

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.602: Tax forms and instructions.  
(Also Part I, Sections 6012, 6061; 1.6012-5, 1.6061-1.)

Rev. Proc. 97-61

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#### SECTION 1. PURPOSE

This revenue procedure informs those who participate in the Form 1040 On-Line Filing Program of their obligations to the Internal Revenue Service, taxpayers, and other participants. The following returns can be filed under the Form 1040 On-Line Filing Program: (1) 1997 Form 1040 and 1997 Form 1040A, U.S. Individual Income Tax Return; and (2) 1997 Form 1040EZ, Income Tax Return for Single and Joint Filers With No Dependents. This revenue procedure updates and supersedes Rev. Proc. 96-62, 1996-2 C.B. 412.

#### SECTION 2. BACKGROUND AND CHANGES

.01 Section 1.6012-5 of the Income Tax Regulations provides that the Commissioner may authorize the use, at the option of a person required to make a return, of a composite return in lieu of any form specified in 26 C.F.R. Part 1 (Income Tax), subject to the conditions, limitations, and special rules governing the preparation, execution, filing, and correction thereof as the Commissioner may deem appropriate.

.02 For purposes of this revenue procedure, an on-line electronically filed Form 1040, Form 1040A, or Form 1040EZ is a

composite return consisting of electronically transmitted data and certain paper documents. The paper portion of the return consists of Form 8453-OL, U.S. Individual Income Tax Declaration for On-Line Filing, and other paper documents that cannot be electronically transmitted. Form 8453-OL must be received by the Service before the composite return is considered filed (see section 5.07 of this revenue procedure). The composite return must contain the same information that a return filed completely on paper contains. See section 7 of this revenue procedure for procedures for completing Form 8453-OL.

.03 The Service will periodically issue Publication 1345, Handbook for Electronic Filers of Individual Income Tax Returns, that lists the forms and schedules associated with the Form 1040 series that can be electronically transmitted.

.04 For the purposes of the Form 1040 On-Line Filing Program, a 1997 Form 1040, Form 1040A, or Form 1040EZ cannot be electronically filed after October 15, 1998, notwithstanding the fact that the taxpayer has been granted an extension to file a return beyond that date.

.05 An amended tax return cannot be electronically filed under the Form 1040 On-Line Filing Program. A taxpayer must file an amended tax return on paper in accordance with the instructions for Form 1040X, Amended U.S. Individual Income Tax Return.

.06 A tax return that has a foreign address for the taxpayer cannot be electronically filed under the Form 1040 On-Line Filing

Program. Army/Air Force (APO) and Fleet (FPO) post offices are not considered foreign addresses.

.07 A tax return for a decedent cannot be electronically filed under the Form 1040 On-Line Filing Program. The decedent's spouse or personal representative must file a paper tax return for the decedent.

.08 This revenue procedure updates and supersedes Rev. Proc. 96-62, 1996-2 C.B. 412. The updates include changes in the Form 1040 On-Line Filing Program, clarification of prior Form 1040 On-Line Filing Program statements, and additional guidance derived from other Service documents that relate to the Form 1040 On-Line Filing Program. Some of the updates are:

(1) Unless certain changes listed in sections 4.03 and 4.04 of this revenue procedure have occurred, an On-Line Filer that actively participated in the most recent Form 1040 On-Line Filing Program does not have to reapply to participate in the Form 1040 On-Line Filing Program (section 4.01);

(2) the application period for the Form 1040 On-Line Filing Program runs from September 2, 1997, through December 1, 1997 (section 4.05);

(3) all applications for the Form 1040 On-Line Filing Program must be sent to the Andover Service Center (sections 4.07 and 5.05);

(4) Applicants and certain On-Line Filers must submit information to the IRS Headquarters Form 1040 On-Line Filing Program Analyst by December 31, 1997 (sections 4.08 and 4.09);

(5) an individual who is an attorney may submit evidence of professional status in lieu of a fingerprint card provided the individual is not currently under suspension or disbarment from practice before the Service or the bar of the highest court of any State, Commonwealth, possession, territory, or the District of Columbia (section 4.12(1));

(6) an individual who is a certified public accountant may submit evidence of professional status in lieu of a fingerprint card provided the individual is not currently under suspension or disbarment from practice before the Service, or whose license to practice is not currently suspended or revoked by any State, Commonwealth, possession, territory, or the District of Columbia (section 4.12(2));

(7) timely notification that an On-Line Filer has discontinued participation in the Form 1040 On-Line Filing Program must be sent to the Andover Service Center (section 5.06);

(8) a Transmitter must ensure that it does not use an EFIN or ETIN obtained through the Form 1040 Electronic Filing (ELF) Program in a transmission of the electronic portion of a taxpayer's return as part of the Form 1040 On-Line Filing Program (section 5.15); and

(9) the Andover Service Center is the office responsible for accepting or rejecting an application to participate in the Form 1040 On-Line Filing Program (sections 13.02 through 13.07).

### SECTION 3. ON-LINE FILING PARTICIPANTS--DEFINITIONS

.01 After acceptance into the Form 1040 On-Line Filing Program, as described in section 4 of this revenue procedure, a participant is referred to as an "On-Line Filer."

