

MEMO

To: Cambridge Selectboard, Listers, Town Clerk/Treasurer Mark Schilling,
Paul Sciortino, Adam Howard, Jane Porter

From: George Putnam

Date: 11/03/17

Subject: Penalty for late filing of the homestead declaration

ISSUE

A taxpayer in Cambridge has questioned the assessment of a penalty for late filing of the homestead declaration. The penalty was 3% of the education tax.

Vermont law says:

Annually on or before the due date for filing the Vermont income tax return, without extension, each homestead owner shall, on a form prescribed by the Commissioner, which shall be verified under the pains and penalties of perjury, declare his or her homestead, if any, as of, or expected to be as of, April 1 of the year in which the declaration is made.

In the case of late filing, the law provides that the town:

may, as determined by the governing body of the municipality, include a penalty of up to three percent of the education tax on the property.

In other circumstances, which do not apply here, the penalty may be up to 8%. See [32 V.S.A. § 5410](#) for both of the above quotes. The declaration is filed on Form HS-122 "Homestead Declaration AND Property Tax Adjustment Claim."

The taxpayer does not dispute that the homestead declaration was filed late. The taxpayer timely filed an application for extension of time to file his Vermont income tax return, but did not file the homestead declaration by its due date (April 18, 2017).

MATTERS TO DECIDE

Does the selectboard wish to allow the taxpayer to appeal the assessment of the penalty?

Does the selectboard wish to continue to assess this penalty? If so, how much? Even if the selectboard wishes to continue current practice without any changes, it should go on record to that effect.

See discussion below.

DISCUSSION

The taxpayer has the following questions.

1. How did we get here? What is the history of this penalty? If the penalty is optional, why is the town charging it?

Homestead declarations are important for how education taxes in Vermont are calculated. Late filing makes more work for both the state and town. A key point is that the penalty was not always optional. A short history of the homestead declaration, and the associated penalty, is as follows:

- The filing of a homestead declaration was made mandatory in 2003 (effective for 2004).
 - Since that time, the due date for filing has been the due date for filing the Vermont income tax return, without extension.
 - The first due date was April 15, 2004.
 - The original penalty was a mandatory 3%.
- In 2011 (effective for 2012) the penalty was made optional.
- In 2014 the penalty, now optional, was changed to be “up to three percent” and the language “as determined by the governing body of the municipality” was added.

The town has simply continued historical practice, as allowed by the law.

A more complete legislative history is included in Attachment 1.

In this memo, I am simply referring to the penalty as 3%. There are circumstances, not applicable here, in which the penalty is 8%. There was also a period of time when the penalty was 1%; it returned to 3% effective 6/04/2010. See Attachment 1.

2. Has the due date always been the due date for filing the Vermont income tax return, without extension? Could or should a better job be done to notify taxpayers of this requirement?

Since April 15, 2004, when the filing of the first homestead declaration was required, the due date has been the due date for filing the Vermont income tax return, without extension. The original form was HS-131 “Declaration of Vermont Homestead.” See the attached completed Form HS-131 for 2004 and instructions from my personal files (Attachment 2). The filing due date was clear from the beginning.

The form number changed to HS-122 with the homestead declaration due on April 17, 2007.

For 2011-2012, state law did not require annual filing of the homestead declaration; taxpayers only had to file if there was a change. State law went back to requiring annual filing in 2013. See the legislative history in Attachment 1.

The 2017 Form HS-122 says at the top: “DUE DATE: April 18, 2017. You may file up to Oct. 16, 2017, but the town may assess a penalty. For details on late filing, see the instructions.” ([link](#)) The instructions for the 2017 Form HS-122 say the same thing, in more words. ([link](#))

Furthermore, Form IN-151 “Application for EXTENSION OF TIME TO FILE FORM IN-111 Vermont Individual Income Tax Return” clearly states that an extension of time to file the income tax return does not extend the time to file the homestead declaration. ([link](#)) Here is the top portion of Form IN-151:

Vermont Department of Taxes
PO Box 1779
Montpelier, VT 05601-1779
Phone: (866) 828-2865 toll-free in Vermont or (802) 828-2865



VT Form IN-151	Application for EXTENSION OF TIME TO FILE FORM IN-111 Vermont Individual Income Tax Return
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Complete this application by April 15 of the current year if you are unable to file your Vermont Income Tax Return before the due date of April 15. By completing this application you are requesting an automatic six-month extension of time to file.

