, and this very uncertainty itself is grounds for concern."). Further searches in 2015 by the authors looking for precedent have been unsuccessful.

99 *See* Kleinberger, *supra* note 6, at 2 (noting that "[interpreting] the series as non-entity, non-person may be so counter-intuitive to judges as to encourage piercing . . . .").

100 *See, e.g.*, *Schlater*, 833 S.W.2d at 925 ("Even though corporate formalities have been observed, one may still challenge the corporate entity by showing that he has been the victim of some basically **unfair device by which the corporate form of business organization has been used to achieve an inequitable result**.") (emphasis added).

101 *Edmunds*, 403 S.W.3d at 828 (citing Mfrs. Consol. Serv., Inc. v. Rodell, 42 S.W.3d 846, 866 (Tenn. Ct. App. 2000)). Other jurisdictions have also addressed sister subsidiary veil piercing. *See generally* Robert B. Thompson, *Piercing the Corporate Veil: An Empirical Study,* 76 CORNELL L. REV. 1036 (1991) (outlining piercing actions and precedent in other jurisdictions).

simply by putting the risky asset into its own series, particularly if the SLLC was aware that the asset would create a liability when it moved the asset. This essentially externalizes the risk of loss from the Tennessee SLLC members to its creditors.[102] However, this inequity is the product of a clear, unambiguous reading of Tennessee law, and courts should be diligent when considering "unfairness" as a factor in the piercing analysis of a SLLC, as the inequity may occur regardless of whether piercing is actually warranted.

Despite its relative clarity and lack of ambiguity, the language of Tennessee's SLLC statute may render Tennessee's SLLCs particularly susceptible to piercing. Since the failure to follow corporate formalities is one of the oft-cited factors in cases where the veil is pierced successfully, any failure by the SLLC to maintain separate records and accounting for the assets of each series, as required by T.C.A. § 48-249-309(b)(1)(B), may provide a court with a justification for piercing.[103] Therefore, members or managers of a Tennessee SLLC must be meticulous in recordkeeping and observe LLC formalities to the greatest extent possible if piercing is to be prevented. Due to the possibility that SLLCs may result in unfairness claims in the tort arena and the high likelihood that some SLLCs may fail to keep proper records as required by law,[104] piercing is a real and significant problem for Tennessee SLLCs, which detracts from the utility and desirability of SLLCs as a choice of entity under Tennessee law.

B. *Bankruptcy*

There is, as of the date of this Article, no directly relevant case law concerning whether the internal shields of an individual series will

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[102] *See* Marie T. Reilly, *Making Sense of Successor Liability*, 31 HOFSTRA L. REV. 745, 752 (2003) ("When insiders manipulate assets in a way that makes them better off but increases creditors' risk of loss without creditors' assent, they 'externalize' loss to creditors.").

[103] *See also* Fox, *supra* note 95, at 1169 ("The factors typically mentioned in the corporate veil-piercing context include . . . failure to observe corporate formalities . . . .").

[104] There is an additional risk that a Tennessee SLLC will fail to keep proper records due to Tennessee's requirement that distinct and individual records be kept for each series.

hold up in a bankruptcy action.[105] Simply put, there is no precedent concerning how a bankruptcy court will treat a SLLC when one series, or the SLLC generally, becomes involved in a bankruptcy proceeding.[106] The National Conference of Commissioners on Uniform State Laws has acknowledged that this is a problem and has taken the position that "[a] protected series is a person distinct from the series organization, other series of the organization, and the owners of the organization."[107] This approach has been validated by other legal commentators, who suggest that characterizing each protected series as a separate legal entity in bankruptcy proceedings would be the "safest approach."[108] Despite this, until precedent emerges, "the only thing we know for sure is that we know nothing for sure."[109]

Interpreting each individual series as an independent person, distinct from other series and the SLLC generally (as the National Conference of Commissioners on Uniform State Laws suggests), would allow the SLLC's liability shield to withstand scrutiny in bankruptcy actions.[110] This would mean the assets of the SLLC generally, as well as the assets of other series, would not be consolidated with those of a series if that series were to be involved in a bankruptcy proceeding.[111] However, despite the apparent clarity of its statutory law in other contexts, Tennessee's SLLC statute does not expressly dictate that a

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105 SERIES OF UNINCORPORATED BUS. ENTITIES ACT reporter's introductory note (Draft Mar. 2015) ("As for the internal shields under bankruptcy law, no directly relevant case law exists.") *available at* http://www.uniformlaws.org/shared/docs/series%20of%20unincorporated%20business%20entities/2015mar_SUBEA_Mtg%20Draft.pdf; *see also* Goforth, *supra* note 3, at 398 ("[T]o date, there are no reported decisions addressing the status of series LLCs in bankruptcy.").

106 *See* Goforth, *supra* note 3, at 399.

107 SERIES OF UNINCORPORATED BUS. ENTITIES ACT reporter's introductory note (Draft Mar. 2015) *available at* http://www.uniformlaws.org/shared/docs/series%20of%20unincorporated%20business%20entities/2015mar_SUBEA_Mtg%20Draft.pdf.

108 *See* Kleinberger, *supra* note 6, at 2 ("The safest approach would be to characterize the protected series as a separate entity and provide the series the full spectrum of entity powers.").

109 *Id.* at 3.

110 *See* Goforth, *supra* note 3, at 398 ("Unless and until bankruptcy law recognizes series as separate legal entities, bankruptcy of a single series might well jeopardize assets of the LLC and the other series as well.").

111 *See id.*

series is to be treated as a separate entity in bankruptcy, and there is no case law to support an argument for legal separateness in this context. Tennessee's legislature, like legislatures in most other states, has declined to directly address the bankruptcy characterization issue.[112] Amending Tennessee's SLLC statute to clarify that each series is a person distinct from the series organization, other series of the organization, and the owners of the organization in bankruptcy would provide a legislative resolution of this issue.

A bankruptcy court cannot consolidate the assets of multiple LLCs.[113] Accordingly, one could argue that T.C.A. § 48-249-309's language requiring each series of a SLLC to be treated as a separate LLC in regard to classification of interests, voting rights, management, distributions, and termination also requires a bankruptcy court to treat each series as a separate LLC in bankruptcy actions.[114] Each series must maintain and account for its assets separately from other series, which further strengthens this argument.[115] It would be unreasonable, and a particularly harsh trap for Tennessee SLLC members, to treat a series as a separate entity for all purposes other than bankruptcy. While a legal rule providing for separateness in bankruptcy may at times produce inequitable results for creditors, if the law were clear on the point, voluntary creditors and unwitting tort victims doing business with a series of a SLLC would be able to identify this risk *ex ante* and, if necessary or desired, secure a guarantee from either another series or the SLLC in order to protect their interests. In the end, however, there is still no direct precedent concerning whether a bankruptcy court will treat a series of an SLLC as an independent entity, which weakens the

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112 *See id.*

113 *See also id.* ("This is a risk that could be avoided with a group of properly formed and operated LLCs . . . .").

114 Gingerich, *supra* note 64, at 189 n.34 ("The Tennessee statute, like the Illinois' statute, more explicitly **treats each series as a separate LLC** with regard to management, voting rights, and termination of the series.") (emphasis added).

