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when LLC members or partnerships or disregarded entities are treated as employees, and...

Craig Smalley • May. 22, 2017

LLC Advantages

- ★ LIMITED PERSONAL LIABILITY
- ★ PASS-THROUGH TAXATION
- ★ FLEXIBLE OWNERSHIP STRUCTURE
- ★ LESS FORMALITIES AND PAPERWORK

For an LLC that's electing to pay tax as an S-Corporation or C-Corporation, it is perfectly fine to treat the members of the LLC as employees. Where it goes awry is when LLC members or partnerships or disregarded entities are treated as employees, and this happens to be a growing trend.

For the most part, payroll companies will sell their payroll services to LLCs, never bothering to ask them their tax election. But the law is clearly stated – TD 9766 points out that partners in partnerships (or LLCs electing partnership status) and sole-proprietorships (or single-member LLCs as disregarded entities) cannot be treated as employees.

The important question is this: What happens to the employee that is given interest as a partner in an LLC? That would nullify the way that they are paid, and any wages

paid to them would have to be considered guaranteed payments to partners.

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As I mentioned earlier, this problem is exacerbated by payroll company salespeople. They simply sell payroll services to clients, never thinking of the tax election that the LLC has made, and that is where the problem begins for us. How do we report wages paid to a disregarded entity? We aren't supposed to report them as wages, but if we don't, the client pays FICA taxes on the amount twice.

If we get the client's information early enough, we can apply for a late S-Election and thereby allow for the wages paid. But what happens when we miss the March 15th deadline? Do we simply report these amounts as wages on the Schedule C or Form 1065? Although technically incorrect, when I come across this situation, I report the wages as an expense. After all, I don't want the client to pay income tax and FICA tax on the wages twice.

In summary, you need to educate those clients of yours who are paying themselves as employees, and who are disregarded entities.

This Month's Top Payroll Social Media Posts:

Is Electronic Timekeeping a Help or Hindrance to Compliance? – **Bloomberg BNA Payroll Blog:** <http://bit.ly/2q3hQF6>

The Small Business Owner's Guide to 401(K)s – **The SurePayroll Blog:** <http://bit.ly/2oj8NBN>

How to Profit from Payroll – **Simon Berglund via LinkedIn:** <http://bit.ly/2qOwhiT>

IRS Sets 2018 Health Savings Account Contribution Limits – **PrimePay Blog:** <http://bit.ly/2qOqbzn>

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The Worst Career Advice Comes from Parents and Friends. Young professionals should think twice before taking career advice from their BFF.

www.cpapracticeadvisor.com/12331360

Congress Votes to Change Overtime Laws to Allow Comp Time Alternative.

Employees would have the choice to use the earned overtime as comp time or have the overtime payments added to their paychecks as they have done in the past.

www.cpapracticeadvisor.com/12331257

Minimum Wage Updates for 2017. Note that local rates can affect the states if the locals are higher. Twenty-seven states had minimum wage changes effective in 2017 — and you can expect more changes coming in the future.

www.cpapracticeadvisor.com/12325114

Immigration Green Cards Got Redesign May 1. These redesigns use enhanced graphics and fraud-resistant security features to create cards that are highly secure and more tamper-resistant than the ones currently in use.

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Payroll

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