

Aliens Who Must Get an Individual Taxpayer ID number

Individuals who are required to have a U.S. taxpayer identification number but who do not have, and are not eligible to obtain, a social security number (SSN) use Form W-7 to apply for an IRS individual taxpayer identification number (ITIN). An ITIN is a nine-digit number issued by the U.S. Internal Revenue Service (IRS).

The Chief, Legal Assistance Office, will ensure that we maintain an adequate supply of Forms W-7 (or will ensure that we have access to the Form through other means such as the World Wide Web or CD-Rom), based upon a reasonable estimate of requests for assistance. If asked to mail a Form W-7 to an eligible client, the Chief, Legal Assistance Office, will ensure that a Form is mailed and will provide the name and telephone number of a legal assistance attorney who the client may contact as necessary.

Pursuant to an agreement between the IRS Assistant Commissioner (International) and the Chief, Legal Assistance Policy Division, Office of the Judge Advocate General, U.S. Army, judge advocates and civilian attorneys serving as legal assistance officers were delegated the authority to sign the W-7s as the Certifying Acceptance Agents.

The Chief, Legal Assistance Office, will:

- (1) Ensure that all attorneys who serve as Certifying Acceptance Agent are trained on this standard operating procedure, Form W-7, and the acceptance agent agreement, before the attorney is allowed to serve as a Certifying Acceptance Agent;
- (2) Ensure that all attorneys who serve as Certifying Acceptance Agent follow this standard operating procedure, the instructions to Form W-7, and the terms of the acceptance agent agreement when completing a Form W-7; and
- (3) Ensure that any changes to the ITIN procedures are incorporated in this SOP and that all attorneys who serve as Certifying Acceptance Agents are trained in the new developments.

Who needs an ITIN?

Any individual who is not eligible to obtain a Social Security Number (SSN) and whose taxpayer identification number is required to be furnished to the IRS must apply for an individual taxpayer identification number (ITIN) on Form W-7. An individual who has a SSN or is eligible to obtain an SSN does not file form W-7. Consequently, U.S. citizens or nationals, or clients who have been lawfully admitted for permanent residence or U.S. employment do not need to complete Form W-7; they must, instead, apply for a SSN.

Consequently, prior to assisting anyone complete Form W-7, you must ensure:

- (1) That they are not eligible to obtain an SSN; and
- (2) That they need an ITIN.

The following examples show appropriate clients:

Nonresident alien individuals not eligible for an SSN who are required to file a U.S. tax return OR who are filing a U.S. tax return only to claim a refund.

Nonresident alien individuals not eligible for an SSN who elect to file a joint U.S. tax return with a spouse who is a U.S. citizen or resident.

U.S. resident aliens who file U.S. tax returns and who are not eligible for an SSN.

Alien individuals claimed as dependents on U.S. tax returns and who are unable or not eligible to obtain an SSN.

Alien individuals claimed as spouses for exemptions on U.S. tax returns and who are not eligible to obtain an SSN.

How do I assist someone in applying for an ITIN?

After verifying that the client is not eligible to obtain an SSN and that the client needs an ITIN, you must help them prepare the Form W-7. You must insure that the information provided on the form and the required documentary evidence are complete and correct.

Preliminary Advice

As a preliminary matter, you must tell them the following:

- (1) That the ITIN cannot be used to claim the earned income tax credit under section 32 of the Internal Revenue Code;
- (2) That possession of an ITIN does not change the client's immigration status or entitle the client to legal employment in the United States;
- (3) That the ITIN does not take the place of an SSN or qualify the client for Social Security benefits;
- (4) That the client may be eligible for an SSN and the circumstances under which they may be eligible;
- (5) That if the client subsequently becomes eligible for an SSN at a later date, the ITIN can no longer be used and the client must apply for an SSN from the Social Security Administration;

You must also fully explain the application process to the applicant, the information required by the form and instructions, your role as a Certifying Acceptance Agent, that the IRS may communicate information regarding the client to you as the Certifying Acceptance Agent, that the form is signed under penalties of perjury, and the consequences of making false statements or providing incorrect or false documentation.

If you determine that the client appears to be eligible for an SSN, you must advise the client on the appropriate procedures to obtain one.

Helping a client who is eligible for an ITIN

Once you have made a preliminary determination that a client is eligible for an ITIN, you must help the client prepare the application. In so doing, you will obtain information from the client, either during an interview or in any other way that is convenient to the client and reasonable for you, that is necessary to establish the client's identity and alien status. You may require the client to provide you with original documents.

