

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-06(3)M
Miscellaneous Tax
April 4, 2006

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M060104A

On January 4, 2006, a Petition for Advisory Opinion was received from Sebastian Gheith, Esq., 45 John Street, Suite 711, New York, NY 10038.

The issue raised by Petitioner, Sebastian Gheith, Esq., is whether a limited liability company (LLC) is subject to the registration requirement imposed under section 275-a of the Tax Law and, therefore, required to file New York State Form MT-610.1.

Petitioner submits the following fact as the basis for this Advisory Opinion.

Petitioner plans to organize the LLC under New York law on behalf of his client.

Applicable law and regulations

Section 2.5 of Article 1 of the Tax Law provides:

The term “limited liability company” means a domestic limited liability company or a foreign limited liability company, as defined in section one hundred two of the limited liability company law, a limited liability investment company formed pursuant to section five hundred seven of the banking law, or a limited liability trust company formed pursuant to section one hundred two-a of the banking law.

Section 2.6 of the Tax Law provides:

“Partnership and partner,” unless the context requires otherwise, shall include, but shall not be limited to, a limited liability company and a member thereof, respectively.

Section 270(1) of Article 12 of the Tax Law provides in part:

There is hereby imposed ... a tax ... on all sales, or agreements to sell, or memoranda of sales and all deliveries or transfers of shares or certificates of stock ... in any domestic or foreign association, company or corporation ... whether made upon or shown by the books of the association, company, corporation, or trustee, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of sale or transfer, whether intermediate or final, and whether investing the holder with the beneficial interest in or legal title to said stock, or other certificates taxable hereunder, or merely with the possession or use thereof for any purpose

Section 275-a of the Tax Law provides in part:

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Every person acting individually or as a trustee, firm, company, association or corporation engaged in whole or in part in the making or negotiating of sales, agreements to sell, deliveries or transfers of shares or certificates taxable under this article, or conducting or transacting a stock brokerage business, and every corporation, stock association, company or trustee which shall maintain a principal office or place of business within the state or which shall keep or cause to be kept within the state of New York a place for the sale, transfer or delivery of its stock, or other certificates included within this article, shall ... file in the office of the tax commission a certificate setting forth the name under which such business is, or is to be, conducted or transacted, and the true or real full name or names of the person or persons conducting or transacting the same, with the post office address or addresses of said person or persons, unless the party so certifying be a corporation or trustee, in which event it shall set forth its said principal office or place of business and when and where incorporated or organized....

Opinion

If a limited liability company (LLC) is engaged in making or negotiating sales or transfers of shares or certificates of stock subject to tax under section 270 of the Tax Law or conducting or transacting a stock brokerage business, the LLC is subject to the registration requirement imposed under section 275-a of the Tax Law and is required to file Form MT-610.1.

However, an LLC is an unincorporated organization of one or more persons having limited liability for the contractual and other liabilities of the business. (See *New York Tax Status of Limited Liability Companies and Limited Liability Partnerships*, Publication 16 (1/03).) An LLC is not formed as a corporation, but is formed pursuant to the New York Limited Liability Company Law. For purposes of the Tax Law, the term “partnership” includes an LLC unless the context requires otherwise. See section 2.6 of the Tax Law. An LLC does not issue shares or certificates of its own stock. Therefore, the registration requirement placed by section 275-a of the Tax Law on a corporation, stock association, company or trustee that maintains a principal office, place of business, or a place within New York State for the sale, transfer or delivery of its own stock or other certificates subject to tax under Article 12 of the Tax Law does not apply to an LLC.

DATED: April 4, 2006

/s/
Jonathan Pessen
Tax Regulations Specialist IV
Technical Services Division

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein