

PART IV - Items of General Interest

Implementation of PATH Act ITIN Provisions

Notice 2016-48

Section 203 of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), Pub. L. 114-113, *div. Q*, enacted on December 18, 2015, modified section 6109 of the Internal Revenue Code, and in so doing, made significant changes to the Individual Taxpayer Identification Number (ITIN) program. This notice explains those changes, how the Internal Revenue Service (IRS) will implement the changes, and the potential consequences to taxpayers who do not renew an ITIN when required by the PATH Act. Finally, this notice requests comments regarding the ITIN program and Certified Acceptance Agents (CAAs).

BACKGROUND

Section 6109 permits the IRS to issue identifying numbers for tax purposes (taxpayer identification numbers) and to request information to issue such numbers. Generally, an individual's taxpayer identification number is a social security number (SSN); however, some individuals are ineligible to receive an SSN but still need a taxpayer identification number for U.S. tax purposes.

An ITIN is a nine-digit tax processing number issued by the IRS that is formatted like an SSN, NNN-NN-NNNN. Each ITIN begins with the number 9 and has fourth and fifth digit ranges from 50-65, 70-88, 90-92, and 94-99. The IRS issues ITINs to individuals who are required to have a U.S. taxpayer identification number for U.S. tax

purposes but who do not have, and are not eligible to obtain, an SSN from the Social Security Administration (SSA). The PATH Act made changes to the ITIN program.

ITIN Application Process

The basic process for applying for an ITIN will not change as a result of the PATH Act. Individuals apply for an ITIN by submitting Form W-7, Application for IRS Individual Taxpayer Identification Number, (Form W-7SP for the Spanish language version). Most taxpayers must submit their Form W-7 with the tax return for which the ITIN is needed. Both domestic and foreign applicants may submit their Form W-7, tax return, and the required documentation by mail to the ITIN Operation Unit in Austin, Texas. Original documents or certified copies of documents from the issuing agency are the only acceptable documentation, except for a few very limited exceptions.

Under the PATH Act, in-person applications may be submitted to an employee of the IRS authorized to review and accept applications or to a community-based certified acceptance agent approved by the IRS. Individuals who apply in person, other than dependents, will receive their documentation back once the in-person application is completed. Currently, all IRS employees authorized to review and accept applications are located in the United States. The IRS is reviewing the new law and considering how to implement the new provision for community-based certified acceptance agents. Until further guidance is issued, all applicants may continue to submit their application package (*i.e.*, Form W-7 and supporting documentation) to CAAs for review under existing procedures (see <https://www.irs.gov/individuals/acceptance-agent-program>). Applicants may also submit their application packet in person at an IRS Taxpayer Assistance Center. Not all locations provide this service and many do so only by

appointment. Taxpayers should first check <https://www.irs.gov/uac/tac-locations-where-in-person-document-verification-is-provided> to find a location that has employees authorized to review and accept applications, and if applicable, make an appointment before visiting.

See the Instructions for Form W-7 and <https://www.irs.gov/individuals/additional-itin-information> for more detailed information regarding the application process for an ITIN.

Certain ITINs will need to be renewed beginning in 2017

Prior to the PATH Act, a taxpayer applied for and received an ITIN only once. The ITIN remained in effect unless the taxpayer applied for and received an SSN. On June 30, 2014, the IRS announced in News Release IR 2014-76 that it would deactivate ITINs that had not been used on a tax return in five consecutive years. That deactivation process had not yet begun at the time the PATH Act was enacted and, as a result of the PATH Act, is now obsolete. Under the PATH Act, certain ITINs will no longer be in effect unless they are renewed.

