

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[TD 8803]

RIN 1545-AW83

Retention of Income Tax Return Preparers' Signatures

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that provide income tax return preparers with two alternative means of meeting the requirement that a preparer retain the manually signed (by the preparer) copy of the return or claim. The regulations are necessary to inform preparers of the two alternatives and provide preparers with the guidance needed to comply with the alternatives. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Effective Date: These regulations are effective December 31, 1998.

Applicability Date: For dates of applicability, see § 1.6695-1T(g) of these regulations.

FOR FURTHER INFORMATION CONTACT: Marc C. Porter (202) 622-4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

This document contains amendments to the Income Tax Regulations (26 CFR part 1) relating to the penalty for failure to sign an income tax return under section 6695(b) of the Internal Revenue Code. Section 6695(b) provides that any person who is an income tax return preparer with respect to a return or claim for refund, who is required by regulations prescribed by the Secretary to sign the return or claim, and who fails to comply with those regulations, must pay a penalty of \$50 for such failure, unless it is shown that the failure is due to reasonable cause and not willful neglect. The maximum penalty imposed with respect to documents filed during a calendar year will not exceed \$25,000.

Section 7701(a)(36)(A) provides that, in general, the term "income tax return preparer" means any person who prepares for compensation, or who employs one or more persons to prepare

for compensation, any return of tax or claim for refund imposed by subtitle A. For purposes of the preceding sentence, the preparation of a substantial portion of a return or claim is treated as if it were the preparation of such return or claim.

Section 1.6695-1(b)(1) and (c) generally provides that an income tax return preparer, with respect to a return or claim for refund, must manually sign the return or claim (which may be a photocopy) in the appropriate space provided on the return or claim after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature.

Section 1.6695-1(b)(4)(i) provides that the manual signature requirement may be satisfied by a photocopy of a copy of the return or claim for refund if the copy is manually signed by the income tax return preparer after completion of its preparation. The taxpayer may file a photocopy of this manually signed return with the IRS, see Rev. Proc. 78-370 (1978-2 C.B. 335). The employer of the preparer or the partnership in which the preparer is a partner, or the preparer (if not employed or engaged by a preparer and not a partner of a partnership which is a preparer), must retain the manually signed copy of the return or claim.

Explanation of Provisions

The regulations provide that, if an income tax return preparer presents for a taxpayer's signature a return or claim for refund that has a copy of the preparer's manual signature, the preparer may either retain a photocopy of the manually signed copy of the return or claim for refund or use an electronic storage system meeting the requirements of section 4 of Rev. Proc. 97-22, (1997-1 C.B. 652) or procedures subsequently prescribed by the Commissioner, to store and produce a copy of the return or claim manually signed by the preparer.

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 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, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for

Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information: The principal author of these regulations is Marc C. Porter, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

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

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

Par. 2. Section 1.6695-1 is amended by revising paragraph (b)(4)(i) to read as follows:

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

* * * * *

(b) * * *

(4)(i) [Reserved]. For further guidance on acceptable methods of meeting the manual signature requirement of paragraphs (b)(1) and (2) of this section, see § 1.6695-1T(b)(4)(i).

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Par. 3. Section 1.6695-1T is added to read as follows:

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

(a) through (b)(3) [Reserved]. For further guidance, see § 1.6695-1(a) through (b)(3).

(b)(4)(i) The manual signature requirement of § 1.6695-1(b)(1) and (2) may be satisfied by a photocopy of a copy of the return or claim for refund which copy is manually signed by the preparer after completion of its preparation. After a copy of the return or claim for refund is signed by the preparer and before it is photocopied, no person other than the preparer may alter any entries on the copy other than to correct arithmetical errors discernible on the return or claim for refund. The employer of the preparer or the partnership in which the preparer is a partner, or the preparer (if not employed or engaged by a preparer and not a

partner of a partnership which is a preparer), must retain the manually signed copy of the return or claim for refund. In the alternative, for a return or claim for refund presented to a taxpayer for signature after December 31, 1998 and for returns or claims for refund retained on or before that date, the person required to retain the manually signed copy of the return or claim for refund may choose to retain a photocopy of the manually signed copy of the return or claim for refund, or use an electronic storage system to store and produce a copy of the manually signed return or claim for refund. For purposes of this paragraph (b)(4)(i), an electronic storage system must meet the electronic storage system requirements prescribed in section 4 of Rev. Proc. 97-22 (1997-1 C.B. 652)(see § 601.601(d)(2) of this chapter) or procedures subsequently prescribed by the Commissioner. A record of any arithmetical errors corrected must be retained and made available upon request by the person required to retain the manually signed copy of the return or claim for refund.

