



**General LLC Information**

Limited liability companies (LLCs) combine traditional corporate and partnership characteristics. The Beverly-Killea Limited Liability Company Act of 1994 (Stats.1994, Ch.1200) authorizes the formation of LLCs in California. It also recognizes out-of-state LLCs that do business in California.

To register or organize an LLC in California, go to the Secretary of State (SOS) website at **sos.ca.gov**. You can also contact SOS by mail or telephone at:

SECRETARY OF STATE  
 DOCUMENT FILING SUPPORT UNIT  
 PO BOX 944228  
 SACRAMENTO CA 94244-2280

916.657.5448 (not toll-free)

For California income and franchise tax purposes, generally we classify:

- A single-member LLC as **disregarded** from its owner, and treat it as a **sole proprietorship**, or a **branch** or **division** of its **owner**.
- An LLC with more than one member as a **partnership**.
- An LLC that files an election to classify as an "association," for federal tax purposes, as a **corporation**.

An LLC must have the same classification for both California and federal tax purposes.

**LLCs classified as disregarded** generally do not report their own income separately from their owners. However, we treat them as separate entities for purposes of the annual LLC tax, LLC fee, return requirements, and credit limitations. If certain items of income/loss or payments attributable to a disregarded LLC's activity exceed certain levels, the disregarded LLC must separately report its income on its return.

**LLCs classified as partnerships** generally determine and report their California income, deductions, and credits separately under the personal income tax law. These items pass through to their owners for purposes of taxation.

**LLCs classified as corporations** generally determine their California income under the corporation tax law. Refer to FTB Publication 1063, *California Corporation Tax Law, a Guide for Corporations*, for these types of LLCs.

**Annual Tax**

LLCs classified as partnerships or disregarded are subject to an \$800 annual tax. This applies if they do business in California or the SOS accepts their *Articles of Organization (LLC-1)* (Articles) or *Application for Registration as a Foreign Limited Liability Company (LLC-5)* (Application). LLCs that organized or registered in California are subject to the annual tax even if they conduct no business in California.

LLCs are not subject to the annual tax if **both** of the following are true:

- They did not conduct any business in California during the tax year.
- Their tax year was 15 days or less.

The annual tax is due on the 15<sup>th</sup> day of the 4<sup>th</sup> month after the tax year begins.

**Due dates for first-year annual tax payment**

Domestic LLCs have until the 15<sup>th</sup> day of the 4<sup>th</sup> month after they file their Articles with the SOS to pay the first-year annual tax.

Existing foreign LLCs that register or commence business in California after the 15<sup>th</sup> day of the 4<sup>th</sup> month of their tax year must pay the annual tax:

- Immediately when they commence business in California.
- When they register with SOS.

**Avoidance of the annual tax** payment is possible for domestic LLCs effective January 1, 2005. They must meet **all** of the following conditions:

- They file a first-year return that is also their final return.
- They do not conduct business.
- They file a short form cancellation with the SOS.

We cannot refund the annual tax once an LLC pays it, even if they meet the avoidance requirements.

**Annual Fee**

LLCs are subject to an annual fee based on their total income (R&TC Section 17942). *Total income* for LLC fee purposes is "gross income, as defined in Section 24271, plus the cost of goods sold that are paid or incurred in connection with the trade or business of the taxpayer."

Before January 1, 2007, LLCs computed the fee based on "total income from all sources reportable to this state," which meant worldwide, unapportioned income (R&TC Section 17942(a)).

Effective January 1, 2007, LLCs calculate the fee on an apportioned basis based on "total income from all sources derived or attributable to this state." LLCs determine "total income from all sources derived from or attributable to this state" by using the rules for sales assignment under Sections 25135 and 25136 and the regulations thereunder, as modified by regulations under Section 25137, other than those provisions that exclude receipts from the sales factor (R&TC Section 17942(b)(1)(B)).

