Chapter 5: IRS Update

Compliance Programs for Undisclosed Foreign Assets A185

IRS Response to Identity Theft A207

IRS Future State Initiative A213

Responsible Person for Trust Fund Recovery Penalty A219

Early Intervention Initiative for Employers A226

IRS Appeals Update A226

ITIN Certification Process A229

Revised Power of Attorney A236

Audit Trends (Data Book) A240

Changes to the Special Enrollment Exam A243

Cash Payment Option A245

5

Please note. Corrections were made to this workbook through January of 2017. No subsequent modifications were made. For clarification about acronyms used throughout this chapter, see the Acronym Glossary at the end of the Index.

For your convenience, in-text website links are also provided as short URLs. Anywhere you see **uofi.tax/xxx**, the link points to the address immediately following in brackets.

COMPLIANCE PROGRAMS FOR UNDISCLOSED FOREIGN ASSETS

There are two separate sets of foreign asset disclosure rules administered by the IRS: the Bank Secrecy Act (BSA) and the Foreign Account Tax Compliance Act (FATCA). Taxpayers who must disclose their foreign assets are defined differently under the two sets of rules.

Note. There are special rules for U.S. residents under the BSA, and tax practitioners should become familiar with these rules. These are explained in the 2014 *University of Illinois Federal Tax Workbook,* Volume A, Chapter 6: IRS Representation and Procedures, and the 2015 *University of Illinois Federal Tax Workbook,* Volume B, Chapter 2: Foreign Asset Disclosure.

Failure to comply with the requirement to file necessary international information returns, disclose foreign financial accounts under the BSA, or appropriately disclose specified foreign financial assets under applicable FATCA rules may result in significant civil and/or criminal penalties. The IRS established programs for taxpayers who have not previously complied with offshore asset disclosure requirements but who now wish to comply. Generally, under these programs, compliance may be possible with reduced, or even eliminated civil penalties and any applicable criminal penalties.

TAXPAYERS WHO MUST DISCLOSE

Bank Secrecy Act

Under the BSA, the taxpayer required to disclose is described as a **U.S. person.** This is defined as any U.S. citizen, U.S. resident, and any entity created under federal or state laws.[1] A U.S. person with a financial interest in or signature authority over foreign financial accounts must generally disclose reportable accounts if their aggregate value exceeds $10,000 at any time during the year.[2]

1. 31 CFR §1010.350(b).
2. Ibid.

When filed with a taxpayer's return, part III of Schedule B, *Interest and Ordinary Dividends,* may serve to alert the IRS that the taxpayer has an obligation to comply with the BSA foreign account requirements.[3] This is the first step to compliance. Practitioners should fulfill their due diligence obligation to annually ask clients appropriate questions about the existence of any foreign financial accounts and whether they have interest or dividends.

> **Note.** For detailed information about the disclosure requirements under the BSA, see the 2015 *University of Illinois Federal Tax Workbook,* Volume B, Chapter 2: Foreign Asset Disclosure.

Foreign Account Tax Compliance Act

Under FATCA, the taxpayer required to disclose is described as a **specified person.** This is defined as a U.S. citizen or resident alien, a nonresident alien married to a U.S. citizen who elects to be treated as a U.S. citizen for tax purposes, or a nonresident alien who is a bona fide resident of Puerto Rico or a U.S. possession and who is required to file an annual tax return.[4]

> **Note.** A taxpayer qualifying as a resident alien under either the green-card test or substantial presence test is a specified person even if they elect to be taxed as a resident of a foreign country under the terms of a tax treaty. More detailed information about FATCA rules can be found in the 2015 *University of Illinois Federal Tax Workbook,* Volume B, Chapter 2: Foreign Asset Disclosure.

To be subject to the FATCA disclosure rules, the specified person must have the type of interest in a **specified foreign financial asset (SFFA) that is covered by FATCA.** FATCA applies if the interest is such that the specified person is or would be obligated to report any income, gains, losses, deductions, or credits generated by the asset (regardless of whether there are any such items to actually report in the tax year).[5]

For a parent making an election to report a child's unearned income on the parent's return, the parent is considered to be the specified person having an interest in an SFFA held by the child.

Generally, if an entity (such as a corporation, partnership, or trust) holds SFFAs, the specified person is not considered to have an interest in those SFFAs **solely** because of their status as a shareholder, partner, or beneficiary of the entity.[6] However, a specified person who owns a foreign disregarded entity is treated as directly owning the SFFAs within that entity. If a specified person is considered the owner of a trust under the Code, they are treated as having an interest in the SFFAs held in the trust.[7]

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3. IRS Fact Sheet FS-2014-7 (Jun. 2014).
4. Treas. Reg. §1.6038D-1(a)(1).
5. Treas. Reg. §1.6038D-2(b)(1).
6. Treas. Reg. §1.6038D-2(b)(4)(i).
7. Treas. Reg. §1.6038D-2(b)(4)(ii).

Specified Foreign Financial Assets. Generally, an SFFA is a financial account maintained by a foreign financial institution (FFI). The following assets are considered SFFAs if they are not in an account with an FFI but are held for investment purposes.[8]

- A stock or security issued by a non-U.S. person
- An interest in a foreign entity
- A financial instrument or contract having an issuer or counterparty who is not a U.S. person

Note. The respective rules under the BSA and FATCA differ significantly regarding the types of assets that must be disclosed, the types of taxpayers affected, and the type of forms that must be filed to comply with reporting requirements. For further details regarding international information returns and offshore asset disclosure rules under the BSA or FATCA, see the 2015 *University of Illinois Federal Tax Workbook,* Volume B, Chapter 2: Foreign Asset Disclosure.

OFFSHORE VOLUNTARY DISCLOSURE PROGRAM[9]

The first voluntary compliance program offered by the IRS was the Offshore Voluntary Disclosure Program (OVDP). In 2009, the IRS offered the first OVDP as a means for taxpayers to comply with foreign account disclosure requirements. The 2009 OVDP opened on March 23, 2009, and ended on October 15, 2009. However, given strong interest, a 2011 OVDP was made available by the IRS from February 8 through September 9, 2011. A further opportunity to comply was provided to taxpayers with the 2012 OVDP, which was announced in January 2012.

There have been over 45,000 voluntary disclosures since the first OVDP was introduced in 2009. The IRS received approximately $6.5 billion in back taxes, interest, and penalties under these programs. Because it has been so successful, IRS Commissioner John Koskinen announced a 2014 expansion of the compliance program. The 2014 OVDP, which became effective July 1, 2014,[10] is based on the 2012 OVDP with modification of some key features.[11] The penalties under the modified 2014 OVDP are higher than those applicable under the 2012 program.

The 2014 expansion of the compliance procedures was designed to cover a broader group of taxpayers and includes those who have not complied with offshore account disclosure requirements but are **not willfully evading** their tax obligations. The modifications of the 2012 OVDP that are part of the 2014 program include the following.[12]

- Expansion of the eligibility criteria to allow more taxpayers to qualify
- Elimination of the $1,500 cap on the amount of tax owed to qualify
- Elimination of the lengthy questionnaire that previously had to be completed in order to qualify
- Reshaping the rules of the OVDP for taxpayers who have willfully not complied

Although the 2014 OVDP opened without an established application deadline, the IRS may change the terms of this program or end it at any time.[13]

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8. Instructions for Form 8938.

9. *IRS Offshore Voluntary Disclosure Efforts Produce $6.5 Billion; 45,000 Taxpayers Participate.* May 9, 2016. IRS. [www.irs.gov/uac/Newsroom/IRS-Offshore-Voluntary-Disclosure-Efforts-Produce-$6.5-Billion;-45,000-Taxpayers-Participate] Accessed on May 11, 2016.

10. IRS News Rel. IR-2014-73 (Jun. 18, 2014).

11. *Statement of IRS Commissioner John Koskinen*. Jun. 18, 2014. IRS. [www.irs.gov/uac/Newsroom/Statement-of-IRS-Commissioner-John-Koskinen] Accessed on May 11, 2016.

12. *IRS Makes Changes to Offshore Programs; Revisions Ease Burden and Help More Taxpayers Come into Compliance.* May 9, 2016. IRS. [www.irs.gov/uac/newsroom/irs-makes-changes-to-offshore-programs-revisions-ease-burden-and-help-more-taxpayers-come-into-compliance] Accessed on Jun. 2, 2016.

13. *Offshore Voluntary Disclosure Program Frequently Asked Questions and Answers 2014.* Q and A #3. Feb. 8, 2016. IRS. [www.irs.gov/Individuals/International-Taxpayers/Offshore-Voluntary-Disclosure-Program-Frequently-Asked-Questions-and-Answers-2012-Revised] Accessed on May 12, 2016.

Eligibility[14]

A taxpayer is eligible to use the OVDP as a means to comply with federal foreign asset disclosure requirements if they:

- Meet the requirements of the **voluntary disclosure practice,** and
- Have legal-source funds invested in undisclosed **OVDP assets.**

> **Note.** Individual and entity taxpayers may qualify to use the OVDP.

Voluntary Disclosure Practice.[15] The 2014 OVDP, like past OVDPs, is a counterpart to IRS Criminal Investigation's (CI) longstanding general voluntary disclosure practice.

> **Note.** The terms of CI's voluntary disclosure practice are important because they form the basic eligibility rules for the 2014 OVDP. The rules of this general voluntary disclosure practice are from the Internal Revenue Manual (IRM) 9.5.11.9.

CI takes into account many factors in determining whether to recommend that the Department of Justice (DOJ) prosecute a case. One factor in this determination is whether the taxpayer voluntarily disclosed information. Although voluntary disclosure does not guarantee immunity from prosecution, it may result in a determination that criminal prosecution should not be pursued. In addition, voluntary disclosure is not taken into consideration under the voluntary disclosure practice if the criminal investigation involves income from illegal sources.

> **Note.** For further details on the process the IRS uses to determine whether a case should be referred for prosecution, see **uofi.tax/16a5x1** [www.irs.gov/uac/How-Criminal-Investigations-Are-Initiated].

Voluntary disclosure of information occurs when the taxpayer meets **all** the following criteria.

1. Demonstrates willingness to (and in fact, does) cooperate with the IRS in determining the correct tax liability
2. Makes good faith arrangements with the IRS to pay in full all applicable tax, penalties, and interest
3. Communicates the information to the IRS in a complete, truthful, and timely manner

The disclosed information is considered **timely** if the IRS receives that information from the taxpayer before **any** of the following occur.

- The IRS notifies the taxpayer that it intends to commence a civil examination or criminal investigation.
- The IRS begins a civil examination or criminal investigation of the taxpayer.
- The IRS begins a civil examination or criminal investigation directly related to the taxpayer's particular tax liability.
- The IRS receives information about the taxpayer's noncompliance from a third party.
- The IRS obtains information directly related to the taxpayer's specific liability from a search warrant, grand jury subpoena, or other criminal enforcement action.

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14. *Offshore Voluntary Disclosure Program Frequently Asked Questions and Answers 2014.* Q and A #12-21. Feb. 8, 2016. IRS. [www.irs.gov/Individuals/International-Taxpayers/Offshore-Voluntary-Disclosure-Program-Frequently-Asked-Questions-and-Answers-2012-Revised] Accessed on May 12, 2016.

15. IRM 9.5.11.9 (2009).

OVDP Assets. OVDP assets include all assets directly or indirectly owned by the taxpayer outside the United States that are subject to the OVDP penalty. Generally, **indirectly owned** means that the taxpayer holds the assets in an entity that the taxpayer controls.

OVDP assets include the following.

- Assets that are related in any way to tax noncompliance (In this context, t**ax noncompliance** refers to a failure to report gross income generated from the assets and failure to pay tax on funds used to acquire the assets.)
- An interest in a U.S. business located outside the United States or an interest in a foreign business
- Tangible items such as artwork and real estate
- Intangible items such as patents and stocks

To participate in the OVDP, the funds that the taxpayer used to acquire the asset must come from a legal source.

Using the OVDP[16]

Generally, taxpayers holding OVDP assets may use the OVDP to become compliant. Using the OVDP allows the taxpayer to avoid substantial civil penalties and, under most circumstances, avoid criminal prosecution for all issues relating to tax noncompliance and failure to file FinCEN Form 114, *Report of Foreign Bank and Financial Accounts.* FinCEN Form 114 (also called the FBAR) is filed for years after 2012 and can only be filed electronically. For years before 2013, the proper form is TD F 90-22.1, which is filed in paper form. In addition, the OVDP makes it possible to calculate the cost of resolving all offshore asset nondisclosure issues.

> **Note.** For further details on some of the applicable civil penalties that may apply to a taxpayer who willfully fails to disclose foreign assets and/or pay tax due on the income from such assets, see **uofi.tax/16a5x2** [www.irs.gov/Individuals/International-Taxpayers/Offshore-Voluntary-Disclosure-Program-Frequently-Asked-Questions-and-Answers-2012-Revised]. Various criminal penalties may also apply, depending upon the taxpayer's conduct.

> **Note.** See the 2014 *University of Illinois Federal Tax Workbook,* Volume A, Chapter 6: IRS Representation and Procedures, for a detailed discussion of FinCEN Form 114. This can be found at **uofi.tax/arc** [www.taxschool.illinois.edu/taxbookarchive].

Taxpayers who wish to participate in the OVDP must agree to the terms of general voluntary disclosure discussed previously. This includes cooperating with the IRS by providing information on foreign assets, foreign financial institutions, and parties who assisted in establishing or maintaining any offshore assets or accounts owned by the taxpayer.

OVDP Disclosure Period.[17] The OVDP disclosure period is the most recent **eight tax years** for which the due date has passed (taking into account due dates that have been appropriately extended). However, the disclosure period does not include years in which the taxpayer can establish tax compliance.

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16. *Offshore Voluntary Disclosure Program Frequently Asked Questions and Answers 2014.* Q and A #1-10. Feb. 8, 2016. IRS. [www.irs.gov/Individuals/International-Taxpayers/Offshore-Voluntary-Disclosure-Program-Frequently-Asked-Questions-and-Answers-2012-Revised] Accessed on May 9, 2016.

17. Ibid.

Preclearance to Use the OVDP. A taxpayer may use an **optional** preclearance process before making full disclosure under the terms of the OVDP. The purpose of the preclearance process is to ensure that the taxpayer is not disqualified from using the OVDP under the terms of the voluntary disclosure requirements (discussed previously). **For example, if the taxpayer is already the subject of a criminal investigation or if the IRS received information from a third party about the taxpayer's noncompliance, they do not meet the voluntary disclosure terms and do not qualify to participate in the OVDP.**

> **Note.** For further guidance on the optional preclearance procedure, see **uofi.tax/16a5x3** [www.irs.gov/uac/How-to-Make-an-Offshore-Voluntary-Disclosure].

After submitting the preclearance information, the taxpayer will receive a preclearance notification. This notification indicates whether the taxpayer is eligible to make a voluntary disclosure. Preclearance is not a guarantee that the taxpayer has been accepted into the OVDP. However, the taxpayer can take the next step and submit the Offshore Voluntary Disclosure Letter (OVDL) and attachment (described in the next section).

Initial Submission for OVDP. If the taxpayer responds to an affirmative preclearance decision, they have 45 days to submit the OVDL and the required attachment.[18] For taxpayers not using preclearance, the OVDL and attachment are the first submission for participation in the OVDP.

The taxpayer must submit Form 14457, *Offshore Voluntary Disclosure Letter.* This form provides CI with basic information about the taxpayer's offshore assets. It also provides information related to the voluntary disclosure requirements found in IRM 9.5.11.9. The focal point of the questions asked on Form 14457 is whether the disclosure the taxpayer seeks to make through OVDP participation will be **timely.**

> **Note.** Form 14457 may be found at **uofi.tax/16a5x4** [www.irs.gov/pub/irs-pdf/f14457.pdf].

In addition, Form 14454, *Attachment to Offshore Voluntary Disclosure Letter,* asks detailed questions about the establishment of OVDP assets, their nature, and transactions and communications associated with those assets.

> **Note.** Form 14454 may be found at **uofi.tax/16a5x5** [www.irs.gov/pub/irs-pdf/f14454.pdf].

Complete Disclosure Under the OVDP.[19] After submitting the OVDL and attachment, CI notifies the taxpayer whether their disclosure under the OVDP has been preliminarily accepted or declined. If accepted, the taxpayer has **90 days** from the date of the notification to make a **full OVDP disclosure.**

If the taxpayer is an individual or estate that failed to report the OVDP asset on a required gift or estate return, all delinquent returns must be filed. If the returns were originally filed without reporting OVDP assets, appropriately amended returns must also be submitted. These returns or amendments must be submitted for all years in the voluntary disclosure period.

> **Note.** Special rules exist for taxpayers with OVDP assets held in a passive foreign investment company (PFIC). For details about these rules and other information about OVDP submissions, see **uofi.tax/16a5x2** [www.irs.gov/Individuals/International-Taxpayers/Offshore-Voluntary-Disclosure-Program-Frequently-Asked-Questions-and-Answers-2012-Revised].

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18. *How to Make an Offshore Voluntary Disclosure.* Apr. 29, 2016. IRS. [www.irs.gov/uac/how-to-make-an-offshore-voluntary-disclosure] Accessed on Jun. 2, 2016.

19. Ibid.

Finalization of OVDP Submission

The taxpayer must sign a Form 906, *Closing Agreement On Final Determination Covering Specific Matters.* The IRS prepares this form and forwards it to the taxpayer for their signature to finalize OVDP participation.

> **Note.** If the taxpayer disagrees with the terms of the closing agreement, mediation or use of the IRS appeals process **are not** available. There is a provision to opt out of the OVDP. However, taxpayers that opt out are subject to the standard audit process. Full scope examinations are likely and referral of the taxpayer's case to the DOJ for criminal prosecution is possible. For further details, see **uofi.tax/16a5x2** [www.irs.gov/Individuals/International-Taxpayers/Offshore-Voluntary-Disclosure-Program-Frequently-Asked-Questions-and-Answers-2012-Revised] and the IRS opt out and removal guide at **uofi.tax/16a5x6** [www.irs.gov/pub/newsroom/2011_ovdi_opt_out_and_removal_guide_and_memo_june_1_2011.pdf].

> **Observation.** Under some circumstances, opting out may be beneficial to the taxpayer. OVDP participation requires agreement to the assessment of interest and penalties for the tax years in the voluntary disclosure period, **which may be up to eight years.** This is substantially longer than the usual 3-year statutory limitations period that applies if the taxpayer opts out. For taxpayers that appear to have a low probability of criminal prosecution, opting out from OVDP participation may be best to minimize the taxpayer's cost of compliance. Such a decision, however, should involve a careful assessment of whether the taxpayer's original nondisclosure was the result of fraudulent conduct or, rather, arose from negligence and reasonable cause. If the taxpayer engages in fraudulent conduct, a limitations period is inapplicable.[20]

STREAMLINED OFFSHORE PROCEDURES

Beginning in 2014, two new streamlined procedures were initiated as part of the modifications made to the 2012 OVDP.

