

in the determination of such figure. Therefore, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under subsection (b) of 5 U.S.C. 553 or subject to the effective date limitation of subsection (d) of that section.

[SEAL] FREDRIC W. HICKMAN,
Assistant Secretary of the Treasury.

[FR Doc. 74-6048 Filed 3-14-74; 8:45 am]

[T.D. 7306]

TAXPAYER IDENTIFYING NUMBERS

By a notice of proposed rule making appearing in the *FEDERAL REGISTER* for Wednesday, December 5, 1973 (38 FR 33490), amendments to the Income Tax Regulations (26 CFR Part 1), the Employment Tax Regulations (26 CFR Part 31), and the Regulations on Procedure and Administration (26 CFR Part 301) under sections 6109, 6676 and 7701 of the Internal Revenue Code of 1954 were proposed in order to revise the rules relating to taxpayer identifying numbers.

The most precise and concise method for identifying taxpayers in the automated recordkeeping system of the Internal Revenue Service is through the use of taxpayer identifying numbers. The existing regulations under section 6109 set forth detailed requirements with respect to taxpayer identifying numbers. The proposed regulations described the two types of taxpayer identifying numbers, told taxpayers where to apply for them, and informed taxpayers that they must give all taxpayer identifying numbers required by the forms and related instructions.

This Treasury decision contains two minor changes from the notice of proposed rule making. One is the addition of a sentence to draw attention to the fact that requirements relating to information to be furnished to the Bureau of Alcohol, Tobacco and Firearms are unchanged by this Treasury decision. Pursuant to paragraph 4(a) of Treasury Order 221, published in the *FEDERAL REGISTER* for June 10, 1972 (37 FR 11696), certain regulations of the Internal Revenue Service, including pertinent sections of 26 CFR Part 301, continue in effect as regulations of the Bureau of Alcohol, Tobacco and Firearms until superseded or revised. The Director, Bureau of Alcohol, Tobacco and Firearms has, therefore, joined as a signatory to this Treasury decision.

The other change is the updating of cross references to parts of the Code of Federal Regulations by replacing the references to the January 1, 1972 revision with references to the April 1, 1973 revision. The two revisions are identical with respect to the regulations under section 6109.

Adoption of amendments to the regulations. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed is hereby adopted, subject to the changes set forth below.

PARAGRAPH 1. Section 1.6109-1, as set forth in paragraph 1 of the appendix to the notice of proposed rule making, is changed by revising paragraph (b). The revised paragraph reads as set forth below.

PAR. 2. Section 31.6109-1, as set forth in paragraph 2 of the appendix to the notice of proposed rule making, is changed by revising paragraph (b). The revised paragraph reads as set forth below.

PAR. 3. Section 301.6109-1, as set forth in paragraph 3 of the appendix to the notice of proposed rule making, is changed by revising paragraph (h). The revised paragraph reads as set forth below.

(This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

[SEAL] REX D. DAVIS,
Director, Bureau of Alcohol,
Tobacco and Firearms.

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: March 11, 1974.

JOHN H. HALL,
Deputy Assistant Secretary
of the Treasury.

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

PARAGRAPH 1. Section 1.6109-1 is amended to read as follows:

§ 1.6109-1 Identifying numbers.

(a) *Information to be furnished after [insert 30 days after final regulations are filed by the Federal Register].* For provisions concerning the requesting and furnishing of identifying numbers with respect to returns, statements, and other documents which must be filed after April 15, 1974, see § 301.6109-1 of this chapter (Regulations on Procedure and Administration).

(b) *Information to be furnished before [insert 31 days after final regulations are filed by the Federal Register].* For provisions concerning the requesting and furnishing of identifying numbers with respect to returns, statements, and other documents which must be filed before April 16, 1974, see 26 CFR § 1.6109-1 (revised as of April 1, 1973).

PART 31—EMPLOYMENT TAXES; APPLICABLE ON AND AFTER JANUARY 1, 1955

PAR. 2. Section 31.6109-1 is amended to read as follows:

§ 31.6109-1 Supplying of identifying numbers.

(a) *In general.* The returns, statements, and other documents required to be filed under this subchapter shall reflect such identifying numbers as are required by each return, statement, or document and its related instructions. See § 301.6109-1 of this chapter (Regulations on Procedure and Administration).

