

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[TD 8839]

RIN 1545-AV08

IRS Adoption Taxpayer Identification Numbers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 6109 relating to taxpayer identifying numbers. The final regulations provide rules for obtaining IRS adoption taxpayer identification numbers (ATINs), which are used to identify children placed for adoption. The regulations assist prospective adoptive parents in claiming tax benefits with respect to these children.

DATES: Effective Date: These regulations are effective September 22, 1999.

Dates of Applicability: For dates of applicability of these regulations, see §§301.6109-1(h)(2)(iii) and 301.6109-3(d).

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman, (202) 622-4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545-1564. Responses to this collection of information are required to obtain ATINs, which are used by prospective adoptive parents to claim tax benefits with respect to children placed for adoption.

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.

The collection of information in this final regulation is contained in §301.6109-3(c)(2). The information collection requirements of that section are satisfied by including the required information on Form W-7A or such other form as may be prescribed by the IRS to apply for an adoption taxpayer identification number (ATIN). The burden for this requirement is reflected in the burden estimated for the form. The current burden estimated for Form W-7A is 40 minutes per form.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and 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.

Books or records relating to this 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 final Regulations on Procedure and Administration (26 CFR Part 301) relating to identifying numbers under section 6109.

On November 24, 1997, final and temporary regulations (TD 8739) were published in the **Federal Register** (62 FR 62518). A notice of proposed rulemaking (REG-103330-97) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (62 FR 62538).

Written comments responding to these notices were received and a public hearing was held on March 4, 1998. After consideration of all the comments, the proposed regulations under section 6109 are adopted with minor changes by this Treasury decision, and the corresponding temporary regulations are removed. The comments and revisions are discussed below.

Explanation of Revisions and Summary of Comments

Comments were received concerning the requirement that, in order for an ATIN to be assigned, the child must be placed for adoption by an authorized placement agency as defined in §1.152-2(c)(2) of the regulations. The commentators expressed concern

that because of this requirement ATINs are not available in the case of independent adoptions as defined by state law. In general, independent adoptions take two forms. In one type the biological parent(s) places the child with the adoptive parents with the assistance of an attorney or other intermediary. In other independent adoptions, no such intermediary is necessary because the adoptive parents and the biological parent(s) know one another.

The IRS and Treasury Department believe that, under section 1.152-2(c), authorized placement agency is not limited to governmental and private organizations authorized by state law to place children for legal adoption, but also includes biological parents and other persons authorized by state law to place children for legal adoption. To address commentators' concerns regarding independent adoptions, the IRS and Treasury Department intend to amend section 1.152-2(c) to clarify that this is the meaning of authorized placement agency. Accordingly, the final ATIN regulations continue to provide that authorized placement agency has the same meaning as in section 1.152-2(c) of the regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Only individuals may receive ATINs under this Treasury decision.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that preceded these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Beverly A. Baughman of the Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

PART 301--PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by:

1. Removing the entries for sections 301.6109-1T and 301.6109-3T; and

2. Adding an entry in numerical order to read in part as follows:

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

Section 301.6109-3 also issued under 26 U.S.C. 6109; * * *

Par. 2 Section 301.6109-1 is amended by:

1. Revising paragraph (a)(1)(i).
2. Revising the introductory text of paragraph (a)(1)(ii).
3. Revising paragraph (a)(1)(ii)(A).
4. Revising paragraph (a)(1)(ii)(B).
5. Revising paragraph (h)(2)(iii).

The revisions read as follows:

§301.6109-1 Identifying numbers.

(a) In general--(1) Taxpayer identifying numbers--(i) Principal types. There are several types of taxpayer identifying numbers that include the following: social security numbers, Internal Revenue Service (IRS) individual taxpayer identification numbers, IRS adoption taxpayer identification numbers, and employer identification numbers. Social security numbers take the form 000-00-0000. IRS individual taxpayer identification numbers and IRS adoption taxpayer identification numbers also take the form 000-00-0000 but include a specific number or numbers designated by the IRS. Employer identification numbers take the form 00-0000000.

(ii) Uses. Social security numbers, IRS individual taxpayer identification numbers, and IRS adoption taxpayer identification numbers are used to identify individual persons. Employer identification numbers are used to identify employers. For the definition of social security number and employer identification number, see §§301.7701-11 and 301.7701-12, respectively. For the definition of IRS individual taxpayer identification number, see paragraph (d)(3) of this section. For the definition of IRS adoption taxpayer identification number, see §301.6109-3(a). Except as otherwise provided in applicable regulations under this chapter or on a return, statement, or other document, and related instructions, taxpayer identifying numbers must be used as follows:

(A) Except as otherwise provided in paragraph (a)(1)(ii)(B) and (D) of this section, and §301.6109-3, an individual required

to furnish a taxpayer identifying number must use a social security number.

