

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

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subject: Reporting EINs of a Disregarded Entity on the Owner's Income Tax Return

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

ISSUE

Whether the Internal Revenue Service (Service) can under existing regulations change tax return forms and instructions to require the sole owner of a disregarded entity to provide the disregarded entity's Employee Identification Number (EIN) on the owner's tax return.

CONCLUSION

Tax return forms and instructions can be modified under I.R.C. § 6011(a) and Treas. Reg. § 1.6011-1(a) to require the sole owner of a disregarded entity to provide the disregarded entity's EIN on the owner's tax return.

BACKGROUND

Under the check-the-box rules,<sup>1</sup> an eligible entity that has a single owner and isn't treated as a corporation is disregarded as an entity separate from its owner.<sup>2</sup>

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<sup>1</sup> Treas. Reg. § 301.7701-1 *et seq.*

<sup>2</sup> Treas. Reg. § 301.7701-2(c)(2)(i).

Accordingly, its activities are treated the same as a sole proprietorship, branch, or division of its owner.<sup>3</sup> The income earned by a disregarded entity must be reported on the owner's income tax return and reported under the owner's Taxpayer Identification Number (TIN).<sup>4</sup> Nevertheless, a disregarded entity may have a legitimate business reason for obtaining a separate EIN, such as for reporting employment taxes and other business taxes.<sup>5</sup> If a disregarded entity has an EIN, it typically does not appear on the owner's tax return. Certain information returns such as Forms 1099 that reflect income earned by a disregarded entity may reflect the entity's EIN and not the owner's TIN. This makes matching the income reported on such an information return to what is reported on an income tax return difficult.

## LAW AND ANALYSIS

### Broad Authority to Require Reporting of Information on Returns

The Internal Revenue Code (the Code) makes taxpayers the source of information necessary to compute an internal revenue tax. Taxpayers are required to report information that the Service considers appropriate for the computation of the tax and, based on that information, they enter their computation of the self-assessed tax on tax returns that they then file with the Service.<sup>6</sup> Requirements for making and filing tax returns are found in I.R.C. § 6011(a) and Treas. Reg. § 1.6011-1(a) which generally provide that any person liable for any tax imposed by the Code must file a return and include therein the information required by the forms and regulations prescribed by the Secretary. Furthermore, under I.R.C. § 6011(b), the Secretary is authorized to require taxpayers to include on their returns the information necessary to properly identify the taxpayer.

Thus, as a general matter, the Service has broad authority to require taxpayers to report information in its tax forms when required on the form and in its instructions.<sup>7</sup> Accordingly the Service may require the sole owner of a disregarded entity to provide a disregarded entity's EIN on the owner's tax return when this requirement appears on the face of those forms and the form instructions.<sup>8</sup>

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<sup>3</sup> Treas. Reg. § 301.7701-2(a).

<sup>4</sup> Treas. Reg. § 301.6109-1(h).

<sup>5</sup> Treas. Reg. § 301.6109-1(d)(4)(ii).

<sup>6</sup> See *Michael A. Saltzman*, IRS PRACTICE AND PROCEDURE ¶ 4.01 (2d ed. 2013).

<sup>7</sup> See *Deutsche Bank AG v. United States*, 742 F.3d 1378 (Fed. Cir. 2014), *aff'd* 95 Fed. Cl. 423 (2010) (the Service had the authority to require the taxpayer to attach forms to its tax return, when the requirement to include those forms appeared on the face of the forms, on form instructions, and on the principal tax return form and its instructions, even though that specific form or attachment is not specifically referred to in the Code or regulation).

<sup>8</sup> See also *Sikes v. Commissioner*, T.C. Memo. 1982-40 ("It is well settled that taxpayers are required to file income tax returns in accordance with the provisions of the Internal Revenue Code.")

### Taxpayer Identification Numbers

Moreover, the Service has authority to require use of TINs on returns because it is necessary and helpful in securing proper identification of the filer. TINs enable the Service to identify in its records the type of taxpayer as well as the taxpayer's account information. Under Treas. Reg. § 301.6109-1(h)(2)(i), except as otherwise provided in regulations, a single owner entity that is disregarded as an entity separate from its owner under Treas. Reg. § 301.7701-3 must use its owner's TIN for federal tax purposes.

However, the regulations also allow disregarded entities to use an EIN to report other business income. Treas. Reg. 301.6109-1(d)(4)(ii) provides in part:

Any individual with both a social security number (or an IRS individual taxpayer identification number) and an employer identification number may use the social security number (or the IRS individual taxpayer identification number) for individual taxes, and the employer identification number for business taxes as required by returns, statements, and other documents and their related instructions.

Allowing a taxpayer to use two types of identification numbers naturally may cause problems in associating different types of returns with a single taxpayer. The Service, however, has authority to require on forms the information necessary to associate to the correct taxpayer under I.R.C. § 6109(b), which authorizes the Service to require information necessary or helpful in securing the proper identification of the taxpayer. In addition, the TIN regulations are complementary and do not prevent the Service from requiring the owner of a disregarded entity to report all the EINs used in its business dealings on the owner's tax return. As such, we conclude that tax return forms and instructions can be modified under I.R.C. § 6011(a) and (b) and Treas. Reg. § 1.6011-1(a) to require the sole owner of a disregarded entity to provide the disregarded entity's EIN on the owner's tax return.

### A Return Without the additional EIN is a valid return

We caution that although we believe the Service has the authority to require the sole owner of a disregarded entity to provide the disregarded entity's EIN on the owner's tax return, the failure to do so would neither invalidate the return for statute of limitation purposes nor make the filer subject to failure to file penalties. The cases hold that to be deemed a return, a document filed with the Service must (1) contain sufficient data to calculate the taxpayer's tax liability, (2) purport to be a return, (3) must be a reasonable attempt to satisfy the requirements of the tax law, and (4) be signed under penalty of perjury. *Beard v. Commissioner*, 82 T.C. 766, 777, *aff'd*, 793 F.2d 139 (6th Cir. 1986), *citing Zellerbach Paper Co. v. Helvering*, 293 U.S. 172, 180 (1934). Generally, the

omission of the taxpayer's identification number does not render a return invalid. See *United States v. Grabinski*, 727 F.2d 681, 686-87 (8<sup>th</sup> Cir. 1984).<sup>9</sup>

In support of your proposal, you contend that if the owner of the disregarded entity was required to include on his income tax return the EINs of his disregarded entities that have EINs, this would permit the Service to better match third-party reporting of income to what was actually reported by the taxpayer. We recognize that this is requirement would assist in tax administration, and that for the successful administration of a self-assessment system, it is essential that taxpayers file returns containing sufficient information for the Service to determine whether an audit is necessary.<sup>10</sup>

We also recognize that such a requirement is not burdensome for the owner of the disregarded entity because it is information within the filer's knowledge. We suggest coordination with Forms and Publications in revising the relevant forms and instructions.

Please call (202) 317-5417 if you have any further questions.

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<sup>9</sup> See also *Blount v. Commissioner*, 86 T.C. 383, 387 (1986) (the omission of a Form W-2 does not prevent the calculation of tax liability); *White v. Commissioner*, T.C. Summ. Op. 2002-101, at \*3 (Aug. 5, 2002) (failure to attach a W-2 does not prevent the calculation of a taxpayer's liability).

<sup>10</sup> *True v. United States*, 354 F.2d 323, 326 (Ct. Cl. 1965).