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IRS Updates PTIN Requirement

The IRS FAQs explain two additional situations where a PTIN isn't required, and when a return preparer may need an Electronic Filing Identification Number (EFIN) as well as a PTIN. They also warn preparers of the penalties for noncompliance with the PTIN rules. The new FAQs issued this month include the following additional guidance on PTINs:

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Advising clients on an issue reflected on a claim for refund. Attorneys or CPAs must get a PTIN if they prepare, or assist in preparing, all or substantially all of a return or claim for refund. However, under Reg. § 1.6695-1(b), they don't need to get a PTIN if they only advise a client about an issue that is reflected on a claim for refund and neither the attorney or CPA nor any person in the firm signs or is required to sign the claim for refund under Reg. § 301.7701-15(b)(1) and Reg. § 1.6695-1(b). The attorney or CPA is still a non-signing tax return preparer subject to penalty under Code Sec. 6694 if he or she has prepared all or a substantial portion of the claim for refund under Reg. § 301.7701-15(b)(3). (Scenarios, FAQ No. 10)

Please see *PTIN Requirement* on page 3

Refund Anticipation Loan Providers may need to comply with consumer protection and disclosure provisions.

Refund Anticipation Loan

The IRS and the federal government have been making things difficult for the tax refund anticipation loan (RAL) business. Now, the states are getting into the act too.

A Missouri state appeals court has ruled that a woman who received a RAL from Jackson Hewitt Inc. may bring an action based on an alleged failure by Jackson Hewitt to comply with Missouri's credit services organizations statute, (*Fugate v. Jackson Hewitt Inc.*, Mo. Ct. App., No. WD72353, 3/1/11).

The issue in the case is whether Jackson Hewitt is a "credit services organization" and must therefore comply with the Missouri statute applicable to all such organizations. The court found that Jackson Hewitt was a credit services organization even though it did not receive a direct payment from the RAL recipient for any loan services. Instead, Jackson Hewitt received payments from the bank providing the loan. The court determined that the Missouri statute does not require that there be a direct payment from the RAL recipient to Jackson Hewitt.

If this case becomes precedent in Missouri, then any RAL provider will have to comply with various consumer protection and disclosure provisions, making it even more difficult for tax preparers such as Jackson Hewitt to continue in the RAL business.



SC Legislative Updates

Healthcare:

At the end of March, the Senate Banking and Insurance Committee held the first of several meetings to hear presentations on the federal healthcare act. Testimony included statements by the state attorney general, S.C. Department of Insurance, S.C. Fair Share, Blue Cross Blue Shield and the Small Business Chamber of Commerce. To date, more than 40 states, including South Carolina, have introduced Freedom of Health Care Choice Acts.

Economic Development:

The Senate Finance Subcommittee on Sales and Income Taxation gave favorable approval to [S.690 \(Leatherman\)](#), commonly known as the safe harbor legislation. The bill would extend the law that expired at the end of 2010 regarding the role of nexus as it relates to income tax and corporate license fees for distribution facilities for five additional years. Also approved by the subcommittee was [S.211 \(Matthews\)](#) which would establish the I-95 Corridor Authority to carry out economic development and educational improvement activities aimed to improve the economic conditions in its member counties.

Other Items of Interest:

- [S.715](#) and [S.716 \(Rose and Davis\)](#) - creates an exemption repeal committee jointly comprised of House and Senate members to require the Office of Economic Research to divide sales tax exemptions into groups and repeal them randomly until all are repealed; also creates the taxpayer rebate fund from increased sales tax collections, providing a refundable individual income tax credit
- [S.718 \(Scott\)](#) - requires public or privately owned water utilities operating within five miles of a landfill to provide a water line and supply to the landfill
- [S.719 \(Matthews\)](#) - establishes renewable energy and efficiency portfolio standards for electric power suppliers
- [S.727 \(Elliott\)](#) – caps wholesale gasoline for each octane sold in South Carolina at the average price it sells for on April 15, 2011, with the cap remaining until April 15, 2012
- [S.728 \(Pinckney\)](#) – relates to definitions and policy coverage for smoking cessation programs
- [S.729 \(Rose\)](#) – regarding state post-secondary educational institutions, requires all revenue from out-of-state tuition in excess of in-state tuition to be sent to the state's General Fund
- [S.732 \(Pinckney\)](#) – relates to restrictions and requirements for nonferrous metals
- [S.733 \(Hayes\)](#) – requires the Department of Health and Environmental Control to notify the public within 48 hours of a domestic sewage spill into state waters that exceeds 5,000 gallons

*SC Senate Spends
Week 11 meeting in
subcommittees and in
floor debate.*

Payroll Providers and PTIN

Payroll providers who only provide mechanical assistance to their clients by transferring information onto a tax return, but do not make any judgments about what goes on the return, will generally not be required to get a preparer tax identification number, an IRS official said March 8.

