



General LLC Information

Limited liability companies (LLCs) combine traditional corporate and partnership characteristics. The California Revised Uniform Limited Liability Company Act (California Corporations Code Sections 17701.01 through 17713.13) authorizes the formation of LLCs in California. It also recognizes out-of-state LLCs that do business in California.

To view or download instructions and Form 568, *Limited Liability Company Return of Income*, go to **ftb.ca.gov** and search for form **568**.

To register or organize an LLC in California, contact the California Secretary of State (SOS):

Website: **sos.ca.gov**

Telephone: 916.657.5448

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

In Person: CALIFORNIA SECRETARY OF STATE
 1500 11TH STREET
 SACRAMENTO CA 95814

Filing Status

For California income and franchise tax purposes, generally LLCs are classified into three categories:

- **Single member LLCs classified as disregarded entities (SMLLC)** generally do not report their own income separately from their owners. However, they are treated as separate entities for purposes of the annual tax, LLC fee, tax return requirements, and credit limitations. If certain items of income/loss or payments attributable to a disregarded LLC's activities exceed certain levels, the disregarded LLC must separately report its income on its tax return.
- **LLCs classified as partnerships (more than one member)** 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 that elect to be classified as an association (taxable as a corporation) for federal purposes** generally determine their California income under corporation tax law. Refer to FTB Publication 1060, *Guide for Corporations Starting Business in California*, for these types of LLCs.

Under Revenue and Taxation Code (R&TC) Section 23038 and the related regulations, an LLC must have the same classification for both California and federal tax purposes.

Annual Tax

LLCs classified as disregarded entities or as partnerships are subject to an \$800 annual tax. This applies if they do business in California or if the SOS accepts their *Articles of Organization (LLC-1)* or *Application for Registration as a Foreign Limited Liability Company (LLC-5)*. LLCs organized or registered in California are subject to the annual tax even if they conduct no business in California (R&TC Section 17941(b)(1)). For taxable years beginning on or after January 1, 2011, an LLC organized in California is doing business in California (R&TC Section 23101(b)(1)).

15-Day Exception

LLCs are not subject to the annual tax and fee 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 fewer.

Deployed Military Exception

For tax years that begin on or after January 1, 2010, and before January 1, 2018, an LLC that is a small business solely owned by a deployed member of the United States Armed Forces shall not be subject to the annual tax if **both** of the following apply:

- The owner is deployed during the tax year.
- The LLC operates at a loss or ceases operation.

For the purpose of this exception:

- "Deployed" means called to active duty or active service during a period when the United States is engaged in combat or homeland defense. "Deployed" does not include temporary duty for the sole purpose of training, processing, or permanent change of station.
- "Operates at a loss" means an LLC's expenses exceed its receipts.
- "Small business" means an LLC with \$250,000 or less of total income from all sources derived from or attributable to California.

Due Dates for First-Year Annual Tax Payment

Domestic LLCs have until the 15th day of the 4th month after they file their *Articles of Organization* with the SOS to pay the first-year annual tax. For the LLC's first year, this is measured from the date the business files its *Articles of Organization*. For example, if you filed your *Articles of Organization* on June 19, your annual tax is due on September 15.

Existing foreign LLCs that register or commence business in California after the 15th day of the 4th month of their tax year must pay the annual tax by one of the following, whichever occurs first:

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

Effective January 1, 2005, an LLC can avoid the first year's \$800 annual tax if they file a short-form cancellation with the SOS. See **Canceling an LLC** section for more information on short form cancellations.

LLC Fee

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

LLCs determine total income from California sources by using the rules for sales assignment under R&TC Sections 25135 and 25136 and the related regulations, as modified by regulations under R&TC Section 25137, other than those provisions that exclude receipts from the sales factor (R&TC Section 17942(b)(1)).

LLCs must estimate and pay the annual fee by the 15th day of the 6th month, of the current tax year. If the LLC's tax year ends prior to the 15th day of the 6th month, the LLC must pay the fee by the due date for filing its Form 568, *Limited Liability Company Return of income*.

If the Total Income* is:	The fee amount is:				
	1994 and 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

*Rounded to the nearest whole dollar.

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

Example

LLC A does business only in California during 2010. LLC B has a 50 percent member interest in LLC A. LLC A has \$1,200,000 of total income derived from California during 2010. LLC B has \$900,000 of total income derived from California during 2010. LLC B's total income includes \$600,000 from LLC A (\$1.2 million X 50 percent member interest).

The filing requirements are:

Entity	2010 Tax Year ends prior to the 15th day of the 6th month	Annual Tax	Total Income	LLC Fee
LLC A	Form 568	\$800	\$1,200,000	\$6,000
LLC B	Form 568	\$800	\$300,000*	\$900

* For tax year 2010, LLC B excludes \$600,000 of total income because the \$600,000 was already subject to the fee on LLC A.

