

child of her parents and, therefore, ineligible to claim the EIC.

Example 3. Taxpayer asks Preparer C to prepare his tax return and wants to claim his niece and nephew as qualifying children for the EIC. Preparer C should make reasonable inquiries to determine whether the children meet EIC qualifying child requirements and ensure possible duplicate claim situations involving the parents or other relatives are properly considered.

Example 4. Taxpayer asks Preparer D to prepare her tax return and tells D that she has a Schedule C business, that she has two qualifying children and that she wants to claim the EIC. Taxpayer indicates that she earned \$10,000 from her Schedule C business, but that she has no expenses. This information appears incomplete because it is very unlikely that someone who is self-employed has no business expenses. D must make additional reasonable inquiries regarding taxpayer's business to determine whether the information regarding both income and expenses is correct.

(4) *Retention of records.* (i) The preparer must retain—

(A) A copy of the completed Eligibility Checklist or Alternative Eligibility Record;

(B) A copy of the Computation Worksheet or Alternative Computation Record; and

(C) A record of how and when the information used to complete the Eligibility Checklist or Alternative Eligibility Record and the Computation Worksheet or Alternative Computation Record was obtained by the preparer, including the identity of any person furnishing the information.

(ii) The items in paragraph (b)(4)(i) of this section must be retained for three years after the June 30th following the date the return or claim for refund was presented to the taxpayer for signature, and may be retained on paper or electronically in the manner prescribed in applicable regulations, revenue rulings, revenue procedures, or other appropriate guidance (see § 601.601(d)(2) of this chapter).

(c) *Exception to penalty.* The section 6695(g) penalty will not be applied with respect to a particular tax return or claim for refund if the tax return preparer can demonstrate to the satisfaction of the Internal Revenue Service that, considering all the facts and circumstances, the tax return preparer's normal office procedures are reasonably designed and routinely followed to

ensure compliance with the due diligence requirements of paragraph (b) of this section, and the failure to meet the due diligence requirements of paragraph (b) of this section with respect to the particular return or claim for refund was isolated and inadvertent.

(d) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

[T.D. 8905, 65 FR 61269, Oct. 17, 2000, as amended by T.D. 9436, 73 FR 78448, Dec. 22, 2008]

§ 1.6696-1 Claims for credit or refund by tax return preparers or appraisers.

(a) *Notice and demand.* (1) The Internal Revenue Service (IRS) shall issue to each tax return preparer or appraiser one or more statements of notice and demand for payment for all penalties assessed against the tax return preparer or appraiser under section 6694 and § 1.6694-1, under section 6695 and § 1.6695-1, or under section 6695A (and any subsequently issued regulations).

(2) For the definition of the term "tax return preparer", see section 7701(a)(36) and § 301.7701-15 of this chapter. A person who prepares a claim for credit or refund under this section for another person, however, is not, with respect to that preparation, a tax return preparer as defined in section 7701(a)(36) and § 301.7701-15 of this chapter.

(b) *Claim filed by tax return preparer or appraiser.* A claim for credit or refund of a penalty (or penalties) assessed against a tax return preparer or appraiser under section 6694 and § 1.6694-1, under section 6695 and § 1.6695-1, or under section 6695A (and any subsequently issued regulations) may be filed under this section only by the tax return preparer or the appraiser (or the tax return preparer's or appraiser's estate) against whom the penalty (or penalties) is assessed and not by, for example, the tax return preparer's or appraiser's employer. This paragraph (b) is not intended, however, to impose any restrictions on the preparation of this claim for credit or refund. The claim may be prepared by the tax return preparer's or appraiser's employer

or by other persons. In all cases, however, the claim for credit or refund shall contain the information specified in paragraph (d) of this section and, as required by paragraph (d) of this section, shall be verified by a written declaration by the tax return preparer or appraiser that the information is provided under penalty of perjury.

(c) *Separation and consolidation of claims.* (1) Unless paragraph (c)(2) of this section applies, a tax return preparer shall file a separate claim for each penalty assessed in each statement of notice and demand issued to the tax return preparer.

(2) A tax return preparer may file one or more consolidated claims for any or all penalties imposed on the tax return preparer by a single IRS campus or office under section 6695(a) and § 1.6695-1(a) (relating to failure to furnish copy of return to taxpayer), section 6695(b) and § 1.6695-1(b) (relating to failure to sign), section 6695(c) and § 1.6695-1(c) (relating to failure to furnish identifying number), or under section 6695(d) and § 1.6695-1(d) (relating to failure to retain copy of return or record), whether the penalties are asserted on a single or on separate statements of notice and demand. In addition, a tax return preparer may file one consolidated claim for any or all penalties imposed on the tax return preparer by a single IRS campus or office under section 6695(e) and § 1.6695-1(e) (relating to failure to file correct information return), which are asserted on a single statement of notice and demand.