.02 The On-Line Filer categories are:

(1) ON-LINE SERVICE PROVIDER. An "On-Line Service Provider" is an on-line information service organization that provides paying subscribers (individuals who use the various services offered by an On-Line Service Provider) dial-up access to a variety of data bases. For purposes of the Form 1040 On-Line Filing Program, an On-Line Service Provider must also have:

(a) an established subscriber or client base to whom the On-Line Service Provider offers services on a continuing basis and about which the On-Line Service Provider maintains certain minimum information identifying the subscriber. Such information could include the subscriber's name, account number, or credit card or demand deposit account number;

(b) a port capacity of at least 1,000 lines or the ability to simultaneously service 1,000 customers;

(c) a network of personal computers that are linked by modems;

(d) access to a broad spectrum of information and/or entertainment services; and

(e) a client base that has the ability to communicate using electronic mail.

(2) SOFTWARE DEVELOPER. A "Software Developer" develops software for the purposes of (a) formatting returns according to

the Service's electronic return specifications; and/or (b) transmitting electronic returns directly to the Service. A Software Developer may also sell its software.

(3) TRANSMITTER. A "Transmitter" transmits the electronic portion of a return directly to the Service. An entity that provides a "bump-up" service is a Transmitter. A "bump-up" service provider increases the transmission rate or line speed of formatted or reformatted information that is being sent to the Service via a public switched telephone network. The Service accepts both asynchronous and bisynchronous communications protocols.

.03 The On-Line Filer categories are not mutually exclusive. For example, a Software Developer can, at the same time, be considered a Transmitter or an On-Line Service Provider depending on the function(s) performed.

#### SECTION 4. ACCEPTANCE IN THE FORM 1040 ON-LINE FILING PROGRAM

.01 Except as provided in sections 4.02 through 4.04 of this revenue procedure, an On-Line Filer that has actively participated in the most recent Form 1040 On-Line Filing Program does not have to reapply to participate in the Form 1040 On-Line Filing Program. However, an On-Line Filer that intends to participate as a Transmitter or a Software Developer in the Form 1040 On-Line Filing Program must first successfully complete the testing referred to in section 4.10 of this revenue procedure. In addition, section 4.13 of this revenue procedure provides for the

Service's issuance of credentials necessary for participation in the Form 1040 On-Line Filing Program.

.02 Applicants must file a new Form 8633, Application to Participate in the Electronic Filing Program, (hereinafter "Form 8633"), with completed fingerprint cards for the appropriate individuals, if:

(1) the applicant has never participated in the Form 1040 On-Line Filing Program;

(2) the applicant has previously been denied participation in the Form 1040 On-Line Filing Program; or

(3) the applicant has been suspended from the Form 1040 On-Line Filing Program.

Applicants must designate that the Form 8633 is for the Form 1040 On-Line Filing Program by putting the words "ON-LINE FILING PROGRAM" across the top of the form and the letters "OLF" in the box in the upper left hand corner of the form that indicates whether the form is new or revised.

.03 To participate in the Form 1040 On-Line Filing Program, an On-Line Filer in the most recent Form 1040 On-Line Filing Program must submit a revised Form 8633 (designated for the Form 1040 On-Line Filing Program as described in section 4.02 of this revenue procedure), signed by all "Principals" and the "Responsible Official" (as described in section 4.11 of this revenue procedure) with completed fingerprint cards for the appropriate individuals if:

(1) the On-Line Filer functioned solely as a Software Developer during the most recent Form 1040 On-Line Filing Program and intends to function as an On-Line Service Provider or Transmitter during the Form 1040 On-Line Filing Program;

(2) there is an additional Principal, such as a partner or a corporate officer, that must be listed on Form 8633, line 8, "Principals of Your Firm or Organization";

(3) there is a Principal listed on Form 8633, line 8, that should be deleted; or

(4) the Responsible Official on Form 8633, line 9 changes.

.04 Except as provided in section 4.03 of this revenue procedure, to participate in the Form 1040 On-Line Filing Program, an On-Line Filer in the most recent Form 1040 On-Line Filing Program must submit either a revised Form 8633, or a letter containing the same information contained in a revised Form 8633, if any information on the On-Line Filer's Form 8633 has changed. A revised Form 8633 or letter submitted under this section should include only the information requested on lines 1a through 1i of Form 8633 and the information being revised. A Principal or a Responsible Official must sign the revised Form 8633 or the letter.

.05 For applicants described in section 4.02 of this revenue procedure, the application period runs from September 2, 1997, through December 1, 1997.

.06 Revised applications described in sections 4.03 and 4.04 of this revenue procedure must be submitted within 30 days of the change(s) reflected on the revised Form 8633 or in the letter.

.07 Applicants and On-Line Filers described in sections 4.02 through 4.04 of this revenue procedure must file Form 8633 (or a letter as provided in section 4.04 of this revenue procedure) with the Andover Service Center.

.08 Applicants described in section 4.02 must submit the following information (or the name and phone number of an individual who can provide the information) to the IRS Headquarters Form 1040 On-Line Filing Program Analyst (see section 17 of this revenue procedure) by December 31, 1997:

(1) the brand name of the software the applicant will be using, has developed, or will be transmitting, and the following information regarding the software:

(a) the name of the Software Developer for the software;

(b) the name of the Transmitter for the software;

(c) the retail cost of the software and any additional costs for transmitting the electronic portion of the taxpayer's return;

(d) whether the software can be used to file Federal/State returns;

(e) whether the software is available on the Internet and, if so, the Internet address;

(f) the Professional Package name of the software submitted for Participants Acceptance Testing (PATS) and whether the software has successfully completed PATS;

(2) the applicant's point of contact for matters relating to the Form 1040 On-Line Filing Program and the telephone number for the point of contact; and

(3) the applicant's customer service telephone number.

