

An Update on the State Tax Treatment of LLCs and LLPs

by Bruce P. Ely and William T. Thistle, II

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In this installment of From the SALT Minds, Ely and Thistle summarize the current differences in the tax treatment of limited liability companies and limited liability partnerships across the 50 states and the District of Columbia.

The accompanying tables discuss state tax considerations relating to LLCs and LLPs as of January 1, 2021, such as conformity with the federal income tax classification rules, entity-level taxes, and potential entity-level withholding or composite return requirements.

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The owners of multistate businesses must consider many factors when deciding how to structure their business ventures, and state taxation should not be overlooked. The accompanying tables can assist in that evaluation for limited liability companies and limited liability partnerships.

In recent years, LLCs and, to a lesser extent, limited partnerships and LLPs have become the popular choice for structuring or restructuring multistate business entities. According to recent IRS statistics, more than two-thirds of all subchapter K entities are now domestic (U.S.) LLCs, surpassing all other entity types for 16 consecutive years.

The accompanying tables summarize the differences in the tax treatment of LLCs and LLPs across the 50 states and the District of Columbia. The tables 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. We hope that the footnotes 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 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 Table 1 shows which states have enacted series LLCs statutes and which state taxing authorities have issued guidance on how these odd creatures are to be taxed. It reflects helpful input from the American Institute of CPAs State & Local Tax Technical Resource Panel and from many state revenue authorities, for which we are thankful.

In September 2010 the U.S. Treasury Department issued helpful proposed regulations explaining how a series LLC would be treated for

federal income tax purposes.¹ We hope that Treasury will issue final series LLC regulations this year, although this project has been downgraded several times, most recently by the need for numerous regulations and other guidance after the Tax Cuts and Jobs Act of 2017 and more recent tax stimulus legislation. Once the regs are finalized, we anticipate that several states will enact legislation authorizing the formation or qualification of series LLCs, and that many 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 table lists the handful of states that have grown impatient and enacted series LLC legislation despite the lack of official guidance. We anticipate the introduction of series LLC bills in several state legislatures this spring.

PTE Taxes as SALT Cap Workarounds – Now Will They Work?

The latest version of Table 1 includes the seven states that, since the last update, have enacted passthrough entity level income taxes in response to the TCJA’s \$10,000 limitation on state and local tax deductions by individual taxpayers.² Connecticut was the first state to enact legislation expressly designed to use PTEs as an indirect means to circumvent the so-called SALT cap.³ Retroactive to tax years beginning on or after January 1, 2018, LLCs and LLPs are subject to a 6.99 percent PTE tax on their net income. Connecticut’s tax mandates that PTEs pay the income tax at the entity level.⁴ The owners of the PTE receive a not quite corresponding credit (now reduced to 87.5 percent) against their Connecticut income tax liability.

¹ See Prop. Treas. reg. sections 301.6011-6, 301.6071-2, and 301.7701-1(a)(5), and amending sections 301.7701-1(e) and (f). For an 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. Mult. Tax’n* 8 (Jan. 2011).

² See IRC section 164(b)(6).

³ See Amy Hamilton, “Danger Ahead? IRS Greenlights Passthrough Workaround to SALT Cap,” *Tax Notes State*, Nov. 16, 2020, p. 745.

⁴ Public Act No. 18-49.

Wisconsin was the second state to enact an avowed SALT cap workaround in a PTE tax.⁵ For tax years beginning on or after January 1, 2019, some PTEs may *elect* to be taxed at the entity level, at the corporate tax rate of 7.9 percent. As the accompanying tables indicate, six other states have followed suit, each with an elective (versus a Connecticut-style mandatory) PTE tax regime: Wisconsin, Oklahoma, Louisiana, Rhode Island, New Jersey, and most recently, Maryland. Unfortunately, no two PTE tax snowflakes are alike.

