

## **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 article, the authors summarize the differences in the tax treatment of LLCs and LLPs across the 50 states and the District of Columbia.

The accompanying tables 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.

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The owners of multistate businesses must consider many factors when deciding how to structure their business ventures, and state taxation shouldn't 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 popular choices 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 15 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 endnotes will be useful, especially those listing the states that exempt qualified investment partnerships 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 multistate businesses has grown in popularity in the past 10 years or so. The last column of Table 1 highlights which states have enacted series LLC statutes and which state taxing authorities have issued guidance on how these odd creatures are to be taxed by their state. It reflects helpful input from the American Institute of CPAs' State and Local Tax Resource Panel and from many state revenue authorities, for which we are thankful.

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

tax purposes.<sup>1</sup> We hope that Treasury will issue final series regulations this fall, 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. Once the regs are finalized, we anticipate that several states will enact legislation authorizing the formation or qualification of series LLCs, and that a large number of states will publish guidance on how each series and the “mother ship” LLC 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 next spring.

A partner in our firm’s SALT practice group, James E. “Jimmy” Long Jr., co-chairs a joint task force of the American Bar Association Section of Taxation’s Partnerships and LLCs Committee and SALT Committee that prepared a comprehensive report summarizing the responses of approximately 31 states to a questionnaire prepared by the task force to facilitate guidance to taxpayers, practitioners, and the IRS. The official report was released by the ABA tax section in 2013 and delivered to Treasury.<sup>2</sup>

### **Passthrough Entity Taxes As SALT Deduction Cap Workarounds**

This version of Table 1 includes the five states that, as of the last update, have enacted passthrough entity (PTE)-level income taxes in response to the TCJA’s \$10,000 limit on SALT deductions by individual taxpayers.<sup>3</sup> Connecticut was the first state to enact legislation designed to use PTEs as an indirect means to circumvent the so-called SALT cap, and was boldly touted as

such. 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.<sup>4</sup> The owners of the PTE receive a nearly corresponding credit (recently reduced to 87.5 percent) against their Connecticut income tax liability.

Wisconsin was the second state to enact an avowed SALT deduction cap workaround in the nature of a PTE tax.<sup>5</sup> 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, three other states have followed suit, each with an elective PTE tax regime: Oklahoma, Louisiana, and, most recently, Rhode Island.

A similar elective workaround bill (S.B. 1170) passed both Michigan’s legislative houses 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 into law.<sup>6</sup> Then California Gov. Jerry Brown also vetoed a bill in 2018 designed to circumvent the federal SALT deduction cap by a different means, but with a similar veto message. In March, Michigan Gov. Gretchen Whitmer (D) introduced her own version of a PTE tax, H.B. 4781, but this version is mandatory. As of September 3, the bill was pending.

New Jersey S.B. 3246 and its companion A.B. 4807 were introduced earlier this year to create an elective entity-level tax on some PTEs, like the Oklahoma and Louisiana legislation. If enacted the bill would be retroactive to tax years beginning on or after January 1, 2018.

Arkansas legislation introduced in March would have created an elective PTE tax regime with the stated intent to avoid the SALT deduction cap (H.B. 1714), but it died on the last day of their legislative session. On January 22 a bill was introduced in the Minnesota Legislature designed to bypass the SALT deduction cap. This bill would have allowed PTEs to elect to file as C

<sup>1</sup> 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 W. 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).

<sup>2</sup> For a summary of the task force’s report, see Rudolph R. Ramelli, “ABA Tax Section Submits Comments on Series Entities,” *State Tax Notes*, May 20, 2013, p. 627.

<sup>3</sup> See IRC section 164(b)(6).

<sup>4</sup> Public Act No. 18-49.

<sup>5</sup> Act 2017-368 (Dec. 14, 2018).

<sup>6</sup> See Jad Chamseddine, “Snyder Vetoes SALT Cap Workaround,” *State Tax Notes*, Jan. 7, 2019, p. 85.

corporations and pay a flat 9.85 percent income tax at the entity level, which would then be deductible as a business expense.<sup>7</sup> That income would be excluded from the PTE owner's Minnesota income. That bill likewise died at the end of the 2019 legislative session. However, we

expect these and several other state legislatures to consider similar legislation next year.

