

under paragraph (a)(4)(ii) of this section if the preparer fails to begin a proceeding for refund in the appropriate United States district court within 30 days after the earlier of—

(1) The day on which the preparer's claim for refund filed under paragraph (a)(4)(ii) of this section is denied; or

(2) The expiration of 6 months after the day on which the preparer filed the claim for refund.

(c) *Suspension of running of period of limitations on collection.* The running of the period of limitations provided in section 6502 on the collection by levy or by a proceeding in court of the unpaid amount of a penalty or penalties described in section 6694(a) or section 6694(b) is suspended for the period during which the IRS, under paragraph (a)(5) of this section, may not collect the unpaid amount of the penalty or penalties by levy or a proceeding in court.

(d) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

[T.D. 9436, 73 FR 78446, Dec. 22, 2008]

**§ 1.6695-1 Other assessable penalties with respect to the preparation of tax returns for other persons.**

(a) *Failure to furnish copy to taxpayer.*

(1) A person who is a signing tax return preparer as described in § 301.7701-15(b)(1) of this chapter of any return of tax or claim for refund of tax under the Internal Revenue Code (Code), and who fails to satisfy the requirements imposed by section 6107(a) and § 1.6107-1(a) to furnish a copy of the return or claim for refund to the taxpayer (or non-taxable entity), shall be subject to a penalty of \$50 for such failure, with a maximum penalty of \$25,000 per person imposed with respect to each calendar year, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

(2) No penalty may be imposed under section 6695(a) and paragraph (a)(1) of this section upon a tax return preparer who furnishes a copy of the return or claim for refund to taxpayers who—

(i) Hold an elected or politically appointed position with the government of the United States or a state or political subdivision thereof; and

(ii) In order faithfully to carry out their official duties, have so arranged their affairs that they have less than full knowledge of the property that they hold or of the debts for which they are responsible, if information is deleted from the copy in order to preserve or maintain this arrangement.

(b) *Failure to sign return.* (1) An individual who is a signing tax return preparer as described in § 301.7701-15(b)(1) of this chapter with respect to a return of tax or claim for refund of tax under the Code as described in § 301.7701-15(b)(4) that is not signed electronically shall sign the return or claim for refund after it is completed and before it is presented to the taxpayer (or non-taxable entity) for signature. For rules covering electronically signed returns, see paragraph (b)(2) of this section. If the signing 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. The tax return preparer shall sign the return in the manner prescribed by the Commissioner in forms, instructions, or other appropriate guidance.

(2) In the case of electronically signed tax returns, the signing tax return preparer need not sign the return prior to presenting a completed copy of the return to the taxpayer. The signing tax return preparer, however, must furnish all of the information that will be transmitted as the electronically signed tax return to the taxpayer contemporaneously with furnishing the Form 8879, "IRS e-file Signature Authorization," or other similar Internal Revenue Service (IRS) e-file signature form. The information may be furnished on a replica of an official form. The signing tax return preparer shall electronically sign the return in the manner prescribed by the Commissioner in forms, instructions, or other appropriate guidance.

(3) An individual required by this paragraph (b) to sign a return or claim for refund shall be subject to a penalty of \$50 for each failure to sign, with a maximum of \$25,000 per person imposed with respect to each calendar year, unless it is shown that the failure is due to reasonable cause and not due to

willful neglect. If the tax return preparer asserts reasonable cause for failure to sign, the IRS will require a written statement to substantiate the tax return preparer's claim of reasonable cause. For purposes of this paragraph (b), reasonable cause is a cause that arises despite ordinary care and prudence exercised by the individual tax return preparer.

(4) *Examples.* The application of this paragraph (b) is illustrated by the following examples:

*Example 1.* Law Firm A employs B, a lawyer, to prepare for compensation estate tax returns and claims for refund of taxes. Firm A is engaged by C to prepare a Federal estate tax return. Firm A assigns B to prepare the return. B obtains the information necessary for completing the return from C and makes determinations with respect to the proper application of the tax laws to such information in order to determine the estate's tax liability. B then forwards such information to D, a computer tax service that performs the mathematical computations and prints the return by means of computer processing. D then sends the completed estate tax return to B who reviews the accuracy of the return. B is the individual tax return preparer who is primarily responsible for the overall accuracy of the estate tax return. B must sign the return as tax return preparer in order to not be subject to the section 6695(b) penalty.

