

MEMORANDUM

TO: DISTRICT PERSONNEL

FROM: OFFICE OF GENERAL COUNSEL

SUBJECT: FINANCIAL AFFIDAVIT FOR A LIMITED LIABILITY COMPANY (“LLC”)

The following financial information is necessary for an analysis of an LLC:

1. Audited or reviewed LLC financial statements for the previous three years (i.e. balance sheet, income statement, and statement of cash flow) **OR** a signed, dated and notarized LLC financial affidavit;
2. Copies of the previous three years’ LLC tax returns, with applicable schedules attached as filed with the Internal Revenue Service;
3. Copies of the Articles of Organization and any amendments thereto;
4. Copies of the LLC’s Operating Agreement (or its equivalent) and any amendments thereto;
5. A signed and dated letter of management representations (this letter is provided by DEP to the LLC - SEE ATTACHMENT I);
6. A management organization document identifying members, managers, officers and directors.

The following affidavit should be completed when an LLC does not have audited or reviewed financial statements and claims an inability to comply with corrective action or pay proposed penalties.

The LLC affidavit should not be used for the analysis of an individual, partnership, sole proprietor, corporation, or s-corporation. Please refer to the financial affidavit designed specifically for each of those entities.

Forward all financial documentation to Brian Dougherty, with a cover memo describing the estimated costs of compliance, proposed penalties, a brief description of the violation(s), and a request for financial analysis.

FINANCIAL AFFIDAVIT
FOR A
LIMITED LIABILITY COMPANY ("LLC")

COMPLETING THE LLC FINANCIAL AFFIDAVIT

The following financial affidavit is used by the Department's financial analyst in determining an LLC's ability to comply with corrective action or pay proposed penalties when audited or reviewed financial statements are unavailable. The analysis is performed as a response to the LLC's claim of inability to pay and is voluntary on the Department's and its part.

In completing the following financial affidavit, be sure to identify revenue, expenses, assets, and liabilities as directed. If revenue, expenses, assets, or liabilities exist for which a line item is not available, then add the item at the end of the appropriate section and include it in the total for that section.

Upon completion of the financial affidavit, at least one manager or managing member, must sign and date, as a LLC representative, the last page of the financial affidavit in the presence of a notary public or attorney.

In addition to completing and submitting the financial affidavit, provide all of the following:

1. copies of the previous three years' LLC tax returns as filed with the Internal Revenue Service, with applicable schedules attached;
2. a copy of the LLC's Articles of Organization, Operating Agreement (or its equivalent), and any amendments thereto;
3. a description of the LLC's management organization that includes a complete and current list of (a) all members and the percentage of their member ship interests, (b) all managing members, (c) all managers, (d) all officers, and (e) all directors;
4. a signed and dated letter of management representations addressed to the appropriate DEP District Office contact or enforcement attorney handling your case (*this letter is provided by DEP and is attached hereto as ATTACHMENT I);
5. a list of all of the LLC's investment, brokerage, insurance, and bank accounts;
6. all investment, brokerage, insurance, and bank account statements of the LLC for the past three years;
7. copies of general ledgers, payroll journals, year end trial balances, depreciation worksheets, canceled checks, and collateral for loans to or from the LLC for the past three years;

8. Copies of any loan or mortgage applications, insurance policies, employment contracts
9. Copies of any agreements for all loans, leases, rentals, promissory notes, purchases (with schedules for asset appraisals), settlements, guarantees, liens, deeds, and agreements to sell or buy receivables for the LLC;
10. a letter authorizing the Department to meet, confer, and communicate with any accountant or bookkeeper regarding the financial statements or records of the LLC and for such accountants or bookkeepers to divulge financial information to the Department;
11. a list of all accountants and bookkeepers who are involved in the LLC's financial affairs.
12. Copies of any audited Financial Statements that has been prepared for the LLC in the past three years.

Since the requested documentation is essential to performing an analysis, it is important that you supply all requested information to the Department in a complete and timely manner. The Department retains the right to request further information or not perform an analysis if requested documentation is not received. Again, this analysis is voluntary on your part and on the Department's part. The Department's goal is to render a complete, correct and fair conclusion as to your ability to pay.

You are not compelled to produce these documents. This is a voluntary submission that is subject to disclosure as a public record under Section 119, Florida Statutes; therefore, this submittal should not be considered confidential Bank account numbers, and debit, charge and credit card numbers held by an agency, are exempt from public disclosure under Section 119.071, Florida Statutes.

I hereby authorize the Department of Environmental Protection to verify the earnings, records, bank accounts, stock holdings, pension, credit information (including past and present mortgages), and any other assets, liabilities, revenues, or expenses necessary to perform an analysis of the LLC's financial position.

I hereby authorize and direct any and all accountants and bookkeepers that have prepared financial statements or records for the LLC to communicate with the Department and to disclose such statements and records and all supporting documentation to the Department.

_____, LLC

By:

Sign Name: _____

Print Name: _____

Print Title: _____

NOTE: The remaining information (i.e. balance sheet, income and expense, and statement of cash flow) may be supplied by attaching audited or reviewed LLC financial statements for the previous three years that were prepared by an independent, certified public accountant.

