

Table 2 to paragraph (b)(2): Modified adjusted gross income effective in 2018	Beneficiary percentage (percent)
Greater than \$170,000 but less than or equal to \$214,000	35
Greater than \$214,000 but less than or equal to \$267,000	50
Greater than \$267,000 but less than or equal to \$320,000	65
Greater than \$320,000	80

Table 3 to paragraph (b)(2): Modified adjusted gross income effective beginning in 2019	Beneficiary percentage (percent)
Greater than \$170,000 but less than or equal to \$214,000	35
Greater than \$214,000 but less than or equal to \$267,000	50
Greater than \$267,000 but less than or equal to \$320,000	65
Greater than \$320,000 but less than \$750,000	80
Greater than or equal to \$750,000	85

(3) *Tables of applicable percentages for married individuals filing separate returns.* If, for the tax year we use, your Federal tax filing status is married filing separately, you lived with your spouse at some time during that tax year, and your modified adjusted gross income is in the range listed in the left column in the following tables, you will pay an amount based on the percentage listed in the right column, which represents a percentage of the cost of basic Medicare prescription drug coverage.

Table 1 to paragraph (b)(3): Modified adjusted gross income effective in 2011–2017	Beneficiary percentage (percent)
Greater than \$85,000 but less than or equal to \$129,000	65
Greater than \$129,000	80

Table 2 to paragraph (b)(3): Modified adjusted gross income effective in 2018	Beneficiary percentage (percent)
Greater than \$85,000	80

Table 3 to paragraph (b)(3): Modified adjusted gross income effective beginning in 2019	Beneficiary percentage (percent)
Greater than \$85,000 but less than \$415,000	80
Greater than or equal to \$415,000	85

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 [FR Doc. 2018–24336 Filed 11–6–18; 8:45 am]
 BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9842]

RIN 1545–BO63

Tax Return Preparer Due Diligence Penalty Under Section 6695(g)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation and removal of temporary regulation.

SUMMARY: This document contains final regulations relating to the tax return

preparer penalty. The final regulations are necessary to implement recent law changes that expand the scope of the tax return preparer due diligence penalty so that it applies to the child tax credit (CTC)/additional child tax credit (ACTC), and the American opportunity tax credit (AOTC) as well as to eligibility to file a return or claim for refund as head of household. The regulations affect tax return preparers.

DATES:
Effective date: These regulations are effective November 7, 2018.
Applicability date: For the applicability date, see § 1.6695–2(e).
FOR FURTHER INFORMATION CONTACT: Marshall French, 202–317–6845 (not a toll-free number).

Paperwork Reduction Act

The collection of information in current § 1.6695–2 was previously

reviewed and approved under control number 1545–1570. Control number 1545–1570 was discontinued in 2014, as the burden for the collection of information contained in § 1.6695–2 is reflected in the burden for Form 8867, “Paid Preparer’s Due Diligence Checklist,” under control number 1545–1629.

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 6695(g) of the Internal Revenue Code (Code) regarding the tax return preparer due diligence requirements.

Prior to 2016, section 6695(g) imposed a penalty on tax return preparers who failed to comply with due diligence requirements set forth in regulations prescribed by the Secretary with respect

to determining eligibility for, or the amount of, the earned income credit (EIC). For tax years beginning after December 31, 2015, the scope of section 6695(g) was expanded to apply the penalty to tax return preparers who fail to comply with due diligence requirements with respect to determining eligibility for, or the amount of, the child tax credit (CTC)/ additional child tax credit (ACTC) and the American opportunity tax credit (AOTC). See section 207 of the Protecting Americans from Tax Hikes Act of 2015, Div. Q of Public Law 114–113 (129 Stat. 2242, 3082) (PATH Act). On December 5, 2016, final and temporary regulations (TD 9799, 81 FR 87444) with cross-referencing proposed regulations (REG–102952–16, 81 FR 87502) (2016 proposed regulations) were published in the **Federal Register** to reflect these changes. No public hearing was held or requested. One comment responding to the notice of proposed rulemaking was received.

