

BRUCE P. ELY AND WILLIAM T. THISTLE, II

State Tax Treatment

LLCs

&

LLPs

Update for 2020

The accompanying charts discuss state tax considerations relating to LLCs and LLPs, such as conformity with the federal income tax classification rules, entity-level taxes, and potential entity-level withholding or composite return requirements.



The owners of multistate businesses must consider a multitude of factors when deciding how to structure their business ventures, and state taxation cannot be overlooked.

The accompanying charts can assist in that evaluation for limited liability companies (LLCs) and limited liability partnerships (LLPs).

In recent years, LLCs and, to a lesser extent, limited partnerships and LLPs, have become the popular choice for structuring or re-structuring multistate business entities. According to recent Internal Revenue Service statistics, more than two-thirds of all Subchapter K entities are now domestic (U.S.) LLCs, surpassing all other entity types for 15 consecutive years.

The accompanying charts summarize the various differences in the tax treatment of LLCs and LLPs across the 50 states and the District of Columbia. The charts discuss state tax considerations, such as conformity with the federal income tax classification rules, entity-level taxes, and potential entity-level withholding or composite return requirements. In addition, we hope that the endnotes will also be useful, especially those listing the states that exempt qualified investment partnerships (QIPs) or their nonresident partners from state income tax and nonresident partner withholding.

Series LLCs—a Once Hot Idea That Seems to Have Cooled?

Like LLCs, the use of series LLCs to structure a multistate business has grown in popularity in the past 10 years or so. The last column of the first chart highlights which states have enacted series LLCs statutes and which state taxing authorities have issued guidance on how these odd creatures are to be taxed by that state. It reflects helpful input from the AICPA's State Tax Resource Panel and from many state revenue authorities, for which we are thankful.

In September 2010—nearly a *decade ago*—the U.S. Treasury Department is-

sued proposed regulations explaining how a series LLC would be treated for federal income tax purposes. *See* Prop. Treas. Reg. § § 301.6011-6, 301.6071-2, and 301.7701-1(a)(5), and amending § § 301.7701-1(e) and (f). For a more thorough analysis of the proposed series LLC regulations and the accompanying state tax implications, *see* M. McLoughlin and B. Ely, "IRS Issues Long-Awaited Guidance on Series LLCs; Will the States Soon Follow?" 20 JMT 8 (January 2011).

We hope that Treasury will issue final series regulations by this Fall, although this project has been downgraded several times, most recently by the need for numerous regulations under the Tax Cuts and Jobs Act of 2017 (TCJA) and now the CARES Act of 2020. Once finalized, we anticipate that a number of states will enact legislation authorizing the formation or qualification of series LLCs and that a large number of states will publish some form of guidance on how each series and the "mother ship" LLC itself are to be taxed for a variety of state taxes, including unemployment compensation taxes or premiums. Our chart lists the handful of states that have grown impatient and enacted series LLC legislation despite the lack of official guidance. Indeed, there are series LLC bills pending in several state legislatures as of this writing.

SALT Cap Workarounds

The latest version of the first chart includes the seven states that, as of this update, have enacted pass-through entity (PTE)-level income taxes in response to the TCJA's \$10,000 limitation on SALT deductions by individual taxpayers. *See* IRC Section 164(b)(6); *see, e.g.*, "New Jersey Enacts Alternative Pass-through

Tax," 30 JMT 31 (March/April 2020). Connecticut was the first to enact legislation expressly designed to use PTEs as an indirect means to circumvent the so-called SALT cap. Retroactive to taxable years beginning on or after January 1, 2018, LLCs/LLPs are subject to a 6.99% Pass-Through Entity Tax on their net income. Connecticut's tax mandates that PTEs pay the income tax at the entity level. (Public Act No. 18-49). The owners of the PTE are entitled to receive not quite a corresponding income tax credit.

Wisconsin also enacted a SALT cap workaround bill. For tax years beginning on or after January 1, 2019, certain PTEs may elect to be taxed at the entity level, at the corporate tax rate of 7.9%. In contrast to Connecticut, Wisconsin permits pass-through entities to voluntarily elect to be taxed at the entity-level. (2017 Wisconsin Act 368)

In addition to Connecticut and Wisconsin, the following states have also recently enacted PTE-level taxes: Louisiana, Maryland, New Jersey, Oklahoma and Rhode Island, all of which are elective in nature. As of the date of this submission, the Alabama PTE tax bill is pending but expected to be carried over until a likely special session this Fall. We expect several more state legislatures to consider similar legislation this year.

