

## **An Update on the State Tax Treatment of LLCs and LLPs**

**by Bruce P. Ely, Christopher R. Grissom, and William T. Thistle II**

**Reprinted from *State Tax Notes*, January 8, 2018, p. 155**

## An Update on the State Tax Treatment of LLCs and LLPs

by Bruce P. Ely, Christopher R. Grissom, and William T. Thistle II



Bruce P. Ely



Christopher R. Grissom



William T. Thistle II

Bruce P. Ely is a partner in the Birmingham, Alabama, office of Bradley Arant Boult Cummings LLP. He can be reached at [bely@bradley.com](mailto:bely@bradley.com). Christopher R. Grissom is also a partner and can be reached at [cgrissom@bradley.com](mailto:cgrissom@bradley.com). William T. Thistle II is also a partner with the firm and can be reached at [wthistle@bradley.com](mailto:wthistle@bradley.com).

In this article, the authors review how the states tax limited liability companies and partnerships and discuss recent legislative developments. They welcome legislative and administrative updates from readers.

Copyright November 1, 2017  
Bruce P. Ely, Christopher R. Grissom,  
William T. Thistle II.  
All rights reserved.

Many factors should be considered when deciding how to structure a multistate business entity, and state taxation cannot be overlooked. The charts that follow can assist when evaluating whether to form a limited liability company or a limited liability partnership.

Over the years, LLCs — and to a lesser extent, LLPs — have become popular choices for structuring or restructuring multistate business entities. The charts present the various ways the 50 states and the District of Columbia treat LLCs and LLPs. They include state tax considerations such as entity-level taxes, conformity with the federal income tax classification rules, and potential entity-level withholding or composite return requirements. The footnotes to the charts also include useful information, such as listing the growing number of states that exempt qualified investment partnerships (QIPs) or their nonresident partners from state income tax and withholding.

*Over the years, LLCs — and to a lesser extent, LLPs — have become popular choices for structuring or restructuring multistate business entities. The charts present the various ways the 50 states and the District of Columbia treat LLCs and LLPs.*

In light of the growing popularity of series LLCs, the last column in the chart highlights which states have enacted series LLC statutes and which state tax authorities have issued guidance on how those entities are to be taxed.

In September 2010 Treasury issued proposed regulations explaining how a series LLC would be treated for federal income tax

purposes.<sup>1</sup> Although Treasury has yet to do so, we expect most states will enact legislation authorizing the formation or qualification of series LLCs once Treasury finalizes the proposed regulations. We also expect that many more states will publish guidance on

how each series and the parent LLCs are to be treated for state tax purposes.<sup>2</sup>

The second chart lists the states that impose a corporate franchise tax based on net worth or debt as of November 1. It also lists those states that subject LLCs, LLPs, and limited partnerships (LPs) to that tax, as well as those states that exempt them.

<sup>1</sup> Prop. Treas. reg. sections 301.6011-6, 301.6071-2, and 301.7701-1(a)(5), and amending section 301.7701-1(e) and (f). For a more thorough analysis of the proposed series LLC regulations and the accompanying state tax implications, see Michael McLoughlin and Bruce P. Ely, "IRS Issues Long-Awaited Guidance on Series LLCs; Will the States Soon Follow?" 20 *J. Multistate Tax'n & Incentives* 8 (Jan. 2011).

<sup>2</sup> In April 2013 a joint task force of the American Bar Association Section of Taxation's Partnerships and State and Local Tax committees issued a report summarizing the responses of approximately 31 states to a questionnaire to inform the IRS on whether states plan to conform to the proposed federal tax classification of a series within a series LLC. For prior coverage, see Rudolph R. Ramelli, "ABA Tax Section Submits Comments on Series Entities," *State Tax Notes*, May 20, 2013, p. 627.

**Table 1.**  
**State Tax Treatment of Limited Liability Companies and Limited Liability Partnerships**  
**(as of November 1, 2017)**

State	State Income Tax Classification of LLCs Follows Federal? <sup>f</sup>	Nonresident Partner Withholding? <sup>d, e</sup>	Entity-Level Tax on LLPs or LLCs? <sup>b</sup>	Series LLC Provisions or Published Guidance? <sup>f</sup>
Alabama	Yes <sup>a</sup>	LLC/LLP files a composite return and pays tax on nonresident partner's distributive share of Alabama income at the highest marginal tax rate applicable.	Annual \$100 minimum and \$15,000 maximum business privilege tax (electing family investment LLCs/LLPs subject to \$500 annual cap; "financial institution groups" subject to Alabama deposits-based alternative tax capped at \$3 million annually).	Ala. Code section 10A-5A-11.01 et seq. (effective Jan. 1, 2015).
Alaska	Yes	No	No	No
Arizona	Yes <sup>a</sup>	No. However, the Arizona Department of Revenue will accept composite returns and estimated payments for nonresident individuals if certain requirements are met.	No	No
Arkansas	Yes <sup>a</sup>	LLP/LLC withholds 6.9% (7% for tax years beginning before Jan. 1, 2015) of distributions of Arkansas-source income to nonresident partners unless consents or composite return filed.	Every LLC formed under the Small Business Entity Tax Pass Through Act (Ark. Code Ann. section 4-32-101 et seq.) must pay the minimum franchise tax (currently \$150).	No

