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CALIFORNIA LLC

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Limited Liability Company (LLC) is a new form of hybrid business association that combines the advantages of a corporation with the flexibility of a partnership. It has sprouted in all states in the last few years. Let's discuss the characteristics and peculiarities of the California LLC:

1. California allows [one-member LLCs](#).
2. [Articles of organization](#) must be filed with the Secretary of State.
3. [Operating agreements](#) must be executed by all members of the firm.
4. [Professional LLCs](#) are not allowed in California. This means that lawyers, doctors, accountants, engineers, and architects cannot do business as LLCs in this state.
5. [Foreign LLCs](#) formed in other states or countries must register with the Secretary of State before commencing business in California.
6. California LLCs must file a new [Form 568](#) (LLC Return of Income), and a host of other unique forms including Forms FTB 3522, 3537, etc.
7. Members will receive a [568 K-1](#) for their share of income and expenses in the entity.
8. LLCs must pay a minimum [Franchise tax of \\$800 per year](#). This minimum tax is due on the 15th day of the fourth month of the current year (April 15 for most entities).
9. And here is the bombshell: LLCs must also pay an [annual fee](#) based on the company's [gross income](#). While other states welcome this new type of organization, it seems that California was only forced to adopt LLCs statutes to stop the outflow of business into the neighboring states of Nevada, Arizona and Washington. That attitude manifests itself by making this type of entity available but punitive by both prohibiting professionals from forming LLCs and taxing those who can form with this annual fee.
10. The LLC [annual fee based on gross income was ruled unconstitutional](#) by the California Supreme Court. The case involved Northwest LLC that was organized in the state of Washington and registered to do business in California. The California Franchise Tax Board assessed the fee on the total worldwide income – without apportionment. The Court ruled that the fee violates the Commerce Clause and the Due Process Clause. If California appeals the verdict and the fee without apportionment is held to be unconstitutional, only multistate LLCs will benefit from this decision. If the statute itself is ruled invalid, all LLCs that paid the fee will benefit from this decision.
11. The California Board of Equalization ruled that an LLC was doing business in this state simply because the managing [member was a California resident](#). The case involved a Nevada LLC with a single managing member from California. The State successfully argued that the performance of managerial functions in California constitutes doing business in this State.

12. A Business that requires a "non-professional, occupational" license may now operate as an LLC. This is new and quite confusing because the Attorney General's office has not provided a list of specific business that can operate as LLCs.
13. A foreign LLC that fails to register in California could be subject to penalties of \$20 each day. It could be subject to late filing and late paying penalties. Unregistered LLCs also lack the ability to bring suit in a California court of law.

TIP: Trust Fund Cases - LLC As Member-Managed Or Manager-Managed?

In unpaid payroll cases, IRS goes after responsible persons.

Revenue officers review articles of organization & operating agreement.

O If member-managed: IRS goes after every member (bad).

O If manager-managed: IRS goes after members who are managers only (good).

Therefore, it's better to classify new LLCs as manager-managed for payroll tax problems.