The second chart lists the states that impose a net worth- or debt-based corporate franchise tax, and which of those states either subject LLCs, LPs, or LLPs to that tax or exempt them, also as of April 2020.

While we hope these charts are a useful research tool, they are clearly only a starting point. They should *not* be relied on as a definitive source of information. ■

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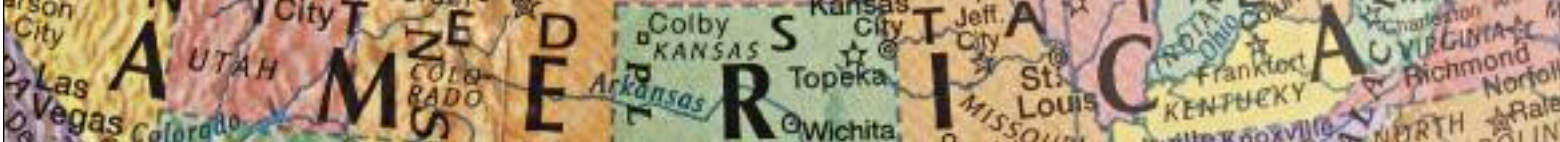


EXHIBIT 1

State Tax Treatment of Limited Liability Companies and Limited Liability Partnerships (as of April 24, 2020)

State	State Income Tax Classification of LLCs Follows Federal? ³	Nonresident Partner Withholding? ^{4, 5}	Entity-Level Tax on LLPs or LLCs? ²	Series LLC Provisions or Published Guidance? ⁶
Alabama	Yes ¹	LLC/LLP files a composite return and pays tax on nonresident partner's distributive share of AL 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 §10A-5A-11.01 et seq. (eff. 1/1/2015).
Alaska	Yes	No	No	No
Arizona	Yes ¹	No. However, the Arizona Department of Revenue will accept composite returns and estimated payments for nonresident individuals if certain requirements are met.	No	LLC Act goes into effect on September 1, 2020 and is based on Revised Uniform Limited Liability Company Act (RULLCA)
Arkansas	Yes ¹	LLC/LLP withholds 6.9% of distributions of AR-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. §4-32-101 et seq.) must pay the minimum franchise tax (currently \$150).	No
California	Yes ¹	LLC/LLP pays tax on nonresident partner's distributive share of CA income (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. Franch. Tax Bd.</i> , 159 Cal. App. 4th 841, 71 Cal. Rptr. 3d 642 (1st Dist., 2008) and <i>Ventas Finance I, LLC v. Franch. Tax Bd.</i> , 81 Cal Rptr. 3d 823 (1st Dist., 2008), <i>rev. denied</i> No. S166870 (Cal. 2008), <i>cert. denied</i> U.S. S. Ct. Dkt. No. 08-1022 (2009).	No series LLC provision; but see: (1) California FTB Tax News, (Vol. 06-2, Mar./Apr. 2006), page 3; (2) California 2014 Form 568 Limited Liability Company Tax Booklet (Forms and Instructions), Section F, page 8 (Series LLCs); (3) California FTB Tax News, (Oct. 2011), page 4; and (4) California FTB Pub. 3556 LLC MEO (Rev. Jan. 2015): Limited Liability Company Filing Information, available online at www.ftb.ca.gov/forms/misc/3556.pdf (noting that California considers each series in a series LLC to be a separate LLC for annual tax and LLC fee purposes).
Colorado	Yes ¹ (but not for purposes of classifying 80-20 companies. See <i>Agilent Technologies Inc. v. CO DOR</i> , 441 P.3d 1012 (Colo. 2019).	LLC/LLP withholds at 4.63% or pays tax at 4.63% with composite return on nonresident partner's distributive share of CO-source income unless nonresident consents filed.	No	No
Connecticut	Yes ¹	LLC/LLP pays tax on nonresident noncorporate partner's distributive share of CT-source income at highest marginal rate if such partner has greater than \$1,000 in state-sourced income. For taxable years beginning on or after 1/1/18, LLC/LLP makes estimated payments of the "Pass-Through Entity Tax" in lieu of composite payments.	LLCs, LLPs subject to annual "business entity tax" of \$250. The tax is eliminated beginning January 1, 2020. For taxable years beginning on or after 1/1/18, LLCs/LLPs are subject to 6.99% Pass-Through Entity Tax on their net income (partners receive partial credit).	Press Release, SN 2018(4): Guidance on 2018 Estimated Payments for Newly Enacted Pass-Through Entity Tax, available at https://portal.ct.gov/DRS/News-Press-Releases/2018/Information-on-the-2018-Pass-Through-Entity-Tax