**Table 1.**  
**State Tax Treatment of Limited Liability Companies and Limited Liability Partnerships**  
**(as of November 1, 2017) (Continued)**

State	State Income Tax Classification of LLCs Follows Federal? <sup>f</sup>	Nonresident Partner Withholding? <sup>d, e</sup>	Entity-Level Tax on LLPs or LLCs? <sup>b</sup>	Series LLC Provisions or Published Guidance? <sup>f</sup>
California	Yes <sup>a</sup>	LLC/LLP pays tax on nonresident partner's distributive share of California income at 7% (for U.S. partners) unless nonresident consents filed; if consents filed, still must withhold (but may request waiver from state).	Annual \$800 minimum franchise tax on all LLCs/LLPs; and gross receipts tax ranging from \$900 to \$11,790 on LLCs (unapportioned pre-2007); unapportioned fee declared unconstitutional in <i>Northwest Energetic Services LLC v. Franchise Tax Board</i> , 159 Cal. App. 4th 841, 71 Cal. Rptr. 3d 642 (1st Dist., 2008); and <i>Ventas Finance I LLC v. Franchise Tax Board</i> , 81 Cal. Rptr. 3d 823 (1st Dist., 2008), <i>rev. denied</i> Cal. S. Ct., No. S166870 (Cal. 2008), <i>cert. denied</i> U.S. S. Ct. Dkt. No. 08-1022 (2009).	No series LLC provision; <i>but see</i> : (1) California FTB Tax News, (vol. 06-2, Mar./Apr. 2006), at 3; (2) California 2014 Form 568 Limited Liability Company Tax Booklet (Forms and Instructions), Section F, at 8 (Series LLCs); (3) California FTB Tax News, (Oct. 2011), at 4; (4) California FTB Pub. 3556 LLC MEO (rev. Jan. 2015): Limited Liability Company Filing Information, available online at <a href="http://www.ftb.ca.gov/forms/misc/3556.pdf">www.ftb.ca.gov/forms/misc/3556.pdf</a> (noting that California considers each series in a series LLC to be a separate LLC for annual tax and LLC fee purposes).
Colorado	Yes <sup>a</sup> (but not for purposes of classifying 80-20 companies. <i>See Agilent Technologies Inc. v. Colorado Department of Revenue</i> , Colo. Ct. App. 2017).	LLC/LLP withholds at 4.63% or pays tax at 4.63% with composite return on nonresident partner's distributive share of Colorado-source income unless nonresident consents filed.	No	No
Connecticut	Yes <sup>a</sup>	LLC/LLP pays tax on nonresident noncorporate partner's distributive share of Connecticut-source income at highest marginal rate if such partner has greater than \$1,000 in state-sourced income.	LLCs, LLPs subject to annual "business entity tax" of \$250. For tax years beginning on or after Jan. 1, 2013, the tax is payable every other year.	No

**Table 1.**  
**State Tax Treatment of Limited Liability Companies and Limited Liability Partnerships**  
**(as of November 1, 2017) (Continued)**

State	State Income Tax Classification of LLCs Follows Federal? <sup>f</sup>	Nonresident Partner Withholding? <sup>d, e</sup>	Entity-Level Tax on LLPs or LLCs? <sup>b</sup>	Series LLC Provisions or Published Guidance? <sup>f</sup>
Delaware	Yes <sup>a</sup>	No	LLCs/LLPs subject to \$300 tax per year (\$250 prior to Jan. 1, 2014); LLPs subject to \$200/partner/year fee with \$120,000 cap.	Del. Code Ann. tit. 6, section 18-215.
District of Columbia	Yes <sup>a</sup>	No	9.2% (9.975% prior to Jan. 1, 2015) tax on District-source income earned by unincorporated business, with a \$250 minimum tax if gross receipts are \$1 million or less and \$1,000 minimum tax if gross receipts exceed \$1 million, but no tax on single-member LLC (SMLLC) owned by another entity subject to tax in the District (\$250 minimum) or on professional firms where 80% of income derived from personal services and capital not material income-producing factor. "Ballpark Fee" based on District gross receipts from previous year of \$5 million or more, ranges from \$5,500 to \$16,500.	D.C. Code Ann. section 29-802.06.
Florida	Yes <sup>a</sup> (no state personal income tax).	No	No	No series LLC provision; <i>but see</i> Florida DOR Technical Assistance Advisement No. 02(M)-009 (Nov. 27, 2002); <i>see also</i> Fla. Rev. Stat. section 605.0902(3).

