

***** JUSTIFICATION FOR EMERGENCY APPROVAL *****

Emergency approval of a collection of information is requested by the Commissioner of Internal Revenue under 44 U.S.C § 3507(j)(1) for a Notice of Proposed Rulemaking (attached) that amends section 1.6109-2 of the income tax regulations on furnishing identifying numbers of tax return preparers. As explained below, all of the requirements of section 3507(j)(1) for emergency approval are satisfied.

Background

The proposed regulations are principally intended to address the problem of the Internal Revenue Service's inability to accurately identify all tax return preparers and more significantly the problem of inaccurate identification of tax returns and claims for refund of tax with the tax return preparers who prepared the returns and claims. The proposed regulations provide that tax return preparers must, as prescribed by the IRS in forms, instructions, or other guidance, furnish a preparer tax identification number (PTIN) on tax returns and claims for refund of tax. Tax return preparers will be required to use a PTIN on tax returns and claims for refund filed after December 31, 2010. As explained in the NPRM, current regulations allow tax return preparers to furnish either their social security number or a PTIN as the preparer's identifying number on tax returns and claims for refund. The option to use more than one identifying number, and the fact that not all tax return preparers reliably use the same identifying number (i.e., a tax return preparer may use an SSN on some tax returns and claims for refund, and use a PTIN on other tax returns and refund claims), inhibits the IRS's accurate identification of tax return preparers and the tax returns and claims for refund they prepare.

The proposed regulations specifically require tax return preparers to apply for and regularly renew a PTIN at the time and in the manner the IRS prescribes, including the payment of a user fee. Further, 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 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.

Section 3507(j)(1)(A)

The collection of information falls within both prongs of section 3507(j)(1)(A). First, as required by section 3507(j)(1)(A)(i), the collection of information is needed prior to the expiration of the normal clearance period (approximately November 2010). The IRS conducted an extensive review in 2009 of paid tax return preparers and tax return preparation. The review concluded that obtaining more complete and accurate information on individual tax return preparers and improved IRS oversight of tax return preparers and their preparation of tax returns and claims for refund is necessary for effective tax administration. See IRS Publication 4832 *Return Preparer Review* (Dec. 2009). The provisions in the proposed regulations are essential to accomplishing these urgent objectives. Establishing a requirement that tax return preparers obtain and consistently use a single identifying number issued by the IRS is fundamental to better oversight of tax return preparers. It is also the requisite first step to: (1) prescribing procedures for tax return preparers to register with the IRS, including procedures for personal and business tax-compliance checks of tax return preparers; (2) authorizing registered tax return preparers to represent taxpayers before the IRS (and be subject to the rules of practice in Circular 230); and (3) requiring tax return preparers to initially pass minimum competency testing and regularly complete continuing education.

Under the proposed regulations, tax return preparers must apply for (and regularly renew) a PTIN in order to comply with the proposed requirement that a PTIN be used as the sole identifying number on tax returns and claims for refund. The information to be collected from tax return preparers who apply for (or renew) a PTIN is necessary to timely and correctly process requests and to determine a preparer's eligibility for a PTIN. Authorization to collect the information is needed as soon as possible to allow the IRS to complete its development and implementation of systems for tax return preparers to apply for and be issued a PTIN. The operational date for a new system to apply for a PTIN and register as a tax return preparer is September 1, 2010. Completion must be sufficiently in advance of the proposed effective date to allow a PTIN to be assigned to all tax return preparers who need one for use on tax returns and claims for refund filed after December 31, 2010.

Second, as required by section 3507(j)(1)(A)(ii), the collection of information is essential to the IRS's mission of administering the internal revenue laws and furthering tax compliance. Tax return preparers and tax return preparation have a significant effect on taxpayer education, tax compliance, and IRS operations. As already described, the regulations are imminently needed as part of the IRS's efforts to better monitor tax return preparers and their preparation of tax returns, which directly depends on accurate identification by means of a single, IRS-generated identifying number for each tax return preparer.

Section 3507(j)(1)(B)

Pursuant to section 3507(j)(1)(B), the IRS cannot reasonably comply with the nonemergency procedures of section 3507. Section 3507(j)(1)(B) sets forth three criteria, at least one of which must apply: (i) public harm is reasonably likely to result if normal clearance procedures are followed; (ii) an unanticipated event has occurred; or (iii) the use of normal clearance procedures is reasonably likely to cause a statutory or court-ordered deadline to be missed. The first criterion applies in this instance. Tax return preparers prepare a considerable number of the tax returns that are filed with the IRS. Consequently, tax return preparers have a significant effect on the correctness of filed tax returns. Taxpayers who hire tax return preparers to prepare their tax returns and the public in general have an interest in proper tax return preparation and in regulation of preparers and their preparation activities. Incorrect tax returns can result in penalties and interest for taxpayers, lost revenue, and added administrative costs to the IRS for examination of tax returns and collection of unreported or unpaid liabilities. The vast majority of individual income tax returns are filed during the annual filing season between late January and April 15th. For the provisions of the regulations, as well as the anticipated additional guidance, to be effective for the next filing season (January – April 2011), the approval of the collection of information in the NPRM is needed as quickly as possible and before it would ordinarily be granted under the standard procedures. Delaying the effective date of the regulatory provisions until the 2012 filing season is reasonably likely to cause public harm.