

Office of Chief Counsel
Internal Revenue Service
Memorandum

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date: August 19, 2003

to: Associate Area Counsel - Salt Lake City
Small Business/Self-Employed Division
CC:SB:5:SLC

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CC:PA:APJP:B02

subject: Significant Service Center Advice

This Service Center Advice responds to your memorandum dated May 21, 2003 in connection with a question posed by the Reporting Agents File (RAF) Unit of the IRS Campus in Ogden. In accordance with I.R.C. § 6110(k)(3), this Service Center Advice should not be cited as precedent.

Issue

Who is authorized to sign the Reporting Agent Authorization for Magnetic Tape/Electronic Filers (Form 8655) when the taxpayer identification number (TIN) or the employer identification number (EIN) on the Form 8655 belongs to a sole proprietorship or a limited liability company (LLC)?

Conclusion

Who is authorized to sign the Reporting Agent Authorization for Magnetic Tape/Electronic Filers (Form 8655) when the taxpayer identification number (TIN) or the employer identification number (EIN) on the Form 8655 belongs to a sole proprietorship or a limited liability company (LLC)?

§§ 6062 and 6063 apply. Accordingly, the IRS Campus in Ogden may accept Form 8655 no matter what corporate or partnership title is used in connection with the signature block when the defaulted single member LLC is owned by a corporation or a partnership. If the single member LLC is owned by an individual, then the LLC is treated as a sole proprietorship. When a sole proprietorship files a Form 8655, it must be signed by the sole proprietor or by someone with authority to execute the Form 8655 on behalf of the sole proprietorship. Thus, for a single member LLC that is treated as a sole proprietorship, the IRS Campus in Ogden should not accept the Form 8655 if it is signed by someone other than the sole owner of the LLC unless some evidence is presented demonstrating that person's authority to execute the Form 8655 on behalf of the LLC.

Facts

As a general rule, actions of a third party taken on behalf of a taxpayer in matters before the IRS are limited to the activities prescribed in the Power of Attorney and Declaration of Representative (Form 2848) on file with the IRS. In this regard, the IRS has indicated that "Form 8655, Reporting Agent Authorization for Magnetic Tape/Electronic Filers, is an acceptable power of attorney." Rev. Proc. 99-39, 1999-2 C.B. 532; Rev. Proc. 96-18, 1996-1 C.B. 637. See also Rev. Proc. 2003-69, 2003-34 I.R.B. 402 (Aug. 25, 2003). The Form 8655 allows a taxpayer to designate a reporting agent to file employment tax returns on magnetic tape or electronically, and to make federal tax deposit payments for the taxes reported on those returns. In addition, Form 8655 allows a reporting agent to receive duplicate copies of certain correspondence with respect to those employment tax returns and federal tax deposits.

The IRS Campus in Ogden receives a significant number of Forms 8655 for sole proprietorships and LLCs. These forms sometimes contain names and/or titles that do not match the name of the taxpayer associated with the TIN or EIN. For example, the IRS has received a Form 8655 where the signature is that of the taxpayer's spouse and the title reflects "owner, manager." Similarly, the IRS has received a Form 8655 signed by an employee and the title reflects "president, manager." Consequently, the IRS Campus in Ogden has difficulty determining whether those Forms 8655 are valid designations of reporting agents.

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Discussion

An LLC is an unincorporated entity of one or more persons having limited liability and formed under state law. Treas. Reg. §§ 301.7701-1 *et seq.* (commonly referred to as the Check-The-Box Regulations) provides the framework for the federal tax classification of entities. Under these Regulations, the classification of an LLC will depend on the number of members in the LLC and any election filed for the LLC. An LLC may be either a multi-member or single member LLC. A multi-member LLC may elect to be classified as an association taxable as a corporation.¹ Treas. Reg.

§ 301.7701-3(a). If no election is made, Treas. Reg. § 301.7701-3(b)(1)(i) provides as a default that the multi-member LLC will be treated as a partnership. A single member LLC may elect to be classified as an association taxable as a corporation. Treas. Reg. § 301.7701-3(a). If a single member LLC does not make an election, then the single member LLC will be classified for federal tax purposes as a disregarded entity and as a result, its activities are treated in the same manner as a sole proprietorship, branch, or division of its sole owner. See Treas. Reg. §§ 301.7701-2(a); 301.7701-3(b)(1)(ii).

As a general rule, a single member LLC that is disregarded has no tax filing obligations because all its activities are reported by its owner. In the employment tax context, the owner of a single member LLC that is treated as a disregarded entity for federal tax purposes is the employer. Note, however, that the Service will accept "separate calculation, reporting, and payment of all employment tax obligations by each state law entity with respect to its employees under its own name and taxpayer identification number." Notice 99-6, 1999-1 C.B. 321. Even though a single member LLC can choose to file its own employment tax returns, "the owner retains ultimate responsibility for the employment tax obligations incurred with respect to employees of the disregarded entity." Id. Thus, as a disregarded entity, a single member LLC cannot be the employer for employment tax purposes regardless of the fact that it files employment tax returns.

