

Hamilton County LAW LIBRARY NEWS

Professional legal information, services, and education

May 2015

Protect the Interest in What You've Built and Prepare for the Future

By Aaron M. Monk of Rendigs, Fry, Kiely & Dennis, LLP. Reprinted with permission.

Many business owners favor the limited liability company structure (taxed as a partnership) over a corporation formation when starting their business. Due to the benefits of flow-through taxation and increased flexibility, the LLC provides many advantages that a corporation cannot provide. After years of growing the business into a profitable organization, business owners often face the problem of retaining talented employees to take their business to the next level. In order to resolve this issue, an attractive option to business owners is to incentivize their employees with equity in the company. By giving the employee an ownership interest, the employee feels tied to the success of the business and will, in theory, work harder and stay at the company.

However, granting ownership in the company via capital interest creates an issue that the owner may not have intended. A capital interest is an interest that entitles the holder to share in the pro-

ceeds if the LLC's assets are sold at a fair market value and the proceeds are then distributed in a complete liquidation of the LLC after the interest is granted. For example, let's say an LLC, taxed as a partnership, granted an employee a 10% capital interest in the company. If the company is then sold the following day for \$10 million, the employee (now partner) would be entitled to one million dollars, even though he has only been a partner for one day. The owners' profits for the years of hard work have now been minimized.

In order to resolve this issue, a business owner can offer a "profits interest." A profits interest is an interest that upon liquidation of the LLC, the recipient only has a share in the future profits and appreciation in

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Hamilton County Law Library

Hamilton County
Courthouse
1000 Main Street
Room 601
Cincinnati, OH 45202
T:513.946.5300
F:513.946.5264

Open Monday-Friday 8 - 4

<http://lawlibrary.hamilton-co.org>

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Tech Tip: Mobile Printing

Email your print jobs on your way to the law library, from home, your office, a courtroom, or anywhere and pick them up! By Julie Koehne, Assistant Law Librarian, Systems

Step 1:

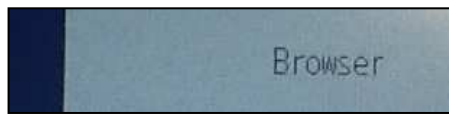
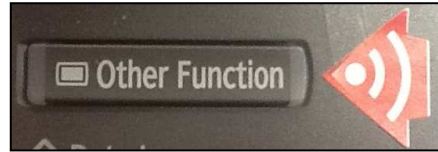
Email your document to hcllcopyroom@printspots.com

Step 2:

You will receive an email with a Privacy Release Code.

Step 3:

When you get to the printer in the Law Library press the "Other Function" button

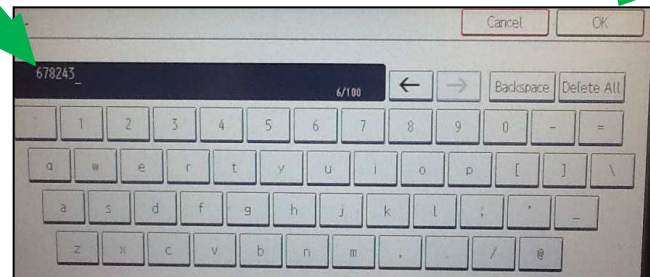
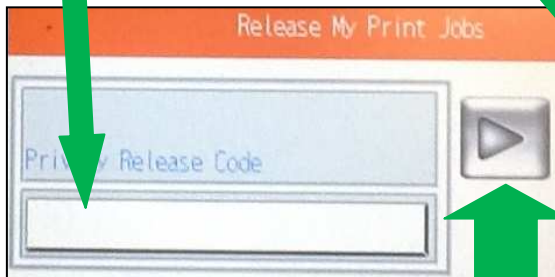


Step 4:

Select "Browser"

Step 5:

Touch inside the box, a keyboard will display, enter the code emailed to you, then press "OK"



