

NEW YORK TAX STATUS OF LIMITED LIABILITY COMPANIES AND LIMITED LIABILITY PARTNERSHIPS



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NOTE: A Publication is an informational document that addresses a particular topic of interest to taxpayers. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in Department policies could affect the validity of the information contained in a publication. Publications are updated regularly and are accurate on the date issued.

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Introduction

This publication is a basic guide for tax professionals and members of limited liability companies (LLCs) and limited liability partnerships (LLPs) and generally applies to tax years beginning after 2007. For general information on doing business in New York State, see Publication 20, *New York State Tax Guide for New Businesses*.

Taxpayers who have tax questions not addressed in this publication should contact the New York State Tax Department. See page 14 for Web site addresses and phone numbers for New York State, New York City, and Internal Revenue Service (IRS) assistance.

For updates and additional information on New York State tax matters that may affect your business or to access publications, TSB-M's (technical memorandums), Important Notices, Advisory Opinions, and Guidances issued by the Tax Department, visit our Web site (www.nystax.gov).

General

New York State Law allows for the formation of limited liability companies (LLCs) and limited liability partnerships (LLPs) in New York State (domestic LLCs or LLPs). In addition, New York State recognizes LLCs and LLPs formed under the laws of other states and foreign countries (foreign LLCs and LLPs).

A *limited liability company* (LLC) is an unincorporated organization of one or more members, each having limited liability for the contractual and other liabilities of the company, formed for any lawful business purpose under the Limited Liability Company Law of New York State or any other jurisdiction.

A *limited liability partnership* (LLP) is a partnership that provides professional services and has registered as a limited liability partnership under Article 8-B of the Partnership Law of New York State or under the laws of another jurisdiction.

Certain investment companies that are established and regulated under Article 12 of the New York State Banking Law are given the option to organize as limited liability investment companies (LLICs). The LLIC option is available only to Article 12 investment companies that serve as holding companies for foreign banking operations. Also, certain trust companies that are established and regulated under section 102-a of Article 3 of the New York State Banking Law are able to organize as limited liability trust companies (LLTCs). The LLTC option is available only to Article 3 trust companies that do not receive deposits from the general public and are exempt from obtaining insurance on deposits and share accounts. LLICs and LLTCs are also governed by certain provisions of the New York State Banking Law (Chapter 2 of the Consolidated Laws). Throughout this publication, the term *limited liability company*

(LLC) includes a limited liability investment company and limited liability trust company.

Formation of LLCs and LLPs

The formation of a domestic LLC is governed by the New York Limited Liability Company Law. The formation of a domestic LLP is governed by Article 8-B of the New York Partnership Law. Both domestic LLCs and LLPs are required to register with the New York State Department of State. In addition, foreign LLCs and LLPs that wish to carry on or conduct business or other activities in New York State must also register with the Department of State.

Taxpayers who have questions concerning the formation or registration of an LLC or LLP should visit the Department of State Web site (www.dos.state.ny.us) or call (518) 473-2492. You may also write to:

Department of State
One Commerce Plaza
99 Washington Avenue
Suite 600
Albany, NY 12231-0001

Note: A foreign LLC or LLP that conducts business or other activities in New York State is not relieved of its obligation to apply for Tax Department registrations and licenses, to file tax returns, and, if applicable, to pay the annual filing fee and/or to make estimated tax payments on behalf of certain partners, simply because it fails to register with the Department of State.

LLC/LLP Request for Information

The Tax Department does not administer the formation or registration process described above. After the LLC or LLP is registered with the Department of State, the Tax Department will send the LLC or LLP a questionnaire, *LLC/LLP Request for Information*. It is very important that the questionnaire be filled out and returned to the Tax Department. The Tax Department will use this information to establish the business account information.

Tax treatment of LLCs and LLPs

The New York personal income tax and the corporate franchise tax conform to the federal income tax classification of LLCs and LLPs. Accordingly, an LLC or LLP that is treated as a partnership for federal income tax purposes will be treated as a partnership for New York tax purposes. An LLC or LLP that is treated as a corporation, including an S corporation, for federal income tax purposes will be treated as a corporation for New York tax purposes or as a New York S corporation if the New York S election is made.

A single-member LLC (SMLLC) may choose to be taxed as a corporation, including an S corporation, or to be disregarded as an entity for federal income tax purposes. If the LLC is disregarded and the single

member is an individual, the LLC will be treated as a sole proprietorship for New York tax purposes. If the LLC is disregarded and the single member is a corporation, including an S corporation, the LLC will be considered part of the corporation for New York tax purposes.

