

Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG-253578-96, Health Insurance Portability for Group Health Plans; and temporary regulation (TD 8716) Interim Rules for Health Insurance Portability for Group Health Plans (§§ 54.9801-3T, 54.9801-4T, 54.9801-5T, and 54.9801-6T).

**DATES:** Written comments should be received on or before October 7, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of regulations should be directed to Carol Savage, (202) 622-3945, or through the internet ([CAROL.A.SAVAGE@irs.gov](mailto:CAROL.A.SAVAGE@irs.gov)), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:** Title: Notice of Proposed Rulemaking, Health Insurance Portability for Group Health Plans, and temporary regulation, Interim Rules for Health Insurance Portability for Group Health Plans.

*OMB Number:* 1545-1537.

*Regulation Project Number:* REG-253578-96.

*Abstract:* These regulations contain rules governing access, portability, and renewability requirements for group health plans and issuers of health insurance coverage offered in connection with a group health plan. The regulations also provide guidance for group health plans and the employers maintaining them regarding requirements imposed on plans relating to preexisting condition exclusions, discrimination based on health status, and access to coverage.

*Current Actions:* There is no change to these existing regulations.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, not-for-profit institutions, and state, local, or tribal governments.

*Estimated Number of Respondents:* 1,300,000.

*Estimated Time Per Respondent:* Varies.

*Estimated Total Annual Burden Hours:* 591,561.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 2, 2002.

**Carol Savage,**

*Program Analyst.*

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**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### **Electronic Tax Preparation and Filing; Intent to Enter Agreement, Opportunity for Comment, Opportunity to Submit Proposals for Additional Consortia**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Advance notice of intent to enter an agreement, opportunity for comment, opportunity to submit proposals for additional consortia.

**SUMMARY:** The Internal Revenue Service (IRS) proposes to enter into an agreement (the Agreement) with a consortium of companies in the electronic tax preparation and filing industry (the Consortium) who together desire to work together to offer free, online tax return preparation and filing services to taxpayers (Free Services). The Consortium will offer these Free Services to taxpayers. The IRS will provide taxpayers with links to the Free

Services offered by the Consortium participants through a web page that will be hosted at [irs.gov](http://irs.gov) with links from [firstgov.gov](http://firstgov.gov). These links to the Consortium will replace the current heading on [irs.gov](http://irs.gov) for "Free Internet Filing Opportunities". Under the Agreement and during its term, the IRS will not compete with the Consortium in providing free, online tax return preparation and filing services to taxpayers. The IRS is soliciting comments on this proposed Agreement and complimentary or competitive offers from alternative consortia to provide Free Services to taxpayers. During this process other Federal agencies will be consulted.

**DATES:** Comments or proposals must be submitted by September 4, 2002.

**ADDRESSES:** Send letters with comments and suggestions on the proposed Agreement, or other proposals, to Paul J. Mamo, 1111 Constitution Avenue, Room 2403, Washington DC. 20224 or to the IRS Internet address: [WLEGOVPO@irs.gov](mailto:WLEGOVPO@irs.gov).

**SUPPLEMENTARY INFORMATION:** The IRS plans to enter into an Agreement (the Agreement) with the Consortium to accomplish the following five objectives:

1. Seek to assure access to a free and secure electronic preparation and filing option for additional taxpayers, building upon free electronic tax preparation and filing provided in the commercial market today;
2. Making tax return preparation and filing easier and reducing the burden on individual taxpayers;
3. Supporting the IRS's statutory goals of increased e-filing, pursuant to the IRS Restructuring and Reform Act of 1998, which encouraged the IRS to set a goal of having 80% of Federal tax and information returns filed electronically by the year 2007;
4. Providing greater service and access to taxpayers; and
5. Implementing one of the proposals in the President's FY'03 budget, specifically to encourage further growth in electronic filing by providing taxpayers the option to file their tax return on-line without charge using cooperation with, and encouraging competition within, the private sector to increase e-filing.

The anticipated essential terms of the Agreement are established in a document described as a Term Sheet. This draft Term Sheet follows.

Dated: July 31, 2002.

**Terence H. Lutes,**

*Director, IRS Electronic Tax Administration.*

### July 30, 2002 Draft

## Free On-Line Electronic Tax Filing Agreement

### Term Sheet

#### I. Purpose

The purpose of this term sheet is to describe the essential terms of an agreement ("the Agreement"). The Agreement will provide for free, online tax return preparation and filing to individual taxpayers, thereby meeting the following five objectives:

1. Seeking to assure access to a free and secure electronic preparation and filing option for additional taxpayers, building upon free electronic tax preparation and filing provided in the commercial market today;
2. Making tax return preparation and filing easier and reducing the burden on individual taxpayers;
3. Supporting the IRS's statutory goals of increased e-filing, pursuant to the IRS Restructuring and Reform Act of 1998, which encouraged the IRS to set a goal of having 80% of Federal tax and information returns filed electronically by the year 2007;
4. Providing greater service and access to taxpayers; and
5. Implementing one of the proposals in the President's FY'03 budget, specifically to encourage further growth in electronic filing by providing taxpayers the option to file their tax return on-line without charge, using cooperation with, and encouraging competition within, the private sector to increase e-filing.