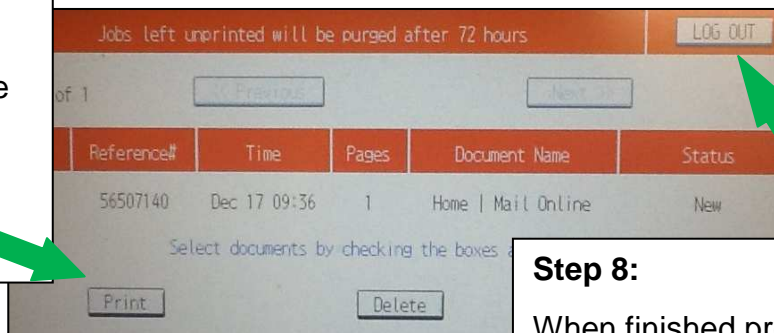
Step 6:

Click on the Arrow button.

Prints are \$0.15 per page and \$0.08 per page for subscribers.

Step 7:

Put money in the vending station and then press "Print"



Step 8:

When finished press "Log out"

Upcoming CLEs

Free to subscribers; \$50 for non-subscribers
To register, call 513.946.5300, email reference@cms.hamilton-co.org, or register via the website <http://lawlibrary.hamiltoncountyohio.gov/classes/cle/>

Finding People Online: Free Online Resources

Presenter: Mary Jenkins
Wednesday, May 13
Noon-1pm
1.0 hour of general CLE pending in Ohio and Kentucky

Subscriber Lounge Policy

The Hamilton County Law Library Resources Board approved a policy in April that designates the area known as the subscriber lounge as a restricted access area. The new policy is listed on the Law Library's [policy webpage](#), along with other policies, and reads as follows: "The subscriber lounge area is restricted to current law library subscribers, library staff, and county elected and appointed officials only, except when members of the public are invited to attend a library program, public meetings, or are otherwise accompanied by a subscriber, county official, or staff member."



Tax Material on Bloomberg BNA

We offer BNA Tax Management Portfolios online (US Income, State Tax, and Estate, Gifts & Trusts titles, with Foreign available in print) for use by subscribers and local government officials in the library. In addition to the portfolios (a mainstay of tax research), our access included the Federal Tax Guide, tax forms, IRS and Treasury source documents, and a wide range of practice tools, news, and commentary. BNA's Tax and Accounting Center offers a Getting Started tab with a good introductory tour to the site and navigation and search tips. Our librarians can provide more help with BNA's tax and accounting material and BNA offers phone support as well, extending assistance beyond library hours.

Trademark, IP Law

If you practice in the field of intellectual property, you might be interested in a new online information source we offer called *Trademark Navigator* on IntelliConnect, available on-site at the Law Library and also to our subscribers with off-site access. From Wolters Kluwer's product description: "WK *Trademark Navigator* will streamline your trademark prosecution practice by providing you with in-depth expert content, analysis and strategy guides that you can't find anywhere else. Regardless of where you are in the process – research, application process, appeal or foreign registration – you'll find exactly what you need in this single integrated resource." Here's a link to a user guide for *Trademark Navigator*: <http://business.cch.com/training/otherresources/WKTrademarkNavigatorReferenceGuide.pdf>

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value of the LLC following the date of grant. Going back to the hypothetical, the employee is granted a 10% profits interest in the company. The value of the company on the date of issuance is \$10 million. Two years later, the company is sold for \$12 million. The liquidation distribution would result in \$11.8 million to the original owners (\$10 million prior to the date of issuance of the profits interest to the employee + 90% of the \$2 million from the date of issuance) and \$200,000.00 to the employee (10% of the value of the company from the date of issuance).

Current IRS regulations provide that if a person receives a profits interest for the provision of services to or for the benefit of a partnership in a partner capacity or in anticipation of being a partner, the IRS will not treat the receipt of the interest as a taxable event for the partner or the partnership if certain requirements are met.