LLCs must estimate and pay the annual fee by the 15<sup>th</sup> day of the 6<sup>th</sup> month of the current tax year. If

the LLC's tax year is less than six months, the LLC must pay the fee by the due date for filing its Form 568 return.

If the total income is:	The fee amount is:				
	1994 & 1995	1996 to 1998	1999	2000	2001 and after
\$250,000-\$499,999	\$500	\$500	\$865	\$1,042	\$900
\$500,000-\$999,999	\$1,000	\$1,500	\$2,595	\$3,126	\$2,500
\$1,000,000-\$4,999,999	\$2,000	\$3,000	\$5,190	\$6,251	\$6,000
\$5,000,000 or more	\$4,000	\$4,500	\$7,785	\$9,377	\$11,790

For tax years that begin on or after January 1, 2001, the definition of total income excludes amounts the LLC already included in the calculation of the fee.

### Example

LLC A does business only in California during 2001. LLC B has a 50 percent member interest in LLC A. LLC A has \$1,200,000 of total income during 2001. LLC B has \$900,000 of total income during 2001. LLC B's income includes \$600,000 from LLC A (\$1.2 million X 50 percent member interest).

The filing requirements are:

Entity	2001 Form	Annual Tax	Total Income	LLC Fee
LLC A	568	\$800	\$1,200,000	\$6,000
LLC B	568	\$800	\$300,000 (900,000 - 600,000)*	\$900

\* For tax year 2001, LLC B excludes \$600,000 of total income because it already used that amount to calculate the fee of LLC A.

Refer to the instructions for Form 568, *Limited Liability Company Return of Income*, for tax years that begin after 2007. The guidelines on how LLCs calculate total income changed. The instructions provide information and examples about conducting business within and outside of California.

### Filing Requirements, Forms, and Mailing Addresses

Although California law uses the same entity classification as federal, LLCs classified as partnerships must:

- File Form 568,
- Pay an annual tax of \$800, and
- Pay an annual fee based on total income attributable to California.

LLCs must comply with the three items above if any of the following conditions apply:

- They organized in California.
- They registered with the SOS to transact business in California.
- They do business in California (R&TC Section 23101).

LLCs with California source income that do not meet any of the three conditions above must file Form 565, *Partnership Return of Income*.

### Forms

All forms are available on the Internet. Go to [ftb.ca.gov](http://ftb.ca.gov) and search for **forms**.

**FTB 3522, LLC Tax Voucher.** File and pay the annual tax payment by the 15<sup>th</sup> day of the 4<sup>th</sup> month of the LLC's tax year.

Send payment with a completed FTB 3522 to:

FRANCHISE TAX BOARD  
PO BOX 942857  
SACRAMENTO CA 94257-0631

**FTB 3536, Estimated Fee for LLCs.** For taxable years that begin on or after January 1, 2009, LLCs must estimate and pay their applicable fee by the 15<sup>th</sup> day of the 6<sup>th</sup> month of the current tax year. If the estimated fee paid by an LLC is less than the amount of the total fee owed for the tax year, then the LLC must pay the amount of the underpayment by the due date of the LLC's return. In addition, an LLC that underestimates its fee will be subject to a penalty equal to 10 % of the amount of the underpayment. However, an LLC can avoid the 10 % estimated fee underpayment penalty if its estimated fee payment for the current tax year is equal to or greater than the total fee owed by the LLC for its preceding tax year. If an LLC's tax year ends prior to the 15<sup>th</sup> day of the 6<sup>th</sup> calendar month of its taxable year, then no estimated payment is required and the LLC must pay the fee by the due date of the return.

Send payment with a completed FTB 3536 to:

FRANCHISE TAX BOARD  
PO BOX 942857  
SACRAMENTO CA 94257-0651

**FTB 3537, Payment for Automatic Extension for LLCs.** We grant an automatic six-month extension to file a return. The automatic extension applies if LLCs file their tax return by the 15<sup>th</sup> day of the 10<sup>th</sup> month after the close of the tax year. An extension of time to file is not an extension of time to pay. LLCs must pay the full balance by the original due date of the return to avoid penalties and interest.

