

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Updating of Employer Identification Numbers

REG-135491-10

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide rules requiring any person assigned an employer identification number (EIN) to provide updated information to the IRS in the manner and frequency prescribed by forms, instructions, or other appropriate guidance. These proposed regulations affect persons with EINs and will enhance the IRS's ability to maintain accurate information as to persons assigned EINs.

DATES: Written or electronic comments and request for a public hearing must be received by June 12, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-135491-10), room 5205, Internal Revenue Service, PO 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 (REG-135491-10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-135491-10).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Gregory T. Armstrong, (202) 622-4940; concerning submissions of comments and requests for a public hearing, Oluwafunmilayo (Funmi) Taylor of the Publications and Regulation Branch at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:M:S, Washington, DC 20224. Comments on the collection of information should be received by May 14, 2012. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in proposed §301.6109-1(d)(2)(ii)(A). This information is necessary to allow the IRS to gather correct ownership information with respect to persons that have an EIN. The respondents are persons that have an EIN.

Estimated total annual reporting burden: 403,177 hours.

Estimated average annual burden per respondent: varies from 10 to 20 minutes with an estimated average of 15 minutes.

Estimated number of respondents: 1,612,708.

Estimated frequency of responses: on occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. 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 return information are confidential, as required by section 6103 of the Internal Revenue Code.

Background and Explanation of Provisions

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR Part 301) under section 6109 relating to identifying numbers. In general, section 6109(a)(1) provides that persons shall include taxpayer identifying numbers on returns, statements, or other documents filed with the IRS. Additionally, section 6109(c) authorizes the Secretary to require such information as may be necessary to assign an identifying number to any person.

One of the principal types of taxpayer identifying numbers used to identify taxpayers is an employer identification number (EIN), which takes the form 00-0000000. See Treas. Reg. §301.6109-1(a)(1); Treas. Reg. §301.7701-12. In general, the IRS assigns an EIN for use by employers, sole proprietors, corporations, partnerships, non-profit associations, trusts, estates, government agencies, certain individuals, and other business entities for tax filing and reporting purposes.

Section 301.6109-1(d)(2)(i) provides that any person required to furnish an EIN must apply for one with the IRS on a Form SS-4, *Application for Employer Identification Number*. The IRS accepts applications for EINs electronically and by telephone, facsimile, or mail.

With increasing frequency, EIN applicants authorize certain individuals (sometimes referred to as "nominees") to act on the EIN applicants' behalf. These

nominees are listed on the EIN application as principal officers, general partners, grantors, owners, and trustors. The authority of these nominees to act on behalf of the EIN applicant is often temporary and expires after the application is processed. The listing of a nominee prevents the IRS from gathering correct ownership information with respect to the EIN applicant once the nominee is no longer authorized to act on behalf of the EIN applicant. In response to concern with this practice and the need for accurate records, effective January 2010, the IRS revised line 7a on the Form SS-4 requiring disclosure of the name of the EIN applicant's "responsible party" and the responsible party's Social Security Number, Individual Taxpayer Identification Number, or EIN.

The Instructions for Form SS-4 provide a definition for "responsible party." For entities with shares or interests traded on a public exchange, or which are registered with the Securities and Exchange Commission, the instructions currently provide that a "responsible party" is (a) a principal officer, if the business is a corporation, (b) a general partner, if a partnership, (c) the owner of an entity that is disregarded as separate from its owner (disregarded entities owned by a corporation enter the corporation's name and EIN), or (d) a grantor, owner, or trustor, if a trust.

For all other entities, the "responsible party" is the person who has a level of control over, or entitlement to, the funds or assets in the entity that, as a practical matter, enables the individual, directly or indirectly, to control, manage, or direct the entity and the disposition of its funds and assets. The ability to fund the entity or the entitlement to the property of the entity alone, however, without any corresponding authority to control, manage, or direct the entity (such as in the case of a minor child beneficiary), does not cause the individual to be a responsible party.

These proposed regulations require any person issued an EIN to provide updated information to the IRS in the manner and frequency required by forms, instructions, or other appropriate guidance, which the IRS will issue in the near future. This requirement includes updated application information regarding the name and taxpayer identifying number of the responsible party. This requirement covers those persons who previously applied for an EIN

by listing a person other than the applicant's responsible party. This updated information will allow the IRS to ascertain correct ownership details for persons who have an EIN. In turn, the IRS can use that knowledge to contact the correct persons when resolving a tax matter related to a business with an EIN and to help combat schemes that abuse the tax system through the use of nominees.

Proposed Effective/Applicability Date

These regulations are proposed to apply to all persons possessing an EIN after the date the Treasury decision adopting these rules as final regulations is published in the **Federal Register**.

