

that demonstrates that other work exists in significant numbers in the national economy that you can do, given your residual functional capacity and vocational factors. We are not responsible for providing additional evidence about your residual functional capacity because we will use the same residual functional capacity assessment that we used to determine if you can do your past relevant work.

§ 416.961 [Removed]

23. Remove § 416.961.

24. Revise § 416.962 to read as follows:

§ 416.962 Medical-vocational profiles showing an inability to make an adjustment to other work.

(a) *If you have done only arduous unskilled physical labor.* If you have no more than a marginal education (see § 416.964) and work experience of 35 years or more during which you did only arduous unskilled physical labor, and you are not working and are no longer able to do this kind of work because of a severe impairment(s) (see §§ 416.920(c), 416.921, and 416.923), we will consider you unable to do lighter work, and therefore, disabled.

Example to paragraph (a): B is a 58-year-old miner with a fourth grade education who has a lifelong history of unskilled arduous physical labor. B says that he is disabled because of arthritis of the spine, hips, and knees, and other impairments. Medical evidence shows a "severe" combination of impairments that prevents B from performing his past relevant work. Under these circumstances, we will find that B is disabled.

(b) *If you are at least 55 years old, have no more than a limited education, and have no past relevant work experience.* If you have a severe, medically determinable impairment(s) (see §§ 416.920(c), 416.921, and 416.923), are of advanced age (age 55 or older, see § 416.963), have a limited education or less (see § 416.964), and have no past relevant work experience (see § 416.965), we will find you disabled. If the evidence shows that you meet this profile, we will not need to assess your residual functional capacity or consider the rules in appendix 2 to subpart P of part 404 of this chapter.

25. Amend § 416.963 by revising the second sentence of paragraph (a) and adding a new sentence after the newly revised second sentence to read as follows:

§ 416.963 Your age as a vocational factor.

(a) *General.* * * * When we decide whether you are disabled under

§ 416.920(g)(1), we will consider your chronological age in combination with your residual functional capacity, education, and work experience. We will not consider your ability to adjust to other work on the basis of your age alone. * * *

* * * * *

26. Amend § 416.969a by removing the seventh sentence of paragraph (a), redesignating the eighth sentence as the last sentence, and adding three new sentences after the sixth sentence to read as follows:

§ 416.969a Exertional and nonexertional limitations.

(a) *General.* * * * When we decide whether you can do your past relevant work (see §§ 416.920(f) and 416.994(b)(5)(vi)), we will compare our assessment of your residual functional capacity with the demands of your past relevant work. If you cannot do your past relevant work, we will use the same residual functional capacity assessment along with your age, education, and work experience to decide if you can adjust to other work. See §§ 416.920(g) and 416.994(b)(5)(vii). * * *

* * * * *

27. Amend § 416.994 by revising the first sentence of paragraph (b)(5)(vi) to read as follows:

§ 416.994 How we will determine whether your disability continues or ends, disabled adults.

* * * * *

(b) * * *
(5) * * *

* * * * *

(vi) *Step 6.* If your impairment(s) is severe, we will assess your current ability to do substantial gainful activity in accordance with § 416.960. * * *

* * * * *

[FR Doc. 02-13901 Filed 6-10-02; 8:45 am]

BILLING CODE 4191-02-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG-115285-01]

RIN-1545-AY84

**Low-Income Taxpayer Clinics—
Definition of Income Tax Return
Preparer**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that exclude

certain Low-Income Taxpayer Clinics (LITCs) that qualify for grants under section 7526 of the Internal Revenue Code from the definition of income tax return preparer under section 7701(a)(36). These proposed regulations also exclude certain persons who are employed by, or volunteer for, such clinics.

DATES: Written or electronically generated comments and requests for a public hearing must be received by September 9, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG-115285-01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG-115285-01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at: www.irs.gov/regs.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Brinton T. Warren, at (202) 622-4940; concerning submissions of comments and requests for a public hearing, Treena Garrett of the Regulations Unit at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to the definition of the term *income tax return preparer* under section 7701(a)(36) of the Internal Revenue Code (Code). These proposed regulations exclude certain qualified Low-Income Taxpayer Clinics (LITCs) from the definition of income tax return preparer and exclude certain persons who are employed by, or volunteer at, such clinics.

