

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8893]

RIN 1545-AW52

Retention of Income Tax Return Preparers' Signatures

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide income tax return preparers with two alternative means of meeting the requirement that a preparer retain the copy of the return or claim manually signed by the preparer. The regulations are necessary to inform preparers about the two alternatives and to provide them with the guidance needed to comply with the alternatives.

DATES: Effective Date: These regulations are effective July 18, 2000.

Applicability Date: For dates of applicability, see §1.6695-1(g) of these regulations.

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman (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.

On December 31, 1998, final and temporary regulations (TD 8803, 1999-12 I.R.B. 15) under section 6695 were published in the **Federal Register** (63 FR 72182). A notice of proposed rulemaking (REG-106386-98, 1999-12 I.R.B. 31) cross-referencing the temporary regulations was published in the **Federal Register** (63 FR 72218) on the same date. Although written or electronic comments and requests for a public hearing were solicited, no comments were received and no public hearing was requested or held. The proposed regulations under section 6695 are adopted by this Treasury decision and the corresponding temporary regulations are removed.

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) 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.

Explanation of Provisions

The final regulations provide that 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. In the alternative, the person required to retain the manually signed copy of the return or claim may either retain a photocopy of that manually signed copy 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 Executive Order 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, the notice of proposed rulemaking that preceded these regulations was 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 Beverly A. Baughman of the 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 removing the entry for section 1.6695-1T and by revising the entry for section 1.6695-1 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 1.6695-1 is amended by:

1. Revising paragraph (b)(4)(i).
2. Adding paragraph (g).
3. Removing the authority citation immediately following the end of the section.

The revision and addition read as follows:

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

* * * * *

(b) * * *

(4)(i) The manual signature requirement of paragraphs (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 this paragraph (b)(4)(i), 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)(see §601.601(d)(2) of this chapter) or other procedures 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.

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(g) Effective date. 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.

Section 1.6695-1T [Removed]

Par. 3. Section 1.6695-1T is removed.

Robert E. Wenzel
Deputy Commissioner of Internal Revenue

Approved:
6/30/00

Jonathan Talisman
Deputy Assistant Secretary of the Treasury