

Interpretation of Section 301.6109-1(d)(3)(ii) of the Procedure and Administration Regulations

Notice 2004-1

SECTION 1. PURPOSE

This notice addresses the requirements of section 301.6109-1(d)(3)(ii) of the regulations on Procedure and Administration, relating to applications for Individual Taxpayer Identification Numbers (ITINs). The Service has changed its ITIN application process. This notice confirms that taxpayers who comply with the new ITIN application process will be deemed to have satisfied the requirements in section 301.6109-1(d)(3)(ii) relating to the time for applying for an ITIN. This notice also solicits public comments regarding the changes to the ITIN application process.

SECTION 2. BACKGROUND

Section 6109(a)(1) generally provides that a person must furnish a taxpayer identifying number (TIN) on any return, statement, or other document required to be made under the Internal Revenue Code (Code). For taxpayers eligible to obtain a social security number (SSN), the SSN is the taxpayer's TIN. *See* section 6109(d); section 301.6109-1(d)(4). Taxpayers who are required under the Code to furnish a TIN, but who are not eligible for a SSN, must obtain an ITIN from the Service. *See* Section 301.6109-1(d)(3)(ii). A taxpayer must apply for an ITIN on Form W-7, *Application for the IRS Individual Taxpayer Identification Number*.

ITINs were not intended to be used as proof of identity for nontax purposes (*e.g.*, to obtain a driver's license, to claim legal residency, to seek employment in the United States, or to apply for welfare and health benefits) and may not be reliable proof of an individual's identity for those purposes. To help eliminate the nontax use of ITINs, the Service now is requiring taxpayers to attach the original, completed tax return for which the ITIN is needed, such as a Form 1040, to the Form W-7.

SECTION 3. FORM W-7 AND ACCOMPANYING INSTRUCTIONS

The Service has revised Form W-7 and the accompanying instructions. In general, a taxpayer who must obtain an ITIN from the Service is required to attach the taxpayer's original, completed tax return for which the ITIN is needed, such as a Form 1040, to the Form W-7. There are, however, certain exceptions to the requirement that a completed return be filed with the Form W-7. These exceptions are described in detail in the instructions to the revised Form W-7. One of the exceptions applies to holders of financial accounts generating income subject to information reporting or withholding requirements. In these cases, an applicant for an ITIN must provide the IRS with evidence that the applicant had opened the account with the financial institution and that the applicant had an ownership interest in the account. The Treasury Department and the IRS will consider changes to the requirements of this exception if necessary to ensure the timely issuance of ITINs to holders of these types of financial accounts. In addition, financial institutions may participate in the IRS' acceptance agent program.

SECTION 4. CLARIFICATION OF REGULATORY REQUIREMENTS

Section 301.6109-1(d)(3)(ii) provides that any taxpayer who is required to furnish an ITIN must apply for an ITIN on Form W-7. The regulation further states that the application must be made far enough in advance of the taxpayer's first required use of the ITIN to permit the issuance of the ITIN in time for the taxpayer to comply with the required use (*e.g.*, the timely filing of a tax return). This requirement was intended to prevent delays related to Code filing requirements.

Under the Service's new ITIN application process, applicants, in general, are required to submit the Form W-7 with (and not in advance of) the original, completed tax return for which the ITIN is needed. Accordingly, taxpayers who comply with the Service's new ITIN application process will be deemed to have satisfied the requirements of section

301.6109-1(d)(3)(ii) with respect to the time for applying for an ITIN.

The original, completed tax return and the Form W-7 must be filed with the IRS office specified in the instructions to the Form W-7 regardless of where the taxpayer might otherwise be required to file the tax return. The tax return will be processed in the same manner as if it were filed at the address specified in the tax return instructions. No separate filing of the tax return (*e.g.*, a copy) with any other IRS office is requested or required. Taxpayers are responsible for filing the original, completed tax return, with the Form W-7, by the due date applicable to the tax return for which the ITIN is needed (generally, April 15 of the year following the calendar year covered by the tax return).

If a taxpayer requires an ITIN for an amended or delinquent return, then the Form W-7 must be submitted together with the return to the IRS office specified in the instructions accompanying the Form W-7.

SECTION 5. EFFECTIVE DATE

This notice is effective December 17, 2003.

SECTION 6. COMMENTS

The Service is committed to maintaining a dialogue with stakeholders on the ITIN application process, including Form W-7. Comments in response to this notice will be considered carefully by the Service in future revisions to the ITIN application process and Form W-7.

The Service welcomes all comments and suggestions and is particularly interested in comments on the following matters:

1. How can Form W-7 and the instructions be simplified or clarified?
2. The instructions to Form W-7 provide four exceptions to the requirement that a completed tax return be attached to Form W-7. Should these exceptions be modified? Are additional exceptions needed?
3. ITIN applicants may submit a Form W-7 to an acceptance agent. The acceptance agent reviews the applicant's documentation and forwards the completed

Form W-7 to the Service. What steps, if any, should the Service consider to improve the acceptance agent program?

Comments must be submitted by June 15, 2004. Comments may be submitted electronically to tonotice.comments@irscounsel.treas.gov. Alternatively, comments may be sent to CC:PA:LPD:PR (Notice 2004-1), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (Notice 2004-1), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224.

SECTION 7. CONTACT INFORMATION

The principal author of this notice is Michael A. Skeen of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this notice, contact Michael A. Skeen at (202) 622-4910 (not a toll-free call).