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[4830-01-p]

## DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-102952-16]

RIN 1545-BN43

Tax Return Preparer Due Diligence Penalty under Section 6695(g)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that will modify the existing regulations related to the penalty under section 6695(g) of the Internal Revenue Code (Code) relating to tax return preparer due diligence. The temporary regulations implement recent law changes that expand the tax return preparer due diligence penalty under section 6695(g) so that it applies to the child tax credit (CTC), additional child tax credit (ACTC), and the American Opportunity Tax Credit (AOTC), in addition to the earned income credit (EIC). The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by **INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-102952-16), room 5205, Internal Revenue Service, P.O. 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-102952-16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-102952-16).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Rachel L. Gregory, 202-317-6845; concerning submissions of comments and the hearing, Regina Johnson, 202-317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

### **Paperwork Reduction Act**

The collection of information in current §1.6695-2 was previously reviewed and approved under control number 1545-1570. Control number 1545-1570 was discontinued in 2014, as the burden for the collection of information contained in §1.6695-2 is reflected in the burden on Form 8867, "Paid Preparer's Due Diligence Checklist," under control number 1545-1629.

### **Background and explanation of provisions**

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR 1.6695-2 by imposing due diligence requirements on tax return preparers with respect to determining the eligibility for, or the amount of, the CTC/ACTC or AOTC, in addition to the EIC, on any return or claim for refund. The temporary regulations also amend section 1.6695-2 to reflect the changes made by section 208(c), Div. B of the Tax Increase Prevention Act of 2014, Pub. L. 113-295 (128

Stat. 4010, 4073 (2014)), requiring the IRS to index the penalty for inflation for returns and claims for refund filed after December 31, 2014.

The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

### **Special Analyses**

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required.

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6), it is hereby certified that these proposed rules, if adopted, would not have a significant economic impact on a substantial number of small entities. When an agency issues a notice of proposed rulemaking, the RFA 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 tax return preparers who determine the eligibility for, or the amount of, the EIC, the CTC/ACTC and/or the AOTC. The North American Industry Classification System (NAICS) code that relates to tax return preparation services (NAICS code 541213) is the appropriate code for tax return preparers subject to this notice of proposed rulemaking. Entities identified as tax return preparation services are considered small under the Small Business Administration size standards (13 CFR

121.201) if their annual revenue is less than \$20.5 million. The IRS estimates that approximately 75 to 85 percent of the 505,000 persons who work at firms or are self-employed tax return preparers are operating as or employed by small entities. The IRS has therefore determined that these proposed rules will have an impact on a substantial number of small entities.

The IRS has further determined, however, that the economic impact on entities affected by the proposed rules will not be significant. The current regulations under section 6695(g) already require tax return preparers to complete the Form 8867 when a return or claim for refund includes a claim of the EIC. Tax return preparers also must currently maintain records of the checklists and EIC computations, as well as a record of how and when the information used to compute the EIC was obtained by the tax return preparer. The information needed to document eligibility for the CTC/ACTC and the AOTC largely duplicates the information needed to compute the EIC and complete other parts of the return or claim for refund. Even if certain preparers are required to maintain the checklists and complete Form 8867 for the first time, the IRS estimates that the total time required should be minimal for these tax return preparers. Further, the IRS does not expect that the requirements in these proposed regulations would necessitate the purchase of additional software or equipment in order to meet the additional information retention requirements.

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 Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small business.

### **Comments and Requests for Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS as prescribed in this preamble under the “Addresses” heading. The IRS and Treasury Department request comments on all aspects of the proposed rules. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written 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 author of this regulation is Rachel L. Gregory, Office of the Associate Chief Counsel (Procedure & Administration).

### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### **PART 1--INCOME TAXES**

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

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

Par. 2. Section 1.6695-2 is amended by revising the section heading and paragraphs (a), (b)(1)(i) introductory text, (b)(1)(ii), (b)(2), (b)(3)(i) and (ii), (b)(4)(i)(B) and (C), (c)(3), and (e) to read as follows:

§ 1.6695-2 Tax return preparer due diligence requirements for certain credits.

(a) [The text of the proposed amendment to §1.6695-2(a) is the same as the text of §1.6695-2T(a) published elsewhere in this issue of the **Federal Register**].

(b) \* \* \*

(1) \* \* \*

(i) [The text of the proposed amendment to §1.6695-2(b)(1)(i) is the same as the text of §1.6695-2T(b)(1)(i) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(ii) [The text of the proposed amendment to §1.6695-2(b)(1)(ii) is the same as the text of §1.6695-2T(b)(1)(ii) published elsewhere in this issue of the **Federal Register**].

(2) [The text of the proposed amendment to §1.6695-2(b)(2) is the same as the text of §1.6695-2T(b)(2) published elsewhere in this issue of the **Federal Register**].

(3) \* \* \*

(i) [The text of the proposed amendment to §1.6695-2(b)(3)(i) is the same as the text of §1.6695-2T(b)(3)(i) published elsewhere in this issue of the **Federal Register**].

(ii) [The text of the proposed amendment to §1.6695-2(b)(3)(ii) is the same as the text of §1.6695-2T(b)(3)(ii) published elsewhere in this issue of the **Federal Register**].

(4) \* \* \*

(i) \* \* \*

(B) [The text of the proposed amendment to §1.6695-2(b)(4)(i)(B) is the same as the text of §1.6695-2T(b)(4)(i)(B) published elsewhere in this issue of the **Federal Register**].

(C) [The text of the proposed amendment to §1.6695-2T(b)(4)(i)(C) is the same as the text of §1.6695-2T(b)(4)(i)(C) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(c) \* \* \*

(3) [The text of the proposed amendment to §1.6695-2T(c)(3) is the same as the text of §1.6695-2T(c)(3) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(e) Applicability date. The rules of this section apply to tax returns and claims for refunds prepared on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register** with respect to tax years beginning after December 31, 2015.

John M Dalrymple,  
Deputy Commissioner for Services and Enforcement.