

§ 7805. Rules and regulations

(a) **Authorization.**—Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

(b) **Retroactivity of regulations.**—

(1) **In general.**—Except as otherwise provided in this subsection, no temporary, proposed, or final regulation relating to the internal revenue laws shall apply to any taxable period ending before the earliest of the following dates:

(A) The date on which such regulation is filed with the Federal Register.

(B) In the case of any final regulation, the date on which any proposed or temporary regulation to which such final regulation relates was filed with the Federal Register.

(C) The date on which any notice substantially describing the expected contents of any temporary, proposed, or final regulation is issued to the public.

(2) **Exception for promptly issued regulations.**—Paragraph (1) shall not apply to regulations filed or issued within 18 months of the date of the enactment of the statutory provision to which the regulation relates.

(3) **Prevention of abuse.**—The Secretary may provide that any regulation may take effect or apply retroactively to prevent abuse.

(4) **Correction of procedural defects.**—The Secretary may provide that any regulation may apply retroactively to correct a procedural defect in the issuance of any prior regulation.

(5) **Internal regulations.**—The limitation of paragraph (1) shall not apply to any regulation relating to internal Treasury Department policies, practices, or procedures.

(6) **Congressional authorization.**—The limitation of paragraph (1) may be superseded by a legislative

grant from Congress authorizing the Secretary to prescribe the effective date with respect to any regulation.

(7) **Election to apply retroactively.**—The Secretary may provide for any taxpayer to elect to apply any regulation before the dates specified in paragraph (1).

(8) **Application to rulings.**—The Secretary may prescribe the extent, if any, to which any ruling (including any judicial decision or any administrative determination other than by regulation) relating to the internal revenue laws shall be applied without retroactive effect.

(c) **Preparation and distribution of regulations, forms, stamps, and other matters.**—The Secretary shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue.

(d) **Manner of making elections prescribed by Secretary.**—Except to the extent otherwise provided by this title, any election under this title shall be made at such time and in such manner as the Secretary shall prescribe.

(e) **Temporary regulations.**—

(1) **Issuance.**—Any temporary regulation issued by the Secretary shall also be issued as a proposed regulation.

(2) **3-year duration.**—Any temporary regulation shall expire within 3 years after the date of issuance of such regulation.

(f) **Review of impact of regulations on small business.**—

(1) **Submissions to small business administration.**—After publication of any proposed or temporary regulation by the Secretary, the Secretary shall submit such regulation to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of such regulation on small business. Not later than the date 4 weeks after the date of such submission, the Chief Counsel for Advocacy shall submit comments on such regulation to the Secretary.

(2) **Consideration of comments.**—In prescribing any final regulation which supersedes a proposed or temporary regulation which had been submitted under this subsection to the Chief Counsel for Advocacy of the Small Business Administration—

(A) the Secretary shall consider the comments of the Chief Counsel for Advocacy on such proposed or temporary regulation, and

(B) the Secretary shall discuss any response to such comments in the preamble of such final regulation.

(3) **Submission of certain final regulations.**—In the case of the promulgation by the Secretary of any final regulation (other than a temporary regulation) which does not supersede a proposed regulation, the requirements of paragraphs (1) and (2) shall apply, except that—

(A) the submission under paragraph (1) shall be made at least 4 weeks before the date of such promulgation, and

(B) the consideration (and discussion) required under paragraph (2) shall be made in connection with the promulgation of such final regulation.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[NTL-978-86]

RIN 1545-AJ83

**Information Reporting by Passport and
Permanent Residence Applicants**

Correction

In proposed rule document 92-31062 beginning on page 61373 in the issue of Thursday, December 24, 1992, make the following correction:

§ 301.6039E-1 [Corrected]

On page 61375, in the second column, in § 301.6039E-1(c)(5), in the sixth line, "(1)" should read "(i)".

BILLING CODE 1505-01-0

Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224

The collection of information is required by § 301.6039E-1(c) of the proposed regulations. This information is required by the Internal Revenue Service to implement section 6039E. This information will be used to give the Internal Revenue Service notice of U.S. non-filers living abroad, and of persons with foreign source income that is subject to U.S. taxation but that is not subject to normal withholding. The respondents are individuals.

