



Instructions for Form IT-204-LL

Limited Liability Company/Limited Liability Partnership

Filing Fee Payment Form

Changes to limited liability company (LLC) and limited liability partnership (LLP) filing fees and filing due date, and new filing fee for single-member disregarded entities

The amount of the filing fee for LLCs and LLPs that are treated as partnerships for federal income tax purposes and have income from New York sources has increased from \$50 to \$100 multiplied by the total number of members or partners in the LLC/LLP. In addition, the minimum and maximum filing fee amounts have increased from \$325 to \$500, and from \$10,000 to \$25,000 respectively. In addition, for tax years beginning in 2003 and 2004, every single-member LLC (SMLLC) that is a disregarded entity for federal income tax purposes and which has income, gain, loss, or deductions derived from New York sources, must file Form IT-204-LL and is subject to a filing fee of \$100. These changes are effective immediately and apply to tax years beginning in 2003 and 2004.

Effective for tax years beginning in 2003 and after, every LLC and LLP subject to the filing fee **must file Form IT-204-LL within 30 days after the last day of its tax year**, with full remittance of any filing fee due attached to the form. An LLC or LLP can no longer attach Form IT-204-LL to the front of Form IT-204, *Partnership Return*.

General information

Chapter 576 of the Laws of 1994 allows for the formation of LLCs and LLPs in New York State (domestic LLCs or LLPs). In addition, recognition is given under New York State law for LLCs and LLPs formed under the laws of other states (foreign LLCs and LLPs).

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 activities in New York State must also register with the Department of State. Taxpayers who have questions concerning the registration process should write to the New York State Department of State, 41 State Street, Albany NY 12231-0001, or call (518) 473-2492. Taxpayers who have questions concerning the New York tax treatment of LLCs and LLPs and payment of the filing fee should contact the Tax Department (see *Need help?* on the back of these instructions).

Effective August 8, 1995, certain investment companies that are established and regulated under Article 12 of the New York State Banking Law are able to organize themselves 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, effective July 21, 1997, certain trust companies that are established and regulated under section 102-A of the New York State Banking Law are able to organize themselves 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 of deposits and share accounts. Throughout these instructions, the term *limited liability company* includes a limited liability investment company and a limited liability trust company.

The New York personal income tax and corporation franchise taxes conform with 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 must, if it meets the requirements (see Form IT-204-I), file a New York State partnership return using Form IT-204, *Partnership Return*. The filing deadline for filing Form IT-204 is April 15, 2005. An LLC or LLP required to file Form IT-204 must also complete and file Form IT-204-LL within 30 days after the last day of the tax year of the LLC, LLP, or disregarded entity. An LLC or LLP that is treated as a corporation for federal income tax purposes must file a New York State corporation franchise tax return.

An SMLLC may choose to be taxed as a 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 personal income tax

purposes. If the LLC is disregarded and the single member is a corporation, the LLC will be considered part of the corporation for New York corporate franchise tax purposes.

Sole proprietorships and partnerships are subject to the law, rules, and regulations under the personal income tax. In addition, an LLC or LLP treated as a partnership for New York personal income and corporate franchise tax purposes may be subject to an annual filing fee which is discussed below.

New York City — 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 their taxpayer assistance line at (718) 935-6000.

Filing fee

Every domestic or foreign LLC or LLP that is required to file a New York State partnership return **and** that has any income, gain, loss, or deduction from New York sources must pay a New York State filing fee. The amount of the filing fee is \$100 multiplied by the total number of members or partners in the LLC or LLP. However, the fee cannot be less than \$500 or more than \$25,000.

In contrast, a domestic or foreign LLC is not subject to the filing fee if it does not have any income, gain, loss, or deduction from New York sources **and**:

- is required to file a New York State partnership return solely because it has a member who is a New York State resident;
- is formed under the laws of New York State; **or**
- is dormant.

An LLC that elects to be treated as a corporation for federal income tax purposes is not subject to the filing fee.

Every SMLLC that is a disregarded entity for federal income tax purposes and has income, gain, loss, or deductions derived from New York sources is subject to a filing fee of \$100.

There is no proration of the filing fee if the LLC or LLP has a short tax year for federal tax purposes.

Who must file

This form must be filed by every SMLLC that is a disregarded entity for federal income tax purposes, and every LLC, LLIC, LLTC, or LLP that is required to file Form IT-204, *Partnership Return*. It is used as a means of remitting the state filing fee or to indicate why the LLC or LLP does not owe a fee for the current tax year.

When to file

An LLC or LLP can no longer attach Form IT-204-LL to the front of Form IT-204. Form IT-204-LL must be filed within 30 days after the last day of the tax year of the LLC, LLP, or SMLLC disregarded entity, with full remittance of any filing fee due attached to the form. In addition, as in previous years, there is no extension of time to file Form IT-204-LL or pay the annual fee. If the LLC/LLP is requesting an extension of time to file Form IT-204, see *Extension* below.

Note: Form IT-204-LL and Form IT-204 (including any attached Form(s) IT-204-ATT) constitute the complete partnership return. Failure to file either or both form(s) by the due dates may result in the imposition of penalties for failure to timely file a partnership return.

