

Section 6109.—Identifying Numbers

26 CFR 301.6109-1: Identifying numbers.

T.D. 8671

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

Taxpayer Identifying Numbers (TINs)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to requirements for furnishing a taxpayer identifying number on returns, statements, or other documents. These regulations set forth procedures for requesting a taxpayer identifying number for certain alien individuals for whom a social security number is not available. These numbers are called “IRS individual taxpayer identification numbers.”

These regulations also require foreign persons to furnish a taxpayer identifying number on their tax returns.

DATES: These regulations are effective May 29, 1996.

For dates of applicability of these regulations, see §301.6109-1(h).

FOR FURTHER INFORMATION CONTACT: Lilo A. Hester, (202) 874-1490 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1461.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden for the collection of information contained in §301.6109-1(d) is reflected in the burden of Form W-7.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On June 8, 1995, the IRS published in the **Federal Register** (60 FR 30211) the withdrawal of the notice of proposed rulemaking published in the **Federal Register** on September 27, 1990 at 55 FR 39427, a notice of proposed rulemaking, and a notice of

public hearing relating to taxpayer identifying numbers as contained in the Income Tax Regulations (26 CFR part 301) under section 6109 of the Internal Revenue Code (Code).

Written comments responding to the notice of proposed rulemaking were received, and a public hearing was held on September 28, 1995. After consideration of all the comments, the proposed regulations under 6109 of the Code are adopted as revised by this Treasury decision. The comments and revisions are discussed below.

Explanation of Provisions and Revisions

A. Principal changes

Section 6109 of the Code generally provides that, when required by regulations, a person must furnish a taxpayer identifying number (TIN) for securing proper identification of that person on any return, statement, or other document made under the Code. The notice of proposed rulemaking contains two principal changes to the existing regulations. The first change is the introduction of a new IRS-issued TIN, called an IRS individual taxpayer identification number (ITIN), for use by alien individuals, whether resident or nonresident, who currently do not have, and are not eligible to obtain, social security numbers. The Social Security Administration generally limits its assignment of social security numbers to individuals who are U.S. citizens and alien individuals legally admitted to the United States for permanent residence or under other immigration categories which authorize U.S. employment. Therefore, this change is designed to help taxpayers (who need a TIN but cannot qualify for a social security number) maintain compliance with TIN requirements under the Code and regulations.

The second change is to modify the existing rule set forth in §301.6109-1(g) that currently excludes from the general requirement of providing a TIN, foreign persons that do not have either (1) income effectively connected with the conduct of a U.S. trade or business or (2) a U.S. office or place of business or a U.S. fiscal or paying agent. Under these regulations, the exclusion is modified to require that any foreign person who makes a return of tax (*i.e.*, income, gift, and estate tax

returns, amended returns, or refund claims, but excluding information returns) furnish its TIN on that return. This change is intended to address the IRS' and Treasury's concern that, without TINs, taxpayers cannot be identified efficiently and tax returns cannot be processed effectively.

B. Comments

Regarding the assignment of ITINs under §301.6109-1(d)(3)(iii) of the proposed regulations, commentators suggested that the IRS develop a process whereby either (1) the Social Security Administration (SSA) issues the ITIN when the individual is not eligible for a social security number, or (2) the Immigration and Naturalization Service (INS) (within the Department of Justice) and the U.S. consulate offices (within the Department of State) issue the ITIN when issuing a U.S. visa. These suggestions were not adopted. The IRS is the most appropriate federal agency to assign the ITIN because the number is intended for tax use only. Having the IRS as the sole issuer of ITINs will facilitate the general public's acceptance of the fact that the assignment of an ITIN creates no inference regarding the immigration status of an alien individual or the right of that individual to be legally employed in the United States. Over the past few years, the IRS has had extensive discussions with the SSA, the INS, and the State Department regarding the IRS' development of a new numbering system. These agencies concur that the IRS is the appropriate initiator of a numbering system dedicated solely for tax purposes, and have expressed a willingness to support the IRS' efforts to develop the system, to disseminate information about obtaining an ITIN, and to otherwise facilitate IRS' assignment of the ITINs.

Regarding the IRS' solicitation of comments and suggestions regarding the type of documents that could be accepted to verify reliably a taxpayer's identity and foreign status, the commentators suggested passports and immigration documentation. This suggestion is already included partially in the proposed regulations which state that examples of acceptable documentary evidence may include items such as "passport, driver's license, birth certificate, identity card or U.S. visa." However, the proposed regulations use the term *U.S. visa* rather than the term

immigration documentation. The term *immigration documentation* is broader in scope than the term *U.S. visa*, and encompasses various identifying documents (including a U.S. visa) required by U.S. immigration laws to support an alien's request for entry, and entry, into the United States. As such, §301.6109-1(d)(3)(iii) of the final regulations has been revised to substitute the term *immigration documentation* for the term *U.S. visa*.

