

which must be filed after April 15, 1974, see §301.6109-1 of this chapter (Regulations on Procedure and Administration).

(b) *Information to be furnished before April 15, 1974.* For provisions concerning the requesting and furnishing of identifying numbers with respect to returns, statements, and other documents which must be filed before April 16, 1974, see 26 CFR §1.6109-1 (revised as of April 1, 1973).

[T.D. 7306, 39 FR 9946, Mar. 15, 1974; 39 FR 11080, Mar. 25, 1974]

§1.6109-2 Tax return preparers furnishing identifying numbers for returns or claims for refund and related requirements.

(a) *Furnishing identifying number.* (1) Each filed return of tax or claim for refund of tax under the Internal Revenue Code prepared by one or more tax return preparers must include the identifying number of the tax return preparer required by §1.6695-1(b) to sign the return or claim for refund. In addition, if there is an employment arrangement or association between the individual tax return preparer and another person (except to the extent the return prepared is for the person), the identifying number of the other person must also appear on the filed return or claim for refund. For the definition of the term "tax return preparer," see section 7701(a)(36) and §301.7701-15 of this chapter.

(2)(i) For tax returns or claims for refund filed on or before December 31, 2010, the identifying number of an individual tax return preparer is that individual's social security number or such alternative number as may be prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

(ii) For tax returns or claims for refund filed after December 31, 2010, the identifying number of a tax return preparer is the individual's preparer tax identification number or such other number prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

(3) The identifying number of a person (whether an individual or entity) who employs or associates with an individual tax return preparer described

in paragraph (a)(2) of this section to prepare the return or claim for refund (other than a return prepared for the person) is the person's employer identification number.

(b) and (c) [Reserved]. For further guidance, see §1.6109-2A(b) and (c).

(d) Beginning after December 31, 2010, all tax return preparers must have a preparer tax identification number or other prescribed identifying number that was applied for and received at the time and in the manner, including the payment of a user fee, as may be prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance. Except as provided in paragraph (h) of this section, beginning after December 31, 2010, to obtain a preparer tax identification number or other prescribed identifying number, a tax return preparer must be an attorney, certified public accountant, enrolled agent, or registered tax return preparer authorized to practice before the Internal Revenue Service under 31 U.S.C. 330 and the regulations thereunder.

(e) The Internal Revenue Service may designate an expiration date for any preparer tax identification number or other prescribed identifying number and may further prescribe the time and manner for renewing a preparer tax identification number or other prescribed identifying number, including the payment of a user fee, as set forth in forms, instructions, or other appropriate guidance. The Internal Revenue Service may provide that any identifying number issued by the Internal Revenue Service prior to the effective date of this regulation will expire on December 31, 2010, unless properly renewed as set forth in forms, instructions, or other appropriate guidance, including these regulations.

(f) As may be prescribed in forms, instructions, or other appropriate guidance, the IRS may conduct a Federal tax compliance check on a tax return preparer who applies for or renews a preparer tax identification number or other prescribed identifying number.

(g) Only for purposes of paragraphs (d), (e), and (f) of this section, the term *tax return preparer* means any individual who is compensated for preparing, or assisting in the preparation

of, all or substantially all of a tax return or claim for refund of tax. Factors to consider in determining whether an individual is a tax return preparer under this paragraph (g) include, but are not limited to, the complexity of the work performed by the individual relative to the overall complexity of the tax return or claim for refund of tax; the amount of the items of income, deductions, or losses attributable to the work performed by the individual relative to the total amount of income, deductions, or losses required to be correctly reported on the tax return or claim for refund of tax; and the amount of tax or credit attributable to the work performed by the individual relative to the total tax liability required to be correctly reported on the tax return or claim for refund of tax. The preparation of a form, statement, or schedule, such as Schedule EIC (Form 1040), "Earned Income Credit," may constitute the preparation of all or substantially all of a tax return or claim for refund based on the application of the foregoing factors. A tax return preparer does not include an individual who is not otherwise a tax return preparer as that term is defined in §301.7701-15(b)(2), or who is an individual described in §301.7701-15(f). The provisions of this paragraph (g) are illustrated by the following examples:

Example 1. Employee A, an individual employed by Tax Return Preparer B, assists Tax Return Preparer B in answering telephone calls, making copies, inputting client tax information gathered by B into the data fields of tax preparation software on a computer, and using the computer to file electronic returns of tax prepared by B. Although Employee A must exercise judgment regarding which data fields in the tax preparation software to use, A does not exercise any discretion or independent judgment as to the clients' underlying tax positions. Employee A, therefore, merely provides clerical assistance or incidental services and is not a tax return preparer required to apply for a PTIN or other identifying number as the Internal Revenue Service may prescribe in forms, instructions, or other appropriate guidance.

Example 2. The facts are the same as in *Example 1*, except that Employee A also interviews B's clients and obtains from them information needed for the preparation of tax returns. Employee A determines the amount and character of entries on the returns and

whether the information provided is sufficient for purposes of preparing the returns. For at least some of B's clients, A obtains information and makes determinations that constitute all or substantially all of the tax return. Employee A is a tax return preparer required to apply for a PTIN or other identifying number as the Internal Revenue Service may prescribe in forms, instructions, or other appropriate guidance. Employee A is a tax return preparer even if Employee A relies on tax preparation software to prepare the return.

