

Strategic Planning for Businesses, Part 2

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Last month, in the first half of this two-part series on strategic planning, we reviewed the important fact that the growth, processing, distribution, retail sale and use of marijuana, while legal under state law, remains illegal as a controlled substance under federal law. The Aug. 29, 2013 Cole memo is guidance from the federal government which provides that the federal government will not enforce the marijuana laws in Washington so long as the state does an adequate job of preventing the marijuana industry from being abused in the state of Washington.

The Cole memo is guidance which could be amended or withdrawn at any time either in whole or part. The impact would lead to criminal prosecution and severe economic hardship.

So what do we recommend for the I-502 business participant?

As mentioned at the end of the last month's article, we recommend that the I-502 business person utilize a strategic asset ownership plan of limited liability companies (LLCs) and trusts to isolate the risk inherent with the I-502 business from the other assets of the business participant.

Structuring with LLCs: The I-502 business should be owned by an LLC (Washington state law appears to require that the business be owned by an LLC formed under Washington law. See WAC 314.55.020(7)). If the I-502 business person has several I-502 related businesses each business should be operated within its own LLC. The reason for this is to isolate the liabilities associated with each I-502 business within its own separate LLC. We further recommend that the I-502 business person have a second LLC hold the ownership in the I-502 business entity (the operating entity).

The ownership LLC provides a second layer of protection by having both the ownership and operation of the I-502 business in LLCs.

Under Washington law, assuming the investors of the LLC properly operate the LLC and treat it as a separate, independent legal entity, the liabilities associated with the operation of the I-502 business should remain within the LLC and not "bleed" over into the other assets of the I-502 business person. (In the event the federal government reversed the prosecuting of violators of the Controlled Substance Act as it relates to Washington residents, there is no assurance this structure would protect the I-502 business person from criminal liability if found personally liable for violating the federal Controlled Substance Act.)

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