#### II. Summary

To accomplish the above objectives, the Internal Revenue Service (the "IRS") and a consortium of companies in the electronic tax preparation and filing industry (the "Consortium") (together, "the Parties") desire to work together to offer free, online tax return preparation and filing services to taxpayers ("Free Services"). The Consortium will offer Free Services to taxpayers at no cost. The IRS will provide taxpayers with links to the Free Services offered by the Consortium participants through a web page (described more fully in VI below; hereafter, the "Web Page"), which will be hosted at [irs.gov](http://irs.gov) accessible through [firstgov.gov](http://firstgov.gov). During the term of the Agreement, the IRS will not compete with the Consortium in providing free, online tax return preparation and filing services to taxpayers.

The Agreement is the best method (business case) for meeting the above

stated objectives because it will promote higher quality Services by utilizing the existing expertise of the private sector, maximize consumer choice, promote competition for such Services, and thereby meet the objectives in the least costly manner.

#### III. Consortium

The Consortium is intended to be part of an existing, non-profit corporation (under the provisions of 26 U.S.C. § 501(c)(3)) affiliated with The Council for Electronic Revenue Communication Advancement (CERCA). The Consortium is being formed to facilitate participation in the Agreement by commercial entities ("Consortium Participants") engaged in the business of electronic tax preparation and filing.

#### IV. Scope of Offerings

A. The Consortium will offer Free Services for eligible taxpayers (taxpayers meeting the qualifications for free offerings) from individual commercial sites. Such offerings, when taken in the aggregate, are intended to provide for Free Services to be available to 60% or more of taxpayers. If at any point the Consortium's aggregate offerings of Free Services are available to fewer than 60 % of taxpayers, the IRS may notify the Consortium of that fact. After receipt of such notice, the Consortium will have six months within which to raise the availability of such offerings to at least 60% of taxpayers. If the Consortium fails to achieve 60% within such six-month period, the IRS may terminate the Agreement. In making this decision, the IRS agrees to take into account the extent to which actual usage of Free Services has increased. Consortium offerings, taken together, will provide eligible taxpayers with a reasonable assurance that: (1) Free Services will be available on demand, and (2) these services will provide the ability to file the same federal tax forms which are fileable and available in the comparable paid online services offered by a selected Consortium member.

B. The Consortium shall accept offerings only from entities that:

1. Provide electronic, on-line tax preparation and filing of individual income tax returns;

1. Will offer and can provide Free Services to a number of individual taxpayers which equals or exceeds 10 percent (10%) of the number of individual income tax returns filed in the base year (CY 2001).

3. Offer online software approved by the IRS that generates returns that can be sent to the IRS via an IRS-approved channel.

4. Are Authorized IRS E-File Providers in accord with IRS Rev. Proc. 2000-31.

5. Are in compliance with applicable law, including but not limited to, Department of Treasury/IRS rules, including but not limited to 31 C.F.R. Part 10, IRS Rev. Proc. 2000-31, current versions of IRS Publications 1345 and 1345-A, and 26 U.S.C. § 7216.

6. Demonstrate the competence and capability to deliver their free offerings. This competence and capability may be demonstrated either by providing evidence of prior experience in providing on-line or electronic filing services or by self-certification. Such self-certification shall be reasonably and objectively determined by the Consortium, taking into account the above referenced need for competence and capability and the intent of the Agreement to avoid unnecessary barriers to entry. Consortium Participants must have adequate capacity to meet the expected demand for their Free Services. In addition to initial Participants, the Consortium will accept later qualified applicants as Consortium Participants.

7. Have security certification, from a third party agreed to by the IRS. It is understood that the Agreement will contain the names of acceptable third-party certifiers.

8. Comply with the privacy provisions of 26 U.S.C. § 7216. Have privacy certification from a third party agreed to by the IRS. Consortium participants are encouraged to use software that will enable their websites to state their privacy practices in a standard machine readable format that can be retrieved automatically and interpreted easily by users. Consortium Participants shall also agree that provisions of Free Services shall not be conditioned on obtaining an eligible taxpayer's consent to solicitations of additional business. It is understood that the Agreement will contain the names of acceptable third-party certifiers.

9. Will not contain or provide links to inappropriate content.

10. Clearly disclose to users their customer service support options and privacy policy.

11. Agree to have at least one link to the IRS.

C. The Consortium will take reasonable steps to publicize the criteria for Consortium participation. The Consortium will provide to the IRS, on request, the names of unsuccessful applicants for Consortium participation and the reason for their rejection.

## V. Performance Standards

A. The IRS will have the Consortium web page ready by December 31, 2002. Consortium participants will have submitted their test returns produced by their software to the IRS sufficiently in advance of that date for testing. The IRS will not list on the Consortium web page a Consortium participant whose test returns have not been certified prior to the beginning of the filing season until that participant's test returns has been tested and certified.

