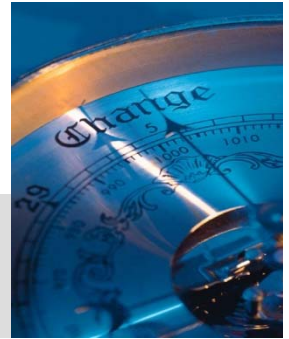


SERVICE BULLETIN



Establishing Unemployment Accounts for Disregarded Entities and Avoiding SUTA-Dumping Issues in the Process

TO: T&T Clients
FROM: Kris Thorngren
RE: Disregarded Entities
DATE: December 15, 2008

Historically, the IRS has allowed a single-member/single-owner limited liability company that has not elected to be treated as a corporation to be disregarded as an entity separate from its owner for federal tax purposes. Such “disregarded entities” have been permitted to use the owner’s taxpayer identification number and to report wages as though the employees were employed directly by the owner.

It is our understanding that such previously disregarded entities will be required to change the way they report and pay federal employment taxes beginning January 1, 2009. Treasury Regulation Section 301.7701-2 states that such entities will now be responsible for filing and paying all federal employment taxes separately, using their own legal name and federal identification number.

The requirement to report wages separately for federal payroll tax purposes has implications relating to state unemployment tax filing, because the Federal Unemployment Tax Act and the various state unemployment laws are intertwined. It is generally advisable to report wages consistently for federal and state unemployment purposes, although there are exceptions (such as the “agent” status which is permissible for federal payroll taxes).

The U.S. Department of Labor has notified the state unemployment agencies about the federal changes but has not provided guidance to the state agencies on the question of whether new state unemployment accounts must be established for previously disregarded entities. In the absence of such guidance we suggest that registration forms be completed and submitted to the state unemployment agencies for such entities, along with a cover letter explaining (1) the reason for the registration and (2) the name and state unemployment account number of the entity which has reported the wages and employment through the end of 2008. The cover letter is important in this situation because most registration forms are not adequately designed to capture the information you want to convey.

By submitting a registration form with an explanatory cover letter you will be accomplishing two things. First, you will be making an attempt to keep your state filings consistent with your federal filings, which always avoids certification issues. If a new state unemployment account is established, the IRS will be able to link your state unemployment reports with your federal unemployment tax return; thereby assuring that you will receive full credit for state contributions paid and be entitled to the correct net federal unemployment tax rate of 0.80% (assuming there is no credit reduction for other reasons).

Secondly, you will be disclosing the reason for the movement of payroll from one entity to another, affiliated entity. By making the disclosure, you clearly establish that you are not making an attempt at “SUTA-dumping,” i.e., shifting payroll from one entity to another in order to reduce your unemployment tax payments. Generally speaking, a transfer of unemployment experience will be required because of the common ownership and control between the entities involved.

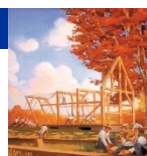
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Disregarded Entities...continued

There is no guarantee that the state unemployment agencies will act consistently on this issue. We think it is likely that most agencies will establish new unemployment tax accounts for the previously disregarded entities. However, some states (most notably North Carolina and Oklahoma) may very well determine that a new account should not be established. If you submit state unemployment registration forms, it is advisable to continue reporting wages and paying contributions using the account numbers that you have historically used until such time as you receive a status determination for the previously disregarded entity.

Several clients have already contacted us about the disregarded entity issue. As always, we are glad to assist with any registrations that may be necessary. Please feel free to contact Josh Kendall or Kathy Wilson (615/242-8246) if we can be of assistance.

-end-



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