



DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG-132434-17]

RIN 1545-B012

Certain Non-Government Persons Not Authorized to Participate in Examinations of Books and Witnesses as a Section 6103(n) Contractor

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTIONS: Withdrawal of notice of proposed rulemaking; notice of proposed rulemaking.

SUMMARY: This document withdraws a notice of proposed rulemaking (REG-132434-17) published in the **Federal Register** on March 28, 2018, which contained proposed regulations that addressed the participation of persons described under section 6103(n) of the Code in the interview of a summoned witness and excluded certain non-government attorneys from participating in an IRS examination.

This document also contains new proposed regulations to implement section 7602(f) of the Internal Revenue Code (Code), which was added to the Code by the Taxpayer First Act of 2019. The new proposed regulations implement new section 7602(f) regarding the persons who may be provided books, papers, records, or other data obtained pursuant to section 7602 for the sole purpose of providing expert evaluation and assistance to the IRS, and continue to propose limitations on the types of non-governmental attorneys to whom, under the authority of section 6103(n), any books, papers, records, or other data obtained pursuant to section 7602 may be provided. The new proposed regulations also propose to prohibit any IRS contractors from asking a summoned person's representative to clarify an objection or assertion of privilege. The

regulations affect these persons.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Requests for a public hearing must be submitted as prescribed in the “**Comments and Requests for a Public Hearing**” section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-132434-17) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket. Send paper submissions to: CC:PA:LPD:PR (REG-132434-17), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, William V. Spatz at (202) 317-5461; concerning submission of comments, Regina Johnson, (202) 317-5177; (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Overview

These proposed regulations amend the Procedure and Administration Regulations (26 CFR part 301) under section 7602(a) of the Code relating to participation by persons described in section 6103(n) and 26 CFR §301.6103(n)-1(a) in receiving and reviewing summoned books, papers, records, or other data and in interviewing a summoned witness under oath.

The U.S. tax system relies upon taxpayers' self-assessment and reporting of their tax liability. The expansive information-gathering authority that Congress granted to the IRS under the Code includes the IRS's broad examination and summons authority, which allows the IRS to determine the accuracy of that self-assessment. See United States v. Arthur Young & Co., 65 U.S. 805, 816 (1984). Section 7602(a), in relevant part, provides that, for the purpose of ascertaining the correctness of any return, making a return where none has been made, or determining the liability of any person for any internal revenue tax, the IRS is authorized to examine books and records, issue summonses seeking documents and testimony, and take testimony from witnesses under oath. These provisions have been part of the revenue laws since 1864.

Use of outside specialists is appropriate to assist the IRS in determining the correctness of the taxpayer's self-assessed tax liability. The assistance of persons from outside the IRS, such as economists, engineers, appraisers, individuals with specialized knowledge who are also attorneys, industry specialists, and actuaries, promotes fair and efficient administration and enforcement of the laws administered by the IRS by providing specialized knowledge, skills, or abilities that the IRS officers or employees assigned to the examination may not possess. Section 6103(n) and 26 CFR

§301.6103(n)-1(a) authorize the IRS to disclose returns and return information to such persons in their capacity as contractors.

On June 18, 2014, temporary regulations (TD 9669) regarding participation in a summons interview of a person described in section 6103(n) were published in the **Federal Register** (79 FR 34625). A notice of proposed rulemaking (REG-121542-14) cross-referencing the temporary regulations was published in the **Federal Register** (79 FR 34668) the same day. No public hearing was requested or held. The IRS received two comments on the proposed regulations and, after consideration of these comments, the proposed regulations were adopted in final regulations (TD 9778) published in the **Federal Register** (81 FR 45409) on July 14, 2016 (2016 Summons Interview Regulations).