The guidelines on how LLCs calculate total income changed for tax years that begin on or after January 1, 2007. Refer to the instructions for Form 568, *Limited Liability Company Return of Income*, for 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 and disregarded LLCs must do **all** of the following:

- File Form 568.
- Pay an annual tax of \$800.
- Pay an annual LLC fee based on total income from all sources derived from or attributable to California.

LLCs must file and pay the annual tax and fee if any of the following conditions apply:

- They organized in California.
- They registered with the SOS to do business in California.
- They do business in California (R&TC Section 23101). See **Doing Business in California** section for more information.

Under R&TC Section 23101(a), a foreign nonregistered LLC that is a member of an LLC (classified as a partnership or disregarded entity for tax purposes) that is doing business in California is also doing business in California. In addition under R&TC Section 23101(a), a general partner in a limited partnership doing business in California by virtue of its activities in this state, is also doing business in California. For tax years that begin on or after January 1, 2011, LLCs that are limited partners in a limited partnership may be doing business in California. See **Doing Business in California** section for more information.

An LLC classified as a partnership that does not meet the conditions above, but has California source income or files to report an election on behalf of a California resident, must file Form 565, *Partnership Return of Income*.

FTB 3522, LLC Tax Voucher. File and pay the annual tax payment by the 15th day of the 4th 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 tax years that begin on or after January 1, 2009, LLCs must estimate and pay their applicable fee by the 15th day of the 6th month of the current tax year. LLCs use FTB 3536 to pay the estimated fee. An LLC that underestimates its fee will be subject to a penalty equal to 10 percent of the amount of the underpayment. However, an LLC can avoid the 10 percent 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 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 tax return, which is the 15th day of the 4th month after the close of its tax year, or it will be subject to a late payment penalty and applicable interest.

If an LLC's tax year ends prior to the 15th day of the 6th calendar month of its tax year, then no estimated payment is required and the LLC must pay the fee by the due date of the tax return.

An LLC that is filing under the six-month automatic extension to file will also use FTB 3536 to pay by the due date of the LLC's tax return any amount of LLC fee owed that was not paid as a timely estimated fee payment. If the LLC does not owe any fee, it is not required to complete or mail FTB 3536. An LLC filing its tax return on a nonextended basis will include any required payment of the fee with its tax return.

Send the estimated LLC 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 tax return. The automatic extension applies if LLCs file their tax return by the 15th day of the 10th 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 of any LLC fee as well as any nonconsenting nonresident (NCNR) member's taxes by the original due date of the tax return to avoid penalties and interest.

If the LLC does not owe any fee or NCNR members' taxes, then it does not need to file any forms on the regular due date of the tax return if it is filing under the automatic extension.

An LLC will use FTB 3537 only if **both** of the following apply:

- The LLC cannot file Form 568 by the due date.
- The LLC owes NCNR members' taxes.

Send payment with a completed FTB 3537 to:

FRANCHISE TAX BOARD
PO BOX 942857
SACRAMENTO CA 94257-0651

FTB 568, Limited Liability Company Return of Income. An LLC must file Form 568 by the 15th day of the 4th month after the close of the tax year, unless it files its tax return under the automatic six-month extension. An extension of time to file is not an extension of time to pay. All payments owed including NCNR members' taxes are due on the original due date of the tax return.

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 completed Form 568 and necessary schedules to:

FRANCHISE TAX BOARD
PO BOX 942857
SACRAMENTO CA 94257-0600

FTB Schedule IW, Limited Liability Company (LLC) Income Worksheet. Total income derived from or attributable to California means gross income, as defined in R&TC Section 24271, plus the cost of goods sold, paid, or incurred in connection with the trade or business of the taxpayer. LLCs with ownership interest in pass-through entities must report their distributive share of the pass-through entities' "Total income from all sources derived from or attributable to California." The distributive share must include the associated cost of goods sold and any deductions subtracted from gross ordinary income to obtain ordinary income. For more information, see the instructions for the LLC Income Worksheet in the Form 568 booklet.

Disregarded LLCs also compute total income on the *LLC Income Worksheet*. Disregarded entities that do not meet the filing requirements to complete Form 568 Schedule B or Schedule K should prepare the LLC Income Worksheet by entering the California amounts attributable to the disregarded entity from the member's federal tax return and appropriate schedules.

An LLC that is a member of a disregarded LLC must report on the member's Schedule B and K the items of income, deduction, and credit attributable to the disregarded LLC. On its LLC Income Worksheet, the single member does not separately enter any amounts attributable to its membership interests in disregarded LLCs.

