

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-134235-08]

RIN 1545-BI28

Furnishing Identifying Number of Tax Return Preparer

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 6109 of the Internal Revenue Code (Code) that provide guidance to tax return preparers on furnishing an identifying number on tax returns and claims for refund of tax that they prepare. These proposed regulations provide guidance on the identifying number of a tax return preparer for tax returns and claims for refund filed before and after the proposed effective date. The proposed regulations describe how the IRS will define the identifying number of tax return preparers. Additional provisions of the proposed regulations provide that tax return preparers must apply for and regularly renew their preparer identifying number as the IRS may prescribe in forms, instructions, or other guidance. This document also invites comments from the public regarding these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by [INSERT DATE 30 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER].

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-134235-08), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-134235-08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS - REG-134235-08).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Stuart Murray at (202) 622-4940 (not a toll-free number); concerning submissions of comments and requests for a hearing, Richard Hurst at richard.a.hurst@irsounsel.treas.gov.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs,

Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by **[INSERT DATE 30 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs of operation, maintenance, and purchase of service to provide information.

The collection of information in these proposed regulations is in §1.6109-2(d) and (e). This information is required in order for the IRS to issue identifying numbers to tax return preparers who are eligible to receive them. Tax return

preparers will need to apply for an identifying number as prescribed in forms, instructions, or other guidance. The use of a prescribed identifying number by tax return preparers on tax returns and claims for refund of tax will enable the IRS to accurately identify tax return preparers, to match tax return preparers to tax returns and claims for refund that they prepare, and to generally administer the internal revenue laws. The collection of information is mandatory. The likely respondents are tax return preparers and employers of tax return preparers.

Estimated total annual reporting burden: 300,000 hours.

Estimated average annual burden hours (or fraction of an hour) per respondent: varies from 10 to 20 minutes, with an estimated average of 15 minutes.

Estimated number of respondents: 1.2 million.

Estimated annual frequency of responses: once every three years.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally,

tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to regulations under section 6109 of the Code relating to furnishing a tax return preparer's identifying number on tax returns and claims for refund of tax. Section 6109 was added to the Code in 1961 (Public Law 87-397, 75 Stat. 828) and authorizes the Secretary to prescribe regulations for the inclusion of identifying numbers on a return, statement, or other document required to be filed with the IRS. In addition, section 6109(c) authorizes the Secretary "to require such information as may be necessary to assign an identifying number to any person." Section 6109(a)(4) as originally enacted by section 1203(d) of the Tax Reform Act of 1976 (Public Law 94-455, 90 Stat. 1520) required return preparers to furnish on income tax returns and claims for refund of income tax an identifying number, as prescribed, to identify the preparer, the preparer's employer, or both. Section 8246(a)(2)(D)(i) of the Small Business and Work Opportunity Tax Act of 2007 (Public Law 110-28, 121 Stat. 112), amended section 6109(a)(4) to allow the IRS to prescribe that tax return preparers furnish identifying numbers on any tax returns or claims for refund they prepare. As currently prescribed in regulations, the identifying number of a tax return preparer who

is an individual is the preparer's social security number (SSN) or alternative number as prescribed by the IRS. The proposed regulations provide that the identifying number of a tax return preparer is exclusively the number prescribed by the IRS. The proposed regulations will implement some of the recommendations made in Publication 4832, Return Preparer Review (Rev. 12-2009), published at the end of last year (the Report). The IRS and the Treasury Department believe that the implementation of the Report's recommendations, including the recommendations implemented by these regulations, will increase tax compliance and allow taxpayers to be confident that the tax return preparers to whom they turn for assistance are knowledgeable, skilled, and ethical.

1. Identifying Numbers Generally

Because an identifying number is unique to the person to whom assigned, the IRS is able to use the number to correctly identify the taxpayer or the tax return preparer. The use of identifying numbers allows the IRS to accurately and timely process returns and issue refunds, centralize information, post information to the correct taxpayer's account, and effectively administer the rules relating to tax return preparers.

2. Requiring Identifying Numbers from Tax Return Preparers

Tax return preparers generally must provide an identifying number on the tax returns they prepare and sign. Specifically,

under §1.6695-1(b), a signing tax return preparer, as defined under §301.7701-15(b)(1), must sign a return of tax or claim for refund after it is completed and before it is presented to the taxpayer for signature. A signing tax return preparer under §301.7701-15(b)(1) is a tax return preparer who has primary responsibility for the overall substantive accuracy of the preparation of a return of tax or claim for refund.