Under the PATH Act, any ITIN that is not used on a federal tax return for three consecutive tax years, either as the ITIN of an individual who files the return or as the ITIN of a dependent included on a return, will expire on December 31 of the third consecutive tax year of nonuse. For example, an individual applied for and received an ITIN in 2015 that is used in 2015 on the individual's 2014 federal income tax return. If the individual does not file or is not claimed as a dependent on a tax return in 2016, 2017, and 2018, the ITIN will expire on December 31, 2018. This rule applies to all ITINs regardless of when the ITIN was issued.

For ITINs issued before 2013, the PATH Act provides that ITINs will no longer be in effect according to the following schedule, unless the ITIN has already expired due to nonuse for three consecutive years as described above:

- ITINs issued before 2008 will remain in effect until January 1, 2017.
- ITINs issued in 2008 will remain in effect until January 1, 2018.
- ITINs issued in 2009 or 2010 will remain in effect until January 1, 2019.
- ITINs issued in 2011 or 2012 will remain in effect until January 1, 2020.

HOW TO RENEW AN ITIN

ITINs that have not been used in the last three consecutive years

ITINs that have expired due to nonuse in the last three consecutive years, as described above, may be renewed anytime starting October 1, 2016 by submitting a Form W-7 and required documentation. These individuals may renew their ITIN without having to attach a tax return to the Form W-7. Filers should use the most recent revision of the Form W-7 and check the box that says “renewal.” Filers should follow the instructions on the Form W-7 and include all the information and documentation required by the instructions except for the requirement to attach Form W-7 to a tax return. Alternatively, individuals may choose to wait to submit their Form W-7 with their tax return. Once the Form W-7 renewal application is approved, the individual’s ITIN will again be effective, and the individual can continue to use the same ITIN. The applicant will receive a letter from the IRS stating that the application has been approved. Once renewed, an ITIN will remain in effect unless it is not used on a tax return for three consecutive years.

ITINs issued prior to January 1, 2013 and currently in use

ITINs issued prior to January 1, 2013 that have been used on a tax return in the last three consecutive years are set to expire based on a multi-year schedule. Under the PATH Act, this schedule is based on the date that an ITIN was issued. However, many ITIN holders may not know when their ITIN was issued and previously had no reason to keep a record of the date an ITIN was issued. To simplify the renewal process and allow for the effective administration of the program, the IRS will administer the renewal of ITINs on a schedule that is different from the schedule in the PATH Act. The IRS will renew ITINs based upon the fourth and fifth digits (middle digits) in the ITIN. ITINs that contain the middle digits of 78 or 79 will no longer be in effect beginning January 1, 2017. The expiration and renewal schedules for ITINs with middle digits other than 78 or 79 will be announced in future guidance.

Beginning this summer, the IRS will send a Letter 5821 to individuals holding ITINs with the middle digits of 78 or 79 if the ITIN was used for a taxpayer or a dependent on a U.S. income tax return in any of the last three consecutive tax years informing them that they may submit a Form W-7 with original or certified documents to renew their ITINs. The Letter 5821 will be sent to the address used on the most recent income tax return on which the ITIN appears or the most recently updated address for the taxpayer who filed the tax return provided to the IRS by the taxpayer or the U.S. Postal Service.

An individual with an ITIN that contains the middle digits of 78 or 79 who is sent a Letter 5821 may submit a Form W-7 and required documentation to renew their ITIN

starting October 1, 2016. These individuals may renew their ITIN without having to attach Form W-7 to a tax return. Filers should use the most recent revision of Form W-7 and check the box that says “renewal.” To expedite processing, filers should include a copy of Letter 5821. Filers should follow the Instructions for Form W-7 and Letter 5821 and include all the information and documentation required by the instructions except for the requirement to attach Form W-7 to a tax return. The IRS anticipates that for applications mailed to the IRS under this process, documents will be returned to the applicant within 60 days from the date the application was received. Alternatively, individuals who are sent a Letter 5821 may choose to wait to submit their Form W-7 with their tax return. Once a Form W-7 renewal application is approved, the individual's ITIN will again be effective, and the individual can continue to use the same ITIN.

