

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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date: June 19, 2014

to: Area Counsel (Great Lakes Area)
(Tax Exempt & Government Entities)
Attn: Julie A. Schwoebel, Senior Attorney

from: Branch Chief, Branch 1
(Procedure & Administration)

subject: Section 6041 Reporting Requirements and Payments to LLCs

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUE

Are payments to limited liability companies (LLCs) exempt from section 6041 reporting requirements?

CONCLUSION

Payments to LLCs are exempt from section 6041 reporting requirements only if the LLC has elected to be classified for federal tax purposes as a corporation by filing Form 8832. Based on the documentation your office provided, the LLC-payees made no such election. Therefore, these LLCs would be classified as either partnerships or disregarded entities, depending on how many members they have. As such, payments to these LLCs are not exempt from section 6041 reporting requirements.

FACTS

The taxpayer is protesting certain adjustments proposed by the examining agent. Specifically, the taxpayer argues that the agent should not include payments to LLCs as reportable payments under section 6041 because the LLCs are exempt payees.

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Therefore, the taxpayer claims that no backup withholding was required with respect to the LLC-payees under section 3406.

Our advice is based on your office's information that the taxpayer has failed to produce any documentation that the LLCs have elected to be classified as corporations for federal tax purposes.

LAW AND ANALYSIS

Section 6041 Reporting and Corporations

All persons engaged in a trade or business who, in the course of that trade or business, make payments of \$600 or more to another person are required to report the payments to the IRS. I.R.C. § 6041(a). There are, however, exemptions under Treasury regulation section 1.6041-3. Generally, returns of information are not required under section 6041 for payments made to a "corporation described in § 1.6049-4(c)(1)(ii)(A)." Treas. Reg. § 1.6041-3(p)(1).

LLCs are not within the definition of corporation unless they elect to be classified as associations for federal tax purposes. A corporation is an entity "defined in section 7701(a)(3)." Treas. Reg. § 1.6049-4(c)(1)(ii)(A). The term corporation "includes associations, joint-stock companies, and insurance companies." I.R.C. § 7701(a)(3). Absent an election, LLCs are not included in this definition of corporation. See I.R.C. § 7701(a)(3); Treas. Reg. § 301.7701-2(b). Additionally, the term corporation includes "a partnership all of whose members are corporations . . . , but only if the partnership files with the payor a certificate stating that each member of the partnership" is a corporation. Treas. Reg. § 1.6049-4(c)(1)(ii)(A). There is no record that any of the LLCs in question made this filing, and so they are not included in this definition of corporation either.

LLCs can Elect to be Corporations

LLCs are generally eligible entities that can elect their classifications for federal tax purposes. See Treas. Reg. § 301.7701-3(a). Multimember LLCs can elect to be classified as either an association or a partnership. See Treas. Reg. § 301.7701-3(a). Single-member LLCs can elect either to be classified as an association or to be disregarded as an entity separate from its owner. See *id.* If an LLC elects to be classified as an association, it is a corporation for federal tax purposes. See *id.*

Without an election, a multimember LLC will be classified as a partnership, and a single-member LLC will generally be classified as a disregarded entity for federal tax purposes. See Treas. Reg. § 301.7701-3(b)(1).

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LLCs can affirmatively elect their classification by filing a valid Form 8832, Entity Classification Election, with the Service Center designated on this form. Treas. Reg. § 301.7701-3(c).

In this case, there is no record that any of the LLCs to which the taxpayer made payments filed Forms 8832 with the Service. Thus, these LLCs would remain classified as the default status (as either partnerships or disregarded entities depending on membership). Therefore, payments to these entities are not excluded from the section 6041 reporting requirements under Treasury regulation section 1.6041-3(p)(1).

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call (202) 317-6845 if you have any further questions.