



Treasury Decisions
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Rules and Regulations

DEPARTMENT OF THE TREASURY
Internal Revenue Service (IRS)

26 CFR Parts 1 and 602

59 FR 33431; RIN 1545-AL49

Preparer Penalties-Manual Signature Requirement

T.D. 8549

DATE: June 29, 1994

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing that persons who prepare U.S. fiduciary income tax returns for compensation may, under certain conditions, satisfy the manual signature requirements by using a facsimile signature. The final regulations will reduce the burden on preparers of U.S. fiduciary income tax returns. The final regulations also incorporate the new \$ 50 penalty amount, with a \$ 25,000 maximum per person with respect to each calendar year, imposed by section 6695(a), (b), and (c). Prior to the Omnibus Budget and Reconciliation Act of 1989 (OBRA), the penalty amount was \$ 25. Finally, the final regulations incorporate the amendment to section 6695(e) by OBRA changing the \$ 100 penalty for failure to file correct information returns and the \$ 5 penalty for each failure to put a required item on a return to \$ 50 for each of the two described failures (with a \$ 25,000 maximum per person with respect to each calendar year).

EFFECTIVE DATE: These regulations are effective June 28, 1994.

FOR FURTHER INFORMATION CONTACT: Robert A. Walker, (202) 622-3640 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (*44 U.S.C. 3504(h)*) under control number 1545-1385. The estimated annual burden per recordkeeper varies from 30 to 60 minutes depending on individual circumstances, with an estimated average of 45 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and 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.

Background

The IRS published a notice of proposed rulemaking in the **Federal Register** on April 22, 1993 (*58 FR 21548*), proposing amendments to rules under section 6695 of the Internal Revenue Code (Code). No comments were received in response to the notice of proposed rulemaking. Accordingly, except for minor stylistic changes, the proposed regulations are adopted as final regulations by this Treasury decision.

Explanation of Provisions

Section 645 of the Code, which was enacted as part of the Tax Reform Act of 1986, generally requires trusts to use a calendar taxable year for years beginning after 1986. Section 1.6695-1(b)(1) of the Income Tax regulations requires an individual, who is an income tax preparer with respect to an income tax return or a claim for refund of income tax, to manually sign the return or claim. These two requirements, taken together, impose a potential hardship for income tax preparers responsible for the preparation of large numbers of Forms 1041 (U.S. Fiduciary Income Tax Returns).

The IRS responded to this potential hardship in *Notice 88-48, 1988-- 1 C.B. 531* (for 1987 Forms 1041), and *Notice 89-48, 1989-1 C.B. 688* (for post-1987 Forms 1041). Under these Notices, pending the revision of regulations under section 6695(b), the IRS authorized the use of a facsimile signature by a preparer (i.e., a failure-to-sign penalty would not be imposed) if certain conditions were satisfied. First, the preparer had to submit to the IRS, with the Forms 1041 bearing the preparer's facsimile signature, a letter manually signed by the preparer (a) listing the taxpayer's name and identification number on each Form 1041 bearing the facsimile signature, and (b) containing a declaration, under penalties of perjury, that the facsimile signature appearing on each return is the signature used by the preparer to sign the return. Second, after the facsimile signature is affixed, no person other than the preparer could alter entries of the Form 1041 other than to correct arithmetic errors. Third, a manually signed copy of the letter to the IRS, together with a record of any arithmetic errors that were corrected, must be retained and made available to the IRS upon request.

The final regulations amend § 1.6695-1(b) to permit preparers of fiduciary returns to use a facsimile signature, instead of a manual signature, to sign returns under the same conditions contained in the two Notices. These conditions are substantially similar to those under which preparers of returns for nonresident alien individual taxpayers are permitted to use a facsimile signature to sign a return or claim for refund. The rules for nonresident alien taxpayers appear in § 1.6695-1(b)(4)(iii). Unlike those rules, however, the final regulations do not extend permission for preparers to use a facsimile signature on fiduciary claims for refund.

Additionally, the final regulations amend the current regulations to reflect the changes made in OBRA to the amounts of the preparer penalties imposed by sections 6695 (a), (b), (c), and (e).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (*5 U.S.C. chapter 5*) and the Regulatory Flexibility Act (*5 U.S.C. chapter 6*) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Robert A. Walker of the Office of Assistant Chief Counsel (General Litigation). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1-INCOME TAXES

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

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

Section 1.6695-1 also issued under 26 U.S.C. 6695(b) * * *

Par. 2. Section 1.6695-1 is amended by:

1. Revising paragraph (a)(1), introductory text.
2. Revising paragraph (b)(1).
3. Revising paragraphs (b)(4) (iv) and (v).
4. Adding paragraph (b)(4)(vi).
5. Revising paragraph (b)(5), introductory text.
6. Revising paragraphs (c)(1), introductory text and paragraph (c)(3).
7. Revising paragraph (e).

§ 1.6695-1 -- Other assessable penalties with respect to the preparation of income tax returns for other persons.