(B) Except as otherwise provided in paragraph (a)(1)(ii)(D) of this section and §301.6109-3, an individual required to furnish a taxpayer identifying number but who is not eligible to obtain a social security number must use an IRS individual taxpayer identification number.

* * * * *

(h) * * *

(2) * * *

(iii) Paragraphs (a)(1)(i), (a)(1)(ii) introductory text, (a)(1)(ii)(A), and (a)(1)(ii)(B) of this section apply to income tax returns due (without regard to extensions) on or after April 15, 1998.

§301.6109-1T [Removed]

Par. 3. Section 301.6109-1T is removed.

Par. 4. Section 301.6109-3 is added to read as follows:

§301.6109-3 IRS adoption taxpayer identification numbers.

(a) In general--(1) Definition. An IRS adoption taxpayer identification number (ATIN) is a temporary taxpayer identifying number assigned by the Internal Revenue Service (IRS) to a child (other than an alien individual as defined in §301.6109-1(d)(3)(i)) who has been placed, by an authorized placement agency, in the household of a prospective adoptive parent for legal adoption. An ATIN is assigned to the child upon application for use in connection with filing requirements under

the Internal Revenue Code and the regulations thereunder. When an adoption becomes final, the adoptive parent must apply for a social security number for the child. After the social security number is assigned, that number, rather than the ATIN, must be used as the child's taxpayer identification number on all returns, statements, or other documents required under the Internal Revenue Code and the regulations thereunder.

(2) Expiration and extension. An ATIN automatically expires two years after the number is assigned. However, upon request, the IRS may grant an extension if the IRS determines the extension is warranted.

(b) Definitions. For purposes of this section--

(1) Authorized placement agency has the same meaning as in §1.152-2(c) of this chapter;

(2) Prospective adoptive child or child means a child who has not been adopted, but who has been placed in the household of a prospective adoptive parent for legal adoption by an authorized placement agency; and

(3) Prospective adoptive parent or parent means an individual in whose household a prospective adoptive child is placed by an authorized placement agency for legal adoption.

(c) General rule for obtaining a number--(1) Who may apply. A prospective adoptive parent may apply for an ATIN for a child if--

(i) The prospective adoptive parent is eligible to claim a personal exemption under section 151 with respect to the child;

(ii) An authorized placement agency places the child with the prospective adoptive parent for legal adoption;

(iii) The Social Security Administration will not process an application for an SSN by the prospective adoptive parent on behalf of the child (for example, because the adoption is not final); and

(iv) The prospective adoptive parent has used all reasonable means to obtain the child's assigned social security number, if any, but has been unsuccessful in obtaining this number (for example, because the biological parent who obtained the number is not legally required to disclose the number to the prospective adoptive parent).

(2) Procedure for obtaining an ATIN. If the requirements of paragraph (c)(1) of this section are satisfied, the prospective adoptive parent may apply for an ATIN for a child on Form W-7A, Application for Taxpayer Identification Number for Pending Adoptions (or such other form as may be prescribed by the IRS). An application for an ATIN should be made far enough in advance of the first intended use of the ATIN to permit issuance of the ATIN in time for such use. An application for an ATIN must include the information required by the form and accompanying instructions, including the name and address of each prospective adoptive parent and the child's name and date of birth. In addition, the application must include such documentary evidence as the IRS may prescribe to establish that a child was placed in the prospective adoptive parent's household by an authorized

placement agency for legal adoption. Examples of acceptable documentary evidence establishing placement for legal adoption by an authorized placement agency may include--

(i) A copy of a placement agreement entered into between the prospective adoptive parent and an authorized placement agency;

(ii) An affidavit or letter signed by the adoption attorney or government official who placed the child for legal adoption pursuant to state law;

(iii) A document authorizing the release of a newborn child from a hospital to a prospective adoptive parent for adoption; and

(iv) A court document ordering or approving the placement of a child for adoption.

(d) Effective date. The provisions of this section apply to income tax returns due (without regard to extension) on or after April 15, 1998.

§301.6109-3T [Removed]

Par. 5. Section 301.6109-3T is removed.

PART 602--OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. In §602.101, paragraph (b) is amended by removing the entry for 301.6109-3T from the table and adding an entry in numerical order to the table to read as follows:

§602.101 OMB Control numbers.

* * * * *

(b)* * *

CFR part or section where

Current OMB

identified and described control No.

* * * * *

301.6109-3 1545-1564

* * * * *

Robert E. Wenzel
Deputy Commissioner of Internal Revenue

Approved: June 17, 1999

Donald C. Lubick
Assistant Secretary of the Treasury