.09 On-Line Filers that participated in the most recent Form 1040 On-Line Filing Program must submit any changes to the information contained in sections 4.08(1) through (3) of this revenue procedure to the IRS Headquarters Form 1040 On-Line Filing Program Analyst by December 31, 1997.

.10 Applicants and On-Line Filers described in sections 4.01 through 4.04 of this revenue procedure that intend to participate as a Transmitter or a Software Developer in the Form 1040 On-Line Filing Program must first successfully complete the necessary testing at the appropriate service center(s).

.11 Each individual listed as a Principal or a Responsible Official must:

(1) be a United States citizen or an alien lawfully admitted for permanent residence as described in 8 U.S.C. § 1101(a)(20) (1994);

(2) have attained the age of 21 as of the date of application;

(3) submit with Form 8633 one standard fingerprint card with a full set of fingerprints taken by a law enforcement agency, except as provided in section 4.12 of this revenue procedure; and

(4) pass a suitability check that includes a credit check, a tax compliance check, and a fingerprint check.

.12 An individual may choose to submit evidence of the individual's professional status in lieu of a standard fingerprint card if the individual is:

(1) an attorney in good standing of the bar of the highest court of any State, Commonwealth, possession, territory, or the District of Columbia, and is not currently under suspension or disbarment from practice before the Service or the bar of the highest court of any State, Commonwealth, possession, territory, or the District of Columbia;

(2) a certified public accountant who is duly qualified to practice as a certified public accountant in any State, Commonwealth, possession, territory, or the District of Columbia, and is not currently under suspension or disbarment from practice before the Service or whose license to practice is not currently suspended or revoked by any State, Commonwealth, possession, territory, or the District of Columbia;

(3) an enrolled agent pursuant to part 10 of 31 C.F.R. Subtitle A;

(4) an officer of a publicly held corporation; or

(5) a banking official who is bonded and has been fingerprinted within the last two years.

.13 The Service will issue credentials to eligible applicants for the Form 1040 On-Line Filing Program, as well as On-Line Filers that do not have to reapply pursuant to section 4.01, 4.03, or 4.04 of this revenue procedure (provided they have first satisfactorily completed the testing described in section 4.10 of this revenue procedure if they intend to participate as a Transmitter or Software Developer). No one may participate in the Form 1040 On-Line Filing Program without the following credentials:

(1) a letter of acceptance into the Form 1040 On-Line Filing Program;

(2) an Electronic Filing Identification Number (EFIN) for each applicable service center; and

(3) if appropriate, an Electronic Transmitter Identification Number (ETIN) for each applicable service center.

.14 If an On-Line Filer is a Software Developer that performs no other function in the Form 1040 On-Line Filing Program but software development, no Principal or Responsible Official needs to pass a suitability check.

.15 The Service may reject an application to participate in the Form 1040 On-Line Filing Program for the following reasons (this list is not all-inclusive). These reason apply to any firm, organization, Principal, or Responsible Official listed on Form 8633:

(1) conviction of any criminal offense under the revenue laws of the United States, or of any offense involving dishonesty or breach of trust;

(2) failure to file timely and accurate tax returns, including returns indicating that no tax is due;

(3) failure to timely pay any tax liabilities;

(4) assessment of tax penalties;

(5) suspension/disbarment from practice before the Service;

(6) disreputable conduct or other facts that would reflect adversely on the Form 1040 On-Line Filing Program;

(7) misrepresentation on an application;

(8) suspension or rejection from either the Form 1040 On-Line Filing Program or the Form 1040 Electronic Filing (ELF) Program in a prior year;

(9) unethical practices in return preparation;

(10) stockpiling returns prior to official acceptance into the Form 1040 On-Line Filing Program (see section 5.21 of this revenue procedure);

(11) knowingly and directly or indirectly employing or accepting assistance from any firm, organization, or individual that is prohibited from applying to participate in the Form 1040 On-Line Filing Program or the Form 1040 ELF Program, or that is suspended from participating in the Form 1040 On-Line Filing Program or the Form 1040 ELF Program. This includes any individual whose actions resulted in the rejection or suspension

of a corporation or a partnership from the Form 1040 On-Line Filing Program or the Form 1040 ELF Program; or

(12) 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 that is prohibited from applying to participate in the Form 1040 On-Line Filing Program or the Form 1040 ELF Program, or that is suspended from participating in the Form 1040 On-Line Filing Program or the Form 1040 ELF Program. This includes any individual whose actions resulted in the rejection or suspension of a corporation or a partnership from the Form 1040 On-Line Filing Program or the Form 1040 ELF Program.

#### SECTION 5. RESPONSIBILITIES OF AN ON-LINE FILER

.01 To ensure that complete returns are accurately and efficiently filed, an On-Line Filer must comply with all the publications and notices of the Service relating to electronic filing. Currently, these publications and notices include:

(1) Publication 1345, Handbook for Electronic Filers of Individual Income Tax Returns, and Publication 1345A, Handbook for Electronic Filers of Individual Income Tax Returns (Supplement);

(2) Publication 1346, Electronic Return File Specifications and Record Layouts for Individual Income Tax Returns;

(3) Publication 1436, Test Package for Electronic Filing of Individual Income Tax Returns; and

(4) Postings to the Electronic Filing System Bulletin Board (EFS Bulletin Board).

