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Re: *IRS Says It CAN Satisfy Tax Liability Out Of LLC Assets*

NO Single Member LLC Asset Protection.

A Debtor argued that the Bankruptcy Trustee acts merely for her creditors and that they are only entitled to a charging order against distributions made on account of her LLC member interest. However, the charging order exists to protect *other members* of an LLC from having involuntarily to share governance responsibilities with someone they did not choose, or from having to accept a creditor of another member as a co-manager. A charging order protects the autonomy of the original members, and their ability to manage their own enterprise. In a single-member entity, there are no non-debtor members to protect. The charging order limitation serves no purpose in a single member limited liability company, because there are no other parties' interests affected

The Albright case illustrates the weakness of a single-member LLC as an asset protection device. If a person wishes to protect its assets from potential creditors in bankruptcy, it might be better to form a multi-member LLC. The Albright court indicated that it might have reached a different conclusion if the LLC in question had at least one other member. ***In re Albright, 291 B.R. 538 (Bankr. D. Colo. 2003).***

II. IRS' Position.

Given Albright, one would assume the IRS would try to seize the assets of a single member LLC to satisfy a member's tax liability. Apparently not.

In CCA_2011032112062926 on 4/22/2011, a portion of a letter to a taxpayer ...

“ ---, this is to confirm your opinion that the Service can't levy on the property of a disregarded LLC to satisfy the tax liability of the LLC's sole member. As you've noted the sole member has no ownership interest in LLC's property under local law and disregarding the LLC for federal tax purposes doesn't allow the Service to disregard the entity for purposes of collection.

A levy might be made for distributions by the LLC that are based on the sole member's interest in LLC; e.g., if the taxpayer is supporting himself from the net income of the LLC the lien attaching to taxpayer interest in LLC should allow the Service to issue a levy notice to LLC for the distributions of that income. Compare *United States v. Moskowitz, Passman & Edelman*, 603 F.3d 162 (2d. Cir. 2010) (frequent and regular partnership “draws” which are advances or loans on annual profits are subject to a lien any may be levied as salary or wages).”

It will be interesting to see if this position is not modified.

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