

TAX COMPLIANCE & PLANNING TRENDS

Disregarded Entities to Pay Their Own Employment and Excise Taxes Under Final Regs

Final regs treat single-owner eligible entities that are disregarded entities (disregarded as separate entities from their owners) and qualified subchapter S subsidiaries (QSubs) as separate entities for employment tax and related reporting requirements. They also treat these disregarded entities as separate entities for certain excise taxes reported on Forms 720, 730, 2290, and 11-C, as well as for excise tax refunds or payments claimed on Form 8849, and excise tax registration on Form 637. For employment taxes, the regs apply to wages paid on or after Jan. 1, 2009. For excise taxes, the regs apply to liabilities imposed and actions first required or permitted in periods beginning on or after Jan. 1, 2008.

BACKGROUND

Employers must deduct and withhold payroll taxes from their employees and also are liable for their share of FICA and FUTA taxes. An employer must make timely deposits of these employment taxes, file employment tax returns, and issue W-2 statements to employees. Certain taxpayers must register with the IRS for certain excise tax purposes. In addition, taxpayers are liable for payment of excise taxes on the sale of certain items.

Under the disregarded entity rules, certain single-owner eligible entities and QSubs are disregarded as entities separate from their owners for tax purposes. As a result, the disregarded entity is ignored and its property and activities are treated as those of the owner of the entity. In [Notice 99-6, 1999-1 CB 321](#), the IRS said that employment tax obligations for employees of a disregarded entity may be satisfied in one of two ways:

1. Payment by the owner of the entity under the owner's name and tax ID number
2. Separate calculation and payment by the disregarded entity under its own name and tax ID number

Proposed Regs

The IRS encountered administrative difficulties due to the interaction of the disregarded entity rules and the employment tax rules. With respect to the interaction of the disregarded entity rules and excise tax rules, IRS noted that many of the excise taxes rely on State law to determine when the tax is imposed. As a result, it issued proposed regs in 2005 to eliminate disregarded entity status for employment tax purposes and to require disregarded entities to pay and report excise taxes. The IRS has now finalized the proposed regs with a few clarifications.

Final Regs

Like the proposed regs, the final regs provide that a disregarded entity is treated as a separate entity for purposes of employment taxes and related reporting requirements. The final regs clarify that the separate entity is treated as a corporation for purposes of employment taxes and related reporting requirements. ([Reg. § 1.1361-4\(a\)\(7\)](#), [Reg. § 301.7701-2\(c\)\(2\)](#).) As provided in the proposed regs, a disregarded entity continues to be disregarded for other Federal tax purposes. The final regs clarify that an owner of a disregarded entity treated as a sole proprietorship is subject to self-employment taxes. ([Reg. § 301.7701-2\(c\)\(2\)](#).)

References

For disregarded entities, see [FTC 2d/FIN ¶ D-1165](#); [United States Tax Reporter ¶ 77,014.15](#); [TaxDesk ¶ 580,501](#); [TG ¶ 4055](#). For disregarded entities and employment tax, see [FTC 2d/FIN ¶ H-4223](#); [TaxDesk ¶ 534,002](#).