

Brian E. Harriss
6023 Harriss Hammond Road
Harlem, GA 30814
April 14, 2017

US Department of State
National Passport Center
207 International Drive
Portsmouth, NH 03801

RE: 282664870

To Whom It May Concern:

I received a letter dated April 10, 2017 from your office requesting a Social Security number (SSN) for my 5-year-old son's passport application. You are probably already aware that the Social Security Act does not require an SSN for most ordinary individuals. The Social Security Administration has stated that "The Social Security Act does not require a person to have a SSN to live and work in the United States, nor does it require an SSN simply for the purpose of having one" on numerous occasions. For your reference, I have attached a copy of one such official letter stating this.

The passport application form DS11, on page 3 of the instructions under "FEDERAL TAX LAW" purports to require that a US Citizen living in the fifty states of the union must include their SSN where it states "... (26 U.S.C. 6039E) and 22 U.S.C 2714a(f) require you to provide your Social Security number (SSN), if you have one, when you apply for or renew a U.S. Passport."

The use of the pronouns "you" and "your" in this verbiage may lead someone unfamiliar with the nuances of written law to conclude that this verbiage is inclusive of all who need a passport. However, those like myself who do give consideration to the written law know that such second person pronouns only apply to those who fall within the purpose and scope of the legislation so enacted. In other words, "you" and "your" does not necessarily include everyone who reads the DS11 instructions and, as shown below, includes only a small percentage of the U.S. Citizen population seeking a passport.

26 USC 6039E and its regulations are quite limited in scope and purpose. It reads, in part:

"(a) General rule

Notwithstanding any other provision of law, any individual who—
(1) applies for a United States passport (or a renewal thereof)...
shall include with any such application a statement which includes the information described in subsection (b).

(e) Exemption

The Secretary may by regulations exempt any class of individuals from the requirements of this section if he determines that applying this section to such individuals is not necessary to carry out the purposes of this section."

So, what are the "purposes of this section"? And who (what "class of individuals") has the Secretary exempted?

A search in the Federal Register for Treasury Decision (T.D.) 9679 (Federal Register / Vol. 79, No. 138, Friday, July 18, 2014), which contains final regulations corresponding to 26 USC 6039E, 28 years after Congress enacted the public law corresponding to 26 USC 6039E, contains no preamble covering the purpose and scope. But this T.D. does refer to a notice of proposed rulemaking from January 26, 2012 (25 years after Congress enacted this law) as well as a prior notice of proposed rulemaking (57 FR 61373) from December 24, 1992 (6 years after Congress enacted this law). A search into this earlier

notice of proposed rulemaking found in Vol. 57, No. 248 of the Federal Register, reveals the Purpose and Scope of Section 6039E. There, it states in part:

"Section 6039E is intended to improve tax compliance by resident aliens and U.S. citizens or nationals **living abroad**.

With respect to U.S. citizens or nationals living overseas but not filing returns, the Congress foresaw that collection of tax after identification might be difficult but nonetheless sought both to give the Internal Revenue Service a further source of information regarding these nonfilers and to notify these **overseas persons** of their continuing duty to file U.S. Tax returns." (emphasis added)

To corroborate the intent of section 6039E, a 1998 GAO report: TAX ADMINISTRATION Nonfiling Among U.S. Citizens Abroad (<http://www.gao.gov/archive/1998/gg98106.pdf>) contains further statements describing the intent of section 6039E.

"The intent of section 6039E was that IRS would use this information to identify non-filers **residing abroad**."

"IRC section 6039E was enacted in 1986 to provide IRS with data from passport applications processed by the State Department for use in identifying individuals **residing abroad** who do not file tax returns." (emphasis added)

Since my 5-year-old son is neither a resident alien nor a U.S. citizen or national living abroad or residing abroad, the only reasonable conclusion is that Section 6039E of the Internal Revenue Code (IRC) has no applicability to him and thus there is no lawful requirement for him to supply an SSN, as he is ostensibly exempted by the Secretary of the Treasury pursuant to the original Preamble to 26 CFR 301.6039E. The words of the law mean what they say and say what they mean.

Additionally, my son has no current intention of living and working abroad. He will be using his U.S. issued Passport as identification for domestic and international vacation purposes in exercising his right to travel. He has no current intention of leaving this country's borders to engage in foreign commerce over which Congress has exclusive jurisdiction.

