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Taxation of Limited Liability Companies



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Contents

Reminder	1
Introduction	1
What is a Limited Liability Company?	2
Classification of an LLC	2
LLCs Classified as Partnerships	2
LLCs Classified as Disregarded Entities	2
LLCs Classified as Corporations	3
Subsequent Elections	4
Community Property	4
How To Get Tax Help	4
Index	6

Reminder

Photographs of missing children. The Internal Revenue Service is a proud partner with the National Center for Missing and Exploited Children. Photographs of missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

Introduction

This publication provides federal income, employment, and excise tax information for limited liability companies. This publication doesn't address state law governing the formation, operation, or termination of limited liability companies. This publication doesn't address any state taxes.

Comments and suggestions. We welcome your comments about this publication and your suggestions for future editions.

You can send us comments from www.irs.gov/formspubs. Click on "More Information" and then on "Give us feedback."

Or you can write to:

Internal Revenue Service
Tax Forms and Publications
1111 Constitution Ave. NW, IR-6526
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We respond to many letters by telephone. Therefore, it would be helpful if you would include your daytime phone number, including the area code, in your correspondence.

Although we cannot respond individually to each comment received, we do appreciate your feedback and will consider your comments as we revise our tax products.

Ordering forms and publications. Visit www.irs.gov/formspubs to download forms and publications. Otherwise, you can go to www.irs.gov/orderforms to order current and prior-year forms and instructions. Your order should arrive within 10 business days.

Tax questions. If you have a tax question not answered by this publication, check IRS.gov and *How To Get Tax Help* at the end of this publication.

Useful Items

You may want to see:

Publication

- 15** (Circular E), Employer's Tax Guide
- 334** Tax Guide for Small Business
- 505** Tax Withholding and Estimated Tax
- 535** Business Expenses
- 541** Partnerships
- 542** Corporations
- 544** Sales and Other Dispositions of Assets
- 583** Starting a Business and Keeping Records
- 925** Passive Activity and At-Risk Rules

Form (and Instructions)

- 1065** U.S. Return of Partnership Income
- 1120** U.S. Corporation Income Tax Return
- 1120S** U.S. Income Tax Return for an S Corporation
- 2553** Election by a Small Business Corporation
- 8832** Entity Classification Election

See *How To Get Tax Help* near the end of this publication for information about getting publications and forms.

What is a Limited Liability Company?

For purposes of this publication, a limited liability company (LLC) is a business entity organized in the United States under state law. An LLC may be classified for federal income tax purposes as a partnership, corporation, or an entity disregarded as separate from its owner by applying the rules in Regulations section 301.7701-3.

The information in this publication applies to LLCs in general, and different rules may apply to special situations, including banks, insurance companies, or nonprofit organizations that are LLCs or that own LLCs. Check your state's requirements and the federal tax regulations for further information.

Classification of an LLC

Default classification. An LLC with at least two members is classified as a partnership for

federal income tax purposes. An LLC with only one member is treated as an entity disregarded as separate from its owner for income tax purposes (but as a separate entity for purposes of employment tax and certain excise taxes). Also, an LLC's federal tax classification can subsequently change under certain default rules discussed later.

Elected classification. An LLC can elect to be classified as an association taxable as a corporation or as an S corporation. After an LLC has determined its federal tax classification, it can later elect to change that classification. For details, see *Subsequent Elections*, later.

LLCs Classified as Partnerships

If an LLC has at least two members and is classified as a partnership, it generally must file Form 1065, U.S. Return of Partnership Income. Generally, an LLC classified as a partnership is subject to the same filing and reporting requirements as partnerships. See the Instructions for Form 1065 for reporting rules that apply specifically to LLCs.

Member manager. Only a member manager of an LLC can sign the partnership tax return. And only a member manager can represent the LLC as the tax matters partner under the consolidated audit proceedings in sections 6221 through 6234. A member manager is any owner of an interest in the LLC who, alone or together with others, has the continuing authority to make the management decisions necessary to conduct the business for which the LLC was formed. If there are no elected or designated member managers, each owner is treated as a member manager.

Change in default classification. If the number of members in an LLC classified as a partnership is reduced to only one member, it becomes an entity disregarded as separate from its owner under Regulations section 301.7701-3(f)(2). However, if the LLC has made an election to be classified as a corporation (discussed later) and that elective classification is in effect at the time of the change in membership, the default classification as a disregarded entity will not apply.