1. Streamlined Foreign Offshore Procedures (SFOP) for U.S. nonresidents
2. Streamlined Domestic Offshore Procedures (SDOP) for U.S. residents

Although both programs have some common qualification factors, each program has a different set of rules.

20. IRC §6501(c)(1), (2).

Common Qualification Factors[21]

The qualifying factors common to both the SDOP and SFOP are as follows.

- Both the SDOP and SFOP are available only to individual taxpayers and their estates.
- Taxpayers must certify that their failure to file FinCEN Form 114 (or the predecessor Form TD F 90-22.1) **did not involve willful conduct.**

Note. Nonwillful conduct generally includes negligence, inadvertence, a mistake, or conduct involving a good faith misunderstanding of tax law. A reckless disregard or willful blindness toward the statutory duty to comply with offshore reporting requirements may be an indicator of willfulness.[22]

- No return of the taxpayer for any tax year must be under examination by the IRS for any reason.
- The taxpayer must not be under any IRS civil examination or criminal investigation.
- If the taxpayer filed delinquent or amended returns in an attempt to resolve any noncompliance issues associated with the failure to disclose foreign financial assets, all related penalty assessments must be paid. Any penalty assessments previously made regarding those filings will not be abated.
- The taxpayer must have a valid taxpayer identification number (TIN).

Observation. If the taxpayer has willfully failed to file FinCEN Form 114 (or the predecessor form) or failed to report income or pay tax and wishes to seek assurance that they will not be subject to criminal charges and/or substantial penalties, the OVDP should be considered because these taxpayers do not qualify for either the SDOP or SFOP.

Streamlined Foreign Offshore Procedures (SFOP)

Nonresidency Test.[23] If a taxpayer meets the common qualifying factors and they meet the nonresidency test, they may qualify for the SFOP. For married filing jointly (MFJ) taxpayers, **both** spouses must qualify as nonresidents in order to use the SFOP. If one spouse is a resident and the other spouse qualifies as a nonresident, only the SDOP may be used.

U.S. citizens and green-card holders have a different nonresidency test than the one applicable to non-U.S. citizens and those who do not hold a green card. The two nonresidency tests are summarized as follows.

U.S. Citizens and Green Card Holders	Non-U.S. Citizens and Non-Green Card Holders
In at least one of the most recent three years for which the taxpayer's return due date (including extensions) has passed, the taxpayer: • Did not have a U.S. **abode,** and • Was physically outside the United States for at least **330 days.**	In at least one of the most recent three years for which the taxpayer's return due date (including extensions) has passed, the taxpayer did not meet the **substantial presence** test.

21. *Streamlined Filing Compliance Procedures.* Aug. 6, 2015. IRS. [www.irs.gov/Individuals/International-Taxpayers/Streamlined-Filing-Compliance-Procedures] Accessed on May 9, 2016.

22. *U.S. v. Williams*, 489 Fed. Appx. 655 (4th Cir. 2012); *U.S. v. McBride*, 908 F.Supp. 2d 1186 (D. Utah 2012).

23. *U.S. Taxpayers Residing Outside the United States.* Aug. 12, 2015. IRS. [www.irs.gov/Individuals/International-Taxpayers/U-S-Taxpayers-Residing-Outside-the-United-States] Accessed on May 10, 2016.

A **green card** is a term used to refer to a registration card issued by U.S. Citizenship and Immigration Services to a noncitizen of the United States. Generally, this registration card allows the registrant to legally reside and work on a permanent basis within the United States. For additional information, see **uofi.tax/16a5x7** [www.uscis.gov/greencard].

The term **abode** is variously defined as a home, habitation, residence, domicile, or place of dwelling. An abode does not include a place of business. For U.S. citizens and green-card holders, the taxpayer's temporary presence in the United States or maintenance of a U.S. dwelling does not necessarily constitute having an "abode" in the United States.

> **Note.** For further guidance regarding the definition of "abode," see IRS Pub. 54, *Tax Guide for U.S. Citizens and Resident Aliens Abroad,* and IRC §911 and the underlying regulations, which apply to the nonresidency test for U.S. citizens and green-card holders.

Substantial Presence Test. A non-U.S. citizen or non-green card holder meets the substantial presence test if they are physically present in the United States for at least:

- 31 days during the calendar year, and
- A total of 183 counted days during the current year and two preceding years.[24]

The current year is the year for which residency status is being determined.

> **Observation.** If the taxpayer did not spend at least 31 days in the United States in the current calendar year, they do not meet the substantial presence test, regardless of the number of days they were physically present in the United States in the two previous years.

An individual is considered present for a day in the United States when they are physically present in the United States for any period during the day. To calculate the number of days present in the United States, the following rules apply.[25]

- Each day present in the United States during the current year is counted as a full day.
- Each day present in the United States during the year immediately preceding the current year is counted as one-third of a day.
- Each day present in the United States during the second preceding year is counted as one-sixth of a day.

U.S. residency starts on the first day of presence in the United States within the tax year in which the substantial presence test is met.

24. IRC §7701(b)(3).

25. Ibid.

Example 1. Alec is an Armenian citizen who periodically spends time in the United States. He spent 60 days in the United States in 2013. He spent 120 days in the United States in 2014.

In 2015, he remained in Armenia for the first two months of the year and arrived in the United States on March 1. He remained in the United States until July 31, and then returned to Armenia. In 2015, he was in the United States for 153 days.

Alec has no green card. He must determine if he is a resident for U.S. tax purposes in 2015. Under the substantial presence test, Alec determines residency using the following calculation.

Calendar Year	Counted Days	Multiplier	Substantial Presence Days
2013	60	1/6	10
2014	120	1/3	40
2015	153	1	153
Total			203

Alec was present in the United States a total of 203 days during the 3-year period that includes the 2015 tax year. In order to be a resident for U.S. tax purposes, he must be present in the United States at least 183 days. Alec meets this requirement; therefore, he is a U.S. resident for 2015 tax purposes. Alec is not considered a U.S. resident for 2013 or 2014. Although he reached his 183rd counted day on July 11, 2015, his starting day for U.S. residency is March 1, 2015, the first day of his presence in the United States within the year.

Alec cannot use the SFOP for the 2015 tax year because he did not qualify as a nonresident. He may still use the SFOP for 2013 and 2014 (or any other year in which he is considered a nonresident).

Note. For more information on days of presence in the United States, including days that do not count toward the taxpayer's presence in the United States, see **uofi.tax/16a5x8** [www.irs.gov/individuals/international-taxpayers/substantial-presence-test].

The days present in the United States are not counted for purposes of the substantial presence test for an exempt individual.[26] **Exempt individuals** include the following.

- A person who is a full-time employee of an international organization, or who has full-time diplomatic or consular status
- A person who intends to leave the United States but is unable to leave due to medical illness when the illness arose in the United States and is not a pre-existing condition
- A teacher or trainee temporarily admitted into the United States under sections 101(a)(15)(J) or 101(a)(15)(Q) of the Immigration and Nationality Act who substantially complies with the terms of their visa
- A student temporarily admitted into the United States under sections 101(a)(15)(F), (J), (M) or (Q) of the Immigration and Nationality Act who substantially complies with the terms of their visa
- Commuters from Canada or Mexico regularly attending their workplace in the United States for more than 75% of their workdays
- Professional athletes participating in a charitable sports event held in the United States

Note. See IRC §7701(b) and Treas. Reg. §301.7701(b)-3(b) for further guidance on exempt individuals. The regulation includes further details, rules, and limitations on some of these exemptions.

26. Treas. Reg. §301.7701(b)-3(b).

Additional Qualifications for SFOP. In addition to meeting the common qualification factors and the nonresidency test, the taxpayer qualifies for the SFOP if they also:

- Failed to report gross income from a foreign financial asset and pay the tax on that income as required under U.S. law and may have failed to file one or more FinCEN Forms 114; and
- Did not willfully fail to report the income, pay tax, and file the required FinCEN Forms 114.

Disclosure Under SFOP. For each of the most recent three years for which the tax return due date has passed, the taxpayer must either submit a delinquent tax return (if no return was previously filed), or submit an amended tax return using Form 1040X, *Amended U.S. Individual Income Tax Return* (if a return has previously been filed).

> **Observation.** Taxpayers using the SDOP must have filed returns for the past three years in order to qualify. However, there is no requirement to have filed returns for the past three years in order to qualify for the SFOP. In addition, under the SFOP rules for nonresidents, the taxpayer can file delinquent returns to comply with U.S. income tax filing obligations as well as foreign financial asset reporting and disclosure obligations.

In addition, the following actions are required.

- Write "Streamlined Foreign Offshore" in red ink at the top of the first page of all delinquent returns or Forms 1040X and at the top of each information return.
- Complete and sign Form 14653, *Certification by U.S. Person Residing Outside of the United States for Streamlined Foreign Offshore Procedures* (shown later).
- Pay all tax due, along with statutory interest, shown on the delinquent returns and/or Forms 1040X. Include the taxpayer identification number (TIN) on the check.
- File any delinquent FinCEN Forms 114 electronically for each of the most recent six years for which the FinCEN Form 114 due date has passed. (Include a statement explaining that these forms are being filed as part of the SFOP.)

The taxpayer must also submit any delinquent international information returns with the delinquent tax returns or amended tax returns. Those international information returns must accompany the Forms 1040 or 1040X submitted, even if the instructions would normally require a separate filing.

All returns, amended returns, international information returns, attachments, related documents, and payment **must be submitted in paper form** and sent to the following address.[27]

Internal Revenue Service
3651 South I-H 35
Stop 6063 AUSC
Attn: Streamlined Foreign Offshore
Austin, TX 78741

27. *U.S. Taxpayers Residing Outside the United States.* Aug. 12, 2015. IRS. [www.irs.gov/individuals/international-taxpayers/u-s-taxpayers-residing-outside-the-united-states] Accessed on Jun. 16, 2016.

Note. For further details regarding the submission of returns under the SFOP, including the requirement to submit payment of any tax due along with the "miscellaneous offshore penalty," see **uofi.tax/16a5x9** [www.irs.gov/Individuals/International-Taxpayers/U-S-Taxpayers-Residing-Outside-the-United-States] and **uofi.tax/16a5x10** [www.irs.gov/Individuals/International-Taxpayers/Streamlined-Filing-Compliance-Procedures-for-U-S--Taxpayers-Residing-Outside-the-United-States-Frequently-Asked-Questions-and-Answers]. It is prudent to check these IRS web pages for changes in the qualifying factors and terms of the SFOP before using this program because the IRS may make changes to the program at any time.

Observation. Use of the SDOP involves payment of a 5% penalty that does not apply with the use of the SFOP.

Form 14653 is shown next.

Observation. Form 14653 is more comprehensive than the Form 14654, *Certification by U.S. Person Residing in the United States for Streamlined Domestic Offshore Procedures,* used for the SFOP. Unlike Form 14653, Form 14654 asks several questions about the taxpayer's foreign assets and requires calculation of the 5% penalty applicable under the SDOP. Both forms require a detailed statement from the taxpayer regarding the failure to fully comply with applicable tax rules.

Form **14653** (February 2016)	Department of the Treasury - Internal Revenue Service **Certification by U.S. Person Residing Outside of the United States for Streamlined Foreign Offshore Procedures**	OMB Number 1545-2241

Name(s) of taxpayer(s)		TIN(s) of taxpayer(s)	Telephone number	
Mailing address	City		State	ZIP code

Note: If this certification is a joint certification, the statements will be considered made on behalf of both spouses, even though the pronoun "I" is used. If spouses submitting a joint certification have different reasons for their failure to report all income, pay all tax, and submit all required information returns, including FBARs, they must state their individual reasons separately in the required statement of facts.

Certification

I am providing delinquent or amended income tax returns, including all required information returns, for each of the most recent 3 years for which the U.S. tax return due date (or properly applied for extended due date) has passed. The tax and interest I owe for each year are as follows

Year *(list years in order)*	Amount of Tax I Owe *(Form 1040, line 76, or Form 1040X, line 19)*	Interest	Total
			$0.00
			$0.00
			$0.00
Total	$0.00	$0.00	$0.00

Note: Your payment should equal the total tax and interest due for all three years. You may receive a balance due notice or a refund if the tax or interest is not calculated correctly.

I failed to report income from one or more foreign financial assets during the above period.

I meet all the other eligibility requirements for the Streamlined Foreign Offshore procedures.

If I failed to timely file correct and complete FBARs for any of the last six years, I have now electronically filed those FBARs.

I agree to retain all records related to my income and assets during the period covered by my delinquent or amended returns until three years from the date of this certification. If I was required to file delinquent FBARs in accordance with these procedures, I also agree to retain all records (including, but not limited to, account statements) related to my foreign financial accounts until six years from the date of this certification. Upon request, I agree to provide all such records to the Internal Revenue Service.

My failure to report all income, pay all tax, and submit all required information returns, including FBARs, was due to non-willful conduct. I understand that non-willful conduct is conduct that is due to negligence, inadvertence, or mistake or conduct that is the result of a good faith misunderstanding of the requirements of the law.

I recognize that if the Internal Revenue Service receives or discovers evidence of willfulness, fraud, or criminal conduct, it may open an examination or investigation that could lead to civil fraud penalties, FBAR penalties, information return penalties, or even referral to Criminal Investigation.

I meet the non-residency requirements for the Streamlined Foreign Offshore procedures as disclosed below.

Note: Both spouses filing a joint certification must meet the non-residency requirements.

Complete one of the following (two) sections regarding your residency status

If you are a U.S. citizen or lawful permanent resident (i.e., "green card holder"), complete this section:

For the covered tax period, indicate whether you were physically outside the United States for each year. You must have been physically outside the U.S. for at least 330 full days in any one or more of the most recent three years for which the U.S. tax return due date (or properly applied for extended due date) has passed, and you must not have had a U.S. abode. For more information on the meaning of "abode" see IRS Publication 54.

I was physically outside the United States for at least 330 full days *(answer Yes or No for each year)*

Year	Yes	No
	☐	☐
	☐	☐
	☐	☐

Catalog Number 67042A www.irs.gov Form **14653** (Rev. 2-2016)

5

Both spouses filing a joint certification must meet the non-residency requirement. If the number of days physically outside of the U.S. differs for each spouse, disclose that on the chart above or in an attachment to this certification.

If you are not a U.S. citizen or lawful permanent resident, complete this section:

If you are not a U.S. citizen or a lawful permanent resident, please attach to this certification your computation showing that you did not meet the substantial presence test under I.R.C. sec. 7701(b)(3). Your computation must disclose the number of days you were present in the U.S. for the three years included in your Streamlined Foreign Offshore Procedures submission and the previous two years. If you do not attach a complete computation showing that you did not meet the substantial presence test, your submission will be considered incomplete and your submission will not qualify for the Streamlined Foreign Offshore Procedures.

Both spouses filing a joint certification must meet the non-residency requirement. If the number of days inside the U.S. differs for each spouse, disclose that on the chart above or in an attachment to this certification.

Note: You must provide specific facts on this form or on a signed attachment explaining your failure to report all income, pay all tax, and submit all required information returns, including FBARs. Any submission that does not contain a narrative statement of facts will be considered incomplete and will not qualify for the streamlined penalty relief.

Provide specific reasons for your failure to report all income, pay all tax, and submit all required information returns, including FBARs. Include the whole story including favorable and unfavorable facts. Specific reasons, whether favorable or unfavorable to you, should include your personal background, financial background, and anything else you believe is relevant to your failure to report all income, pay all tax, and submit all required information returns, including FBARs. Additionally, explain the source of funds in all of your foreign financial accounts/assets. For example, explain whether you inherited the account/asset, whether you opened it while residing in a foreign country, or whether you had a business reason to open or use it. And explain your contacts with the account/asset including withdrawals, deposits, and investment/ management decisions. Provide a complete story about your foreign financial account/asset. If you relied on a professional advisor, provide the name, address, and telephone number of the advisor and a summary of the advice. If married taxpayers submitting a joint certification have different reasons, provide the individual reasons for each spouse separately in the statement of facts. The field below will automatically expand to accommodate your statement of facts.

Under penalties of perjury, I declare that I have examined this certification and all accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

Signature of Taxpayer	Name of Taxpayer	Date
Signature of Taxpayer *(if joint certification)*	Name of Taxpayer *(if joint certification)*	Date

Catalog Number 67042A www.irs.gov Form **14653** (Rev. 2-2016)

For Estates Only

Signature of Fiduciary	Date

Title of Fiduciary *(e.g., executor or administrator)*	Name of Fiduciary

For Paid Preparer Use Only *(the signature of taxpayer(s) or fiduciary is required even if this form is signed by a paid preparer)*

Signature of Preparer	Name of Preparer		Date
Firm's name			Firm's EIN
Firm's address	City	State	ZIP code
Telephone number	PTIN		☐ Check if Self-Employed

Do you want to allow another person to discuss this form with the IRS ☐ Yes *(complete information below)* ☐ No

Designee's name	Telephone number

Privacy Act and Paperwork Reduction Notice

We ask for the information on this certification by U.S. person residing in the United States for streamlined domestic offshore procedures to carry out the Internal Revenue laws of the United States. Our authority to ask for information is sections 6001, 6109, 7801, 7803 and the regulations thereunder. This information will be used to determine and collect the correct amount of tax under the terms of the streamlined filing compliance program. You are not required to apply for participation in the streamlined filing compliance program. If you choose to apply, however, you are required to provide all the information requested on the streamlined certification. You are not required to provide the information requested on a document that is subject to the Paperwork Reduction Act unless the document displays a valid OMB control number. Books or records relating to a document or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103. Section 6103, however, allows or requires the Internal Revenue Service to disclose or give this information to others as described in the Internal Revenue Code. For example, we may disclose this information to the Department of Justice to enforce the tax laws, both civil and criminal, and to cities, states, the District of Columbia, and U.S. commonwealths or possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. Failure to provide this information may delay or prevent processing your application. Providing false information may subject you to penalties. The time needed to complete and submit the streamlined certification will vary depending on individual circumstances. The estimated average time is: 8 hours

Streamlined Domestic Offshore Procedures (SDOP)[28]

Taxpayers meeting the common qualification factors (described earlier) can use the SDOP if the taxpayer also:

- Does not meet the applicable nonresidency test;
- Has filed U.S. tax returns (if required) for the most recent three years for which the return due date has passed;
- Failed to report gross income from a foreign financial asset and pay the tax on that income as required under U.S. law, and may have failed to file FinCEN Form 114 and/or one or more international information returns (such as Forms 3520, 3520-A, 5471, 5472, 8938, 926, and 8621); and
- Did not willfully fail to report gross income, pay required tax, and file FinCEN Form 114 or international information returns.

Taxpayers that qualify for the SDOP **must take all of the following actions** in order to comply with foreign financial account disclosure requirements.

- File amended returns using Form 1040X. The taxpayer must include delinquent international information returns with a Form 1040X for each of the most recent three years for which the tax return due date has passed. Information returns for the 3-year period must be filed with Form 1040X even if the instructions to the information returns specify a separate filing.

