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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

TD 9119

RIN 1545-BC12

Tax Return Preparers -- Electronic Filing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document provides final regulations to facilitate electronic filing of returns prepared by tax return preparers. They provide that preparers may avoid paper copies by retaining and furnishing to taxpayers copies of returns in an electronic or digital format prescribed by the Commissioner.

DATES: Effective Date: These regulations are effective March 25, 2004.

Applicability Dates: For dates of applicability, see §1.6107-2(b) and §1.6695-1(b)(5).

FOR FURTHER INFORMATION CONTACT: Richard Charles Grosenick, (202) 622-7950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR part 1) under sections 6107 and 6695 of the Internal Revenue Code (Code) to facilitate electronic

filing and record keeping by tax return preparers. Section 6695 of the Code imposes various penalties on tax return preparers, including a penalty for failure to sign the returns they prepare. Originally, the regulations under section 6695 contemplated only manually signed (paper) returns. Although the regulations under section 6695 were amended in 1996 to permit tax return preparers to sign and file returns electronically in the manner prescribed by the Secretary (see TD 8689 (61 FR 65319, Dec. 12, 1996)), §1.6695-1(b) of the regulations continue to refer to manually signed returns and copies. Those references resulted in uncertainty over whether preparers must produce manually signed, paper copies of returns to satisfy their obligations under section 6107 to provide copies of returns to taxpayers and keep copies of returns in their records.

On April 24, 2003, temporary regulations (TD 9053) relating to the signing of returns and retention of copies by tax return preparers were published in the **Federal Register** (68 FR 20069). A notice of proposed rulemaking (REG-141659-02) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (68 FR 20089).

The temporary regulations eliminated the references to manually signed returns in §1.6695-1(b). In addition, they provided that the Commissioner may prescribe, in forms, instructions, or other appropriate guidance, the manner in which preparers may satisfy their obligations under section 6107 to furnish returns to taxpayers and to retain copies of returns. These changes and the applicable forms, instructions, and guidance clarified that preparers may maintain electronic (paperless) filing systems. These final regulations adopt the temporary regulations without change.

Summary of Comments

The IRS and the Department of the Treasury received four comments pertaining to the regulations. One commentator had concerns about identity theft. The commentator requested a change to the regulation that would allow taxpayers to decide whether the paid return preparer should keep a copy of the tax return.

One commentator requested that the copy the preparer is required to retain be in a specific electronic format. Another commentator requested that the preparer be permitted to use any electronic format, so long as the preparer's computer can print a copy of the return.

One commentator endorsed upgrading current record-keeping requirements under section 6107(b) to allow electronic storage. The commentator requested that published guidance clarify whether certain forms must continue to be maintained on paper due to signature requirements. With the exception of these forms, the commentator requested that preparers be allowed to choose to maintain taxpayer data on electronic media, with the ability to recreate the tax return.

After consideration of the comments, the temporary regulations under sections 6107 and 6695 are adopted without change by this Treasury decision, and the corresponding temporary regulations are removed. The final regulations give the IRS the authority to prescribe in forms, instructions, or other appropriate guidance acceptable methods of signing. Issues raised in the comments are more appropriately addressed in those other forms of guidance.

Special Analyses

It has been determined that this regulation 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 this regulation and, because the regulation does not impose a collection of information on small entities, that the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this regulation will be 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 this regulation is Richard Charles Grosenick, Office of Assistant Chief Counsel (Administrative Provisions & Judicial Practice). However, other personnel from the IRS and the Treasury Department participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendment to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for "Section 1.6695-1T" and continues to read, in part, as follows:

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

Section 1.6695-1 also issued under 26 U.S.C. 6060(b) and 6695(b) * * *

Par. 2. Section 1.6107-2 is added to read as follows:

§1.6107-2 Form and manner of furnishing copy of return and retaining copy or record.

(a) In general. The Commissioner may prescribe the form and manner of satisfying the requirements imposed by section 6107(a) and (b) and §1.6107-1(a) and

(b) in forms, instructions, or other appropriate guidance (see §601.601(d)(2) of this chapter).

(b) Effective date. To the extent this section relates to section 6107(a) and §1.6107-1(a), it applies to income tax returns and claims for refund presented to a taxpayer for signature after December 31, 2002. To the extent this section relates to section 6107(b) and §1.6107-1(b), it applies after December 31, 2002, to returns and claims for refund for which the 3-year period described in section 6107(b) expires after December 31, 2002.

§1.6107-2T [Removed].

Par. 3. Section 1.6107-2T is removed.

Par. 4. Section 1.6695-1 is amended by revising paragraph (b) to read as follows:

§1.6695-1 Other assessable penalties with respect to the preparation of income tax returns for other persons.

