

## Limited Liability Companies

### Application

*This bulletin replaces Information Bulletin Number 2753 originally published April 1997.*

*The bulletin sets out the policy of the Corporations Tax Branch (Branch) regarding the status of a U.S. limited liability company (LLC) for the purposes of the **Corporations Tax Act (Ontario) (CTA)**. It is important to determine the status of an LLC because the application of many of the provisions of the CTA is dependent on the classification of an entity (i.e., corporation, partnership).*

### Introduction

1. An LLC is an unincorporated organization, created under the laws of a particular state of the United States, that can generally offer its members the features and benefits of both a corporation (e.g., separate legal personality, limited liability to its members, etc.) and a partnership (e.g., flow-through taxation for U.S. tax purposes where the LLC is treated as a partnership under the *Internal Revenue Code*).

### Corporation Versus Partnership

2. For Canadian taxation purposes, the distinction between a corporation and a partnership is an important one. A corporation is a separate, taxable legal entity, whereas in the case of a partnership, it is generally the individual partners who are subject to tax, not the partnership itself.

### “Corporation” for Federal Tax Purposes

3. Federal Interpretation Bulletin IT-343R, issued by the Canada Customs and Revenue Agency (CCRA), describes a corporation as an entity created by law, having a legal personality and existence separate and distinct from the personality and existence of those who caused its creation or those who own it. Where an entity has such a separate identity and existence, the CCRA will consider it to be a corporation for taxation purposes under the *Income Tax Act (Canada) (ITA)*.

### State LLCs Considered as Corporations

4. Based on the description of a corporation in paragraph 3, the CCRA has reviewed the following statutes, and has determined that LLCs formed thereunder are to be treated as corporations for purposes of the ITA:

| State        | Legislation   |
|--------------|---|
| Delaware (*) | Chapter 18, subtitle II of Tier 6 of the laws of Delaware   |
| Florida      | Florida Limited Liability Company Act   |
| Indiana      | Indiana Business Flexibility Act  |
| Kentucky     | Chapter 275 Limited Liability Companies (known and cited as the “ <i>Kentucky Limited Liability Company Act</i> ”). |

State LLCs  
Considered as  
Corporations  
(continued)

| State         | Legislation   |
|---------------|---|
| Michigan      | <i>Michigan Limited Liability Company Act</i>   |
| New Hampshire | <i>New Hampshire Revised Statutes Annotated</i> , Chapter 304C  |
| New York      | Chapter 34 of the Consolidated Laws of New York (1994) (known and cited as the " <i>New York Limited Liability Company Law</i> ") |
| Ohio          | Section 1705 of the <i>Ohio Revised Code</i>  |
| Oregon        | <i>Oregon Revised Statutes</i> , Chapter 63   |
| Tennessee     | Tennessee Limited Liability Company Act   |
| Texas         | Texas Limited Liability Company Act   |
| Wyoming       | Wyoming Limited Liability Company Act   |

(\*) Except partnerships formed under the *Delaware Revised Uniform Partnership Act*. The CCRA considers such entities to be partnerships for Canadian tax purposes.

Ontario  
Treatment of  
LLCs

- The CTA parallels the ITA in its definition of a corporation. It has also been the practice of the Branch to follow federal interpretation bulletins in cases where the CTA parallels the ITA.
- It is therefore the position of the Branch to treat LLCs formed under the statutes of those states mentioned in paragraph 4, as corporations for the purposes of the CTA. Several other jurisdictions now have legislation or proposed legislation designed to form LLCs based on one of the models in the above-noted states. Based on the current legislation, the Branch will continue to follow any further determinations made by the CCRA relating to the status of an LLC for the purposes of the ITA.

For More  
Information

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