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From:

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To:

Cc:

Subject: FW: LLC wrongful levy case

, this is to confirm your opinion that the Service can't levy on the property of a disregarded LLC to satisfy the tax liability of the LLC's sole member. As you've noted the sole member has no ownership interest in LLC's property under local law and disregarding the LLC for federal tax purposes doesn't allow the Service to disregard the entity for purposes of collection.

A levy might be made for distributions by the LLC that are based on the sole member's interest in LLC; e.g., if TP is supporting himself from the net income of the LLC the lien attaching to TP's interest in LLC should allow the Service to issue a levy notice to LLC for the distributions of that income. Compare United States v. Moskowitz, Passman & Edelman, 603 F.3d 162 (2d. Cir. 2010) (frequent and regular partnership "draws" which are advances or loans on annual profits are subject to a lien any may be levied as salary or wages).

And as you said, the RO could consider whether an alter ego lien is appropriate. The lien might be based on the common law concept of piercing the corporate veil which courts generally apply to LLCs and which some LLC statute reference. A reverse veil piercing in some states would subject the LLC property to the claims of a member's creditors. Some states set a high standard for piercing; e.g. piercing must be needed to prevent an injustice or acts approaching fraud. In some states an alter ego analysis is used to allow piecing and in others it's a separate approach for disregarding an entity, and the standards vary state by states. In some states a member's control of the LLC might make the two indistinguishable; e.g., the books and records may show the sole member and the LLC don't have a separate economic existence. The Government has argued for the application of a Federal common law of alter ego, but that argument was rejected in Old West Annuity and Life Ins. Co. v. Apollo Group, 605 F3d 856, 861 (11th Cir. 2010).