

Disregarded Entities And Employment Taxes—Further Refinements

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A recent [post](#) noted that disregarded entities are **not** treated as disregarded for employment tax purposes, but are instead treated as corporations. This special treatment came into effect in 2009, and the treatment as a corporation was specifically provided for recently.

Some wage payments are exempt from FICA and FUTA taxes. For example, services performed by a child under the age of 18 in the employ of his father or mother is not considered employment for FICA purposes. Code §3121(b)(3)(A). Services performed by an individual under the age of 21 who is employed by his father or mother, or performed by an individual employed by his spouse or son or daughter (subject to certain conditions) for domestic service in a private home of the employer is not considered employment for FICA purposes. Code §3121(b)(3)(B). Services performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother, are not considered employment for FUTA purposes. Code §3306(c)(5).

If the employer is a disregarded entity owned by an employer described in one of the preceding exemptions, the treatment of the employer as a corporation and not a disregarded entity for employment tax purposes acts to convert exempt wages to taxable wages for FICA and FUTA taxes. In recognition of this problem, the IRS has issued temporary Treasury Regulations that will allow the exemptions to continue to apply in this circumstance. Essentially, they provide a partial exception to the nondisregarded entity treatment applied to otherwise disregarded entities for employment tax purposes – yes, quite a mouthful.

The new regulations also confirm that information reporting and backup withholding is applied to the owners of disregarded entities, and more specifically, that the disregarded entities themselves are relieved of such obligations.

Treas. Regs. §§31.3121(b)(3)-1T(e) , 31.3127-1T(d) , 31.3306(c)(5)-1T(e) , and 301.7701-2T(e)(5)

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