

Tax Return Preparer Rules

Preparer tax identification number (PTIN). A PTIN must be obtained by all enrolled agents, as well as all tax return preparers who are compensated for preparing, or assisting in the preparation of, all or substantially all of any U.S. federal tax return, claim for refund, or other tax form submitted to the IRS except the following:

- ▶ Form SS-4, Application for Employer Identification Number.
- ▶ Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding.
- ▶ Form SS-16, Certificate of Election of Coverage under FICA.
- ▶ Form W-2 series of returns.
- ▶ Form W-7, Application for IRS Individual Taxpayer Identification Number.
- ▶ Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment.
- ▶ Form 872, Consent to Extend the Time to Assess Tax.
- ▶ Form 906, Closing Agreement On Final Determination Covering Specific Matters.
- ▶ Form 1098 series.
- ▶ Form 1099 series.
- ▶ Form 2848, Power of Attorney and Declaration of Representative.
- ▶ Form 3115, Application for Change in Accounting Method.
- ▶ Form 4029, Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits.
- ▶ Form 4419, Application for Filing Information Returns Electronically.
- ▶ Form 5300, Application for Determination for Employee Benefit Plan.

Tax Return Preparer Rules Reg. Sec.301.7701-15

Tax preparer defined. An income tax return preparer is any person who prepares for compensation, or who employs (or engages) one or more persons to prepare for compensation, all or substantially all of a tax return or claim for refund of tax. Factors involved in determining whether an individual is a tax return preparer include, but are not limited to, the following:

- ▶ The complexity of the work the individual performs relative to the overall complexity of the tax return or claim for refund of tax.
- ▶ The amount of the items of income, deductions, or losses attributable to the work the individual performs relative to the total amount of income, deductions, or losses required to be correctly reported on the tax return or claim for refund of tax.
- ▶ The amount of tax or credit attributable to the work the individual performs relative to the total tax liability required to be correctly reported on the tax return or claim for refund of tax.

Note: The individual who prepares a substantial portion of a return is considered the preparer even if someone else may be required to sign the return.

Persons who are not preparers. A person shall not be considered a preparer if the person performs only one of the following services:

1. Typing, reproduction, or other mechanical assistance in preparing a return.
2. Preparing a return for a person, an officer, a general partner, or employee of a person by whom the individual is employed.
3. Giving advice on specific issues of law.

Signing the return. A paid preparer must sign the return he or she prepared. The paid preparer can sign the return manually or use a rubber stamp, mechanical device, or computer software.

Identification of preparer. The preparer must furnish their preparer tax identification number (PTIN) and employer identification number on the return. Preparers employed by others or partners in partnerships must enter their PTIN and the identification number of the employer or partnership.

Copies of return. A preparer must furnish a copy of the return to the T/P at the time the return is presented for signature to the T/P. The preparer must also retain a copy of the return or retain a record of the name, T/P identification number, and taxable year of the T/P. The copy or record must be kept available for inspection for the **3-year** period following the close of the return year.

Information returns of income tax return preparers. A person who employs preparers to prepare returns must keep a record of each preparer employed by him or her at any time during the return period (July 1 - June 30). The record must include each preparer's:

- ▶ Name,
- ▶ Taxpayer identification number, and
- ▶ Place of work.

Recordkeeping. This record must be kept available for inspection for the **3-year** period following the close of the return period to which that record relates.

Due diligence in claiming the earned income tax credit (EITC). Preparers who prepare tax returns claiming the Earned Income Tax Credit (EITC), must meet four due diligence requirements:

1. **Complete Form 8867**, Paid Preparer's Earned Income Credit Checklist and submit this completed form to IRS with every electronic EITC claim prepared and attach to every paper return.
2. **Complete the EITC worksheet** in the Form 1040 instructions, Publication 596, Earned Income Credit, or complete a document with the same information. Most professional tax preparation software includes the computation worksheet.
3. **Knowledge.** The preparer must not know or have reason to know, that any information used in determining the client's eligibility for the amount of the EIC is incorrect, inconsistent, or incomplete. At the time of the interview the preparer must document any additional questions he or she asked the clients and the clients answers.
4. **Keep all the following documents for 3 years:**
 - ▶ Form 8867.
 - ▶ The EIC worksheet.
 - ▶ A copy of any document that was provided by the client and on which the preparer relied on to complete Form 8867 or the EIC Worksheet.
 - ▶ A record of how, when, and from whom the preparer received the information used to prepare the return and worksheet.
 - ▶ A record of any additional questions the preparer asked and the client answered.

Tax Return Preparer Rules Preparer Penalties

Penalty for understatement due to an unrealistic position (section 6694(a)). A penalty of the greater of \$1,000 or 50% of the preparer's fee for preparation of a return will apply if:

1. The preparer knew (or reasonably should have known) of the unrealistic position,
2. There was not a reasonable belief that the position would be sustained on its merits, and
3. The position was not disclosed, or there was no reasonable basis for the position.

Penalty for understatement due to willful, reckless, or intentional conduct (section 6694(b)). A penalty of the greater of \$5,000 or 50% of the preparer's fee will apply if any part of an understatement was due to:

1. A willful attempt in any manner by an income tax return preparer to understate the liability for tax, or
2. Any reckless or intentional disregard of rules or regulations by an income tax return preparer.

Burden of proof. The preparer must bear the burden of proof of whether he or she understated the tax liability of a T/P under section 6694(a), understating tax liability due to unrealistic position and under section 6694(b), understating tax liability due to willful understatement of tax liability or reckless or intentional disregard of rules and regulations.