



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE SERVICE CENTER ADVICE

MEMORANDUM FOR RONALD P. RIVELLIE
CHIEF, Partnerships, Trusts and International Section
OP:FS:S:P:P

FROM: Pamela W. Fuller
Senior Technician Reviewer
CC:PA:APJP:1

SUBJECT: Request for Service Center Advice - ITIN Signature and ITIN
Dependent

This Chief Counsel Advice responds to your memorandum dated April 12, 2002 requesting service center advice. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

ISSUES

1. Can a resident spouse sign a Form W-7 as a guardian of his/her unavailable spouse?
2. Can the Internal Revenue Service ("Service") reject a Form W-7 if the applicant designates that he/she is a dependent of a U.S. person but has an address outside of the United States, Canada, or Mexico?

FACTS

Issue 1

A foreign individual wants to apply for an ITIN but is unavailable (i.e. outside of the country). The resident spouse signs the Form W-7 on behalf of the unavailable

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spouse. The resident spouse indicates on the Form W-7 that he/she is the guardian of the unavailable spouse.

Issue 2

A foreign individual files Form W-7 requesting an IRS taxpayer identification number ("ITIN"). The applicant indicates that the reason for submitting the Form W-7 is because he/she is a dependent of a U.S. person. The address of the applicant is outside the United States, Canada, or Mexico.

CONCLUSION

Issue 1

A person can only sign a Form W-7 as a guardian when the applicant is age 14 or under. Therefore, a resident spouse cannot sign a Form W-7 as a guardian of his/her unavailable spouse.

Issue 2

A resident alien under the substantial presence test of § 7701(b)(1)(B)(3) satisfies the definition of a dependent pursuant to § 152(b)(3). Therefore, the Service should not reject a Form W-7 solely because an applicant designates that he/she is a dependent of a U.S. person and has an address outside of the United States.

LAW AND ANALYSIS

Issue 1

Generally, § 6109(a)(1) of the Internal Revenue Code ("Code") provides that when required by regulations prescribed by the Secretary, any person required under the authority of the Title 26 (Code) to make a return, statement, or other document must include in the return, statement, or other document the identifying number as may be prescribed for securing the proper identification of such person.

Section 301.6109-1(a)(ii)(B) of the Regulations on Procedure and Administration ("regulations") states that an individual required to furnish a taxpayer identifying number but who is not eligible to obtain a social security number must use an ITIN. The regulations define an ITIN as a taxpayer identifying number issued to an alien individual by the Service, upon application, for use in connection with filing requirements under this title. See Treas. Reg. 301.6109-1(d)(3)(i). An alien individual is an individual who is not a citizen or national of the United States. Id. Section 301.6109-1(d)(3)(ii) of the regulations require that such individual apply for an ITIN on Form W-7, Application for IRS Individual Taxpayer Identification Number. An applicant for an ITIN shall furnish the information required by the Form W-7 and its accompanying instructions. Id.

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The Form W-7 requires the applicant execute the form under penalty of perjury. If an applicant is age 14 or under, a delegate (parent or guardian) should sign. If an applicant is over the age of 14, the applicant may appoint an authorized agent. The authorized agent must print his/her name in the appropriate area and attach a Form 2848, Power of Attorney and Declaration of Representative.

In this scenario, the resident spouse designates himself/herself as the guardian of the unavailable spouse. This designation does not adhere to the requirements of Form W-7. A person may sign as a guardian only where the applicant is age 14 or under. Therefore, the resident spouse cannot sign the Form W-7 as guardian of the unavailable spouse.

However, as stated above, an applicant over the age of 14 may appoint an authorized agent to sign the Form W-7. In this case, the unavailable spouse could appoint the resident spouse as an authorized agent. The resident spouse would print his/her name on the W-7 and attach a Form 2848.

Issue 2

As stated above, § 301.6109-1(d)(3)(ii) of the regulations states that an applicant for an ITIN shall furnish the information required by the Form W-7 and its accompanying instructions, including the individual's name, address, foreign tax identification number (if any), and the specific reason for obtaining an ITIN. The Form W-7 provides one reason for obtaining an ITIN as "dependent of U.S. person." This is an individual who may be claimed as a dependent on a U.S. tax return and who is unable, or not eligible, to obtain a social security number. A U.S. person is a citizen, national, or resident alien of the United States.

Section 152(b)(3) of the Code defines the term "dependent" as not including any individual who is not a citizen or national of the United States unless such individual is a resident of the United States or of a country contiguous to the United States. Section 7701(b)(1)(B) defines a resident of the United States.

An applicant who is a resident alien under the substantial presence test of § 7701(b)(1)(B)(3) satisfies the § 152(b)(3) definition of dependent and, therefore, may mail a Form W-7 from an address outside of the United States, Canada, or Mexico. As a result, the Service should not reject a Form W-7 merely because the address of the applicant is outside the United States, Canada, or Mexico.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

Please call (202) 622-4910 if you have any further questions.