Effective for tax years beginning after December 31, 2017, section 6695(g) was amended to expand the scope of the penalty to tax return preparers who fail to comply with due diligence requirements set by the Secretary with respect to determining eligibility to file as head of household (as defined in section 2(b)). See section 11001(b) of “An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018,” Public Law 115–97 (131 Stat. 2054, 2058 (2017)). A notice of proposed rulemaking (REG–103474–18, 83 FR 33875) (2018 proposed regulations) was published in the **Federal Register** on July 18, 2018 to withdraw paragraphs (a), (b)(3), and (e) of § 1.6695–2 of the 2016 proposed regulations and to propose in their place new paragraphs (a), (b)(3), and (e) of § 1.6695–2. The amended paragraphs updated the 2016 proposed regulations to reflect the most recent change to section 6695(g). No public hearing was held or requested. Comments responding to the notice of proposed rulemaking were received. After consideration of all the comments, paragraphs (b)(1)(i) introductory text, (b)(1)(ii), (b)(2), (b)(4)(i)(B), (b)(4)(i)(C), and (c)(3) of the 2016 proposed regulations and the entirety of the 2018 proposed regulations are adopted by this Treasury decision without substantive changes. Minor grammatical revisions were made to the examples provided in paragraph (b)(3)(ii) of § 1.6695–2 of the 2018 proposed regulations and example 5 was revised for clarity. A new example 6 was added

to paragraph (b)(3)(ii) and the previous examples 6 and 7 from the 2018 proposed regulations were renumbered as 7 and 8 respectively. A detailed explanation of these regulations can be found in the preambles to the 2016 temporary regulation and the 2018 proposed rules. 81 FR 87446; 83 FR 33876.

Summary of Comments

Paragraph (a) of § 1.6695–2 of the 2016 proposed regulations provides guidance on the operation of the penalty for failure to meet due diligence requirements with respect to returns claiming the EIC, the CTC/ACTC, the AOTC, or any combination of those credits. A commenter to the 2016 proposed regulations recommended that the rule include language stating that the phrase “tax return preparer” is defined to include business entities and persons without an identifying number. The commenter suggested that including this definition in the rule would decrease the likelihood that tax return preparers without an identifying number would be able to escape enforcement of section 6695(g) of the Code. Paragraph (a) defines “tax return preparer” by cross-reference to section 7701(a)(36) of the Code. The definition of tax return preparer provided in section 7701(a)(36) of the Code states: “The term ‘tax return preparer’ means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by this title or any claim for refund of tax imposed by this title. For purposes of the preceding sentence, the preparation of a substantial portion of a return or claim for refund shall be treated as if it were the preparation of such return or claim for refund.” In addition, the definition of “person” provided in section 7701(a)(1) of the Code states: “The term ‘person’ shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.” Thus the definition of tax return preparer already includes business entities in addition to individuals. Further, while individual paid tax return preparers who prepare, or assist in preparation of, all or substantially all of a tax return or claim for refund are required by Treas. Reg. § 1.6109–2 to obtain an identifying number, the definition of “tax return preparer” in section 7701(a)(36) does not include a requirement that the person have obtained an identifying number. Therefore, penalties under section 6695(g) of the Code apply to any person who falls within the definition provided

in section 7701(a)(36) of the Code, without regard for whether they have an identifying number. Because the definition already includes paid tax return preparers who do not have an identifying number, it is not necessary to adopt this comment.