Table 2 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 as of September 3. 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.

<sup>7</sup>S.F. 304.

**Table 1. State Tax Treatment of LLCs and LLPs  
(as of September 3, 2019)**

State	State Income Tax Classification of LLCs Follows Federal?	Nonresident Partner Withholding? <sup>b,c</sup>	Entity-Level Tax on LLPs or LLCs? <sup>b</sup>	Series LLC Provisions or Published Guidance? <sup>f</sup>
Alabama	Yes <sup>a</sup>	LLC/LLP files a composite return and pays tax on nonresident partner's distributive share of Alabama income at the highest marginal tax rate applicable.	Annual \$100 minimum and \$15,000 maximum business privilege tax (electing family investment LLCs/LLPs subject to \$500 annual cap; financial institution groups subject to Alabama deposits-based alternative tax capped at \$3 million annually).	Ala. Code section 10A-5A-11.01 et seq. (eff. Jan. 1, 2015).
Alaska	Yes	No	No	No
Arizona	Yes <sup>a</sup>	No. However, the Arizona Department of Revenue will accept composite returns and estimated payments for nonresident individuals if requirements are met.	No	No
Arkansas	Yes <sup>a</sup>	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 (currently \$150).	No

**Table 1. State Tax Treatment of LLCs and LLPs  
(as of September 3, 2019) (Continued)**

State	State Income Tax Classification of LLCs Follows Federal? <sup>c</sup>	Nonresident Partner Withholding? <sup>d,e</sup>	Entity-Level Tax on LLPs or LLCs? <sup>b</sup>	Series LLC Provisions or Published Guidance? <sup>f</sup>
California	Yes <sup>a</sup>	LLC/LLP pays tax on nonresident partner's distributive share of California income (for U.S. partners) unless nonresident consents filed; if consents filed, still must withhold but may request waiver from state.	Annual \$800 minimum franchise tax on all LLCs/LLPs; and gross receipts tax ranging from \$900 to \$11,790 on LLCs (unapportioned pre-2007); unapportioned fee declared unconstitutional in <i>Northwest Energetic Services LLC v. Franchise Tax Board</i> , 159 Cal. App. 4th 841 (1st Dist., 2008); and <i>Ventas Finance I LLC v. Franchise Tax Board</i> , 81 Cal. Rptr. 3d 823 (1st Dist., 2008), <i>rev. denied</i> No. S166870 (Cal. 2008), <i>cert. denied</i> S. Ct. Dkt. No. 08-1022 (2009).	No series LLC provision; <i>but see</i> California FTB Tax News, 3 (Vol. 06-2, Mar./Apr. 2006); California 2014 Form 568 LLC Tax Booklet (Forms and Instructions), Section F, 8 (Series LLCs); California FTB Tax News, 4 (Oct. 2011); and 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 tax and fee purposes).
Colorado	Yes, <sup>a</sup> but not for purposes of classifying 80-20 companies. <i>See Agilent Technologies Inc. v. Colorado Department of Revenue</i> , 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

**Table 1. State Tax Treatment of LLCs and LLPs  
(as of September 3, 2019) (Continued)**

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Connecticut	Yes <sup>a</sup>	LLC/LLP pays tax on nonresident noncorporate partner's distributive share of Connecticut-source income at highest marginal rate if the partner has greater than \$1,000 in state-sourced income.  For tax 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 payable every other year and is being phased out.  For tax 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
Delaware	Yes <sup>a</sup>	No	LLCs/LLPs subject to \$300 tax per year (\$250 before Jan. 1, 2014); LLPs subject to \$200/partner/year fee with \$120,000 cap.	Del. Code Ann. Tit. 6, section 18-215.
District of Columbia	Yes <sup>a</sup>	No	9.2% (9.975% before Jan. 1, 2015) tax on District-source income earned by unincorporated business, with a \$250 minimum tax if gross receipts are \$1 million or less and \$1,000 minimum tax if gross receipts exceed \$1 million, but no tax on single-member LLC 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.