To reduce the burden on taxpayers, the IRS will accept Forms W-7 from each member of a family in a single family submission starting October 1, 2016, if at least one of the family members is required to renew an ITIN because the middle digits are 78 or 79 and that family member received a Letter 5821. For this purpose, family members include the filer, the filer's spouse, and any dependents claimed on the filer's return.

ITINs with middle digits other than 78 or 79 that have been in use within the last three consecutive tax years should not be renewed and require no immediate action from the ITIN holder. The IRS will accept, and individuals should continue to file, tax returns using these existing ITINs. The IRS will provide information about the expiration schedule and renewal process for the remaining ITINs issued before 2013 in future guidance and expects the expiration and renewal process for the remaining ITINs to be completed over multiple years.

WHAT MAY HAPPEN IF AN ITIN IS NOT RENEWED

Once renewed, an ITIN will remain in effect unless it is not used on a tax return for three consecutive years. The issuance date of a renewed ITIN is the date the ITIN was originally issued, not the renewal date. Some individuals may not be aware that their ITIN has expired or that they must renew an expired ITIN. Returns filed by these individuals will be accepted by the IRS; however, there may be a delay in processing these returns, and certain credits, such as the Child Tax Credit and the American Opportunity Tax Credit, may not be allowed unless the ITIN is renewed. This could result in a reduced refund or additional penalties and interest. The IRS will notify these filers about the delay and any reduction in refunds and credits claimed and will inform them about the need to file Form W-7 to renew their ITIN.

HOLDERS OF EXPIRED ITINS WHO HAVE OR BECOME ELIGIBLE FOR AN SSN

An individual with an expired ITIN who has or becomes eligible for an SSN should not renew the ITIN. Instead, those individuals who already have an SSN should write a letter to the IRS or visit a local IRS office explaining that they now have an SSN and that they want all their tax records combined under their SSN. Details about what to include with the letter and where to mail it can be found at www.irs.gov/Individuals/Additional-ITIN-Information. Those individuals who are eligible to obtain an SSN should obtain one from the SSA and then follow the instructions above. Visit the SSA website at www.ssa.gov, for information on how to apply for an SSN.

USE OF AN ITIN SOLELY ON AN INFORMATION RETURN

An individual whose expired ITIN is used only on information returns filed and furnished by third parties, such as Forms 1099, is not required to renew the ITIN. ITINs may continue to be used for information return purposes regardless of whether they have expired for individual income tax return filing purposes. If the individual is later required to file a tax return, however, the individual's ITIN will have to be renewed at that time. Additionally, the third parties who file and furnish information returns with an expired payee ITIN will not be subject to information return penalties under sections 6721 or 6722 solely because the ITIN is expired.

REQUEST FOR COMMENTS

Further guidance on other issues regarding the ITIN program will be forthcoming. The Treasury Department and the IRS request comments and recommendations regarding the ITIN program. Specifically, the Treasury Department and the IRS request comments on the following issues:

1. The eligibility requirements that should be established for organizations or individuals applying to be community-based certified acceptance agents and ways to increase the number of community-based certified acceptance agents in a manner that will minimize the risk of fraud and non-compliance.

2. Additional guidance that would be beneficial in administering the implementation of section 203 of the PATH Act.

How to Submit Comments

Taxpayers may mail comments to:

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2016-48)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

or hand deliver comments Monday through Friday between the hours of 8 a.m. and
4 p.m. to:

Courier's Desk
Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2016-48)
1111 Constitution Ave., N.W.
Washington, D.C. 20224

Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2016-0032 in the search field on the regulations.gov homepage to find this notice and submit comments). All comments submitted by the public in response to this notice will be available for public inspection and copying in their entirety.

DRAFTING INFORMATION

The principal author of this announcement is Michael Hara of the Office of the Associate Chief Counsel (Procedure and Administration). For further information about this notice, call 1-800-908-9982.