



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
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INTERNAL REVENUE SERVICE NATIONAL OFFICE  
TECHNICAL ASSISTANCE

MEMORANDUM FOR GROUP MANAGER, TAX TREATY GROUP 4  
OP:IN:I:T:4:LB

FROM: Elizabeth U. Karzon, Branch Chief  
CC:INTL:BR1

SUBJECT: Certification of Limited Liability Companies

This Technical Assistance responds to your memorandum of February 1, 2000, in which you requested the views of the Office of the Associate Chief Counsel (International) in connection with a question posed to you by the Certification Unit of the Philadelphia Service Center ("PSC").

ISSUE

Whether the PSC may certify that a single-owner limited liability company ("LLC") that is disregarded, for federal income tax purposes, as an entity separate from its owner is a resident of the United States that is therefore entitled to benefits under a bilateral income tax treaty to which the United States is a party.

CONCLUSION

Because a single-owner LLC that is disregarded as an entity separate from its owner is not a "person", nor is it "liable to tax", the PSC may not certify that the LLC is a resident of the United States. However, the PSC may certify that the single owner of the LLC is a resident of the United States, which should suffice to establish that income derived by the LLC in the treaty country is being derived by a resident of the United States and is entitled to treaty benefits.

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## FACTS

The bilateral income tax treaties to which the United States is a party generally provide reduced withholding rates and other treaty benefits only to residents of the United States or residents of the other country that is a party to the treaty. Our treaty partners often require U.S. persons who wish to claim benefits under a treaty to obtain certification from the IRS that they are residents of the United States.

Requests for treaty certification are processed by the PSC. Where appropriate, the PSC certifies on a Form 6166 that, to the best of its knowledge, the person requesting certification is a resident of the United States. See I.R.M., Part I, Handbook [1.3] 6.7.0. See also Publication 686. The PSC has procedures in place for certifying that entities that are treated as corporations or partnerships for federal income tax purposes are residents of the United States.

Single-owner LLCs that are disregarded as entities separate from their owners for U.S. federal income tax purposes are typically not disregarded by our treaty partners for purposes of their tax systems. When such an LLC receives income from a treaty country, our treaty partners may view the income as being derived by the LLC itself, and not by its single owner. Accordingly, some of our treaty partners assume that their domestic tax law classification of the entity requires that for treaty purposes the LLC certify that it is a resident of the United States.

The PSC has requested advice as to how to handle these requests for certification.

## LAW AND ANALYSIS

Pursuant to Treas. Reg. §301.7701-3(a), an LLC with a single owner can elect to be classified for federal income tax purposes as an association (and thus a corporation) or to be disregarded as an entity separate from its owner. It may not elect to be classified as a partnership. A default rule provides that a single-owner LLC that fails to make an election will be disregarded as an entity separate from its owner. Treas. Reg. §301.7701-(3)(b)(ii).

If a single-owner LLC is disregarded, “its activities are treated in the same manner as a sole proprietorship, branch, or division of the owner.” Treas. Reg. §301.7701-2(a). The income of an LLC that is disregarded for federal income tax purposes is included on the federal income tax return of the LLC’s single owner.

Under the bilateral income tax treaties to which the United States is a party, a “resident” of the United States must first be a person. Thus, the 1996 United States Model Income Tax Convention provides that the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, citizenship, place of management,

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place of incorporation, or any other criterion of a similar nature. U.S. Model, Art. 4(1). Under the U.S. Model, the term “person” includes an individual, an estate, a trust, a partnership, a company, and any other body of persons. See U.S. Model, Art. 3(1)(a).

As noted above, because single-owner LLCs are disregarded as entities separate from their owners for federal income tax purposes, they are not persons for purposes of U.S. income tax treaties. Further, because the income of a single-owner LLC is taxable in the hands of the single owner and not in the hands of the LLC, the LLC, even if it were a “disregarded” person, is not liable to tax within the meaning of our U.S. income tax treaties. Thus, the PSC cannot certify that the LLC is a resident of the United States.

However, the PSC can certify that the single owner of the disregarded LLC is a resident of the United States. In our view, such certification suffices to establish that, for income tax treaty purposes, the income derived by the LLC from the treaty country is being derived by a resident of the United States, the single owner of the LLC. See Temp. Treas. Reg. §1.894-1T(d)(6)(5).

We recommend that procedures be developed for certifying that the single owner of a disregarded LLC (or of any other single-owner entity that is disregarded for federal income tax purposes pursuant to Treas. Reg. §301.7701-3) is a resident of the United States and that, therefore, any income derived by the disregarded LLC should be considered to be derived by a resident of the United States. An explanatory statement should be prepared for our treaty partners and an announcement should be published in the Internal Revenue Bulletin.

Please call if you have any further questions.

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