115 *See* TENN. CODE ANN. § 48-249-309(b)(1)(B) (2012). The argument here is that if a series looks like a separate LLC, functions like a separate LLC, and keeps records like a separate LLC, then it should be treated as a separate LLC for the purposes of aggregating assets in a bankruptcy proceeding.

attractiveness of the SLLC as an entity, particularly for more risk-prone business models.

C. *Foreign Actions*

A third troubling uncertainty for Tennessee SLLCs is whether the entity's liability shields will be effective outside the borders of its state of formation. As mentioned *supra* in Part II, questions remain as to whether a forum state's courts will defer to a foreign jurisdiction's grant of limited liability to SLLC series. In most states, the law of the state of formation controls the liability of a foreign LLC under the internal affairs doctrine.[116] However, it is uncertain whether this general principle applies to SLLCs and, as of this time, there is no court precedent to provide guidance on this issue. These uncertainties are complicated by the fact that some states, such as California, have SLLC statutes that explicitly prohibit limited liability for series.[117] Therefore, as a general matter, venturers who plan on conducting business through the LLC form in states that (1) do not have a SLLC statute or (2) have a SLLC statute that does not provide limited liability for series, may be better served by forming separate LLCs rather than a SLLC.[118]

However, this is an uncertainty that may soon be resolved. At the time of this writing, the majority of states have yet to adopt a SLLC statute.[119] Nevertheless, the National Conference of Commissioners on Uniform State Laws is drafting a model act for SLLCs: the Series of Unincorporated Business Entities Act.[120] With the release of this model act, it is hopeful that more states will turn to uniform law when drafting or remodeling SLLC statutes. This would possibly cause the utility and

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116 *See* Goforth, *supra* note 3, at 397-98 ("The majority of LLC statutes provide that the law of the state of formation controls the liability of members of a foreign LLC.").

117 CAL. CORP. CODE § 17712.01 (2013).

118 *See also* Griffith & Long, *supra* note 7, at 86 ("Series LLCs formed in states that permit the protected series should not do business in those states and anticipate that the internal liability shields will be honored if there is a problem.").

119 *See* Avery et al., *supra* note 55, at 15 ("Another hazard of Series LLCs is the fact that they are still relatively new and are only recognized in a minority of states."); *see also* Goforth, *supra* note 3, at 398 ("The most obvious problem at this point in time is the fact that so few states have adopted series LLC legislation.").

120 *See generally* SERIES OF UNINCORPORATED BUS. ENTITIES ACT reporter's introductory note (Draft Mar. 2015), *available at* http://www.uniformlaws.org/shared/docs/series%20of%20unincorporated%20business%20entities/2015mar_SUBEA_Mtg%20Draft.pdf.

prevalence of SLLCs to increase, as members will be able to ascertain whether the liability benefits afforded to SLLCs in their state of formation will be effective in other states.

In Tennessee, a foreign SLLC must identify itself as a SLLC in either the foreign SLLC's application for a certificate of authority to transact business in Tennessee, or an amendment of a pre-existing certificate of authority.[121] The SLLC must also state in the application or amendment whether the SLLC has "internal" liability shields.[122] The "internal" liability shields of foreign SLLCs are effective in Tennessee, unless otherwise provided in the application or amendment.[123] In conclusion, until more states pass SLLC statutes like Tennessee's, which allow the "internal" liability shields of a foreign SLLC to be effective within their borders, Tennessee SLLCs should be cautious when operating outside of Tennessee.

IV. FEDERAL AND STATE TAX ISSUES

A. *Business Tax Landscape*

When a LLC opts into the series structure under an enabling statute, the fundamental federal and state income tax treatment generally remains constant. As such, the basic income tax environment in which SLLCs exist is equivalent to its derivative LLC form.[124] Complications

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121 TENN. CODE ANN. § 48-249-309(i) (2012).

122 *Id.* ("In addition, the foreign LLC shall state in such application or amendment, as applicable, whether the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series, if any, shall be enforceable against the assets of such series only, and not against the assets of the foreign LLC generally or any other series of the foreign LLC."). The entity must state if it has internal liability shields, since while it makes little sense to form a SLLC without the shields, it is technically possible.

123 *Id.* ("[U]nless otherwise provided in such application or amendment, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the foreign LLC generally, or any other series of the foreign LLC, shall be enforceable against the assets of such series.").

124 This treatment, like the series opt-in procedure discussed *supra* Part I, is analogous a partnership electing to become a limited liability partnership. The electing partnership and LLC each continue to operate under the general tax scheme that existed at the time of election.

arise, however, when the income tax treatment accorded to the LLC becomes muddled with the series' inherent separate/singular dichotomy as well as incomplete federal and state income tax guidance regarding such issues.

Unlike corporations and partnerships, LLCs do not have an independent income tax regime codified in a sub-chapter of the U.S. Internal Revenue Code.[125] Rather, a LLC's federal, and generally state, income tax classification depends on whether it elects to be treated as a partnership, corporation, or disregarded entity under the "check-the-box" regulations.[126] Under check-the-box regulations, a qualifying entity may literally check a box on the relevant federal tax form to elect its federal income tax classification, even if that classification differs from its state law entity classification.[127] This concurrent, simplified classification system is possible because "the determination of whether an entity is separate from its owners for Federal tax purposes is a matter of Federal tax law and does not depend on whether the organization is recognized as an entity under local law."[128]

The mechanics of the regulations provide that qualifying entities, essentially separate business entities that are not corporations,[129] trusts,[130]

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125 *See* Samuel P. Starr, et al., *Limited Liability Companies*, 725-3d TAX MGMT. (BNA) U.S. INCOME PORTFOLIOS, at VIII.C.1 (2015) ("LLCs are creatures of state law, not tax law. In most states, the fact that a business is organized as an LLC does not dictate its state tax treatment.").

126 *See id.* at n.635 ("LLCs do not elect to be treated as pass-through entities for state tax purposes; instead, in most states they are treated as such if they qualify for federal partnership treatment"); *see also* Treas. Reg. § 301.7701-2 (as amended in 2014).

127 *See* I.R.S. Form 8832, Entity Classification Election (2013), *available at* http://www.irs.gov/pub/irs-pdf/f8832.pdf; *see also* Lisa Marie Starczewski, *Formation of an LLC, Classification*, TAX MGMT. TAX PRAC. SER. (BNA), at 4100.03B (2015).

128 Treas. Reg. § 301.7701-1(a)(1) (as amended in 2011). Check-the-box regulations freed LLCs from the uncertainty of a balancing test to determine whether the LLCs operating agreement included more corporate characteristics than non-corporate characteristics – the basis on which it was decided whether the LLC was more appropriately treated as a corporation rather a partnership under tax law. *See* Starr et al., *supra* note 125, at n.635.

