

## Important Notice

### New York Tax Status of Limited Liability Companies and Partnerships

New York State has enacted a law to allow the formation of limited liability companies (LLCs) and limited liability partnerships (LLPs) in New York State (domestic LLCs and LLPs). In addition, New York recognizes LLCs and LLPs formed under the laws of other states and foreign countries (foreign LLCs and LLPs).<sup>1</sup> The new law is effective October 24, 1994. (Chapter 576 of the Laws of 1994.)

Both domestic and foreign LLCs and LLPs may be subject to an annual filing fee administered by the Department of Taxation and Finance in addition to any fees payable to the Secretary of State. A new business that is an LLC or LLP or an existing business converting to an LLC or LLP may also have registration, permitting and bonding responsibilities for other taxes administered by the Department. These requirements are explained below.

The Tax Department will be sending a questionnaire (*LLC/LLP Request for Information*) to all LLCs and LLPs registered with the Secretary of State. It is very important that the form be filled out and returned to the Tax Department. We will use this information to establish and update taxpayer account information.

#### Formation of LLCs and LLPs

The formation of a domestic LLC is governed by the New York Limited Liability Company Law (Chapter 34 of the Consolidated Laws). The formation of a domestic LLP is governed by the Partnership Law (Article 8-B). 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. The Tax Department does not administer the formation and registration process.

Taxpayers who have questions in this area should write to the New York State Department of State, 162 Washington Avenue, Albany NY 12231-0001 or call (518) 473-2494.

Note: A foreign LLC or LLP that actually conducts business or other activities in New York State is not relieved of its obligation to file tax returns, and, if applicable, to pay the annual filing fee, simply because it fails to register with the Department of State.

#### Tax Treatment of LLCs and LLPs

In general, an LLC may be treated as a partnership or a corporation for federal income tax purposes (however, see **Single-Member LLCs** below). An LLP is always treated as a partnership for federal income tax purposes. The New York State Tax Law conforms with federal tax treatment regarding LLCs and LLPs.

An LLC treated as a corporation for federal tax purposes is treated as a corporation for New York tax purposes and is subject to tax under the applicable corporation tax law, rules and regulations. An LLC treated as a partnership for federal tax purposes, and any LLP are treated as partnerships for New York tax purposes. These entities 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 tax purposes may be subject to the annual filing fee described below.

**Single-Member LLCs** -- The New York State Limited Liability Company Law provides that an LLC may be composed of only one member. The Internal Revenue Service has issued no guidance in this area. If the internal Revenue Service were to treat single-member LLCs as sole proprietorships, these LLCs would not be required to pay the annual filing fee. This rule would also apply to a foreign single-member LLC.

<sup>1</sup> An LLC is an unincorporated organization of one or more persons having limited liability for the contractual and other liabilities of the business, An LLP is a partnership without limited partners which is engaged in the practice of a profession in New York State and which registers to be treated as an LLP with the Department of State.

**Annual Filing Fee**

Every domestic and foreign LLC or LLP that is treated as a partnership and has any income, gain, loss or deduction from New York sources <sup>2</sup> is subject to an annual filing fee. The filing fee applies to each taxable year of the entity that **begins** on or after October 24, 1994. For purposes of the filing fee, the New York taxable year of the entity is always the same as its federal taxable year.

The amount of the filing fee is \$50 multiplied by the total number of members or partners in the LLC or LLP. However, the fee cannot be less than \$325 or more than \$10,000 annually. The total number of members or partners includes all resident and nonresident individuals, estates and trusts, and all corporations or other LLCs or partnerships that were members or partners of the entity as of the last day of its taxable year. There is no proration of the filing fee if the LLC or LLP has a short taxable year for federal tax purposes.

A domestic or foreign LLC or LLP that does not have any income, gain, loss or deduction from New York sources, but is required to file a New York State partnership return solely because it has a member or partner who is a New York resident, is not subject to the filing fee. In addition, a domestic LLC or LLP with no New York source income is not subject to the filing fee solely because it was formed under the laws of New York State. Similarly, a dormant LLC or LLP having no items of income, gain or loss or deduction is not subject to the fee.

**Note:** The Tax Law also **authorizes the City of New York** to impose a separate annual filing fee, equal in amount to the state fee, on domestic and foreign LLCs and LLPs that have income, gain, loss or deduction derived from the City. As of this date, the City has not acted to impose the fee.

**Payment of the Filing Fee --** The full amount of the filing fee due must be paid on or before the due date of the partnership return, determined **without** regard to any extension of time to file. In the case of a calendar-year LLC or LLP, the fee must be paid no later than April 15.

If the LLC or LLP is not requesting an extension of time to file the partnership return, the fee must be remitted at the time the partnership return is filed. If the LLC or LLP is requesting an extension of time to file, a remittance for the full amount of the filing fee must accompany the extension request. There is no extension of time for payment of the filing fee. If the LLC or LLP fails to pay the full amount of filing fee with its extension

<sup>2</sup> Section 631 of the Tax Law provides, in general, that items of income, gain, loss or deduction from New York sources include those items attributable to (a) the ownership of any interest in real or tangible personal property located in this state or (b) a business, trade, profession or occupation carried on in this state.

