

Delays in Issuing SSNs to Aliens by the Social Security Administration

Sometimes aliens experience significant delays in obtaining social security numbers. The consequences of these delays are discussed below.

There is no federal law administered by any federal agency which prohibits the hiring of a person based solely on the fact that the person does not have a Social Security Number (SSN). Similarly, there is no federal law which prohibits the making of a payment to a person based solely on the fact that the person does not have an SSN.

However, there are federal laws and regulations which require the reporting of a payee's TIN (Taxpayer Identification Number--SSN or ITIN) on federal information returns and payee statements such as forms W-2, 1099, 1042-S, etc. In addition, federal regulations require (with a few exceptions) that all tax treaty claims made on Forms 8233, W-8BEN, or W-9 be accompanied by the beneficial owner's TIN.

The IRS is quite aware of the Social Security Administration's procedures effective since 09-30-2002 about not issuing an SSN to any alien for whom it cannot confirm his identity and immigration status from the USCIS (United States Citizenship and Immigration Services—formerly the INS). In addition, the IRS is quite aware of the potential delays in securing an SSN which these procedures may cause some aliens. Furthermore, in the situation in which an alien is work-authorized under the immigration law and has met the Social Security Administration's evidence requirements for an SSN, but who is experiencing delays in securing an SSN caused by the SSA's procedures, the IRS will not generally issue an ITIN (Individual Taxpayer Identification Number) to such an alien.

With respect to IRS penalties related to the payer's failure to furnish a payee TIN on an information return and on a payee statement, the fact that the payer does not have a payee TIN to report solely because the SSA is delaying an issuance of an SSN, or cannot issue an SSN, to a work-authorized alien because of its procedures, will cause the IRS to be quite favorable toward considering this situation one in which "reasonable cause" exists for not asserting such penalties. The payer should keep documentation to show that his failure to supply a payee TIN is caused solely by the SSA's procedures for issuing SSN's to aliens.

Any withholding agent (with certain exceptions) who receives a Form 8233, W-8BEN, or W-9 without a payee TIN for the purpose of claiming a tax treaty benefit is not allowed to grant such tax treaty benefit until he receives a proper Form 8233, W-8BEN, or W-9 which does report the payee's TIN. However, a form 8233 or W-8BEN without a payee TIN is still valid for the purpose of declaring that the payee is a foreign person, subject to the withholding and reporting rules which apply to payments made to foreign persons.

The IRS cannot speak to the issue of potential penalties which could be imposed by other federal, state, or local agencies for the failure of an employer or payer to report a payee's TIN on any required documents, except to note that the filing of the immigration Form I-9 without an SSN does not constitute grounds, in and of itself, to reject the validity of the Form I-9. If an alien employee can prove his work-eligibility with documents listed on Form I-9 other than a U.S. social security card, then the alien's Form I-9, even though submitted without an SSN, is valid under the immigration law.

References/Related Topics

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