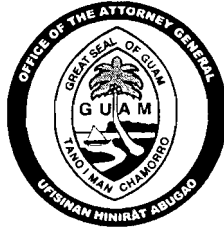


Alicia G. Limtiaco
Attorney General



Phillip J. Tydingco
Chief Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL

August 18, 2009

LEGAL MEMORANDUM

Ref: DRT 09-0007

TO: Director, Department of Revenue and Taxation

FROM: Attorney General *ALG*

SUBJECT: **The Vehicle Transfer Tax and Use of ITINS for Driver's Licenses**

By letter dated January 26, 2009, you have sought guidance on two issues:

- (1) Whether the term "transfer" as used in 16 GCA § 25101(b)(2) includes a bank when it repossesses a vehicle, thus subjecting it to the transfer tax; and
- (2) Whether it is in the Director's authority to have an Individual Taxpayer Identification Number (ITIN) be accepted in place of a social security number as a requirement for a customer applying for a Guam Driver's License.

1. Vehicle Transfer Tax Issue.

The first issue you have inquired about involves a bank repossessing a vehicle and wanting to become the newly registered owner. Specifically, you have asked whether the bank is exempt from the transfer tax 16 GCA § 25102 in light of 16 GCA § 25101(b)(2).

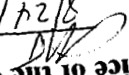
In general, 16 GCA § 25101(a) provides for a transfer tax on every transfer of a motor vehicle by other than a licensed dealer.

16 GCA § 25101(b)(2) provides that the word *transfer* does not include:

- (2) The repossession of a motor vehicle in the exercise of a right or power reserved by or granted to a seller and described in the instrument defining the security interest reserved by such seller.

As provided in § 25101(c)(4), the Director is permitted to charge a registration fee in the amount of \$10 for a change in ownership arising from repossession.

Under 16 GCA § 25101(b)(2), in order for a bank to be exempt from the transfer tax there must be a written agreement between the bank and the car "owner" that grants the bank the power to

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Office of the Compiler of Laws
By: 
Date: 8/24/09
Time: 10:30am

repossess or which reserves to the bank such power. Additionally, the instrument creating the security interest must describe this right.

If these two elements are not present in the agreement, the bank will not be exempt from the transfer tax and will instead be subject to the tax found in 16 GCA § 25101(c)(4).

2. Use of Individual Tax Identification Numbers on Drivers Licenses.

You have also enclosed a Memorandum from a Former Director of Revenue and Taxation which authorizes individuals who do not have and are not eligible to get a social security number to use an Individual Taxpayer Identification Number to fulfill the requirement of having a social security number.

In 2003 and 2004, the Internal Revenue Service limited the use of ITINs and provided they are to only be used for the purpose of complying with the US Tax laws. I also enclose a copy of a memorandum issued by the IRS with respect to this issue. It may be found at http://www.irs.gov/pub/irs-utl/itin_dmv_info.pdf.

This memorandum provides in part:

The Internal Revenue Service issues ITINs for the sole purpose of enabling individuals who do not qualify for Social Security numbers to meet their tax filing responsibilities. Therefore, we do not subject ITIN applicants to the same rigorous documentation verifications as Social Security number or visa/passport applicants.

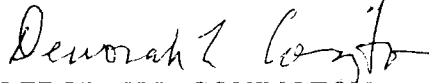
The memorandum further provides:

If your state currently accepts ITINs as proof of identity for driver's licenses, please alert your staffs that IRS issues ITINs for tax purposes only. Please do not direct driver's license applicants to us for ITINs; we do not issue the numbers for non-tax reasons.

Additionally, the IRS issued Notice 2004-1, 2004-2 I.R.B. 268, 2004-1 C.B. 268 on January 12, 2004. The IRS again reiterated that "ITIN's were not intended to be used as proof of identity for nontax purposes (e.g., to obtain a driver's license, to claim legal residency, to seek employment in the United States, or to apply for welfare and health benefits) and may not be reliable proof of an individual's identity for those purposes." *See also*, Treas. Reg. § 301.6109-1(a)(ii)(B).

