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[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG-135491-10]

RIN 1545-BK02

Updating of Employer Identification Numbers

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 **[INSERT DATE 90 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

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:T:SP, Washington, DC 20224. Comments on the collection of information should be received by **[INSERT DATE 60 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. 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).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

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.

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