Note. The SDOP cannot be used to file a delinquent Form 1040. If the taxpayer has delinquent tax returns in any of the previous three tax years covered under these rules, the taxpayer does not qualify for the SDOP.

- Write "Streamlined Domestic Offshore" in red at the top of the first page of all Forms 1040X.
- Complete and sign Form 14654.
- Pay all tax due, along with the statutory interest that applies to each of the late payment amounts shown on the Forms 1040X. Include the TIN on the check.
- Pay the Title 26 **miscellaneous offshore penalty.**

Note. For additional details on the miscellaneous offshore penalty, including an example of how this penalty is calculated, see Question 8 of the IRS OVDP Frequently Asked Questions webpage found at **uofi.tax/16a5x2** [www.irs.gov/Individuals/International-Taxpayers/Offshore-Voluntary-Disclosure-Program-Frequently-Asked-Questions-and-Answers-2012-Revised].

- File any delinquent FinCEN Forms 114 (or Forms TD F 90-22.1 for years before 2013) for each of the most recent six years for which the form due date has passed. For each form, "Streamlined Filing Compliance Procedures" should be stated as the reason the forms are filed late.

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28. *U.S. Taxpayers Residing in the United States.* Sep. 25, 2015. IRS. [www.irs.gov/Individuals/International-Taxpayers/U-S-Taxpayers-Residing-in-the-United-States] Accessed on May 11, 2016.

The Forms 1040X, international information returns, attachments, related documents, and payment must be submitted in **paper** form to the following address.[29]

Internal Revenue Service
3651 South I-H 35
Stop 6063 AUSC
Attn: Streamlined Domestic Offshore
Austin, TX 78741

Note. For further details regarding taxpayers with certain foreign retirement plans and the submission of returns under the SDOP, including the requirement to submit payment of any tax due along with the payment of the miscellaneous offshore penalty, see **uofi.tax/16a5x11** [www.irs.gov/Individuals/International-Taxpayers/U-S-Taxpayers-Residing-in-the-United-States] and **uofi.tax/16a5x12** [www.irs.gov/Individuals/International-Taxpayers/Streamlined-Filing-Compliance-Procedures-for-U-S-Taxpayers-Residing-in-the-United-States-Frequently-Asked-Questions-and-Answers]. It is prudent to check these IRS web pages for changes in the qualifying factors and terms of the SDOP before using this program because the IRS may make changes to the program at any time.

Form 14654 is shown next.

29. *U.S. Taxpayers Residing in the United States*. Sep. 25, 2015. IRS. [www.irs.gov/individuals/international-taxpayers/u-s-taxpayers-residing-in-the-united-states] Accessed on Jun. 16, 2016.

Form **14654** (February 2016)

Department of the Treasury - Internal Revenue Service

Certification by U.S. Person Residing in the United States for Streamlined Domestic Offshore Procedures

OMB Number 1545-2241

Name(s) of taxpayer(s)	TIN(s) of taxpayer(s)	Telephone number	
Mailing address	City	State	ZIP code

Note: If this certification is a joint certification, the statements will be considered made on behalf of both spouses, even though the pronoun "I" is used. If spouses submitting a joint certification have different reasons for their failure to report all income, pay all tax, and submit all required information returns, including FBARs, they must state their individual reasons separately in the required statement of facts.

Certification

I am providing amended income tax returns, including all required information returns, for each of the most recent 3 years for which the U.S. tax return due date (or properly applied for extended due date) has passed. I previously filed original tax returns for these years. The tax and interest I owe for each year are as follows

Year *(list years in order)*	Amount of Tax I Owe *(Form 1040X, line 19)*	Interest	Total
			$0.00
			$0.00
			$0.00
Total	$0.00	$0.00	$0.00

I failed to report income from one or more foreign financial assets during the above period.

I meet all the eligibility requirements for the Streamlined Domestic Offshore procedures.

If I failed to timely file correct and complete FBARs for any of the last 6 years, I have now electronically filed those FBARs.

During each year in either my 3-year covered tax return period or my 6-year covered FBAR period, my foreign financial assets subject to the 5% miscellaneous offshore penalty were as follows

Year

Name, City, and Country of Financial Institution/Description of Asset	Account Number	Year Account Was Opened or Asset Was Acquired	Year-End Balance/ Asset Value *(state in US Dollars)*
Total			$0.00

If you held no assets subject to the 5% miscellaneous offshore penalty during this year enter "N/A" next to "Total" in the above table. Attach a continuation sheet if necessary. If you attach a continuation sheet, it must be signed with taxpayer name(s) and TIN(s) printed.

Year

Name, City, and Country of Financial Institution/Description of Asset	Account Number	Year Account Was Opened or Asset Was Acquired	Year-End Balance/ Asset Value *(state in US Dollars)*
Total			$0.00

If you held no assets subject to the 5% miscellaneous offshore penalty during this year enter "N/A" next to "Total" in the above table. Attach a continuation sheet if necessary. If you attach a continuation sheet, it must be signed with taxpayer name(s) and TIN(s) printed.

Year

Name, City, and Country of Financial Institution/Description of Asset	Account Number	Year Account Was Opened or Asset Was Acquired	Year-End Balance/ Asset Value *(state in US Dollars)*
Total			$0.00

If you held no assets subject to the 5% miscellaneous offshore penalty during this year enter "N/A" next to "Total" in the above table. Attach a continuation sheet if necessary. If you attach a continuation sheet, it must be signed with taxpayer name(s) and TIN(s) printed.

Year

Name, City, and Country of Financial Institution/Description of Asset	Account Number	Year Account Was Opened or Asset Was Acquired	Year-End Balance/ Asset Value *(state in US Dollars)*
Total			$0.00

If you held no assets subject to the 5% miscellaneous offshore penalty during this year enter "N/A" next to "Total" in the above table. Attach a continuation sheet if necessary. If you attach a continuation sheet, it must be signed with taxpayer name(s) and TIN(s) printed.

Year

Name, City, and Country of Financial Institution/Description of Asset	Account Number	Year Account Was Opened or Asset Was Acquired	Year-End Balance/ Asset Value *(state in US Dollars)*
Total			$0.00

If you held no assets subject to the 5% miscellaneous offshore penalty during this year enter "N/A" next to "Total" in the above table. Attach a continuation sheet if necessary. If you attach a continuation sheet, it must be signed with taxpayer name(s) and TIN(s) printed.

Year

Name, City, and Country of Financial Institution/Description of Asset	Account Number	Year Account Was Opened or Asset Was Acquired	Year-End Balance/ Asset Value *(state in US Dollars)*
Total			$0.00

If you held no assets subject to the 5% miscellaneous offshore penalty during this year enter "N/A" next to "Total" in the above table. Attach a continuation sheet if necessary. If you attach a continuation sheet, it must be signed with taxpayer name(s) and TIN(s) printed.

Year

Name, City, and Country of Financial Institution/Description of Asset	Account Number	Year Account Was Opened or Asset Was Acquired	Year-End Balance/ Asset Value *(state in US Dollars)*
Total			$0.00

If you held no assets subject to the 5% miscellaneous offshore penalty during this year enter "N/A" next to "Total" in the above table. Attach a continuation sheet if necessary. If you attach a continuation sheet, it must be signed with taxpayer name(s) and TIN(s) printed.

Catalog Number 67044W www.irs.gov Form **14654** (Rev. 2-2016)

5

Year

Note: Use this seventh year only if your 3-year covered tax return period does not completely overlap with your 6-year covered FBAR period (for example, if your 3-year covered tax return period is 2011 through 2013 because the due date for your 2013 tax return is passed, but your covered FBAR period is 2007 through 2012 because the due date for the 2013 FBAR has not passed).

Name, City, and Country of Financial Institution/Description of Asset	Account Number	Year Account Was Opened or Asset Was Acquired	Year-End Balance/ Asset Value *(state in US Dollars)*
Total			$0.00

If you held no assets subject to the 5% miscellaneous offshore penalty during this year enter "N/A" next to "Total" in the above table. Attach a continuation sheet if necessary. If you attach a continuation sheet, it must be signed with taxpayer name(s) and TIN(s) printed.

The assets listed in this certification are my only foreign financial assets subject to the 5% miscellaneous offshore penalty.

My penalty computation is as follows

Highest Account Balance/Asset Value *(enter the highest total balance/ asset value among the years listed above)*	
Miscellaneous Offshore Penalty *(Highest Account Balance/Asset Value from above multiplied by 5%)*	

My payment information is as follows

Total Tax and Interest Due	
Miscellaneous Offshore Penalty	
Total Payment	

Note: Your payment should equal the total tax and interest due for all three years, plus the miscellaneous offshore penalty. You may receive a balance due notice or a refund if the tax, interest, or penalty is not calculated correctly.

In consideration of the Internal Revenue Service's agreement not to assert other penalties with respect to my failure to report foreign financial assets as required on FBARs or Forms 8938 or my failure to report income from foreign financial assets, I consent to the immediate assessment and collection of a Title 26 miscellaneous offshore penalty for the most recent of the three tax years for which I am providing amended income tax returns. I waive all defenses against and restrictions on the assessment and collection of the miscellaneous offshore penalty, including any defense based on the expiration of the period of limitations on assessment or collection. I waive the right to seek a refund or abatement of the miscellaneous offshore penalty.

I agree to retain all records (including, but not limited to, account statements) related to my assets subject to the 5% miscellaneous offshore penalty until six years from the date of this certification. I also agree to retain all records related to my income and assets during the period covered by my amended income tax returns until three years from the date of this certification. Upon request, I agree to provide all such records to the Internal Revenue Service.

My failure to report all income, pay all tax, and submit all required information returns, including FBARs, was due to non-willful conduct. I understand that non-willful conduct is conduct that is due to negligence, inadvertence, or mistake or conduct that is the result of a good faith misunderstanding of the requirements of the law.

I recognize that if the Internal Revenue Service receives or discovers evidence of willfulness, fraud, or criminal conduct, it may open an examination or investigation that could lead to civil fraud penalties, FBAR penalties, information return penalties, or even referral to Criminal Investigation.

Note: You must provide specific facts on this form or on a signed attachment explaining your failure to report all income, pay all tax, and submit all required information returns, including FBARs. Any submission that does not contain a narrative statement of facts will be considered incomplete and will not qualify for the streamlined penalty relief.

Catalog Number 67044W   www.irs.gov   Form **14654** (Rev. 2-2016)

Provide specific reasons for your failure to report all income, pay all tax, and submit all required information returns, including FBARs. Include the whole story including favorable and unfavorable facts. Specific reasons, whether favorable or unfavorable to you, should include your personal background, financial background, and anything else you believe is relevant to your failure to report all income, pay all tax, and submit all required information returns, including FBARs. Additionally, explain the source of funds in all of your foreign financial accounts/assets. For example, explain whether you inherited the account/asset, whether you opened it while residing in a foreign country, or whether you had a business reason to open or use it. And explain your contacts with the account/asset including withdrawals, deposits, and investment/ management decisions. Provide a complete story about your foreign financial account/asset. If you relied on a professional advisor, provide the name, address, and telephone number of the advisor and a summary of the advice. If married taxpayers submitting a joint certification have different reasons, provide the individual reasons for each spouse separately in the statement of facts. The field below will automatically expand to accommodate your statement of facts.

Under penalties of perjury, I declare that I have examined this certification and all accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

Signature of Taxpayer	Name of Taxpayer	Date
Signature of Taxpayer *(if joint certification)*	Name of Taxpayer *(if joint certification)*	Date

Catalog Number 67044W www.irs.gov Form **14654** (Rev. 2-2016)

For Estates Only

Signature of Fiduciary		Date
Title of Fiduciary *(e.g., executor or administrator)*	Name of Fiduciary	

For Paid Preparer Use Only *(the signature of taxpayer(s) or fiduciary is required even if this form is signed by a paid preparer)*

Signature of Preparer	Name of Preparer		Date
Firm's name			Firm's EIN
Firm's address	City	State	ZIP code
Telephone number	PTIN		☐ Check if Self-Employed

Do you want to allow another person to discuss this form with the IRS ☐ Yes *(complete information below)* ☐ No

Designee's name	Telephone number

Privacy Act and Paperwork Reduction Notice

We ask for the information on this certification by U.S. person residing in the United States for streamlined domestic offshore procedures to carry out the Internal Revenue laws of the United States. Our authority to ask for information is sections 6001, 6109, 7801, 7803 and the regulations thereunder. This information will be used to determine and collect the correct amount of tax under the terms of the streamlined filing compliance program. You are not required to apply for participation in the streamlined filing compliance program. If you choose to apply, however, you are required to provide all the information requested on the streamlined certification. You are not required to provide the information requested on a document that is subject to the Paperwork Reduction Act unless the document displays a valid OMB control number. Books or records relating to a document or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103. Section 6103, however, allows or requires the Internal Revenue Service to disclose or give this information to others as described in the Internal Revenue Code. For example, we may disclose this information to the Department of Justice to enforce the tax laws, both civil and criminal, and to cities, states, the District of Columbia, and U.S. commonwealths or possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. Failure to provide this information may delay or prevent processing your application. Providing false information may subject you to penalties. The time needed to complete and submit the streamlined certification will vary depending on individual circumstances. The estimated average time is: 8 hours

COORDINATION BETWEEN STREAMLINED PROGRAMS AND OVDP[30]

If the taxpayer participates in either the SDOP or SFOP, they **may not participate** in the OVDP. Generally, taxpayers who submitted a voluntary disclosure letter for the OVDP on or after July 1, 2014, are not eligible for the SDOP or SFOP.

If a taxpayer already submitted a voluntary disclosure letter before July 1, 2014, and that taxpayer qualifies for the SDOP or SFOP, the taxpayer may request at any time before full execution of the OVDP closing agreement that the SDOP or SFOP penalty terms be used in their OVDP assessment. The IRS considers these requests in light of the facts and circumstances of the taxpayer's case. Although it is not necessary to opt out of the OVDP in order to receive transitional treatment and obtain a more favorable penalty structure under the SDOP or SFOP, certification of nonwillful conduct is required to do so.[31]

> **Note.** For further information on coordination and transition rules associated with the OVDP and other programs, see **uofi.tax/16a5x13** [www.irs.gov/Individuals/International-Taxpayers/Transition-Rules-Frequently-Asked-Questions-FAQs].

IRS RESPONSE TO IDENTITY THEFT

The IRS continues to aggressively combat identity theft associated with processing tax returns and issuing tax refunds. In the first 11 months of 2015, the IRS detected possible identity theft issues with 4.8 million returns. These returns were either rejected or suspended before final processing.

The IRS increased the number of internal filters it uses to identify fraudulent returns from 114 in 2014 to 196 in 2015.[32] These safeguards helped the IRS prevent a total of $10.9 billion in fraudulent refunds being issued due to identity theft and other types of fraud within the first 11 months of 2015.[33]As the IRS develops new initiatives to fight identity theft, the identity theft problem tops the IRS's annual "dirty dozen" list of scams for 2016.[34]

30. *Streamlined Filing Compliance Procedures.* Aug. 6, 2015. IRS. [www.irs.gov/individuals/international-taxpayers/streamlined-filing-compliance-procedures] Accessed on Jun. 2, 2016; *Transition Rules: Frequently Asked Questions (FAQs).* Apr. 8, 2016. [www.irs.gov/individuals/international-taxpayers/transition-rules-frequently-asked-questions-faqs] Accessed on Jun. 2, 2016.

31. *Transition Rules: Frequently Asked Questions (FAQs).* Apr. 8, 2016. IRS. [www.irs.gov/individuals/international-taxpayers/transition-rules-frequently-asked-questions-faqs] Accessed on Jun. 2, 2016.

32. *Tax Schemes and Scams During the 2015 Filing Season.* Mar. 12, 2015. Treasury Inspector General for Tax Administration. [www.treasury.gov/tigta/congress/congress_03122015.pdf] Accessed on Jun. 1, 2016.

33. *IRS, States and Tax Industry Combat Identity Theft and Refund Fraud on Many Fronts.* Jan. 14, 2016. IRS. [www.irs.gov/uac/Newsroom/IRS,-States-and-Tax-Industry-Combat-Identity-Theft-and-Refund-Fraud-on-Many-Fronts] Accessed on May 2, 2016.

34. *Identity Theft an Ongoing Concern on the IRS Annual "Dirty Dozen" List of Tax Scams to Avoid.* Feb. 1, 2016. IRS. [www.irs.gov/uac/Newsroom/Identity-Theft-an-Ongoing-Concern-on-the-IRS-Annual-Dirty-Dozen-List-of-Tax-Scams-to-Avoid] Accessed on Mar. 3, 2016.

COLLABORATIVE RECOMMENDATIONS[35]

During March 2015, IRS officials, chief executive officers of leading tax preparation firms, software developers, payroll and tax financial product processors, and state tax administrators came together at a **security summit.** The purpose of the summit was to make recommendations to combat tax-related identity theft. As a result of the summit, the following groups originated.

- **Authentication Work Group.** The group agreed to increase verification of taxpayer and return authenticity at the time of filing. The team identified and successfully tested 20 new data elements from tax return submissions to detect and prevent identity theft returns. These elements will be transmitted to the IRS and state revenue departments with the tax return. No single element can be relied on to determine whether the return is from a legitimate taxpayer or from an identity thief. However, these elements will be used in conjunction with the IRS and state filters to allow for stronger pre-refund authentication and fraud detection.[36] Some of the elements include the following.

    - Reviewing the transmission of tax returns, including improper or repetitive use of Internet protocol (the Internet "address" from which the return is being sent) to determine if one person may be filing multiple returns
    - Reviewing computer identification data tied to the return's origin
    - Reviewing the time it takes to complete a tax return so computer mechanized fraud can be detected (an unreasonably quick preparation time may indicate the return was automatically generated by a computer)
    - Capturing metadata in the computer transaction to allow review for identity theft fraud

    The authentication work group reached agreements with software providers to enhance identity requirements and strengthen validation procedures to protect against account takeovers by criminals. These enhancements include the following.

    - New password standards to access tax returns require a minimum of eight characters with uppercase, lowercase, alpha, numerical, and special characters
    - New timed lockout feature and a limited number of unsuccessful login attempts
    - Addition of three security questions
    - Out-of-band verification for email addresses (sending an email or text to the customer with a PIN)

- **Strategic Threat Assessment and Response (STAR) Work Group.** The STAR work group aligns tax industry participants with the IRS and the states under the National Institute of Standards and Technology (NIST) cybersecurity framework. The NIST cybersecurity framework consists of standards, guidelines, and practices to promote the protection of critical information technology (IT) infrastructures. The framework provides for a prioritized, flexible, repeatable, and cost-effective approach to help manage risks relating to cybersecurity.[37] New steps include the following.

    - Holding a preliminary meeting with NIST to develop a strategy for the larger STAR audience
    - Conducting NIST information session on the cybersecurity framework
    - Conducting follow-up sessions to develop a strategy for how the NIST cybersecurity framework will be applied for all organizations within the tax industry

35. *IRS, States and Industry Partners Provide Update on Collaborative Fight Against Tax-Related Identity Theft.* Oct. 20, 2015. IRS. [www.irs.gov/uac/Newsroom/IRS,-States-and-Industry-Partners-Provide-Update-on-Collaborative-Fight-Against-Tax-Related-Identity-Theft] Accessed on Jan. 29, 2016.

