

New York LLC's and LLP's New Annual Fee Charges

January 1, 2008 | **CLIENT ALERTS**

New York has changed the rules regarding the annual filing for Limited Liability Companies (LLC) and Limited Liability Partnerships (LLP). These changes are effective for tax years beginning on or after January 1, 2008.

OLD RULE

For tax years prior to 2008, LLCs and LLPs were required to file annually with New York and pay a filing fee based upon the number of members in the organization. Under the prior rules, the annual fee to be paid to New York State was based on a calculation of \$100 times the number of members in the LLC or LLP with a minimum payment of \$500 and a maximum payment of \$25,000. Entities with only one member that were considered disregarded entities for federal income tax purposes, but have New York source income, gain, loss or deductions were still required to pay a \$100 fee. Entities that did not have New York source income and were dormant or elected to be treated as a corporation were not subject to the filing fee.

NEW RULE

Effective for tax years beginning in 2008, 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 exemptions for dormant or entities treated as corporations no longer apply.

The New York State filing fee is to be filed and the amount of the fee paid on Form IT-204-LL within 30 days after the last day of the LLC or LLP tax year. We have been recently advised that New York State will no longer mail a copy of the Form IT-204 to entities and that each LLC and LLP is responsible for obtaining the form from the New York State website www.nystax.gov and for filing.

Most importantly, New York has also changed the manner in which the annual fee is calculated. It is now based on the amount of gross income from New York sources and the fee is based on the following table:

NY Gross Source Income | Annual Filing Fee

\$0 - \$100,000 | \$ 25

\$100,000 - \$250,000 | \$ 50

\$250,000 - \$500,000 | \$ 175

\$500,000 - \$1,000,000 | \$ 500

\$1,000,000 - \$5,000,000 | \$1,500

\$5,000,000 - \$25,000,000 | \$3,000

Over \$25,000,000 | \$4,500

New York source gross income is defined as the sum of the partners' or members' shares of federal gross income from the LLP or LLC derived from or connected with New York State sources without any deduction for cost of goods sold.

Unlike the prior rule, this fee scheme will dramatically increase the filing fee for businesses that are high volume sales even if those businesses have fairly low profit margins. By taxing gross income, the new fees are, in fact, more punitive than traditional income taxes.

If you would like further information regarding this topic feel free to contact any of our corporate or tax attorneys at (716) 835-5100.