A similar elective workaround bill (S.B. 1170) passed Michigan’s House of Representatives and Senate but was vetoed by then-Gov. Rick Snyder on December 28, 2018, with a warning of a likely IRS challenge if the bill were enacted. Former California Gov. Jerry Brown also vetoed a bill in 2018 designed to circumvent the federal SALT deduction cap by a different means. In March 2019 Michigan Gov. Gretchen Whitmer (D) introduced her own version of a PTE tax, H.B. 4781, but this version was mandatory, and (we understand) partly because of the lack of the option, the bill eventually died.

Other state legislatures that considered PTE tax legislation in 2020 and will likely reconsider it this year include Alabama, Arkansas, Minnesota, and New York. Earlier this year, California Gov. Gavin Newsom (D) announced tax incentive and relief proposals that, among other things, included a SALT cap workaround for S corporations (but not LLCs or partnerships). That bill is now S.B. 104. The New York legislation is now S. 2509/A. 3009. The Massachusetts legislation is included in the governor’s budget proposal as section 28. We expect several other state legislatures to consider PTE tax legislation this year, even though prospects of an early repeal, or more likely an increased SALT cap, are greater considering the different composition of the Congress as of January 20, 2021.

The driving force behind these recent state legislative efforts is largely the issuance of IRS Notice 2020-75⁶ in early November 2020, in which

⁵ Act 2017-368 (Dec. 14, 2018).

⁶ 2020-49 IRB 1 (Nov. 9, 2020).

the IRS announced its intention to issue regulations providing guidance supporting partnerships and S corporations deducting amounts qualifying as “specified income tax payments,” that is, PTE tax liabilities imposed by a state, political subdivision of a state, or the District of Columbia. The deduction will be available to partnerships and S corporations in computing their non-separately stated income or loss, regardless of whether the liability is the result of an election by the entity, or whether the partners or shareholders receive a partial or full deduction, exclusion, credit, or other tax benefit

based on their share of the amount of tax paid by the entity.⁷

Table 2 lists the states that impose a net worth-based or debt-based corporate franchise tax, and which of those states either statutorily subject LLCs, LPs, or LLPs to that tax or exempt them, also as of January 1, 2021.

While we hope these tables are a useful research tool, they are clearly only a starting point. They should *not* be relied on as a definitive source of information. And we always welcome statutory or administrative updates.

⁷For a thoughtful discussion of IRS Notice 2020-75, see Steven N.J. Wlodychak, “IRS Just Raised State Taxes for Multistate Passthrough Entity Owners,” *Tax Notes State*, Dec. 14, 2020, p. 1159.

Table 1. State Tax Treatment of LLCs and LLPs (as of Jan. 1, 2021)

State	State Income Tax Classification of LLCs Follows Federal? ^c	Nonresident Partner Withholding? ^{d,e}	Entity-Level Tax on LLPs or LLCs? ^b	Series LLC Provisions or Published Guidance? ^f
Alabama	Yes ^a	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.
Alaska	Yes	No	No	No
Arizona	Yes ^a	No. However, the Arizona Department of Revenue will accept composite returns and estimated payments for nonresident individuals if requirements are met.	No	No
Arkansas	Yes ^a	LLC/LLP withholds 6.9% 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 (\$150).	No

Table 1. State Tax Treatment of LLCs and LLPs (as of Jan. 1, 2021) (Continued)

