

Office of Chief Counsel
Internal Revenue Service
Memorandum

Number: **200816023**

Release Date: 4/18/2008

CC:PA:BR:4:
GL-101310-08

UILC: 6330.00-00

date: March 14, 2008

to: Charles M Berlau
Senior Counsel
(Small Business/Self-Employed)

from: Peter J. Devlin
Chief
Branch 4
(Procedure & Administration)

subject: LLC and Letter 1058

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUES

1. Is a Final Notice of Intent to Levy and Right to a Hearing (Letter 1058 or LT-11) ("CDP notice") a legally sufficient notice in respect to the collection of tax liabilities from a disregarded single-owner limited liability company (LLC), where the notice lists only the name of the LLC's owner, omitting his social security number?

2. Does the single owner of a disregarded LLC make a valid request for a Collection Due Process (CDP) Hearing upon submitting to the Service a Request for a Collection Due Process Hearing (Form 12153) and on it listing the single owner's name and the EIN of the LLC?

CONCLUSIONS

1. Yes.

2. No. Assuming that the LLC's owner is the taxpayer for the particular tax at issue, the regulations require the taxpayer's identification number. The regulations, however, provide flexibility in that a taxpayer will be given a reasonable time period to make corrections to a timely written CDP hearing request that does not satisfy all of the requirements in such regulation. Treas. Reg. §§ 301.6320-1(c)(2) (Q-C1 and A-C1(iii)) and 301.6330-1(c)(2)(Q-C1 and A-C1(iii)).

FACTS

The Office of Appeals has questioned the validity of CDP notices and CDP hearing request forms in the context of collection actions involving single-owner disregarded LLCs. One person observed that a new IRM provision (5.1.21) states that the single-owner's name should be used on the CDP notice along with the EIN associated with the assessment. IRM 5.1.21.6.3(3).¹ The social security number of the LLC's single-owner, who is the taxpayer, is not listed in the CDP notice.

The inquiry also states:

“. . . [c]onfusion in this area results from the fact that the Desk Reference Guide – LLC for Revenue Officers (Rev. 5-2007)² indicates that if employment taxes were reported in the name and EIN of the disregarded LLC, then the LLC is the taxpayer on ICS. They are to then create a new name line using the procedures earlier in the chapter, and to select it when generating the CDP notice to the single member owner, with the EIN of the assessment. Thus, the CDP Notice is sent to the single member owner but uses the EIN of the LLC, as opposed to the SSN of the single member owner.”

LAW AND ANALYSIS

Identification of the person in CDP Notices

The starting point in addressing the validity of CDP notice, whether furnished to a taxpayer in connection with the filing of a Notice of Federal Tax Lien (NFTL) or proposed levy, is the statute and implementing regulations. Neither the statute nor regulations require a taxpayer identification number, whether a social security number or employer identification number, to be included on a CDP notice.

¹ This states:

* * *

(3) Letter 1058 must be sent to the taxpayer prior to levy. Generate it through ICS, selecting the correct name line according to 5.1.21.6.2 above. Include the EIN of the assessment so proper transaction codes are generated.

² This refers to a training guide, known as the Desk Reference Guide Limited Liability Companies for Revenue Officers, Trng. 10271-104 (Rev. 5-2007).

I.R.C. § 6330(a)(1) states that no levy may be initiated to collect outstanding tax unless the Service first notifies the person in writing of his right to a CDP hearing before such levy is made. Subsection (a)(3) requires that the CDP notice include: (i) the amount of the unpaid tax; (ii) a statement informing the taxpayer of his right to request a hearing during the 30-day period beginning on the date shown on the CDP notice; (iii) the proposed levy action by the Secretary and the rights of the taxpayer, including brief statements identifying the I.R.C. provisions relating to levy and sale, the procedures applicable to levy and sale, administrative appeals available to the taxpayer regarding a levy and sale and applicable procedures, alternatives available to taxpayer to prevent levy, and the I.R.C. provisions relating to the redemption of property and release of liens on property. I.R.C. § 6330(a)(3).³