Under §1.6109-2(a)(1), a tax return preparer who must sign a tax return or tax refund claim must also include an identifying number with the preparer's signature. A return of tax includes an information return described in §301.7701-15(b)(4). If a signing tax return preparer has an employment arrangement or association with another person, then that other person's employer identification number (EIN) must also be included on the tax return or refund claim.

The identifying number of a signing tax return preparer, and the identifying number of any person with whom the preparer has an employment arrangement or association, must be included on electronically filed tax returns, as well as paper returns. Further, because of recent statutory changes, tax return preparers who prepare and file individual income tax returns (Form Series 1040) for their clients will soon be required to electronically file the returns, unless the tax return preparer reasonably expects to file only 10 or fewer individual income

tax returns for the calendar year. See Section 17 of the Worker, Homeownership, and Business Assistance Act of 2009, Public Law 111-92, 123 Stat. 2984, 2997 (adding Code section 6011(e)(3)).

Tax return preparers who are required but fail to include their identifying number on a tax return or refund claim, or fail to include the identifying number of any person with whom they have an employment arrangement or association, are subject to a penalty under section 6695(c). A tax return preparer is not liable for the penalty if the failure to include an identifying number is due to reasonable cause and not due to willful neglect.

3. Preparer Tax Identification Numbers

Section 6109(a) initially provided that the identifying number of a tax return preparer was the individual's SSN. Section 3710(a) of the IRS Restructuring and Reform Act of 1998 (Public Law 105-206, 112 Stat. 685) (RRA '98), allowed the IRS to prescribe an identifying number for tax return preparers other than the preparer's SSN. In response to section 3710(a) of RRA '98, the IRS developed and began to issue preparer tax identification numbers (PTINs). Tax return preparers currently may apply online for a PTIN using the e-services PTIN process on the IRS website at www.irs.gov or by filing Form W-7P, "Application for Preparer Tax Identification Number." Applying

online is faster, and return preparers are encouraged to apply online. In the future, the IRS will prescribe the method to apply for a PTIN consistent with these proposed regulations. Currently, under §1.6109-2(a)(2), a tax return preparer may use as an identifying number on a tax return or claim for refund either the preparer's SSN or an "alternative number" prescribed by the IRS, including a PTIN. But an EIN, an Electronic Filing Identification Number (EFIN) (which is an identification number assigned to IRS e-file providers), or an Electronic Transmitter Identification Number (ETIN) (which is an identification number assigned to IRS e-file providers who electronically transmit tax returns to the IRS) is not a valid preparer identifying number.

4. Regulation of Tax Return Preparers

In June 2009, the IRS initiated a comprehensive review of tax return preparers, and in December 2009 the IRS published the Report describing its findings from that review. The Report recommended, in part, that tax return preparers be required to obtain and use a PTIN as the exclusive preparer identifying number and undergo a tax-compliance check. As discussed below, the proposed regulations implement those recommendations.

Under current law, any individual may prepare a tax return or claim for refund. The Report recommended that the IRS establish new eligibility standards that an individual must meet in order to prepare tax returns -- including testing, continuing

education, and tax compliance checks. The Report contemplates that only attorneys, certified public accountants, enrolled agents, as well as tax return preparers who pass a minimum competency exam and meet other requirements (referred to as "registered tax return preparers") will be eligible to prepare and sign tax returns and claims for refund. These proposed regulations do not establish the requirements to become a registered tax return preparer, which primarily will be set forth in future guidance under Treasury Department Circular No. 230, 31 CFR Part 10. After a transition period, however, it is intended that only individuals who satisfy the eligibility standards may obtain and use a PTIN as a tax return preparer.

