



National Association
of Tax Professionals

NATP's Commentary Regarding:

The IRS's Individual Taxpayer Identification
Number (ITIN) application procedures

Submitted to:

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You recently requested that we comment on the IRS' Individual Taxpayer Identification Number (ITIN) application procedures for the National Taxpayer Advocate's 2012 Annual Report to Congress. On June 22, 2012, the IRS, in IR-2012-62, announced important interim changes to strengthen its procedures for issuing ITINs through the end of the year. We have talked with a number of members who work closely with foreign individuals needing an ITIN because they are not eligible to obtain a Social Security Number.

The single-most frequent and serious complaint regarding the burden imposed upon applicants for ITINs is the requirement that original documents, such as birth certificates, driver's licenses and passports, be submitted with the ITIN application. Affected taxpayers are concerned that such documents will be lost and not returned. They are also concerned about being without these documents when continued demands are made upon them to produce them for other official reasons, and when the penalties for not producing them are severe.

This week we talked to a Certified Acceptance Agent (CAA) who had a client that needed to produce a birth certificate for a minor relative in an education program in the United States. The client sent for and obtained birth certificates from Mexico. It is a common practice that these birth certificates need translation. An honest translation of more recent birth certificates from Mexico reveals that some are substitutes. They are updated and not original documents. When the CAA asked his client about original documents, he said that he gave the originals to the Government of Mexico when he went to obtain his passport. They did not return the original documents, and the best he can do is obtain a substitute. The new birth certificates do not indicate that they've been witnessed, nor do they any longer list the grandparents on them. Hence these documents would not suffice in order to obtain an ITIN. This anecdote further indicates why applicants are also hesitant to release or submit their original documents if, indeed, they are available.

We have concerns that, even though an applicant may be able to submit certified copies of required identification documents, they may not be able to do so in a timely manner. That may depend on where they live and where the nearest consulate is located. Issuance often requires that an applicant appear in person to obtain a certified copy. As you know, in this interim period, ITINs will not be issued based upon applications supported with notarized copies of documents. ITINs will not also be issued based upon applications submitted through CAAs unless they attach original documentation or copies of documents certified by the issuing agency.

We have received some rather eloquent commentary on the practical problems applicants face from a member who is very active in assisting low-income taxpayers. You may already have his commentary as he indicates that he has submitted some of this dialogue to the Systemic Advocacy Management System (SAMS):

"The alleged strengthening of the ITIN application requirement poses an tremendous burden on low income taxpayers and will effectively deny many applicants the ability to continue their daily lives during the weeks that their only photo ID is in transit or in the hands of the ITIN Operation. Very few of the documents than can be used for ITIN application purposes are eligible for a certified copy issued by the original issuer. That works for birth certificates, but not voter cards, passports, consular cards, drivers

licenses, military ID cards or any other national or state ID document of which I am aware. Who wants to drive without a license in their possession for a week, much less two to six weeks. Moreover, IRS is now requiring that most applicants submit to them what is probably their only photo ID to get an ITIN. In today's world, how would not having a photo ID for an extended period impact your life?

Consider the H2A client whom we are currently serving. He arrived in the U.S. within the past two weeks and needs to file tax returns for multiple years, since he only learned last fall that he was required to file at all. Under the old rules, he has a courier service send him or brings his wife's voter ID card with him when he enters the U.S. for work. He comes to us immediately to file his tax returns and apply for ITINs. As soon as we are done, he uses FEDEX or another courier service to get the voter card back to his wife. Without it, she can't cash the money orders or pick up money wired to her by the taxpayer. Nor can she conduct other business at home that requires the ID card. The Mexican Consulate staff are in my office now and have confirmed that issuers of Mexican IDs that can be used to get an ITIN have no procedures authorizing them to issue certified copies of those documents except for birth certificates. Sending original documents to the Service is risky business. We have had taxpayers bring us other people's ID cards mailed back to them by ITIN Operation in the past. The new procedure denies the applicant for an ITIN the use of an essential ID document for too long a period of time. It's an undue risk to mail it in and it's an undue burden to deny them the use of the ID for the period of time that it will take the ITIN operation to process and return the document so the taxpayer can get it back to the applicant.

