

(2) Section 6695(f) and paragraph (f)(1) and (3) of this section do not apply to a preparer-bank which—

(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).

A 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.

(3) The 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 date.* This section applies to income tax returns and claims for refund presented to a taxpayer for signature after December 31, 1998, and for returns or claims for refund retained on or before that date.

[T.D. 7519, 42 FR 59969, Nov. 23, 1977, as amended by T.D. 7640, 44 FR 49452, Aug. 23, 1979; T.D. 8549, 59 FR 33432, June 29, 1994; T.D. 8689, 61 FR 65320, Dec. 12, 1996; T.D. 8803, 63 FR 72182, Dec. 31, 1998; T.D. 8893, 65 FR 44437, July 18, 2000; T.D. 9053, 68 FR 20069, Apr. 24, 2003; T.D. 9119, 69 FR 15249, Mar. 25, 2004]

**§ 1.6695-2 Preparer due diligence requirements for determining earned income credit eligibility.**

(a) *Penalty for failure to meet due diligence requirements.* A person who is an income tax return preparer (preparer) of an income tax return or claim for refund under subtitle A of 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. However, no penalty will be imposed under section 6695(g) on a

person who is an income tax return preparer solely by reason of—

(1) Section 301.7701-15(a)(2) and (b) of this chapter, on account of having given advice on specific issues of law; or

(2) Section 301.7701-15(b)(3) of this chapter, on account of having prepared the return solely because of having prepared another return that affects amounts reported on the return.

(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.* The preparer must not know, or have reason to know, that any information used by the preparer in determining the taxpayer's eligibility for, or the amount of, the EIC is incorrect. The preparer may not ignore the implications of information furnished to, or known by, the preparer, and must make reasonable inquiries if the information furnished to, or known by, the preparer appears to be incorrect, inconsistent, or incomplete.

(4) *Retention of records.* (i) The preparer must retain—

(A) A copy of the completed Eligibility Checklist or Alternative Eligibility Record;

(B) A copy of the Computation Worksheet or Alternative Computation Record; and

(C) A record of how and when the information used to complete the Eligibility Checklist or Alternative Eligibility Record and the Computation Worksheet or Alternative Computation Record was obtained by the preparer, including the identity of any person furnishing the information.

(ii) The items in paragraph (b)(4)(i) of this section must be retained for three years after the June 30th following the date the return or claim for refund was presented to the taxpayer for signature, and may be retained on paper or electronically in the manner prescribed in applicable regulations, revenue rulings, revenue procedures, or other appropriate guidance (see § 601.601(d)(2) of this chapter).

(c) *Exception to penalty.* The section 6695(g) penalty will not be applied with respect to a particular income tax return or claim for refund if the preparer can demonstrate to the satisfaction of the IRS that, considering all the facts and circumstances, the preparer's normal office procedures are reasonably designed and routinely followed to ensure compliance with the due diligence requirements of paragraph (b) of this section, and the failure to meet the due diligence requirements of paragraph (b) of this section with respect to the particular return or claim for refund was isolated and inadvertent.

(d) *Effective date.* This section applies to income tax returns and claims for refund due on or after October 17, 2000.

[T.D. 8905, 65 FR 61269, Oct. 17, 2000]

### § 1.6696-1 Claims for credit or refund by income tax return preparers.

(a) *Notice and demand.* (1) The Internal Revenue Service shall issue to each income tax return preparer one or more statements of notice and demand for payment for all penalties assessed against the preparer under section 6694 and § 1.6694-1, or under section 6695 and § 1.6695-1.

(2) For the definition of the term "income tax return preparer" (or "preparer"), see section 7701(a)(36) and § 301.7701-15. However, a person who prepares a claim for credit or refund under this section for another person is not, with respect to that preparation, an income tax return preparer as defined in section 7701(a)(36) and § 301.7701-15.

(b) *Claim filed by preparer.* A claim for credit or refund of a penalty (or penalties) assessed against a preparer under section 6694 and § 1.6694-1, or under section 6695 and § 1.6695-1, may be filed under this section only by the preparer (or the preparer's estate) against whom the penalty (or penalties) is assessed and not by for example, the preparer's employer. This paragraph is not intended, however, to impose any restrictions on the preparation of this claim for credit or refund. Thus, the claim may be prepared by the preparer's employer or by other persons. In all cases, however, the claim for credit or refund shall contain the information specified in paragraph (d) of this section and, as required in that paragraph, shall be verified by a written declaration by the preparer that the information is provided under penalty of perjury.

(c) *Separation and consolidation of claims.* (1) Unless paragraph (c)(2) of this section applies, a preparer shall file a separate claim for each penalty asserted in each statement of notice and demand issued to the preparer.

(2) A preparer may file one or more consolidated claims for any or all penalties imposed on the preparer by a single Internal Revenue Service Center (or district director) under section 6695(a) and § 1.6695-1(a) (relating to failure to furnish copy of return to taxpayer), section 6695(b) and § 1.6695-1(b) (relating to failure to sign), section