



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR GRACE E. DAVIS
ANALYST
W&I:CAR:SPEC:FO:IMS

FROM: James C. Gibbons
Branch Chief
CC:PA:APJP:1

SUBJECT: Chief Counsel Advice
IRS *e-file* Association Rule

In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

This responds to your request for Chief Counsel Advice in connection with the IRS *e-file* Program. We have restated the issue as follows:

ISSUE

What are the parameters of an individual's conduct which may result in the denial of participation in the IRS *e-file* Program ("Program").

CONCLUSION

IRS Publication 1345 ("Publication") articulates those factors which may result in the denial of participation in the Program.

FACTS

In your e-mail to our office dated February 13, 2002, you pose certain factors affecting participation in the Program. More specifically, you request information on the standards of conduct which may result in the denial of participation in the Program.

LAW AND ANALYSIS

Treas. Reg. § 1.6011-1(a) provides that every person subject to income tax must make a return or statement as required by the regulations. Such return or statement must include the information required by the applicable regulations or forms. Similarly, Treas. Reg. § 1.6061-1(b) authorizes the Secretary to prescribe in forms, instructions, or other appropriate guidance the method of signing any return, statement, or other

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document required to be made under any provision of the internal revenue laws or regulations. Finally, Treas. Reg. § 1.6012-5 states that the Commissioner may authorize the use, at the option of a person required to make a return, of a composite return in lieu of any form specified in 26 CFR Part 1, subject to the conditions, limitations, and special rules governing the preparation, execution, filing, and correction thereof as the Commissioner may deem appropriate. These applicable statutory provisions provide the legal bases for the implementation and operation of the Program.

Concomitant with the above-stated legal bases for the existence of the Program, IRS Publication 1345 articulates the standard of conduct which determines whether an individual may participate in the Program. While the Publication states specific reasons for denial of participation (discussed below), such participation is predicated on the overarching principles of good faith and fair dealing on the part of the participating individual.

According to Publication 1345, participation is predicated upon application and acceptance into the Program. Similarly, an application for participation may be denied for a variety of reasons that include, but are not limited to:

1. Conviction of any criminal offense under the revenue laws of the United States or a state or other political subdivision;
2. Failure to file timely and accurate Federal, state, or local tax returns, including returns indicating that no tax is due (unless the applicant did not have a legal filing requirement);
3. Failure to timely pay any Federal, state, or local tax liability;
4. Assessment of penalties;
5. Suspension/disbarment from practice before the Service or before a state or local tax agency;
6. Disreputable conduct or other facts that would reflect adversely on the IRS *e-file* Program;
7. Misrepresentation on an application;
8. Suspension or denial of participation from the Program in a prior year;
9. Unethical practices in return preparation;
10. Assessment against the applicant of a penalty under § 6695(g) of the Internal Revenue Code (involving the failure to be diligent in determining eligibility for Earned Income Credit);

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11. Stockpiling returns prior to official acceptance into the IRS *e-file* Program;
12. Knowingly and directly or indirectly employing or accepting assistance from any firm, organization, or individual prohibited from applying to participate in the IRS *e-file* program or suspended from participating in the IRS *e-file* Program. This includes any individual whose actions resulted in the denial, suspension, or expulsion of a firm from the Form 1040 ELF Program or the IRS *e-file* Program; or
13. Knowingly and directly or indirectly accepting employment as an associate, correspondent, or as a subagent from, or sharing fees with, any firm, organization, or individual prohibited from applying to participate in the IRS *e-file* Program or suspended or expelled from participating in the IRS *e-file* Program. This includes any individual whose actions resulted in the denial, suspension, or expulsion of a firm from the Form 1040 ELF Program as well as the IRS *e-file* Program.

Additionally, Form 8633 states additional specific requirements for participation in the Program. These requirements are as follows: 1) An individual must be a U.S. citizen or lawful permanent resident; 2) An individual must have attained the age of 21 as of the date of application for participation in the Program; 3) If the individual is applying to be an Electronic Return Originator, such individual must meet state and local licensing and/or bonding requirements. Thus, any individual does not meet the Form 8633 requirements is prohibited from applying for participation in the Program.

Because the overarching purpose of the rules relating to eligibility is to ensure that all participants in the Program exercise good faith and fair dealing, the above-articulated rules are not intended to be exhaustive. As a result, the Service enjoys significant latitude in determining who may participate in the Program.

If you have any questions, please contact _____ at 202-622-4910.