State	State Income Tax Classification of LLCs Follows Federal? ^c	Nonresident Partner Withholding? ^{d,e}	Entity-Level Tax on LLPs or LLCs? ^b	Series LLC Provisions or Published Guidance? ^f
California	Yes ^a	LLC/LLP pays tax on nonresident partner's distributive share of California income (for U.S. partners) unless nonresident consents filed; if consents filed, still must withhold, but may request waiver from the state.	Annual \$800 minimum franchise tax on all LLCs/LLPs, and gross receipts tax ranging from \$900 to \$11,790 on LLCs.	No series LLC provision; <i>but see</i> : (1) California FTB Tax News, (Vol. 06-2, Mar./Apr. 2006), p. 3; (2) California 2014 Form 568, "Limited Liability Company Tax Booklet (Forms and Instructions)," section F, p. 8 (Series LLCs); (3) California FTB Tax News, (Oct. 2011), p. 4; and (4) California FTB Pub. 3556 LLC MEO (Rev. Jan. 2015): Limited Liability Company Filing Information (noting that California considers each series in a series LLC to be a separate LLC for annual tax and LLC fee purposes).
Colorado	Yes, ^a but not for purposes of classifying 80-20 companies. <i>See Agilent Technologies Inc. v. Department of Revenue</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 Colorado-source income unless nonresident consents filed.	No	No
Connecticut	Yes ^a	LLC/LLP pays tax on nonresident noncorporate partner's distributive share of Connecticut-source income at highest marginal rate if the partner has greater than \$1,000 in state-sourced income. For taxable years beginning on or after Jan. 1, 2018, LLC/LLP makes estimated payments of the PTE tax in lieu of composite payments.	LLCs/LLPs subject to annual business entity tax of \$250. The tax is eliminated beginning Jan. 1, 2020. For taxable years beginning on or after Jan. 1, 2018, LLCs/LLPs are subject to 6.99% PTE tax on their net income (partners receive partial credit).	No

Table 1. State Tax Treatment of LLCs and LLPs (as of Jan. 1, 2021) (Continued)

State	State Income Tax Classification of LLCs Follows Federal? ^c	Nonresident Partner Withholding? ^{d,e}	Entity-Level Tax on LLPs or LLCs? ^b	Series LLC Provisions or Published Guidance? ^f
Delaware	Yes ^a	No	LLCs/LLPs subject to \$300 tax per year; LLPs subject to \$200/partner/year fee with \$120,000 cap.	Del. Code Ann. title 6, section 18-215.
District of Columbia	Yes ^a	No	9.2% 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 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. section 29-802.06.
Florida	Yes ^a (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) and Fla. Rev. Stat. section 605.0902(3).
Georgia	Yes ^a	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

Table 1. State Tax Treatment of LLCs and LLPs (as of Jan. 1, 2021) (Continued)

State	State Income Tax Classification of LLCs Follows Federal? ^c	Nonresident Partner Withholding? ^{d,e}	Entity-Level Tax on LLPs or LLCs? ^b	Series LLC Provisions or Published Guidance? ^f
Hawaii	Yes ^a	Withholding is required at the highest marginal rate applicable to the nonresident partner (effective July 2, 2019, for tax years beginning on or after Jan. 1, 2019, but delayed indefinitely by the Hawaii Department of Taxation).	No	No
Idaho	Yes ^a	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
Illinois	Yes ^a	<p>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.</p> <p>Nonresidents whose Illinois income tax liability is fully paid by passthrough withholding are not required to file an Illinois income tax return.</p> <p>For tax years ending on or after Dec. 31, 2014, composite returns are no longer permitted.</p>	<p>Replacement income tax of 1.5% 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>	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 LLCs and LLPs (as of Jan. 1, 2021) (Continued)

State	State Income Tax Classification of LLCs Follows Federal? ^c	Nonresident Partner Withholding? ^{d,e}	Entity-Level Tax on LLPs or LLCs? ^b	Series LLC Provisions or Published Guidance? ^f
Indiana	Yes ^a	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 (eff. Jan. 1, 2017).
Iowa	Yes ^a	LLC/LLP pays 5% withholding tax on nonresident partner's distributive share of Iowa income unless certificate of release obtained from DOR and estimated tax paid by nonresident partner.	No	Iowa Code section 489.1201 (eff. July 1, 2020, Iowa Code section 489.12901). Effective July 1, 2020, Iowa provides for a protected series of a series LLC. See Iowa Code section 489.12401 et seq.
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 PTEs 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 were \$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 the state through its ownership interest in a PTE.	LLCs/LLPs with gross receipts or profits of \$3 million or more are 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. (providing that a statutory trust may establish one or more series).