.02 An On-Line Filer must maintain a high degree of integrity, compliance, and accuracy.

.03 An On-Line Filer may accept returns for on-line electronic filing only from taxpayers or from another On-Line Filer.

.04 If an On-Line Filer charges a fee for the electronic transmission of a tax return, the fee may not be based on a percentage of the refund amount or any other amount from the tax return.

.05 An On-Line Filer must submit a revised Form 8633 (or a letter as provided in section 4.04 of this revenue procedure) to the Andover Service Center within 30 days of when any of the conditions or changes described in section 4.03 or 4.04 of this revenue procedure occur. See section 4.06 of this revenue procedure.

.06 An On-Line Filer must notify the Andover Service Center within 30 days of discontinuing its participation in the Form 1040 On-Line Filing Program. This does not preclude reapplication in the future.

.07 An On-Line Filer must ensure that it promptly processes returns submitted to it for electronic filing. See sections 5.09, 5.10, and 5.11 of this revenue procedure. However, an On-Line Filer that receives a return for electronic filing on or before the due date of the return must ensure that the on-line electronic return is filed on or before that due date (including extensions). An on-line electronic return is not considered filed until the

electronic portion of the tax return has been acknowledged by the Service as accepted for processing and a completed and signed Form 8453-OL has been received by the Service. However, if the electronic portion of a return is successfully transmitted on or shortly before the due date and the taxpayer complies with section 7.01 of this revenue procedure, the return will be deemed timely filed. If the electronic portion of a return is transmitted on or shortly before the due date and is ultimately rejected, but the taxpayer complies with section 5.18 of this revenue procedure, the return will be deemed timely filed. For a balance due return, see section 10 of this revenue procedure for instructions on how to make a timely payment of tax.

.08 An On-Line Filer must ensure against the unauthorized use of its EFIN or ETIN. An On-Line Filer must not transfer its EFIN or ETIN by sale, loan, gift, or otherwise to another entity.

.09 An On-Line Filer that participates as an On-Line Service Provider must:

(1) provide assistance to a subscriber in transmitting the electronic portion of a tax return;

(2) ensure that no more than three tax returns are filed electronically by one subscriber;

(3) not provide to a subscriber software that has a Service-assigned production password built into the software;

(4) immediately send to a subscriber the information provided by a Transmitter under section 5.17 or 5.18 of this revenue procedure; and

(5) inform a subscriber upon request that information regarding a refund can be obtained by using the IRS TeleTax system.

.10 An On-Line Filer that participates as a Software Developer must:

(1) promptly correct any software error which causes the electronic portion of a return to be rejected;

(2) promptly distribute any software correction;

(3) ensure that its software package cannot be used to transmit more than three electronic returns;

(4) ensure that its software package contains a Form 8453-OL format that can be printed and used by a taxpayer to file with the Service;

(5) ensure that its software package contains a consent to disclosure statement; and

(6) not incorporate into its software a Service-assigned production password.

.11 An On-Line Filer that participates as a Transmitter must:

(1) assign (as prescribed in Publication 1345) a Declaration Control Number (DCN) to the electronic portion of each return received from a taxpayer;

(2) include the assigned DCN in the transmission of the electronic portion of a return;

(3) transmit all electronic returns within three calendar days of receipt to the appropriate service center based on the state code in the taxpayer's return address;

(4) retrieve the acknowledgement file (in which the Service states whether it accepts or rejects the electronic portion of a taxpayer's return) within two work days of transmission;

(5) match the acknowledgement file to the original transmission file and notify the taxpayer of the status of a transmitted return as prescribed in section 5.18 of this revenue procedure;

(6) retain, until the end of the calendar year in which a return was filed, the acknowledgement file received from the Service;

(7) retain, until the end of the calendar year in which a return was filed, the complete copy of the electronic portion of the return (may be retained on magnetic media) that can be readily and accurately converted into an electronic transmission that the Service can process;

(8) immediately contact the Electronic Filing Unit at the appropriate service center for further instructions if an acknowledgement of acceptance for processing has not been received by the Transmitter within two work days of transmission or if the Transmitter receives an acknowledgement for a return that was not transmitted on the designated transmission;

(9) promptly correct any transmission error that causes an electronic transmission to be rejected;

(10) contact the Electronic Filing Unit at the appropriate service center for assistance if a return has been rejected after three transmission attempts;

(11) ensure the security of all transmitted data;

(12) ensure that it does not transmit or accept for transmission more than three electronic returns originating from one software package;

(13) ensure that the electronic portion of a return contains a completed consent to disclosure statement; and

(14) ensure that it does not use software that has a Service-assigned production password built into the software.

.12 A Transmitter must include an On-Line Service Provider's EFIN on each return that the Transmitter accepts from an On-Line Service Provider.

.13 A Transmitter must enter the letter "0" in Field #15 (Transmission Type Code) when transmitting the electronic portion of an on-line electronically filed return to the Service. See Part II, Section 1, page 4, of Publication 1346.

.14 A Transmitter must ensure that it does not combine the electronic portion of an on-line electronically filed return with the electronic portion of any other return within the same transmission to the Service.

.15 A Transmitter must ensure that it does not use an EFIN or ETIN obtained through the Form 1040 ELF Program in a transmission of the electronic portion of a taxpayer's return as part of the Form 1040 On-Line Filing Program.