One commenter suggested that clarity would be increased if the knowledge requirement of paragraph (b)(3)(i) of the 2018 proposed regulations were rephrased in positive terms, rather than in negative terms. Paragraph (b)(3)(i) as proposed requires tax return preparers to not know, or have reason to know, that the information they use to prepare the tax returns or claims for refund is incorrect. Paragraph (b)(3)(i) also states that tax return preparers cannot ignore the implications of information furnished to or known by them and must make further inquiries if it is reasonable to do so. The IRS and the Treasury Department considered this issue and decided not to modify the language in paragraph (b)(3)(i). This language mirrors the pre-existing language in § 10.34 of Circular 230. Departing from the language in Circular 230 may cause confusion among tax return preparers and decrease overall clarity.

One commenter requested that the final regulations clarify the circumstances under which a tax return preparer can meet the knowledge requirement of paragraph (b)(3) of the 2018 proposed regulations by relying upon pre-existing knowledge. The commenter noted that Examples 2 and 4 of paragraph (b)(3)(ii) illustrate that a return preparer with pre-existing knowledge of the facts surrounding a taxpayer’s return or claim for refund can meet the knowledge requirement when the pre-existing knowledge was acquired in the context of the tax return preparer’s tax return preparation practice. The commenter requested guidance as to whether tax return preparers’ use of pre-existing knowledge is limited to these circumstances. A new Example 6 has been added to paragraph (b)(3)(ii) and Examples 6 and 7 from the 2018 proposed regulations have been renumbered as Examples 7 and 8, respectively. The new Example 6 clarifies that a tax return preparer who possesses pre-existing knowledge that was acquired outside the context of the preparer’s tax return preparation practice cannot meet the knowledge requirement of paragraph (b)(3)(ii) by relying on that pre-existing knowledge. The tax return preparer must make reasonable inquiries to determine the applicable facts, and the inquiries and responses to those inquiries must be

contemporaneously documented in the tax return preparer's files.

A commenter recommended that paragraph (b)(3)(i) of the 2018 proposed regulations be modified to remove the requirement that tax return preparers contemporaneously document any inquiries made and responses to those inquiries. The commenter stated that some tax return preparers may have made contemporaneous inquiries but failed to document them, and suggested that other forms of evidence, such as testimony, should be allowed to prove that the tax return preparer asked the questions. The commenter also suggested that tax return preparers should be allowed to illustrate facts through non-contemporaneous documentation as a defense to the penalty. The IRS and the Treasury Department considered this issue and decided to not make the suggested modifications to paragraph (b)(3)(i) because contemporaneous documentation is important for improving compliance and reducing the error rate in tax returns and claims for refund prepared by tax return preparers.

One commenter stated that example 5 in paragraph (b)(3)(ii) of the 2018 proposed regulations requires a tax return preparer to engage in inquiries beyond those required by the knowledge requirement in paragraph (b)(3)(i). In example 5, a tax return preparer is informed that the taxpayer has never been married and that the taxpayer's niece and nephew lived with the taxpayer for part of the year. The tax return preparer believes that the taxpayer may be eligible to file as head of household and that the taxpayer may be able to claim the children as qualifying children for purposes of the EIC and CTC. Example 5 in the 2018 proposed regulations states that the tax return preparer must ask additional questions to meet the knowledge requirement in paragraph (b)(3)(i). The commenter stated that the tax return preparer should not be required to engage in additional inquiries because none of the information provided to the tax return preparer appears to be incorrect or inconsistent. This comment overlooks the additional requirement of (b)(3)(i) that tax return preparers engage in additional inquiries where the information furnished to them is incomplete. The information in Example 5 is incomplete because the preparer does not know enough about the children's residency or the source of their support. Example 5 has been revised to clarify that the reason the tax return preparer must engage in additional inquiries is because the

information furnished to the tax return preparer is incomplete.

A commenter requested additional guidance concerning the extent to which tax return preparers are required by paragraph (b)(3)(i) of the 2018 proposed regulations to engage in additional inquiries. The commenter notes that a reasonable person would not take unlimited and unending steps as part of the due diligence process but states that the regulations do not sufficiently identify a stopping point after which a tax return preparer is no longer required to make additional inquiries. Guidance as to the stopping point referenced by the commenter is provided in the regulation at paragraph (b)(3)(i), which states that additional inquiries are required if a reasonable and well-informed tax return preparer knowledgeable in the law would conclude that the information furnished to the tax return preparer appears to be incorrect, inconsistent, or incomplete.