NOTE: This extension does NOT apply to the Homestead Declaration OR Property Tax Adjustment Claim. Form HS-122 is due April 15 of the current year. Late filed Homesteads will be charged a late filing penalty up to 8% of the corrected education tax.

It is hard for me to see how or why any additional notification to taxpayers is necessary.

3. Can the penalty be assessed differently? Could it be a flat fee instead of a percentage? Could the penalty depend on how late the homestead declaration was filed?

State law does not contemplate any of these options. Furthermore, the software used to generate property tax bills can only handle this penalty as a percentage, in whole numbers, without regard for how late the homestead declaration was filed. The selectboard can decide to have a penalty of 0%, 1%, 2% or 3%. (Or, in other circumstances, which don't apply in this case, up to 8%.) There are many instances in tax law where penalties are a percentage of the tax owed, and do not depend on how late the filing is. The current situation is not at all unusual, and I see no need to consider answering these questions other than “no.”

4. Can the penalty be appealed?

The taxpayer was advised by the Department of Taxes to file a request for a hearing with the town's Board of Abatement. That was not good advice. The taxpayer's request for a hearing was (correctly) denied on the basis that [24 V.S.A. § 1535](#), which lists the types of tax issues that can be entertained by the Board of Abatement, does not include this issue.

The taxpayer should have been advised to appeal to the listers and then to the Board of Civil Authority as per [32 V.S.A. § 5410\(j\)](#).

Paragraph 5410(j) is a long and confusing paragraph, but a careful reading leads to the conclusion that the only part that applies to the current situation is the second sentence:

A taxpayer may appeal an assessment of any other penalty under this section to the listers within 14 days after the date of mailing of notice of the penalty, and from the listers to the Board of Civil Authority and thereafter to the courts, in the same manner as an appraisal appeal under chapter 131 of this title.

It is the same appeal process as a grievance of an assessed value for the grand list (see [32 V.S.A. Chapter 131](#)).

The property tax bills were mailed in late July. The taxpayer submitted a request for a hearing with the Board of Abatement on September 12. The taxpayer was over the 14 day limit, but neither town nor state gave taxpayer good, timely advice on how to appeal.

5. How much has the Town of Cambridge collected from this penalty over the years?

Property tax bills are generated by the NEMRC system (New England Municipal Resource Center, Georgia, VT). The penalty for late filing is calculated and billed by this system, along with the property tax. Data prior to 2010 has been purged from the system. The NEMRC system shows the following penalties:

Year	Number	Total
2010	14	\$458.90
2011	12	\$778.25
2012	7	\$518.98
2013	35	\$3,184.41
2014	32	\$3,223.60
2015	33	\$3,044.37
2016	18	\$1,970.43
2017 thru 9/12	13	\$1,571.43

As noted above, state law did not require annual filing of the homestead declaration in 2011-2012; taxpayers only had to file if there was a change. State law went back to requiring annual filing in 2013. Also as noted above, the penalty changed from 1% back to 3% effective 6/04/2010.

6. What decisions does the Selectboard need to make?

Please refer back to "Matters to Decide" on page 1.

Attachment 1

How did we get here? What is the history of this penalty?

Following is a more complete legislative history than was included in the memo.

Key points from the following legislative history:

- The filing of a homestead declaration was made mandatory in 2003 (effective for 2004).
 - Since that time, the due date for filing has been the due date for filing the Vermont income tax return, without extension.
 - The first due date was April 15, 2004.
 - The original penalty was a mandatory 3%.
- In 2011 (effective for 2012) the penalty was made optional.
- In 2014 the penalty, now optional, was changed to be “up to three percent” and the language “as determined by the governing body of the municipality” was added.

In this memo, I am simply referring to the penalty as 3%. There are circumstances, not applicable here, in which the penalty is 8%. See 32 V.S.A. § 5410 for details. There was also a period of time when the penalty was 1%; it returned to 3% effective 6/04/2010. See below.

Section 5410 “Declaration of homestead” began with Act 60 of 1997-1998 (6/26/1997), which was the major law implementing the requirements of the 1997 Brigham decision of the Vermont Supreme Court regarding education funding.