These estimates are an approximation of the average time expected to be necessary for collection of information. They are based on information available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting burden for passport applicants: 500,000 hours. The estimated annual burden per respondent varies from four to ten minutes, depending on individual circumstances, with an estimated average of six minutes. Estimated number of respondents: 5,000,000. Estimated annual frequency of responses: one.

Estimated total annual reporting burden for permanent residence applicants: 250,000. The estimated annual burden per respondent varies from twenty to forty minutes, depending on individual circumstances, with an estimated average of thirty minutes. Estimated number of respondents: 500,000. Estimated annual frequency of responses: one.

Background

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301), under section 6039E of the Internal Revenue Code of 1986 (26 U.S.C. 6039E), as added by section 1234 of the Tax Reform Act of 1986 (Pub. L. 99-514), as amended by section 1012(o) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647, Nov. 10, 1988). The proposed amendments to the regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1986 (68A Stat. 917, 26 U.S.C. 7805) and under the authority contained in section 6039E. The regulations are proposed to be applicable to all passport applications submitted after January 31, 1987 and immigration applications

submitted after December 31, 1989, that solicit the information described in section 6039E.

Statutory Framework

Section 6039E of the Internal Revenue Code of 1985 requires that passport and permanent residence applicants include certain information with their applications. The information required of passport applicants in the statute is different from that required of permanent residence applicants. The Secretary of the Treasury has authority to require additional information from either of the above mentioned groups. The statute requires a TIN (Taxpayer Identification Number) (if any) from both passport applicants and applicants for permanent residence, but also requires special information from each of these two groups. For passport applicants, the foreign country of residence (if any) must be stated, and for permanent residence applicants, a statement as to whether the applicant is required to file a tax return for any of that individual's three most recent taxable years must be given. Section 6039E requires and authorizes the obtaining of three categories of information which are grouped into "lists" in the proposed regulations—a list for permanent residence applicants, a list for passport applicants, and a list of "possible" information items which may be required of either group (or both) at a later date under the authority of section 6039E (b)(4). The statute imposes a \$500 penalty on any applicant who fails to provide the required information without reasonable cause for such failure. The Department of State and the Immigration and Naturalization Service are required to share the information collected in the course of processing passport and permanent residence applications with the Treasury Department, and are also required to identify persons refusing to comply. Finally, Congress gave the Secretary the authority to exempt any class of individuals from these reporting requirements if reporting by that class is unnecessary to carry out the purposes of section 6039E.

Section 1012 (o) of the Technical and Miscellaneous Revenue Act of 1988 exempted from the information-sharing requirement information subject to the Immigration Reform and Control Act of 1986 exempted from the information-sharing requirement information subject to the Immigration Reform and Control Act of 1986 (IRCA); (section 245A of the Immigration and Nationality Act, 8 U.S.C. 1255a). This change, which added the last sentence of section 6039E (d), has been implemented in the

26 CFR Part 301

(INTL-978-86)

RIN 1545-AJ93

Information Reporting by Passport and Permanent Residence Applicants

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations implementing section 6039E of the Internal Revenue Code of 1986. Section 6039E was added by the Tax Reform Act of 1986 to require that applicants for passports and permanent residence report certain information related to administration of U.S. tax law. These regulations would inform applicants for passports or for permanent residence of their obligations under the new reporting provision and the penalties for non-compliance and advise certain agencies of the federal government of their responsibilities under this provision.

DATES: Written comments and requests for a public hearing must be received by February 22, 1993.

ADDRESSES: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:CORP:T:R (INTL-978-86), P.O. Box 7604, Ben Franklin Station, Room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Ricardo A. Cadenas of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224, (202-874-1490, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention:

proposed regulations by both exempting any information gathered in connection with IRCA from the information sharing requirements and also by excepting such information from the reporting requirements by definition.

Purpose and Scope

Section 6039E is intended to improve tax compliance by resident aliens and U.S. citizens or nationals living abroad.

