A Business Perspective

Passthrough Nexus? Nexus Issues For Nonresident Corporate Partners, Members, and Shareholders

by June Summers Haas

There is a growing trend for states to assert jurisdiction to tax over the nonresident corporate partner, member, or shareholder of passthrough entities. States have long asserted statutorily that they may apply their business activities tax on a nonresident corporate partner's distributive share of a partnership conducting business activities within the taxing state.[1] With the proliferation of the use of limited liability companies, states are asserting similar taxing authority over the nonresident corporate members of those entities as well. Many taxpayers are now closely examining and questioning states' constitutional basis for asserting nexus over nonresident corporations. This article first reviews the competing constitutional theories for imposition of business activities taxes. Then it examines and questions the arguments for and against states asserting nexus over a nonresident corporate owner of an interest in a passthrough entity under the current constitutional theories. Finally, the article discusses the Multistate Tax Commission's proposal for states to withhold taxes from distributions to nonresident corporations.

Constitutional Principles for Imposition Of Business Activity Taxes

A state must satisfy both the Due Process and Commerce clauses of the U.S. Constitution to impose tax on an out-of-state corporation. Due process nexus is concerned with whether the tax in practical operations has a rational relationship to the opportunities benefits, or protections conferred or afforded by the state. The U.S. Supreme Court has held that purposeful availment of the economic market in the state through continuous and widespread solicitation in the state satisfies due process nexus.[2]

Currently, there is a vicious debate over the appropriate constitutional standard under the Commerce Clause for imposition of business activity taxes. The U.S. Supreme Court has clearly established the requirement of a "substantial nexus" between the state and the business that the state is trying to tax for states to constitutionally impose a business activity tax.[3] However, what the term "substantial nexus" means is the center of huge debate. There are two competing theories — physical presence versus economic presence — being debated in courtrooms across the country.[4] It is beyond the scope of this article to provide more than a brief overview of the opposing arguments.

Physical Presence. Physical presence advocates assert that a corporation must have a physical presence in a state in order to be subject to a state's jurisdiction to tax in order to fulfill the Commerce Clause goal of creating a free-flowing national economy unencumbered by discriminatory, arbitrary jurisdictional standards of the states. *Quill Corp. v. North Dakota*, 504 US 298 (1992) supports this position. In *Quill*, the U.S. Supreme Court established a physical presence requirement for use tax collection by the states. In evaluating the Commerce Clause standard, the Court noted that *Bellas Hess*, which established the physical presence standard, is not inconsistent with *Complete Auto* and the Court's recent cases even though contemporary Commerce Clause jurisprudence might not dictate the same result today.[5] Additionally, the Court stated, "although we have not, in our review of other types of taxes, articulated the same physical presence requirement that *Bellas Hess* established for sales and use taxes, that silence does not imply repudiation of the *Bellas Hess* rule."[6] In other words, the Court stated that it may apply a physical presence standard like that of *Bellas Hess* to other taxes under *Complete Auto*. Finally, the Court noted that physical presence requirement "furthers the ends of the dormant Commerce Clause."[7] Thus, advocates of the physical presence standard for business activity tax nexus argue for the provision of this clear stan-

[1] Willson and Windfeld-Hansen, 150 T.M., *State Taxation of Pass-Through Entities: General Principles*, 1500.05.A.1.

[2] *Quill Corp. v. North Dakota*, 504 US 298, 307 (1992).

[3] *Complete Auto Transit Inc. v. Brady*, 430 US 274 (1977) (providing that the Commerce Clause requires a tax to (1) be applied to an activity with substantial nexus with the taxing state; (2) be fairly apportioned; (3) to not discriminate against interstate commerce; and (4) to be fairly related to the services provided by the state).

[4] There is a current effort to put the competing theories in the legislative political arena through HR 2526 and MTC Factor Presence Nexus Standard rather than waiting.

[5] *Quill* at 311.

[6] *Quill* at 314.

[7] *Id.*

dard and point to U.S. Supreme Court case law as upholding this standard as a logical extension of its current nexus jurisprudence.[8]

Economic Presence. The economic presence advocates say that corporations can do business within states without any physical presence and that the only logical standard is to provide that economic presence of the corporation evidenced by purposeful availment of the economic market in the state is sufficient to establish nexus. State advocates of the economic presence theory point to what they deem as a "reluctant affirmance" of the *Bellas Hess* physical presence requirement. They also argue that the Court's statement that "contemporary commerce clause jurisprudence might not dictate the same result were the issue to arise for the first time today" means that were the issue to arise for the first time in business activity tax nexus, the Court would not impose a physical presence standard under contemporary Commerce Clause.