Special Analyses

It has been determined that these proposed regulations are not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. 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.

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6), requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis" that will "describe the impact of the proposed rule on small entities." (5 U.S.C. 603(a)). Section 605 of the RFA provides an exception to this requirement if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities.

The proposed rules affect entities that have an EIN and the IRS has determined that these proposed rules will have an impact on a substantial number of small entities. The IRS has determined, however, that the impact on entities affected by the proposed rule will not be significant. The current Form SS-4 already requires entities to disclose the name of the EIN applicant's "responsible party" and the responsible party's Social Security Number, Individual Taxpayer Identification Number, or EIN. The amount of time necessary to submit the updated information required in these proposed regulations, therefore, should be minimal for these entities.

Based on these facts, the IRS hereby certifies that the collection of information contained in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Treasury and the IRS request comments on all aspects of the proposed rules. All comments submitted by the public will be made available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Tammie A. Geier and Gregory T. Armstrong of the Office of the Associate Chief Counsel (Procedure and Administration).

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6109-1 is amended by adding paragraphs (d)(2)(ii)(A) and (d)(2)(ii)(B) to read as follows:

§301.6109-1. *Identifying numbers.*

* * * * *

- (d) * * *
- (2) * * *
- (ii) * * *

(A) *Requirement to update.* Persons issued employer identification numbers in accordance with the application process set forth in paragraph (d)(2)(i) of this section shall provide to the Internal Revenue Service any updated application information in the manner and frequency required by forms, instructions, or other appropriate guidance.

(B) *Effective/applicability date.* Paragraph (d)(2)(ii)(A) of this section applies to all persons possessing an employer identification number after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

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Steven T. Miller,
*Deputy Commissioner for
Services and Enforcement.*

(Filed by the Office of the Federal Register on March 13, 2012, 8:45 a.m., and published in the issue of the Federal Register for March 14, 2012, 77 F.R. 15004)

ANNOUNCEMENT AND REPORT CONCERNING ADVANCE PRICING AGREEMENTS ANNOUNCEMENT 2012-13

April 2, 2012

This Announcement is issued pursuant to § 521(b) of Pub. L. 106-170, the Ticket to Work and Work Incentives Improvement Act of 1999, which requires the Secretary of the Treasury to report annually to the public concerning Advance Pricing Agreements (APAs) and the APA Program. The first report covered calendar years 1991 through 1999. Subsequent reports covered separately each calendar year 2000 through 2010. This thirteenth report describes the experience, structure, and activities of the APA Program during calendar year 2011. It does not provide guidance regarding the application of the arm's length standard.

As described in greater detail below, in the first quarter of calendar year 2012, the APA Program merged with that portion of the Office of the U.S. Competent Authority (USCA) that resolves transfer pricing cases under the mutual agreement procedures of the United States' bilateral income tax conventions. As the successor to the APA Program, the new Advance Pricing and Mutual Agreement (APMA) office has prepared and finalized this report.

Throughout the period covered by this report, and most particularly following the announcement of the new combined APMA Office, the APA Program and the USCA engaged in extensive efforts to ensure a smooth transition and successful realignment. In addition to addressing personnel transfer, systems management, and other logistical issues, during the fall of 2011, the USCA hired additional managers and staff for the APMA Office, representing a 50-percent increase in total headcount. These new employees are receiving extensive training and mentoring from existing staff and management.

In part because of these transitional issues, during 2011, case closures fell short of normal expectations and average cycle times increased. APA, with some assistance from USCA, completed 43 APAs (including one amended APA) and 47 recommended negotiating positions (RNPs), down from totals of 69 APAs and 58 RNPs in 2010. The average time to complete an APA increased from 37.2 months in 2010 to 40.7 months in 2011.

Additional contributing factors to these results were the decrease in APA personnel for most of 2011 and the record number of new APA applications filed during the past four years. It is anticipated that when the transition to the APMA Office is complete, the number of completed APAs will increase and the average cycle time will decrease. Despite a decrease in 2011, over the last several years the APA program experienced increasing productivity, as measured by the number of completed APA items (*e.g.*, APAs, APA amendments, and recommended US negotiating positions) divided by total APA staff hours.

In view of the existing backlog of APA submissions, the hiring of new personnel, an expected growth in requests in coming years, and the expanding role of APMA in examinations and other matters involving treaty jurisdictions, it is difficult to predict APMA's future resource needs with confidence. With the recently augmented staff, however, management anticipates steady growth in the productivity of the new APMA Office in the years to come.

Samuel M. Maruca
Director, Office of Transfer Pricing Operations