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TITLE 26--INTERNAL REVENUE

(Continued)

PART 301--PROCEDURE AND ADMINISTRATION--Table of Contents

Sec. 301.6109-1 Identifying numbers.

(a) In general--(1) Taxpayer identifying numbers--(i) Principal types. There are several types of taxpayer identifying numbers that include the following: social security numbers, Internal Revenue Service (IRS) individual taxpayer identification numbers, IRS adoption taxpayer identification numbers, and employer identification numbers. Social security numbers take the form 000-00-0000. IRS individual taxpayer identification numbers and IRS adoption taxpayer identification numbers also take the form 000-00-0000 but include a specific number or numbers designated by the IRS. Employer identification numbers take the form 00-0000000.

(ii) Uses. Social security numbers, IRS individual taxpayer identification numbers, and IRS adoption taxpayer identification numbers are used to identify individual persons. Employer identification numbers are used to identify employers. For the definition of social security number and employer identification number, see Secs. 301.7701-11 and 301.7701-12, respectively. For the definition of IRS individual taxpayer identification number, see paragraph (d)(3) of this section. For the definition of IRS adoption taxpayer identification number, see Sec. 301.6109-3(a). Except as otherwise provided in applicable regulations under this chapter or on a return, statement, or other document,

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and related instructions, taxpayer identifying numbers must be used as follows:

(A) Except as otherwise provided in paragraph (a)(1)(ii)(B) and (D) of this section, and Sec. 301.6109-3, an individual required to furnish a taxpayer identifying number must use a social security number.

(B) Except as otherwise provided in paragraph (a)(1)(ii)(D) of this section and Sec. 301.6109-3, an individual required to furnish a taxpayer identifying number but who is not eligible to obtain a social security number must use an IRS individual taxpayer identification number.

(C) Any person other than an individual (such as corporations, partnerships, nonprofit associations, trusts, estates, and similar nonindividual persons) that is required to furnish a taxpayer identifying number must use an employer identification number.

(D) An individual, whether U.S. or foreign, who is an employer or who is engaged in a trade or business as a sole proprietor should use an employer identification number as required by returns, statements, or other documents and their related instructions.

(2) A trust all of which is treated as owned by the grantor or another person pursuant to sections 671 through 678--(i) Obtaining a taxpayer identification number. If a trust does not have a taxpayer identification number and the trustee furnishes the name and taxpayer identification number of the grantor or other person treated as the owner of the trust and the address of the trust to all payors pursuant to Sec. 1.671-4(b)(2)(i)(A) of this chapter, the trustee need not obtain a taxpayer identification number for the trust until either the first taxable year of the trust in which all of the trust is no longer owned by the grantor or another person, or until the first taxable year of the trust for which the trustee no longer reports pursuant to Sec. 1.671-4(b)(2)(i)(A) of this chapter. If the trustee has not already obtained a taxpayer identification number for the trust, the trustee must obtain a taxpayer identification number for the trust as provided in paragraph (d)(2) of this section in order to report pursuant to Sec. 1.671-4(a), (b)(2)(i)(B), or (b)(3)(i) of this chapter.

(ii) Obligations of persons who make payments to certain trusts. Any payor that is required to file an information return with respect to payments of income or proceeds to a trust must show the name and taxpayer identification number that the trustee has furnished to the payor on the return. Regardless of whether the trustee furnishes to the payor the name and taxpayer identification number of the grantor or other person treated as an owner of the trust, or the name and taxpayer identification number of the trust, the payor must furnish a statement to recipients to the trustee of the trust, rather than to the grantor or other person treated as the owner of the trust. Under these circumstances, the payor satisfies the obligation to show the name and taxpayer identification number of the payee on the information return and to furnish a statement to recipients to the person whose taxpayer identification number is required to be shown on the form.

(iii) Persons treated as payors. For purposes of this paragraph (a)(2), the term payor means a person described in Sec. 1.671-4(b)(4) of

this chapter.

