FORM 5472 AND FOREIGN-OWNED U.S. ENTITIES: THE NEW CHIEF COUNSEL GUIDANCE

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C.C.A. 202617012
E.C.I. Tax Blocker
Foreign-Owned L.L.C.
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INTRODUCTION

Foreign owners of U.S. limited liability companies ("L.L.C.'s") are often told that the L.L.C. is a disregarded entity for U.S. tax purposes. They assume that it means exactly that: disregarded.

The assumption is understandable. It was true in almost every relevant respect for many years. It is still true for U.S. income tax purposes. A single-member L.L.C. generally files no income tax return of its own. Its income, deductions, and assets belong directly to its owner.

But the assumption is wrong in one important respect.

Since 2017, a foreign-owned single-member L.L.C. has been treated as a domestic corporation for purposes of the reporting and record-maintenance obligations under Code §6038A. The reporting mechanism is Form 5472 (Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business). The I.R.S. instructions confirm that a reporting corporation includes a 25% foreign-owned U.S. corporation, including a foreign-owned U.S. disregarded entity.

Failure to file, or failure to maintain the required records, carries a $25,000 penalty per form per year. Additional $25,000 penalties may follow for continued noncompliance after I.R.S. notice. There is no meaningful cap.

But there may be hope for taxpayers that can show reasonable cause.

On April 24, 2026, the I.R.S. released Chief Counsel Advice 202617012 ("C.C.A."). The C.C.A. addresses when the reasonable cause exception to the Code §6038A penalty applies and, in particular, what it means for the I.R.S. to apply that exception "liberally" for certain small corporations. The C.C.A. may not be used or cited as precedent, but it is still a useful window into how the I.R.S. may evaluate these requests.

BACKGROUND

Many foreign owners missed the 2017 change to the scope of the disregarded nature of their L.L.C.'s. This is especially true where the L.L.C. was formed before 2017 and was never used to conduct an active U.S. business.

Many owners learned about the issue only when the Corporate Transparency Act ("C.T.A.") was about to become effective. By way of short reminder, the C.T.A. was enacted in 2021 to create a nonpublic beneficial ownership database. It was intended to apply to many domestic and foreign entities and to help combat money laundering, terrorist financing, tax fraud, and similar activity. In 2024, the law became effective, and existing entities were generally expected to file by January 1, 2025. Litigation then created major uncertainty. In March 2025, FinCEN issued an interim final rule removing beneficial ownership reporting requirements for U.S. companies and U.S. persons, while leaving certain foreign entities registered to do business in the United States within the narrowed regime.

For foreign owners of U.S. L.L.C.'s, the C.T.A. scare had a useful side effect. It caused them to look at their U.S. entities. When they did, many discovered that Form 5472 had been required for years.

The practical reach of this rule is broader than many expect. The foreign owner does not need to be a foreign corporation. The L.L.C. does not need to have U.S. income. It does not need to operate a U.S. business. It does not even need to have a bank account.

Form 5472 is required when the foreign-owned disregarded entity has a reportable transaction with its foreign owner or another related party. Reportable transactions include contributions, distributions, loans, interest payments, and other monetary or nonmonetary transactions. Part V of Form 5472 specifically reaches transactions of foreign-owned U.S. disregarded entities, including amounts paid or received in connection with the formation, dissolution, acquisition, and disposition of the entity, and contributions to and distributions from the entity.

Consider the following situations:

- A foreign family uses a U.S. L.L.C. to hold U.S. real estate for personal use. It is true that this, on its own, is not an estate-tax-protected structure, but other solutions for that problem may exist.

- A foreign individual uses a U.S. L.L.C. as part of a foreign tax planning structure. For example, in some jurisdictions, owning foreign real estate through a U.S. L.L.C. may convert what would otherwise be a taxable sale of real property into a potentially different local-law result on a sale of shares or interests.

- A foreign individual forms a U.S. L.L.C. to provide personal services from outside the United States to U.S. customers.

In each case, the owner will almost certainly make payments to keep the L.L.C. alive. Registered agent fees, state annual fees, tax preparation fees, and other routine expenses may be paid directly by the owner. Those payments may feel informal. They may not be labeled as capital contributions. But for Form 5472 purposes, they may be reportable transactions.

To file Form 5472, the L.L.C. must obtain an employer identification number. The Form 5472 is filed with a pro forma Form 1120, on which only limited identifying information is completed.

When the missed filing requirement is discovered, compliance often goes back at least three years. Reasonable cause statements are prepared. Late pro forma Forms 1120 and Forms 5472 are filed. The hope is that the taxpayer can come into compliance without a $25,000 penalty for each year and each relevant reporting obligation.

The new I.R.S. guidance gives some reassurance that, in certain cases, penalty relief is realistic.