With respect to U.S. citizens or nationals living overseas but not filing returns, the Congress foresaw that collection of tax after identification might be difficult but nonetheless sought both to give the Internal Revenue Service a further source of information regarding these nonfilers and to notify these overseas persons of their continuing duty to file U.S. tax returns. With respect to persons applying for permanent residence, Congress was concerned that new residents might derive income from foreign sources not subject to normal information reporting or withholding. Therefore, Congress concluded that the Internal Revenue Service needed an additional tax compliance measure for these persons. The new reporting provisions give the Internal Revenue Service information about these persons that would otherwise be unavailable.

Explanation of Provision

The proposed regulations in this document:

(1) Prescribe the information to be gathered by processing agencies (generally, the Department of State and the Immigration and Naturalization Service (INS) of the Department of Justice).

(2) Exempt certain applicants and applications from section 6039E and this section.

(3) Provide alternate procedures for agencies reporting section 6039E information to the Internal Revenue Service.

(4) Require that information transmitted by other agencies include information concerning any persons who fail to comply with the information reporting requirements, and

(5) Restate the penalties imposed on nonexempt applicants who fail to comply.

In addition, the proposed regulations provide rules and examples concerning the possible unavailability of information to passport and immigration applicants.

The Department of State (through its domestic passport agencies and through its embassies and consulates abroad) processes all passport applications. Applications for lawful permanent

residence, or "immigrant visa" applications, are processed by both INS (domestically) and the Department of State (overseas). Forms used in these processes have been (or are in the process of being modified to request information required by section 6039E and these proposed regulations. In some instances, the forms request additional information pursuant to the authority granted in section 6039E(b)(4).

Special Analyses

It has been determined that this proposed rule is not a major rule as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Request for a Public Hearing

Before adopting these proposed Regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments on the proposed rules. Notice of the time and place of that hearing will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Ricardo A. Cadenas of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions,

Reporting and recordkeeping requirements, Statistics, Taxes.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR part 301 is as follows:

PART 301—REGULATIONS ON PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 301.6039E-1 also issued under 26 U.S.C. 6039E * * *

Par. 2. Section 301.6039E-1 is added to read as follows:

§ 301.6039E-1 Information reporting by passport and permanent residence applicants.

(a) *Applicability.* Section 6039E and this section apply to passport applicants, immigration applicants, immigration services and passport agencies of the United States (as these terms are defined in paragraph (b) of this section). Paragraphs (c) and (d) of this section apply only to passport and immigration applicants. Paragraph (e) of this section applies only to government agencies. This section shall apply to passport applications submitted after January 31, 1987 and immigration applications submitted after December 31, 1989, that solicit the information described in section 6039E.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Taxpayer identification number or TIN* means the individual's social security number (SSN) issued by the Social Security Administration. If an individual does not have an SSN, then any TIN assigned to such individual under section 6109 must be reported. An individual who has neither an SSN nor a TIN must enter zeros in the appropriate space on the application.

(2) *Country of residence* means the country in which the applicant resides at the time of the application.

(3) *Passport applicant* means any person who applies for a U.S. passport, other than a person who applies for a U.S. passport for use in diplomatic, military, or other official U.S. government business.

(4) *Passport application* includes any form used to apply for a U.S. passport described in paragraph (b)(3) of this section.

(5) *Immigration applicant* means any person applying to be accorded the privilege of lawful permanent residence in the United States as an immigrant in

accordance with chapter 12 of title 8 of United States Code. However, the form does not include any person applying for adjustment of status under I.S.C. 1255a, commonly known as the Immigration Reform and Control Act of 1986, Public Law 99-603 (100 Stat. 34).

(6) *Immigration application* means any form used in the processing of an immigration applicant by an immigration service (as defined in paragraph (b) (7) of this section).

(7) *Immigration service* means those offices of the Immigration and Naturalization Service of the Department of Justice that process immigration applications.

(8) *Passport agency* includes those offices of the Department of State (including United States Embassies and consular posts abroad) that process passport applications.

(9) *Reporting agency* means an immigration service or passport agency.