Other tax consequences of a change in membership, such as recognition of gain or loss, are determined by the transactions through which an interest in the LLC is acquired or disposed of. If a partnership that becomes a disregarded entity as a result of a decrease in the number of members makes an election to be classified as a corporation, the applicable deemed transactions discussed under *Subsequent Elections*, later, apply.

Example 1. Ethel and Francis are members of an LLC classified as a partnership for federal tax purposes. Each holds an equal membership interest. The LLC doesn't hold any unrealized receivables or substantially appreciated inventory. Ethel sells her entire interest in the LLC to Francis for \$10,000. After the sale, the business is continued by the LLC, which is

owned solely by Francis. No entity classification election is made after the sale to treat the LLC as a corporation for federal tax purposes. The partnership terminates when Francis buys Ethel's entire interest. Ethel must treat the transaction as the sale of a partnership interest and must report gain or loss, if any, resulting from the sale of her partnership interest.

For purposes of determining the tax treatment of Francis, the partnership is deemed to make a liquidating distribution of all of its assets to Ethel and Francis, and after this distribution, Francis is treated as acquiring the assets deemed to have been distributed to Ethel in liquidation of Ethel's partnership interest. Francis' basis in the assets attributable to Ethel's one-half interest in the partnership is \$10,000, the purchase price for Ethel's partnership interest. Upon the termination of the partnership, Francis is considered to receive a distribution of those assets attributable to Francis' former interest in the partnership. Francis must recognize gain or loss, if any, on the deemed distribution of the assets to the extent required by section 731(a). See *Partnership Distributions* in Pub. 541.

Example 2. George and Henrietta are members of an LLC classified as a partnership for federal tax purposes. Each holds an equal membership interest. The LLC doesn't hold any unrealized receivables or substantially appreciated inventory. George and Henrietta each sell their entire interests in the LLC to Ian, an unrelated person, in exchange for \$10,000. After the sale, the business is continued by the LLC, which is owned solely by Ian. No entity classification election is made after the sale to treat the LLC as a corporation for federal tax purposes. The partnership terminates when Ian purchases the entire interests of George and Henrietta in the LLC. George and Henrietta must report gain or loss, if any, resulting from the sale of their partnership interests. For purposes of classifying the acquisition by Ian, the partnership is deemed to make a liquidating distribution of its assets to George and Henrietta. Immediately following this distribution, Ian is deemed to acquire, by purchase, all of the former partnership's assets.

For more details on the preceding two examples, see Revenue Ruling 99-6, 1999-6 I.R.B. 6. You can find Revenue Ruling 99-6 at www.irs.gov/pub/irs-irbs/irb99-06.pdf.

LLCs Classified as Disregarded Entities

Income tax. If an LLC has only one member and is classified as an entity disregarded as separate from its owner, its income, deductions, gains, losses, and credits are reported on the owner's income tax return. For example, if the owner of the LLC is an individual, the LLC's income and expenses would be reported on the following schedules filed with the owner's Form 1040:

- Schedule C, Profit or Loss from Business (Sole Proprietorship);
- Schedule C-EZ, Net Profit From Business (Sole Proprietorship);

- Schedule E, Supplemental Income and Loss; or
- Schedule F, Profit or Loss From Farming.

Note. The LLC should not file an income tax return.

Employment tax and certain excise taxes. A single-member LLC disregarded for income tax purposes is considered a corporation for employment tax and collection of income tax and certain excise tax purposes and must use its own name and identification number for those purposes.

See the employment and excise tax returns and instructions, including the following, for more information.

- Form 637, Application for Registration (For Certain Excise Tax Activities)
- Form 720, Quarterly Federal Excise Tax Return
- Form 730, Monthly Tax Return for Wagers (Section 4401 of the Internal Revenue Code)
- Form 2290, Heavy Highway Vehicle Use Tax Return
- Form 11-C, Occupational Tax and Registration Return for Wagering
- Form 8849, Claim for Refund of Excise Taxes

For the purposes of determining certain exceptions from employment tax because of the familial relationship or religious affiliation of the employer and employee, the owner of the LLC is considered the employer. Additionally, the owner of the entity is subject to the withholding requirements imposed by section 3406 (backup withholding).

