

**Office of Chief Counsel  
Internal Revenue Service  
Memorandum**

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to: Associate Area Counsel (CTM), Area 5  
CC:LB&I:CTM:LN

from: Chief, Branch 6  
(Income Tax & Accounting)

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subject: Separate and Distinct Trades or Businesses

This memorandum responds to your request for assistance. This advice may not be used or cited as precedent.

LEGEND

Company =

LLC =

Year A =

Purchaser A =

Purchaser B =

ISSUE

Are Company and LLC separate and distinct trades or businesses within the meaning of IRC § 446(d)?

CONCLUSION

Based upon the available information submitted, we believe that Company and LLC are separate and distinct trades or businesses within the meaning of IRC § 446(d).

FACTS

LLC was previously a subsidiary of Company that converted in Year A to a limited liability company, whose sole member is Company. LLC has not made an election under Procedure and Administration Reg. § 301.7701-3 to be taxed as a corporation, thus, LLC is not regarded as an entity separate from Company for federal income tax purposes but is instead treated as a division of Company.

Company's activities include sales, marketing, distribution, sale support, research and development, and administrative and headquarters functions. LLC primarily manufactures products but does provide some research and development services to the purchaser of its products, Purchaser A. Purchaser A will subsequently sell these products to Purchaser B, who will ultimately sell the products to Company.

Company and LLC have separate books and records. These books and records are prepared at Company's location. Company and LLC are in different geographical locations. Further, Company and LLC do not share employees, but, do share the highest-level executives. Company and LLC use the same accounting method, presumably, that method is an accrual accounting method.

#### LAW AND ANALYSIS

IRC § 446(d) permits accounting methods to be chosen at the trade or business level. Treas. Reg. § 1.446-1(d) provides factors to be used for determining that level in specific situations.

Deciding whether Company and LLC are separate and distinct trades or businesses requires a factual determination. The currently available information fails to convince us that Company and LLC are not separate and distinct trades or businesses. The fact that LLC has failed to make an election to be taxed as a corporation and is thus, disregarded as an entity separate from Company for federal income tax purposes, does not mean that LLC can never be a separate and distinct trade or business. Accordingly, based on the available information, our view is that Company and LLC are separate and distinct trades or businesses within the meaning of IRC § 446(d).

#### CASE DEVELOPMENT, HAZARDS, AND OTHER CONSIDERATIONS

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine the ability of the Internal Revenue Service to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.