Explanation of Provisions

1. Requiring the Use of PTINs

The proposed regulations provide that for tax returns or refund claims filed after December 31, 2010, the identifying number that a tax return preparer must include with the preparer's signature on tax returns and refund claims is that prescribed by the IRS in forms, instructions, or other guidance. Tax return preparers will not be able to use an SSN as a preparer identifying number unless specifically prescribed by the IRS in forms, instructions, or other guidance. Instead, to the extent provided in forms and instructions, a tax return preparer will be required to use a PTIN as the identifying

number unless the IRS prescribes in the future a replacement to the PTIN. Forms and instructions will be revised accordingly. The use of PTINs as the identifying number for tax return preparers will improve tax administration and tax compliance, benefit taxpayers and tax return preparers, and help maintain the confidentiality of SSNs.

For tax returns or claims for refund filed before January 1, 2011, the identifying number of a tax return preparer will remain the preparer's SSN or PTIN. In the case of tax returns for taxable periods ending before January 1, 2011, and made on the appropriate forms prescribed for the taxable periods, but which are filed on or after January 1, 2011, tax return preparers must furnish on the returns the identifying number prescribed on the forms to be filed and in associated instructions.

For tax return preparation businesses and other persons having an employment arrangement or association with a tax return preparer, the business's or employer's EIN continues to be the identifying number that must be included on tax returns and refund claims along with the tax return preparer's signature and preparer identifying number. An individual tax return preparer, however, may not use an EIN as a preparer identifying number on a return, even if the preparer has an EIN (for example, as a sole proprietor). Tax return preparers who use

their SSN, or an EIN, EFIN, or ETIN, instead of a valid PTIN, on tax returns or claims for refund filed after the effective date may be subject to the penalty under section 6695(c) unless the failure to include a valid PTIN is due to reasonable cause and not due to willful neglect.

2. Eligibility to Receive a PTIN

The proposed regulations provide that all tax return preparers must apply for a PTIN or other prescribed identifying number at the time and in the manner as may be prescribed by the IRS in forms, instructions, or other appropriate guidance. The proposed regulations also authorize the IRS to prescribe a user fee in connection with applying for, and renewing, a PTIN (or successor number similar to a PTIN). Except as provided in any transitional period, beginning after December 31, 2010, to obtain a PTIN, an individual must be an attorney, certified public accountant, enrolled agent, or registered tax return preparer under future guidance to be provided in Circular 230.

Only for purposes of applying for and renewing a PTIN or other prescribed preparer identifying number, the term tax return preparer means any individual who is compensated for preparing, or assisting in the preparation of, all or substantially all, of a tax return or claim for refund of tax. A tax return preparer does not include an individual who is not otherwise a tax return preparer as that term is defined in

§301.7701-15(b)(2), or who is an individual described in §301.7701-15(f). The proposed regulations provide several examples illustrating who is a tax return preparer required to apply for a PTIN.

As part of the process of applying for a PTIN, a tax return preparer may be subject to both an initial tax-compliance check and subsequent periodic checks, which could include a review of a preparer's history of compliance with personal and business tax filing and payment obligations. The tax-compliance check is intended to establish whether a tax return preparer has timely filed required personal and business tax returns and has paid taxes that are due or made other acceptable arrangements with the IRS, such as an approved installment agreement under section 6159. If a tax return preparer disregards any applicable requirements to obtain a prescribed identifying number and thereafter omits, when required to include, a valid identifying number on a tax return or claim for refund filed after the effective date, the preparer may be liable for the section 6695(c) penalty, unless the failure to include a valid identifying number was due to reasonable cause and not due to willful neglect.

The information a tax return preparer provides when the preparer initially applies for a PTIN or other prescribed identifying number will often become outdated or otherwise

inaccurate. The IRS may require tax return preparers to regularly renew their identifying numbers and otherwise maintain updated information with the IRS. If a tax return preparer who is required to include an identifying number on a tax return or claim for refund filed after the effective date uses an expired identifying number, the tax return preparer may be liable for the section 6695(c) penalty, unless the use of the expired number was due to reasonable cause and not due to willful neglect.

The proposed regulations provide that if necessary for effective tax administration, the IRS may prescribe exceptions to any of the requirements, such as for an interim period while procedures are being implemented. For example, the IRS and the Treasury Department recognize that the procedures for becoming a registered tax return preparer may not be fully implemented when these regulations become effective. It is anticipated that transitional interim guidance will be provided to allow individuals who intend to become registered tax return preparers to obtain an interim PTIN or other interim identifying number that may be used as a preparer identifying number on tax returns and refund claims until the procedures are fully implemented. After the interim period, however, to obtain a PTIN, an individual will need to be an attorney, certified public

accountant, enrolled agent, or registered tax return preparer authorized to practice before the IRS under Circular 230.

