

## IRM PROCEDURAL UPDATE

**DATE:** 04/11/2017

**NUMBER:** wi-03-0417-0664

**SUBJECT:** BMF Entity Updates

**AFFECTED IRM(s)/SUBSECTION(s):** 3.13.2

**CHANGE(s):**

**IRM 3.13.2.3.8.2(4) - Added text saying if an EO taxpayer submits a Change of Responsible Party, it will be processed in Ogden EO Entity.**

4. We maintain the **XREF-TIN-ITIN** field for the following types of entities:
  - o corporations (for profit only);
  - o partnerships;
  - o LLCs;
  - o business trusts;
  - o trusts (grantor's TIN);
  - o estates (decedent's SSN).

**NOTE:** If an EO taxpayer submits a Change of Responsible Party, it will be processed in Ogden EO Entity.

For instructions on updating the **XREF-TIN-ITIN** field, see IRM 3.13.2.9.22.

**IRM 3.13.2.25(12) row n - Corrected return due date.**

**IRM 3.13.2.25(12) - Revised table for Section 508 Compliancy.**

12. An LLC that has multiple members and that is required to file Form 1065 for federal tax purposes, however, is not a partnership under state law. If the LLC files a Form 8832, Entity Classification Election, to change their classification to a corporation, they are required to file Form 1120; however, they are not a corporation under state law. Regardless of the filing status, the entity remains a Limited Liability Company under state law. See the chart below for more information on domestic LLCs.

**CAUTION:** It is very important when processing correspondence and forms received from LLCs to determine how they are classified by researching CCs ENMOD and/or BMFOL'E' to see if there is a posted or pending TC 076 and verifying the PARA-SEL CD>.

<b>If...</b>	<b>And...</b>	<b>Then...</b>
a) A Limited Liability Company (LLC) has multiple members and a Form 1065 filing requirement,	1) The number of members changes from more than one member to a single member,	<ul style="list-style-type: none"> <li>○ They are not required to file Form 8832. The LLC automatically defaults from the classification of partnership to disregarded entity for income tax purposes.</li> <li>○ Update the sort name line and LLC indicator.</li> <li>○ If the final Form 1065 has posted, delete the Form 1065 FRC.</li> <li>○ Correspond with the taxpayer if needed.</li> </ul>
a) A Limited Liability Company (LLC) has multiple members and a Form 1065 filing requirement,	2) Files Form 8832 to be taxed as a partnership,	<ul style="list-style-type: none"> <li>○ Prepare Form 8832 for destruction per local procedures.</li> <li>○ Correspond with the taxpayer telling them their default classification is that of a partnership, therefore, Form 8832 is not required.</li> </ul>
b) An LLC has only one member and is classified as a disregarded entity,	It changes from a single member to more than one member,	<ul style="list-style-type: none"> <li>○ They are not required to file Form 8832. The LLC automatically defaults from the classification of disregarded entity to partnership.</li> <li>○ Update the sort name line and LLC indicator.</li> <li>○ Add a Form 1065 filing requirement.</li> <li>○ Prepare Form 8832 for destruction per local procedures.</li> <li>○ Correspond with taxpayer, if needed.</li> </ul>
c) A sole	1) Wishes to use the same	<ul style="list-style-type: none"> <li>○ A single member LLC</li> </ul>

<p>proprietor files papers to become a state entity and organizes as a single member LLC,</p> <p><b>NOTE:</b> A sole proprietor is not eligible to file Form 8832. If the sole proprietor organizes as a state entity (for example, LLC) that LLC is eligible to file a Form 8832 using the LLCs own EIN,</p>	<p>Employer Identification Number (EIN) assigned to them as a sole proprietor for their LLC. A single member LLC without employment or excise tax liability is a disregarded entity,</p> <p><b>NOTE:</b> Once an LLC has established federal tax liability (any filing requirement), they are required to have their own EIN. They are no longer considered a disregarded entity for federal tax purposes,</p>	<p>disregarded entity can use the sole proprietor's EIN, but the owner/sole proprietor's EIN remains in the owner/sole proprietor's name.</p> <ul style="list-style-type: none"> <li>○ Enter the name of the disregarded entity in the sort name line.</li> <li>○ The single member LLC can obtain its own EIN, but is not required to.</li> </ul> <p><b>NOTE:</b> If an EIN already exists for the single member LLC disregarded entity, inform the taxpayer they already have an EIN for the disregarded entity.</p>
<p>c) A sole proprietor files papers to become a state entity and organizes as a single member LLC,</p> <p><b>NOTE:</b> A sole proprietor is not eligible to file Form 8832. If the sole proprietor organizes as a state entity (for example, LLC) that LLC is eligible to file a Form 8832 using the LLCs own EIN,</p>	<p>2) Wishes to use the same EIN assigned to them as a sole proprietor for the LLC and they have excise tax filing requirements for tax periods <b>prior</b> to 1-1-08 or employment tax filing requirements for tax periods <b>prior</b> to 1-1-09,</p> <p><b>NOTE:</b> Once an LLC has established federal tax liability (any filing requirement), they are required to have their own EIN. They are no longer considered a disregarded entity for federal tax purposes,</p>	<ul style="list-style-type: none"> <li>○ A single member LLC disregarded entity can use the sole proprietor's EIN, but the owner/sole proprietor's EIN remains in the owner/sole proprietor's name.</li> <li>○ Enter the name of the disregarded entity in the sort name line</li> <li>○ Inform the taxpayer that after those dates the LLC must have its own EIN for reporting employment and/or excise tax.</li> <li>○ A single member LLC disregarded entity must have its own EIN for BMF filing requirements. Advise the taxpayer to obtain a new EIN. If you are</li> </ul>