The courts have not addressed whether a CDP notice is invalid for the Service's failure to include a single-owner's social security number in connection with the collection of tax from a disregarded LLC. The courts have addressed this issue in considering other Service notices. When the Service makes an assessment pursuant to I.R.C. § 6203, it must identify the taxpayer, but need not include an identifying number. United States v. Indianapolis Baptist Temple, 61 F.Supp.2d 836, 839 n.3 (S.D. Ind. 1999), *aff'd.*, 224 F.3d 627 (7th Cir. 2000), *cert. denied*, 531 U.S. 112, 121 S.Ct. 851 (2001)(EIN not required on records supporting assessment); Gongware v. Internal Revenue Service, 98-2 U.S. Tax Cas. (CCH) P50,665 (3d Cir. 1998)(assessments against responsible corporate officer for trust fund recovery penalty valid even though they contained wrong address of taxpayer and transposed his social security number with that of other corporate officer); Moore v. United States, 93-2 U.S.T.C. (CCH)P50,495 (E.D. Cal. 1993)(assessment valid even though Service used social security number of the taxpayer's son where taxpayer was properly identified by name and address); see also Barnes v. Internal Revenue Service, 116 F.Supp2d 1007 (S.D. Ind. 2000)(assessment against "Marvin L. and Barbara J Barnes PTR" and which listed EIN valid, irrespective of whether business was operated as sole proprietorship or partnership, where record showed that taxpayers were aware of potential tax liability and did not demonstrate confusion caused by parties listed in assessment).

Moreover, deficiency notices issued pursuant to I.R.C. § 6212 with a variety of defects or shortcomings have been held valid.⁴ Flynn v. Commissioner, 40 T.C. 770

³ In regard to the filing of a NFTL, I.R.C. § 6320(a)(3) requires the CDP notice to include: the amount of the unpaid tax, a statement informing the taxpayer of his right to request a hearing within the 30 calendar day period commencing on the day after the 5th business day following the filing of the NFTL, the administrative appeals available to the taxpayer and procedures related to such appeals, and the I.R.C. provisions and procedures governing releases of liens on property.

The implementing regulations basically mirror the statute in describing what must be included in CDP notices relating to NFTLs and levies. Treas. Reg. §§ 301.6320-1(a)(2)(Q-A10 and A-A10) and 301.6330-1(a)(3)(Q-A6 and A-A6).

(1963)(ninety-day letter valid even though it listed deficiencies different than ones in agent's proposed report attached to 30-day letter); Estate of Stranahan v. Commissioner, 472 F.2d 867 (6th Cir. 1973)(notice listing one incorrect period valid when it correctly covered taxpayer's final period); Geiselman v. United States, 961 F.2d 1 (1st Cir. 1992), *cert. denied*, 506 U.S. 891, 113 S.Ct. 261 (1992)(failure to include I.R.C. section and factual basis for deficiency did not deprive taxpayer of information necessary to contest deficiency in court); Byk v. Commissioner, T.C. Memo 1983-516 (because date of mailing of deficiency notice was established, fact that notice contained erroneous date did not make it invalid). A deficiency notice is sufficient if it advises the person who is to pay the deficiency that the Commissioner intends to assess him and gives him the opportunity to contest it in court. Olsen v. Helvering, 88 F.2d 650 (2d Cir. 1937).

In our opinion, the courts will uphold a CDP notice which names the single-owner of a disregarded LLC and the EIN of such LLC in connection with tax liabilities owed by the single owner. As noted above, the relevant Treasury Regulations, §§ 301.6320-1(a)(2)(Q-A10 and A-A10) and 301.6330-1(a)(3)(Q-A6 and A-A6) don't require any identification number of the taxpayer in a CDP notice. Rather, parroting I.R.C. § 6330(a)(3), these state that the Service must notify the person of the amount of unpaid tax, his or her right to request a CDP hearing and brief descriptions of the Code sections authorizing levies, alternatives that could prevent levy, available administrative appeals, and in the case of NFTLs, a description of release of lien provisions and property redemptions. So long as the CDP notice accurately lists the person from whom the Service seeks to collect the tax, in this case the single-owner of an LLC, the amount of unpaid tax and other information required by the regulation and the statute, it will be difficult for such person to argue that he was prejudiced or misled by the inclusion of the LLC's EIN on the notice. Indianapolis Baptist Temple, supra (assessment made against unincorporated religious society valid notwithstanding that assessment used EIN of defunct predecessor corporation). In the absence of a legal requirement, the courts have uniformly refused to require the Service to include social security numbers in its notices. Gongaware, supra; Moore, supra (noting that I.R.C. § 6109, which requires the social security number as the identifying number of an individual, applies only when a taxpayer is required by statute or regulation to submit a return or statement and not to the Service's identification of a taxpayer for assessment purposes); *see also* Spearing Tool and Manufacturing Co., Inc. v. Crestmark Bank, 412 F.3d 653 (6th Cir. 2005), *cert. denied*, 127 S.Ct. 41, 166 L.Ed2d 18 (2006)(Service not required to perfectly identify taxpayer in lien notice).