The appropriate manner by which to address this issue is by using the numbers from the Guam Identification Cards. *See* Amended Governor's Circular No. 2009-0029 (April 2, 2009). In accordance with 10 GCA § 57102, any non-United States citizen applying for any service of the government of Guam must possess and present a Guam Identification Card as a condition of eligibility. A copy of the Amended Circular as well as the Certification of Identification statute is enclosed for your review.

In sum, the Director is not authorized to use ITINs as proof of identity for driver's licenses. I enclose a copy of Notice 2004-1 as well as a copy of the Information Memorandum for State Departments of Motor Vehicles.


DEBORAH L. COVINGTON
Assistant Attorney General

10 GCA HEALTH AND SAFETY
CH. 57 CERTIFICATE OF IDENTIFICATION

CHAPTER 57
CERTIFICATE OF IDENTIFICATION

§ 57100. Certificate of Identification: Requirement and Fee.

§ 57101. Same: Use.

§ 57102. Requirement of Guam Identification Card.

§ 57103. Certificates of Identification Issued to Minors.

§ 57104. Guam Identification Card Issued to Organ Donors

§ 57100. Certificate of Identification: Requirement and Fee.

Any person may obtain a certificate of identification from the Department of Revenue and Taxation. The Director of Revenue and Taxation is authorized to issue such certificate of identification without charge in a form prescribed by him.

SOURCE: GC § 8600.

§ 57101. Same: Use.

The certificate of identification provided for in § 57100 may be used for purposes of identification and admitted in evidence.

SOURCE: GC § 8601.

§ 57102. Requirement of Guam Identification Card.

Any non-United States citizen applying for *any* service of the government of Guam must possess and present a Guam Identification Card as a condition of eligibility.

SOURCE: GC § 8602. Repealed and reenacted by P.L. 29-113:VI:55 (Sept. 30, 2008).

§ 57103. Certificates of Identification Issued to Minors.

All certificates of identification issued to persons under the age of eighteen (18) years of age shall prominently display the month and year in which such person will turn eighteen (18) years of age.

SOURCE: Added by P.L. 24-169:3.

§ 57104. Guam Identification Card Issued to Organ Donors.

All applicants to Guam Identification Card shall indicate whether he or she wishes and consents to be an organ donor under the Uniform Anatomical Gift Act and shall be a part of the application form. For those under eighteen (18) years of age, a parental consent shall be required prior to organ donor procurement. For those Guam Identification Card issued to persons agreeing to organ donation shall have the words affix '*Organ*

**10 GCA HEALTH AND SAFETY
CH. 57 CERTIFICATE OF IDENTIFICATION**

Donor' on the lower segment of the picture portion of the Guam Identification Card or other section of the card that the Chief of Police deems appropriate. A Guam Identification Card with the organ donor designation is only revocable by obtaining a new Guam Identification Card without the organ donor designation.

SOURCE: Added by P.L. 24-249:3.



Office of the Governor of Guam

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Felix P Camacho

Governor

Michael W. Cruz, M.D.

L'utientant Governor

AMENDED GOVERNOR'S CIRCULAR NO. 2009-0829

DATE: 02 APR 2009

TO: Government of Guam Departments and Agencies

FROM: Governor Felix P. Camacho
Felix P. Camacho

SUBJECT: Guam Identification Card

Please note that any non-United States citizen applying for any services of the government of Guam must possess and present a Guam Identification Card as a condition of eligibility. See 10 G.C.A. 57102 which was recently repealed and reenacted in Public Law 29-113.

Several state government motor vehicle departments are accepting IRS-issued Individual Taxpayer Identification Numbers (ITINs) as proof of identification for state driver's licenses, prompting us to issue this reminder -- *ITINs are not valid for identification outside the tax system.*

The Internal Revenue Service issues ITINs for the sole purpose of enabling individuals who do not qualify for Social Security numbers to meet their tax filing responsibilities. Therefore, we do not subject ITIN applicants to the same rigorous document verification standards as Social Security number or visa/passport applicants.