A commenter suggested that the requirement in paragraph (b)(1) of the 2016 proposed regulations that tax return preparers complete and attach Form 8867 be eliminated. The IRS and the Treasury Department decline to adopt this suggestion. The completion and filing of Form 8867 by tax return preparers is an essential part of the section 6695(g) due diligence enforcement process. The commenter also stated that some tax return preparers are uncertain as to whether completing Form 8867 is sufficient to avoid due diligence penalties under section 6695(g). Filing a completed Form 8867 is one of the requirements established by the final regulations, but there are additional requirements. Paragraph (b)(2) requires tax return preparers who prepare returns or claims for refund claiming one or more of EIC, CTC/ACTC, and AOTC to either complete the applicable worksheet(s) prescribed by the Secretary or record in one or more documents the tax return preparer's method and information used to make the computations for the credits. Paragraph (b)(3) requires tax return preparers to meet knowledge requirements concerning the basis for the benefits claimed on returns or claims for refund and also to contemporaneously document inquiries and responses related to meeting these knowledge requirements. Paragraph (b)(4) sets retention requirements for documents used by the tax return preparer in preparing the return or claim for refund. A tax return preparer who completes Form 8867 but fails to comply with one or more of these additional requirements has not

satisfied the due diligence requirements of 6695(g).

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Although the regulations will have an economic impact on a substantial number of small entities, this impact will not be significant.

The current final and temporary regulations under section 6695(g) already require tax return preparers to complete Form 8867 when a return or claim for refund includes a claim of the EIC, the CTC/ACTC, the AOTC, or any combination of those credits. Tax return preparers also must currently maintain records of the checklists and computations, as well as a record of how and when the information used to compute the credits was obtained by the tax return preparer. The information needed to document a taxpayer's eligibility to file as head of household is information the preparer must gather to file the return. Even if certain preparers are required to maintain the checklists and complete Form 8867 for the first time, the IRS estimates that the total time required should be minimal for these tax return preparers. Further, the IRS does not expect that the requirements in the final rule would necessitate the purchase of additional software or equipment to meet the additional information retention requirements.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses. No comments were received from the Small Business Administration.

Drafting Information

The principal author of these regulations is Marshall French of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.6695–2 is amended by revising the section heading and paragraphs (a), (b)(1)(i) introductory text, (b)(1)(ii), (b)(2) and (3), (b)(4)(i)(B) and (C), (c)(3), and (e) to read as follows:

§ 1.6695–2 Tax return preparer due diligence requirements for certain tax returns and claims.

(a) *Penalty for failure to meet due diligence requirements—(1) In general.* A person who is a tax return preparer (as defined in section 7701(a)(36)) of a tax return or claim for refund under the Internal Revenue Code who determines the taxpayer's eligibility to file as head of household under section 2(b), or who determines the taxpayer's eligibility for, or the amount of, the child tax credit (CTC)/additional child tax credit (ACTC) under section 24, the American opportunity tax credit (AOTC) under section 25A(i), or the earned income credit (EIC) under section 32, and who fails to satisfy the due diligence requirements of paragraph (b) of this section will be subject to a penalty as prescribed in section 6695(g) (indexed for inflation under section 6695(h)) for each failure. A separate penalty applies to a tax return preparer with respect to the head of household filing status determination and to each applicable credit claimed on a return or claim for refund for which the due diligence requirements of this section are not satisfied and for which the exception to penalty provided by paragraph (d) of this section does not apply.