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(as of September 3, 2019) (Continued)**

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Florida	Yes <sup>a</sup> (no state personal income tax)	No	No	No series LLC provision; <i>but see</i> Florida DOR TAA No. 02(M)-009 (Nov. 27, 2002); and Fla. Rev. Stat. section 605.0902(3).
Georgia	Yes <sup>a</sup>	LLC/LLP withholds 4% tax on nonresident partner's distributive share of Georgia income, with exemptions, unless composite return filed (entity and partners are jointly and severally liable; filing of estimated tax payments by the member does not relieve the entity from the withholding responsibility).	No	No
Hawaii	Yes <sup>a</sup>	Withholding is required at the highest marginal rate applicable to the nonresident partner (eff. July 2, 2019, for tax years beginning on or after Jan. 1, 2019, but delayed indefinitely by the Department of Taxation).	No	No
Idaho	Yes <sup>a</sup>	Withholding at the highest marginal rate is required for nonresident individual owners unless composite return or nonresident consents filed; 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 it fails to withhold and file composite return.	No	No

**Table 1. State Tax Treatment of LLCs and LLPs  
(as of September 3, 2019) (Continued)**

State	State Income Tax Classification of LLCs Follows Federal? <sup>c</sup>	Nonresident Partner Withholding? <sup>d,e</sup>	Entity-Level Tax on LLPs or LLCs? <sup>b</sup>	Series LLC Provisions or Published Guidance? <sup>f</sup>
Illinois	Yes <sup>a</sup>	LLC/LLP must withhold from each nonresident partner an amount equal to the partner's distributive share of the Illinois business income (and, effective for tax years ending on or after Dec. 31, 2014, nonbusiness income) of the partnership multiplied by the applicable tax rates for that partner, unless nonresident consents filed.  For tax years ending on or after Dec. 31, 2014, composite returns are no longer permitted.	1.5% replacement income tax on partnerships and LLCs; partners liable if LLC/LLP fails to pay; investment partnerships are exempt.  Domestic LLPs subject to \$100/partner/year fee with a \$200 minimum and \$5,000 cap; initial filing fee for foreign LLPs is \$500 and each renewal fee is \$300.	805 ILCS section 180/37-40; <i>see also</i> Illinois DOR ST 13-0046-GIL (Sept. 10, 2013) (sales tax guidance).
Indiana	Yes <sup>a</sup>	LLC/LLP pays withholding tax on nonresident partner's distributive share of Indiana-source income at applicable rate.	No	Ind. Code section 23-18.1 (eff. Jan. 1, 2017).
Iowa	Yes <sup>a</sup>	LLC/LLP pays 5% withholding tax on nonresident partner's distributive share of Iowa income unless certificate of release obtained from Iowa 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. <i>See</i> 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.



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(as of September 3, 2019) (Continued)**

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Kentucky	Yes	LLCs/LLPs must withhold at the highest marginal rate applicable unless nonresident partner filed return and timely paid Kentucky income tax in year immediately prior (but if partner does not pay tax in the current year, LLC/LLP still liable) or if composite return filed.  Withholding required for corporate partner that is only doing business in Kentucky through its ownership interest in a PTE.	LLCs/LLPs subject to limited liability entity tax 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 limited liability entity tax.	No series LLC provision; <i>but see</i> Ky. Rev. Stat. Ann. section 386A.4-010 et seq. (eff. July 12, 2012) (providing that a statutory trust may establish one or more series).
Louisiana	State classification follows federal classification of LLC, but only regarding corporate income tax, not franchise tax <sup>a</sup> (eff. 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 <sup>a</sup>	LLC/LLP pays quarterly withholding tax on nonresident partner's proportionate share of Maine income at highest applicable state rate (if such 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

