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CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
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MEMORANDUM FOR ARKANSAS-OKLAHOMA DISTRICT COUNSEL

FROM: Kathryn A. Zuba
Chief, Branch 2 (General Litigation)

SUBJECT: Collection of Employment Tax Liabilities from Members of
Single-Member Limited Liability Companies

ISSUE: Is the sole owner of a single-member limited liability company (LLC) personally liable for employment taxes incurred by the LLC?

CONCLUSION: The general rule that members of LLCs are not personally liable for employment taxes incurred by the LLC does not apply to single-member LLCs unless the LLC elects association status under the "check-the-box" regulations because absent such election the LLC entity is disregarded for federal tax purposes. Thus, the single member is the statutory employer and is liable for the employment tax.

BACKGROUND: The Office of Chief Counsel has taken the position that where, under the state LLC statutes, a member is not personally liable for the debts of the LLC, the employment tax liability of the LLC cannot be collected from the property of the member under the federal tax collection provisions (unless the member has trust fund liability under I.R.C. § 6672). The question has arisen whether the same reasoning applies to single-member LLCs where the LLC is disregarded for federal tax purposes.

LAW AND ANALYSIS: The "check-the-box" regulations determine how a business entity is to be classified for federal tax purposes. A business entity with a single owner that is not classified as a corporation under the regulations may elect to be classified as an association (and, thus, taxed like a corporation) or to be disregarded as an entity separate from its owner. Treas. Reg. § 301.7701-3(a). If no election is made, the entity is disregarded as an entity separate from its owner. Treas. Reg. § 301.7701-3(b)(1). Thus, if the owner is an individual all income is reported on the individual's returns and the individual is the employer for purposes of liability for employment taxes.

The Service has announced in temporary procedures that it will generally accept reporting and payment of employment taxes with respect to the employees of an entity disregarded as an entity separate from its owner in one of two ways:

1) Calculation, reporting, and payment of all employment tax obligations with respect to employees of a disregarded entity by its owner (as though the employees of the disregarded entity are employed directly by the owner) and under the owner's name and taxpayer identification number; or

2) 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, 1999-3 I.R.B. 1. The Notice cautions, however, that if the second method is chosen, the owner retains ultimate responsibility for the employment tax obligations incurred with respect to employees of the disregarded entity. In other words, although the Service will consider the employment tax obligations of the owner to be fulfilled through the second method, the owner remains the liable employer.

Pursuant to Notice 99-6, the owner of a single-member LLC, where association status is not elected, is the statutory employer for purposes of liability for employment taxes because the LLC entity is disregarded for federal tax purposes. Any delinquent employment taxes should be collected from the owner. ^{1/} Our general advice that LLC members are not responsible for the employment taxes of LLCs (except for trust fund liability) only applies where the LLC is the statutory employer. If in the case of a single-member LLC the member is the statutory employer due to the disregard of the LLC entity, then such member is liable for the employment tax and the employment tax can be collected from such member pursuant to the federal tax collection provisions.

Please contact this office at (202) 622-3620 if you have any questions or comments concerning this memorandum.

cc: District Counsel Pacific-Northwest (Portland)
Assistant Chief Counsel (P&SI)

^{1/} In certain cases of abuse, there may be grounds for collecting the sole member's liability from the LLC based on the theory that the LLC is an alter ego or that it would be appropriate to "pierce" the LLC veil. For application of such approaches with respect to corporations, see Wolfe v. United States, 798 F.2d 1241 (9th Cir. 1986); Avco Delta Corp. Canada Ltd. v. United States, (7th Cir. 1976); Valley Finance, Inc. v. United States, 629 F.2d 162, 171-72 (D.C. Cir. 1980), cert. denied 451 U.S. 1018 (1981).

