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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9053]

RIN 1545-BC12

Tax Return Preparers—Electronic Filing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations to facilitate electronic filing by tax return preparers. The existing regulations, which contain references to manually signed returns, have resulted in uncertainty over whether preparers must produce manually signed, paper copies of returns for taxpayers and for the preparers' records. The temporary regulations clarify that preparers may avoid paper copies by retaining and furnishing to taxpayers copies of returns in electronic or digital format prescribed by the Commissioner.

DATES: *Effective Date:* These regulations are effective by April 24, 2003.

Applicability Date: For dates of applicability, see § 1.6107-2T(b) and § 1.6695-1T(b)(5).

FOR FURTHER INFORMATION CONTACT: Richard Charles Grosenick, (202) 622-7940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations that amend the Income Tax Regulations (26 CFR part 1) under sections 6107 and 6695 of the Internal Revenue Code (Code) to facilitate electronic filing and record keeping by tax return preparers. Section 6695 of the Code imposes various penalties on tax return preparers, including a penalty for

failure to sign the returns that they prepare. Originally, the regulations under section 6695 contemplated only manually signed (*i.e.*, paper) returns. Although the regulations under section 6695 were amended in 1996 to permit tax return preparers to sign and file returns electronically in the manner prescribed by the Secretary (*see* TD 8689 (61 FR 65319, Dec. 12, 1996)), § 1.6695-1(b) of the regulations continues to refer to manually signed returns and copies. Those references have resulted in uncertainty over whether preparers must produce manually signed, paper copies of returns to satisfy their obligations under section 6107 to provide copies of returns to taxpayers and keep copies of returns in their records.

These temporary regulations eliminate the references to manually signed returns in § 1.6695-1(b). In addition, they provide that the Commissioner may prescribe, in forms, instructions, or other appropriate guidance, the manner in which preparers may satisfy their obligations under section 6107 to furnish returns to taxpayers and to retain copies of returns. These changes and the applicable forms, instructions, and guidance clarify that preparers may maintain electronic (paperless) filing systems.

Special Analyses

It has been determined that this temporary regulation is not a significant regulatory action as defined in Executive Order 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 this regulation and, because the regulation does not impose a collection of information on small entities, that the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Richard Charles Grosenick, Office of Assistant Chief Counsel (Administrative Provisions & Judicial Practice). However, other personnel from the IRS

and the Treasury Department participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendment 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 in part as follows:

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

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

■ **Par. 2.** Section 1.6107-2T is added to read as follows:

§ 1.6107-2T Form and manner of furnishing copy of return and retaining copy or record.

(a) *In general.* The Commissioner may prescribe the form and manner of satisfying the requirements imposed by section 6107(a) and (b) and § 1.6107-1(a) and (b) in forms, instructions, or other appropriate guidance.

(b) *Effective date.* To the extent this section relates to section 6107(a) and § 1.6107-1(a), it applies to income tax returns and claims for refund presented to a taxpayer for signature after December 31, 2002. To the extent this section relates to section 6107(b) and § 1.6107-1(b), it applies after December 31, 2002, to returns and claims for refund for which the 3-year period described in section 6107(b) expires after December 31, 2002.

■ **Par. 3.** Section 1.6695-1 is amended by revising paragraph (b) to read as follows:

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

* * * * *

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

* * * * *

■ **Par. 4.** 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.

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