EXHIBIT 1 (continued)

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Delaware	Yes ¹	No	LLCs/LLPs subject to \$300 tax per year; LLPs subject to \$200/partner/year fee with \$120,000 cap.	Del. Code Ann. tit. 6, § 18-215.
District of Columbia	Yes ¹	No	9.2% (9.975% prior to 1/1/2015) tax on D.C.-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 SMLLC owned by another entity subject to tax in D.C. (\$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 D.C. gross receipts from previous year of \$5 million or more, ranges from \$5,500 to \$16,500.	D.C. Code Ann. § 29-802.06.
Florida	Yes ¹ (no state personal income tax)	No	No	No series LLC provision; <i>but see</i> Florida DOR Technical Assistance Advice No. 02(M)-009 (Nov. 27, 2002); and Fla. Rev. Stat. §605.0902(3).
Georgia	Yes ¹	LLC/LLP withholds 4% tax on nonresident partner's distributive share of GA 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 ¹	Withholding is required at the highest marginal rate applicable to the nonresident partner (eff. 7/2/19 for tax years beginning on or after 1/1/19, but delayed indefinitely by the Hawaii Dep't of Taxation)	No	No
Idaho	Yes ¹	Withholding at the highest marginal rate is required for nonresident individual owners unless composite return or nonresident consents filed; a single-member LLC 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

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State	State Income Tax Classification of LLCs Follows Federal? ³	Nonresident Partner Withholding? ^{4, 5}	Entity-Level Tax on LLPs or LLCs? ²	Series LLC Provisions or Published Guidance? ⁶
Illinois	Yes ¹	<p>LLC/LLP must withhold from each nonresident partner an amount equal to the partner's distributive share of the IL business income (and, eff. for tax years ending on or after 12/31/2014, nonbusiness income) of the partnership multiplied by the applicable tax rates for that partner, unless nonresident consent filed.</p> <p>Nonresidents whose Illinois Income Tax liability is fully paid by pass-through withholding are not required to file an Illinois Income Tax return</p> <p>For tax years ending on or after 12/31/2014, composite returns are no longer permitted.</p>	<p>1.5% "replacement" income tax on partnerships and LLCs; partners liable if LLC/LLP fails to pay; "investment partnerships" are exempt.</p> <p>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</p>	<p>805 ILCS § 180/37-40; see also IDOR ST 13-0046-GIL (9/10/2013) (sales tax guidance).</p>
Indiana	Yes ¹	<p>LLC/LLP pays withholding tax on nonresident partner's distributive share of IN-source income at applicable rate.</p>	No	<p>Ind. Code § 23-18.1 (eff. 1/1/17).</p>
Iowa	Yes ¹	<p>LLC/LLP pays 5% withholding tax on nonresident partner's distributive share of IA income unless certificate of release obtained from IDOR and estimated tax paid by nonresident partner.</p>	No	<p>Iowa Code §489.1201 (eff. 7/1/20, Iowa Code §489.12901).</p> <p>Eff. 7/1/20, Iowa also provides for a protected series of a series LLC. See Iowa Code §489.12401 et seq.</p>
Kansas	Yes	<p>Effective 7/1/2014, withholding for nonresident owners of LLCs/LLPs is repealed.</p> <p>For tax periods 1/1/2013 through 12/31/2016, non-wage income reported to individuals by pass-through entities is excluded from taxable income.</p>	<p>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 KS was \$1,000,000 or more.</p> <p>There is an annual report fee of \$55 (paper filing) or \$50 (online filing) for both LLCs and LLPs.</p>	<p>Kan. Stat. Ann. § 17-76,143.</p>
Kentucky	Yes	<p>LLCs/LLPs must withhold at the highest marginal rate applicable unless nonresident partner filed return and timely paid KY 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.</p> <p>Withholding required for corporate partner that is only doing business in KY through its ownership interest in a pass-through entity.</p>	<p>LLCs/LLPs subject to limited liability entity tax (LLET) equal to lesser of (1) \$0.095 per \$100 of KY gross receipts or (2) \$0.75 per \$100 of KY gross profits, with exceptions. Must pay minimum tax of \$175. Partners generally allowed credit against KY personal income tax for proportionate share of LLET.</p>	<p>No series LLC provision; but see Ky. Rev. Stat. Ann. §386A.4-010 et seq. (eff. 7/12/2012) (providing that a statutory trust may establish one or more series).</p>

