

Section 7602.—Examination of Books and Witnesses

26 CFR 301.7602-1: Examination of books and witnesses.

T.D. 9195

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 301

Designated IRS Officer or Employee Under Section 7602(a)(2) of the Internal Revenue Code

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to administrative summonses under section 7602(a) of the Internal Revenue Code. The regulations

adopt the rules of the temporary regulations, which confirm that officers and employees of the Office of Chief Counsel may be included as persons designated to receive summoned books, papers, records, or other data and to take summoned testimony under oath.

DATES: *Effective Dates:* These regulations are effective April 1, 2005.

FOR FURTHER INFORMATION CONTACT: Elizabeth Rawlins at (202) 622-3630 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending 26 CFR part 301 under section 7602 of the Internal Revenue Code of 1986. The final regulations define officers or employees of the Office of Chief Counsel as persons who may be designated to receive summoned books, papers, records, or other data or to take testimony under oath. The final regulations also provide that more than one person may be designated to receive summoned information and testimony. Additionally, the final regulations clarify that a summons need not show the designation of the specific officer or employee who is authorized to take testimony and receive summoned materials.

On September 10, 2002, temporary regulations (T.D. 9015, 2002-2 C.B. 642 [67 FR 57330]) and a notice of proposed rulemaking (REG-134026-02, 2002-2

C.B. 684 [67 FR 57354]) containing these regulatory provisions were published in the **Federal Register**. No written comments were received on the temporary and proposed regulations; no public hearing was requested, and none was scheduled or held. Accordingly, the final regulations adopt the rules of the temporary regulations without change.

Explanation of Provisions

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 7602 of the Internal Revenue Code of 1986. The final regulations make permanent three changes established in the temporary regulations regarding the persons who may be designated to receive summoned books, papers, records, or other data or to take testimony under oath. Although IRS examiners will continue to be responsible for developing and conducting examinations, these changes will allow, among other things, officers and employees of the Office of Chief Counsel to participate fully along with an IRS employee or officer in a summoned interview.

For purposes of identifying persons who may receive summoned information or take testimony under oath, the final regulations define an officer or employee of the IRS to include all persons who administer and enforce the internal revenue laws or any other laws administered by the IRS and who are appointed or employed by, or subject to the directions, instructions, or orders of the Secretary of the Treasury

or the Secretary's delegate. This amendment clarifies that officers and employees of the Office of Chief Counsel may be designated as persons authorized to take testimony under oath and to receive summoned books, papers, records, or other data.

The final regulations also expressly provide that more than one person may be designated to receive summoned information or to take testimony under oath during a summoned interview. Finally, the final regulations clarify the existing regulations by providing that a summons document need not designate the specific officer or employee who is authorized to take testimony under oath and to receive and examine books, papers, records, or other data.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f), the preceding temporary regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal author of this regulation is Elizabeth Rawlins of the Office of the Associate Chief Counsel (Procedure and Administration), Collection, Bankruptcy and Summonses Division.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is 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. In §301.7602-1, paragraphs (b) and (d) revised to read as follows:

§301.7602-1 Examination of books and witnesses.

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(b) *Summons*—(1) *In general.* For the purposes described in § 301.7602-1(a), the Commissioner is authorized to summon the person liable for tax or required to perform the act, or any officer or employee of such person or any person having possession, custody, or care of books of accounts containing entries relating to the business of the person liable for tax or required to perform the act, or any other person deemed proper, to appear before one or more officers or employees of the Internal Revenue Service at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry. This summons power may be used in an investigation of either civil or criminal tax-related liability. The Commissioner may designate one or more officers or employees of the IRS as the individuals before whom a person summoned pursuant to section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602 shall appear. Any such officer or employee is authorized to take testimony under oath of the person summoned and to re-

ceive and examine books, papers, records, or other data produced in compliance with the summons.

(2) *Officer or employee of the IRS.* For purposes of this paragraph (b), officer or employee of the IRS means all officers and employees of the United States, who are engaged in the administration and enforcement of the internal revenue laws or any other laws administered by the IRS, and who are appointed or employed by, or subject to the directions, instructions, or orders of the Secretary of the Treasury or the Secretary's delegate. An officer or employee of the IRS, for purposes of this paragraph (b), shall include an officer or employee of the Office of Chief Counsel.

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(d) *Effective dates.* This section is applicable after September 3, 1982, except for paragraph (b), which is applicable on and after April 1, 2005. For rules under paragraph (b) that are applicable to summonses issued on or after September 10, 2002, see 26 CFR §301.7602-1T. For rules applicable on or before September 3, 1982, see 26 CFR §301.7602-1 (revised as of April 1, 1984).

§301.7602-1T [Removed]

Par. 3. Section 301.7602-1T is removed.

Mark E. Matthews,
*Deputy Commissioner for Services
and Enforcement.*

Approved February 15, 2005.

Eric Solomon,
*Acting Deputy Assistant Secretary
of the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on March 31, 2005, 8:45 a.m., and published in the issue of the Federal Register for April 1, 2005, 70 F.R. 16711)