

Chapter 2

Account Opening and Solicitation of Taxpayer Identification Numbers

Chapter Highlights

- The IRS Information Returns Program (IRP) is driven by the taxpayer identification number (TIN),
- Every account or customer relationship should require a TIN or proof of exemption, and
- Banks must solicit TINs in accordance with IRS regulations, to avoid penalties.
- States may have separate and additional reporting requirements
- Banks should consider BSA/USA Patriot Act provisions separately from IRS TIN solicitation.

General Rules

The success of the IRP is driven by the TIN. This is either an individual's Social Security Number (SSN) or an entity's Employer Identification Number (EIN). In 1996, the IRS began issuing "Individual Taxpayer Identification Numbers" (ITINs) to certain foreign individuals. ITINs can be applied for using Form W-7. Children who are in the process of being adopted may be assigned an Adoption Taxpayer Identification Number (ATIN) until the adoption is final and an SSN can be obtained.

The TIN is used to match the information reported by financial institutions and other filers with a taxpayer's income tax return (Form 1040). IRS regulations require customers to provide a taxpayer identification number to information return filers.

A valid SSN or EIN consists of a nine-digit number with no alphabetic characters. Filers cannot use numbers of fewer than nine digits and must treat the account as having no SSN or EIN. For example, if an individual or entity provides the bank with an SSN of 123-45-67 or 12-34A-5678, the TIN provided is obviously incorrect because it has fewer than nine digits or includes an alphabetic character.

Individuals and entities who are required to file a return, statement, or other document on which the identifying number of another person must also be shown must obtain that other person's or entity's SSN or EIN. A correctly completed Form W-9, Request for Taxpayer Identification Number, or an acceptable substitute should be used to obtain the TIN. The IRS revised Form W-9 and the Instructions for the Requestor of Form W-9 to reflect Revenue Procedure 96-26 (see appendix B), and information regarding ITINs.

Some customers may provide Social Security cards with the legend or overstamp "NOT VALID FOR EMPLOYMENT." This stamp indicates their ability to work in the United States for immigration and visa purposes, but is also valid for Forms W-9 or W-8 TIN certification purposes.

In addition, in 1998, the IRS issued Form W-9S "Request for Student's or Borrower's SSN and Certification," which may be used by a lender to solicit the borrower's TIN and certification that the loan proceeds are to pay for qualified education expenses. See also Form 1098-E.

Banks must solicit TINs at account opening. If a bank does not have a TIN on an account, backup withholding will apply. (See the next chapter, Backup Withholding

Rules.”) The solicitation of a customer’s TIN may be done orally, but it is best to have it in writing using Form W-9. (Some TINs are not required to be certified under penalties of perjury.) If the solicitation of the TIN is done by telephone, a log must be kept indicating that the account holder or an adult member of his or her household was reached. In the case of an entity’s account, a corporate officer or partner must be reached. Banks must tell account holders that they are required by the IRS to obtain the TIN and that a penalty of \$50.00 may apply if the correct information is not given. In order to prove the solicitation, the log should indicate the name of the person who provided any information, and the date and time of the oral solicitation.

If a TIN written solicitation is done, a Form W-9 should be sent to the customer with a request for his or her TIN, an instruction letter, and a return envelope. The letter must indicate the IRS requirement to provide the information and the applicable \$50.00 penalty if the TIN is not provided. Although the return envelope is not required to be postage paid, it will facilitate and expedite the return of the information to the bank by the customer.

If a bank follows either the above oral or written solicitation rules but does not receive the TIN, IRS regulations require solicitation of the TIN *again* by the later of the end of that same calendar year or 30 days. If the TIN is still not received, the regulations require the bank to solicit the TIN one more time by the end of the next calendar year. There is an exception to this general rule for mortgage interest (Form 1098) reporting purposes. Because of a separate Internal Revenue Code (IRC) provision, these TINs must be solicited each year until received. (See “Form 1098, Mortgage Interest Statement” chapter.)

If a bank has still not received the TIN at this time, it is deemed to have met the IRS “reasonable cause” standard (see “IRS Penalties” chapter) and will not be penalized for filing an information return without a TIN. Although the bank will not be subject to an IRS penalty for failure to solicit a TIN, the bank will be responsible for backup withholding if there is a missing TIN or the TIN is not certified when a certification is required. This is referred to as type “A” backup withholding because it falls within Section 3406(a)(1)(A) of the IRC. If backup withholding is not performed, the financial institution will be liable for the amount that should have been withheld.

Form W-9

For tax information reporting purposes, the Form W-9 is the most important document that a financial institution must receive and retain. Final regulations indicate that Form W-9 must be kept for three years from account opening, although banks may want to retain it until the account is closed. This form indicates to the filer whether the customer has a TIN or has applied for one (“awaiting TIN”); the customer is subject to backup withholding; and the customer is exempt from the information reporting and backup withholding rules. (See “Exempt Customers” section in this chapter.)

A Form W-9 is valid when the following information is provided under penalties of perjury:

- execution date,
- customer’s name,
- customer’s address,

Securing an SSN

An individual who needs an SSN must file an application on Form SS-5, Application for Social Security Account Number (or Replacement of Lost Card). This form can be obtained at any district director's office of the Internal Revenue Service, any Social Security Administration (SSA) office, or most U.S. Post Offices.

The regulations require that all information asked for on the application form be included. After several weeks, the individual will be sent a card showing his or her name and assigned SSN.

Securing an EIN

An entity needing an EIN is required to file an application on Form SS-4. This form can be obtained from any Internal Revenue Service office. The application, with any supplementary statement, must be prepared in accordance with the form and instructions and be signed, as appropriate by

- the individual, if the person is an individual,
- the president, vice president, or other principal officer, if the entity is a corporation,
- a responsible and duly authorized member or officer having knowledge of the entity's affairs, if the entity is a partnership or other unincorporated organization, and
- the fiduciary, if the entity is a trust or estate.

The application should be filed approximately one month before the first required use of the number with the IRS office designated in the instructions for Form SS-4. In 2002, the IRS established a new centralized call site, a toll-free number, and a revised EIN application. The toll-free number is 1-866-816-2065. The IRS will immediately assign an EIN over the telephone or by fax. In 2003, the IRS started a new online process that allows entities to complete an application online to obtain a TIN and receive it immediately.

Special Types of Customers

NRAs: Nonresident aliens not engaged in trade or business within the United States are not required to obtain TINs. The IRS has finalized regulations that Individual Taxpayer Identification Numbers (ITINs) be issued to individuals who are not eligible for a SSN but who are required to furnish a TIN on a tax return.. The toll-free number is 1-866-816-2065. NRAs may use Form W-7 Application for IRS Individual Taxpayer Identification Number to apply for an ITIN. (See the "Information Reporting for Nonresident Aliens" chapter.) The IRS released a Revenue Procedure that outlines the procedures for those entities interested in applying to the IRS to become "Acceptance Agents." This will allow the "agent" to issue an ITIN on behalf of the IRS.