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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9014]

RIN 1545-AX27

Furnishing Identifying Number of Income Tax Return Preparer

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that allow income tax return preparers to elect an alternative to their social security number for purposes of identifying themselves on returns they prepare. The regulations are needed to implement section 6109(a) as amended by the Internal Revenue Service Restructuring and Reform Act of 1998. The regulations affect individual preparers who elect to identify themselves using a number other than their social security number.

DATES: Effective Date: These regulations are effective August 12, 2002.

Applicability Date: For dates of applicability, see §§1.6109-2A(d) and 1.6109-2(d).

FOR FURTHER INFORMATION CONTACT: Michelle B. Baxter, (202) 622-4910 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Section 6109(a)(4) of the Internal Revenue Code provides that any return or claim for refund prepared by an income tax return preparer must bear the identifying number of the preparer as required by regulations prescribed by the Secretary. Prior to the amendment of section 6109(a) by the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105-206, 112 Stat. 685 (RRA '98)), section 6109(a) limited the identifying number of an individual preparer to that preparer's social security number.

Section 3710 of RRA '98 amended section 6109(a) by removing the requirement that an individual preparer's identifying number be the preparer's social security account number. Instead, under section 6109(a)(4), the Secretary may prescribe alternatives to the social security account number for purposes of identifying individual preparers.

On December 21, 1998, the IRS published Notice 98-63, 1998-2 C.B. 760, to inform preparers of the IRS's intention to develop a system of alternative identifying numbers. On August 12, 1999, the Service published a temporary regulation (TD 8835) permitting a preparer to use an alternative identifying number. **Federal Register** (64 FR 43910). On August 12, 1999, the Service also published a notice of proposed rulemaking (REG-105237-99) allowing a preparer to use an alternative to their social security number for purposes of

identifying themselves on returns they prepare. **Federal Register** (64 FR 43969). No public hearing was requested or held. No written comments were received. The proposed regulations are adopted by this Treasury decision, and the corresponding temporary regulations are removed.

Explanation of Provisions

This document contains amendments to the Income Tax Regulations (26 CFR part 1) to allow individual preparers to either use their social security number or elect an alternative identifying number for purposes of identifying themselves on returns they prepare. The IRS developed Form W-7P, Application for Preparer Tax Identification Number, on which preparers may apply for an alternative identifying number.

Effective Date

The final regulations under §1.6109-2 apply to returns or claims for refund filed after December 31, 1999. The current rules of §1.6109-2, which are retained in §1.6109-2A, continue to apply with respect to returns or claims for refund filed prior to January 1, 2000.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 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 these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Michelle B. Baxter, Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is 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 * * *

Par. 2. Immediately following §1.6115-1, an undesignated center heading is added to read as follows:

REGULATIONS APPLICABLE TO RETURNS OR CLAIMS FOR REFUND FILED PRIOR TO JANUARY 1, 2000.

Par. 3. Section 1.6109-2 is redesignated as §1.6109-2A, and transferred immediately after the undesignated center heading "REGULATIONS APPLICABLE TO RETURNS OR CLAIMS FOR REFUND FILED PRIOR TO JANUARY 1, 2000."

Par. 4. The second sentence of redesignated §1.6109-2A(d) is revised to read:

1.6109-2A Furnishing identifying number of income tax return preparer.

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(d) * * * For returns or claims for refund filed after December 31, 1999, see §1.6109-2(a).

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Par. 5. New §1.6109-2 is added to read as follows:

§1.6109-2 Income tax return preparers furnishing identifying numbers for returns or claims for refund filed after December 31, 1999.

(a) Furnishing identifying number.--(1) Each return of tax, or claim for refund of tax, under subtitle A of the Internal Revenue Code prepared by one or more income tax return preparers must include the identifying number of the preparer required by §1.6695-1(b) to sign the return or claim for refund. In addition, if there is a partnership or employment arrangement between two or more preparers, the identifying number of the partnership or employer must also appear on the return or claim for refund. For the definition of the term "income tax return preparer" (or "preparer") see section 7701(a)(36) and §301.7701-15 of this chapter.

(2) The identifying number of a preparer who is an individual (not described in paragraph (a)(3) of this section) is that individual's social security account number, or such alternative number as may be prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

(3) The identifying number of a preparer (whether an individual, corporation, or partnership) who employs or engages one or more persons to prepare the return or claim for refund

(other than for the preparer) is that preparer's employer identification number.

(b) and (c) [Reserved]. For further guidance, see §1.6109-2A(b) and (c).

(d) Effective date. Paragraph (a) of this section and this paragraph (d) apply to returns or claims for refund filed after December 31, 1999. For returns or claims for refund filed prior to January 1, 2000, see §1.6109-2A(a).

§1.6109-2T [Removed]

Par. 6. Section 1.6109-2T is removed.

Acting Deputy Commissioner of Internal Revenue

David A. Mader

Approved: August 8, 2002

Acting Assistant Secretary of the Treasury

Pamela F. Olson