

Checkpoint Contents

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S CORPORATIONS, PARTNERSHIPS, AND LLCs

State Tax Treatment of LLCs and LLPs: Update for 2010

The charts include entity-level taxes, state conformity with the federal entity classification rules, and potential entity-level withholding requirements, as well as certain nontax elements, such as restrictions on the availability of entity forms for certain professionals.

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[pg. 8]

Many factors should be considered when deciding how to structure a multistate business entity, and state taxation must not be overlooked. The following pages contain the most recent (as of 1/1/10) edition of our LLC/LLP state tax charts, which were last published in The Journal in the Mar/Apr 2009 issue. These charts can assist in evaluating a business structure for limited liability companies (LLCs) and limited liability partnerships (LLPs).

Over the years, LLCs and, to a lesser extent, LLPs have become popular choices for structuring or re-structuring multistate business entities. The accompanying charts set out the various differences in the way the 50 states and the District of Columbia treat LLCs and LLPs. The charts discuss tax considerations, such as entity-level taxes, conformity with the federal entity classification rules for income tax purposes, and potential entity-level withholding requirements, as well as certain nontax elements, such as restrictions on the availability of entity forms for certain professionals and the extent of liability protection afforded to partners of LLPs.

Investment partnerships and series LLCs.

We trust readers also will find the footnotes to be useful, especially those listing the growing number of states that now officially recognize qualified investment partnerships (QIPs) and/or series LLCs. A qualified investment partnership generally is a pass-through entity substantially all the income of which is derived from investments that produce income that would not be taxable to a nonresident individual if the investments were held or owned individually (i.e., investments in intangible property not used in a trade or business). A series LLC allows for the establishment of separate LLC interests with regard to, e.g., specified LLC property or obligations, thus facilitating separate liability exposure without creating separate legal entities. For more on these entity types, see, e.g., McLoughlin and Ely, "The Series LLC Raises Serious State Tax Questions but Few Answers Are Yet Available," 16 JMT 6 (January 2007); Gotlinger and Mahon, "State Tax Exemptions for Investment Partnerships and Their Nonresident Partners," 17 JMT 22 (February 2008).

In 2009, the American Bar Association's Section of Taxation filed well-reasoned comments with the Treasury Department, urging Treasury to publish guidance on the taxation of series LLCs. (The comments are available online via the ABA website, at http://meetings.abanet.org/webupload/commupload/TX327000/otherlinks_files/SeriesLLCcomments.pdf.) We expect that guidance to be issued by this summer, followed by a wave of state legislatures' amending their LLC acts to

include provisions pertaining to series LLCs.

Exhibit 1. State Tax Treatment of Limited Liability Companies and Limited Liability Partnerships (as of 1/1/10)

Exhibit 2. Tax Treatment of LLCs/LLPs/LPs (LLEs) by States Imposing Net Worth- or Debt-Based Corporate Franchise Taxes (as of 1/1/10)

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