Regarding the role of acceptance agents under §301.6109-1(d)(3)(iv) of proposed regulations, some commentators suggested that acceptance agents should only be required to provide the necessary forms to the ITIN applicant and to forward the completed forms, together with copies of required documentation, to the IRS in order to avoid being held responsible for applicant's errors or being considered as the applicant's tax advisor. The adoption of this suggestion was not necessary because, under the proposed regulations, the precise role of an acceptance agent is a matter to be decided by written agreement between the particular person and the IRS. Under an agreement with the IRS, an acceptance agent could act as a conduit of information between the IRS and the applicant as suggested by the commentators or could take a more active role in the process by assuming responsibility for reviewing the required documentation and providing the necessary representations to the IRS for the issuance of a number. In the latter case, the acceptance agent would generally not be required to furnish any underlying documentation to the IRS, except as part of a verification process by which the IRS may periodically verify the agent's compliance with the agreement. Even in that case, the acceptance agent would not be considered a tax return preparer for purposes of section 7216 if it acted within the terms of the agreement with the IRS. In addition, under this agreement, an acceptance agent would not be responsible for an ITIN applicant's errors as long as the acceptance agent exercises due diligence under the agreement. The IRS is preparing further guidance on acceptance agent agreements.

The rule proposed in §301.6109-1(b)(2)(iv) that would require foreign persons to furnish a TIN when making a return of tax has been restated to clarify that making a return of tax includes filing an amended return or a

claim for refund. In addition, regarding this rule, commentators asked whether Form SS-4, Application for Employer Identification Number, is a return of tax for this purpose. For purposes of this rule, a return of tax includes income, estate, and gift tax returns, amended returns, or refund claims but excludes information returns, statements or other documents. Form SS-4 is a statement or document but not a return of tax; therefore, the foreign persons described in §301.6109-1(b)(2)(iv) of the proposed regulations are not required to obtain an ITIN in order to sign a Form SS-4. For example, a foreign individual signing Form SS-4 as a principal officer of a corporation need not obtain an ITIN for the sole purpose of signing the form. See for comparison, however, §301.6109-1(d)(4)(ii) regarding the requirement to furnish a previously-issued ITIN on Form SS-4 when a foreign individual is required to obtain an employer identification number for such individual's own business purposes. No further clarification is needed in these regulations.

Regarding the proposed regulations becoming effective for any return, statement, or other document filed after December 31, 1995, commentators suggested that the effective date be delayed. This suggestion was adopted. Accordingly, the final regulations are generally effective after May 29, 1996, of publication in the **Federal Register**, except that the requirement for an estate to obtain an employer identification number applies on and after January 1, 1984, and the requirement for a foreign person as described in §301.6109-1(b)(2)(iv) to furnish a TIN on a tax return is effective for tax returns filed after December 31, 1996. The IRS will begin accepting applications for ITINs (Form W-7) on or after July 1, 1996.

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) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section

7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these final regulations has been 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 these regulations is Lilo A. Hester of the Office of Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805

Section 301.6109-1 also issued under 26 U.S.C. 6109(a), (c), and (d).

Par. 2. Section §301.6109-1 is amended as follows:

1. Paragraphs (a)(1), (b), (c), and (d)(2) are revised.

2. Paragraphs (d)(3) and (4) are added.

3. Paragraphs (f), (g), and (h) are revised.

The revisions and additions read as follows:

§301.6109-1 Identifying numbers.

(a) *In general*—(1) *Taxpayer identifying numbers*—(i) *Types*. There are generally three types of taxpayer identifying numbers: social security numbers, Internal Revenue Service (IRS) individual taxpayer identification numbers, and employer identification numbers. Social security numbers take the form 000-00-0000, IRS individual taxpayer identification numbers take the form 000-00-0000 but begin with a specific number designated by the IRS, and employer identification numbers take

the form 00-0000000. Both social security numbers and IRS individual taxpayer identification numbers identify individual persons. For the definition of social security number and employer identification number, see §§301.7701-11 and 301.7701-12, respectively. For the definition of IRS individual taxpayer identification number, see paragraph (d)(3) of this section.

(ii) *Uses.* Except as otherwise provided in applicable regulations under this title or on a return, statement, or other document, and related instructions, taxpayer identifying numbers must be used as follows:

(A) Except as otherwise provided in paragraphs (a)(1)(ii)(B) and (D) of this section, an individual required to furnish a taxpayer identifying number must use a social security number.