(2) *Examples.* The provisions of paragraph (a)(1) of this section are illustrated by the following examples:

(i) *Example 1.* Preparer A prepares a federal income tax return for a taxpayer claiming the CTC and the AOTC. Preparer A did not meet the due diligence requirements under this section with respect to the CTC or the AOTC claimed on the taxpayer's return. Unless the exception to penalty provided by paragraph (d) of this section applies, Preparer A is subject to two penalties under section 6695(g): One for failure to meet the due diligence requirements for the CTC and a second penalty for failure to meet the due diligence requirements for the AOTC.

(ii) *Example 2.* Preparer B prepares a federal income tax return for a taxpayer claiming the CTC and the AOTC. Preparer B did not meet the due diligence requirements

under this section with respect to the CTC claimed on the taxpayer's return, but Preparer B did meet the due diligence requirements under this section with respect to the AOTC claimed on the taxpayer's return. Unless the exception to penalty provided by paragraph (d) of this section applies, Preparer B is subject to one penalty under section 6695(g) for the failure to meet the due diligence requirements for the CTC. Preparer B is not subject to a penalty under section 6695(g) for failure to meet the due diligence requirements for the AOTC.

(iii) *Example 3.* Preparer C prepares a federal income tax return for a taxpayer using the head of household filing status and claiming the CTC and the AOTC. Preparer C did not meet the due diligence requirements under this section with respect to the head of household filing status and the CTC claimed on the taxpayer's return. Preparer C did meet the due diligence requirements under this section with respect to the AOTC claimed on the taxpayer's return. Unless the exception to penalty provided by paragraph (d) of this section applies, Preparer C is subject to two penalties under section 6695(g) for the failure to meet the due diligence requirements: One for the head of household filing status and one for the CTC. Preparer C is not subject to a penalty under section 6695(g) for failure to meet the due diligence requirements for the AOTC.

(b) * * *

(1) * * *

(i) The tax return preparer must complete Form 8867, "Paid Preparer's Due Diligence Checklist," or complete such other form and provide such other information as may be prescribed by the Internal Revenue Service (IRS), and—

* * * * *

(ii) The tax return preparer's completion of Form 8867 must be based on information provided by the taxpayer to the tax return preparer or otherwise reasonably obtained or known by the tax return preparer.

(2) *Computation of credit or credits.*

(i) When computing the amount of a credit or credits described in paragraph (a) of this section to be claimed on a return or claim for refund, the tax return preparer must either—

(A) Complete the worksheet in the Form 1040, 1040A, 1040EZ, and/or Form 8863 instructions or such other form including such other information as may be prescribed by the IRS applicable to each credit described in paragraph (a) of this section claimed on the return or claim for refund; or

(B) Otherwise record in one or more documents in the tax return preparer's paper or electronic files the tax return preparer's computation of the credit or credits claimed on the return or claim for refund, including the method and information used to make the computations.

(ii) The tax return preparer's completion of an applicable worksheet

described in paragraph (b)(2)(i)(A) of this section (or other record of the tax return preparer's computation of the credit or credits permitted under paragraph (b)(2)(i)(B) of this section) must be based on information provided by the taxpayer to the tax return preparer or otherwise reasonably obtained or known by the tax return preparer.

(3) *Knowledge—(i) In general.* The tax return preparer must not know, or have reason to know, that any information used by the tax return preparer in determining the taxpayer's eligibility to file as head of household or in determining the taxpayer's eligibility for, or the amount of, any credit described in paragraph (a) of this section and claimed on the return or claim for refund is incorrect. The tax return preparer may not ignore the implications of information furnished to, or known by, the tax return preparer, and must make reasonable inquiries if a reasonable and well-informed tax return preparer knowledgeable in the law would conclude that the information furnished to the tax return preparer appears to be incorrect, inconsistent, or incomplete. The tax return preparer must also contemporaneously document in the preparer's paper or electronic files any inquiries made and the responses to those inquiries.

