

# Section 6331.—Levy and Distraint

*26 CFR 301.6331-1: Levy and distraint.*

**Limited Liability Company.** This ruling discusses the issue of whether the IRS

can collect employment taxes owed by a multi-member domestic Limited Liability Company (LLC) from the members.

## Rev. Rul. 2004-41

### ISSUE

When a multi-member domestic Limited Liability Company (“LLC”) incurs federal employment tax liabilities, can the IRS collect the employment taxes owed by the LLC from the members, including by levy on the members’ property and rights to property?

### BACKGROUND

A multi-member domestic LLC is an eligible entity that may be, and by default is, classified as a partnership for federal tax purposes under Section 301.7701-1 *et seq.* of the Procedure and Administration Regulations. For states that permit LLCs, state law generally provides that the members of an LLC are not liable for the debts of the LLC in their capacity as members of the LLC, subject to certain limited exceptions. Questions have arisen as to whether classification of an LLC as a partnership for federal tax law purposes permits the IRS to collect federal employment tax liabilities of the LLC from the LLC members as if they were general partners of a partnership.

### FACTS

X, Y, and Z are the members of a domestic LLC (“XYZ”) formed in state A. XYZ is an employer for federal tax pur-

poses and has incurred a federal employment tax liability that remains unpaid. X, Y, and Z have assets that would be sufficient to satisfy all or a portion of the employment tax liability. Under the laws of state A, the members of an LLC generally are not liable for the debts of the LLC.

### LAW AND ANALYSIS

State law generally provides that the general partners of a partnership are jointly and severally liable for the partnership’s obligations. With respect to federal tax liabilities incurred by a partnership, such as federal employment taxes, the Service may seek to collect those federal tax liabilities from the general partners of the partnership. *See United States v. Papandon*, 331 F.3d 52, 55-56 (2d Cir. 2003) (state law determines a partner’s liability for partnership obligations, including federal tax liabilities); *Remington v. United States*, 210 F.3d 281, 283 (5th Cir. 2000) (“Accordingly, under Texas law, the IRS is entitled to collect the trust fund tax liability, indisputably a partnership debt, from any one of the general partners ....”); *see also United States v. Galletti*, 72 U.S.L.W. 4252 (U.S. March 23, 2004). In contrast, an LLC member generally is not liable under state law for the LLC’s debts. *E.g.*, N.Y. Ltd. Liab. Co. Law § 609(a) (McKinney Supp. 2003). Thus, the Service, as a general matter, cannot collect the LLC’s employment tax liability from the LLC members. Therefore, because the members, X, Y, and Z, are not liable under the law of state A for the debts of XYZ, the IRS may not levy on the property and rights to property of

the members, in their capacity as members, to collect the employment taxes owed by XYZ.

There, however, may be special circumstances such as a fraudulent transfer of assets from the LLC to its members which might expose the members to liability. *See generally Scott v. Commissioner*, 236 F.3d 1239 (10th Cir. 2001) (imposing transferee liability under I.R.C. § 6901 on person receiving fraudulent transfer of assets from taxpayer-corporation); *Stanko v. Commissioner*, 209 F.3d 1082 (8th Cir. 2000) (same). Also, depending on the facts of a particular case, a member may be liable for the trust fund recovery penalty under I.R.C. § 6672.

### HOLDING

If under state law the members of the LLC are not liable for the debts of the LLC, then absent fraudulent transfers or other special circumstances, the IRS may not collect the LLC’s employment tax liability from the members, including by levy on the property and rights to property of the members.

### DRAFTING INFORMATION

The principal author of this revenue ruling is Walter Ryan of the Office of the Associate Chief Counsel, Procedure and Administration (Collection, Bankruptcy & Summonses Division). For further information regarding this revenue ruling, contact Branch 1 of the Collection, Bankruptcy & Summonses Division at (202) 622-3610 (not a toll-free call).