GUIDE

Form 5472 for foreign-owned US LLCs, explained

If a foreign person owns a US single-member LLC, the LLC files Form 5472 with a pro forma Form 1120 for every year it has a reportable transaction with its owner, and paying the formation costs counts. It's due April 15 for calendar-year LLCs, it can't be e-filed, and missing it carries a $25,000 penalty.

QUICK FACTS

- **Who.** Foreign-owned US single-member LLCs, and 25% foreign-owned US corporations
- **With.** A pro forma Form 1120
- **Due.** April 15, or October 15 with Form 7004
- **How.** Fax or mail. No e-filing
- **Penalty.** $25,000 per form, per year

Who has to file Form 5472?

Form 5472 is an information return about transactions between a US company and its foreign owners or related parties. Two kinds of companies file it:

- US corporations that are at least 25% foreign-owned
- US single-member LLCs owned by a foreign person, which are disregarded for income tax

The second rule dates from 2017. Before then, a foreign-owned single-member LLC usually had no federal filing at all, which is why so many owners still don't know about it. For this purpose, the IRS treats the LLC as if it were a corporation, and that's why the form goes in with a pro forma Form 1120.

What is a reportable transaction?

Almost any movement of money or value between the LLC and its foreign owner, or someone related to the owner.

General information, not tax advice for your situation.

TRANSACTION	REPORTABLE?
You pay the state filing fee to form the LLC	Yes, as a contribution
You send money into the LLC's bank account	Yes
The LLC pays you, or pays your personal expenses	Yes, as a distribution
You lend money to the LLC, or it lends to you	Yes
The LLC buys from or sells to your other company	Yes
The LLC sells to unrelated US customers	Not on Form 5472, though it may matter for other filings

Because formation fees count, nearly every new foreign-owned LLC files in its first year, even before it earns a dollar.

What goes on the pro forma 1120?

Very little. The LLC's name, address and EIN, with "Foreign-owned U.S. DE" written across the top. You don't report income or calculate tax on it. It's simply the cover that carries Form 5472 to the IRS. Form 5472 itself identifies the LLC, the foreign owner and any related parties, and lists the amounts of each type of reportable transaction.

How and when do I send it?

It can't be e-filed. The pro forma 1120 and Form 5472 go by fax or mail to the specific IRS unit listed in the current Form 5472 instructions. Keep proof that it was sent. The deadline is April 15 for calendar-year LLCs. Filing Form 7004 by April 15 extends it to October 15.

The LLC needs its own EIN before it can file. Foreign owners without an SSN or ITIN apply for the EIN by fax or mail too, which takes longer, so don't leave it until March.

What are the penalties?

- $25,000 for each Form 5472 not filed, filed late or filed incomplete, per year
- Another $25,000 for each 30 days the form stays unfiled more than 90 days after the IRS sends a notice
- The LLC must also keep records that support what it reports

If you've missed years, filing them before the IRS contacts you gives you the best position. Penalty relief is sometimes possible with reasonable cause, but it isn't automatic.

Other US filings to check

- Form 1040-NR, if the LLC runs a business in the US and you owe tax on that income personally
- State annual reports and franchise taxes in the state where the LLC is formed or operates
- Sales tax, if you sell taxable goods or services to US customers above a state's threshold

Filing from outside the US?

ITINs, expat returns, non-resident returns and Form 5472. Book a free 30-minute call at eminenttax.com/contact or call (972) 347-4590.

eminenttax.com

General information, not tax advice for your situation.