Example 3. C is an employee of a firm that prepares tax returns and claims for refund of tax for compensation. C is responsible for preparing a Form 1040, "U.S. Individual Income Tax Return," for a client. C obtains the information necessary for the preparation of the tax return during a meeting with the client, and makes determinations with respect to the proper application of the tax laws to the information in order to determine the client's tax liability. C completes the tax return and sends the completed return to employee D, who reviews the return for accuracy before signing it. Both C and D are tax return preparers required to apply for a PTIN or other identifying number as the Internal Revenue Service may prescribe in forms, instructions, or other appropriate guidance.

Example 4. E is an employee at a firm which prepares tax returns and claims for refund of tax for compensation. The firm is engaged by a corporation to prepare its Federal income tax return on Form 1120, "U.S. Corporation Income Tax Return." Among the documentation that the corporation provides to E in connection with the preparation of the tax return is documentation relating to the corporation's potential eligibility to claim a recently enacted tax credit for the taxable year. In preparing the return, and specifically for purposes of the new tax credit, E (with the corporation's consent) obtains advice from F, a subject matter expert on this and similar credits. F advises E as to the corporation's entitlement to the credit and provides his calculation of the amount of the credit. Based on this advice from F, E prepares the corporation's Form 1120 claiming the tax credit in the amount recommended by F. The additional credit is one of many tax credits and deductions claimed on the tax return, and determining the credit amount does not constitute preparation of all or substantially all of the corporation's tax return under this paragraph (g). F will not be considered to have prepared all or substantially all of the corporation's tax return, and F is not a tax return preparer required to apply for a PTIN or other identifying number as the Internal Revenue Service may prescribe in forms, instructions, or other appropriate guidance. The analysis is the same whether or not the tax credit is a

substantial portion of the return under § 301.7701-15 of this chapter (as opposed to substantially all of the return), and whether or not F is in the same firm with E. E is a tax return preparer required to apply for a PTIN or other identifying number as the Internal Revenue Service may prescribe in forms, instructions, or other appropriate guidance.

(h) The Internal Revenue Service, through forms, instructions, or other appropriate guidance, may prescribe exceptions to the requirements of this section, including the requirement that an individual be authorized to practice before the Internal Revenue Service before receiving a preparer tax identification number or other prescribed identifying number, as necessary in the interest of effective tax administration. The Internal Revenue Service, through other appropriate guidance, may also specify specific returns, schedules, and other forms that qualify as tax returns or claims for refund for purposes of these regulations.

(i) *Effective/applicability date.* Paragraph (a)(1) of this section is applicable to tax returns and claims for refund filed after December 31, 2008. Paragraph (a)(2)(i) of this section is applicable to tax returns and claims for refund filed on or before December 31, 2010. Paragraph (a)(2)(ii) of this section is applicable to tax returns and claims for refund filed after December 31, 2010. Paragraph (d) of this section is applicable to tax return preparers after December 31, 2010. Paragraphs (e) through (h) of this section are effective after September 30, 2010.

[T.D. 9014, 67 FR 52863, Aug. 14, 2002, as amended by T.D. 9436, 73 FR 78439, Dec. 22, 2008; T.D. 9501, 75 FR 60315, Sept. 30, 2010]

§ 1.6115-1 Disclosure requirements for quid pro quo contributions.

(a) *Good faith estimate defined*—(1) *In general.* A good faith estimate of the value of goods or services provided by an organization described in section 170(c) in consideration for a taxpayer's payment to that organization is an estimate of the fair market value, within the meaning of § 1.170A-1(c)(2), of the goods or services. The organization may use any reasonable methodology in making a good faith estimate, provided it applies the methodology in good faith. If the organization fails to

apply the methodology in good faith, the organization will be treated as not having met the requirements of section 6115. See section 6714 for the penalties that apply for failure to meet the requirements of section 6115.

(2) *Good faith estimate for goods or services that are not commercially available.* A good faith estimate of the value of goods or services that are not generally available in a commercial transaction may be determined by reference to the fair market value of similar or comparable goods or services. Goods or services may be similar or comparable even though they do not have the unique qualities of the goods or services that are being valued.

(3) *Examples.* The following examples illustrate the rules of this paragraph (a).

Example 1. Facility not available on a commercial basis. Museum *M*, an organization described in section 170(c), is located in Community *N*. In return for a payment of \$50,000 or more, *M* allows a donor to hold a private event in a room located in *M*. Private events other than those held by such donors are not permitted to be held in *M*. In Community *N*, there are four hotels, *O*, *P*, *Q*, and *R*, that have ballrooms with the same capacity as the room in *M*. Of these hotels, only *O* and *P* have ballrooms that offer amenities and atmosphere that are similar to the amenities and atmosphere of the room in *M* (although *O* and *P* lack the unique collection of art that is displayed in the room in *M*). Because the capacity, amenities, and atmosphere of ballrooms in *O* and *P* are comparable to the capacity, amenities, and atmosphere of the room in *M*, a good faith estimate of the benefits received from *M* may be determined by reference to the cost of renting either the ballroom in *O* or the ballroom in *P*. The cost of renting the ballroom in *O* is \$2500 and, therefore, a good faith estimate of the fair market value of the right to host a private event in the room at *M* is \$2500. In this example, the ballrooms in *O* and *P* are considered similar and comparable facilities to the room in *M* for valuation purposes, notwithstanding the fact that the room in *M* displays a unique collection of art.

Example 2. Services available on a commercial basis. Charity *S* is an organization described in section 170(c). *S* offers to provide a one-hour tennis lesson with Tennis Professional *T* in return for the first payment of \$500 or more that it receives. *T* provides one-hour tennis lessons on a commercial basis for \$100. Taxpayer pays \$500 to *S* and in return receives the tennis lesson with *T*. A good faith