(b) *Effective date.* The provisions of this section are effective for information which must be furnished after April 15, 1974. See 26 CFR § 31.6109-1 (revised as of April 1, 1973) for provisions with respect to information which must be furnished before April 16, 1974.

PART 301—PROCEDURE AND ADMINISTRATION

PAR. 3. Section 301.6109-1 is amended to read as follows:

§ 301.6109-1 Identifying numbers.

(a) *In general.* There are two types of taxpayer identifying numbers: social security numbers and employer identification numbers. Social security numbers take the form 000-00-0000, while employer identification numbers take the form 00-0000000. Social security numbers identify individual persons and estates of decedents, while employer identification numbers identify corporations, partnerships, nonprofit associations, trusts, and similar nonindividual persons. Both types of taxpayer identifying numbers are used by individuals who are employers or who are engaged in trade or business as sole proprietors, as required by returns, statements or other documents and their related instructions. Such documents often require an individual's own social security number in connection with his individual taxes, and his employer identification number in connection with his business taxes.

(b) *Use of one's own number.* Every person who files under this title a return, statement, or other document shall furnish his taxpayer identifying number as required by the forms and the instructions relating thereto. A person whose number must be included on a document filed by another person shall give the taxpayer identifying number so required to the other person on request. For provisions dealing specifically with the duty of employees with respect to their social security numbers, see paragraphs (a) and (b) of § 31.6011(b)-2 of this chapter (Employment Tax Regulations). For provisions dealing specifically with the duty of employers with respect to employer identification numbers, see § 31.6011(b)-1 of this chapter (Employment Tax Regulations).

(c) *Use of another's number.* Every person required under this title to file a return, statement, or other document shall furnish such taxpayer identifying numbers of other persons as required by the forms and the instructions relating thereto. If he does not know the taxpayer identifying number of the other person, he shall request such number of the other person. A request should state that the identifying number is required to be furnished under authority of law. When the person filing the return, statement, or other document does not know the number of the other person, and has complied with the request provision of this paragraph, he shall sign an affidavit on the transmittal document forwarding

such returns, statements, or other documents to the Internal Revenue Service, so stating. A person required to file a taxpayer identifying number shall correct any errors in such filing when his attention has been drawn to them.

(d) **Obtaining a taxpayer identifying number.** (1) **Social security number.** Any individual required to furnish a social security number pursuant to paragraph (b) of this section shall apply for one, if he has not done so previously, on Form SS-5, which may be obtained from any Social Security Administration or Internal Revenue Service office. He shall make such application far enough in advance of the first required use of such number to permit issuance of the number in time for compliance with such requirement. The form, together with any supplementary statement, shall be prepared and filed in accordance with the form, instructions, and regulations applicable thereto, and shall set forth fully and clearly the data therein called for. Individuals who are ineligible for or do not wish to participate in the benefits of the social security program shall nevertheless obtain a social security number if they are required to furnish such a number pursuant to paragraph (b) of this section.

(2) **Employer identification number.** Any person required to furnish an employer identification number pursuant to paragraph (b) of this section shall apply for one, if he has not done so previously, on Form SS-4, which may be obtained from any office of the Internal Revenue Service. He shall make such application far enough in advance of the first required use of such number to permit issuance of the number in time for compliance with such requirement. The form, together with any supplementary statement, shall be prepared and filed in accordance with the form, instructions, and regulations applicable thereto, and shall set forth fully and clearly the data therein called for.

(e) **Banks, and brokers and dealers in securities.** For additional requirements relating to deposits, share accounts, and brokerage accounts, see 31 CFR 103.34 and 103.35.

(f) **Penalty.** For penalty for failure to supply identifying numbers, see section 6676 and § 301.6676-1.

(g) **Nonresident alien exclusion.** This section shall not apply to nonresident aliens, foreign corporations, foreign partnerships, or foreign private foundations that do not have income effectively connected with the conduct of a trade or business within the United States and do not have an office or place of business or a fiscal or paying agent in the United States.

(h) **Effective date.** The provisions of this section are effective for information which must be furnished after April 15, 1974. See the parts of 26 CFR (revised as of April 1, 1973) which relate to the particular tax for provisions with respect to information which must be furnished before April 16, 1974, and for information which must be furnished to the Bureau of Alcohol, Tobacco and Firearms prior

to the effective date of comparable procedural regulations promulgated by the Bureau in 27 CFR Part 70. Nothing contained in the regulations under section 6109 shall limit the authority of the Internal Revenue Service to obtain taxpayer identifying numbers required before or after the effective date of this paragraph after notice is served upon the taxpayer pursuant to section 6001.