36. *2015 Security Summit: Protecting Taxpayers from Identity Theft Tax Refund Fraud.* IRS. [www.irs.gov/PUP/newsroom/2015%20Security%20Summit%20Report.pdf] Accessed on Feb. 4, 2016.

37. Ibid.

- **Information Sharing Work Group.** This group establishes the Information Sharing and Analysis Center (explained in detail later). Other tasks include the following.
  - Updating IRS Pubs. 1345 and 3112 for filing season 2016 to require electronic filing (e-file) providers who file 2,000 or more returns to perform research and analysis and provide any identity theft data to the IRS and states (Under the previous voluntary external leads program, the IRS identified emerging identity theft trends by aggregating tax returns and reviewing the returns for fraud patterns or schemes. By requiring all e-file providers to perform post-filing analytics and provide anonymous and aggregated data to the IRS on a recurring and timely basis, the IRS can bolster fraud detection and prevention efforts.[38])
  - Like-kind requirements for states to share data and lead reporting for 2016 to the IRS
  - Acting as a conduit and facilitating industry data sharing with the states
  - Creating a new memo of understanding regarding the roles, responsibilities, and information sharing pathways between states and industry (Thus far, 34 state departments of revenue and 20 tax industry members have aligned with the IRS and endorsing organizations.)
- **Information Sharing and Analysis Center Subgroup.** This group is responsible for centralizing, standardizing, and enhancing data compilation and analysis to facilitate sharing actionable information. The target date for operations is filing season 2017.
- **Financial Services Work Group.** This group examines and explores additional ways to prevent and deter criminals from potentially accessing financial products, deposit accounts, and prepaid debit cards.
- **Communication and Taxpayer Awareness Work Group.** This group increases awareness among individuals, businesses, and tax professionals on the need to protect sensitive data and financial information. This group encourages people to protect themselves from identity theft by taking the following actions.[39]
  - Using security software to protect computers, including firewalls, virus/malware protection, and encryption for sensitive information
  - Being aware of phishing emails and phone scams
  - Protecting personal information by taking measures such as not carrying documents with a social security number (SSN), shredding sensitive documents, checking credit reports, and not sharing personal information on social media
- **Tax Professional Work Group.** This group examines the following.
  - The impact of the new tax software requirements on tax preparers
  - The effect on the preparer community of the overall data capture and reporting requirements
  - The preparer community's contribution to the prevention of identity theft and refund fraud

> **Note.** Because of the sensitive nature of the topic, only general details of the recommendations are made public.

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38. Ibid.

39. *IRS, States and Tax Industry Announce New Steps to Help Public to Protect Personal Tax Data.* Nov. 19, 2015. IRS. [www.irs.gov/uac/Newsroom/IRS,-States-and-Tax-Industry-Announce-New-Steps-to-Help-Public-to-Protect-Personal-Tax-Data] Accessed on Mar. 3, 2016; IRS Pub. 4524, *Taxes. Security. Together.*

DRIVER'S LICENSES[40]

The IRS does not require a driver's license to file tax returns. States with the ability to match state records and confirm the taxpayer's identity may request a driver's license number. The driver's license serves as an additional layer of protection against thieves who may have a taxpayer's name and SSN but not their driver's license number.

FORM W-2 VERIFICATION[41]

Starting with the 2016 filing season, the IRS is testing a capability to verify the authenticity of data on Form W-2, *Wage and Tax Statement,* submitted by taxpayers on e-filed returns. The IRS is partnering with certain payroll service providers to include a 16-digit code and a new verification code field on a limited number of Forms W-2 provided to employees. The code is displayed in four groups of four alphanumeric characters, separated by hyphens (XXXX-XXXX-XXXX-XXXX).

The verification code appears on selected versions of Form W-2, copy B (filed with employee's federal tax return) and copy C (for employee's records). The form includes these instructions.

> *Verification Code. If this field is populated, enter this code when it is requested by your tax return preparation software. It is possible your software or preparer will not request the code. The code is not entered on paper-filed returns.*

The code is not included on any Form W-2 data submitted to the Social Security Administration or any state or local departments of revenue.

A taxpayer who receives a Form W-2 with a blank verification code does not need to enter any code data in their tax software. Because this is a "test-and-learn" review, omitted and incorrect verification codes will not delay return processing. At the conclusion of the pilot, the IRS will analyze the data to determine if it is useful in evaluating the integrity of Form W-2 information.

IP PIN

The IRS issues victims of identity theft an identity protection personal identification number (IP PIN). An IP PIN is a 6-digit number assigned to eligible taxpayers to prevent misuse of an SSN by confirming the identity of the taxpayer. Once the taxpayer is identified as needing an IP PIN, the IRS sends a new IP PIN each year by postal mail. A taxpayer cannot opt out after they receive an IP PIN. Taxpayers should only use the current year IP PIN for all filings during the year, both current and delinquent. For MFJ returns, either spouse or both may require an IP PIN. The IRS rejects returns if the IP PIN is missing or incorrect. A return filed on paper with a missing or incorrect IP PIN delays processing.[42]

> **Caution.** Because of an IRS error, IP PIN notices dated January 4, 2016, had the incorrect year listed. The IP PIN is valid for the 2015 tax year.[43]

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40. *How New Security Safeguards will Affect You for 2016.* Jan. 21, 2016. IRS. [www.irs.gov/Individuals/New-Security-Safeguards] Accessed on Feb. 5, 2016.

41. *IRS Tests W-2 Verification Code for Filing Season 2016.* Nov. 10, 2015. IRS. [www.irs.gov/Individuals/IRS-Tests-W-2-Verification-Code] Accessed on Mar. 3, 2016.

42. *How New Security Safeguards will Affect You in 2016.* Jan. 21, 2016. IRS. [www.irs.gov/Individuals/New-Security-Safeguards] Accessed on Feb. 5, 2016; *Get An Identity Protection PIN (IP PIN).* Jan. 25, 2016. IRS. [www.irs.gov/Individuals/Get-An-Identity-Protection-PIN] Accessed on Mar. 7, 2016.

43. *How New Security Safeguards will Affect You in 2016.* Jan. 21, 2016. IRS. [www.irs.gov/Individuals/New-Security-Safeguards] Accessed on Feb. 5, 2016.

As of March 2016, the IRS temporarily suspended the IP PIN program after its ongoing security review. In July 2016, the "Get an IP PIN" tool returned with a multi-factor authentication process to help prevent automated attacks.[44] A taxpayer must now verify their identity using a more rigorous process. This process requires a taxpayer to have the following.

- Immediate access to an email address
- Account information from a credit card or loan
- A text-enabled mobile phone

Taxpayers unable to retrieve their IP PIN online must call 800-908-4490 for specialized assistance. An assistor will verify the taxpayer's identity and mail the IP PIN to the address of record within 21 days.[45]

Note. Taxpayers must submit form 14039, *Identity Theft Affadavit,* to receive an IP PIN.

A taxpayer is eligible for an IP PIN if they:[46]

- Are a victim of identity theft and the IRS resolved the case;
- Filed their federal tax return last year as a resident of Florida, Georgia, or the District of Columbia; or
- Received an IRS letter to opt in to the IP PIN program.

RETURN REVIEW PROGRAM[47]

The IRS developed the return review program (RRP) in 2009 to identify potential identity theft tax returns. After initial success with the RRP pilot test during the 2014 processing year, the program was expanded for processing year 2015. By using the RRP, the IRS can change or adjust selection models during the processing year. The RRP provides the capability of changing models to identify new identity theft schemes as they emerge. The tactics criminals use are constantly evolving and the RRP allows the IRS to quickly adapt.

The Treasury Inspector General for Tax Administration (TIGTA) reports that the RRP still has security vulnerabilities. For example, a patch for the largest data breach during 2014 had not been installed more than six months after the vulnerability was identified. TIGTA recommends that the IRS resolve all critical and high-risk RRP vulnerabilities. The IRS agrees and is focusing on resolving the critical vulnerabilities in production.[48]

IDENTITY THEFT VICTIM ASSISTANCE ORGANIZATION[49]

In 2015, the IRS centralized most of its victim assistance efforts under the Identity Theft Victim Assistance organization. This allows the IRS to better serve victims and help reduce the time it takes to resolve a case. The average case takes 120 days to resolve, but complex cases can take longer.

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44. *IRS Statement on "Get an IP PIN" Tool.* Jul. 19, 2016. IRS. [www.irs.gov/uac/irs-statement-on-get-an-ip-pin-tool] Accessed on Aug. 1, 2016.

45. *Retrieve Your Identity Protection Pin (IP PIN).* Jul. 27, 2016. IRS. [www.irs.gov/individuals/retrieve-your-ip-pin] Accessed on Aug. 8, 2016.

46. *The Identity Protection PIN (IP PIN).* Jul. 27, 2016. IRS. [www.irs.gov/individuals/the-identity-protection-pin-ip-pin] Accessed on Aug. 8, 2016.

47. *Continued Refinement of the Return Review Program Identity Theft Detection Models Is Needed to Increase Detection.* Dec. 11, 2015. TIGTA. [www.treasury.gov/tigta/auditreports/2016reports/201640008fr.pdf] Accessed on Mar. 3, 2016; *IRS to Revamp Fraud Detection System for New Identity Theft Techniques*. Cohn, Michael. Jan. 28, 2016. AccountingToday. [www.accountingtoday.com/news/tax-practice/irs-to-revamp-fraud-detection-system-for-new-identity-theft-techniques-77073-1.html] Accessed on Mar. 3, 2016.

48. *The Return Review Program Enhances The Identification Of Fraud; However, System Security Needs Improvement.* Sep. 22, 2015. TIGTA. [www.treasury.gov/tigta/auditreports/2015reports/201520060fr.pdf] Accessed on Feb. 9, 2016.

49. *IRS, States and Tax Industry Combat Identity Theft and Refund Fraud on Many Fronts.* Jan. 14, 2016. IRS. [www.irs.gov/uac/Newsroom/IRS,-States-and-Tax-Industry-Combat-Identity-Theft-and-Refund-Fraud-on-Many-Fronts] Accessed on Mar. 3, 2016.

BREACHES

Despite the IRS's attempts to curb identity theft, multiple breaches occurred in the past year.

- **IRS's "Get Transcript" application.**[50] The application on IRS.gov was compromised in May 2015, with an estimated 724,000 taxpayer accounts accessed illegally. Criminals targeted an additional 295,000 accounts that were not accessed. The application allowed taxpayers to immediately view and download their tax transcript or have the transcript sent to their address. The site was taken down and the IRS notified the affected taxpayers. The IRS offered free identity theft protection services and IP PINs to the victims.

> **Note.** In June 2016, the IRS launched a more rigorous e-authentication process for the "Get Transcript" service.
>
> - **For taxpayers,** The IRS requires a 2-step authentication process to access the online tool. Taxpayers must have an email address, a text-enabled phone, and specific financial account information, such as a credit card or loan number. For first-time users, the IRS will email a confirmation code and text a one-time verification code necessary to access the application. Returning users who have not completed the new secure access process must submit a mobile phone number to receive an activation code via text to access the program. Taxpayers who cannot validate their identity (e.g., they cannot provide financial verification information or they lack access to a mobile phone) can use Get Transcript by Mail.[51]
> - **For practitioners,** the process to obtain transcripts under the provisions of a power of attorney has not substantially changed.

- **Form W-2 Phishing.**[52] Cybercriminals posing as company executives targeted payroll and human resources professionals to email payroll data, including Forms W-2, that contain SSNs and other personal information. The IRS reported a 400% surge in phishing and malware incidents during the first two months of the 2016 tax season. The IRS responded to the phishing attacks with a wide consumer alert for email schemes and continues to engage in a public awareness campaign to encourage everyone to protect their personal data.
- **E-Filing PIN application.**[53] In February 2016, the IRS identified unauthorized attempts to generate e-file PINs for stolen SSNs. Identity thieves used approximately 464,000 unique SSNs, of which 101,000 SSNs successfully accessed e-file PINs. Criminals obtained personal data elsewhere outside of the IRS to generate e-file PINs. The attack on IRS systems did not compromise any personal taxpayer data. The IRS took immediate steps to notify affected taxpayers by mail that their personal information was used in an attempt to access the IRS application. The IRS marked those taxpayer accounts to protect against tax-related identity theft.

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50. *IRS Statement On "Get Transcript."* Feb. 26, 2016. IRS. [www.irs.gov/uac/Newsroom/IRS-Statement-On-Get-Transcript] Accessed on Mar. 3, 2016; *Still more accounts found hacked in IRS "Get Transcript" breach.* Bonner, Paul. Feb. 26, 2016. Journal of Accountancy. [www.journalofaccountancy.com/news/2016/feb/irs-get-transcript-data-breach-worse-201613967.html] Accessed on Jun. 2, 2016.

51. IRS Fact Sheet 2016-20 (Jun. 2016).

52. *IRS Alerts Payroll and HR Professionals to Phishing Scheme Involving W-2s.* Mar. 1, 2016. IRS. [www.irs.gov/uac/Newsroom/IRS-Alerts-Payroll-and-HR-Professionals-to-Phishing-Scheme-Involving-W2s] Accessed on Mar. 3, 2016.

53. *IRS Statement on E-filing PIN.* Feb. 9, 2016. IRS. [www.irs.gov/uac/Newsroom/IRS-Statement-on-Efiling-PIN] Accessed on Mar. 7, 2016.

IRS FUTURE STATE INITIATIVE

Reduced funding for the IRS has resulted in deteriorating service and enforcement levels. Consequently, the IRS is exploring ways to provide the best possible taxpayer experience at a lower cost. The IRS calculates it costs them between $40 and $60 to interact with a taxpayer in person and less than $1 online.[54]

IRS Commissioner John Koskinen stated that the IRS's goal is to increase the availability and quality of self-service interactions to take the taxpayer experience to the next level.[55]

The IRS is launching the Future State Initiative to adapt to the changing needs of taxpayers. The initiative focuses on how to provide taxpayers with the services they need in a way that works for them. A key part of this effort is to provide taxpayers with a more complete online experience for IRS interactions.[56]

CHALLENGES[57]

In upgrading its service model, the IRS faces the following challenges.

- **Evolving taxpayer expectations.** Taxpayers are increasingly expressing a preference to communicate with the IRS through an interactive online experience.
- **Increasing complexity.** Changes to existing tax provisions and the addition of new provisions, often late in the year, make the tax system complex for the IRS, taxpayers, and tax professionals. New laws and credits expand the IRS's mission, often without additional funds or resources.
- **Combatting noncompliance, identity theft, and refund fraud.** Information and analytics are essential for detecting noncompliance and effectively allocating the IRS's finite resources. The increased frequency and sophistication of identity theft and refund fraud threatens the credibility of the entire tax system.
- **Coping with limited budgets.** The IRS is investigating methods to fulfill their mission through prudent planning and investment. Stopgap measures adversely affect employee retention and morale and increase maintenance costs.
- **Incorporating key stakeholder's perspectives.** Taxpayers, tax professionals, and IRS employees provide the IRS with regular advice and insight about how tax responsibilities can be satisfied in the Future State.

KEY FEATURES

For the Future State Initiative to become a reality, the IRS must invest in the right technology. By funding these technologies, the IRS's goal is to provide an improved experience for taxpayers and deliver IRS services efficiently and effectively. Accordingly, the IRS is working toward achieving the following key features of the taxpayer experience.

- Virtual taxpayer assistance
- Identity authentication
- Upfront issue identification
- End-to-end taxpayer experience
- Analytics

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54. *Planning for the Future of the Taxpayer Experience.* Feb. 10, 2016. IRS. [www.irs.gov/PUP/newsroom/FSTaxpayerInteraction.pdf] Accessed on Mar. 16, 2016.

55. *IRS Future State: Overview.* Feb. 2016. IRS. [www.irs.gov/PUP/newsroom/IRS%20Future%20State%20Journey_R.pdf] Accessed on Mar. 17, 2016; *Planning for the Future of the Taxpayer Experience.* Feb. 10, 2016. IRS. [www.irs.gov/PUP/newsroom/FSTaxpayerInteraction.pdf] Accessed on Mar. 16, 2016.

56. *Future State Initiative.* Feb. 22, 2016. IRS. [www.irs.gov/uac/Newsroom/Future-State-Initiative] Accessed on Mar. 16, 2016.

57. *IRS Future State: Overview.* Feb. 2016. IRS. [www.irs.gov/PUP/newsroom/IRS%20Future%20State%20Journey_R.pdf] Accessed on Mar. 17, 2016.

Virtual Taxpayer Assistance

Within a virtual taxpayer assistance center (TAC), taxpayers would have an account at the IRS where they, or their representative, could log in securely, access and control their account information, and communicate directly with the IRS. In their account history, a taxpayer could see return and refund statuses, payment confirmations, letters mailed, and completed actions. The easy-to-use self-service tools would have clear steps to resolve most errors and issues. A taxpayer under an IRS audit could upload information to address issues quickly. Phone calls or correspondence would not be necessary to handle uncomplicated account issues.[58]

Example 2. Merida forgot to include information for her child care credit on her 2015 tax return. Currently, she must prepare an amended return on paper and mail it to the IRS. In the future, Merida or her representative could log on to her IRS account and provide the information to resolve the issue. She could research how the tax law applies to her situation, digitally correct her account, upload supporting documents, and authorize tax payment or direct deposit of a refund.

Through the same communications channel, the IRS would send Merida a message that they received the information and that her account reflects the resolution. Merida could see that her tax records match the IRS's and that her tax responsibilities are fulfilled.[59]

Example 3. Ferdinand owns several Royal Dreams Bouncy-Castle franchises. He has just moved his offices, changed his tax practitioner, and hired a new finance manager. Rapid growth and change has made it harder to manage his taxes and stay current with emerging tax issues.

In the future, Ferdinand could use the virtual TAC to file estimated payroll taxes, research how to set up pensions for his employees, and get information on the new health care law. Ferdinand could authorize his finance and human resources managers and his tax representative to manage part or all of the company's tax data and account history.[60]

The virtual TAC is an extension of the physical TACs located throughout the United States. TACs provide taxpayers with in-person tax help when the taxpayer believes their issue cannot be handled online or by phone. Most TACs operate on a first-come, first-served basis. The IRS TAC may not be able to assist all taxpayers, especially during peak demand periods or taxpayers who arrive later in the day. Selected TACs could accept appointments that should help eliminate long lines and ensure the taxpayer's issue is resolved. The appointment process informs taxpayers in advance that they can get their requested service without waiting.[61]

Note. Taxpayers can find the nearest TAC by entering their zip code at **uofi.tax/16a5x14** [http://apps.irs.gov/app/officeLocator/index.jsp].