Section 7701(a)(36), defining the term income tax return preparer, was enacted by section 1203 of the Tax Reform Act of 1976, Public Law 94-455 (90 Stat. 1520) (1976) (TRA 1976). TRA 1976 also enacted many of the provisions of sections 6694 and 6695, which impose penalties for certain acts and omissions by income tax return preparers.

The preparer penalties enacted by TRA 1976 reflect the concern of Congress with improper practices within the commercial tax services industry. See H. R. Rep. No. 94-658, 94th Cong. 1st Sess. 274 (1976), 1976-3 (Vol. 2) C.B. 966. Consistent with the commercial focus of the legislative history, the definition of an income tax

return preparer requires that the tax return or claim for refund be prepared "for compensation." Persons who do not receive compensation are not income tax return preparers for purposes of section 7701(a)(36) regardless of the extent to which they are involved with the preparation of a return or claim for refund.

Section 3601(a) of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206 (112 Stat. 685) (1998) (RRA 1998), added section 7526 of the Code, which provides for grants to qualified LITCs. Qualified LITCs represent taxpayers in controversies with the IRS and operate programs to inform individuals for whom English is a second language (ESL taxpayers) about their rights and responsibilities as taxpayers (ESL outreach). Qualified LITCs are either clinical programs run by accredited educational institutions that allow students to represent low-income taxpayers, or tax-exempt organizations that provide representation to low-income taxpayers.

Under section 7526(b)(1)(A)(i), a qualified LITC may not charge more than a nominal fee for its authorized services (except for reimbursement of actual costs incurred). These proposed regulations do not address the definition of a nominal fee. The Treasury Department and the IRS specifically request comments on whether the final regulations, or other guidance, should define a nominal fee and, if so, the factors that should be considered in defining a nominal fee. In addition, although the Treasury Department and the IRS believe that a qualified LITC is not authorized by statute to provide return preparation assistance other than as described below, these regulations do not address the qualification of an LITC under section 7526 of the Code.

The Treasury Department and the IRS recognize that in the course of representing a taxpayer in a controversy with the IRS, a qualified LITC may provide assistance with a tax return or claim for refund that is related directly to that controversy. The Treasury Department and the IRS also recognize that as an ancillary part of a qualified LITC's ESL outreach program, the LITC may provide assistance with a tax return or claim for refund that will be treated as return preparation assistance. The Treasury Department and the IRS believe that such return preparation assistance should not cause the LITC, or its employees or volunteers, to be treated as income tax return preparers unless the LITC is compensated for such assistance. Accordingly, these proposed regulations specify when an LITC will

be treated as having prepared a tax return or claim of refund for compensation for purposes of section 7701(a)(36).

The Treasury Department and the IRS expect that LITCs will follow the practices specified in sections 6694 and 6695 as the preferred practice for their operations even if they are not income tax return preparers within the meaning of section 7701(a)(36). For example, section 6695(a), in conjunction with section 6107(a), requires that an income tax return preparer furnish the taxpayer a completed copy of a tax return or claim for refund not later than the time the return or claim is presented to the taxpayer for signature.

Explanation of Provisions

The proposed regulations clarify that qualified LITCs, as defined by section 7526, and employees and volunteers of such LITCs, that provide assistance with a tax return or claim for refund will not be treated as income tax return preparers if two requirements are satisfied.

First, any such return preparation assistance must be (i) directly related to a controversy with the IRS for which the LITC is providing assistance or (ii) an ancillary part of an LITC's ESL outreach program. Second, the LITC cannot charge a separate fee or vary a fee based on whether the LITC provides assistance with a return of tax or claim for refund, or charge more than a nominal fee for its services.

Proposed Effective Date

The regulations, as proposed, would apply on the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (preferably a signed original and 8 copies) and electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of the regulations is Brinton T. Warren of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.7701-15 is amended by:

1. Removing the language "and" from the end of paragraph (a)(7)(iii).
2. Removing the period at the end of paragraph (a)(7)(iv) and adding a semicolon in its place.
3. Adding paragraphs (a)(7)(v), (a)(7)(vi), (a)(8)(i) and (a)(8)(ii).

The additions read as follows:

§ 301.7701-15 Income tax return preparer.