Send payment with a completed FTB 3537 to:

FRANCHISE TAX BOARD  
PO BOX 942857  
SACRAMENTO CA 94257-0651

**Form 568, Limited Liability Company Return of Income.** File and pay the applicable fee plus any nonconsenting nonresident member tax by the 15<sup>th</sup> day of the 4<sup>th</sup> month after the close of the tax year, unless the LLC files an extension by the 15<sup>th</sup> day of the 10<sup>th</sup> month after the close of the tax year.

Send Form 568, necessary schedules, and payment for applicable fee to:

FRANCHISE TAX BOARD  
PO BOX 942857  
SACRAMENTO CA 94257-0601

If no payment is due, send Form 568 and necessary schedules to:

FRANCHISE TAX BOARD  
PO BOX 942857  
SACRAMENTO CA 94257-0600

### **Limited Liability Company Income Worksheet.**

LLCs with ownership interests in pass-through entities must report their distributive shares of the pass-through entities' total income it excludes from the calculation of the LLC fee. Their distributive share cannot include any deductions they subtracted from gross ordinary income to obtain net ordinary income. Also, LLCs must enter the matching cost of goods sold on line 3b. Contact the pass-through entity to get the necessary information for lines 3c and 9c.

Disregarded LLCs also compute total income on the LLC Income Worksheet. Use the applicable lines and ignore the line items that address Schedule B.

LLCs that own a disregarded LLC must report the disregarded LLC items on Schedules B and K. Do not separately enter any amounts from a membership interest in a disregarded LLC on the LLC Income Worksheet.

**California Schedule K-1 (568), Member's Share of Income, Deductions, Credits, etc.** LLCs that elect classification as a partnership for tax purposes use this schedule to report each member's share of the LLC's income, deductions, credits, etc. We accept this document in a paperless format via CD, diskette, or cartridge. For information about the Paperless Schedule K-1 Program, go to [ftb.ca.gov](http://ftb.ca.gov) and search for **K-1**.

**LLCs classified as corporations** should refer to FTB Publication 1060, *Guide for Corporations Starting Business in California*. This publication provides information for these types of LLCs.

### **Converted Business Entities Information**

If any type of business entity converts to an LLC during the current year, it generally will have a tax liability and filing requirement as both the previous business entity and the new LLC.

### **Nonresident Members**

LLCs must file a form FTB 3832, *Limited Liability Company Nonresident Members' Consent*, with Form 568.

The Form 3832 must have each nonresident member's signed consent to California's jurisdiction to tax the member's distributive share of the LLC's income that they attribute to California sources. The nonresident member of a single member LLC consents to California tax jurisdiction when they sign the Single Member LLC Information and Consent on Side 1 of Form 568.

If an LLC fails to obtain the signature of any nonresident member, it must pay tax on each of its nonconsenting nonresident members' distributive share of income. It must pay at the members' highest marginal tax rate. The tax is due by the Form 568's due date, without extensions.

Use Schedule T, *Nonconsenting Nonresident Members' Tax Liability*, to calculate and report nonconsenting nonresident members' taxes the LLC must pay. Completion of FTB 3832 (or the single member's consent) or Schedule T does not satisfy the consenting member's California filing requirement.

Refer to the Form 568 instructions for Schedule T for additional information.

### **Doing Business in California**

California defines doing business as "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit" (R&TC Section 23101). Regardless of where LLCs primarily conduct business, if any of their members, managers, or other agents conduct business in California on behalf of the LLC, we consider the LLC as doing business in California.

#### **Example 1**

Paul is a California resident and a member of a Nevada LLC. The Nevada LLC owns property in Nevada. The LLC hires a Nevada management company to collect rents and provide maintenance. Paul has the right to hire and fire the management company. He occasionally has telephone discussions with the management company regarding the property. He is ultimately responsible for the property and oversees the management company. Paul conducts business in California on behalf of the LLC. It must file Form 568.