Proposed Effective/Applicability Date

These regulations are effective after the date that final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It has been determined that an initial regulatory flexibility analysis under 5 U.S.C. 603 is required for this notice of proposed rulemaking. The analysis is set forth below under the heading, "Initial Regulatory Flexibility Analysis."

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Initial Regulatory Flexibility Analysis

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (5 U.S.C. chapter 6) requires the agency to "prepare and make available for public comment an initial

regulatory flexibility analysis" that "describe[s] the impact of the proposed rule on small entities." 5 U.S.C. 603(a). Section 605 of the Act provides an exception to this requirement if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. A small entity is defined as a small business, small nonprofit organization, or small governmental jurisdiction. 5 U.S.C. 601(3)-(6). The IRS and the Treasury Department conclude that the proposed regulations, if promulgated (together with other contemplated guidance provided for in these regulations), will impact a substantial number of small entities and the economic impact will be significant. As a result, an initial regulatory flexibility analysis is required.

Description of the reasons why the agency action is being considered.

Taxpayers' reliance on paid tax return preparers has grown steadily in recent decades. Today, paid tax return preparers assist a majority of U.S. taxpayers in meeting their income tax filing obligations. Beyond preparing tax returns, tax return preparers also help educate taxpayers about the tax laws, and facilitate electronic filing. Tax return preparers provide advice to taxpayers, identify items or issues for which the law or guidance is unclear, and inform taxpayers of the benefits and risks of positions taken on a tax return, and the tax treatment

or reporting of items and transactions. Competent tax return preparers who are well educated in the rules and subject matter of their field can prevent costly errors, potentially saving a taxpayer from unwanted problems later on and relieving the IRS from expending valuable examination and collection resources.

Given the important role that tax return preparers play in Federal tax administration, the IRS has a significant interest in being able to accurately identify tax return preparers and monitor their tax return preparation activities. The proposed regulations are intended to advance tax administration by requiring all individuals who are paid to prepare all or substantially all of a tax return or claim for refund of tax to obtain a preparer identifying number prescribed by the IRS. Pursuant to the proposed regulations, the IRS will require individuals who sign tax returns or claims for refund to report the preparer's identifying number on a tax return or claim for refund when the return or refund claim is signed. The proposed regulations also provide that the IRS may require tax return preparers to apply for, and regularly renew, their identifying numbers. Under the proposed regulations, the IRS may prescribe a user fee payable when applying for a number and for renewal.

Further, the IRS and the Treasury Department conclude that taxpayers, tax return preparers, and overall tax administration will be best served through increased oversight of the tax

return preparer industry. Mandating a single prescribed identifying number for all tax return preparers and assigning a prescribed number to registered tax return preparers is critical to effective oversight.

Statement of the objectives of, and the legal basis for, the proposed rule.

The principal objective of the proposed regulations is to enable the IRS to more accurately identify tax return preparers and the tax returns and refund claims associated with each tax return preparer. The proposed regulations do this by providing that the IRS may prescribe the use of identifying numbers for tax return preparers and the qualifications or other requirements necessary to obtain a valid number. The legal basis for these provisions is section 6109 of the Code, which authorizes the Secretary to prescribe the "identifying number for securing proper identification of" a tax return preparer and "to require such information as may be necessary to assign an identifying number to any person."

Description and estimate (where feasible) of the number of small entities subject to the proposed rule.

The proposed regulations apply to individuals who prepare tax returns and claims for refund of tax. The estimated number of paid tax return preparers is as high as 1.2 million, which means the proposed regulations are likely to impact a large number of individuals. Most paid tax return preparers are

employed by firms. A substantial number of paid tax return preparers are employed at small tax return preparation firms or are self-employed tax return preparers. Any economic impact of these regulations on small entities generally will be on self-employed tax return preparers who prepare and sign tax returns or on small businesses that employ one or more individuals who sign tax returns.

The appropriate NAICS codes for tax return preparers are those for tax return preparation services (NAICS code 541213) and other accounting services (NAICS code 541219). Entities identified under either of these two codes are considered small under the Small Business Administration's size standards (13 CFR 121.201), if their annual revenue is less than \$7 million or \$8.5 million, respectively. The IRS estimates that approximately 70 to 80 percent of the individuals subject to these proposed regulations are tax return preparers operating as or employed by small entities.