(b) Requirement to furnish one's own number--(1) U.S. persons. Every U.S. person who makes under this title a return, statement, or other document must furnish its own taxpayer identifying number as required by the forms and the accompanying instructions. A U.S. person whose number must be included on a document filed by another person must give the taxpayer identifying number so required to the other person on request. For penalties for failure to supply taxpayer identifying numbers, see sections 6721 through 6724. For provisions dealing specifically with the duty of employees with respect to their social security numbers, see Sec. 31.6011(b)-2 (a) and (b) of this chapter (Employment Tax Regulations). For provisions dealing specifically with the duty of employers with respect to employer identification numbers, see Sec. 31.6011(b)-1 of this chapter (Employment Tax Regulations).

(2) Foreign persons. The provisions of paragraph (b)(1) of this section regarding the furnishing of one's own number

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shall apply to the following foreign persons--

(i) A foreign person that has income effectively connected with the conduct of a U.S. trade or business at any time during the taxable year;

(ii) A foreign person that has a U.S. office or place of business or a U.S. fiscal or paying agent at any time during the taxable year;

(iii) A nonresident alien treated as a resident under section 6013(g) or (h);

(iv) A foreign person that makes a return of tax (including income, estate, and gift tax returns), an amended return, or a refund claim under this title but excluding information returns, statements, or documents;

(v) A foreign person that makes an election under Sec. 301.7701-3(c); and

(vi) A foreign person that furnishes a withholding certificate described in Sec. 1.1441-1(e)(2) or (3) of this chapter or Sec. 1.1441-5(c)(2)(iv) or (3)(iii) of this chapter to the extent required under Sec. 1.1441-1(e)(4)(vii) of this chapter.

(c) Requirement to furnish another's number. Every person required under this title to make a return, statement, or other document must furnish such taxpayer identifying numbers of other U.S. persons and foreign persons that are described in paragraph (b)(2)(i), (ii), (iii), or (vi) of this section as required by the forms and the accompanying instructions. The taxpayer identifying number of any person furnishing a withholding certificate referred to in paragraph (b)(2)(vi) of this section shall also be furnished if it is actually known to the person making a return, statement, or other document described in this

paragraph (c). If the person making the return, statement, or other document does not know the taxpayer identifying number of the other person, and such other person is one that is described in paragraph (b)(2)(i), (ii), (iii), or (vi) of this section, such person must request the other person's number. The request should state that the identifying number is required to be furnished under authority of law. When the person making the return, statement, or other document does not know the number of the other person, and has complied with the request provision of this paragraph (c), such person must sign an affidavit on the transmittal document forwarding such returns, statements, or other documents to the Internal Revenue Service, so stating. A person required to file a taxpayer identifying number shall correct any errors in such filing when such person's attention has been drawn to them.

(d) Obtaining a taxpayer identifying number--(1) Social security number. Any individual required to furnish a social security number pursuant to paragraph (b) of this section shall apply for one, if he has not done so previously, on Form SS-5, which may be obtained from any Social Security Administration or Internal Revenue Service office. He shall make such application far enough in advance of the first required use of such number to permit issuance of the number in time for compliance with such requirement. The form, together with any supplementary statement, shall be prepared and filed in accordance with the form, instructions, and regulations applicable thereto, and shall set forth fully and clearly the data therein called for. Individuals who are ineligible for or do not wish to participate in the benefits of the social security program shall nevertheless obtain a social security number if they are required to furnish such a number pursuant to paragraph (b) of this section.

(2) Employer identification number--(i) In general. Any person required to furnish an employer identification number must apply for one, if not done so previously, on Form SS-4. A Form SS-4 may be obtained from any office of the Internal Revenue Service, U.S. consular office abroad, or from an acceptance agent described in paragraph (d)(3)(iv) of this section. The person must make such application far enough in advance of the first required use of the employer identification number to permit issuance of the number in time for compliance with such requirement. The form, together with any supplementary statement, must be prepared and filed in accordance with the form, accompanying instructions, and relevant regulations, and must set forth fully and clearly the requested data.