[32 V.S.A. § 5410](#) has been amended 14 times since Act 60. The legislative history for § 5410:

Added 1997, [No. 60](#), § 45, eff. Jan. 1, 1999;

Amended:

1997, [No. 71](#) (Adj. Sess.), §§ 12, 13, 14, eff. Jan. 1, 1998;

1997, [No. 71](#) (Adj. Sess.), § 76, eff. January 1, 1999;

1999, [No. 1](#), § 60g(b);

1999, [No. 49](#), §§ 31, 53, eff. June 2, 1999;

2003, [No. 68](#), § 6, eff. July 1, 2004; (penalty set at 3%)

2003, [No. 76](#) (Adj. Sess.), §§ 2, 20, eff. Feb. 17, 2004; (penalty changed to 1%)

2003, [No. 107](#) (Adj. Sess.), § 18a;

2005, [No. 38](#), § 6, eff. Jan. 1, 2006;

2005, [No. 38](#), § 17;

2005, [No. 185](#) (Adj. Sess.), § 6, eff. Jan. 1, 2006;

2007, [No. 190](#) (Adj. Sess.), § 12;

2009, [No. 1](#) (Sp. Sess.), § H.24, eff. June 2, 2009;

2009, [No. 160](#) (Adj. Sess.), § 47, eff. June 4, 2010; (penalty changed to 3%, no annual filing)

2011, [No. 45](#), § 11, eff. May 24, 2011; (penalty made optional)

2011, [No. 143](#) (Adj. Sess.), § 25, eff. Jan. 1, 2013; (annual filing reinstated)

2013, [No. 174](#) (Adj. Sess.), §§ 17, 18.) (penalty set at “up to” 3%)

(The years refer to the first year of a biennium, even if the bill was passed in the second year.)

The three bolded acts in the above list cover the main points we are interested in, and are discussed below:

[Act 68 of 2003-2004](#) (6/18/2003) changed the filing of a homestead declaration from optional to mandatory by making the following changes to 5410(a) and (b):

(a) A resident ~~may~~ shall declare ~~one~~ ownership of a homestead for purposes of ~~this chapter~~ education property tax.

(b) Annually on or before the due date for filing the Vermont income tax return, ~~with~~ without extension, each resident individual ~~may~~ shall, on a form prescribed by the commissioner, which shall be verified under the pains and penalties of perjury, declare his or her homestead, if any, as of, or expected to be as of, April 1 of the year in which the declaration is made.

Note the change in the due date to the due date of the Vermont income tax return **without extension**.

Act 68 also instituted a penalty for failure to file a homestead declaration by making the following changes to 5410(g):

~~(f)~~(g) If the property identified in a declaration under subsection (b) of this section is not the taxpayer's homestead, or if the owner of a homestead fails to declare a homestead as required under this section, the commissioner shall notify the municipality and the municipality shall assess the taxpayer a penalty in an amount equal to ~~eight percent~~ three percent if the municipality's nonresidential tax rate is higher than the municipality's homestead tax rate for the tax year to which the declaration pertains, or in any other case shall assess the taxpayer a penalty in an amount equal to eight percent, of the education tax assessed on the property; or if the declaration was filed or failure to declare was with fraudulent intent, then the commissioner municipality shall assess the taxpayer a penalty in an amount equal to 100 percent of the education tax assessed on the property, plus any property tax due with interest from the original due date of the property tax on the property, at the applicable rate established in section 3108 of this title. A taxpayer may appeal the assessment under this subsection to the commissioner, in the same manner as an appeal under chapter 151 of this title. Any penalty imposed under this subsection may be recovered by assessment and enforcement and with appeal rights in the same manner as an income tax under chapter 151 of this title and any additional property tax and interest due shall be assessed and collected by the municipality in the same manner as a property tax under chapter 133 of this title. Amounts collected under this subsection shall be credited to the education fund. The commissioner may waive or reduce the eight percent penalty under this subsection for good cause. Education taxes assessed in the fiscal year upon property identified in a declaration of homestead, but which was not the taxpayer's homestead, shall remain payable to the commissioner. Upon the filing of a new or corrected declaration by an owner subject to this subsection, any additional tax, penalty, and interest collected by the municipality shall be remitted to the state treasurer upon collection; and the municipality may retain one-eighth of one percent of the total remitted. Any reduction in tax shall be refunded from the education fund to the municipality, and by the municipality to the taxpayer;

and any change in property tax under this subsection shall have no retroactive effect upon the education tax rates for the municipality.

