
**Section 6109.—Identifying
Numbers**

T.D. 9617

**DEPARTMENT OF THE
TREASURY
Internal Revenue Service
26 CFR Parts 301 and 602**

**Updating of Employer
Identification Numbers**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final regulations that require 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 regulations affect persons with EINs and will enhance the IRS's ability to maintain accurate information as to persons assigned EINs.

DATES: *Effective Date:* These regulations are effective on May 6, 2013.

Applicability Date: For date of applicability, see §301.6109-1(d)(2)(ii)(B).

FOR FURTHER INFORMATION CONTACT: David Skinner, (202) 622-4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in the final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2242.

The collection of information in the final regulations is in §301.6109-1(d)(2)(ii)(A). The collection of this information is necessary to allow the IRS to gather correct application information with respect to persons that have EINs. The respondents are persons that have EINs.

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

This document contains final amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 6109 of the Internal Revenue Code relating to identifying numbers. The Department of Treasury and the IRS published a notice of proposed rulemaking (REG-135491-10) in the **Federal Register**, 77 FR 15004, on March 14, 2012, requiring persons issued EINs to provide updated application information to the IRS. The IRS did not receive any requests for a public hearing. Written comments responding to the proposed regulations were received and are available for public inspection at <http://www.regulations.gov> or upon request. After consideration of all the comments, the proposed regulations are adopted without amendment by this Treasury decision.

Summary of Comments

The IRS received four written comments in response to the proposed regulations. One comment supported the rule in the proposed regulations requiring 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 (including updated application information regarding the name and taxpayer identifying number of the responsible party). This commentator also recommended changes to either

the Form SS-4, *Application for Employer Identification Number*, or the Form 5500, *Annual Returns/Reports of Employee Benefit Plan*, to require additional information confirming the active status of a trust's EIN. Alternatively, the commentator suggested that the IRS could use a postcard to confirm the active status of trusts for EIN purposes. Although these suggestions are outside the scope of the regulations, the IRS will take them into consideration during future updates of those items.

Three of the comments did not support the rule in the proposed regulations. Two commentators objected to the increased burden on entities resulting from the updating requirement and questioned the necessity of this requirement. Additionally, two commentators suggested that the estimated annual average burden of 15 minutes provided in the Paperwork Reduction Act section of the proposed regulations underestimated the actual burden to entities and their agents. One commentator also argued that this rule is "material" because the related costs could reach over \$100,000,000. Treasury and the IRS have considered these comments and, for the following reasons, these final regulations adopt the proposed regulations without change.

Treasury and the IRS continue to conclude that updating this application information is necessary for effective tax administration. Some EIN applicants continue to list individuals temporarily authorized to act on behalf of EIN applicants (sometimes referred to as "nominees") as principal officers, general partners, grantors, owners, and trustors on EIN applications. The listing of nominees or other individuals who are no longer associated with the entity prevents the IRS from gathering and maintaining correct and current information with respect to the responsible party for the EIN applicant. The requirement in the final regulations to provide updated application information will allow the IRS to ascertain the true responsible party for persons who have an EIN. This knowledge will prevent unnecessary delays by allowing the IRS to contact the correct persons when resolving a tax matter related to a business with an EIN. In addition, this information will help the IRS combat schemes that abuse the tax system through the use of nominees, which results in the concealing of

the true responsible party for entities that hide assets and income.

Treasury and the IRS also conclude that the costs related to this rule are not "material," any associated burden on entities resulting from this requirement is minimal, and the costs and burden are outweighed by the benefits to tax administration described in the previous paragraph. An entity with an EIN will always know the identity of its appropriate responsible party, which is generally defined as the individual with the authority to control, manage, or direct the entity and the disposition of its funds and assets. The updating requirement in these final regulations requires entities to keep the IRS informed of the identity of the responsible party.

The 15 minute burden estimate provided in the Paperwork Reduction Act section of the proposed regulations is an estimate of the burden in reporting and disclosing the correct application information to the IRS, not the burden an entity or its agent may incur in determining this information (which, as noted, is minimal because an entity will always know the identity of its responsible party). Following the publication of these final regulations, the IRS will publish the relevant form for persons issued an EIN to use to disclose the correct application information to the IRS. The relevant form will require these persons to update application information regarding the name and taxpayer identifying number of the responsible party within the applicable timeframe. Treasury and the IRS have determined that the amount of time necessary to fill out the relevant form and submit it to the IRS is minimal.

These final regulations are applicable as of January 1, 2014, so that the IRS can publish the relevant form and instructions in advance of the applicability date.

Special Analyses

It has been determined that these final rules 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 final regulations.

When an agency issues a rulemaking, 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 rules affect entities that have an EIN and the IRS has determined that these 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 rules will not be significant. The current Form SS-4, *Application for Employer Identification Number*, 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. Employers are required to know the identity of their responsible party. The amount of time necessary to submit the updated information required in these regulations, therefore, should be minimal for these entities.

Based on these facts, the IRS hereby certifies that the collection of information contained in the final regulations 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, the notice of proposed rulemaking preceding the final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business and no comments were received.

Drafting Information

The principal author of these regulations is Elizabeth Cowan of the Office of the Associate Chief Counsel (Procedure and Administration).

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is 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 paragraph (d)(2)(ii) to read as follows:

§301.6109-1 *Identifying numbers.*

* * * * *

(d) * * *

(2) * * *

(ii) *Updating of application information—(A) Requirements.* Persons issued employer identification numbers in accordance with the application process set forth in paragraph (d)(2)(i) of this section must 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 on or after January 1, 2014.

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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. In §602.101, paragraph (b) is amended by adding the following entry in numerical order to the table:

§602.101 OMB Control Numbers.

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(b) * * *

CFR part or section where Identified and described	Current OMB Control No.
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301.6109-1	1545-2242
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Steven T. Miller,
Deputy Commissioner for Services and Enforcement.

Mark J. Mazur,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on May 3, 2013, 8:45 a.m., and published in the issue of the Federal Register for May 6, 2013, 78 F.R. 26244)

Approved April 25, 2013.