

SUPPORTING STATEMENT
NOTICE OF PROPOSED RULEMAKING
REG-134235-08

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

The Notice of Proposed Rulemaking will amend section 1.6109-2 of the Income Tax Regulations to provide that tax return preparers must furnish a preparer tax identification number (PTIN) on tax returns and claims for refund of tax as prescribed by the Internal Revenue Service in forms, instructions, or other guidance. The proposed regulations authorize the IRS to prescribe in forms, instructions, or other guidance (including regulations) requirements related to identifying numbers for tax return preparers that will involve a collection of information.

The collection of information is necessary to implement and administer provisions of the Internal Revenue Code. In particular, section 6109(a)(4) provides that when required by regulations, any tax return or claim for refund of tax prepared by a tax return preparer must include an “identifying number for securing proper identification of such preparer . . . as may be prescribed.” Section 6109(c) authorizes the Secretary of the Treasury “to require such information as may be necessary to assign an identifying number to any person.” Identifying numbers for tax return preparers enable the IRS to accurately identify tax return preparers and match tax return preparers to tax returns and claims for refund that they prepare. This information facilitates administration of the internal revenue laws.

Section 1.6109-2 provides that any filed tax return or claim for refund prepared by one or more tax return preparers must include the identifying number of the tax return preparer who is required to sign the tax return or claim for refund. Under the current regulations, the identifying number that a tax return preparer must use on tax returns or claims for refund is the individual’s social security number or an alternative number obtained from the IRS.

As proposed, the amendments to § 1.6109-2 eliminate the option to furnish an SSN as a valid identifying number of a tax return preparer for tax returns and claims for refund filed after December 31, 2010. After the proposed effective date, tax return preparers must use a PTIN (or a successor number that the IRS prescribes), which will be valid for a specified period and will expire unless renewed. The proposed regulations further provide that tax return preparers must apply for and regularly renew a PTIN at the time and in the manner the IRS prescribes, including the payment of a user fee. It is contemplated that tax return preparers will be required to regularly renew a PTIN once every three

years. Additionally, once the new regulations are effective, to obtain or renew a PTIN, a tax return preparer must be an attorney, certified public accountant, enrolled agent, or registered tax return preparer authorized to practice before the IRS under Treasury Department Circular 230 (31 C.F.R. Part 10), and tax return preparers may be subject to tax compliance checks.

The IRS and the Department of Treasury anticipate that final regulations under section 6109 will be published by June 15, 2010. The IRS and Treasury Department also anticipate issuing other regulations concerning the registration of tax return preparers, rules of practice for tax return preparers, payment of user fees, and requirements of minimum competency testing and continuing education.

2. USE OF DATA

The information collected will be used to correctly identify tax return preparers who apply for or renew a PTIN and to timely and accurately process an application or renewal.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

Tax return preparers currently apply for a PTIN either online at www.irs.gov or by submitting to the IRS a completed Form W-7P, "Application for Preparer Tax Identification Number." The IRS intends to implement a new online system that will replace the current platform and the Form W-7P. The new system will include, for at least a temporary period, a paper version of the online process for tax return preparers who are unable to apply online.

4. EFFORTS TO IDENTIFY DUPLICATION

The IRS will attempt to eliminate duplication wherever possible. In particular, to the extent the process to apply for or renew a PTIN overlaps with the process to become a registered tax return preparer, the IRS will make all reasonable efforts to identify and eliminate duplication in the collection of information from tax return preparers.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

In general, the proposed regulations do not, and the final regulations will not, directly impose any collection-of-information burden on small businesses or other small entities. Under the regulations, information will be collected pursuant to forms, instructions, or other guidance that the IRS may prescribe.

Additionally, information is only being collected from individuals who are tax return preparers, not from businesses or other entities, which are not eligible to obtain a PTIN.

