

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Disclosure of Returns and Return Information to Procure Property or Services for Tax Administration Purposes

DL-1-95

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations relate to the disclosure of returns and return information in connection with the procurement of property and services for tax administration purposes. The amendments would authorize the Department of Justice, including offices of United States Attorneys, to make such disclosures. Current disclosure authority within the Department of Justice rests only with the Tax Division. The amendments also reflect a change to the law made by the Omnibus Budget Reconciliation Act of 1990 regarding the type of services about which disclosures may be made.

DATES: Comments and requests for a public hearing must be received by March 14, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (DL-01-95), Room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (DL-01-95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Donald Squires, 202-622-4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 6103(n) of the Internal Revenue Code (Code) authorizes the disclosure of returns and return informa-

tion, pursuant to regulations prescribed by the Secretary of the Treasury, "to the extent necessary in connection with the processing, storage, transmission, and reproduction of such returns and return information, the programming, maintenance, repair, testing, and procurement of equipment, and the providing of other services, for purposes of tax administration."

Existing regulations promulgated under this section prescribe the persons who may make such disclosures, the situations under which such disclosures may be made and the notification and safeguarding procedures to be followed when such disclosures are made. Among the persons who may make such disclosures are officers and employees of the Tax Division of the Department of Justice. The amendments would authorize such disclosures by the Department of Justice (not solely the Tax Division) to third parties who provide services for tax administration purposes under the conditions and restrictions of the regulations. The amendments would provide that, for the purpose of this section, the "Department of Justice" includes offices of United States Attorneys.

The amendments would also conform the regulation to the language of section 6103(n), which was amended by the Omnibus Budget Reconciliation Act of 1990 to clarify that the disclosures authorized by this section included those in connection with "the providing of other services" (*i.e.* services other than those related to the mechanical processing of returns and return information).

Explanation of Provisions

As currently written, 26 CFR 301.6103(n)-1 authorizes the Tax Division of the Department of Justice, among other entities and individuals, to make disclosures of returns and return information pursuant to section 6103(n) of the Internal Revenue Code. This authority allows the Tax Division to disclose tax information incident to its contracts to private parties for, among other purposes, automated litigation support services.

The Department of Justice has indicated its intention to establish an expanded automated tracking system

for all monetary judgments in favor of the United States, which will be operated by a private company under contract with the Department. Although the majority of tax cases are handled by the Tax Division, there are several United States Attorneys' offices that also have litigation responsibility in the civil tax area. In addition, the Tax Division refers some judgments in tax cases to the United States Attorneys for collection. Existing regulations arguably would not permit these offices, which are technically not part of the Tax Division, to disclose tax information incident to their inclusion of tax judgments in the automated tracking system.

The proposed amendment would authorize the Department of Justice, including offices of United States Attorneys, to make disclosures to procure property and services for tax administration purposes. Any such disclosures will be made under the same conditions and restrictions already set forth in the existing regulations. By definition, any office within the Department of Justice without tax administration duties will not have occasion or authority pursuant to these regulations to make such disclosures.

The proposed amendment would also authorize disclosures in connection with "the providing of other services," *i.e.*, services not related to the strict mechanical processing or manipulation of tax returns or return information. This would conform the regulations to the language of the statute, as amended by the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508, 104 Stat. 1388-353).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemak-

ing will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Donald Squires, Office of the Assistant Chief Counsel (Disclosure Litigation), IRS. However, other personnel from the IRS, Department of Justice and Treasury Department participated in their development.

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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 * * *

Paragraph 2. Section 301.6103(n)-1 is amended as follows:

1. The first sentence of paragraph (a) introductory text is amended by removing the language “Tax Division,”.

2. Paragraph (a)(2) is amended by removing the language “or to”.

3. Paragraph (a)(2) is further amended by adding the language “or the providing of other services,” immediately following the text “other property,”.

4. The concluding text following paragraph (a)(2) is amended by removing the language “Tax Division,”.

5. The second sentence of paragraph (d) introductory text is amended by removing the language “Tax Division,”.

6. Paragraph (d)(2) is amended by removing the language “Tax Division,”.

7. Paragraph (e)(1) is amended by removing the language “, and” at the end of the paragraph and adding a semicolon in its place.

8. Paragraph (e)(2) is amended by removing the period at the end of the paragraph and adding “; and” in its place.

9. Paragraph (e)(3) is added.

10. The authority citation immediately following §301.6103(n) is removed.

The addition reads as follows:

§301.6103(n)-1 Disclosure of returns and return information in connection with procurement of property and services for tax administration purposes.

* * * * *

(e) * * *

(3) The term *Department of Justice* includes offices of the United States Attorneys.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on December 14, 1995, 8:45 a.m., and published in the issue of the Federal Register on December 15, 1995, 60 F.R. 64402)