To accomplish this:

- The profits interest must not relate to a substantially certain and predictable streams of income from partnership assets, such as income from high-quality debt securities or a high-quality net lease;
- Within two years of receipt, the partner cannot dispose of the profits interest; or
- The profits interest is not a limited partnership interest in a “publicly traded partnership” within the meaning of the Internal Revenue Code.

It is advisable that your Operating Agreement is amended in order to allow for granting profits interest. If not, this can result in significant tax consequences because most Operating Agreements only account for

capital interests. Rendigs is able to assist should you want to review this important document.

Issuing Unvested Profits Interests

Many employers worry that if an employee is given a profits interest, he or she will not perform at the same level as he or she did prior to having a profits interest. However, if structured properly, a business owner can set up certain milestones (dollar amount in sales, length of employment, etc.) that the employee must reach in order to obtain a profits interest. Once the employee meets these milestones, the employee will gain ownership of the profits interest. This is called a vested interest.

While a number of tax issues arise when profits interests are issued, but not yet vested, the primary question is “when does the ownership transfer for tax purposes?”

Most commentators suggest a service provider who receives a non-vested partnership profits interest can be recognized as a partner from the time he or she receives the interest. In order to pass IRS muster, the following conditions must be satisfied so that the receipt of such profits interest is not treated as a taxable event for the recipient or the company:

- Adhere to the three requirements for profits interest laid out above.
- Both the LLC and the recipient must treat the recipient as a “real” member for tax purposes with respect to the entire profits interest granted beginning on the date of grant (i.e., the LLC must provide the recipient with a K-1, and the recipient must pay

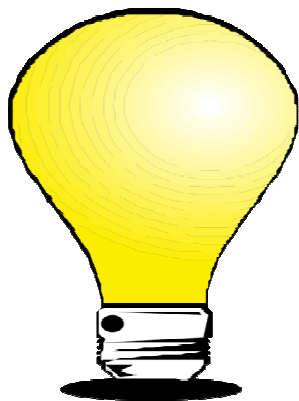
his or her share of the taxes on the LLC's income); and

- Neither the LLC nor the recipient may take any compensation deduction in connection with the profits interest.

Careful drafting of the Operating Agreement must take place in order to account for the granting of a profits interest that is substantially unvested. If not, there is a significant likelihood that the intended profits interest will actually be treated as a capital interest. This opens a whole new can of worms for both the recipient and company in regards to potential adverse tax consequences. For more information, contact [Aaron M. Monk](#).

Air Quality Action Steps: Turn Off the Lights

The summer months typically have higher levels of pollution, creating risks for people with pulmonary issues and leading the Southwest Ohio Air Quality Agency to issue more frequent air quality advisories. Hamilton County agencies and departments are asked to take steps. We're asking you to take one step with us: let's get in the habit of turning off lights in library conference rooms and in the book stacks when not in use. Thank you.



ABA Law Journals

The Law Library recently added the ABA Law Library Collection Periodicals to HeinOnline. This new collection digitizes ABA periodicals and makes the current files and an archived collection of these essential materials available online in full color via HeinOnline. Forty four ABA periodicals previously unavailable to us are now in this collection. Some of those titles are *Solo & Small Firm*, *Trial Practice*, *Trial Evidence*, *Family Law Litigation*, *Consumer Litigation*, *Expert Witness*, *LGBT Litigator*, *Practical Practice & Discovery*, and more, in addition to *ABA Journal* and other key titles. One can also set up research alerts to follow specific authors, titles or phrases. HeinOnline will notify you when new content that fits your parameters is added to the collection. A My-Hein account is required to set up alerts. The ABA law journals are available on HeinOnline by all library users on-site and by subscribers who are solo attorneys or attorneys at full-subscribing firms of fewer than fifty attorneys. Contact a librarian for more information.

