



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.1.21

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EFFECTIVE DATE

(10-07-2020)

PURPOSE

- (1) This transmits revised IRM 5.1.21, Field Collecting Procedures, Collecting From Limited Liability Companies (LLCs).

MATERIAL CHANGES

- (1) Editorial changes made throughout. Reviewed and updated website addresses and examples to meet IRM 1.11.2.5.6 criteria, as necessary.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 5.1.21, Collecting from Limited Liability Companies (LLCs), dated October 22, 2018.

AUDIENCE

SB/SE Collection Employees

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5.1.21

Collecting from Limited Liability Companies

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5.1.21.1
(10-07-2020)
Program Scope and Objectives

- (1) **Purpose.** This IRM section explains how to properly address various LLC collection issues and pursue administrative collection actions against the correct LLC taxpayer entity. Because state law governs an LLC's property rights that may be different from that of a corporation or a partnership, the administrative collection actions taken may also differ. It is important to determine how the LLC is classified, whether the LLC made a check-the-box election, and whether the liable taxpayer is a single member or multi-member LLC.
- (2) **Audience.** These procedures apply to IRS Field Collection revenue officers and group managers.
- (3) **Policy Owner.** The Director, Collection Policy, SB/SE is the policy owner of this IRM.
- (4) **Program Owner.** Collection Policy, SB/SE, Employment Tax (ET) is the program owner of this IRM.
- (5) **Primary Stakeholder.** The primary stakeholder of this section is Field Collection.
- (6) **Program Goals.** As a form of business organization, LLCs have different characteristics than corporations or sole proprietorships. Employees must understand how to apply IRS processes and procedures to LLCs. By following the guidance in this IRM, employees will be able to properly address various LLC collection issues and pursue administrative collection actions against the correct taxpayer entity when required.

5.1.21.1.1
(10-22-2018)
Background

- (1) An LLC's classification for federal tax purposes is governed by the provisions of Treas. Reg. 301.7701-2 and -3. Liability for income, employment, and excise taxation is determined by the classification of the entity under applicable regulations. You must first understand how an LLC is classified before taking administrative collection actions and properly addressing various collection questions.
- (2) Revised regulations changing the treatment of certain LLCs for employment and excise tax liabilities were issued on August 16, 2007. The changes are not retroactive and they do not change the tax treatment of employment and excise taxes that accrued prior to their effective dates. The applicability of these regulations must be considered when determining liability for employment and excise taxes incurred both before and after the effective dates of these regulations.

5.1.21.1.2
(10-22-2018)
Authority

- (1) Treasury Regulation 301.7701-2, Business entities; definition
- (2) Treasury Regulation 301.7701-3, Classification of certain business entities
- (3) Notice 99-6, 1999-3 IRB 12, Employment tax issues for disregarded entities
- (4) IRC 6320(a)(2), Requirement of Notice for hearing upon filing of notice of lien
- (5) IRC 6330(a)(2), Requirement of Notice Before Levy
- (6) Rev. Rul. 99-5, 1999-6 IRB 8, Disregarded entity to partnership
- (7) Rev. Rul. 99-6, 1999-6 IRB 6, Partnership to disregarded entity

5.1.21.1.3
(10-22-2018)
Responsibilities

- (1) The Director, Collection Policy, is the executive responsible for the policies and procedures to be employed by collection personnel.
- (2) Field Collection group managers and territory managers are responsible for ensuring the guidance and procedures described in this IRM are followed.
- (3) Field Collection revenue officers are responsible for conducting investigations on LLC cases and collecting from the correct taxpayer entity.

5.1.21.1.4
(10-07-2020)
Program Management and Review

- (1) LLC cases can be identified by establishment of case codes on ICS and assigned cases in ENTITY as follows:
 - 601 - LLC in business
 - 602 - LLC out of business
- (2) Periodic program reviews are conducted by Employment Tax to:
 - Validate policies and procedures
 - Verify compliance with requirements
 - Determine if IRM procedures are being followed
 - Identify and share best/proven practices
- (3) Reports showing the timeliness of actions and for controlling inventory are the same as those for all Field Collection cases as discussed and outlined in IRM 1.4.50.5.2.4, Time Utilization Reviews.
- (4) For program effectiveness, management verifies that employees are applying procedures correctly as outlined in the IRM.
- (5) Group managers conduct reviews on LLC cases to ensure employees are taking administrative collection actions against the correct taxpayer entity.
- (6) Operational reviews are conducted by territory managers and area directors.
- (7) NQRS and EQRS reviews are conducted to determine if NFTLs are filed on the correct taxpayer entity.

5.1.21.1.5
(10-22-2018)
Program Controls

- (1) Integrated Collection System (ICS) is programmed with a pop-up to ensure employees file the NFTL on the correct taxpayer entity. If the employee confirms there are LLC tax periods after January 1, 2009, then they are prompted to remove the SMO nameline and file the NFTL in the name of the LLC only.
- (2) IRS Master File is programmed to establish an LLC indicator that is input systematically on or after January 1, 2009 that identifies whether the taxpayer entity is a single member or multi-member LLC.
- (3) The Integrated Data Retrieval System (IDRS) displays the LLC indicator on BMFOLE as "LLC-IND" as **(S)** for single member LLC or **(M)** for multi-member LLC.
- (4) The Integrated Data Retrieval System (IDRS) uploads Transaction Codes 076 and/or 090 when the LLC makes an election to be taxable as a corporation or 1120S Corp.

5.1.21.1.6
(10-22-2018)
Acronyms

- (1) The following table lists commonly used acronyms and definitions:

Acronym	Definition
AC	Action Code
AIQ	Advisory, Insolvency and Quality
ALS	Automated Lien System
ATFR	Automated Trust Fund Recovery
CC	Command Code
CCP	Centralized Case Processing
DLN	Document Locator Number
EIN	Employer Identification Number
IA	Installment Agreement
ICS	Integrated Collection System
IDRS	Integrated Data Retrieval System
IRC	Internal Revenue Code
LLC	Limited Liability Company
NFTL	Notice of Federal Tax Lien
OIC	Offer-In-Compromise
SMO	Single Member Owner
SSN	Social Security Number
TC	Transaction Code
TFRP	Trust Fund Recovery Penalty

5.1.21.1.7
(10-07-2020)
Terms

- (1) The following table lists frequently used terms used in this IRM:

Term	Definition
Limited Liability Company (LLC)	<p>A limited liability company (LLC) is an entity created by state statute that has characteristics of both a partnership and corporation.</p> <ul style="list-style-type: none"> • It has pass-through taxation of a partnership or sole proprietorship combined with limited liability of a corporation. • For state purposes, an LLC is a business separate from its owner in which the owner is protected from the LLC's acts and debts, such as bankruptcy and lawsuits. • For federal tax purposes, an LLC is disregarded as separate from its owner, therefore is liable for taxes.
Notice 99-6	<p>As of January 1, 2009, Notice 99-6 is obsolete and the following applies:</p> <ul style="list-style-type: none"> • Employment tax liabilities that accrue on or after January 1, 2009 may no longer be reported in the name and EIN of the SMO. • Employment taxes must be reported in the name and EIN of the LLC. • The LLC is always the liable taxpayer regardless of its tax classification (sole-proprietorship, partnership, or corporation). • The TFRP must be investigated and assessed if necessary.
Election by LLC	<p>An LLC can elect to be treated as a corporation for tax purposes by filing Form 8832, Entity Classification Election. The LLC can further elect to be classified as an 1120S corporation by filing Form 2553, Election by a Small Business Corporation.</p>

5.1.21.1.8
(10-22-2018)

Related Resources

- (1) The following table contains related resources referenced in this IRM

Resources	Title
IRM 5.1.12.21.1.4.1	Limited Liability Company Offset
IRM 5.9.13.14	Limited Liability Companies
IRM 5.12.6.3.16	Invalid CDP Notices and Rescinding the CDP Notice
IRM 5.12.7.5.3	Limited Liability Company (LLC)
IRM 5.12.7.5.3.1	Creating New LLC Name Line Using ICS
IRM 5.14.7.3	Installment Agreements Involving Limited Liability Companies
IRM 5.16.1.3.4	Limited Liability Companies

5.1.21.2
(01-12-2015)
Limited Liability Company (LLC)

- (1) A limited liability company (LLC) is an entity created under state law that has characteristics of both a partnership and a corporation. It is similar to a:
- Corporation in that the owners have limited personal liability for negligent acts and LLC debts.
 - Partnership in that it provides management flexibility and may provide the benefit of pass-through taxation of income.
- (2) An LLC may own property, enter into contracts and otherwise conduct business in its own name. Property ownership is governed by state law.

5.1.21.3
(01-12-2015)
Characteristics of a Limited Liability Company (LLC)

- (1) State LLC statutes include a number of common elements and characteristics, many of which are different from other types of business organizations.
- (2) The following are some of the characteristics of an LLC:
- Owners are called members.
 - There are no restrictions on ownership.
 - There are no restrictions on the number of members.
 - Single member LLCs are permitted.
- (3) An LLC with one owner is a single member entity.
- (4) An LLC with more than one owner is a multi-member entity.
- (5) The treatment of an LLC for tax purposes may depend in part on whether the LLC is a single member entity or a multi-member entity.
- (6) Classification of the LLC for federal tax purposes does not negate state law provisions concerning the legal status of the LLC. For example:
- An LLC classified as a partnership for federal tax purposes does not mean the member/owners have liability for LLC debts as would be the case in a partnership under state law.

- An LLC that is a disregarded entity is treated as a sole proprietorship if it is owned by an individual. If the disregarded entity is owned by any other entity, it is treated as a branch or division of its owner.

5.1.21.3.1
(10-07-2020)

Disregarded Entity

- (1) For state purposes, an LLC is a business separate from its owner in which the owner is protected from the LLC's acts and debts, such as bankruptcy and lawsuits. For federal tax purposes, it is not regarded as separate from its owner, therefore, the owner is liable for the tax liability of the LLC. It is considered the same entity as the owner for tax purposes, but not liability purposes.

Note: A single member LLC that is otherwise disregarded is treated as a corporation for certain excise taxes that accrued on or after January 1, 2008 and for employment taxes on wages paid on or after January 1, 2009.

- (2) The following are characteristics of a disregarded entity:

- The member/owner, not the LLC, is the taxpayer when the LLC is a disregarded entity.
- As noted above, if the disregarded entity is owned by an individual, it is treated as a sole proprietorship.

Reminder: The LLC's income and expenses are reported on the individual's Form 1040, Schedule C, Schedule D, Schedule E or Schedule F, depending on the type of income.

- As noted above, if the disregarded entity is owned by any other entity, it is treated as a branch or division of its owner.

Example: If the division of its owner is a corporation, the income or loss is reported on Form 1120, U.S. Corporation Income Tax Return.

5.1.21.3.2
(09-01-2009)

Member/Owner

- (1) A member/owner is a person with an ownership interest in the LLC. The term "person" includes legal entities. Thus, a member/owner may be:

- An individual
- A corporation
- A partnership
- An association
- An estate
- A trust
- Another LLC

- (2) The terms "member," "owner" and "member/owner" may be used interchangeably.

5.1.21.4
(10-07-2020)

Classification Available to LLC Entities

- (1) Treas. Reg. 301.7701-3 specifies the classifications available to foreign and domestic eligible entities by election or default.

5.1.21.4.1
(10-07-2020)
**Classifications Available
for Entities Filing an
Election**

(1) Domestic and foreign eligible entities, including LLCs, may elect its classification for federal tax purposes by filing Form 8832, Entity Classification Election.

(2) A multi-member LLC may elect to be classified as:

- A partnership, or
- An association taxable as a corporation.

Reminder: A multi-member entity cannot elect disregarded entity status.

(3) A single member LLC may elect to be classified as:

- An association taxable as a corporation, or
- An entity disregarded as separate from its owner.

