

## Part III - Administrative, Procedural, and Miscellaneous

### PREPARER SIGNATURE REQUIREMENTS UNDER SECTION 6695(b), AS AMENDED BY THE SMALL BUSINESS AND WORK OPPORTUNITY TAX ACT OF 2007

#### Notice 2008-12

This notice provides guidance to the public regarding implementation of the tax return preparer signature requirement penalty provisions under section 6695(b) of the Internal Revenue Code, as amended by the Small Business and Work Opportunity Tax Act of 2007.

#### BACKGROUND

The Small Business and Work Opportunity Tax Act of 2007 (the Act), Pub. L. No. 110-28, 121 Stat. 190, was enacted on May 25, 2007. Section 8246 of the Act amended several provisions of the Code, including section 6695(b), to extend the application of the income tax return preparer penalties to all tax return preparers. As amended by the Act, section 6695(b) imposes a penalty on a tax return preparer of any return or claim for refund who fails to sign a return when required by regulations prescribed by the Secretary, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. The penalty under section 6695(b) is \$50 for each

failure to sign, with a maximum of \$25,000 per person imposed with respect to each calendar year. The amendments to section 6695(b) made by section 8246 of the Act are effective for tax returns and claims for refund prepared after May 25, 2007.

#### INTERIM AND PLANNED GUIDANCE

The Treasury Department and the Internal Revenue Service intend to issue regulations that implement the signature requirements under section 6695(b) for certain 2008 tax year returns and claims for refund. In advance of these regulations, guidance is being issued to (1) identify the returns and claims for refund required to be signed by a tax return preparer in order to avoid a section 6695(b) penalty under current regulations, and (2) identify the returns and claims for refund that will be required to be signed by a tax return preparer in order to avoid a section 6695(b) penalty under future regulations published by the Treasury Department and IRS. This interim guidance will apply until further guidance is issued and tax return preparers may rely on the interim guidance in this notice.

##### A. Signing Tax Return Preparer

For purposes of section 6695(b), an individual who is a tax return preparer with respect to a return of tax or claim for refund of tax listed below in paragraph (B)(1) of this notice shall sign the return or claim for refund after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature. If the tax return preparer is unavailable for signature, another tax return preparer shall review the entire preparation of the return or claim for refund, and then shall sign the return or claim for refund.

If more than one tax return preparer is involved in the preparation of the return or claim for refund, the individual tax return preparer who has the primary responsibility as between or among the preparers for the overall substantive accuracy of the preparation of such return or claim for refund shall be considered to be the tax return preparer for purposes of section 6695(b).

B. Forms Requiring Signature of Tax Return Preparer

(1) Consistent with existing regulations, in order to avoid the imposition of a penalty under section 6695(b), a signing tax return preparer described above in paragraph (A) of this notice must provide a signature on any income tax returns or claim for refund of income tax that are filed after December 31, 2007, including but not limited to the following:

- Form 990-T, Exempt Organization Business Income Tax Return
- Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation
- Form 1040, U.S. Individual Income Tax Return
- Form 1040A, U.S. Individual Income Tax Return
- Form 1040-C, U.S. Departing Alien Income Tax Return
- Form 1040EZ, Income Tax Return for Single and Joint Filers With No Dependents
- Form 1040NR, U.S. Nonresident Alien Income Tax Return
- Form 1040NR-EZ, U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents
- Form 1040-PR, Planilla para la Declaración de la Contribución Federal sobre el Trabajo por Cuenta Propia (Incluyendo el Crédito Tributario Adicional por Hijos para Residentes *Bona fide* de Puerto Rico)
- Form 1040-SS, U.S. Self-Employment Tax Return (Including the Additional Child Tax Credit for Bona Fide Residents of Puerto Rico)
- Form 1040X, Amended U.S. Individual Income Tax Return
- Form 1041, U.S. Income Tax Return for Estates and Trusts
- Form 1041-N, U.S. Income Tax Return for Electing Alaska Native Settlement Trusts

- Form 1041-QFT, U.S. Income Tax Return for Qualified Funeral Trusts
- Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons
- Form 1065, U.S. Return of Partnership Income
- Form 1065-B, U.S. Return of Income for Electing Large Partnerships
- Form 1066, U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return
- Form 1120, U.S. Corporation Income Tax Return
- Form 1120-C, U.S. Income Tax Return for Cooperative Associations
- Form 1120-F, U.S. Income Tax Return of a Foreign Corporation
- Form 1120-FSC, U.S. Income Tax Return of a Foreign Sales Corporation
- Form 1120-H, U.S. Income Tax Return for Homeowners Associations
- Form 1120IC-DISC, Interest Charge Domestic International Sales Corporation Return
- Form 1120-L, U.S. Life Insurance Company Income Tax Return
- Form 1120-ND, Return for Nuclear Decommissioning Funds and Certain Related Persons
- Form 1120-PC, U.S. Property and Casualty Insurance Company Income Tax Return
- Form 1120-POL, U.S. Income Tax Return for Certain Political Organizations
- Form 1120-REIT, U.S. Income Tax Return for Real Estate Investment Trusts
- Form 1120-RIC, U.S. Income Tax Return For Regulated Investment Companies
- Form 1120S, U.S. Income Tax Return for an S Corporation
- Form 1120-SF, U.S. Income Tax Return for Settlement Funds (Under Section 468B)
- Form 1120X, Amended U.S. Corporation Income Tax Return
- Form 2438, Undistributed Capital Gains Tax Return