Description of the projected reporting, recordkeeping, and related requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirements and the type of professional skills necessary for preparation of the report or record.

The proposed regulations do not directly impose any reporting, recordkeeping, or similar requirements on any small entities. Rather, the proposed regulations provide that the IRS

may prescribe in forms, instructions, or other guidance (including regulations) requirements for identifying numbers for tax return preparers, regular renewal of identifying numbers, and payment of a user fee when applying for or renewing an identifying number. In addition, other guidance may require certain tax return preparers to complete competency testing, complete continuing education courses, and adhere to established rules of practice governing attorneys, certified public accountants, enrolled agents, enrolled actuaries, and enrolled retirement plan agents.

Applying for an identifying number and subsequent renewal will require reporting of certain information, but are not expected to require recordkeeping. These activities also will not require the purchase or use of any special business equipment or software. To the extent it will be necessary to apply for a PTIN (or similar identifying number that replaces a PTIN) online at www.irs.gov, most if not all tax return preparation businesses have computers and Internet access. The IRS estimates that applying for a PTIN will take 10 to 20 minutes per individual, with an average of 15 minutes per individual.

Under other guidance that the IRS may issue, tax return preparers who apply to be registered tax return preparers and who regularly renew their status may be subject to recordkeeping

requirements because they may be required to maintain specified records, such as documentation and educational materials relating to completion of continuing education courses. These requirements do not involve any specific professional skills other than general recordkeeping abilities already needed to own and operate a small business or to competently act as a tax return preparer. It is estimated that tax return preparers will annually spend approximately 30 minutes to 1 hour in maintaining records relating to the continuing education requirements, depending on individual circumstances.

A separate regulation addressing reasonable user fees will be proposed in the near future. Tax return preparers may be required to pay a user fee when first applying for a PTIN and at every renewal. Small entities may be affected by these costs if the entities choose to pay some or all of these fees for their employees.

Under regulations to be issued in the future, tax return preparers may also incur costs for commercial continuing education courses and minimum competency examinations, plus incidental costs, such as for travel and accommodations in order to maintain their status as registered tax return preparers under Circular 230. Course prices can vary greatly, from free to hundreds of dollars. Many small tax return preparation firms may choose, as with the user fee, to bear these costs for their

employees. In some cases, small entities may lose sales and profits while their employed tax return preparers attend training or educational classes or are studying and sitting for examinations. Some small entities that employ tax return preparers may even need to alter their business operations if a significant number of their employees cannot satisfy the necessary registration and competency requirements. The IRS and the Treasury Department conclude, however, that only a small percentage of small entities, if any, may need to cease doing business or radically change their business model due to the proposed regulations.

Although each of the reporting and recordkeeping requirements and the costs identified above (in connection with the proposed regulations and the other anticipated guidance necessary to implement the Return Preparer Review) is not expected to singly result in a significant economic impact, taken together it is anticipated that they may have a significant economic impact on a substantial number of small entities.

Identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

The proposed regulations do not duplicate, overlap, or conflict with any Federal statutes or other rules.

Description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and minimize any significant economic impact on small entities.

The IRS and the Treasury Department have determined that there are no viable alternatives to the proposed regulations that would enable the IRS to accurately identify tax return preparers, other than through the use of a prescribed identifying number, as provided in the proposed regulations.

More broadly, the IRS received a large volume of comments as part of the Return Preparer Review on the issue of increased oversight of tax return preparers generally and on the Report's proposed recommendations, including requiring tax return preparers to use a uniform prescribed identifying number. The comments were received from all categories of interested stakeholders, including tax professional groups representing large and small entities, IRS advisory groups, tax return preparers, and the public. The input received from this large and diverse community overwhelmingly expressed support for the proposed requirements.