Table 1. State Tax Treatment of LLCs and LLPs (as of Jan. 1, 2021) (Continued)

State	State Income Tax Classification of LLCs Follows Federal? ^c	Nonresident Partner Withholding? ^{d,e}	Entity-Level Tax on LLPs or LLCs? ^b	Series LLC Provisions or Published Guidance? ^f
Louisiana	State classification follows federal classification of LLC but only regarding corporate income tax, not franchise tax ^a (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.	For tax years beginning on or after Jan. 1, 2019, LLC/LLP may elect to be taxed at the entity level as a C corporation for Louisiana income tax purposes.	No
Maine	Yes ^a	LLC/LLP pays quarterly withholding tax on nonresident partner's proportionate share of Maine income at highest applicable state rate (provided that the member's share of entity's state-sourced income is \$1,000 or more), unless composite return filed or 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 ^a	LLC/LLP pays tax on nonresident partner's distributive share of Maryland 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 or after Jan. 1, 2020, LLC/LLP may elect to be taxed at the entity level at the rate of 5.75%.	No

Table 1. State Tax Treatment of LLCs and LLPs (as of Jan. 1, 2021) (Continued)

State	State Income Tax Classification of LLCs Follows Federal? ^c	Nonresident Partner Withholding? ^{d,e}	Entity-Level Tax on LLPs or LLCs? ^b	Series LLC Provisions or Published Guidance? ^f
Massachusetts	Yes, ^a 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 exemptions apply.	No	No series LLC provision; <i>but see</i> Massachusetts DOR Ltr. Rul. 08-2 (Feb. 15, 2008).
Michigan	Yes ^a	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 exemptions apply; withholding may apply to some 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.	For 2008-2011, 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 ^a	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, 2018, \$0 to \$10,210 fee based on sum of entity's Minnesota property, payroll, and sales. 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 LLCs and LLPs (as of Jan. 1, 2021) (Continued)

State	State Income Tax Classification of LLCs Follows Federal? ^c	Nonresident Partner Withholding? ^{d,e}	Entity-Level Tax on LLPs or LLCs? ^b	Series LLC Provisions or Published Guidance? ^f
Mississippi	Yes ^a	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 ^a	LLC/LLP pays withholding tax on nonresident individual partner's distributive share of Missouri income at highest state rate (6%), unless either nonresident consents or composite return filed.	No	Mo. Rev. Stat. section 347.010 et seq.
Montana	Yes ^a	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 ^a	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 LLCs and LLPs (as of Jan. 1, 2021) (Continued)

State	State Income Tax Classification of LLCs Follows Federal? ^c	Nonresident Partner Withholding? ^{d,e}	Entity-Level Tax on LLPs or LLCs? ^b	Series LLC Provisions or Published Guidance? ^f
New Hampshire	Yes ^a (conforms to check-the-box regs but only regarding 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 or after Dec. 31, 2018) on business profits (only for LLCs/LLPs with more than \$50,000 in gross business income); and 0.675% (for tax years ending on or after Dec. 31, 2018) 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. A dollar-for-dollar credit is allowed against the business profits tax for business enterprise tax paid.	No
New Jersey	Yes ^a	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. LLCs/LLPs must make quarterly payments of 6.37% of New Jersey net income allocated to all nonresident <i>noncorporate</i> partners and 9% for all nonresident <i>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 fewer than three partners. Elective business alternative income tax applies to tax years beginning on or after Jan. 1, 2020 (graduated rate up to 10%).	No
New Mexico	Yes ^a	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 LLCs and LLPs (as of Jan. 1, 2021) (Continued)

State	State Income Tax Classification of LLCs Follows Federal? ^c	Nonresident Partner Withholding? ^{d,e}	Entity-Level Tax on LLPs or LLCs? ^b	Series LLC Provisions or Published Guidance? ^f
New York	Yes ^a	<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 state 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 — minimum \$25 and maximum \$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 Department of Taxation and Finance (Sept. 4, 1998).
North Carolina	Yes ^a	<p>LLC/LLP pays withholding tax on <i>individual</i> nonresident partner's distributive share of North Carolina 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 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 ^a	LLC/LLP pays withholding tax on distributions to nonresident partners — if 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 LLCs and LLPs (as of Jan. 1, 2021) (Continued)