Reminder: A single member entity cannot elect partnership status.

(4) An association taxable as a corporation may further elect to be classified as an S corporation by filing Form 2553, Election by a Small Business Corporation.

(5) An LLC that meets all other requirements to qualify as an S corporation and timely files a Form 2553 is treated as having made an election to be classified as an association, without having to file a Form 8832, per Treas. Reg. 301.7701-3(c)(1)(v)(C). An entity that filed an S election late, and intended to be treated as an association, may be eligible for relief pursuant to Rev. Proc. 2013-30, 2013-36 I.R.B 173.

5.1.21.5
(01-12-2015)
**Initial Analysis to
Determine Classification**

(1) Conduct a thorough initial analysis to determine the classification of an LLC prior to initial contact to identify the liable taxpayer before pursuing administrative collection actions by conducting the following:

- Research “internal and external sources” to determine whether the liable taxpayer is the single member owner (SMO) or the LLC.
- Research to determine if the LLC is a single member or multi-member LLC.
- Determine if the LLC made an election to be classified as a corporation, partnership, disregarded entity, or the LLC is classified by default.
- Identify each tax module as SMO or LLC with TC 971 AC 364, 365 or 366.
- Make prompt decision of the applicability of a trust fund recovery penalty investigation after classification and identity of LLC has been made.

(2) For employment taxes on wages paid on or after January 1, 2009, the liable taxpayer is the LLC for administrative collection actions and trust fund recovery penalty investigation.

5.1.21.5.1
(10-07-2020)
Internal Sources

(1) Check IDRS command codes (CC) BMFOLE and TXMODA for Transaction Codes 076 and 090 to determine whether or not the LLC made an election.

(2) Transaction Code 076 will include alphabetic indicators “A” through “F,” showing after PARA-CD, which correspond to the box checked on Form 8832, Entity Classification Election. The alphabetic indicator “Z” will appear if Form 2553, Election by a Small Business Corporation, is filed to make simultaneous elections.

- (3) See table in Exhibit 5.1.21-1, Election by LLC, for further explanation of transaction codes and alphabetic indicators.
- (4) If Transaction Codes 076 or 090 are not present, then no election has been made and the LLC is subject to the default classifications in the regulations. See IRM 5.1.21.10.1, Default Classification of Entities Not Filing an Election, for information on default classification of entities not filing an election.
- (5) An LLC indicator is input systemically for LLCs established on the master file on or after January 1, 2009. This indicator displays on CC BMFOLE as "LLC-IND" as follows:
 - "S" for a single member LLC
 - "M" for a multi-member LLC
 - A blank indicates entity was not identified as an LLC, or it was established prior to January 1, 2009
- (6) An indicator displays on the "Other Entity Information" screen under Entity Detail on ICS as "Single Member" or "Multi Member."

Caution: An LLC is not required to notify the Service if membership changes from multi-member to single member or from single member to multi-member. If the ownership of an LLC has changed, this indicator will not identify the number of members of the LLC for each delinquent period. Further verification is necessary to determine the number of owners for each tax period.

- (7) Check CC TXMOD for TC 971 Action Codes 364, 365 and 366, which are input to ICS and systemically uploaded to IDRS to specific tax modules to identify the liable taxpayer after a Service employee has made the determination. A new menu selection titled "LLC TC 971/972" is available in the ICS Collection Activities Menu to provide guidance for inputting these codes. For further instructions refer to *ICS User Guide*, Chapter 9, Entity Detail. See IRM 5.1.21.14.3, Identity of the Taxpayer on Integrated Data Retrieval System (IDRS), for more information on these action codes.

Note: The TC 971 AC 364 or 365 are not necessary on wages paid on or after January 1, 2009, as the LLC is the liable taxpayer.

- (8) When the liable taxpayer cannot be determined by any of the above methods, useful information regarding the ownership and classification of an LLC may be obtained by accessing various Integrated Data Retrieval System (IDRS) command codes or by retrieving copies of forms filed by the taxpayer. For example:
 - IDRS command code ENMOD may include a name line indicating membership.
 - IDRS command code BMFOLE may reveal the name and or cross-reference TIN of owner(s), filing requirements, and will confirm any elections made, including effective date and classification elected.
 - Form 8832, Entity Classification Election, may indicate the number of owners and requires the signature of each member or the authorized representative. Request ESTAB using DLN of form to secure.
 - Form 2553, Election by a Small Business Corporation, requires the signature and taxpayer identification number (TIN) for each member. Request ESTAB using DLN of form to secure.

- Form 1065, U.S. Return of Partnership Income, or Form 1120S, U.S. Income Tax Return for an S Corporation, includes Schedule(s) K-1 with the name, address and TIN for each owner.
- (9) For entities established prior to July 2007, if the campus could not determine the number of members/owners of the LLC, a Form 1065, U.S. Return of Partnership Income, filing requirement was opened on IDRS.
- The default to Form 1065 filing requirement on BMFOLE does not necessarily indicate the taxpayer is a multi-member LLC classified as a partnership.
 - Additional research of internal and external sources and taxpayer contact is required to determine if the LLC entity established before July 2007 should be classified as a partnership.

5.1.21.5.2
(01-12-2015)
External Sources

- (1) Information to determine the number of member/owners of an LLC may be secured from external sources including:
- Records required by state statutes governing LLCs
 - Records from the Secretary of State (or equivalent official)
 - Records from state licensing or taxing agencies
 - Direct contact with the taxpayer
- (2) Basic familiarity with state LLC statutes is required to help determine:
- Information available from the Articles of Organization or similar documents
 - Requirements imposed on the LLC to maintain ownership information
 - Other record-keeping requirements for the LLC
 - Provisions for dissolution and reinstatement of the LLC
- Note: For further information on state LLC statutes, refer to *State by State LLC Code*.
- (3) Available information from the Secretary of State or equivalent includes:
- Articles of Organization or similar documents
 - Initial and annual reports
- (4) Information from state licensing or taxing agencies may include the names of members or managers.
- (5) Articles of Organization or similar documents must be filed with the Secretary of State or other designated official. In some states, the Articles of Organization are known as a Certificate of Formation or Certificate of Organization. A copy of the organizing document may provide:
- An address for the LLC
 - The name, TIN, signature, telephone number, or address of each organizer or of one or more of the member/owners
 - Bank of the LLC
 - Type of business activity
- (6) State statutes specify requirements for the formation of an LLC. In some states, the LLC is officially formed at the time the organizing documents are signed and delivered to the state official designated as the receiving official (Secretary of State or equivalent). Other state statutes allow for a delayed

effective date (generally no more than 90 days after filing) or include additional provisions when organizing documents are filed before the LLC has at least one member. Check your state statute to determine when an LLC is officially formed.

- (7) Many states require an LLC to file an annual report with the designated state official. Reports may include:
- Name and address of the registered agent for the LLC
 - Principal business address of the company
 - Name of the manager of the LLC
 - Names of one or more of the members
- Note:** Many state statutes do not require the LLC to provide complete ownership information to the Secretary of State or equivalent.
- (8) Provisions for Operating Agreements vary widely according to state law. They may be known as Limited Liability Company Agreements or By-laws and are optional in some states. These documents are not generally required to be filed with the Secretary of State's office. Many states allow them to be written or oral.
- (9) The Operating Agreement may provide some or all of the following information:
- Responsibilities of the members within the LLC
 - Name and address of one or more of the members
 - Signature of the members that adopted the Operating Agreement
 - Name of the attorney that drafted the Operating Agreement
 - Indication as to whether members share in management of the LLC, or if there is a designated manager
 - Name and address of one or more of the managers
 - Initial capital contributions
 - Initial shares
 - Allocation of distribution of profits amongst members (which may differ from their ownership interest)
 - Powers of the manager as signatory on bank accounts

5.1.21.5.3
(01-12-2015)
Initial Contact

- (1) Since the LLC is often the most useful source of information, secure as much information as possible on initial contact. Most state statutes require the LLC to maintain complete ownership records and other information at the place of business. This includes some or all of the following:
- Number of members of the LLC
 - Name(s), address(es), and TIN(s) of all members, along with dates of ownership and amount of their interest in the LLC
 - Information regarding the designation of a manager of the LLC, if applicable, along with the dates of service and a record of the manager's responsibilities
 - Copy of the Operating Agreement
 - Articles of Organization or similar documents
 - Minutes of meetings of members of the LLC

Note: If supporting documentation is not readily available to determine the number of members of an LLC that made no elections, consider issuing a summons for original documents or for testimony, or secure an affidavit from the member(s), signed under penalties of perjury.

5.1.21.6
(10-07-2020)
**Administrative
Collection Actions**

- (1) Determine whether the LLC or SMO is the liable taxpayer for each tax period prior to taking any administrative collection actions.
- (2) Administrative collection actions should **not** include both the name of the LLC and the name of the SMO. Only the name of the liable taxpayer should be included.

Exception: Under certain circumstances, both the name of the LLC and the name of the SMO may be included on a single Form 433-D, Installment Agreement, when the installment agreement is combined. See IRM 5.1.21.7.1, Installment Agreement, for additional information.

- (3) If the liable taxpayer changes from one period to the next or within a tax period due to changes in ownership or election, or as a result of regulation changes, take separate administrative collection actions for each liable taxpayer.
- (4) If the liable taxpayer changes during a tax period and different taxpayers are liable for a portion of the Bal Due, manually compute the module balance attributable to each liable taxpayer and prepare separate documents. The same tax period may appear on separate administrative collection actions against the LLC and the SMO.
- (5) See Exhibit 5.1.21-4, Identification of Taxpayer on Administrative Actions for Employment Taxes.
- (6) To determine which name, address and taxpayer identification number(s) to include on administrative collection actions.

5.1.21.6.1
(10-07-2020)
**Collection Due Process
Notice**

- (1) Identify the liable taxpayer before issuing Letter 1058, Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing, so the correct entity is notified of their right to a Collection Due Process (CDP) hearing. Document your history with the basis for your determination of the liable taxpayer.
 - When the LLC is the taxpayer, the CDP notice is issued in the name of the LLC and the LLC has the right to a CDP hearing.
 - When the SMO is the taxpayer, the CDP notice must be issued in the name of the SMO and the SMO has the right to a CDP hearing.
- (2) If the, Notice of Intent to Levy and Notice of a Right to a CDP Hearing, was issued by ACS, ensure it included the name of the liable taxpayer and was given at the proper address.
- (3) When the SMO is the liable taxpayer, notice to the SMO is required even when the CDP notice was previously issued in the name of the disregarded LLC. To be valid, the notice must include the name of the SMO and be given at the last known address of the SMO, if different from the address of the LLC. The CDP notice is an exception to the Service's position that notice to the disregarded LLC is equivalent to notice to the owner when the owner of the LLC is the taxpayer.
- (4) When the SMO is the liable taxpayer and the CDP notice includes both the name of the LLC and the name of the SMO (even when the SMO is listed on the second name line), the fact that such notice also includes the LLC's name will not invalidate it. However, the notice must be given at the proper address for the SMO according to IRC 6320(a)(2) and IRC 6330(a)(2).

