

Department  
of the  
Treasury

Internal  
Revenue  
Service

Office of  
Chief Counsel

**N o t i c e**

┌ N(35)000-160 ┐  
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CR: N(34)000-50  
CR: N(31)000-24

January 22, 1999

Application of I.R.C. § 7602(c)  
**Subject:** to Counsel Employees

**Cancellation Date:** July 21, 1999

The purpose of this notice is to remind Chief Counsel employees that new subsection (c) of I.R.C. § 7602, as enacted by section 3417 of the Restructuring and Reform Act of 1998, may apply to third party contacts made by Chief Counsel employees in certain situations, and to provide guidance on recording and reporting such contacts in order to comply with the requirements of the statute.

In general, I.R.C. § 7602(c) provides that an officer or employee of the Internal Revenue Service may not contact a person other than the taxpayer with respect to the determination or collection of the taxpayer's liability without providing advance notice that such contacts may be made. The statute does not give the taxpayer any right to prevent the contacts. The statute requires the Service to keep a record of the contacts and to provide such record to the taxpayer both on a periodic basis and upon the taxpayer's request. The statute applies to contacts made after January 18, 1999.

#### Contacts Made During Litigation

Based upon an analysis of the statutory provision and its history, we have concluded that I.R.C. § 7602(c) does not apply to third party contacts made during litigation if the contact relates to a matter and issue being litigated. If the contact is made in connection with the determination or collection of a taxpayer's liability and not to a matter and issue pending in litigation, however, then the requirements of the statute must be followed by Counsel employees. Contacts made with persons other than the taxpayer in order to avoid litigation, or prior to a case being filed, are considered section 7602(c) contacts. For example, if a Counsel employee contacts a third party upon whom a levy has been served in order to encourage voluntary compliance, this would constitute a section 7602(c) contact. Similarly, last chance letters in summons matters where the summoned party is not the taxpayer would be a section 7602(c) contact. These contacts are being made with respect to the determination or collection of the taxpayer's liability during the administrative process. Contacts made with other Service employees, or Department of Justice attorneys in the course of litigation, do not constitute section 7602(c) contacts.

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### Exceptions to Section 7602(c) Rules

I.R.C. § 7602(c) contains three exceptions. First, the statute does not apply to any contact which the taxpayer has authorized. Accordingly, Counsel employees do not need to record or report authorized contacts to the taxpayer. However, the specific contacts which the taxpayer authorizes should be documented on a Form 12180, Third Party Contact Authorization Form, and associated with the case file. A copy of this form is attached. A taxpayer may authorize repeated contacts with the same party but blanket authorizations are not acceptable.

Second, the statute does not apply if the Secretary determines for good cause shown that following its provisions would jeopardize collection of any tax or may involve reprisal against any person. If it is determined that providing the taxpayer with prior notice or a record of a specific contact would jeopardize the collection of any tax, a Form 12175, Third Party Contact Report Form, should nonetheless be completed timely and sent to the RRA 3417 coordinator once the jeopardy situation ceases to exist. A copy of this form is attached.

Similarly, if a Service employee determines that providing the taxpayer with advance notice or a record of a specific contact may involve reprisal against any person, then a Form 12175 should be sent to the RRA 3417 coordinator. The form should not contain any information that would identify either the third party or the Service employee making the contact, and the word "Reprisal" should be written in where the third party's name would otherwise go. The basis for making a reprisal determination should be documented in the case file.

Generally, a reprisal determination will be made on a case by case basis. However, if a taxpayer has been classified as a Potentially Dangerous Taxpayer (PDT), this serves as a basis for making a blanket reprisal determination. In all other cases, the reprisal determination should be made based on facts known to the Service employee making the contact. Sometime during the contact, the third party should be advised that a record of the contact will be provided to the taxpayer by the Service as required by law. Any concern that is raised by the third party regarding reprisal should be taken at face value. However, a general desire for confidentiality, without more, is insufficient to determine that the reprisal exception applies and the third party should be so advised.

The authority to determine whether the jeopardy or reprisal exceptions apply is being delegated to employees who regularly make section 7602(c) contacts (generally revenue agents and revenue officers). Until such authority is delegated to Counsel employees, Counsel should ask the appropriate function employee to make the relevant determination and process the recordation and notice.