*Example 2.* Partnership E is a national accounting firm that prepares returns and claims for refund of taxes for compensation. F and G, employees of Partnership E, are involved in preparing the Form 990-T, Exempt Organization Business Income Tax Return, for H, a tax exempt organization. After they complete the return, including the gathering of the necessary information, analyzing the proper application of the tax laws to such information, and the performance of the necessary mathematical computations, I, a supervisory employee of Partnership E, reviews the return. As part of this review, I reviews the information provided and the application of the tax laws to this information. The mathematical computations and carried-forward amounts are reviewed by J, an employee of Partnership E. The policies and practices of Partnership E require that K, a partner, finally review the return. The scope of K's review includes reviewing the information provided and applying to this information his knowledge of H's affairs, observing that Partnership E's policies and practices have been followed, and making the final determination with respect to the proper application of the tax laws to determine H's tax liability. K may or may not exercise these responsibilities, or may exercise them to a

greater or lesser extent, depending on the degree of complexity of the return, his confidence in I (or F and G), and other factors. K is the individual tax return preparer who is primarily responsible for the overall accuracy of H's return. K must sign the return as tax return preparer in order to not be subject to the section 6695(b) penalty.

*Example 3.* L corporation maintains an office in Seattle, Washington, for the purpose of preparing partnership returns for compensation. L makes compensatory arrangements with individuals (but provides no working facilities) in several states to collect information from partners of a partnership and to make decisions with respect to the proper application of the tax laws to the information in order to prepare the partnership return and calculate the partnership's distributive items. M, an individual, who has such an arrangement in Los Angeles with L, collects information from N, the general partner of a partnership, and completes a worksheet kit supplied by L that is stamped with M's name and an identification number assigned to M by L. In this process, M classifies this information in appropriate categories for the preparation of the partnership return. The completed worksheet kit signed by M is then mailed to L. O, an employee in L's office, reviews the worksheet kit to make sure it was properly completed. O does not review the information obtained from N for its validity or accuracy. O may, but did not, make the final decision with respect to the proper application of tax laws to the information provided. The data from the worksheet is entered into a computer and the return form is completed. The return is prepared for submission to N with filing instructions. M is the individual tax return preparer primarily responsible for the overall accuracy of the partnership return. M must sign the return as tax return preparer in order to not be subject to the section 6695(b) penalty.

*Example 4.* P employs R, S, and T to prepare gift tax returns for taxpayers. After R and S have collected the information from a taxpayer and applied the tax laws to the information, the return form is completed by a computer service. On the day the returns prepared by R and S are ready for their signatures, R is away from the city for 1 week on another assignment and S is on detail to another office in the same city for the day. T may sign the gift tax returns prepared by R, provided that T reviews the information obtained by R relative to the taxpayer, and T reviews the preparation of each return prepared by R. T may not sign the returns prepared by S because S is available.

(5) *Effective/applicability date.* This paragraph (b) is applicable to returns and claims for refund filed after December 31, 2008.

(c) *Failure to furnish identifying number.* (1) A person who is a signing tax return preparer as described in § 301.7701-15(b)(1) of this chapter of any return of tax under the Code or claim for refund of tax under the Code, and who fails to satisfy the requirement of section 6109(a)(4) and § 1.6109-2(a) to furnish one or more identifying numbers of signing tax return preparers or persons employing the signing tax return preparer (or with which the signing tax return preparer is associated) on a return or claim for refund after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature shall be subject to a penalty of \$50 for each failure, with a maximum of \$25,000 per person imposed with respect to each calendar year, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

(2) No more than one penalty of \$50 may be imposed under section 6695(c) and paragraph (c)(1) of this section with respect to a single return or claim for refund.

(d) *Failure to retain copy or record.* (1) A person who is a signing tax return preparer as described in § 301.7701-15(b)(1) of this chapter of any return of tax under the Code or claim for refund of tax under the Code, and who fails to satisfy the requirements imposed upon him or her by section 6107(b) and § 1.6107-1(b) and (c) (other than the record requirement described in both § 1.6107-1(b)(2) and (3)) to retain and make available for inspection a copy of the return or claim for refund, or to include the return or claim for refund in a record of returns and claims for refund and make the record available for inspection, shall be subject to a penalty of \$50 for the failure, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

(2) A person may not, for returns or claims for refund presented to the taxpayers (or nontaxable entities) during each calendar year, be subject to more than \$25,000 in penalties under section 6695(d) and paragraph (d)(1) of this section.

