



BDO Seidman, LLP
Accountants and Consultants

Subject:

IRS Final Regulations on Employment and Excise Taxation of Disregarded Entities

August 2007

Federal Tax Alert

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On August 16, 2007 the Internal Revenue Service (IRS) issued final regulations under which qualified subchapter S subsidiaries and eligible single-owner disregarded entities (Disregarded Entities) will be treated as separate entities for employment tax and reporting purposes, as well as for some excise tax purposes.

Date/Timing

The final regulations, eliminating disregarded entity status for purposes of federal employment taxes and some federal excise taxes, are effective August 16, 2007. For employment tax purposes, the regulations apply to wages paid after December 31, 2008, and for excise tax purposes, the regulations apply to liabilities imposed and actions first required or permitted in periods beginning after December 31, 2007.

Affecting

Qualified subchapter S subsidiaries and eligible single-owner disregarded entities.

Background

Disregarded Entities are disregarded for federal tax purposes and are treated as a division of their owner. In Notice 99-6, 1999-1 CB 321, the IRS provided that Disregarded Entities could satisfy their employment tax obligations by calculating, reporting and paying all employment taxes (1) under the name and employer identification number of the owner (treating the employees as employees of the owner) or (2) under the name and employer identification number of the Disregarded Entity. Notice 99-6 is obsolete as of January 9, 2009.

Final regulations (T.D. 9356) adopt, with some changes, proposed REG-114371-05 (published in 2005). REG-114371-05 proposed to treat Disregarded Entities as separate entities for purposes of employment tax and related reporting requirements. The regulation also proposed the same treatment for certain excise taxes reported on

Form 720, 730, 2290, and 11-C; excise tax refunds or payments claimed on Form 8849; and excise tax registrations on Form 637.

Impact

The final regulations spell out that Disregarded Entities are treated as a corporation for employment tax and reporting purposes. Thus, Disregarded Entities will be required to calculate, report and pay all employment taxes for their employees in their own name and under their employer identification number.

Disregarded Entities continue to be disregarded for all other federal tax purposes. The final regulations also make clear that an individual owner of a Disregarded Entity that is treated as a sole proprietorship is subject to self-employment taxes.

Material discussed in this tax alert is meant to provide general information and should not be acted on without professional advice tailored to your firm's individual needs.

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