(c) *Requirement of Reporting*—(1) Passport applicants must include with an application the following information—

(i) Name;

(ii) Address of the applicant's home within the country of residence as defined in paragraph (b)(2) of this section, but if the applicant does not maintain a home within the country of residence, the applicant's mailing address at the time of the application;

(iii) Taxpayer Identification Number (TIN), if such a number has been issued to the applicant;

(iv) Date of birth; and

(v) Country of residence.

(2) Immigration applicants must include with the application the following information—

(i) Name;

(ii) Address of the applicant's home within the United States, but if the applicant does not have a home within the United States, the applicant's home address within the foreign country (or U.S. possession);

(iii) Taxpayer Identification Number (TIN), if such a number has been issued to the applicant;

(iv) Date of birth; and

(v) For each of the applicant's three most recent taxable years:

(A) A statement whether the applicant had income from sources within the United States during any such year (specifying which year or years); and

(B) A statement indicating whether the applicant has been present in the United States more than 182 days during any such year (specifying which year or years). For purposes of this section, the applicant's physical presence within the United States

during any part of a day shall be considered as presence for that day.

(3) Passport and immigration applicants must also provide in connection with their applications, the following information, if required on the application form—

(i) The last year the applicant filed a United States tax return;

(ii) A statement whether the applicant is self-employed;

(iii) A statement indicating the applicant's occupation; and

(iv) A statement regarding whether the applicant was required to file a Federal income tax return for any of the applicant's three most recent taxable years, indicating whether such returns were filed or explaining why any such returns have not been filed.

(4) Passport applicants must provide the information required by this section at the time of submitting a passport application to a passport agency.

(5) Immigration applicants residing outside of the United States who commence the immigration application process by making a visa request with the Department of State (including U.S. embassies and consulates abroad) must provide the information required by this section to an immigration service no later than the time of immigration processing upon the applicant's entry to the United States. All other immigration applicants must provide the information required by this section at the time of submitting an immigration application to an immigration service.

(d) *Penalties*—(1) A passport or immigration applicant who fails to provide the information required by section 6039E and this section must pay a penalty of \$500 for each such failure, unless it is due to reasonable cause and not willful neglect. This penalty will be applied only once per application.

(2) *Notice to applicant*. Before assessing a penalty under this section, the Service will ordinarily provide to the applicant a written notice advising the applicant of the potential imposition of the \$500 penalty, requesting the information being sought, and offering the applicant an opportunity to explain why such information was not provided at the time the application was submitted. An applicant has 30 days (60 days if the notice is addressed to an applicant outside the United States) to respond to the notice. The Service will consider the applicant's response in determining whether it will assess the penalty.

(3) *Abatement of the penalty*. After a penalty is assessed, an applicant may obtain an abatement of the penalty by affirmatively showing reasonable cause for the failure to provide the

information required by this section in the form of a written statement declaring that it is made under penalties of perjury. If it is shown that the applicant exercised ordinary care and prudence, made a reasonable effort to respond with the correct information and was, nevertheless, unable to provide all of the information required by section 6039E and this section, then the failure is due to reasonable cause. If after considering all of the surrounding circumstances, the Service determines that the failure to provide the information was due to reasonable cause and not to willful neglect, the penalty will be abated.

(4) *Examples*. The provisions of this section are illustrated by the following examples.

Example 1. A (a citizen or national of the United States) needs a passport quickly because of a medical emergency and does not have the required information at the time A completes A's passport application. The Department of State (or other passport agency) processes A's passport application. The Internal Revenue Service contacts A about the penalty, and A responds within 30 days of the date of the Internal Revenue Service's notice (60 days if it is addressed to A outside the United States). Under the emergency circumstances A's failure to provide the information would generally be treated as due to reasonable cause and not willful neglect. No penalty would be assessed.

Example 2. B does not have a social security number when B applies for permanent residence. B should so indicate on the application. The law requires that B furnish a TIN (which for individuals is generally the SSN) only if B has one. No penalty would be assessed.

Example 3. C makes a minor mistake in supplying information on a passport or immigration application. Based on the nature of the error and the information C provides after contact by the Service, the Internal Revenue Service concludes that the mistake is not due to willful neglect. No penalty will be assessed if C provides accurate information when notified by the Service.

