

Legal NEWSLETTER

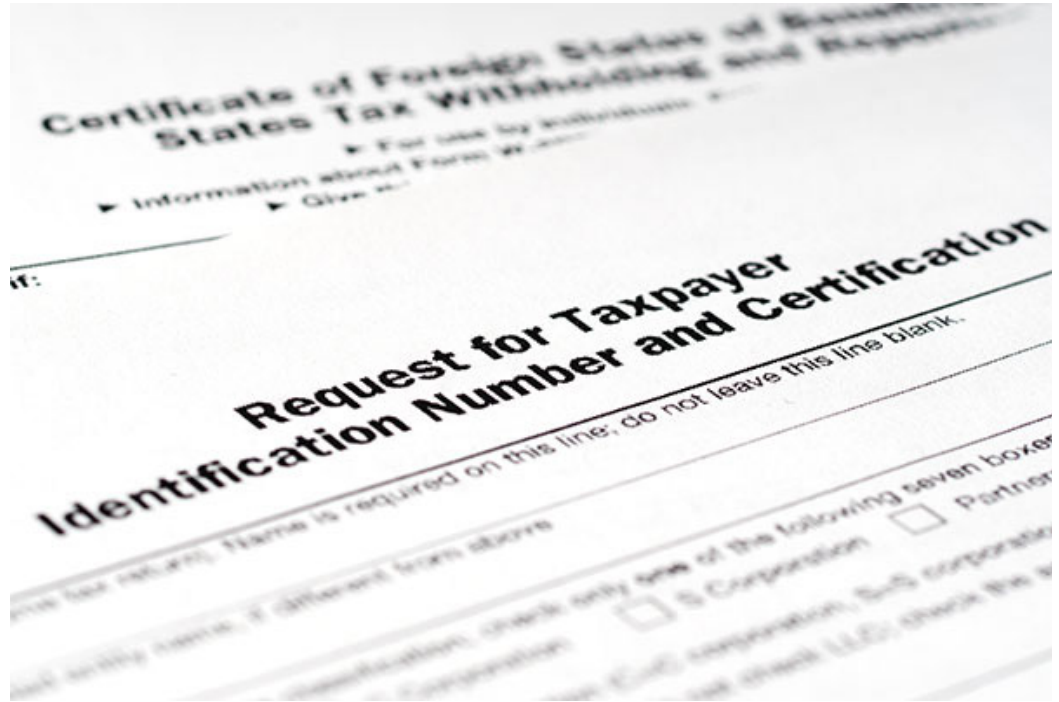
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This publication is not intended to provide legal advice, but rather insight and awareness into legal issues that we feel could be useful to our clients and friends. Actual resolution of legal issues depends upon many factors, including variations of facts and state and federal laws.



THE PURPOSE OF A TAX ID NUMBER FOR AN ESTATE

By Attorney Amy J. Eddy

For those who are unfamiliar with estate and probate administration, the need for a separate tax identification number can be confusing. Most people are familiar with the idea that when you file your individual tax returns each year, you need to include your social security number (SSN). Your SSN functions as your “Tax Identification Number” for the Internal Revenue Service (IRS). When an individual passes away however, their SSN can no longer be used to report income earned

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LLC ORGANIZATION THROUGH AGREEMENTS

By Attorney Heather M. Huebner

You have made the decision to start your own small business. That is great news! But what steps should you take now to properly organize your limited liability company (LLC)?

In Wisconsin, the first step of limited liability company formation is to decide on a name and file Articles of Organization with the Wisconsin Department of Financial Institutions. The articles establish your business with the State of Wisconsin and specify whether your business is managed by members or managers, who will serve as your registered agent, and the principal location of your business.

Many individuals file articles online, but do not complete the other steps to best protect their business and to take full advantage of the limited liability protection provided for by an LLC.

The next step is to develop and execute an Operating Agreement for your limited liability company. An Operating Agreement guides how your new business will function. You will draft your Operating Agreement to determine voting rights and duties of members, management terms of members or managers, member ownership interest, and meeting requirements. The Operating Agreement, when fully executed, protects the members from personal liability for actions of the limited liability company. This point is important because without the executed Operating Agreement, the members will likely be subject to personal liability as they would be if they operated with a sole proprietorship or partnership. Resolutions by the organizers, members, and/or managers adopting the Operating Agreement and member lists should be executed at the same time.



The final step to develop your new LLC is to determine whether to draft a Buy-Sell Agreement. This agreement is very important to limit conflict when a limited liability company has multiple owners. The terms of this agreement determine the process for transferring business ownership and anticipates various scenarios which will likely lead to conflict. Such scenarios include the determination of the fair market value of the business and a selling member's interest, what happens to the shares of a member in the event of death or divorce, how shares are transferred when a member retires, and who has the option to purchase ownership in the limited liability company.