As to the proposed requirements recommended in the Report, the IRS and the Treasury Department considered various alternatives in determining the best ways to effectuate proposed changes with respect to tax return preparers, including:

(1) Requiring all paid tax return preparers to comply with the ethical standards in Circular 230 or an ethics code similar to Circular 230, but not requiring any paid preparers to demonstrate their qualification and competency;

(2) Requiring tax return preparers who are not currently authorized to practice before the IRS to register with the IRS, complete annual continuing education requirements, and meet certain ethical standards, but not to pass a minimum competency examination;

(3) Requiring all paid tax return preparers to pass a minimum competency examination and meet other registration requirements; and

(4) Requiring all paid tax return preparers who are not currently authorized to practice before the IRS to pass a minimum competency examination and meet other registration requirements, but "grandfather in" tax return preparers who have accurately and competently prepared tax returns for a certain period of years.

After consideration of these and other alternatives and the responses received in the public comment process, the IRS and the Treasury Department conclude that the provisions of the proposed regulations will most effectively promote sound tax administration. The provisions in the proposed regulations for a single prescribed identifying number for tax return preparers

will enable the IRS to accurately identify tax return preparers, match preparers with the tax returns and claims for refund they prepare, and better administer the tax laws with respect to tax return preparers and their clients. The provisions, in combination with anticipated guidance described above, also will ensure that qualified, competent, and ethical tax return preparers will be assigned prescribed preparer identifying numbers. The testing requirements that may be set forth in other guidance will establish a benchmark of minimum competency necessary for tax return preparers to obtain their professional credentials, while the continuing education requirements are intended to ensure that tax return preparers remain current on the Federal tax laws and continue to develop their tax knowledge. The extension in other, prospective guidance of the rules in Circular 230 to any paid tax return preparer will require all practitioners to meet certain ethical standards and allow the IRS to suspend or otherwise appropriately discipline tax return preparers who engage in unethical or disreputable conduct. Accordingly, the implementation of qualification and competency standards is expected to increase tax compliance and allow taxpayers to be confident that the tax return preparers to whom they turn for assistance are knowledgeable, skilled, and ethical.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments that are submitted by the public will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Stuart Murray of the Office of the Associate Chief Counsel, Procedure and Administration.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6109-2 also issued under 26 U.S.C. 6109(a) * * *

Par. 2. Section 1.6109-2 is amended by revising the section heading, revising paragraphs (a)(2) and (d), and adding paragraphs (e), (f), (g), (h), and (i) to read as follows:

§1.6109-2 Tax return preparers furnishing identifying numbers for returns or claims for refund and related requirements.

(a) * * *

(2)(i) For tax returns or claims for refund filed on or before December 31, 2010, the identifying number of an individual tax return preparer is that individual's social security number or such alternative number as may be prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

(ii) For tax returns or claims for refund filed after December 31, 2010, the identifying number of a tax return preparer is the individual's preparer tax identification number or such other number prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

* * * * *

(d) Beginning after December 31, 2010, all tax return preparers must have a preparer tax identification number or other prescribed identifying number that was applied for and received at the time and in the manner, including the payment of a user fee, as may be prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance. Except as provided in paragraph (h) of this section, beginning after December 31, 2010, to obtain a preparer tax identification number or other prescribed identifying number, a tax return preparer must be an attorney, certified public accountant, enrolled agent, or registered tax return preparer authorized to practice before the Internal Revenue Service under 31 U.S.C. 330 and the regulations thereunder.

(e) The Internal Revenue Service may designate an expiration date for any preparer tax identification number or other prescribed identifying number and may further prescribe the time and manner for renewing a preparer tax identification number or other prescribed identifying number, including the

payment of a user fee, as set forth in forms, instructions, or other appropriate guidance. The Internal Revenue Service may provide that any identifying number issued by the Internal Revenue Service prior to the effective date of this regulation will expire on December 31, 2010, unless properly renewed as set forth in forms, instructions, or other appropriate guidance, including these regulations.

(f) As may be prescribed in forms, instructions, or other appropriate guidance, the IRS may conduct a tax compliance check on a tax return preparer who applies for or renews a preparer tax identification number or other prescribed identifying number.