**Table 1.**  
**State Tax Treatment of Limited Liability Companies and Limited Liability Partnerships**  
**(as of November 1, 2017) (Continued)**

State	State Income Tax Classification of LLCs Follows Federal? <sup>a</sup>	Nonresident Partner Withholding? <sup>d, e</sup>	Entity-Level Tax on LLPs or LLCs? <sup>b</sup>	Series LLC Provisions or Published Guidance? <sup>f</sup>
Georgia	Yes <sup>a</sup>	LLC/LLP withholds 4% tax on nonresident partner's distributive share of Georgia income, with exemptions, unless composite return filed (entity and partners are jointly and severally liable; filing of estimated tax payments by the member does not relieve the entity from the responsibility of the withholding requirement).	No	No
Hawaii	Yes <sup>a</sup>	No	No	No
Idaho	Yes <sup>a</sup>	Withholding at the highest marginal rate is required for nonresident individual owners unless composite return or nonresident consents filed; effective Jan. 1, 2014, a SMLLC treated as a disregarded entity for federal income tax purposes is included in the definition of "individual" for composite return purposes; LLC/LLP liable for unpaid tax if LLC/LLP fails to withhold and fails to file composite return.	No	No
Illinois	Yes <sup>a</sup>	LLC/LLP must withhold from each nonresident partner an amount equal to the partner's distributive share of the Illinois business income (and, effective for tax years ending on or after Dec. 31, 2014, nonbusiness income) of the partnership multiplied by the applicable tax rates for that partner, unless nonresident consent filed.  For tax years ending on or after Dec. 31, 2014, composite returns will no longer be permitted.	1.5% "replacement" income tax on partnerships and LLCs; partners liable if LLC/LLP fails to pay; "investment partnerships" are exempt.  Domestic LLPs subject to \$100/partner/year fee with a \$200 minimum and \$5,000 cap; initial filing fee for foreign LLPs is \$500 and each renewal fee is \$300.	805 ILCS section 180/37-40; <i>see also</i> IDOR ST 13-0046-GIL (Sept. 10, 2013) (sales tax guidance).

**Table 1.**  
**State Tax Treatment of Limited Liability Companies and Limited Liability Partnerships**  
**(as of November 1, 2017) (Continued)**

State	State Income Tax Classification of LLCs Follows Federal? <sup>f</sup>	Nonresident Partner Withholding? <sup>d, e</sup>	Entity-Level Tax on LLPs or LLCs? <sup>b</sup>	Series LLC Provisions or Published Guidance? <sup>f</sup>
Indiana	Yes <sup>a</sup>	LLC/LLP pays withholding tax on nonresident partner's distributive share of Indiana-source income at applicable rate.	No	Ind. Code section 23-18.1 (effective Jan. 1, 17).
Iowa	Yes <sup>a</sup>	LLC/LLP pays 5% withholding tax on nonresident partner's distributive share of Iowa income unless certificate of release obtained from IDOR and estimated tax paid by nonresident partner.	No	Iowa Code section 489.1201.
Kansas	Yes	Effective July 1, 2014, withholding for nonresident owners of LLCs/LLPs is repealed.  For tax periods Jan. 1, 2013, through Dec. 31, 2016, non-wage income reported to individuals by passthrough entities is excluded from taxable income.	For tax years after 2010, the franchise tax is repealed. For prior tax years, LLCs/LLPs were subject to franchise tax on net capital accounts with a \$20,000 cap, but only if net capital accounts located or used in Kansas was \$1 million or more.  There is an annual report fee of \$55 (paper filing) or \$50 (online filing) for both LLCs and LLPs.	Kan. Stat. Ann. section 17-76,143.
Kentucky	Yes	LLCs/LLPs must withhold at the highest marginal rate applicable unless nonresident partner filed return and timely paid Kentucky income tax in immediately prior year (but if partner does not pay tax in current year, LLC/LLP still liable) or if composite return filed.  Withholding required for corporate partner that is only doing business in Kentucky through its ownership interest in a passthrough entity.	LLCs/LLPs subject to limited liability entity tax (LLET) equal to lesser of (1) \$0.095 per \$100 of Kentucky gross receipts or (2) \$0.75 per \$100 of Kentucky gross profits, with exceptions. Must pay minimum tax of \$175. Partners generally allowed credit against Kentucky personal income tax for proportionate share of LLET.	No series LLC provision; <i>but see</i> Ky. Rev. Stat. Ann. section 386A.4-010 et seq. (effective July 12, 2012) (providing that a statutory trust may establish one or more series).

**Table 1.**  
**State Tax Treatment of Limited Liability Companies and Limited Liability Partnerships**  
**(as of November 1, 2017) (Continued)**

State	State Income Tax Classification of LLCs Follows Federal? <sup>e</sup>	Nonresident Partner Withholding? <sup>d, e</sup>	Entity-Level Tax on LLPs or LLCs? <sup>b</sup>	Series LLC Provisions or Published Guidance? <sup>f</sup>
Louisiana	State classification follows federal classification of LLC but only with respect to corporate income tax, not franchise tax <sup>a</sup> (effective Jan. 1, 2017, LLCs electing to be taxed as corporations subject to corporate franchise tax).	LLC/LLP required to make composite tax payments on nonresident partner's distributive share of Louisiana income at highest individual state rate unless nonresident consents filed.  Partners that are corporations or partnerships themselves generally cannot be included on composite return.	No	No
Maine	Yes <sup>a</sup>	LLC/LLP pays quarterly withholding tax on nonresident partner's proportionate share of Maine income at highest applicable state rate (provided that such member's share of entity's state-sourced income is \$1,000 or more), unless composite return filed or certain exemptions apply.	LLC "financial institutions" are taxed at the entity level at a rate of: (1) 1% of Maine net income and \$0.08 per \$1,000 of Maine assets, or (2) \$0.39 per \$1,000 of Maine assets.	No
Maryland	Yes <sup>a</sup>	LLC/LLP pays tax on nonresident partner's distributive share of Maryland income at rate of 7.5% for individuals (7.0% prior to Jan. 1, 2016), 8.25% for entities, limited to amount of nonresidents' distributive share of income, not to exceed the sum of all nonresidents' shares of distributable cash flow.	No	No

