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REQUIREMENT TO OBTAIN A P-TIN

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REQUIREMENT TO OBTAIN A P-TIN

Since the enactment of the Sixteenth Amendment in 1913, Congress has been permitted to levy a tax upon the income of individuals and corporations. Since that time, tax payers have hired tax preparers to prepare their income tax returns, and the tax preparers have signed off on the income tax return using their Social Security Number. The IRS has recently changed the rules on how income taxes are filed as well as the procedures a tax preparer must follow in preparing an income tax return.

Now, pursuant to Notice 2011-80, the IRS requires that all individuals who prepare income taxes for compensation obtain a P-TIN (Preparer Tax Identification Number). It is important to note that an individual, and not a company, applies for a P-TIN. 26 CFR Part 300. This requirement extends not only to the tax preparers that sign the income tax return, but also to all tax preparers who assist in the preparation of the income tax return. IRC §1.6109-2(h). Indeed, even if the individual does not sign the return, nor has any intention of signing a return, they are still required to obtain the P-TIN if the individual assisted in the preparation of the return. Reg §.6109-2(g). Furthermore, the rules are not only applicable to Certified Public Accountants (“CPA”), but also to any individual who prepares an income tax return for compensation. IRC §1.6109-2(h). It should be noted that if an individual is not a CPA, enrolled agent, or enrolled actuary, the individual needs to take a competency examination given or administered by the IRS before the individual is permitted to apply for a P-TIN. Id.

The IRS has provided guidance on tasks that do and do not qualify as “assisting in the preparation of an income tax return.” If the employee of a tax preparation firm or CPA firm merely answers phones, makes copies, and inputs client data gathered by a tax preparer in tax return software, the employee is not required to obtain a P-TIN because the IRS has determined those ministerial tasks do not assist in the preparation of the income tax return. Reg §301.7701-15(g), Example 1. However, if that same employee interviews the client and obtains information necessary to prepare the income tax return, the employee is required to obtain a P-TIN. Id., Example 2. In order to determine whether or not the employee is required to obtain a P-TIN, there must be an analysis of whether the services provided by the employee are merely clerical or whether they exercised discretion and independent judgment relating to the information necessary to prepare the income tax return. Id., Example 1.

Before a CPA or tax preparation firm decides to hire an employee to assist in the preparation of a tax return, it must first be determined if the employee is even eligible to obtain a P-TIN. If the individual is an attorney, CPA, enrolled agent, or registered tax return preparer authorized to practice before the IRS under 31 U.S.C. 330 or Circular 230, the employee is eligible to obtain a P-TIN. IRC §60301(2)(b). If the employee, or prospective employee, does not meet the aforementioned criteria, the person must first qualify as a registered tax return preparer before he or she can apply for the P-TIN. To qualify as a registered tax preparer, the employee or prospective employee must be at least 18 years of age. 31 U.S.C. §330. Secondly,

the employee or prospective employee must pass a written examination administered by the IRS to establish that he or she has special competency in income tax matters. Id. Lastly, the employee or prospective employee may not have been suspended or disbarred from their area of expertise. Id.

If the employee or prospective employee meets all of the requirements, the cost of acquiring a P-TIN is \$64.25. The renewal fee for an active P-TIN is \$63.00. Although it is the responsibility of the holder of the P-TIN to maintain their P-TIN, it may be prudent for the CPA or tax preparer firm to maintain the P-TIN of all their employees to ensure compliance and prevent the imposition of penalties. IRC §6694 imposes civil penalties of equal to the greater of \$1,000 or 50 percent of the income derived (or to be derived) by the tax return preparer with respect to the claim. Furthermore, IRC §6695 imposes other penalties for the failure to furnish the taxpayer with a copy of the return, failure to sign the return or include a P-TIN, failure to correct information returns, or the failure to be diligent in determining the taxpayer's ability to acquire the earned income credit. Each such occurrence is a fine of \$50.00, but the fines may not exceed \$25,000.00 per year. Ultimately, if there are numerous errors establishing a pattern of misconduct, IRC §7407 provides the IRS may ultimately seek to enjoin the tax return preparer from preparing subsequent returns.

Therefore, it is imperative that all income tax preparers ensure they obtain their P-TIN to prepare income tax returns for the 2011 tax year. Pursuant to Notice 2011-80, Section 1(a), the IRS will provide provisional P-TINs until at least April 18, 2012 in order to permit individuals time to prepare for the competency examination and to prevent disruption of the 2012 filing season.

Should you require additional information concerning the new P-TIN requirements, you may contact Paul A. Carbon, Esq. at pcarbon@margolisedelstein.com, or John J. O'Hara, III, Esq. at johara@margolisedelstein.com.

Paul Carbon specializes in professional liability claims, with emphasis on accounting, legal, and insurance agents and brokers liability claims. Mr. Carbon also handles complex commercial litigation, class action and mass tort litigation, estate and trust litigation, mergers and acquisitions, and matrimonial law. Mr. Carbon has represented accountants in investigations by federal, state and local agencies, including the Securities and Exchange Commission, the Federal Bureau of Investigation, the Internal Revenue Service, the U.S. Commodity Futures Trading Commission and the New Jersey State Board of Accountancy. Mr. Carbon is frequently called upon to provide pre-litigation risk management services to accountants, including claims handling assistance and public and private subpoena response and risk management services.

John J. O'Hara, III specializes in real estate property tax appeals. Mr. O'Hara has litigated property tax appeals involving office complexes, hotels, manufacturing facilities, utility plants, warehouses, apartment complexes, data centers, condominiums, and residential real estate. In addition to his real estate property tax appeal work, Mr. O'Hara practices in the areas of professional liability claims, with particular emphasis on accounting, legal, and insurance agents and brokers liability claims.

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