Self-employment tax. An individual owner of a single-member LLC classified as a disregarded entity isn't an employee of the LLC. Instead, the owner is subject to tax on the net earnings from self-employment of the LLC which is treated in the same manner as a sole proprietorship. Similarly, a partner in a partnership that is the owner of a single-member LLC classified as a disregarded entity is not an employee of the LLC. Instead, the partner is subject to the same self-employment tax rules as a partner of a partnership that does not own a disregarded entity.

Example 3. LLC is a disregarded entity owned by Irene. LLC has three employees (Kent, Patricia, and Tex) and pays wages. LLC is treated as an entity separate from its owner for purposes of employment taxes. For the wages paid to Kent, Patricia, and Tex, LLC is liable for income tax withholding, Federal Insurance Contributions Act (FICA) taxes, and Federal Unemployment Tax Act (FUTA) taxes. In addition, LLC must file under its name and EIN the applicable employment tax returns; make timely employment tax deposits; and file with the Social Security Administration and furnish to LLC's employees (Kent, Patricia, and Tex) Forms W-2, Wage and Tax Statement. Irene is self-employed for purposes of the self-employment tax. Thus, Irene is subject to self-employment tax on her net earnings from self-employment with respect to LLC's activities. Irene isn't an employee of LLC for purposes of

employment taxes. Because LLC is treated as a sole proprietorship of Irene for income tax purposes, Irene must report the income and expenses from LLC on her Schedule C. Irene will figure the tax due on her net earnings from self-employment on Schedule SE. Irene can also deduct one-half of her self-employment tax on line 27 of her Form 1040.

Taxpayer identification number. For all income tax purposes, a single-member LLC classified as a disregarded entity must use the owner's social security number (SSN) or EIN. This includes all information returns and reporting related to income tax. For example, if a disregarded entity LLC that is owned by an individual is required to provide a Form W-9, Request for Taxpayer Identification Number and Certification, the LLC must provide the owner's SSN or EIN, not the LLC's EIN.

However, most new single-member LLCs classified as a disregarded entity will need to obtain an EIN for the LLC. An LLC will need an EIN if it has any employees or if it will be required to file any of the excise tax forms listed above (see *Employment tax and certain excise taxes* earlier). See Form SS-4, Application for Employer Identification Number, for information on applying for an EIN.

Change in default classification. If a single-member LLC classified as a disregarded entity for income tax purposes acquires an additional member, it becomes a partnership under Regulations section 301.7701-3(f)(2). However, if the LLC has made an election to be classified as a corporation (discussed later) and that elective classification is in effect at the time of the change in membership, the default classification as a partnership will not apply.

Other tax consequences of a change in membership, such as recognition of gain or loss, are determined by the transactions through which an interest in the LLC is acquired or disposed of. If a disregarded entity that becomes a partnership as a result of an increase in the number of members makes an election to be classified as a corporation, the applicable deemed transactions discussed in *Subsequent Elections*, later, apply.

Example 4. Bart, who isn't related to Alain, buys 50% of Alain's interest in an LLC that is a disregarded entity for \$5,000. Alain doesn't contribute any portion of the \$5,000 to the LLC. Alain and Bart continue to operate the business of the LLC as co-owners of the LLC. The LLC is converted to a partnership when the new member, Bart, buys an interest in the disregarded entity from the owner, Alain. Bart's buying a 50% interest in Alain's ownership interest in the LLC is treated as Bart's buying a 50% interest in each of the LLC's assets, which are treated as owned directly by Alain for federal income tax purposes. Immediately thereafter, Alain and Bart are treated as contributing their respective interests in those assets to a partnership in exchange for ownership interests in the partnership. Alain recognizes gain or loss from the deemed sale to Bart of the 50% interest in the assets. Neither Alain nor Bart recognizes any gain or loss as a result of the deemed contribution of the assets to the partnership.

Example 5. Charles, who isn't related to Danielle, contributes \$10,000 to an LLC owned by Danielle for a 50% ownership interest in the LLC. The LLC uses all of the contributed cash in its business. Charles and Danielle continue to operate the business of the LLC as co-owners of the LLC. The LLC is converted from a disregarded entity to a partnership when Charles contributes cash to the LLC. Charles' contribution is treated as a contribution to a partnership in exchange for an ownership interest in the partnership. Danielle is treated as contributing all of the assets of the LLC to the partnership in exchange for a partnership interest. Neither Charles nor Danielle recognizes gain or loss as a result of the conversion of the disregarded entity to a partnership.

