

Auburn Old Town Gallery
Special board meeting
July 30, 2024

In Attendance: Connie McLennan, Suzanne Hambleton, Cathy McAllister, Lorna Miser, Kirsty Roberts, Linda Whiteside, Diane Tharp, Louise Bezerk and Janis Quinn

Thérèse Tuttle, (pronounced Ter-ase) Tuttle Law Group joined by Zoom

This is an attempt to document the conversation with attorney, Therese Tuttle of the Tuttle Law Group. This meeting was held to continue conversation with regard to the AOTG organizational structure and IRS filing status. As background, in a meeting with our CPA Jennifer Starbucks we pursued her suggestion of changing our filing status to eliminate the current need of issuing K-1 statements for each member at tax time. As we proceeded to update our current documents, and consulting several attorney's to engage their review of the documents, it became alarmingly clear that our documents do not accurately reflect our operating structure and put us in a very liable position with regard to the Department of Labor employment laws.

The meeting opened with Therese providing a brief summary of the conversation she had with Connie several weeks ago. To recap:

- While we were of the understanding we are operating as a cooperative gallery, we are actually documented as a Limited Liability Company, (LLC). We also currently file with the IRS as an LLC. This is important to note because we are not a corporation.
- We cannot use cooperative in our name if we are not organized that way.
- An LLC requires the use of Articles of Organization and an Organizational Agreement called an Operating Agreement. We are currently utilizing documents called Articles of Corporation and Bylaws; both documents do not fit our business model.
- Theresa complemented Connie on her efforts to streamline the bylaws in the way we want to operate. If we choose to keep our LLC structure, it is possible we can transfer the updated bylaws into the needed Operating Agreement. If we choose to change our structure to a cooperative, we will need to begin by filing new papers with the Secretary of State.
- Big distinction between an LLC and a Co-op is an LLC has members but also has a manger and requires certain rules on how money is distributed between members. Gets confusing on who will be manager, a singular person or a group of people.
- IRS requires distribution of income according to percentages outlined by the LLC. Financial responsibilities work better as a coop vs. an LLC. A Co-op distributes funds according to product, (ie., sales) an equal partnership LLC distributes money equally. While we have operated as an LLC, we do not currently fit that model.

With regard to changing our filing status to C-Corp vs. an LLC.

- If we do that without having signed documents to give us that authority, is it a problem? Typically an LLC board is authorized to make decisions of how to file. She is not sure that our filing as a c-corp will resolve the issues we currently face.

Multiple conversations followed:

Kirsty stated that an LLC is a pass through corporation and C-corps are not. Can you tell us why we would want to file as a c-corp when there is double taxation?

LLC as a pass thru entity means each member is agreeing to take their portion of the total income on their tax return so that we can zero out the taxes at the entity level. If a coop, even if a corporation, you also get the single taxation. LLC are taxed under subchapter K. Coops are under subchapter T.

Question: Would we want to be a S-corp for tax purposes? Therese says she suggests we operate as a coop for same purposes.

If we do not change designation, (ie., LLC vs. Co-op) but change as a c-corp and correct documents – does that fix our problem. She cannot answer that as she is not a tax attorney. There are some benefits to operate as an LLC, as we qualify for the pass thru taxation.

Employment laws governed by the Dept. of Labor does not like the responsibility of requirement of shifts. Does the K-1 protect us better from that issue than a 1099?

The language in our document may not be compliant with labor laws. What is our liability having members sign these documents. Therese says we must have our documents in order to protect ourselves. Strongly recommends we have D&O insurance.

What is our protection if we have members sign documents that have not been provided/reviewed by an attorney? If document is not legal or legally binding, the member could just ignore it. Or, if the person is upset about something, they could sue claiming an illegal contract. And if our membership agreements regarding the requirement that member's work violates the DOL laws, we are liable.

They could say they could be forced to work without pay, which is actually the case.

The DOL would go after the entity, not necessarily the board, but protection can be very thin as an LLC because there's less of a firewall as compared to an entity like a Corporation as they have very strict formalities in their organizational laws/rules. LLC's are much looser, which makes it easier to comply with the statute but as it is more casual it lends itself to liability.

When we bring members into our gallery, we do not currently disclose how the organization is established. Providing information that discloses all this and other things, ie., financial records, protects the gallery and is designed to protect the board.

Therese would like to get more information from our CPA and us so that she can make a more formal recommendation of how we should be structured. Connie will begin by sending her a copy of our 2023 tax return and some recent P&L statements.

In conclusion:

Kirsty stated the current business model is no capital buy-in, only a small administrative fee when they join. Another point Kirsty made is that members agree to staff our gallery as part of being a member, and can trade shifts at will.

Janis clarified for Theresa that our current CPA will no longer work with us if we do not find a way that eliminates the K-1 schedules because of all the angry phone calls she has received over several years from our members. To the point Connie clarified that we have never explained to new members or existing members the reason behind the K-1 and tax filing instructions for it.

Individual contracts with each member to circumvent the equal distribution requirements.

Needs to speak with her partner that is much more versed on tax and labor laws.

Vote to secure her services. Unanimous **YES**

Present to membership in August 2024 meeting to grant authorization to proceed with \$2500 deposit.

Meeting was adjourned.

Respectfully Submitted,
Janis Quinn
Secretary