American Tax Club, Inc.
(AMERITAX)

2022

Annual Federal Tax Refresher Course
(AFTR)

Annual Filing Season Program (AFSP)

Course Domain 3 –Practices, Procedures and Professional Responsibility

Domain 3 of the AFTR course is a general review of the practices, procedures and professional responsibilities for tax return preparers.

Objectives

After completing Domain 3, participants should be able to:

- Learn ways to safeguard taxpayer data and prevent tax-related identity theft
- Understand ITIN parameters
- Identify penalties assessed to tax return preparers
- Summarize due diligence requirements
- Recall e-file requirements
- Identify Annual Filing Season Program (AFSP) requirements

3.1 **Tax-Related Identity Theft**

Tax return preparers should be especially diligent in recognizing fraud and abuse, reporting it to the IRS, and preventing it when possible. Fraudulent returns are sometimes filed by individuals using someone else's name or SSN, or by presenting fabricated or forged documents.

The IRS issued Publication 5199, Tax Preparer Guide to Identity Theft, to inform practitioners of the potential warning signs of identity theft and provide resources to assist victims.

For more information, see Publication 5199 and Publication 4557, Safeguarding Taxpayer Data.

Security Summit

In 2015, the IRS joined with key individuals from the tax software industry, tax preparation firms, payroll and tax financial product processors, and state tax administrations to help protect US taxpayers from the alarming increase in tax-related identify theft and refund fraud. As of 2022, membership includes 42 state agencies and 20 industry officials, in addition to the IRS.

The Security Summit partners have convened several working groups to enact new safeguards to combat fraud and theft. There are six work groups with specific tasks assigned. Some actions taken include:

- Launching security awareness campaigns for taxpayers and tax professionals
- Enhancing authentication standards in payroll and tax software programs
- Improving communication between agencies to provide alerts for questionable activity

Many of the safeguards implemented by the Security Summit happen behind the scenes and remain invisible to both taxpayers and tax professionals.

Warning Signs of Tax-Related Identity Theft

In tax-related identity theft, thieves usually use stolen SSNs to file false tax returns to claim a fraudulent refund. These criminals generally try to file the fraudulent return early in the filing season. Taxpayers may be unaware that their identity has been compromised until attempting to file their return.

Warning signs of tax-related identity theft for individual clients include:

- A rejected return with IRS rejects codes which indicate the taxpayer's SSN has already been used on a previously accepted return
- A taxpayer received unexpected IRS notices that do not correlate to tax returns filed

An IRS notice indicating a taxpayer received wages from an employer who is unknown to him or her

Assisting Victims of Tax-Related Identity Theft

If a taxpayer's SSN has been compromised, or it is suspected that he or she is a victim of tax- related identity theft, the following steps are recommended:

- File a report with local police.
- File a complaint with the Federal Trade Commission (FTC) at www.identitytheft.gov or the FTC Identity Theft Hotline at 1-877-4384338 (877-ID-THEFT).
- Contact one or more of the three major credit bureaus to place a fraud alert on credit records:

  Equifax.com 1-800-525-6285

  Experian.com 1-888-397-3742

  TransUnion.com1-800-680-7289
- Review all credit reports with the credit bureaus.
- Close any accounts opened fraudulently.
- Contact check verification companies if bank account compromised

  Check Rite Systems 701-214-4123. T

Tele-Check	800-710-9898
Chex Systems	800-328-5121

- Respond immediately to any IRS notice by calling the number provided.
- Complete IRS Form 14039, Identity Theft Affidavit, then mail or fax it according to the instructions.

  Continue to file return and pay tax if needed, even if it is necessary to paper-file returns.
- Contact appropriate state tax agencies

If a taxpayer has contacted the IRS but has no resolution, call the Identity Protection Specialized Unit at 1-800-908-4490.

NOTE: Preparers must have power of attorney on file before an IRS customer service representative can provide them with any taxpayer information.

Remind taxpayers that the IRS does not initiate contact with individuals by email or text messages to request personal or financial information.

3.2 **Safeguarding Taxpayer Data**

As thieves have become more sophisticated and continue to adapt their tactics to compromise data, it is imperative that tax professionals take the necessary steps to protect themselves and their clients from theft and fraud. The IRS has published Publication 4557, Safeguarding Taxpayer Data, to give tax professionals a guide and some best practices in handling taxpayer data.

Safeguarding taxpayer data is critical and is the responsibility of not only the IRS but also businesses, organizations, and individuals that handle taxpayer data. Use Publication 4557 to get started and put the proper safeguards in place.