Therefore, it should be evident that my son and millions of U.S. Citizens who live and/or work in one of the States of the Union are outside of the intended scope and purpose of section 6039E. The intentional misapplication and misrepresentation of a law to those to whom it does not apply is a crime. In most cases it is called extortion. Though 22 U.S.C 2714a(f) gives the Secretary of State the authorization, but not the requirement, to deny a passport application or revoke a passport that does not include a social security number, I trust that the background provided herein of the Scope and Purpose of 26 USC 6039E will make a *writ mandamus* unnecessary.

Pursuant to the foregoing, please make all efforts to expedite the completion of this passport application, and issue my son's passport and return his birth certificate as promptly as possible. We have made nonrefundable travel arrangements departing on Friday, April 21st.

Respectfully,

Brian E. Harriss

- Enclosures:
- (1) Letter from Social Security Administration
 - (2) T.D. 9679 FR Doc# 2014-16944_79 FR 41891 July 18 2014_pages 418889-418891
 - (3) Select Pages from 1998 GAO report: TAX ADMINISTRATION Nonfiling Among U.S. Citizens Abroad
 - (4) Copy of National Passport Center letter dated 4/10/17



SOCIAL SECURITY

TEH2B
QR3572

January 27, 2009

The Honorable Gus Bilirakis
House of Representatives
Washington, D.C. 20515

Dear Mr. Bilirakis:

This letter is in response to your inquiry on behalf of Mr. C D ,
, who contacted you concerning
the need for a Social Security number (SSN).

The Social Security Act does not require a person to have an SSN to live and work in the United States, nor does it require an SSN simply for the purpose of having one. However, if someone works without a number, we cannot properly credit the earnings for the work performed, and the worker may lose any potential entitlement to Social Security benefits.

Other laws require people to have and use SSNs for specific purposes. For example, the Internal Revenue Code (26 U.S.C. 6109 (a)) and applicable regulations (26 CFR 301.6109-1 (d)) require a person to get and use a number on tax documents and to furnish it to any other person or institution (such as an employer or a bank) that is required to provide the Internal Revenue Service (IRS) information about payments to that person. There are penalties for failure to do so. The IRS also requires employers to report the number with employees' earnings. In addition, people filing tax returns for taxable years after December 31, 1994, generally must include the number of each dependent.

The Privacy Act regulates the use of SSNs by government agencies. They may require a number only if a law or regulation either orders or authorizes them to do so. Agencies are required to disclose the authorizing law or regulation. If the request has no legal basis, the person may refuse to provide the number and still receive the agency's services.

We hope that this information will help you respond to Mr. D . Please let us know if we can be of further assistance.

Sincerely,

Sheryll Ziporkin
Associate Commissioner
Office of Public Inquiries

(iii) *Freely revocable election.* The election described in this section under Act section 311(d)(2) is freely revocable.

Michael P. Dolan,
Acting Commissioner of Internal Revenue.
IFR Doc. 92-30946 Filed 12-23-92; 8:45 am]
BILLING CODE 4830-01-M

26 CFR Part 301

[INTL-978-86]

RIN 1545-AJ93

Information Reporting by Passport and Permanent Residence Applicants

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations implementing section 6039E of the Internal Revenue Code of 1986. Section 6039E was added by the Tax Reform Act of 1986 to require that applicants for passports and permanent residence report certain information related to administration of U.S. tax law. These regulations would inform applicants for passports or for permanent residence of their obligations under the new reporting provision and the penalties for non-compliance and advise certain agencies of the federal government of their responsibilities under this provision.

DATES: Written comments and requests for a public hearing must be received by February 22, 1993.

ADDRESSES: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:CORP:T:R (INTL-978-86), P.O. Box 7604, Ben Franklin Station, room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Ricardo A. Cadenas of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224, (202-874-1490, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention:

Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224

The collection of information is required by § 301.6039E-1(c) of the proposed regulations. This information is required by the Internal Revenue Service to implement section 6039E. This information will be used to give the Internal Revenue Service notice of U.S. non-filers living abroad, and of persons with foreign source income that is subject to U.S. taxation but that is not subject to normal withholding. The respondents are individuals.

These estimates are an approximation of the average time expected to be necessary for collection of information. They are based on information available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting burden for passport applicants: 500,000 hours. The estimated annual burden per respondent varies from four to ten minutes, depending on individual circumstances, with an estimated average of six minutes. Estimated number of respondents: 5,000,000. Estimated annual frequency of responses: one.