**Table 1. State Tax Treatment of LLCs and LLPs  
(as of September 3, 2019) (Continued)**

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Maryland	Yes <sup>a</sup>	LLC/LLP pays tax on nonresident partner's distributive share of Maryland income at rate of 7.5% for individuals and 8.25% for entities, limited to amount of nonresidents' distributive share of income, not to exceed the sum of all nonresidents' shares of distributable cash flow.	No	No
Massachusetts	Yes, <sup>a</sup> except single-member LLCs 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 Letter Ruling 08-2 (Feb. 15, 2008).
Michigan	Yes <sup>a</sup>	LLC/LLP pays withholding tax at a rate of 4.25% for periods beginning on or after Oct. 1, 2012, on nonresident partner's distributive share of Michigan taxable income, unless exemptions apply; withholding may apply to some corporate nonresident partners if entity 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 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.  Effective Jan. 1, 2012, Michigan imposes a corporate income tax on C corporations, replacing the MBT.  Pending legislation would impose mandatory 8.5% PTE tax. H.B. 4781.	No

**Table 1. State Tax Treatment of LLCs and LLPs  
(as of September 3, 2019) (Continued)**

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Minnesota	Yes <sup>a</sup>	LLC/LLP pays withholding tax on nonresident partner's distributive share of Minnesota income at highest individual rate unless composite return filed.	For tax years beginning after Dec. 31, 2012, \$0 to \$9,340 (effective Jan. 1, 2019, \$0 to \$10,210) fee based on sum of entity's Minnesota 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 <sup>a</sup>	Generally no, but LLC/LLP and general partners are jointly and severally liable for any unpaid tax unless LLC/LLP withholds and remits 5% of the LLC's/LLP's net profit or gain for the year.	No	No
Missouri	Yes <sup>a</sup>	LLC/LLP pays withholding tax on nonresident individual partner's distributive share of Missouri income at highest state rate (currently 6%) unless either nonresident consents or composite return filed.	No	Mo. Rev. Stat. section 347.010 et seq.
Montana	Yes <sup>a</sup>	LLC/LLP with nonresident individual or C corp owners liable for income tax at highest marginal rate (individual) or applicable rate (C corp) on nonresident partner's distributive share of Montana income unless either composite return or nonresident consents filed.	No	Mont. Code Ann. section 35-8-101 et seq.
Nebraska	Yes <sup>a</sup>	LLC/LLP liable for income tax at highest state rate on nonresident individual partner's distributive share of Nebraska income unless nonresident consents filed.	No	No

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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.
New Hampshire	Yes <sup>a</sup> (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

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New Jersey	Yes <sup>a</sup>	<p>None, but entity-level tax on nonresident partner's distributive shares of New Jersey net income; entity-level tax not required if composite return filed and quarterly estimated payments made.</p> <p>LLCs/LLPs must make quarterly payments of 6.37% of New Jersey net income allocated to all nonresident noncorporate partners and 9% for all nonresident corporate partners.</p>	<p>\$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.</p> <p>Pending legislation would impose elective graduated rate PTE tax.</p> <p>S.B. 3246/A.B. 4807.</p>	No
New Mexico	Yes <sup>a</sup>	<p>LLC/LLP required to withhold tax on nonresident partner's distributive share of New Mexico income at highest individual rate unless nonresident consents filed.</p>	No	No
New York	Yes <sup>a</sup>	<p>LLCs/LLPs make quarterly estimated tax payments on behalf of C corp and 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 and nonresident individual owners that file an exemption certificate with the LLC/LLP certifying their compliance with all New York income tax, estimated tax, and income tax return filing requirements.</p>	<p>LLCs/LLPs subject to annual filing fee based on New York-source gross receipts, min. \$25, max. \$4,500.</p> <p>Single-member LLCs that are treated as disregarded entities for federal income tax purposes are subject to a \$25 annual filing fee.</p>	<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).</p>