System Security

Tax preparers should do the following to protect taxpayer and their own data:

- Take basic security steps including strong internal controls, antimalware software, firewalls, passwords, and backups.
- Check e-file applications and PTIN accounts regularly for activity Secure wireless networks and remote access, including PCs and printers
- Protect stored client data with strong encryption and regular backups
- Train staff to recognize phishing scams
- Use strong web browsing protection software
- Have a written security plan and follow it

Verification of Taxpayer Identification Numbers

In order to safeguard taxpayer information and prevent fraud and abuse, it is critical that EROs and tax return preparers confirm identities and identification numbers of taxpayers, spouses, and dependents listed on returns. Preparers should confirm Social Security Numbers (SSNs), Employer Identification Numbers (EINs), Adoption Taxpayer Identification Numbers (ATINs), and Individual Taxpayer Identification Numbers (ITINs).

To verify the identities, preparers should ask taxpayers to provide two forms of identification, with at least one being a government-issued photo ID. Preparers should verify the taxpayer’s name and current address against the identification supplied. Viewing Social Security cards and ITIN letters for everyone listed on the tax return also helps prevent filing returns with incorrect ID numbers.

Fraudulent Returns

Tax return preparers should be especially diligent in recognizing fraud and abuse, reporting it to the IRS, and preventing it when possible. Fraudulent returns are sometimes filed by individuals using someone else's name or SSN, or by presenting fabricated or forged documents.

The IRS has identified questionable Forms W-2 as a source of abuse. Tax return preparers should be on the lookout for irregular or nonstandard Forms W-2 that are suspicious or altered. It is also important to verify the identification number entered on Form W-2, Wage and Tax Statement. The identification number should match that of the respective taxpayer or spouse on the tax return.

3.3 **Overview and Expirations of ITINs**

An Individual Taxpayer Identification Number (ITIN) is a tax processing number issued by the IRS to taxpayers who do not have, or are not eligible for, a Social Security Number (SSN). ITINs help taxpayers comply with U.S. tax laws regardless of immigration status.

An ITIN is a nine-digit number which begins with the number 9 and has a range of numbers from 50-65, 70-88, 90-92, and 94-99 as the fourth and fifth digits. It is formatted like a social security number, 9xx-xx-xxxx.

ITINs should be used for federal tax reporting and are not intended to be used for any other purpose. An ITIN does not authorize work in the U.S. or provide eligibility for Social Security benefits.

ITIN Application

To apply for an ITIN, individuals should complete Form W-7, Application for IRS Individual Taxpayer Identification Number. Form W7 can be attached and mailed along with the federal tax return to the IRS. Services of an IRS-authorized Form W-7 Acceptance Agent or some IRS Taxpayer Assistance Center can also be used to submit Form W-7.

ITINs are usually issued within seven weeks of the receipt of complete, qualified applications. Recipients will receive notice CP565, ITIN Assignment Notice.

Filing with an ITIN

If a taxpayer files a return with an ITIN and reports wages, he or she is required to show the SSN under which the wages were earned. This scenario creates an ITIN/SSN mismatch when e-filing. Even though these returns have been rejected when sent via e-file in the past, the IRS system now accepts returns with as ITIN/SSN mismatch. The ITIN should be displayed only at the top of Form 1040 as the identifying number.

If the primary taxpayer or spouse, have ITINS, they are not eligible for EIC even if the dependents have valid SSNs.

Notice 2016-48

Prior to the PATH act, a taxpayer applied for and received an ITIN only once. The ITIN remained in effect unless the taxpayer applied for and received an SSN. Under the PATH Act, certain ITINs will no longer be in effect unless they are renewed.

In August 2016, the IRS issued Notice 2016-48, outlining the implementation of the changes for ITINs resulting from the PATH Act of 2015. Certain ITINs must be renewed in order to be used on a tax return, including unused and expired ITINs.

Unused ITINs

ITINs that have not been used on a federal tax return for three consecutive tax years, either as the ITIN an individual who files the return or as the ITIN of a dependent, will expire on December 31 of the third consecutive year or of nonuse.

Expiring ITINs

ITINs began expiring in 2016 and have continued to expire on a rolling basis regardless of whether they have been used in the three prior years. Older ITINs (ITINs issued before 2013) expire on a rolling basis depending on when they were issued. ITINs issued before 2009 have already expired unless they have been renewed. ITINs issued in 2011 and 2012 expired on January 1, 2020.

Expired ITINs: If an ITIN wasn't included on a U.S. federal tax return at least once for tax years 2018, 2019, and 2020, the ITIN expired on December 31, 2021.

ITINs with middle digits (the fourth and fifth positions) "70," "71," "72," "73," "74," "75," "76," "77," "78," "79," "80," "81," "82," "83," "84," "85," "86," "87," or "88" have expired.

