

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR CHIEF OF OPERATIONS OP

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FROM: Lewis J. Fernandez
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SUBJECT: Dependent TIN Requirements of § 151(e)--
Religious Objection to the Social Security System

This memorandum responds to your request for advice as to whether § 151(e) of the Internal Revenue Code ("the Code") precludes exemptions for individuals who do not have social security numbers ("SSN") or taxpayer identification numbers ("TIN") because they have religious objections to participating in the social security system.

Representatives from our office met on August 24, 1999, with Matthew Beaulieu, Jeff Cooper, Ray Sausville, Charles Johnson, Richard Denmark, and David M. Tyree III to discuss a recent federal district court opinion concerning § 151(e). As we explained at the meeting, we believe that § 151(e) does not preclude the Service's long-standing practice of exempting members of certain religious groups from the requirement of submitting a TIN in order to qualify for the dependency exemption. This memorandum confirms our discussions and summarizes our reasons for reaching this conclusion.

ISSUE

Whether § 151(e) of the Code precludes the Service's long-standing practice of exempting members of certain religious groups from the requirement that they submit their dependents' TINs (or SSNs) in order to qualify for the dependency exemption under § 151(a).

CONCLUSION

Section 151(e) does not preclude the Service's long-standing practice of exempting certain religious groups from the requirement of submitting a TIN in order to qualify for the dependency exemption under § 151(a). The legislative history indicates

that, in enacting § 151(e), Congress did not withdraw its support of the Service's practice.

ANALYSIS

Law

Section 151(e) of the Code, added by § 1615 of the Small Business Job Protection Act of 1996 (Pub. L. No. 104-188, 110 Stat. 1755, 1853 (1996)), provides that no exemption shall be allowed under § 151(a) with respect to any individual unless the TIN of such individual is included on the return claiming the exemption.¹ The dependent TIN requirement was enacted in 1986. Section 6109(e) required a taxpayer who claimed the deduction for the dependency exemption under § 151(c) to provide the dependent's TIN.² Section 151(e) now requires the same information as did repealed § 6109(e). The Act merely changed the enforcement mechanism for the TIN requirement from an information reporting penalty (under § 6109(e)) to a disallowance of the deduction under the math error procedures (under § 151(e)).

Legislative History

The legislative history under § 6109(e) indicates that Congress approved of the Service's policy of providing administrative relief for certain dependents who are not required to obtain social security numbers. The conference report of the Tax Reform Act of 1986 stated, in part,

The conferees note that certain taxpayers, because of their religious beliefs, are exempted from the social security self-employment taxes. The conferees intend that these taxpayers and their dependents who currently acquire their TINs from the IRS continue to be permitted to do so. It is the intent of the conferees that these taxpayers continue to be exempted from the general requirement of obtaining a social security number from the Social Security Administration. Others of these taxpayers obtain their TINs under special procedures with the Social Security Administration. The conferees intend that these procedures continue to be available to these taxpayers.

¹ The Act also expanded the math error procedures of § 6213(b)(1) to disallow the exemption or credit if the taxpayer fails to satisfy the TIN requirement. See § 6213(g)(2)(H).

² Section 1524(a) of the Tax Reform Act of 1986, 1986-3 (vol. 1) C.B. 666, first required taxpayers claiming the dependency exemption to provide a TIN for dependents who were 5 years old at the end of the taxable year. Congress repeatedly amended the statute to reduce the age of dependents requiring TINs. By 1995, § 6109 effectively required a TIN for all dependents regardless of age. See § 742(b) and (c)(2) of the Uruguay Round Agreements Act (Pub. L. No. 103-465, 108 Stat. 4809, 5010 (1994)).

H. Conf. Rep. No. 841, 99th Cong., 2d sess., vol. II, 789, 790 (1986).

Similar language was included in the conference report to the 1988 amendment of § 6109(e). As § 6109(e) has been amended through the years, Congress has had the opportunity to rescind its prior support for the administrative exemption for members of certain religious groups from the requirement of submitting a TIN in order to qualify for the dependency exemption. Congress has remained silent on the issue. It is reasonable to conclude that Congress' silence on this issue indicates support for this administrative practice rather than a desire to reverse it. However, you may want to consider requesting a legislative clarification.

Administrative Practice

Largely in response to the legislative history recognizing an exception for taxpayers with religious objections to the use of an SSN, the Service has established certain administrative practices allowing taxpayers to document their objection on their individual income tax returns. This administrative relief permits certain taxpayers, under narrow circumstances, to claim the dependency exemption without providing an identifying number of any sort.

As provided for under § 1402(g) of the Code, taxpayers who qualify for the administrative relief will waive all benefits and other payments under Title II and XVIII of the Social Security Act, as well as all such benefits and other payments to taxpayers on the basis of wages and self-employment income of any other person. To waive out of the social security system, taxpayers must receive approval from the Commissioner of the Social Security Administration by filing Form 4029. Additionally, taxpayers must file for and receive an SSN for themselves. This provision applies to members of any religious order meeting the requirements contained within this section.

The Service has maintained these administrative practices over the years. In an October 2, 1996, letter issued by the Acting Chief Taxpayer Service to Congressman Robert S. Walker, the Service assured the Congressman that the same procedures would be in place even after enactment of § 151(e). More recently, Chief Counsel issued an opinion on March 19, 1997, upholding the administrative practice of granting exemptions from the dependent TIN requirement to taxpayers who have been exempted from participating in the social security system due to religious beliefs.

Recent Opinions

Two recent opinions should not affect the Service's administrative practices under § 151(e). In the first case, *Furlow v. United States*, 84 AFTR2d Par. 99-5062 (D.Md., July 6, 1999), the taxpayer raised a very generalized objection to the TIN requirement and primarily claimed that he was unable to obtain his dependent's TIN despite legitimate efforts to do so. Relying strictly on the plain language of § 151(e) of the Code, the court held that the taxpayer was not entitled to the dependency exemption.³ Because the taxpayer did not raise the specific argument based on religious objection to participation in the social security system, the United States District Court did not address the Service's administrative practice.

The second opinion, issued by Chief Counsel as a Field Service Advice ("FSA"), involved taxpayers who objected to providing TINs for eight claimed dependents based on their unique, personal religious beliefs and convictions. Although it is understandable why the FSA could create some confusion, it is important to note that under the facts considered in the FSA, the taxpayers did not object to participating in the social security system and did not attempt to obtain exemptions as allowed under § 1402(g). Because the specific issue was not raised, the FSA did not directly address the administrative practice of allowing the exemption for those taxpayers who object to participating in the social security system based on religious beliefs. Rather, the FSA concluded that taxpayers may not simply refuse to provide TINs for themselves or their dependents based on vague religious grounds.

If you have any questions regarding this matter, please contact

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³ We note that the Court may have confused the information reporting exception under § 301.6109-1(c) of the Regulations with the exemption under § 151(e) for certain individuals who do not have TINs because of their religious objections to participating in the social security system. Regulation § 301.6109-1(c) applies only to taxpayers required to make a return furnishing other parties' TINs *as required by the forms and the accompanying instructions*. Clearly, § 301.6109-1(c) does not apply to taxpayers required to submit a TIN to support their own claims for the dependency exemption.