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North Carolina	Yes <sup>a</sup>	<p>LLC/LLP pays withholding tax on individual nonresident partner's distributive share of North Carolina income at the applicable individual income tax rate.</p> <p>LLC/LLP pays withholding tax on non-individual nonresident partner's distributive share of North Carolina income at the applicable income tax rate unless nonresident consents filed.</p>	<p>If book value of LLC assets exceeds \$150,000, corporate member required to include LLC's assets, directly or indirectly owned, in its franchise tax base if collective ownership by corporation and its affiliates of LLC's capital interests is more than 50%.</p> <p>LLC electing to be taxed as C corporation subject to franchise tax.</p> <p>LLC electing to be taxed as S corporation also subject to franchise tax.</p>	No
North Dakota	Yes <sup>a</sup>	<p>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.</p>	<p>No (nominal annual filing fee based on number of LLP managing partners).</p>	No
Ohio	Yes <sup>a</sup>	<p>LLC/LLP pays 5% withholding tax on apportioned distributive shares of nonresident individual partners and some trusts and an 8.5% withholding tax on apportioned distributive shares of some non-individual partners after adjustments unless composite return or consents to jurisdiction filed.</p>	<p>For tax years beginning before Jan. 1, 2014, franchise tax credit calculations include corporation's proportionate share amounts from any PTE.</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 over \$1 million.</p>	No

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Oklahoma	Yes <sup>a</sup>	<p>LLC/LLP pays 5% withholding tax on distributions to nonresident partner of Oklahoma income unless nonresident consents filed.</p> <p>For tax years beginning on or after Jan. 1, 2013, composite returns allowed for LLC/LLP members that are some PTEs.</p>	<p>LLC/LLPs were subject to business activity tax of \$25 plus 1% of net revenue, but, for tax years 2010, 2011, and 2012, BAT liability was tied to the amount of the taxpayer's 2009 franchise tax liability. 2012 was the final year of BAT.</p> <p>LLCs are not subject to the newly reinstated Oklahoma franchise tax but must pay a \$25 annual registration fee.</p> <p>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.</p>	Okla. Stat. tit. 18, section 2054.4.
Oregon	Yes <sup>a</sup>	<p>LLC/LLP withholds tax on nonresident partner's distributive share of Oregon income computed at the highest marginal rate applicable, unless composite return or nonresident consents filed; composite return may be required in some situations.</p>	<p>LLC/LLPs are subject to a minimum privilege tax of \$150.</p>	No
Pennsylvania	Yes <sup>a</sup>	<p>LLC/LLP pays withholding tax on nonresident individual and nonfiling corporate partner's distributive share of Pennsylvania income at the applicable income tax rate.</p>	<p>Before 2016, LLCs, except for restricted professional companies, were subject to capital stock tax on taxable capital stock value.</p> <p>Professional LLCs subject to \$520/Pennsylvania member/year fee; LLPs subject to \$350/Pennsylvania partner/year fee.</p>	No

**Table 1. State Tax Treatment of LLCs and LLPs  
(as of September 3, 2019) (Continued)**

State	State Income Tax Classification of LLCs Follows Federal? <sup>c</sup>	Nonresident Partner Withholding? <sup>d,e</sup>	Entity-Level Tax on LLPs or LLCs? <sup>b</sup>	Series LLC Provisions or Published Guidance? <sup>f</sup>
Rhode Island	Yes <sup>a</sup> (for withholding purposes, corporate-owned single-member LLCs treated as C corporations).	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%.  H. 5151 Sub. A.	No
South Carolina	Yes <sup>a</sup>	LLC/LLP pays 5% withholding tax on nonresident partner's distributive share of South Carolina income unless nonresident consents or composite return filed.	No	No
South Dakota	No state income tax.	No	Domestic LLCs subject to \$150 initial report fee; foreign LLCs subject to \$750 initial report fee; all LLCs subject to \$50 annual report fees thereafter.  For LLPs, annual report filing fee is \$50; domestic and foreign LLPs subject to \$125 statement of qualification filing fee.	No
Tennessee	Yes, <sup>a</sup> 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 single-member LLC subject to Tennessee 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 (min. \$300, max. \$3,000 for LLCs and min. \$250 and max. \$2,500 for LLPs).	Tenn. Code Ann. section 48-249-309; Tenn. DOR Letter Ruling 11-42 (Sep. 6, 2011).