PAR. 4. Paragraph (a) of § 301.6676-1 is amended by replacing the phrase "Under § 1.6109-1(b)(2)" with "Under § 301.6109-1(c)". It reads as follows:

§ 301.6676-1 **Penalty for failure to supply identifying number.**

(a) **In general.** Except as provided in paragraph (c) of this section, if any person who is required by the regulations under section 6109—

(1) To include his identifying number in any return, statement, or other document,

(2) To furnish his identifying number to another person, or

(3) To include in any return, statement, or other document made with respect to another person the identifying number of such other person,

fails to comply with such requirement at the time prescribed by such regulations, such person shall pay a penalty of \$5 for each such failure. Such penalty shall be paid in the same manner as tax upon the issuance of a notice and demand therefor. Under § 301.6109-1(c) a payer is required to request the identifying number of the payee. If, after such a request has been made, the payee does not furnish the payer with his identifying number, the penalty will not be assessed against the payer.

PAR. 5. Section 301.7701-11 is amended to read as set forth below:

§ 301.7701-11 **Social security number.**

For purposes of this chapter, the term "social security number" means the taxpayer identifying number of an individual or estate which is assigned pursuant to section 6011 (b) or corresponding provisions of prior law, or pursuant to section 6109, and in which nine digits are separated by hyphens as follows: 000-00-0000. Such term does not include a number with a letter as a suffix which is used to identify an auxiliary beneficiary under the social security program. The terms "account number" and "social security number" refer to the same number.

PAR. 6. Section 301.7701-12 is amended to read as set forth below:

§ 301.7701-12 **Employer identification number.**

For purposes of this chapter, the term "employer identification number" means the taxpayer identifying number of an individual or other person (whether or not an employer) which is assigned pursuant to section 6011 (b) or corresponding provisions of prior law, or pursuant to section 6109, and in which nine digits are separated by a hyphen, as follows: 00-0000000. The terms "employer identi-

fication number" and "identification number" (defined in § 31.0-2(a)(11) of this chapter (Employment Tax Regulations)) refer to the same number.

[FR Doc. 74-6046 Filed 3-14-74; 8:45 am]

[T.D. 7308]

PART 12—TEMPORARY INCOME TAX REGULATIONS UNDER THE REVENUE ACT OF 1971

Activities Not Engaged in for Profit

The following regulations relate to section 183(e) of the Internal Revenue Code of 1954, as added by section 311(a) of the Revenue Act of 1971 (85 Stat. 525), which permits a taxpayer to elect to postpone the determination of the presumption that an activity is engaged in for profit if it is profitable in two years during a period of five consecutive years (seven consecutive years in the case of activities concerning the breeding, training, showing or racing of horses).

The regulations provide, generally, that an election with respect to an activity shall be made by filing a statement with the service center where the taxpayer's return is filed within three years after the due date of the return (determined without regard to extensions) for the first taxable year in which the taxpayer engages in such activity or, if earlier, upon notice that a district director proposes to disallow deductions attributable to an activity not engaged in for profit under section 183, by filing a statement with the district director who issued such notification within 60 days after such notice. (For purposes of the election a taxpayer shall be treated as not having engaged in any activity during any taxable year beginning before January 1, 1970.) The election must include a general extension of the three year statute of limitations, with respect to all years in the five or seven year period, commencing with the year in which the taxpayer first engages in the activity, to 18 months after the due date of the return (determined without regard to extensions) for the last taxable year in the five or seven year period.

The regulations set forth herein are temporary and are designed to provide rules governing the manner and time for making an election to postpone a determination of whether an activity is engaged in for profit. The regulations are effective until the issuance of final regulations to be prescribed by the Commissioner and approved by the Secretary or his delegate.

In order to provide such temporary regulations under section 183(e) of the Internal Revenue Code of 1954, the following regulations are adopted:

Section 12.9 is added immediately following § 12.8 and reads as follows:

§ 12.9 **Election to postpone determination with respect to the presumption described in section 183(d).**

(a) **In general.** An individual, electing small business corporation, trust or estate may elect in accordance with the