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

OFFICE OF CHIEF COUNSEL

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MEMORANDUM FOR ASSOCIATE AREA COUNSEL,
SB/SE:2 (GREENSBORO)

FROM: Mitchel S. Hyman
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SUBJECT: Notice to a Single Member Owner of a Disregarded LLC

This Chief Counsel Advice responds to your request for advice on a Collection Due Process ("CDP") issue relating to a Limited Liability Company ("LLC"). In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

ISSUE

If the Internal Revenue Service ("Service") makes an assessment against a disregarded LLC and provides a collection due process ("CDP") notice to the disregarded LLC, must the Service issue a separate CDP notice to the single member owner if the Service adds his name to the assessment ?

CONCLUSION

The Service should issue another CDP notice to the single member owner, even when the single member owner received actual notice and was not prejudiced by the Service's error. This approach ensures that a single member owner will receive the CDP safeguards that Congress enacted.

BACKGROUND

An LLC is a hybrid entity created under state law, which has attributes of both a partnership and a corporation. See generally, Uniform Limited Liability Company Act (1995). See also, N.Y. Ltd. Liab. Co. Law §§ 101-1403 (McKinney 2000). The owners of an LLC are the members, who generally are not liable for the debts of the LLC. An LLC may own property in its own name, and members have no interest in such property. The law of most states permit organization of single member LLCs, i.e., LLCs having only one member commonly known as the single member owner.

Treas. Reg. § 301.7701-1 et seq. (commonly referred to as the check-the-box regulations) provides a framework for the federal tax classification of entities. Under the regulations, the classification of an LLC will depend on the number of members in the LLC and any election filed for the LLC. For example, an LLC may be either a multi-

member or single member LLC. If it is a multi-member LLC, it may elect to be treated as an association taxable as a corporation. Treas. Reg. § 301.7701-3(a). If no election is made, Treas. Reg. § 301.7701-3(b)(1)(i) provides as a default that the multi-member LLC will be treated as a partnership.

Alternatively, if an LLC is a single member LLC, the question is whether it is treated as an association taxable as a corporation or as a disregarded entity. A single member owner could elect to have the LLC classified as an association taxable as a corporation. Treas. Reg. § 301.7701-3(a). If no election is made, Treas. Reg. § 301.7701-3(b)(1)(ii) provides that the LLC will be disregarded as an entity separate from its owner. A disregarded LLC's "activities are treated in the same manner as a sole proprietorship, branch, or division of the owner." Treas. Reg. § 301.7701-2(a).

Because a disregarded LLC is not separate from its owner, the Service may seek to collect the taxes arising from the LLC's business directly from the single member owner by administrative collection action, including the filing of a Notice of Federal Tax Lien ("NFTL"). In pursuing administrative collection action, collection due process ("CDP") rights under I.R.C. §§ 6320 and 6330 must be accorded the single member owner taxpayer.

As a general rule, a single member limited liability company that is disregarded has no tax filing obligation, as all its activities are reported by the company's sole owner. As an exception to the general rule, Notice 99-6, 1999-3 I.R.B. 12, permits a disregarded LLC to separately calculate, report, and pay its employment tax obligation with respect to its employees under its own name and EIN. The Notice makes clear that the owner of a single member limited liability company that is treated as a disregarded entity for federal tax purposes is the employer for purposes of employment tax liability. Consequently, "the owner retains ultimate responsibility for the employment tax obligations incurred with respect to employees of the disregarded entity." Id. Thus, as a disregarded entity, a single member limited liability company cannot be the employer for employment tax purposes regardless of the fact that it files employment tax returns.

Where the employment tax liability is reported by the disregarded LLC pursuant to Notice 99-6, the Service's current practice is to assess employment taxes in the name and EIN of the limited liability company. Consequently, a limited liability company that is a disregarded entity is often assessed for the employment tax liabilities that are the ultimate responsibility of the company's single member owner. Also, the Service makes notice and demand for payment on the disregarded LLC.

For purposes of discussion in this memorandum, we shall assume the following as a model situation. The Service has made an assessment against a disregarded LLC and has made notice and demand for payment on the LLC. Looking to collect the tax liability, the Service has provided CDP notices under both sections 6320 and 6330 to the disregarded LLC. Subsequently, the Service adds the single member owner's name to the assessment made against the disregarded LLC.

