

FAQs on PTIN rules explain exemptions and warn of penalties for noncompliance

IRS has updated its online FAQs explaining the new post-2010 requirement for paid tax return preparers to obtain and furnish a preparer tax identification number (PTIN) on tax returns and refund claims that they prepare. The FAQs explain two additional situations where a PTIN isn't required, and when a return preparer may need an Electronic Filing Identification Number (EFIN) as well as a PTIN. They also warn preparers of the penalties for noncompliance with the PTIN rules.

Background. In January, 2010, IRS released a study on the U.S. return preparer industry carrying detailed recommendations on new standards for preparers other than attorneys, certified public accountants (CPAs), and enrolled agents (EAs). Subsequently, IRS rolled out a new set of rules subjecting tax return preparers who are not attorneys, CPAs or EAs to new registration requirements, including mandatory use of PTINs for tax returns or refund claims filed after Dec. 31, 2010, competency testing, continuing education rules and ethical standards (i.e., Circular 230).

IRS's guidance to date on oversight of tax return preparers has consisted of periodically supplemented Frequently Asked Questions (FAQs); proposed and final regs on the PTIN requirement; proposed Circular 230 regs creating a new class of practitioners called registered tax return preparers (RTRPs); Notice 2011-6, 2011-3 IRB 315, significantly easing up on the PTIN requirements and providing interim rules; and assorted revenue procedures and announcements dealing with specialized topics such as how foreign tax preparers and domestic preparers obtain PTINs, and providing relief for preparers who made a good faith but unsuccessful effort to obtain a PTIN for the 2011 filing season. For an overview of the new PTIN requirements.

Advising clients on an issue reflected on a claim for refund. Attorneys or CPAs must get a PTIN if they prepare, or assist in preparing, all or substantially all of a return or claim for refund. However, under Reg. § 1.6695-1(b), they don't need to get a PTIN if they only advise a client about an issue that is reflected on a claim for refund and neither the attorney or CPA nor any person in the firm signs or is required to sign the claim for refund under Reg. § 301.7701-15(b)(1) and Reg. § 1.6695-1(b). The attorney or CPA is still a nonsigning tax return preparer subject to penalty under Code Sec. 6694 if he or she has prepared all or a substantial portion of the claim for refund under Reg. § 301.7701-15(b)(3). (Scenarios, FAQ No. 10)

No PTIN needed for preparing certain retirement plan-related forms. A retirement plan administrator does not need a PTIN to prepare Form 8955-SSA, Annual Registration Statement Identifying Separated Participants With Deferred Vested Participants, and Form 5558, Application for Extension of Time to File Certain Employee Plan Returns. These forms are not on the Notice 2011-6, 2011-3 IRB 315 list of PTIN-exempted forms, but IRS will treat them, for purposes of this list, as part of the "Form 5500 series" of tax returns that is specifically exempted. That's because Form 8955-SSA and Form 5558 are prepared either in conjunction with the filing of a retirement plan's Form 5500 filing or to request an extension of time to file a Form 5500 series tax return. (Scenarios, FAQ No. 9)

Difference between PTINs and EFINs. Any individual who, for compensation, prepares all or substantially all of a tax return or claim for refund needs a PTIN, and, when applicable, it must be placed in the Paid Preparer section of a tax return that the tax return preparer prepared for compensation. By contrast, an EFIN is issued by IRS to individuals or firms that have been approved as authorized IRS e-file providers, and is included with all electronic return data transmitted to IRS. Paid preparers who reasonably expect to file

100 or more Forms 1040, 1040A, 1040EZ, or 1041 during 2011 must e-file their clients' returns. They (or their firm) need an EFIN, as do preparers who are not required to e-file but voluntarily desire to participate. (New PTIN Requirements, FAQ No. 8)

Penalties for noncompliance with PTIN rules. IRS reminds paid tax return preparers that they could face stiff penalties if they prepare, or assist in the preparation of, all or substantially all of a tax return or claim for refund after Dec. 31, 2010, but don't have a PTIN. Failure to comply with the PTIN rules could result in the imposition of Code Sec. 6695 penalties, injunction, referral for criminal investigation, or disciplinary action by IRS's Office of Professional Responsibility.

However, IRS is notifying individuals who have made a good faith effort to timely obtain a PTIN, but experienced processing issues, that they may prepare returns during the interim period while their applications are pending. This notification is being made on the online system to people who make four unsuccessful attempts to register and in writing (email or letter) to individuals who have timely submitted paper applications and payments.