The 2016 Summons Interview Regulations under §301.7602-1(b)(3) were issued, in part, to clarify that persons described in section 6103(n) and §301.6103(n)-1(a) may receive and review books, papers, records, or other data summoned by the IRS. The regulations under §301.7602-1(b)(3) were also issued to clarify that, in the presence and under the guidance of an IRS officer or employee, these non-government persons could participate fully in the interview of a person whom the IRS had summoned as a witness to provide testimony under oath, allowing a contractor to ask a summoned witness substantive questions. See 81 FR 45409, at 45410.

New section 7602(f), enacted by section 1208 of the Taxpayer First Act of 2019, Pub. L. No. 116-25, and effective on July 1, 2019, now bars non-government persons who are hired by the IRS from questioning a witness under oath whose testimony was obtained pursuant to a summons issued under section 7602.

Executive Order 13789, Notice 2017-38, and the Reports to the President

Before new section 7602(f) was enacted on July 1, 2019, the President issued Executive Order 13789 on April 21, 2017 (E.O. 13789, 82 FR 19317), instructing the Secretary of the Treasury (Secretary) to review all significant tax regulations issued on or after January 1, 2016, and to identify regulations that (i) impose an undue burden on U.S. taxpayers; (ii) add undue complexity to the Federal tax laws; or (iii) exceed the statutory authority of the IRS, and take appropriate action to alleviate the burdens of these regulations. E.O. 13789 further instructed the Secretary to submit to the President within 60 days a report (First Report) that identified regulations that meet the criteria and should be modified. Notice 2017-38 (2017-30 I.R.B. 147 (July 24, 2017)) included the 2016 Summons Interview Regulations in a list of regulations identified by the Secretary in the First Report as meeting the President's criteria. E.O. 13789 instructed the Secretary to submit to the President a second report (Second Report) that recommended specific actions to mitigate the burden imposed by regulations identified in the First Report.

In response to Notice 2017-38, the Treasury Department and the IRS received seven comments from professional and business associations addressing the 2016 Summons Interview Regulations. All but one of these comments recommended removal of the regulations based primarily on the commenters' perception that the 2016 Summons Interview Regulations create longer and less efficient examinations by improperly delegating authority to outside law firms to conduct examinations. The one commenter that did not recommend removal of the regulations in their entirety

requested removal of the provisions permitting a contractor to question directly a witness during a summons interview.

On October 16, 2017, the Secretary published the Second Report in the **Federal Register** (82 FR 48013) stating that the Treasury Department and the IRS were considering proposing an amendment to the 2016 Summons Interview Regulations to narrow their scope to prohibit certain non-government attorneys from questioning witnesses on behalf of the IRS and playing a behind-the-scenes role in an examination, such as by reviewing summoned records or consulting on IRS legal strategy.

2018 Notice of Proposed Rulemaking

On March 28, 2018, the Treasury Department and the IRS published proposed regulations (REG-132434-17) in the **Federal Register** (83 FR 13206), which split the 2016 Summons Interview Regulations in §301.7602-1(b)(3) into two new subparagraphs set forth as §301.7602-1(b)(3)(i) and (ii). The first new subparagraph – §301.7602-1(b)(3)(i) – described the general rule for IRS contractor participation in an examination of books, records, and witnesses under section 7602 in the same terms as the 2016 Summons Interview Regulations, except it did not include the last clause which addressed IRS contractors asking a summoned person’s representative to clarify an objection or assertion of privilege. The second new subparagraph -- §301.7602-1(b)(3)(ii) -- provided that non-governmental attorneys were not eligible to be hired by the IRS to participate in an examination, unless the non-governmental attorney fit into one of three exceptions: (1) a specialist in foreign, state, or local law, including tax law; (2) a specialist in non-tax substantive law that is relevant to an issue in the examination, such as patent law, property law, or environmental law; or (3) a person

who happens to be an attorney, but is hired by the IRS for knowledge, skills, or abilities other than providing legal services as an attorney. These exceptions were designed to ensure that the IRS remained able to continue to hire and receive critical support from outside experts and ancillary contractors with the special skills, knowledge, and abilities the IRS needs to be successful in its most high profile cases, while prohibiting the IRS from hiring non-governmental attorneys as specialists in federal tax law or in U.S. civil litigation to participate in an examination under section 7602.