Currently, there is a vicious debate over the appropriate constitutional standard under the Commerce Clause for imposition of business activity taxes.

Moreover, the state advocates point to two cases as upholding application of an economic presence standard to business activity taxes. In *International Harvester v. Wisconsin Dept. of Taxation*, 322 US 435 (1944), the Supreme Court upheld the constitutionality of a Wisconsin tax on the privilege of declaring and receiving dividends. The tax was collected from the corporation clearly present in the state on dividends paid to nonresident shareholders. Economic presence advocates point out that the Court stated, "it has never been thought that residence within a state or county is a *sine qua non* of the power to tax." From this, the advocates conclude that imposing a corporate tax does not require physical presence.[9]

Also cited is the *JC Penney* case, in which the court sustained the same tax, stating that the requisite nexus is supplied if the corporation avails itself of the "substantial privilege of carrying on business within the State."[10]

Application of Economic Presence or Physical Presence Nexus Theories to Passthrough Entities

Regardless of which theory a given state advocates, the state must apply either the economic presence or the physical presence theory as a basis for asserting jurisdiction to tax the distributive share of a nonresident corporate owner of an interest in a passthrough entity. This section analyses the arguments for application of these theories. Note that it is often hard to determine which theory a state is using as a basis for its assertion of its right to tax over the nonresident corporation. The states are not forthright in stating the underlying constitutional theory and there are very few cases in this area. The majority of the cases deal with whether the nonresident corporate member meets the state's "doing business" standard, which avoids the constitutional issue.[11] Only a handful of cases ever raise and address the constitutional issue.[12]

Economic Presence

A distinct minority of states argue that the mere receipt of income from the flow-through entity doing business in the state is a form of economic presence in the state. The partner, member, or shareholder is "purposefully availing" itself of the benefits of the state through the flow-through entity. This economic presence creates taxing jurisdiction for the state. As discussed above, this economic presence theory is based on older U.S. Supreme Court cases dealing with application of dividends received tax that was collected from the in-state corporation even though the actual liability was conceded to be on the shareholder.

Criticisms of Economic Presence

Reliance on this line of cases for taxing jurisdiction seems suspect for three reasons. First, in upholding the dividends received tax in *International Harvester*, the Supreme Court relied on cases affirming the states' ability to tax nonresident individuals on their share of income derived from business activity within the state such as *Schaffer v. Carter* and *Travis v. Yale & Town Mfg. Co.*, 252 US 60.[13] To the extent that the Court was assuming that the shareholders were individuals, these decisions would not be applicable. The nature of the shareholders is not raised in the court's opinion. Do the same constitutional considerations arise for taxation of nonresident individuals as for nonresident corporations? If they do, then the debate over economic nexus is over, for it is quite clear that states can tax income of nonresident individuals arising from property or business activities in the state.[14] If application of the Commerce Clause is different for corporations, then *International Harvester* does not necessarily provide a basis for economic presence taxation of nonresident corporations. A case does not stand for a proposition it does not address.

[8] For further arguments in favor of a physical presence standard, see Scott D. Smith and Sharlene Amitay, "Economic Nexus: An Unworkable Standard for Jurisdiction," at *State Tax Notes*, Sept. 9, 2002, p. 787; *2002 STT 174-2*; or *Doc 2002-20452 (6 original pages)*. For Diann L. Smith's comments to the MTC re: "Factor Presence Nexus Standard," see *State Tax Notes*, Sept. 30, 2002, p. 1043; *2002 STT 168-1*; or *Doc 2002-19881 (7 original pages)*.

[9] *See* Dan Bucks and Frank Katz, "Explanation of the Multistate Tax Commission's Proposed Factor Presence Nexus Standards," *State Tax Notes*, Sept. 30, 2002, p. 1037; *2002 STT 189-6*; or *Doc 2002-22046 (6 original pages)* for a complete explanation of the case for economic presence. *See also* Swain, "State Income Tax Nexus: Making the Case for an Economic Presence Standard in Light of *Quill*," BNA Tax Management Multistate Tax Report, Vol. 9, No. 4, p. 965.