(ii) *Examples.* The provisions of paragraph (b)(3)(i) of this section are illustrated by the following examples:

(A) *Example 1.* In 2018, Q, a 22-year-old taxpayer, engages Preparer C to prepare Q's 2017 federal income tax return. Q completes Preparer C's standard intake questionnaire and states that Q has never been married and has two sons, ages 10 and 11. Based on the intake sheet and other information that Q provides, including information that shows that the boys lived with Q throughout 2017, Preparer C believes that Q may be eligible to claim each boy as a qualifying child for purposes of the EIC and the CTC. However, Q provides no information to Preparer C, and Preparer C does not have any information from other sources, to verify the relationship between Q and the boys. To meet the knowledge requirement in paragraph (b)(3) of this section, Preparer C must make reasonable inquiries to determine whether each boy is a qualifying child of Q for purposes of the EIC and the CTC, including reasonable inquiries to verify Q's relationship to the boys, and Preparer C must contemporaneously document these inquiries and the responses.

(B) *Example 2.* Assume the same facts as in *Example 1* of paragraph (b)(3)(ii)(A) of this section. In addition, as part of preparing Q's 2017 federal income tax return, Preparer C made sufficient reasonable inquiries to verify that the boys were Q's legally adopted children. In 2019, Q engages Preparer C to prepare Q's 2018 federal income tax return. When preparing Q's 2018 federal income tax

return, Preparer C is not required to make additional inquiries to determine each boy's relationship to Q for purposes of the knowledge requirement in paragraph (b)(3) of this section.

(C) *Example 3.* In 2018, R, an 18-year-old taxpayer, engages Preparer D to prepare R's 2017 federal income tax return. R completes Preparer D's standard intake questionnaire and states that R has never been married, has one child, an infant, and that R and R's infant lived with R's parents during part of the 2017 tax year. R also provides Preparer D with a Form W-2 showing that R earned \$10,000 during 2017. R provides no other documents or information showing that R earned any other income during the tax year. Based on the intake sheet and other information that R provides, Preparer D believes that R may be eligible to claim the infant as a qualifying child for the EIC and the CTC. To meet the knowledge requirement in paragraph (b)(3) of this section, Preparer D must make reasonable inquiries to determine whether R is eligible to claim these credits, including reasonable inquiries to verify that R is not a qualifying child of R's parents (which would make R ineligible to claim the EIC) or a dependent of R's parents (which would make R ineligible to claim the CTC), and Preparer D must contemporaneously document these inquiries and the responses.

(D) *Example 4.* Assume the same facts as the facts in *Example 3* of paragraph (b)(3)(ii)(C) of this section. In addition, Preparer D previously prepared the 2017 joint federal income tax return for R's parents. Based on information provided by R's parents, Preparer D has determined that R is not eligible to be claimed as a dependent or as a qualifying child for purposes of the EIC or the CTC on R's parents' return. Therefore, for purposes of the knowledge requirement in paragraph (b)(3) of this section, Preparer D is not required to make additional inquiries to determine that R is not R's parents' qualifying child or dependent.

(D) *Example 5.* In 2019, S engages Preparer E to prepare S's 2018 federal income tax return. During Preparer E's standard intake interview, S states that S has never been married and that S's niece and nephew lived with S for part of the 2018 tax year. Preparer E believes S may be eligible to file as head of household and claim each of these children as a qualifying child for purposes of the EIC and the CTC, but the information furnished to Preparer E is incomplete. To meet the knowledge requirement in paragraph (b)(3) of this section, Preparer E must make reasonable inquiries to determine whether S is eligible to file as head of household and whether each child is a qualifying child for purposes of the EIC and the CTC, including reasonable inquiries about the children's residency, S's relationship to the children, the children's income, the sources of support for the children, and S's contribution to the payment of costs related to operating the household, and Preparer E must contemporaneously document these inquiries and the responses.