Estimated total annual reporting burden for permanent residence applicants: 250,000. The estimated annual burden per respondent varies from twenty to forty minutes, depending on individual circumstances, with an estimated average of thirty minutes. Estimated number of respondents: 500,000. Estimated annual frequency of responses: one.

Background

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301), under section 6039E of the Internal Revenue Code of 1986 (26 U.S.C. 6039E), as added by section 1234 of the Tax Reform Act of 1986 (Pub. L. 99-514), as amended by section 1012(o) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647, Nov. 10, 1988). The proposed amendments to the regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1986 (68A Stat. 917, 26 U.S.C. 7805) and under the authority contained in section 6039E. The regulations are proposed to be applicable to all passport applications submitted after January 31, 1987 and immigration applications

submitted after December 31, 1989, that solicit the information described in section 6039E.

Statutory Framework

Section 6039E of the Internal Revenue Code of 1986 requires that passport and permanent residence applicants include certain information with their applications. The information required of passport applicants in the statute is different from that required of permanent residence applicants. The Secretary of the Treasury has authority to require additional information from either of the above mentioned groups. The statute requires a TIN (Taxpayer Identification Number) (if any) from both passport applicants and applicants for permanent residence, but also requires special information from each of these two groups. For passport applicants, the foreign country of residence (if any) must be stated, and for permanent residence applicants, a statement as to whether the applicant is required to file a tax return for any of that individual's three most recent taxable years must be given. Section 6039E requires and authorizes the obtaining of three categories of information which are grouped into "lists" in the proposed regulations—a list for permanent residence applicants, a list for passport applicants, and a list of "possible" information items which may be required of either group (or both) at a later date under the authority of section 6039E (b)(4). The statute imposes a \$500 penalty on any applicant who fails to provide the required information without reasonable cause for such failure. The Department of State and the Immigration and Naturalization Service are required to share the information collected in the course of processing passport and permanent residence applications with the Treasury Department, and are also required to identify persons refusing to comply. Finally, Congress gave the Secretary the authority to exempt any class of individuals from these reporting requirements if reporting by that class is unnecessary to carry out the purposes of section 6039E.

Section 1012 (o) of the Technical and Miscellaneous Revenue Act of 1988 exempted from the information-sharing requirement information subject to the Immigration Reform and Control Act of 1986 exempted from the information-sharing requirement information subject to the Immigration Reform and Control Act of 1986 (IRCA); (section 245A of the Immigration and Nationality Act, 8 U.S.C. 1255a). This change, which added the last sentence of section 6039E (d), has been implemented in the

proposed regulations by both exempting any information gathered in connection with IRCA from the information sharing requirements and also by excepting such information from the reporting requirements by definition.

Purpose and Scope

Section 6039E is intended to improve tax compliance by resident aliens and U.S. citizens or nationals living abroad.

With respect to U.S. citizens or nationals living overseas but not filing returns, the Congress foresaw that collection of tax after identification might be difficult but nonetheless sought both to give the Internal Revenue Service a further source of information regarding these nonfilers and to notify these overseas persons of their continuing duty to file U.S. tax returns. With respect to persons applying for permanent residence, Congress was concerned that new residents might derive income from foreign sources not subject to normal information reporting or withholding. Therefore, Congress concluded that the Internal Revenue Service needed an additional tax compliance measure for these persons. The new reporting provisions give the Internal Revenue Service information about these persons that would otherwise be unavailable.

Explanation of Provision

The proposed regulations in this document:

- (1) Prescribe the information to be gathered by processing agencies (generally, the Department of State and the Immigration and Naturalization Service (INS) of the Department of Justice).
- (2) Exempt certain applicants and applications from section 6039E and this section.
- (3) Provide alternate procedures for agencies reporting section 6039E information to the Internal Revenue Service.
- (4) Require that information transmitted by other agencies include information concerning any persons who fail to comply with the information reporting requirements, and
- (5) Restate the penalties imposed on nonexempt applicants who fail to comply.

In addition, the proposed regulations provide rules and examples concerning the possible unavailability of information to passport and immigration applicants.

