

NOTICE:

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes section 41-1033 for a review of the statement.

(This notice is required by A.R.S. § 41-1091(B).)

NOTICE OF SUBSTANTIVE POLICY STATEMENT

DEPARTMENT OF ECONOMIC SECURITY

1. **Title of the substantive policy statement and the substantive policy statement number by which the policy statement is referenced:**

Unemployment Insurance Tax: Limited Liability Company (LLC), Limited Liability Partnership (LLP), and Professional Limited Liability Company (PLLC). The substantive policy statement number is 17P-C118.

2. **Date the substantive policy statement was issued and the effective date of the policy statement if different from the issuance date:**

The substantive policy statement was issued and will become effective upon filing with the Office of the Secretary of State.

3. **Summary of the contents of the substantive policy statement:**

The substantive policy statement describes the Department's rationale and treatment of limited liability companies (LLCs), limited liability partnerships (LLPs), and professional limited liability companies (PLLCs) for the purpose of Unemployment Insurance Taxes.

4. **Federal or state constitutional provision; federal or state statute, administrative rule, or regulation; or final court judgment that underlies the substantive policy statement:**

A.R.S.) § § 10-2201 (6), 23-613.01 (E), 23-614 (A), 23-617 (4), 23-622 (A), 29-601 (12), 29-841 (4), 29-843, 29-857, 29-1101 (A), and 29-1031 (H)

Internal Revenue Service (IRS), Internal Revenue Bulletin: 2007-39, T.D. 9356, September 24, 2007

Internal Revenue Service website at [http: www.irs.gov](http://www.irs.gov)

5. **Statement as to whether the substantive policy statement is a new statement or a revision:**

This is a new substantive policy statement.

6. **Name, address and telephone number of the person to whom questions and comments about the substantive policy statement may be directed:**

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Policy Statement
Number: 17P-C118
Unemployment Insurance Tax
Date Issued: May 19, 2010

SUBJECT

Limited liability company (LLC), limited liability partnership (LLP), and professional limited liability company (PLLC)

AUTHORITY

Arizona Revised Statute (A.R.S.) § 23-614 (A) defines an employing unit as “an individual or type of organization, including a partnership, association, trust, estate, joint-stock company, insurance company or corporation...” Although the definition of employing unit does not mention LLCs or LLPs the phrase “type of organization” is broadly defined to encompass these types of business entities which share both partnership and corporate traits.

LLCs are owned by one (1) or more members. A Member is defined under A.R.S. § 29-601 (12) as “a person who is admitted as a member in a limited liability company pursuant to this chapter until an event of withdrawal occurs....”

A.R.S. § 23-622 (A) defines wages as “all remuneration for services from whatever source including commissions, bonuses and fringe benefits and the cash value of all remuneration in any medium other than cash.”

Finally, A.R.S. § 23-613.01 (E) provides: “Notwithstanding this section, an individual or class of individuals determined to be an employee or employees for purposes of the federal unemployment tax act, as amended (26 United States Code §§ 3301 through 3311), are employees under this chapter.”

LLPs are general or limited partnerships that have qualified for LLP status as provided in A.R.S. § 29-1101.

In addition to LLCs and LLPs, Arizona also created professional limited liability companies (PLLCs) pursuant to A.R.S. § 29-841 (4). A PLLC is defined as “a limited liability company organized under this chapter for purposes that include rendering one or more categories of professional services.” With respect to the application of general LLC law, A.R.S. §29-843 states that a PLLC “shall be governed by the laws applicable to other limited liability companies.” Professional services are defined at A.R.S. § 10-2201 (6) as “service that may be lawfully rendered only by a person licensed or otherwise authorized by a licensing authority in this state to render the service.” For example the professional services of an attorney, accountant, doctor, or dentist.

CONCLUSION/DISCUSSION

In determining liability for Arizona Unemployment Tax, the Department will align itself with the IRS and look to how the entity (i.e., LLC, SMLLC, LLP, and PLLC) reports to the IRS.