"Payroll providers are generally not considered tax return preparers," John Kurdziel, an IRS technical adviser, told the American Payroll Association Capital Summit. He cautioned that it is not a blanket exemption. Any activity that goes beyond just transferring numbers onto a page could be considered tax preparation.

For instance, if payroll providers also prepare Forms 1040, 1120, or 1065, in addition to the usual Forms 940 and 941, they may be considered tax preparers, because those returns are not within a category that is exempt from the preparer registration requirements, Kurdziel said.

New IRS Regulations require all tax preparers (including CPAs, attorneys, and Enrolled Agents to apply for a Preparer Tax Identification Number (PTIN) even if you already have one. Go to the IRS Website at <http://www.irs.gov/taxpros/index.html> to apply for your.

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No PTIN needed for preparing certain retirement plan-related forms. A retirement plan administrator does not need a PTIN to prepare Form 8955-SSA, Annual Registration Statement Identifying Separated Participants With Deferred Vested Participants, and Form 5558, Application for Extension of Time to File Certain Employee Plan Returns. These forms are not on the Notice 2011-6, 2011-3 IRB 315 list of PTIN-exempted forms, but IRS will treat them, for purposes of this list, as part of the "Form 5500 series" of tax returns that is specifically exempted. That's because Form 8955-SSA and Form 5558 are prepared either in conjunction with the filing of a retirement plan's Form 5500 filing or to request an extension of time to file a Form 5500 series tax return. (Scenarios, FAQ No. 9)

Difference between PTINs and EFINs. Any individual who, for compensation, prepares all or substantially all of a tax return or claim for refund needs a PTIN, and, when applicable, it must be placed in the Paid Preparer section of a tax return that the tax return preparer prepared for compensation. By contrast, an EFIN is issued by IRS to individuals or firms that have been approved as authorized IRS e-file providers, and is included with all electronic return data transmitted to IRS. Paid preparers who reasonably expect to file 100 or more Forms 1040, 1040A, 1040EZ, or 1041 during 2011 must e-file their clients' returns. They (or their firm) need an EFIN, as do preparers who are not required to e-file but voluntarily desire to participate. (New PTIN Requirements, FAQ No. 8)

Penalties for noncompliance with PTIN rules. IRS reminds paid tax return preparers that they could face stiff penalties if they prepare, or assist in the preparation of, all or substantially all of a tax return or claim for refund after Dec. 31, 2010, but don't have a PTIN. Failure to comply with the PTIN rules could result in the imposition of Code Sec. 6695 penalties, injunction, referral for criminal investigation, or disciplinary action by IRS's Office of Professional Responsibility.

However, IRS is notifying individuals who have made a good faith effort to timely obtain a PTIN, but experienced processing issues, that they may prepare returns during the interim period while their applications are pending. This notification is being made on the online system to people who make four unsuccessful attempts to register and in writing (email or letter) to individuals who have timely submitted paper applications and payments.

SCSA Schedules 40 Affordable CPE Hours

The South Carolina Society of Accountants has scheduled 40 CPE hours beginning with the 8-hour Operating an Effective Accounting & Tax Practice scheduled Friday, May 20th at the Marriott Courtyard at 1251 Woodland Ave., Mt. Pleasant, SC 29464. The sleeping room rate is \$129 and includes breakfast. For reservations, call the Courtyard (843) 284-0900. Refer to discount code SSAR.

Mark Hobbs, CPA, of the Hobbs Group in Columbia is the speaker. Two hours of this program will count toward the ethics requirement. Program includes round-table lunch discussions on SC Sales Tax vs. Use Tax, the new health care reform, tax and accounting software, and more.

Sept. 22-23 are the dates for the 16-hour Business Entities: Corporations & Partnerships in Columbia and Nov. 3-4 are the dates for the 16-hour Individual Income Tax in Columbia.

Both the Business Entities and the Individual Income Tax are scheduled at the Hilton Columbia Center in downtown Columbia. Located in the renovated Vista area, the lovely venue offers a room rate of \$132. This rate includes parking. For reservations, call the Hilton (803) 744-7800.

Registration fee starts at \$175. Visit the SCSA Website at www.scsacct.org for online registration.

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