Library Services to Law Firms

When 100% of a firm's attorneys become subscribers to the Law Library, library use privileges expand to include off-site access to several legal information databases and use of the library's resources by the firm's paralegals, librarians, and other staff. To learn more about services for full-subscribing firms, contact library director [Mary Jenkins](#) or see

<http://lawlibrary.hamiltoncountyohio.gov/join/>.

Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to six weeks at a time

Access to extensive electronic databases from the Law Library, including LexisNexis, Shepards', Westlaw, IntelliConnect, Hein Online Law Journals and Federal Register, and over 70 Aspen /LOISLaw treatises in 16 substantive areas

Wireless network throughout the Law Library

Polycom videoconferencing

Five meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

Inexpensive CLE seminars throughout the year, on legal research and substantive topics

Bi-weekly news updates in various practice areas

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/ LOISLaw treatises, HeinOnline and IntelliConnect.

You and the Legal System: Bankruptcy

Attorneys Tammy Stickley and Nick Zingarelli will discuss Bankruptcy on Friday, May 1 at noon in the Law Library. This program was originally scheduled for March 20.

You and the Legal System: Social Security Disability (SSDI) and Supplemental Security Income (SSI)

Attorney Dan O'Brien will discuss the basics of SSDI and SSI on Friday, May 15 at noon in the Law Library.

These programs are free to the public. To register, call 513.946.5300 or register via our website at

<http://lawlibrary.hamiltoncountyohio.gov/classes/you-and-the-legal-system/>

You and the Legal System is brought to you as a public service by the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service. Save the date for the next event in the *You and the Legal System* series. Attorney Paul Laufman will discuss DUI/Traffic Law on June 19.



Corporations and LLCs

Law Library subscribers have access to a variety of resources on corporations and LLCs. For more information about accessing these or any of the library's resources, contact the reference staff at reference@cms.hamilton-co.org or 513.946.5300

Anderson's Ohio corporation law handbook
KFO213 .A65 S45 2015

Blackford business organizations (Ohio)
KFO210 .B53 2015

Corporate governance: avoiding and responding to misconduct
KF1423 .A915

Corporate legal compliance handbook
KF1414.85 B262 2015

Limited liability entities : a state-by-state guide to LLCs, LLPs and LPs
KF1380.A4 B67 2015

Ohio annotated business entities handbook
KFO210 .C3 2014

Ohio business entities
KFO210 .C3 2014

Ohio limited liability company : forms and practice manual
KFO207.5 .A65 H46

Ohio transaction guide: forms
KFO213 .O54 2015

O'Neal and Thompson's close corporations

and LLCs : law and practice
KF1466 .O52 2014

O'Neal and Thompson's oppression of minority shareholders and LLC members : protecting minority rights in squeeze-outs and other intracorporate conflicts
KF1448 .O52 2015

Piercing the corporate veil
KF1423 .P54 2014

Understanding your business clients
KF1414.85 S64 2013

Online Resources/Remote Access*

Aspen/Loislaw

Limited Liability Company Library

Drafting Limited Liability Company

Operating Agreements

Federal and State Taxation of Limited Liability Companies

Limited Liability Entities: State-by-State Guide to LLCs, LLPs and LPs

EBSCO

Corporate Records Handbook

Form a Partnership

Form Your Own Limited Liability Company

How to Form a Nonprofit Corporation

Incorporate Your Business

Legal Guide to Starting and Running a Small Business

LLC or Corporation

NOLO's Quick LLC

WOW! I'm in Business

*Remote access is available to subscribers who are solos or firm attorneys whose entire firm has a subscription to the Law Library.

Upcoming Events:

May 1: You and the Legal System: Bankruptcy

May 13: CLE: Finding People Online

May 15: You and the Legal System: SSI/SSDI

Law Library Holidays

The Law Library will be closed on Monday, May 25 in observance of Memorial Day.



May 2015 Law Library Newsletter

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ADDRESS CORRECTION REQUESTED

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Hamilton County Courthouse
1000 Main Street, Room 601
Cincinnati, OH 45202