129 "A business entity that is not classified as a corporation under §301.7701-2(b)(1), (3), (4), (5), (6), (7) or (8) (an *eligible entity*) can elect its classification for federal tax purposes as provided in this section." Treas. Reg. § 301.7701-3(a) (as amended in 2006) (emphasis added). For this purpose:

> [T]he term *corporation* means –
>
> > (1) A business entity organized under a Federal or State statute or under a statute of a federally recognized Indian

or otherwise subject to special treatment under the Internal Revenue Code, may check-the-box to elect federal income taxation under the corporate tax regime.[131] Under the default rules (i.e., unless the entity elects otherwise) electing eligible entities have the following federal income tax classifications: "a domestic eligible entity is [a] partnership if it has two or more members; or [is] [d]isregarded as an entity separate from its owners if it has a single owner."[132] Corporations are not eligible entities and, therefore, may not elect a different federal income tax classification.[133] Rather, the income of a corporation[134] is taxed at the federal level under Subchapter C of the Internal Revenue Code, unless it makes a qualifying election to receive pass-through tax treatment under

> tribe, if the statutes describes or refers to the entity as incorporated or as a corporation, body corporate, or body politic; . . . (3) A business entity organized under a State statute, if the statute describes or refers to the entity as a joint-stock association; (4) an insurance company; (5) A State-chartered business entity conducting baking activities . . .; (6) A business entity wholly owned by a state or any political subdivision thereof, or a business entity wholly owned by a foreign government or any other entity described in §1.892-2T; (7) A business entity that is taxable as a corporation under a provision of the Internal Revenue Code other than section 7001(a)(3); and (8) Certain foreign entities . . . .

Treas. Reg. § 301.7701-2(b) (as amended in 2014).

130 Treas. Reg. § 301.7701-4 (as amended in 1996).

131 *See* Treas. Reg. § 301.7701-1(a), (b) (as amended in 2011); Treas. Reg. § 301.7701-2(a), (b) (as amended in 2014); Treas. Reg. § 301.7701-3(a), (b)(1) (as amended in 2006); *see generally* Starczewski, *supra* note 127, at 4100.03B (providing an overview of check-the-box classification regulations).

132 Treas. Reg. § 301.7701-3(a) (as amended in 2006). It should be noted, however, that separate and apart from federal income tax rules there are "special employment and excise tax rules that apply to an eligible entity that is otherwise disregarded as an entity separate from its owner." Treas. Reg. § 301.7701-2(a) (as amended in 2014).

133 *See* Treas. Reg. §301.7701-3(a) (as amended in 2006) ("A business entity that is not classified as a corporation . . . can elect its classification for federal tax purposes as provided in this section.").

134 As well as entities that properly elect corporate taxation under the check-the-box regulations.

Subchapter S.[135] Thus, for federal income tax purposes, a LLC with one member, commonly referred to as a Single Member LLC ("SMLLC"), will be disregarded as a separate entity and its tax consequences will flow up to the single owner unless the LLC elects to be taxed as a corporation under the check-the-box regulations. Similarly, the income of a LLC with more than one member will be taxed as a partnership, unless the LLC elects to be taxed as a corporation.

Under the corporate tax regime, entities are viewed as separate and apart from their owners and are subject to income tax at the entity level.[136] Income tax is assessed at both the entity level in the form of a corporate income tax,[137] as well as at the owner level when the entity makes a taxable distribution, for example a dividend, which is included in the owner's gross income whether the owner is an entity or individual person.[138] The potential for taxation at both the owner and entity level is the hallmark of corporate taxation and is commonly referred to as "double taxation."[139]

A partnership, on the other hand, is a pass-through entity for federal income tax purposes. Income tax is not assessed at the entity level but, rather, is deemed to pass through to the owners.[140] Thus, unlike corporate taxation, where the owners are generally only taxed when they receive a distribution from the entity, owners of an entity subject to partnership taxation must pay tax on their distributive share of partnership income each tax year, regardless of whether they receive an actual distribution from the entity.[141] Although the income tax is not assessed on the entity, the entity must nevertheless calculate its taxable income[142] and file an informational return with the Internal Revenue Service ("IRS") describing its income production activities[143] for the tax

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135 "The term 'S corporation' means . . . a small business corporation for which an election under section 1362(a) is in effect for such year." I.R.C. § 1361(a)(1) (2012).

136 *See generally* Starr et al., *supra* note 125.

137 *See* I.R.C. § 11 (2012).

138 *See* I.R.C. § 61 (2012).

139 *See* Starr et al., *supra* note 125, at n.159.

140 I.R.C. § 701 (2012).

141 I.R.C. §§ 701, 702, 704 (2012).

142 I.R.C. § 703(a) (2012).

143 Specifically, partnership income, loss, gain, deductions, credits, and items thereof. *See* I.R.S. Form 1065, Instructions (2014).

year.[144] The entity is also responsible for providing information to the owners and the IRS about the owners' respective share of partnership income, loss, gain, deduction, and credit (i.e., the calculation of the owner's distributive share) that passes through to the individual owners.[145]

Finally, a disregarded entity is an entity that is treated as a "tax-nothing"[146] for federal income tax purposes–"its activities are treated in the same manner as a sole proprietorship, branch, or division of the owner."[147] For federal income tax purposes, a disregarded entity is not viewed as a separate entity, resulting in pass-through treatment, notwithstanding its state law classification. Practitioners and business people must be aware, however, that an entity considered disregarded for one tax purpose, such as the federal income tax, may not be treated as disregarded for all tax purposes.[148]

While state corporate income taxation generally follows federal income tax treatment, unique differences arise at the state level with respect to partnership taxation. One notable issue arising at the state level is the application of state nexus.[149] Because of the pass-through

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144 *See* I.R.C. § 6031(a) (2012).

145 *See* I.R.C. § 6031(b) (2012); Temp. Treas. Reg. § 1.6031(b)-1T(a)(3) (1988).

146 *See* Thomas E. Rutledge, *Regarding the Disregarded Entity*, J. PASSTHROUGH ENTITIES 55, 55 (Mar. – Apr. 2011) ("The 'disregarded entity' is often described as a 'tax nothing,' an entity not only transparent to, but actually outside the contemplation of, the tax code.").

147 Treas. Reg. § 301.7701-2(a) (as amended in 2014); *see also* Treas. Reg. § 301.7701-3(b)(1) (as amended in 2006).

148 For example, the state income tax, franchise and excise tax, employment tax, or sales and use tax among others. *See* Starr et al., *supra* note 125, at VIII.C.8.

149 One expert has commented that "[e]xactly what constitutes nexus is one of the most vexing problems in the field of state taxation." Carolyn Joy Lee, Bruce P. Ely & Dennis Rimkunas, *State Taxation of Partnerships and LLCs and Their Members*, J. MULTISTATE TAX'N & INCENTIVES, Feb. 2010, at 6, 17. Nexus is generally defined as the contact an entity or individual must have with a state before it becomes subject to the state's tax laws. This minimum contact is generally understood in the context of constitutional minimum contacts, as required by the Due Process Clause and Commerce Clause. The quality and extent of these contacts remains a source of controversy, however. A commonly used standard is whether the entity is "doing business" or "transacting business" in the state. Some states use a broader definition of nexus, taxing entities

nature of partnership taxation, for entities taxed as partnerships, state income tax law views the owners as if they are doing business in the state themselves when the entity has nexus – even if the owner is not actually participating in the operation of the partnership or present in the state. Thus, when an entity electing partnership taxation does business in multiple states, the owners may find themselves with a significant compliance burden because they must file and pay income taxes in each state.[150] Additionally, some states levy a tax or fee on pass-through entities doing business in the state.[151] These entity-level taxes include state excise and franchise taxes, which are wholly separate from state income taxes, and are typically based on the entity's gross receipts or net worth, respectively.