Although we require ITIN applicants to provide proof of identity documents, we accept these documents at face value without validating their authenticity with issuing agencies or conducting applicant background investigations. We do not require applicants to appear in person and third parties may submit applications and provide documentation on behalf of others. Also, since we issue ITINs for tax filing purposes only, we do not verify applicants' legal presence in the U.S. — the tax code classifies aliens based on their physical presence (resident or non-resident), not their legal status in this country.

Unlike Social Security numbers, ITINs do not:

- Authorize an individual to work in the U.S.;
- Endorse an individual's legal status in this country; or
- Entitle an individual to Social Security benefits or the Earned Income Tax Credit.

If your state is considering legislation to accept ITINs as proof of identity for driver's licenses, please alert your legislators to potential security risks. State-issued photo identification provides unrestricted access to most U.S. air and ground transportation systems and entry to public buildings.

If your state currently accepts ITINs as proof of identity for driver's licenses, please alert your staffs that IRS issues ITINs for tax purposes only. Please do not direct driver's license applicants to us for ITINs; we do not issue the numbers for non-tax reasons.

Thank you for your help and support. For additional information about ITINs, visit our website at <http://www.irs.gov/individuals/article/0,,id=96287,00.html> or direct questions to the ITIN Program Office voice mail box at 404-338-8963 or e-mail to [*ITINProgramOffice@irs.gov](mailto:ITINProgramOffice@irs.gov).

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Notice 2004-1, 2004-2 I.R.B. 268, 2004-1 C.B. 268, 2003 WL 22969978 (IRS NOT)

Internal Revenue Service (I.R.S.)
IRS NOT

Notice

INTERPRETATION OF SECTION 301.6109-1(D)(3)(II) OF THE PROCEDURE AND ADMINISTRATION
REGULATIONS

Released: December 19, 2003

Published: January 12, 2004

This notice clarifies that the new application process for an IRS Individual Taxpayer Identification Number (**ITIN**), which generally requires that the application be accompanied by the applicant's completed tax return, constitutes compliance with regulations section 301.6109-1(d)(3)(ii). This notice also requests taxpayers to submit comments on the revised **ITIN** application process.

SECTION 1. PURPOSE

This notice addresses the requirements of section 301.6109-1(d)(3)(ii) of the regulations on Procedure and Administration, relating to applications for Individual Taxpayer Identification Numbers (**ITINs**). The Service has changed its **ITIN** application process. This notice confirms that taxpayers who comply with the new **ITIN** application process will be deemed to have satisfied the requirements in section 301.6109-1(d)(3)(ii) relating to the time for applying for an **ITIN**. This notice also solicits public comments regarding the changes to the **ITIN** application process.

SECTION 2. BACKGROUND

Section 6109(a)(1) generally provides that a person must furnish a taxpayer identifying number (TIN) on any return, statement, or other document required to be made under the Internal Revenue Code (Code). For taxpayers eligible to obtain a social security number (SSN), the SSN is the taxpayer's TIN. *See* section 6109(d); section 301.6109-1(d)(4). Taxpayers who are required under the Code to furnish a TIN, but who are not eligible for a SSN, must obtain an **ITIN** from the Service. *See* Section 301.6109-1(d)(3)(ii). A taxpayer must apply for an **ITIN** on Form W-7, *Application for the IRS Individual Taxpayer Identification Number*.

ITINs were not intended to be **used** as proof of identity for nontax **purposes** (*e.g.*, to obtain a **driver's license**, to claim legal residency, to seek employment in the United States, or to apply for welfare and health benefits) and may not be reliable proof of an individual's identity for those **purposes**. To help eliminate the nontax **use** of **ITINs**, the Service now is requiring taxpayers to attach the original, completed tax return for which the **ITIN** is needed, such as a Form 1040, to the Form W-7.