- (5) A Notice of Intent to Levy and Notice of a Right to a CDP Hearing must be issued to the taxpayer prior to levy. Generate Letter 1058 through ICS, selecting the correct Name/Address record created for the SMO. Include the EIN of the taxpayer assessed the liability so proper transaction codes are generated.
- (6) If the original CDP notice was not properly issued to the liable taxpayer, request input of a TC 972 AC 069 to reverse the original notice and request a new CDP notice through ICS, selecting the correct Name/Address record. Document ICS history to explain this action. For additional information, see IRM 5.12.6.3.16, Invalid CDP Notices and Rescinding the Collection Due Process Notice.
- (7) If the identity of the taxpayer changes due to a change in classification or regulations, issue one CDP notice to the LLC for tax period(s) when the LLC is liable and a separate CDP notice to the SMO for tax period(s) when the SMO is liable. If the liable taxpayer changed during a tax period, the same tax period would appear on each CDP notice, with the appropriately allocated amounts of liability for each entity.
- (8) Letter 3172, Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320, is issued post lien filing to the taxpayer to notify the taxpayer of their right to a CDP hearing. It is systemically generated to the name and address listed on the Notice of Federal Tax Lien (NFTL), using the EIN of the taxpayer assessed the liability. Selecting the correct Name/Address record when requesting the NFTL will ensure proper issuance of the notice and protection of the taxpayer's rights of appeal concerning the filing of the lien.
- (9) See Exhibit 5.1.21-4, Identification of Taxpayer on Administrative Collection Actions for Employment Taxes, to determine which name, address and taxpayer identification number(s) to include on CDP Notices.

5.1.21.6.2
(10-07-2020)

Notice of Federal Tax Lien

- (1) The taxpayer must be properly identified on the NFTL to give proper public notice of the debt. To ensure the NFTL is properly recorded, determine whether the LLC or the SMO is the liable taxpayer before filing.
- (2) The Automated Lien System (ALS) is interfaced with the master file to facilitate timely systemic release of NFTLs when the tax liability has been satisfied. Because ALS requires a TIN for this process, the NFTL always contains the EIN of the taxpayer assessed the liability, even if it does not match the name of the taxpayer.
- (3) Request the NFTL through ICS by selecting or adding the correct Name/Address record and the appropriate tax periods for each liable taxpayer. Refer to *ICS User Guide*, Chapter 6, Notice of Federal Tax Lien, for guidance on requesting NFTLs and Chapter 9, Entity Detail, for updated guidance on selection of entity type, "LLC-Owner is Liable Address" or "LLC-LLC is Liable Taxpayer".
- (4) File separate NFTLs for each liable taxpayer if the identity of the taxpayer changed from one period to the next resulting in a change of the taxpayer of record.
- (5) Calculate the portion of the liability attributable to each liable taxpayer if the identity of the taxpayer changed during a tax period. Complete Form 12636, Request for Filing or Refiling Notice of Federal Tax Lien, then send by secure

email to Centralized Lien Operation (CLO) for preparation of NFTL. See IRM 5.12.7.3.2, Requesting NFTLs Using Form 12636, for further instructions on preparation of form.

- (6) For more information on filing NFTLs on LLC cases, see IRM 5.12.7.5.3, Limited Liability Company (LLC), IRM 5.12.7.5.3.1, Creating New LLC Name Line Using ICS, and IRM 5.12.7.5.4, Name Change.

5.1.21.6.2.1
(01-12-2015)

Location for Filing NFTL

- (1) State law determines where the NFTL should be filed to compete against other lien interests. Refer to Exhibit 5.12.7-2 or your state statute for filing locations for various entity types. For U.S. Possessions and Territories (also known as insular areas), NFTL filing locations are determined by local law.
- (2) The NFTL should be filed in the location specified for partnerships and corporations when:
- The SMO is the taxpayer, and the SMO is a partnership or a corporation; or
 - The LLC is the taxpayer, classified as a partnership or a corporation; or
 - The otherwise disregarded LLC is treated as a corporation for excise tax periods beginning on or after January 1, 2008, and for employment tax periods beginning on or after January 1, 2009.
- (3) The NFTL should be filed in the location specified for individuals when the liable SMO is an individual.

5.1.21.6.2.2
(01-12-2015)

Incorrect Taxpayer Name on NFTL

- (1) When a NFTL has been filed using **only** the name of an entity that is not the liable taxpayer, request a withdrawal of the NFTL through AIQ, Advisory. Do not request a release, as that action would extinguish the underlying statutory lien. File a new NFTL with the name of the taxpayer and the EIN of the taxpayer assessed the liability. The new NFTL does **not** retain the priority of the original NFTL.

Exception: Depending on the facts of each case, a NFTL identifying the disregarded LLC as the taxpayer may be a valid notice against the SMO. The Government's position is that a NFTL need not precisely identify the taxpayer; rather, the NFTL is valid if it substantially complies with the filing requirement so that constructive notice of the government's claim is provided to third parties. Because the Service will lose its priority by withdrawing the NFTL, consult Area Counsel in certain cases in which the name of the LLC is very close to the name of the SMO. Counsel will make a determination based on the particular facts.

- (2) If the NFTL includes the names of both the LLC and the SMO, and was not filed in the correct location for the liable taxpayer, follow the procedures in (1) above.
- (3) When the NFTL includes the names of both the LLC and the SMO, and was filed in the correct location for the liable taxpayer, request an amended NFTL, deleting the name of the entity that was not liable. This will preserve the priority of the original NFTL as to the liable taxpayer. If you do not have access to the amend function on ALS, request the amended NFTL by e-mailing Form 13809, Request for Amendment to a Recorded Notice of Federal Tax Lien, by secure e-mail to Centralized Lien Operation (CLO) for input.

5.1.21.6.3
(10-07-2020)
Notice of Levy

- (4) See Exhibit 5.1.21-4 to determine which name, address and taxpayer identification number(s) to include on NFTLs.

- (1) The notice of levy must properly identify whether the LLC or SMO is the liable taxpayer so the third party who receives it can identify which assets to attach.

- When the LLC is the taxpayer, include the name, trade name (if applicable), and the EIN of the LLC on the notice of levy. Do not include the name(s) or TIN(s) of the owner(s).
- When the single member owner (SMO) is the taxpayer, include only the name and TIN(s) of the SMO on the notice of levy.

Note: The TIN is frequently used by third parties for account identification purposes, so no TIN other than that of the liable party should appear in the “identifying number(s)” field on the levy, despite the resulting mismatch between the assessment and the notice of levy. See IRM 5.1.21.6.3.1, Preparation of Notice of Levy when the Single Member Owner (SMO) is Taxpayer, for additional information.

- (2) The levy will only attach to the assets of the taxpayer identified.
- (3) Generate the notice of levy through ICS so a third party contact is recorded, a history entry of the levy is made and a systemic follow up is generated for the levy.
- (4) Issue separate notices of levy for each liable taxpayer when the identity of the taxpayer has changed from one period to the next or during a tax period resulting in a change of the taxpayer of record.
- (5) Refer to *ICS User Guide*, Chapter 10, Levy, and Chapter 9, Entity Detail, for updated guidance on selection of entity type and Name/Address record to make changes and corrections on Notices of Levy.
- (6) See Exhibit 5.1.21-4 to determine which name, address and taxpayer identification number(s) to include on Notice of Levy.

5.1.21.6.3.1
(10-07-2020)
Preparation of Notice of Levy when the Single Member Owner (SMO) is Taxpayer

- (1) When the SMO is the taxpayer and the liabilities are assessed in the name and EIN of the SMO, generate the notice of levy through ICS, selecting the appropriate Name/Address record and tax periods.
- (2) When the SMO is the taxpayer for liabilities assessed in the name and EIN of the LLC, special care is needed when preparing a notice of levy. Generate the notice of levy through ICS, selecting the appropriate Name/Address record and tax periods. Refer to *ICS User Guide*, Chapter 9, Entity Detail, and Chapter 10, Levy, for additional guidance.
- (3) Include the EIN of the liable SMO on the Notice of Levy. The levy may also include the Social Security Number if the SMO is an individual.
- (4) To avoid accounts being incorrectly attached and to facilitate the posting of levy proceeds received, the following disclaimer is systemically generated by ICS when the SMO is the liable taxpayer and “LLC-Owner is Liable Address” is selected on the Notice of Levy: “This notice attaches to all accounts in the

name of SMO name, EIN and SSN, if applicable as owner of (LLC name and EIN) but does not attach accounts established in the name of (LLC name and EIN).”

5.1.21.6.3.2

(10-07-2020)

Levy on LLC for Flow-Through Income of a Member

- (1) When a member of an LLC is liable for federal taxes, a Notice of Levy may be served on the LLC to attach distributions payable to the member when the right to receive income from the LLC is “property” or a “right to property” under state law.
- (2) Under most state laws, a member of an LLC has a right to receive a share of the LLC’s profits and losses, unless otherwise provided in the LLC’s operating agreement. Consult with Area Counsel, if necessary, to determine the member’s property rights under state law.
- (3) A levy will attach property possessed and obligations existing at the time of the levy. Obligations exist when the liability of the obligor is fixed and determinable, although the right to receive payment may be deferred until a later date. Courts have held that the “fixed and determinable” requirement in Treas. Reg. 301.6331-1(a)(1) is satisfied when the events which give rise to the obligation have occurred and the amount of the obligation is capable of being determined in the future. Under this rationale, a levy could be served upon the LLC to attach income to which the member is entitled for services rendered prior to the service of the notice of levy, after the LLC sets aside a reserve for overhead expenses.
- (4) Generally, a levy extends only to property possessed and obligations which exist at the time of levy. An exception to this rule, IRC 6331(e), authorizes a continuous levy on salary or wages, but does not specify the types of remuneration that are covered by the terms “salary or wages.”
- (5) Courts have held that, under certain circumstances, recurring payments that are made as draws or advances on future income **may** be subject to the continuous wage levy provision of IRC 6331(e). Consider using the Service’s summons authority to determine the frequency with which the owner takes draws of profits from the LLC.
- (6) Consult with Area Counsel to determine whether the facts are sufficient to support a continuous wage levy, using Form 668-W, Notice of Levy on Wages, Salary and Other Income, or if successive levies, using Form 668-A, Notice of Levy, should be served to attach to the property of or obligations owed to the owner at the time of levy.

5.1.21.6.4

(10-07-2020)

Seizure

- (1) The Form 668-B, Levy, Form 2433, Notice of Seizure, and other seizure documents must include only the Name/Address record and tax periods of the entity identified as the liable taxpayer. Do not include the name of the entity that is not the liable taxpayer.
- (2) Use the TIN of the taxpayer assessed the liability for the preparation of seizure documents, even if it does not match the name of the taxpayer. The TIN is considered a convenience for internal record keeping. Use of the TIN of the taxpayer assessed the liability will ensure proper posting of payments received.
- (3) When LLC assets are seized, include only those tax periods where the LLC is identified as the liable taxpayer.

5.1.21.6.5
(10-07-2020)

**Trust Fund Recovery
Penalty**

- (4) When the SMO's assets are seized, include only those tax periods where the SMO is identified as the liable taxpayer.
- (1) Identify the liable taxpayer to determine the applicability of a Trust Fund Recovery Penalty (TFRP) investigation. See IRM 5.7, Trust Fund Compliance.
- (2) A TFRP investigation and determination is not required to establish liability when the SMO is the taxpayer on tax periods prior to January 1, 2009, as the SMO is directly liable for all taxes. However, TFRP may be applicable against other persons who meet the definition of a responsible person under IRC 6672. Possibilities include:
- A designated employee/manager
 - Other employees within the disregarded entity
 - An employee or official within the owner organization (such as a corporation, partnership, trust, or other LLC) with responsibility for employment tax matters of the disregarded entity
- (3) A TFRP investigation and determination is required on the LLC for employment taxes on wages paid on or after January 1, 2009 because the LLC is always the liable taxpayer. See IRM 5.7.4.1.1, Factors When Considering Trust Fund Balance Owed Amounts, for additional information.
- (4) When the LLC is the taxpayer, a member/owner is protected from direct liability for the debts of the LLC. The TFRP may be applicable to collect from individuals who meet the definition of a responsible person under IRC 6672. Possibilities include:
- Member/owner(s)
 - Manager designated in the operating agreement
 - Other employees determined liable
- (5) The TFRP on excise taxes is limited to the types of collected excise taxes specified in IRM 5.7.3.1.1, TFRP for Collected Excise Taxes. Personal liability for other collected excise taxes under IRC 4103 may be asserted when facts and circumstances warrant.
- (6) When the SMO is the taxpayer for some tax periods and the LLC is the taxpayer for other periods, contact the Area Automated Trust Fund Recovery (ATFR) Coordinator to create two separate cases on ATFR.
- (7) Take the following actions when there are separate cases on ATFR:

If the . . .	And there are . . .	Then . . .
LLC is liable	any individuals subject to the TFRP	complete TFRP using normal processing
SMO is liable	other individuals subject to the TFRP	complete TFRP using normal processing for assessment against responsible parties

If the . . .	And there are . . .	Then . . .
SMO is liable	no other individuals subject to the TFRP	close the case on ATFR using the "Closed - LLC" disposition

5.1.21.6.6
(10-07-2020)
IRC 6020(b) Actions

- (1) IRC 6020(b) authorizes the Secretary to make and file a tax return on behalf of a taxpayer that fails to do so under any internal revenue law or regulation. Prior to proposing an IRC 6020(b) action identify whether the LLC or the SMO is the taxpayer.
- (2) When the SMO is the taxpayer, an IRC 6020(b) action for employment taxes is proposed in the name and EIN of the SMO without regard to alternate filing options allowed under Notice 99-6 to account for, report, and pay employment taxes in the name of the disregarded entity.