58. *Planning for the Future of the Taxpayer Experience.* Feb. 10, 2016. IRS. [www.irs.gov/PUP/newsroom/FSTaxpayerInteraction.pdf] Accessed on Mar. 16, 2016; *Future State Initiative.* Feb. 22, 2016. IRS. [www.irs.gov/uac/Newsroom/Future-State-Initiative] Accessed on Mar. 16, 2016.

59. Adapted from an example in *Planning for the Future of the Taxpayer Experience.* Feb. 10, 2016. IRS. [www.irs.gov/PUP/newsroom/FSTaxpayerInteraction.pdf] Accessed on Mar. 16, 2016.

60. Ibid.

61. *Contact Your Local IRS Office.* Apr. 7, 2016. IRS. [www.irs.gov/uac/Contact-Your-Local-IRS-Office-1] Accessed on May 3, 2016; IRS Pub. 5116, *Municipal Digest.*

The Future State will free up limited IRS in-person resources, such as phone lines. Therefore, the initiative will allow the IRS to more easily serve taxpayers and tax professionals who need one-on-one assistance.[62] While the IRS will offer more web-based services, taxpayers will still have access to toll-free helplines and the option to file tax returns on paper as long as some taxpayers prefer that option.[63]

The IRS could identify problems when the tax return is filed rather than contacting taxpayers years later. This could mitigate potential penalties and interest. In addition, noncompliance issues could be corrected without costly follow-up contacts or labor-intensive audits.[64]

Taxpayer benefits from the Future State initiative would include the following.[65]

- Taxpayers would have better tools to interact with the IRS.
- Taxpayers could easily manage their accounts, filings, correspondence, data, and payments.
- Virtual assistance and digital self-service tools could help taxpayers quickly identify issues and resolve errors.
- Taxpayers could visit a single place to get tax questions answered and tax issues addressed without potentially long waits in lines or phone queues.
- Taxpayers would have clear information that is directly relevant to the issue they are addressing and available to them where they need it.
- By giving the taxpayer access through a mobile smart-phone, laptop computer, or a self-service kiosk, the taxpayer would be empowered to take more active control of their tax account.
- The IRS could identify issues at the same time it identifies math errors, fraud, or identity theft. The IRS would communicate them upfront so the large majority of taxpayers could resolve even complex compliance issues within a year of filing their return or before they miss a payment.

Identity Authentication[66]

The IRS continues to work on ensuring taxpayers' private information is protected but needs to expand and evolve its capabilities to authenticate taxpayer identities and secure their data. The IRS must establish a secure environment and confirm that they are interacting with the correct person online or through mobile devices and applications.

Upfront Issue Identification[67]

Finding errors and issues at the time taxpayers file their returns is central to the virtual TAC. The IRS could take immediate action such as stopping an identity thief from stealing a refund or finding an unclaimed tax credit on a taxpayer's return. Better access to data sources such as the following would help the IRS detect issues at the beginning of filing season.

- Accelerated Form W-2, *Wage and Tax Statement,* information would enable the IRS to validate income reporting.
- More complete information used to authenticate taxpayer submissions would protect against identity theft and refund fraud.
- Correctable error authority would resolve problems if reliable government data contradicts information on the tax return.

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62. *Future State Initiative.* Feb. 22, 2016. IRS. [www.irs.gov/uac/Newsroom/Future-State-Initiative] Accessed on Mar. 16, 2016.
63. *Planning for the Future of the Taxpayer Experience.* Feb. 10, 2016. IRS. [www.irs.gov/PUP/newsroom/FSTaxpayerInteraction.pdf] Accessed on Mar. 16, 2016.
64. Ibid.
65. Ibid.
66. Ibid.
67. Ibid.

Example 4. In 2016, Eugene receives the following correspondence from the IRS.

- A letter in February asking why he did not pay a $325 balance on his 2014 tax return
- A letter in June questioning his claim for the 2015 earned income credit (EIC)
- A letter in July asking if he reported all of his business income on Schedule C, *Profit or Loss From Business*

Eugene's experience is disjointed, and he wonders why he received multiple letters from the IRS. In the future, the IRS would be able to match tax returns with information returns more quickly. This would do a better job of protecting Eugene's refund from identity thieves and match the income he reported on his tax return to information reported by his employers, banks, or brokerage firms. The IRS would be able to identify issues on Eugene's tax return at the time he files or shortly thereafter, including credit claims. The IRS could alert Eugene to these issues, and he could fix his return information online before the return is processed and accepted. Eugene may completely avoid an audit, and the IRS would need no follow-up.

End-to-End Taxpayer Experience[68]

In the future, the IRS could create a seamless taxpayer experience regardless of which IRS employee is working with the taxpayer. Integrated case management would allow the IRS to move information to the correct agent or workgroup. Multiple expert employees could contribute to complex audits without requiring the taxpayer to understand the IRS's internal processes.

Analytics[69]

Analytics enable the IRS to use tests and data to improve the efficiency and effectiveness of IRS interactions. Using analytics, the IRS would get early warnings of new tax issues and could better inform and help taxpayers avoid issues, confusion, or misunderstandings in new tax laws. The IRS could coordinate with tax software providers and return preparers to identify software-specific remedies to reduce the likelihood for taxpayer mistakes.

INITIATIVES[70]

The IRS identified 18 initiatives to further develop capabilities and functionalities critical to attaining the envisioned Future State. The initiatives are divided into the following groups to enable high-level collaboration and coordination for stakeholder review, discussion, and updates. The teams assigned to these groups collaborate in determining methods to deliver the capabilities and functionalities.

- Workforce management
- Taxpayer experience
- Noncompliance management
- Case management
- Data collection
- Enforcement optimization
- Internal operations optimization

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68. Ibid.

69. Ibid.

70. *IRS Future State: Overview.* Feb. 2016. IRS. [www.irs.gov/PUP/newsroom/IRS%20Future%20State%20Journey_R.pdf] Accessed on Mar. 17, 2016.

Workforce Management

The initiatives under workforce management contribute to a well-equipped workforce and engaged IRS employees.

1. **Mission impact and evaluation.** Analyze program performance measures affecting employee engagement and develop related strategies to address opportunities to support the workforce.
2. **Enterprise collaboration.** Provide the workforce with access to knowledge management and promote tools, resources, and information to support cross-organization collaboration and best use of resources.
3. **Workforce planning.** Identify current workforce capabilities and skill gaps through competency management and help employees achieve required skills through performance management plans.
4. **Enhanced career development.** Enhance employee development with ongoing, short-term performance feedback and provide transparency and predictability in the requirements and expectations for the spectrum of career tracks through workforce development and training.

Taxpayer Experience

The following initiatives relate to improving IRS interactions with taxpayers.

1. **Taxpayer outreach.** Communicate common compliance issues, provide published guidance based on previous taxpayer behavior, increase public awareness of enhanced IRS capabilities, and encourage feedback directly to the IRS and through stakeholder partners
2. **Channel optimization.** Optimize service channel processes, technology, and capacity and transition taxpayers to the most efficient and effective service channels to enable the most efficient resolution of inquiries
3. **Taxpayer online account.** Expand ability for taxpayers and authorized third parties to securely obtain taxpayer information, make payments, resolve compliance issues, share documentation, and self-correct issues in an individualized, online account

Noncompliance Management

Noncompliance management initiatives are intended to identify compliance issues.

1. **Compliance risk management.** Establish ongoing activities to assess and anticipate compliance risks for taxpayer segments and develop processes for prioritization of identified issues for treatment
2. **Taxpayer behavior analytics.** Conduct ongoing analysis of taxpayer behavior to identify problem areas and support development and implementation of behavioral levers to drive higher levels of compliance, self-correction, and use of more efficient channels
3. **Issue detection and classification.** Enhance the ability to rapidly detect noncompliance (including nonfilers) from a variety of sources and align to the most appropriate treatment stream

Case Management

Case management initiatives contribute to the ability to manage case inventory.

1. **Data-centric processing.** Transition paper-based documents (taxpayer and internal) to a digital format, including digital options for submitting and modifying relevant forms and data and digitizing case files and employee documentation
2. **Workload management.** Organize work and integrate new workforce planning to address the greatest noncompliance and continue to realign work portfolio as compliance needs shift

Data Collection

The following initiatives relate to obtaining quicker access to taxpayer and nontaxpayer data.

1. **Accelerated information documents.** Accelerate the collection and processing of taxpayer data from employers, financial institutions, and other third parties to reduce lag time between filing and document matching

2. **Data sharing and analytics.** Facilitate and/or enhance partnerships with government entities to promote timely and secure data sharing (Information would be used to enhance issue identification and identify outreach topics that promote voluntary compliance.)

Enforcement Optimization

Enforcement optimization initiatives focus on improving exam and collection activities.

1. **Exam optimization.** Identify transformational ways to increase the efficiency of resources in exams and use Future State capabilities to focus on high potential cases without sacrificing quality

2. **Collection optimization.** Optimize collection activities through process, technology, and workforce transformations to resolve collection cases earlier and with more efficient resources

Internal Operations Optimization

Initiatives grouped under internal operations optimization focus on developing more agile and efficient operations.

1. **Optimize internal operations service delivery.** Further optimize IRS support organizations

2. **Consolidate underutilized facilities: reduce the footprint.** Consolidate nearby buildings with short-term lease expirations to increase usage rates and account for decreasing space needs

PREVIOUSLY IMPLEMENTED MODERNIZATIONS[71]

The IRS currently has several projects underway to improve taxpayer service, enforcement, and operations. These projects help identify areas where the IRS can be more effective, more efficient, and/or generate savings to reinvest in the future. Some of the business units developing and considering projects tied to the Future State effort include the following.

- **Tax Exempt/Government Entities** has many initiatives underway, including a Lean Six Sigma review of the determination letter processes in Exempt Organizations and Employee Plans and developing web-based solutions for taxpayer service and outreach. (Lean Six Sigma uses a collaborative team effort to improve performance by systematically removing waste.[72])

- **Wage & Investment** is using long-term planning, engagement, and collaboration as part of the Future State initiative. Wage & Investment changed taxpayer services to serve more taxpayers overall. Other service-related projects and realignment efforts are already complete or underway.

- **Small Business/Self-Employed** is striving to find a more efficient way of doing business, including using technology to transform taxpayer service and enforcement.

- **Large Business & International** is implementing efforts to support a flexible and well-trained workforce, select better work, tailor work streams to achieve compliance outcomes, and to promote innovation and feedback-based improvement.

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71. *Future State Initiative.* Feb. 22, 2016. IRS. [www.irs.gov/uac/Newsroom/Future-State-Initiative] Accessed on Mar. 16, 2016.

72. *Lean Six Sigma.* Wikipedia. [en.wikipedia.org/wiki/Lean_Six_Sigma] Accessed on Mar. 21, 2016.

Some of the other initiatives related to the Future State that are already in place include the following.

- **Security summit.** Tax industry and state tax authorities joined with the IRS to implement several initiatives to combat identity theft and refund fraud. More information on the security summit can be found earlier in this chapter.
- **TAC appointment test.** Taxpayers can schedule appointments at selected TACs instead of only being able to walk in.
- **Web-first service strategy.** This strategy provides taxpayers with immediate options to get tax information and automated services online. This allows customer-facing employees to help more taxpayers who need person-to-person assistance.
- **Compliance realignment.** The IRS realigned some organizations. The Small Business/Self-Employed unit is responsible for most post-filing compliance activities. The Wage & Investment group works most pre-refund compliance activities in addition to pre- and post-refund EIC activities.
- **Identity theft victim assistance directorate.** This group centralizes the identity theft victim assistance work and provides end-to-end accountability. The goal is helping taxpayers receive timely and consistent help in resolving their cases.
- **Enterprise e-records management team.** This group develops IRS policies, procedures, and IT solutions for electronic records management and archiving (including email). The team has progressed toward implementation of an electronic records management process.
- **Real estate savings.** The IRS reviews office space and posts of duty with expiring leases or expiring federal building occupancies. In the past five years, the IRS eliminated more than 2.4 million square feet of excess space, resulting in a $64 million rent reduction in 2016. These funds can generate more rent savings and support other core IRS services such as training.

RESPONSIBLE PERSON FOR TRUST FUND RECOVERY PENALTY

For the purpose of the trust fund recovery penalty (TFRP), a **responsible person** is a person who has the duty to perform and the power to direct the collecting, accounting, and paying of **trust fund taxes.** A trust fund tax is the money withheld from an employee's wages (income, social security, and Medicare taxes) by an employer. These amounts are called trust fund taxes because the employer actually holds the employee's money in trust until the employer makes a federal tax deposit in the required amount. Trust fund taxes also include other collected taxes (e.g., excise taxes). Trust fund taxes that are not paid to the IRS may be assessed **personally** against one or more "responsible persons."

A responsible person is potentially liable for the TFRP. The TFRP is not a penalty in the usual sense. It is a means provided by IRC §6672 to facilitate the collection of trust fund taxes and enhance voluntary compliance. It is an alternative method of collecting unpaid trust fund taxes when the taxes are not fully collectible from the business that failed to pay the taxes. Congress enacted §6672 to encourage the prompt payment of tax withholdings and to ensure the ultimate collection of the taxes from a secondary source.[73]

73. IRM 8.25.1.1 (2014).

IDENTIFYING TRUST FUND TAXES

TFRPs are based on liabilities reported on the following tax forms.[74]

- Form 720, *Quarterly Federal Excise Tax Return*
- Form 941, *Employer's Quarterly Federal Tax Return*
- Form 943, *Employer's Annual Federal Tax Return for Agricultural Employees*
- Form 944, *Employer's Annual Federal Tax Return*
- Form 945, *Annual Return of Withheld Federal Income Tax*
- Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*
- Form 8288, *U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests*
- Form 8804, *Annual Return for Partnership Withholding Tax (Section 1446)*
- Form CT-1, *Employer's Annual Railroad Retirement Tax Return*

RESPONSIBLE PERSON

The TFRP may be assessed against any person who:[75]

1. Is **responsible** for:
   a. Collecting,
   b. Truthfully accounting for, and
   c. Paying over taxes held in trust, and
2. **Willfully** fails to collect or pay them.

In *Slodov v. U.S.,*[76] the Supreme Court interpreted the statutory language to apply to all "persons responsible for collection of third-party taxes and not . . . [only] to those persons in a position to perform all three of the enumerated duties." Thus, the Code deems anyone who is required to collect **or** account for **or** remit taxes a **responsible person.**[77]

A responsible person may be one of the following.[78]

1. An officer or an employee of a corporation
2. A member or employee of a partnership
3. A corporate director or shareholder
4. A member of a board of trustees of a nonprofit organization
5. Another person with the authority and control over funds to direct their disbursement
6. Another corporation or third-party payer
7. Payroll service providers (PSP) or responsible parties within a PSP
8. Professional employer organizations (PEO) or responsible parties within a PEO
9. Responsible parties within the common law employer (client of PSP/PEO)

74. IRM 8.25.1.3 (2012).

75. IRC §6672(a).

76. *Slodov v. U.S.,* 436 U.S. 238 (1978).

77. *Johnson v. U.S.,* No. 12-1739 (4th Cir. 2013), citing *Plett v U.S.,* 185 F.3d 216 (4th Cir. 1999).

78. *Employment Taxes and the Trust Fund Recovery Penalty (TFRP).* May 4, 2016. IRS. [www.irs.gov/Businesses/Small-Businesses-%26-Self-Employed/Employment-Taxes-and-the-Trust-Fund-Recovery-Penalty-TFRP] Accessed on May 5, 2016.

Responsibility is based on whether a person exercised independent judgment with respect to the business's financial affairs. An employee is **not a responsible person if the employee's duty was solely to pay the bills** as directed by a superior, rather than to determine which creditors would be paid.

Example 5. Anna is a non-owner employee who works as an administrative assistant in the office of Chilly Animation Studio. She signs checks and tax returns at the direction of and for the convenience of the owner or a supervisor who is a non-owner. Anna is directed to pay certain vendors, even though payroll taxes are unpaid. She is **not** a responsible party for purposes of the TFRP because she works under the dominion and control of her superiors, and she is not permitted to exercise independent judgment.[79]

The ability to select one creditor over another is not a prerequisite to being deemed a responsible person. Officers and higher-level employees of a company who are non-owners may be required to terminate their employment to avoid being responsible for the TFRP. For example, in *Howard v. U.S.,*[80] a corporate officer was held to be the person responsible for paying trust fund taxes even though his superior ordered him not to pay the taxes and he informed the IRS of the matter. Despite the taxpayer's claim that his actions were not voluntary, the court determined that **his failure to pay taxes was willful because he could have refused to comply with his superior's orders and risk dismissal** from his job. The District Court had described the corporate CEO as "even more responsible" than the corporate officer. However, the CEO was apparently no longer within reach of the IRS. The Circuit Court observed that §6672 "looks only to 'responsible persons,' not to 'the most responsible person,' for satisfaction."

Persons serving as volunteers solely in an honorary capacity as directors and trustees of tax-exempt organizations are generally not considered responsible persons unless:

- They participated in the day-to-day operations of the organization, and
- They had actual knowledge of the failure to withhold or pay over the trust fund taxes.

This does not apply if it would result in no person being determined to be responsible for the TFRP.[81]

The responsible person is **willful** if they:

- Must have been, or should have been, aware of the outstanding taxes, and
- Either intentionally disregarded the law or were plainly indifferent to its requirements.

Paying other creditors with available funds when the business is unable to pay the employment taxes is an indication of **willfulness.** In *Erwin v. U.S.,* the court noted that "when a responsible person learns that withholding taxes have gone unpaid in past quarters for which he was responsible, he has a duty to use all current and future unencumbered funds available to the corporation to pay back those taxes."[82]

Note. Form 4180, *Report of Interview with Individual Relative to Trust Fund Recovery Penalty or Personal Liability for Excise Taxes,* is an interview questionnaire used to determine responsible party status.

79. Adapted from an example in IRM 5.7.3.3.1.2 (2010).

80. *Howard v. U.S.,* 711 F.2d 729 (5th Cir. 1983).

81. IRM 5.7.3.3.1.1 (2006).

82. *Erwin v. U.S.,* 591 F.3d 313 (4th Cir. 2010).

Facts and Circumstances

Establishing if an individual is a responsible person is based on facts and circumstances. However, an essential inquiry is whether a person has significant, but not necessarily exclusive, authority over corporate finances or management decisions.[83] A person with the effective power to pay taxes may be a responsible person if they have the actual authority or ability, as a result of their status within the entity, to pay the taxes owed.[84] A responsible person may possess both legal and/or actual authority.[85]

A person cannot be presumed to be a responsible person based on their title alone. An individual must exercise and use their authority over financial affairs or general management, or be under a duty to do so, to be considered a responsible person.[86]

Example 6. Tiana has the title of finance manager at Ribbett and Friends Corporation. She serves as an office manager for the company. Tiana is responsible for writing checks as directed by the board of directors. Tiana is **not** considered a responsible person.