Note that the penalty was **mandatory**, not optional. In Act 76 passed in the same biennium but the following year (2/17/2004), the penalty was changed from 3% to 1% but it was still mandatory. The penalty was changed back to 3% in Act 160 of 2009-2010 (6/04/2010). It was still mandatory.

[Act 45 of 2011-2012](#) (5/24/2011) amended 32 V.S.A. § 5410(g) and made the penalty optional:

(g) If the property identified in a declaration under subsection (b) of this section is not the taxpayer's homestead, or if the owner of a homestead fails to declare a homestead as required under this section, ~~or fails to file a notice of transfer or change in qualification pursuant to subdivisions (b)(1)(A) and (B) of this section,~~ the commissioner shall notify the municipality, and the municipality shall issue a corrected tax bill that ~~includes~~ may include a penalty in an amount equal to three percent of the education tax on the property if the municipality's nonresidential tax rate is higher than the municipality's homestead tax rate for the tax year to which the declaration or failure pertains, ~~or in any other case shall assess the taxpayer a penalty in an amount equal to eight percent of the education tax on the property.~~ If the property incorrectly declared as a homestead is located in a municipality that has a lower homestead tax rate than the nonresidential tax rate, the penalty shall be an amount equal to eight percent of the education tax on the property, but if the homestead tax rate is higher than the nonresidential tax rate, the penalty shall be in an amount equal to three percent of the education tax on the property. If an undeclared homestead is located in a municipality that has a lower nonresidential tax rate than the homestead tax rate, the penalty shall be eight percent of the education tax liability on the property, but if the nonresidential tax rate is higher than the homestead tax rate, then the penalty shall be in an amount equal to three percent of the education tax on the property. If the commissioner determines that the declaration or failure to declare was with fraudulent intent, then the municipality shall assess the taxpayer a penalty in an amount equal to 100 percent of the education tax on the property; plus any interest and late-payment fee or commission which may be due. Any penalty imposed under this section and any additional property tax interest and late-payment fee or commission shall be assessed and collected by the municipality in the same manner as a property tax under chapter 133 of this title.

[Act 174 of 2013-2014](#) (6/4/2014) further amended 32 V.S.A. § 5410(g) to say that the penalty, now optional, could be "up to three percent" and the language "as determined by the governing body of the municipality" was added:

(g) If the property identified in a declaration under subsection (b) of this section is not the taxpayer's homestead, or if the owner of a homestead fails to declare a homestead as required under this section, the Commissioner shall notify the municipality, and the municipality shall issue a corrected tax bill that may, as determined by the governing body of the municipality, include a penalty of up to three percent of the education tax on the property. ~~If~~ However, if the property incorrectly declared as a homestead is located in a municipality that has a lower homestead tax rate than the nonresidential tax rate, ~~the penalty shall be an amount~~

~~equal to eight percent of the education tax on the property, but if the homestead tax rate is higher than the nonresidential tax rate, the penalty shall be in an amount equal to three percent of the education tax on the property. If an undeclared homestead is located in a municipality that has a lower nonresidential tax rate than the homestead tax rate, the penalty shall be eight percent of the education tax liability on the property, but if the nonresidential tax rate is higher than the homestead tax rate, then the penalty shall be in an amount equal to three percent of the education tax on the property or if an undeclared homestead is located in a municipality that has a lower nonresidential tax rate than the homestead tax rate, then the governing body of the municipality may include a penalty of up to eight percent of the education tax liability on the property.~~ If the Commissioner determines that the declaration or failure to declare was with fraudulent intent, then the municipality shall assess the taxpayer a penalty in an amount equal to 100 percent of the education tax on the property; plus any interest and late-payment fee or commission which may be due. Any penalty imposed under this section and any additional property tax interest and late-payment fee or commission shall be assessed and collected by the municipality in the same manner as a property tax under chapter 133 of this title. Notwithstanding section 4772 of this title, issuance of a corrected bill issued under this section does not extend the time for payment of the original bill, nor relieve the taxpayer of any interest or penalties associated with the original bill. If the corrected bill is less than the original bill, and there are also no unpaid current year taxes, interest or penalties and no past year delinquent taxes or penalties and interest charges, any overpayment shall be reflected on the corrected tax bill and refunded to the taxpayer.