.16 If the Service accepts the electronic portion of a taxpayer's return, the Transmitter must notify the taxpayer (as prescribed in section 5.19 of this revenue procedure) of the following:

- (1) the date the transmission was accepted;
- (2) the DCN;
- (3) where to put the DCN on Form 8453-OL;
- (4) the requirement to properly complete and timely submit a Form 8453-OL with accompanying paper documents (including Form W-2, Wage and Tax Statement) within one work day;
- (5) the appropriate service center's address to which Form 8453-OL with accompanying paper documents must be sent;
- (6) that a Form 8453-OL must be received by the Service before an on-line electronically filed return is complete; and
- (7) that the taxpayer's failure to timely submit a Form 8453-OL with accompanying paper documents could result in the Service not allowing the taxpayer to file a tax return through the Form 1040 On-Line Filing Program in the future.

.17 If the Service informs the Transmitter (in an acknowledgement file) that the electronic portion of a taxpayer's return has been rejected, the Transmitter must notify the taxpayer, as prescribed in section 5.19 of this revenue procedure, of the following:

- (1) that the Service rejected the electronic portion of the taxpayer's return;
- (2) the date of the rejection;

(3) what the reject code(s) means;

(4) what steps the taxpayer needs to take to correct the error that caused the rejection; and

(5) the information contained in section 5.18 of this revenue procedure.

.18 If the taxpayer chooses not to have the electronic portion of the return corrected and transmitted to the Service, or if the electronic portion of the return cannot be accepted for processing by the Service, the taxpayer, in order to file a timely return, must file a paper return by the later of:

(1) the due date of the return; or

(2) ten calendar days after the date the Service gives notification that the electronic portion of the return is rejected or that the electronic portion of the return cannot be accepted for processing.

The paper return should include an explanation of why the return is being filed after the due date.

.19 A Transmitter that transmits a return of a taxpayer who is a subscriber of an On-Line Service Provider must notify the taxpayer by sending an electronic transmission to the On-Line Service Provider within two work days of retrieving the acknowledgement file. A Transmitter that transmits a return of a taxpayer who is not a subscriber of an On-Line Service Provider must notify the taxpayer by:

(1) sending an electronic transmission to the taxpayer within two work days of retrieving the acknowledgement file; or

(2) mailing a written notification to the taxpayer within one work day of retrieving the acknowledgement file.

.20 A Transmitter must make available to the Service upon request all items required by this section to be retained until the end of the calendar year in which a return was filed. The Transmitter must make this material available either at the business address of the Transmitter or from the contact representative named on Form 8633.

.21 A Transmitter is responsible for ensuring that stockpiling does not occur. Stockpiling means collecting returns from taxpayers prior to official acceptance into the Form 1040 On-Line Filing Program, or, after official acceptance into the Form 1040 On-Line Filing Program, waiting more than three calendar days to transmit a return to the Service after receiving the information necessary for an electronic transmission of a tax return.

.22 An On-Line Filer may not offer, nor in any way participate in or facilitate, a Refund Anticipation Loan (RAL) in connection with any return filed under the Form 1040 On-Line Filing Program. A RAL is money borrowed by a taxpayer that is based on a taxpayer's anticipated income tax refund.

.23 An On-Line Filer may not charge a separate fee for a Direct Deposit. See section 9 of this revenue procedure.

.24 In addition to the specific responsibilities described in this section, an On-Line Filer must meet all the requirements

in this revenue procedure to keep the privilege of participating in the Form 1040 On-Line Filing Program.

## SECTION 6. PENALTIES

### .01 Penalties for Disclosure or Use of Information.

(1) An On-Line Filer, except a Software Developer that performs no other function in the Form 1040 On-Line Filing Program but software development, is a tax return preparer (Preparer) under the definition of § 301.7216-1(b) of the Regulations on Procedure and Administration. A Preparer is subject to a criminal penalty for unauthorized disclosure or use of tax return information. See § 7216 of the Internal Revenue Code and § 301.7216-1(a). In addition, § 6713 establishes civil penalties for unauthorized disclosure or use of tax return information.

(2) Under § 301.7216-2(h), disclosure of tax return information among accepted On-Line Filers for the purpose of preparing a return is permissible. For example, an On-Line Service Provider may pass on tax return information to a Transmitter for the purpose of having an on-line electronic return formatted and transmitted to the Service. However, if the tax return information is disclosed or used in any other way, an On-Line Filer may be subject to the penalties described in section 6.01(1) of this revenue procedure.

### .02 Other Preparer Penalties.

(1) Preparer penalties may be asserted against an individual or firm meeting the definition of an income tax return

preparer under § 7701(a)(36) and § 301.7701-15. Preparer penalties that may be asserted under appropriate circumstances include, but are not limited to, those set forth in §§ 6694, 6695, and 6713.

(2) Under § 301.7701-15(d), an On-Line Filer is not an income tax return preparer for the purpose of assessing most preparer penalties as long as the On-Line Filer's services are limited to "typing, reproduction, or other mechanical assistance in the preparation of a return or claim for refund."

(3) If an On-Line Filer alters the return information in a nonsubstantive way, this alteration will be considered to come under the "mechanical assistance" exception described in § 301.7701-15(d)(1). A nonsubstantive change is a correction or change limited to a transposition error, misplaced entry, spelling error, or arithmetic correction that falls within the following tolerances:

(a) the amount of "Total tax", "Federal income tax withheld", "Refund", or "Amount you owe" on Form 8453-OL differs from the corresponding amount on the electronic portion of the tax return by no more than \$7;

(b) the amount of "Total income" shown on Form 8453-OL differs from the corresponding amount on the electronic portion of the tax return by no more than \$25; or

(c) dropping cents and rounding to whole dollars.

