

State of Rhode Island and Providence Plantations
Rhode Island Department of Revenue
Division of Taxation

Public Notice of Proposed Rule-Making

Pursuant to the provisions of 42-35-3(a)(1) of the General Laws of Rhode Island, and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws, the Division of Taxation hereby gives notice of its intent to issue a regulation regarding limited liability companies (LLCs).

The purpose of this regulation is to implement Rhode Island General Laws (RIGL) §§ 7-16-67 and 7-16-73, which imposes an annual filing requirement on the LLCs and their members. This regulation shall take effect July 1, 2012 and shall amend and supercede regulation CT 98-14 promulgated May 1, 1998

The proposed regulation and concise summary of non-technical requirements and proposed new rules are available for public inspection at www.tax.ri.gov, in person at The Rhode Island Division of Taxation, or requested by e-mail at mcanole@tax.ri.gov or by calling Michael Canole at (401) 574-8729.

In the development of the proposed regulation, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) whether the regulation, in and of itself, would have significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by May 15, 2012 to Michael Canole, Rhode Island Division of Taxation, One Capitol Hill, Providence, RI – telephone number (401) 574-8729 or via e-mail at mcanole@tax.ri.gov. A public hearing to consider the proposed regulation will be held on May 15, 2012 at the Rhode Island Division of Taxation, One Capitol Hill, Providence, RI, at which time and place all persons interested therein will be heard. The room is accessible to the disabled and interpreter services for the hearing impaired will be provided if requested 48 hours prior to the hearing. Requests for this service can be made in writing to Michael Canole at Rhode Island Division of Taxation, One Capitol Hill, Providence, RI 02908 or by calling 401 574-8729.

Rhode Island Department of Revenue

Division of Taxation

Concise Summary of ALL Non-technical requirements pursuant to RIGL Section 42-35-3(a)(1) for Rules and Regulation regarding Limited Liability Companies (LLCs).

The purpose of this regulation is to implement Rhode Island General Laws (RIGL) §§ 7-16-67 and 7-16-73, which imposes an annual filing requirement on the LLCs and their members.

This regulation shall take effect July 1, 2012 and shall amend and supercede CT 98-14 promulgated May 1, 1998.

~~State of Rhode Island -- Division of Taxation~~

~~Business Corporation Tax~~

~~Regulation CT 98-14~~

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~~Limited Liability Companies~~

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~~I. Filing of Returns~~

~~A. Every limited liability company ("LLC") which has elected to be treated as a corporation for federal income taxation purposes shall file a return with the Division of Taxation annually as follows:~~

~~If the fiscal year of the LLC is the calendar year, the return shall be filed on or before the fifteenth day of March in the year following the close of the fiscal year.~~

~~If the fiscal year of the LLC is not the calendar year, the return shall be filed on or before the fifteenth day of the third month following the close of the fiscal year.~~

~~B. Every limited liability company ("LLC") which has elected to be treated as a partnership for federal income taxation purposes shall file a return with the Division of Taxation on or before the fifteenth day of the fourth month following the close of the fiscal year.~~

~~C. When filing the annual return the LLC shall attach a copy of its Federal return for that fiscal year.~~

~~II. Annual Charge~~

~~An annual charge shall be due upon the filing of the LLC's return with the Division of Taxation. The charge shall be determined as follows:~~

~~a. If the LLC is treated as a corporation for purposes of Federal income taxation, it shall pay as an annual charge the taxes as provided in Chapters 11 and 12 of Title 44.~~

~~b. If the LLC is treated as a partnership for purposes of Federal income taxation, it shall pay as an annual charge a fee in an amount equal to the minimum tax imposed upon a corporation under section 44-11-2(e).~~

~~c. If the LLC is formed by one person and is treated as a sole proprietorship for purposes of Federal income taxation, it shall pay as an annual charge a fee in an amount equal to the minimum tax imposed upon a corporation under section 44-11-2(e).~~

~~III. Filing Requirements Under the Personal Income Tax~~

~~If a domestic or foreign LLC is treated as a partnership or sole proprietorship for purposes of Federal income taxation:~~