(B) Except as otherwise provided in paragraph (a)(1)(ii)(D) of this section, an individual required to furnish a taxpayer identifying number but who is not eligible to obtain a social security number, must use an IRS individual taxpayer identification number.

(C) Any person other than an individual (such as corporations, partnerships, nonprofit associations, trusts, estates, and similar nonindividual persons) that is required to furnish a taxpayer identifying number must use an employer identification number.

(D) An individual, whether U.S. or foreign, who is an employer or who is engaged in a trade or business as a sole proprietor should use an employer identification number as required by returns, statements, or other documents and their related instructions.

(b) *Requirement to furnish one's own number*—(1) *U.S. persons.* Every U.S. person who makes under this title a return, statement, or other document must furnish its own taxpayer identifying number as required by the forms and the accompanying instructions. A U.S. person whose number must be included on a document filed by another person must give the taxpayer identifying number so required to the other person on request. For penalties for failure to supply taxpayer identifying numbers, see sections 6721 through 6724. For provisions dealing specifically with the duty of employees with respect to their social security numbers, see §31.6011(b)-2(a) and (b) of this chapter (Employment Tax Regulations).

For provisions dealing specifically with the duty of employers with respect to employer identification numbers, see §31.6011(b)-1 of this chapter (Employment Tax Regulations).

(2) *Foreign persons.* The provisions of paragraph (b)(1) of this section regarding the furnishing of one's own number shall apply to the following foreign persons—

(i) A foreign person that has income effectively connected with the conduct of a U.S. trade or business at any time during the taxable year;

(ii) A foreign person that has a U.S. office or place of business or a U.S. fiscal or paying agent at any time during the taxable year;

(iii) A nonresident alien treated as a resident under section 6013(g) or (h); and

(iv) Any other foreign person who, with respect to taxes imposed under this title (including income, estate, and gift taxes), makes a return of tax, an amended return, or a refund claim, but excluding information returns, statements, or documents.

(c) *Requirement to furnish another's number.* Every person required under this title to make a return, statement, or other document must furnish such taxpayer identifying numbers of other U.S. persons and foreign persons that are described in paragraph (b)(2)(i), (ii), or (iii) of this section as required by the forms and the accompanying instructions. If the person making the return, statement, or other document does not know the taxpayer identifying number of the other person, such person must request the other person's number. A request should state that the identifying number is required to be furnished under authority of law. When the person making the return, statement, or other document does not know the number of the other person, and has complied with the request provision of this paragraph, such person must sign an affidavit on the transmittal document forwarding such returns, statements, or other documents to the Internal Revenue Service, so stating. A person required to file a taxpayer identifying number shall correct any errors in such filing when such person's attention has been drawn to them.

(d) * * *

(2) *Employer identification number.* Any person required to furnish an employer identification number must apply for one, if not done so pre-

viously, on Form SS-4. A Form SS-4 may be obtained from any office of the Internal Revenue Service, U.S. consular office abroad, or from an acceptance agent described in paragraph (d)(3)(iv) of this section. The person must make such application far enough in advance of the first required use of the employer identification number to permit issuance of the number in time for compliance with such requirement. The form, together with any supplementary statement, must be prepared and filed in accordance with the form, accompanying instructions, and relevant regulations, and must set forth fully and clearly the requested data.

(3) *IRS individual taxpayer identification number*—(i) *Definition.* The term *IRS individual taxpayer identification number* means a taxpayer identifying number issued to an alien individual by the Internal Revenue Service, upon application, for use in connection with filing requirements under this title. The term *IRS individual taxpayer identification number* does not refer to a social security number or an account number for use in employment for wages. For purposes of this section, the term *alien individual* means an individual who is not a citizen or national of the United States.

(ii) *General rule for obtaining number.* Any individual who is not eligible to obtain a social security number and is required to furnish a taxpayer identifying number must apply for an IRS individual taxpayer identification number on Form W-7, Application for IRS Individual Taxpayer Identification Number, or such other form as may be prescribed by the Internal Revenue Service. Form W-7 may be obtained from any office of the Internal Revenue Service, U.S. consular office abroad, or any acceptance agent described in paragraph (d)(3)(iv) of this section. The individual shall furnish the information required by the form and accompanying instructions, including the individual's name, address, foreign tax identification number (if any), and specific reason for obtaining an IRS individual taxpayer identification number. The individual must make such application far enough in advance of the first required use of the IRS individual taxpayer identification number to permit issuance of the number in time for compliance with such requirement. The application form, together with any supplementary statement and documentation, must be prepared and filed in

accordance with the form, accompanying instructions, and relevant regulations, and must set forth fully and clearly the requested data.