(b)(4)(ii) through (f) [Reserved]. For further guidance, see § 1.6695-1(b)(4)(ii) through (f).

(g) *Effective date.* This section applies to income tax returns and claims for refund presented to a taxpayer for signature after December 31, 1998 and for returns or claims for refund retained on or before December 31, 1998. This section expires on December 31, 2001.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 17, 1998.

Donald C. Lubick,

Assistant Secretary of the Treasury.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, 35a, and 301

[TD 8804]

RIN 1545-AW39

General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds, and Credits; Revision of Information Reporting and Backup Withholding Regulations; and Removal of Regulations Under Parts 1 and 35a and of Certain Regulations Under Income Tax Treaties

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule; delay of effective date, technical amendments, and partial withdrawal.

SUMMARY: This document contains changes delaying the effective date and making technical amendments to final regulations (TD 8734), which were published in the **Federal Register** for October 14, 1997, relating to the withholding of income tax on certain U.S. source income payments to foreign persons. The Department of the Treasury and the IRS believe it is in the best interest of tax administration to extend the effective date of the final withholding regulations to ensure that both taxpayers and the government can complete changes necessary to implement the new withholding regime. As extended by this document, the final withholding regulations will apply to payments made after December 31, 1999. This document also withdraws two amendments which have already been dealt with in TD 8772, which was published in the *Federal Register* for June 30, 1998.

DATES: *Effective Dates:* The amendments in this final rule are effective January 1, 2000. As of December 31, 1998, the effective date of the final regulations published at 62 FR 53387, October 14, 1997, is delayed from January 1, 1999, until January 1, 2000; however, the effective date of the addition of § 31.9999-0 and § 35a.9999-0 and the removal of § 35a.9999-0T remains October 14, 1997.

Withdrawal: Effective December 31, 1998, the amendments removing §§ 1.6045-1T and 1.6045-2T published at 62 FR 53387, October 14, 1997, are withdrawn.

FOR FURTHER INFORMATION CONTACT: Lilo Hester, (202) 622-3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this amendment provide guidance under sections 1441, 1442, and 1443 of the Internal Revenue Code (Code) on certain U.S. source income paid to foreign persons, the related tax deposit and reporting requirements under section 1461 of the Code, and the related changes under sections 163(f), 165(j), 871, 881, 1462, 1463, 3401, 3406, 6041, 6041A, 6042, 6045, 6049, 6050A, 6050N, 6109, 6114, 6402, 6413, and 6724 of the Code.

Need for Changes

On April 13, 1998, in Notice 98-16 (1998-15 I.R.B. 12), the IRS and Treasury announced their decision to extend the effective date of the final regulations, and to make correlative changes to the transition rules for obtaining new withholding certificates and statements containing the necessary information and representations required by the final regulations. As published in the **Federal Register** on October 14, 1997 (62 FR 53387), the final regulations were generally applicable to payments made after December 31, 1998, and generally granted withholding agents until after December 31, 1999, to obtain the new withholding certificates and statements required under those regulations. This amendment serves to make the final regulations applicable to payments made after December 31, 1999, and to require mandatory use of the new withholding certificates and statements after December 31, 2000. In addition, this amendment serves to address typographical errors, and to withdraw the removal of §§ 1.6045-1T and 1.6045-2T since those sections were already removed on June 30, 1998, in TD 8772 (63 FR 35517).

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) does not apply to these regulations. Finally, it has been determined that the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations because the regulations do not impose a collection of information on small entities. Pursuant to 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations (61 FR 17614) was submitted to the Small