BALANCE SHEET INFORMATION

ASSETS:

Cash and cash equivalents:		
Petty cash	\$	_____
Cash in bank- general		_____
Cash in bank- payroll		_____
Cash in bank- tax account		_____
Cash in bank- savings		_____
Money market		_____
Other: _____		_____
_____		_____
Certificate(s) of Deposits		_____
Treasury Bills		_____
Stocks		_____
Bonds		_____
Accounts Receivable:		
Trade Accounts		_____
Less: Allowance for bad debts		_____
Officers		_____
Employees		_____
Member(s)		_____
Dividends		_____
Other		_____
Less: Allowance for bad debts		_____
Prepaid Assets:		
Prepaid Insurance		_____
Prepaid Rent		_____
Other Prepaid Assets: _____		_____
_____		_____
Inventory		_____
Supplies		_____
Trade notes		_____
Less: Allowance for bad debts		_____
Federal and state obligations		_____
Investments:		
_____		_____
_____		_____

FIXED ASSETS:

Buildings & other depreciable assets (describe):

Furniture and Fixtures:

Transportation:

Automobiles:

Trucks

Tractors

Forklifts

Recreational vehicles:

Aircraft

Boats

Other watercraft

Other land vehicle(s)

OTHER FIXED ASSETS:

Tanks

Treatment Plants

Lift Stations

Drainfields

Filters

Pumps

Blowers

Other: _____

Less: Accumulated Depreciation

OTHER ASSETS:

Leasehold Improvements

Less: Accumulated depreciation

Depletable assets (describe): _____

Less: Accumulated depletion

Intangible Assets (describe): _____

Patents

Trademarks

Goodwill

License

Other Intangibles

Less: Accumulated amortization

Natural Resources	_____
Property:	
Rental	_____
Investment	_____
Timberland	_____
Other Land: _____	_____
Construction In Progress	_____
Life Insurance Policy- cash surrender value	_____
Livestock	_____
Machinery and equipment	_____
Other: _____	_____
_____	_____
TOTAL NET ASSETS	\$ _____

LIABILITIES

Accounts payable	_____
Accrued salaries	_____
Bonus payable	_____
Accrued income tax	_____
Loans:	
Line(s) of credit	_____
Mortgage(s)	_____
Automobile(s)	_____
From member(s)	_____
Other loan(s)	_____
Bonds payable	_____
Notes payable	_____
Franchise fees payable	_____
Liens	_____
Other liabilities:	
_____	_____
_____	_____
_____	_____
TOTAL LIABILITIES	_____

EQUITY:

LLC Capital Accounts:	% Ownership	Type (general/limited)	
Member: _____	_____	_____	_____
Member: _____	_____	_____	_____
Member: _____	_____	_____	_____

Member: _____
Member: _____
Member: _____

TOTAL LIABILITIES & OWNER'S EQUITY \$ _____

NOTE: Prior to forwarding this affidavit to the Department, please ensure that the balance sheet does in fact balance:

TOTAL ASSETS = TOTAL LIABILITIES + OWNERS EQUITY

INCOME AND EXPENSE INFORMATION

REVENUE:

MONTHLY

Gross Sales	\$	_____
Less: Sales returns and allowances		_____
Gross Receipts from services		_____

OTHER REVENUE:

Commissions		_____
Rental income		_____
Interest income:		
Bonds		_____
Certificate of Deposit(s)		_____
Other _____		_____
Other _____		_____
Proceeds from life insurance		_____
Gross Royalties		_____
Other Revenue:		
_____		_____
_____		_____
_____		_____
TOTAL REVENUE	\$	=====

EXPENSES:

Cost of Goods Sold	\$	_____
Members' salaries paid at fixed rate (guaranteed payments)		_____
Other salaries and wages		_____
Commission		_____
Travel, meals, etc.		_____
Supplies		_____
Rent Expense		_____
Lease Expense:		
Buildings		_____
Equipment		_____
Automobile		_____
Other		_____
Loan payments:		
Mortgage(s)		_____
Automobile(s)		_____
Machinery		_____
Other		_____

Repairs and maintenance	_____
Bad debt expense	_____
Utilities:	
Electricity	_____
Gas / Propane	_____

MONTHLY EXPENSES:

Taxes:	
Property	_____
Payroll	_____
General	_____
Interest expense	_____
Insurance	_____
Contributions	_____
Depreciation expense	_____
Amortization expense	_____
Depletion	_____
Advertising	_____
Subcontractor expense	_____
Permits	_____
Employee benefit programs	_____
Pension, profit-sharing, etc., plans	_____
Manufacturing expense	_____
Management fees	_____
Other:	
_____	_____
_____	_____

OTHER EXPENSES:

Security expense	_____
Premium on life insurance	_____
(identify the insured) _____	
Inspection expense	_____
Penalties	_____
Professional Fees:	
Audit expense	_____
Legal expense	_____
Other _____	_____

TOTAL EXPENSES	\$	_____
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TOTAL REVENUE (refer to page 9)	_____
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LESS: TOTAL EXPENSES (above)