**Table 1.**  
**State Tax Treatment of Limited Liability Companies and Limited Liability Partnerships**  
**(as of November 1, 2017) (Continued)**

State	State Income Tax Classification of LLCs Follows Federal? <sup>e</sup>	Nonresident Partner Withholding? <sup>d, e</sup>	Entity-Level Tax on LLPs or LLCs? <sup>b</sup>	Series LLC Provisions or Published Guidance? <sup>f</sup>
Massachusetts	Yes <sup>a</sup> (except SMLLCs owned by S corps) (until 2009, check-the-box regs followed only for LLCs; LP, and LLP classifications determined by common law, <i>Kintner</i> regs).	LLC/LLP pays quarterly withholding tax on nonresident partner's distributive share of Massachusetts income unless composite return or nonresident consents filed or certain exemptions apply.	No	No series LLC provision; <i>but see</i> Mass. DOR Ltr. Rul. 08-2 (Feb. 15, 2008).
Michigan	Yes <sup>a</sup>	LLC/LLP pays withholding tax at a rate of 4.25% for periods beginning on or after Oct. 1, 2012, on nonresident partner's distributive share of Michigan taxable income, unless certain exemptions apply; effective Jan. 1, 2012, withholding may apply to certain corporate nonresident partners if entity as a whole expects to accrue more than \$200,000 in state-sourced income for the year.  Withholding is no longer required for tax years that begin on or after July 1, 2016.	Effective Jan. 1, 2008, through Dec. 31, 2011, Michigan Business Tax (MBT) applied to LLCs and LLPs; tax was 4.95% of business income; 0.80% of modified gross receipts tax base; and a 21.99% surcharge on allocated and apportioned income before credits with \$6 million cap.  Effective Jan. 1, 2012, Michigan imposes a corporate income tax on C corporations, replacing the MBT.	No
Minnesota	Yes <sup>a</sup>	LLC/LLP pays withholding tax on nonresident partner's distributive share of Minnesota income at highest individual rate unless composite return filed.	For tax years beginning after Dec. 31, 2012, \$0 to \$9,340 fee based on sum of entity's Minnesota property, payroll, and sales (fee was capped at \$5,000 for tax years beginning before Jan. 1, 2013).  SMLLC not subject to fee if its income and other information is reported on the member's individual income tax return.	No

**Table 1.**  
**State Tax Treatment of Limited Liability Companies and Limited Liability Partnerships**  
**(as of November 1, 2017) (Continued)**

State	State Income Tax Classification of LLCs Follows Federal? <sup>f</sup>	Nonresident Partner Withholding? <sup>d, e</sup>	Entity-Level Tax on LLPs or LLCs? <sup>b</sup>	Series LLC Provisions or Published Guidance? <sup>f</sup>
Mississippi	Yes <sup>a</sup>	Generally no, but LLC/LLP and general partners are jointly and severally liable for any unpaid tax unless LLC/LLP withholds and remits 5% of the LLC's/LLP's net profit or gain for the year.	No	No
Missouri	Yes <sup>a</sup>	LLC/LLP pays withholding tax on nonresident individual partner's distributive share of Missouri income at highest state rate (currently 6%) unless either nonresident consents or composite return filed.	No	Mo. Rev. Stat. section 347.010 et seq.
Montana	Yes <sup>a</sup>	LLC/LLP with nonresident individual or C corp. owners liable for income tax at highest marginal rate (individual) or applicable rate (C corp.) on nonresident partner's distributive share of Montana income unless either composite return or nonresident consents filed.	No	Mont. Code Ann. section 35-8-101 et seq.
Nebraska	Yes <sup>a</sup>	LLC/LLP liable for income tax at highest state rate on nonresident individual partner's distributive share of Nebraska income unless nonresident consents filed.	No	No
Nevada	No state income tax	No	Effective July 1, 2015, there is an annual commerce tax on each business entity (including LLCs and LLPs) based on the business's gross revenue. The rates vary from 0.051% to 0.331% depending on the industry. For tax to apply, state-sourced gross revenue must exceed \$4 million.	Nev. Rev. Stat. section 86.296.

**Table 1.**  
**State Tax Treatment of Limited Liability Companies and Limited Liability Partnerships**  
**(as of November 1, 2017) (Continued)**