(ii) [Reserved]

(iii) Special rule for Section 708(b)(1)(B) terminations. A new partnership that is

formed as a result of the termination of a partnership under section 708(b)(1)(B) will retain the employer identification number of the terminated partnership. This paragraph (d)(2)(iii) applies to terminations of partnerships under section 708(b)(1)(B) occurring on or after May 9, 1997; however, this paragraph (d)(2)(iii) may be applied to terminations occurring on or after May 9, 1996, provided that the partnership and its partners apply this paragraph (d)(2)(iii) to the termination in a consistent manner.

(3) IRS individual taxpayer identification number--(i) Definition.

The term IRS individual taxpayer identification number means a taxpayer identifying number issued to an alien individual by the Internal Revenue Service, upon application, for use in connection with filing requirements under this title. The term IRS individual taxpayer identification number does not refer to a social security number or an account number for use in employment for wages. For purposes of this section, the term alien individual means an individual who is not a citizen or national of the United States.

(ii) General rule for obtaining number. Any individual who is not eligible to obtain a social security number and is required to furnish a taxpayer identifying number must apply for an IRS individual taxpayer identification number on Form W-7, Application for IRS Individual Taxpayer Identification Number, or such other form as may be prescribed by the Internal Revenue Service. Form W-7 may be obtained from any office of the Internal Revenue Service, U.S. consular office abroad, or any acceptance agent described in paragraph (d)(3)(iv) of this section. The individual shall furnish the information required by the form and accompanying instructions, including the individual's name, address, foreign tax identification number (if any), and specific reason for obtaining an IRS individual taxpayer identification number. The individual must make such application far enough in advance of the first required use of the IRS individual taxpayer identification number to permit issuance of the number in time for compliance with such requirement. The application form, together with any supplementary statement and documentation, must be prepared and filed in accordance with the form, accompanying instructions, and relevant regulations, and must set forth fully and clearly the requested data.

(iii) General rule for assigning number. Under procedures issued by the Internal Revenue Service, an IRS individual taxpayer identification number will be assigned to an individual upon the basis of information reported on Form W-7 (or such other form as may be prescribed by the Internal Revenue Service) and any such accompanying documentation that may be required by the Internal Revenue Service. An applicant for an IRS individual taxpayer identification number must submit such documentary evidence as the Internal Revenue Service may prescribe in order to

establish alien status and identity. Examples of acceptable documentary evidence for this purpose may include items such as an original (or a certified copy of the original) passport, driver's license, birth certificate, identity card, or immigration documentation.

(iv) Acceptance agents--(A) Agreements with acceptance agents. A person described in paragraph (d)(3)(iv)(B) of this section will be accepted by the Internal Revenue Service to act as an acceptance agent for purposes of the regulations under this section upon entering into an agreement with the Internal Revenue Service, under which the acceptance agent will be authorized to act on behalf of taxpayers seeking to obtain a taxpayer identifying number from the Internal Revenue Service. The agreement must contain such terms and conditions as are necessary to insure proper administration of the process by which the Internal Revenue Service issues taxpayer identifying numbers to foreign persons, including proof of their identity and foreign status. In particular, the agreement may contain--

(1) Procedures for providing Form SS-4 and Form W-7, or such other necessary form to applicants for obtaining a taxpayer identifying number;

(2) Procedures for providing assistance to applicants in completing the application form or completing it for them;

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(3) Procedures for collecting, reviewing, and maintaining, in the normal course of business, a record of the required documentation for assignment of a taxpayer identifying number;

(4) Procedures for submitting the application form and required documentation to the Internal Revenue Service, or if permitted under the agreement, submitting the application form together with a certification that the acceptance agent has reviewed the required documentation and that it has no actual knowledge or reason to know that the documentation is not complete or accurate;

(5) Procedures for assisting taxpayers with notification procedures described in paragraph (g)(2) of this section in the event of change of foreign status;

(6) Procedures for making all documentation or other records furnished by persons applying for a taxpayer identifying number promptly available for review by the Internal Revenue Service, upon request; and

(7) Provisions that the agreement may be terminated in the event of a material failure to comply with the agreement, including failure to exercise due diligence under the agreement.