State	State Income Tax Classification of LLCs Follows Federal? ^c	Nonresident Partner Withholding? ^{d,e}	Entity-Level Tax on LLPs or LLCs? ^b	Series LLC Provisions or Published Guidance? ^f
Ohio	Yes ^a	LLC/LLP pays 5% withholding tax on apportioned distributive shares of nonresident <i>individual</i> partners and some trusts and an 8.5% withholding tax on apportioned distributive shares of some <i>non-individual</i> partners after 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 PTE. 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 over \$1 million.	No
Oklahoma	Yes ^a	LLC/LLP pays 5% withholding tax on distributions to nonresident partner of Oklahoma income unless nonresident consents filed. Composite returns now allowed for LLC/LLP members that are some PTEs.	LLC/LLPs were subject to business activity tax of \$25 plus 1% of net revenue, but for tax years 2010-2012, BAT liability was tied to the amount of the taxpayer's 2009 franchise tax liability. 2012 was the final year of BAT. LLCs are not subject to the newly reinstated Oklahoma franchise tax but must pay a \$25 annual registration fee. For tax years beginning on or after Jan. 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.	Okla. Stat. title 18, section 2054.4.
Oregon	Yes ^a	LLC/LLP withholds tax on nonresident partners' distributive share of Oregon income computed at the highest applicable marginal rate, unless composite return or nonresident consents filed; composite return may be required in some situations.	LLC/LLPs are subject to a minimum privilege tax of \$150.	No

Table 1. State Tax Treatment of LLCs and LLPs (as of Jan. 1, 2021) (Continued)

State	State Income Tax Classification of LLCs Follows Federal? ^c	Nonresident Partner Withholding? ^{d,e}	Entity-Level Tax on LLPs or LLCs? ^b	Series LLC Provisions or Published Guidance? ^f
Pennsylvania	Yes ^a	LLC/LLP pays withholding tax on nonresident individual and "nonfiling corporate" partner's distributive share of Pennsylvania income at the applicable income tax rate.	Before 2016, LLCs, except for restricted professional companies, were subject to capital stock tax on taxable capital stock value. Professional LLCs subject to annual fee of \$520 per Pennsylvania member; LLPs subject to annual fee of \$350 per Pennsylvania partner.	No
Rhode Island	Yes ^a (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 Jan. 1, 2019, LLC/LLP may elect to be taxed at the entity level at the rate of 5.99%.	No
South Carolina	Yes ^a	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

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Table 1. State Tax Treatment of LLCs and LLPs (as of Jan. 1, 2021) (Continued)

State	State Income Tax Classification of LLCs Follows Federal? ^c	Nonresident Partner Withholding? ^{d,e}	Entity-Level Tax on LLPs or LLCs? ^b	Series LLC Provisions or Published Guidance? ^f
Tennessee	Yes, ^a but LLCs subject to franchise/excise tax 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 (minimum tax of \$100) and (2) 6.5% of net earnings. Corporate member of disregarded SMLLC subject to franchise/excise tax; all entities classified as partnerships are also subject to 5% (6% before Jan. 1, 2016) dividends and interest income tax; LLC/LLPs subject to \$50/partner annual fee — minimum \$300, maximum \$3,000 for LLCs and \$250/\$2,500 for LLPs.	Tenn. Code Ann. section 48-249-309; Tennessee DOR Ltr. Rul. 11-42 (Sept. 6, 2011).
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.	Tex. Bus. Org. Code section 101.601 et seq.; Texas Policy Ltr. Rul. 201005184L (May 5, 2010) (released Sept. 2011); Franchise Tax FAQs, Texas Office of the Comptroller, FAQ #19 (updated Jan. 6, 2014).
Utah	Yes ^a	Unless a waiver is obtained, LLC/LLP must pay or withhold 4.95% (formerly 5%) tax on the business and nonbusiness income of the PTE derived from or connected with Utah sources on behalf of a nonresident PTE taxpayer.	No	Utah Code Ann. section 48-3a-1201 et seq.
Vermont	Yes ^a	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

Table 1. State Tax Treatment of LLCs and LLPs (as of Jan. 1, 2021) (Continued)