**Table 1. State Tax Treatment of LLCs and LLPs  
(as of September 3, 2019) (Continued)**

State	State Income Tax Classification of LLCs Follows Federal? <sup>c</sup>	Nonresident Partner Withholding? <sup>d,e</sup>	Entity-Level Tax on LLPs or LLCs? <sup>b</sup>	Series LLC Provisions or Published Guidance? <sup>f</sup>
Texas	State taxes LLCs as corporations (no state personal income tax).	No	<p>LLPs subject to \$200/partner/year fee.</p> <p>LLCs and LLPs subject to Texas franchise margin tax at 0.5% (retailers and wholesalers) or 1% (all other businesses) of lowest of: (1) 70% of total revenue; (2) total revenue minus cost of goods sold; or (3) total revenue minus total compensation.</p> <p>For reports due in 2014, the following temporary permissive alternative tax rates were available: 0.4875% for retailers and wholesalers and 0.975% for all other taxpayers. For reports due in 2015, the following temporary permissive alternative tax rates were available: 0.475% for retailers and wholesalers and 0.95% for all other taxpayers. Effective Jan. 1, 2016, for the tax years 2016 and 2017, the franchise tax rate is reduced to 0.375% for retailers and wholesalers and to 0.75% for all other taxpayers.</p>	Tex. Bus. Org. Code section 101.601 et seq.; Texas Policy Letter Ruling 201005184L (May 5, 2010) (released Sep. 2011); and Franchise Tax FAQs, Texas Office of the Comptroller, FAQ #19 (updated Jan. 6, 2014).
Utah	Yes <sup>a</sup>	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. (eff. July 1, 2012, superseding Utah Code Ann. section 48-2c-606).

**Table 1. State Tax Treatment of LLCs and LLPs  
(as of September 3, 2019) (Continued)**

State	State Income Tax Classification of LLCs Follows Federal? <sup>c</sup>	Nonresident Partner Withholding? <sup>d,e</sup>	Entity-Level Tax on LLPs or LLCs? <sup>b</sup>	Series LLC Provisions or Published Guidance? <sup>f</sup>
Vermont	Yes <sup>a</sup>	LLC/LLP must make quarterly estimated tax payments at second lowest marginal rate on nonresident partner's distributive share of Vermont income.	LLC/LLP must pay annual tax of \$250.	No
Virginia	Yes <sup>a</sup>	LLC/LLP must pay withholding tax of 5% of nonresident partner's allocable share of Virginia income.	No	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 <sup>a</sup>	LLC/LLP pays 6.5% withholding tax on nonresident partner's distributive share of West Virginia income unless nonresident consents filed.	Effective Jan. 1, 2015, the business franchise tax is no longer imposed. For prior tax years, the tax was the greater of \$50 or 0.1% 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 and 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%. Act 2017-368.	No

**Table 1. State Tax Treatment of LLCs and LLPs  
(as of September 3, 2019) (Continued)**

State	State Income Tax Classification of LLCs Follows Federal? <sup>c</sup>	Nonresident Partner Withholding? <sup>d,e</sup>	Entity-Level Tax on LLPs or LLCs? <sup>b</sup>	Series LLC Provisions or Published Guidance? <sup>f</sup>
Wyoming	No state income tax.	No	No	No

<sup>a</sup>Indicates that the state taxing authority has announced that it will follow the IRS check-the-box regulations for state income tax purposes, the state LLC act adopts the regulations either explicitly or implicitly, or the state adopts them by separate statute. Note that most states, such as Florida, Georgia, Michigan, and the District of Columbia, do not conform to the check-the-box regulations for sales, use, and other related taxes.

<sup>b</sup>Assumes entity is classified as a partnership for federal income tax purposes. See supplemental table regarding net worth- or debt-based corporate franchise taxes.

<sup>c</sup>States such as California, Delaware, Illinois, and Pennsylvania restrict the use of LLCs by banks and insurance companies.

<sup>d</sup>“Partner” in this column and the tables means both partners of LLPs and members of LLCs unless otherwise clear from the context.

