

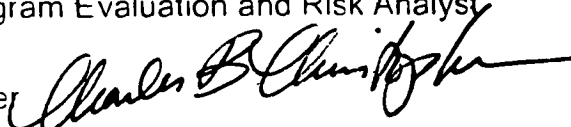
Office of Chief Counsel
Internal Revenue Service
memorandum

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from: Charles B. Christopher 
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subject: Disclosure Issues regarding ITIN Applications

The purpose of this memorandum is to provide guidance to Individual Tax Identification Number Program Office employees regarding disclosure issues involving Individual Taxpayer Identification Number (ITIN) applications for minor children.

Background

The Individual Taxpayer Identification Real-time System (ITIN RTS) is a modernized application processing system used to control and track Form W-7, Application for IRS Individual Taxpayer Identification Number. ITIN RTS is programmed not to require a Form 2848, Power of Attorney and Declaration of Representative, if a parent signs a Form W-7 on behalf the child. This programming is true regardless of the age of the child, including instances where the child is age 18 or older. The system was programmed in this manner based on the understanding that a parent always has the right to know a child's ITIN.

Despite the ITIN RTS programming, Publication 1915, Understanding Your Individual Taxpayer Identification Number (ITIN), provides an alternate set of requirements regarding ITIN applications made on behalf of children claimed as dependants. Page 16 of Publication 1915 creates application rules that hinge upon whether the ITIN is being sought for a child 14 years of age or older or for a child under the age of 14.¹

¹ It appears that this age of 14 was adopted from IRC § 1(g), whereby the unearned income of minor children was taxed as if it were the parent's income. However, Public Law 109-222 (5-17-06) amended this provision and now provides for a cut-off of 18 years of age.

If the person for whom the Form W-7 is being submitted is under the age of 14, the publication states that a delegate may sign for the child. A delegate can be either a parent or a court-appointed guardian:

- A parent must submit documentation of the parent-child relationship (for example, birth certificate or adoption papers)
- Guardians must submit documentation of the relationship between the adult and the dependant for whom the form is submitted (such as court-appointment papers showing legal guardianship)

The Instructions to the Form W-7 provide the same guidelines regarding applicants who are minors under the age of 14.

If the person for whom the Form W-7 is being submitted is over the age of 14, the publication states that the child may sign the form on his or her own behalf or appoint an authorized agent. The only documentation required of the authorized agent, regardless if the agent is either a parent or a guardian, is the Form 2848. The Instructions to the Form W-7 provide the same guidelines regarding applicants who are 14 years of age or older.

Questions

In your electronic mail inquiry, you posed the following questions concerning the standards and procedures for ITIN applications made by parents, guardians, and Powers of Attorney (POAs) on behalf of minor children:

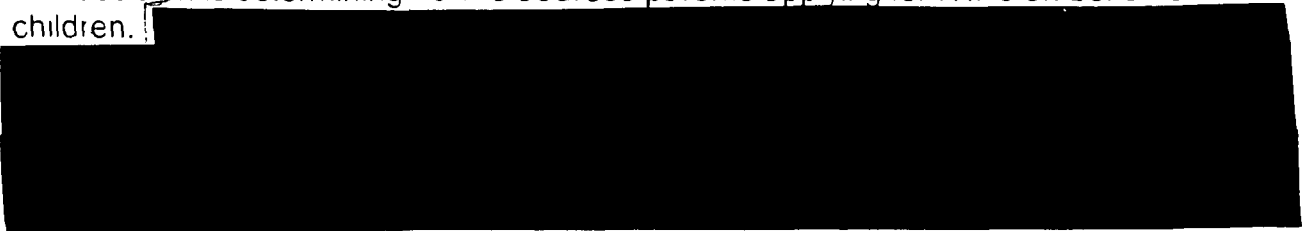
1. If a parent signed the W-7 for a child over 14, are we allowed to give them the child's ITIN? Is there an age cutoff?
2. Can parents be permitted to sign the W-7 for their own children without regard to age?
3. Should we be requiring relationship verification for all children claimed from all parents without regard to the age of the children?
4. Should a Form 2848 be required when a parent signs a W-7 for his or her own child over 14?
5. Is it permissible for someone other than the parent (an aunt or uncle, for example), to sign the W-7 on behalf of the minor child after receiving a power of attorney signed by a parent in the child's name?
6. Do parents have disclosure rights for children over 14?

Questions one through five, above, involved areas of responsibility assigned to the Associate Chief Counsel (Procedure & Administration), Administrative Provisions and Judicial Practice Division (APJP); therefore, this office sought technical legal assistance from that division in responding to these issues.

Discussion

Age of Demarcation and POAs

We will first address the second part of question one through question four collectively, due to the close relationship of the underlying issues. Ultimately, the method chosen by the Service for processing and issuing ITINs is strictly a business decision. Inherent in that decision is determining how to address parents applying for ITINs on behalf of their children.