Caution: If there is an existing assessment for the same tax period in the name and EIN of the SMO for liability resulting from a separate business operated by the owner, ensure that an additional assessment is not prohibited by an ASER. Consult with Area Counsel, if necessary.

- (3) Under Notice 99-6, a disregarded entity was given two options for filing and payment compliance:
 - Under the name and EIN of the owner, or
 - Under the name and EIN of the disregarded entity

The notice also provided that if a disregarded entity chose the second option, the owner was still the liable taxpayer.

- (4) When the LLC is the taxpayer, an IRC 6020(b) action for employment taxes is proposed in the name and EIN of the LLC.

Note: For employment taxes for wages paid on or after January 1, 2009, the LLC is the taxpayer. Accordingly, an IRC 6020(b) action for such employment taxes will be proposed in the name and EIN of the LLC, even if the LLC is disregarded for income tax purposes.

- (5) If a SMO of a disregarded LLC has unfiled employment tax returns for periods both before and after January 1, 2009, ensure that IRC 6020(b) action is proposed against the correct entity:
 - Because the SMO is the taxpayer for wages paid prior to January 1, 2009, the IRC 6020(b) action for tax periods ended prior to January 1, 2009 would be proposed in the name and EIN of the SMO.
 - Because the LLC is the taxpayer for wages paid on or after January 1, 2009, the IRC 6020(b) action for tax periods beginning on or after January 1, 2009 would be proposed in the name and EIN of the LLC.

Note: Similarly, for employment taxes that accrue before January 1, 2009, ensure that the IRC 6020(b) action is proposed against the correct entity if the identity of the taxpayer changed with an elective change or a change in ownership of the LLC.

- (6) When a disregarded entity LLC fails to file an employment tax return for tax periods prior to January 1, 2009, and the SMO has previously filed a tax return for the same period, do not submit the return prepared under IRC 6020(b) to Submission Processing as a secured return. Process the return under IRC 6020(b) on Form 3870. See IRM 5.1.11.6.7.4(6), Preparing Returns for Assessment, for further guidance.

5.1.21.6.7
(10-07-2020)

Summons Procedures

- (1) The taxpayer under investigation must be properly identified by name on a summons issued for the liability resulting from the operation of an LLC:
- When the LLC is the taxpayer, include the name of the LLC in the “statement of liability” section of the summons. The name of the member/owner(s) should **not** be included even though the individual may be the summoned party.
 - When the single member owner (SMO) is the taxpayer, include the owner’s name, **not** the name of the LLC, in the “statement of liability” section of the summons.
 - If a summons is being issued to establish the Trust Fund Recovery Penalty (TFRP) against an individual, use the procedure for issuing a summons to establish the TFRP against an officer or other individual in a corporation. See IRM 25.5.6.4.1, Procedures for Summonses Issued to Investigate Liabilities for the Trust Fund Recover Penalty.

Example: John Dragon, as member/owner of Dragon LLC.
 - Include the full name, title and address of the summoned party in the description of the summoned party, on the “To” and “At” lines of the appropriate summons form, even if it duplicates the name in the “statement of liability” section. Include the title or official status of the summoned party on the “To” line of the appropriate summons form.

Example: Margie Frog, as managing member of Frog LLC.
 - Because a member/owner of an LLC may be an individual, corporation, partnership, trust or another LLC, the summoned party may be an employee or owner of the LLC itself, or an employee of an entity that owns the LLC.

Example: Margie Frog, as controller of Frog Inc., member/owner of Frog LLC.
 - The information summoned should be clearly described. If summoning the bank records for the LLC, describe the summoned materials with the LLC’s name. If summoning the owner’s bank records, describe the summoned materials with the owner’s name.
 - Notice to any person identified in the summons is required for certain third-party summonses, including a summons served on a third-party witness for the production of records or testimony relating to the liability resulting from the operation of an LLC. When “notice” is required, the taxpayer is always a noticee, even though the taxpayer’s name may not appear in the description of the summoned records. Both the LLC and member/owner(s) may be entitled to a notice, depending on the description of summoned records.

Note: Refer to IRM 25.5, Summons Handbook, for additional information regarding issuance of a summons, IRM 5.17.6.6(2), Third-Party Summonses Subject to IRC 7609 and IRM 5.17.6.6.2, Notice and Waiting Period Requirements, for

a discussion of the exceptions to third party notice and waiting requirements in connection with a summons issued in the aid of the collection of an assessment made or judgment rendered against the person with respect to whose liability the summons is issued.

- (2) Issue a separate summons for each taxpayer if the identity of the taxpayer changed during the period of time for which records are summoned. This may occur if you are conducting a TFRP investigation for some periods when the SMO was the taxpayer and other periods when the LLC was the taxpayer.

5.1.21.7
(01-12-2015)
Case Resolution Actions

- (1) The liable taxpayer must be “identified” as the SMO or LLC prior to case resolution actions. If there are different liable taxpayers identified for separate tax periods, separate case resolution actions may be required.

5.1.21.7.1
(10-07-2020)
Installment Agreement

- (1) The identity of the taxpayer determines the party subject to an installment agreement. Ensure that a Name/Address record, identifying only the liable taxpayer, is created on ICS where **only** the SMO or the LLC is the liable taxpayer for all open tax periods.

Note: See paragraphs (5) thru (7) below for situations where the SMO is liable for some tax periods and the LLC is liable for others.

- (2) Voluntary payments may be accepted from the LLC, regardless of the identity of the taxpayer. Payments are applied to the entity identified in the assessment.
- (3) When **only** the LLC is the taxpayer, the installment agreement is with the LLC.
 - The installment agreement is based on the LLC’s ability to pay.
 - Any default notifications and actions are directed against the LLC and LLC assets.
- (4) When **only** the SMO is the taxpayer, the installment agreement is with the SMO, even when the tax liabilities are assessed in the name and EIN of the LLC.
 - The installment agreement will include the EIN of the assessed liability to facilitate input of proper codes, posting of payments and monitoring of the agreement.
 - The following statement may be included on an installment agreement when the member/owner is liable for the employment taxes: “This agreement is between the Service and (SMO name). Payments will be accepted from (SMO name) or (LLC name), and will be applied to the liability assessed against (LLC name and EIN). In the event of default, enforcement action will be taken against (SMO name).”
 - Any default notifications and actions are directed against the SMO and its assets.
 - Special care must be taken in the monitoring process to ensure levy action is not taken against assets of the LLC, in the event of default.

Reminder: This paragraph applies only to employment taxes on wages paid *before* January 1, 2009. The LLC is the taxpayer for employment taxes on wages paid *on or after* January 1, 2009.

- (5) If the identity of the taxpayer changed from one period to the next resulting in a change of the taxpayer of record, determine whether an installment agreement is the appropriate resolution for each liable taxpayer.
- (6) If an installment agreement is the appropriate case resolution for only one liable taxpayer, complete the action for the other liable taxpayer before submitting the installment agreement for processing.
- (7) If an installment agreement is the appropriate case resolution for **both** the SMO and LLC, a combined installment agreement may be secured.
- (8) Refer to IRM 5.14.7.3, Installment Agreements Involving Limited Liability Companies, for additional procedures relating to combined installment agreements and processing SMO/LLC IAs.

Note: The names of **both** the LLC and SMO will appear on a combined installment agreement. This is an exception to the general rule that collection actions should not include both the name of the LLC and the SMO.

- (9) For an SMO/LLC IA, ensure the appropriate Name/Address record and TC 971/972 AC 364, 365 or 366 are input. Refer to *ICS User Guide*, Chapter 12, Installment Agreement, for procedures on processing SMO/LLC In-Business IAs and SMO/LLC IBTF-IA.

5.1.21.7.2
(10-07-2020)
Offers In Compromise

- (1) The taxpayer must be properly identified as SMO or LLC in an Offer in Compromise (OIC) submitted for the liability resulting from the operation of an LLC.
- (2) If the LLC is the taxpayer,
 - The OIC should reflect the LLC name as the taxpayer's name in Section 1 of Form 656, Offer in Compromise, with the signature, name and title of any individual authorized to sign for the LLC in Section 9.
 - A Form 433-B for the LLC is required.
- (3) If the single member/owner (SMO) is the taxpayer,
 - The OIC should reflect the SMO's name as the taxpayer's name in Section 1 of Form 656;
 - The signature in Section 9 should be that of the individual owner or an official authorized to sign on behalf of a corporate, partnership, trust or LLC owner.
 - A Form 433-A or Form 433-B for the owner of the LLC, and a Form 433-B for the LLC is required if it is still operating.
- (4) When the SMO is the taxpayer, the following factors must be considered to determine the adequacy of the offer:
 - The assets of the LLC are not owned directly by the owner as offer proponent.
 - The owner/proponent's assets include the ownership interest in the disregarded LLC.
 - As a general rule, the owner's interest is the right to a distribution of money or property from the LLC and is governed by state statutes. For example, most states require the satisfaction of unsecured creditors of the LLC before a distribution can be made to the owner. Such limitations will have an effect upon the value assigned the owner's interest.

- The SMO must provide information on the disposition of LLC assets if the LLC is no longer operating.
- (5) An OIC submitted for trust fund taxes arising from the operation of the LLC has the same requirements as for other in-business taxpayers. See IRM 5.8.4.24, Offers From Operating Businesses and IRM 5.8.4.22.1, Trust Fund Liabilities, regarding trust fund liabilities.
 - (6) Separate actions and separate OICs are required for each liable taxpayer when the LLC is the taxpayer for some tax periods and the SMO is the taxpayer for other tax periods assessed under the same EIN. An accepted OIC for one liable taxpayer will not be defaulted by subsequent liabilities owed by a different liable taxpayer assessed under the same EIN.

5.1.21.7.3
(10-07-2020)
Currently Not Collectible

- (1) Identify the liable taxpayer as the SMO or LLC prior to reporting accounts currently not collectible (CNC). The collectibility determination must be made based on the assets and payment abilities of the liable taxpayer.
- (2) Use the EIN of the assessed liability to report accounts currently not collectible.
- (3) Request TC 130 for refund offset as appropriate when the SMO is liable for an assessment made in the name and EIN of the LLC.
- (4) Separate collectibility determinations are required for each taxpayer if the identity of the taxpayer changed from one period to the next resulting in a change of the taxpayer of record.
- (5) When closing modules on one or both liable taxpayers (LLC and SMO) as currently not collectible, case resolution actions must be taken in a specific order. See IRM 5.16.1.3.4, Limited Liability Companies, for additional information on the specific order of case resolutions.