A public hearing on the 2018 proposed regulations was held on July 31, 2018. There were six speakers at the hearing, four of whom had previously provided the IRS with written public comments in response to the notice of proposed rulemaking. Those comments are available at www.regulations.gov.

Three speakers at the public hearing generally supported the direction of the 2018 proposed amendments to the 2016 Summons Interview Regulations. They supported both paring back the types of non-government attorney contractors whom the IRS may hire to assist it in the activities described in section 7602(a) and removing prior approval for any contractor to ask a summoned person's representative to clarify an objection or assertion of privilege. Two of these speakers stated in their public comments a new argument that allowing any non-government attorney to ask questions of a witness under oath was "the most intrusive of governmental actions, because it carries immediate perjury implications." Overall, however, these three speakers urged that the 2016 Summons Interview Regulations be eliminated entirely, contending that allowing any contractor to participate fully in a summons interview may cause the IRS officer or employee in charge of the interview to lose control of the interview, that

permitting any IRS contractors to receive and review information and documents obtained pursuant to section 7602 was an unlawful delegation of inherently governmental functions to private contractors, and that allowing any IRS contractors access to such information and documents posed an unacceptably high risk of unlawful disclosure of private tax information by these contractors. The Treasury Department and the IRS previously addressed and declined to adopt these arguments in the preamble to the 2016 Summons Interview Regulations (TD 9778) published in the **Federal Register** (81 FR 45409) on July 14, 2016.

A fourth speaker, who also submitted a public comment to the notice of proposed rulemaking, spoke for himself and six federal tax law professors. This speaker commented that under the 2018 proposed regulations the IRS was disarming itself in examinations of multinational companies in complex cases. This speaker opposed the 2018 proposed regulations, saying the IRS would be foreclosing its access to external expert litigation skills, while large U.S. taxpayers can hire all the legal talent they want. A fifth speaker observed that transfer pricing issues are complex, and the IRS needs non-tax law expertise to understand the technological, logistical, economic, and financial interactions that are at stake in transfer pricing cases.

A sixth speaker argued that the legislative history to section 6103(n) provided that the “other services” allowed thereunder through a 1990 amendment to the statute were limited to those provided to the IRS by “expert witnesses.” This was another argument that was previously discussed and addressed in the preamble to the 2016 Summons Interview Regulations. This speaker further contended that it would be improper for the IRS to use as an expert witness any specialist in domestic, non-tax

laws. This second argument, in combination with the speaker's first argument, argue for rejection of the portion of the 2018 proposed regulations (and of the present proposed regulations) that allows the IRS to use in an examination any attorney hired as a specialist "in non-tax substantive law that is relevant to an issue in the examination, such as patent law, property law, or environmental law."

Most of the speakers and written comments recommended that the Treasury Department and the IRS postpone action on the 2018 proposed regulations, because the House of Representatives and Senate Finance Committee had each previously approved proposed legislation that would alter the 2016 Summons Interview Regulations. Congress enacted new section 7602(f) on July 1, 2019, before the 2018 proposed regulations were finalized.

Legislative History of Section 7602(f)

Prior to 2018, bills were introduced in the House and Senate that included proposed legislative provisions to alter the IRS contractor conduct allowed pursuant to the 2016 Summons Interview Regulations. On April 18, 2018, H.R. 5444 passed the House with a section 11308 that would have added new section 7602(f) to the Internal Revenue Code. Section 11308 of H.R. 5444 was explained in H. Rep. 115-637, Part 1, at 34-36 (April 13, 2018). This bill was not passed by the Senate in 2018, but S. 3728 was introduced in the Senate on July 26, 2018 with a corresponding proposal in section 704 of the bill to add new section 7602(f) to the Internal Revenue Code.