In addition, ITINs with middle digits "90," "91," "92," "94," "95," "96," "97," "98," or "99," IF assigned before 2013, have expired.

Individuals with an expiring ITIN will be mailed a notification CP48 from the IRS. Failure to renew expired ITINs before filing a tax return could result in refund delays and ineligibility for certain tax credits. Individuals should keep their mailing address current with the IRS to avoid delays in receiving the notices.

3.4 **Preparer Penalties Paid Preparers**

According to the IRS, "A paid tax return preparer is any person who is compensated for preparing or assisting in the preparation of all or substantially all of any U.S federal tax return, claim for refund, or other tax form submitted to the IRS (with a few exceptions)."

All paid tax return preparers are required to register with the IRS and obtain a Preparer Tax Identification Number (PTIN) which must be renewed annually. PTIN applicants must be at least 18 years of age.

All paid tax return preparers are subject to the Internal Revenue Code (IRC).

Understatement of Tax Liability IRC §6694

Disreputable behavior by a tax return preparer is not tolerated by the IRC. Penalties will be assessed against tax return preparers for negligent or intentional disregard of rules and regulations, including willful understatement of tax liability under IRC §6694 (a) and §6694 (b).

A penalty can be assessed for each return or claim that shows an understatement of tax liability when the understatement was due to an "unreasonable position" – Code §6694(a).

An unreasonable position is one in which:

• The return preparer knew (or reasonably should have known) of the position

• The preparer did not have a reasonable belief that the position would more likely than not (i.e., greater than 50% chance) be sustained on its merits

• The tax return preparer did disclose but had no reasonable basis for the position According to IRC §6694(a), the penalty for understatement of liability due to an unreasonable position is the greater of $1,000 for each return or claim that shows such understatement or 50% of the income that the preparer receives (or will receive) for preparing the tax return or claim for refund.

Example:

Bryan, a tax return preparer, prepares and signs Isabel's return. Bryan received a fee of $1,100 from Becky for his tax return preparation services. After the return is filed and reviewed by the IRS, it is found that there was an understatement of liability on Isabel's return due to an unreasonable position, subjecting John to a penalty. Because 50% of his preparation fee would be $550 (50% of $1,100), Bryan would be imposed a fee of $1,000 ($1,000 > $550).

Taking an unreasonable position does not always result in a penalty being imposed if the preparer showed a reasonable basis for the understatement, acted in good faith, or adequately disclosed the position.

Sometimes, an understatement of tax liability is due to the misconduct of the tax return preparer.

A penalty may be imposed IRC §6694(b) if:

- There is an understatement of liability on a return or claim for refund due to a willful attempt in any manner to understate the tax liability by the preparer
- The preparer has recklessly or intentionally disregarded rules or regulations

The IRS §6694(b) penalty is the greater of $5,000 or 50% of the income derived by the return preparer for each return or claim for refund in violation. If a preparer has been assessed both

§6694(a) and §6694(b) penalties for the same return, the §6694(b) penalty will be reduced by the amount assessed by §6694(a).

Example:

Lorena, a self-employed hairdresser, claims various business expenses. Upon review, Anthony, the tax return preparer, notices that Lorena has included amounts paid for lawn service at his home as an expense. Even though Anthony recognizes the expenses for lawn care should be deemed as personal and nondeductible, he still deducts them on Lorena's Schedule C and does not disclose the deductions as questionable. After an IRS review, a penalty is imposed upon Anthony for intentional and willful understatement of tax liability. Anthony charged Lorena a fee of $250 to prepare the return; therefore, Anthonyw will be assessed a $5,000 penalty since it is greater than 50% ($125) of the income derived from the return.

IRC §6695

IRC §6695 provides seven distinct penalties that may be assessed on a tax return preparer for actions related to disclosures and client dealings, including:

- Failure to furnish copy to taxpayer (§6695(a))
- Failure to sign return (§6695(b))
- Failure to furnish identifying number (§6695(c))
- Failure to retain copy or list (§6695(d))
- Failure to file correct information returns (§6695(e))
- Negotiation of check (§6695(f))
  - Failure to be diligent in determining eligibility for certain tax benefits (§6695(g))

Furnish Copy to Taxpayer

Preparers are required to furnish a completed copy of a return or claim for refund no later than the time the return is presented to the taxpayer for his or her signature.

Under IRC §6695(a), tax return preparers shall pay a penalty of $55 for each failure to provide a copy of the return or claim for refund to the taxpayer. If the preparer can show the failure was due to a reasonable cause and was not due to willful neglect, the penalties could be reduced.