California Schedule K-1 (Form 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 on CD or portable USB flash drive. For information about the Paperless Schedule K-1 Program, go to 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 FTB 3832, *Limited Liability Company Nonresident Members' Consent*, with Form 568. The FTB 3832 must have each nonresident member's signed consent to California's jurisdiction to tax the members' distributive share of the LLC's income attributable to California sources. Single-member LLCs do not file FTB 3832. The nonresident member of a single member LLC consents to California tax jurisdiction when it signs the Single Member LLC Information and Consent on Side 1 of Form 568.

If an LLC fails to obtain the consent signature of a nonresident member, the LLC must pay tax on that member's distributive share of California source income reduced by nonresident withholding paid on behalf of such member. It must pay tax at the member's highest marginal tax rate. The tax is due by the Form 568's original tax return due date.

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

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

Group Nonresident Tax Returns

Nonresident members of an LLC doing business or deriving income in California may elect to file a group nonresident tax return (R&TC Section 18535). Get Publication 1067, *Guidelines for Filing a Group Form 540NR*, for more information.

Nonresident Withholding

R&TC Section 18662 and related regulations require withholding of California income or franchise taxes from payments and distributions made to nonresidents of California source income. Get Publication 1017, *Resident and Nonresident Withholding Guidelines*, for more 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(a)). An LLC is "doing business" if any of the LLC's members, managers, or other agents performs activities in California on behalf of the LLC, regardless of where the LLC otherwise conducts business. In addition, an LLC is "doing business" in California under R&TC Section 23101(a) in California if:

- It is a nonregistered foreign LLC that is a member of an LLC (classified as a partnership for disregarded entity for tax purposes) that does business in California.
- It is a general partner in a general or limited partnership that does business in California.

For tax years that begin on or after January 1, 2011, a taxpayer, including an LLC, is also doing business in California if any of the following apply:

- The taxpayer is organized or commercially domiciled in California.
- Sales, as defined in subdivision (e) or (f) of R&TC Section 25120, including sales by the taxpayer's agents and independent contractors, in California, exceed the lesser of \$500,000 or 25 percent of the taxpayer's total sales.
- Real or tangible property of the taxpayer in California, exceed the lesser of \$50,000 or 25 percent of the taxpayer's total real and tangible property.
- The amount paid in California by the taxpayer for compensation, as defined in subdivision (c) of R&TC Section 25120, exceeds the lesser of \$50,000 or 25 percent of the total compensation paid by the taxpayer.

Under R&TC Section 23101(c), we will annually revise the amounts for sales, property, and payroll in paragraphs (2), (3), and (4) of subdivision (b), respectively, in accordance with subdivision (h) of R&TC Section 17041.

For the preceding conditions, the sales, property, and payroll of the taxpayer include the taxpayer's pro rata or distributive share of the sales, property, and payroll of pass-through entities, such as entities classified as partnerships for income tax purposes. (R&TC Section 23101(d)). Go to ftb.ca.gov and search for **doing business** for more information.

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 from California with the management company in Nevada 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. The LLC must file Form 568.

Example 2

Rachel is a California resident and 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. The LLC 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. The LLC must file Form 568.

Series LLCs

California recognizes series LLCs formed in other states if the laws of their formation state provide for the designation of multiple series of interests in the LLC 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 law of the formation state, the payment of expenses, charges, and liabilities of each series is limited to the assets of that series.

For annual tax and LLC fee purposes, each series in a series LLC is a separate LLC.

Each series LLC must:

- File its own 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.

Write "Series LLC # _____" in red ink on the top of all payment vouchers, tax returns, and correspondence.

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 NCNR member's 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 NCNR 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 (including NCNR) or fee late.
- Underpay tax (including NCNR) or fee.
- File their tax return beyond the extended due date.
- Pay their estimated LLC fee late.
- Underpay their estimated LLC fee.

We impose penalties under the following R&TC Sections:

- Underpayment and monthly, Section 19132.
- Delinquent (does not apply to the annual tax), 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.

Suspension/Forfeiture

If an LLC does not file Form 568 and/or does not pay all tax, penalty, or interest due, its powers, rights, and privileges may be suspended (domestic LLC) or forfeited (foreign LLC). Also, any contracts entered into during suspension or forfeiture are voidable at the request of any party of the contract other than the suspended or forfeited LLC. Such contracts will remain voidable and unenforceable unless the LLC applies for relief of contract voidability and FTB grants relief. See R&TC Sections 23301, 23305.1, and 23305.2 for more information. In addition, a suspended or forfeited LLC cannot file a claim for refund. Go to ftb.ca.gov and search for **revive** for instructions to restore an LLC to good standing.

To Cancel an LLC

In general, an LLC is required to pay the \$800 annual tax and file a California tax return until the appropriate paperwork is filed with the SOS to cancel the LLC. In order to cancel an LLC, the LLC must file Form LLC-4/7, *Limited Liability Company Certificate of Cancellation*, with SOS. The SOS also requires a domestic LLC to file Form LLC-3, *Certificate of Dissolution*, unless the dissolution is made by vote of all the members. The Form LLC-4/7 is effective on the date it is filed with the SOS.

