

CALIFORNIA LIMITED LIABILITY COMPANY REVIEW

LLCS DOING BUSINESS IN CA

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California imposes both an \$800 annual minimum tax and an annual LLC fee based on the level of total income of the LLC attributable to California for LLCs organized, registered or doing business in California. The LLC fee can be almost \$12,000 annually for LLCs with total income in excess of \$5 million, but may be deductible for federal and California purposes. Those LLCs must file FTB Form 568 and report the amounts. (The LLC fee does not apply to LLCs classified as corporations.)

Doing business has always been a relatively slight test – generally only requiring actively engaging in transactions within California for pecuniary gain. The doing business standard for taxation requires less activity than transacting intrastate business under the California Corporations Code, which has its own body of law and ramifications for failure, such as the inability to maintain lawsuits in the state.

Beginning in 2011, California has redefined doing business in California by adding additional tests. Under the new law an LLC is doing business by: (i) being organized or commercially domiciled in California;

(ii) having California sales, including sales by an agent or independent contractor, exceed the lesser of \$500,000 or 25% of total sales; (iii) having California real property and tangible personal property exceed the lesser of \$50,000 or 25% of total real property and tangible personal property; or (iv) having the amount paid in California for compensation exceed the lesser of \$50,000 or 25% of the total compensation paid. Rev. & Tax. Code §23101.

California considers LLCs as doing business in California if any of the members, managers or agents conducts business in California. For example, where a member of a Nevada LLC is a California resident, and the LLC owns property in Nevada managed by a Nevada management company, California will treat the LLC as doing business in California if the California member can hire and fire the management company and otherwise has the ultimate responsibility and oversight of the property.

Similarly, when a California resident is a member of an Oregon LLC with a retail store in Oregon and the LLC uses a California address for filing the tax returns and a California accountant to prepare the return, California treats the Oregon LLC as doing business in California.

Check out FTB Form 3556, [General Information on New Rules for Doing Business in California](#), CA FTB News (Mar. 1, 2011) and FTB Legal Ruling 2011-1 for further information.

Additionally, California considers a nonregistered foreign LLC as doing business in California if it is a member of an LLC doing business in California. That position contrasts with a longstanding position that merely owning a limited partnership interest in a limited partnership doing business in California, is NOT doing business in California.

It has been too recent for a court to have determined whether California's positions about the status and activities of members and agents could pass muster under the US Constitution. The California Board of Equalization, which is the only forum in which to fight the tax without paying it, will not rule on constitutional issues.

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