

IRPAC 2008

Excerpt from the 2008 Emerging Compliance Issues Subgroup Report (Information Reporting Program Advisory Committee to the Internal Revenue Service)

E. Clarification of Form W-9 and the Corresponding Instructions Regarding the Entity Classification Box for Limited Liability Companies

Discussion

The most recent version of the Form W-9, issued in October 2007, requests all limited liability companies (“LLC’s”) to designate their entity types. The Form W-9 now provides a specific entity box for an LLC and a tax classification letter (“D” for disregarded entity, “C” for corporation, and “P” for partnership).

For an LLC classified as a partnership or a corporation, the instructions for completing the form are clear. The LLC’s name goes on the “Name” line and the taxpayer checks the LLC box with the appropriate tax classification (“P” or “C”).

The rules are clear for an LLC that is disregarded for tax purposes as long as the ownership structure is simple. Per the “LLC” instructions, the taxpayer should enter the owner’s name on the “Name” line and the disregarded LLC’s name on the “Business Name” line. The instructions also state that the taxpayer should enter the owner’s SSN (or the employer identification number (“EIN”) of the owner), not the LLC, on the form. The “Note” in the instructions seems to imply that the owner should check an entity box because it states, “You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.)” The instructions, however, do not clearly state which entity box (or boxes) should be checked when the LLC is disregarded. Does the owner designate its status or should the LLC’s status be designated? The current instructions direct the person completing the form to check the LLC box and to write in the code “D” for the tax classification.

Proper completion of the Form W-9 with complex ownership structures becomes more problematic, for example, consider where the single owner of a disregarded LLC is another LLC that is a partnership or corporation for U.S. federal income tax purposes. Following the current instructions, it would be correct for the taxpayer to select either the owner-LLC’s tax classification or that of the disregarded LLC. This leaves the payor unable to determine if the entity classification marked on the form applies to the owner-LLC or the disregarded LLC.

Recommendation

Taxpayers need expanded guidance on how the Form W-9 should be completed for disregarded LLC’s, which will allow payors to more easily determine whether the forms are valid with respect to the entity on the “Name” line. IRPAC submitted the following suggestions to the IRS:

1. On the Form W-9 eliminate the “D” code for LLC’s since the entity (the owner) providing and signing the form should not be a disregarded entity.
2. Revise the instructions to provide specific guidance on how to complete the form for an entity that is a “sole proprietor”, “LLC with 2 or more members”, “single-member LLC treated as a corporation”, “disregarded single member LLC with a domestic owner”, “disregarded single-member LLC with a foreign owner” and “other entities”.

3.

In accordance with the above point, the “Specific Instructions, Name, section on Page 2 of the Form W-9 instructions could be revised as follows:

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the “Name” line. You may enter your business, trade, or “doing business as (DBA)” name on the “Business name” line.

Limited liability company (LLC). An LLC with 2 or more members may be treated as a corporation or a partnership; and an LLC with a single member may be treated as a corporation or an entity disregarded from its owner.

LLC With 2 or More Members. If the LLC is domestic and has two or more members, check the “Limited liability company” box only and enter the appropriate code for the tax classification (“C” for corporation, or “P” for partnership) in the space provided. Provide the taxpayer identification number of the LLC. If the LLC is foreign and has two or more members, do not use Form W-9. Instead use the appropriate Form W-8 (see Publication 515.)

Single-Member LLC Treated as a Corporation. For a domestic single-member LLC that has elected to be treated as a corporation, check the “Limited Liability Company” box only and enter “C” for corporation in the space provided. Provide the taxpayer identification number of the LLC. If the LLC is foreign and treated as a corporation, do not use Form W-9. Instead use the appropriate Form W-8 (see Publication 515.)

Disregarded Single Member LLC With Domestic Owner. For a single-member LLC (including a foreign LLC) with a domestic owner that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, enter the owner’s name on the “Name” line. Enter the LLC’s name on the “Business name” line. Check the box appropriate to the owner’s classification, and provide the owner’s taxpayer identification number.

Disregarded Single-Member LLC With Foreign Owner. For a single-member LLC with a foreign owner that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, do not use Form W-9. Instead use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

If the LLC (or its single owner) is classified as a corporation, also check the “Exempt Payee” box if applicable for the type of payments the LLC will receive (such as interest and dividends) and refer to the Exempt Payee instructions below.

Other entities. If not specifically listed, check the “other“ box and enter the type of entity in the blank space. Enter your business name as shown on required federal tax documents on the “Name” line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business,

trade, or DBA name on the “Business name” line.

IRS Response / Action

The IRS understood the need for clarification, offered suggestions on ways to clarify the instructions and is considering incorporating the suggestions noted above when Form W-9 is next revised; with the exception of item 1 (to eliminate the “D” code for LLC’s) citing disregarded as one of three possible tax classifications for an LLC and the benefit to small business payer/filer community.