Extension

There is no extension of time to file Form IT-204-LL or to pay the annual fee. An LLC or LLP that is requesting an extension of time to file Form IT-204 must complete Form IT-370-PF, *Application for Automatic Extension of Time to File for Partnerships and Fiduciaries*. If the LLC or LLP is requesting an extension of time to file Form IT-204,

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that extension will not extend the deadline for filing Form IT-204-LL. Form IT-204-LL **must** be filed within 30 days after the last day of the tax year of the LLC, LLP, or SMLLC disregarded entity. If the LLC or LLP fails to pay the full amount of filing fee by the due date of Form IT-204-LL, it must pay interest and a late payment penalty of ½% per month, up to a maximum of 25% on the amount of fee not paid.

Where to file

Mail Form IT-204-LL and your remittance, if any, to:

**STATE PROCESSING CENTER
PO BOX 61000
ALBANY NY 12261-0001**

Private delivery services — If you choose, you may use a private delivery service, instead of the U.S. Postal Service, to file your return and pay tax. However, if, at a later date, you need to establish the date you filed your return or paid your tax, you cannot use the date recorded by a private delivery service unless you used a delivery service that has been designated by the U.S. Secretary of the Treasury or the Commissioner of Taxation and Finance. (Currently designated delivery services are listed in Publication 55, *Designated Private Delivery Services*. See *Need help?* below for information on ordering forms and publications.) If you have used a designated private delivery service and need to establish the date you filed your return, contact that private delivery service for instructions on how to obtain written proof of the date your return was given to the delivery service for delivery. If you use any private delivery service, whether it is a designated service or not, address your return to: State Processing Center, 101 Enterprise Drive, Kingston NY 12401.

Line instructions

Name and address box — Partnerships enter the name, address, and identification number exactly as they will appear on Form IT-204. Also enter the principal business activity, the date the business started, and the contact person's telephone number.

SMLLCs enter the name, address, and employer identification number. An SMLLC that is a disregarded entity for federal income tax purposes must also provide the identification number (employer identification number or social security number) of the entity or individual that will be reporting the income or loss on line 4.

Change of business information — If you marked an **X** in the box on the front, enter your new address in the space next to your address. You must report any changes in your business name, ID number, mailing address, physical address, telephone number, or owner/officer information on Form DTF-95, *Business Tax Account Update*. If only your address has changed, you may use Form DTF-96, *Report of Address Change for Business Tax Accounts*, to correct your address for this and all other tax types. You can get these forms from our Web site, or by fax or phone. See *Need help?* below for the phone number and Web address.

Need help?



Internet access: www.nystax.gov
Access our Answer Center for answers to frequently-asked questions; check your refund status; check your estimated tax account; download forms, publications; get tax updates and other information.



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



Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.
To order forms and publications: 1 800 462-8100

Refund status: 1 800 443-3200
Personal Income Tax Information Center: 1 800 225-5829
From areas outside the U.S. and outside Canada: (518) 485-6800

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110

Part I — General information

Line 1 — See *Income from New York State sources includes* under the heading **Who must file** on page 2 of Form IT-204-I, *Instructions for Form IT-204*, to determine if the LLC or LLP has any income, gain, loss, or deduction derived from New York sources during the tax year.

Note: An LLC or LLP that has a net loss derived from New York sources during the tax year must still mark an **X** in the Yes box.

SMLLCs that are disregarded entities for federal income tax purposes, skip lines 2 and 3 and continue with Part III.

Part II — Partnerships for federal income tax purposes

Line 2 — The total number of members or partners includes all resident and nonresident individuals, estates and trusts, and all corporations and partnerships that were members or partners of the entity as of the **last** day of its tax year. This total may not necessarily agree with the number of partners entered at question **F** on Form IT-204.

Line 3 — LLC/LLP filing fee

New York State filing fee worksheet	
1. Enter total number of members or partners from line 2 of Form IT-204-LL	1. _____
2. Multiply line 1 by \$100	2. _____
3. Maximum filing fee	3. <u>\$25,000</u>
4. Enter the smaller of line 2 or line 3 above	4. _____
5. Minimum filing fee	5. <u>\$500</u>
6. Enter the larger of line 4 or line 5 here and on Form IT-204-LL, line 3	6. _____

Part III — Disregarded entities for federal income tax purposes

Line 4 — Enter the employer identification number or social security number of the entity or individual who will be reporting the income or loss.

Full remittance of the amount shown on line 3 or 5 must accompany this form. Make your check or money order payable to **NYS LLC/LLP Fee**; write your employer identification number and **2004 filing fee** on the remittance and staple it to the front of Form IT-204-LL.

Paid preparer must sign the return — Anyone you pay to prepare the return must sign it and fill in the other blanks in the paid preparer's area of the return. The preparer required to sign the return must sign it by hand; signature stamps or labels are not acceptable. If anyone prepares the return and does not charge you, the paid preparer's area should not be filled in.

Note to paid preparers — When signing a taxpayer's New York State income tax return, you must enter the same identification number that you used on the taxpayer's federal return, either your social security number or your federal preparer tax identification number (PTIN). If you did not prepare a federal income tax return for the taxpayer, you must use your PTIN if you have one; otherwise, use your social security number.

Paid preparers may be subject to a penalty for failure to conform to certain requirements. For more information see the instructions for Form IT-204.

Privacy notification — The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.