This is the most recent amendment to 32 V.S.A. § 5410(g).

Attachment 2

2004 VERMONT	<i>Declaration of Vermont Homestead</i>	FORM HS-131
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* 0 4 1 3 1 1 1 0 0 *

DUE DATE: April 15, 2004
PRINT in BLUE or BLACK INK

You MUST file this form if you are a Vermont resident as of January 1, 2004 and own and occupy your homestead on April 1, 2004.

<p>VT Resident Social Security Number</p> <p>VT Resident Last Name PUTNAM</p> <p>Spouse or CU Partner Last Name PUTNAM</p> <p>Mailing Address (Number and Street/Road or PO Box) 413 JEFFERSON HEIGHTS RD</p> <p>City/Town JEFFERSONVILLE</p> <p>Location of Homestead 413 JEFF HEIGHTS RD <small>number, street / road name</small></p>	<p>Spouse or CU Partner Social Security Number</p> <p>First Name GEORGE</p> <p>First Name NANCY</p> <p>State VT</p> <p>Zip Code 05464-</p>	<p>Initial S</p> <p>Initial C</p>	<p>1 VT School District Code 038</p> <p>2 City/Town of Legal Residence on 04/01/2004 CAMBRIDGE</p> <p>State VT</p>
<p>3. SPAN Number (REQUIRED) 123-038-11368 (From your 2003/2004 property tax bill)</p>			

4. Special Situations Check if you are:

- | | |
|--|--|
| <input type="checkbox"/> Grantor and sole beneficiary of a Revocable Trust that owns the property. | <input type="checkbox"/> Homestead on farm property |
| <input type="checkbox"/> Life Estate owner of the Property. | <input type="checkbox"/> Owner of homestead property that crosses town boundaries. (If so, you must file a declaration for each town.) |

5. Business Use of Dwelling (See instructions. If no business use, enter 00.00) 5. **00 . 00 %**

6. Rental Use of Dwelling (See instructions. If no rental use, enter 00.00) 6. **00 . 00 %**

7. Business or Rental Use of Improvements or Other Buildings.

Are improvements or other buildings located on your parcel, other than the dwelling, used for business or rented out? Yes No

SIGN HERE Under penalties of perjury, I have examined the above information and, to the best of my knowledge and belief, it is true, correct, and complete. I further declare I am a Vermont resident and the above homestead is my principal dwelling as of April 1, 2004. Preparers cannot use Declaration information for purposes other than preparing the Declaration.

Keep a copy for your records.	Your signature 	Date 1/25/04	Telephone Number (optional) - - -
<input type="checkbox"/> Check here if authorizing the VT Department of Taxes to discuss this Declaration with your preparer.			
Preparer's Use Only	Preparer's signature	Date	Preparer's SSN or PTIN
	Firm's name (or yours if self-employed) and address		EIN

MAIL TO: Vermont Department of Taxes, PO Box 1779, Montpelier, VT 05601-1779

Form HS-131

Instructions for Form HS-131

2004 Declaration of Vermont Homestead

DUE DATE: April 15, 2004

Why File a Declaration of Vermont Homestead? The declaration identifies your property as a homestead. You must file a declaration to receive the correct school property tax rate.

Who Files a Declaration of Vermont Homestead? The law requires you to file this declaration if you:

- Will be a Vermont resident on January 1, 2004; and
- Expect to be a Vermont resident on April 1, 2004; and
- Own and occupy the Vermont property as your principal home on April 1, 2004.

Only one eligible owner need file a Declaration. Individuals holding a life estate or living in the home they donated to a revocable trust also need to file.

Who Does NOT File a Declaration? Owners of commercial, business, vacation or second home properties do not file a declaration on those properties.

What is a Homestead? A homestead is your principal dwelling and improvements and all land listed on the parcel in your town. Your dwelling may have up to 25% of the floor space used for business purposes and still be considered a homestead.

What is NOT a Homestead? Properties used for business or as a vacation or second home are not homesteads. Any portion of a dwelling that is rented or held out for rent is not a homestead. The portion of a dwelling used for a business is not a homestead if that portion is more than 25% of the floor space of the dwelling. A separate building or improvement used for a business is not homestead property.