An LLC is not subject to the \$800 annual tax for tax years after it files a tax return that it designates in the manner prescribed by the Franchise Tax Board as its final tax return if it takes all following steps:

- Files a timely final California tax return with us.
- Pays the \$800 annual tax for the tax year of the final tax return.
- Conducts no business in California after the last day of the tax year for which the final return was filed.
- Files Form LLC-4/7, *Limited Liability Company Certificate of Cancellation*, with the SOS within 12 months of the filing date of its final tax return.

For more information, go to ftb.ca.gov and search for **1038** to get FTB Publication 1038, *Guide to Dissolve, Surrender, or Cancel a California Business Entity*.

Short Form Cancellation

Beginning January 1, 2005, a domestic LLC organized in California on or after January 1, 2004, can file a Form LLC-4/8, *Short Form Certificate of Cancellation*, if all of the following requirements are met:

- It files California SOS Form LLC-4/8, *Limited Liability Company Short Form Cancellation*, within 12 months after filing its *Articles of Organization*.
- It does not have any debts or other liabilities (other than LLC tax liabilities).
- It has filed or states it will file a timely final annual LLC tax return.
- All of its known assets have been distributed to the persons entitled to them, or it had no known assets.
- It has not conducted any business since the time it filed its *Articles of Organization*.
- A majority of the managers or members, or if there are no managers or members, the person or a majority of the persons who signed the *Articles of Organization*, vote to dissolve the domestic LLC.
- If the LLC received payments for interests from investors, those payments have been returned to those investors.

The domestic LLC must file SOS Form LLC-4/8, with the SOS. It must include a statement that all of the terms above, with the exception of the filing of the final tax return, have been completed before the SOS will cancel the LLC. If the SOS files the Form LLC-4/8, the LLC will not be subject to the annual \$800 tax for its first tax year. However, an LLC is not entitled to a reimbursement of any annual taxes or fees paid prior to cancellation for its first tax year.

For more information on how to cancel your LLC, contact SOS. Refer to the SOS contact information on PAGE 1.

LLC Fee Litigation

Four separate cases have been filed challenging the constitutionality of the LLC fee as calculated according to former R&TC Section 17942. Each case presents separate factual circumstances. The following two cases are now final:

- **Northwest Energetic Services, LLC v. Franchise Tax Board** (2008) 159 Cal. App. 4th 841 (NES)
- **Ventas Finance I, LLC v. Franchise Tax Board** (2008) 165 Cal. App. 4th 1207 (Ventas)

The following two cases, which also challenge the fee statute on additional grounds, are still ongoing as of the date of this form's publication.

- **Bakersfield Mall, LLC v. Franchise Tax Board** (Bakersfield)
- **CA Centerville II, LLC v. Franchise Tax Board** (Centerville)

An LLC with an open statute of limitations may want to file a protective claim for refund to withhold any action on its claim while this litigation is pending.

Claims for Refund of LLC Fees

Assembly Bill 198 changed the way California determines the LLC fee for years beginning on or after January 1, 2007, under R&TC Section 17942. LLCs with substantially the same factual situation as NES and Ventas who have paid an LLC fee and have an open statute of limitations for years prior to 2007 may be entitled to claim a refund of the LLC fee paid based on the following court cases:

1. NES, an LLC registered in California that did not earn income in California.
2. Ventas, an LLC registered in California that earned income inside and outside of California.

To determine if your LLC's claim qualified under one of these cases, go to ftb.ca.gov and search for **notice 2008-2** or **notice 2009-04**.

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.

If an LLC wants to file a protective claim based on Bakersfield or Centerville, it must send us a letter that contains the following information:

- A statement, "This is a protective claim."
- The LLC name, address, and identification number issued by SOS. (Unregistered LLCs use the identification number issued by the Franchise Tax Board.)
- The tax years involved.
- A description of the issue (stating pending outcome of Bakersfield or Centerville litigation is enough).
- The amount of claim for refund, which should match the annual fee paid by the LLC.
- Name, address, phone and fax number of person to contact.

The letter must be signed by a representative with a power of attorney or by the LLC's managing member.

The claim will be held pending result of the court's final decision.

Protective Claim or Claim for a Refund Submissions

Send the required information for your protective claim, claim for a refund, or amended tax return to:

Fax: 916.845.9796

Mail: FEDERAL STATE SPECIAL AUDIT SECTION MS F340
FRANCHISE TAX BOARD
PO BOX 1998
RANCHO CORDOVA CA 95741-1998

Courier: FEDERAL STATE SPECIAL AUDIT SECTION MS F340
FRANCHISE TAX BOARD
SACRAMENTO CA 95827-1500

California Business Forms

To get California forms for LLCs, go to ftb.ca.gov and search for the required form number.