An LLC is an unincorporated legal entity whose member(s) are not personally liable for the liabilities of the LLC. Management of the LLC may be reserved to some or all of the members, or delegated to an outside, non-member manager. Managerial authority may be specified in the Articles of Organization or in Operating Agreements.

An LLP is a general or limited partnership that has qualified for status as an LLP. A partnership must have at least two (2) partners, one of whom must be a general partner. A general partnership is composed entirely of general partners. A limited partnership has at least one (1) general partner and one (1) or more limited partners. Neither general nor limited partners in an LLP are personally liable for the liabilities of the LLP.

LLCs and LLPs are created by state statutes. Because the Internal Revenue Service (IRS) did not create a new tax classification for the LLCs and LLPs, the IRS will use one of their existing tax entity classifications; corporation, partnership, or sole proprietor for IRS reporting.

If a multi-member LLC (MMLLC) is reported to the IRS as a partnership, then the entity will be treated as a partnership, unless the MMLLC chooses to be treated as a corporation. If the MMLLC files as a partnership, then the wages received by the members are exempt from the Federal Unemployment Tax Act (FUTA) and are not subject to Arizona Unemployment Insurance Tax. In addition, the family exemptions of A.R.S. § 23-617 (4) will apply. Family exemptions are addressed more fully in Policy Statement 17P-C106.

If the MMLLC elects to be treated as an association taxable as a corporation by the IRS, the wages paid to the members of the MMLLC are subject to FUTA and Arizona Unemployment Insurance Tax (as they would be for a corporate officer or any other employee). Consequently, the family exemption accorded under A.R.S. § 23-617 (4) would no longer apply.

A single-member LLC (SMLLC) is disregarded as an entity for reporting compensation received by the single-member owner (i.e., a business entity that chooses to be disregarded as separate from the single-member owner) and, therefore, the single member reports to the IRS as a sole proprietorship and wages paid would not be subject to Federal Unemployment Tax Act (FUTA) nor Arizona Unemployment Insurance Tax because the single member is not considered an employee of the SMLLC. Prior to January 1, 2009 the SMLLC had several options for who was the reporting entity for the wages paid to its employees under IRS rules. Effective January 1, 2009 the SMLLC must report employment taxes under the SMLLC's Federal Employer Identification Number (FEIN).

Prior to January 1, 2009 a SMLLC may also report to the IRS under the SMLLC's own FEIN , however the single member would still report to the IRS as a sole proprietorship and wages paid would not be subject to Federal Unemployment Tax Act (FUTA) nor Arizona Unemployment Insurance Tax because the single member is not considered an employee of the SMLLC.

Finally, a SMLLC may elect to report as a corporation to IRS. As a result the single member's wages would then be subject to FUTA and Arizona Unemployment Tax as a corporate officer.

For Arizona Unemployment Tax, the LLC is not disregarded as a reporting entity and is assigned an employer account for reporting employment.

TREATMENT OF A SINGLE MEMBER LIMITED LIABILITY COMPANY (SMLLC)

AFTER JANUARY 1, 2009

Prior to January 1, 2009, there was no requirement that a SMLLC report to the IRS under the SMLLC's EIN assigned by the IRS. However, after January 1, 2009 the IRS required SMLLCs to be treated as the taxpayer for employment taxes. Internal Revenue Bulletin: 2007-39, T.D. 9356, September 24, 2007.

After January 1, 2009, the SMLLC is responsible for collecting, reporting, and paying FUTA and Arizona Unemployment Insurance Taxes. The single-member owner, however, will continue to be treated as disregarded from the SMLLC entity under federal law and is, therefore, exempt from both Federal and Arizona Unemployment Insurance Taxes and treated as a sole proprietorship. IRS Bulletin § 301.7701-2 (C) (iii).

REFERENCES

A.R.S.) § § 10-2201 (6), 23-613.01 (E), 23-614 (A), 23-617 (4), 23-622 (A), 29-601 (12), 29-841 (4), 29-843, 29-857, 29-1101 (A), and 29-1031 (H)

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AGENCY RECEIPT

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