SECTION 3. FORM W-7 AND ACCOMPANYING INSTRUCTIONS

The Service has revised Form W-7 and the accompanying instructions. In general, a taxpayer who must obtain

an **ITIN** from the Service is required to attach the taxpayer's original, completed tax return for which the **ITIN** is needed, such as a Form 1040, to the Form W-7. There are, however, certain exceptions to the requirement that a completed return be filed with the Form W-7. These exceptions are described in detail in the instructions to the revised Form W-7. One of the exceptions applies to holders of financial accounts generating income subject to information reporting or withholding requirements. In these cases, an applicant for an **ITIN** must provide the IRS with evidence that the applicant had opened the account with the financial institution and that the applicant had an ownership interest in the account. The Treasury Department and the IRS will consider changes to the requirements of this exception if necessary to ensure the timely issuance of **ITINs** to holders of these types of financial accounts. In addition, financial institutions may participate in the IRS' acceptance agent program.

SECTION 4. CLARIFICATION OF REGULATORY REQUIREMENTS

Section 301.6109-1(d)(3)(ii) provides that any taxpayer who is required to furnish an **ITIN** must apply for an **ITIN** on Form W-7. The regulation further states that the application must be made far enough in advance of the taxpayer's first required **use** of the **ITIN** to permit the issuance of the **ITIN** in time for the taxpayer to comply with the required **use** (e.g., the timely filing of a tax return). This requirement was intended to prevent delays related to Code filing requirements.

Under the Service's new **ITIN** application process, applicants, in general, are required to submit the Form W-7 with (and not in advance of) the original, completed tax return for which the **ITIN** is needed. Accordingly, taxpayers who comply with the Service's new **ITIN** application process will be deemed to have satisfied the requirements of section 301.6109-1(d)(3)(ii) with respect to the time for applying for an **ITIN**.

The original, completed tax return and the Form W-7 must be filed with the IRS office specified in the instructions to the Form W-7 regardless of where the taxpayer might otherwise be required to file the tax return. The tax return will be processed in the same manner as if it were filed at the address specified in the tax return instructions. No separate filing of the tax return (e.g., a copy) with any other IRS office is requested or required. Taxpayers are responsible for filing the original, completed tax return, with the Form W-7, by the due date applicable to the tax return for which the **ITIN** is needed (generally, April 15 of the year following the calendar year covered by the tax return).

If a taxpayer requires an **ITIN** for an amended or delinquent return, then the Form W-7 must be submitted together with the return to the IRS office specified in the instructions accompanying the Form W-7.

SECTION 5. EFFECTIVE DATE

This notice is effective December 17, 2003.

SECTION 6. COMMENTS

The Service is committed to maintaining a dialogue with stakeholders on the **ITIN** application process, including Form W-7. Comments in response to this notice will be considered carefully by the Service in future revisions to the **ITIN** application process and Form W-7.

The Service welcomes all comments and suggestions and is particularly interested in comments on the following matters:

1. How can Form W-7 and the instructions be simplified or clarified?

Notice 2004-1, 2004-2 I.R.B. 268, 2004-1 C.B. 268, 2003 WL 22969978 (IRS NOT)

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2. The instructions to Form W-7 provide four exceptions to the requirement that a completed tax return be attached to Form W-7. Should these exceptions be modified? Are additional exceptions needed?

3. ITIN applicants may submit a Form W-7 to an acceptance agent. The acceptance agent reviews the applicant's documentation and forwards the completed Form W-7 to the Service. What steps, if any, should the Service consider to improve the acceptance agent program?

Comments must be submitted by June 15, 2004. Comments may be submitted electronically to notice.comments@irs.counsel.treas.gov. Alternatively, comments may be sent to CC:PA:LPD:PR (Notice 2004-1), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (Notice 2004-1), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224.

SECTION 7. CONTACT INFORMATION

The principal author of this notice is Michael A. Skeen of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this notice, contact Michael A. Skeen at (202) 622-4910 (not a toll-free call).