		<p>processing a return or payment, assign a new EIN with NIC ".B"</p> <p><b>NOTE:</b> If an EIN already exists for the single member LLC disregarded entity, inform the taxpayer they already have an EIN for the disregarded entity.</p>
<p>c) A sole proprietor files papers to become a state entity and organizes as a single member LLC,</p> <p><b>NOTE:</b> A sole proprietor is not eligible to file Form 8832. If the sole proprietor organizes as a state entity (for example, LLC) that LLC is eligible to file a Form 8832 using the LLCs own EIN,</p>	<p>3) Wishes to use the same EIN assigned to them as a sole proprietor for the LLC, and they have excise tax filing requirements for the tax periods <b>after</b> 1-1-08 or employment tax filing requirements for tax periods <b>after</b> 1-1-09</p> <p><b>NOTE:</b> Once an LLC has established federal tax liability (any filing requirement), they are required to have their own EIN. They are no longer considered a disregarded entity for federal tax purposes,</p>	<ul style="list-style-type: none"> <li>o The single member LLC must have its own EIN, separate from the sole proprietor's EIN, to report excise taxes and employment taxes accruing after those dates.</li> <li>o If you are processing a return or payment, assign a new EIN with NIC "B"</li> </ul> <p><b>NOTE:</b> If the LLC was previously assigned an EIN, add the appropriate excise and/or employment tax filing requirements to the LLC's EIN. Update Sole Prop EIN to indicate out of business.</p>
<p>c) A sole proprietor files papers to become a state entity and organizes as a single member LLC,</p> <p><b>NOTE:</b> A sole proprietor is not eligible to file</p>	<p>4) Wishes to use the same EIN assigned to them as a sole proprietor for their LLC and elect to be treated as a corporation with a Form 1120 filing requirement,</p>	<ul style="list-style-type: none"> <li>o The single member LLC must have its own EIN separate from the sole proprietor's EIN, since the LLC is no longer disregarded.</li> <li>o Do not update the sole proprietor's account. The Form 8832 must be filed with the EIN of the</li> </ul>

<p>Form 8832. If the sole proprietor organizes as a state entity (for example, LLC) that LLC is eligible to file a Form 8832 using the LLCs own EIN,</p>		<p>LLC to elect to be treated as a corporation.</p> <ul style="list-style-type: none"> <li>○ Return Form 8832 to taxpayer informing him/her that Form 8832 cannot be processed with their Sole Prop EIN, they must apply for a new EIN and re-file Form 8832.</li> </ul>
<p>c) A sole proprietor files papers to become a state entity and organizes as a single member LLC,</p> <p><b>NOTE:</b> A sole proprietor is not eligible to file Form 8832. If the sole proprietor organizes as a state entity (for example, LLC) that LLC is eligible to file a Form 8832 using the LLCs own EIN,</p>	<p>5) Wishes to use the same EIN assigned to them as a sole proprietor for their LLC and elect to be treated as an S corporation with a Form 1120S filing requirement,</p>	<ul style="list-style-type: none"> <li>○ The single member LLC must have its own EIN, separate from the sole proprietor, since the LLC is no longer disregarded.</li> <li>○ The LLC must timely file a Form 2553 (deemed Form 8832), with the EIN of the LLC electing to be treated as an S corporation.</li> </ul>
<p>d) A corporation, partnership, estate or trust is the sole owner of a single member LLC,</p>	<p>1) Wishes to use the same EIN assigned their owner for the LLC and they have excise tax filing requirements for tax periods <b>prior</b> to 1-1-08 or employment tax filing requirements for tax periods <b>prior</b> to 1-1-09,</p> <p><b>NOTE:</b> Once an LLC has</p>	<ul style="list-style-type: none"> <li>○ A single member LLC disregarded entity can use the owner's EIN, but the owner's EIN remains in the owner's name.</li> <li>○ A single member LLC disregarded entity must have its own EIN for BMF filing requirements. If</li> </ul>

