



December 14, 2023

The Honorable Lily Batchelder
Assistant Secretary for Tax Policy
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Daniel I. Werfel
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

RE: Current Procedures for Application for an Employer Identification Number

Dear Ms. Batchelder and Mr. Werfel:

The American Institute of CPAs (AICPA) is providing comments regarding the procedures for submitting Form SS-4, *Application for Employer Identification Number* (EIN), to the Internal Revenue Service (IRS). Specifically, we are concerned with the timing currently involved with the procedure for business entities organized in the US where the responsible party does not have a Social Security Number (SSN) or an Individual Taxpayer Identification Number (ITIN). Our members have always struggled with obtaining EINs for their clients with this profile.

The Beneficial Ownership Information (BOI) reporting required by the Corporate Transparency Act (CTA) now adds additional concerns due to the 30-day turnaround time required by the CTA for entities organized on or after January 1, 2025. Specifically, the BOI rules require entities to include their EIN on their initial BOI report filed with the Treasury Department.

We are, therefore, requesting a change in the IRS EIN issuance procedures for certain entities. Specifically, we recommend that the IRS change its procedures and allow entities that are organized in the US with a responsible person that lacks a Taxpayer Identification Number (TIN) to be able to call the IRS and obtain the EIN over the phone, as entities organized outside the US currently may do. This has also been recommended by the IRS Advisory Council.¹

Overview

The EIN is a critical identifier that an entity needs to obtain when starting a business or engaging in transactions in the US. It is used to open bank accounts, apply for business licenses, register with government agencies, and submit many other applications, including paying and filing tax returns. Application for an EIN is made with the IRS, which provides three methods for an entity to apply for an EIN, as explained in the instructions to Form SS-4, on the IRS website² and detailed for IRS employees in the Internal Revenue Manual.³ These three methods are discussed below.

¹ <https://www.irs.gov/pub/irs-pdf/p5316.pdf>, page 53

² <https://www.irs.gov/businesses/small-businesses-self-employed/how-to-apply-for-an-ein>

³ IRM 21.7.13.2.3 (03-13-2017)

The IRS requires that the application for an EIN must identify the “responsible party” who ultimately owns, controls, manages or directs the entity. The responsible party must be an individual (i.e., a natural person) for all applicants other than a government entity. In addition, the EIN application for non-governmental agencies must disclose the responsible party’s TIN, i.e., their SSN, or ITIN. The three methods for applying for an EIN are detailed below:

1. Application Online. An applicant is eligible to apply online through the IRS website if the business is created or organized in the US or US territories and the responsible party has a valid TIN.⁴ After the IRS has validated the information, the EIN is issued immediately. Although this is the IRS’s recommended method of applying for an EIN, it is not available for a US based entity whose responsible party is foreign and does not have a TIN.
2. Application by Fax or US Mail. If an applicant is organized in the US and lacks a responsible party with a TIN, this is the only procedure available. An applicant can apply for an EIN by faxing or mailing a completed Form SS-4 to the designated IRS fax number or IRS mailing address for the applicant’s jurisdiction. Once the IRS validates the information on the Form SS-4, an EIN number is issued. Based upon the feedback that we have received from our members: a) In some cases, the IRS will fax the applicant the EIN, if a fax number is provided; b) In other situations, the IRS fails to fax the EIN and the responsible party must prepare a federal Form 8821, *Tax Information Authorization*, and then calls the IRS to obtain the EIN. However, in any case, the IRS typically takes at least several weeks to issue the EIN.
3. Application by Telephone. Only international applicants that are organized outside of the US are permitted to apply for an EIN by telephone. The IRS can request any necessary information needed for the issuance of the EIN from the applicant. The applicant may be a designated third party and may or may not have a valid TIN. However, since this option is only available to entities formed outside the US, a US based entity with a foreign owner or responsible party is not eligible to apply for an EIN using the telephone method. This is the procedure that we request be made available to a) Domestic entities; that b) Lack a responsible person with a TIN.