The maximum penalty imposed upon a preparer for failure to provide copies of filed documents during any tax year is $28,000.

Return Signature Requirements

Tax return preparers are also required to sign returns and claims for refunds they prepare. Failure to do so will result in a $55 penalty under IRC §6695(b) for each failure unless it can be shown that the failure was due to reasonable cause and not willful neglect. The maximum penalty assessed to a person is $28,000 for documents filed during any calendar year.

Furnish Preparer Identifying Number

Section 6109 (a)(4) requires preparers to furnish on tax returns and claims for refund an identifying number, specifically a Preparer Tax Identification Number (PTIN). This ensures proper identification of the return preparer, the preparer's employer, or both.

Preparers who fail to provide their PTIN on the tax return or claim for refund are subject to penalty under IRC §6695(c), unless the omission was due to reasonable cause and not willful neglect. A penalty of $55 for each failure will be imposed with a maximum of $28,000 with respect to a return period.

Retention of Tax Return Copies or Lists

Tax return preparers who prepare any return or claim for refund should, for three years after the end of the return period:

- Retain a completed copy of tax returns or claims for refund or retain a list that has the taxpayers' names and identification numbers for whom the returns were prepared
- Be able to make copies or lists available for inspection upon request

Preparers may be penalized for failure to keep copies of returns or lists under IRC §6695(d). A penalty of $55 for each failure will be imposed unless it is shown the failure is due to a reasonable cause and not due to willful neglect. The maximum penalty for failure to retain copies filed during a calendar year should not exceed $28,000.

Prohibition of Negotiation of Taxpayer Refunds

Under IRC §6695(f), tax return preparers are strictly prohibited from negotiating or endorsing any federal tax refund check for a return that they prepared. A penalty of $560 is imposed for each such violation. There is no maximum penalty limit. Exceptions apply to tax preparation firms that are also financial institutions.

3.5 **Due Diligence in Tax Preparation**

Tax return preparers must comply with due diligence requirements when determining:

- Eligibility to file as Head of Household
- Eligibility for, or the amount of credit allowable, for the:
    - Earned Income Tax Credit
    - Child Tax Credit
    - American Opportunity Tax Credit
    - Credit for Other Dependents

Any tax return preparer who fails to comply with the due diligence requirements will be subject to a penalty of $560 for each failure. There is no maximum penalty limit.

Due Diligence Requirements

Tax return preparers who prepare any return or claim for refund that includes the Earned Income Tax Credit (EITC), Child Tax Credit (CTC), Credit for Other Dependents (ODC) or the American Opportunity Tax Credit (AOTC) must meet specific due diligence requirements. Due diligence requirements also apply to returns that have taxpayers filing as Head of Household.

Failure to comply with due diligence requirements with respect to determining eligibility for, or the amount of, EITC could lead to a $560 penalty for each such failure under IRC §6695(g).

There is no maximum penalty limit. In addition to monetary penalties, return preparers or tax return preparation firms can also face suspension or even expulsion from IRS e-file, other disciplinary action from the IRS Office of Professional Responsibility, and injunctions prohibiting the preparer from preparing tax returns or restricting the types of tax returns that may be prepared.

The IRS can also penalize an employer or employing firm if an employee fails to comply with the EITC due diligence requirements.

There are four basic due diligence requirements for preparers for EITC, CTC, AOTC, ODC, and the Head of Household (HOH) filing status:

- Completing and Submitting the Eligibility Checklist – Form 8867
- Computing the Credit
- Knowing and Understanding Rules and Regulations
- Keeping Records

Form 8867 Eligibility Checklist

Paid preparers who prepare returns with items requiring due diligence must complete and submit Form 8867, Paid Preparer's Due Diligence Checklist. This checklist helps the preparer consider all the eligibility criteria for claiming not only EITC, but also CTC, AOTC, ODC and HOH filing status.

Form 8867 should be completed based on information provided to the preparer by the taxpayer. Eligibility questions should be posed to taxpayers in language the taxpayer understands. Ask open questions to get more information than "yes" or "no." At the time of the interview, preparers should document any additional questions that were asked of the taxpayer and their replies.

Return preparers need to answer the questions covering eligibility on Form 8867 using information from the taxpayers. The IRS recommends using words and terms clients know and won't misunderstand.

For example:

- Instead of asking "What's your marital status?", ask "Are you single or married?"
- Instead of asking "Are you the head of the household?", find out if they qualify for Head of Household by asking the right questions.
- Don't ask if they have a qualifying child or dependent, find out who they lived with during the tax year and for how long.