Example 4. D decides not to give D's TIN and another information item when applying for permanent residence. D has no reasonable cause for failing to provide the required information. Although two information items are missing, D's failure involves only one "statement," within the meaning of section 6039E(c); thus, only one \$500 penalty is assessed.

(e) *Prescribed forms and transmittal of information by agencies*—(1) A reporting agency is required by section 6039E and this section to obtain from passport and immigration applicants the information described in section 6039E (b) and paragraph (c) of this section. A reporting agency may either forward the passport or immigration applications directly to the Service, or record and

transmit to the Service the information required by this section.

(2) If a passport or immigration applicant refuses to disclose any item of information required by this section, the reporting agency shall provide to the Service the applicant's name and address, and any other information, described in paragraph (c) of this section of which it has knowledge.

(3) If the passport or immigration applicant provides incomplete information with the application, the Service may contact the applicant to obtain complete information.

Shirley D. Peterson,
Commissioner of Internal Revenue.

[FR Doc. 92-31062 Filed 12-23-92; 8:45 am]

BILLING CODE 4830-01-M

P.L. 98-611, § 1(d)(1):

Amended Subpart A of part III of Subchapter A of chapter 61 by adding Code Sec. 6039D, above. [Note P.L. 98-612

also added a Code Sec. 6039D, the text of which is identical with the exception of subsection (c).]

[Sec. 6039E]

SEC. 6039E. INFORMATION CONCERNING RESIDENT STATUS.

[Sec. 6039E(a)]

(a) GENERAL RULE.—Notwithstanding any other provision of law, any individual who—

- (1) applies for a United States passport (or a renewal thereof), or
- (2) applies to be lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws,

shall include with any such application a statement which includes the information described in subsection (b).

[Sec. 6039E(b)]

(b) INFORMATION TO BE PROVIDED.—Information required under subsection (a) shall include—

- (1) the taxpayer's TIN (if any),
- (2) in the case of a passport applicant, any foreign country in which such individual is residing,
- (3) in the case of an individual seeking permanent residence, information with respect to whether such individual is required to file a return of the tax imposed by chapter 1 for such individual's most recent 3 taxable years, and
- (4) such other information as the Secretary may prescribe.

[Sec. 6039E(c)]

(c) PENALTY.—Any individual failing to provide a statement required under subsection (a) shall be subject to a penalty equal to \$500 for each such failure, unless it is shown that such failure is due to reasonable cause and not to willful neglect.

[Sec. 6039E(d)]

(d) INFORMATION TO BE PROVIDED TO SECRETARY.—Notwithstanding any other provision of law, any agency of the United States which collects (or is required to collect) the statement under subsection (a) shall—

- (1) provide any such statement to the Secretary, and
- (2) provide to the Secretary the name (and any other identifying information) of any individual refusing to comply with the provisions of subsection (a).

Nothing in the preceding sentence shall be construed to require the disclosure of information which is subject to section 245A of the Immigration and Nationality Act (as in effect on the date of the enactment of this sentence).

Amendments

P.L. 100-647, § 1012(o):

Act Sec. 1012(o) amended Code Sec. 6039E(d) by adding at the end thereof a new sentence to read as above.

The above amendments are effective as if included in the provisions of the Tax Reform Act of 1986 (P.L. 99-514) to which they relate.

[Sec. 6039E(e)]

(e) EXEMPTION.—The Secretary may by regulations exempt any class of individuals from the requirements of this section if he determines that applying this section to such individuals is not necessary to carry out the purposes of this section.

P.L. 99-514, § 1234(a)(1):

Act Sec. 1234(a)(1) amended subpart A of part III of Subchapter A of chapter 61 by inserting after Code Sec. 6039D new Code Sec. 6039E to read as above.

The above amendment applies to applications submitted after December 31, 1987 (or, if earlier, the effective date (which shall not be earlier than January 1, 1987) of the initial regulations issued under Code Sec. 6039E).

[Sec. 6040]

SEC. 6040. CROSS REFERENCES.

- (1) For the notice required of persons acting in a fiduciary capacity for taxpayers or for transferees, see sections 6212, 6901 (g), and 6903.

Sec. 6039E

©1989, Commerce Clearing House, Inc.