5.1.21.8
(10-07-2020)
Bankruptcy Proceedings

- (1) When the Service receives notice that an LLC has filed bankruptcy, Insolvency must determine if the "LLC or the SMO" is the taxpayer before proceeding with a proof of claim.
 - If the bankrupt LLC is the taxpayer, normal proof of claim procedures are used. Liability for TFRP can be pursued against responsible persons, without regard for the automatic stay imposed by the bankruptcy.
 - If the SMO is the taxpayer, the LLC has no liability for Bal Due modules, even though assessments may exist in the LLC name resulting from the SMO using the option of reporting employment taxes under the LLC name and EIN. The liability is that of the owner and the Service may not have the status of a creditor of the bankrupt entity. The automatic stay imposed by the bankruptcy does not bar collection against the SMO for the entire employment, excise or income tax liability arising from the operation of the LLC.

Caution: For situations where the SMO has also filed for bankruptcy, follow the procedures in (2) below.

Note: The LLC is the taxpayer for employment taxes for wages paid on or after January 1, 2009, or excise taxes incurred on or after January 1, 2008.

- (2) When the SMO files bankruptcy, Insolvency may not be aware of a liability arising from the activities of the disregarded LLC because of the limitations of IDRS and CFOL. When Insolvency has indications that the debtor is the SMO of an LLC, determine whether the SMO is the liable taxpayer for employment tax liabilities on wages paid prior to January 1, 2009 by:
 - Checking CC TXMOD to determine whether TC 971 AC 364, 365 or 366 has been input to identify the liable taxpayer;
 - Reviewing the ICS Name/Address records, and/or case history to determine whether a revenue officer has identified the liable taxpayer;
 - Examining the schedules of the debtor for evidence of ownership of a disregarded LLC;
 - Questioning the taxpayer and/or the power of attorney at the 341 hearing;
 - Issuing a courtesy investigation to a revenue officer field group to make the determination; or
 - Contacting Area Counsel to obtain the information from the debtor through a Bankruptcy Rule 2004 examination.
- (3) Employees who learn of a bankruptcy proceeding where an LLC or owner of a disregarded LLC is the debtor should notify Insolvency of the tax status of the debtor.
 - If the LLC is the debtor, notify Insolvency of any tax liability owed by the LLC.
 - If the SMO is the debtor, notify Insolvency of any tax liability owed by the member/owner.
- (4) If threshold for filing claims are met per Exhibit 5.9.13-1, a proof of claim will be filed for the tax liability of:
 - An LLC classified as a partnership or an association taxable as a corporation when the LLC files bankruptcy
 - The single member/owner of a disregarded entity when the SMO files bankruptcy
 - An LLC treated as an entity separate from its owner for employment taxes on wages paid on or after January 1, 2009, or excise taxes incurred on or after January 1, 2008, when the LLC files bankruptcy
- (5) A protective proof of claim should be filed if the liable taxpayer cannot be determined prior to the bar date or under certain other conditions described in IRM 5.9.13.14, Limited Liability Companies.

5.1.21.9
(10-07-2020)
**Other Collection
Remedies**

- (1) Other collection remedies may be available to collect from LLCs. These include:
 - Alter Ego
 - Nominee Liability
 - Transferee Liability
 - Specific State Statutes
- (2) An example of collection based on a specific state statute relates to forfeiture of a corporate charter under Texas Tax Code 171.255. The officers and directors of a corporation that has its corporate charter forfeited are personally

liable for all debts incurred or created in Texas from the due date of the report, and tax or penalty on which the forfeiture is based until the revival of the corporate charter.

- (3) For assistance, refer to IRM 5.17.14, Legal Reference Guide for Revenue Officers, Fraudulent Transfers and Transferee and Other Third Party Liability.
- (4) Because these options are highly dependent upon case fact patterns, they should be pursued only with the agreement and guidance of Area Counsel.

5.1.21.9.1
(09-01-2009)
Charging The Member's Interest

- (1) When an owner is subject to a federal tax lien, the ownership interest in the LLC is, in theory, subject to lien attachment. Administrative action may not be productive for the following reasons:
 - The value of the interest to a prospective purchaser is usually the right to receive a distribution of money or property from the LLC. The prospective purchaser does not acquire a direct ownership interest in the LLC's assets.
 - State law generally requires payment of creditors' claims, both recorded liens and general unsecured claims, before a distribution may be declared to the owner(s).
 - These factors combine to make the value of the ownership interest difficult to determine and of very limited value to prospective purchasers.
- (2) Furthermore, most state laws protect the LLC from "forced distributions" to member/owner(s).
- (3) However, a three-step process may be used to charge the member's interest. This process may be useful when the single member/owner is liable for taxes incurred in the operation of a disregarded LLC.
 - a. A suit to reduce a tax claim to judgment and to foreclose the federal tax lien establishes a judgment against the owner.
 - b. The judgment is then used as the basis for action in state court to charge the member's interest and obtain an order for distribution of money or property to satisfy the judgment.
 - c. The United States steps into the shoes of the member/owner and is paid any distributions made from the LLC pursuant to the order.

Note: As pending actions do not preclude distributions from the LLC prior to the order of the court, the LLC could be reduced to an empty shell by other distributions during the pendency of suit. In appropriate cases, pre-judgment relief to prevent such distributions may be sought as a part of the suit.

5.1.21.10
(10-07-2020)
Rules for Entity Classification Elections

- (1) An election made on Form 8832, Entity Classification Election, cannot take effect more than 75 days prior to the date the election is filed, nor can it take effect later than 12 months after the election is filed unless the entity is eligible for late election relief under Rev. Proc. 2009-41, 2009-39 I.R.B. 439, or by requesting a private letter ruling.
- (2) Once an eligible entity makes an election on Form 8832, the entity generally cannot change that classification during the 60 months following the effective date of the election. See Form 8832 instructions for exceptions.

- (3) There are numerous restrictions on which entities can elect to be treated as an S corporation. See instructions for Form 2553, Election by a Small Business Corporation.

5.1.21.10.1
(10-07-2020)

**Default Classification of
Entities Not Filing an
Election**

- (1) A “domestic multi-member LLC” that has **not** filed an election is classified by default as a partnership for federal tax purposes.

Exception: See IRM 5.1.21.10.2, Community Property Considerations, for special provisions regarding an LLC wholly owned as community property by a husband and wife.

Caution: An LLC that is owned and operated by spouses as co-owners is a valid entity under state law. Therefore, it may **not** be considered a “qualified joint venture” under the provisions of the Small Business Work and Opportunity Tax Act of 2007, which allow spouses to elect not to be treated as a partnership by separately reporting a share of all of a business’s items of income, loss, etc.

- (2) A “domestic single member LLC” that has **not** filed an election is by “default disregarded as an entity separate from its owner” for federal income tax purposes, employment taxes that accrue prior to January 1, 2009, and certain excise taxes that accrue before January 1, 2008.
- (3) A foreign eligible entity that has **not** made an election on Form 8832, is with respect to the debts and obligations of the entity classified as:
- A partnership if it has two or more members and at least one member does not have limited liability
 - An association taxable as a corporation if all members have limited liability, or
 - A disregarded entity separate from its owner if it has a single owner that does not have limited liability.
- (4) A single member LLC that has **not** filed an election will be treated as an “entity separate from its owner” for excise tax liabilities imposed and actions first required or permitted in periods beginning on or after January 1, 2008, and for employment tax liabilities on wages paid on or after January 1, 2009.

5.1.21.10.2
(10-07-2020)

**Community Property
Considerations**

- (1) Rev. Proc. 2002-69, 2002–45 IRB 831, provides guidance on the classification for federal tax purposes of an entity that:
- Is owned solely by a husband and wife as community property under the laws of a state, foreign country or a possession of the United States; and
 - The entity is not treated as a corporation under Treas. Reg. 301.7701-2.
- (2) The revenue procedure provides that the Service will respect a taxpayer’s treatment of these entities.
- If the husband and wife treat the wholly-owned LLC as a partnership for federal tax purposes and file the appropriate partnership returns, the Service will accept the position that the entity is a partnership for federal tax purposes.

- If they treat the LLC as a disregarded entity for federal tax purposes, the Service will accept the position that the entity is a disregarded entity for federal tax purposes.

Note: The legal position of the Service is that for calendar years that the husband and wife did not file an income tax return, the wholly-owned LLC is considered a multi-member LLC classified as a partnership.

- (3) A change in reporting position is treated as a conversion of the entity for federal income tax purposes. There is no restriction on the timing or frequency of changing reporting position and the resulting conversion from disregarded entity to partnership or from partnership to disregarded entity.
- (4) The identity of the taxpayer liable for certain excise taxes that accrue prior to January 1, 2008, and for employment taxes that accrue prior to January 1, 2009, changes concurrently with this change in classification.
- (5) Limitations on the filing of amended returns resulting in classification changes are no different from limitations on other amended returns. This may present unique challenges for determining the taxpayer liable for employment and excise taxes. For example, the filing of the partnership return may occur after the employment tax liability is incurred. Should questions of liability arise in these circumstances, seek the assistance of Area Counsel.
- (6) The provisions of Rev. Rul. 99-5, 1999-6 IRB 8, (regarding conversion from a disregarded entity to a partnership) and Rev. Rul. 99-6, 1999-6 IRB 6, (regarding conversion from a partnership to a disregarded entity), provide guidance on the income tax consequences of conversions.

5.1.21.10.3
(10-07-2020)
**Examples of LLC
Ownership and
Classification**

- (1) As noted above, state law allows for a very broad range of ownership possibilities for an LLC. The following examples are not all-inclusive but indicate the complexities that may be encountered in determining ownership. For example:
 - The Banana Corporation formed Banana LLC. Banana Corporation is the single member/owner of the LLC.
 - Donald Date is the sole owner of Date LLC. The LLC is a single member entity.
 - Fig LLC is the sole owner of ten separate LLC entities, Fig A LLC; Fig B LLC; etc. Each LLC is a single member entity that has never filed an election and is a disregarded entity of Fig LLC. Investigation reveals that Fig LLC itself is owned by another single member LLC, ABC Fig LLC, that is itself a disregarded entity of the Fig Corporation. Each of these LLCs is a single member disregarded entity with Fig Corporation being the ultimate owner.
 - Mulberry Family Trust and Randolph Mulberry are the member/owners of Mulberry LLC. The LLC has two owners and is therefore a multi-member LLC.
 - Michael Cherry and Patricia Peach own the state law partnership, M & P. The partnership owns 100% of Cherry Peach LLC. The LLC is owned by one legal entity, M & P, and is therefore a single member LLC.
 - Andrew Bilberry and Howard Cranberry are partners in Kumquat Partnership. The partnership purchases a 25% interest in the Cherry Peach LLC in the previous example. The LLC now has two owners, Kumquat Partnership and M & P, making it a multi-member LLC. (See Rev. Rul. 99-5 for the consequences of this conversion.)

Note: Employees should be alert to the possibility that layers of LLC ownership may not indicate a legitimate business purpose. In some of the examples above, additional facts would need to be examined to determine if alter ego and/or nominee issues might be raised.

5.1.21.11
(01-12-2015)

Changes in Election or Ownership

- (1) An LLC can elect to change its classification, but generally cannot make a subsequent election for a period of sixty months after the effective date of a prior election. Exceptions to the general rule include:
 - A request for a private letter ruling that allows a change in classification within the period of the sixty-month limitation.
 - The previous election was made by a newly formed entity and was effective on the date of formation.
- (2) Changes in the number of owners of a domestic LLC may affect its classification as follows:
 - An LLC classified as a partnership becomes classified as a disregarded entity when the LLC's ownership is reduced to one member.
 - An LLC classified as a disregarded entity becomes classified as a partnership when membership increases to more than one member.
 - See Rev. Rul. 99-5 (regarding conversion from a disregarded entity to a partnership) and Rev. Rul. 99-6 (regarding conversion from a partnership to a disregarded entity), for income tax ramifications of these conversions involving domestic entities.
- (3) For a domestic LLC, the default classification and filing requirements may change at the same time as a change in ownership from multi-member to single member or from single member to multi-member at any time.
- (4) A domestic LLC classified as an association taxable as a corporation retains its same classification regardless of any change in the number of members.
- (5) For foreign eligible entities, the default classification may change if the number of members without limited liability changes.
- (6) A change in ownership that affects the LLC's classification is not an elective change, so there is no sixty-month limitation on the frequency of such changes.