C.C.A. 202617012

The Penalty and the Reasonable Cause Exception

Code §6038A(d) imposes a $25,000 penalty for failure to provide required information or maintain required records. Additional $25,000 penalties may apply for each 30-day period, or fraction of a 30-day period, during which the failure continues after 90 days from I.R.S. notice. The C.C.A. confirms both the initial penalty and the continuation penalty structure.

However, the penalty does not apply if the failure is due to reasonable cause. The regulations require an affirmative showing, made in a written statement signed under penalties of perjury, that the taxpayer acted in good faith and that reasonable cause existed for the failure. The C.C.A. confirms that the determination is made case by case, taking into account all relevant facts and circumstances.

The general reasonable cause standard applies to all reporting corporations. A separate, more favorable provision applies to certain small corporations.

The Small Corporation Provision

The regulations provide that the I.R.S. "shall apply the reasonable cause exception liberally" in the case of a small corporation that

- had no knowledge of the Code §6038A requirements;
- had limited presence in and contact with the United States; and
- promptly and fully complied with all I.R.S. requests to file Form 5472 and furnish books, records, and other relevant materials.

For this purpose, a small corporation is a corporation whose gross receipts for the taxable year are $20 million or less. The C.C.A. emphasizes that this is an overall gross receipts test, not merely a U.S. gross receipts test.

Before C.C.A. 202617012, there was very little guidance beyond the regulatory text, which itself comes from the legislative history of the statute, on how a taxpayer qualified for this relief or what "liberally" meant in practice. No court had interpreted the provision. Prior guidance acknowledged the exception without adding much substance. The C.C.A. addresses both questions.

How Qualification Works

The C.C.A. explains that the taxpayer generally demonstrates eligibility through a written submission signed under penalties of perjury. The submission should show that

- the taxpayer had overall gross receipts of $20 million or less for the taxable year
- the taxpayer lacked knowledge of the Code §6038A requirements,

- the taxpayer had limited presence in and contact with the United States, and
- the taxpayer is now in full and prompt compliance.

The I.R.S. may verify gross receipts independently.

On the knowledge prong, the I.R.S. may consider whether the taxpayer previously filed Forms 5472 and whether any owner or controlling person controlled another entity that had filed Form 5472. Prior Form 5472 history in any related entity may hurt a claim that the taxpayer did not know of the filing requirement.

On the limited-presence prong, the I.R.S. may consider the location and experience of corporate officers and managers, the number and size of U.S. customer transactions, and the degree of interaction with U.S. individuals, businesses, and Federal, State, and local government authorities.

This is where facts matter. An L.L.C. owned by a foreign family, with no U.S. employees, no U.S. customers, and no U.S. office, which simply holds a foreign asset, should present a strong case. A U.S. L.L.C. that owns U.S. real property is more nuanced. Query whether ownership of U.S. real property, by itself, creates too much U.S. presence and contact. The answer may depend on the facts. A personally used apartment with no rental activity should be easier than an L.L.C. operating a rental business, interacting with tenants, vendors, lenders, and local government authorities.

On the corrective-compliance prong, the I.R.S. may consider how promptly the taxpayer responded, how complete the responses were, whether the I.R.S. had to follow up multiple times, and whether the information supplied was consistent. A taxpayer who files all outstanding Forms 5472 promptly after learning of the obligation and responds fully to any I.R.S. request is in a significantly better position.

What "Liberally" Means

The C.C.A. clarifies that the liberal standard does not mean automatic relief. It means the I.R.S. applies a lower level of evidentiary scrutiny when a qualifying small corporation asks for reasonable cause relief.

The C.C.A. describes "liberal" by reference to the ordinary meaning of the word: generous, or not strict or exact. But the taxpayer still must make a factual showing. A conclusory submission is not enough. The I.R.S. should not ignore known facts that cast doubt on the taxpayer's good faith, the completeness of the submission, or the truth of the facts presented.

This is a helpful clarification. For small foreign-owned L.L.C.'s that genuinely did not know of the Form 5472 requirement, the C.C.A. suggests that a well-prepared reasonable cause submission should have a real chance of success. But the submission should not be casual. The taxpayer should tell the story carefully, explain why the obligation was missed, show that the taxpayer had limited U.S. contacts, and demonstrate prompt corrective compliance.

Additional Relief Paths

The C.C.A. also highlights two additional penalty relief paths that are easy to miss.

First, if Form 5472 was filed late with a late Form 1120, and the Form 1120 failure-to-file penalty is abated for reasonable cause, the Form 5472 penalty may be abated on the same basis, provided the taxpayer had no similar penalties in the three prior periods.

