

IRS makes it clear the Owner(s) of LLCs have to file Tax Returns in the USA

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The IRS has recently made it very clear that the owner(s) of an LLC have to file an income tax return in the USA. This applies to LLCs formed in every State, not just in Delaware, so you can't form in another State thinking this doesn't apply to you.

From the IRS website: <http://www.irs.gov/businesses/small/article/0,,id=98277,00.html> [1]

"The federal government does not recognize an LLC as a classification for federal tax purposes. An LLC business entity must file as a corporation, partnership or sole proprietorship tax return."

What this means to you:

A Single Member LLC can only be a Disregarded Entity if it's owner has an EIN (in the case of a company owner), a SSN, or an ITIN, and that owner files a tax return in the USA that the LLC will be accounted for in. So it is filing as a Sole-Proprietor if an individual owner (personal tax return in the USA), or as a Corporation if the owner is a USA corporation, or if it elects to be taxed as a corporation itself.

A multi-member LLC has to file as a Partnership Return (if all Members have SSNs, ITINs, or EINs and file income tax returns in the USA), or elect to be taxed as a Corporation anyway.

OPINION: If you don't already file tax returns in the USA you are better off just forming a C-Corporation and accounting for the company in it's own income tax return.

How it effects our services:

We can get EINs for foreign owned Corporations.

We can get EINs for LLCs whose owners have USA Tax IDs and file tax returns in the USA already.

We can get EINs for LLCs whose owners don't file tax returns in the USA already, but want to.

Double Taxation: It's only double taxation if the USA company shows a profit, pays tax on it, then distributes the remaining profit as Dividends to the shareholders (which makes sense for a company with many owners that aren't managers). An LLC naturally passes through the profits to the USA owner(s) of the LLC as a disregarded entity, but a Corporation can do this very easily to avoid double taxation too. Simply by having the parent company or individual owner/managers invoice their USA company for Outsourcing Services to the parent company, thus transferring the revenue from the USA Corporation to the owners, so the profit gets taxed in the appropriate jurisdiction. Now, if you live in a jurisdiction that has higher taxes than the USA you might want to leave some profit in your USA company, have it taxed at the approximate 15% - 34% tax rate in the USA, http://en.wikipedia.org/wiki/Corporate_tax_in_the_United_States#Tax_rates [2], and keep the rest of the profit in the USA company to spend to it's benefit. So you see a Corporation is a better vehicle for business for non-resident aliens, accomplishing easily what the benefits of an LLC would be but with a more straightforward structure that people the world over understand.

If you are a USA Resident with a SSN, or the LLCs owner is a US Corporation, that already files tax returns in the USA then an LLC may be perfect for you as you can account for the LLC in tax returns you are already familiar with, be it your personal income tax return or the corporate parents tax return.

If you are reading elsewhere that foreigners can take advantage of the pass-through taxation of an LLC and not have to file a tax return in the USA, I'm afraid you are reading old, outdated information. And if you are hearing from someone still that this is the case then you should cal for a second opinion as following their advice will get you into trouble. Call a USA accountant, Enrolled Agent, or get it from the horse's mouth, call the IRS themselves and ask, the IRS will answer your questions and help you with your tax filings for free.

Makes sense:

1. USA Corporate Parent owning 1 or many LLCs all accounted for in the parent's tax return (1 tax return to file no matter how many LLCs under the Corp that files).
2. Foreign owned Corporation.
3. USA Resident owned LLCs.
4. Foreign owned LLCs taxed as corporations.
5. Foreign owned LLCs whose owners want to file personal income tax returns in the USA.

I hope this makes it clear to all of you who are looking for answers to this question. I'm happy to discuss your situation with you personally too. Contact me any time, we're here to help you have the best experience you can with your new Delaware company.

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Links:

- [1] <http://www.irs.gov/businesses/small/article/0,,id=98277,00.html>
- [2] http://en.wikipedia.org/wiki/Corporate_tax_in_the_United_States#Tax_rates
- [3] <https://valisinternational.com/tags/ein>
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