[10] *Wisconsin v. JC Penney Co.*, 311 US 435, at 444-445 (1940).

[11] *See*, for example, *Secretary of Revenue v. Perkins Restaurants Inc.*, No. 351 (NC Tax Rev. Bd. 1999), at *Doc 1999-19249 (4 original pages)* or at *1999 STT 107-23*; *Appeal of Ammend Schmid Finanz AG, et al.*, No. 96-SBE-008 (Cal State Bd. of Equal. (1998)).

[12] *See*, for example, *Borden Chemicals and Plastics v. Zehnder*, 726 NE2d 73; 312 Ill. App. 1st 35 (2000). (For the full text of the Appellate Court's decision, see *Doc 2000-5242 (12 original pages)* or *2000 STT 38-18*.)

[13] *International Harvester* at 442 and 444.

[14] *Shaffer v. Carter*, 252 US 37 (1920).

Second, *International Harvester* was decided prior to the Court's delineation of the requirements for constitutional imposition of business taxes on interstate commerce in *Complete Auto* and it is not clear that *International Harvester* comports with those standards. Moreover, the year following the *International Harvester* decision, the Supreme Court decided *International Shoe*, in which it invalidated quasi-*in-rem* jurisdiction. *International Harvester* can be argued to be nothing more than an application of quasi-*in-rem* jurisdiction.

It is often hard to determine which theory a state is using as a basis for its assertion of its right to tax over the nonresident corporation.

Third, in *Shaffer v. Heitner*, 43 US 186 (1977), the Court invalidated a state's attempt to impose *in rem* jurisdiction on a nonresident shareholder of a corporation, stating "all assertions of state jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny." The Court found that neither the ownership of stock nor holding a position as a corporate officer in a Delaware corporation gave Delaware jurisdiction over the stockholders. Given that *Shaffer v. Heitner* holds that ownership of stock does not meet the minimum contacts standards under Due Process for jurisdiction, how can *International Harvester* still be good law given that due process nexus is a prerequisite to taxation?

Physical Presence

The majority of the states appear to argue that the in-state physical presence of the flow-through entity should be attributed to the partner, member, or shareholder. Thus, the state is not pushing a new constitutional nexus theory per se but is applying it under a flow-through approach. States use the aggregate theory for a passthrough entity to attribute physical presence of the entity to the nonresident corporate interest owner.

Aggregate Theory

How does the state attribute the in-state presence of the passthrough entity to the out-of-state corporate partner, member, or shareholder? The state argues that the passthrough entity should not be regarded as a separate entity for tax nexus purposes. The argument is that the entity is really only an aggregate of all of its members. Therefore, any activity undertaken by that entity is in reality an activity undertaken by all of its members. Any property owned is owned by all of its members. This theory attributes ownership of all in-state property to each member in proportion to their ownership in the passthrough entity. It attributes the presence and actions of the in-state personnel of the passthrough entity to the partners, members, and shareholders. In sum, whenever the passthrough entity acts, such actions must be seen as actions of the aggregate of the owners.

States point to the relevant portions of the Internal Revenue Code of 1986, as amended that provide flow-through taxation of income and argue that if the income is taxed on a flow-through basis, then nexus for applying the tax should be determined on a flow-through basis. IRC section 701 provides that a partnership is not subject to tax and the persons carrying on the business as partners are liable for income tax in their separate or individual capacity. IRC section 1363 provides the general rule that an S corporation is not subject to tax, and under IRC section 1366, the items of income and their characterization are passed through to S corporation shareholders. The federal check-the-box regulations[15] allow limited liability companies to elect to be taxed as partnerships.[16] States also point to their own state statutes that provide for passthough taxation of the income of the entity as support for their theory of passthrough nexus. The ability to conduct business in the partnership, limited liability, or S corporation form is a privilege granted by the state. Thus, the state has given something for which it can ask for something in return. Whether the entity is organized under the laws of that state or the state merely agrees to recognize the characteristics of the entity organized in another state, it is ultimately a privilege conferred by the state. It may be argued that this privilege is the state's quid pro quo for taxation under the Due Process Clause and by extension the Commerce Clause.