(d) *Content of claim.* Each claim for credit or refund for any penalty (or penalties) paid by a tax return preparer under section 6694 and § 1.6694-1, or under section 6695 and § 1.6695-1, or paid by an appraiser under section 6695A (and any subsequently issued regulations) shall include the following information, verified by a written declaration by the tax return preparer or appraiser that the information is provided under penalty of perjury:

(1) The tax return preparer's or appraiser's name.

(2) The tax return preparer's or appraiser's identification number. If the tax return preparer or appraiser is—

(i) An individual (not described in paragraph (d)(2)(iii) of this section)

who is a citizen or resident of the United States, the tax return preparer's or appraiser's social security account number (or such alternative number as may be prescribed by the IRS in forms, instructions, or other appropriate guidance) shall be provided;

(ii) An individual who is not a citizen or resident of the United States and also was not employed by another tax return preparer or appraiser to prepare the document (or documents) with respect to which the penalty (or penalties) was assessed, the tax return preparer's or appraiser's employer identification number shall be provided; or

(iii) A person (whether an individual, corporation, or partnership) that employed one or more persons to prepare the document (or documents) with respect to which the penalty (or penalties) was assessed, the tax return preparer's or appraiser's employer identification number shall be provided.

(3) The tax return preparer's or appraiser's address where the IRS mailed the statement (or statements) of notice and demand and, if different, the tax return preparer's or appraiser's address shown on the document (or documents) with respect to which the penalty (or penalties) was assessed.

(4)(i) The address of the IRS campus or office that issued the statement (or statements) of notice and demand for payment of the penalty (or penalties).

(ii) The date (or dates) and identifying number (or numbers) of the statement (or statements) of notice and demand.

(5)(i) The identification, by amount, type, and document to which related, of each penalty included in the claim. Each document referred to in the preceding sentence shall be identified by the form title or number, by the taxpayer's (or nontaxable entity's) name and taxpayer identification number, and by the taxable year to which the document relates.

(ii) The date (or dates) of payment of the amount (or amounts) of the penalty (or penalties) included in the claim.

(iii) The total amount claimed.

(6) A statement setting forth in detail—

(i) Each ground upon which each penalty overpayment claim is based; and

(ii) Facts sufficient to apprise the IRS of the exact basis of each such claim.

(e) *Form for filing claim.* Notwithstanding §301.6402-2(c) of this chapter, Form 6118, "Claim for Refund of Tax Return Preparer and Promoter Penalties," is the form prescribed for making a claim as provided in this section with respect to penalties under sections 6694 and 6695. Form 843, Claim for Refund and Request for Abatement, is the form prescribed for making a claim as provided in this section with respect to a penalty under section 6695A.

(f) *Place for filing claim.* A claim filed under this section shall be filed with the IRS campus or office that issued to the tax return preparer or appraiser the statement (or statements) of notice and demand for payment of the penalty (or penalties) included in the claim.

(g) *Time for filing claim.* (1)(i) Except as provided in section 6694(c)(1) and §1.6694-4(a)(4)(ii) and (5), and in section 6694(d) and §1.6694-1(d):

(A) A claim for a penalty paid by a tax return preparer under section 6694 and §1.6694-1, or under section 6695 and §1.6695-1, or by an appraiser under section 6695A (and any subsequently issued regulations) shall be filed within three years from the date the payment was made.

(B) A consolidated claim, permitted under paragraph (c)(2) of this section, shall be filed within three years from the first date of payment of any penalty included in the claim.

(ii) For purposes of this paragraph (g)(1), payment is considered made on the date payment is received by the IRS or, if applicable, on the date an amount is credited in satisfaction of the penalty.

(2) For purposes of determining whether a claim is timely filed, the rules under sections 7502 and 7503 and the provisions of §§1.7502-1, 1.7502-2, and 1.7503-1 apply.

(h) *Application of refund to outstanding liability of tax return preparer or appraiser.* The IRS may, within the applicable period of limitations, credit any amount of an overpayment by a tax return preparer or appraiser of a penalty (or penalties) paid under section 6694 and §1.6694-1, under section 6695 and §1.6695-1, or under section 6695A (and

any subsequently issued regulations) against any outstanding liability for any tax (or for any interest, additional amount, addition to the tax, or assessable penalty) owed by the tax return preparer or appraiser making the overpayment. If a portion of an overpayment is so credited, only the balance will be refunded to the tax return preparer or appraiser.

(i) *Interest.* (1) Section 6611 and §301.6611-1 of this chapter apply to the payment by the IRS of interest on an overpayment by a tax return preparer or appraiser of a penalty (or penalties) paid under section 6694 and §1.6694-1, under section 6695 and §1.6695-1, or under section 6695A (and any subsequently issued regulations).