In 2019, different versions of the Taxpayer First Act were introduced in the House and Senate, and these bills again contained provisions for adding new section 7602(f) to the Internal Revenue Code. H.R. 1957 was introduced in the House on March 28,

2019 and passed the House on April 9, 2019, but did not pass the Senate. Section 1208 of H.R. 1957 contained proposed statutory language for new Internal Revenue Code section 7602(f) that was identical to the statutory language that was enacted a short time later on July 1, 2019 in section 1208 of H.R. 3151. Due to the procedural way in which H.R. 3151 became a vehicle for enacting the Taxpayer First Act, there are no separate House, Senate, or Conference Reports regarding H.R. 3151. Therefore, it is appropriate for the Treasury Department and the IRS to look to the House Ways and Means Committee and Joint Committee Reports for H.R. 1957, the immediate predecessor to H.R. 3151, to identify what Congress meant by the words “expert evaluation and assistance” used in new section 7602(f).

The House Ways and Means Committee and Joint Committee Reports for H.R. 1957 clarify the meaning of “expert evaluation and assistance.” The House Ways and Means Committee Report explained that pursuant to new section 7602(f), the IRS could not under the authority of section 6103(n) “provide to a tax administration contractor any books, papers, records or other data obtained by summons, except when such person requires such information for the sole purpose of providing expert evaluation and assistance to the IRS (including, for example, access to such information by translators) . . . [and, that new section 7602(f)] is not intended to restrict the Office of Chief Counsel’s ability to use court reporters, translators or interpreters, photocopy services, and other similar ancillary contractors.” H.R. Rep. No. 116-39, at 50 (2019) (emphasis added). The Joint Committee staff report for the House Committee markup of H.R. 1957 used the same explanatory language as the House Committee Report to describe the types of IRS contractor participation that new section 7602(f) was intended to allow

under the terms “expert evaluation and assistance.” JCX-15-19, at 22 (2019). These reports confirm that Congress intended these terms to have a broad interpretation in the examination context of section 7602.

The restrictions in the second sentence of new section 7602(f) on an IRS contractor questioning a witness are expressly limited to witnesses whose testimony was obtained pursuant to section 7602 and to a witness questioned “under oath.” The IRS will continue to interview summoned witnesses “under oath,” even though doing so limits the opportunity of an IRS contractor to ask a summoned witness any questions directly. Contractors may continue to ask questions informally (not under oath) of a taxpayer, a taxpayer’s employee, or third parties in appropriate circumstances.

Explanation of Provisions

Overview

This document withdraws, effective as of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the previously proposed 2018 regulations because Pub. L. No. 116-25 (enacted on July 1, 2019) bars persons other than officers or employees of the Internal Revenue Service or the Office of Chief Counsel from substantively questioning summoned persons who are providing testimony to the IRS under oath, effective as of July 1, 2019.

These new proposed regulations continue to narrow the scope of the 2016 Summons Interview Regulations by providing that non-government attorneys may not be hired by the IRS to assist in an examination under section 7602 unless the attorney is hired by the IRS as a specialist in foreign, state, or local law (including foreign, state, or local tax law), or in non-tax substantive law that is relevant to an issue in the

examination, or is hired for knowledge, skills, or abilities other than providing legal services as an attorney. These proposed regulations also prohibit any IRS contractors from asking a summoned person's representative to clarify an objection or assertion of privilege.

These proposed regulations include some aspects of the 2018 proposed regulations and provide new rules. Consistent with the 2018 proposed regulations, these proposed regulations prohibit the hiring of certain non-government attorneys to assist in section 7602 examinations even though this prohibition on hiring is not required by section 7602(f). The 2018 proposed regulations described the extent of a contractor's participation in IRS examinations and summons interviews in broad terms. In contrast, these proposed regulations interpret and implement the statutory restrictions under section 7602(f) on sharing information obtained in an examination with contractors and questioning a witness under oath in a summons interview. These proposed regulations also prohibit IRS contractors from asking a summoned person's representative to clarify an objection or assertion of privilege in a summons interview even though this prohibition is not required by section 7602(f).

