[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8803]

RIN 1545-AW83

Retention of Income Tax Return Preparers' Signatures

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations
that provide income tax return preparers with two alternative
means of meeting the requirement that a preparer retain the
manually signed (by the preparer) copy of the return or claim.
The regulations are necessary to inform preparers of the two
alternatives and provide preparers with the guidance needed to
comply with the alternatives. The text of the temporary
regulations also serves as the text of the proposed regulations
set forth in the notice of proposed rulemaking on this subject in
the Proposed Rules section of this issue of the **Federal Register.**

DATES: <u>Effective date</u>. These regulations are effective December
31, 1998.

    <u>Applicability date</u>: For dates of applicability, see
§1.6695-1T(g) of these regulations.

FOR FURTHER INFORMATION CONTACT: Marc C. Porter (202) 622-4940
(not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) relating to the penalty for failure to sign an income tax return under section 6695(b) of the Internal Revenue Code. Section 6695(b) provides that any person who is an income tax return preparer with respect to a return or claim for refund, who is required by regulations prescribed by the Secretary to sign the return or claim, and who fails to comply with those regulations, must pay a penalty of $50 for such failure, unless it is shown that the failure is due to reasonable cause and not willful neglect. The maximum penalty imposed with respect to documents filed during a calendar year will not exceed $25,000.

Section 7701(a)(36)(A) provides that, in general, the term "income tax return preparer" means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax or claim for refund imposed by subtitle A. For purposes of the preceding sentence, the preparation of a substantial portion of a return or claim is treated as if it were the preparation of such return or claim.

Section 1.6695-1(b)(1) and (c) generally provides that an income tax return preparer, with respect to a return or claim for refund, must manually sign the return or claim (which may be a photocopy) in the appropriate space provided on the return or claim after it is completed and before it is presented to the

taxpayer (or nontaxable entity) for signature.

Section 1.6695-1(b)(4)(i) provides that the manual signature requirement may be satisfied by a photocopy of a copy of the return or claim for refund if the copy is manually signed by the income tax return preparer after completion of its preparation. The taxpayer may file a photocopy of this manually signed return with the IRS, see Rev. Proc. 78-370, (1978-2 C.B. 335). The employer of the preparer or the partnership in which the preparer is a partner, or the preparer (if not employed or engaged by a preparer and not a partner of a partnership which is a preparer), must retain the manually signed copy of the return or claim.

Explanation of Provisions

The regulations provide that, if an income tax return preparer presents for a taxpayer's signature a return or claim for refund that has a copy of the preparer's manual signature, the preparer may either retain a photocopy of the manually signed copy of the return or claim for refund or use an electronic storage system meeting the requirements of section 4 of Rev. Proc. 97-22, (1997-1 C.B. 652) or procedures subsequently prescribed by the Commissioner, to store and produce a copy of the return or claim manually signed by the preparer.

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 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 temporary 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 Marc C. Porter, Office of Assistant Chief Counsel (Income Tax & Accounting). 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 is amended by adding an entry in numerical order to read as follows:

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

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

Par. 2. Section 1.6695-1 is amended by revising paragraph (b)(4)(i) to read as follows:

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

* * * * *

(b) * * *

(4)(i) [**Reserved**]. For further guidance on acceptable
methods of meeting the manual signature requirement of paragraph
(b)(1) and (2), see §1.6695-1T(b)(4)(i).

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Par. 3. Section 1.6695-1T is added to read as follows:

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

(a) through (b)(3) [**Reserved**]. For further guidance, see
§1.6695-1(a) through (b)(3).

(4)(i) The manual signature requirement of paragraph 1.6695-
1(b)(1) and (2) of this section may be satisfied by a photocopy
of a copy of the return or claim for refund which copy is
manually signed by the preparer after completion of its
preparation. After a copy of the return or claim for refund is
signed by the preparer and before it is photocopied, no person
other than the preparer may alter any entries on the copy other
than to correct arithmetical errors discernible on the return or
claim for refund. The employer of the preparer or the
partnership in which the preparer is a partner, or the preparer
(if not employed or engaged by a preparer and not a partner of a
partnership which is a preparer), must retain the manually signed
copy of the return or claim for refund. In the alternative, for
a return or claim for refund presented to a taxpayer for
signature after December 31, 1998 and for returns or claims for
refund retained on or before that date, the person required to

retain the manually signed copy of the return or claim for refund
may choose to retain a photocopy of the manually signed copy of
the return or claim for refund, or use an electronic storage
system to store and produce a copy of the manually signed return
or claim for refund. For purposes of paragraph (b)(4)(i) of this
section, an electronic storage system must meet the electronic
storage system requirements prescribed in section 4 of Rev. Proc.
97-22 (1997-1 C.B. 652) or procedures subsequently prescribed by
the Commissioner. A record of any arithmetical errors corrected
must be retained and made available upon request by the person
required to retain the manually signed copy of the return or
claim for refund.

　　　(b)(4)(ii) through (f) [**Reserved**]. For further guidance,
see §1.6695-1(b)(4)(ii) through (f).

(g) <u>Effective date</u>. This section applies to income tax returns and claims for refund presented to a taxpayer for signature after December 31, 1998 and for returns or claims for refund retained on or before that date. This section expires on December 31, 2001.

                                        Deputy Commissioner of Internal Revenue
                                        Robert E. Wenzel

Approved: December 17, 1998

          Assistant Secretary of the Treasury

          Donald C. Lubick