

INGENUITY COUNSEL

CROSS BORDER TAX AND UNITED STATES LEGAL SERVICES

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FORM 1065 LATE FILING PENALTIES FOR THE LLC

Filing late is the most common reason for foreign business to pay penalties and interest to the IRS. Usually, this is caused by ignorance of United States tax law or after you learn, were just too busy and forgot. Unfortunately, these penalties can be incredibly severe and the United States Internal Revenue Service (IRS) unforgiving.

Other Forms & Penalties

Typically, penalties for failing to timely file a United States income tax return is based on the amount of tax owed. However, when it comes to information returns or disclosure forms, such as the FBAR reporting United States persons' foreign financial accounts (Form 114) and Forms 8938 (foreign financial assets), 5471 (US persons interest in foreign corporation), 5472 (foreign persons interest in US corporation or disregarded entity), the penalties are some form of flat fee as in \$10,000 per account/year, \$10,000 per failure or in the recent case of Form 5472 increased to \$25,000 per failure. But there's another form, a cross between an income tax return and an information/disclosure form, Form 1065, Partnership Tax Return. Since it resembles an income tax return, many business owners and accountants mistakenly assume that if there is no tax due, then there is no harm in not failing the return by its stated due date or at all. Unfortunately this is not the case.

The LLC Filing Requirement

The Limited Liability Company ("LLC") is the most popular type of legal entity used by businesses in the U.S. Not so much for Canadians doing business in the U.S., but there are many instances where for one reason or another a Canadian investor or business person will use an LLC. When you have more than one member or owner in the LLC, then it is automatically treated as a "partnership" by the IRS. If it's owned by just one person or entity, that is considered a disregarded entity and has other consequences that I wrote about recently. The LLC can also file an election with the IRS to be treated for income tax purposes as a C corporation. The U.S. requires a 1065 Partnership Tax Return to be filed for any LLC that has more than one member or owner, even if you made no money or lost money. The IRS always requires an LLC to file a tax return when it has more than one member or owner.

The Penalties

Failure to file the 1065 Partnership Tax Return means that the IRS will charge a late filing penalty. The late filing penalty for a 1065 Partnership Tax Return is \$195 dollars per partner and month (up to 12 months). The IRS defines a month as "any part of a month." This means that a return that is filed one day

late is considered late for the entire month. Let's say, your LLC has 2 members or owners, and it is 18 months past the original due date for filing Form 1065. In this case, the penalty would be \$4,680! For a moment, presume you have not filed for 6 tax years because your residential rental property business has not made a taxable profit. You would owe the IRS \$28,080! It's scary, but real. Let's not forget about the interest that would be accruing on those penalties as well.

If you have any questions about IRS penalties or doing business in the United States in general, please do not hesitate to contact Michael Kennedy at mk@ingenuitycounsel.com or 519-252-3888.

About Ingenuity Counsel & Michael Kennedy

Ingenuity Counsel, based in Windsor, Ontario, Canada, provides cross border tax & United States legal services to Canadians. Michael Kennedy, with 15 years of legal experience, and his team at Ingenuity Counsel Incorporated, assist companies and entrepreneurs with immigration, business, real estate and tax matters in the U.S. With his expertise, he is able to walk clients through the process of successfully setting up their business in the United States. Additionally, Ingenuity Counsel advises clients that own property in Florida, Michigan, Arizona & California with respect to income tax, estate planning & administration matters. Michael also handles wills & trusts, powers of attorney and probate administrations. Whether you have real property, financial accounts or business assets located in the United States, Michael and his team can help.

Michael is admitted to practice law in California & Michigan and permitted by the Law Society of Upper Canada to provide U.S. legal services in Ontario as a Foreign Legal Consultant. Prior to establishing Ingenuity Counsel in 2012, he practiced law in the United States for more than 10 years in California, Michigan and Florida. Michael has a U.S. law degree (JD) from Western New England University School of Law and his master of laws degree (LLM) from Georgetown University Law Center in Washington DC.

IRS Circular 230 Disclosure

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