



Tax Reduction Letter

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Treasury Decision 9462 Disregarded Entities and Excise Taxes

October 19, 2009

Department of the Treasury
Internal Revenue Service
26 CFR Part 301

AGENCY:

Internal Revenue Service (IRS), Treasury.

ACTION:

Final and temporary regulations.

SUMMARY:

This document contains final and temporary regulations clarifying that a single-owner eligible entity that is disregarded as an entity separate from its owner for any purpose, but regarded as a separate entity for certain excise tax purposes, is treated as a corporation for tax administration purposes related to those excise taxes. These regulations also make conforming changes to the tax liability rule for disregarded entities and the treatment of entity rule for disregarded entities with respect to employment taxes. These regulations affect disregarded entities in general and, in particular, disregarded entities that pay or pay over certain federal excise taxes or that are required to be registered by the IRS. The text of these temporary regulations serves as the text of proposed regulations (REG-116614-08) published in this issue of the Bulletin.

DATES:

Effective Date: These regulations are effective on September 14, 2009.

Applicability Date: For dates of applicability, see §301.7701-2T(e)(2), (e)(5), and (e)(6).

FOR FURTHER INFORMATION CONTACT:

Michael H. Beker, (202) 622-3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 7701 of the Internal Revenue Code (Code).

Under existing §301.7701-2(c)(2)(iv), a single-owner eligible entity that is disregarded as an entity separate from its owner for Federal tax purposes is treated as a separate entity for purposes of employment taxes imposed under Subtitle C of the Code and related reporting requirements. The regulations treat these disregarded eligible entities as corporations for purposes of employment taxes imposed under Subtitle C of the Code and related reporting requirements.

Under existing §301.7701-2(c)(2)(v), a single-owner eligible entity that is disregarded as an entity separate from its owner for Federal tax purposes is treated as a separate entity for purposes of certain excise taxes reported on Form 720, “Quarterly Federal Excise Tax Return;” Form 730, “Monthly Tax Return for Wagers;” Form 2290, “Heavy Highway Vehicle Use Tax Return;” and Form 11-C, “Occupation Tax and Registration Return for Wagering;” excise tax refunds or payments claimed on Form 8849, “Claim for Refund of Excise Taxes;” and excise tax registrations on Form 637, “Application for Registration (For Certain Excise Tax Activities).” Although liability for excise taxes is not dependent upon an entity’s classification, an entity’s classification is relevant for certain tax administration purposes, such as determining the proper location for filing a notice of federal tax lien and the place for hand-carrying a return under section 6091. Therefore, these temporary regulations clarify that these disregarded eligible entities are treated as corporations for tax administration purposes.

These temporary regulations also make conforming changes to the tax liability rule for disregarded entities in §301.7701-2(c)(2)(iii) and the treatment of entity rule for disregarded entities with respect to employment taxes in §301.7701-2(c)(2)(iv)(B).

Effective/Applicability Date

These regulations apply on and after September 14, 2009.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the Bulletin. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7701-2 is amended by:

1. Revising paragraphs (c)(2)(iii) and (c)(2)(iv)(B).
2. Redesignating paragraph (c)(2)(v)(B) as paragraph (c)(2)(v)(C) and added new paragraph (c)(2)(v)(B).
3. In newly-designated paragraph (c)(2)(v)(C), Example (iv) is added.
4. Revising paragraph (e)(2).

The additions and revisions read as follows:

§ 301.7701-2 Business entities; definitions.

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(c) * * *

(2) * * *

(iii) [Reserved]. For further guidance, see §301.7701-2T(c)(2)(iii).

(iv) * * *

(B) [Reserved]. For further guidance, see §301.7701-2T(c)(2)(iv)(B).

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(v) * * *

(B) [Reserved]. For further guidance, see §301.7701-2T(c)(2)(v)(B).

(C) * * *

(iv) [Reserved]. For further guidance, see §301.7701-2T(c)(2)(v)(C) Example (iv).

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(e) * * *

(2) [Reserved]. For further guidance, see §301.7701-2T(e)(2).

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Par. 3. Section 301.7701-2T is added to read as follows:

§301.7701-2T Business entities; definitions (temporary).

(a) through (c)(2)(ii) [Reserved]. For further guidance, see §301.7701-2(a) through (c)(2)(ii).