Contractor Access to Books and Records

Proposed §301.7602-1(b)(3)(i)(A) tracks the first sentence of new section 7602(f). Proposed §301.7602-1(b)(3)(i)(B) then describes three non-exclusive types of potential IRS contractors who may appropriately provide the IRS with "expert evaluation and assistance," so as to receive from and review for the IRS any books, papers, records, or other data the IRS obtained pursuant to section 7602 in an examination. The first of these non-exclusive types described in the proposed regulations is a person

with specialized expertise in certain substantive areas, including but not limited to an economist, an engineer, an attorney specializing in an area relevant to an issue in the examination (such as patent law, property law, environmental law, or foreign, state, or local law (including foreign, state, or local tax law)), an industry expert, or other subject-matter expert. The second type of specialists who are described in the proposed regulations as persons with whom the IRS may appropriately provide books, papers, records, or other data the IRS obtained pursuant to section 7602 in an examination for their assistance are persons providing support to an IRS examination as ancillary service providers, including but not limited to court reporters, translators or interpreters, photocopy services, providers of data processing programs or equipment, litigation support services, or other similar contractors. The third type of eligible potential contractors under section 7602(f) are whistleblower-related contractors, who are described in §301.6103(n)-2 and who may possess special factual knowledge that may assist the IRS in a section 7602 examination. Neither section 7602(f) nor its legislative history suggest that Congress intended to curtail the IRS's ability to work with whistleblower-related contractors.

Proposed §301.7602-1(b)(3)(i)(C) describes the circumstances in which the IRS may hire certain attorneys as contractors to assist the IRS in a section 7602 examination. The IRS will not hire an attorney as a contractor for this purpose unless the attorney is hired as a specialist in foreign, state, or local law (including foreign, state, or local tax law), or in non-tax substantive law that is relevant to an issue in the examination, such as patent law, property law, or environmental law, or is hired for knowledge, skills, or abilities other than providing legal services as an attorney.

Proposed §301.7602-1(b)(3)(i)(C) largely repeats the restriction on non-government attorney hiring in the 2018 proposed regulations and is intended to exclude two types of potential IRS contractors – Federal tax lawyers and U.S. civil litigators – from being hired for their expertise in Federal tax law or civil litigation to assist in an examination under section 7602. Though not required by new section 7602(f), the Treasury Department and the IRS choose to impose this hiring restriction in the interests of sound tax administration. The IRS workforce (including the Office of Chief Counsel), already possesses the knowledge, skills, and abilities the IRS needs with respect to the interpretation and application of Federal tax law and the practice of U.S. civil litigation involving Federal taxes in the U.S. Tax Court.

IRS Contractor Participation in an IRS Summons Interview

The first sentence of proposed §301.7602-1(b)(3)(ii)(A) tracks the second sentence of new section 7602(f). The 2016 Summons Interview Regulations and the 2018 proposed regulations both clarified that eligible IRS contractors could attend a summons interview and provide assistance to the IRS or Office of Chief Counsel employees in attendance. New section 7602(f) does not prevent these eligible IRS contractors from attending and providing assistance to the IRS at a summons interview under oath. New section 7602(f) only prohibits IRS contractors from asking substantive questions of the summoned witness under oath. The second sentence of proposed §301.7602-1(b)(3)(ii)(A) makes this distinction between allowable contractor attendance and assistance to the IRS, on the one hand, and unallowable direct questioning of a summoned witness under oath, on the other hand. In this second sentence, the Treasury Department and the IRS also make explicit the treatment of a potential issue