(a) *Failure to furnish copy to taxpayer.* (1) A person who is an income tax return preparer of any return of tax under subtitle A of the Internal Revenue Code or claim for refund of tax under subtitle A of the Internal Revenue Code and who fails to satisfy the requirements imposed by section 6107(a) and § 1.6107-1 (a) and (c) to furnish a copy of the return or claim for refund to the taxpayer (or nontaxable entity), shall be subject to a penalty of \$ 50 for such failure, with a maximum penalty of \$ 25,000 per person imposed with respect to each calendar year, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. Thus, no penalty may be imposed under section 6695(a) and this paragraph (a)(1) upon a person who is an income tax return preparer solely by reason of-

* * * * *

(b) *Failure to sign return.* (1) An individual who is an income tax return preparer with respect to a return of tax under subtitle A of the Internal Revenue Code or claim for refund of tax under subtitle A of the Internal Revenue Code shall manually sign the return or claim for refund (which may be a photocopy) in the appropriate space provided on the return or claim for refund after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature. Except as provided in paragraphs (b)(4) (iii) and (iv) of this section, an individual preparer may not satisfy this requirement by use of a facsimile signature stamp or signed gummed label. If the preparer is unavailable for signature, another preparer shall review the entire preparation of the return or claim for refund, and then shall manually sign the return or claim for refund.

* * * * *

(4) * * *

(iv) A preparer of a fiduciary return may satisfy the manual signature requirement of paragraphs (b) (1) and (2) of this section by a facsimile signature only if the preparer submits to the Internal Revenue Service with the returns bearing the preparer's facsimile signature a letter, manually signed by the preparer, identifying by taxpayer name and identification number each return bearing the facsimile signature and declaring under penalties of perjury that the facsimile signature appearing on these returns is the signature used by the preparer to sign these documents. After the facsimile signature is affixed, no person other than the preparer may alter any entries on the return other than to correct arithmetical errors discernable on the return. The employer of the preparer or the partnership in which the preparer is a partner, or

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the preparer (if not employed or engaged by a preparer and not a partner in a partnership which is a preparer), shall retain a manually signed copy of the letter submitted to the Internal Revenue Service with the returns. A record of any arithmetical errors corrected shall be retained by the person required to keep the manually signed letter and that person shall make the record available to the Internal Revenue Service upon request. The preparer of a fiduciary claim for refund may not satisfy the manual signature requirement of paragraphs (b) (1) and (2) of this section by a facsimile signature.

(v) Any items required to be retained and kept available for inspection under paragraph (b)(4) (i), (ii), (iii), or (iv) of this section shall be retained and kept available for inspection for the same period that the material described in § 1.6107-1(b) must be retained and kept available for inspection.

(vi) If the district director, service center director, or compliance center director (director) determines that a preparer or preparers have abused the permissive signature rules of this paragraph (b)(4), such as by altering the return or claim for refund after signature (in contravention of paragraph (b)(4)(i) of this section), by altering information on the return or claim for refund after attestation (in contravention of paragraph (b)(4)(ii) of this section), or by failing to comply with the provisions of paragraph (b)(4) (iii) or (iv) of this section, then the director may, by written notice, prospectively deny to the preparer or preparers the right to use the permissive signature rules of this paragraph (b)(4).

(5) An individual required by this paragraph (b) to sign a return or claim for refund shall be subject to a penalty of \$ 50 for each failure to sign, with a maximum of \$ 25,000 per person imposed with respect to each calendar year, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. For purposes of this paragraph (b), reasonable cause is a cause which arises despite ordinary care and prudence exercised by the individual preparer. Thus, no penalty may be imposed under section 6695(b) and this paragraph (b) upon a person who is an income tax return preparer solely by reason of-

* * * * *

(c) *Failure to furnish identifying number.* (1) A person who is an income tax return preparer of any return of tax under subtitle A of the Internal Revenue Code or claim for refund of tax under subtitle A of the Internal Revenue Code and who fails to satisfy the requirement of section 6109(a)(4) and § 1.6109-2(a) to furnish one or more identifying numbers of preparers on a return or claim for refund shall be subject to a penalty of \$ 50 for each failure, with a maximum of \$ 25,000 per person imposed with respect to each calendar year, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. Thus, no penalty may be imposed under section 6695(c) and this paragraph (c)(1) upon a person who is an income tax return preparer solely by reason of-

* * * * *

(3) No more than one penalty of \$ 50 may be imposed under section 6695(c) and paragraph (c)(1) of this section with respect to a single return or claim for refund.

* * * * *

(e) *Failure to file correct information returns.* A person who is subject to the reporting requirements of section 6060 and § 1.6060-1 and who fails to satisfy these requirements shall pay a penalty of \$ 50 for each such failure, with a maximum of \$ 25,000 per person imposed for each calendar year, unless such failure was due to reasonable cause and not due to willful neglect.

* * * * *PART 602-OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. The table in § 602.101(c) is amended by revising the entry for § 1.6695-1 to read as follows:

"1.6695-1--1545-0074, 1545-1385".

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: June 10, 1994.

T.D. 8549

Leslie Samuels,

Assistant Secretary of the Treasury.

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