Other burdens occur. Taxpayers who have a spouse's or dependent's ITIN application delayed by this procedure or who can't readily comply with because the applicant cannot surrender the photo ID for that length of time will suffer. They will be assessed higher taxes, because even if they claim exemptions, without a TIN, the exemption won't be allowed. Instead of a refund or no tax due situation, these taxpayers will end up in collections.

In light of these burdens and complications, I just submitted in SAMS the following:

"IR-2012-62, June 22, 2012 requires that original documents be submitted by all ITIN applicants to prove identity and foreign status. This includes applicants who use the services of a Certifying Acceptance Agent. IR-2012-62 effectively abrogates the agreement the IRS has with every CAA. CAAs are no longer trusted to attest to the validity of documents submitted by applicants. Although one can get the issuer of a birth certificate to issue a certified copy, issuers of passports, driver's licenses, State and National ID cards and other valid documents will not issue certified copies. Some of these documents must be maintained in the applicant's possession; all are subject to risk of loss in the mail or by the IRS. We know this has happened in the past. The requirement to mailing original documents implies, at the very least, the need for certified mail. If IRS gets a passport via certified mail, it should return it by certified mail. The extent to which this procedure will strengthen the ITIN program is questionable, at best. What evidence does the Service have that the current procedures have created a situation in which ITINs have been obtained under fraudulent circumstances or facilitated ID theft that the new procedures will correct? Even if such evidence exists, is the problem so widespread that the new

procedure can be justified despite the burden it creates? The real impact of this “interim” procedure is to deny to taxpayers benefits related to filing status, exemptions and credits to which they are legally entitled. The requirement is overly burdensome; whatever the problem it is designed to address, there has got to be a better way.

*Although paragraph 6 of IR 2012-62 states: “During this interim period, people who need ITINS to get their tax return processed can do so by submitting by mail their original documentation or certified copies of their documentation”. That sounds like any certification will do. That’s not the case. Paragraph 2 makes clear that the Service will only accept ‘**certified copies of these documents from the issuing agency.**’”*

He also offers some potential practical suggestions on other steps the IRS could more realistically take to shore up its application process:

“The Service posted a FAQ list for its new policy that, at least until the end of the year, requires all Forms W-7, even those submitted by a CAA, to include either original documents or copies of original documents certified by the agency which issued them. In the FAQ list, the Service states: ‘You may be able to request a certified copy of your passport or similar international identification (e.g., Matricula Card) at your local consulate’s office.’

We have spoken to representatives of the Mexican Consulate in Boise, Idaho. They have the authority and the ability to certify a wider range of documents than those listed in the FAQ. Specifically, they will certify, among other documents, a Mexican voter card, a driver’s license issued by a State in Mexico, and a birth certificate. There is a \$13.00 per document fee and the party requesting the service must appear in person at the Consulate. Our office is 130 miles from the Consulate and many of our clients are even further away. We do not know if all countries’ consulates will certify as broad a range of documents as the Mexican Consulate. Nor do we know if the ‘in- person’ requirement is true for all countries. Given the circumstances imposed by the IRS and the great distances to some Consulates (e.g., a Guatemalan citizen in Idaho would have to travel to San Francisco for Consulate services), perhaps some Consulates would accept Fedex or certified mail requests in the same way that foreign embassies currently allow U.S. citizens to request travel visas by mail by mailing to the Embassy a passport.

Even then, it is not clear to us that the ITIN Operation is allowed by the new policy to accept a copy of a document certified by Consulate, of a document initially issued by a Mexican State?

