

### Treatment of Limited Liability Companies and Their Resident Individual Members

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#### Issue

How are limited liability companies and their resident individual members treated for Nebraska income tax purposes?

#### Conclusion

A limited liability company (LLC) treated as a partnership for federal income tax purposes will be treated as a partnership for Nebraska income tax purposes and will file a Nebraska Return of Partnership Income, Form 1065N. An LLC treated as a corporation for federal income tax purposes will be treated as a corporation for Nebraska income tax purposes and will file a Nebraska Corporation Income Tax Return, Form 1120N. A single member LLC treated as a disregarded entity for federal income tax purposes will be treated as a disregarded entity for Nebraska income tax purposes. The income of the disregarded entity will be reported on the income tax return of its sole member.

For Nebraska income tax purposes, there are differences in the treatment of income of a resident member compared to a resident partner when the income from the company is derived from sources outside Nebraska. A member is allowed an adjustment decreasing federal adjusted gross income for the portion of his or her share of the income of the company that is apportioned to states other than Nebraska using the sales-factor formula. A partner is not allowed this adjustment. A member is not allowed a credit for taxes paid to another state on income from the company, however, a partner is allowed a credit for taxes paid to another state on income from the company.


#### Analysis

Under [Neb. Rev. Stat. § 77-2714](#) any terms used in §§ [77-2714 to 77-27,123](#) have the same meaning as when used in a comparable context in the laws of the United States relating to federal income tax, unless a different meaning is clearly required. A federal classification of an entity for federal income tax purposes is the conclusive determination of the entity's classification for Nebraska purposes.

The Nebraska Uniform Limited Liability Company Act, Neb. Rev. Stat. § 21-104(d) provides that an LLC is classified for state income tax purposes in the same manner as it is classified for federal income tax purposes. Under [Neb. Rev. Stat. §§ 77-2716\(4\)](#) and [21-104\(d\)](#), although an LLC is treated as a partnership, S corporation, or disregarded entity for federal income tax purposes, a member of an entity organized as an LLC is allowed an adjustment decreasing federal adjusted gross income for the portion of his or her share of the income of the LLC which is apportioned to states other than Nebraska using the sales-factor formula. Because of this adjustment, a member cannot take a credit for taxes paid to another state on income from the LLC.

In the same situation, a partner is not allowed a decreasing adjusted gross income adjustment. A full year Nebraska resident individual partner reports his or her share of the partnership's entire income to Nebraska and may claim a credit for taxes properly paid to another state.

APPROVED:

A handwritten signature in cursive script that reads "Tony Fulton".

Tony Fulton  
Tax Commissioner

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