Notice 2004-1, 2004-2 I.R.B. 268, 2004-1 C.B. 268, 2003 WL 22969978 (IRS NOT)
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IR- 2003-140, 2003 WL 22963006 (I.R.S.)

Internal Revenue Service (I.R.S.)

News Release
IRS ANNOUNCES REVISIONS TO
ITIN
APPLICATIONS

For Release: December 17, 2003

WASHINGTON --- The Internal Revenue Service today announced several steps to strengthen controls over the issuance of Individual Taxpayer Identification Numbers. The changes will help ensure that **ITINs** are issued for their intended tax administration purpose for administering the tax code and not for other reasons, such as providing personal identification. In addition, the IRS is taking steps to help ensure that applicants can continue to obtain **ITINs** without undue burden.

Beginning today, new **ITIN** applicants must use a revised Form W-7, Individual Taxpayer Identification Number Application. **ITIN** applicants also must provide proof that the **ITIN** will be used for tax administration purposes. For applicants seeking an **ITIN** in order to file a tax return, the return must be filed along with the W-7.

“About one-quarter of the **ITINs** issued for tax return purposes never actually find their way onto a tax return,” said IRS Commissioner Mark W. Everson. “The steps taken today ensure **ITINs** will be issued only to those seeking to comply with their tax obligations.”

Federal law requires individuals with U.S. income, regardless of immigration status, to pay U.S. taxes. The **ITIN**, a nine-digit number that begins with the number 9, was created for use on tax returns for those taxpayers who do not qualify for a Social Security Number. The IRS has issued 7 million **ITINs** since 1996.

However, some **ITINs** issued by the IRS do not appear in tax filings or tax reporting documents and may have been procured solely to serve as a form of identification. Earlier this year, the IRS issued letters to all governors and state motor vehicle departments advising that **ITINs** were not designed to serve as personal identification and would not be suitable for determining identification of applicants for driver's licenses.

After a review of the **ITIN** program, the IRS will implement these changes effective immediately:

- All new **ITIN** applicants will have to show a federal tax purpose for seeking the **ITIN**. For those seeking an **ITIN** to meet their income tax filing obligations, this will require attaching a federal tax return to the Form W-7 when they are ready to file their tax return with the IRS.
- **ITIN** applications without proof of need for tax administration purposes will be rejected.
- The IRS will reduce to 13 from 40 the number of documents it will accept as proof of identity to obtain an **ITIN**. The 13 acceptable documents are listed in the new Form W-7 instructions.
- The IRS also will change the appearance of the **ITIN** from a card to an authorization letter to avoid any

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possible similarities with a Social Security Number card.

A small number of non-U.S. residents apply for an **ITIN** to report income under a tax treaty, and a small number of U.S. resident and non-resident applicants apply for an **ITIN** to report income from a U.S. bank or brokerage account. Neither type of applicant will be required to file a tax return along with their **ITIN** application. Non-resident applicants will be required to furnish evidence of their ownership of the asset that gave rise to the reporting obligation. Resident applicants will be required to furnish evidence of actual rather than intended ownership of the bank or brokerage account.

The IRS will continue to help individuals who seek **ITINs** comply with the tax laws. The IRS has found no indication of any differences in accuracy rates between tax returns filed with **ITINs** and tax returns filed with SSNs. The agency understands the need to continue to monitor challenges posed by **ITINs**, and will do so over the course of time.

The IRS will continue to review ways to improve Form W-7 and will conduct a public comment period until June 15, 2004. The IRS will be publishing an announcement in the Internal Revenue Bulletin that will ask for comments on the revised form and the application process. Internal Revenue Bulletin 2004-2, to be published on Jan. 12, 2004, will give instructions on when and how comments may be submitted.

Additional information is available at IRS.gov where English and Spanish versions of the Form W-7 are available. A list of frequently asked questions (FAQs) also is available.

Media Contact: Tel. (202) 622-4000

Copies: Tel. (202) 622-4040

IR- 2003-140, 2003 WL 22963006 (I.R.S.)
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