EXHIBIT 1 (continued)

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Louisiana	State classification follows federal classification of LLC but only with respect to corporate income tax, not franchise tax ¹ (eff. 1/1/2017, 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 LA income at highest individual state rate unless nonresident consents filed. Partners that are corporations or partnerships themselves generally cannot be included on composite return.	For tax years beginning on or after 1/1/2019, LLC/LLP may elect to be taxed at the entity level as a C corporation for Louisiana income tax purposes. S.B. 223 (6/22/19)	No
Maine	Yes ¹	LLC/LLP pays quarterly withholding tax on nonresident partner's proportionate share of ME 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 ME net income and \$0.08 per \$1,000 of ME assets, or (2) \$0.39 per \$1,000 of ME assets.	No
Maryland	Yes ¹	LLC/LLP pays tax on nonresident partner's distributive share of MD income at rate of 7.5% for individuals, 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..	For tax years beginning on/after 1/1/20, LLCs/LLPs may elect to pay MD tax at the entity level, with the tax rate and the corresponding credit depending on whether the member/partner is an individual or a corporation. SB 523 (5/8/20)	No
Massachusetts	Yes ¹ 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 MA income unless composite return or nonresident consents filed or certain exemptions apply.	No	No series LLC provision; <i>but see</i> Mass. Dep't. of Rev. Ltr. Rul. 08-2 (Feb. 15, 2008).
Michigan	Yes ¹	LLC/LLP pays withholding tax at a rate of 4.25% for periods beginning on or after 10/1/2012 on nonresident partner's distributive share of MI taxable income, unless certain exemptions apply; 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 7/1/2016.	For 2008 through 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. Eff. 1/1/2012, MI imposes a corporate income tax on C corporations, replacing the MBT. Legislation that would have created a mandatory 6% income tax rate for LLC/LLPs failed to pass in 2019.	No

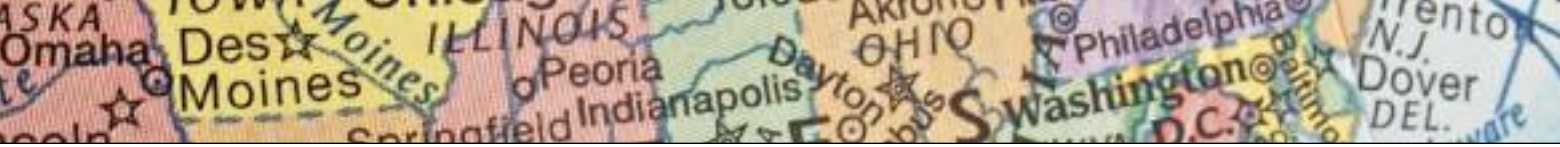


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State Tax Treatment of Limited Liability Companies and Limited Liability Partnerships (as of April 24, 2020)

