

# **E-Filers Beware**

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# Revocation of EFIN: Cause and Effect

Introduction: Despite the fact that revocation of a tax preparer's EFIN can effectively eliminate his ability to earn a living there is very limited guidance from the IRS as to when an EFIN will be revoked. That guidance is set forth in Rev. Proc. 2007-40 and IRS Publication 3112 (3-09), and is extremely general. The review process for the revocation of an EFIN is shrouded in mystery, and appears to be subject to the whim of mysterious individuals within the IRS.

I. The IRS may sanction a Provider for the same reasons that it denies an application to participate in IRS e-file. Before sanctioning, the IRS may issue a warning letter that describes specific corrective action the Provider must take. The IRS may also sanction a Provider without issuance of a warning letter.

II. According to IRS Pub. 3112 reasons the IRS may deny an application for a variety of [unspecified] reasons including but not limited to:

- A. An indictment or conviction of any criminal offense under the laws of the United States or of a state or other political subdivision, or an active IRS criminal investigation;
- B. Failure to file timely and accurate Federal, state, or local tax returns;
- C. Failure to timely pay any Federal, state, or local tax liability;
- D. Assessment of penalties;
- E. Suspension/disbarment from practice before the IRS or before a state or local tax agency;
- F. Disreputable conduct or other facts that may adversely impact IRS *e-file*;
- G. Misrepresentation on an IRS *e-file* Application;
- H. Unethical practices in return preparation;
- I. Assessment against the applicant of a penalty under §6695(g) of the Internal Revenue Code;
- J. Stockpiling returns prior to official acceptance to participate in IRS *e-file*;
- K. Knowingly and directly or indirectly employing or accepting assistance from any firm, organization, or individual denied participation in IRS *e-file*, or suspended or expelled from participating in IRS *e-file*. This includes any individual whose actions resulted in the denial, suspension, or expulsion of a firm from IRS *e-file*;
- L. Knowingly and directly or indirectly accepting employment as an associate, correspondent, or as a subagent from, or sharing fees with, any firm, organization, or individual denied participation in IRS *e-file*, or suspended or expelled from participating in IRS *e-file*. This includes any individual whose actions resulted in denial, suspension, or expulsion of a firm from IRS *e-file*.
- M. Enjoined from filing returns by a Federal or State court injunction or prohibited from filing returns by any Federal or State legal action that prohibits them from participation.

A type of such legal action is a Federal Executive Order such as Executive Order 13224 (September 23, 2001), which involves prohibitions directed at terrorist individuals and organizations.

### III. A few examples of situations in which the IRS has issued a notice immediately suspending a tax preparer's EFIN

- A. A married couple both of whom were tax return preparers. Tax Preparer husband was under investigation by the IRS Criminal Investigation division. The IRS revoked not only the husband's EFIN, but his wife's EFIN, despite the fact that she was not under investigation. Because the suspension was instigated by CI the IRS refused to seriously consider any administrative appeals.
- B. Tax return preparer was assessed a trust fund recovery penalty based upon a determination that he was the responsible officer of a business of which he was not the owner. The return preparer contended that he did not have the decision making authority as to which bills were to be paid. The IRS revoked his EFIN.
- C. Tax return preparer was audited, and was assessed additional tax which he wasn't in a position to pay in full. While he was attempting to negotiate an installment payment agreement the IRS notified him that it was going to suspend his EFIN unless he entered into a payment agreement. Because he was unable to get anyone in the IRS collection division to act quickly enough the IRS suspended his EFIN. On appeal although an installment agreement had been entered into because a negligence penalty had been assessed in connection with the audit the suspension was sustained.

### IV. Appeal of EFIN Revocation/Suspension

- A. An administrative review by the Electronic Products Support and Services Division is generally available. However, the suspension or revocation will generally continue during the appeal process
- B. If not satisfactorily resolved a further appeal to the IRS Appeals Division is generally available.
- C. There is no obvious statutory provision for court review of an IRS EFIN Revocation/Suspension. In *Thomas v. United States*, 2009 U.S. Dist. LEXIS

8988 (M.D. Ga. 2009) the court held that review under the Administrative Procedures Act (APA) was generally not available since decisions regarding the electronic filing program have been left by Congress within the sole discretion of the IRS. However, the court also held that had the IRS failed to follow its own procedures, i.e. Rev. Proc. 2007-40 and IRS Publication 3112 that failure would have been reviewable under the APA.

V. Consequences. An e-file provider is prohibited from:

- A. Knowingly and directly or indirectly employing or accepting assistance from any firm, organization, or individual denied participation in IRS *e-file*, or suspended or expelled from participating in IRS *e-file*.
- B. Knowingly and directly or indirectly accepting employment as an associate, correspondent, or as a subagent from, or sharing fees with, any firm, organization, or individual denied participation in IRS *e-file*, or suspended or expelled from participating in IRS *e-file*.
- C. As a result an individual who is suspended is unable to work for another tax return preparer who is an *e-file* provider.