

PKF PERSPECTIVES

NEW YORK STATE LLC/LLP FILING FEES



Recent changes were enacted in New York State pertaining to limited liability company (LLC) and limited liability partnership (LLP) filing fees and filing due dates. In addition, new filing fees for single member dis-regarded entities were established.

Increase in Filing Fees for LLCs and LLPs

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.

New Filing Fee for Single Member Disregarded LLCs

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.

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 the tax year. An LLC or LLP can no longer attach Form IT-204-LL to the front of Form IT-204, **Partnership Return**. There is no proration of the filing fee if the LLC or LLP has a short tax year for federal purposes. There is no extension of time to file Form IT-204-LL or to pay the annual fee.

MODIFICATIONS TO NYS WITHHOLDING REQUIREMENTS

We reported in August 2003 that New York State had amended its laws to require, in certain cases, quarterly income tax withholding and payments by partnerships and S corporations. **Partnerships (and LLCs or LLPs that are treated as partnerships) and New York S corporations that have income derived from New York sources are now required to make estimated income tax payments on behalf of nonresident individual partners or shareholders that are C corporations.** The first required payment of estimated tax became effective on September 15, 2003.

New York has recently modified its rules regarding the making of estimated tax payments that are effective with payments due on January 15, 2004. C corporation partners and nonresident individual partners and shareholders may, if they qualify, claim exemption from the estimated tax provisions by filing one of the following exemption certificates:

- Form CT-2658-E, **Certificate of Exemption from Partnership Estimated Tax Paid on Behalf of Corporate Partners**, or
- Form IT-2658-E, **Certificate of Exemption from Partnership or New York S Corporation Estimated Tax Paid on Behalf of Nonresident Individual Partners and Shareholders**.

Filing exemption certificates with the New York State Department of Taxation and Finance is not required. Copies of these forms must, instead, be maintained by the partnership or S corporation. In the future, however, New York State will require periodic submissions of certain information relating to partners and shareholders that have filed exemption certificates.

C corporations qualify for the exemption if they meet one of the following:

- The corporation is not subject to New York State corporation or franchise taxes; or
- The corporation certifies that it will comply with all New York State corporation estimated tax payment provisions and tax return filing requirements.

Nonresident individuals qualify for the exemption if they certify that they will comply, in an individual capacity, with all the New York personal income tax estimated tax payment provisions and income tax return filing requirements.

C corporation partners and nonresident individual partners and shareholders are required to notify the partnership or S corporation within 10 days if they will no longer meet the requirements for claiming exemption. Once notified, the partnership or S corporation must begin making estimated tax payments on behalf of the partner or shareholder.

Exemption certificates will cover the last payment due for tax year 2003 (due January 15, 2004) and the payments due for tax years 2004 and 2005. All certificates will expire on February 1, 2006. At that time, new certificates must be submitted.

Instructions originally released by New York State contained an automatic exemption from the estimated tax rules for:

- C corporations, if the partnership could demonstrate that the partner's distributive share of partnership income earned from New York sources would not be includable in the partner's New York taxable income, and
- Nonresident individuals, if the partnership or New York S corporation could demonstrate that the partner's or shareholder's distributive share or partnership or pro rata share of S corporation income from New York sources would not be includable in the partner's or shareholder's New York source income.

These automatic exemptions no longer apply and are replaced by the new exemptions listed above.

IN THE WORDS OF ...

The thing generally raised on city land is taxes.

... Charles Dudley Warner (1829-1900 - American essayist and novelist)

Look, we play the "Star Spangled Banner" before every game. You want us to pay income taxes, too?

... Bill Veeck (1914-1986 - owner of the Cleveland Indians and Chicago White Sox)

Worried about an IRS audit? Avoid what's called a "red flag". That's something the IRS always looks for. For example, say you have some money left in your bank account after paying your taxes - that's a "red flag".

... Jay Leno

Items in this publication should not be considered official statements of position, nor advice for individuals or organizations without consulting a tax advisor. For more information, please contact Howard Pell or Leo Parmegiani at:

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... the right size

... the right people

... the right choice