(iii) Tax liabilities of certain disregarded entities—(A) In general. An entity that is disregarded as separate from its owner for any purpose under §301.7701-2 is treated as an entity separate from its owner for purposes of—

(1) Federal tax liabilities of the entity with respect to any taxable period for which the entity was not disregarded;

(2) Federal tax liabilities of any other entity for which the entity is liable; and

(3) Refunds or credits of Federal tax.

(B) Examples. The following examples illustrate the application of paragraph (c)(2)(iii)(A) of this section:

Example 1. In 2006, X, a domestic corporation that reports its taxes on a calendar year basis, merges into Z, a domestic LLC wholly owned by Y that is disregarded as an entity separate from Y, in a state law merger. X was not a member of a consolidated group at any time during its taxable year ending in December 2005. Under the applicable state law, Z is the successor to X and is liable for all of X's debts. In 2009, the Internal Revenue Service (IRS) seeks to extend the period of limitations on assessment for X's 2005 taxable year. Because Z is the successor to X and is liable for X's 2005 taxes that remain unpaid, Z is the proper party to sign the consent to extend the period of limitations.

Example 2. The facts are the same as in Example 1, except that in 2007, the IRS determines that X miscalculated and underreported its income tax liability for 2005. Because Z is the successor to X and is liable for X's 2005 taxes that remain unpaid, the deficiency may be assessed against Z and, in the event that Z fails to pay the liability after notice and demand, a general tax lien will arise against all of Z's property and rights to property.

(c)(2)(iv)(A) [Reserved]. For further guidance, see §301.7701-2(c)(2)(iv)(A).

(B) Treatment of entity. An entity that is disregarded as an entity separate from its owner for any purpose under §301.7701-2 is treated as a corporation with respect to taxes imposed under Subtitle C—Employment Taxes and Collection of Income Tax (Chapters 21, 22, 23, 23A, 24, and 25 of the Internal Revenue Code).

(C) through (c)(2)(v)(A) [Reserved]. For further guidance, see §301.7701-2(c)(2)(iv)(C) through (c)(2)(v)(A).

(B) Treatment of entity. An entity that is disregarded as an entity separate from its owner for any purpose under §301.7701-2 is treated as a corporation with respect to items described in §301.7701-2(c)(2)(v)(A).

(C) Example. (i) through (iii) [Reserved]. For further guidance, see §301.7701-2(c)(2)(v)(C) Example (i) through (iii).

(iv) Assume the same facts as in §301.7701-2(c)(2)(v)(C) Example (i) and (ii). If LLCB does not pay the tax on its sale of coal under chapter 32 of the Internal Revenue Code, any notice of lien the Internal Revenue Service files will be filed as if LLCB were a corporation.

(d) through (e)(1) [Reserved]. For further guidance, see §301.7701-2(d) through (e)(1).

(e)(2) Paragraph (c)(2)(iii) of this section applies on and after September 14, 2009. For rules that apply before September 14, 2009, see 26 CFR part 301 revised as of April 1, 2009.

(e)(3) through (e)(4) [Reserved]. For further guidance, see §301.7701-2(e)(3) through (e)(4).

(e)(5) Paragraph (c)(2)(iv)(B) of this section applies with respect to wages paid on or after September 14, 2009. For rules that apply before September 14, 2009, see 26 CFR part 301 revised as of April 1, 2009.

(e)(6) Paragraphs (c)(2)(v)(B) and (c)(2)(v)(C) Example (iv) of this section apply on and after September 14, 2009.

(7) [Reserved]. For further guidance, see §301.7701-2(e)(7).

(8) Expiration Date. The applicability of paragraphs (c)(2)(iii), (c)(2)(iv)(B), (c)(2)(v)(B), (c)(2)(v)(C) Example (iv), (e)(2), (e)(5) and (e)(6) of this section expires on or before September 11, 2012.

L. E. Stiff,
Deputy Commissioner for
Services and Enforcement.

Approved August 31, 2009.

Michael F. Mundace,
Acting Assistant Secretary
of the Treasury (Tax Policy).

Note

(Filed by the Office of the Federal Register on September 10, 2009, 11:15 a.m., and published in the issue of the Federal Register for September 14, 2009, 74 F.R. 46903)

Drafting Information

The principal author of these regulations is Michael H. Beker, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

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