~~a. Any member of the limited liability company during any part of the limited liability company's taxable year shall file a Rhode Island income tax return and shall include in Rhode Island gross income that portion of the limited liability company's Rhode Island income allocable to such member's interest in the limited liability company.~~

~~b. Any member of the limited liability company who is a nonresident shall execute and forward to the limited liability company before the original due date of the Rhode Island limited liability company return an agreement which states that such member will file a Rhode Island income tax return and pay income tax on the nonresident member's share of the limited liability company's income which was derived from or attributable to sources within this state, and the agreement shall be attached to the limited liability company's Rhode Island return for the taxable year.~~

~~c. In the event that the nonresident member's executed agreement is not attached to the Rhode Island limited liability company return or the agreement set forth above is attached to the limited liability company return and thereafter the nonresident member fails to file a timely income tax return, then within thirty (30) days of the date of notice by the Tax Administrator to the limited liability company, the limited liability company shall remit to the Tax Administrator the nonresident member's tax on such member's share of the limited liability company's income which was derived from or attributable to sources within this state, which tax shall be computed at the statutory rate applicable to corporations.~~

~~d. A nonresident member is required to file a Rhode Island income tax return even though the member's only source of Rhode Island income was such member's share of the limited liability company's income which was derived from or attributable to sources within this state, and the amount of remittance by the limited liability company on behalf of the nonresident member shall be allowed as a credit against such member's Rhode Island income tax liability.~~

~~R. GARY CLARK~~

~~TAX ADMINISTRATOR~~

~~EFFECTIVE DATE: May 1, 1998~~

State of Rhode Island - Division of Taxation

Business Corporation Tax

Limited Liability Companies

Regulation CT 12-14

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RULE 1. PURPOSE

The purpose of these rules and regulations is to implement Rhode Island General Laws (RIGL) §§ 7-16-67 and 7-16-73, which imposes an annual filing requirement on LLCs and their members.

RULE 2. AUTHORITY

This regulation is promulgated pursuant to RIGL §44-1-4. The rules and regulations have been prepared in accordance with the requirements of RIGL §§42-35-1 et. seq. of the Rhode Island Administrative Procedures Act.

RULE 3. APPLICATION

These rules and regulations shall be liberally construed so as to permit the Division of Taxation to effectuate the purpose of RIGL §§ 7-16-67 and 7-16-73 and other applicable state laws and regulations.

RULE 4. SEVERABILITY

If any provision of these rules and regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the rules and regulations shall not be affected thereby.

RULE 5. FILING OF RETURNS

A. Every LLC which has elected to be treated as a corporation for federal income tax purposes shall file with the Division of Taxation annually as follows:

1. If the taxable year of the LLC is a calendar year, the return shall be filed on or before the fifteenth day of March in the year following the close of the calendar year.
2. If the taxable year of the LLC is a fiscal year, the return shall be filed on or before the fifteenth day of the third month following the close of the fiscal year.

B. Every LLC which has not elected to be treated as a corporation for federal income tax purposes shall file with the Division of Taxation annually as follows:

1. If the taxable year of the LLC is a calendar year, the return shall be filed on or before the fifteenth day of April in the year following the close of the calendar year.
2. If the taxable year of the LLC is a fiscal year, the return shall be filed on or before the fifteenth day of the fourth month following the close of the fiscal year.

C. When filing the Rhode Island annual return the LLC shall attach a copy of its Federal return for that taxable year.

1. If the LLC elects to be treated as a corporation for federal income tax purposes, a copy of federal Form 1120 shall be attached to the Form RI-1120C. If the LLC elects federal Subchapter S treatment, then a copy of federal Form 1120S shall be attached to Form RI-1120S.
2. If the LLC elects to be treated as a partnership for federal income tax purposes, a copy of federal Form 1065 shall be attached to the Form RI-1065.¹

¹ For tax years beginning on or after January 1, 2012, LLCs are required to file Form RI-1065. Prior to January 1, 2012, LLCs shall file Form RI-1120S

3. If the LLC elects to be treated as a disregarded entity for federal income tax purposes, a copy of federal *pro forma* tax return, federal Form 1040 Schedule C, federal Form 1040 Schedule E, federal Form 1040 Schedule F (whichever is applicable) shall be attached to Form RI-1065. For a LLC with a single member taxed as a Subchapter C corporation, a profit or loss statement shall be an acceptable attachment to Form RI-1065.