For more details on the preceding two examples, see Revenue Ruling 99-5, 1999-6 I.R.B. 8. You can find Revenue Ruling 99-5 at www.irs.gov/pub/irs-irbs/irb99-06.pdf.

LLCs Classified as Corporations

An LLC with either a single member or more than one member can elect to be classified as a corporation rather than be classified as a partnership or disregarded entity under the default rules discussed earlier. File Form 8832 to elect classification as a C corporation. File Form 2553 to elect classification as an S corporation. An LLC electing classification as an S corporation isn't required to file Form 8832 to elect classification as a corporation before filing Form 2553. By filing Form 2553, an LLC is deemed to have elected classification as a corporation in addition to the S corporation classification.



If the LLC elects to be classified as a corporation by filing Form 8832, a copy of the LLC's Form 8832 must be attached to the federal income tax return of each direct and indirect owner of the LLC for the tax year of the owner that includes the date on which the election took effect.

Example 6. Classification as a corporation without an S election. Wanda and Sylvester are members of an LLC. They agree that the LLC should be classified as a corporation but don't want to elect to have the LLC be treated as an S corporation. The LLC must file Form 8832.

Example 7. Classification as a corporation with an S election. Evelyn and Carol are members of an LLC. They agree that the LLC should be classified as an S corporation. The LLC must file Form 2553 instead of Form 8832.

If the LLC is classified as a corporation, it must file a corporation income tax return. If it is a C corporation, it is taxed on its taxable income and distributions to the members are includible in the members' gross income to the extent of the corporation's earnings and profits (double taxation). If it is an S corporation, the corporation is generally not subject to any income tax and the income, deductions, gains, losses, and credits of the corporation "pass through" to the members.

Corporations generally file either:

- Form 1120; or
- Form 1120S.

For more information on the income taxation of corporations and their shareholders, see Pub. 542. For more information on the income taxation of S corporations and their shareholders, see the Instructions for Form 1120S.

Subsequent Elections

An LLC can elect to change its classification. Generally, once an LLC has elected to change its classification, it can't elect again to change its classification during the 60 months after the effective date of the election. An election by a newly formed LLC that is effective on the date of formation isn't considered a change for purposes of this limitation. For more information and exceptions, see Regulations section 301.7701-3(c) and the Form 8832 instructions.

An election to change classification can have significant tax consequences based on the following transactions that are deemed to occur as a result of the election.

Partnership to corporation. An election to change classification from a partnership to a corporation will be treated as if the partnership contributed all of its assets and liabilities to the corporation in exchange for stock and the partnership then immediately liquidated by distributing the stock to its partners.

For more information, see *Partnership Distributions* in Pub. 541 and *Property Exchanged for Stock* in Pub. 542.

Corporation to partnership. An election to change classification from a corporation to a partnership will be treated as if the corporation distributed all of its assets and liabilities to its shareholders in liquidation and the shareholders then immediately contributed all of the distributed assets and liabilities to a new partnership.

For more information, see *Contribution of Property* in Pub. 541 and *Distributions to Shareholders* in Pub. 542.

Corporation to disregarded entity. An election to change classification from a corporation to a disregarded entity will be treated as if the corporation distributed all of its assets and liabilities to its single owner in liquidation.

For more information, see *Distributions to Shareholders* in Pub. 542.

Disregarded entity to corporation. An election to change classification from a disregarded entity to a corporation will be treated as if the owner of the disregarded entity contributed all of the assets and liabilities to the corporation in exchange for stock.

For more information, see *Property Exchanged for Stock* in Pub. 542.

Community Property

A married couple may choose to treat a business entity as a partnership or as a disregarded entity if:

1. The business entity is wholly owned by the couple as a community property under the laws of a state, a foreign country, or possession of the United States;
2. No person other than one or both spouses would be considered an owner for federal tax purposes; and
3. The business entity isn't treated as a corporation under Regulations section 301.7701-2.

A change in reporting position will be treated as a conversion of the entity.

How To Get Tax Help

If you have questions about a tax issue, need help preparing your tax return, or want to download free publications, forms, or instructions, go to IRS.gov and find resources that can help you right away.

Preparing and filing your tax return. Find free options to prepare and file your return on IRS.gov or in your local community if you qualify.