	<p>established federal tax liability (for example, employment, excise tax liability), they are required to have their own EIN</p>	<p>processing a return or payment, assign a new EIN with NIC "B."</p> <ul style="list-style-type: none"> <li>○ If an EIN already exists for the LLC, inform the taxpayer they already have an EIN for the disregarded entity.</li> </ul>
<p>d) A corporation, partnership, estate or trust is the sole owner of a single member LLC,</p>	<p>2) Wishes to use the same EIN assigned to the owner for the LLC, and they have excise tax filing requirements for the tax periods <b>after</b> 1-1-08 or employment tax filing requirements for tax periods <b>after</b> 1-1-09,</p> <p><b>NOTE:</b> Once an LLC has established federal tax liability (for example, employment, excise tax liability), they are required to have their own EIN</p>	<ul style="list-style-type: none"> <li>○ The single member LLC must have its own EIN, separate from the owner's EIN.</li> </ul> <p><b>NOTE:</b> If the single member LLC was previously assigned an EIN add filing requirement codes for the appropriate excise and/or employment tax returns to the LLC's EIN</p>
<p>e) A corporation files papers with the state to convert to an LLC,</p>	<p>1) Wishes to use the same EIN assigned to them as a corporation for their LLC and default to the classification of partnership,</p>	<ul style="list-style-type: none"> <li>○ Secure documentation of the state conversion before updating the EIN.</li> <li>○ Update the EIN before processing Form 8832. See IRM 3.13.2.26.13</li> </ul>
<p>e) A corporation files papers with the state to convert to an LLC,</p>	<p>2) Wishes to use the same EIN assigned to them as a corporation for their LLC and retain their status as a corporation,</p> <p><b>NOTE:</b> This is other than an F-reorganization, as described in IRM 3.13.2.27.</p>	<ul style="list-style-type: none"> <li>○ They must timely file Form 8832 electing to be treated as a corporation. Attach conversion paperwork to 8832.</li> <li>○ Update the EIN before processing Form 8832. See IRM</li> </ul>

		3.13.2.26.13.
e) A corporation files papers with the state to convert to an LLC,	3) Wishes to use the same EIN assigned to them as a corporation for their LLC and be classified as an S corporation,  <b>NOTE:</b> This is other than an F-reorganization, as described in IRM 3.13.2.27	<ul style="list-style-type: none"> <li>○ The LLC must timely file Forms 2553 (deemed Form 8832) electing to be treated as an S corporation</li> <li>○ If the existing corporation already has a valid S election on file, update the entity by following procedures in IRM 3.13.2.26.13</li> </ul>
e) A corporation files papers with the state to convert to an LLC,	4) Wishes to use the same EIN assigned to them as a corporation for their LLC and be classified as a disregarded entity,	<ul style="list-style-type: none"> <li>○ Secure documentation of the state conversion before updating the EIN.</li> <li>○ Update the EIN before processing Form 8832. See IRM 3.13.2.26.13</li> </ul>
f) A corporation reorganizes as an association treated as a corporation,	Wishes to use the same EIN assigned to them as a corporation and be taxed as a partnership,	<ul style="list-style-type: none"> <li>○ They must timely file Form 8832 electing to be treated as a partnership.</li> <li>○ Update the EIN before processing Form 8832.</li> </ul> <p><b>NOTE:</b> If there is a posted TC090, a TC096 needs to be input. BK95 may be needed.</p>
g) A partnership (not LLC),	1) Wishes to elect to be treated as a C corporation, with a Form 1120 filing requirement,	<ul style="list-style-type: none"> <li>○ They must timely file Form 8832 electing to be treated as a corporation.</li> <li>○ Do not update the account until a Form 8832 is approved</li> <li>○ If Form 8832 is received, see IRM 3.13.2.26 for</li> </ul>