While LLC tax entity classification is now well settled for federal income tax purposes, this was not always the case. The first LLC statute was enacted in Wyoming in 1977,[152] but the IRS did not issue guidance on how the state-law hybrid LLC would be treated for federal income tax purposes until 1988.[153] Before the IRS definitively addressed the proper federal income tax treatment of LLCs, the question of whether the LLC should be taxed as a partnership or corporation was a significant issue.[154] During that time, the LLC, one of the most innovative and popular vehicles for doing business today,[155] remained relegated to the sidelines, too risky to be taken seriously as a legitimate option. The same is true for the SLLC.

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that "'derive income' from sources within the state." *Id.*; *see* McLoughlin & Ely, *supra* note 18, at 7.

150 Lee et al., *supra* note 149.

151 *Id.* at 12-13.

152 Charles A. Borek, *Legal Issues for Accountants and Auditors Advising Business Entities*, 5512-2nd ACCT. POL'Y & PRAC. REP. (BNA) TAX AND ACCOUNTING PORTFOLIO, at III.B.3 (2015).

153 *Id.*

154 McLoughlin & Ely, *supra* note 18, at 18 n.53 ("The first LLC statute was enacted in Wyoming in the 1970s but LLCs did not come into vogue until the 1990s, after the IRS began issuing guidance that helped make the tax picture more clear. *See, e.g.*, Rev. Rul. 88-76, 1988-2 CB 360.").

155 *See, e.g.*, TENN. SEC'Y OF STATE, BUSINESS ENTITY STATISTICS (2015), *available at* http://sos.tn.gov/products/business-services/business-entity-statistics-0. (In 2014 there were more active LLCs (98,336) on file with active status in Tennessee than for-profit corporations, limited partnerships and limited liability partnerships combined (89,038)).

The concurrent federal and state tax regimes layered on this general LLC tax foundation create two primary levels of complexity when considering the tax consequences of SLLC series. First, as discussed *infra* Part IV.B, federal tax issues arise related to the general federal tax classification and treatment of series and the SLLC itself. Entity classification is an important threshold issue that determines how the business organization should be viewed in the eyes of federal tax law.[156] Without guidance, this issue is particularly complex as a result of the theoretical inconsistencies presented by the SLLC, particularly the tension between the "separateness" of the series and most state's determination that a series is not an entity separate from the SLLC for state law purposes.[157]

Federal guidance in this area improved in 2010, however, when proposed amendments to entity classification regulations ("Proposed Regulations") were published, providing the Treasury's and IRS' long-awaited position regarding the federal income tax treatment of SLLCs.[158] Proposed regulations become authoritative Treasury regulations when they are published in the Federal Register.[159] This was expected to take place by June 30, 2015, but has not yet occurred.[160] Nevertheless, practitioners have become comfortable in following the proposed

156 Supplementary information, 75 Fed. Reg. 55,699, 55,700 (Sept. 14, 2010) ("The threshold question for determining the tax classification of a series of a series LLC . . . is whether an individual series or cell should be considered an entity for Federal tax purposes."). *See infra* Part IV.B (discussing specific SLLC federal income tax guidance provided by the Proposed Regulations, and noting continuing areas of uncertainty with respect to SLLC federal taxation more generally).

157 *See supra* Part II; REVISED UNIF. LTD. LIAB. CO. ACT prefatory note (2006) ("How can a series be – and expect to be treated as – a separate legal person for liability and other purposes if the series is defined as part of another legal person?").

158 *See* 75 Fed. Reg. at 55,699; Bruce P. Ely, J. Leigh Griffith & James E. Long, Jr., *Will the States Conform to Federal Classification of Series LLCs Once the Proposed Regulations are Finalized?* 2013 TAX MGMT. WEEKLY STATE TAX REPORT (BNA) 4 (May 3, 2013) ("The Proposed Regulations govern only Federal income tax issues; they expressly reserve a determination as to the Federal (and state) employment tax issues.").

159 *See* 75 Fed. Reg. at 55,706.

160 *A.L.I. Series LLC CLE*, *supra* note 8, at § VI.A.1.

guidance in the interim.[161] While the Proposed Regulations were a critical first step in illuminating the federal income tax treatment of SLLCs, several significant uncertainties remain, particularly with respect to employment taxes.

Second, as discussed *infra* Part IV.C, these and other issues arise in the context of state taxation where the SLLC series has a sufficient nexus[162] and is thus subject to the state's tax laws. Although there have been some attempts at unification of state and local taxation among the states and with the federal treatment, it is in each state's discretion whether it decides to follow any of these external approaches.[163] Indeed, after the issuance of the Proposed Regulations, a significant question still remains as to "whether or to what extent the states plan to conform with [the federal] proposed tax classification of series within a [SLLC]."[164] The mosaic of state and local tax rules provides for a vast and divergent tax landscape for entities operating in more than one state.[165] This variability can provide an opportunity to structure transactions and business operations to "minimize or avoid state taxes without sacrificing the business or federal tax objectives of the parties."[166] The ability to

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161 Griffith & Long, *supra* note 7, at 86. The purpose of a proposed rule is to "announce[ ] and explain the agency's plan to address a problem or accomplish a goal." After the publication of the proposed rule in the Federal Register, the agency receives comments from the public. Following the comment period, the agency determines whether it will move forward with the proposed regulation, developing it into a final rule. These final rules are integrated into the Code of Federal Regulations, carrying with the full force of law. OFFICE OF THE FEDERAL REGISTER, *A Guide to the Rulemaking Process*, https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf.

162 *See supra* note 149 (discussing standards commonly used to determine whether sufficient nexus exists between the taxpayer and the taxing jurisdiction to subject the taxpayer to the jurisdiction's tax laws).

163 SWENSON ET AL., STATE AND LOCAL TAXATION: PRINCIPLES AND PLANNING 3-4 (2d. ed. 2004).

164 Letter from Rudolph R. Ramelli, Chair, Section of Taxation, A.B.A., to Steven T. Miller, Acting Comm'r, I.R.S. (Apr. 30, 2013), *available at* http://www.americanbar.org/content/dam/aba/administrative/taxation/policy/043013comments.authcheckdam.pdf) [hereinafter *A.B.A. Section of Taxation Letter*].

165 *See, e.g.*, Prentiss Willson & Mark Windfeld-Hansen, *State Taxation of Pass-Through Entites: General Principles*, 1550-2d TAX MANAGEMENT (BNA) STATE TAX PORTFOLIOS, at 1500.01.B (2015) ("Not only do the states vary widely in their methods of taxing pass-through entities and their participants, but often the same state will apply markedly different rules depending on the particular type of pass-through entity involved.").