For e-filed returns, Form 8867 must be submitted electronically. If a return is not e-filed, Form 8867 must be attached to any paper return that is prepared and filed. If a preparer prepares the return but does not submit it to the IRS, he or she must still provide Form 8867 to be sent with the filed tax return.

Computing the Credit

Preparers should complete any applicable worksheets needed to compute credits. Worksheets can be found in the Forms 1040 or 1040-SR instructions or in IRS publications. Any alternative document with the same information can be used. Most tax return preparation software includes the computation worksheets.

The worksheets show all the items that should be included in the credit computations including self-employment income, total earned income, investment income, and adjusted gross income.

Knowledge Requirement

Preparers should know the law regarding items with required due diligence and ask the appropriate questions to collect all relevant facts. Preparers should take into account the information the taxpayer provides and what the preparer knows about the taxpayer and apply a commonsense standard. The preparer should not know or have any reason to know any information used to determine taxpayer's eligibility or the amount of the credit is incorrect, inconsistent, or incomplete. It is the duty of the preparer to determine if the information is complete and to gather any missing facts. It is also important to recognize contradictory statements or statements known not to be true.

Preparers should also make additional inquiries if a reasonable and well-informed tax return preparer would know the information is incorrect, inconsistent, or incomplete. Additional questions asked and the taxpayer's answers to the questions should be documented at the time of the interview.

Record Keeping

Preparers must keep adequate records to satisfy due diligence requirements. Records can be kept either in paper or electronic format. A backup of the records should also be kept in a secure off-site location. Preparers should be sure that they can retrieve records at the IRS's request. Preparers should retain the following documents:

- Form 8867
- Computation worksheets

- Copies of any documents provided by the taxpayer on which the preparer relied to complete Form 8867 or worksheets
- Records of when, how, and from whom the information was obtained to prepare the return

These above documents should be kept three years from the latest of:

- The due date of the tax return
- The date the tax return was electronically filed or, if paper-filed, the date the return was presented for the taxpayer's signature
- The date in which the return is given to the signing tax return preparer (if no signing preparer)

Self-Employed Individuals and Due Diligence

Preparers should carefully consider due diligence for taxpayers who are self-employed. An individual is considered self-employed if he or she carries on a trade or business with a profit motive as a sole proprietor or as an independent contractor. It could also be an individual who performs services on a part-time basis or does occasional "odd jobs" and receives compensation for that work. These taxpayers don't necessarily need a business name or formal business structure to be considered self-employed. These individuals are required to report the income and related expenses from selling goods or performing services for others for money.

Schedule C Red Flags

Some red flags for return preparers to watch for are:

- Schedule C income in round numbers
- Schedule C cash businesses as the only income claiming EITC
- Schedule C with little or no expenses when expenses would be expected

- Schedule C taxpayers with little or no receipts for income and expenses
- Any Schedule C income that brings the taxpayer to the maximum credit allowed
- Schedule C without Form 1099

3.6 **e-File Compliance e-File Mandate**

Any tax return preparer who anticipates preparing and filing 11 or more Forms 1040 or 1040-SR and Forms 1041 during a calendar year must use IRS e-file to submit returns. There are some exemptions and preparers may seek approval of a hardship waiver.

In some cases, taxpayers choose to submit their return to the IRS themselves even if prepared by an IRS authorized e-file provider. In this situation, preparers should obtain and keep a signed and dated statement from the taxpayer documenting the taxpayer’s choice. Form 8948, Preparer Explanation for Not Filing Electronically, should be completed and attached to the taxpayer’s paper return.

If a preparer wishes to seek approval for a hardship waiver, Form 8944, Preparer e-file Hardship Waiver Request, generally should be filed with the IRS no later than February 15 of the year for which the waiver is being requested. Some reasons preparers may request a waiver include bankruptcy, financial problems, or the preparer is located in an area declared a Presidential Disaster Area. Hardship waivers are not commonly approved. The decision to approve a waiver is based on a preparer’s circumstances and is reviewed on a case-by-case basis. Requests for a hardship waiver based solely on personal desire of the preparer or the lack of computer or software will be denied. If a waiver is granted, Form 8948 should still be attached to client returns with box 2 checked and applicable information included.

Taxpayer Signatures for e-File

Both taxpayers and preparers must electronically sign returns submitted to IRS through e-file. Taxpayers must sign and date the Declaration of Taxpayer to authorize the electronic submission of the return to the IRS before it is transmitted. The Declaration of Taxpayer includes the taxpayer's declaration under penalties of perjury that the return is true and correct. If any changes are made to the return after the taxpayers have signed the declaration that results in more than either $50 difference in total income or AGI or $14 to total tax, Federal income tax withheld, refund, or amount owed, then the declaration must be signed again before the return can be transmitted.