The Department of State (through its domestic passport agencies and through its embassies and consulates abroad) processes all passport applications. Applications for lawful permanent

residence, or "immigrant visa" applications, are processed by both INS (domestically) and the Department of State (overseas). Forms used in these processes have been (or are in the process of being modified to request information required by section 6039E and these proposed regulations. In some instances, the forms request additional information pursuant to the authority granted in section 6039E(b)(4).

Special Analyses

It has been determined that this proposed rule is not a major rule as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Request for a Public Hearing

Before adopting these proposed Regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments on the proposed rules. Notice of the time and place of that hearing will be published in the *Federal Register*.

Drafting Information

The principal author of these proposed regulations is Ricardo A. Cadenas of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions,

Reporting and recordkeeping requirements, Statistics, Taxes.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR part 301 is as follows:

PART 301—REGULATIONS ON PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 301.6039E-1 also issued under 26 U.S.C. 6039E * * *

Par. 2. Section 301.6039E-1 is added to read as follows:

§ 301.6039E-1 Information reporting by passport and permanent residence applicants.

(a) *Applicability.* Section 6039E and this section apply to passport applicants, immigration applicants, immigration services and passport agencies of the United States (as these terms are defined in paragraph (b) of this section). Paragraphs (c) and (d) of this section apply only to passport and immigration applicants. Paragraph (e) of this section applies only to government agencies. This section shall apply to passport applications submitted after January 31, 1987 and immigration applications submitted after December 31, 1989, that solicit the information described in section 6039E.

(b) *Definitions.* For purposes of this section, the following definitions apply

(1) *Taxpayer identification number or TIN* means the individual's social security number (SSN) issued by the Social Security Administration. If an individual does not have an SSN, then any TIN assigned to such individual under section 6109 must be reported. An individual who has neither an SSN nor a TIN must enter zeros in the appropriate space on the application.

(2) *Country of residence* means the country in which the applicant resides at the time of the application.

(3) *Passport applicant* means any person who applies for a U.S. passport, other than a person who applies for a U.S. passport for use in diplomatic, military, or other official U.S. government business.

(4) *Passport application* includes any form used to apply for a U.S. Passport described in paragraph (b)(3) of this section.

(5) *Immigration applicant* means any person applying to be accorded the privilege of lawful permanent residence in the United States as an immigrant in

accordance with chapter 12 of title 8 of the United States Code. However, the term does not include any person applying for adjustment of status under 8 U.S.C. 1255a, commonly known as the Immigration Reform and Control Act of 1986, Public Law 99-603 (100 Stat. 3394).

(6) *Immigration application* means any form used in the processing of an immigration applicant by an immigration service (as defined in paragraph (b) (7) of this section).

(7) *Immigration service* means those offices of the Immigration and Naturalization Service of the Department of Justice that process immigration applications.

(8) *Passport agency* includes those offices of the Department of State (including United States Embassies and Consular posts abroad) that process passport applications.

(9) *Reporting agency* means an immigration service or passport agency.

(c) *Requirement of Reporting*—(1) Passport applicants must include with the application the following information—

(i) Name;

(ii) Address of the applicant's home within the country of residence as defined in paragraph (b)(2) of this section, but if the applicant does not maintain a home within the country of residence, the applicant's mailing address at the time of the application;

(iii) Taxpayer Identification Number (TIN), if such a number has been issued to the applicant;

(iv) Date of birth; and

(v) Country of residence.

(2) Immigration applicants must include with the application the following information—

(i) Name;

(ii) Address of the applicant's home within the United States, but if the applicant does not have a home within the United States, the applicant's home address within the foreign country (or U.S. possession);

(iii) Taxpayer Identification Number (TIN), if such a number has been issued to the applicant,

(iv) Date of birth; and

(v) For each of the applicant's three most recent taxable years;

(A) A statement whether the applicant had income from sources within the United States during any such year (specifying which year or years); and

(B) A statement indicating whether the applicant has been present in the United States more than 182 days during any such year (specifying which year or years). For purposes of this section, the applicant's physical presence within the United States

during any part of a day shall be considered as presence for that day.

(3) Passport and immigration applicants must also provide in connection with their applications, the following information, if required on the application form—

(1) The last year the applicant filed a United States tax return;

(ii) A statement whether the applicant is self-employed;

(iii) A statement indicating the applicant's occupation; and

(iv) A statement regarding whether the applicant was required to file a Federal income tax return for any of the applicant's three most recent taxable years, indicating whether such returns were filed or explaining why any such returns have not been filed.