(4) If an On-Line Filer alters the return information in a substantive way, rather than having the taxpayer alter the

return, the On-Line Filer will be considered to be an income tax return preparer for purposes of § 7701(a)(36).

(5) If an On-Line Filer goes beyond mechanical assistance, the On-Line Filer may be held liable for income tax return preparer penalties. See Rev. Rul. 85-189, 1985-2 C.B. 341 (which describes a situation where a Software Developer was determined to be an income tax return preparer and subject to certain preparer penalties).

.03 Other Penalties. In addition to the above specified provisions, the Service reserves the right to assert all appropriate preparer, nonpreparer, and disclosure penalties against an On-Line Filer as warranted under the circumstances.

#### SECTION 7. FORM 8453-OL, U.S. INDIVIDUAL INCOME TAX DECLARATION FOR ON-LINE FILING

##### .01 Procedures for Completing Form 8453-OL.

(1) Form 8453-OL must be completed by the taxpayer in accordance with the instructions for that form.

(2) The taxpayer(s)'s name, address, social security number(s), tax return information, and direct deposit of refund information in the electronic transmission must be identical to the information on the Form 8453-OL that the taxpayer(s) signs and will mail to the appropriate service center.

(3) If the electronic portion of a return was filed as a joint return, both spouses' signatures are required on Form 8453-OL.

(4) The taxpayer's Form 8453-OL must be sent to the address of the appropriate service center within one work day after the taxpayer is provided notification that the electronic portion of the taxpayer's return has been accepted for processing.

.02 Missing Form 8453-OL. If the Service determines that a Form 8453-OL is missing, the taxpayer must provide the Service with a replacement. A taxpayer must also provide a copy of any Form W-2, Wage and Tax Statement, Form W-2G, Certain Gambling Winnings, Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., and all other attachments to Form 8453-OL.

.03 Substitute Form 8453-OL. If a substitute Form 8453-OL is used, it must be approved by the Service prior to use. See Rev. Proc. 96-48, 1996-2 C.B. 339.

#### SECTION 8. INFORMATION AN ON-LINE FILER MUST PROVIDE TO THE TAXPAYER

.01 The Transmitter must advise a taxpayer to retain a complete copy of the return and any supporting material.

.02 The Transmitter must advise the taxpayer that an amended return, if needed, must be filed as a paper return and mailed to the service center that would handle the taxpayer's paper return.

.03 The Transmitter must give the taxpayer the Declaration Control Number (DCN) for the taxpayer's Form 8453-OL and instructions to the taxpayer for entering the DCN on Form 8453-OL.

.04 If a taxpayer inquires about the status of a refund, the Transmitter, or On-Line Service Provider if the taxpayer is a

subscriber, must advise the taxpayer that the taxpayer can call the local IRS TeleTax number to inquire about the status of the taxpayer's refund. The Transmitter or On-Line Service Provider should also advise the taxpayer to wait at least three weeks from the date the Service gave notification that the electronic portion of the taxpayer's return was accepted for processing before calling the TeleTax number.

.05 The Transmitter must inform the taxpayer that the address on the electronic portion of the return, once processed, will be used to update the taxpayer's address of record. The Internal Revenue Service uses the taxpayer's address of record for various notices that are required to be sent to a taxpayer's "last known address" under the Internal Revenue Code and for refunds of overpayments of tax (unless otherwise specifically directed by the taxpayer, such as by Direct Deposit).

#### SECTION 9. DIRECT DEPOSIT OF REFUNDS

.01 The Service will ordinarily process a request for Direct Deposit but reserves the right to issue a paper refund check.

.02 The Service does not guarantee a specific date by which a refund will be directly deposited into the taxpayer's financial institution account.

.03 Neither the Service nor Financial Management Service (FMS) is responsible for the misapplication of a Direct Deposit

that is caused by error, negligence, or malfeasance on the part of the taxpayer, On-Line Filer, financial institution, or any of their agents.

#### SECTION 10. BALANCE DUE RETURNS

.01 An on-line electronically filed balance due return is transmitted to the appropriate service center in the same manner that a refund or zero balance return is filed. A balance due return is not complete unless and until the Service receives Form 8453-OL completed and signed by the taxpayer.

.02 The Transmitter must furnish Form 1040-V, Payment Voucher, to a taxpayer who electronically files a balance due return.

.03 To expedite the crediting of a tax payment, a taxpayer who electronically files a balance due return should mail his or her tax payment with either Form 1040-V or the scannable payment voucher that is included in some tax packages. Each of these options has specific mailing instructions.

.04 A taxpayer who electronically files a balance due return must make a full and timely payment of any tax that is due. Failure to make full payment of any tax that is due on or before April 15, 1998, will result in the imposition of interest and may result in the imposition of penalties.

#### SECTION 11. ADVERTISING STANDARDS FOR ON-LINE FILERS

.01 An On-Line Filer shall comply with the advertising and solicitation provisions of 31 C.F.R. Part 10 (Treasury Department Circular No. 230). This circular prohibits the use or participation in the use of any form of public communication containing a false, fraudulent, misleading, deceptive, unduly influencing, coercive, or unfair statement or claim. Any claims concerning faster refunds by virtue of electronic filing must be consistent with the language in official Service publications.

