
United States: IRS begins to implement ITIN renewal and expiration processes

August 9, 2016

In brief

The Internal Revenue Service (IRS) issued Notice 2016-48, *Implementation of PATH Act ITIN Provisions* on August 4, 2016. This notice explains the changes made to the Individual Taxpayer Identification Number (ITIN) program by the Protecting Americans from Tax Hikes Act of 2015 (PATH Act) enacted on December 18, 2015.

The PATH Act requires that ITINs, not used on a federal tax return at least once in the last three years, be renewed and provides for the expiration of ITINs issued prior to 2013 on a rolling schedule. The renewal process differs from the original application process in that the Form W-7, *Application for IRS Individual Taxpayer Identification Number*, is not required to be submitted together with a tax return (original or certified documents establishing foreign status and identity are still required.)

Beginning this summer, the IRS will send a Letter 5821 regarding the required ITIN renewal to individuals holding ITINs with the middle digits 78 or 79 if the ITIN was used for a taxpayer or a dependent on a US income tax return in any of the last three consecutive tax years. The IRS will begin processing ITIN renewal applications received from these individuals on October 1, 2016. Once renewed, an ITIN will remain in effect unless it is not used on a tax return for three consecutive years. ITINs with middle digits other than 78 or 79 that have been in use within the last three consecutive tax years should not be renewed at this time and require no immediate action from the ITIN holder.

US income tax returns filed by individuals with an expired ITIN will be accepted by the IRS; however there may be a delay in processing these returns, and certain credits, such as the Child Tax Credit and the America Opportunity Tax Credit, may not be allowed unless the ITIN is renewed. This could result in a reduced refund or additional penalties and interest.

In detail

Background

The IRS issues ITINs to individuals who are not eligible for a US social security number, but who need a taxpayer identification number for US tax purposes. Previously, ITINs did not

expire. On June 30, 2014, the IRS announced in News Release IR 2014-76 that it would deactivate ITINs that had not been used on a tax return in five consecutive years. As the PATH Act was enacted prior to the start of that deactivation process, the

2014 announcement is now obsolete.

Under the PATH Act, ITINs that have not been used on a federal tax return at least once in the last three years, will expire on December 31 of the third consecutive tax year of nonuse.

For example, an individual applied for and received an ITIN in 2015 that is used in 2015 on the individual's 2014 federal income tax return. If the individual does not file and is not claimed as a dependent on a tax return in 2016, 2017, and 2018, the ITIN will expire on December 31, 2018. This rule applies to all ITINs regardless of when the ITIN was issued.

For ITINs issued before 2013, the PATH Act provides that ITINs will no longer be in effect according to the following schedule, unless the ITIN has already expired due to nonuse for three consecutive years as described above:

- ITINs issued before 2008 will remain in effect until January 2017.
- ITINs issued in 2008 will remain in effect until January 1, 2018.
- ITINs issued in 2009 or 2010 will remain in effect until January 1, 2019.
- ITINs issued in 2011 or 2012 will remain in effect until January 1, 2020.

ITIN application process

The basic process of applying for an ITIN will not change as a result of the PATH Act, but the IRS has implemented some documentation changes effective October 1, 2016. Individuals will continue to apply for an ITIN by submitting Form W-7, *Application for IRS Individual Taxpayer Identification Number*. Most taxpayers must submit their Form W-7 with the tax return for which the ITIN is needed. Applicants may submit their Form W-7, tax return, and the required documentation by mail to the ITIN Operation Unit in Austin, Texas. Original documents or certified copies of documents from the issuing agency are the only acceptable documentation, except for a few very limited exceptions.

Under the PATH Act, in-person applications may be submitted to an employee of the IRS authorized to review and accept applications or to a community-based certified acceptance agent approved by the IRS. Individuals who apply in person, other than dependents, will receive their documentation back once the in-person application is completed.

As of October 1, 2016, the IRS will no longer accept passports that do not have a date of entry into the United States as a stand-alone identification document for dependents from countries other than Canada or Mexico or dependents of military members overseas.