Note: The taxpayer is not required to notify the Service of ownership changes.

5.1.21.11.1
(10-07-2020)

Examples of Classification Changes by Ownership or Election

- (1) For employment taxes on wages paid prior to January 1, 2009, the identity of the liable taxpayer may change under a variety of circumstances. For example:
 - Emma Eagle was the sole owner of E LLC, which made no election. On January 1, 2008, Timothy Hawk acquired a partial ownership interest in the LLC. The employment tax liabilities were reported on Forms 941 in the name of E LLC for all quarters of 2007 and 2008. For the 2007 Forms 941, E LLC was a single member LLC, classified as a disregarded entity; Emma Eagle was the employer and liable taxpayer. When Timothy Hawk became a member on January 1, 2008, E LLC became a

- multi-member LLC, classified as a partnership. E LLC was the employer and the liable taxpayer for 2008 Forms 941.
- Perry Pigeon and Robert Robin owned PR LLC, which made no election. PR LLC was classified as a partnership, and the LLC was the employer and liable taxpayer. On January 1, 2008, Mr. Robin sold his interest in the LLC to Mr. Pigeon, and it became a single member LLC, classified as a disregarded entity. Employment taxes were reported in the name and EIN of PR LLC for all quarters of 2007 and 2008. PR LLC was the employer and the liable taxpayer for Forms 941 for 2007 liabilities. Perry Parrot was the employer and liable taxpayer for Forms 941 for 2008.
 - Judy Finch was the sole owner of Finch LLC, which made no election and was classified as a disregarded entity for 2006 and 2007. The LLC filed a Form 8832, Entity Classification Election, electing to be treated as an association taxable as a corporation, effective January 1, 2008. Employment taxes were reported in the name and EIN of Finch LLC for all quarters in 2006, 2007 and 2008. Ms. Finch is the employer and liable taxpayer for Forms 941 for 2006 and 2007. Finch LLC is the employer and liable taxpayer for 2008 Forms 941.
 - Margie Duck and Thomas Osprey formed M LLC on January 1, 2006, and made no election. On January 15, 2007, the LLC filed a Form 8832, electing to be classified as an association taxable as a corporation, effective January 1, 2007. On October 1, 2007, Ms. Duck purchased Mr. Osprey's interest in the LLC. Employment taxes were reported in the name and EIN of M LLC for all quarters in 2006, 2007 and 2008. M LLC was classified as a partnership for 2006 and was classified as an association taxable as a corporation beginning January 1, 2007. M LLC is the employer and liable taxpayer for Forms 941 for all quarters of 2006, 2007 and 2008. Because the LLC is classified as an association taxable as a corporation beginning January 1, 2007, the change in ownership on October 1, 2007 did not affect its classification.
 - Warren Swan was the sole owner of W LLC, which filed a Form 8832, effective January 1, 2001, electing to be classified as an association taxable as a corporation. The LLC filed another Form 8832, effective January 1, 2007, electing to change its classification to a disregarded entity. Employment taxes were reported in the name and EIN of W LLC for all quarters in 2006, 2007 and 2008. W LLC was the employer and the liable taxpayer for Forms 941 for 2006. Warren Swan is the employer and the liable taxpayer for Forms 941 for 2007 and 2008.
 - Robin LLC is wholly owned as community property by Nancy and Rudy Robin in a community property state, and made no election. Employment taxes were reported in the name and EIN of Robin LLC for all quarters in 2006 and 2007. Mr. and Mrs. Robin treated the LLC as a partnership for federal tax purposes by filing a Form 1065, U.S. Return of Partnership Income, for 2006, so the LLC is classified as a partnership for 2006. Mr. and Mrs. Robin treated the LLC as a disregarded entity for 2007 by reporting LLC activity on their jointly filed Form 1040, Schedule C. For 2006 employment taxes, Robin LLC is the employer and liable taxpayer. For 2007 employment taxes, the employer and liable taxpayer is the community of Nancy and Rudy Robin.
 - Tom Warbler was the sole owner of Warbler LLC, which was organized July 1, 2007. Warbler LLC made no election. On January 1, 2008, Mr. Warbler sold his interest in the LLC to Chris Cardinal. Employment taxes were reported in the name and EIN of Warbler LLC for 2007 and

2008. Tom Warbler is the employer and liable taxpayer for Forms 941 for 2007 and Chris Cardinal is the employer and liable taxpayer for Forms 941 for 2008.

- (2) For a single member LLC that made no elections, the identity of the liable taxpayer changed for employment tax periods beginning on or after January 1, 2009. For example:
 - Barbara Sparrow is the sole owner of Sparrow LLC, which made no election. Employment taxes were reported in the name and EIN of Sparrow LLC for all quarters in 2007, 2008 and 2009. Sparrow LLC is a disregarded entity, so Barbara Sparrow is the employer and liable taxpayer for 2007 and 2008 employment taxes. For employment tax periods beginning on or after January 1, 2009, the LLC is treated as an entity separate from its owner; Sparrow LLC is the employer and the liable taxpayer. Sparrow LLC continues to be disregarded as an entity separate from its owner for Federal income tax purposes.
 - Bridgette Bunting is the sole owner of B LLC, which has made no election. She reports employment taxes in her own name and EIN for all quarters in calendar year 2007. Under Notice 99-6, as modified by T.D. 9356, 2007–39 IRB 675, she does not have to seek permission from the Commissioner to switch her method of reporting employment taxes. She begins reporting employment taxes in the name and EIN of B LLC for all quarters in calendar year 2008. Because B LLC is a disregarded entity, Bridgette Bunting is directly liable for employment taxes on wages paid prior to January 1, 2009. Even though the 2007 liability was reported in the name and EIN of Bridgette Bunting, and the 2008 liability was reported in the name and EIN of B LLC, Bridgette Bunting is the liable taxpayer for 2007 and 2008 employment tax periods. B LLC is the liable taxpayer for employment tax periods beginning on or after January 1, 2009. B LLC continues to be disregarded as an entity separate from its owner for Federal income tax purposes.
- (3) For excise tax periods beginning on or after January 1, 2008 and employment tax periods beginning on or after January 1, 2009, the LLC is the liable taxpayer, regardless of changes in election or ownership.
- (4) See *IRM 5.1.21.13.6.1*, Impact of Regulations Changes on Employment and Excise Taxation for a Disregarded Entity, for additional information on impact of regulation changes.

5.1.21.12
(10-07-2020)

Correcting or Clarifying Entity Information

- (1) When you determine that the SMO is the liable taxpayer for any open modules, correct or clarify entity information as appropriate:
 - Select “J” Address Type in ICS, which allows entering the SMO’s name and secondary TIN, an SSN or EIN.

Note: See *ICS User Guide*, Chapter 9, Entity Detail, for additional information and guidance.
 - Correct the filing requirements for the entity, as appropriate
 - Verify that the SMO has its own Employer identification Number (EIN), if not, advise taxpayer to secure an EIN for the SMO.
 - Request TC 130 cross-reference for those periods where an individual owner is identified as the liable taxpayer for liabilities assessed in the

name and EIN of the LLC. For additional information, see IRM 5.1.12.20.1.4.1, Limited Liability Company Offset.

Note: When a secondary TIN is added or updated in the “LLC-LLC Owner is Liable Address,” it is systemically added to the ICS Cross reference on the case.

- (2) Document your case history with the basis for requested corrections and clarifications.
- (3) Requests to add or delete the name and/or EIN of the owner or delete erroneously created filing requirements should be forwarded by secure e-mail to Centralized Case Processing (CCP) using Form 2363, Master File Entity Change.
- (4) Requests to close out filing requirements should be forwarded by secure e-mail to CCP using Form 4844, Request for Terminal Action, to request TC 591, Closing Code 50 for the appropriate period.
- (5) Requests to create new filing requirements must be forwarded to the Entity Unit at the appropriate campus.

5.1.21.12.1
(10-07-2020)
**Addition of Owner Name
to Assessment**

- (1) Adding the name of the SMO to the name line of a disregarded entity does **not** constitute a supplemental assessment. The legal position of the Service is that given the close relationship between the disregarded entity and its SMO, any reference in an assessment to the LLC is a valid assessment against the member/owner.
- (2) Notices issued in the name and EIN of the LLC are generally legally sufficient for:
 - Assessment
 - Notice and demand
 - Third-Party contact notification

Note: See IRM 5.1.21.6.1, Collection Due Process (CDP) Notice, for special requirements for a Collection Due Process Notice. A CDP notice given to the LLC is **not** sufficient notice to the SMO.

5.1.21.12.2
(10-07-2020)
**Employer Identification
Number Requirements
for an LLC**

- (1) A multi-member LLC must have its own EIN, regardless of its classification.
- (2) A single member LLC classified as an association taxable as a corporation must have its own EIN.
- (3) For wages paid before January 1, 2009, an LLC classified as a disregarded entity was not required to have an EIN. The disregarded entity could request an EIN for banking purposes or if it chose to report and pay employment taxes incurred in its business operations using the name and EIN of the LLC. See IRM 5.1.21.13.6.2, Disregarded Entities, and Notice 99-6.
- (4) A single member LLC that is otherwise disregarded is treated as a corporation for employment taxes on wages paid on or after January 1, 2009 and the LLC must have its own EIN. Employment taxes on wages paid on or after January 1, 2009, must be reported and paid using the name and EIN of the LLC.

5.1.21.12.3
(10-07-2020)

**Employer Identification
Number Requirements
for the Owner of a
Disregarded Entity**

- (5) A single member LLC that is otherwise disregarded is treated as a corporation for certain excise taxes that accrued on or after January 1, 2008, and the LLC must have an EIN.
- (1) Treasury Regulation 301.6109–1 requires every employer to have an EIN. With respect to wages paid prior to January 1, 2009, if the LLC is a disregarded entity, the single member/owner (SMO), not the LLC, was the employer and must have its own EIN. This is required even if the SMO reported and paid employment taxes in the name and EIN of the LLC.
- (2) When a disregarded entity LLC was established on the business master file, the campus assigned an EIN to the SMO if the LLC identified itself as having one owner and having employees during tax periods ended prior to January 1, 2009. See IRM 21.7.13.5.4.3, Why Two EINs are Assigned to a Single Member LLC for Certain Tax Periods, for additional explanation.
- (3) If the campus could not establish that the LLC was a disregarded entity, an EIN was assigned to the LLC, but no EIN was assigned to the SMO.
- (4) When the SMO is identified as the employer for any open modules, ensure that the owner has its own EIN by completing the following:
 - Research IDRS command code NAMEB and NAMEE to determine if the member/owner of the disregarded entity has its own assigned EIN.
 - If the SMO is an individual, research command code INOLES for the SSN to check for a cross-reference EIN.
- (5) If no EIN has been assigned, advise the SMO to secure an EIN through internet EIN at www.irs.gov and complete the following:
 - Document the case history why an EIN is necessary
 - Request the addition of the SMO's EIN as a cross-reference EIN on the LLC entity and enter it in the ICS case history for use on a levy, if required.
- (6) ICS programming updates allow for the addition of a secondary TIN, SSN or EIN, by editing "LLC-LLC is Liable Address." See *ICS User Guide*, Chapter 9, Entity Detail, for details on adding or updating secondary TINs.

Note: Updates to ICS allow the issuance of a levy using the "LLC-Owner is Liable Address" without requiring input of an EIN.