Effective January 1, 2024, any US corporation, limited liability company (LLC), partnership, or other similar entity organized in the US that has filed/registered with a secretary of state, as well as foreign entities registered to do business in the US, must file and disclose their foreign ownership with FinCEN subject to certain exceptions in order to comply with the new BOI reporting requirements.⁵ Entities (reporting companies) created or registered before January 1, 2024, will have one year (until January 1, 2025) to file their initial reports, while reporting companies created or registered after January 1, 2024, will have 90 days after creation or registration to file their initial reports. These reports must include the entity’s EIN. Entities organized (or registered with a state) on or after January 1, 2025, will have only 30 days to file with FinCEN. Once the initial report has been filed, both existing and new reporting companies will have to file updates within 30 days of a change in their beneficial ownership information.

⁴ IRM 21.7.13.3.4.1

⁵ [87 Fed. Reg. 59,498 \(September 30, 2022\)](#)

Recommendation

We recommend that the IRS change its procedures and allow entities:

- a) Organized in the US; and
- b) With a responsible person that lacks a TIN

to be able to call the IRS and obtain the EIN over the phone, as entities organized outside the US currently may do.

Analysis

Until an EIN is obtained, many important business functions are delayed, such as filing federal income tax returns, opening a bank account, registering for state and local taxes, forming investment funds and M&A acquisition vehicles, completing entity subscription documents, transferring funds between entities, making check-the-box elections, and performing many more time-sensitive activities. The delay in obtaining an EIN also impacts the use of the Electronic Federal Tax Payment System (EFTPS) along with filing of election forms and returns that can result in IRS Notices and penalties being issued creating additional costs for the IRS and taxpayers in abating and reconciling payments.⁶

The new BOI reporting to Financial Crimes Enforcement Network (FinCEN) for US entities with foreign ownership will also create urgency for entities to obtain an EIN to meet their filing requirements. Since the filing cannot be made without an EIN, entities organized in the US that lack a responsible person with an SSN or ITIN will not be able to file the required BOI reports until the IRS issues an EIN. As stated above, and to reiterate, based upon the current experience of our members, the IRS is not issuing EINs for entities that have faxed in their applications for several weeks. **We are, therefore, concerned that it will be very difficult, if not impossible in some cases, for entities to meet the 30-day FinCen filing deadline that applies for entities organized or registered on or after January 1, 2025.** At this stage, it is unclear whether FinCEN will be accommodating penalty abatement in the case of reasonable cause, such as an inability to timely obtain an EIN.

We appreciate the need for careful vetting of all applications prior to the issuance of an EIN and look forward to a process that allows these business owners to meet their reporting obligations in a timely manner.

⁶ It is noted that if an EIN is not obtained by the time a tax deposit is due, a taxpayer is directed to send the payments to the IRS Service Center where the client files, with a notation that the EIN has been applied for and the date. Such applicant can attest to having “applied for” an EIN and provide the official date of its application (being the date the application was mailed).

The Honorable Lily Batchelder and The Honorable Daniel I. Werfel

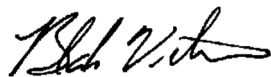
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We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further. If you have any questions, please contact Chaya Siegfried, Chair, AICPA International Tax Technical Resource Panel, at (732) 759-6835, or csiegfried@withim.com; Reema Patel, AICPA Senior Manager – Tax Policy & Advocacy, at (202) 434-9217, or reema.patel@aicpa-cima.com; or me, at (830) 372-9692, or bvickers@alamo-group.com.

Sincerely,



Blake Vickers
Chair, AICPA Tax Executive Committee

cc:

Mr. Tom West, Deputy Assistant Secretary, Office of Tax Policy, Department of the Treasury
Mr. Krishna Vallabhaneni, Office of Tax Legislative Counsel, Department of the Treasury
Ms. Lindsay Kitzinger, International Tax Counsel, Department of the Treasury
Mr. Douglas O'Donnell, Deputy Commissioner for Services and Enforcement, Internal Revenue Service
Mr. Kenneth Corbin, Chief Taxpayer Experience Office, Internal Revenue Service
Ms. Holly Paz, Commissioner Large Business and International Division, Internal Revenue Service !