Sole proprietorships and partnerships are subject to the personal income tax law, rules, and regulations. An LLC or an LLP treated as a **partnership** for New York tax purposes may be required to file Form IT-204, *Partnership Return*. It may also be subject to the annual filing fee, and may be required to make estimated tax payments on behalf of certain nonresident partners. For more information, see the instructions for Form IT-204.

An LLC or LLP that is treated as a C corporation for federal income tax purposes or that has elected both federal and New York State S corporation status must file a New York State corporation franchise tax return. For general information on filing requirements for corporations, see Form CT-3/4-I, *Instructions for Forms CT-4, CT-3, and CT-3-ATT, General Business Corporation Franchise Tax Returns*, or Form CT-3-S-I, *Instructions for Forms CT-3-S and CT-3-S-ATT New York S Corporation Franchise Tax Return and Attachment*.

New York City taxes

Information regarding the tax treatment of an LLC or LLP for purposes of the New York City General Corporation Tax (GCT) and the New York City Unincorporated Business Tax (UBT) is provided in the New York City Department of Finance Memorandum 99-1. This memorandum is available on the NYC Department of Finance Web site at www.nyc.gov/finance or by calling the Business Income and Excise Tax Customer Assistance line at (212) 504-4036.

LLC/LLP filing fee

Every domestic or foreign LLC or LLP that is treated as a partnership for federal income tax purposes, and every LLC that is a disregarded entity for federal income tax purposes, that has any income, gain, loss, or deduction derived from New York sources is subject to an annual filing fee. An LLC that elects to be treated as a corporation, including an S corporation, for federal income tax purposes is not subject to the filing fee. An LLC or LLP that owes the filing fee must file Form IT-204-LL.

An LLC or LLP that has no income, gain, loss, or deduction derived from New York sources is not subject to the filing fee, and is not required to file Form IT-204-LL. Accordingly, an LLC or LLP that has no income, gain, loss, or deduction from New York sources who is filing a partnership return solely because it has a New York resident partner, is formed under the laws of New York State, or is dormant, is not subject to the filing fee and is not required to file Form IT-204-LL.

New York source income includes **all** of the following:

- Income attributable to the ownership of any interest in real property or tangible personal property located in New York State.

Effective May 7, 2009, New York source income includes the gain (or loss) from a nonresident taxpayer's sale or exchange of an interest in a partnership, LLC, S corporation, or non-publicly traded C corporation with 100 or fewer shareholders (hereinafter the *entity*) where the entity owns real property located in New York State that has a fair market value that equals or exceeds 50% of the assets of the entity as of the date of the sale or exchange. For more information, see TSB-M-09(5)I, *Amendment to the Definition of New York source Income of a Nonresident Individual*.

- Income attributable to intangible personal property to the extent that the property is used in a business, trade, profession, or occupation carried on in New York State.
- Income attributable to a business, trade, profession, or occupation carried on in New York State.
- Winnings from a wager placed with the New York State Lottery if the proceeds exceed \$5,000.
- Any gain from the sale, transfer, or other disposition of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold when the real property comprising the units of such cooperative housing corporation is located in New York State, whether or not connected with a business.

A LLC or LLP carries on a business, trade, profession, or occupation within New York State if:

- it maintains or operates an office, a shop, a store, a warehouse, a factory, an agency, or other place in New York State where its affairs are systematically and regularly carried on; **or**
- it performs a series of acts or transactions in New York State with regularity and continuity for livelihood or profit, as distinguished from isolated or incidental transactions.

The annual filing fee applies to each tax year of the LLC or LLP. For purposes of the filing fee, the New York tax year of the LLC or LLP is always the same as its tax year for federal income tax purposes. There is no proration of the filing fee if the LLC or LLP has a short tax year for federal income tax purposes.

Amount of the filing fee

The amount of the filing fee for LLCs and LLPs that are treated as partnerships for federal income tax purposes is based on the New York source gross income of the LLC or LLP. LLCs that are disregarded entities for federal income tax purposes will owe the minimum fee of \$25.00. No tax credits may be applied against the filing fee.

The New York source gross income is calculated for the tax year immediately preceding the tax year for which the fee is due. If the LLC or LLP does not have any New York source gross income for the tax year immediately preceding the tax year for which the fee is due, the LLC or LLP will owe the minimum filing fee of \$25.00.

New York source gross income is the sum of the partner's or member's shares of federal gross income from the LLP or LLC derived from or connected with New York sources, determined in accordance with the provisions of section 631 of the Tax Law (relating to New York source income), as if those provisions and any related provisions expressly referred to a computation of federal gross income from New York sources. For purposes of this section, federal gross income is computed under section 61 of the Internal Revenue Code, but there will be no allowance or deduction for cost of goods sold.