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Minnesota	Yes ¹	LLC/LLP pays withholding tax on nonresident partner's distributive share of MN income at highest individual rate unless composite return filed.	For tax years beginning after 12/31/2018, \$0 to \$10,210 fee based on sum of entity's MN property, payroll, and sales. Single-member LLC not subject to fee if its income and other information is reported on the member's individual income tax return.	No
Mississippi	Yes ¹	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 ¹	LLC/LLP pays withholding tax on nonresident individual partner's distributive share of MO income at highest state rate (currently 6%) unless either nonresident consents or composite return filed.	No	Mo. Rev. Stat. § 347.010 et seq.
Montana	Yes ¹	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 MT income unless either composite return or nonresident consents filed.	No	Mont. Code Ann. § 35-8-101 et seq.
Nebraska	Yes ¹	LLC/LLP liable for income tax at highest state rate on nonresident individual partner's distributive share of NE income unless nonresident consents filed.	No	No
Nevada	No state income tax	No	Effective 7/1/2015, there is an annual commerce tax on each business entity (including LLCs and LLPs) based on the business' 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. § 86.296



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New Hampshire	Yes ¹ (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; 7.9% (for tax years ending on/after 12/31/18) on business profits (only for LLCs/LLPs with more than \$50,000 in gross business income); and 0.675% (for tax years ending on/after 12/31/18) on the "business enterprise value tax base" for LLCs/LLPs with more than \$207,000 of gross receipts from all their activities, or an enterprise value tax base exceeding \$103,000. Note: a dollar-for-dollar credit is allowed against the business profits tax for business enterprise tax paid.	No
New Jersey	Yes ¹	None, but entity-level tax on nonresident partners' distributive shares of NJ net income; entity-level tax not required if composite return filed and quarterly estimated payments made. LLCs/LLPs must make quarterly payments of 6.37% of NJ net income allocated to all <i>nonresident</i> noncorporate partners and 9% for all <i>nonresident corporate</i> partners.	\$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. S.B. 3246 passed in January 2020 and imposes elective graduated rate PTE tax and establishes elective pass-through entity business alternative income tax and allows corresponding refundable gross income tax and corporation business tax credit.	No
New Mexico	Yes ¹	LLC/LLP required to withhold tax on nonresident partner's distributive share of NM income at highest individual rate unless nonresident consents filed.	No	No
New York	Yes ¹	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. 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 NY income tax, estimated tax, and income tax return filing requirements.	LLCs/LLPs subject to annual filing fee based on NY-source gross receipts, min. \$25, max. \$4,500. Single-member LLCs that are treated as disregarded entities for federal income tax purposes are subject to a \$25 annual filing fee.	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 (Sep. 4, 1998).

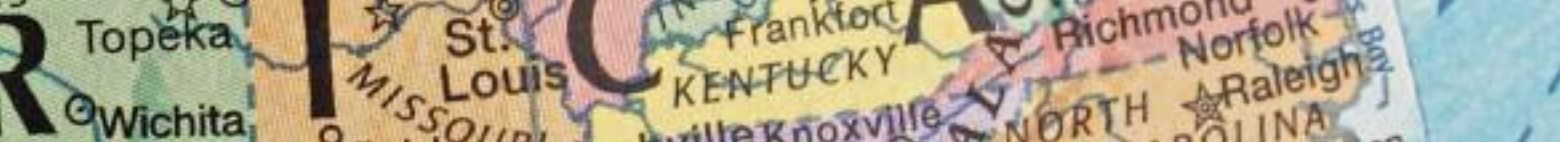


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North Carolina	Yes ¹	<p>LLC/LLP pays withholding tax on <i>individual</i> nonresident partner's distributive share of NC income at the applicable individual income tax rate.</p> <p>LLC/LLP pays withholding tax on <i>non-individual</i> nonresident partner's distributive share of NC 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 ¹	<p>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.</p>	<p>No</p> <p>(nominal annual filing fee based on number of LLP managing partners).</p>	No
Ohio	Yes ¹	<p>LLC/LLP pays 5% withholding tax on apportioned distributive shares of nonresident <i>individual</i> partners and certain trusts and a 8.5% withholding tax on apportioned distributive shares of certain <i>non-individual</i> partners after certain adjustments unless composite return or consents to jurisdiction filed.</p>	<p>For tax years beginning before 1/1/2014, franchise tax credit calculations include corporation's proportionate share amounts from any pass-through entity.</p> <p>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.</p>	No
Oklahoma	Yes ¹	<p>LLC/LLP pays 5% withholding tax on distributions to nonresident partner of OK income unless nonresident consents filed.</p> <p>Composite returns now allowed for LLC/LLP members that are certain pass-through entities.</p>	<p>LLC/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.</p> <p>LLCs are not subject to the newly reinstated OK franchise tax but must pay a \$25 annual registration fee.</p> <p>For tax years beginning on or after 1/1/2019, LLC/LLP may elect to be taxed at the entity level. The tax is calculated by multiplying each partner's distributive share by the partner's highest applicable marginal rate. H.B. 2665 (4/29/19)</p>	Okla. Stat. tit. 18, § 2054.4.
Oregon	Yes ¹	<p>LLC/LLP withholds tax on nonresident partners' distributive share of OR income computed at the highest marginal rate applicable, unless composite return or nonresident consents filed; composite return may be required in some situations.</p>	<p>LLC/LLPs are subject to a minimum privilege tax of \$150.</p>	No

