

(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

§ 1.6696-1

26 CFR Ch. I (4-1-08 Edition)

6695(c) and § 1.6695-1(c) (relating to failure to furnish identifying number), or under section 6695(d) and § 1.6695(d) (relating to failure to retain copy of return or record), whether the penalties are asserted on a single or on separate statements of notice and demand. In addition, a preparer may file one consolidated claim for any or all penalties imposed on the preparer by a single Internal Revenue Service Center (or district director) under section 6695(e) and § 1.6695-1(e) (relating to failure to file correct information return), which are asserted on a single statement of notice and demand.

(d) *Content of claim.* Each claim for credit or refund or any penalty (or penalties) paid by a preparer under section 6694 and § 1.6694-1, or under section 6695 and § 1.6695-1, shall include the following information, verified by a written declaration by the preparer that the information is provided under penalty of perjury:

(1) The preparer's name.

(2) The preparer's identification number. If the preparer is:

(i) An individual (not described in subdivision (iii) of this paragraph (d)(2)) who is a citizen or resident of the United States, the preparer's social security account number shall be provided;

(ii) An individual who is not a citizen or resident of the United States and also was not employed (or engaged) by another preparer to prepare the document (or documents) with respect to which the penalty (or penalties) was assessed, the preparer's employer identification shall be provided; or

(iii) A person (whether an individual, corporation, or partnership) who employed (or engaged) one or more persons to prepare the document (or documents) with respect to which the penalty (or penalties) was assessed, the preparer's employer identification number shall be provided.

(3) The preparer's address where the Internal Revenue Service mailed the statement (or statements) of notice and demand and, if different, the preparer's address shown on the document (or documents) with respect to which the penalty (or penalties) was assessed.

(4)(i) The address of the Internal Revenue Service Center (or district direc-

tor) which issued to the preparer the statement (or statements) of notice and demand for payment of the penalty (or penalties) included in the claim; and

(ii) The date (or dates) and identifying number (or numbers) of the statement (or statements) of notice and demand.

(5)(i) The identification, by amount, type, and document of which related, of each penalty included in the claim. Each document referred to in the preceding sentence shall be identified by the form title or number, by the taxpayer's (or nontaxable entity's) name and identification number, and by the taxable year to which the document relates;

(ii) The date (or dates) of payment of the amount (or amounts) of the penalty (or penalties) included in the claim; and

(iii) The total amount claimed.

(6) A statement setting forth in detail:

(i) Each ground upon which each penalty overpayment claim is based; and

(ii) Facts sufficient to apprise the Internal Revenue Service of the exact basis of each such claim.

(e) *Form for filing claim.* Notwithstanding § 301.640-2(c), Form 6118 is the form prescribed for making a claim as provided in this section.

(f) *Place for filing claim.* A claim filed under this section shall be filed with the Internal Revenue Service Center (or district director) which issued to the preparer the statement (or statements) of notice and demand for payment of the penalty (or penalties) included in the claim.

(g) *Time for filing claim.* (1) Except as provided in section 6694(c)(1) and § 1.6694-2, (a)(3)(ii) and (4), and in section 6694(d) and § 1.6694-1(c):

(i) A claim for a penalty paid by a preparer under section 6694 and § 1.6694-1, or under section 6695 and § 1.6695-1, shall be filed within 3 years from the date the payment was made; and

(ii) A consolidated claim, permitted under paragraph (c)(2) of this section, shall be filed within 3 years from the first date of payment of any penalty included in the claim.

For purposes of this paragraph (g)(1), payment is considered made on the

Internal Revenue Service, Treasury

§ 1.6851-1

date payment is received by the Internal Revenue Service or, where applicable, on the date an amount is credited in satisfaction of the penalty.

(2) The rules under sections 7502 and 7503 and the regulations thereunder apply to the timely filing of a claim as provided in this section.

(h) *Application of refund to outstanding liability of income tax return preparer.* The Internal Revenue Service may, within the applicable period of limitation, credit any amount of an overpayment by a preparer of a penalty (or penalties) paid under section 6694 and § 1.6694-1, or under section 6695 and § 1.6695-1, against any outstanding liability for any tax (or for any interest, additional amount, addition to the tax, or assessable penalty) owed by the preparer making the overpayment. If a portion of an overpayment is so credited, only the balance will be refunded to the preparer.

(i) *Interest.* (1) Section 6611 and the regulations thereunder apply to the payment by the Internal Revenue Service of interest on an overpayment by a preparer of a penalty (or penalties) paid under section 6694 and § 1.6694-1, or under section 6695 and § 1.6695-1.

(2) Section 6601 and the regulations thereunder apply to the payment of interest by a preparer to the Internal Revenue Service on any penalty (or penalties) assessed against the preparer under section 6694 and § 1.6694-1 or under section 6695 and § 1.6695-1.

(j) *Suits for refund of preparer penalty.* (1) A preparer may not maintain a civil action for the recovery of any penalty paid under section 6694 and § 1.6694-1 or under section 6695 and § 1.6695-1, unless the preparer has previously filed a claim for credit or refund of the penalty as provided in this section (and the court has jurisdiction of the proceeding). See sections 6694(c) and 7422.

(2)(i) Except as provided in section 6694(c)(2) and § 1.6694-2(b), the periods of limitation contained in section 6532 and the regulations thereunder apply to a preparer's suit for the recovery of any penalty paid under section 6694 and § 1.6694-1, or under section 6695 and § 1.6695-1.

(ii) The rules under section 7503 and the regulations thereunder apply to the timely commencement by a preparer of

a suit for the recovery of any penalty paid under section 6694 and § 1.6694-1, or under section 6695 and § 1.6695-1.

[T.D. 7621, 44 FR 27985, May 14, 1979]

§ 1.6709-1T Penalties with respect to mortgage credit certificates (temporary).

(a) *Material misstatement*—(1) *Negligence.* If any person makes a material misstatement in any affidavit or other statement under a penalty of perjury made with respect to the issuance of a mortgage credit certificate and such misstatement is due to the negligence of that person, that person shall pay a penalty of \$1,000 for each mortgage credit certificate with respect to which that misstatement was made.

(2) *Fraud.* If a misstatement described in subparagraph (1) is due to fraud on the part of the person making the misstatement, that person shall pay a penalty of \$10,000 for each mortgage credit certificate with respect to which the fraudulent misstatement was made. The penalty imposed by this paragraph (a)(2) is in addition to any criminal penalty.

(b) *Reports.* (1) Any person required by § 1.25-8T to file a report with respect to any mortgage credit certificate who fails to file the report at the time and in the manner required by § 1.25-8T shall pay a penalty of \$200 for each mortgage credit certificate with respect to which that failure occurred. The preceding sentence shall not apply if it is shown that such failure is due to reasonable cause and not to willful neglect.

(2) In the case of any report required under § 1.25-8T(b), the aggregate amount of the penalty imposed by this paragraph shall not exceed \$2,000.

[T.D. 8023, 50 FR 19355, May 8, 1985]

JEOPARDY, BANKRUPTCY, AND RECEIVERSHIPS

§ 1.6851-1 Termination assessments of income tax.

(a) *Authority for making*—(1) *In general.* This section applies to assessments authorized by a district director under section 6851(a) (hereinafter referred to as termination assessments). The district director shall immediately authorize a termination assessment of