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"PTINs" For Payroll and Employee Benefits Practitioners

By Elizabeth T. Dold

By In an effort to monitor and impose quality controls on tax return preparers, beginning January 1, 2011, all individuals (including attorneys and CPAs) who are compensated for preparing, or assisting in the preparation of, all or substantially all of a tax return or claim for refund must have a PTIN. This number is assigned by the IRS, and can be applied for online for \$64.25 (<https://rpr.irs.gov/datamart/mainMenu.do;jsessionid=F8AEB591F0F5277ED6ABC167EB9EBFC9.bm9kZTM>). As part of the PTIN process, competency exams and continuing education requirements may apply. However, these rules only apply currently to Form 1040 preparers.

The IRS recently explained in Notice 2011-6 (Jan. 17 [IRS Bulletin](#)) that, for this purpose, all tax returns, claims for refund, or other tax forms submitted to the IRS are considered tax returns for this purpose, unless expressly identified by the IRS as exempt. The current list of exempt forms, as relevant to payroll and employee benefit practitioners, is as follows:

- Form SS-8 – Worker Classification,
- Form W-2 series – Wages,
- Form 906 – Closing Agreement,
- Form 1098, 1099 series – Information Returns for Various Payments,
- Form 2848 – Power of Attorney,
- Form 5300, 5307, 5310, 8717 – Determination Letters,
- Form 5500 series – Annual Reports

Although the above list of excluded forms is helpful, a wide variety of other forms that arise in employee benefits practice are not carved out. These include –

- Forms 5329 and 5330 – Reporting a wide variety of pension excise taxes for both individual and business taxpayers,
- Forms 5498 and 5306 – Relating to IRA applications and reports to IRA owners,
- Forms 990 and 990-T – The detailed annual information/tax returns for tax-exempt organizations and unrelated business income tax.

The failure to sign-up for (or renew) the PTIN may result in penalties. Tax return preparers who do not use a valid PTIN on tax returns or claims for refund filed after December 31, 2010 may be subject to a penalty, under IRC Section 6695(c), of \$50 per return (maximum \$25,000 per year), unless reasonable cause applies.

Therefore, in the employee benefit and payroll areas, if the IRS form is not exempt and contains a paid preparer signature line, consideration should be given to whether the practitioner needs to sign the form and include a PTIN. On the other hand, where the practitioner provides legal advice on only a portion of the form, such as a company's pension contribution deduction on Form 1120, he or she is unlikely to sign the tax return and therefore should not need a PTIN.

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