- Go to IRS.gov and click on the Filing tab to see your options.
- Enter "Free File" in the search box to see whether you can use brand-name software to prepare and *e-file* your federal tax return for free.
- Enter "VITA" in the search box, download the free IRS2Go app, or call 1-800-906-9887 to find the nearest Volunteer Income Tax Assistance or Tax Counseling for the Elderly (TCE) location for free tax preparation.
- Enter "TCE" in the search box, download the free IRS2Go app, or call 1-888-227-7669 to find the nearest Tax Counseling for the Elderly location for free tax preparation.

The Volunteer Income Tax Assistance (VITA) program offers free tax help to people who generally make \$54,000 or less, persons with disabilities, the elderly, and limited-English-speaking taxpayers who need help preparing their own tax returns. The Tax Counseling for the Elderly (TCE) program offers free tax help for all taxpayers, particularly those who are 60 years of age and older. TCE volunteers specialize in answering questions about pensions and retirement-related issues unique to seniors.



Getting answers to your tax law questions. On IRS.gov, get answers to your tax questions anytime, anywhere.

- Go to www.irs.gov/Help-&-Resources for a variety of tools that will help you with your taxes.
- Enter "ITA" in the search box on IRS.gov for the Interactive Tax Assistant, a tool that will ask you questions on a number of tax

law topics and provide answers. You can print the entire interview and the final response.

- Enter "Pub 17" in the search box on IRS.gov to get Pub. 17, Your Federal Income Tax for Individuals, which features details on tax-saving opportunities, tax changes, and thousands of interactive links to help you find answers to your questions.
- Additionally, you may be able to access tax law information in your electronic filing software.

Tax forms and publications. You can download or print all of the forms and publications you may need on www.irs.gov/formspubs. Otherwise, you can go to www.irs.gov/orderforms to place an order and have forms mailed to you. You should receive your order within 10 business days.

Direct Deposit. The fastest way to receive a tax refund is by combining direct deposit and *IRS e-file*. Direct deposit securely and electronically transfers your refund directly into your financial account. Eight in 10 taxpayers use direct deposit to receive their refund. The majority of refunds are received within 21 days or less.

Getting a transcript or copy of a return.

- Go to IRS.gov and click on "Get Transcript of Your Tax Records" under "Tools."
- Call the transcript toll-free line at 1-800-908-9946.
- Mail Form 4506-T or Form 4506T-EZ (both available on IRS.gov).

Using online tools to help prepare your return. Go to IRS.gov and click on the Tools bar to use these and other self-service options.

- The [Earned Income Tax Credit Assistant](#) determines if you are eligible for the EIC.
- The [Online EIN Application](#) helps you get an employer identification number.
- The [IRS Withholding Calculator](#) estimates the amount you should have withheld from your paycheck for federal income tax purposes.
- The [First Time Homebuyer Credit Account Look-up](#) tool provides information on your repayments and account balance.

For help with the alternative minimum tax, go to IRS.gov/AMT.

Understanding identity theft issues.

- Go to www.irs.gov/uac/Identity-Protection for information and videos.
- If your SSN has been lost or stolen or you suspect you are a victim of tax-related identity theft, visit www.irs.gov/identitytheft to learn what steps you should take.

Checking on the status of a refund.

- Go to www.irs.gov/refunds.
- Download the free IRS2Go app to your smart phone and use it to check your refund status.
- Call the automated refund hotline at 1-800-829-1954.

Making a tax payment. The IRS uses the latest encryption technology so electronic

payments are safe and secure. You can make electronic payments online, by phone, or from a mobile device. Paying electronically is quick, easy, and faster than mailing in a check or money order. Go to www.irs.gov/payments to make a payment using any of the following options.

- **IRS Direct Pay** (for individual taxpayers who have a checking or savings account).
- **Debit or credit card** (approved payment processors online or by phone).
- **Electronic Funds Withdrawal** (available during *e-file*).
- **Electronic Federal Tax Payment System** (best option for businesses; enrollment required).
- **Check or money order.**

IRS2Go provides access to mobile-friendly payment options like IRS Direct Pay, offering you a free, secure way to pay directly from your bank account. You can also make debit or credit card payments through an approved payment processor. Simply download IRS2Go from Google Play, the Apple App Store, or the Amazon Appstore, and make your payments anytime, anywhere.

What if I can't pay now? Click on the "Pay Your Tax Bill" icon on IRS.gov for more information about these additional options.

- Apply for an [online payment agreement](#) to meet your tax obligation in monthly installments if you cannot pay your taxes in full today. Once you complete the online process, you will receive immediate notification of whether your agreement has been approved.
- An offer in compromise allows you to settle your tax debt for less than the full amount you owe. Use the [Offer in Compromise Pre-Qualifier](#) to confirm your eligibility.