(B) Persons who may be acceptance agents. An acceptance agent may include any financial institution as defined in section 265(b)(5) or Sec. 1.165-12(c)(1)(v) of this chapter, any college or university that

is an educational organization as defined in Sec. 1.501(c)(3)-1(d)(3)(i) of this chapter, any federal agency as defined in section 6402(f) or any other person or categories of persons that may be authorized by regulations or Internal Revenue Service procedures. A person described in this paragraph (d)(3)(iv)(B) that seeks to qualify as an acceptance agent must have an employer identification number for use in any communication with the Internal Revenue Service. In addition, it must establish to the satisfaction of the Internal Revenue Service that it has adequate resources and procedures in place to comply with the terms of the agreement described in paragraph (d)(3)(iv)(A) of this section.

(4) Coordination of taxpayer identifying numbers--(i) Social security number. Any individual who is duly assigned a social security number or who is entitled to a social security number will not be issued an IRS individual taxpayer identification number. The individual can use the social security number for all tax purposes under this title, even though the individual is, or later becomes, a nonresident alien individual. Further, any individual who has an application pending with the Social Security Administration will be issued an IRS individual taxpayer identification number only after the Social Security Administration has notified the individual that a social security number cannot be issued. Any alien individual duly issued an IRS individual taxpayer identification number who later becomes a U.S. citizen, or an alien lawfully permitted to enter the United States either for permanent residence or under authority of law permitting U.S. employment, will be required to obtain a social security number. Any individual who has an IRS individual taxpayer identification number and a social security number, due to the circumstances described in the preceding sentence, must notify the Internal Revenue Service of the acquisition of the social security number and must use the newly-issued social security number as the taxpayer identifying number on all future returns, statements, or other documents filed under this title.

(ii) Employer identification number. Any individual with both a social security number (or an IRS individual taxpayer identification number) and an employer identification number may use the social security number (or the IRS individual taxpayer identification number) for individual taxes, and the employer identification number for business taxes as required by returns, statements, and other documents and their related instructions. Any alien individual duly assigned an IRS individual taxpayer identification number who also is required to obtain an employer identification number must furnish the previously-assigned IRS individual taxpayer identification number to the Internal Revenue Service on Form SS-4 at the time of application for the employer identification number. Similarly, where an alien individual has an employer identification number and is required to obtain an IRS individual taxpayer identification

number, the individual must furnish the previously-assigned employer identification number to the Internal Revenue Service on Form W-7, or such other form as may be prescribed by the Internal Revenue Service, at the time of application for the IRS individual taxpayer identification number.

(e) Banks, and brokers and dealers in securities. For additional requirements relating to deposits, share accounts, and brokerage accounts, see 31 CFR 103.34 and 103.35.

(f) Penalty. For penalties for failure to supply taxpayer identifying numbers, see sections 6721 through 6724.

(g) Special rules for taxpayer identifying numbers issued to foreign persons--(1) General rule--(i) **Social security number**. A social security number is generally identified in the records and database of the Internal Revenue Service as a number belonging to a U.S. citizen or resident alien individual. **A person may establish a different status for the number by providing proof of foreign status with the Internal Revenue Service under such procedures as the Internal Revenue Service shall prescribe, including the use of a form as the Internal Revenue Service may specify.** Upon accepting an individual as a nonresident alien individual, the Internal Revenue Service will assign this status to the individual's social security number.

