



August 28, 2012

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Commissioner Shulman:

This letter is in response to the Internal Revenue Service (IRS) announcement on June 22, 2012 regarding the interim changes to the Individual Taxpayer Identification Number (ITIN) application procedures.

We understand that the IRS has received inquiries regarding the ITIN application process, including recommendations for change made in a recent Treasury Inspector General for Tax Administration report. The American Institute of Certified Public Accountants (AICPA) fully supports the IRS efforts to address these issues and we offer our commitment to assist IRS during this process.

While the challenges presented by the new ITIN procedures are great, we urge IRS to consider the impact the interim changes will have on those taxpayers who must have an ITIN to meet their U.S. tax filing obligations or claim refunds during 2012. We also request immediate guidance regarding how taxpayers who are unable to obtain ITINs under the interim changes should achieve compliance with their 2011 federal tax obligations. This issue is particularly urgent as individual income tax returns on extension are due by October 15, 2012.

The AICPA is the world's largest member association representing the accounting profession, with nearly 386,000 members in 128 countries and a 125 year heritage of serving the public interest. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

Background

On June 22, 2012 the IRS announced interim changes to the procedures for issuing ITINs. ITINs are generally issued to individuals with U.S. tax filing requirements who are not eligible to obtain Social Security Numbers (SSNs). The announcement, which is effective through the end of 2012, contains two significant changes to the process. First, the IRS has eliminated the option of providing a notarized copy of required identification documents, such as passports, with the Form W-7, Application for IRS Individual Tax Identification Number. Beginning on June 22, 2012, individuals applying for an ITIN

must either mail their original passport or other acceptable government-issued identification document (or certified copies of these documents obtained from the original issuing agency) to the IRS Austin Service Center with their Form W-7. The IRS has indicated that it may take 60 days or longer for these original documents to be returned to the applicant. Second, prior to this change, ITIN applicants using Certifying Acceptance Agents (CAAs) were able to present their original documents to the CAA for verification without having to submit notarized copies to the IRS. The interim changes apply to applications submitted directly to the IRS as well as to those submitted through CAAs. Thus, under the (new) interim procedures a taxpayer must mail either original documents or copies certified by the issuing agency to the IRS even if they use a CAA.

In announcing the interim changes, the IRS stated that because the April 17, 2012 filing deadline has already passed, only a small number of taxpayers will need ITINs between now and the end of 2012. The announcement also stated that final rules will be issued before the start of the 2013 filing season.

Burdens Caused by the Interim Changes

We believe the IRS has underestimated the number of ITIN applicants that will be affected by the interim changes, as well as the burden the changes to the documentation requirements place on those applicants needing ITINs in the future if these interim procedures are adopted.

The AICPA strongly disagrees with the IRS's view that because the April 17 filing deadline has passed, only a small number of taxpayers are affected by the change in the ITIN procedures. A large number of ITIN applicants file their income tax returns on extension. This is exceedingly common in scenarios involving individuals who have multiple filing requirements in different foreign jurisdictions as well as the United States. In addition, some ITIN applicants, who are utilizing elections under Internal Revenue Code (IRC) section 7701(b) were unable to file on or before April 17 because they had not yet satisfied the requirements of the election (i.e., the substantial presence test in 2012). These individuals are unable to apply for their ITINs until after the April filing deadline.

We are also concerned about the impact the interim ITIN procedures have on nonresident alien individuals who are partners in U.S. partnerships. These partners are required to possess ITINs in order to be eligible to file Form 1040-NR, U.S. Nonresident Alien Income Tax Return. Filing a Form 1040-NR allows a nonresident individual to take advantage of the U.S. graduated tax rate structure.

Because the ITIN changes became effective in the middle of the filing season without any prior notice of the changes, these prospective ITIN applicants never had an opportunity to prepare for the documentation requirements now in effect. Many individuals had already assembled the required information under the prior rules and were waiting to reach the

time when a Form W-7 could be filed. As described below, these new documentation requirements are highly burdensome, and in some cases, are not able to be met because the foreign jurisdiction does not offer the required certified copies.