For more information on computing New York source gross income, see Form IT-204-LL and the instructions for Form IT-204-LL.

The amount of the filing fee is determined in accordance with the following table:

If the New York source gross income is:	The fee is:
not more than \$100,000	\$ 25
more than \$100,000 but not over \$250,000	50
more than \$250,000 but not over \$500,000	175
more than \$500,000 but not over \$1,000,000	500
more than \$1,000,000 but not over \$5,000,000	1,500
more than \$5,000,000 but not over \$25,000,000	3,000
more than \$25,000,000	4,500

Payment of the filing fee

Every LLC and LLP subject to the filing fee must file Form IT-204-LL on or before the 30th day following the last day of the tax year, with full remittance of any filing fee due. There is no extension of time to file Form IT-204-LL or to pay the annual fee. If the LLC or LLP fails to pay the full amount of the filing fee by the due date of Form IT-204-LL, it may be subject to penalties and interest.

**Registrations,
licenses, etc.**

A new business that is an LLC or LLP, or an existing business converting to an LLC or LLP, may have registration, permitting, and bonding responsibilities for taxes administered by the Tax Department. For general information, see Publication 20, *New York State Tax Guide for New Businesses*. In addition, the following information applies to LLCs and LLPs.

**Converting an
existing partnership
or professional
partnership**

If an existing **partnership** becomes an LLC through a conversion agreement under section 1006 of the Limited Liability Company Law, there generally is no need to obtain new registrations, licenses, or permits required by the Tax Law. Also, when an existing professional partnership registers with the Secretary of State as an LLP, there is no need to cancel any existing registrations, licenses, or permits, and reapply for new ones. In either case, however, the LLC/LLP should complete the *LLC/LLP Request for Information* form and return it to the Tax Department. The information will be used by the Tax Department to reflect the LLC/LLP status and update business account information.

Exception: For purposes of the taxes imposed under Tax Law Articles 12-A (Tax on Gasoline and Similar Motor Fuel), 13-A (Tax on Petroleum Businesses), 18 (Taxes on Alcoholic Beverages), 20 (Taxes on Cigarettes and Tobacco Products), 21 (Highway Use Tax), and 21-A (Tax on Fuel Use), any addition or substitution of a partner of the registrant requires a new registration. For example, if there is an addition or substitution of a partner in the conversion to an LLC, the LLC must apply on its own behalf for any registrations, licenses or permits required under these Articles.

If a partnership was required to file a bond or other security with the Tax Department, a rider or other documentation demonstrating the continued application of the bond to the LLC must be executed and submitted as an addendum to the bond or other security.

If business assets are transferred to an LLC from a partnership required to collect sales and use tax, the LLC must file Form AU-196.10, *Notification of Sale, Transfer, or Assignment in Bulk*, with the Tax Department. For more information, see Publication 750, *A Guide to Sales Tax in New York State*

If a partnership which owns an interest in real property changes ownership in connection with the conversion to an LLC, the real estate transfer tax (Article 31 of the Tax Law) may be incurred. For more information, see Form TP-584, *Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax*, and the instructions for Form TP-584.

Changing an existing sole proprietorship or corporation

When a sole proprietorship or corporation will be going out of existence as a result of the formation of an LLC, the sole proprietor or corporation has certain tax obligations to fulfill with the Tax Department. The sole proprietor or corporation must file final business tax returns, pay any taxes or fees due, and surrender all certificates of registration, permits, and licenses it obtained.

The newly formed LLC must apply for any registrations, licenses, or permits required by the Tax Law. These will not be transferred from the sole proprietorship or corporation to the LLC. In most cases, the new LLC cannot legally engage in business until the appropriate registrations, permits, etc., have been obtained from the Tax Department. Therefore, this must be taken into account when planning the change from an existing business to an LLC.

Additionally, when a New York corporation changes to an LLC, the corporation must formally dissolve to avoid further New York State corporate tax liability. If the business is a foreign corporation authorized to do business in New York, it must surrender its authority to do business in New York to avoid further New York State corporate tax liability. For more information call the Corporation Dissolution Unit at (518) 485-2639 (in-state callers without free long distance, call 1 800 327-9688).

If business assets are transferred to an LLC from a sole proprietor or corporation required to collect sales and use tax, the LLC must file a Form AU-196.10, *Notification of Sale, Transfer, or Assignment in Bulk*, with the Tax Department. For more information, see Publication 750, *A Guide to Sales Tax in New York State*.

If an ownership interest in real property is transferred by a sole proprietor or a corporation in exchange for an ownership interest in an LLC, the real estate transfer tax (Article 31 of the Tax Law) may be incurred. For more information, see Form TP-584, *Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax*, and the instructions for Form TP-584.