(ii) **Employer identification number**. An employer identification number is generally identified in the records and database of the Internal Revenue Service as a number belonging to a U.S. person. However, the Internal Revenue Service may establish a separate class of employer identification numbers solely dedicated to foreign persons which will be identified as such in the records and database of the Internal Revenue Service. **A person may establish a different status for the number either at the time of application or subsequently by providing proof of U.S. or foreign status with the Internal Revenue Service under such procedures as the Internal Revenue Service shall prescribe, including the use of a form as the Internal Revenue Service may specify.** The Internal Revenue Service may require a person to apply for the type of employer identification number that reflects the status of that person as a U.S. or foreign person.

(iii) IRS individual taxpayer identification number. **An IRS**

individual taxpayer identification number is generally identified in the records and database of the Internal Revenue Service as a number belonging to a nonresident alien individual. If the Internal Revenue Service determines at the time of application or subsequently, that an individual is not a nonresident alien individual, the Internal Revenue Service may require that the individual apply for a social security number. If a social security number is not available, the Internal Revenue Service may accept that the individual use an IRS individual taxpayer identification number, which the Internal Revenue Service will identify as a number belonging to a U.S. resident alien.

(2) Change of foreign status. Once a taxpayer identifying number is identified in the records and database of the Internal Revenue Service as a number belonging to a U.S. or foreign person, the status of the number is permanent until the circumstances of the taxpayer change. A taxpayer whose status changes (for example, a nonresident alien individual with a social security number becomes a U.S. resident alien) must notify the Internal Revenue Service of the change of status under such procedures as the Internal Revenue Service shall prescribe, including the use of a form as the Internal Revenue Service may specify.

(3) Waiver of prohibition to disclose taxpayer information when acceptance agent acts. As part of its request for an IRS individual taxpayer identification number or submission of proof of foreign status with respect to any taxpayer identifying number, where the foreign person acts through an acceptance agent, the foreign person will agree to waive the limitations in section 6103 regarding the disclosure of certain taxpayer information. However, the waiver will apply only for purposes of permitting the Internal Revenue Service and the acceptance agent to communicate with each other regarding matters related to the assignment of a taxpayer identifying number and change of foreign status.

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(h) Special rules for certain entities under Sec. 301.7701-3--(1) General rule. Any entity that has an employer identification number (EIN) will retain that EIN if its federal tax classification changes under Sec. 301.7701-3.

(2) Special rules for entities that are disregarded as entities separate from their owners--(i) When an entity becomes disregarded as an entity separate from its owner. Except as otherwise provided in regulations or other guidance, a single owner entity that is disregarded as an entity separate from its owner under Sec. 301.7701-3, must use its

owner's taxpayer identifying number (TIN) for federal tax purposes.

(ii) When an entity that was disregarded as an entity separate from its owner becomes recognized as a separate entity. If a single owner entity's classification changes so that it is recognized as a separate entity for federal tax purposes, and that entity had an EIN, then the entity must use that EIN and not the TIN of the single owner. If the entity did not already have its own EIN, then the entity must acquire an EIN and not use the TIN of the single owner.

(3) Effective date. The rules of this paragraph (h) are applicable as of January 1, 1997.

(i) Special rule for qualified subchapter S subsidiaries (QSubs)--

(1) General rule. Any entity that has an employer identification number (EIN) will retain that EIN if a QSub election is made for the entity under Sec. 1.1361-3 or if a QSub election that was in effect for the entity terminates under Sec. 1.1361-5.

(2) EIN while QSub election in effect. Except as otherwise provided in regulations or other published guidance, a QSub must use the parent S corporation's EIN for Federal tax purposes.

(3) EIN when QSub election terminates. If an entity's QSub election terminates, it may not use the EIN of the parent S corporation after the termination. If the entity had an EIN prior to becoming a QSub or obtained an EIN while it was a QSub in accordance with regulations or other published guidance, the entity must use that EIN. If the entity had no EIN, it must obtain an EIN upon termination of the QSub election.