(4) Passport applicants must provide the information required by this section at the time of submitting a passport application to a passport agency.

(5) Immigration applicants residing outside of the United States who commence the immigration application process by making a visa request with the Department of State (including U.S. embassies and consulates abroad) must provide the information required by this section to an immigration service no later than the time of immigration processing upon the applicant's entry to the United States. All other immigration applicants must provide the information required by this section at the time of submitting an immigration application to an immigration service.

(d) *Penalties*—(1) A passport or immigration applicant who fails to provide the information required by section 6039E and this section must pay a penalty of \$500 for each such failure, unless it is due to reasonable cause and not willful neglect. This penalty will be applied only once per application.

(2) *Notice to applicant*. Before assessing a penalty under this section, the Service will ordinarily provide to the applicant a written notice advising the applicant of the potential imposition of the \$500 penalty, requesting the information being sought, and offering the applicant an opportunity to explain why such information was not provided at the time the application was submitted. An applicant has 30 days (60 days if the notice is addressed to an applicant outside the United States) to respond to the notice. The Service will consider the applicant's response in determining whether it will assess the penalty.

(3) *Abatement of the penalty*. After a penalty is assessed, an applicant may obtain an abatement of the penalty by affirmatively showing reasonable cause for the failure to provide the

information required by this section, in the form of a written statement declaring that it is made under penalties of perjury. If it is shown that the applicant exercised ordinary care and prudence, made a reasonable effort to respond with the correct information and was, nevertheless, unable to provide all of the information required by section 6039E and this section, then the failure is due to reasonable cause. If after considering all of the surrounding circumstances, the Service determines that the failure to provide the information was due to reasonable cause and not to willful neglect, the penalty will be abated.

(4) *Examples*. The provisions of this section are illustrated by the following examples.

Example 1. A (a citizen or national of the United States) needs a passport quickly because of a medical emergency and does not have the required information at the time A completes A's passport application. The Department of State (or other passport agency) processes A's passport application. The Internal Revenue Service contacts A about the penalty, and A responds within 30 days of the date of the Internal Revenue Service's notice (60 days if it is addressed to A outside the United States). Under the emergency circumstances A's failure to provide the information would generally be treated as due to reasonable cause and not willful neglect. No penalty would be assessed.

Example 2. B does not have a social security number when B applies for permanent residence. B should so indicate on the application. The law requires that B furnish a TIN (which for individuals is generally the SSN) only if B has one. No penalty would be assessed.

Example 3. C makes a minor mistake in supplying information on a passport or immigration application. Based on the nature of the error and the information C provides after contact by the Service, the Internal Revenue Service concludes that the mistake is not due to willful neglect. No penalty will be assessed if C provides accurate information when notified by the Service.

Example 4. D decides not to give D's TIN and another information item when applying for permanent residence. D has no reasonable cause for failing to provide the required information. Although two information items are missing, D's failure involves only one "statement," within the meaning of section 6039E(c); thus, only one \$500 penalty is assessed.

(e) *Prescribed forms and transmittal of information by agencies*—(1) A reporting agency is required by section 6039E and this section to obtain from passport and immigration applicants the information described in section 6039E (b) and paragraph (c) of this section. A reporting agency may either forward the passport or immigration applications directly to the Service, or record and

transmit to the Service the information required by this section.

(2) If a passport or immigration applicant refuses to disclose any item of information required by this section, the reporting agency shall provide to the Service the applicant's name and address, and any other information, described in paragraph (c) of this section of which it has knowledge.

(3) If the passport or immigration applicant provides incomplete information with the application, the Service may contact the applicant to obtain complete information.

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92-31062 Filed 12-23-92; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, and 268

[FRL-4548-8]

Notice of Public Meeting on the RCRA Hazardous Waste Identification System

AGENCY: Environmental Protection Agency.

ACTION: Meeting.

SUMMARY: EPA's Office of Solid Waste will conduct a discussion on issues related to hazardous waste identification. Through this meeting EPA will solicit input from the public on appropriate procedures and standards to identify hazardous waste and contaminated media. EPA will also solicit additional information on how to best address wastes from remediations.

On May 20, 1992, EPA proposed the Hazardous Waste Identification Rule (HWIR) (57 FR 21450). The proposed rule contained a number of different options for managing low-toxicity wastes under RCRA. On October 30, 1992, the HWIR was withdrawn (57 FR 49278) after review of public comments revealed a variety of concerns expressed by environmental groups, industry, and states over the options presented. This discussion is intended to allow all interested parties an opportunity for open dialogue on the next steps to be taken in this area. This discussion is open to the public.