that section 7602(f) did not address – whether the same IRS contractors who are now barred from questioning a summoned witness under oath could nevertheless ask a summoned person’s representative to clarify an objection or assertion of privilege. The Treasury Department and the IRS propose in the interests of sound tax administration, and in light of the purposes behind new section 7602(f), to forego explicitly any potential opportunity for an IRS contractor attending an IRS summons interview to ask the summoned person’s representative to clarify an objection or assertion of a privilege. However, a Department of Justice attorney in the Tax Division or U.S. Attorney office may attend a summons interview conducted under oath. The Department of Justice attorney may ask the summoned person’s representative to clarify an objection or assertion of privilege.

Proposed §301.7602-1(b)(3)(ii)(B) provides, in part, that IRS contractors who are court reporters are not barred from asking a summoned witness the types of typical housekeeping questions which are an essential part of their jobs. Some examples of typical housekeeping questions asked by court reporters of a summoned witness include: does the witness swear to tell the truth, will the witness speak up or speak (rather than gesture) an answer, and will the witness spell a name or address provided in an answer. The IRS has for some time hired contractor court reporters to make a record of IRS summons interviews in both large- and medium-size civil tax cases, where creating an exact and undisputed record of the matters discussed is considered important by the IRS to the case. The House Ways and Means Committee Report and the Joint Committee Report both specifically state that Congress did not intend section 7602(f) to prohibit the IRS from continuing to use court reporters in section 7602

circumstances. Congress could not have intended that the IRS continue to hire court reporters to prepare transcripts of summoned witnesses under oath, but yet prevent these court reporters from asking the witness the types of ordinary housekeeping questions that go along with the job of acting as a court reporter.

Proposed §301.7602-1(b)(3)(ii)(B) also provides, in part, that IRS contractors who are translators or interpreters are permitted to translate questions asked by an IRS or Office of Chief Counsel employee to a summoned witness. In these circumstances, the Treasury Department and the IRS interpret new section 7602(f)'s restriction on a contractor asking questions as applying only to the originator of a question, and not to contractors who translate the original question from an IRS or Office of Chief Counsel employee for the witness. Translators or interpreters in these circumstances may also need to ask questions to clarify the translation. The IRS has again for some time hired contractor translators and interpreters in summons cases of all sizes where the IRS was alerted in advance of a summons interview of the need. The House Ways and Means Committee Report and the Joint Committee report both again specifically state that Congress did not intend by section 7602(f) to prohibit the IRS from continuing to hire translators and interpreters in section 7602 circumstances. Congress could not have intended for the IRS to continue hiring translators and interpreters to assist the IRS with conducting summons interviews under oath, yet prevent these translators or interpreters from translating an IRS or Office of Chief Counsel employee's questions.

These regulations are proposed to be effective for examinations begun and summonses served by the IRS on or after the date that these proposed regulations are published in the Federal Register. This applicability date is appropriate because these

proposed regulations would, as of **[INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]**, prohibit the IRS from engaging in certain activities in the context of an examination under section 7602 that the Treasury Department and the IRS have determined are not in the interests of sound tax administration.

Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and affirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. Because the proposed regulations mainly affect the IRS and would not impose requirements on small entities, it is certified, under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that the proposed regulations do not impose a significant economic impact on a substantial number of small entities. Pursuant to section 7805(f) of the Code, the IRS will submit the proposed regulations to the Chief Counsel for Advocacy of the Small Business Administration for comments about the regulations' impact on small businesses.

Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the "**ADDRESSES**" section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at www.regulations.gov or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also

encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**.

Announcement 2020-4, I.R.B. 2020-17, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal author of these regulations is William V. Spatz of the Office of Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Withdrawal of a Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG-132434-17) that was published in the **Federal Register** on March 28, 2018 (83 FR 13206) is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301--PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7602-1 is amended by:

1. In paragraph (b)(2), adding "(Secretary)" at the end of the first sentence.

2. Revising paragraphs (b)(3) and (d).

The revisions read as follows:

§ 301.7602-1 Examination of books and witnesses.

