



December 28, 2021

VIA E-MAIL (paul.d.adams@irs.gov) AND UPS

United States Department of the Treasury
Internal Revenue Service
Room 6526
1111 Constitution Avenue Northwest
Washington, District of Columbia 20224

Re: Request for Comments - IRS Form SS-4

Dear Mr. Adams:

We write in response to your request for comments regarding IRS Form SS-4 (Application for Employer Identification Number) posted to the Federal Register on October 29, 2021. We offer thoughts and suggestions regarding two issues that frequently recur when we advise clients about whether and how to complete and submit Form SS-4.

Designation of Responsible Party

Line 7a of Form SS-4 asks for the name of the Responsible Party. The instructions define the Responsible Party as:

the person who ultimately owns or controls the entity or who exercises ultimate effective control over the entity. The person identified as the responsible party should have a level of control over, or entitlement to, the funds or assets in the entity that, as a practical matter, enables the person, directly or indirectly, to control, manage, or direct the entity and the disposition of its funds and assets.

For trusts, the instructions provide that the Responsible Party should be the "grantor, owner, or trustor." Yet trusts could have a different Responsible Party depending on their tax status, which could confuse both taxpayers and advisors when completing IRS Form SS-4. For instance, a grantor trust's Responsible Party ought to be its Section 671 or Section 678 grantor -- who may not be the state law settlor -- yet a non-grantor trust's Responsible Party ought to be its Trustee. The designation can become quite difficult when Section 671 treats multiple parties as grantor or when multiple Trustees serve together; neither IRS Form SS-4 nor its instructions provide guidance about which person to use as Responsible Party in these scenarios.

One example of when the designation of a Responsible Party could become especially important for a taxpayer is in the process of opening a bank account. In the trust context, banks often require a trust's TIN confirmation letter prior to opening a bank account. Banks may have their own internal policy regarding who can or should be a "Responsible Party", and that policy may differ

from what the IRS specifies in its Form SS-4 Instructions. When issuing online TIN confirmations to trusts, the IRS module labels the Responsible Party with the abbreviation "TTEE". Yet the Responsible Party is often not the Trustee, leading to considerable confusion and administrative inconvenience.

We believe the IRS could remedy these issues by asking the following information about each Responsible Party:

- Depending on the entity type, the Responsible Party's position.
 - For **LLCs**, the Responsible Party could be a Member, Manager, or Officer, and the IRS would probably wish to know whether a Manager or Officer is also a Member.
 - For **Trusts**, the Responsible Party could be a state law settlor who is a grantor for Section 671 purposes, a beneficiary who is a grantor for Section 678 purposes, a Trustee, or a non-settlor/non-beneficiary who is a grantor for Section 671 purposes by virtue of a gift to the trust. The IRS would probably wish to know which of these designations applies.
 - For closely held **Corporations**, the Responsible Party would be an Officer, and the IRS would probably wish to know whether the Officer is also a Shareholder.

Obtaining this detailed information would not only assist IRS enforcement and data collection, but it would also result in the online TIN system including more accurate information in its automated confirmation letters. This should result in significantly decreased administrative inconvenience for both the IRS and taxpayers.

Treatment of Disregarded LLCs

We often get questions from both taxpayers and their advisors about whether a single-member LLC treated as a disregarded entity for federal income tax purposes should file IRS Form SS-4 and obtain a TIN. To answer this question, we often direct taxpayers to the IRS website and its analysis of the subject, which is located [here](#). Even so, we often hear from both taxpayers and their bankers that financial institutions require procurement of a TIN for a disregarded LLC that does not plan on having payroll. We trust that the common practice of disregarded LLCs needlessly applying for TINs is already overburdening the IRS's systems.

We suggest adding a "**Who Must File**" section to the Form SS-4 Instructions, as the IRS does for the instructions to several other forms. This section could clarify best practices for disregarded LLCs, international taxpayers (directing them to Form W-7 when necessary), Qualified Subchapter S Subsidiaries, grantor trusts, and any other entity types where ambiguity could arise about whether a TIN is necessary or proper. In addition to decreasing the IRS's administrative burden, it could also serve as a helpful resource for third parties requiring TINs (such as financial institutions) to signal more prominently that certain entities should not receive them.

We hope this comment letter proved helpful, and we are optimistic you agree that taxpayers, advisors, financial institutions, and the government would substantially benefit from the implementation of our suggestions. We welcome any dialogue the IRS would like to have with us about the content of this correspondence.

Thank you for considering our thoughts, and we wish everyone at the IRS a joyous New Year celebration and a healthy and successful 2022.

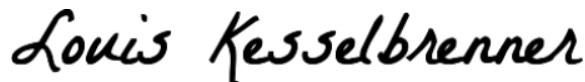
Respectfully submitted,
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cc: Ms. Sara Covington - Internal Revenue Service (*via e-mail at sara.l.covington@irs.gov*)
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