Criticism of Flow-Through Nexus: The Entity Theory

The counterargument is that these passthrough entities are in fact recognized and respected as separate entities from the interest owner. The separate nature of the entities should be respected. Attributing nexus of the entity to its owners is inappropriately disregarding the nature of the entity as provided for by law.

Do the same constitutional considerations arise for taxation of nonresident individuals as for nonresident corporations? If they do, then the debate over economic nexus is over.

The acts under which these entities are formed establish the separate nature of the entity from its owners. For both general and limited partnerships, the Uniform Partnership Act and the Uniform Limited Partnership Act provide that the partnership is an entity separate from its partners. For limited partners, there is the provision that the limited partner is not liable for the actions of the partnership except to certain contribution limits. Nexus attribution runs afoul of these well-established concepts. Many states' LLC acts clearly establish the LLC as a separate and distinct entity from the member for purposes of sales tax, operational formalities, articles of incorporation, records requirements, employer identification numbers, annual information statements, licenses, fictitious business names, payroll taxes,

[15] *See* Treas. Reg. section 302.7701-1 through section 301.7701-3.

[16] LLCs can also elect to be taxed as corporations or disregarded entities. Obviously, only LLCs that elect to be taxed as a partnership are vulnerable to a possible passthrough nexus theory. Disregarded entities generally have nexus based on their activities and those of the parent entity.

withholding taxes, insurance coverage, trademarks, tradenames, trade secrets, and qualifications to do business in other states. Only managing members have any say in the running of the business of the LLC. In some states, the law provides that a member of an LLC is not personally liable for the debts of obligations of the LLC solely by virtue of its membership. Other states provide that the member is liable only to the same extent that a shareholder in a C corporation would be liable; that is, by piercing the corporate veil. One of the characteristics of an LLC is its ability to sue and defend against suit. Arguably, this should include tax matters as well. A member may argue that it would not reasonably foresee that it would have to take on a responsibility already assigned to the entity.

C Corporation Similarity

S corporations can point out their similarity to C corporations as support for respect for the separate entity status of the S corporation. For C corporations, the U.S. Supreme Court has held that the mere ownership of shares does not satisfy the minimum contacts test, even when the corporation is incorporated in the state.[17] Most states view the source of the income received by a C corporation shareholder as not being the operations and property of the corporation but the shareholder's ownership interest. Consequently, the dividend and interest income is treated as income from an intangible and is sourced and taxed in the state of residence or domicile of the shareholder. Because S corporations are corporations for state law purposes, the same principles arguably should apply in determining the state's jurisdiction to tax and sourcing of income for an S corporation.

Attributing nexus of the entity to its owners is inappropriately disregarding the nature of the entity as provided for by law.

Limited liability companies may also argue that based on the similarities between LLCs and corporations, the nexus analysis for a nonresident LLC member should be the same as that for a nonresident C corporation shareholder. Mere ownership of an LLC interest should not result in jurisdiction over a member owner.

Intangible Interest Ownership

For all types of passthrough entities, the owners may argue that all they really own is an intangible asset. Ownership interests in each of these passthrough entities is an intangible interest under most state laws. Essentially, what the states are trying to do under the aggregate theory is to argue that ownership of an intangible interest in the state establishes nexus. The partner, shareholder, or member is availing itself of the privilege of conducting activities in a state because the passthrough entity is operating in a particular state. If the member does not undertake any actions in the state or direct any actions at the state, it may have a position that it has no contacts — minimum or otherwise — with the state. The only act that a partner, shareholder, or member undertakes is holding an interest in a passthrough entity operating in a state. Shouldn't the member be reasonably assured that it does not have jurisdiction in that state? States that otherwise recognize that mere ownership of an intangible in the state does not create nexus are likely to be challenged on that theory.