When a sole proprietorship or a corporation changes to an LLC,

request, it will be subject to interest, and late payment penalty of 1/2% per month, up to a maximum of 25%, on the amount of fee not paid.

**Sales, Miscellaneous, and Corporation Taxes**

**Professional Partnerships and Other Existing Partnerships**

When an existing professional partnership registers with the Secretary of State as an LLP, there is no need to cancel any existing registrations, licenses, permits, etc., and reapply for new ones. Also, if an existing partnership becomes an LLC through a conversion agreement under section 1006 of the Limited Liability Company Law, there will generally be no need to obtain new registrations, licenses, etc. In either case, however, the LLC/LLP should complete the LLC/LLP *Request for Information* form and return it to the Tax Department. We will use this information to reflect your LLC/LLP status in our records.

For purposes of the taxes imposed under Tax Law Articles 12-A (gasoline and diesel motor fuel taxes), 13-A (petroleum business tax), 18 (alcoholic beverage tax), 20 (cigarette and tobacco products taxes) and 21 (highway use taxes) any change in partnership interest 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 the partnership was required to file a bond or other security with the 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 a partnership which owns an interest in real property changes ownership in connection with the conversion to an LLC, the gains tax (Article 31-B of the Tax Law) and the real estate transfer tax (Article 31 of the Tax Law) may be imposed.

**Other Entities**

A newly formed LLC (other than one formed through a conversion agreement under section 1006 of the Limited Liability Company Law) must file with the Tax Department the same applications for registration and licensing as required of any other new business. If there are bonding requirements that apply to the business, these must also be met.

the LLC must apply for any registrations, licenses or permits

required by the Tax Law. These will not automatically be transferred from the sole proprietorship or corporation to the LLC. To apply for a *Certificate of Authority* to collect sales and use tax, or to establish a New York State withholding tax account, LLCs that are successors to sole proprietorships and corporations may use the LLC/LLP *Request for Information* form. For other licensing, permit and registration information, the LLC should call the information phone number listed at the end of this notice, in most cases, the new LLC cannot legally engage in business until the appropriate registrations, permits, etc. have been obtained. Therefore, this must be taken into account when planning the change from an existing business to an LLC. Further, where business assets are transferred to an LLC from a business or individual required to collect sales and use tax, the LLC must file a bulk sale notification with the Department (Form AU-196.10).

### **Terminating Business**

If a business entity will be going out of existence as a result of the formation of an LLC, the terminating business has 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.

If the terminating business is a New York corporation, it must formally dissolve. 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. Corporate dissolution and surrender of authority are explained in the Tax Department's publication on termination of business corporations (Publication 110).

If an ownership interest in real property is transferred by a sole proprietorship or a corporation in exchange for an ownership interest in an LLC, the gains tax (Article 31-B of the Tax Law) and real estate transfer tax (Article 31 of the Tax Law) may be incurred.

A list of registrations, licenses and permits provided for in various sections of the Tax Law follows.

### **Articles 28 and 29**

- Certificate of Authority (sales and use tax registration).

### **Articles 12-A and 13-A (Motor Fuel Tax, Diesel Motor Fuel Tax and Petroleum Business Tax)**

- Motor Fuel Distribution Registration
- Distributor of Diesel Motor Fuel Registration
- Distributor of Kero-Jet Fuel Only Registration
- Retailer of Heating Oil Only Registration
- Liquefied Petroleum Gas Fuel Permittee Registration
- Importing/Exporting Transporter Registration
- Terminal Operator Registration
- Residual Petroleum Product Business Registration
- Aviation Fuel Business Registration

### **Article 18 (Alcoholic Beverage Tax)**

- Alcoholic Beverage Tax Distributor License

### **Article 18-A (Beverage Container Tax)**

- Container Sale Initiator Registration

### **Articles 20 and 20-A (Cigarette Tax)**

- Wholesale Dealer License
- Stamping Agent License
- Retail Dealer Annual Registration
- Distributor of Tobacco Products Registration

### **Article 21 (Highway Use Tax)**

- Highway Use Tax Registration

For forms or publications, call toll free (from New York State only) 1 800 462-8100. From areas outside New York State, call (518) 438-1073.

**For information**, call toll free (from New York State only) 1 800 CALL TAX (1 800 225-5829). From areas outside New York State, call (518) 438-8581.

**Telephone assistance is available from 8:30 a.m. to 4:25 p.m., Monday through Friday.**

**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, please call the information and assistance numbers listed above.

**Hotline for the Hearing and Speech Impaired** - If you have a hearing or speech impairment and have access to a telecommunications device for the deaf (TDD), you can get answers to your New York State tax questions by calling toll free (from the continental U.S.) 1 800 634-2110. Hours of operation are from 8:30 a.m. to 4:15 p.m., Monday through Friday. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.

**If you need to write**, address your letter to: NYS Tax Department, Taxpayer Assistance Bureau, W A Harriman Campus, Albany NY 12227.