Passive Investor[87]

Passive investors are not responsible persons for purposes of the TFRP. They do not exercise authority in managing the company, do not dictate financial decisions of the company, and have no authority to do so. Facts and circumstances dictate if an individual's involvement is substantial enough to be classified as a responsible person. In *Erwin v. U.S.*, the court ruled that Mr. Erwin was not merely a passive investor because he engaged in the following activities.[88]

- Involvement in the company's general decision making
- Negotiated leases and chose locations for restaurants

Erwin's activities proved that he was more than a passive investor. The court held that Erwin was a responsible person.

Erwin's activities did not establish that he participated in the day-to-day operations.[89] However, individuals who are not involved in day-to-day operations may still have authority and be a responsible person.[90] Delegating day-to-day authority does not relieve an individual of their responsibility.[91]

Example 7. Rapunzel is the CEO and 50% owner of FairyTale Extensions Salon. Her husband, Flynn, owns the other 50%. Shortly after opening the salon, Rapunzel had triplets and had no time to manage the business. She delegated all the managerial and financial responsibilities to Flynn while she stayed home with the babies. Rapunzel continued to collect a $50,000 salary from FairyTale despite not going into the salon for two years. She believes she is a passive investor.

Flynn wrote checks for rent, salaries, and supplies but failed to remit the trust fund taxes for three quarters. Rapunzel **can be considered** a responsible person for the TFRP because she cannot escape liability by delegating her responsibility to pay the taxes to another person.

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83. Ibid.
84. *Barnett v. IRS,* 988 F.2d 1449 (5th Cir. 1993).
85. *Miller v. U.S.,* No. 3:13-CV-728 (E.D. Virginia Jun. 27, 2014).
86. *O'Connor v. U.S.,* 956 F.2d 48 (4th Cir. 1992).
87. *Erwin v. U.S.,* 591 F.3d 313 (4th Cir. 2010); *O'Connor v. U.S.,* 956 F.2d 48 (4th Cir. 1992).
88. *Erwin v. U.S.,* 591 F.3d 313 (4th Cir. 2010).
89. Ibid.
90. *Waterhouse v. U.S.,* No. 12-718T (Fed. Cl. Jul. 23, 2015).
91. *Erwin v. U.S.,* 591 F.3d 313 (4th Cir. 2010).

Outsourcing Payroll

Many employers outsource their payroll and associated tax duties to third-party payers such as PSPs and reporting agents (RA). Though most of these businesses are reputable, there have been many individuals and companies that have been prosecuted for stealing funds intended for the payment of payroll taxes.

> **Note.** Examples of these successful prosecutions can be found at **uofi.tax/16a5x15** [www.irs.gov/uac/Examples-of-Employment-Tax-Fraud-Investigations-Fiscal-Year-2016].

The TFRP may be assessed against a third-party payer. In determining the potential **responsibility** and **willfulness** of a third-party payer, the following factors are considered.[92]

- **Responsibility.** The person(s) within the third-party payer who had significant control over the payment of the client's employment taxes must be identified.
- **Willfulness.** Willfulness means the act is intentional, deliberate, voluntary, reckless, and knowing, as opposed to accidental. It is not required that the person had evil intent or bad motives.

However, the employers who outsource their payroll functions are still legally responsible for any payroll taxes due. This is true even in situations in which the employer forwards tax amounts to a PSP or RA to make the required deposits or payments.[93] The following factors are considered in determining responsibility and willfulness of a responsible person within the employing organization when there is a third-party payer arrangement.[94]

- **Responsibility.** The use of a third-party payer does not relieve the employer and the employer's employees from the responsibility of ensuring that all of the employer's federal employment tax obligations are met.
- **Willfulness.** Willfulness means the act is intentional, deliberate, voluntary, reckless, and knowing, as opposed to accidental. It is not required that the person had evil intent or bad motives. Additional factors considered when determining willfulness include the following.
  - Whether the responsible person had knowledge of a pattern of noncompliance by the third-party payer at the time the delinquencies were accruing
  - Whether the client had received prior IRS notices indicating that employment tax returns were not filed, or were inaccurate, or that employment taxes were not paid
  - The actions the client took to ensure that its federal employment tax obligations were met after becoming aware of the tax delinquencies (e.g., timely reporting the problems to the IRS, ensuring current tax debts were timely reported and paid, and working with the IRS on a reasonable plan to resolve past debts)
  - Whether the third-party payer used fraud or deception to conceal the noncompliance from detection by the client

92. IRM 5.7.3.3.3 (2012).

93. IRS FS-2013-9 (Jul. 2013).

94. IRM 5.7.3.3.3 (2012).

The IRS identified steps that employers can take to protect themselves from unscrupulous third-party payers.[95]

- Ensure the PSP or RA uses the electronic federal tax payment system (EFTPS) to make tax deposits. EFTPS gives employers easy online access to their payment history when deposits are made under their employer identification number (EIN), which enables them to monitor whether their third-party payer is properly carrying out their tax deposit responsibilities.
- Refrain from substituting the third-party payer's address for the employer's address as the address on record with the IRS. Doing this ensures that the employer will continue to receive bills, notices, and other account-related correspondence from the IRS. It also gives employers a way to monitor the third-party payer and spot any improper diversion of funds.
- Contact the IRS about any bills or notices as soon as possible. This is especially important if it involves a payment that the employer believes was made or should have been made by a third-party payer.
- Become familiar with the tax due dates that apply to employers.
- Employers who use RAs should be aware of special rules that apply. RAs are generally required to use EFTPS and file payroll tax returns electronically. They are also required to provide a written statement to employers that details the employer's responsibilities, including a reminder that the employer is still legally required to timely file returns and pay any tax due.

Caution. Tax practitioners should be aware that continuing their control of client funds when unpaid taxes exist could lead to the practitioner being identified as the responsible party and becoming subject to the TFRP.

Multiple Responsible Persons

IRC §6672 imposes liability for the TFRP on **all** responsible persons, not just the **most** responsible person. More than one person may be considered a responsible person. The term "responsible person" is broad and may include multiple people within an organization.[96] The fact that more than one person is a responsible person does not relieve another responsible person of their personal liability. A responsible person cannot avoid collection on the grounds that the IRS must collect from another responsible person first. The IRS is not required to pursue collection against every responsible person, or against the organization, before attempting to collect from a responsible person.[97]

Commonwealth National Bank of Dallas, et al. v. U.S.,[98] was a case involving an employer, the employer's bank, and the bank president, who were all liable for the TFRP. The liability was not confined to the employer and its officers but extended to those responsible for controlling corporate disbursements, which included the lender bank. The bank controlled how the funds were spent, including deciding which creditors were paid.

Note. The IRS pursuing action against one responsible party does not preclude that party from bringing action against any other responsible party the IRS did not pursue.

95. IRS FS-2013-9 (Jul. 2013).

96. *Erwin v. U.S.,* 591 F.3d 313 (4th Cir. 2010).

97. *U.S. v. Guerin,* No. 3:12-cv-00187 (N.D. Ca. Apr. 28, 2014).

98. *Commonwealth National Bank of Dallas, et al. v. U.S.,* 665 F.2d 743 (5th Cir. 1982).

Partnership Responsible Person

State law generally provides that general partners in a partnership are jointly and severally liable for partnership debts. Partnership debts include federal taxes and employment taxes. The IRS may collect the TFRP from any one of the general partners.[99]

Example 8. In January 2016, Esmeralda acquired a 5% profit and loss interest in HUMP partnership but did not make a capital contribution. She does not have the authority to hire, fire, set salaries, or write checks. Esmeralda manages HUMP's real estate projects and personally guaranteed millions of dollars in partnership debt. Esmeralda is treated as a general partner.

In April 2016, the IRS sent a notice to HUMP indicating that the partnership was delinquent in paying trust fund taxes for the four calendar quarters of 2015. Esmeralda can be held liable for the unpaid employment taxes as a responsible person because she is a general partner who is jointly and severally liable for partnership debts.

Tax Matters Partner. A partnership designates a tax matters partner (TMP) to act as an official representative in IRS matters. A TMP designation lasts for a specific tax year and may be terminated as provided in Treas. Reg. §301.6231(a)(7)-1.

A TMP is not automatically a responsible person. The distinction between TMP and a responsible person has not been litigated. Often the duties of a TMP align with a responsible person, but the facts and circumstances dictate who is considered a responsible person.

Note. The Bipartisan Budget Act of 2015,[100] enacted on November 2, 2015, changes several rules regarding the taxation of partnerships and IRS partnership audit procedures. Under these changes, generally effective for tax years beginning after 2017, the concept of a TMP is replaced with a "partnership representative." For more information on a TMP, see IRC §6231(a)(7) and the instructions to Form 1065, *U.S. Return of Partnership Income*. For further information on the changes to the TMP rules, including the post-2017 changes made to the TMP rules, see sections 1101 and 1102 of the Bipartisan Budget Act of 2015 at **uofi.tax/16a5x16** [www.congress.gov/bill/114th-congress/house-bill/1314/text]. Presumably, the distinction between a TMP and a "partnership representative" will continue to exist after the new rules become effective.

AMOUNT OF PENALTY

Under IRC §6672, the TFRP is equal to the total amount of tax evaded, not collected, or not accounted for and paid. The TFRP applies only to the income tax withheld from employees and the employee's portion of FICA; it does not apply to the **employer's** portion of employment taxes. It also applies to excise taxes that are collected.[101]

The IRS's policy is to collect the full tax only once from:

- The business,
- One or more of its responsible individuals, or
- The business **and** one or more responsible individuals.[102]

The TFRP must generally be assessed within three years from the date a return is filed or the due date of the return, whichever is later.[103]

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99. Rev. Rul. 2004-41, 2004-1 CB 845.
100. Bipartisan Budget Act, P.L. 114-74.
101. IRM 8.25.1.2 (2012).
102. IRM 5.19.14.1.2 (2016).
103. IRM 5.19.14.1.5 (2016).

EARLY INTERVENTION INITIATIVE FOR EMPLOYERS[104]

The IRS launched the Early Intervention Initiative to identify employers who are falling behind on payroll or employment taxes **even before** they file an employment tax return. Prior to the initiative, the IRS often did not contact employers until the unpaid tax obligation was unmanageable. The goal of the initiative is to help employers stay in compliance and avoid interest and penalties.

Employers facing financial difficulties may inappropriately divert funds withheld from employees' wages to cover other financial responsibilities. These diversions can quickly result in mounting tax liabilities for the employer, potentially threatening the employer's financial viability.

Employers who use a payroll processor to handle payroll, withholding, matching, remittance, and/or reporting responsibilities may not have clear channels of communication with the processor. This can result in failure to make required tax deposits and file reports.

To identify vulnerable employers, the IRS initiative monitors deposit patterns and identifies employers with declining or late payments. After identifying at-risk employers, the IRS provides information and guidance through:

- Letters,
- Automated phone messages, or
- Visits from an IRS revenue officer.

IRS APPEALS UPDATE

The IRS Appeals Judicial Approach and Culture (AJAC) initiative was launched in 2012 and continues to implement changes within the IRS appeals process to emphasize the impartial, quasi-judicial nature of this process. AJAC has been implemented in phases since 2012.[105]

AJAC seeks to ensure that IRS employees involved in the appeals process do not engage in other compliance functions, such as account management, collections, examination, or investigative functions that are performed by IRS Compliance and Enforcement.[106] This reinforces the impartial, case resolution function of appeals and enhances "internal and external customer perceptions of a fair, impartial and independent Office of Appeals."[107] The IRS indicates that the Office of Appeals "helps over 100,000 taxpayers resolve their tax disputes without going to Tax Court."[108]

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104. *New Early Interaction Initiative Will Help Employers Stay Current with Their Payroll Taxes.* Dec. 8, 2015. IRS. [www.irs.gov/uac/Newsroom/New-Early-Interaction-Initiative-Will-Help-Employers-Stay-Current-with-Their-Payroll-Taxes] Accessed on Mar. 8, 2016.

105. *Fact Sheet – IRS Clarifies Office of Appeals Policies.* IRS. [www.irs.gov/PUP/individuals/factsheet.pdf] Accessed on May 20, 2016.

106. Ibid.

107. *Memorandum for Appeals Employees.* Cardone, John V. Jul. 2, 2014. IRS. [www.irs.gov/pub/foia/ig/spder/AP-08-0714-0004%20REDACTED[1].pdf] Accessed on May 20, 2016.

108. *Appeals.* Apr. 19, 2016. IRS. [www.irs.gov/individuals/appeals-resolving-tax-disputes] Accessed on May 20, 2016.

AJAC resulted in several important changes within the IRS appeals process that involve the collection and examination functions, which include the following.[109]

- Financial information in an appeals case that requires investigation or verification is sent to IRS collection personnel in order to preclude appeals officers or employees from engaging in investigative functions.
- Appeals employees only consider taxpayer assets documented by either IRS collections employees or introduced by the taxpayer.
- Appeals employees do not recommend that tax liens be filed in connection with taxpayer assets.
- New issues are not raised when an appeal is being considered.
- Generally, issues that the taxpayer and the examiner have agreed upon are not reopened when an appeal is considered.

AJAC also resulted in several changes to the Internal Revenue Manual (IRM) regarding how appeals employees should consider an appeals case and handle various aspects of case administration.[110] For example, a case generally must have at least one year remaining on its statute of limitations in order for appeals employees to consider the case (or 270 days remaining for an estate tax case).[111]

In addition, if a taxpayer raises a new, relevant issue during an appeal or provides new information that warrants additional investigation or analysis, the case is **returned** to the relevant compliance department of the IRS to address or investigate the new information before the case is returned for further appeals consideration.[112]

> **Note.** For further details regarding the required statute of limitations periods and procedures now used for taxpayers raising new arguments or information during an appeal, see IRM 8.2.1.4, IRM 8.6.1.6.4, and IRM 8.6.1.6.6. Special procedures apply to cases that have been assigned a U.S. Tax Court docket number (referred to as a "docketed case").[113]

NATIONAL TAXPAYER ADVOCATE REPORT

AJAC's goals of increasing fairness and objectivity within the Office of Appeals were referred to as "commendable" by the National Taxpayer Advocate (NTA).[114] However, the NTA cited AJAC as a "most serious problem" in its 2015 annual report to Congress because AJAC's practical implementation "is eroding the very perceptions of fairness and objectivity that it claims to bolster."[115]

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109. *Fact Sheet – IRS Clarifies Office of Appeals Policies.* [www.irs.gov/PUP/individuals/factsheet.pdf] Accessed on May 20, 2016.

110. *Memorandum for Appeals Employees.* Cardone, John V. Jul. 2, 2014. IRS. [www.irs.gov/pub/foia/ig/spder/AP-08-0714-0004%20REDACTED[1].pdf] Accessed on May 20, 2016.

111. IRM 8.2.1.4 (2015).

112. IRM 8.2.1.5 (2015).

113. See IRM 8.4.1.1 *et seq*.

114. *Appeals: The Appeals Judicial Approach and Culture Project Is Reducing the Quality and Extent of Substantive Administrative Appeals Available to Taxpayers.* National Taxpayer Advocate Annual Report to Congress 2015. [http://taxpayeradvocate.irs.gov/Media/Default/Documents/2015ARC/ARC15_Volume1_MSP_08_Appeals.pdf] Accessed on May 20, 2016.

115. Ibid.

In conjunction with AJAC, IRS Compliance now has more stringent rules regarding information document requests and the closing of cases before issuing a notice of deficiency unless the taxpayer provides all requested documentation or certifies that there is no additional documentation available. For example, IRS Letter 5262, (used to request from the taxpayer either additional information regarding an audit or certification that no additional information is available) was revised, and its first paragraph now reads as follows.

> *If you don't provide the information requested on the enclosed Form 4564 or contact me to confirm you have no additional information to provide by the response due date listed above, we will close your examination based on the information we have now. If you don't agree, you won't be able to appeal within the IRS before we issue a notice of deficiency.*

The NTA points out in the 2015 annual report that a taxpayer who provides additional information using Form 4564, *Information Document Request,* retains appeal rights, but a taxpayer who telephones the examiner to indicate no further information exists is barred from exercising appeal rights. The NTA concludes that AJAC is sometimes being used to "intimidate taxpayers and deny their right to an administrative appeal."[116]

Observation. In its 2015 report to Congress, the NTA recommends that the use of IRS Letter 5262 be permanently discontinued.

The NTA further concludes that AJAC is causing a substantial number of cases to be transferred back and forth between the Office of Appeals and IRS Collections.

Since the implementation of AJAC, the NTA notes that the number of cases taxpayers have submitted to the Office of Appeals for review has fallen dramatically. The following table indicates the overall number of annual Office of Appeals case receipts from 2011 through 2015 (based on IRS fiscal years).[117]

IRS Fiscal Year	Nondocketed Cases	Docketed Cases	Total Cases Received by Office of Appeals
2011	21,706	22,101	43,807
2012	19,450	23,004	42,454
2013	16,509	21,797	38,306
2014	13,563	23,356	36,919
2015	11,645	23,785	35,430

The NTA report notes that while the overall number of cases declined, the percentage of those cases received by the Office of Appeals that are "docketed" (i.e., filed into Tax Court for pending litigation) actually increased over the same 2011–2015 period. This is contrary to the mission of the Office of Appeals.

Observation. Based on the number of cases provided by the NTA in the preceding table, docketed cases in 2011 represented 50.4% of the total number of cases received by the Office of Appeals. By 2015, the percentage of docketed cases had risen to 67.1%.

116. Ibid.

117. Ibid.

Moreover, the NTA annual report indicates that despite AJAC's goals, the changes implemented through AJAC resulted in curtailed Office of Appeals review of examination and collection actions taken against the taxpayer.[118] Although AJAC generally requires cases that need additional factual development or analysis be redirected to IRS examination personnel, the NTA recommends that Appeals Officers be given more discretion to determine whether this would materially assist with the resolution of the case.

Note. For further details regarding how AJAC made the appeals process more adversarial and diminished the quantity and quality of review by appeals (including anecdotal evidence), see the NTA 2015 Annual Report to Congress at **uofi.tax/16a5x17** [http://taxpayeradvocate.irs.gov/reports/2015-annual-report-to-congress/full-report].

The NTA also noted a need for additional guidance and training for appeals officers to enhance quality substantive review of cases under the new AJAC rules so that the focus is not strictly on adherence to procedural requirements. In addition, given the difficulties experienced by taxpayers and practitioners, the NTA recommends an Office of Appeals outreach program to provide appeals employees with greater information about those difficulties in an attempt to reduce or resolve them and to help practitioners understand what is needed for a successful appeal.[119]

ITIN CERTIFICATION PROCESS

The Protecting Americans from Tax Hikes (PATH) Act of 2015 provides new regulations on issuing individual taxpayer identification numbers (ITIN). An ITIN is a 9-digit number used for federal tax reporting purposes only. The IRS issues ITINs to individuals who are required to have a U.S. taxpayer identification number but are not eligible to obtain a social security number (SSN). Examples of the types of individuals who must apply for an ITIN include the following.[120]

- A nonresident alien (NA) required to get an ITIN to claim reduced withholding under an applicable tax treaty
- A NA not eligible for an SSN who is required to file a U.S. tax return or is filing a U.S. tax return to claim a refund
- A U.S. resident alien (based on the substantial presence test) filing a tax return but who is not eligible for an SSN

Note. The substantial presence test is explained in the "Compliance Programs for Undisclosed Foreign Assets" section of this chapter.