(4) Effective date. The rules of this paragraph (i) apply on January 20, 2000.

(j) Effective date--(1) General rule. Except as otherwise provided in this paragraph (j), the provisions of this section are generally effective for information that must be furnished after April 15, 1974. However, the provisions relating to IRS individual taxpayer identification numbers apply on and after May 29, 1996. An application for an IRS individual taxpayer identification number (Form W-7) may be filed at any time on or after July 1, 1996.

(2) Special rules--(i) Employer identification number of an estate. The requirement under paragraph (a)(1)(ii)(C) of this section that an estate obtain an employer identification number applies on and after January 1, 1984.

(ii) Taxpayer identifying numbers of certain foreign persons. The requirement under paragraph (b)(2)(iv) of this section that certain foreign persons furnish a TIN on a return of tax is effective for tax returns filed after December 31, 1996.

(iii) Paragraphs (a)(1)(i), (a)(1)(ii) introductory text, (a)(1)(ii)(A), and (a)(1)(ii)(B) of this section apply to income tax returns due (without regard to extensions) on or after April 15, 1998.

[T.D. 7306, 39 FR 9946, Mar. 15, 1974 as amended by T.D. 7670, 45 FR 6932, Jan. 31, 1980; T.D. 7796, 46 FR 57482, Nov. 24, 1981; T.D. 8633, 60 FR 66090, Dec. 21, 1995; T.D. 8637, 60 FR 66134, Dec. 21, 1995; T.D. 8671, 61 FR 26790, May 29, 1996; 61 FR 33657, June 28, 1996; T.D. 8697, 61 FR 66588, Dec. 18, 1996; T.D. 8717, 62 FR 25502, May 9, 1997; T.D. 8734, 62 FR 53494, Oct. 14, 1997; T.D. 8739, 62 FR 62520, Nov. 24, 1997; T.D. 8739, 63 FR 13124, Mar. 18, 1998; T.D. 8839, 64 FR 51242, Sept. 22, 1999; T.D. 8844, 64 FR 66583, Nov. 29, 1999; T.D. 8869, 65 FR 3856, Jan. 25, 2000]

Effective Date Note: By T.D. 8734, at 62 FR 53494, Oct. 14, 1997, Sec. 301.6109-1 was amended by revising paragraphs (b)(2)(iv), (b)(2)(v), and (c) and by adding paragraph (b)(2)(vi), effective Jan. 1, 1999. By T.D. 8804, 63 FR 72183, Dec. 31, 1998 the effectiveness of the amendments to Sec. 301.6109-1 was delayed until Jan. 1, 2000. By T.D. 8856, 64 FR 73408, Dec 30, 1999 the effectiveness of the amendments to Sec. 301.6109-1 was delayed until Jan. 1, 2001. For the convenience of the user, the superseded text is set forth as follows:

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(b) * * *
(2) * * *

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(iv) Any other foreign person who, with respect to taxes imposed under this title (including income, estate, and gift taxes), makes a return of tax, an amended return, or refund claim, but, excluding information returns, statements, or documents; and

(v) A foreign person that makes an election under Sec. 301.7701-3(c).

* * * * *

(c) Requirement to furnish another's number. Every person required under this title to make a return, statement or other document must furnish such taxpayer identifying numbers of other U.S. persons that are described in paragraph (b)(2)(i), (ii), or (iii) of this section as required by the forms and the accompanying instructions. If the person making the return, statement, or other document does not know the taxpayer identifying number of the other person, such person must request the other person's number. A request should state that the identifying number is required to be furnished under authority of law.

When the person making the return, statement, or other document does not know the number of the other person, and has complied with the request provision of this paragraph, such person must sign an affidavit on the transmittal document forwarding such returns, statements, or other documents to the Internal Revenue Service, so stating. A person required to file a taxpayer identifying number shall correct any errors in such filing when such person's attention has been drawn to them.