



September 27, 2016

The Honorable John A. Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

The Honorable William J. Wilkins
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Mr. Michael Hara
Attorney
Office of the Associate Chief Counsel
Procedure and Administration
Internal Revenue Service
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Re: Notice 2016-48, Implementation of PATH Act ITIN Provisions

Dear Messrs. Koskinen, Wilkins and Hara:

The American Institute of CPAs (AICPA) submits the following comments related to the Individual Taxpayer Identification Number (ITIN) application and renewal process. Our comments focus on the provisions amended by P.L. 114-113, also known as the Protecting Americans From Tax Hikes Act of 2015 (PATH Act)¹ and their implementation by the Internal Revenue Service (IRS) as outlined in Notice 2016-48. These comments were developed by the AICPA's International Taxation Technical Resource Panel and approved by the Tax Executive Committee.

SUMMARY OF RECOMMENDATIONS

The AICPA believes that it is critical for the IRS to effectively administer the ITIN program, including ITIN renewals, without disrupting the tax filings of the many individual taxpayers who wish to remain compliant with their annual filing obligations.

In order to ensure the smooth operation of the ITIN program, the AICPA provides the following recommendations for your consideration:

- 1) Clarify in future taxpayer-oriented materials the expiration date of an ITIN which expires due to nonuse for three consecutive years.
- 2) Allow for the renewal of any ITIN issued prior to January 1, 2013 in advance of its scheduled expiration date. Also, allow holders of ITINs issued prior to January 1, 2013, regardless of their current residence, to use any Certified Acceptance Agent

¹ <https://www.congress.gov/114/plaws/publ113/PLAW-114publ113.pdf>.

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(CAA), located in the United States (U.S.) or overseas to process their renewal application.

- 3) Notify the holder of an ITIN if it has expired due to nonuse for three consecutive years.
- 4) Establish an automated telephone response or on-line system which would allow taxpayers to verify the scheduled expiration date of their ITIN if no further returns are filed. Alternatively, establish an ongoing notification program to holders of ITINs which are due to expire because of nonuse for three consecutive years.
- 5) Establish a simplified procedure for holders of ITINs which are used solely on an information return to prevent their ITIN from expiring due to nonuse.
- 6) Consider, under certain circumstances, allowing holders of ITINs, who reside overseas, to use CAAs located outside of the U.S., to process their renewal application if their ITIN expires due to nonuse for three consecutive years.

BACKGROUND

On December 18, 2015, the President signed the PATH Act, which includes provisions regarding the mandatory expiration and renewal of all ITINs issued before January 1, 2013, as well as updated requirements for new ITIN applications.

Pursuant to the new provisions, all ITINs issued prior to January 1, 2013 will automatically expire and require renewal by the taxpayer on a staggered schedule. On August 4, 2016, the IRS issued Notice 2016-48 detailing its initial plans for implementing the ITIN related provisions in the PATH Act.

In addition, all ITINs will now expire after three consecutive years of nonuse on an income tax return.

SPECIFIC COMMENTS

- 1) **Clarify in future taxpayer oriented materials the expiration date of an ITIN which expires due to nonuse for three consecutive years.**

The general rule is that all ITINs issued after December 31, 2012 will automatically expire if not used on a return for three consecutive years "...on the last day of such third consecutive taxable year."² We understand that many taxpayers and practitioners have interpreted this wording to mean that if the three-year period encompassed tax years 2015, 2016 and 2017, the taxpayer's ITIN would expire on December 31, 2017. However, taxpayers cannot file

² Section 6109(i)(3)(A).

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their 2017 return until after December 31, 2017. Their 2017 tax return is not due until April 15, 2018 (June 15, 2018 if the taxpayer resides overseas) or October 15, 2018 (if an extension request is timely filed). A strict reading of the statute could lead to the interpretation that the ITIN expires on December 31, 2017, before the taxpayer files their 2017 tax return.

Notice 2016-48 contains the following language:

“For example, an individual applied for and received an ITIN in 2015 that is used in 2015 on the individual’s 2014 federal income tax return. If the individual does not file or is not claimed as a dependent on a tax return in 2016, 2017, and 2018, the ITIN will expire on December 31, 2018.”

This language makes it clear that “three consecutive years” refers to the years in which tax returns are actually filed with the IRS, not the tax year reported on the returns.

We recommend that the IRS post a similar clarifying example on its website and in form instructions referencing the expiration period for ITINs to enable taxpayers to clearly understand the operation of this provision.

2) Allow for the renewal of any ITIN issued prior to January 1, 2013 in advance of its scheduled expiration date. Also, allow holders of ITINs issued prior to January 1, 2013, regardless of their current residence, to use any CAA, located in the U.S. or overseas to process their renewal application.

As previously noted, the PATH Act requires that ITINs issued prior to January 1, 2013 will automatically expire on a staggered schedule based on the date of original issue. The AICPA recommends that the IRS establish a procedure allowing taxpayers with ITINs issued prior to January 1, 2013 to submit a renewal application prior to the scheduled expiration date for their ITIN.

We recommend that such a procedure require the taxpayer to complete a new Form W-7, *Application for IRS Individual Taxpayer Identification Number*, which includes their existing ITIN and indicates that it is a renewal application. Along with the Form W-7, we recommend that the IRS require the taxpayer to provide documentation meeting the same standards enacted in the PATH Act which apply to a new ITIN application.

We further recommend that the IRS allow all taxpayers taking advantage of this early renewal procedure, whether residing in the U.S. or overseas, to use a CAA for the verification of the required documents which accompany the renewal application. Current law prohibits the use of CAAs for overseas residents applying for the “issuance” of an ITIN. We interpret the word “issuance” as referring to an original application. The law is silent on the ability to use CAAs for renewals by taxpayers residing overseas. To minimize compliance burdens on taxpayers, we believe the IRS should permit the use of CAAs in this circumstance.