(iii) *General rule for assigning number.* Under procedures issued by the Internal Revenue Service, an IRS individual taxpayer identification number will be assigned to an individual upon the basis of information reported on Form W-7 (or such other form as may be prescribed by the Internal Revenue Service) and any such accompanying documentation that may be required by the Internal Revenue Service. An applicant for an IRS individual taxpayer identification number must submit such documentary evidence as the Internal Revenue Service may prescribe in order to establish alien status and identity. Examples of acceptable documentary evidence for this purpose may include items such as an original (or a certified copy of the original) passport, driver's license, birth certificate, identity card, or immigration documentation.

(iv) *Acceptance agents—(A) Agreements with acceptance agents.* A person described in paragraph (d)(3)(iv)-(B) of this section will be accepted by the Internal Revenue Service to act as an acceptance agent for purposes of the regulations under this section upon entering into an agreement with the Internal Revenue Service, under which the acceptance agent will be authorized to act on behalf of taxpayers seeking to obtain a taxpayer identifying number from the Internal Revenue Service. The agreement must contain such terms and conditions as are necessary to insure proper administration of the process by which the Internal Revenue Service issues taxpayer identifying numbers to foreign persons, including proof of their identity and foreign status. In particular, the agreement may contain—

(1) Procedures for providing Form SS-4 and Form W-7, or such other necessary form to applicants for obtaining a taxpayer identifying number; application form together with a certification that the acceptance agent has reviewed the required documentation and that it has no actual knowledge or reason to know that the documentation is not complete or accurate;

(2) Procedures for providing assistance to applicants in completing the application form or completing it for them;

(3) Procedures for collecting, reviewing, and maintaining, in the normal course of business, a record of the required documentation for assignment of a taxpayer identifying number;

(4) Procedures for submitting the application form and required documentation to the Internal Revenue Service, or if permitted under the agreement, submitting the application form together with a certification that the acceptance agent has reviewed the required documentation and that it has no actual knowledge or reason to know that the documentation is not complete or accurate;

(5) Procedures for assisting taxpayers with notification procedures described in paragraph (g)(2) of this section in the event of change of foreign status;

(6) Procedures for making all documentation or other records furnished by persons applying for a taxpayer identifying number promptly available for review by the Internal Revenue Service, upon request; and

(7) Provisions that the agreement may be terminated in the event of a material failure to comply with the agreement, including failure to exercise due diligence under the agreement.

(B) *Persons who may be acceptance agents.* An acceptance agent may include any financial institution as defined in section 265(b)(5) or §1.165-12(c)(1)(v) of this chapter, any college or university that is an educational organization as defined in §1.501(c)(3)-1(d)(3)(i) of this chapter, any federal agency as defined in section 6402(f) or any other person or categories of persons that may be authorized by regulations or Internal Revenue Service procedures. A person described in this paragraph (d)(3)(iv)(B) that seeks to qualify as an acceptance agent must have an employer identification number for use in any communication with the Internal Revenue Service. In addition, it must establish to the satisfaction of the Internal Revenue Service that it has adequate resources and procedures in place to comply with the terms of the agreement described in paragraph (d)(3)(iv)(A) of this section.

(4) *Coordination of taxpayer identifying numbers—(i) Social security number.* Any individual who is duly assigned a social security number or who is entitled to a social security number will not be issued an IRS individual taxpayer identification num-

ber. The individual can use the social security number for all tax purposes under this title, even though the individual is, or later becomes, a nonresident alien individual. Further, any individual who has an application pending with the Social Security Administration will be issued an IRS individual taxpayer identification number only after the Social Security Administration has notified the individual that a social security number cannot be issued. Any alien individual duly issued an IRS individual taxpayer identification number who later becomes a U.S. citizen, or an alien lawfully permitted to enter the United States either for permanent residence or under authority of law permitting U.S. employment, will be required to obtain a social security number. Any individual who has an IRS individual taxpayer identification number and a social security number, due to the circumstances described in the preceding sentence, must notify the Internal Revenue Service of the acquisition of the social security number and must use the newly-issued social security number as the taxpayer identifying number on all future returns, statements, or other documents filed under this title.