Challenges in Submitting Original Documents or Obtaining Certified Copies

The interim changes offer two options for obtaining an ITIN – mail original identification documents or mail copies of such documents certified by the original issuing agency.

It is impractical for most foreign persons in need of an ITIN to surrender their original identification documents to the IRS for 60 days. The ITIN applicants may need their identification for travel purposes, to prove their legal presence in the United States, or to provide identification for any other purpose, including conducting day-to-day business and unanticipated travel such as for family emergencies. Obtaining certified copies of the documents from the issuing agency would be the only other means available for most people to apply for an ITIN, if such copies are even available.

The AICPA is concerned regarding the difficulties faced by taxpayers attempting to obtain certified copies of the identification documentation. Depending upon their location within the United States, it may not be possible or practical for these individuals to appear in person at the consular office, as consular offices may be located too far from their place of U.S. residence. We have also heard from our members that some prospective ITIN applicants who are currently residing in the United States have been advised by their home country's consulate that it does not issue certified copies of passports.

It may not be practical for many of these applicants to travel to their home country solely for the purpose of obtaining certified documentation. Further complicating the situation, we have heard from our members that some countries will not issue a certified copy of a passport at all – not even if the applicant is present in the home country. For example, for the United Kingdom and Commonwealth countries, some of our members have reported that the only way to have the government stamp a copy is via the Apostille process where the Foreign and Commonwealth Office attaches its seal. It is our understanding that the IRS Austin ITIN unit has often rejected Apostille copies in the past, and thus, Apostille copies are not a good option either. We are also hearing from members with foreign clients who are not residents in the United States regarding some countries that do not provide any type of certification process for these documents, thereby making it impossible for them to secure an ITIN.

Additional Administrative Burdens for Taxpayers and IRS

To the extent individuals find themselves unable to obtain ITINs, the outcome is burdensome not only for the individuals, but also for the IRS. For example, in the situation where a foreign person is legally authorized to work in the United States with a

SSN, they may timely file their Form 1040. However, the taxpayers must forego a joint return and any exemptions because their spouse and dependents are unable to obtain ITINs before the return filing date. As a result, the taxpayer will unnecessarily pay higher taxes. Then, once the spouse and dependents obtain their ITINs, the taxpayer will amend the Form 1040. The filing of unnecessary amended returns will undoubtedly result in an increase in administrative burden and/or cost for both taxpayers and the IRS.

Perhaps most concerning are the issues surrounding frequent business travelers with significant days of U.S. presence and other individuals who have U.S. effectively connected income (ECI). These individuals often trigger a liability in the United States based on their ECI, but are ineligible for SSNs. These individuals require ITINs in order to both file their return and make payment of any tax due. If the filing of the return is delayed, the individual would be forced to pay the tax without an ITIN or risk substantial penalties. This delay would later cause administrative work for the IRS to properly identify the taxpayer and allocate the payment to the correct taxpayer account.

Due to the vast difficulties with obtaining certified copies of identification documents for many applicants, the AICPA strongly urges the IRS to review its decision to not accept notarized copies of documents submitted with the Form W-7. We think notarized documents are an efficient method of transmitting required documentation to the IRS in the majority of cases.

Identity Theft

It appears the interim changes are intended to address problems with tax refund fraud connected to refundable credits. However, it is unclear how receipt of an original passport or other identification provides the IRS with any more certainty that the applicant is actually the owner of the document or whether the applicant is eligible for any refundable credits claimed.

To the extent the changes are intended to discourage identity theft, the AICPA is concerned that sending original documents through the mail at least twice (first when the taxpayer mails the document to the IRS and second when the IRS mails the document back to the taxpayer) presents a different set of identity theft risks to be considered. In particular, there is concern when ITIN applicants use overseas mail.

Certifying Acceptance Agents

We are also particularly dismayed by the application of the interim changes to the CAA population. While we appreciate the IRS's efforts to change its processes to reduce the risk of tax fraud and identity theft, it is unclear how the elimination of the option to show, but not surrender, original documents to a CAA, will accomplish this goal. In fact, by interposing trusted CAAs, it is more likely that documents presented as identification actually belong to the applicant.