Declaration of Taxpayer

Under penalties of perjury, I declare that I have examined a copy of my electronic individual income tax return and accompanying schedules and statements for the tax year ending December 31, 2022, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that the amounts in Part I above are the amounts from my electronic income tax return. I consent to allow my intermediate service provider, transmitter, or electronic return originator (ERO) to send my return to the IRS and to receive from the IRS:

(a) an acknowledgement of receipt or reason for rejection of the transmission,

(b) the reason for any delay in processing the return or refund, and

(c) the date of any refund. If applicable, I authorize the U.S. Treasury and its designated Financial Agent to initiate an ACH electronic funds withdrawal (direct debit) entry to the financial institution account indicated in the tax preparation software for payment of my federal taxes owed on this return and/or a payment of estimated tax, and the financial institution to debit the entry to this account.

This authorization is to remain in full force and effect until I notify the U.S. Treasury Financial Agent to terminate the authorization.

To revoke (cancel) a payment, I must contact the U.S. Treasury Financial Agent at 1-888-353-4537. Payment cancellation requests must be received no later than 2 business days prior to the payment (settlement) date. I also authorize the financial institutions involved in the processing of the electronic payment of taxes to receive confidential information necessary to answer inquiries and resolve issues related to the payment.

I further acknowledge that the personal identification number (PIN) below is my signature for my electronic income tax return and, if applicable, my Electronic Funds Withdrawal Consent.

For taxpayers, there are two methods of signing individual tax returns with an electronic signature. Both methods include the use of a Personal Identification Number (PIN) to sign the return and the Declaration of Taxpayer.

The methods are:

- Self-Select PIN
- Practitioner PIN

The Self-Select PIN requires the taxpayer to provide the prior-year PIN and AGI amount. This method can be completely paperless if the taxpayer enters the PIN directly into the electronic return. Taxpayers can authorize EROs to enter the PIN on their behalf, in which case the taxpayer must sign a consent form after reviewing the return.

Some taxpayers are ineligible to use a Self-Select PIN, including primary taxpayers under age 16 who have never filed a return and secondary taxpayer under age 16 who did not file a prior- year return.

Using the Practitioner PIN does not require the use of prior-year PIN and AGI amount. A Practitioner PIN always requires taxpayers to sign their consent even if the PIN was entered into the return by the taxpayer. EROs may select and enter a Practitioner PIN. Some tax software programs automatically generate the PIN for the taxpayers.

An IRS e-file signature authorization is needed for both Self-Select PINs not entered in directly by the taxpayer and Practitioner PINs. Form 8879, IRS e-File Signature Authorization, authorizes an ERO to enter the taxpayer's PIN on individual returns. Form 8878, IRS e-File Authorization for Application of Extension of Time to File, authorizes the ERO to enter the taxpayer's PIN on Forms 4868 and 2350. Both Forms 8879 and 8878 include the Declaration of Taxpayer.

EROs must also sign tax returns with a PIN, which should be the same PIN throughout the entire filing season. EROs may authorize other members of their practice or firm to sign on their behalf; however, the ERO is still responsible for the return.

Forms 8879 and 8878 should be retained for three years from the return due date or the date the IRS received the return, whichever is later.

Timing of Filing

Once the return is signed, the Electronic Return Originator (ERO) must submit the return electronically as quickly as possible and ensure that stockpiling does not occur.

Stockpiling is either:

- Collecting returns from taxpayers and other authorized e-file providers prior to their acceptance to participate in IRS e-file
- Waiting more than three calendar days to submit a return to the IRS after obtaining all necessary information

Returns held in early season before the IRS accepts any transmissions is not considered stockpiling, but the preparer must advise the taxpayers of the date the IRS will begin accepting returns electronically.

e-File Record Keeping

EROs must retain the following documents and records until the end of the calendar year at the business address from which the return originated or at a location that allows the ERO to readily access the material:

- A copy of Form 8453, US Individual Income Tax Transmittal for IRS e-file Return, and supporting documents that are not included in the electronic records submitted to the IRS
- Copies of Forms W-2, W-2G, and 1099-R
- A copy of signed IRS e-file consent to disclosure forms
- A complete copy of the electronic portion of the return that can be readily and accurately converted into an electronic transmission that the IRS can process
- The acknowledgement file for IRS accepted returns

The above records must be readily available upon IRS request during the retention period.

Forms 8878 or 8879 must be available in the same manner for three years from the return due date or the IRS received date, whichever is later. The Submission ID must be associated with Forms 8878 and 8879.