.02 An On-Line Filer must adhere to all relevant federal, state, and local consumer protection laws that relate to advertising and soliciting.

.03 An On-Line Filer must not use the Service's name, "Internal Revenue Service" or "IRS", within a firm's name.

.04 An On-Line Filer must not use improper or misleading advertising in relation to the Form 1040 On-Line Filing Program (including the time frames for refunds).

.05 An On-Line Filer using electronic filing promotional materials or logos provided by the Service must comply with all Service instructions pertaining to the promotional materials or logos.

.06 Use of Direct Deposit name and logo.

(1) The name "Direct Deposit" will be used with initial capital letters or all capital letters.

(2) The logo/graphic for Direct Deposit will be used whenever feasible in advertising copy.

(3) The color or size of the Direct Deposit

logo/graphic may be changed when used in advertising pieces.

.07 Advertising materials shall not carry the FMS, IRS, or other Treasury Seals.

.08 Advertising for a cooperative electronic return filing project (public/private sector) must clearly state the names of all cooperating parties.

.09 If an On-Line Filer uses radio or television broadcasting to advertise, the broadcast must be pre-recorded. The On-Line Filer must keep a copy of the pre-recorded advertisement for a period of at least 36 months from the date of the last transmission or use.

.10 If an On-Line Filer uses direct mail or fax communications to advertise, the On-Line Filer must retain a copy of the actual mailing or fax, along with a list or other description of firms, organizations, or individuals to whom the communication was mailed, faxed, or otherwise distributed for a period of at least 36 months from the date of the last mailing, fax, or distribution.

.11 Acceptance to participate in the Form 1040 On-Line Filing Program does not imply endorsement by the Service, FMS, or the Treasury Department of the software or quality of services provided.

## SECTION 12. MONITORING AND SUSPENSION OF AN ON-LINE FILER

.01 The Service will monitor an On-Line Filer for conformity with this revenue procedure. Before suspending an On-Line Filer,

the Service may issue a warning letter that describes specific corrective action for deviations from this revenue procedure. However, the Service can immediately suspend, without notice, an On-Line Filer from the Form 1040 On-Line Filing Program. In most circumstances, a suspension from participation in the Form 1040 On-Line Filing Program is effective as of the date of the letter informing the On-Line Filer of the suspension.

.02 If a Principal or Responsible Official is suspended from the Form 1040 On-Line Filing Program, every entity that listed the suspended Principal or Responsible Official on its Form 8633 may also be suspended.

.03 The Service will monitor the timely receipt of Forms 8453-OL.

.04 The Service will monitor the quality of an On-Line Filer's transmissions throughout the filing season. The Service will also monitor the electronic portion of returns and tabulate rejections, errors, and other defects. If quality deteriorates, the On-Line Filer will receive a warning from the Service.

.05 The Service will monitor complaints about an On-Line Filer and issue a warning or suspension letter as appropriate.

.06 The Service reserves the right to suspend an On-Line Filer from participation in the Form 1040 On-Line Filing Program for violating any provision of this revenue procedure. Generally, the Service will advise a suspended On-Line Filer concerning the requirements for reacceptance into the Form 1040 On-Line Filing Program. The following reasons may lead to a warning letter

and/or suspension of an On-Line Filer from the Form 1040 On-Line Filing Program (this list is not all-inclusive):

(1) the reasons listed in section 4.15 of this revenue procedure;

(2) deterioration in the format of individual transmissions;

(3) unacceptable cumulative error or rejection rate;

(4) stockpiling returns at any time while participating in the Form 1040 On-Line Filing Program;

(5) failure on the part of a Transmitter to retrieve acknowledgement files within two work days of transmission by the Service;

(6) failure on the part of a Transmitter to notify the taxpayer, as prescribed in section 5.19 of this revenue procedure, of the status of a transmitted return within two work days of receipt of the acknowledgement files from the Service;

(7) failure on the part of an On-Line Service Provider to ensure that no more than three tax returns are filed electronically by one subscriber;

(8) failure on the part of a Transmitter to ensure that it does not transmit or accept for transmission more than three electronic returns originating from one software package;

(9) significant complaints about an On-Line Filer;

(10) failure on the part of an On-Line Filer to ensure against the unauthorized use of its EFIN and/or ETIN;

(11) failure on the part of an On-Line Filer to cooperate with the Service's efforts to investigate electronic filing abuse;

(12) violation of the advertising standards described in section 11 of this revenue procedure;

(13) failure to maintain and make available records as described in section 5.20 of this revenue procedure;

(14) failure to supply a taxpayer with an accurate DCN;

(15) failure to give effective instructions to a taxpayer concerning the entry of the DCN on Form 8453-OL; or

(16) failure to timely submit a revised Form 8633 (or a letter containing the same information contained in a revised Form 8633) notifying the Service of changes described in section 4.03 or 4.04 of this revenue procedure.

.07 The Service may list in the Internal Revenue Bulletin, district office listings, district office newsletters, and on the EFS Bulletin Board the name and owner(s) of any entity suspended from the Form 1040 On-Line Filing Program and the effective date of the suspension.

.08 If a participant is suspended from participating in the Form 1040 On-Line Filing Program, the period of suspension includes the remainder of the calendar year in which the suspension occurs plus the next two calendar years. A suspended participant may submit a new application for the application period immediately preceding the end of the suspension.