CAAs facilitate and expedite the issuance of ITINs by verifying the foreign status and identity of the ITIN applicant and, prior to June 22, 2012, eliminated the need for the applicants to relinquish their original documents or use a notary. Many of the CAAs further facilitate the process as a direct result of the way they are organized. For example, certain professional services firms have CAA agreements in place with the IRS as a means of assisting their current clients, and are part of a network of member firms around the world. In following standard CAA protocol, employees of the member firms of the CAA, who are in the best position to authenticate and translate documents, are conducting interviews as required by the CAA agreement, certifying documents and completing the requisite checklists. For applicants residing overseas or in remote locations, CAAs are essential to the filing process. Because many CAAs provide these services only to their clients (individuals known to them), and there is a low occurrence of refundable credits on the tax returns filed by these individuals, the risk of tax-based identity theft is substantially lower. The interim changes eliminate the ability of CAAs to provide full ITIN application services to these individuals and take away from the IRS a valuable tool in ensuring the authenticity of documents from foreign jurisdictions. Additionally, because the CAAs are closely regulated by the IRS through participation in the CAA program, the IRS could address any concerns regarding ITIN applications directly with the CAAs, as opposed to issuing an overly broad and burdensome response to perceived problems in the ITIN process.

The AICPA strongly recommends that the IRS review its decision that the interim changes apply to CAAs. Specifically, the IRS should permit taxpayers to present identification documents to CAAs as opposed to submitting originals to the IRS in order to obtain an ITIN.

Request for Immediate Guidance

The AICPA also urges IRS to issue immediate guidance regarding how taxpayers in need of ITINs can comply with their tax year 2011 federal tax obligations. Specifically, we would appreciate guidance on the following issues:

- Definition of “original issuing agency.” It is unclear what the IRS’s ITIN Unit will treat as an original issuing agency. Is a certified copy of a document from the consulate or embassy located in the United States sufficient or does the copy have to be certified by the particular office in a particular city within the home country that issued the original document? To avoid delays in obtaining an ITIN as a result of submitting incorrect documentation, additional guidance regarding the definition of an “original issuing agency” would be helpful.
- Certification. We understand that some issuing agencies in some countries will not stamp and certify the submitted document copies directly on those documents. In such cases, will an “authenticity statement” from the issuing agency be acceptable? Similarly, will an Apostille be acceptable? If neither of these options

is acceptable, is there another alternative that will be acceptable as certification?

- Failure to obtain documentation in time to meet filing or payment deadlines. If the taxpayer is unable to obtain a copy of the document certified by the issuing agency in sufficient time to allow for timely filing of the tax return, how should the individual proceed if:
 - The taxpayer owes tax and does not have an ITIN?
 - The taxpayer is claiming exemptions for dependents who do not have identifying numbers? May the individual revert to designating that an identifying number has been "applied for" in the area for the ITIN to facilitate timely filing?
 - Based on treaty rates the taxpayer does not owe tax in the amount withheld and is due a refund resulting from investments made in the U.S?

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The AICPA appreciates the IRS's willingness to consider our concerns regarding the new ITIN procedures; and we remain interested in further dialog with the Service regarding permanent guidance, as well as the interim changes. Further, if there are specific concerns regarding the use of notarized documents in the ITIN application process, we would like to discuss those concerns in an effort to find ways to mitigate any improper abuses of the notary process, as we believe notarized documents are an efficient method of transmitting required documentation to the IRS in the majority of cases.

If you would like to discuss our comments in more depth or have any questions, please contact me at (401) 831-0200, or patt@pgco.com; Kathy Petronchak, Chair, IRS Practice and Procedures Committee, at (202) 758-1480, or kpetronchak@deloitte.com; or Benson Goldstein, AICPA Senior Technical Manager-Taxation, at (202) 434-9279, or bgoldstein@aicpa.org.

Sincerely,



Patricia Thompson, CPA
Chair, Tax Executive Committee