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Pennsylvania	Yes ¹	LLC/LLP pays withholding tax on nonresident individual and "nonfiling corporate" partner's distributive share of PA income at the applicable income tax rate.	Prior to 2016, LLCs, except for "restricted professional companies," were subject to capital stock tax on taxable capital stock value. Professional LLCs subject to \$520/PA member/year fee; LLPs subject to \$350/PA partner/year fee.	No
Rhode Island	Yes ¹ (for withholding purposes, corporate-owned single-member LLC treated as C corporation).	LLP/LLC pays withholding tax at highest marginal rate for individuals (5.99%) or 7% for C-corporations, unless composite return filed.	\$400 tax on all LLCs (unless taxed as a corporation) and LLPs. For tax years beginning on or after 1/1/2019, LLC/LLP may elect to be taxed at the entity level at the rate of 5.99%. H. 5151 Sub. A.	No
South Carolina	Yes ¹	LLC/LLP pays 5% withholding tax on nonresident partner's distributive share of SC 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
Tennessee	Yes ¹ but LLCs subject to franchise/excise tax anyway and single-member LLCs 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 TN franchise/excise tax; all entities classified as partnerships are also subject to 5% (6% prior to 1/1/2016) dividends and interest income tax; LLC/LLPs subject to \$50/partner annual fee—min. \$300, max. \$3,000 for LLCs; \$250/\$2,500 for LLPs.	Tenn. Code Ann. §48-249-309; Tenn. Dep't of Rev. Ltr. Rul. 11-42 (Sep. 6, 2011).

EXHIBIT 1 (continued)

State Tax Treatment of Limited Liability Companies and Limited Liability Partnerships (as of April 24, 2020)

State	State Income Tax Classification of LLCs Follows Federal? ³	Nonresident Partner Withholding? ^{4, 5}	Entity-Level Tax on LLPs or LLCs? ²	Series LLC Provisions or Published Guidance? ⁶
Texas	State taxes LLCs as corporations (no state personal income tax).	No	LLPs subject to \$200/partner/year fee. 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. Effective for tax years of 2016 and 2017, the franchise tax rate is reduced to 0.375% for retailers and wholesalers and to 0.75% for all other taxpayers.	Tex. Bus. Org. Code § 101.601 et seq.; Texas Policy Ltr. Rul. 201005184L (May 5, 2010) (released Sep. 2011); <i>Franchise Tax Frequently Asked Questions</i> , Texas Office of the Comptroller, FAQ #19 (updated Jan. 6, 2014), available at http://www.window.state.tx.us/taxinfo/franchise/faq_tax_ent.html#tax_ent19 .
Utah	Yes ¹	Unless a waiver is obtained, LLC/LLP must pay or withhold 4.95% (formerly 5%) tax on the business and nonbusiness income of the pass-through entity derived from or connected with Utah sources on behalf of a nonresident pass-through entity taxpayer.	No	Utah Code Ann. §48-3a-1201 et seq.
Vermont	Yes ¹	LLC/LLP must make quarterly estimated tax payments at second lowest marginal rate on nonresident partner’s distributive share of VT income.	LLC/LLP must pay annual tax of \$250.	No
Virginia	Yes ¹	LLC/LLP must pay withholding tax of 5% of nonresident partner’s allocable share of VA income.	No	Va. Code Ann. §13.1-1088, et seq. (eff. 7/1/20)
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 ¹	LLC/LLP pays 6.5% withholding tax on nonresident partner’s distributive share of WV income unless nonresident consents filed.	Eff. 1/1/2015, the business franchise tax is no longer imposed. For prior tax years, the tax was the greater of \$50 or 0.1% of “capital” (generally, average balance of partners’ capital accounts per Form 1065).	No