- An alien individual eligible to be claimed as a dependent on a U.S. tax return but who is not eligible to get an SSN
- An alien spouse claimed as an exemption on a U.S. tax return who is not eligible to get an SSN
- An NA student, professor, or researcher who is required to file a U.S. tax return but is not eligible for an SSN or who is claiming an exception to the tax return filing requirement
- A dependent or spouse of an NA visa holder who is not eligible to get an SSN
- An NA not eligible for an SSN who elects to file a joint U.S. tax return with a spouse who is a U.S. citizen or resident alien

Note. For more information on who is required to file an individual federal income tax return, see IRS Pub. 17, *Your Federal Income Tax.*

118. Ibid.

119. Ibid.

120. Instructions for Form W-7; *General ITIN Information.* Oct. 27, 2015. IRS. [www.irs.gov/Individuals/General-ITIN-Information] Accessed on Mar. 10, 2016.

To receive an ITIN, an individual must have a requirement to furnish a federal tax identification number **or** file a valid federal income tax return. An individual does not need to file a tax return to obtain an ITIN if they qualify for one of the following exceptions.[121]

1. Receives passive income subject to third-party withholding or covered by tax treaty benefits
2. Does not claim benefits of an income tax treaty and receives taxable scholarship, fellowship, or grant income or claims the benefits of a U.S. tax treaty with a foreign country and receives any of the following
   a. Wages, salary, compensation, and honoraria payments
   b. Scholarships, fellowships, and grants
   c. Gambling income
3. Has a home mortgage loan on real property in the United States that is subject to third-party reporting of mortgage interest
4. Is a party to a disposition of a U.S. real property interest by a foreign person, which is generally subject to withholding by the transferee or buyer
5. Has an IRS reporting requirement under TD 9363 and is submitting Form W-7, *Application for IRS Individual Taxpayer Identification Number,* with Form 13350, *Registration for e-services* (TD 9363 concerns the requirements for filing corporate income tax returns and returns for certain exempt organizations on magnetic media.)

APPLICATION

To apply for an ITIN, applicants must file the following documents.[122]

1. Form W-7
2. Original, valid tax return(s) for which the ITIN is needed (unless an exception applies, as mentioned earlier)
3. Original documents, or certified copies of those documents from the issuing agency, that support the information on Form W-7

An applicant must complete Form W-7 and attach it when they file the tax return for which the ITIN is needed. An individual meeting one of the exceptions for filing a return should complete and submit Form W-7 as soon as they determine they are covered by the exception.

The tax return (or other documents required by an exception), Form W-7, and supporting documents must be mailed to the following address.[123]

Internal Revenue Service
Austin Service Center
ITIN Operation
PO Box 149342
Austin, TX 78714-9342

Caution. Do not mail the documents to the address listed in the instructions for the tax return.

121. Ibid.
122. Ibid.
123. Ibid.

The IRS takes six weeks to notify an applicant of their ITIN. During peak processing periods (January 15 through April 30,) it can take from eight to 10 weeks.[124]

An individual cannot electronically file (e-file) a return using an ITIN in the calendar year the IRS issues the ITIN. In subsequent years, the individual can e-file returns using their ITIN.[125]

Example 9. Belle is a French student studying library science at the University of Illinois. She is an NA and earns income from a part-time job. Belle applied for an ITIN in February 2015 when she prepared her 2014 Form 1040NR, *U.S. Nonresident Alien Income Tax Return*. Belle submitted the following Form W-7, along with her Form 1040NR and supporting documents on paper. In 2016, Belle can e-file her 2015 Form 1040NR with the ITIN the IRS issued her in 2015.

124. Ibid.

125. Ibid.

For Example 9

Form **W-7** (Rev. August 2013) Department of the Treasury Internal Revenue Service

Application for IRS Individual Taxpayer Identification Number

► For use by individuals who are not U.S. citizens or permanent residents.
► See instructions.

OMB No. 1545-0074

FOR IRS USE ONLY

An IRS individual taxpayer identification number (ITIN) is for federal tax purposes only.

Before you begin:

- ***Do not submit*** *this form if you have, or are eligible to get, a U.S. social security number (SSN).*
- *Getting an ITIN does not change your immigration status or your right to work in the United States and does not make you eligible for the earned income credit.*

Reason you are submitting Form W-7. Read the instructions for the box you check. **Caution:** If you check box **b, c, d, e, f,** or **g, you must file a tax return with Form W-7 unless you meet one of the exceptions** (see instructions).

- a ☐ Nonresident alien required to get ITIN to claim tax treaty benefit
- b ☐ Nonresident alien filing a U.S. tax return
- c ☐ U.S. resident alien **(based on days present in the United States)** filing a U.S. tax return
- d ☐ Dependent of U.S. citizen/resident alien
- e ☐ Spouse of U.S. citizen/resident alien
  - Enter name and SSN/ITIN of U.S. citizen/resident alien (see instructions) ►
- f ☒ Nonresident alien student, professor, or researcher filing a U.S. tax return or claiming an exception
- g ☐ Dependent/spouse of a nonresident alien holding a U.S. visa
- h ☐ Other (see instructions) ►

Additional information for **a** and **f**: Enter treaty country ► and treaty article number ►

Name (see instructions)	1a First name **Belle**	Middle name	Last name **Gaston**
Name at birth if different . . ►	1b First name	Middle name	Last name
Applicant's mailing address	2 Street address, apartment number, or rural route number. **If you have a P.O. box, see separate instructions.** **501 E Daniel St**		
	City or town, state or province, and country. Include ZIP code or postal code where appropriate. **Champaign, IL 61820**		
Foreign (non-U.S.) address (if different from above) (see instructions)	3 Street address, apartment number, or rural route number. **Do not use a P.O. box number.** **14 Rue de Beaumont**		
	City or town, state or province, and country. Include ZIP code or postal code where appropriate. **Murat, France 15300**		
Birth information	4 Date of birth (month / day / year) **11/22/1991**	Country of birth **France**	City and state or province (optional) — 5 ☐ Male ☒ Female
Other information	6a Country(ies) of citizenship **France**	6b Foreign tax I.D. number (if any)	6c Type of U.S. visa (if any), number, and expiration date

6d Identification document(s) submitted (see instructions) ☒ Passport ☒ Driver's license/State I.D. ☐ USCIS documentation ☐ Other

Issued by: **F-1** No.: **123456** Exp. date: **12/31/18** Date of entry into the United States (MM/DD/YYYY) **08/15/2014**

6e Have you previously received a Internal Revenue Service Number (IRSN) or employer identification number (EIN)?

☒ **No/Do not know.** Skip line 6f.

☐ **Yes.** Complete line 6f. If more than one, list on a sheet and attach to this form (see instructions).

6f Enter: IRSN or EIN ► and Name under which it was issued ►

6g Name of college/university or company (see instructions) **University of Illinois**
City and state **Urbana, IL** Length of stay **4 years**

Sign Here

Under penalties of perjury, I (applicant/delegate/acceptance agent) declare that I have examined this application, including accompanying documentation and statements, and to the best of my knowledge and belief, it is true, correct, and complete. I authorize the IRS to disclose to my acceptance agent returns or return information necessary to resolve matters regarding the assignment of my IRS individual taxpayer identification number (ITIN), including any previously assigned taxpayer identifying number.

Signature of applicant (if delegate, see instructions) | Date (month / day / year) / / | Phone number

Keep a copy for your records.

Name of delegate, if applicable (type or print) | Delegate's relationship to applicant ► ☐ Parent ☐ Court-appointed guardian ☐ Power of Attorney

Acceptance Agent's Use ONLY

► Signature | Date (month / day / year) / / | Phone | Fax

► Name and title (type or print) | Name of company | EIN | PTIN | Office Code

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 10229L Form **W-7** (Rev. 8-2013)

DOCUMENTATION

Under the IRS revised procedures, applicants can provide all required documentation either:[126]

1. In person to an authorized TAC office or a community-based certified acceptance agent (as authorized by the IRS); or
2. By postal mail.

The documents must be **originals or copies certified** by the issuing agency. Notarized or apostilled (notarized documents that are authenticated for international acceptance) copies are not accepted. Certified documents are exact copies of the original document that the original issuing agency provides and contain an official stamped seal from the agency.

The following applicants are **exempt** from the new requirements.[127]

- **Military spouses and military dependents** without an SSN can apply for an ITIN by providing a copy of the spouse or parent's U.S. military identification or apply from an overseas APO/FPO address.
- **Nonresident aliens applying for an ITIN to claim tax treaty benefits** must abide by the previous standards for documentation. However, scrutiny of the documents is heightened. Any applications submitted with a U.S. tax return are subject to the revised document standards.

Unless an individual provides a passport, an applicant must submit at least two documents from the following list to verify their identity (i.e., the document contains the applicant's name) and support their claim of foreign status. At least one of the documents must contain the applicant's photo, unless the application is submitted for a dependent who is under age 14 (under age 18 if a student).[128]

	Can be used to establish:	
Supporting Documentation	**Foreign Status**	**Identity**
Passport (the only stand-alone document)	X	X
U.S. Citizenship and Immigration Services (USCIS) photo identification	X	X
Visa issued by U.S. Department of State	X	X
U.S. driver's license		X
U.S. military identification card		X
Foreign driver's license		X
Foreign military identification card	X	X
National identification card (must be current and contain name, photograph, address, date of birth, and expiration date)	X	X
U.S. state identification card		X
Foreign voter's registration card	X	X
Civil birth certificate	X [a]	X
Medical records (valid only for dependents under age 6)	X [a]	X
School records (valid only for dependents under age 14 (under age 18 if a student))	X [a]	X

[a] Can be used to establish foreign status only if they are foreign documents.

126. *Section-by-Section Summary of the Proposed "Protecting Americans From Tax Hikes Act of 2015."* House Ways and Means Committee. [http://waysandmeans.house.gov/wp-content/uploads/2015/12/SECTION-BY-SECTION-SUMMARY-OF-THE-PROPOSED-PATH-ACT.pdf] Accessed on Mar. 10, 2016; Instructions for Form W-7.

127. *ITIN Updated Procedures Frequently Asked Questions.* Jan. 5, 2016. IRS. [www.irs.gov/Individuals/ITIN-Updated-Procedures-Frequently-Asked-Questions] Accessed on Mar. 10, 2016.

128. Instructions for Form W-7.

Documents must be current. The definition of "current" varies depending on the type of document.[129]

- **Civil birth certificates** do not have an expiration date and are considered current at all times.
- **Passports and national identification cards** are current if their expiration date has not passed prior to the date the applicant submits Form W-7.
- **Medical records** (only accepted for dependents under age six) consist only of a shot/immunization record which documents the patient's name and dates of the patient's medical history and care. The medical record must also contain the following information.
  - Child's name, date of birth, and verifiable address
  - Name, address, and phone number of the doctor, hospital, or clinic that administered the last treatment

  If this information is not printed on the medical record, a dated letter must accompany the medical record that provides the required information on official letterhead from the federal authority, physician, hospital, or clinic that administered the latest care of the child. If a date of entry is required for the applicant, the medical record must be from a U.S. facility.
- **School records** are considered current if they are for a school term no older than 12 months from the date of the Form W-7 application (e.g., January 2015–December 2015 for a January 2016 application). These documents are valid for dependents under the age of 14 (under age 18 if a student). A school record consists of an official report card or transcript issued by the school (or equivalent of a Ministry of Education) and signed by the school or ministry official. The record must be dated and contain the following information.
  - Student's name
  - Course work with grades
  - Date of grading period(s)
  - School name and address

  The school record must be from a U.S. facility if a date of entry is required for the applicant.

RENEWAL

There are two key groups of ITIN holders who may need to renew an ITIN so it will be in effect for returns filed in 2017.[130]

- **Unused ITINs.** ITINs not used on a federal income tax return in the last three years (covering 2013, 2014, or 2015) will no longer be valid to use on a tax return as of January 1, 2017. ITIN holders in this group who need to file a tax return next year must renew their ITINs. The renewal period begins October 1, 2016.
- **Expiring ITINs.** ITINs issued before 2013 will begin expiring in 2016, and taxpayers will need to renew them on a rolling basis. The first ITINs that will expire under this schedule are those with middle digits of 78 and 79 (e.g., 9XX-78-XXXX). The renewal period for these ITINs begins October 1, 2016. The IRS started mailing letters to this group of taxpayers in August 2016 to inform them of the need to renew their ITINs if they need to file a tax return and to explain steps they need to take.

Note. At the time this book was published, the schedule for expiration and renewal of ITINs that do not have middle digits of 78 and 79 had not been announced.

129. Ibid.

130. *IRS Works to Help Taxpayers Affected by ITIN Changes; Renewals Begin in October.* Aug. 4, 2016. IRS. [www.irs.gov/uac/irs-works-to-help-taxpayers-affected-by-itin-changes-renewals-begin-in-october] Accessed on Aug. 22, 2016.

To renew an ITIN, a taxpayer must complete a Form W-7 and include all information and documentation according to the instructions for the form. To reduce the burden on taxpayers, the IRS will not require individuals who are renewing an ITIN to attach a tax return when submitting their Form W-7. The taxpayer should use the newest version of the Form W-7 available at the time of renewal.[131] Alternatively, an individual may choose to wait to submit their Form W-7 with their tax return. Once renewed, an ITIN will remain in effect unless it is not used on a tax return for three consecutive years.[132]

Family Option[133]

Any individual having an ITIN with middle digits of "78" or "79" (e.g., 9XX-78-XXXX), may receive a renewal letter from the IRS. They can choose to renew all of their family members' ITINs at the same time rather than separately over several years. Family members include:

- Taxpayer,
- Spouse, and
- Any dependents claimed on tax returns.

131. Ibid.

132. IRS Notice 2016-48, 2016-33 IRB 235.

133. *IRS Works to Help Taxpayers Affected by ITIN Changes; Renewals Begin in October.* Aug. 4, 2016. IRS. [www.irs.gov/uac/irs-works-to-help-taxpayers-affected-by-itin-changes-renewals-begin-in-october] Accesed on Aug. 8, 2016.

REVISED POWER OF ATTORNEY

Form 2848, *Power of Attorney and Declaration of Representative,* authorizes an individual to represent a taxpayer before the IRS. The individual whom the taxpayer authorizes must be eligible to practice before the IRS. Form 2848 lists the eligible designations.

Part II **Declaration of Representative**

Under penalties of perjury, by my signature below I declare that:

- I am not currently suspended or disbarred from practice, or ineligible for practice, before the Internal Revenue Service;
- I am subject to regulations contained in Circular 230 (31 CFR, Subtitle A, Part 10), as amended, governing practice before the Internal Revenue Service;
- I am authorized to represent the taxpayer identified in Part I for the matter(s) specified there; and
- I am one of the following:

a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
b Certified Public Accountant—licensed to practice as a certified public accountant is active in the jurisdiction shown below.
c Enrolled Agent—enrolled as an agent by the Internal Revenue Service per the requirements of Circular 230.
d Officer—a bona fide officer of the taxpayer organization.
e Full-Time Employee—a full-time employee of the taxpayer.
f Family Member—a member of the taxpayer's immediate family (spouse, parent, child, grandparent, grandchild, step-parent, step-child, brother, or sister).
g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Internal Revenue Service is limited by section 10.3(d) of Circular 230).
h Unenrolled Return Preparer—Authority to practice before the IRS is limited. An unenrolled return preparer may represent, provided the preparer (1) prepared and signed the return or claim for refund (or prepared if there is no signature space on the form); (2) was eligible to sign the return or claim for refund; (3) has a valid PTIN; and (4) possesses the required Annual Filing Season Program Record of Completion(s). ***See Special Rules and Requirements for Unenrolled Return Preparers in the instructions for additional information.***
k Student Attorney or CPA—receives permission to represent taxpayers before the IRS by virtue of his/her status as a law, business, or accounting student working in an LITC or STCP. See instructions for Part II for additional information and requirements.
r Enrolled Retirement Plan Agent—enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).

► IF THIS DECLARATION OF REPRESENTATIVE IS NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THE POWER OF ATTORNEY. REPRESENTATIVES MUST SIGN IN THE ORDER LISTED IN PART I, LINE 2.

Note: For designations d-f, enter your title, position, or relationship to the taxpayer in the "Licensing jurisdiction" column.

Designation—Insert above letter **(a–r)**.	Licensing jurisdiction (State) or other licensing authority (if applicable).	Bar, license, certification, registration, or enrollment number (if applicable).	Signature	Date

In December 2015, the IRS revised Form 2848. The IRS removed the registered tax return preparer designation and updated the description and representation requirements **for unenrolled return preparers.** An unenrolled return preparer is an individual **other than** one of the following.[134]

- Attorney
- Certified public accountant (CPA)
- Enrolled agent
- Enrolled retirement plan agent
- Enrolled actuary who prepares and signs tax returns as the paid preparer or who prepares returns but is not legally required to sign the return

134. Instructions for Form 2848.

Unenrolled return preparers include individuals who passed the IRS registered tax return preparer competency test offered between November 2011 and January 2013.[135]

An unenrolled return preparer **can only** represent taxpayers during an examination of the tax period covered by the tax return they prepared and signed before revenue agents, customer service representatives, or similar officers and employees of the IRS (including the Taxpayer Advocate Service).[136]

An unenrolled return preparer **cannot** represent taxpayers before appeals officers, revenue officers, attorneys from the Office of Chief Counsel, or similar officers or employes of the IRS or the Department of Treasury.[137]

For returns prepared and signed after December 31, 2015, an unenrolled return preparer must also possess a valid annual filing season program record of completion for the calendar year in which the preparer prepared and signed the tax return or claim for refund and for the year(s) in which the representation occurs.[138] An **annual filing season program record of completion** certifies that an unenrolled tax return preparer meets all of the following requirements.[139]

- Took 18 hours of continuing education (CE), which included the following:
  - Six continuing education (CE) hours of an annual federal tax refresher (AFTR) course and passed a knowledge-based comprehension test
  - 10 hours of other federal tax law topics
  - Two hours of ethics
- Has an active preparer tax identification number (PTIN)
- Consents to adhere to specific practice obligations outlined in Circular 230, subpart B and §10.51

A preparer who passed the registered tax return preparer test (administered by the IRS between November 2011 and January 2013) or certain other recognized national and state tests must meet the following requirements to obtain an annual filing season program record of completion.[140]

- Took 15 hours of CE, which included the following:
  - Three hours of federal tax law updates
  - 10 hours of other federal tax topics
  - Two hours of ethics
- Has an active PTIN
- Consents to adhere to specific practice obligations outlined in Circular 230, subpart B and §10.51

135. Ibid.

136. Ibid.

137. Ibid.

138. Ibid.

139. *Annual Filing Season Program.* Mar. 25, 2016. IRS. [www.irs.gov/Tax-Professionals/Annual-Filing-Season-Program] Accessed on May 3, 2016; *General Requirements.* Nov. 4, 2015. IRS. [www.irs.gov/Tax-Professionals/General-Requirements-for-the-Annual-Filing-Season-Program-Record-of-Completion] Accessed on Mar. 15, 2016.