State	State Income Tax Classification of LLCs Follows Federal? ^c	Nonresident Partner Withholding? ^{d,e}	Entity-Level Tax on LLPs or LLCs? ^b	Series LLC Provisions or Published Guidance? ^f
Virginia	Yes ^a	LLC/LLP must pay withholding tax of 5% of nonresident partner's allocable share of Virginia income.	No	Va. Code Ann. section 13.1-1088, et seq. (eff. July 1, 2020).
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 ^a	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% 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.	For tax years beginning on or after Jan. 1, 2019, LLC/LLP may elect to be taxed at the entity level at the corporate tax rate of 7.9% with the consent of the majority of owners.	No
Wyoming	No state income tax.	No	No	No

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Table 1. State Tax Treatment of LLCs and LLPs (as of Jan. 1, 2021) (Continued)

State	State Income Tax Classification of LLCs Follows Federal? ^c	Nonresident Partner Withholding? ^{d,e}	Entity-Level Tax on LLPs or LLCs? ^b	Series LLC Provisions or Published Guidance? ^f
<p>^aIndicates that the state taxing authority has publicly announced 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. 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>^bAssumes entity is classified as a partnership for federal income tax purposes. See Table 2 regarding net worth-based or debt-based corporate franchise taxes.</p>				
<p>^cStates such as California, Delaware, Illinois, and Pennsylvania restrict the use of LLCs by banks and insurance companies.</p>				
<p>^d“Partner” in this column and throughout the table means both partners of LLPs and members of LLCs unless otherwise clear based on the context.</p>				
<p>^eThe 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 nonresident partner’s state of domicile. Massachusetts statutorily exempts nonresident limited partners of some investment LPs but not other PTEs. Thus, any income tax withholding, jurisdictional consent waivers, or composite return requirements in these states may not apply to nonresident partners of QIPs. Other states, such as Virginia, effectively exempt nonresident partners of investment partnerships from income taxation by taking the position that PTEs 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>^fSeveral states, e.g., Wisconsin, Minnesota, and North Dakota, have language in their LLC statutes regarding “classes” and “series” of membership interests, but no provisions for the layers or “firewalls” of protection in the typical series LLC act. Puerto Rico has enacted a series LLC statute. Each year, there are series LLC bills pending in multiple state legislatures.</p>				

Table 2. Tax Treatment of LLCs/LLPs/LPs (LLEs) by States Imposing Net Worth-Based or Debt-Based Corporate Franchise Taxes (as of Jan. 1, 2021)

State	Apply Franchise Tax to LLE? ^b	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 minimum and \$15,000 maximum (generally). Family limited liability entities (LLEs) subject to \$500 cap. Ala. Code section 40-14A-22.
Arkansas	No ^a	But LLCs are subject to the minimum \$150 franchise tax. Ark. Code Ann. section 2654104(8).
Connecticut	No ^a	
Delaware	No ^a	
Georgia	No	
Illinois	No	
Kansas	No	For tax years before 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 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). Before 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 ^a	
Mississippi	No	
Missouri	No	
Nebraska	No	
New Jersey	No	
New Mexico	No ^a	
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	
Oklahoma	No	LLCs are exempt from franchise tax by statute. Okla. Stat. title 68, section 1201. However, Oklahoma imposed a BAT on the net revenue of a taxpayer, including LLCs and LLPs, for tax years 2010-2012. 2012 was the last year of the BAT because voters approved the imposition of a property tax on intangible property. As before, LLCs are exempt from the reinstated franchise tax.

Table 2. Tax Treatment of LLCs/LLPs/LPs (LLEs) by States Imposing Net Worth-Based or Debt-Based Corporate Franchise Taxes (as of Jan. 1, 2021) (Continued)

State	Apply Franchise Tax to LLE? ^b	Note:
Pennsylvania	No	Before 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 ^a	
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 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. section 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 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% 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).
^a Several states impose a de minimis (for example, \$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. ^b As a general rule, states that follow the federal income tax classification guidelines for LLEs will impose a net worth-based or debt-based franchise tax only on those LLEs treated as C corporations.		