166 *Id.*

leverage non-uniform state laws is contrasted with perilous uncertainty of the law itself, as has largely been the case for SLLCs. The "chair of the [ABA] joint task force and of the [State and Local Tax] Practice Group at Bradley Arant Boult Cummings LLP in Birmingham, Ala[bama], likened the uncertainty surrounding the use of [SLLCs] to that of 'placing a loaded gun in the hands of a child.'"[167] The tax uncertainties are complex and wide-ranging, including: entity classification, nexus, apportionment, sales and use tax, entity-level taxes, state unemployment taxes, and gross receipts taxes.[168]

B. *Federal Tax Issues*

As described *supra* Part IV.A, until recently, substantial uncertainty surrounded how the SLLC would be treated for federal income tax purposes. The root of SLLC federal tax issues has concerned whether a series is treated as a separate entity for federal income tax purposes. The preamble to the Proposed Regulations addressing the SLLC's federal income tax classification emphasizes that when the Proposed Regulations were published in 2010 "there [was] little specific guidance regarding whether for Federal tax purposes a series . . . [should be] treated as an entity separate from other series or the [SLLC] . . . or whether the company and all of its series . . . should be treated as a single entity."[169] The issuance of the Proposed Regulations brought clarity to an aspect of SLLC tax entity classification by expanding check-the-box regulations to specifically address series organizations.[170]

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167 Deborah Swann, *States Undecided on How They Will Treat Series LLC Employment Taxes*, 2013 TAX MGMT. WEEKLY STATE TAX REPORT (BNA) 15 (May 17, 2013).

168 *See, e.g.*, McLoughlin & Ely, *supra* note 18 (providing an overview of state tax issues arising from the use of a SLLC).

169 *See* supplementary information, 75 Fed. Reg. 55,699, 55,699 (Sept. 14, 2010).

170 The proposed regulations define a series organization as "a juridical entity that establishes and maintains, or under which is established and maintained, a series . . . " Prop. Treas. Reg. § 301.7701-3(a)(5)(viii)(A), 75 Fed. Reg. 55,699, 55,708 (Sept. 14, 2010). For federal tax classification purposes a series is "a segregated group of assets and liabilities that is established pursuant to a series statute (as defined in paragraph (a)(5)(viii)(B) of this section) by agreement of a series organization . . . ." Prop. Treas. Reg. § 301.7701-3(a)(5)(viii)(C), 75 Fed. Reg. at 55,708.

Specifically, the Proposed Regulations clarify SLLC tax entity classification by providing that, notwithstanding the state law entity status of a SLLC series, each series in a SLLC is treated as a separate entity for purposes of determining its tax classification for federal income tax purposes.[171] Each qualifying series[172] may make an independent check-the-box election, allowing the series to choose how it will be taxed for federal income tax purposes within the relevant rules. Thus, a series that has only one associated member will be treated as a disregarded entity for federal income tax purposes, unless it elects to be treated as a corporation, and a series that has two or more associated members will be taxed as a partnership unless it elects to be treated as a corporation.[173] For federal income tax purposes, the series will be considered "organized under the laws of [the] State" that permits the establishment of the respective series.[174]

Similarly, the SLLC, as a state law entity, is considered a federal income tax-reporting unit separate and apart from its respective series.[175] As a result, the SLLC itself may have federal income tax reporting

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171 "For Federal tax purposes, except as provided in paragraph (a)(5)(ix) of this section, a series, (as defined in paragraph (a)(5)(viii)(C) of this section) organized or established under the laws of the United States or of any State, whether or not a juridical person for local law purposes, is treated as an entity formed under local law." Prop. Treas. Reg. § 301.7701-1(a)(5)(i), 75 Fed. Reg. 55,699, 55,707 (Sept. 14, 2010); *see also* Prop. Treas. Reg. § 301.7701-1(a)(5)(viii), 75 Fed. Reg. at 55,708 (specifically providing that a SLLC is a series organization as defined by the regulation).

172 Prop. Treas. Reg. § 301.7701-1(a)(5)(iii), 75 Fed. Reg. at 55,707 ("Whether a series that is treated as a local law entity under paragraph (a)(5)(i) or (ii) of this section is recognized as a separate entity for Federal tax purposes is determined under this section and general tax principles."); Prop. Treas. Reg. § 301.7701-1(a)(5)(iv), 75 Fed. Reg. at 55,707 ("The classification of a series that is recognized as a separate entity for Federal tax purposes is determined under paragraph (b) of this section.").

173 For example, assume a qualifying domestic SLLC has two series, Series A and Series B. Members 1 and 2 are associated with Series A, and Member 3 is associated with Series B. Analysis under Prop. Treas. Reg. § 301.7701-1(a)(5)(i) provides that "Series A and Series B are each treated as an entity formed under local law. The classification of series A and Series B is determined under of this section. The default classification under §301.7701-3 of Series A is a partnership and of Series B is a disregarded entity." Prop. Treas. Reg. § 301.7701-1(a)(x), Example 1, 75 Fed. Reg. at 55,708.

174 Prop. Treas. Reg. § 301.7701-1(a)(5)(v), 75 Fed. Reg. at 55,707.

175 *See* supplementary information, 75 Fed. Reg. 55,699, 55,704 (Sept. 14, 2010). Although the proposed regulations are silent on this point, the preamble provides that an organization recognized as a state law purposes is generally treated as an entity for federal tax purposes. *Id.*

responsibilities and may make federal income tax elections independent of its series.[176] While the preamble acknowledges that a tax entity may not have a filing obligation under some circumstances where it does not undertake income producing activities,[177] the proposed regulations do not specifically address "whether a series organization is recognized as a separate entity for Federal tax purposes if it has no assets and engages in no activities independent of its series."[178] Thus, additional federal income tax uncertainty exists where a SLLC is used as a mere holding company.

Further, the Proposed Regulations provide that each series and the SLLC will have to make annual informational disclosures by March 15th for the preceding tax year, effective for tax years following the adoption of the final regulations.[179] SLLCs will have to provide "identifying information . . . as proscribed by the Internal Revenue Service . . . ,"[180] although the IRS has yet to determine exactly what information will be required to be disclosed by the SLLC to satisfy these annual reporting requirements.[181]

The Proposed Regulations depart from the state SLLC statutes with respect to some ancillary SLLC issues, appearing to favor substance over form in these instances. For example, the Proposed Regulations provide that "the ownership of interests in a series and of the assets associated with a series is determined under general tax principles" and that "[a] series organization is not treated as the owner . . . of a series or of the assets associated with a series merely because the series

176 State tax experts have commented that "under the Proposed [SLLC] regulations, the [SLLC] itself (as opposed to the series within the [SLLC]) is considered a separate tax reporting unit independent of the various series within it." *A.B.A. Section of Taxation Letter*, *supra* note 164 at 2; *see also* Ely et al., *supra* note 158.

177 Supplementary information, 75 Fed. Reg. at 55,704 ("For example, §301.6031(a)-(1)(a)(3)(i) provides that a partnership with no income, deductions, or credits for federal income tax purposes may not be required to file a partnership return for that year.").

178 *Id.* at 55,703.

179 Prop. Treas. Reg. § 301.6011-6, 75 Fed. Reg. 55,699, 55707 (Sept. 14, 2010); supplementary information, 75 Fed. Reg. at 55,705.