#### **Example 2**

Rachel is a California resident and a member of an Oregon LLC. The Oregon LLC has a retail store in Oregon. Rachel uses a California address for the LLC's tax filings and a California accountant to prepare the LLC's tax returns. Rachel conducts business in California on behalf of the LLC. It must file Form 568.

#### **Example 3**

Sara is a California resident and a member of a Texas LLC. The Texas LLC receives royalties from Texas oil wells. Sara maintains a California business bank account and secures financing in California for the LLC's Texas investments. Sara conducts business in California on behalf of the LLC. It must file Form 568.

#### Example 4

John is a member of an Arizona LLC. The Arizona LLC operates a repair shop in Arizona. John moved to California and no longer works as a mechanic for the LLC. John is still responsible for some of the general and financial administration of the business, which includes bill payment and bookkeeping. John conducts business in California on behalf of the LLC. It must file Form 568.

#### Tiered Entity

California considers a tiered entity as doing business here if one of the following applies:

- It is a nonregistered foreign LLC that is a member of an LLC that does business in California.
- It is a general partner in a partnership or limited partnership that does business in California.

Tiered entities should file Form 568.

#### Example

LLC A holds rental real estate properties in California. California considers LLC A as doing business here. LLC B is a member of LLC A, but not registered in California, and has no other contact with California. However, since LLC A is doing business here, California considers LLC B as doing business here as well. LLC B must file Form 568 and is subject to the LLC tax and fee.

#### Series LLCs

California recognizes series LLCs that form in other states if the laws of their formation state provide for the designation of a series of interests and:

- The holders of the interests in each series are limited to the assets of that series upon redemption, liquidation, or termination and may share in the income only of that series.
- Under the home state law, the payment of expenses, charges, and liabilities of each series is limited to the assets of that series.

For tax purposes, California considers each series in a series LLC a separate LLC.

Each series LLC must:

- File a separate Form 568.
- Pay its own LLC annual tax and fee.

If the series LLC registered in California, the first LLC in the series uses the SOS number as the identification number on its initial payment voucher. All other LLCs in the series must leave the identification numbers blank on their first payment vouchers.

When LLCs complete payment vouchers and tax returns, write "Series LLC # \_\_\_\_\_" after the LLC name. In addition, write "Series LLC" in red on the top of these documents.

We will assign an identification number to the rest of the LLCs in the series LLC. We will notify each series of its assigned number after we receive its initial payment voucher.

#### Example

ABC LLC is a series LLC registered in Delaware. It contains three series and files in California with the names: ABC LLC, ABC LLC Series 1, and ABC LLC Series 2.

#### Billings and Notices

We bill all types of LLCs for unpaid taxes and fees.

Depending upon the filing situation for each LLC, we mail one of the following:

- *Return Information Notice* to LLCs if they fail to show the correct annual tax, annual fee, or nonconsenting nonresident members' taxes. We mail this notice to LLCs classified as corporations if they fail to show the correct estimated tax.
- *Notice of Balance Due* to LLCs if they fail to pay the annual tax, fee, or nonconsenting nonresident members' tax. We mail this notice to LLCs classified as corporations if they fail to pay the estimated tax.
- *Past Due Notice* to all types of LLCs for tax liabilities, penalties, and interest unpaid 45 days from the first notice's mail date.

LLCs may be subject to penalties and interest if they:

- Pay tax or fee late.
- Underpay tax or fee.
- File their tax return beyond the extended due date.

We impose penalties under the following R&TC Sections:

- Underpayment and monthly (Section 19132).
- Delinquent (Section 19131).
- Late filing (Section 19172).

If an LLC pays the balance due within 15 days of the notice's issue date, no additional penalties or interest will accrue.

#### Canceling an LLC

Effective September 29, 2006, the requirement for an LLC to obtain a *Tax Clearance Certificate* from us to cancel its registration with the SOS ended. This affects tax years that begin on or after January 1, 2006.

