

January 3, 2011

IRS Provides Relief for Retirement Plan Providers from New Tax Return Preparer (PTIN) Requirements

During 2010, the Treasury Department rolled out two initiatives intended to increase the oversight of and improve the competency of paid tax return preparers. The Treasury released:

- Final regulation §1.6109-2, which generally requires all tax return preparers who are compensated for preparing, or assisting in the preparation of, all or substantially all of a U.S. federal tax return or claim for refund to obtain a preparer tax identification number (PTIN) prior to filing any return after December 31, 2010. All federal tax return preparers, even those who already had a PTIN, are required to register in the new system. PTINs are required for each individual preparer and may not be obtained for a company or office. There is an annual fee to maintain a PTIN; and
- Proposed regulations that require paid preparers to pass a competency examination in order to receive a PTIN, to take 15 credit hours of continuing education annually, and to comply with IRS Circular 230 ethics rules. The competency examination will be available in mid-2011. Preparers who obtain a PTIN prior to that time will have until December 31, 2013, to pass the examination. The continuing education requirements are expected to take effect in 2013. Attorneys, CPAs, enrolled actuaries, enrolled agents, and enrolled retirement plan agents, all of whom are already governed by Circular 230, may be exempt from this requirement (but not from the PTIN requirement).

The initial indications from the IRS were that these requirements applied to all tax returns, and were not limited to the Form 1040 series of individual tax returns. Given the breadth of the definition of “preparer,” this initial position created uncertainties and complications for firms that generate or assist in the preparation of tax information or similar returns in the ordinary course of another type of business, including retirement plan providers and administrators.

In [Notice 2011-6](#), to be published on January 17, 2011, the IRS reversed direction and provided that the preparation of certain enumerated tax forms are not within the scope of these requirements. These forms include many of the forms that may be normally involved in a retirement plan business, including:

- Form SS-4, Application for Employer Identification Number;
- Form W-2 series of returns;
- Form 1099 series of returns;
- Form 4419, Application for Filing Information Returns Electronically;
- Form 5300, Application for Determination for Employee Benefit Plan;
- Form 5307, Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans;
- Form 5310, Application for Determination for Terminating Plan;
- Form 5500 series of annual reports;
- Form 8717, User Fee for Employee Plan Determination, Opinion, and Advisory Letter Request; and
- Form 8809, Application for Extension of Time to File Information Return.

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This relief also addresses the concerns of insurance companies and service providers that prepare or provide information for Schedule A or C of Form 5500. The list of exempted forms is not comprehensive, however; for example, the Form 990 series, including Form 990-T, is not exempted.

Until further guidance is issued, Notice 2011-6 also permits paid preparers to obtain a PTIN without passing the competency examination and meeting the continuing education requirements if they either (i) do not prepare returns in the Form 1040 series or (ii) are employed and supervised by an attorney, CPA, enrolled actuary, enrolled agent, or enrolled retirement plan agent authorized to practice before the IRS who signs all the returns covered by these rules.



If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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