Currently, all IRS employees authorized to review and accept applications are located in the United States. The IRS is reviewing the new law and considering how to implement the new provision for community-based certified acceptance agents. Until further guidance is issued, all applicants may continue to submit their application package (*i.e.*, Form W-7 and supporting documentation) to Certified Acceptance Agents (including those at PwC) for review under existing procedures. Applicants may also submit their application packet in person at any IRS Taxpayer Assistance Center that provides this service.

ITINs that have not been used in the last three consecutive years

ITINs that have expired due to nonuse in the last three consecutive years, as described above, may be renewed anytime starting October 1, 2016 by submitting a Form W-7 and required documentation. These individuals may renew their ITIN without having to attach a tax return to the Form W-7.

Filers should use the most recent version of Form W-7 and check the box

that states 'renewal.' Filers should follow the instructions to Form W-7 and include all information and documentation required by such instructions except for the requirement to attach Form W-7 to a tax return. Alternatively, individuals may choose to wait to submit their Forms W-7 with their tax returns.

Once the Form W-7 renewal application is approved, the individual's ITIN will again be effective, and the individual can continue to use the same ITIN. The applicant will receive a letter from the IRS stating that the application has been approved. Once renewed, an ITIN will remain in effect unless it is not used on a tax return for three consecutive years.

ITINs issued prior to January 1, 2013 and currently in use

ITINs issued prior to January 1, 2013 that have been used on a tax return in the last three consecutive years are set to expire based on the multi-year schedule described above. Under the PATH Act, this schedule is based on the date that an ITIN was issued. However, many ITIN holders may not know when their ITIN was issued and previously had no reason to keep a record of the date an ITIN was issued.

To simplify the renewal process and allow for the effective administration of the program, the IRS will administer the renewal of ITINs on a schedule that is different from the schedule in the PATH Act. The IRS will renew ITINs based upon the fourth and fifth digits (middle digits) in the ITIN. ITINs that contain the middle digits of 78 or 79 will no longer be in effect beginning January 1, 2017. The expiration and renewal schedules for ITINs with middle digits other than 78 or 79 will be announced in future IRS guidance.

To reduce the burden on taxpayers, the IRS will accept Forms W-7 from

each member of a family in a single family submission starting October 1, 2016, if at least one of the family members is required to renew an ITIN because the middle digits are 78 or 79 and that family member received a Letter 5821. For this purpose, family members include the filer, the filer's spouse, and any dependents claimed on the filer's return.

Use of an ITIN solely on an information return

An individual whose expired ITIN is used only on information returns filed and furnished by third parties, such as Forms 1099 or 1042-s, is not required to renew the ITIN. ITINs may continue to be used for information return purposes regardless of whether they have expired for individual income tax return filing purposes.

Third parties who file and furnish information returns with an expired payee ITIN will not be subject to information return penalties under Sections 6721 or 6722 solely because the ITIN is expired. If the individual is later required to file a tax return or will be claimed as a dependent, the ITIN will need to be renewed at that time.

The takeaway

Many internationally mobile individuals will be impacted by the requirement to renew ITINs for themselves or dependents. To avoid delays in filing US tax returns, global mobility programs will need to establish processes for tracking expiration dates of ITINs.

Individuals who obtained ITINs prior to 2013 will need to be made aware of these changes in order that they can begin the renewal process beginning in October of this year.

How can PwC help?

PwC has Certifying Acceptance Agent agreements with the IRS and can assist individuals submitting original or renewal ITIN applications, by meeting with them to review their original supporting documentation and Form W-7, *Application for IRS Individual Taxpayer Identification Number* and submit the application to the IRS. PwC's specialists in this area are located in numerous cities in the United States and in several countries, including Australia, Belgium, Canada, Japan, Singapore, United Arab Emirates, and the United Kingdom.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your Global Mobility Services engagement team or one of the following team members:

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