The third statutory exception concerns any pending criminal investigation. If a case is being investigated by the Criminal Investigation Division (CID), the notice and

recordkeeping requirements of I.R.C. § 7602(c) do not apply. While a case is pending in CID, no record of third party contacts needs to be made. However, if the case is transferred back for civil processing, the statute will apply to contacts made in the civil case. Those contacts should be recorded on a Form 12175 and sent to the RRA 3417 coordinator.

#### Procedures for Documenting Section 7602(c) Contacts by Counsel

**Pre-Contact Notice.** The Service must provide reasonable notice to the taxpayer that third parties may be contacted before any contact with a third party is made. The Service is developing a notice that will be included with all Master File notices which informs taxpayers that third parties may be contacted. For nondocketed cases coming into Counsel where such notice has not been sent to the taxpayer, Counsel should ensure that a Letter 3164 is provided to the taxpayer. A copy of this Letter is attached. It is anticipated, however, that Counsel will make few, if any, section 7602(c) contacts without the presence of the appropriate function employee. While it is unlikely that the duty to give pre-contact notice will be unfulfilled by the time a case comes to Counsel, care should be taken to make sure that the taxpayer has been given reasonable notice that third parties may be contacted.

**Record of Contacts.** The Service is required to make a record of all section 7602(c) contacts. Collection is working with Information Systems to develop an automated system to store section 7602(c) contact information. However, the system is not expected to be available until June 1999. Until the automated system is implemented, information regarding section 7602(c) contacts should be recorded on a Form 12175 and sent, within two working days of the contact, to "RRA 3417 Coordinator" at the address of the local district or Service Center served by local Counsel. A copy of the form should be kept with the case file.

**Provision of Information to Taxpayer.** The Service must provide information with respect to section 7602(c) contacts to the taxpayer both periodically and upon the taxpayer's request. The Service has decided to meet the "periodic" requirement by providing the information annually. The RRA 3417 coordinator will be responsible for maintaining the Forms 12175 and for providing the record of persons contacted to taxpayers who request the information. The statute does not place any limits on the frequency of taxpayer requests. However, requests for an ongoing list of all future contacts should not be accepted.

There may be circumstances where the post-contact report would not be required. The Office is currently considering the applicability of common law and statutory privileges



# THIRD PARTY CONTACT AUTHORIZATION FORM

Internal Revenue Code Section 7602(c)

Under section 7602(c) of the Internal Revenue Code, the Internal Revenue Service (IRS) is required to provide taxpayers with reasonable advance notice that contacts with persons other than the taxpayer may be made with respect to the determination or collection of the tax liability of such taxpayer. Additionally, IRS is required to provide the taxpayer with a record of persons contacted on a periodic basis. IRS will also provide this record to the taxpayer upon request. However, IRS is not required to provide advance notice or a record of persons contacted with respect to any contacts which the taxpayer has authorized.

By signing this form, you are waiving your rights under section 7602(c) with respect to the persons you have authorized IRS to contact. Accordingly, IRS will not be required to maintain a record of these contacts. If no third party contacts are made other than those authorized by you, IRS will not be required to provide you with advance notice that contacts with third parties may be made or provide you with a record of persons contacted.

## Authorization of Third Party Contact(s)

I authorize an officer or employee of the Internal Revenue Service to contact the following third person(s) with respect to the determination or collection of my tax liability.

Name(s) of Third Person(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I understand that by signing this form, I am waiving my rights under section 7602(c) with respect to contacts made by an officer or employee of the Internal Revenue Service with the above listed person(s).

TAXPAYER'S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

TAXPAYER IDENTIFICATION NUMBER \_\_\_\_\_

SPOUSE'S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

TAXPAYER REPRESENTATIVE \_\_\_\_\_ DATE \_\_\_\_\_

CORPORATE NAME \_\_\_\_\_ DATE \_\_\_\_\_

CORPORATE OFFICER(S) \_\_\_\_\_ DATE \_\_\_\_\_

**FORM 12180** (01-1999)

## THIRD PARTY CONTACT REPORT FORM

<b>1. TAXPAYER TIN</b> _____	<b>2. NAME CONTROL</b> _____	<b>3. EMPLOYEE ID NUMBER</b> _____
<b>4. MFT/TAX PERIOD</b> <i>enter all periods</i> <i>example</i> <u>30</u> <u>1999</u> <u>12</u> MFT    year    month _____ _____	_____ _____ _____ _____ _____	<b>5. SECONDARY TIN</b> _____