B. The Consortium will make its best efforts to assure that Free Services by individual Consortium Participants are performed in accordance with the terms of the Agreement and in accordance with the offer made by the Consortium Participant. If the IRS determines a particular offering of Free Services is deficient or that Free Services are not being properly performed, it will notify the Consortium in writing of that fact, and provide information regarding corrective actions it believes are needed.

C. The undertaking by the Consortium under IV. A to offer Free Services at or above the 60% level shall apply only to January through April of each year (the primary tax filing season). Outside of the primary tax filing season, the Consortium shall encourage Consortium members to offer Free Services to the same extent that such services are offered by Consortium members for compensation.

D. The Consortium will be responsible for establishing its governance standards. These standards shall be in accord with applicable law and regulations. The standards shall be consistent with the Consortium performing its obligations under the Agreement and be designed to maximize participation of industry members while meeting the requirements of the Agreement.

E. IRS, in consultation with the Consortium, will develop an assessment process including usability performance measures to measure the extent to which the Agreement is accomplishing the objectives described in I., above. They will include at least:

1. Uptime and reliability through the tax season.
2. Delivery of the taxpayer to the Free Services in the minimum number of clicks consistent with usability design principles and the need to fully inform taxpayers about the free online services. From the site the taxpayer arrives at by clicking on the Consortium page's link to the Consortium Participant, until the taxpayer arrives at the Free Services, there will be no more clicks than required of such Consortium

Participant's paying customers, if applicable, consistent with usability design principles

## VI. Consortium Web Page Operation

A. The IRS will host and maintain the Web Page. The Consortium will submit to the IRS proposed content for the Web Page, and the IRS shall determine the final content to appear on the Web Page. The IRS will ensure that there are links from appropriate Government sites to The Web Page.

B. The design of the Web Page will conform to the following guidelines:

1. The Consortium will determine rank order placement of links to individual offerings in accordance with reasonable, objective criteria. Each listing of an offering will provide a description of the scope of, and eligibility for, free Services it offers.

1. The Web Page will provide a link to each Consortium Participant's Free Services entry using a minimum number of clicks.

2. No advertising will appear on the Web Page.

3. The Consortium will create and supply to IRS proposed content for the Web Page using existing IRS content management procedures.

4. The Web Page will be developed using usability design principles and will be updated based upon usability testing and other user feedback.

C. Taxpayers will be able to use Consortium Participants' software to prepare and electronically file their own personal income tax returns using proprietary processes and systems which such Participants host and maintain.

D. The Consortium will promptly notify the IRS of any planned or unplanned unavailability (i.e., downtime) of an offering that is anticipated to exceed five hours in duration. The IRS will annotate that offering's listing on The Web Page with a notice advising the public of the unavailability. The IRS may delist an offeror if its service remains unavailable for more than 24 hours, but shall re-list after restoration of availability; provided, however, if a Consortium Participant repeatedly has periods of such unavailability, the IRS shall be entitled to delist that Consortium Participant.

## VII. Marketing

A. The Parties will coordinate with each other their respective marketing of these Free Services to provide uniformity and maximize public awareness. Final decisions on the marketing campaign will remain with the IRS for IRS marketing expenditures

and with the Consortium and the Consortium Participants for their marketing expenditures.

B. The IRS will not endorse specific offerings or products, but will promote the availability of the Consortium's Free Services.

C. The Parties will work with the States to explore how the Agreement can support the states. Online tax preparation and e-filing of both federal and state returns can maximize benefits of this Agreement to taxpayers.

D. The Consortium understands that the IRS may continue to provide Consortium Participants or non-Participants Partners links from Government sites to electronic preparers and filers.

## VIII. Term of Agreement; Termination

A. The Agreement will have an initial term of three years from its effective date with automatic options to renew for successive two year periods. Representatives from the Parties will meet semiannually to review operation of the Agreement. The Parties will review the terms of the Agreement on an annual basis, and, upon mutual consent, can agree in writing to modify any provision of the Agreement.

B. Either Party may terminate the Agreement for cause if the other Party fails to comply with the Agreement, and such failure is not cured within thirty days of written notice of such failure from the other Party.

C. The IRS may terminate the Agreement without cause, such termination to be effective 12 months after the date of notice of such termination.

D. Should the IRS decide to offer Free Services to taxpayers the IRS shall notify the Consortium immediately. If the IRS gives such notice during the tax season (between January 1st and April 15th), or the last day of the filing deadline if that date is changed from April 15) of any year, the Consortium may, by written notice to the IRS, terminate the Agreement, effective on April 16th of that year. If the IRS gives such notice between April 16th and October 15th of any year, then the Consortium may, by written notice to the IRS other than during a tax season, terminate the Agreement, such termination to be effective no fewer than 30 days after the date of the Consortium's notice of such termination. If the IRS gives such notice between October 15 and December 31, the Consortium may by written notice immediately terminate the Agreement at any time on or before December 31.

**IX. Status of Term Sheet**

This is not the Agreement, and it is not intended to bind the parties. It is the parties' objective to reach an agreement

consistent with these terms in the near future.

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For IRS

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For IRS For the Consortium

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