When determining who must sign the Form 8655, the IRS has established the following rules:

- (1) the taxpayer, or the taxpayer's authorized representative. If, however, the

¹ An LLC that wishes to elect its classification files Form 8832, Entity Classification Election.

authorized representative is the holder of a power of attorney, the person executing the Authorization must be specifically authorized to sign tax returns on behalf of the taxpayer. If the taxpayer's authorized representative wishes to authorize an Agent to receive tax return notices, correspondence, and transcripts from the Service, or discuss taxpayer account information with Service representatives, the authorized representative must be someone with authority both to receive, and to designate others to receive, tax return information (as defined by § 6103(b)(2)) of the taxpayer; or

(2) a person who is duly authorized in accordance with § 31.6011(a)-7 of the regulations, provided that the authorizing language explicitly states that the person may both receive and designate recipients of the taxpayer's tax return information, if the form is used to designate the person as a recipient of tax return information.

Rev. Proc. 96-17, 1996-1 C.B. 633, 635 § 6.02.

Treas. Reg. § 31.6011(a)-7(c) deals with the execution of employment tax returns, and refers to Treas. Reg. § 31.6061-1 for information regarding the signing of returns. Treas. Reg. § 31.6061-1 states:

Each return required under the regulations in this subpart shall, if signature is called for by the form or instructions relating to the return, be signed by (a) the individual, if the person required to make the return is an individual; (b) the president, vice president, or other principal officer, if the person required to make the return is a corporation; (c) a responsible and duly authorized member or officer having knowledge of its affairs, if the person required to make the return is a partnership or other unincorporated organization. . . .The return may be signed for the taxpayer by an agent who is duly authorized in accordance with § 31.6011(a)-7 to make such return.

In the income tax context, the following guidelines apply to the signing of returns:

The return of a corporation with respect to income shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary pursuant to the provisions of section 6012(b)(3), such fiduciary shall sign the return. The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on behalf of the corporation.

I.R.C. § 6062. Further, “[a]n individual's signature on a return, statement, or other document made by or for a corporation shall be prima facie evidence that such individual is authorized to sign such return, statement, or other document.” Treas. Reg. § 1.6062-1(c).

Similarly, “the return of a partnership made under section 6031 shall be signed by any one of the partners. The fact that a partner's name is signed on the return shall be prima facie evidence that such partner is authorized to sign the return on behalf of the partnership.” I.R.C. § 6063. Thus, “[a] partner's signature on a return, statement, or other document made by or for a partnership of which he is a member shall be prima facie evidence that such partner is authorized to sign such return, statement, or other document.” Treas. Reg. § 1.6063-1(b).

Based on I.R.C. §§ 6062 and 6063, and Treas. Reg. §§ 1.6062-1(c) and 1.6063-1(b), an individual's or partner's signature on the Form 8655 is prima facie evidence that such individual or partner is authorized to sign the form for a corporation or partnership. Thus, an individual's or partner's signature on a Form 8655 is evidence, if uncontradicted, sufficient to sustain a determination that the signer was authorized to execute the Form 8655 for a corporation or partnership.

These rules for signing Form 8655 can be applied in the LLC context. The Check-The-Box Regulations reflect a policy decision that LLCs should be permitted to elect the form of taxation imposed on the LLC. By electing to be taxed as a corporation or defaulting into partnership status, it follows that the LLC should be entitled to the signature presumptions for corporation and partnership returns under I.R.C. §§ 6062 and 6063. Accordingly, the *prima facie* rules under I.R.C. §§ 6062 and 6063 also apply to multi-member LLCs electing to be taxed as corporations or multi-member LLCs that are classified as partnerships by default, respectively. Similarly, the *prima facie* rule under I.R.C. § 6062 also applies to single member LLCs electing to be taxed as corporations. Accordingly, the IRS Campus in Ogden may accept Form 8655 no matter what corporate or partnership title is used in connection with the signature block when an LLC that is classified as a corporation or a partnership files the Form 8655.

With regard to single member LLCs that are classified by default as disregarded entities, the status of the owner is the determinative factor. While Notice 99-6 allows a single member LLC to file employment tax returns, the LLC is not the employer and therefore not the taxpayer; the taxpayer for purposes of designating a reporting agent is the owner of the LLC. Thus, if the single member LLC is owned by a corporation or a partnership, then the *prima facie* rules under I.R.C. §§ 6062 and 6063 apply. Accordingly, the IRS Campus in Ogden may accept Form 8655 no matter what corporate or partnership title is used in connection with the signature block when a single member LLC that is classified by default as a disregarded entity is owned by a corporation or a partnership.

If the single member LLC is classified by default as a disregarded entity and owned by an

individual, then the LLC is treated as a sole proprietorship. See Treas. Reg. § 301.7701-2(a). In general, a sole proprietorship with employees reports employment tax liabilities on Forms 940 and 941. Treas. Reg. §§ 31.6011(a)-1(a)(1); 31.6011(a)-3(a). Both of those returns require the individual's signature. Thus, the IRS Campus in Ogden should not accept a Form 8655 that is signed by someone other than the sole proprietor unless the sole proprietor has an authorized representative who is specifically authorized to sign tax returns and designate a reporting agent. Similarly, the IRS Campus in Ogden should not accept a Form 8655 in the single member LLC context that is signed by someone other than the sole owner unless some evidence is presented demonstrating that person's authority to execute the Form 8655 on behalf of the LLC.

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If you have any questions, please contact this office at .