In addition, LLCs may avoid the annual tax for current and subsequent tax years if they meet all of the following requirements:

- They file a timely final tax return (including extension) for the preceding tax year.
- They conduct no business after the last day of the preceding tax year.
- They file the appropriate documents with the SOS within 12 months of the date they file their final tax return. (For additional information, refer to FTB Publication 1038, *Guide to Dissolve, Surrender, or Cancel a California Business Entity*.)

## Forms used to cancel

To cancel, file the following forms with SOS. Their office handles cancellations.

**Domestic LLCs** - SOS Form, LLC-3, *Certificate of Dissolution*.

**Foreign and domestic LLCs** - SOS Form, LLC-4/7, *Certificate of Cancellation*.

### Send forms:

**By Mail** DOCUMENT FILING SUPPORT UNIT  
SECRETARY OF STATE  
PO BOX 944228  
SACRAMENTO CA 94244-2280

**In Person** SECRETARY OF STATE  
1500 11TH STREET, THIRD FLOOR  
SACRAMENTO CA 95814

For more information, contact SOS by telephone at 916.657.5448 (not toll-free), or go to [sos.ca.gov](http://sos.ca.gov).

## Short Form Cancellation

Effective January 1, 2005, domestic LLCs that organized in California qualify to file a Short Form Certificate of Cancellation if they meet all of the following:

- They file their SOS Form LLC-4/8, *Limited Liability Company Short Form Certificate of Cancellation* within 12 months after they file their Articles.
- They have no debts or liabilities, except those described as tax liabilities.
- They filed or will file a final tax return with us.
- They distributed any assets that remain after payment of, or adequately provides for, known debts and liabilities to the persons entitled to them.
- They did not conduct any business since they organized.
- A majority of the managers or members (if no managers or members, the person or a majority of the persons who signed the Articles) votes to dissolve the LLC.
- They returned all payments they received for members' interests to investors.
- A majority of the members or if there are no members, a majority of the managers (or if there are no managers or members, the person or majority of persons who signed the Articles) execute the cancellation.

Go to [sos.ca.gov](http://sos.ca.gov) and get Form LLC-4/8, *Limited Liability Company Short Form Certificate of Cancellation*.

## Protective Claims

To protect the statute of limitations on a claim, LLCs may file a request with us to withhold any action on their claim while an audit determination or litigation is pending. The LLC may file a protective claim pending the outcome of:

- An appeal to the State Board of Equalization.
- A court case.
- An audit by the Internal Revenue Service.
- An audit by another California taxing agency.
- Other litigation.

## Filing a protective claim

Send us a letter if your claim relates to recent court cases that challenge the constitutionality of the LLC fee. Send the letter via mail, courier, or fax.

For cases related to **Northwest Energetic Services, LLC (NES)**:

MAIL ABS 389 MS: F340  
FRANCHISE TAX BOARD  
C/O FTB NOTICE **2008-2**  
PO BOX 942867  
SACRAMENTO CA **94267-8888**

COURIER ABS 389 MS: F340  
FRANCHISE TAX BOARD  
C/O FTB NOTICE **2008-2**  
SACRAMENTO CA **95827**

FAX 916.845.9796

For cases related to **Ventas Finance I, LLC**:

MAIL ABS 389 MS: F340  
FRANCHISE TAX BOARD  
C/O FTB NOTICE **2009-04**  
PO BOX 942867  
SACRAMENTO CA **94267-8888**

COURIER ABS 389 MS: F340  
FRANCHISE TAX BOARD  
C/O FTB NOTICE **2009-04**  
SACRAMENTO CA **95827**

FAX 916.845.9796

To determine if your LLC's protective claim qualifies under one of the recent court cases, go to [ftb.ca.gov](http://ftb.ca.gov) and search for **FTB Notice - 2008-2**, or **FTB Notice - 2009-04**. Follow the applicable set of instructions listed in the notice(s) to file your claim. In the case of **Bakersfield Mall, LLC v. Franchise Tax Board**, the case is ongoing.