**6. Check if third party contact is for:**

PRIMARY TIN \_\_\_\_\_                     
 SECONDARY TIN \_\_\_\_\_                     
 BOTH \_\_\_\_\_

### CONTACT INFORMATION

<b>7. DATE OF CONTACT</b> <i>date format is: yyyy/mm/dd</i>	/    /
<b>8. NAME OF THIRD PARTY</b> <i>if known</i>	_____
<b>9A. ADDRESS OF THIRD PARTY</b> <i>if known</i>  <i>Use two letter designation for state</i>  <p style="text-align: center;"><b>AND</b></p> <b>9B. TELEPHONE NUMBER OF THIRD PARTY</b> <i>if known</i>  <i>if foreign country telephone number enter on foreign country telephone number line</i>	_____ <p style="text-align: center;"><i>Street address</i></p> _____                      _____                      _____ <p style="text-align: center;"><i>City    State    Zip code</i></p> (       )       -  _____ <p style="text-align: center;"><i>foreign country telephone number</i></p>

*THIS AREA IS FOR THIRD PARTY COORDINATOR DOCUMENT CONTROL TRACKING USE*  
*ENTER DISTRICT OFFICE CODE AND SEQUENTIAL DOCUMENT NUMBER*

**DOCUMENT SEQUENCE NUMBER** \_\_\_\_\_

Instructions for completing the THIRD PARTY CONTACT REPORT FORM 12175

1. Enter the edited Taxpayer TIN.
2. Enter the four-letter name control for the taxpayer.
3. Enter your Employee Identification Number. Enter your badge number. Or enter your IDRS Number.
4. Enter all the digit Master File Tax Class Codes and Tax Periods that apply to this third party contact. Use this format: 30 1999 12; where 30=MFT, 1999=year; 12=month.
5. If there is a Secondary TIN associated with the Taxpayer TIN, enter the edited Secondary TIN in Secondary TIN area.
6. Put a check mark on the appropriate line to signify that the third party contact is for the Primary TIN, or the Secondary SSN, or if it is for Both the Primary and Secondary TINs.

**CONTACT INFORMATION**

7. Enter the date the third party contact was made. Use the following format (yyyy/mm/dd) to enter the date: 1999/01/19.

8. Enter the name of the third party, if known. If the name of the third party is not known and would not normally be requested, a general description of the third party contacted should be included.

Examples: "neighbor at ABC street" or "employee at XYZ Bank."

9A. Enter address of the third party, if known.

Enter the street address; example: 123 Any Street.

Enter State using the appropriate two letter abbreviation designating the State (per Document 7475).

If the third party contact has a foreign address, enter the street on street address line.

Enter the city, country and postal code information on the city line. Leave state and zip code blank.

**AND**

9B. Enter the third party's telephone number, including the area code, in the appropriate area, if known.

If the telephone number is for a foreign country, enter it only on the line designated for foreign telephone numbers. Enter the country code followed by the telephone number.

Information must be entered in boxes 1 through 7. Enter information in boxes 8 through 9B with the information that was collected.

Department of the Treasury  
**Internal Revenue Service**  
(address)

**Letter Number: 3164**  
**Letter Date:**  
**Taxpayer Identification Number:**  
(Social Security Number or Employer  
Identification Number)

**For Assistance You May Call Us At:**

**Person to Contact:**

**Employee Identification Number:**

**Office Hours:**

[taxpayer name]  
[taxpayer address]  
[taxpayer address]

### **INFORMATION ONLY - NO RESPONSE IS NECESSARY**

We are writing to let you know that during the determination or collection of your tax liability, the Internal Revenue Service may need to contact third parties. Third party contacts may include, but are not limited to, neighbors, employers, employees, and banks. We may use these contacts to help us determine your correct tax liability, identify your assets, or locate your current address. We are considering the following type(s) of tax and tax period(s) for your account.

**Tax Form** (Type of Tax):      **Tax Period:**      **Tax Form** (Type of Tax):      **Tax Period:**

*[Preparer of letter should indicate: "Information Continued on Reverse" if additional information is shown on reverse of page]*

We are providing this information to you in accordance with Section 7602(c)(1) of the Internal Revenue Code, which becomes effective for third party contacts made after January 18, 1999. You are not required to take any action.

Sincerely yours,

[signature]

[title]

**Tax Form** (Type of Tax):

**Tax Period:**

**Tax Form** (Type of Tax):

**Tax Period:**