(g) Only for purposes of paragraphs (d), (e), and (f) of this section, the term tax return preparer means any individual who is compensated for preparing, or assisting in the preparation of, all or substantially all of a tax return or claim for refund of tax. Factors to consider in determining whether an individual is a tax return preparer under this paragraph (g) include, but are not limited to, the complexity of the work performed by the individual relative to the overall complexity of the tax return or claim for refund of tax; the amount of the items of income, deductions, or losses attributable to the work performed by the individual relative to the total amount of income, deductions, or losses required to be

correctly reported on the tax return or claim for refund of tax; and the amount of tax or credit attributable to the work performed by the individual relative to the total tax liability required to be correctly reported on the tax return or claim for refund of tax. A tax return preparer does not include an individual who is not otherwise a tax return preparer as that term is defined in §301.7701-15(b)(2), or who is an individual described in §301.7701-15(f). The provisions of this paragraph (g) are illustrated by the following examples:

Example 1. Employee A, an individual employed by Tax Return Preparer B, assists Tax Return Preparer B in answering telephone calls, making copies, inputting client tax information gathered by B into the data fields of tax preparation software on a computer, and using the computer to file electronic returns of tax prepared by B. Although Employee A must exercise judgment regarding which data fields in the tax preparation software to use, A does not exercise any discretion or independent judgment as to the clients' underlying tax positions. Employee A, therefore, merely provides clerical assistance or incidental services and is not a tax return preparer required to apply for a PTIN or other identifying number as the Internal Revenue Service may prescribe in forms, instructions, or other appropriate guidance.

Example 2. The facts are the same as in Example 1, except that Employee A also interviews B's clients and obtains from them information needed for the preparation of tax returns. Employee A determines the amount and character of entries on the returns and whether the information provided is sufficient for purposes of preparing the returns. For at least some of B's clients, A obtains information and makes determinations that constitute all or substantially all of the tax return. Employee A is a tax return preparer required to apply for a PTIN or other identifying number as the Internal Revenue Service may prescribe in forms, instructions, or other appropriate guidance. Employee A is a tax return preparer even if Employee A relies on tax preparation software to prepare the return.

Example 3. C is an employee of a firm that prepares tax returns and claims for refund of tax for compensation. C is responsible for preparing a Form 1040, "U.S. Individual Income Tax Return," for a client. C obtains the information necessary for completing the return during a meeting with the client, and makes determinations with respect to the proper application of the tax laws to the information in order to determine the client's tax liability. C completes the tax return and sends the completed return to employee D, who reviews the return for accuracy before signing it. Both C and D are tax return preparers required to apply for a PTIN or other identifying number as the Internal Revenue Service may prescribe in forms, instructions, or other appropriate guidance.

Example 4. E is an employee at a firm which prepares tax returns and claims for refund of tax for compensation. The firm is engaged by a corporation to prepare its Federal income tax return on Form 1120, "U.S. Corporation Income Tax Return." Among the documentation that the corporation provides to E in connection with the preparation of the tax return is documentation relating to the corporation's potential eligibility to claim a recently enacted tax credit for the taxable year. In preparing the return, and specifically for purposes of the new tax credit, E (with the corporation's consent) obtains advice from F, a subject matter expert on this and similar credits. F advises E as to the corporation's entitlement to the credit and provides his calculation of the amount of the credit. Based on this advice from F, E prepares the corporation's Form 1120 claiming the tax credit in the amount recommended by F. The additional credit is one of many tax credits and deductions claimed on the tax return, and determining the credit amount does not constitute preparation of all or substantially all of the corporation's tax return under this paragraph (g). F will not be considered to have prepared all or substantially all of the corporation's tax return, and F is not a tax return preparer required to apply for a PTIN or other identifying number as the

Internal Revenue Service may prescribe in forms, instructions, or other appropriate guidance. The analysis is the same whether or not the tax credit is a substantial portion of the return under §301.7701-15 of this chapter, and whether or not F is in the same firm with E. E is a tax return preparer required to apply for a PTIN or other identifying number as the Internal Revenue Service may prescribe in forms, instructions, or other appropriate guidance.

(h) The Internal Revenue Service, through forms, instructions, or other appropriate guidance, may prescribe exceptions to the requirements of this section, including the requirement that an individual be authorized to practice before the Internal Revenue Service before receiving a preparer tax identification number or other prescribed identifying number, as necessary in the interest of effective tax administration.

(i) Effective/applicability date. Paragraph (a)(2) of this section is effective for returns and claims for refund filed after the date that final regulations are published in the **Federal Register**. Paragraphs (d) through (h) of this section are effective after the date that final regulations are published in the **Federal Register**.

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