180 Prop. Treas. Reg. § 301.6011-6(a), 75 Fed. Reg. at 55,707.

181 *Id.*

organization holds legal title to the assets associated with the series."[182] Similarly, a liability-sharing or other similar arrangement between or among series or the series organization will be disregarded for purposes of determining whether a series has been formed under the proposed regulations.[183] Further, "a failure to comply with the record keeping requirements for the limitation on liability available under the relevant series statue[] will [also] be disregarded [for purposes of defining the series]."[184] This is significant for Tennessee SLLCs because Tennessee's SLLC statute allows the SLLC to utilize private ordering with respect to third-party liability but requires separate books and records to be maintained for the internal liability shield to be effective.[185]

Finally, in Proposed Regulation section 301.7701-1(a)(5)(vii), the IRS considers the effect of state law classification on federal income tax collection and enforcement.[186] First, consistent with the series' entity designation for federal tax purposes (and thus notwithstanding the state law classification), the Proposed Regulations provide that tax may be collected from a series as if it were any other taxpayer.[187] Additionally, where state or federal law provides that "a debt attributable to [a] series [may] be collected from the series organization or other series of the series organizational"[188] then the IRS may collect the federal income tax due from the SLLC or any of its component series.[189] Similarly, where "a creditor is permitted to collect a liability attributable to a [SLLC] from any [of its] series" the IRS may likewise collect tax assessed on the SLLC directly from a series.[190]

Notwithstanding the guidance provided by the Proposed Regulations, several federal tax issues remain. The IRS requested

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182 Prop. Treas. Reg. § 301.7701-1(a)(5)(vii), 75 Fed. Reg. 55,699, 55,703 (Sept. 14, 2010).

183 Prop. Treas. Reg. § 301.7701-1(a)(5)(viii)(C), 75 Fed. Reg. at 55,708.

184 *Id.*

185 TENN. CODE ANN. § 48-249-309(b)(1)(A), (B) (2012).

186 *See* Prop. Treas. Reg. § 301.7701-1(a)(5)(vii), 75 Fed. Reg. at 55,704.

187 Prop. Treas. Reg. 301.7701-1(a)(5)(vii), 75 Fed. Reg. at 55,708.

188 *Id.* (for example, if the series is not a protected series).

189 *Id.*

190 *Id.*

comments regarding seven specific issues in the Proposed Regulations.[191] Several of these issues relate to employment taxes, a complex area[192] further complicated by the series construct.[193] Specifically, the bi-polar "series structure [makes] it difficult to determine whether the series or the series organization is the employer. . . ."[194] This should give employers pause because employers are responsible for withholding and remitting employment taxes from employees' taxable compensation to the IRS, akin to a trustee or agent for the government.[195] Harsh penalties

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191 Specifically, the proposed regulations called for comments on the following seven issues:

> (1) Whether a series organization should be recognized as a separate entity for Federal tax purposes if it has no assets and engages in no activities independent of its series; (2) The appropriate treatment of a series that does not terminate for local law purposes when it has no members associated with it; . . . (4) How the Federal employment tax issues . . . and similar technical issues should be resolved; (5) How series and series organizations will be treated for State employment tax purposes and other state employment-related purposes and how that treatment should affect the Federal employment tax treatment of series and series organizations . . . ; (6) What issues could arise with respect to the provision of employee benefits by a series organization or series; and (7) The requirement for the series organization and each series of the series organization to file a statement and what information should be included on the statement.

Supplementary information, 75 Fed. Reg. 55,699, 55,707 (Sept. 14, 2010).

192 *See, e.g.*, ERNST & YOUNG, *Employers and the Employment Tax Portfolio* (2012), http://www.ey.com/Publication/vwLUAssets/Managing_the_tax_risks_and_growing_complexity/$FILE/ETS-2012March.pdf ("[E]mployers can count on two things in the realm of employment tax: a complex operating environment and an aggressive enforcement climate.").

193 *See* Griffith & Long, *supra* note 7 (describing several employment tax issues arising from the series structure).

194 Supplementary information, 75 Fed. Reg. at 55,705.

195 *See* I.R.S., Employer's Tax Guide, Publication 15 (2015), *available at* http://www.irs.gov/publications/p15/index.html; Robert W. Wood, *Failing to Pay Employment Taxes Means Personal Liability*, FORBES (Mar. 12, 2014), http://www.forbes.com/sites/robertwood/2012/03/12/failing-to-pay-employment-taxes-means-personal-liability/.

exist for the failure to fulfill this duty,[196] which can result in personal liability for the business owners and other "responsible persons."[197]

C. *State Tax Issues*

Much like the uncertainty surrounding whether states will respect a foreign SLLC's liability shield,[198] it is yet to be seen how many states will address the series concept with respect to state and local taxation. With the issuance of federal guidance, the next question became, as noted *supra* Part IV.A., whether states would adopt the federal classification regime and the issues that accompany treating a series as a separate tax entity.[199] This determination in turn spawns a myriad of additional state tax issues arising from the entity/non-entity tension inherent in the SLLC structure under state LLC law. While the states have issued little formal guidance,[200] available information regarding the state tax treatment of the SLLC has greatly benefitted from the ABA Section on Taxation's *Survey of the States Regarding their Intent to Conform to the Classification of Series LLCs for Federal Income Tax Purposes* and related comments (" Survey").[201] In particular, five areas stand out as unsettled SLLC state tax issues: entity classification, gross receipts/net worth taxes, employment taxes, sales and use taxes, and nexus. Tennessee has been a leader in developing state guidance on these issues, illuminating the state's position on aspects of SLLC taxation by issuing formal

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196 *See, e.g.*, I.R.C § 6672 (2012) (providing for the trust fund penalty, providing for a 100% penalty under some circumstances); I.R.C. § 6651 (2012 & Supp. 2014) (providing a failure to file a the tax return or pay tax results may result in a penalty of up to a 25% of the tax due).

197 *See* I.R.S., *Employment Taxes and the Trust Fund Recovery Penalty (TFRP)*, http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Employment-Taxes-and-the-Trust-Fund-Recovery-Penalty-TFRP (June 2015) ("A responsible person is a person or group of people who has the duty to perform and the power to direct the collecting, accounting, and paying of trust fund taxes."). *Id.*

198 *See supra* Parts II, III.

199 *See, e.g.*, Ely et al., *supra* note 158.

200 *A.B.A. Section of Taxation Letter*, *supra* note 164, at 7. As of April 30, 2013, the only states with statutes acknowledging SLLCs that have issued state taxation guidance were Tennessee and Texas. *Id.*

201 *Id.* at 2. Survey responses were received from thirty-one states providing feedback on how the states intend to address various state tax issues related to the SLLC. Although the survey provides a wealth of information, its findings are not binding authority.

guidance and by shedding light on the state's anticipated treatment of other remaining issues through its participation in the Survey.[202]

Tennessee is one of a handful of states that have issued authoritative guidance providing that the state will conform to the Proposed Regulations.[203] Thus, under Tennessee tax law, a series is considered a separate entity that may elect its state tax classification.[204] This comports with other states' anticipated classification of series for state tax purposes.[205] Indeed, this may be the area in which states are most in agreement with respect to SLLC state taxation issues. No state responding to the Survey indicated that it planned to depart from the federal income tax treatment of SLLC series set forth in the Proposed Regulations.[206]

Because the series is considered a separate entity for Tennessee tax law purposes, an individual series may be liable for franchise and excise tax for the privilege of conducting business in the state and having substantial nexus in the state.[207] Practitioners and business people

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202 *See* Tenn. Dep't of Rev. Ltr. Rul. 11-42 (Sept. 6, 2011) [hereinafter *Tenn. D.O.R. Letter Rule 11-42*]; *A.B.A. Section of Taxation Letter*, *supra* note 164, at 7; Brett R. Carter & James E. Long, Jr., *Tennessee: State Issues Significant Guidance on the Tax Treatment of Series LLCs*, J. MULTISTATE TAX'N & INCENTIVES, Feb. 2012, at 34, 34.