State	State Income Tax Classification of LLCs Follows Federal? <sup>f</sup>	Nonresident Partner Withholding? <sup>d, e</sup>	Entity-Level Tax on LLPs or LLCs? <sup>b</sup>	Series LLC Provisions or Published Guidance? <sup>f</sup>
New Hampshire	Yes <sup>a</sup>  (conforms to check-the-box regs but only with respect to multi-member LLCs).	No	5% on dividends and interest exceeding \$2,400 if LLC/LLP is without transferable shares; 8.5% (8.2% beginning in 2016) on business profits (only for LLCs/LLPs with more than \$50,000 in gross business income); and 0.75% (0.72% beginning in 2016) on the "business enterprise value tax base" for LLCs/LLPs with more than \$207,000 of gross receipts from all their activities (\$150,000 prior to Jan. 1, 2014), or an enterprise value tax base more than \$103,000 (\$75,000 prior to Jan. 1, 2014). <i>Note:</i> a dollar-for-dollar credit is allowed against the business profits tax for the amount of business enterprise tax paid.	No
New Jersey	Yes <sup>a</sup>	None, but entity-level tax on nonresident partners' distributive shares of New Jersey net income; entity-level tax not required if composite return filed and quarterly estimated payments made.	\$150/partner annual fee with a \$250,000 cap for partnerships with more than two partners; no annual fee for LLCs/LLPs with less than three partners; and LLCs/LLPs must make quarterly payments of 6.37% of New Jersey net income allocated to all nonresident noncorporate partners and 9% for all nonresident corporate partners.	No
New Mexico	Yes <sup>a</sup>	LLC/LLP required to withhold tax on nonresident partner's distributive share of New Mexico income at highest individual rate unless nonresident consents filed.	No	No

**Table 1.**  
**State Tax Treatment of Limited Liability Companies and Limited Liability Partnerships**  
**(as of November 1, 2017) (Continued)**

State	State Income Tax Classification of LLCs Follows Federal? <sup>f</sup>	Nonresident Partner Withholding? <sup>d, e</sup>	Entity-Level Tax on LLPs or LLCs? <sup>b</sup>	Series LLC Provisions or Published Guidance? <sup>f</sup>
New York	Yes <sup>a</sup>	<p>LLCs/LLPs make quarterly estimated tax payments on behalf of C corp./ nonresident individual owners that owe more than \$300 in tax, unless commissioner authorizes group returns.</p> <p>No estimated tax payments required on behalf of C corp./ nonresident individual owners that file an exemption certificate with the LLC/LLP certifying their compliance with all New York income tax, estimated tax, and income tax return filing requirements.</p>	<p>LLCs/LLPs subject to annual filing fee based on New York-source gross receipts, min. \$25, max. \$4,500.</p> <p>SMLLCs that are treated as disregarded entities for federal income tax purposes are subject to a \$25 annual filing fee.</p>	No series LLC provision; <i>but see</i> New York Advisory Opinion No. TSB-A-98(8)I, New York Dep't of Tax'n and Finance (Sept. 4, 1998).
North Carolina	Yes <sup>a</sup>	<p>LLC/LLP pays withholding tax on individual nonresident partner's distributive share of North Carolina income at the applicable individual income tax rate.</p> <p>LLC/LLP pays withholding tax on non-individual nonresident partner's distributive share of North Carolina income at the applicable income tax rate unless nonresident consent filed.</p>	<p>If book value of LLC assets exceeds \$150,000, corp. member required to include LLC's assets, directly or indirectly owned, in its franchise tax base if collective ownership by corp. and its affiliates of capital interests of the LLC is more than 50%.</p> <p>LLC electing to be taxed as a C corporation subject to franchise tax.</p> <p>LLC electing to be taxed as S corporation also subject to franchise tax.</p>	No
North Dakota	Yes <sup>a</sup>	LLC/LLP pays withholding tax on distributions to nonresident partners (provided that state-sourced income of an individual partner equals or exceeds \$1,000 for year) at highest individual rate unless composite return filed.	No  (nominal annual filing fee based on number of LLP managing partners).	No

**Table 1.**  
**State Tax Treatment of Limited Liability Companies and Limited Liability Partnerships**  
**(as of November 1, 2017) (Continued)**

State	State Income Tax Classification of LLCs Follows Federal? <sup>e</sup>	Nonresident Partner Withholding? <sup>d, e</sup>	Entity-Level Tax on LLPs or LLCs? <sup>b</sup>	Series LLC Provisions or Published Guidance? <sup>f</sup>
Ohio	Yes <sup>a</sup>	LLC/LLP pays 5% withholding tax on distributions to nonresident individual partners and an 8.5% withholding tax on distributions to certain non-individual partners after certain adjustments unless composite return or consents to jurisdiction filed.	For tax years beginning before Jan. 1, 2014, franchise tax credit calculations include corporation's proportionate share amounts from any passthrough entity.  Unless gross receipts are less than \$150,000, LLCs/LLPs are subject to commercial activity tax of \$150 to \$2,600 (depending on Ohio gross receipts) plus 0.26% of Ohio gross receipts in excess of \$1 million.	No
Oklahoma	Yes <sup>a</sup>	LLC/LLP pays 5% withholding tax on distributions to nonresident partner of Oklahoma income unless nonresident consents filed.  For tax years beginning on or after Jan. 1, 2013, composite returns now allowed for LLC/LLP members that are certain passthrough entities.	LLCs/LLPs were subject to business activity tax (BAT) of \$25 plus 1% of "net revenue," but, for tax years 2010, 2011, and 2012, the BAT liability was tied to the amount of the taxpayer's 2009 franchise tax liability. 2012 was the final year of the BAT.  LLCs are not subject to the newly reinstated Oklahoma franchise tax but must pay a \$25 annual registration fee.	Okla. Stat. tit. 18, section 2054.4.
Oregon	Yes <sup>a</sup>	LLC/LLP withholds tax on nonresident partners' distributive share of Oregon income computed at the highest marginal rate applicable, unless composite return or nonresident consents filed; composite return may be required in some situations.	LLCs/LLPs are subject to a minimum privilege tax of \$150.	No