The business attorneys at Anderson O'Brien are happy to provide you with personalized guidance on the topics covered in this post, as well as decisions regarding the nuances of the tax elections, management decisions, proper record-keeping, and other steps to formalize your new limited liability company. ♦

Lawyers where you live.

WHEN \$100,000 IS NOT \$100,000 – UNDERSTANDING UNDERINSURED MOTORIST LIMITS IN WISCONSIN

By Attorney Brad A. Yanke

Any regular reader of our newsletter, or attendee of our seminars, has heard the repeated importance about having enough underinsured motorist coverage (UIM) to protect yourself if you're injured in an auto collision. UIM coverage provides a pot of money to compensate you for injuries sustained in a crash if the at-fault driver does not have enough insurance to fully compensate you for your injuries. In other words, once the at-fault liability insurer pays its policy limit, your own insurance company steps into their shoes with its underinsured motorist coverage to pay you for any remaining uncompensated damages.



Unlike liability coverage or uninsured motorist coverage, a Wisconsin driver is not required by law to have underinsured motorist coverage. However, if accepted (and you should), the lowest limit that can be provided is \$50,000 per person / \$100,000 per accident. Considering the extremely low cost of UIM coverage, we strongly encourage that drivers get as high of limits as possible. For example, my personal auto policy has \$500,000 per person UIM coverage and it costs \$26 per year. Having sufficient UIM coverage is especially important in light of the fact that whatever your UIM policy limit, whether \$50,000 or \$500,000, it is a dollar amount that you will never be able to recover from your insurance company.

Current Wisconsin law allows insurers to define underinsured motorist by a "limits to limits" comparison. The result is you will only be eligible for UIM coverage if your UIM policy limit is greater than the at-fault liability policy limit. Similarly, current Wisconsin law allows insurers to reduce what it has to pay under its

UIM coverage by whatever is recovered from the at-fault driver and his or her insurance company, often called a "reducing clause." This combination means no Wisconsin driver can actually recover the dollar amount of the UIM he or she purchased.

Hopefully, an example will help. Joe is severely injured in a car wreck. The at-fault driver has a \$100,000 liability policy limit that the insurance company pays out to Joe. This payment from the liability insurer does not fully compensate Joe for his injuries, and he turns to his own insurance company, with whom he has a \$100,000 UIM policy. Unfortunately, because both the liability insurance and UIM insurance have the same limit, \$100,000, it means that there isn't actually any underinsured motorist coverage available to Joe. Because of the limits to limits comparison, only when the UIM policy limit is higher than the liability policy limit would Joe's UIM coverage kick in.

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after their date of death. Therefore, one of the first tasks of a Personal Representative (or Executor) should be obtaining the federal tax identification number for the estate.

There are many scenarios where the estate continues to earn income after the decedent's death. It often takes many months to complete the administration of the estate. During that time, the Personal Representative will need to open a bank account to collect the estate's assets and pay ongoing administration expenses. The Personal Representative will need the tax identification number for the estate in order to open the bank account. The Personal Representative will also need to request that any investment accounts registered under the decedent's social security number be re-registered in the name of the estate and the estate's tax identification number. The estate will be earning income, such as interest accruing on the estate's bank accounts, dividends paid on stocks or other investments, or rental income from tenants, until the assets are fully liquidated or transferred to the beneficiaries.

Under current federal law, if an estate generates more than \$600 in income, the Personal Representative must file a separate tax return known as a Form 1041. This is a separate return from the decedent's final individual tax returns, which also must be filed (under the decedent's individual SSN) to report the income earned in the calendar year prior to the decedent's date of death. The estate's income tax return will report only the income earned after date of death.

Applying for a federal tax identification number, also known as an Employer Identification Number (EIN), is a free service offered by the IRS. If you are working with an attorney to settle the estate, you can provide the attorney with an authorization to obtain the number on your behalf. If you obtain the number without the assistance of an attorney, beware of websites on the Internet that charge for this free service. If you are uncertain about obtaining the tax identification number, use caution and seek the advice of a probate attorney. ♦

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To illustrate the reducing clause, let's change the above example to say that Joe has \$250,000 in UIM coverage. The at-fault insurance company still pays its \$100,000 to Joe. Now, because the \$250,000 UIM limit is higher than the \$100,000 liability limit, Joe is entitled to UIM coverage under his policy. However, he is not entitled to \$250,000 in UIM; instead he is only entitled to \$150,000 because of the reducing clause ($\$250,000 - \$100,000 = \$150,000$).

Regardless of what your policy says the UIM limit is, by virtue of the limits to limits comparison definition of underinsured motorist and reducing clauses, no Wisconsin driver actually knows how much UIM he or she will have available until after the accident and after he or she knows how much liability insurance the at-fault driver has. As such, when you hear me or my colleagues harping about having plenty of UIM coverage, it is because if you have low limits of UIM, there is a good chance you will never get to use it, and if you do end up using it, it will always be less than the dollar amount you purchased. ♦



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