The information stated on Form W-7 must be consistent with the documentary evidence required to be furnished by the client in support of the client's identity and alien status.

You must review the documentary evidence and ensure that it establishes:

The client's identity;

The client's alien status; and

All other statements made on Form W-7.

What documents do I need?

The documentary evidence supports the client's claim of identity and alien status only if, in consideration of all facts and circumstances known to you, neither the information on the application nor the documentary evidence raise any reasonable suspicion that the identity or alien status of the applicant is not as claimed by the applicant. In particular, you must review the documentary evidence to ascertain its authenticity as an original or as a properly certified copy of an original and to determine that the original or copy has not been altered.

You may use any of the following evidence to support an application for an ITIN:

A foreign passport (that does not contain information inconsistent with a claim of non-residence in the United States), a valid document issued by the U.S. Immigration and Naturalization Service in accordance with that agency's regulations, establishing the non-U.S. status and residence of the applicant, or a foreign birth record. A foreign passport may or may not establish the client's claim of identity and alien status; a valid document issued by immigration and naturalization will establish it. Thus, a foreign passport may not be enough in itself.

A birth record, provided the applicant also presents one of the following documents: a driver's license, an identity card, a voter's registration card, a school record, a medical record, a marriage record, or a military registration card. You can consider the document reliable if it has a photograph of the individual, has not expired if it has a validity period. If the document is either lacking a photograph or is older than three years, you may nevertheless rely on the document as supporting the alien status of the client but must ascertain by other means where the applicant is currently residing.

If it appears that the individual is residing in the United States, evidence supporting the reasons for the applicant's ineligibility for an SSN must be obtained from the applicant. In the cases where the Acceptance Agent, after considering information presented, is still in doubt as to the applicant's ineligibility for an SSN, the applicant should be requested to provide a letter from the Social Security Administration to confirm ineligibility for an SSN.

Do I need original documents?

In reviewing these documents:

You may accept only originals or copies thereof which are properly certified to be true and complete copies of the original document.

In the case of a document issued by a person in a foreign country, the certification is proper only if it is certified by the agency that issued the document, by an embassy or consulate office of that country, by a U.S. embassy or consulate office in that country, or by a U.S. Notary Public.

You may notarize documents in accordance with AR 27-55.

You may accept documents notarized by a Notary Public who is commissioned in the United States and who is acting within his or her legal authority with respect to the notarization. For this purpose, be aware that, in certain States, Notary Publics cannot legally notarize a copy made of certain original documents.

Completing the form

(1) If, after you have completed your review of the client's documents, you are satisfied that they establish the client's identity; the client's alien status; and all other statements required on Form W-7, complete the Form with the client. Use the current instructions to Form W-7 as a guide in completing the Form.

(2) In addition, to the information required by the Form's instructions:

Include on the certification document your name and phone number in case the IRS has any questions about processing the Form;

Include in the shaded box labeled "FOR IRS USE ONLY," all of the following codes that correspond to evidence you relied:

CodeType of Documentation01Passport02National Identity Card03I-94 (Any Version)04I-20 ID05I-95A06I-18407I-18608I-18609I-44410I-58611MICA (Mexican Border Crossing Card)12Marriage Certificate13Divorce Certificate14Adoption Record15Military Record16Driver's License17Civil Birth Certificates18Religious Birth Certificates19Illegal Alien20Other

(3) Once the application is completed, you and the client must sign the form, and you must provide the other information required in the block labeled "Acceptance Agent's Use Only."

Record Keeping

IAW Rev. Proc. 96-31, 1996-48 I.R.B. 1, you must make a copy of the completed form and copies of all documents you relied on. You must keep these documents for at least three years.

Mailing the Form

Mail the Form within five days of completion to:

Internal Revenue Service
11601 Roosevelt Boulevard, D.P. 426
Philadelphia, PA 19255

What if I learn that the client has become eligible for a SSN?

When, in the course of an ongoing attorney-client relationship, you learn that a client's status (or the status of one of the client's dependents) has changed and that the client (or one of the client's dependents) is now eligible for an SSN or has obtained one, you shall do the following:

(1) Make reasonable efforts to advise the client to apply for an SSN and to stop using the ITIN;

(2) Advise the client to stop using the ITIN upon receipt of the SSN; and

(3) Advise the client to promptly notify the IRS of this change in status by mailing or faxing a statement to the IRS that states the name, address, ITIN, and new SSN (if issued already) of the person, that indicates that the person is eligible for, or has obtained, an SSN, and that is dated and signed by the person.