

Department of Finance and Administration

Legislative Impact Statement

Bill: SB601

Amendment Number: S1

Bill Subtitle: TO REPEAL THE SMALL BUSINESS ENTITY TAX PASS THROUGH ACT; AND TO ESTABLISH THE UNIFORM LIMITED LIABILITY COMPANY ACT.

Basic Change :

Sponsor: Sen. J. Dismang

Senate Amendment No. 1 --- SB601-S1 (engrossed 4/21/21) requires that a limited liability company (LLC) and its members be classified and taxed in the same manner for Arkansas income tax purposes as they are classified and taxed for federal income tax purposes, unless the LLC has elected taxation under the Elective Pass-Through Entity Tax Act. SB601-S1 also makes other minor changes to the sections of SB601 that govern the formation, operation, and dissolution of an LLC.

Original Bill --- SB601 adopts a new uniform law, the Uniform Limited Liability Company Act (ULLCA), which governs the formation, operation, and dissolution of a limited liability company (LLC). SB601 repeals the Small Business Entity Tax Pass Through Act, which currently governs the formation, operation, and dissolution of an LLC. The ULLCA will be effective on and after September 1, 2021.

Revenue Impact :

None.

Taxpayer Impact :

None.

Resources Required :

None.

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

Department employees and the tax community will need to be educated on the new requirements created by the bill.

Other Comments :

None.

Legal Analysis :

Senate Amendment No. 1 --- SB601-S1 (engrossed 4/21/21) addresses the repeal of § 4-32-1313 by adding a new section, § 26-51-817, which reestablishes the general rule that Arkansas will classify and tax a limited liability company (LLC) and its members in the same manner as that LLC and its members

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are classified and taxed for federal income tax purposes. This prevents an LLC from electing to be taxed at the member level for Arkansas income tax purposes while electing to be taxed at the entity level for federal income tax purposes, or vice versa. The new section creates an exception to that general rule for LLCs that elect taxation under the Elective Pass-Through Entity Tax Act, § 26-65-101 *et seq.*

SB601-S1 also adds another section, § 4-38-1107, that repeats the general rule. Section 4-38-1107 does not contain an exception for LLCs that elect taxation under the Elective Pass-Through Entity Tax Act. To the extent these two sections conflict, the more specific section, § 26-51-817, would likely control.

Original Bill --- SB601 adopts the Uniform Limited Liability Company Act (ULLCA) which governs the formation, operation, and dissolution of an Arkansas Limited Liability Company (LLC). The bill repeals the current Arkansas law under which LLC's are formed, operated, and dissolved. The bill makes several changes to the current law, including:

- Providing clear guidance regarding when an LLC is formed;
- Eliminating the requirement for a written operating agreement;
- Requiring LLC members to discharge their duties consistent with the obligation of good faith and fair dealing; and
- Identifying the circumstances under which an LLC member may be expelled for misconduct by the other members or by the courts.

SB601 repeals § 4-32-1313, which requires an LLC and its members to be taxed for Arkansas income tax purposes in the same manner as they are taxed for federal income tax purposes. The ULLCA does not include a corresponding provision. An amendment would be necessary to retain this language in the ULLCA to ensure uniform treatment of LLCs and their members for both state and federal income tax purposes. However, the requirement that an LLC be taxed in the same manner for both state and federal income tax purposes should not apply to an LLC electing to pay the Elective Pass-Through Entity Tax enacted by Act 362 of 2021.