**Table 1.**  
**State Tax Treatment of Limited Liability Companies and Limited Liability Partnerships**  
**(as of November 1, 2017) (Continued)**

State	State Income Tax Classification of LLCs Follows Federal? <sup>a</sup>	Nonresident Partner Withholding? <sup>d, e</sup>	Entity-Level Tax on LLPs or LLCs? <sup>b</sup>	Series LLC Provisions or Published Guidance? <sup>f</sup>
Pennsylvania	Yes <sup>a</sup>	LLC/LLP pays withholding tax on nonresident individual and “nonfiling corporate” partner’s distributive share of Pennsylvania income at the applicable income tax rate.	Prior to Jan. 1, 2016, LLCs, except for “restricted professional companies,” were subject to capital stock tax on taxable capital stock value.  Professional LLCs subject to \$520/Pennsylvania member/year fee; LLPs subject to \$350/Pennsylvania partner/year fee.	No
Rhode Island	Yes <sup>a</sup> (for withholding purposes, corporate-owned SMLLC treated as C corporation).	LLP/LLC pays withholding tax at highest marginal rate for individuals and 9% (7% effective July 1, 2017) for corporations, unless composite return filed.	\$450 tax on LLCs taxed as partnerships.	No
South Carolina	Yes <sup>a</sup>	LLC/LLP pays 5% withholding tax on nonresident partner’s distributive share of South Carolina income unless nonresident consents or composite return filed.	No	No
South Dakota	No state income tax	No	Domestic LLCs subject to \$150 initial report fee; foreign LLCs subject to \$750 initial report fee; all LLCs subject to \$50 annual report fees thereafter.  For LLPs, annual report filing fee is \$50; domestic and foreign LLPs subject to \$125 statement of qualification filing fee.	No

**Table 1.**  
**State Tax Treatment of Limited Liability Companies and Limited Liability Partnerships**  
**(as of November 1, 2017) (Continued)**

State	State Income Tax Classification of LLCs Follows Federal? <sup>e</sup>	Nonresident Partner Withholding? <sup>d, e</sup>	Entity-Level Tax on LLPs or LLCs? <sup>b</sup>	Series LLC Provisions or Published Guidance? <sup>f</sup>
Tennessee	Yes <sup>a</sup>  (but LLCs subject to franchise, excise tax anyway and SMLLCs only disregarded if sole member is classified as a corporation).	No	LLC/LLP subject to franchise/excise tax of: (1) \$0.25 per \$100 of net worth (min. tax of \$100) and (2) 6.5% of net earnings; corporate member of disregarded SMLLC subject to Tennessee franchise/excise tax; all entities classified as partnerships are also subject to 5% (6% prior to Jan. 1, 2016) dividends and interest income tax; LLCs/LLPs subject to \$50/partner annual fee, min. \$300, max. \$3,000 for LLCs; \$250/\$2,500 for LLPs.	Tenn. Code Ann. section 48-249-309; Tenn. DOR Ltr. Rul. 11-42 (Sept. 6, 2011).

**Table 1.**  
**State Tax Treatment of Limited Liability Companies and Limited Liability Partnerships**  
**(as of November 1, 2017) (Continued)**

State	State Income Tax Classification of LLCs Follows Federal? <sup>e</sup>	Nonresident Partner Withholding? <sup>d, e</sup>	Entity-Level Tax on LLPs or LLCs? <sup>b</sup>	Series LLC Provisions or Published Guidance? <sup>f</sup>
Texas	State taxes LLCs as corporations (no state personal income tax).	No	<p>LLPs subject to \$200/partner/year fee.</p> <p>LLCs and LLPs subject to Texas franchise “margin” tax at 0.5% (retailers and wholesalers) or 1% (all other businesses) of lowest of: (1) 70% of total revenue; (2) total revenue minus cost of goods sold; or (3) total revenue minus total compensation.</p> <p>For reports due in 2014, the following temporary permissive alternative tax rates were available: 0.4875% for retailers and wholesalers and 0.975% for all other taxpayers. For reports due in 2015, the following temporary permissive alternative tax rates were available: 0.475% for retailers and wholesalers and 0.95% for all other taxpayers. Effective Jan. 1, 2016, for the tax years 2016 and 2017, the franchise tax rate is reduced to 0.375% for retailers and wholesalers and to 0.75% for all other taxpayers.</p>	<p>Tex. Bus. Org. Code section 101.601 et seq.; Texas Policy Ltr. Rul. 201005184L (May 5, 2010) (released Sept. 2011); Franchise Tax Frequently Asked Questions, Texas Office of the Comptroller, FAQ #19 (updated Jan. 6, 2014), available at <a href="http://www.window.state.tx.us/taxinfo/franchise/faq_tax_ent.html#tax_ent19">http://www.window.state.tx.us/taxinfo/franchise/faq_tax_ent.html#tax_ent19</a>.</p>
Utah	Yes <sup>a</sup>	Unless a waiver is obtained, LLC/LLP must pay or withhold 5% tax on the business and nonbusiness income of the passthrough entity derived from or connected with Utah sources on behalf of a nonresident passthrough entity taxpayer.	No	Utah Code Ann. section 48-3a-1201 et seq. (effective July 1, 2012, superseding Utah Code Ann. section 48-2c-606).

