



## Summer 2018 Bulletin

### CLAIMING SINGLE-MEMBER LLC STATUS

The Tax Court has ruled against husband/wife members of a limited liability company (LLC), who appealed a determination made at a collection due process (CDP) hearing regarding a levy with respect to the penalty for failure to file a partnership return. The taxpayers had argued that they weren't liable for the penalty because their entity was a single-member LLC.

Background—qualified joint venture under Code Sec. 761(f). The Code allows a "qualified joint venture", (i.e., a joint venture whose only members are a husband and wife who file a joint return and who make the appropriate election, to not be treated as a partnership for Federal tax purposes). (Code Sec. 761(f))

Facts. The taxpayer was Argosy, an LLC. Argosy's tax returns for tax years 2010 and 2011 included the following statement: "This partnership's Code Sec. 6231(A)(1)(B)(ii) election to be covered under TEFRA unified audit procedures is still in existence and in force". These returns were not timely filed and the IRS assessed late filing penalties for the late filing of the returns.

IRS sent Argosy a Final Notice of Intent to Levy and Notice of Your Right to a Hearing. Argosy timely submitted a Form 12153, Request for a Collection Due Process or Equivalent Hearing. Argosy did not request a collection alternative; it only raised the underlying liabilities. Argosy asserted that it was not a partnership, but a single-member LLC.

For tax years 2010 and 2011, John Petito and his wife were reported on Argosy's Form 1065, Schedules B-1, Information on Partners Owning 50% or More of the Partnership, as owning 100% of Argosy. Mr. Petito signed the hearing request. Argosy's Form 1065, Schedules K-1, Partner's Share of Income, Deductions, Credits, and Other Items, for tax years 2010 and 2011, were attached to the hearing request.

The CDP hearing was conducted through correspondence. Thereafter, the IRS Appeals officer issued a notice of determination sustaining the proposed levy. The Appeals case memorandum acknowledged that Argosy contended it was a single-member entity. The Appeals officer verified through transcript analysis that assessment was properly made for each tax year in issue. The Appeals officer concluded that all of the requirements of applicable law or administrative procedure had been met.

Tax Court sides with IRS. The Tax Court concluded that the taxpayer was a partnership, that it was liable for the penalties for late filing of its partnership returns, and that the CDP procedure was handled properly.

Argosy contended, and the Court agreed, that its underlying liabilities were raised in its CDP hearing request, in which it stated that a single-member LLC could not be subject to partnership penalties.

The Court said, however, that since Argosy represented itself as a partnership on its tax returns, it could not argue that it was another entity. Argosy contended that Mr. and Mrs. Petito were one partner. However, there was no evidence of an election pursuant to Code Sec. 761(f).

**DISCLAIMER:** This publication does not constitute legal advice. Readers should consult with their own legal counsel for the most current information and to obtain professional advice before acting on any of the information presented.  
Copyright © The Law Offices of Jack S. Johal

2025 Hurley Way, Suite 100  
Sacramento, CA 95825  
916.569.8111  
[www.johallawoffices.com](http://www.johallawoffices.com)

205917.1