<sup>e</sup>The following states exempt the distributive share of nonresident partners of investment partnerships (as defined in varying ways) from income taxation: Alabama, Arkansas, California, Georgia, Idaho, Illinois, Kentucky, Maryland, New Jersey, New York, North Carolina, Ohio, and Texas. A few states, such as Connecticut, Minnesota, and New Mexico, do not specifically exempt nonresident partners of investment partnerships but have rules that effectively allocate that income to the domicile of the nonresident partner. Massachusetts statutorily exempts nonresident limited partners of 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 qualified investment partnerships. Other states, such as Virginia, effectively exempt nonresident partners of investment partnerships from income tax by taking the position that PTEs established solely to invest in intangible personal property that 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.

<sup>f</sup>Several states, including Minnesota, North Dakota, and Wisconsin, have language in their LLC statutes regarding “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 has enacted a series LLC statute. There are series LLC bills pending in several state legislatures as of this date.

**Table 2. Tax Treatment of LLCs, LLPs, and LPs by States Imposing  
Net Worth- or Debt-Based Corporate Franchise Taxes  
(as of Sept. 3, 2019)**

State	Apply Franchise Tax to LLE? <sup>b</sup>	Note
Alabama	Yes	LLCs, LLPs, and LPs subject to business privilege tax based on modified net worth. Sliding rate scale based on apportioned federal net income with \$100 min. and \$15,000 max. (generally). Family limited liability entities subject to \$500 cap. Ala. Code section 40-14A-22.
Arkansas	No <sup>a</sup>	But LLCs are subject to the minimum \$150 franchise tax. Ark. Code Ann. section 2654104(8).
Connecticut	No <sup>a</sup>	
Delaware	No <sup>a</sup>	
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. Rule 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. Private Letter Ruling 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 <sup>a</sup>	
Mississippi	No	
Missouri	No	
Nebraska	No	
New Jersey	No	
New Mexico	No <sup>a</sup>	
North Carolina	No	LLCs exempt from franchise tax by statute. A corporate member is required to include the LLC's assets in its franchise tax base if the corporate member or its affiliates collectively own 50% or more of the capital interests of the LLC. However, LLC electing corporation status subject to franchise tax. N.C. Gen. Stat. section 105-114(b)(2).
Ohio	No	

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Net Worth- or Debt-Based Corporate Franchise Taxes  
(as of Sept. 3, 2019) (Continued)**

State	Apply Franchise Tax to LLE? <sup>b</sup>	Note
Oklahoma	No	LLCs are exempt from franchise tax by statute. Okla. Stat. tit. 68 section 1201. However, Oklahoma imposed a BAT on the taxpayer's net revenue, including LLCs and LLPs, for tax years 2010-2012. 2012 was the last year of the BAT because voters approved a property tax on intangible property. As before, LLCs are exempt from the reinstated franchise tax.
Pennsylvania	No	Before Jan. 1, 2016, all LLCs, except restricted professional companies, were subject to the capital stock and franchise taxes. 15 Pa. Cons. Stat. section 8925.
Rhode Island	No <sup>a</sup>	
South Carolina	No	
Tennessee	Yes	LLCs, LLPs, and LPs subject to franchise tax of \$0.25 per \$100 of net worth. Tenn. Code Ann. section 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 70% of total revenue; total revenue minus cost of goods sold; or 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% (0.2% before Jan. 1, 2014) of capital accounts. W. Va. Code sections 11-23-3(b)(2)(C) and 11-23-6.
Wyoming	Yes	Generally, annual report license tax is the greater of \$50 or \$0.0002 of assets employed in Wyoming. Wyo. Stat. sections 1716-1630(a) and 17-29-209(a).

<sup>a</sup>Several states impose a de minimis (e.g., \$150 Arkansas, \$250 Connecticut (every other year), \$300 Delaware; \$500 Massachusetts, \$50 New Mexico, and \$450 Rhode Island) annual franchise tax or filing fee on LLEs.

<sup>b</sup>Generally, 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.

This table is only a summary of the applicable laws, regulations, and rulings as of the date stated above and should not be relied on as a definitive source of information. Readers should consult their tax advisers and local counsel regarding the application of state and local law to their circumstances. Legislative updates are always appreciated. Please contact Bruce Ely (bely@bradley.com); Will Thistle (wthistle@bradley.com); or Chris Grissom (cgrissom@bradley.com).