DATES: On January 5, the meeting will begin at 8:30 a.m.

ADDRESSES: The meeting will be held at the Quality Hotel, 415 New Jersey Avenue, NW., Washington, DC, (202) 638-1616.

FOR FURTHER INFORMATION CONTACT: For information on substantive matters,

please contact William A. Collins, Jr., of the Waste Identification Branch, at (202) 260-4791. For information on administrative matters, please contact Michael Young of Endispute, Inc., EPA's Convener at (212) 223-8300

Dated: December 21, 1992.

Chris Kirtz,

Director, Consensus and Dispute Resolution Program.

[FR Doc. 92-31299 Filed 12-23-92; 8:45 am]

BILLING CODE 6820-50-M

40 CFR Part 261

[FRL-4548-7]

Nevada; Approval of State Underground Storage Tank (UST) Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination to approve the State of Nevada's UST Program, public hearing and public comment period.

SUMMARY: The State of Nevada has applied for approval of its underground storage tank (UST) program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Nevada's application and has made the tentative decision that Nevada's UST program satisfies all of the requirements necessary to qualify for approval. Thus, EPA intends to grant approval to the State to operate its program in lieu of the Federal program. Nevada's application for approval is available for public review and comment, and, if sufficient public interest is expressed, a public hearing will be held to solicit comments on the application.

DATES: A public hearing is scheduled for January 28, 1993, from 7 p.m. to 10 p.m. at the Nevada State Library, Board Room, 100 Stewart Street, Carson City, Nevada, 89710. Requests to present oral comments at the hearing must be received by January 14, 1993. EPA reserves the right to cancel the public hearing if sufficient public interest in a hearing is not communicated to EPA in writing, postmarked by January 14, 1993. EPA will determine after January 14, 1993 whether there is significant interest to hold a public hearing. Those requesting to present oral comments will be notified of the cancellation. Nevada will participate in any public hearing held by EPA on this subject. All written comments on Nevada's state program approval application must be postmarked no later than January 29,

1993. If no significant comment are provided and insufficient public interest exists to hold a public hearing, this tentative decision of the Regional Administrator will become final 60 days after the public comment period ends, without the need to publish further notice in the Federal Register.

ADDRESSES: Copies of Nevada's state program approval application are available during 8:30 a.m. and 4:30 p.m. at the following addresses for inspection and copying:

Nevada Division of Environmental Protection, UST/LUST Branch, 333 West Nye Lane, Carson City, Nevada 89710, (702) 687-5872.

U.S. Environmental Protection Agency, UST Docket, Mail Code OS-305, 401 M Street, S.W., room 2427, Washington, DC 20460, (202) 260-9720.

U.S. Environmental Protection Agency, Region IX Library (13th Floor), 75 Hawthorne Street, San Francisco, California 94105-3901, Contact: Reference desk, (415) 744-1510.

Written comments should be sent to Martin Rodriguez, Nevada Program Manager, Office of Underground Storage Tanks, U.S. EPA Region IX, 75 Hawthorne Street (H-2-1), San Francisco, California 94105-3901, (415) 744-2076.

FOR FURTHER INFORMATION CONTACT: Martin Rodriguez, Office of Underground Storage Tanks, U.S. EPA Region IX, 75 Hawthorne Street (H-2-1), San Francisco, California 94105-3901, (415) 744-2076.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6991c(a), authorizes EPA to approve State UST programs to operate in the State in lieu of the Federal UST program. Program approval is granted by EPA if it finds that the State program is "no less stringent" than the Federal program in all eight elements listed below and provides for adequate enforcement of compliance with UST standards:

- (a) New UST Systems Design, Construction, Installation, and Notification;
- (b) Upgrading existing UST Systems;
- (c) General Operating Requirements;
- (d) Release Detection;
- (e) Release Reporting, Investigation, and Confirmation;
- (f) Release Response and Corrective Action;
- (g) Out of Service UST Systems and Closure; and

United States General Accounting Office

GAO

Report to the Chairman Committee on
Ways and Means, House of
Representatives

May 1998

**TAX
ADMINISTRATION**

**Nonfiling Among U.S.
Citizens Abroad**



1997,¹ and an additional amount based on their housing expenses if they meet certain foreign residency requirements. Nonfilers detected by IRS before filing voluntarily lose their eligibility for the exclusions in some circumstances. (See app. I for additional information on the exclusions and related rules affecting U.S. citizens residing abroad.)