**Table 1.**  
**State Tax Treatment of Limited Liability Companies and Limited Liability Partnerships**  
**(as of November 1, 2017) (Continued)**

State	State Income Tax Classification of LLCs Follows Federal? <sup>a</sup>	Nonresident Partner Withholding? <sup>d, e</sup>	Entity-Level Tax on LLPs or LLCs? <sup>b</sup>	Series LLC Provisions or Published Guidance? <sup>f</sup>
Vermont	Yes <sup>a</sup>	LLC/LLP must make quarterly estimated tax payments at second lowest marginal rate on nonresident partner's distributive share of Vermont income.	LLC/LLP must pay annual tax of \$250.	No
Virginia	Yes <sup>a</sup>	LLC/LLP must pay withholding tax of 5% of nonresident partner's allocable share of Virginia income.	No	No
Washington	State taxes LLCs as partnerships (no state personal income tax).	No	Business and occupation tax of 0.138% to 3.3% of gross receipts	No
West Virginia	Yes <sup>a</sup>	LLC/LLP pays 6.5% withholding tax on nonresident partner's distributive share of West Virginia income unless nonresident consents filed.	Effective Jan. 1, 2015, the business franchise tax is no longer imposed. For prior tax years, the tax was the greater of \$50 or 0.1% (0.2% prior to Jan. 1, 2014) of "capital" (generally, average balance of partners' capital accounts per Form 1065).	No
Wisconsin	Yes	LLC/LLP pays quarterly withholding tax on nonresident shares of Wisconsin income at highest individual/corporate rate, with exemptions.	LLCs/LLPs with more than \$4 million in gross receipts are subject to economic development surcharge tax of \$25 to \$9,800. Effective Jan. 1, 2013, entities treated as partnerships are no longer subject to the economic development surcharge.	No
Wyoming	No state income tax	No	No	No

**Table 1.**  
**State Tax Treatment of Limited Liability Companies and Limited Liability Partnerships**  
**(as of November 1, 2017) (Continued)**

State	State Income Tax Classification of LLCs Follows Federal? <sup>a</sup>	Nonresident Partner Withholding? <sup>d, e</sup>	Entity-Level Tax on LLPs or LLCs? <sup>b</sup>	Series LLC Provisions or Published Guidance? <sup>f</sup>
<p><sup>a</sup>Indicates that the state taxing authority has publicly announced that it will follow the IRS “check-the-box” regulations for state income tax purposes, the state LLC act adopts the regulations either explicitly or implicitly, or the state adopts them by separate statute. Note that most states, such as Florida, Georgia, Michigan, and the District of Columbia, do not conform to the “check-the-box” regulations for sales, use, and other related taxes.</p> <p><sup>b</sup>Assumes entity is classified as a partnership for federal income tax purposes. See supplemental chart regarding net-worth or debt-based corporate franchise taxes.</p> <p><sup>c</sup>States such as California, Delaware, Illinois, and Pennsylvania restrict the use of LLCs by banks and/or insurance companies.</p> <p><sup>d</sup>“Partner” in this column and throughout the chart means both partners of LLPs and members of LLCs unless otherwise clear from the context.</p> <p><sup>e</sup>The following states exempt the distributive share of nonresident partners of investment partnerships (as defined in varying ways) from income taxation: Alabama, Arkansas, California, Georgia, Idaho, Illinois, Kentucky, Maryland, New Jersey, New York, North Carolina, Ohio, and Texas. A few states, such as Connecticut, Minnesota, and New Mexico, do not specifically exempt nonresident partners of investment partnerships but have rules that effectively allocate that income to the domicile of the nonresident partner. Massachusetts statutorily exempts nonresident limited partners of certain investment LPs but not other passthrough entities. Thus, any income tax withholding, jurisdictional consent waivers, or composite return requirements in these states may not apply to nonresident partners of qualified investments partnerships. Other states, such as Virginia, effectively exempt nonresident partners of investment partnerships from income taxation by taking the position that passthrough entities established solely to invest in intangible personal property, which have no employees or tangible property in the state, are not considered to be carrying on a trade or business in the state, and thus the nonresident partner’s distributive share of income is not from in-state sources.</p> <p><sup>f</sup>Several states, e.g., Wisconsin, Minnesota, and North Dakota, have language in their LLC statutes about “classes” and “series” of membership interests, but no provisions for the layers or “firewalls” of protection that the typical series LLC act contains. Puerto Rico also has enacted a series LLC statute. There are series LLC bills pending in several state legislatures as of this date.</p>				

**Table 2.**  
**Tax Treatment of LLCs/LLPs/LPs (LLEs) by States Imposing Net Worth- or Debt-Based Corporate Franchise Taxes (as of November 1, 2017)**