SECTION 13. ADMINISTRATIVE REVIEW PROCESS FOR DENIAL OF PARTICIPATION IN THE FORM 1040 ON-LINE FILING PROGRAM

.01 An applicant that has been denied participation in the Form 1040 On-Line Filing Program has the right to an administrative review. During the administrative review process, the denial of participation remains in effect.

.02 In response to the submission of a Form 8633, the Andover Service Center will either (1) accept an applicant into the Form 1040 On-Line Filing Program, or (2) issue a proposed letter of denial that explains to the applicant why the service center proposes to reject the application to participate in the Form 1040 On-Line Filing Program.

.03 An applicant who receives a proposed letter of denial may mail or deliver, within 30 calendar days of the date of the proposed letter of denial, a written response to the Andover Service Center. The applicant's response must address the service center's reason(s) for proposing the denial to participate.

.04 Upon receipt of an applicant's written response, the Andover Service Center will reconsider its proposed letter of denial. The service center may either (1) withdraw its proposed letter of denial and admit the applicant into the Form 1040 On-Line Filing Program, or (2) finalize the proposed denial letter.

.05 If an applicant receives a final denial letter from the Andover Service Center, the applicant is entitled to an appeal, in writing, to the Director of Practice.

.06 The appeal must be mailed or delivered to the Andover Service Center within 30 calendar days of the date of the final

denial letter. An applicant's written appeal must contain a detailed explanation, with supporting documentation, of why the denial should be reversed.

.07 The Andover Service Center will, upon receipt of a written appeal to the Director of Practice, forward to the Director of Practice its file on the applicant and the material described in section 13.06 of this revenue procedure. The service center will forward these materials to the Director of Practice within 15 calendar days of receipt of the applicant's written appeal.

.08 Failure to respond within either of the 30-day periods described in sections 13.03 and 13.06 of this revenue procedure irrevocably terminates an applicant's right to an administrative review or appeal.

.09 If an application for participation in the Form 1040 On-Line Filing Program is denied, the applicant is ineligible to submit a new application for two years from the application date of the denied application.

#### SECTION 14. ADMINISTRATIVE REVIEW PROCESS FOR SUSPENSION FROM THE FORM 1040 ON-LINE FILING PROGRAM

.01 An On-Line Filer that has been suspended from participation in the Form 1040 On-Line Filing Program has the right to an administrative review. During the administrative review process, the suspension remains in effect.

.02 If an On-Line Filer receives a suspension letter, the On-Line Filer may mail or deliver, within 30 calendar days of the

date of the suspension letter, a detailed written explanation, with supporting documentation, of why the suspension letter should be withdrawn. This written response should be sent to the district office or service center that issued the suspension letter.

.03 Upon receipt of the On-Line Filer's written response, the district office or service center will reconsider its suspension of the On-Line Filer. The district office or service center may either (1) withdraw its suspension letter, or (2) affirm the suspension.

.04 If the On-Line Filer receives a letter affirming the suspension, the On-Line Filer is entitled to an appeal, in writing, to the Director of Practice.

.05 The appeal must be mailed or delivered to the district office or service center that issued the suspension letter within 30 calendar days of the date of the letter affirming the suspension. The On-Line Filer's written appeal must contain detailed reasons, with supporting documentation, for reversal of the suspension.

.06 The district office or service center whose decision to suspend is being appealed will, upon receipt of a written appeal to the Director of Practice, forward its file on the On-Line Filer to the Director of Practice. The district office or service center will also forward to the Director of Practice the material described in section 14.05 of this revenue procedure. The district office or the service center will forward these materials

within 15 calendar days of the receipt of an On-Line Filer's written request for appeal.

.07 Failure to appeal within either of the 30-day periods described in sections 14.02 and 14.05 of this revenue procedure irrevocably terminates an On-Line Filer's right to an appeal.

SECTION 15. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 96-62, 1996-2 C.B. 412, is superseded.

SECTION 16. EFFECTIVE DATE

This revenue procedure is effective December 29, 1997.

SECTION 17. INTERNAL REVENUE SERVICE OFFICE CONTACT

All questions regarding the electronic filing aspects of the Form 1040 On-Line Filing Program should be directed to the IRS Headquarters Electronic Filing Office. The telephone number for this purpose is (202) 283-0531 (not a toll-free number). All questions regarding the on-line aspects of this program should be directed to the IRS Headquarters Form 1040 On-Line Filing Program Analyst. The telephone number for this purpose is (202) 283-0265 (not a toll-free number). The address for the IRS Headquarters Form 1040 On-Line Filing Program Analyst is T:ETA:O:P, 5000 Ellin Road, Lanham, MD 20706.

SECTION 18. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1513.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in this revenue procedure are in sections 4, 5, 8, and 11 of the revenue procedure. This information is required by the IRS to implement the Form 1040 On-Line Filing Program and to enable taxpayers to file their individual income tax returns electronically through the Form 1040 On-Line Filing Program. The information will be used to ensure that taxpayers receive accurate and essential information regarding the filing of their return through the Form 1040 On-Line Filing Program and to identify the persons involved in the filing of a return through the Form 1040 On-Line Filing Program. The collections of information are required to retain the benefit of participating in the Form 1040 On-Line Filing Program. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting and recordkeeping burden is 5,926 hours.

The estimated annual burden per respondent/recordkeeper varies from eight (8) minutes to 455 hours, depending on individual circumstances, with an estimated average of 423 hours (or approximately two (2) minutes per on-line electronically filed

return). The estimated number of respondents and recordkeepers is 14.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. § 6103.