

Section 6109.—Identifying Numbers

26 CFR 301.6109-1: Identifying numbers.
(Also § 301.7701-3.)

Employer Identification Numbers.

This ruling provides guidance on the retention of an entity's employer identification number upon changing under § 301.7701-3 from a partnership to a disregarded entity or from a disregarded entity to a partnership.

Rev. Rul. 2001-61

ISSUES

(1) If an entity classified as a partnership becomes disregarded as an entity separate from its owner (disregarded entity) for federal tax purposes and if the disregarded entity chooses to calculate, report, and pay its employment tax obligations under its own name and employer identification number (EIN) pursuant to Notice 99-6 (1999-1 C.B. 321) does the disregarded entity retain the same EIN it used as a partnership?

(2) If an entity classified as a disregarded entity for federal tax purposes calculates, reports, and pays its employment tax obligations under its own name and EIN pursuant to Notice 99-6 and if the federal tax classification of that entity changes to a partnership, does the partnership retain the same EIN it used as a disregarded entity?

FACTS

In each of the following situations, the eligible entity (as defined in § 301.7701-3(a) of the Procedure and Administration Regulations) does not elect under

§ 301.7701-3(c) to be treated as an association for federal tax purposes at any time.

Situation 1. X, an eligible entity classified as a partnership, becomes a disregarded entity for federal tax purposes when the entity's ownership is reduced to one member. (See, for example, Rev. Rul. 99-6 (1999-1 C.B. 432.) X chooses to calculate, report, and pay its employment tax obligations under its own name and EIN pursuant to Notice 99-6.

Situation 2. Y is a disregarded entity for federal tax purposes. Pursuant to Notice 99-6, Y calculates, reports, and pays its employment tax obligations under its own name and EIN. Y becomes a partnership for federal tax purposes when the entity's ownership expands to include more than one member. (See, for example, Rev. Rul. 99-5 (1999-1 C.B. 434.)

LAW & ANALYSIS

Section 6109(a)(1) of the Internal Revenue Code provides that any person required to make a return, statement, or other document shall include in the return, statement, or other document the identifying number as may be prescribed for securing proper identification of the person.

Section 301.6109-1(h)(1) provides that any entity that has an EIN will retain that EIN if its federal tax classification changes under § 301.7701-3.

Section 301.6109-1(h)(2)(i) provides that except as otherwise provided in regulations or other guidance, a single owner entity that is disregarded as an entity separate from its owner under § 301.7701-3 must use its owner's taxpayer identification number (TIN) for federal tax purposes.

Section 301.6109-1(h)(2)(ii) provides that if a single owner entity's classification changes so that it is recognized as a separate entity for federal tax purposes, and that entity had an EIN, then the entity must use that EIN and not the TIN of the single owner. If the entity did not already

have its own EIN, then the entity must acquire an EIN and not use the TIN of the single owner.

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner.

Section 301.7701-3(f)(2) provides that an eligible entity classified as a partnership becomes a disregarded entity when the entity's membership is reduced to one member. A disregarded entity becomes classified as a partnership when the entity's membership is increased to more than one member.

Notice 99-6 provides that the Service generally will accept reporting and payment of employment taxes with respect to the employees of a disregarded entity if made in one of two ways: (1) calculation, reporting, and payment of all employment tax obligations with respect to employees of a disregarded entity by its owner (as though the employees of the disregarded entity are employed directly by the owner) and under the owner's name and TIN; or (2) separate calculation, reporting, and payment of all employment tax obligations by each state law entity with respect to its employees under its own name and TIN.

In *Situation 1*, X's change in federal tax classification from a partnership to a disregarded entity is a change described in § 301.7701-3(f)(2). Thus X is required to retain its EIN under § 301.6109-1(h)(1) if it chooses to calculate, report, and pay its employment tax obligations under its own name and EIN pursuant to Notice 99-6 upon its federal tax classification changing to a disregarded entity. For all federal tax purposes other than employment obligations or except as otherwise provided in regulations or other

guidance, *X* must use the TIN of its owner pursuant to § 301.6109–1(h)(2)(i).

In *Situation 2*, because *Y* calculates, reports, and pays its employment tax obligations under its own name and EIN prior to its federal tax classification changing from a disregarded entity to a partnership, § 301.6109–1(h)(2)(ii) requires that *Y* retain its EIN for use for all federal tax purposes as a partnership.

HOLDINGS

(1) If an entity classified as a partnership becomes a disregarded entity for federal tax purposes and if the disregarded entity chooses to calculate, report, and pay its employment tax obligations under its own name and EIN pursuant to Notice 99–6, the disregarded entity must retain the same EIN for employment tax purposes it used as a partnership. For all federal tax purposes other than employment obligations or except as otherwise pro-

vided in regulations or other guidance, a disregarded entity must use the TIN of its owner.

(2) If an entity classified as a disregarded entity for federal tax purposes calculates, reports, and pays its employment tax obligations under its own name and EIN pursuant to Notice 99–6 and if the federal tax classification of that entity changes to a partnership, the partnership must retain the same EIN it used as a disregarded entity.

DRAFTING INFORMATION

The principal author of this revenue ruling is Craig Gerson of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Craig Gerson at (202) 622–3050 (not a toll-free call).