LAW AND ANALYSIS

I.R.C. § 6201 authorizes the Service to assess the taxpayer's liability. The Service's positions regarding assessments against disregarded LLCs is as follows. Assessments and notices and demand under the name and/or taxpayer identification number of a disregarded LLC are valid against the single member owner. This is consistent with the notion that "notices containing technical defects are valid where the taxpayer has not been prejudiced or misled by the error and is afforded a meaningful opportunity to litigate his claims." Planned Investments, Inc. v. United States, 881 F.2d 340, 344 (6th Cir. 1989) (citing Marvel v. United States, 719 F.2d 1507 (10th Cir. 1983) and Allan v. United States, 386 F.Supp. 499 (N.D. Tex. 1975), aff'd without published opinion, 514 F.2d 1070 (5th Cir. 1975)). In substance, a disregarded LLC is a trade name by which the company's sole owner conducts business. See Marvel. Given the close relationship between a single member limited liability company and its sole owner, any reference in an assessment to a disregarded LLC and notice to the LLC is tantamount to an assessment and notice to the single member owner.

Accordingly, notice and demand for payment made on the disregarded LLC serves as notice and demand for payment under section 6303(a) on the single member owner who actually received the notice and was not prejudiced by the Service's error. [1] Analogous support for this can be drawn from cases holding that notice and demand erroneously made on a business or nonexistent partnership was a valid when the taxpayer received actual notice and was not prejudiced by the error. For example, in Marvel, the taxpayers contended that because the notices were in the name of "Marvel Photo" and not in the name of Fred and Angela Marvel, the notice and demand for payment did not comply with section 6303(a). The court rejected the taxpayers' argument, reasoning that "[a]lthough the notices were addressed to taxpayers' business rather than to the individual taxpayers, it is undisputed that taxpayers, doing business as Marvel Photo, actually received the notices and that the notices listed the correct taxpayer identification number." Marvel, 719 F.2d at 1513. Accord, Barmes v. I.R.S., 116 F. Supp.2d 1007, 1014 (S.D. Ind. 2000) (holding that Service made a valid notice and demand on Marvin Barmes, a sole proprietor who actually received the notice, even though the notice was mistakenly sent to the Barmes partnership).
Given the disregarded status of the LLC for all federal tax purposes and its close relationship to its single member owner, the owner who actually receives the notice and demand addressed to the disregarded LLC and is not prejudiced by the Service's mistake cannot seriously object to the validity of the notice.

Where an assessment and notice and demand is made with respect to the disregarded LLC, the Service's practice is to add the single member owner's name to the assessment to facilitate collection against the owner. The question arises whether this procedure requires the Service to send a new CDP notice to the single member owner.

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[1] Section 6303 provides that "notice shall be left at the dwelling or usual place of business of such person [liable for the unpaid tax], or shall be sent by mail to such person's last known address."

There is no clear answer to this question. On the one hand, it could be argued that there is no need to send a new CDP notice to the single member owner who actually received a CDP notice addressed to the disregarded LLC and was not prejudiced by the Service's mistake. Essentially, the Service would apply the standard for determining the validity of a notice under section 6303 to CDP notices. Under section 6303, the Service is not required to identify the taxpayer correctly when the taxpayer should recognize that the notice applies to his tax liability. See Marvel, 719 F.2d at 1513; Barmes, 116 F. Supp.2d 1014. There is nothing in sections 6320 or section 6330 indicating that Congress intended to impose a more exacting standard for providing a CDP notice than the notice standard under section 6303.

On the other hand, it could also be argued that the standard for providing notice under section 6303 does not apply to CDP notices because CDP notices serve a different purpose. Specifically, a CDP notice alerts a taxpayer that a limited period exists for filing a request for a CDP hearing. I.R.C. §§ 6320(a)(3)(B) and 6330(a)(2). There is no similar right to a hearing under section 6303.

Moreover, recognizing that a taxpayer has a limited time in which to request a CDP hearing, Congress could have intended that CDP notices correctly identify the taxpayer so that there would not be any confusion or delay. A CDP notice addressed to a disregarded LLC may cause confusion and mislead a single member owner, because the single member owner may believe that the Service intends to take collection action against the assets of the disregarded LLC. The single member owner may not grasp the abstract tax concept that the LLC is disregarded for federal tax purposes and that the Service is actually seeking to collect the tax liability from the assets of the single member owner.

Finally, requiring that a CDP notice correctly identify the taxpayer comports with the overall legislative intent underlying the CDP hearings, which was to provide greater safeguards to a taxpayer during the Service's collection process. Requiring the Service to issue a CDP notice correctly identifying the taxpayer provides greater protection to taxpayers.

In conclusion, we believe the Service should send a new CDP notice addressed to the single member owner, even when the single member owner actually received a CDP notice addressed to the disregarded LLC and was not prejudiced by the Service's mistake. This cautious approach will ensure that a single member owner's CDP rights will be protected.

If we can be of any further assistance, please call.