Second, if the Form 1120 penalty is abated under first-time abatement provisions, the Form 5472 penalty may also be abated under a derivative first-time abatement theory. This is notable because Code §6038A penalties are ordinarily not eligible for first-time abatement. The C.C.A. indicates that derivative relief may be available where the Form 5472 was filed with the late Form 1120 and the relevant prior-penalty conditions are satisfied.

These are not substitutes for compliance. They are penalty relief arguments. But in the right case, they should be included.

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A Parallel Trap: Foreign Gifts and Form 3520

A similar problem appears on the other side of a cross-border relationship. In the Form 5472 setting, the company is a U.S. entity, the owner is foreign, and the taxpayer may assume that the entity is "disregarded" in every practical sense. In the Form 3520 foreign-gift setting, the donee is a U.S. person, the donor is foreign, and the taxpayer may assume that a nontaxable gift does not require a U.S. information return.

That assumption can also be wrong. Form 3520 is not limited to foreign trusts. A U.S. person must also use Form 3520 to report certain large gifts or bequests from foreign persons. In general, gifts or bequests of more than $100,000 from a nonresident alien individual or foreign estate must be reported, with aggregation rules for related donors and intermediaries. Gifts from foreign corporations and foreign partnerships are subject to a lower threshold set out in the annual instructions and raise additional characterization issues.

The penalty regime is different from the Form 5472 penalty regime. For failure to report a foreign gift under Code §6039F, the penalty is generally 5% of the gift for each month the failure continues, up to 25% of the gift, unless the taxpayer establishes reasonable cause. The C.C.A. does not create a Form 3520 standard. There is no small-corporation rule and no regulatory command to apply reasonable cause "liberally" merely because the U.S. recipient is unsophisticated. Still, the practical lesson is similar. The taxpayer should explain the relationship between donor and donee, the nature and timing of the transfer, why the transfer was treated as a gift, why the filing obligation was missed, when the taxpayer learned of the obligation, and how promptly the taxpayer corrected the failure.

This is especially important where the transfer comes from, or through, a foreign corporation, partnership, trust, nominee, or other intermediary. In those cases, the I.R.S. may question whether the transfer was truly a gift or whether it was compensation, a distribution, a loan, or another taxable or reportable transaction. The National Taxpayer Advocate has reported that the I.R.S. ended its practice of automatically assessing penalties at the time of filing for certain late-filed Forms 3520, Part IV, which covers foreign gifts and bequests, and would begin reviewing reasonable cause statements before assessing certain penalties. That does not guarantee relief, but it makes the quality of the submission more important.[1]

The comparison is useful because both rules punish the same kind of mistake. In one case, the taxpayer says: the entity was disregarded, so I did not know Form 5472 was required. In the other, the taxpayer says: the transfer was a nontaxable gift, so I did not know Form 3520 was required. Neither statement is enough by itself. In both cases, the taxpayer must move from conclusion to evidence.

SUMMARY

The Form 5472 obligation for foreign-owned disregarded L.L.C.'s remains one of the most systematically missed compliance requirements in cross-border planning. The entity may be disregarded for income tax purposes, but it is not disregarded for Form 5472 purposes. The reporting obligation is not optional, and international information return enforcement remains an I.R.S. priority.

Foreign persons who have held a U.S. L.L.C. as sole owner at any point since 2017 should review Form 5472 compliance. Where multiple related L.L.C.'s are involved, each entity should be reviewed separately. Where more than one related party is involved, multiple Forms 5472 may be required.

Taxpayers seeking penalty abatement should expressly invoke the small corporation provision where the facts support it. The request should not merely say that the taxpayer was unaware of the filing obligation. It should document the taxpayer's size, lack of knowledge, limited U.S. presence, and prompt corrective compliance. It should be signed under penalties of perjury and supported by the facts.

The same lesson applies beyond Form 5472. A cross-border transaction may be nontaxable, disregarded, personal, or informal, and still carry a U.S. information-reporting obligation. Where the filing is missed, reasonable cause should be developed as a factual submission, not a slogan.

The C.C.A. is not precedent. But it is still welcome guidance. It confirms that relief is not automatic, but it also confirms that the word "liberally" has meaning. For small foreign-owned L.L.C.'s that missed Form 5472 because the owners reasonably believed the entity was disregarded, the C.C.A. provides a practical roadmap for coming into compliance.

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1 See Erin M. Collins, National Taxpayer Advocate, IRS Hears Concerns From TAS and Practitioners, Makes Favorable Changes to Foreign Gifts and Inheritance Filing Penalties, National Taxpayer Advocate Blog, Oct. 24, 2024, last updated Apr. 23, 2025; National Taxpayer Advocate, 2024 Annual Report to Congress, Most Serious Problem #9, Civil Penalty Administration, at 130-31.