What is the Homestead School Property Tax Rate? For 2004, the statewide homestead school rate is \$1.10 per \$100 of property value. This funds the State per-student grant to each town. If your town spends more per student than the state grant, the homestead rate increases proportionally and will be more than \$1.10.

What is the Non-Homestead School Property Tax Rate? The non-homestead rate is \$1.59 per \$100 of property value and is not adjusted for above grant education spending.

When to File As early as possible but no later than April 15, 2004. You may file your declaration separately from your income tax or other property tax returns.

Late Filing You must file a declaration even if it is late. Penalties apply to a Declaration of Vermont Homestead filed after the due date at:

- 3% of the correct school property tax if the non-homestead school property tax rate is more than the homestead rate.
- 8% of the correct school property tax plus interest on the additional property tax from original due date if the homestead school property tax is more than the non-homestead rate.

Line Instructions

Enter your social security number, name, and address and, if applicable, for your spouse or civil union partner. Location: Enter the street or road location of the homestead. This cannot be a post office box.

EXAMPLES: 123 Maple Street 276 Route 12A

Line 1 VT School District Code: Enter the 3-digit school district code shown on your property tax bill. If the number is not on the bill, you can find the school district code for the place you will pay school property tax on

April 1, 2004 by going to the web at www.state.vt.us/tax or calling (866) 828-2865 (toll-free in VT) or (802) 828-2865 (local or out-of-state) or going to page 12 of the income tax booklet. If you are not sure of your school district code, check with your town clerk.

Line 2 Legal Residence: Enter the town or city name of legal residence. If you live where there is both a city and town with the same name, please specify city or town.

EXAMPLES: Rutland City or Rutland Town Barre City or Barre Town

Line 3 SPAN (School Property Account Number): This is a unique identification number for your homestead assigned by the town. Enter the 11-digit number printed on your property tax bill.

Lines 4a - 4d Special Situations: Check the box if one of these situations apply to you. Call 1-866-828-2865 (toll-free in VT) or 802-828-2865 (local or out-of-state) or go to www.state.vt.us/tax for more information.

→ Use whole numbers and round to the nearest percentage for Lines 5 and 6.

Line 5 Business Use of Dwelling: Up to 25% of your dwelling floor space may be used for business purposes with the entire dwelling taxed at the homestead school property tax rate. For business use over 25%, that portion of the dwelling is no longer part of the homestead and is taxed at the non-homestead school property tax rate. The business use percentage is generally the same as reported on your Federal income tax return. **EXAMPLE A:** Dwelling with total 1,800 square feet with 635 square feet used as a home office and inventory storage. You have 35.28% business use (635/1,800). Enter 35 for round whole percentage. Sixty-five percent of your dwelling will be taxed at the homestead rate and thirty-five percent at the non-homestead rate. **EXAMPLE B:** Dwelling with total 1,200 square feet homestead with 250 square feet used as a home office. You have 20.83% business use (250/1,200) rounded to 21%. Because this is less than 25%, enter 00. One hundred percent of the dwelling will receive the homestead tax rate.

Line 6 Rental Use of Dwelling: The portion of your dwelling (home) that you rent to another person is not your homestead and is taxed at the non-homestead tax rate. There is no 25% allowance. Any rental use must be reported. The rental use percentage is generally the same as reported on your Federal income tax return. **Example:** Dwelling is 1,800 square feet and you rent 365 square feet. You have 20.27% rental use (365/1,800). Enter 20 for rounded whole percentage. Eighty percent of your dwelling will be taxed at the homestead rate and twenty percent at the non-homestead rate.

Line 7 Business or Rental Use of Improvements and Other Buildings on the Property: Check the applicable Yes or No box.

Check the Yes box if any improvements or other buildings are rented out. They will be taxed at the non-homestead school property tax rate.

Signature Sign the return in the space provided.

Disclosure Authorization If you wish to give the Department authorization to discuss your 2004 Declaration of Vermont Homestead with your tax preparer, check this box and include the preparer's name.

Preparer If you employed a paid preparer, he/she must also sign the form. The preparer must enter his/her social security number or PTIN and, if employed by a business, the EIN of the business. If someone other than the filer(s) prepared the declaration without charging a fee, the signature is optional.