Checking the status of an amended return. Go to IRS.gov and click on the Tools tab and then [Where's My Amended Return?](#)

Understanding an IRS notice or letter. Enter "Understanding your notice" in the search box on IRS.gov to find additional information about your IRS notice or letter.

Visiting the IRS. Locate the nearest Taxpayer Assistance Center using the Office Locator tool on IRS.gov. Enter "office locator" in the search

box. Or choose the "Contact Us" option on the IRS2Go app and search Local Offices. Before you visit, use the Locator tool to check hours and services available.

Watching IRS videos. The IRS Video portal www.irsvideos.gov contains video and audio presentations for individuals, small businesses, and tax professionals. You'll find video clips of tax topics, archived versions of panel discussions and Webinars, and audio archives of tax practitioner phone forums.

Getting tax information in other languages. For taxpayers whose native language is not English, we have the following resources available.

1. Taxpayers can find information on IRS.gov in the following languages.
 - a. [Spanish.](#)
 - b. [Chinese.](#)
 - c. [Vietnamese.](#)
 - d. [Korean.](#)
 - e. [Russian.](#)
2. The IRS Taxpayer Assistance Centers provide over-the-phone interpreter service in over 170 languages, and the service is available free to taxpayers.

The Taxpayer Advocate Service Is Here To Help You

What is the Taxpayer Advocate Service?

The Taxpayer Advocate Service (TAS) is an *independent* organization within the Internal Revenue Service that helps taxpayers and protects taxpayer rights. Our job is to ensure that every taxpayer is treated fairly and that you know and understand your rights under the [Taxpayer Bill of Rights](#).

What Can the Taxpayer Advocate Service Do For You?

We can help you resolve problems that you can't resolve with the IRS. And our service is free. If you qualify for our assistance, you will be assigned to one advocate who will work with

you throughout the process and will do everything possible to resolve your issue. TAS can help you if:

- Your problem is causing financial difficulty for you, your family, or your business,
- You face (or your business is facing) an immediate threat of adverse action, or
- You've tried repeatedly to contact the IRS but no one has responded, or the IRS hasn't responded by the date promised.

How Can You Reach Us?

We have offices [in every state, the District of Columbia, and Puerto Rico](#). Your local advocate's number is in your local directory and at www.taxpayeradvocate.irs.gov. You can also call us at 1-877-777-4778.

How Can You Learn About Your Taxpayer Rights?

The Taxpayer Bill of Rights describes ten basic rights that all taxpayers have when dealing with the IRS. Our Tax Toolkit at www.taxpayeradvocate.irs.gov can help you understand [what these rights mean to you](#) and how they apply. These are **your** rights. Know them. Use them.

How Else Does the Taxpayer Advocate Service Help Taxpayers?

TAS works to resolve large-scale problems that affect many taxpayers. If you know of one of these broad issues, please report it to us at www.irs.gov/sams.

Low Income Taxpayer Clinics

Low Income Taxpayer Clinics (LITCs) serve individuals whose income is below a certain level and need to resolve tax problems such as audits, appeals, and tax collection disputes. Some clinics can provide information about taxpayer rights and responsibilities in different languages for individuals who speak English as a second language. To find a clinic near you, visit www.irs.gov/litc or see IRS Publication 4134, [Low Income Taxpayer Clinic List](#).



To help us develop a more useful index, please let us know if you have ideas for index entries. See “Comments and Suggestions” in the “Introduction” for the ways you can reach us.

A
Assistance (See Tax help)

C
Change in classification:
Disregarded entity to corporation [4](#)
Disregarded entity to partnership [3, 4](#)
Partnership to corporation [4](#)
Partnership to disregarded entity [2, 4](#)

Recognition of gain or loss [2–4](#)
Classification as a corporation [3](#)
Classification as a disregarded entity [2](#)
Classification as a partnership [2](#)
Classification election [3](#)
Classification of an LLC:
Default classification [2](#)
Elected classification [2](#)

E
Employer identification number (See Taxpayer identification number)

Employment tax [3](#)
Excise taxes [3](#)

I
Identity theft [4](#)

P
Publications (See Tax help)

S
Self-employment tax [3](#)

Social security number (See Taxpayer identification number)
Subchapter S election [3](#)

T
Tax help [4](#)
Taxpayer identification number [3](#)