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Reminder of May 13 deadline: EIN requirements for responsible parties

The IRS in late March 2019 announced that effective May 13, 2019, only individuals with tax identification numbers may request an Employer Identification Number (EIN) as the “responsible party” on the Form SS-4 application.

The March 2019 release ([IR-2019-058](#)) states:

- Entities will not be able to use their own EINs to obtain additional EINs.
- The new requirement will apply to both the paper Form SS-4, *Application for Employer Identification Number*, and online EIN application.
- The IRS has anticipated that entities and their representatives would have time to identify the proper responsible official to comply with the new policy.

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What happens, however, if the responsible party individual does not have and cannot obtain a tax identification number?

The March 2019 release states that individual responsible parties must have either an SSN or an ITIN. That release does not mention an exception in the Form SS-4 instructions that provides that individuals who are ineligible for an SSN or ITIN may leave Line 7b blank. The IRS has informally confirmed that this exception in the Form SS-4 instructions is still available.

The discussion below briefly explains certain implications of the new policy and sets forth how an individual can activate the exception in the Form SS-4 instructions.

Background

Currently, individuals may be the responsible party in their role as, for example, the appropriate officer of the corporate parent of a wholly owned subsidiary for whom the EIN is needed.

In some circumstances, individual responsible parties may enter the corporate parent's or other owner's EIN as the taxpayer identification number of the responsible party on Line 7b of Form SS-4 (instead of the individual's own taxpayer identification number).

Individuals who are not eligible for an SSN, but who are eligible for an ITIN, need to consider applying for an ITIN on Form W-7, *Application for IRS Individual Taxpayer Identification Number*, with sufficient time to allow for receipt of the ITIN for purposes of completing Form SS-4 for the subject entity.

Beginning May 13, 2019, individual responsible parties who have an SSN or an ITIN (or who are eligible to obtain one) must use their own taxpayer identification number on Line 7 of Form SS-4. This change will prohibit individual responsible parties from using the EIN of one entity to obtain an EIN for another entity. This prohibition will apply to both paper EIN applications as well as online EIN applications.

Accordingly, as of May 13, 2019, individuals named as a responsible party generally must provide either their personal SSN or ITIN.

Individuals not eligible for either SSN or ITIN

Because the IRS will not issue an ITIN to an individual solely for the purpose of applying for an entity's EIN, some individuals who are responsible parties will not be eligible for either an SSN or an ITIN.

In these situations, the individual may follow the instructions to Form SS-4 that provide that if the individual is not eligible for either an SSN or an ITIN, the individual may leave Line 7b blank. Alternatively, these individuals may consider writing "Not Eligible" on Line 7b to indicate that the lack of an entry was not an oversight. Keep in mind that the IRS ordinarily limits EIN issuance to one per responsible party per day. This limitation is applicable to all requests for EINs whether online, by telephone, fax, or mail.

Who is the "responsible party"

The Form SS-4 instructions explain who is to be the responsible party for various entity types.

- The responsible party in generally is the person who ultimately owns or controls the entity or who exercises ultimate effective control over the entity.
- The person identified as the responsible party must have a level of control over, or entitlement to, the funds or assets in the entity that, as a practical matter, enables the person (directly or indirectly) to control, manage, or direct the entity and the disposition of its funds and assets.
- Unless the applicant is a government entity, the responsible party must be an individual (i.e., a natural person), not an entity.

SEC registered or publicly traded entities: For entities with shares or interests traded on a public exchange, or which are registered with the Securities and Exchange Commission (SEC), the responsible party is: (1) the principal officer, if the entity is a corporation; or (2) a general partner, if the entity is a partnership. The general requirement that the responsible party be an individual applies to these entities. For example, if a corporation is the general partner of a publicly traded partnership for which Form SS-4 is filed, then the responsible party of the partnership is the principal officer of the corporation.

Tax-exempt organizations: The responsible party is generally the same as the “principal officer” as defined in the Form 990, *Return of Organization Exempt From Income Tax*, instructions.

Government entities: The responsible party is generally the agency or agency representative in a position to legally bind the particular government entity.

Trusts: The responsible party is a grantor, owner or trustor.

If there are changes to the responsible party, the entity can change the responsible official designation by completing and filing Form 8822-B, *Change of Address or Responsible Party – Business*, within 60 days of a change.

Restructuring plans and check-the-box elections

If a restructuring plan includes a “check-the-box election” for a foreign eligible entity that does not have an EIN and a foreign individual is the responsible party with respect to the entity, the foreign individual generally must have an SSN or an ITIN (if the individual is eligible to obtain one) before the entity can obtain an EIN.

The entity, in turn, is required to complete Form 8832, *Entity Classification Election*, to make the check-the-box election.

Again, the instructions to Form SS-4 direct the responsible party to leave the line blank for his or her taxpayer identification number if the individual is not eligible for an SSN or an ITIN. The application process for an ITIN for eligible taxpayers generally takes a few weeks, so taxpayers need to factor that time into their planning process.

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