



IRS INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER – *When is it necessary?*



By:

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About the Author:

Ms. Glendinning joined the firm in 1987 and has headed the International Tax Department since 1996. She has authored articles regarding various international tax issues and frequently gives presentations on U.S. income and estate taxation of foreign nationals doing business in the U.S.

Prior to 1996, nonresidents could obtain a social security number issued by the Social Security Administration. This was not a true social security number, since it did not entitle the bearer to work in the U.S. without specific immigration approval. The social security card issued to the nonresident stated on the face of the card “not valid for employment purposes.”

In late 1996, the IRS started a program to streamline the issuance of these tax identification numbers. This resulted in the IRS Individual Taxpayer Identification Number, commonly known as an ITIN. The tax identification numbers issued by the Social Security Administration remained valid, but nonresidents wanting a number after that time could only obtain it from the Internal Revenue Service.

At the beginning of the program, nonresidents could apply for an ITIN for any reason. We routinely encouraged our clients to apply for this number, even if they currently didn’t require it, knowing they would need it at some time in the future.

Today, the IRS has taken a radically different view of who can obtain an ITIN and when they can obtain it. In order to currently obtain an ITIN, the applicant must show a specific reason for needing the number. From the viewpoint of the IRS, the only reason a nonresident needs an ITIN is for purposes of complying with IRS tax reporting requirements. If the nonresident states the reason for applying is to file a U.S. income tax return, the actual tax return must be attached to the ITIN application (IRS Form W-7). If the nonresident wishes to apply because he has a bank account in the U.S., a letter from the bank, stating that the bank is requiring a tax identification number from its customer so that it (the bank) can comply with IRS tax reporting requirements, must accompany the Form W-7.

I am frequently asked if nonresidents must have an ITIN before they can sell their U.S. real estate. Since they don’t have a tax filing requirement until after the property is sold, they are prohibited from applying for a number before the sale of property, so the answer to the question is “no.” Once the property is sold, a number can be obtained in advance of the actual filing of the tax return the following year.

The fact that an individual possesses either an ITIN or a social security number issued before the inception of the ITIN program is no indication of the current U.S. income tax status of the bearer. An individual with a social security number could be a nonresident for U.S. income tax purposes and an individual with an ITIN could be a resident for U.S. income tax purposes. It is impossible to determine U.S. income tax status solely by the existence of a tax identification number, whether it is an ITIN or a social security number.

An ITIN can only be issued to an individual who does not currently qualify to obtain a social security number. If the individual later becomes eligible for a social security number, then he must apply for that number through the Social Security Administration and the ITIN becomes invalid.

This can be a very confusing and complicated situation, especially when trying to determine tax residency connected with the sale of U.S. real estate. I would be happy to assist you with any of your questions. Please call (941-365-4617) or email (rglending@kbggrp.com).

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