(2) Section 6601 and §301.6601-1 of this chapter apply to the payment of interest by a tax return preparer or appraiser to the IRS on any penalty (or penalties) assessed against the tax return preparer under section 6694 and §1.6694-1, under section 6695 and §1.6695-1, or under section 6695A (and any subsequently issued regulations).

(j) *Suits for refund of penalty.* (1) A tax return preparer or appraiser may not maintain a civil action for the recovery of any penalty paid under section 6694 and §1.6694-1, under section 6695 and §1.6695-1, or under section 6695A (and any subsequently issued regulations), unless the tax return preparer or appraiser has previously filed a claim for credit or refund of the penalty as provided in this section (and the court has jurisdiction of the proceeding). See sections 6694(c) and 7422.

(2)(i) Except as provided in section 6694(c)(2) and §1.6694-4(b), the periods of limitation contained in section 6532 and §301.6532-1 of this chapter apply to a tax return preparer's or appraiser's suit for the recovery of any penalty paid under section 6694 and §1.6694-1, under section 6695 and §1.6695-1, or under section 6695A (and any subsequently issued regulations).

(ii) The rules under section 7503 and §301.7503-1 of this chapter apply to the timely commencement by a tax return preparer or appraiser of a suit for the recovery of any penalty paid under section 6694 and §1.6694-1, under section 6695 and §1.6695-1, or under section

Internal Revenue Service, Treasury

§ 1.6851-1

6695A (and any subsequently issued regulations).

(k) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

[T.D. 9436, 73 FR 78449, Dec. 22, 2008, as amended at 74 FR 5105, Jan. 29, 2009]

§ 1.6709-1T Penalties with respect to mortgage credit certificates (temporary).

(a) *Material misstatement*—(1) *Negligence.* If any person makes a material misstatement in any affidavit or other statement under a penalty of perjury made with respect to the issuance of a mortgage credit certificate and such misstatement is due to the negligence of that person, that person shall pay a penalty of \$1,000 for each mortgage credit certificate with respect to which that misstatement was made.

(2) *Fraud.* If a misstatement described in subparagraph (1) is due to fraud on the part of the person making the misstatement, that person shall pay a penalty of \$10,000 for each mortgage credit certificate with respect to which the fraudulent misstatement was made. The penalty imposed by this paragraph (a)(2) is in addition to any criminal penalty.

(b) *Reports.* (1) Any person required by § 1.25-8T to file a report with respect to any mortgage credit certificate who fails to file the report at the time and in the manner required by § 1.25-8T shall pay a penalty of \$200 for each mortgage credit certificate with respect to which that failure occurred. The preceding sentence shall not apply if it is shown that such failure is due to reasonable cause and not to willful neglect.

(2) In the case of any report required under § 1.25-8T(b), the aggregate amount of the penalty imposed by this paragraph shall not exceed \$2,000.

[T.D. 8023, 50 FR 19355, May 8, 1985]

JEOPARDY, BANKRUPTCY, AND RECEIVERSHIPS

§ 1.6851-1 Termination assessments of income tax.

(a) *Authority for making*—(1) *In general.* This section applies to assessments authorized by a district director

under section 6851(a) (hereinafter referred to as termination assessments). The district director shall immediately authorize a termination assessment of the income tax for the current or preceding taxable year if the district director finds that a taxpayer designs to do an act which would tend to prejudice proceedings to collect the income tax for such year or years unless such proceedings are brought without delay. In addition, the district director shall immediately authorize such a termination assessment if the district director determines that the taxpayer designs to do any act which would tend to render such proceedings wholly or partially ineffective unless brought without delay. A termination assessment will be made if collection is determined to be in jeopardy because at least one of the following conditions exists.

(i) The taxpayer is or appears to be designing quickly to depart from the United States or to conceal himself or herself.

(ii) The taxpayer is or appears to be designing quickly to place his, her, or its property beyond the reach of the Government either by removing it from the United States, by concealing it, by dissipating it, or by transferring it to other persons.

(iii) The taxpayer's financial solvency is or appears to be imperiled.

Paragraph (a)(1)(iii) of this section does not include cases where the taxpayer becomes insolvent by virtue of the accrual of the proposed assessment of tax, and penalty, if any. A tax assessed under this section shall become immediately due and payable and the district director shall serve upon such taxpayer notice and demand for immediate payment of such tax.

(2) *Computation of tax.* If a termination assessment of the income tax for the current year is made, the income tax for such year shall be computed for the period beginning on the first day of such year and ending on the day of the assessment. A credit shall be allowed for any tax for the taxable year previously assessed under section 6851. The taxpayer is entitled to a deduction for the personal exemptions (as limited in the case of certain