



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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Dear _____ :

This letter responds to the letter dated November 10, 2009, from your attorneys requesting an information letter concerning the treatment of a limited liability company whose sole member is a tax-exempt public charity for federal tax purposes and concerning the treatment of a grant for charitable purposes by an unrelated private foundation to such a disregarded limited liability company.

An "information letter" is defined in Revenue Procedure 2010-4 to mean—

a statement issued either by the Director, Employee Plans Rulings and Agreements or the Director, Exempt Organizations Rulings and Agreements. It calls attention to a well-established interpretation or principle of tax law (including a tax treaty) without applying it to a specific set of facts. To the extent resources permit, an information letter may be issued if the taxpayer's inquiry indicates a need for general information or if the taxpayer's request does not meet the requirements of this revenue procedure and the Service thinks general information will help the taxpayer. The taxpayer should provide a daytime telephone number with the taxpayer's request for an information letter. Requests for information letters should be sent to the address stated in section 9.04(2) of this revenue procedure. The requirements of section 9.02 of this revenue procedure are not applicable to information letters. An information letter is advisory only and has no binding effect on the Service. Section 3.06 of Rev. Proc. 2010-4, 2010-1 I.R.B. 122, January 4, 2010.

A domestic limited liability company with a single owner or member (hereafter "owner") generally is disregarded for federal tax purposes unless it elects to be regarded separately from its owner, in which case it is treated as an association that is taxable as a corporation. See Treasury Regulation sections 301.7701-2(a) and (c)(2) and 301.7701-3(a), (b)(1)(ii), and (c)(1)(v).

If the sole owner of a disregarded limited liability company is a tax-exempt organization described in section 501(a) of the Code, then the limited liability company is treated as a component part of the exempt organization. In such a situation, the exempt owner of the disregarded limited liability company generally must treat the operations of the limited liability company as a branch or division of the owner and include, as the owner's own, information pertaining to the finances and operations of the limited liability company in filing an annual information return as required under section 6033 of the Code.

As a general rule, a disregarded limited liability company whose sole owner is exempt from federal income tax under section 501(a) of the Code is not required to pay federal taxes or file a federal tax or information return; that is the responsibility of its sole owner. The disregarded entity generally receives the benefit of its owner's tax-exempt status, including exemption from federal income tax, federal unemployment tax, and other federal taxes where applicable.

On January 1, 2008, Treas. Reg. section 301.7701-2(c)(2)(v) became effective and requires entities that are otherwise disregarded under section 301.7701-2(c)(2)(i) to be regarded for certain excise tax purposes. Additionally, prior to 2009, a disregarded entity could choose to report and pay employment taxes for its employees, but otherwise was generally treated as a disregarded entity (except for certain excise tax purposes). See Notice 99-6, 1999-3 I.R.B. 12. However, beginning on January 1, 2009, Treas. Reg. section 301.7701-2(c)(2)(iv) became effective and Notice 99-6 became obsolete. The regulations in 301.7701-2(c)(2)(iv) and (v) treat a disregarded limited liability company as separate from its owner for purposes of various federal excise taxes and employment tax liabilities arising on or after January 1, 2008, and January 1, 2009, respectively. Beginning on those dates, every disregarded limited liability company is taxed as a corporation for purposes of various federal excise taxes and employment taxes. Collection of such tax liabilities against a limited liability company may be pursued as if it were a separate corporation.

Where an exempt organization that is the sole member of a limited liability company needs to demonstrate the status of the limited liability company as a disregarded entity, such as to state officials, it should consider providing a copy of its annual information return, since that return will include financial and operational information of the disregarded limited liability company. In addition, an organization may request a private letter ruling regarding a proposed transaction involving a disregarded limited liability company, such as whether a proposed transaction would adversely affect the organization's tax-exempt status or result in unrelated trade or business taxation. See Revenue Procedure 2010-4, 2010-1 I.R.B. 122 (updated annually).

A tax-exempt organization that is the sole owner of a disregarded limited liability company will not jeopardize its exempt status merely because the organizational documents of the limited liability company do not contain specific language limiting the

limited liability company's purposes to one or more exempt purposes. However, the exempt status of the owner may be adversely affected if the disregarded limited liability company's organizational documents provide that the limited liability company will be operated for purposes that are contrary to the tax-exempt purposes of the owner.

Section 4942(g) of the Code provides that the term "qualifying distribution" means any amount paid to another organization to accomplish one or more exempt purposes described in section 170(c)(2)(B), *other than* any contribution to (i) an organization controlled by the distributing private foundation or one or more disqualified persons with respect to that private foundation or (ii) a private foundation that is not an operating foundation. The regulations referred to above provide that where the sole member of a limited liability company is a tax-exempt organization described in section 501(a), including an organization described in section 501(c)(3), the limited liability company is recognized as an integral part of the tax-exempt organization. The exempt owner of such a disregarded limited liability company is required to treat the operations and finances of the limited liability company as its own for tax and information reporting purposes. Accordingly, a distribution by a private foundation to a limited liability company that is treated as a disregarded entity for federal tax purposes to accomplish one or more exempt purposes described in section 170(c)(2)(B), where the sole member of the disregarded limited liability company is a public charity (which is described in section 509(a)(1) and is not controlled by the distributing private foundation), generally will be treated as a qualifying distribution to the public charity for purposes of section 4942.

Section 4945(d) of the Code defines the term "taxable expenditure" to include any grant by a private foundation to another organization unless the other organization is a public charity described in section 509(a)(1) or (2), an eligible Type I or Type II section 509(a)(3) supporting organization, or an exempt operating foundation under section 4940(d)(2). If the grantee organization is not one of the listed excepted organizations, then the grant will be a taxable expenditure unless the private foundation exercises "expenditure responsibility" in accordance with section 4942(h). Thus, where a limited liability company is a disregarded entity owned solely by a public charity which, for example, is described in section 509(a)(1) and is not controlled by the distributing private foundation, expenditure responsibility generally will not have to be exercised by the distributing private foundation.

We believe this general information will be of assistance to you. However, this letter is for informational purposes only and is intended to provide general statements of well-defined law. It is not a ruling and may not be relied on as such. See Rev. Proc. 2010-4, 2010-1 I.R.B. 122 (or its successor). This letter will be made available for public inspection. The Internal Revenue Service will delete any name, address and other identifying information as appropriate under the Freedom of Information Act. See Announcement 2000-2, 2000-2 I.R.B. 295. If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

We also suggest referring to Internal Revenue Service Publication 3402 (Rev. 3-2008) "Tax Issues for Limited Liability Companies." You may obtain a copy of Publication 3402 on the Internet at: <http://www.irs.gov/pub/irs-pdf/p3402.pdf>.

Sincerely,

David L. Fish
Manager
Exempt Organizations, Guidance