NET INCOME

\$

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STATEMENT OF CASH FLOWS

CASH FLOWS FROM OPERATING ACTIVITIES:

Net Income	\$	_____
Adjustments to reconcile net income to net cash provided by operating activities:		
Gain (loss) on sale/ disposition of asset(s)		_____
<i>Increase (Decrease) in Non-Cash Items:</i>		
Depreciation		_____
Amortization		_____
Depletion		_____
Deferred Taxes		_____
Provision for bad debts		_____
<i>(Increase) decrease in assets:</i>		
Trade accounts receivable		_____
Notes Receivable		_____
Interest Receivable		_____
Inventory		_____
Prepaid Expenses		_____
Other _____		_____
Other _____		_____
<i>Increase (decrease) in liabilities:</i>		
Trade accounts payable		_____
Other accounts payable		_____
Income taxes payable		_____
Other _____		_____
Other _____		_____

NET CASH PROVIDED BY OPERATING ACTIVITIES _____

CASH FLOWS FROM INVESTING ACTIVITIES:

(Purchase) Sale of equipment	\$	_____
(Purchase) Sale of other fixed asset(s)		_____
(Increase) Decrease in outstanding advances		_____
(Increase) Decrease in restricted cash		_____
(Increase) Decrease in other short-term investments, maturities less than 90 days		_____
Other _____		_____
Other _____		_____

NET CASH (USED) PROVIDED BY INVESTING ACTIVITIES _____

CASH FLOWS FROM FINANCING ACTIVITIES:

Proceeds (Repayment) of short-term borrowings		_____
Proceeds (Repayment) of notes payable and		

long-term debt	_____
Proceeds from stock issue	_____
(Purchase) Sale of Treasury Stock	_____
Dividends (paid)	_____
Loans from Stockholders	_____
Other _____	_____

NET CASH (USED) PROVIDED BY FINANCING ACTIVITIES _____

NET (DECREASE) INCREASE IN CASH _____

CASH AT BEGINNING OF YEAR _____

CASH AT THE END OF THE YEAR _____

GIFTS AND RELATED PARTY SALES

List any assets either gifted or sold, within the previous twenty-four months, to a related party if the asset value individually exceeded \$500. "Related party" is defined as any entity that can control or significantly influence the management or operating policies of another entity to the extent that one of the entities may be prevented from pursuing its own interests. Related parties for this purpose include, but are not limited to:

1. Members, managing members, managers and their immediate families or others who reside in the same household;
2. Affiliated companies;
3. Investments accounted for under the equity method;
4. Trusts for the benefit of employees.

**LETTER OF MANAGEMENT REPRESENTATIONS
ATTACHMENT I**

In connection with the Department's analysis of the balance sheet, income statement, statement of cash flow, and supplemental financial information of _____ ("LLC") as of _____ and for the period of _____ for the purpose of determining the LLC's ability to comply with corrective action or pay proposed penalties, I/WE HEREBY CERTIFY under penalty of perjury, that to the best of my/our knowledge, information and belief, the following representations made to the Department during its analysis of the financial affidavit or financial statements provided, and as supplemented, are true and correct:

1. I/We accept responsibility for the fair presentation in the foregoing financial affidavit, of the LLC's financial position, results of operations, and cash flow regarding it (including any statements attached hereto and incorporated by reference).
2. The basis of accounting (e.g. cash basis, accrual, tax basis, other comprehensive basis of accounting ("OCBOA")) has been identified.
3. I/We have no knowledge of pending or imminent events that may materially affect the carrying value or classification of assets and liabilities, which have not been identified.
4. The following have been properly recorded or disclosed in the financial statement or affidavit:
 - a. Related party transactions and related amounts receivable or payable, including sales, purchases, loans, transfers, leasing arrangements, and guarantees.
 - b. Arrangements with financial institutions involving compensating balances or arrangements involving restrictions on cash balances and line-of-credit or similar arrangements.
 - c. Agreements to repurchase assets previously sold.
5. There are no material transactions that have not been properly recorded in the accounting records underlying the financial statements or financial affidavit.
6. Provision, when material, has been made to reduce excess or obsolete inventories to their estimated net realizable value.
7. The LLC has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor has any asset been pledged, where such lien, encumbrance, or pledge was not clearly identified in the financial statements, affidavit or information provided to the Department.
8. All accountants and bookkeepers that have prepared financial statements or records for the LLC are authorized to communicate with the Department and to disclose such statements and records and all supporting documentation to the Department.

Signature of Person making
acknowledgment

Signature of Person making
acknowledgment

Name (typed, printed, or stamped)

Name (typed, printed, or stamped)

Position (typed, printed, or stamped)

Position (typed, printed, or stamped)

STATE OF FLORIDA
COUNTY OF

The foregoing instrument was acknowledged before me this _____ by
_____, member/managing member) on behalf of
_____, LLC. He/She is personally known to me or has produced
_____ as identification.

NOTARY PUBLIC

My Commission Expires: _____.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of this financial affidavit was furnished by
_____ to:
on the _____ day of _____ 20__.

AFFIANT OR AFFIANT REPRESENTATIVE