

ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 01-007

This document may not be used or cited as precedent. Code of Ala. 1975, §40-2A-5(a).

TO:

FROM: Cynthia Underwood
Commissioner of Revenue

DATE: August 1, 2001

RE: Procedure for reporting withholding tax obligations by a single member limited liability company.

FACTS

According to the relevant portions of the request, the facts are:

LLC "A" is a single member Alabama limited liability company. LLC "A's" sole member is Corporation "B".

Corporation "B" plans to construct and operate a manufacturing plant (the "Plant") in Alabama. LLC "A" will own and operate the Plant. The Plant will provide parts to another manufacturing plant under construction in Alabama. At full production, LLC "A" will employ approximately 150 persons.

LLC "A" plans to start hiring associates (employees) in the near future. Under Alabama law, employers must withhold State of Alabama income tax from the wages of employees and then remit such taxes to the State.... LLC "A" will hire associates and begin paying them wages in the near future. Arising at such time will be a duty to withhold Alabama income taxes from the wages of LLC "A's" employees with subsequent payment of such taxes to the State.

ISSUE

Whether or not a single member limited liability company ("LLC") which has not elected to be treated as a corporation may separately calculate, report and pay its

Alabama income tax withholding obligations to the Department independent of its single member.

ANALYSIS

For the purposes of taxation, a LLC “shall be treated as a partnership unless it is classified otherwise for federal income tax purposes, in which case it shall be classified in the same manner as it is for federal income tax purposes.” Code of Ala. 1975, §10-12-8(b). Obviously, however, a single member LLC cannot be treated as a partnership. A partnership, by definition, is an association of two or more entities. See generally, Code of Ala. 1975, §10-8A-101. Revenue Procedure 98-001 states that, “[for purposes of the taxing statutes in Title 40, Code of Ala. 1975, all LLCs . . . will be classified as they are classified for federal income tax purposes under the Internal Revenue Service’s “check-the-box” regulations.” Thus, for Alabama tax purposes, a single member LLC should be classified in the same manner as it is for federal income tax purposes.

There are special federal rules for a single member LLC. The Reporter’s Comments to §10-12-8, citing Treas. Reg. §301.7701-3(b), state that “[a] single member limited liability company that does not elect to be treated as a corporation will be ignored for income tax purposes.” Similarly, “[a] business entity that has a single owner and is not a corporation... is disregarded as an entity separate from its owner.” Treas. Reg. §301.7701-2(c)(2). Thus, a single member LLC could elect to be treated as a corporation. Presumably, however, LLC “A” will not elect to be treated as a corporation, since such an election would automatically authorize separate calculation of its withholding tax liabilities. The issue is whether a single member LLC which does not elect to be treated as a corporation may separately report and pay its withholding tax to the Department.

The issue is complicated by the independent legal status of LLCs. All LLCs, including single member LLCs, clearly have a separate identity from their members. Every LLC has the power to carry out its business, including, but not limited to, the powers “[t]o sue and be sued, complain and defend, in its name.” Code of Ala. 1975, §10-12-4(a). In addition, Code of Ala. 1975, §10-12-18 provides that “neither a member nor a manager of a limited liability company is a proper party to proceedings by or against a limited liability company... .” Thus, even a “disregarded entity” single member LLC maintains its separate legal identity.

As a recognition to the uniqueness of single member LLCs and the complexity of the issue, the Internal Revenue Service (“IRS”) has issued Notice 99-6, 1993-3 IRB.12. The notice, as a temporary employment tax procedure, specifically states that “until additional guidance is issued,” the IRS will accept reporting and payment of employment taxes with respect to the employees of a disregarded entity (§301.7701-2(c)(2)) if made by:

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.

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. This method merely permits the employment tax obligations of the owner incurred with respect to the disregarded entity to be fulfilled through the separate calculation, reporting, and payment of employment taxes by the disregarded entity. Accordingly, the Service will not proceed against the owner for employment tax obligations relating to employees of a disregarded entity if those obligations are fulfilled by the disregarded entity using its own name and taxpayer identification number, even if there are differences in the timing or amount of payments or deposits as calculated under the second method.

To summarize, for federal corporate income tax purposes, a single member LLC that does not elect to be treated as a corporation is ignored for reporting purposes. However, for federal withholding tax purposes, a single member LLC may report tax in its own name or that of its owner. Thus, for federal income tax purposes, single member LLCs are not always classified in the same manner. Instead, the classification depends on the type of tax involved. Since Alabama law is directly tied to the federal classifications, one form of classification will not suffice for Alabama tax purposes.

RULING

In reference to single member LLCs, the Department adopts the tax procedures currently authorized by the IRS pursuant to Notice 99-6 and referenced herein.

1. LLC "A" may separately calculate, report and pay to the Department its Alabama income tax withholding obligations under its own name and taxpayer identification number; or
2. LLC "A's" Alabama income tax withholding obligations may be calculated, reported and paid by its owner under the owner's name and taxpayer identification number.

If LLC "A" reports its withholding tax liabilities under its own name and taxpayer identification number, then Corporation "B" will retain ultimate responsibility to the Department for the payment of the taxes.

CYNTHIA UNDERWOOD, Commissioner
Alabama Department of Revenue

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