Finally, you noted that the IRM requires the name and social security number of the single-member owner, not the EIN of the LLC, in respect to a notice of levy. IRM 5.11.6.13(3). Initially, we note that neither I.R.C. § 6331 nor the implementing regulation requires that the taxpayer's identification number be included on a notice of

⁴ Neither I.R.C. § 6212 nor the implementing regulation, Treas. Reg. § 301.6212-1, require a taxpayer's identification number on a notice of deficiency.

levy. Treas. Reg. 301.6331-1. Even though the IRM expressly states that the owner's name and identification number, and not the EIN of the LLC, must be included in a notice of levy, this gives the taxpayer no rights and does not impact the requirements for a CDP notice issued pursuant to I.R.C. §§ 6320(a) or 6330(a). Reid & Reid, Inc. v. United States, 366 F.Supp.2d 284, 288 (D. Md. 2005) (“the IRS Service Manual is not binding authority on the Court or the IRS”); Miller v. Commissioner, T.C. Memo 2001-55 (Service's procedural rules contained in IRM were directory, not mandatory).

Is a written Request for a Collection Due Process Hearing (Form 12153), which includes the single-owner's name and EIN of the LLC, but not the social security number of the single-owner, valid?

I.R.C. §§ 6320(a) and (b) and 6330(a) and (b) provide the person against whom the Service intends to collect tax liabilities with the right to request a CDP hearing but do not specify what information must be included in the hearing request. The implementing regulations for both liens and levies require the taxpayer to include his identifying number in the written CDP hearing request. Treas. Reg. § 301.6320-1(c)(2)(Q-C1 and A-C1) governs hearing requests when the Service files a NFTL. This states, in part:

* * *

Q-C1. What must a taxpayer do to obtain a CDP hearing?

A-C1 (i) The taxpayer must make a request in writing for a CDP hearing. The request for a CDP hearing shall include the information and signature specified in A-C1(ii) of this paragraph (c)(2). See A-D7 and A-D8 of paragraph (d)(2).

(ii) The written request for a CDP hearing must be dated and must include the following:

(A) The taxpayer's name, address, daytime telephone number (if any), and taxpayer identification number (e.g. SSN, ITIN or EIN).

(B) The type of tax involved

(C) The tax period at issue

* * *

(iii) If the IRS receives a timely written request for a CDP hearing that does not satisfy the requirements set forth in A-C1(ii) of this paragraph (c)(2), the IRS will make a reasonable attempt to contact the taxpayer and request that the taxpayer comply with the unsatisfied requirements. The taxpayer must perfect any timely request for a CDP hearing that does not satisfy the

requirements set forth in A-C1(ii) of this paragraph (c)(2) within a reasonable period of time after a request from the IRS.

Treas. Reg. § 301.6320-1(c)(2)(Q-C1 and A-C1(i)-(iii))(emphasis added)⁵.

Under these provisions, if a single owner of a disregarded LLC makes a written request for a CDP hearing, he is required to include his identifying number, which for a natural person is his social security number. If he fails to include this and lists only the EIN of the LLC, under the regulations the CDP hearing request is invalid, unless the taxpayer corrects the deficiency in such request within a reasonable time period after being contacted by the Service. I.R.C. § 6109(a)(1) expressly provides that a person must include his identifying number in returns, statements or other documents, when required by regulation, in order to properly identify such person. Thus, the regulatory provisions requiring the identification number of the taxpayer in a written CDP hearing request have the support of the I.R.C.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS



This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call _____ if you have any further questions.

⁵ The regulatory provision stating the requirements for making a request for a CDP hearing in connection with a proposed levy is essentially the same as that for liens. Treas. Reg. § 301.6330-1(c)(2)(Q-C1 and A-C1).