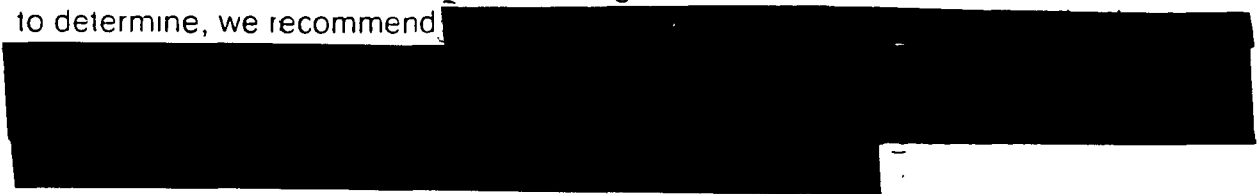


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Question five inquires whether it is permissible for someone other than the parent (e.g., aunt, uncle), to sign the Form W-7 on behalf of the minor child after receiving a POA signed by a parent in the child's name. We conclude that a person other than a parent or a court-appointed guardian of a minor who has a POA from the minor's parent (or a court-appointed guardian) may sign a Form W-7, provided the POA authorizes the third-party to execute the Form W-7. Thus, a relative other than a parent (an uncle, aunt, cousin, etc.) may sign a Form W-7 for a minor, provided the relative has a POA from the minor's parent (or court-appointed guardian) that authorizes the relative to sign the Form W-7 on the parent's behalf.

Disclosure of ITINs and Return Information

Question six inquires whether a parent has disclosure authority to receive the return information for children over the age of 14. A related question regarding whether the Service may disclose a child's ITIN to a parent signing the W-7 for a child is posed in number one. As discussed above, although this is a business decision for the Service to determine, we recommend



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The answer to these questions will depend on whether or not the child under the age of 18 has applied on his own behalf or the parent or guardian has applied for him. A child under the age of 18 may apply for an ITIN on his own behalf; in that instance, the ITIN and accompanying information on the Form W-7 are the return information of the child and as such, are protected by IRC § 6103(a) from disclosure without the child's consent

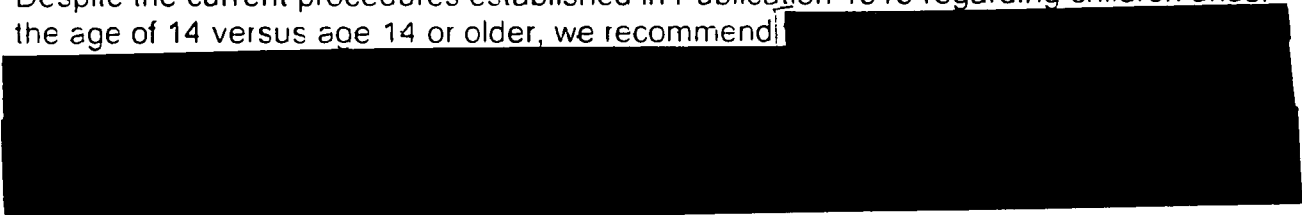
under section 6103(c) (or other applicable disclosure exemption).² Conversely, if the parent or guardian has applied for a child under 18, the Service may disclose to parents and guardians the ITIN and related return information of the child.

We base these findings on the Service's determinations as reported in IRM 11.3.2.4.10, Minors (05-24-2005). This IRM reports that returns and return information of a minor may be disclosed to the minor. However, the IRM also notes that returns and return information of a minor may be disclosed to the signer of the return. Thus, disclosures may be made to the parent who signed the return on behalf of the child. *Revenue Ruling 82-206, 1982-2 C.B. 356*, advises that if the child cannot make and file his or her own tax return, the parent should do so on behalf of the child by the use of the following language: "By (signature) Parent (or guardian) for minor child."³ Revenue Ruling 82-206 is derived from IRC § 6012 and the regulations promulgated thereunder. Treasury Regulation § 1.6012-1(a)(4) requires the guardian or other person charged with the care of the minor's person or property to make and file the return on behalf of the child if the child did not make and file the return. Inherent in this subsection is the authority to discuss the return and resulting tax liability, including any necessary collection activities, with the parent who signed the return.

Although a parent or guardian seeking to obtain the ITIN of a child under the age of 18 is not required by law to apply for and obtain the child's ITIN (as is required in Treasury Regulation § 1.6012-1(a)(4), above), such ITIN application is necessary if the parent seeks to claim the IRC § 151 dependency exemption for the child. Although the Form W-7 does not contain the exact phrase suggested above ("By (signature) Parent (or guardian) for minor child"), it does require the parent, guardian, or POA to indicate that the person is applying on behalf of the child.

Summary

Despite the current procedures established in Publication 1915 regarding children under the age of 14 versus age 14 or older, we recommend



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² We note that IRC § 6109(a)(2) provides that a person must provide his TIN to another person when it is required to be on a return that the other person has to file (certain information returns, e.g.). Although nothing requires the section 151 dependency exemption to be claimed on a return, once a taxpayer chooses to claim the exemption, the taxpayer must provide the dependant's TIN, therefore, in that sense the TIN is "required." In the context of section 6109(a)(2), however, the Service is a silent third party, with the requirement applicable to the parties to the particular transaction or relationship. The party required to provide the TIN would use his best efforts to obtain the other party's information, but if the taxpayer cannot obtain the number, the Service has no power to enforce section 6109(a)(2).

³ We also note that section 6103(e)(2) which provides for disclosure to the committee, trustee or guardian of an incompetent's estate, could potentially allow the Service to disclose the minor's return information to the parent or guardian (see IRM 11.3.2.4.10 (4)). If under state law the parent is the legal custodian of the minor's estate, all issues concerning the minor's tax liabilities may be discussed with the parent, including the minor's ITIN.



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Finally, we find that the Service may disclose to parents or guardians the ITIN or other Form W-7 return information of the child under the following circumstances: (1) the parent or guardian has completed and signed the Form W-7 on behalf of the child; or (2) the child who has completed and signed the Form W-7 on his own behalf provides a consent (e.g., Form 8821) to allow the Service to disclose the ITIN or other Form W-7 return information to the parent or guardian