140. *Reduced Requirements for Exempt Individuals.* Nov. 4, 2015. IRS. [www.irs.gov/Tax-Professionals/Reduced-Requirements-for-Exempt-Individuals-for-the-Annual-Filing-Season-Program-Record-of-Completion] Accessed on Mar. 16, 2016.

REPRESENTATION RIGHTS

Beginning January 1, 2016, the IRS changed the representation rights of return preparers to the following.[141]

Tax Professionals	Representation Rights
Attorneys, CPAs, enrolled agents	Unlimited: can represent clients on any matter including audits, payment/collection issues, and appeals
Annual filing season program participants	Limited: can represent clients whose returns they prepared and signed but only before revenue agents, customer service representatives, and similar IRS employees, including the Taxpayer Advocate Service
PTIN holders without an annual filing season program record of completion or other professional credential	Only permitted to prepare tax returns; for returns prepared and signed after December 31, 2015, cannot represent clients before the IRS

A taxpayer can authorize an unenrolled return preparer who does not meet the representation requirements to inspect and/or request tax information by filing Form 8821, *Tax Information Authorization.*[142] Form 8821 does not authorize an appointee to do any of the following activities.[143]

- Speak on the taxpayer's behalf
- Execute a request to allow disclosure of return or return information to another third party
- Advocate taxpayer's position with respect to federal tax laws
- Execute waivers, consents, or closing agreements
- Represent the taxpayer in any other manner before the IRS

Example 10. Peter is a pilot who spends the majority of his time away from home. His neighbor, Wendy, is an unenrolled preparer who collects his mail and takes care of his house while Peter is flying. One afternoon when Wendy was watering Peter's plants, she spilled water on his stack of mail, completely ruining a notice from the IRS. Peter decided to authorize Wendy to request a copy of the IRS notice. He completed and signed the following Form 8821, appointing Wendy to help him with any IRS notices.

141. *Annual Filing Season Program.* Mar. 25, 2016. IRS. [www.irs.gov/Tax-Professionals/Annual-Filing-Season-Program] Accessed on May 3, 2016.

142. Instructions for Form 2848.

143. Instructions for Form 8821.

For Example 10

Form **8821**

(Rev. March 2015)

Department of the Treasury
Internal Revenue Service

Tax Information Authorization

▶ Information about Form 8821 and its instructions is at *www.irs.gov/form8821*.

▶ Do not sign this form unless all applicable lines have been completed.

▶ Do not use Form 8821 to request copies of your tax returns or to authorize someone to represent you.

OMB No. 1545-1165

For IRS Use Only

Received by:

Name

Telephone

Function

Date

1 Taxpayer information. Taxpayer must sign and date this form on line 7.

Taxpayer name and address	Taxpayer identification number(s)	
Peter Pann **1902 Neverland Drive, Chicago, IL 60611**	**011-11-0000**	
	Daytime telephone number	Plan number (if applicable)

2 Appointee. If you wish to name more than one appointee, attach a list to this form. **Check here if a list of additional appointees is attached ▶** ☐

Name and address

Wendy Darling
1904 Neverland Drive, Chicago, IL 60611

CAF No. **NONE**

PTIN

Telephone No.

Fax No.

Check if new: Address ☐ Telephone No. ☐ Fax No. ☐

3 Tax Information. Appointee is authorized to inspect and/or receive confidential tax information for the type of tax, forms, periods, and specific matters you list below. See the line 3 instructions.

(a) Type of Tax Information (Income, Employment, Payroll, Excise, Estate, Gift, Civil Penalty, Sec. 4980H Payments, etc.)	(b) Tax Form Number (1040, 941, 720, etc.)	(c) Year(s) or Period(s)	(d) Specific Tax Matters
Income	**1040**	**2014-2015**	**Tax Notices**

4 Specific use not recorded on Centralized Authorization File (CAF). If the tax information authorization is for a specific use not recorded on CAF, check this box. See the instructions. If you check this box, skip lines 5 and 6 . . . . ▶ ☐

5 Disclosure of tax information (you **must** check a box on line 5a or 5b unless the box on line 4 is checked):

a If you want copies of tax information, notices, and other written communications sent to the appointee on an ongoing basis, check this box . . . . ▶ ☒

Note. Appointees will no longer receive forms, publications, and other related materials with the notices.

b If you do not want any copies of notices or communications sent to your appointee, check this box . . . . ▶ ☐

6 Retention/revocation of prior tax information authorizations. If the line 4 box is checked, skip this line. If the line 4 box is not checked, the IRS will automatically revoke all prior Tax Information Authorizations on file unless you check the line 6 box and attach a copy of the Tax Information Authorization(s) that you want to retain. . . . . ▶ ☐

To revoke a prior tax information authorization(s) without submitting a new authorization, see the line 6 instructions.

7 Signature of taxpayer. If signed by a corporate officer, partner, guardian, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute this form with respect to the tax matters and tax periods shown on line 3 above.

▶ IF NOT COMPLETE, SIGNED, AND DATED, THIS TAX INFORMATION AUTHORIZATION WILL BE RETURNED.

▶ DO NOT SIGN THIS FORM IF IT IS BLANK OR INCOMPLETE.

Signature Date

Print Name Title (if applicable)

For Privacy Act and Paperwork Reduction Act Notice, see instructions. Cat. No. 11596P Form **8821** (Rev. 3-2015)

5

THIRD-PARTY DESIGNEE

A taxpayer can choose an unenrolled return preparer as a third-party designee on Form 1040, *U.S. Individual Income Tax Return*. A taxpayer can authorize the IRS to discuss a return with a friend, family member, or any other person if the "yes" box in the third-party designee area is checked and they provide the required information. The third-party designation allows the designee to do the following.[144]

- Give the IRS information missing from the taxpayer's return
- Call the IRS for information about the processing of the taxpayer's return or the status of a refund or payment(s)
- Receive copies of notices or transcripts related to the return, upon request
- Respond to certain IRS notices about math errors, offsets, and return preparation

A third-party designee **cannot** do any of the following.[145]

- Receive refund checks
- Bind the taxpayer to any agreements
- Represent the taxpayer before the IRS

The authorization cannot be revoked but will automatically terminate no later than the due date (without regard to extensions) for filing the subsequent year's tax return.[146]

Example 11. Jasmine elects her boyfriend, Al, as her third-party designee on her 2015 Form 1040. She files her tax return February 14, 2016. In September 2016, Jasmine realizes she never received her refund and has Al call the IRS for an update. As her third-party designee, Al can call the IRS, and he finds out that they issued the refund check the previous week. Al's authorization will automatically terminate on April 15, 2017.

AUDIT TRENDS (DATA BOOK)[147]

The IRS issues its *Data Book* annually. It contains statistical tables and organizational information on a fiscal year basis. The 2015 *Data Book* reflects data collected from October 1, 2014, to September 30, 2015.

RETURNS FILED

The IRS collected more than $3.3 trillion in gross taxes for fiscal year (FY) 2015. It issued more than 119 million refunds amounting to almost $403.3 billion. Nearly 16.3 million tax refunds included a refundable child tax credit and almost 24.1 million included a refundable EIC.

144. IRM 4.11.55.1.4.2.5 (2010).

145. Ibid.

146. Ibid.

147. *2015 Internal Revenue Service Data Book.* IRS. [www.irs.gov/pub/irs-soi/15databk.pdf] Accessed on Apr. 1, 2016.

Almost 163.5 million returns and other forms were filed electronically. The following table summarizes the total returns e-filed by entity type.

Type of Return	Number e-filed
C or other corporation income tax	1,268,809
S corporation	3,731,071
Partnership	3,094,662
Individual	127,778,934
Estate and trust income tax	2,470,453

Individual income tax returns represented 78.2% of e-filed returns. Paid preparers e-filed nearly 78.1 million tax returns and almost 3 million taxpayers used the IRS Free File program.

AUDITS

The IRS examined less than 1% of all returns filed for calendar year (CY) 2014.

During FY 2015, 72.6% of the audits were conducted via correspondence audit and the remaining 27.4% were conducted in the field. The following table summarizes the percentage of returns examined in FY 2015.

		Returns Examined in FY2015	
Type of Return	All Returns Filed in Calendar Year 2014	Total	%
Individual income tax return	146,861,217	1,228,117	0.8
Corporation income tax return	1,915,337	24,761	1.3
Estate and trust income tax returns (Form 1041)	3,215,902	5,288	0.2
Estate tax returns (Form 706)	35,619	2,770	7.8
Gift tax returns	267,600	2,539	0.9

Of the 1.2 million examinations of individual income tax returns, almost 40,000 resulted in additional refunds to the taxpayer totaling more than $1.1 billion.

For individuals, a disproportionate amount of audits occur at the highest tax brackets and for taxpayers with no adjusted gross income (AGI). The following table displays the increased focus during FY 2015 on taxpayers with AGI of $10 million or more. Examination rates for individuals in the lower brackets have remained steady.

Individual's AGI	Returns Filed in CY2014 (%)	Examination Coverage in FY2014 (%) [148]	Examination Coverage in FY2015 (%)
$0	1.76	5.26	3.78
$1–$200,000	94.44	3.17	3.11
$200,000–$500,000	3.08	1.75	1.54
$500,000–$1,000,000	0.48	3.62	3.81
$1,000,000–$5,000,000	0.21	6.21	8.42
$5,000,000–$10,000,000	0.01	10.53	19.44
$10,000,000 or more	0.01	16.22	34.69

148. *2014 Internal Revenue Service Data Book.* IRS. [www.irs.gov/pub/irs-soi/14databk.pdf] Accessed on Apr. 5, 2016.

MATH ERRORS

The IRS sent almost 1.7 million notices to taxpayers in FY 2015 for almost 2.2 million math errors. For tax year 2014 returns processed in 2015, math errors from the calculation of income or other taxes made up almost 34% of total math errors. For tax year 2013 and prior year returns processed in CY 2015, misreporting the number and amount of exemptions was the most common error, making up 24.8% of total math errors.

PENALTIES

The IRS abated almost $8.9 billion in civil penalties during the year. This includes $3.6 billion in abatements for individual and estate and trust income tax returns.

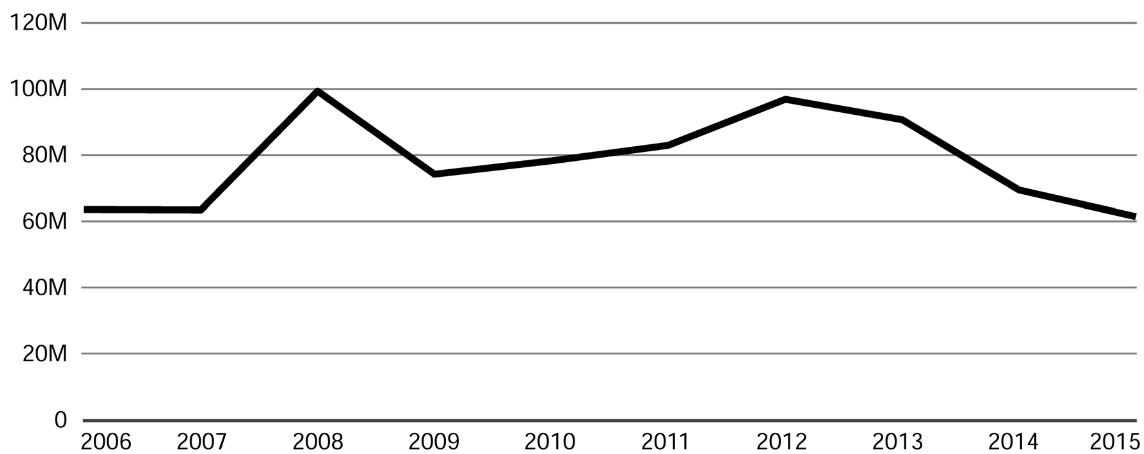
IDENTITY THEFT

In FY 2015, the IRS initiated 776 identity theft cases and completed 985 investigations. Data for identity theft was not provided in the 2014 *Data Book*, which illustrates the IRS's increased focus on identity theft issues during 2015.

TAXPAYER ASSISTANCE

During FY 2015, the IRS provided taxpayer assistance through 493.2 million taxpayer visits to **IRS.gov.** In addition, 61.3 million taxpayers called the helpline or visited walk-in sites, and the IRS received 234 million inquires on the Where's My Refund application. Call and walk-in assistance has seen a steady decline since 2012, as shown in the following graph.

Call and Walk-in Assistance, Total, Fiscal Years 2006–2015



IRS ADMINISTRATION

The IRS provides taxpayer services, enforcement, operations support, and business systems modernization on an increasingly shrinking budget. The actual expenditures for FY 2015 were $11.4 billion for overall operations, down from almost $11.6 billion in FY 2014.

The number of IRS employees is also shrinking. In 2015, the IRS used 79,890 full-time equivalent positions, a decrease of 15.6% from 2010.

CHANGES TO THE SPECIAL ENROLLMENT EXAM[149]

To become an enrolled agent (EA), an applicant must pass the special enrollment examination (SEE). The SEE is updated periodically to ensure that the exam covers appropriate topics and tests the knowledge an EA must possess to adequately perform their tasks. Updated test specifications apply to tests taken after May 1, 2016.[150]

The SEE is a 3-part comprehensive IRS test offered May 1 through the last day of February. The SEE test is not available during March and April because that is when the exam is updated.

Candidates can take exam parts up to four times during each test window. Each part contains 100 multiple-choice questions and lasts 3.5 hours. The three parts are:

1. Individuals;
2. Businesses; and
3. Representation, Practices, and Procedures.

The revised exam changes the emphasis on some of the learning domains. The following table compares the old and new versions.[151]

SEE Part 1 Domains	New % of Exam	Old % of Exam
Preliminary work and taxpayer data	20%	15%
Income and assets	25%	25%
Deductions and credits	25%	25%
Taxation and advice	17%	20%
Specialized returns for individuals	13%	15%
SEE Part 2 Domains		
Business entities	33%	45%
Business financial information	46%	40%
Specialized returns and taxpayers	21%	15%
SEE Part 3 Domains		
Practices and procedures	30%	35%
Representation before the IRS	28%	30%
Specific types of representation	22%	30%
Completion of the filing process	20%	5%

Exam content outlines are updated for new material. Revised specifications, as well as a tracked changes version, are available at **uofi.tax/16a5x18** [www.prometric.com/see] under "Review Exam Content Outlines." A revised candidate information bulletin that contains an overview of scoring, test center regulations, identification policies, and other helpful information can also be found at this web site.

149. *Candidate Information Bulletin*. 2016. Prometric. [www.prometric.com/en-us/clients/SEE/Documents/IRS_SEE_CIB.pdf] Accessed on Apr. 8, 2016.

150. *Information for IRS Approved Continuing Education Providers.* IRS. [www.irs.gov/pub/irs-utl/ce_provider_notes_jan_2016.pdf] Accessed on Apr. 11, 2016.

151. *IRS Special Enrollment Examination: Review Exam Content Outlines.* Prometric. [www.prometric.com/en-us/clients/see/Pages/landing.aspx] Accessed on Apr. 27, 2016.

Starting August 14, 2016, applicants receive printed test results at the test site after completing the computer-based exam. The number of questions correctly answered from the total number of exam questions is converted to a scale from 40 to 130. A passing score is 105. Candidates scoring 105 or above receive a score report showing a passing designation but **not** the score. They will also receive diagnostic information to indicate areas to consider for professional development.

Candidates scoring below 105 receive a report showing the scaled score. They receive diagnostic information to help them with future exam preparation. The diagnostics show one of the following indicators.

1. Area of weakness where additional study is necessary (For exam takers, it is important to focus on this domain to prepare to retake the exam. Exam takers may want to consider taking a course or participating actively in a study group on this topic.)
2. The area where the exam taker may need additional study
3. The area where the exam taker clearly demonstrated an understanding of subject

Passing scores on a part of the SEE **carry over up to two years** from the date the candidate passes the examination.

> **Example 12.** Cindy Rella passed the Individual part of the exam on November 15, 2014. She passed the Businesses part on February 15, 2015. Cindy has until November 14, 2016, to pass the Representation, Practices, and Procedures part before she loses credit for Individuals.

The IRS posted frequently asked questions about becoming an EA and taking the SEE. These can be found at **uofi.tax/16a5x19** [www.irs.gov/Tax-Professionals/Enrolled-Agents/Enrolled-Agents-Frequently-Asked-Questions].

FORMER IRS EMPLOYEES[152]

Certain former IRS employees can apply to become an EA without taking the SEE. According to Circular 230, applicants "must have been regularly engaged in applying and interpreting the provisions of the Internal Revenue Code, and the regulations relating to income, estate, gift, employment, or excise taxes." This experience generally must include at least five years in a taxpayer-facing field position, such as any of the following.

- Appeals officer
- Special agent
- Revenue officer
- Revenue agent
- Tax specialist
- Tax law specialist
- Settlement officer

Three of the five qualifying years must have occurred within the last five years prior to leaving the IRS. The experience requirement is intended to ensure the applicant's IRS experience is equivalent to a public sector candidate who passes all three parts of the SEE. A former IRS employee without comparable experience is restricted to a specific area of representation.

152. *Enrolled Agent Information for Former IRS Employees.* Jan. 20, 2016. IRS. [www.irs.gov/Tax-Professionals/Enrolled-Actuaries/Enrolled-Agent-Information-for-Former-IRS-Employees] Accessed on Apr. 11, 2016.

To apply for enrollment, former IRS employees must:

- Submit Form 23, *Application for Enrollment to Practice Before the Internal Revenue Service;*
- Provide information regarding education, training, licenses, and work experience; and
- Pass a background check.

CASH PAYMENT OPTION[153]

The IRS is now offering a cash payment option. Taxpayers can now make an IRS payment in cash at participating 7-Eleven stores in 34 states. There is a $3.99 fee charged per payment, and payments are limited to $1,000 per day. The 4-step process to make a payment is as follows.

1. The taxpayer should visit the official payments site at **uofi.tax/16a5x20** [www.officialpayments.com/fed/] and follow the instructions to make a payment with PayNearMe.
2. The taxpayer will receive a confirmation email from the official payments website. The IRS will then verify the information.
3. Upon IRS verification, PayNearMe will send the taxpayer an email with instructions and a link with a payment code.
4. The taxpayer then can visit the 7-Eleven store listed in the email with the code, makes payment, and receives a receipt. The IRS will post the payment within two business days.

The IRS cautions that the verification and posting steps will each take several business days, so the cash payment process should be started well in advance of any due dates to avoid penalties and interest.

The IRS also warns that the only valid email contacts will be from either the official payments website or PayNearMe (if the taxpayer has already started the process to make a cash payment). Phone calls and other unsolicited email may be phishing schemes.

153. *Pay with Cash at a Retail Partner.* Jul. 27, 2016. IRS. [www.irs.gov/payments/pay-with-cash-at-a-retail-partner] Accessed on Aug. 8, 2016.