* * * * *

(b)* * *

(3) Participation of a person described in section 6103(n)--(i) IRS contractor access to books and records obtained by the IRS administratively--(A) In general. The Secretary may not, under the authority of section 6103(n), provide any books, papers, records, or other data obtained pursuant to section 7602 to any person authorized under section 6103(n), except when such person requires such information for the sole purpose of providing expert evaluation and assistance to the IRS.

(B) Persons providing expert evaluation and assistance. For the purposes of paragraph (b)(3)(i)(A) of this section, persons providing expert evaluation and assistance may include, but are not limited to, the following:

(1) Persons with specialized expertise in certain substantive areas, including, but not limited to, economists, engineers, attorneys specializing in an area relevant to an issue in the examination (such as patent law, property law, environmental law, or foreign, state, or local law (including foreign, state, or local tax law)), industry experts, or other subject-matter experts;

(2) Persons providing support as ancillary service contractors including, but not limited to, court reporters, translators or interpreters, photocopy services, providers of data processing programs or equipment, litigation support services, or other similar contractors; and

(3) Whistleblower-related contractors described in §301.6103(n)-2.

(C) Hiring of certain non-government attorneys. The IRS may not hire an attorney as a contractor to assist in an examination under section 7602 unless the attorney is hired by the IRS as a specialist in foreign, state, or local law (including foreign, state, or local tax law), or in non-tax substantive law that is relevant to an issue in the examination, such as patent law, property law, or environmental law, or is hired for knowledge, skills, or abilities other than providing legal services as an attorney.

(ii) IRS contractor participation in an IRS summons interview--(A) In general. No person other than an officer or employee of the IRS or its Office of Chief Counsel may, on behalf of the Secretary, question a witness under oath whose testimony was obtained pursuant to section 7602. Persons authorized by section 6103(n) and with whom the Secretary may provide books, papers, records, or other data obtained pursuant to section 7602 may also attend a summons interview and provide assistance to the IRS or Office of Chief Counsel employees in attendance, but may not question the summoned witness under oath or ask a summoned person's representative to clarify an objection or assertion of privilege.

(B) Court reporters, translators, and interpreters are not barred from asking questions. Court reporters who are hired as contractors by the IRS to make a record of an IRS summons interview are permitted to ask typical housekeeping questions of a summoned witness. Examples of such questions include, but are not limited to, asking whether the witness swears to tell the truth, asking the witness to spell a word or phrase, and asking whether the witness can speak up or speak rather than gesture an answer. Translators and interpreters who are hired as contractors by the IRS to assist

in the interview of a summoned witness are permitted to translate any of the questions that are asked of the witness by an IRS or Office of Chief Counsel officer or employee and to ask questions which may be necessary to clarify the translation.

* * * * *

(d) Applicability date. This section is applicable after September 3, 1982, except for paragraphs (b)(1) and (2) of this section which are applicable on and after April 1, 2005 and paragraph (b)(3) of this section which applies to examinations begun or administrative summonses served by the IRS on or after [INSERT DATE THIS

DOCUMENT IS FILED FOR PUBLIC INSPECTION BY THE FEDERAL REGISTER].

For rules under paragraphs (b)(1) and (2) of this section that are applicable to summonses issued on or after September 10, 2002 or under paragraph (b)(3) of this section that are applicable to summons interviews conducted on or after June 18, 2014 and before July 14, 2016, see 26 CFR 301.7602-1T (revised as of April 1, 2016). For rules under paragraph (b)(3) of this section that are applicable to administrative

summonses served by the IRS before **[INSERT DATE THIS DOCUMENT IS FILED
FOR PUBLIC INSPECTION BY THE FEDERAL REGISTER]**, see 26 CFR 301.7602-1

(revised as of April 1, 2020).

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

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