* * * * *

(a) * * *

(7) * * *

(v) Any individual who provides tax assistance as part of a qualified Low-Income Taxpayer Clinic (LITC), as defined by section 7526, subject to the requirements of paragraphs (a)(8)(i) and (ii) of this section; and

(vi) Any organization that is a qualified Low-Income Taxpayer Clinic

(LITC), as defined by section 7526, subject to the requirements of paragraphs (a)(8)(i) and (ii) of this section. (8)(i) Paragraphs (a)(7)(v) and (a)(7)(vi) of this section apply only if any assistance with a return of tax or claim for refund under subtitle A of the Internal Revenue Code is directly related to a controversy with the Internal Revenue Service for which the qualified LITC is providing assistance, or is an ancillary part of an LITC program to inform individuals for whom English is a second language about their rights and responsibilities under the Internal Revenue Code.

(ii) Notwithstanding paragraph (a)(8)(i) of this section, paragraphs (a)(7)(v) and (a)(7)(vi) of this section do not apply if an LITC charges a separate fee or varies a fee based on whether the LITC provides assistance with a return of tax or claim for refund under subtitle A of the Internal Revenue Code, or if the LITC charges more than a nominal fee for its services.

* * * * *

Par. 3. Effective date. This amendment is applicable on the date the final regulations are published in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.
[FR Doc. 02-14670 Filed 6-10-02; 8:45 am]
BILLING CODE 4830-01-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Houston-Galveston-02-010]

RIN 2115-AA97

Security Zones; Ports of Houston and Galveston, TX

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish moving and fixed security zones around cruise ships that are transiting, anchored or moored in the Ports of Houston and Galveston, Texas. These security zones are needed for the safety and security of these vessels. Entry into these zones would be prohibited, unless authorized by the Captain of the Port, Houston-Galveston or his designated representative.

DATES: Comments and related material must reach the Coast Guard on or before August 12, 2002.

ADDRESSES: You may mail comments and related material to Marine Safety

Office Houston-Galveston, 9640 Clinton Drive, Galena Park, TX, 77547. Marine Safety Office Houston-Galveston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Houston-Galveston between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) George Tobey, Marine Safety Office Houston-Galveston, Texas, Port Waterways Management, at (713) 671-5100.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [COTP Houston-Galveston-02-010], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Houston-Galveston at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. National security and intelligence officials have warned that future terrorist attacks against civilian targets may be anticipated. In response to these terrorist acts and warnings, heightened awareness for the security and safety of all vessels, ports, and harbors is necessary. Due to the increased safety and security concerns surrounding the transit of cruise ships, the Captain of the Port, Houston-Galveston established

temporary security zones around these vessels. The temporary final rule was published May 1, 2002 in the **Federal Register** (67 FR 21576).

Because the generalized high-level threat environment continues, the Captain of the Port Houston-Galveston has determined that there is a need for these security zones to remain in effect indefinitely. The Captain of the Port Houston-Galveston proposes to establish permanent security zones around these vessels as they transit within the Ports of Houston and Galveston. These security zones will reduce the potential of a waterborne attack on cruise ships and enhance public health, safety, defense, and security.

Discussion of Proposed Rule

The Coast Guard is proposing a permanent rule to create moving security zones around cruise ships when they pass the Galveston Bay Approach Lighted Buoy "GB" inbound and to continue the zone through the cruise ship's transit, mooring, and return transit until the cruise ship passes the sea buoy outbound. The establishment of moving security zones described in this proposed rule will be announced to mariners via Marine Safety Information Broadcast.

In the Ports of Houston and Galveston, no vessel would be permitted to operate within 500 yards of a cruise ship unless operating at the minimum safe speed required to maintain a safe course. Except as described in this proposed rule, no person or vessel would be permitted to enter within 100 yards of a cruise ship unless expressly authorized by the Captain of the Port Houston-Galveston. Moored vessels or vessels anchored in a designated anchorage area would be permitted to remain within 100 yards of a cruise ship while it is in transit.

The Houston Ship Channel narrows to 400 feet or less near Houston Ship Channel Entrance Lighted Bell Buoy "18" and continues at this width through Barbours Cut. Between these points vessels that must transit the navigable channel will have to gain permission from the Captain of the Port Houston-Galveston or his designated representative, to pass within 100 yards of a cruise ship. Mariners that anticipate encountering a cruise ship in this section of the channel are encouraged to contact "Houston Traffic" prior to getting underway.

For the purpose of this proposed rule the term "cruise ship" is defined as a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours any part of which is on the