(2) In the absence of Treasury regulations requiring signature, a signing tax return preparer described above in paragraph (A) of this notice will not be subject to the penalty under section 6695(b) with respect to tax returns or refund claims for taxes other than income taxes that are filed after December 31, 2007 but on or before December 31, 2008, including the filing of the following returns:

- Form CT-1, Employer's Annual Railroad Retirement Tax Return
- Form CT-2, Employee Representative's Quarterly Railroad Tax Return
- Form 11-C, Occupational Tax and Registration Return for Wagering

- Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return
- Form 706-A, United States Additional Estate Tax Return
- Form 706-D, United States Additional Estate Tax Return Under Code Section
- Form 706-GS(D), Generation-Skipping Transfer Tax Return For Distributions
- Form 706-GS(T), Generation-Skipping Transfer Tax Return For Terminations
- Form 706-NA, United States Estate (and Generation-Skipping Transfer) Tax Return - Estate of nonresident not a citizen of the United States Trusts
- Form 706-QDT, United States Estate Tax Return for Qualified Domestic Trusts
- Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return
- Form 720, Quarterly Federal Excise Tax Return
- Form 720X, Amended Quarterly Federal Excise Tax Return
- Form 730, Monthly Tax Return for Wagers
- Form 843, Claim for Refund and Request for Abatement
- Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return
- Form 940-PR, Planilla para la Declaración Federal ANUAL del Patrono de la Contribución Federal para el Desempleo (*FUTA*)
- Form 941, Employer's QUARTERLY Federal Tax Return
- Form 941-PR, Planilla para la Declaración Federal TRIMESTRAL del Patrono
- Form 941-SS, Employer's QUARTERLY Federal Tax Return
- Form 941-M, Employer's MONTHLY Federal Tax Return
- Form 943, Employer's Annual Federal Tax Return for Agricultural Employees
- Form 943(PR), Planilla Para la Declaración ANUAL De La Contribución Del Patrono De Empleados Agrícolas
- Form 944, Employer's ANNUAL Federal Tax Return
- Form 944-PR, Planilla para la Declaración ANUAL de la Contribución Federal del Patrono 944(SP), Declaración Federal ANUAL de Impuestos del Patrono o Empleador
- Form 944-SS, Employer's ANNUAL Federal Tax Return
- Form 945, Annual Return of Withheld Federal Income Tax
- Form 1040 (Schedule H), Household Employment Taxes
- Form 1040-PR (Anexo H-PR), Contribuciones sobre el Empleo de Empleados Domesticos
- Form 2290, Heavy Highway Vehicle Use Tax Return
- Form 2290(FR), Declaration d'Impot sur L'utilisation des Vehicules Lourds sur les Routes
- Form 2290(SP), Declaración del Impuesto sobre el Uso de Vehículos Pesados en las Carreteras
- Form 4720, Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the Internal Revenue Code
- Form 5330, Return of Excise Taxes Related to Employee Benefit Plans
- Form 8612, Return of Excise Tax on Undistributed Income of Real Estate

Investment Trusts

- Form 8613, Return of Excise Tax on Undistributed Income of Regulated Investment Companies
- Form 8725, Excise Tax on Greenmail
- Form 8831, Excise Taxes on Excess Inclusions of REMIC Residual Interests
- Form 8849, Claim for Refund of Excise Taxes
- Form 8876, Excise Tax on Structured Settlement Factoring Transactions
- Form 8924, Excise Tax on Certain Transfers of Qualifying Geothermal or Mineral Interests

The tax return preparer shall sign the return in the manner prescribed by the Commissioner in forms, instructions, or other appropriate guidance.

The Treasury Department and IRS intend to issue regulations on or before December 31, 2008 requiring signatures under section 6695(b) for all the above listed forms that are filed after December 31, 2008.

Information on the preparer signature requirement for electronically filed returns will be announced in IRS publications, instructions, and information posted electronically on the IRS.gov website.

EFFECTIVE DATE

This Notice is effective as of January 1, 2008.

CONTACT INFORMATION

The principal authors of this notice are Matthew S. Cooper and Michael E. Hara of the Office of the Associate Chief Counsel (Procedure and Administration). For further information regarding this notice contact Mr. Cooper at 202-622-4940 or Mr. Hara at (202) 622-4910 (not toll-free calls).