

Corporation Tax Information Bulletin Relating to the Not-For-Profit Exemption from the Capital Stock/Foreign Franchise Tax as Applied to a Single Member Limited Liability Company (LLC) or Business Trust.

**PENNSYLVANIA DEPARTMENT OF REVENUE
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SUBJECTIVITY OF A SINGLE MEMBER LIMITED LIABILITY COMPANY (LLC) OR BUSINESS TRUST TO THE CAPITAL STOCK/FOREIGN FRANCHISE TAX.

Section 601 of the Tax Reform Code of 1971 provides for an exemption from the Capital Stock/Foreign Franchise Tax for entities that are tax-exempt organizations under Internal Revenue Code § 501. In addition, entities organized as not-for-profit organizations that would qualify as tax-exempt organizations under Internal Revenue Code § 501 are also exempt from the Capital Stock/Foreign Franchise Tax.

When a Limited Liability Company or Business Trust is a disregarded entity for federal income tax purposes these entities are not required to obtain federal tax-exempt status separate from the entity reporting the activity of the Limited Liability Company or Business Trust. In addition, the Commonwealth of Pennsylvania does not specifically provide for a Limited Liability Company or Business Trust to organize on a not-for-profit basis.

The purpose of this bulletin is to clarify the Pennsylvania Department of Revenue's position on the subjectivity of these single member Limited Liability Companies and Business Trusts to the Capital Stock/Foreign Franchise Tax.

To qualify as a not-for-profit entity the Articles of Organization, Trust Agreement, or By-Laws must specifically state that the Limited Liability Company or Business Trust is organized as a not-for-profit entity and limit the activity of the entity to those of a not-for-profit or tax exempt organization. A copy of the Articles of Organization or Trust Agreement and a copy of the By-Laws must be provided to the Bureau of Corporation Taxes.

To support a position that the entity would qualify as a tax-exempt organization under IRC § 501 the following information must be provided:

- I. If the member is a tax-exempt organization under IRC § 501 and the Limited Liability Company or Business Trust does not generate unrelated business income:

If the entity is a Limited Liability Company, a copy of the Certificate of Organization and written Operating Agreement.

If the entity is a Business Trust, a copy of the Trust Agreement.

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A copy of the By-Laws for the Limited Liability Company or Business Trust.

A copy of the letter received from the Internal Revenue Service approving the member's status as a tax exempt organization under IRC § 501.

A copy of the federal return filed by the member.

Consolidating statements showing the inclusion of the LLC or Business Trust in the federal return filed by the member.

- II. If the member is not a tax-exempt organization under IRC § 501 or if the member is a tax exempt organization under IRC § 501 and the Limited Liability Company or Business Trust generates unrelated business income:

If the entity is a Limited Liability Company, a copy of the Certificate of Organization and written Operating Agreement.

If the entity is a Business Trust, a copy of the Trust Agreement.

A copy of the By-Laws for the Limited Liability Company or Business Trust.

A copy of the Articles of Incorporation, Certificate of Organization and Operating Agreement, or Trust Agreement and a copy of the By-Laws for the member.

A completed pro forma application for Federal tax-exempt status (Form 1023 or Form 1024) along with all supporting documentation which would have been required by the Internal Revenue Service if the Limited Liability Company or Business Trust would have filed this application on its own behalf.

If the Limited Liability Company or the Business Trust generates unrelated business income, please provide specific federal tax authority that proves that the Limited Liability Company or Business Trust would still qualify for a federal tax exemption. For additional information please visit our website:

www.revenue.pa.gov.