- (7) For tax periods beginning on or after January 1, 2009, the SMO is **not** the employer and is no longer required to have an EIN.

5.1.21.13
(01-12-2015)

**Federal Taxation of an
LLC**

- (1) For purposes of this section, income taxation is discussed in separate sections from employment and excise taxation. See Exhibit 5.1.21-2 for income tax rules. See Exhibit 5.1.21-3 for employment tax rules.
- (2) Income taxation of an LLC depends upon the elections made for the entity or, in the absence of election, the default classification of the entity provided in the regulations.
- (3) With respect to excise tax liabilities imposed and actions first required or permitted in periods beginning on or after January 1, 2008, or employment

taxes on wages paid on or after January 1, 2009, the LLC is treated as a corporation and is the liable taxpayer, regardless of its classification for income tax purposes.

5.1.21.13.1
(10-07-2020)
**Income Taxation for
Association
Classification**

- (1) An LLC classified as an association taxable as a corporation, whether owned by one or more members, files Form 1120, U.S. Corporation Income Tax Return or Form 1120-F, U.S. Income Tax Return of a Foreign Corporation, and is liable for payment of any tax due.
- (2) When an LLC is classified as a subchapter S corporation, the LLC
 - Files Form 1120S, U.S. Income Tax Return for an S Corporation
 - Provides Schedule K-1, Shareholder's Share of Income, Credits, Deductions, etc., to each member/owner

Note: Each member/owner reports its share of the income and deductions from the LLC on its own income tax return and is liable for any tax due on that return.

 - Is liable for certain taxes due on Form 1120S tax return in limited circumstances provided in the Internal Revenue Code and its governing regulations.

5.1.21.13.2
(10-07-2020)
**Income Taxation for
Partnership
Classification**

- (1) An LLC classified as a partnership files Form 1065, U.S. Partnership Tax Return, and provides Schedule K-1, Partner's Share of Income, Credits, Deductions, etc., to each member/owner.
- (2) Each member/owner reports its share of the income and deductions from the LLC on its own income tax return and is liable for any tax due on that return.

5.1.21.13.3
(10-07-2020)
**Income Taxation for
Disregarded Entity
Classification**

- (1) When a single member LLC is classified as a disregarded entity, the single member owner (SMO) reports the income and expenses of the LLC on the appropriate schedules of its own income tax return.
- (2) If the member/owner is
 - An individual, the individual files Form 1040, U.S. Individual Income Tax Return, or Form 1040-NR, U.S. Nonresident Alien Income Tax Return, with the schedules appropriate to the income source.
 - A partnership, the SMO files Form 1065, U.S. Return of Partnership Income.
 - A corporation, the SMO files Form 1120, U.S. Corporation Income Tax Return, Form 1120-F, U.S. Income Tax Return of a Foreign Corporation, or Form 1120S, U.S. Income Tax Return for an S Corporation, if the SMO is classified as an S corporation.
 - A trust, estate or another LLC, the SMO files the appropriate income tax return for that entity type.
- (3) While regulations published August 16, 2007, may affect the tax treatment of an LLC for employment and excise tax purposes, income taxation is unchanged. A single member LLC that has not elected to be treated as an association taxed as a corporation, continues to report the income and expenses of the LLC on the appropriate schedules of the SMO's income tax return.

Note: An individual owner of a disregarded entity continues to be treated as self-employed for purposes of the Self-Employment Contributions Act (SECA) taxes, and not as an employee of the disregarded entity.

5.1.21.13.4
(09-01-2009)

**Employment and Excise
Taxation for Association
Classification**

- (1) When the LLC is classified as an association taxable as a corporation or a subchapter S corporation, regardless of the number of members, the LLC is the employer and is liable for employment taxes.
- (2) When the LLC is classified as an association taxable as a corporation, the member/owners are the equivalent of shareholders in the corporation. If the LLC owes employment taxes, the trust fund recovery penalty (TFRP) may be asserted against a member/owner who meets the definition of a responsible person under IRC 6672.
- (3) Excise taxes that result from the operation of the LLC are generally the liability of the LLC and may be subject to TFRP.
- (4) When the LLC is the taxpayer, the assets of the LLC, *not the owner's assets*, are subject to collection action.

5.1.21.13.5
(01-12-2015)

**Employment and Excise
Taxation for Partnership
Classification**

- (1) When an LLC is classified as a partnership, the LLC is the employer and is liable for employment taxes.
- (2) A member/owner of an LLC classified as a partnership is not an employee of the LLC and may be subject to self-employment tax.
- (3) When the LLC is classified as a partnership, the liability of members/owners for employment taxes is not the same as the liability of general partners.
 - Under state law, general partners are liable for the employment tax incurred by the partnership, just as they are liable for other debts of the partnership.
 - Under state law, members/owners of an LLC are not liable for the debts of an LLC. Accordingly, the members/owners of an LLC classified as a partnership are not directly liable for the employment tax liability incurred by the LLC.

Note: The trust fund recovery penalty (TFRP) may be asserted against a member/owner who meets the definition of a responsible person under IRC 6672.

- (4) Excise taxes that result from the operation of the LLC are generally the liability of the LLC and may be subject to TFRP.
- (5) When the LLC is the liable taxpayer, the assets of the LLC, *not the owner's assets*, are subject to collection action.

5.1.21.13.6
(10-07-2020)

**Employment and Excise
Taxation for the
Disregarded Entity**

- (1) For employment taxes on wages paid prior to January 1, 2009 by an LLC that is a disregarded entity, the following apply:
 - a. The SMO is the employer of record for any employees engaged in the business.
 - b. The SMO is not an employee of the LLC and is subject to self-employment taxes.

- c. The SMO is liable for all employment taxes.
- d. The assets of the SMO are subject to collection action.
- e. Because the employment taxes are a debt of the SMO, state law limitation of liability shields the assets of the LLC from administrative collection actions.

Note: State LLC statutes specify that an owner has no direct ownership of LLC assets. Administrative collection actions for debts of the owner cannot, therefore, be directed toward LLC assets.

- (2) The SMO of a disregarded entity is the taxpayer for certain excise taxes that accrued prior to January 1, 2008. Due to the variety of excise taxes that may be encountered, questions regarding collection of these liabilities should be addressed on a case by case basis.

Example: The LLC is assessed a civil penalty on periods prior to January 1, 2008 for failure to file correct information returns under IRC 6721 on a Form 2290, Heavy Highway Use Tax Return, and the entity is a single member owner (SMO). The SMO is the taxpayer and liable for taxes as described in Treasury Regulation 301.7701-2. The Heavy Highway Use Tax is imposed under Chapter 36 (section 4481) of the Internal Revenue Code.

5.1.21.13.6.1
(10-07-2020)

**Impact of Regulations
Changes on
Employment and Excise
Taxation for a
Disregarded Entity**

- (1) Revised regulations under Treas. Reg. 301.7701-2 (as amended by T.D. 9356, 2007–39 IRB 675), provide that after the applicability dates of the changes, a single member LLC that is otherwise disregarded as an entity separate from its owner is treated as a corporation for employment and certain excise tax purposes.
- (2) For employment taxes, the regulations changes apply to wages paid on or after January 1, 2009.
- (3) For certain excise taxes, the regulations changes apply to liabilities imposed and actions first required or permitted in periods beginning on or after January 1, 2008.
- (4) These changes are not retroactive. Liabilities for employment and excise taxes incurred by a disregarded entity prior to the effective dates of these regulations are subject to collection procedures for disregarded entities specified above. See IRM 5.1.21.13.6, Employment and Excise Taxation for the Disregarded Entity.

Reminder: These employment and excise taxes are subject to assertion of a TFRP when the unpaid trust fund tax meets the criteria for a TFRP investigation. See IRM 5.1.21.6.5, Trust Fund Recovery Penalty, for additional information.

5.1.21.13.6.2
(09-01-2009)

**Disregarded Entities and
Notice 99-6**

- (1) Notice 99-6, 1999–3 IRB 12, allowed a single member LLC classified as a disregarded entity two options for reporting and paying employment taxes for wages paid prior to January 1, 2009:
 - Using the name and EIN assigned to the LLC; or
 - Using the name and EIN assigned to the SMO, as if there were no LLC

Note: When this option was used and the SMO is an individual, it may appear that the liability is from a sole proprietorship.

- (2) For employment taxes on wages paid prior to January 1, 2009, the manner in which the liability is reported for a disregarded entity does **not** affect how it is collected. Whether the liability was reported using the name and EIN of the LLC or the name and EIN of the SMO, the SMO is the employer and is fully liable for all employment taxes incurred in the business operations of the disregarded LLC. The disregarded LLC is not the employer and is not liable for any Bal Dues.
- (3) Notice 99-6 is obsolete as of January 1, 2009, and employment tax liabilities that accrue on or after that date may no longer be reported in the name and EIN of the SMO. The LLC is the employer for wages paid on or after January 1, 2009, and employment taxes must be reported in the name and EIN of the LLC.

5.1.21.14
(10-07-2020)
Identification of Liable Taxpayer

- (1) For income tax purposes, the liable taxpayer is named in the assessment.
- (2) For excise tax purposes, the liable taxpayer is named in the assessment. For liabilities imposed and actions required or permitted in periods beginning on or after January 1, 2008, the LLC is the taxpayer.
- (3) For employment taxes on wages paid prior to January 1, 2009, the liable taxpayer may be the LLC or its owner, depending on the classification of the LLC for federal tax purposes. See IRM 5.1.21.4.1, Classifications Available for Entities Filing an Election, for classification of an LLC after making an election. The classification of the LLC and identification of the taxpayer:
 - If the LLC is classified as an association taxable as a corporation, the LLC is the taxpayer.
 - If the LLC is classified as a partnership, the LLC is the taxpayer.
 - If the LLC is classified as a disregarded entity, the SMO is the taxpayer.
- (4) For employment taxes on wages paid on or after January 1, 2009, the LLC is the taxpayer, regardless of its classification.

5.1.21.14.1
(10-07-2020)
Identity of the Taxpayer on BMFOLE

- (1) For employment taxes on wages paid before January 1, 2009, the
 - LLC is the taxpayer if BMFOLE indicates that the LLC elected to be classified as an association taxable as a corporation; or
 - Liable taxpayer is dependent on whether the LLC has one member or more than one member if the LLC did not elect to be classified as an association taxable as a corporation.
- (2) For an entity established on or after January 1, 2009, an LLC indicator (LLC-IND) is systemically input on the master file and displays on BMFOL and ICS to denote whether the LLC had one member or more than one member when it was established.
- (3) If the LLC indicator field on BMFOLE is blank or does not reflect the current ownership of the LLC, forward Form 4844, Request for Terminal Action, by secure e-mail to Centralized Case Processing (CCP) to request input of CC BNCHG to update the LLC-IND as appropriate:

- “S” for a single member LLC
- “M” for a multi-member LLC

Caution: Verify the number of members for each open module to determine the liable taxpayer for that module, as the membership of the LLC may have changed since it was established.

- (4) The phrases “Single Member” or “Multi-member” are displayed on ICS, “Other Entity Information” screen under Entity Detail.

5.1.21.14.2
(10-07-2020)

**Identity of the Taxpayer
on Integrated Collection
System (ICS)**

- (1) ICS generally reflects the entity name as it appeared when it was established on BMF. It may contain the name of the LLC, its trade name and/or the name of a member/owner.
- (2) When the taxpayer is identified, document the case history with evidence supporting the classification determination.
- (3) Create a new Name/Address record on ICS to identify the liable taxpayer when requesting administrative collection actions by selecting the correct “LLC Name/Address type” in ICS. See *ICS User Guide*, Chapter 9, Entity Detail, for updated guidance on selecting Name/Address record for the correct taxpayer entity.
- (4) If the identity of the taxpayer changes from one period to the next, create a separate Name/Address record for each taxpayer. Clarify the tax periods attributed to each taxpayer in your summarizing history entry.
- (5) When the liable taxpayer changes during a tax period, the liability of both taxpayers may be reported on one tax return under the provision of Notice 99–6. Document your case history with the basis for your determination and the calculation of the portion of the module balance due from each liable taxpayer.