Business incentives

New York State offers a number of significant tax incentives designed to enhance economic development, stimulate capital investment, and encourage revitalization of distressed areas. Several initiatives have been enacted or enhanced over the past few years. These include tax credits for emerging technology companies, farmers, and the film and television production industry. Additionally, several tax credits are available that will encourage business owners in promoting environmental issues.

The broad range of tax credits available to businesses underscores the state's commitment to attract and foster growth in the business community. These credits provide significant tax relief to businesses to

encourage job creation and to ensure competitiveness in a global marketplace.

For more information on income tax credits available to businesses, see Publication 99-B, *General Information on New York State and New York City Income Tax Credits for Businesses*.

Terminating business

If an LLC or LLP will be going out of existence, there are certain obligations to fulfill. The business must file final tax returns and pay any taxes or fees due to the Tax Department. It must also surrender all certificates of registration, permits and licenses it obtained from the Tax Department. In addition, the LLC or LLP should also terminate its registration with the Department of State.

Note: Effective for tax years beginning on or after January 1, 2006, Tax Law section 209.8 provides an exemption for certain domestic business corporations from the Article 9-A tax measured by the fixed dollar minimum. Under this exemption, a domestic corporation that is no longer doing business, employing capital, or owning or leasing property in this state is exempt from the fixed dollar minimum tax for tax years following its final tax year under certain conditions. For more information, see TSB-M-06(5)C, *Certain Domestic Business Corporations Exempt from the Article 9-A Fixed Dollar Minimum Tax*.

New York State publications and tax forms

New York State forms and publications can be accessed on the Tax Department Web site (www.nystax.gov). In addition, the Tax Department provides an automated forms ordering system. If you have access to a fax machine, you may order many forms and other documents from a touch-tone telephone, 24 hours a day, 7 days a week by calling toll free 1 800 748-3676. You may also request most of the documents listed below by calling (518) 457-5431 (in-state callers without free long distance, call 1 800 462-8100).

The following is a list of publications and tax forms referred to in this publication:

- Publication 20, *New York State Tax Guide for New Businesses*
- Publication 99-B, *General Information on New York State and New York City Income Tax Credits for Businesses*
- Publication 750, *A Guide to Sales Tax in New York State*
- Form AU-196.10, *Notification of Sale, Transfer, or Assignment in Bulk*
- Form IT-204, *Partnership Return*

- Form IT-204-LL, *Limited Liability Company/Limited Liability Partnership Filing Fee Payment Form* (For tax years prior to 2009)
- Form IT-204-LL, *Partnership, Limited Liability Company, and Limited Liability Partnership Filing Fee Payment Form*
- Form CT-3/4-I, *Instructions for CT-4, CT-3, and CT-3 ATT General Business Corporation Franchise Tax Returns*
- Form CT-3-S-I, *Instructions for Forms CT-3-S and CT-3-S-ATT New York S Corporation Franchise Tax Return and Attachment*
- Form TP-584, *Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax*

**New York State
assistance**

Department of Taxation and Finance

Visit our Web site at www.nystax.gov or see the *Need help?* box on the back cover of this publication.

Department of State

Visit their Web site at www.dos.state.ny.us or call (518) 473-2492.

**New York City
assistance**

Visit their Web site at www.nyc.gov. For general information and services, dial 311 from within the city or call (212) 639-9675.

New York City Department of Finance

Visit their Web site at www.nyc.gov/html/dof or call the Business Income and Excise Tax Customer Assistance at (718) 935-6000 or (212) 504-4036.

**Internal Revenue
Service (IRS)
assistance**

Visit their Web site at www.irs.gov or call:

- Forms Line 1 800 829-3675
- Business and Specialty Tax Line 1 800 829-4933
- Personal income tax 1 800 829-1040



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(for information, forms, and publications)



Fax-on-demand forms: Forms are available 24 hours a day, 7 days a week. 1 800 748-3676



Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at 1 800 634-2110. If you do not own a TTY, check with independent living centers or community action programs to find out where machines are available for public use.



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.



Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.

Personal Income Tax Information Center: (518) 457-5181
In-state callers without free long distance: 1 800 225-5829

Corporation Tax Information Center: (518) 485-6027
In-state callers without free long distance: 1 888 698-2908

Sales Tax Information Center: (518) 485-2889
In-state callers without free long distance: 1 800 698-2909

Withholding Tax Information Center: (518) 485-6654
In-state callers without free long distance: 1 877 698-2910

Miscellaneous Tax Information Center: (518) 457-5735
In-state callers without free long distance: 1 800 470-4353

To order forms and publications: (518) 457-5431
In-state callers without free long distance: 1 800 462-8100