(e) *Failure to file correct information returns.* A person who is subject to the reporting requirements of section 6060

and § 1.6060-1 and who fails to satisfy these requirements shall pay a penalty of \$50 for each such failure, with a maximum of \$25,000 per person imposed for each calendar year, unless such failure was due to reasonable cause and not due to willful neglect.

(f) *Negotiation of check.* (1) No person who is a tax return preparer as described in § 301.7701-15 of this chapter may endorse or otherwise negotiate, directly or through an agent, a check (including an electronic version of a check) for the refund of tax under the Code that is issued to a taxpayer other than the tax return preparer if the person was a tax return preparer of the return or claim for refund which gave rise to the refund check. A tax return preparer will not be considered to have endorsed or otherwise negotiated a check for purposes of this paragraph (f)(1) solely as a result of having affixed the taxpayer's name to a refund check for the purpose of depositing the check into an account in the name of the taxpayer or in the joint names of the taxpayer and one or more other persons (excluding the tax return preparer) if authorized by the taxpayer or the taxpayer's recognized representative.

(2) Section 6695(f) and paragraphs (f)(1) and (3) of this section do not apply to a tax return preparer-bank that—

(i) Cashes a refund check and remits all of the cash to the taxpayer or accepts a refund check for deposit in full to a taxpayer's account, so long as the bank does not initially endorse or negotiate the check (unless the bank has made a loan to the taxpayer on the basis of the anticipated refund); or

(ii) Endorses a refund check for deposit in full to a taxpayer's account pursuant to a written authorization of the taxpayer (unless the bank has made a loan to the taxpayer on the basis of the anticipated refund).

(3) A tax return preparer-bank may also subsequently endorse or negotiate a refund check as a part of the check-clearing process through the financial system after initial endorsement or negotiation.

(4) The tax return preparer shall be subject to a penalty of \$500 for each endorsement or negotiation of a check

prohibited under section 6695(f) and paragraph (f)(1) of this section.

(g) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

[T.D. 9436, 73 FR 78447, Dec. 22, 2008, as amended at 74 FR 5104, Jan. 29, 2009]

**§ 1.6695-2 Tax return preparer due diligence requirements for determining earned income credit eligibility.**

(a) *Penalty for failure to meet due diligence requirements.* A person who is a signing tax return preparer of a tax return or claim for refund under the Internal Revenue Code with respect to determining the eligibility for, or the amount of, 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 of \$100 for each such failure.

(b) *Due diligence requirements.* A preparer must satisfy the following due diligence requirements:

(1) *Completion of eligibility checklist.* (i) The preparer must either—

(A) Complete Form 8867, “Paid Preparer’s Earned Income Credit Checklist,” or such other form and such other information as may be prescribed by the Internal Revenue Service (IRS) (Eligibility Checklist); or

(B) Otherwise record in the preparer’s paper or electronic files the information necessary to complete the Eligibility Checklist (Alternative Eligibility Record). The Alternative Eligibility Record may consist of one or more documents containing the required information.

(ii) The preparer’s completion of the Eligibility Checklist or Alternative Eligibility Record must be based on information provided by the taxpayer to the preparer or otherwise reasonably obtained by the preparer.

(2) *Computation of credit.* (i) The preparer must either—

(A) Complete the Earned Income Credit Worksheet in the Form 1040 instructions or such other form and such other information as may be prescribed by the IRS (Computation Worksheet); or

(B) Otherwise record in the preparer’s paper or electronic files the preparer’s EIC computation, including the method and information used to make the computation (Alternative Computation Record). The Alternative Computation Record may consist of one or more documents containing the required information.

(ii) The preparer’s completion of the Computation Worksheet or Alternative Computation Record must be based on information provided by the taxpayer to the preparer or otherwise reasonably obtained by the 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 for, or the amount of, the EIC 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 the information furnished to the tax return preparer appears to be incorrect, inconsistent, or incomplete. A tax return preparer 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 files the reasonable inquiries made and the responses to these inquiries.

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

*Example 1.* A 22 year-old taxpayer wants to claim two sons, ages 10 and 11, as qualifying children for purposes of the EIC. Preparer A must make additional reasonable inquiries regarding the relationship between the taxpayer and the children as the age of the taxpayer appears inconsistent with the ages of the children claimed as sons.

*Example 2.* An 18 year-old female taxpayer with an infant has \$3,000 in earned income and states that she lives with her parents. Taxpayer wants to claim the infant as a qualifying child for the EIC. This information appears incomplete and inconsistent because the taxpayer lives with her parents and earns very little income. Preparer B must make additional reasonable inquiries to determine if the taxpayer is the qualifying