5.1.21.14.2.1
(01-12-2015)

LLC Case Codes in ICS

- (1) Case codes have been established in ICS for LLC cases as follows:
- 601- LLC in business
 - 602 - LLC out of business
- (2) These case codes are not set systemically and must be updated through ICS when you identify a taxpayer is an LLC.
- (3) ICS sets the appropriate LLC case code if the LLC indicator field displays an S or M when the case is uploaded to ICS.

5.1.21.14.3
(10-07-2020)

**Identity of the Taxpayer
on Integrated Data
Retrieval System (IDRS)**

- (1) The liable taxpayer can change from one tax period to the next, or within a tax period, when the classification of the LLC changes concurrently with a change in ownership or election, or with the effective date of regulations changes.
- (2) Assign Transaction Code 971 and Action Codes 364, 365 and 366 to each tax period to identify the liable taxpayer. These codes are utilized to streamline requests for administrative collection actions and to facilitate case closing actions.
- (3) A menu selection “LLC TC 971/972”, is available in the Collection Activities Menu on ICS that allows for the systemic uploading of these transactions

codes from ICS to IDRS. This option allows input of the TC 971, action codes and date when the applicable taxpayer was first liable.

- (4) Ensure the appropriate Name/Address records and TC 971/972 AC 364, 365 and 366 are input at the earliest possible time. These records are used in other applications including NFTL, Levy, IA, and CNC. See *ICS User Guide*, Chapter 9, Entity Detail, for updated guidance to request TC 971 and action codes.
- (5) Transaction Code (TC) 971 and Action Codes (AC) have been assigned to identify the liable taxpayer for each tax period, as follows:

Action Code	Explanation
364	LLC is the liable taxpayer for this tax period.
365	Single member owner (SMO) is the liable taxpayer for this tax period.
366	Liable taxpayer changed during this tax period.

- (6) Use the following table to determine when the “X-REF TIN” field and the “DATE FIRST LIABLE” field should be included for these inputs:

Action Code	Liable Taxpayer	X-REF TIN field	Date First Liable
364	LLC	Not required	Optional: Date LLC first liable
365	SMO	Required: EIN of SMO	Optional: Date SMO first liable
366 Note: Request a separate TC 971 AC 366 for each liable taxpayer.	Changed during tax period	Required: EIN of liable taxpayer	Required: Date SMO or LLC first liable

Note: The EIN of the liable SMO, not an SSN, should be used for the “X-REF TIN.”

- (7) When the liable taxpayer changes from one tax period to the next, include the date the taxpayer was first liable in the “DATE FIRST LIABLE” field.

Example: Steve Spruce was the sole member of Spruce LLC, EIN: 00-0XX1234, which was established on January 1, 2008. Steve Spruce’s EIN is 00-0XX5678. Spruce LLC made no election. On July 1, 2008, Debbie Spruce acquired a partial interest in Spruce LLC. There are open Bal Due modules for Form 941 taxes for tax periods ended June 30, 2008, September 30, 2008 and December 31, 2008. Request the following:

Tax Period	Action Code	X-REF TIN	DATE First Liable
01/200806	365 (SMO Liable Taxpayer)	00-0XX5678	01/01/2008
01/200809 01/200812	364 (LLC Liable Taxpayer)	N/A (not required; same as case TIN)	07/01/2008

- (8) When the liable taxpayer changes during a tax period, enter separate TC 971 AC 366 for each liable taxpayer during a tax period.

Example: Assume in the example above that Spruce LLC has a Bal Due for the Form 940 for 2008. Request the following for Form 940 for tax period ended December 31, 2008:

Action Code	X-REF TIN	DATE First Liable
366	00-0XX5678	01/01/2008
366	00-0XX1234	07/01/2008

Example: Oak LLC, EIN: 00-12345XX, made no election, and had two members, Lisa Oak and Sue Birch. On March 1, 2008, Sue Birch sold her interest in Oak LLC to Lisa Oak, EIN 00-67890XX. Oak LLC has a Bal Due for Form 941 for the tax period ended March 31, 2008. Request the following for that module:

Action Code	X-REF TIN	Date First Liable
366	00-12345XX	01/01/2008
366	00-67890XX	03/01/2008

Note: Requesting input of TC 971 AC 365 or 366 will never be applicable for tax periods beginning on or after January 1, 2009. If attempted, ICS will block the request.

- (9) If TC 971 AC 364/365/366 does not correctly identify the liable taxpayer, request TC 972 with the original action code to reverse it. Request another TC 971 with the correct action code.

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Exhibit 5.1.21-1 (01-12-2015)
Election by LLC

Check IDRS command code (CC) BMFOLE for the following transaction codes to determine whether or not the LLC has made an election:

Transaction Code	Meaning
076	Indicates the <ul style="list-style-type: none"> • date the Form 8832 was accepted by the campus; • effective date of the election; and • type of entity elected. This code will also be input if Form 2553 is filed to make simultaneous elections.
090	Indicates the <ul style="list-style-type: none"> • date the Form 2553 was accepted by the campus; • effective date of the election; and • fiscal year month for the entity.

Use the following table to identify the classification of the **PARA-CD** indicator A-F and Z:

Indicator	Classification
A	Domestic entity; association taxable as a corporation
B	Domestic entity; partnership
C	Domestic entity; disregarded as a separate entity
D	Foreign entity; association taxable as a corporation
E	Foreign entity; partnership
F	Foreign entity, disregarded as a separate entity
Z	Domestic entity; simultaneous election, association taxable as corporation and an S corporation by filing only Form 2553

Exhibit 5.1.21-2 (01-12-2015)
Income Taxation for LLCs

Use the following table to determine how a limited liability company will be treated for federal income tax purposes:

Classification	A Partnership	B Corporation	C Disregarded Entity
Domestic Entities	Multi-member No election filed (default provision) or filed Form 8832 electing box [b] to be classified as a partnership	Single or Multi-member Filed Form 8832 electing box [a] to be classified as an association taxable as a corporation or per se corporation per Form 8832 instructions	Single member No election filed (default provision) or filed Form 8832 electing box [c] to be disregarded as a separate entity
Foreign Entities	Multi-member At least one member does not have limited liability (default provision) or filed Form 8832 electing box [e] to be classified as a partnership	Single or Multi-member All members have limited liability (default provision) or at least one member does not have limited liability and filed Form 8832 electing box [d] to be classified as an association taxable as a corporation	Single member Member does not have limited liability (default provision) or filed Form 8832 electing box [f] to be disregarded as a separate entity
Filing Requirement	Reported on Form 1065 in name and EIN of LLC, with K-1 to each member	Reported on Form 1120 or 1120F, in name and EIN of LLC, [unless entity files Form 2553 electing to be an S Corporation, then reported on Form 1120S in the name and EIN of LLC, with K-1 to each member]	Reported on the income tax return of the single member, with its TIN [1040/1040-NR if individual member, 1065 if partnership member, 1120 or 1120F if corporate member]
Collectible From	Each member's assets, not from the assets of the LLC	LLC assets, not the assets of the member [unless LLC filed Form 1120S, then from each member, not the assets of the LLC]	Single member's, assets, not the assets of the LLC

For domestic entities, a change in the number of members of an entity classified as association taxable as a corporation (column B) does not affect its classification. However, an eligible entity classified as a partnership, (column A), will be converted to a disregarded entity, (column C), when its membership is reduced to one member; and a disregarded entity, (column C), will be converted to a partnership, (column A), when it adds any more members. See Rev. Rul. 99-5, 1999-6 IRB 8 and Rev. Rul. 99-6, 1999-6 IRB 6, for income tax ramifications.

Exhibit 5.1.21-2 (Cont. 1) (01-12-2015)
Income Taxation for LLCs

tions of these conversions. For foreign eligible entities, the default classification may change if the number of members change and/or limited liability changes.

Exhibit 5.1.21-3 (10-07-2020)
Employment Taxation for LLCs

Use the following table to determine how a limited liability company will be treated for federal employment tax purposes:

Classification of LLC	Partnership OR Corporation	Disregarded Entity	Disregarded Entity for income tax; corporation for employment tax
Tax Periods	ALL	Ended before January 1, 2009	Beginning on or after January 1, 2009
Filing Requirement	Reported in the name and EIN of the LLC	Reported in the name and EIN of the single member owner or in the name and EIN of the LLC	Reported in the name and EIN of the LLC
TC 971 Action Codes	AC 364 for modules where LLC is liable. Request a separate AC 366 for the LLC and the SMO when they are each liable for different portions of the same module. Include the EIN of the liable taxpayer in the X-REF TIN field and the date they were first liable in the SECONDARY DATE field.	AC 365 for modules where SMO is liable. Request a separate AC 366 for the LLC and the SMO when they are each liable for different portions of the same module. Include the EIN of the liable taxpayer in the X-REF TIN field and the date they were first liable in the SECONDARY DATE field.	AC 364 for modules where LLC is liable

Exhibit 5.1.21-3 (Cont. 1) (10-07-2020)
Employment Taxation for LLCs

Classification of LLC	Partnership OR Corporation	Disregarded Entity	Disregarded Entity for income tax; corporation for employment tax
Collectible From	<p>LLC, not the assets of the member ;</p> <p>TFRP applicable to collect the trust fund portion of the tax from responsible, willful persons which may or may not include members</p>	<p>SMO entire employment tax liability from member's assets ONLY, not the assets of LLC;</p> <p>TFRP applicable against responsible, willful bookkeepers or managers There are various avenues to pursue to reach LLC assets for the liabilities of a disregarded entity, including Alter Ego, Nominee liability, Transferee liability, or two step judgments, depending on state law and the facts of the case. Consult with Area Counsel.</p>	<p>LLC, not the assets of the member;</p> <p>TFRP applicable to collect the trust fund portion of the tax from responsible, willful persons which may or may not include members</p>
TFRP Determination	Required	Required for responsible, willful bookkeepers, managers or other persons; not for SMO	Required

Exhibit 5.1.21-4 (01-12-2015)**Identification of Taxpayer on Administrative Collection Actions for Employment Taxes**

Use the following table to determine the correct name, address and taxpayer identification number(s) to be used on administrative collection actions for employment taxes assessed in the name and EIN of an LLC.

Reminder: Include the name, address and taxpayer identification number of the assessment on administrative collection actions for income tax and excise tax liabilities. Notice 99-6 applies only to employment taxes on wages paid before January 1, 2009.

Classification of LLC	Partnership OR Association Taxable as a Corporation	Disregarded Entity	Disregarded Entity for income tax; corporation for employment tax
Tax Periods	ALL	Ended before January 1, 2009	Beginning on or after January 1, 2009
Collection Due Process (CDP) Notice to taxpayer	LLC's name, address and EIN	SMO's name and address, EIN of taxpayer assessed the liability	LLC's name, address and EIN
Request for CDP Hearing from taxpayer	LLC's name, address and EIN	SMO's name and TIN (EIN and/or SSN when the SMO is an individual)	LLC's name, address and EIN
Notice of Federal Tax Lien	LLC's name, address and EIN	SMO's name and address, EIN of taxpayer assessed the liability	LLC's name, address and EIN
Notice of Levy	LLC's name, address and EIN	SMO's name, address and EIN; may include SSN when SMO is an individual	LLC's name, address and EIN
Seizure Documents	LLC's name, address and EIN	SMO's name and address, EIN of taxpayer assessed the liability	LLC's name, address and EIN
IRC 6020(b) Actions	LLC's name, address and EIN	SMO's name, address and EIN	LLC's name, address and EIN