Failure to Treat an Entity as a Passthrough Entity

Many states are inconsistent in their treatment of such entities as truly passthrough for tax purposes. States that separately tax the passthrough entity may be challenged on their application of an aggregate theory of nexus to its owners. These states are respecting the entity as a separate entity to the extent they require the passthrough entity to pay tax, however much, on its business activities in the state. Thus, the state is not treating the entity as a passthrough entity. The state has no basis on which to assert passthrough nexus. Physical presence nexus exists only if the state can assert that the activities or property ownership of the entity pass through to the nonresident corporate interest owner. Once the state taxes the entity as an entity, it is no longer treating the entity as a passthrough, so it has no basis to claim that the activities of the entity pass through to the interest owners any more than the state could claim that the activities of a corporation should be passed through to the corporate shareholders. The federal tax status of the entity is irrelevant because the state is not respecting the federal tax status. Does the amount of tax that the state imposes matter? Once the state taxes the entity, the interest owner has an argument that *Shaffer v. Heitner* controls. Arguably, the amount of tax should not matter because the theoretical basis for the state taxation of the nonresident corporate interest owner is undermined. Practically, a minimum tax may be viewed by courts as akin to a fee for doing business.

Opportunities to challenge state application of passthrough nexus theory based on inconsistent treatment abound. Two states — California and New Jersey — tax limited partnerships only. In California, limited partnerships must pay a minimum franchise tax of $800, and in New Jersey, limited partnerships are subject to a business income tax. The following seven states tax general partnerships: Illinois, Massachusetts, Michigan, New Hampshire, Oklahoma, Tennessee, and West Virginia.

Twenty-nine states impose an entity-level tax on limited liability companies.[18] Ten states impose minimum level taxes or fees. Alabama imposes its business privilege tax but has ruled that ownership of either a managing or nonmanaging LLC interest does not create nexus in the state. The District of Columbia imposes a 14.5 percent tax on source income earned in the district. Florida taxes LLCs as corporations. Illinois imposes a 1.5 percent income tax. Michigan imposes its single business tax. New Hampshire imposes its business profits tax. Washington imposes its business and

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[17] *Shaffer v. Heitner*, 433 US 186 (1977) (stock certificates and options located in the state were not sufficient contact with the state to subject appellants to Due Process jurisdiction in the state).

[18] *See* Ely and Grissom, "The LLC/LLP Scorecard — 2002 Update," at *State Tax Notes*, Nov. 18, 2002, p. 463; at *2002 STT 222-2*; or at *Doc 2002-25509 (9 original pages)* for a complete listing of the states that tax LLCs and LLPs.

occupation tax. Nine states require the LLC to withhold on behalf of nonresident members.

Twenty-four states impose tax on S corporations. The following 11 states impose the state franchise tax: California (at 1.5 percent), Georgia, Kansas, Mississippi, New Mexico, South Dakota, Tennessee, Texas, West Virginia, Wisconsin (only on federal and state municipal interest), and Wyoming. The District of Columbia imposes its corporate income tax but does not tax the shareholders. Idaho, Montana, and Nevada impose minimal fees. Illinois imposes a tax at 1.5 percent of taxable income. Louisiana and Ohio impose tax only on the distributive shares of nonresident shareholders who do not file in the state. Maryland imposes a 5 percent tax on nonresidents' distributive shares. Michigan imposes its single business tax. New Hampshire imposes its business profits tax but does not tax the shareholders. Washington imposes its business and occupations tax but does not tax the shareholders.

Borden Chemicals

As discussed above, the majority of cases addressing the taxation of nonresident owners of passthrough entity interests analyze the issue as a question of whether the nonresident is "doing business" in the state under the state statutory standard.[19] Only a few cases have ventured into a constitutional analysis. In *Borden Chemicals v. Zehnder*, 726 NE 2d 73 (2000), the Illinois Court of Appeals found that a nonresident limited corporate partner was subject to Illinois replacement tax. The replacement tax is a tax imposed on the privilege of receiving income as a resident of Illinois or from Illinois sources. Borden alleged that both the Due Process and Commerce clauses prohibited Illinois from assessing the replacement tax on a limited partner whose only connections to the state were investing in a partnership. The Court cited *International Harvester v. Wisconsin*, *supra*, for the proposition that a state may tax income of a nonresident that is attributable to property or transactions in the state. Borden argued that *International Harvester* does not address whether the company has the requisite minimum contacts required by Due Process Clause. The Court of Appeals found that Borden's connections with Illinois were not only its partnership interest in an entity that availed itself of the laws of the state but also the receipt of distributable income earned in Illinois. These contacts satisfied due process minimum contacts for specific jurisdiction.