IRS' Office of the Assistant Commissioner (International)—AC (International) is responsible for all international tax matters. To support its mission, AC (International) maintains about 13 full-time personnel at 9 foreign posts of duty. Additionally, some staff who are normally based in the United States are available for temporary tours of duty in foreign countries.

We have responded to two earlier congressional inquiries into nonfiling by U.S. citizens residing abroad. In a 1985 testimony, we noted that our analysis of filing among a limited sample of U.S. citizens in selected countries indicated a potential nonfiling problem.² As a result, Congress enacted IRC section 6039E: Information Concerning Resident Status in the Tax Reform Act of 1986. This section includes provisions requiring U.S. citizens applying for passports to provide their Social Security number (SSN), any foreign country of residence, and other information that might be prescribed by the Treasury Department. The intent of section 6039E was that IRS would use this information to identify nonfilers residing abroad.



In May 1993, we reported on IRS' relevant compliance initiatives, the lack of reliable data on U.S. citizens abroad, and IRS' limited use of passport application data as a compliance tool.³

Results in Brief

IRS has not estimated the overall prevalence of nonfiling abroad or the resulting loss of tax revenue, and the data we identified in our review were inadequate to support reliable quantified estimates. Data on the number of U.S. taxpayers residing abroad and the number of returns they file are of uncertain reliability, and the amount of taxes that nonfilers would owe if

¹The Taxpayer Relief Act of 1997 increased the limitation on the exclusion for foreign earned income from \$70,000 to \$80,000 in \$2,000 increments each year beginning in 1998, and provides that the limitation is indexed for inflation beginning in 2008.

²See U.S. Citizens Residing in Foreign Countries and Not Filing Federal Income Tax Returns testimony before the Subcommittee on Commerce, Consumer and Monetary Affairs, House Committee on Government Operations (May 8, 1985).

³See IRS Activities to Increase Compliance of Overseas Taxpayers, a report to the Chairman of the Senate Finance Committee (GAO/GGD-93-93, May 18, 1993).

identified U.S. citizens who reside abroad or noted their citizenship on information returns.²⁰ Additionally, IRS has had difficulty processing and matching foreign information returns due to computer system limitations and because most foreign returns do not include the taxpayer's SSN or are received too late to be processed as part of IRS' information matching program.

IRS noted that it may receive some additional information on U.S. citizens abroad through Qualified Intermediary Agreements with foreign financial institutions beginning in tax year 2000. Qualified Intermediary Agreements, introduced by IRS regulations under IRC section 1441, generally relate to U.S. withholding by foreign financial institutions on U.S. source income paid to foreign persons; but, IRS expects the agreements will also require the foreign institutions to report certain information on U.S. citizens.

IRS Lacks Collection Authority Abroad

The mechanisms provided to IRS under U.S. law for collecting unpaid taxes, including liens, levies, and seizures, generally cannot be applied against assets that have been transferred to a foreign country. As a result, IRS generally cannot collect unpaid taxes from assets that have been transferred to a foreign country, except for the five countries that have entered into mutual collection assistance agreements as part of tax treaties with the United States—Canada, France, Denmark, Sweden, and the Netherlands. Mutual collection assistance agreements generally provide for each country to use measures available within its own legal system to collect taxes owed to its partner in the agreement. The agreement with Canada was ratified in 1995, and the others were ratified between 1939 and 1948. According to IRS documentation on the program's evolution, the 47-year hiatus between the last two agreements occurred because the Senate indicated in 1948 that it did not favor additional agreements of this type.

IRS' Limited Use of Passport Application Data

IRC section 6039E was enacted in 1986 to provide IRS with data from passport applications processed by the State Department for use in identifying individuals residing abroad who do not file tax returns. The law required passport applicants to provide their SSNs, foreign country of residence, and other information to be prescribed by Treasury, and established a penalty of \$500 for each failure to provide the required

²⁰Although IRS has received information on the foreign investments of U.S. citizens residing in the United States, IRS officials believe they have received little such information on U.S. citizens residing abroad. This is because an investor's presumed citizenship in foreign information reporting systems is likely to have been based on their mailing address.