3) Notify the holder of an ITIN if it has expired due to nonuse for three consecutive years.

According to Notice 2016-48, the IRS intends to send out Letter 5821 to individuals whose ITINs were issued prior to January 1, 2013, which have not yet expired due to nonuse for three consecutive years and are scheduled to expire on December 31, 2016. The AICPA recommends that the IRS expand this notification program to include holders of all ITINs which either have already expired or will expire due to nonuse on December 31, 2016.

The expiration provisions for ITINs enacted in the PATH Act are substantially different from those previously announced by the IRS on June 30, 2014 in IR-2014-76,³ which were a revision of expiration provision established by the IRS on November 29, 2012 in IR-2012-98.⁴ Expansion of the population of taxpayers who receive Letter 5821 will help to alleviate confusion created by repeated revisions of the ITIN expiration provisions and notify a taxpayer of an impending ITIN expiration.

4) Establish an automated telephone response or on-line system which would allow taxpayers to verify the scheduled expiration date of their ITIN if no further returns are filed. Alternatively, establish an ongoing notification program to holders of ITINs which are due to expire because of nonuse for three consecutive years.

The AICPA recommends that the IRS establish an automated telephone response system using a dedicated phone number (accessible from outside the United States) and/or establish a secure on-line notification system which would allow taxpayers to obtain the tentatively scheduled expiration date of their ITIN.

Such a system should allow taxpayers to easily determine, on an ongoing basis, whether their ITIN has already expired or is scheduled to expire for nonuse. The system should also allow taxpayers to ensure that their ITIN is still valid prior to filing any tax return or providing their ITIN to a third party for information reporting. This type of system will ensure that taxpayers maintain their ITINs as active or renew them if necessary, which will minimize the unnecessary correspondence and delays resulting from the use of an expired ITIN.

We recommend that taxpayers provide the IRS with their full name, ITIN and date of birth. Once verified, taxpayers would immediately receive either notification that their ITIN has expired or of their ITIN's expected expiration date. Return preparers with an active Power of Attorney should have the ability to obtain this information for their clients.

³ [Unused ITINs to Expire After Five Years; New Uniform Policy Eases Burden on Taxpayers, Protects ITIN Integrity.](#)

⁴ [IRS Strengthens Integrity of ITIN System; Revised Application Procedures in Effect for Upcoming Filing Season.](#)

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Notice 2016-48 contains the following language:

“For example, an individual applied for and received an ITIN in 2015 that is used in 2015 on the individual’s 2014 federal income tax return. If the individual does not file or is not claimed as a dependent on a tax return in 2016, 2017, and 2018, the ITIN will expire on December 31, 2018.”

In the example above, the system would currently notify the taxpayer that unless a tax return or renewal application is filed before December 31, 2018, their ITIN will expire on that date.

5) Establish a simplified procedure for holders of ITINs which are used solely on an information return to prevent their ITIN from expiring due to nonuse.

As noted in Notice 2016-48, certain taxpayers require an ITIN solely for use on information returns furnished by third parties. Additionally, other taxpayers may require an ITIN solely to claim treaty benefits. The PATH Act stipulates that ITINs which are not used on a tax return for three consecutive taxable years expire on the last day of the third year. Notice 2016-48 provides that an ITIN “may continue to be used for information return purposes” even if it has expired under the provisions of the PATH Act. It further provides that such third parties “will not be subject to information return penalties under sections 6721 or 6722 solely because the ITIN is expired.” The AICPA is concerned that allowing any use of an expired ITIN for tax purposes could allow unscrupulous individuals to make inappropriate use of the ITINs.

The AICPA suggests that the IRS establish a simplified procedure for maintaining the active status of an ITIN for taxpayers who require an ITIN solely for use on information returns or any legitimate purpose other than filing a tax return. The AICPA recommends that such a method could consist of a simplified Form 1040-ITIN. This form should require standard taxpayer identification information and a series of check boxes indicating the reason why a taxpayer requires the ITIN to remain valid. Submission of this form would meet the requirement of use on a tax return within the previous three consecutive years.

6) Consider, under certain circumstances, allowing holders of ITINs, who reside overseas, to use CAAs located outside of the U.S. to process their ITIN renewal application if their ITIN expires due to nonuse for three consecutive years.

Current law prohibits overseas residents from using CAAs to apply for the “issuance” (which we interpret to mean an original application) of an ITIN. The law is silent on the ability to use CAAs for renewals by taxpayers residing overseas. The AICPA recommends that the IRS permit certain holders of ITINs which expire due to nonuse for three consecutive years, to use a CAA to renew their ITINs. We recommend that this procedure apply only in instances where the taxpayer resides overseas, files a tax return within 12 months following the expiration of their ITIN, and attaches the completed Form W-7 renewal application to the tax return.

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The AICPA is the world's largest member association representing the accounting profession, with more than 418,000 members in 143 countries and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further. Please feel free to contact me at (801) 523-1051 or tlewis@sisna.com; Blake Vickers, Chair, AICPA International Taxation Technical Resource Panel, at (713) 753-5493 or blake.vickers@kbr.com; or Jonathan Horn, Senior Technical Manager – AICPA Tax Policy & Advocacy, at (202) 434-9204 or jhorn@aicpa.org.

Respectfully submitted,



Troy K. Lewis, CPA, CGMA
Chair, AICPA Tax Executive Committee

cc: Mr. Douglas W. O'Donnell, Commissioner, Large Business and International Division, Internal Revenue Service
Mr. Theodore Setzer, Assistant Deputy Commissioner (International), Large Business and International Division, Internal Revenue Service