(F) *Example 6.* Assume the same facts as the facts in *Example 5* of paragraph (b)(3)(ii)(E) of this section. In addition,

Preparer E knows from prior social interactions with S that the children resided with S for more than one-half of the 2018 tax year and that the children did not provide over one-half of their own support for the 2018 tax year. To meet the knowledge requirement in paragraph (b)(3) of this section, Preparer E must make the same reasonable inquiries to determine whether S is eligible to file as head of household and whether each child is a qualifying child for purposes of the EIC and the CTC as discussed in *Example 5* of this section, and Preparer E must contemporaneously document these inquiries and the responses.

(G) *Example 7.* W engages Preparer F to prepare W's federal income tax return. During Preparer F's standard intake interview, W states that W is 50 years old, has never been married, and has no children. W further states to Preparer F that during the tax year W was self-employed, earned \$10,000 from W's business, and had no business expenses or other income. Preparer F believes W may be eligible for the EIC. To meet the knowledge requirement in paragraph (b)(3) of this section, Preparer F must make reasonable inquiries to determine whether W is eligible for the EIC, including reasonable inquiries to determine whether W's business income and expenses are correct, and Preparer F must contemporaneously document these inquiries and the responses.

(H) *Example 8.* Y, who is 32 years old, engages Preparer G to prepare Y's federal income tax return. Y completes Preparer G's standard intake questionnaire and states that Y has never been married. As part of Preparer G's client intake process, Y provides Preparer G with a copy of the Form 1098-T Y received showing that University M billed \$4,000 of qualified tuition and related expenses for Y's enrollment or attendance at the university and that Y was at least a half-time undergraduate student. Preparer G believes that Y may be eligible for the AOTC. To meet the knowledge requirement in paragraph (b)(3) of this section, Preparer G must make reasonable inquiries to determine whether Y is eligible for the AOTC, as Form 1098-T does not contain all the information needed to determine eligibility for the AOTC or to calculate the amount of the credit if Y is eligible, and contemporaneously document these inquiries and the responses.

- (4) * * *
- (i) * * *

(B) A copy of each completed worksheet required under paragraph (b)(2)(i)(A) of this section (or other record of the tax return preparer's computation permitted under paragraph (b)(2)(i)(B) of this section); and

(C) A record of how and when the information used to complete Form 8867 and the applicable worksheets required under paragraph (b)(2)(i)(A) of this section (or other record of the tax return preparer's computation permitted under paragraph (b)(2)(i)(B) of this section) was obtained by the tax return preparer, including the identity of any person furnishing the information, as

well as a copy of any document that was provided by the taxpayer and on which the tax return preparer relied to complete Form 8867 and/or an applicable worksheet required under paragraph (b)(2)(i)(A) of this section (or other record of the tax return preparer's computation permitted under paragraph (b)(2)(i)(B) of this section).

- * * * * *
- (c) * * *

(3) The firm disregarded its reasonable and appropriate compliance procedures through willfulness, recklessness, or gross indifference (including ignoring facts that would lead a person of reasonable prudence and competence to investigate) in the preparation of the tax return or claim for refund with respect to which the penalty is imposed.

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(e) *Applicability date.* The rules of this section apply to tax returns and claims for refund for tax years beginning after December 31, 2015, that are prepared on or after December 5, 2016. However, the rules relating to the determination of a taxpayer's eligibility to file as head of household under section 2(b) apply to tax returns and claims for refund for tax years beginning after December 31, 2017, that are prepared on or after November 7, 2018.

§ 1.6695-2T [Removed]

■ **Par. 3.** Section 1.6695-2T is removed.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

Approved: October 1, 2018.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2018-24411 Filed 11-5-18; 4:15 pm]

BILLING CODE 4830-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

RIN 0648-XG515

Fraser River Sockeye Salmon Fisheries; Inseason Orders

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary orders; inseason orders.

SUMMARY: NMFS publishes Fraser River salmon inseason orders to regulate