The Submission ID can be added to Forms 8879 and 8878 or the acknowledgement containing the Submission ID can be associated with Forms 8879 and 8878. If the acknowledgement is kept to identify the Submission ID, it should be kept in accordance with the retention requirements for Forms 8878 and 8879.

Records may be either paper copies or in electronic format.

Documents Required for e-File

Tax return preparers must not file a return prior to receiving Forms W-2, W-2G, or 1099-R. In the event that the taxpayer is unable to obtain correct

Forms W-2, W-2G, or 1099-R, a return may be e-filed after Form 4852, Substitute Form W-2, Wage and Tax Statement, or 1099-R Distributions from Pension, Annuities, Retirement, or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., has been submitted. Form 4852 must be completed in compliance with the use of that form. If Form 4852 is used, the nonstandard W-2 indicator must be included in the record and the ERO must maintain Form 4852 in the same manner as Forms W-2, W-2G, and 1099-R.

Example:

Paul is very eager to file his 2021 tax return because he expects to receive a large refund. On January 31, 2022, he takes his last paycheck stub to his tax return preparer because he has not received Form W-2 from his employer. Paul asks his tax return preparer to file the return using the information on his last paycheck stub so he can get his refund as quickly as possible.

The tax return preparer should not file Jesse's return without Form W-2.

Rejected Returns

The IRS may reject a return submitted through e-file. In many cases, the ERO or preparer can rectify the reject quickly. If the reject cannot be resolved, the ERO must take reasonable steps to inform the taxpayer of the reject within 24 hours and provide the reject codes to the taxpayer. At such time if the taxpayer chooses to not have the return retransmitted, or if the IRS cannot accept the return, the return must be paper filed by the due date of the return or 10 calendar days after the reject is issued. A statement should be attached to the return explaining why the return is being filed past the return due date and noting that the return was originally timely filed.

Example:

Fred has his Form 1040 prepared and e-filed by his local tax return preparer on April 15, 2022. The preparer contacted him on April 16 and explained the return had been rejected by the IRS. The reject code referred to his dependent and the tax return preparer told Fred his son had already been claimed as a dependent on someone else's return. Because Fred's son was not eligible to be anyone else' dependent, Fred wanted to paper-file the return. Since the due date of the return had passed, but the return was filed timely initially, Fred must attach a statement to the paper return explaining the reject and noting the original date the preparer attempted to e-file the return.

3.7 **Annual Filing Season Program (AFSP) AFSP Overview**

The Annual Filing Season Program is intended to recognize and encourage the voluntary efforts of non-credentialed tax return preparers to increase their knowledge and improve their filing season competency through continuing education. The program is not directed at or necessary for credentialed preparers such as attorneys, CPAs, enrolled agents, enrolled retirement plan agents or enrolled actuaries. They are already in possession of higher level qualifications.

The Annual Filing Season Program (AFSP) is a voluntary program which aims to recognize non- credentialed tax return preparers who aspire to a higher level of professionalism. Tax return preparers who complete the requirements of the program earn the AFSP – Record of Completion. Preparers who complete all the requirements are also included in the IRS Directory of Tax Return Preparers and Select Qualifications, where taxpayers can search for qualified tax return preparers in their area.

The directory includes the name, city, state, ZIP Code, and credentials of all attorneys, certified public accountants (CPAs), enrolled agents, enrolled retirement plan agents (ERPAs), and enrolled actuaries with *valid PTINs. It also includes information on individuals who received an AFSP – Record of Completion.*

Following the completion of all Continuing Education requirements and renewal of PTIN for the upcoming year, eligible return preparers will receive an email from the IRS. The email will provide instructions for logging into your PTIN account and completing the process. Among the final steps will be a required consent to adhere to specific practice obligations outlined in Subpart B and section 10.51 of Treasury Department Circular No. 230. Following successful completion of these steps, you will be issued an Annual Filing Season Program - Record of Completion.

Please note that it may take up to four weeks following the completion of all requirements for return preparers to receive a Record of Completion and be placed on the Directory of Federal Tax Return Preparers with Credentials and Select Qualifications. Additionally, you will not be issued a Record of Completion until your PTIN is renewed for the upcoming tax year.

AFSP Requirements

In order to earn the AFSP – Record of Completion for the 2023 filing season, participants must:

a) Obtain necessary continuing education before December 31, 2022, including o A six-hour Annual Federal Tax Refresher (AFTR) course and exam o Ten hours of other federal tax law topics o Two hours of ethics

b) Have an active PTIN for the year of participation

c) Consent to adhere to specific obligations in Subpart B and Section 10.51 of Circular 230

Some preparers may be exempt from the AFTR course. Publication 5227 outlines all the requirements as well as the exemptions from the AFTR *course. Please note that Enrolled Agents are not allowed to earn CE credit for the AFTR course. For more information, see Publication 5227.*

Continuing Education for the AFSP

The continuing education credits required in order to earn an Annual Filing Season Program (AFSP) Record of Completion are displayed in the following table.