The Court of Appeals found that the Commerce Clause was satisfied but stated, "that this area of law is nebulous at best is beyond dispute." The Court of Appeals found that the *Quill* requirement of physical presence was inapplicable outside the sales and use tax arena. Nonetheless, the Court of Appeals relied on the aggregate theory, stating that a partnership is a conduit "through which the taxpaying obligation passes to the individual partners." The Court of Appeals stated, "certainly, the physical presence in the taxing state of the partnership that generates the income suffices as a physical presence of the nonresident partner in the state." The Court of Appeals summarily dismissed Borden's argument that substantial nexus must separately exist with Illinois and Borden, as a separate entity. *Borden* amply demonstrates how a conglomeration of economic nexus and the aggregate physical presence theories has been used to support nexus for the taxing state. The case is on appeal.

MTC Withholding/Composite Return Proposal

A recent uniformity proposal developed by the Multistate Tax Commission (MTC) may short-circuit much of the dispute in this area. The MTC has issued a proposed "Uniformity Proposal Concerning Reporting Options for Non-Resident Members of Passthrough Entities." This proposal was first issued in the spring of 2002, public hearings were held in March 2002 and December 17, 2002.[20] The MTC has now sent the proposal out for a By-Law 7 Survey to see if a majority of the MTC member states would adopt the proposal if it became a uniformity recommendation. If a majority of the MTC member states indicate support for the proposal, it will be presented to the MTC Executive Committee to be voted on August 1, 2003.

Once the state taxes the entity as an entity, it is no longer treating the entity as a passthrough, so it has no basis to claim that the activities of the entity pass through to the interest owners.

The proposed statutory language requires withholding on income distributed to a nonresident member if (1) the income was not included in a composite return filed by the entity; (2) the distributive income exceeds $1,000; and (3) the nonresident member has not received a ruling from the tax agency exempting it from withholding. The proposal also contains uniform language providing for an optional composite return for passthrough entities to report and pay tax on a pro rata distributive share of income of nonresident members. "Passthrough entity" is defined to mean an S corporation under federal or state law, a general, limited, or limited liability partnership, trust, or limited liability company that is not taxed as a corporation for federal or state law purposes. The proposal applies to owners on interests in the passthrough entity who are nonresident individuals, business entities without a commercial domicile in the state, and trusts not organized in the state. The proposal also provides the passthrough entity with a uniform optional composite return that may be a better alternative to costly litigation on intractable nexus issues. The MTC proposal provides a way for states to ensure they receive tax on income of a passthrough entity earned in the state. There is

[19] *See*, for example, *Dept. of Revenue v. Sledge*, 241, GA App 833; 528 SE 2d 260 (2000) (upholding personal income tax assessed against nonresident limited individual partners of a partnership doing business in Georgia based on the Georgia tax statutes). The Georgia statute declared that nonresident individual members of a partnership doing business in the state were taxable on their distributive share of net profits. The individuals were deemed to be doing business in Georgia. Constitutional principles of nexus were never discussed.

[20] *See* Timothy Catts, "MTC Holds Hearings on Passthrough Entities, Business Income," at *State Tax Notes*, Dec. 23, 2002, p. 845; at *2002 STT 243-1*; or at *Doc 2002-27577 (1 original page)*.

no question that states have jurisdiction to require withholding from the partnerships, limited liability companies, and S corporations doing business in the state. Many states already impose withholding requirements.[21] The MTC proposal is bound to encourage more states to move in this direction.

Conclusion

While passthrough nexus is widely asserted, the constitutional underpinnings of a state's jurisdiction to tax have not been conclusively established. States will continue to require corporate partners, members, and shareholders to pay tax without clearly establishing whether jurisdiction is based on an assertion of physical presence or economic presence in the state. States may be vulnerable to challenge on constitutional nexus grounds. At the same time, states are increasing statutory obligations for tax withholding requirements on passthrough entities' distributive shares to nonresident interest owners. Ultimately, the option of a composite return may be a workable solution for both sides, providing the states with tax on passthrough entity net profits and allowing nonresident corporate partners, members, and shareholders to avoid having to concede or litigate nexus in a state in which they have no physical presence. ✰

[21] *See* Ely and Grissom, The LLC/LLP Scorecard — 2002 Update," at *State Tax Notes*, Nov. 18, 2002, p. 463; at *2002 STT 222-2*; or at *Doc 2002-25509 (9 original pages)* for a listing of nonresident member/partner withholding requirements for LLCs and LLPs.

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