I strongly believe that the IR 2012-62 policy needs to be loosened. A better way must be found to overcome whatever problem(s) gave rise to the new policy. CAAs should be able to submit copies of original documents unless the CAA has a record of submitting inappropriate applications. Additional safeguards could be readily added to the CAA agreement procedures.

Dealing with notaries poses different problems, but is also workable. Idaho and other States of which I have knowledge do not permit a Notary to certify as a true copy any document for which the issuer will

provide a certified copy. That rules out notarized copies of birth certificates, which CAAs can and should continue to be allowed to certify. Many notaries who assist alien taxpayers operate in gray areas and some hold themselves out as 'Notarios' to the Spanish speaking community. In Mexico, all 'Notarios' are attorneys, although not all attorneys are 'Notarios.' As a consequence, many notary publics hold out to the Spanish speaking public as 'Notarios' and provide legal help with immigration applications. Their clients often believe that these 'Notarios' are attorneys. Obviously, they are not. Unfortunately, many notaries who serve the populations in need of ITINs are dishonest and/or incompetent. These notaries stamp their seals on documents they are asked to notarize without any regard whatsoever to the law that governs their practice. Plus, the business of preparing ITIN applications often goes hand in glove with tax returns on which there may be questionable claims for refunds and credit. However, for a reason I have never understood, the Service elected not to include the Form W-7 as one which a Tax Professional must sign if helping a taxpayer prepare it. That was a mistake, and should be corrected.

To curb other questionable practices by notaries and CAAs, the Service could institute the following, less draconian changes. To tighten things up, the CAA can be required to submit copies, with an additional statement that the copies were made from the originals and signed by the CAA under penalty of perjury. CAAs could be required to use a jurat similar to the one required of Notaries. If not signed by a CAA, the Form W-7 needs to be signed by any tax practitioner who assists in completing the form. This can be done immediately with instructions to line out the Acceptance Agent's Use Only, sign in that space and disclose the PTIN in the Office Code box. All who help a taxpayer prepare a Form W-7 should be required to sign the Form and should do so with the knowledge that they must exercise due diligence with respect to completion of the Form itself, and the tax return submitted with it, if that tax return has not been prepared by a RRP, EA, CPA or attorney with PTIN and contact data disclosed on the return. Even then, in my opinion, it would not be unreasonable to require the CAA to exercise due diligence with respect to any claim made on a tax return relative to the W-7 applicant who is listed on the return. If CTC is claimed, the CAA may be required, under penalty of perjury, to include a statement that the CAA exercised due diligence with respect to the Child's residency in the United States.

Reinstate the use of notarized 'true copies', but tighten up the requirements. There is a uniform law on notarial acts. Many states adopted a version that was published in the 1980s. There is a newer version promulgated in 2010 that has not yet been widely adopted. Rather than requiring original documents for all applicants, the Service could suspend processing for a week or two to train its personnel in the uniform act and only refuse to accept notarized documents that are not notarized in a manner that conforms to the act. If deemed advisable, the Service could also require the Notary to provide an additional statement to accompany documents that they notarize. Since only four states to date have adopted the 2010 Uniform law, require the Notary or applicant to include a page from the Notary Public Handbook in his or her state with prescribes both the authority for certifying a true copy and the form of the jurat that must be used. This information should be available to applicants, Notaries and tax professionals assisting notaries on-line from the Secretary of State or other State office that oversees each state's notary public function, and would give the processing staff an immediate example of what the notary's authority was and what the document should look like. Want more teeth? Advise the applicant and the through the applicant, the notary, that Notaries who do not comply with the needed

standards will be reported to the State agency that granted their Notary License. But what was done with IR 2012-62 is unnecessarily burdensome and overkill.

We concur with these suggestions and offer them in hopes it will help the National Taxpayer Advocate set forth the plight of these applicants and the nature of the undue burden they bear. Hopefully it will offer impetus in her report that will result in a more equitable solution to this problem for both applicants and the IRS.

Thank you for the opportunity to respond.