The provisions in the regulations and the contemplated requirements in subsequent published guidance may, however, indirectly burden small entities. There will likely be an impact on self-employed tax return preparers and on small businesses that employ tax return preparers. Some tax return preparation businesses, including small businesses, may choose, for example, to pay user fees incurred by employees to obtain or renew a PTIN. The IRS and Treasury Department have considered but are not aware of any methods to further minimize any burden on small entities.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

As indicated above, it is anticipated that the IRS will prescribe a three-year cycle for tax return preparers to regularly re-register and simultaneously renew a PTIN. Tax compliance checks and continuing education will be part of the renewal process. The IRS and Treasury have determined that recurrence once every three years is necessary to ensure the ongoing competency of tax return preparers and that they continue to meet the highest ethical standards. Less frequent renewal, and thus a less frequent collection of information, could jeopardize the IRS's effective oversight of tax return preparers, with adverse consequences for tax compliance and tax administration and damage to the confidence of taxpayers and the public that the IRS's regulation of tax return preparers is working properly.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

Not applicable.

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

A notice of proposed rulemaking has been published in the Federal Register. The NPRM solicits comments from the public, including comments on the collection of information. The NPRM was preceded by an extensive review by the IRS of the tax return preparation industry as described in Publication 4832, *Return Preparer Review* (the Report), issued in December 2009. The proposed regulations implement recommendations set forth in the Report.

The IRS conducted the review with the objectives of (1) strengthening partnerships with tax practitioners and tax return preparers, among others, to advance effective tax administration and (2) ensuring that all tax practitioners, tax return preparers, and other third parties involved in the federal tax system adhere to professional standards and legal requirements. The Report noted that the review process was an open and transparent discussion of issues with the industry, consumer advocacy groups, and the public. The IRS sponsored three public forums and also issued Notice 2009-60, 2009-32 I.R.B. 181, requesting comments. The IRS considered the input received, which overwhelmingly expressed support for proposed requirements such as increased oversight of tax return preparers, in developing the recommendations in the Report.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, the information collected is confidential as required by the Privacy Act of 1974, 5 U.S.C. § 552a.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

The items of information currently collected from tax return preparers who apply for a PTIN are name, address, SSN, and date of birth. The anticipated replacement system will collect the same items of information and may have mandatory questions on whether the tax return preparer has been convicted of a felony within a specified period and whether the preparer is in compliance with all personal and business federal tax filing and tax payment requirements.

The collection of information is necessary to accurately identify a tax return preparer who applies for or renews a PTIN and to prevent fraud. In addition, because the proposed regulations provide that to obtain a PTIN, an individual must be authorized to practice before the IRS (as an attorney, certified public accountant, enrolled agent, or registered tax return preparer), the information is also needed to determine eligibility to practice before the IRS and for registration. By authorizing tax return preparers to practice and by classifying tax return preparers who are not attorneys, certified public accountants, or enrolled agents as registered tax return preparers, there will be heightened expectations as to the integrity of preparers and their fitness to prepare returns and refund

claims. Tax return preparers have access to highly sensitive and confidential taxpayer information and are responsible for compliance with the internal revenue laws.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The IRS and Treasury Department estimate that there as many as 1.2 million tax return preparers who are potentially subject to the proposed regulations. The IRS and Treasury Department further estimate that the average time to apply for or to renew a PTIN is 15 minutes per tax return preparer, for a total estimated annual burden of 300,000 hours. The estimated annual frequency of responses is once every three years. There will be reporting of information, however, by a large number of tax return preparers every year as they apply for or renew a PTIN. Each tax return preparer will generally report information only once every three years, but it is anticipated that information will be collected annually from many respondents (not exceeding 1.2 million), as not all tax return preparers will be on the same three-year cycle.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

The proposed regulations request public comments on estimates of capital or start-up costs and the costs of operation, maintenance, and purchase of services to provide information. Estimates of the annualized cost to respondents for the time spent applying for or renewing a PTIN are not available at this time.

14. ESTIMATED ANNUAL COST TO THE FEDERAL GOVERNMENT

The estimated annual cost to the Federal government of the collection of information is \$62.4 million.

15. REASONS FOR CHANGE IN BURDEN

Not applicable

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS, AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

Displaying the expiration date of an OMB control number is inappropriate because it could cause confusion by leading tax return preparers and the public

to believe that the regulations sunset as of the expiration date. Tax return preparers and the general public are unlikely to be aware that the IRS intends to request renewal of the OMB approval and to obtain a new expiration date before the approval expires.

18. EXCEPTIONS TO THE CERTIFICATION REQUIREMENT OF OMB FORM 83-I

Not applicable.

Note: The following paragraph applies to collections of information in this submission:

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 OMB control number. Books or records relating to a 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 information are confidential, as required by 26 U.S.C. 6103.