D. Any LLC disregarded for federal income tax purposes is still required to file the Form RI-1065 with payment of the annual charge. The a pass-through entity's income, loss or other activity shall flow through to the single member's income tax return and be taxed at that level. The single member's income tax return is not considered to be a filing for the LLC.

E. Any LLC disregarded for federal income tax purposes shall use their federal employer identification number to file Form RI-1065. However, if the entity does not have a federal identification number, the Rhode Island Secretary of State's identification number shall be used when filing the required tax return.

RULE 6. ANNUAL CHARGE

A. An annual charge shall be due upon the filing of the LLC's return with the Division of Taxation. The charge shall be determined as follows:

1. If the LLC is treated as a corporation for federal income tax purposes, it shall pay as an annual charge the taxes as provided in RIGL chapters 44-11 and 44-12.

2. If the LLC is treated as a partnership for federal income tax purposes, it shall pay as an annual charge in an amount equal to the minimum tax imposed upon a corporation under RIGL 44-11-2(e).

3. If the LLC is a single member LLC and is treated as a disregarded entity for federal income tax purposes, it shall pay as an annual charge equal to the minimum tax imposed upon a corporation under RIGL 44-11-2(e).

RULE 7. FILING REQUIREMENTS FOR MEMBERS

A. If a domestic or foreign LLC is not treated as a corporation for of federal income tax purposes:

1. Any member of the LLC during any part of the LLC's taxable year shall file a Rhode Island income tax return and shall include in Rhode Island gross income that portion of the LLC's Rhode Island income allocable to such member's interest in the LLC.

2. A nonresident member is required to file a Rhode Island income tax return even though the member's only source of Rhode Island income was such member's share of the LLC's income which was derived from or attributable to sources within this state, and the amount of nonresident pass-through withholding remitted by the LLC on behalf of the

nonresident member shall be allowed as a credit against such member's Rhode Island income tax liability.

RULE 8. PASS-THROUGH WITHHOLDING REQUIREMENTS

A. Any LLC with a nonresident member(s) shall withhold income taxes on the income that is being passed through to the nonresident members. The Form RI-1096PT shall be filed reporting these withholding payments. The nonresident member(s) shall be provided a Form RI-1099PT in order to claim these withholding payments on their income tax return. If the nonresident member is another pass-through entity, that member shall also be required to file a Form RI-1096PT to pass-through the withholding payments to their member(s). The “Bulletin on Pass-through Entities to Non-resident Taxpayers”² may be consulted for further information.

B. Any LLC with nonresident member(s) may file Form RI-1040C composite tax return instead of filing the Form RI-1096PT. Each nonresident member shall complete Form RI-1040C-NE and file it with the entity. The “Bulletin on Pass-through Entities to Non-resident Taxpayers” may be consulted for further information.

C. If the LLC’s expected pass-through withholding tax liability is more than \$250 for the taxable year, then estimated payments are required on the 15th day of the 4th month, 15th day of the 6th month, 15th day of the 9th month and 15th day of the first month of the pass-through entity’s next succeeding taxable year. For a calendar year taxpayer, that would be April 15th, June 15th, September 15th and January 15th of the next succeeding taxable year. LLCs are covered by the “safe harbor” provisions (80% of the current year tax liability or 100% of the prior year’s tax liability at the current year rates) for the requirements of estimated tax payments as well as calculating underestimated interest. The appropriate estimated tax payment coupons of Form RI-1096PT-ES or Form RI-1040C-ES shall be used to make these estimated payments.

RULE 9. EFFECTIVE DATE

This Regulation shall take effect July 1, 2012 and shall amend and supercede CT 98-14 promulgated May 1, 1998.

David M. Sullivan
TAX ADMINISTRATOR

² This bulletin can be found at http://www.tax.ri.gov/misc/passthrough_entities.php