203 This includes the Proposed Regulations addressing series federal income tax classification, which conclude series are considered separate entities for federal tax purposes, notwithstanding state business law. *Tenn. D.O.R. Letter Rule 11-42*.

204 *A.B.A. Section of Taxation Letter*, *supra* note 164, at 3.

205 *Id.* at 6-7.

206 *Id.* at 6.

207 TENN. CODE ANN. §§ 67-4-2005, -2104 (2013); *Tenn. D.O.R. Letter Rule 11-42*, *supra* note 203; *see generally* TENN. DEP'T OF REVENUE, FRANCHISE AND EXCISE TAX GUIDE (2014), *available at* http://www.tn.gov/assets/entities/revenue/attachments/feguide.pdf. The excise tax is levied on LLCs doing business in the state and having a substantial nexus in the state, and is equal to six and one-half percent tax based on the entity's net earnings or income from business done in the state for the tax year. TENN. CODE ANN. § 67-4-2007(a) (2013 & Supp. 2015) (amended 2015, effective Jan. 1, 2016). The franchise tax is levied on LLCs doing business in the state and having a substantial nexus in the state, or exercising the corporate franchise in the state, and is equal to one quarter of one percent tax based on the greater of net worth or the book value of real or tangible personal property owned or used in Tennessee. TENN. CODE ANN. §§ 67-4-2105 (2013

should be aware, however, that whether a series is viewed as a separate entity for Tennessee state tax purposes is merely a threshold question in determining Tennessee franchise and excise tax liability. In Tennessee, a second level inquiry must be made to determine the particular series' tax classification for state franchise and excise tax purposes. While Tennessee generally conforms with the federal check-the-box tax classification for LLCs (and thus series and SLLCs) for state tax purposes,[208] state law requires a more exacting standard for tax entities to qualify for disregarded entity classification.[209] Specifically, in Tennessee, "to be [considered a] . . . disregarded [entity for franchise and excise tax purposes] a particular [series] must 1) constitute[[210]] a single member limited liability company; 2) be classified as a disregarded entity for federal income tax purposes; and 3) be wholly owned by a corporation."[211] It is in this limited situation that a series may be disregarded as a part of the corporate owner and will not have independent filing responsibilities for Tennessee franchise and excise tax purposes.[212]

Indeed, the letter ruling setting forth these requirements emphasizes that "[i]f any of these requirements are not met, the [series] will be treated as a separate entity for franchise and excise tax purposes."[213] For example, where a SMLLC is wholly owned by a limited partnership,[214] it cannot be disregarded for franchise and excise

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& Supp. 2015, effective Jan. 1, 2016); TENN. CODE ANN. §§ 67-4-2106(a), 67-4-2108(a)(1) (2013).

208 TENN. CODE ANN. § 48-249-1003 (2012); *Tenn. D.O.R. Letter Rule 11-42*, *supra* note 203, at 3.

209 TENN. CODE ANN. § 67-4-2007(d) (2013 & Supp. 2015) (amended 2015, effective Jan. 1, 2016); TENN. CODE ANN. § 67-4-2106(c) (2013).

210 Constitute in this context refers strictly to tax principles. Specifically, no more than one owner may be *associated* with the series for a series to be equivalent to a SMLLC. For state law purposes, however, where a series is not considered a separate state law entity, a series may never "constitute" a SMLLC because no entity exists in the eyes of the state law. *See supra* Part I (noting that series are generally not recognized as separate entities under state law).

211 *Tenn. D.O.R. Letter Rule 11-42*, *supra* note 203, at 4.

212 *Id.*

213 *Id.*

214 For example, if the SLLC is wholly owned by a limited partnership (and therefore the single owner would be associated with 100% of each series), as the Tennessee Letter Ruling facts provide. *Id.* at 1.

tax purposes because the single member must be a corporation.[215] Rather, the series will be viewed as an independent entity for this limited purpose and must separately satisfy Tennessee franchise and excise tax reporting requirements, notwithstanding the fact that it may be recognized as a disregarded entity for federal and other Tennessee state tax purposes.[216] This departure from the federal treatment under the Proposed Regulations is limited to Tennessee's franchise and excise tax.[217] Accordingly, Tennessee conforms to the less stringent Proposed Regulations for all other Tennessee state taxes, where any wholly owned series may be considered a disregarded entity unless it elects to be taxed as a corporation.[218] Tennessee indicated that it will not require the SLLC to file franchise and/or excise tax returns "if the [SLLC] did not have any business activity within the state (other than being associated with a series that has nexus within the state)."[219]

In contrast to most other states responding to the Survey, Tennessee will not impose state income tax on a non-resident owner of a series electing pass-through taxation so long as "the series was filing returns and remitting the appropriate tax."[220] This means that so long as the taxable series doing business in Tennessee files the appropriate tax returns and pays the corresponding tax, the Tennessee Department of Revenue will not "look to the out-of-state owner to file the return and pay the tax in situations where such owner can be held liable for the tax."[221] Tennessee does not require out-of-state LLC members to file a composite tax return or subject them to withholding requirements, both of which are common strategies states employ to mitigate collection

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215 *Id.* at 4-5.

216 *Id.* at 4.

217 *Id.*; *A.B.A. Section of Taxation Letter*, *supra* note 164, at 8.

218 For example, the sales and use tax, property tax, and business tax. *Tenn. D.O.R. Letter Rule 11-42*, *supra* note 203, at 8.

219 *A.B.A. Section of Taxation Letter*, *supra* note 164, at 9-10.

220 *Id.* at 8, 8 n.15.

221 *Id.* at n.33.

problems arising from out-of-state members participating in a pass-through entity conducting business in the state.[222]

Like the United States and several other states, Tennessee is undecided on the issue of "how the series and series organization will be treated for state employment tax purposes and other state employment-related purposes . . . ."[223] Only fourteen states have disclosed their anticipated treatment of these taxes, of which nine plan to treat each series as a separate employer and five plan to take the opposite approach.[224] As evidenced by the federal uncertainty that was the impetus for the Survey, employment taxes remain a significant area of uncertainty for SLLCs.

Tennessee levies a seven percent state sales or use tax[225] on retail sales,[226] leases,[227] rentals,[228] or consumption[229] of a variety of items, including tangible personal property,[230] computer software,[231] certain services,[232] and amusements.[233] The tax is levied on the retailer, who or

222 Starr et al., *supra* note 125, at VIII.C.6.b.

223 *A.B.A. Section of Taxation Letter*, *supra* note 164, at 2.

224 *Id.*

225 *See* TENN. CODE ANN. § 67-6-201 (2013 & Supp. 2015) (amended 2015, effective July 1, 2017); *see generally* TENN. DEP'T OF REVENUE, TENNESSEE SALES AND USE TAX GUIDE (2015). Certain transactions may also be subject to the single article tax and/or local sales taxes. TENN. CODE ANN. § 67-6-202, -702 (2013 & Supp. 2015) (amended 2015).