EXHIBIT 1 (continued)

State Tax Treatment of Limited Liability Companies and Limited Liability Partnerships (as of April 24, 2020)

State	State Income Tax Classification of LLCs Follows Federal? ³	Nonresident Partner Withholding? ^{4, 5}	Entity-Level Tax on LLPs or LLCs? ²	Series LLC Provisions or Published Guidance? ⁶
Wisconsin	Yes	LLC/LLP pays quarterly withholding tax on nonresident shares of WI income at highest individual/corporate rate, with exemptions.	For tax years beginning on or after 1/1/2019, LLC/LLP may elect to be taxed at the entity level at the corporate tax rate of 7.9%. Act 2017-368.	No
Wyoming	No state income tax	No	No	No



¹ Indicates that the state taxing authority has publicly announced that it will follow the I.R.S. “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.

² Assumes entity is classified as a partnership for federal income tax purposes. See supplemental chart regarding net-worth or debt-based corporate franchise taxes.

³ States such as California, Delaware, Illinois, and Pennsylvania restrict the use of LLCs by banks and/or insurance companies.

⁴ “Partner” in this column and throughout the

chart means both partners of LLPs and members of LLCs unless otherwise clear based on context.

⁵ 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 pass-through entities. Thus, any income tax withholding, jurisdictional consent waivers, or composite return requirements in these states may not apply to nonresident partners of qual-

ified investments partnerships. Other states, such as Virginia, effectively exempt nonresident partners of investment partnerships from income taxation by taking the position that pass-through 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.

⁶ 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.

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EXHIBIT 2

Tax Treatment of LLCs/LLPs/LPs (“LLEs”) by States Imposing Net Worth- or Debt-Based Corporate Franchise Taxes (as of April 24, 2020)

State	Apply Franchise Tax to LLE? ²	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 §40-14A-22.
Arkansas	NO ¹	But LLCs are subject to the minimum \$150 franchise tax. Ark. Code Ann. §26-54-104(8).
Connecticut	NO ¹	
Delaware	NO ¹	
Georgia	NO	
Illinois	NO	
Kansas	NO	For tax years prior to 2011, 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 KS were \$1,000,000 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 LA franchise tax. La. DOR Rev. Rul. No. 01-013 (Oct. 1, 2001). Prior to Jan. 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); 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).
Massachusetts	NO ¹	
Mississippi	NO	
Missouri	NO	
Nebraska	NO	
New Jersey	NO	
New Mexico	NO ¹	
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. §105-114(b)(2).
Ohio	NO	
Oklahoma	NO	LLCs are exempt from franchise tax by statute. Okla. Stat. tit. 68 §1201. However, OK imposed a Business Activity Tax (“BAT”) on the “net revenue” of a taxpayer, including LLCs and LLPs, for tax years 2010, 2011, and 2012. 2012 was the last year of the BAT because OK voters approved the imposition of a property tax on intangible property. As before, LLCs are exempt from the reinstated franchise tax.
Pennsylvania	NO	Prior to 2016, all LLCs, except “restricted professional companies,” were subject to the capital stock and franchise taxes. 15 Pa. Cons. Stat. §8925.
Rhode Island	NO ¹	
South Carolina	NO	
Tennessee	YES	LLCs, LLPs, and LPs subject to franchise tax of \$0.25 per \$100 of net worth. Tenn. Code Ann. §§67-4-2105(a), 2106(a).
Texas	YES	LLCs and LLPs initially 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. §171.101. For tax years 2017-2019, 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 1/1/2015, the business franchise tax is no longer imposed. For prior tax years, the tax was the greater of \$50 or 0.1% of capital accounts. W. Va. Code §§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. §§17-16-1630(a) & 17-29-209(a).

¹ 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.

² 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.

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