State	Apply Franchise Tax? <sup>b</sup>	Note
Alabama	Yes	LLCs, LLPs, and LPs subject to “business privilege tax” based on modified net worth. Sliding rate scale based on apportioned federal net income with \$100 min. and \$15,000 max. (generally). “Family limited liability entities” subject to \$500 cap. Ala. Code section 40-14A-22.
Arkansas	No <sup>a</sup>	But LLCs are subject to the minimum \$150 franchise tax. Ark. Code Ann. section 26-54-104(8).
Connecticut	No <sup>a</sup>	
Delaware	No <sup>a</sup>	
Georgia	No	
Illinois	No	
Kansas	No	For tax years after 2010, the franchise tax is repealed. For prior tax years, LLCs/LLPs were subject to franchise tax on net capital accounts with a \$20,000 cap, but only if net capital accounts located or used in Kansas were \$1 million or more.
Kentucky	No	
Louisiana	No	An LLE’s election under the check-the-box regulations to be taxed as a corporation for federal income tax purposes has no significance in determining whether the LLE is subject to Louisiana franchise tax. La. DOR Rev. Rul. No. 01-013 (Oct. 1, 2001). Prior to January 1, 2017, LLE electing S corporation or C corporation status not subject to franchise tax. La. DOR Info. Bulletin No. 04-023 (Dec. 1, 2004); and La. Priv. Ltr. Rul. 05-015 (Dec. 28, 2005). However, effective Jan. 1, 2017, LLCs electing to be taxed as corporations will be subject to corporate franchise tax. Act No. 12, 2016 Extra. Session (1st Extra. Session) (Mar. 10, 2016).
Massachusetts	No <sup>a</sup>	
Mississippi	No	
Missouri	No	
Nebraska	No	
New Jersey	No	
New Mexico	No <sup>a</sup>	
North Carolina	No	LLCs exempt from franchise tax by statute. A corporate member is required to include the LLC’s assets in its franchise tax base if the corporate member or its affiliates collectively own 50% or more of the capital interests of the LLC. However, LLC electing corporation status subject to franchise tax. N.C. Gen. Stat. section 105-114(b)(2).
Ohio	No	

**Table 2.**  
**Tax Treatment of LLCs/LLPs/LPs (LLEs) by States Imposing Net Worth- or Debt-Based Corporate Franchise Taxes (as of November 1, 2017) (Continued)**

Oklahoma	No	LLCs are exempt from franchise tax by statute. Okla. Stat. tit. 68 section 1201. However, Oklahoma imposed a business activity tax (BAT) on the "net revenue" of a taxpayer, including LLCs and LLPs, for tax years 2010, 2011, and 2012, tied to the amount of the taxpayer's 2009 franchise tax liability. 2012 was the last year of the BAT because Oklahoma voters approved the imposition of a property tax on intangible property. As before, LLCs are exempt from the newly reinstated franchise tax.
Pennsylvania	No	Prior to Jan. 1, 2016, all LLCs, except "restricted professional companies," were subject to the capital stock and franchise taxes. 15 Pa. Cons. Stat. section 8925.
Rhode Island	No <sup>a</sup>	
South Carolina	No	
Tennessee	Yes	LLCs, LLPs, and LPs subject to franchise tax of \$0.25 per \$100 of net worth. Tenn. Code Ann. sections 67-4-2105(a), -2106(a).
Texas	Yes	LLCs and LLPs subject to Texas franchise "margin" tax at 0.5% (retailers and wholesalers) or 1% (all other businesses) of lowest of: (1) 70% of total revenue; (2) total revenue minus cost of goods sold; or (3) total revenue minus total compensation. Tex. Tax Code Ann. section 171.101.  For reports due in 2014, the following temporary permissive alternative tax rates were available: 0.4875% for retailers and wholesalers and 0.975% for all other taxpayers. For reports due in 2015, the following temporary permissive alternative tax rates were available: 0.475% for retailers and wholesalers and 0.95% for all other taxpayers. Effective Jan. 1, 2016, for 2016 and 2017 tax years, the franchise tax rate is reduced to 0.375% for retailers and wholesalers and to 0.75% for all other taxpayers.
West Virginia	No	Effective Jan. 1, 2015, the business franchise tax is no longer imposed. For prior tax years, the tax was the greater of \$50 or 0.1% (0.2% prior to Jan. 1, 2014) of capital accounts. W.Va. Code sections 11-23-3(b)(2)(C) & 11-23-6.
Wyoming	Yes	Generally, annual report license tax is the greater of \$50 or \$0.0002 of assets employed in Wyoming. Wyo. Stat. sections 1716-1630(a) and 17-29-209(a).
<sup>a</sup> Several states impose a de minimis (e.g., \$150 Arkansas, \$250 Connecticut (every other year), \$300 Delaware; \$500 Massachusetts, \$50 New Mexico, and \$450 Rhode Island) annual franchise tax/filing fee on LLEs. <sup>b</sup> As a general rule, states that follow the federal income tax classification guidelines for LLEs will impose a net worth- or debt-based franchise tax only on those LLEs treated as C corporations.		

■



## We're on a mission.

Encouraging  
engagement  
and debate for  
over 40 years.

Creating a marketplace of ideas and an atmosphere that fosters public debate, where exchanges are open, all sides of the aisle are represented, and all ideas are welcome.

We publish world-class news and analysis, host and provide speakers for conferences on topics that matter, provide material for free on [taxanalysts.org](https://taxanalysts.org), and pursue the release of important public information through the Freedom of Information Act.