226 TENN. CODE ANN. § 67-6-202 (2013 & Supp. 2015) (amended 2015, effective July 1, 2017).

227 TENN. CODE ANN. § 67-6-204 (2013).

228 *Id.*

229 TENN. CODE ANN. § 67-6-203 (2013 & Supp. 2015) (amended 2015, effective July 1, 2017). Consumption is broadly used here to refer to "the privilege of using, consuming, distributing or storing tangible personal property after it is brought into this State from without this State[]'" as contemplated by the Tennessee use tax statute. Broadacre Daries, Inc. v. Evans, 246 S.W.2d 78, 79 (Tenn. 1952) (citing Madison Suburban Util. Dist. of Davison Cty. v. Carson, 232 S.W.2d 277, 280 (Tenn. 1950)).

230 TENN. CODE ANN. § 67-6-202 (2013 & Supp. 2015) (amended 2015, effective July 1, 2017).

231 TENN. CODE ANN. § 67-6-231 (2013 & Supp. 2015) (amended 2015, effective July 1, 2017).

232 TENN. CODE ANN. § 67-6-205 (2013 & Supp. 2015) (amended 2015, effective July 1, 2017).

which is liable for the tax regardless of whether it is collected from customers.[234] The use tax is the counterpart to the sales tax. It is levied on purchases of goods imported for use in Tennessee, and unlike the sales tax, the purchaser is liable for the tax.[235] In the context of SLLCs, Tennessee intends to "exempt from sales and use taxation any transfers of tangible personal property between and among series because, for state law purposes, there is no change of title or ownership."[236] In Tennessee, where sales and use tax does arise, the SLLC, not the individual series, will "ultimately . . . be responsible for the tax regardless of the type of entity or its classification for federal income tax purposes."[237] Consistent with its position on sales and use taxes, "Tennessee indicated that [it] may exempt intercompany transactions" from rental/lease tax on "leases of tangible personal property between the series."[238] Further, in Tennessee, the SLLC, not the series, is the proper "reporting entity for lease/rental taxes, even if [it] has no activity in the state (independent of the [activity of the] series)."[239] Thus, the SLLC may create tax savings for organizations that engage in such intercompany transactions.

Finally, the position that series are considered separate entities for tax purposes creates interesting questions and opportunities related to nexus.[240] It is an open question whether a series doing business in one state will create nexus for members associated with a different series of the same SLLC, where the series are subject to partnership taxation and

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233 TENN. CODE ANN. § 67-6-212 (2013).

234 TENN. CODE ANN. §§ 67-6-501 to -502 (2013).

235 TENN. CODE ANN. § 67-6-203 (2013).

236 *A.B.A. Section of Taxation Letter*, *supra* note 164, at 3, app. xi; TENN. CODE ANN. § 67-6-102(78)(A) (2013) and as amended § 67-6-102(80)(A) (Supp. 2015) (amended 2015, effective July 1, 2017) ("'Sale"' means any transfer of title . . . in any manner or by any means whatsoever of tangible personal property for a consideration . . . ").

237 *A.B.A. Section of Taxation Letter*, *supra* note 164, at app. xi n.56.

238 *Id.* at 13.

239 *Id.*

240 *See* McLoughlin & Ely, *supra* note 18, at 13-14 (illustrating the potential impact of series treated as separate entities for tax purposes with respect to nexus determinations).

conduct business exclusively in different states. The answer to this question depends on whether a series will be respected as a separate entity for purposes of determining nexus. If the series is considered a separate entity, the associated owners will be deemed to only have nexus where their associated series have nexus. Accordingly, associated owners will minimize their reporting requirements, and thus tax liability, where the series is not considered to be doing business in states to which it otherwise would be deemed to have nexus (i.e., if the series was viewed as an unshielded segment of a traditional LLC). Similarly, if series are treated as separate entities for state income apportionment purposes,[241] new state tax planning possibilities may arise for SLLCs doing business in more than one state when business operations are organized in a way that minimizes the income allocable to high-tax jurisdictions by strategically locating series activities in states to best take advantage of favorable apportionment formulas.[242] However, SLLC multi-state operations may open the door to liability: value created by optimizing the SLLC's state tax exposure may be outweighed by the risk created from operating in foreign jurisdictions that do not recognize protected series.

These issues represent the general treatment of some of the many possible SLLC state tax issues. Any particular SLLC tax issue should be considered in the context of the broader federal, state, and local tax and business environment and the entity's specific facts and circumstances. This creates numerous opportunities for tax advisors and legal counsel.

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241 Apportionment is the statutory "method of determining what portion of a multistate taxpayer's income can fairly be said to be related to the taxpayers' activities in the state[]" and is usually based on some combination of the entity's sales, property, and payroll attributable to the state. Lee et al., supra note 149, at 19; *see, e.g.*, TENN. CODE ANN. §§ 67-4-2012, -2111 (2013 & Supp. 2015) (amended 2015) (providing a double weighted sales apportionment formula for tax years beginning before July 1, 2016, and a triple weighted sales apportionment formula for tax years beginning on or after July 1, 2016). This resulting ratio is applied to the franchise and excise tax base to determine the entity's franchise and excise tax liability attributable to doing business in the state. *Id.*; *see also* TENN. DEP'T OF REVENUE, Instructions for Completing Apportionment Schedules N – R, *available at* https://www.tn.gov/assets/entities/revenue/attachments/instrschednr.pdf.

242 *See, e.g.*, McLoughlin & Ely, *supra* note 18, at 16-17 (providing an overview and example of using the SLLC form to minimize taxable income under state apportionment formulas).

V. CONCLUSION

Ten years after the enactment of the Tennessee SLLC statute, several critical uncertainties continue to cloak the SLLC form. These uncertainties will likely continue to restrict the desirability of the Tennessee SLLC as a multistate business entity. In particular, whether the SLLC's internal liability shield will be respected in foreign jurisdictions, the appropriate treatment of the series concept with respect to federal and state employment tax, and the state tax treatment both within and outside Tennessee will likely continue to prevent the SLLC from gaining more widespread use. While much progress has been made over the past ten years with regard to SLLC taxation, particularly through the efforts of the ABA, much of the guidance providing for the tax consequences of organizing a business as a Tennessee SLLC is not authoritative and simply provides the federal and states' anticipated tax treatment of the attendant issues. Similarly, until there is precedent or statutory authority on point providing for the integrity of Tennessee internal liability shields adjudicated in foreign jurisdictions, the ultimate effectiveness of Tennessee SLLCs in multistate business remains largely unknown.

Following this decade of doubt, however, the possibility remains that federal and state guidance will continue to illuminate the benefits and risks of the Tennessee SLLC form. The ongoing work by the NCCUSL and ABA to develop uniform laws governing the SLLC and the continued legislative and administrative activity at the federal and state level to provide anticipated and authoritative guidance on SLLC issues are two ongoing developments that will likely have significant impact on the ultimate success of the Tennessee SLLC as a mainstream business entity. Until then, it is unlikely that the SLLC will become the next LLC and enjoy the LLC's status as a widespread viable alternative to traditional business entity structures in Tennessee. Rather, absent further advances on a national scale, the Tennessee SLLC will likely remain an exotic state law entity, limited in its usefulness to particular intrastate business.