
What is FTB's position on Delaware Series LLCs?



Ask the Advocate

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The business community is requesting tax-filing guidance from state government on the Delaware Series Limited Liability Company (LLC). The Delaware Series LLC is a relatively new business entity classification and there is minimal federal guidance on whether each series within a master series LLC is a separate taxpayer. We have taken the position that each series within the Series LLC is a separate business entity and each has a filing requirement *if it is registered or doing business in California*. Members of our audit staff have identified many issues associated with Series LLC that could lead to abusive tax strategies if they are not appropriately addressed.

Under the Delaware LLC Act, Section 18-215, a single LLC agreement may establish one or more designated series of members, managers or LLC interests having separate rights, powers or duties relating to specified property or obligations of the LLC, or profits and losses associated with specified property or obligations. Any such series may have a separate business purpose or investment objective. Additionally, a series may be terminated and its affairs wound up without causing the dissolution of the LLC. Other states have passed series LLC legislation.

A Series LLC is essentially a master LLC that has separate divisions, similar to an S corporation with Q-sub. Each

division has its own liabilities and assets and a creditor should only be able to pursue that entity's assets rather than the entire series' assets. The claimed business purposes are liability protection and flexibility, with the added bonus that they would pay the LLC fee and the minimum tax only once.

The Treasury Department has not issued direct guidance on the tax treatment of Series LLCs. Review of the tax research services indicates that the Series LLCs are compared to the separate series of a single trust, which have been regarded as separate taxpayers as found in *National Securities Series — Industrial Stock Series v. Commissioner*, 13 TC 884 and Revenue Ruling 55-416. In addition, the IRS issued various private letter rulings based on those early authorities.

California has not adopted a statute similar to the Delaware Series LLC. Tax practitioners propose that only one Form 568 needs to be filed for the entire series. FTB does not agree. Our current position is that each series in a Delaware Series LLC is considered a separate LLC and must file its own Form 568 *Liability Company Return of Income* and pay its own separate LLC annual tax and fee *if it is registered or doing business in California*. We included this statement with the 2005 Form 568 instructions and its updates.

Do you have a need to know?

If you do have a need to know, the FTB Speakers' Bureau is available to help non-profit organizations, community and professional groups, and government-funded educational institutions learn more about tax-related issues. We provide speakers who can give you the details and the latest updates on a variety of tax-related topics. The Speakers' Bureau is one of our ongoing ventures that acknowledge the continuing educational needs of tax professionals and non-profit tax-related organizations.

FTB speakers typically make brief presentations to groups of 25 or more. If you are interested in requesting a speaker contact Steve Sims at (916) 845-7565, at least 30 days before your event.