		processing instructions.
e) A corporation files papers with the state to convert to an LLC,	2) Wishes to elect to be treated as an S corporation and converted/reorganized at the state level to a corporation,	<ul style="list-style-type: none"> <li>o Secure documentation of the state conversion and Form 2553. before updating the EIN.</li> <li>o Do not update the EIN until all documentation is received and Form 2553 can be approved.</li> <li>o Prepare a "dummy" Form 8832 and input.</li> </ul>
e) A corporation files papers with the state to convert to an LLC,	3) Wishes to elect to be treated as a C corporation and converted/reorganized at the state level to a corporation,	<ul style="list-style-type: none"> <li>o Secure documentation of the state conversion before updating the EIN.</li> <li>o Prepare a "dummy" Form 8832 as an association taxable as a corporation and input.</li> </ul>
h) A partnership (not an LLC) reduces to one member,	Wishes to use the same EIN it used as a partnership,	<ul style="list-style-type: none"> <li>o Since the partnership is not registered with the state as an LLC they are not considered a single member LLC/disregarded entity. The entity becomes disregarded as a sole proprietor. As a sole proprietorship they cannot use the partnership's EIN.</li> <li>o Send 147C to inform the taxpayer they need to use the TIN of their owner or apply for an EIN for the sole</li> </ul>

		proprietorship.
i) A partnership (not an LLC) is attempting to elect to be a disregarded entity,	There is no indication they reduced to one member,	They are not eligible as an entity with multiple owners cannot elect to be classified as a disregarded entity.
j) A partnership files articles with the state to be recognized as an LLC,	Wishes to use the same EIN assigned to them as a partnership,	They are not required to file the Form 8832, but automatically default to the classification of partnership. Update the name lines to reflect it is now an LLC.
k) An LLC or partnership files papers with the state to convert to a corporation. (taxpayer's name had LLC or PTR and name now shows it is a corporation)	Wishes to use the same EIN assigned to them as an LLC or partnership,	Secure documentation of the state conversion before updating the EIN. See IRM 3.13.2.26.13.
l) A taxpayer makes an entity classification election within 60 months of the effective date of an earlier election,	They were a newly formed eligible entity when their original election was filed and approved for the date of their formation,	Process the election because the original election is not considered a change and they are not subject to the 60-month limitation.
m) A taxpayer makes an entity classification election within 60 months of the effective date of an earlier election,	They were not a newly formed eligible entity when their election was filed and approved for a date later than the date of their formation,	<ul style="list-style-type: none"> <li>o The 60-month rule applies and the taxpayer cannot file another election to change their classification for 60 months.</li> <li>o Contact the taxpayer to inform them they are not eligible to change their classification for 60 months; however, they may seek a</li> </ul>

		waiver to the 60-month limitation by requesting a Private Letter Ruling from the Office of Chief Counsel.
n) A Taxpayer indicates Form 8832 was filed in error and wants to default to the classification of partnership or disregarded entity,	1) Their request to withdraw the election is received before the due date of the initial tax return. Example: TC 076 effective date is 1/1/2016 election and/or request to withdraw must be received by 4/16/2017,	Input a TC 077 to reverse the TC 076. Associate documentation for TC 077 with Form 8832 (TC 076 DLN)
n) A Taxpayer indicates Form 8832 was filed in error and wants to default to the classification of partnership or disregarded entity,	2) Their request to withdraw the election is not received before the due date of the initial tax return and the initial election was effective for the first day of the LLCs existence,	Contact the taxpayer to inform them they cannot change their classification for the tax year they requested, but are eligible to file a timely Form 8832 to change their classification for the following year, long as they do not contravene the 60-month rule.
o) A Taxpayer indicates Form 8832 was filed in error and wants to default to the classification of partnership or disregarded entity,	Their request to withdraw the election is not received before the due date of the initial return and the effective date was not for the first day of the LLC's existence,	<ul style="list-style-type: none"> <li>o The 60-month rule applies and the taxpayer cannot file another Form 8832 to change their classification for 60 months.</li> <li>o Contact the taxpayer to inform them they cannot change their classification for the current tax year, are not eligible to file Form 8832 to change their classification for 60 months; however, they may seek a waiver to the 60-month rule by requesting a PLR from the Office of</li> </ul>

		Chief Counsel.
p) The taxpayer made a Subchapter S election,	They want to revert to a default classification,	<p>If we allow the Entity Classification Election to be withdrawn/rescinded and there is a Subchapter S election on file, the Subchapter S election terminates and the following action will be taken:</p> <ul style="list-style-type: none"> <li>○ Input a TC 077 to reverse original TC 076</li> <li>○ Input a TC 096 using the effective date from the new Form 8832. A BK95 may be necessary if the taxpayer owes a final Form 1120S. If notification is received via correspondence from the taxpayer, use the IRS received date of the correspondence as the TC 096 effective date.</li> </ul>