AFSP Exemption

Status	AFTR Course & Exam	Tax Law Update Federal	Ethic	Total CE
Non-Exempt	6	10	2	18
Exempt	3	10	2	15

Other tax return preparers who desire to earn an AFSP Record of Completion must complete the CE listed in the Nonexempt row of the table unless they are exempt from the Annual Federal Tax Refresher (AFTR) course and test requirement. If that is the case, they must complete the CE requirements listed in the "Exempt" row of the table.

Preparers Exempt from the AFTR

The following unenrolled preparers are exempt from the AFTR course and test requirement because they have passed other recognized state or national competency tests covering federal tax matters:

- RTRPs: Anyone who passed the Registered Tax Return Preparer (RTRP) test administered by the IRS between November 2011 and January 2013
- Participants in established state-based return preparer program with testing requirements: Return preparers who are active members of the

Oregon Board of Tax Practitioners and the California Tax Education Council, and return preparers who pass the examination of the Maryland Board of Individual Tax Preparers (when available)

- SEE Part I test-passers: Tax practitioners who have passed the Special Enrollment Exam (SEE) Part I within the past two years, as of the first day of the upcoming filing season

- VITA volunteers: Quality Volunteer Income Tax Assistance (VITA) program reviewers and instructors with active PTINs

- Other accredited tax-focused credential-holders: Tax practitioners who have passed the Accredited Business Accountant/Advisor (ABA) exam or the Accredited Tax Preparer (ATP) exam offered by the Accreditation Council for Accountancy and Taxation

3.7.1 Circular 230 Consent

AFSP participants are required to consent to adhere to certain provisions of Circular 230. Before the AFSP Record of Completion is issued, participants are required to consent to the following statement:

I agree to abide by the duties and restrictions relating to practice before the IRS in subpart B and section 10.51 of Treasury Department Circular No. 230 for the entire period covered by the Record of Completion.

I understand that failing to comply with the duties and restrictions relating to practice before the IRS in these sections may result in the revocation of my Annual Filing Season Program – Record of Completion, and I may be prohibited from participating in the Annual Filing Season Program in the future.

After all other requirements have been met for the AFSP, participants will receive notification in their secure online PTIN mailbox with instructions on how to sign the Circular 230 consent and receive the AFSP – Record of Completion.

3.7.2 **Representation Rights**

Individuals who have a valid IRS PTIN are authorized to prepare federal tax returns; however, having a PTIN does not authorize a preparer to represent a taxpayer before the IRS. Depending upon credentials and qualifications, return preparers could have unlimited, limited, or no representation rights.

Unlimited Representation Rights

Certified Public Accountants (CPAs), Enrolled Agents (EAs), and attorneys have unlimited representation rights before the IRS. Tax professionals with these credentials may represent taxpayers on any matters including audits, collection issues, and appeals.

Limited Representation Rights

Tax professionals who are not CPAs, EAs, or attorneys, but who participate in the AFSP have limited representation rights. Return preparers who have limited representation rights can represent only those clients whose returns they prepared and signed, but before only revenue agents, customer service representatives, and similar IRS employees (including the Taxpayer Advocate Service).

No Representation Rights

Tax return preparers who have an active PTIN, but no credentials and do not participate in the AFSP, can prepare and sign tax returns, but have no representation rights. These preparers have no authority to represent clients before the IRS (except for returns they prepared and signed before December 31, 2015.)

Review question for Domain 3:

What penalty will be imposed for understatement of tax liability due to an unreasonable position under IRC 6694(a)?

a) $1,000.00 or 50% of the tax refund shown on the return, whichever is greater
b) $1,500.00
c) $1,000.00 or 50% of the income the preparer receives for preparing the return, whichever is greater
d) $1,000.00 minus the amount of the tax refund shown on the return

Review question for Domain 3 – Answer keywords

a. $1,000 or 50% of the tax refund shown on the return, whichever is greater.

Incorrect. The amount of the tax refund shown on the return has no influence on the penalty charged.

b. $1,500

Incorrect. The penalty is not a flat $1,500.

c. **$1,000 or 50% of the income the preparer receives for preparing the return, whichever is greater**

Correct! The penalty is the greater of $1,000 or 50% of the income received by the preparer to prepare the return.

d. $1,000 minus the amount of the tax refund shown on the return

Incorrect. The amount of the tax refund shown on the return has no impact on the penalty charged.

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