(ii) *Employer identification number.* Any individual with both a social security number (or an IRS individual taxpayer identification number) and an employer identification number may use the social security number (or the IRS individual taxpayer identification number) for individual taxes, and the employer identification number for business taxes as required by returns, statements, and other documents and their related instructions. Any alien individual duly assigned an IRS individual taxpayer identification number who also is required to obtain an employer identification number must furnish the previously-assigned IRS individual taxpayer identification number to the Internal Revenue Service on Form SS-4 at the time of application for the employer identification number. Similarly, where an alien individual has an employer identification number and is required to obtain an IRS individual taxpayer identification number, the individual must furnish the previously-assigned employer identification number to the Internal Revenue Service on Form W-7, or such other form as may be prescribed by the Internal Revenue Service, at the time of application for the IRS individual taxpayer identification number.

(f) *Penalty.* For penalties for failure to supply taxpayer identifying numbers, see sections 6721 through 6724.

(g) *Special rules for taxpayer identifying numbers issued to foreign persons*—(1) *General rule*—(i) *Social security number.* A social security number is generally identified in the records and database of the Internal Revenue Service as a number belonging to a U.S. citizen or resident alien individual. A person may establish a different status for the number by providing proof of foreign status with the Internal Revenue Service under such procedures as the Internal Revenue Service shall prescribe, including the use of a form as the Internal Revenue Service may specify. Upon accepting an individual as a nonresident alien individual, the Internal Revenue Service will assign this status to the individual's social security number.

(ii) *Employer identification number.* An employer identification number is generally identified in the records and database of the Internal Revenue Service as a number belonging to a U.S. person. However, the Internal Revenue Service may establish a separate class of employer identification numbers solely dedicated to foreign persons which will be identified as such in the records and database of the Internal Revenue Service. A person may establish a different status for the number either at the time of application or subsequently by providing proof of U.S. or foreign status with the Internal Revenue Service under such procedures as the Internal Revenue Service shall prescribe, including the use of a form as the Internal Revenue Service may specify. The Internal Revenue Service may require a person to apply for the type of employer identification number that reflects the status of that person as a U.S. or foreign person.

(iii) *IRS individual taxpayer identification number.* An IRS individual taxpayer identification number is generally identified in the records and database of the Internal Revenue Service as a number belonging to a nonresident alien individual. If the Internal Revenue Service determines at the time

of application or subsequently, that an individual is not a nonresident alien individual, the Internal Revenue Service may require that the individual apply for a social security number. If a social security number is not available, the Internal Revenue Service may accept that the individual use an IRS individual taxpayer identification number, which the Internal Revenue Service will identify as a number belonging to a U.S. resident alien.

(2) *Change of foreign status.* Once a taxpayer identifying number is identified in the records and database of the Internal Revenue Service as a number belonging to a U.S. or foreign person, the status of the number is permanent until the circumstances of the taxpayer change. A taxpayer whose status changes (for example, a nonresident alien individual with a social security number becomes a U.S. resident alien) must notify the Internal Revenue Service of the change of status under such procedures as the Internal Revenue Service shall prescribe, including the use of a form as the Internal Revenue Service may specify.

(3) *Waiver of prohibition to disclose taxpayer information when acceptance agent acts.* As part of its request for an IRS individual taxpayer identification number or submission of proof of foreign status with respect to any taxpayer identifying number, where the foreign person acts through an acceptance agent, the foreign person will agree to waive the limitations in section 6103 regarding the disclosure of certain taxpayer information. However, the waiver will apply only for purposes of permitting the Internal Revenue Service and the acceptance agent to communicate with each other regarding matters related to the assignment of a taxpayer identifying number and change of foreign status.

(h) *Effective date*—(1) *General rule.* Except as otherwise provided in this paragraph (h), the provisions of this section are generally effective for information that must be furnished after April 15, 1974. However, the provisions relating to IRS individual taxpayer identification numbers apply after May 29, 1996. An application for an

IRS individual taxpayer identification number (Form W-7) may be filed at any time on or after July 1, 1996.

(2) *Special rules*—(i) *Employer identification number of an estate.* The requirement under paragraph (a)(1)(ii)-(C) of this section that an estate obtain an employer identification number applies on and after January 1, 1984.

(ii) *Taxpayer identifying numbers of certain foreign persons.* The requirement under paragraph (b)(2)(iv) of this section that certain foreign persons furnish a TIN on a return of tax is effective for tax returns filed after December 31, 1996.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par 3. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In §602.101, the table in paragraph (c) is amended by revising the entry for 301.6109-1 to read as follows:

301.6109-1	1545-0003
	1545-0295
	1545-0367
	1545-0387
	1545-0957
	1545-1461

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved May 20, 1996.

Leslie Samuels,
Assistant Secretary of the Treasury.

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