

IRS RELEASES MEMO ON PARTICIPATION BY SINGLE-MEMBER LLC'S EMPLOYEES IN MEMBER'S 403(B) AND 457 PLANS

C.C.A. 2016-34-021 (July 11, 2016)

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In a recently released Chief Counsel Advice memorandum, the IRS addressed participation by employees of a single-member LLC that is a disregarded entity (the "LLC"), in the § 403(b) and § 457(b) retirement plans sponsored by its member owner, a § 501(c)(3) tax exempt organization (the "owner organization"). As a disregarded entity (i.e., treated as not being separate from its owner organization), the IRS opined that the LLC is a branch or division of the owner organization, which is an eligible employer under the § 403(b) rules. As a result of this status, the LLC does not have to separately qualify as an eligible employer for its employees to be able to participate in the § 403(b) plan. In fact, the IRS cautioned that as employees of a branch or division of the owner organization sponsoring the plan, the employees are covered by the universal availability requirement in the § 403(b) regulations, which generally requires that all employees be permitted to make elective deferrals to the plan. As a result, all of the owner organization's and LLC's employees must be permitted to participate in the plan. With regard to a § 457(b) plan sponsored by the owner organization, the IRS opined that the LLC's employees are permitted to be covered by the plan. However, because § 457(b) plans are not subject to a universal applicability rule, the IRS stated that coverage of the LLC's employees is not mandatory. C.C.A. 2016-34-021 (July 11, 2016)

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