* * * * *

(b) Failure to sign return. (1) An individual who is an income tax return preparer with respect to a return of tax under subtitle A of the Internal Revenue Code or claim for refund of tax under subtitle A of the Internal Revenue Code shall sign the return or claim for refund after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature. If the preparer is unavailable for signature, another preparer shall review the entire preparation of the return or claim for refund, and then shall sign the return or claim for refund. The preparer shall sign the return in the manner prescribed by the Commissioner in forms, instructions, or other appropriate guidance.

(2) If more than one income tax return preparer is involved in the preparation of the return or claim for refund, the individual preparer who has the primary responsibility as between or among the preparers for the overall substantive accuracy of the preparation of such return or claim for refund shall be considered to be the income tax return preparer for purposes of this paragraph (b).

(3) The application of this paragraph (b) is illustrated by the following examples:

Example 1. X law firm employs Y, a lawyer, to prepare for compensation returns and claims for refund of taxes. X is employed by T, a taxpayer, to prepare his Federal tax return. X assigns Y to prepare T's return. Y obtains the information necessary for completing the return from T and makes determinations with respect to the proper application of the tax laws to such information in order to determine T's tax liability. Y then forwards such information to C, a computer tax service which performs the mathematical computations and prints the return by means of computers. C then sends the completed return to Y who reviews the accuracy of the return. Y is the individual preparer who is primarily responsible for the overall accuracy of T's return. Y must sign the return as preparer.

Example 2. X partnership is a national accounting firm which prepares for compensation returns and claims for refund of taxes. A and B, employees of X, are involved in preparing the tax return of T Corporation. After they complete the return, including the gathering of the necessary information, the proper application of the tax laws to such information, and the performance of the necessary mathematical computations, C, a supervisory employee of X, reviews the return. As part of this review, C reviews the information provided and the application of the tax laws to this information. The mathematical computations and carried-forward amounts are proved by D, an employee of X's comparing and proving department. The policies and practices of X require that P, a partner, finally review the return. The scope of P's review includes reviewing the information provided by applying to this information his knowledge of T's affairs, observing that X's policies and practices have been followed, and making the final determination with respect to the proper application of the tax laws to determine T's tax liability. P may or may not exercise these responsibilities, or may exercise them to a greater or lesser extent, depending on the degree of complexity of the return, his confidence in C (or A and B), and other factors. P is the individual preparer who is primarily responsible for the overall accuracy of T's return. P must sign the return as preparer.

Example 3. C corporation maintains an office in Seattle, Washington, for the purpose of preparing for compensation returns and claims for refund of taxes. C makes compensatory arrangements with individuals (but provides no working facilities) in

several States to collect information from taxpayers and to make determinations with respect to the proper application of the tax laws to the information in order to determine the tax liabilities of such taxpayers. E, an individual, who has such an arrangement in Los Angeles with C, collects information from T, a taxpayer, and completes a worksheet kit supplied by C which is stamped with E's name and an identification number assigned to E by C. In this process, E classifies this information in appropriate income and deduction categories for the tax determination. The completed worksheet kit signed by E is then mailed to C. D, an employee in C's office, reviews the worksheet kit to make sure it was properly completed. D does not review the information obtained from T for its validity or accuracy. D may, but did not, make the final determination with respect to the proper application of tax laws to the information. The data from the worksheet is entered into a computer and the return form is completed. The return is prepared for submission to T with filing instructions. E is the individual preparer primarily responsible for the overall accuracy of T's return. E must sign the return as preparer.

Example 4. X employs A, B, and C to prepare income tax returns for taxpayers. After A and B have collected the information from the taxpayer and applied the tax laws to the information, the return form is completed by computer service. On the day the returns prepared by A and B are ready for their signatures, A is away from the city for 1 week on another assignment and B is on detail to another office for the day. C may sign the returns prepared by A, provided that C reviews the information obtained by A relative to the taxpayer, and C reviews the preparation of each return prepared by A. C may not sign the returns prepared by B because B is available.

(4) An individual required by this paragraph (b) to sign a return or claim for refund shall be subject to a penalty of \$50 for each failure to sign, with a maximum of \$25,000 per person imposed with respect to each calendar year, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. If the preparer asserts reasonable cause for failure to sign, the Internal Revenue Service will require a written statement in substantiation of the preparer's claim of reasonable cause. For purposes of this paragraph (b), reasonable cause is a cause which arises despite ordinary care and prudence exercised by the individual preparer. Thus, no penalty may be imposed under section 6695(b) and this paragraph (b) upon a person who is an income tax return preparer solely by reason of--

(i) Section 301.7701-15(a)(2) and (b) of this chapter on account of having given

advice on specific issues of law; or

(ii) Section 301.7701-15(b)(3) of this chapter on account of having prepared the return solely because of having prepared another return which affects amounts reported on the return.

(5) Effective date. This paragraph (b) applies to income tax returns and claims for refund presented to a taxpayer for signature after December 31, 2002.

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§ 1.6695-1T **[Removed]**.

Par. 5. Section 1.6695-1T is removed.

Deputy Commissioner for Services and Enforcement.

Approved:

Assistant Secretary of the Treasury.