

Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by September 8, 2003. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in 26 CFR 301.9000-5(a). This information is required to enable the authorizing official to make an informed decision as to whether to grant a request or demand in a non-IRS matter. This information will be used to inform the authorizing official of the background of the non-IRS matter and to refine the scope of the testimony or disclosures sought. The collection of information is voluntary and required to obtain a benefit. The likely respondents are individuals, farms, business or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

Estimated total annual reporting: 1,400 hours.

Estimated average annual burden hours per respondent: 1 hour.

Estimated number of respondents: 1,400.

Estimated annual frequency of responses: 1,400.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section

6103 of the Internal Revenue Code (Code).

Background

This document contains proposed amendments to 26 CFR part 301 under 5 U.S.C. 301. The existing regulation provides procedures for IRS officers and employees to follow upon receipt of a request or demand for disclosure of IRS records or information. Under this proposed regulation, current and former IRS officers, employees and contractors may not disclose IRS records or information without first receiving authorization to do so. To conserve valuable resources, the IRS carefully considers the nature and circumstances of a request or demand for IRS records or information prior to committing resources to fulfilling the request or demand. If the IRS is a disinterested party or has no affected interest with respect to a request or demand and would consider the commitment of resources to comply with the request or demand inappropriate, the IRS may deny the request or demand for IRS records or information. For example, the IRS may deny a request by private litigants for the expert testimony of an IRS employee as to the Federal tax ramifications of various transactions based on information furnished by the private litigants. Such testimony could compromise the enforcement of the tax laws, should the IRS later conduct an examination of the tax consequences of the transactions.

The proposed regulation provides more specificity regarding the content of a request to allow an authorizing official to make an informed decision when authorizing or denying the request. Similarly, the proposed regulation provides more specific guidance to the authorizing officials, or to current or former IRS officers, employees or contractors, who receive requests or demands for IRS records or information, as to the circumstances for authorization or denial of such requests. Additionally, the proposed regulation applies to former IRS officers, employees or contractors whose previous access to IRS records or information may be the subject of such requests or demands. In such cases the IRS has an interest in protecting IRS records or information and should receive notice and have an opportunity to determine the extent to which disclosure should be permitted.

The existing regulation at 26 CFR 301.9000-1(f) provides guidance for IRS officers and employees in state liquor, tobacco, firearms, or explosives cases. This proposed regulation does not contain such a provision because Treasury Department Order No. 120-01,

effective July 1, 1972, transferred from the IRS to the United States Bureau of Alcohol, Tobacco and Firearms (ATF) those functions, powers and duties related to alcohol, tobacco, firearms and explosives. The ATF promulgated its own regulations guiding disclosure in testimony and in related matters, which can be found at 27 CFR 70.803. Effective January 24, 2003, the Homeland Security Act of 2002, Public Law 107-296, divided ATF into two new agencies, the Tax and Trade Bureau (TTB) in the Treasury Department and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATFE) in the Justice Department. Section 1111(c)(1)-(c)(2) of the Homeland Security Act transferred to ATFE the authorities and functions of ATF, except for the authorities and functions of ATF relating to the administration and enforcement of chapters 51 and 52 and sections 4181 and 4182 of the Code, and title 27, USC. Section 1111(d)(1), (d)(3) of the Homeland Security Act provided that TTB shall administer the authorities and functions of ATF not transferred to ATFE. Treasury Department Order No. 120-01, effective January 24, 2003, designated TTB as the Alcohol and Tobacco Tax and Trade Bureau. The disclosure regulations found at 27 CFR 70.803 are still applicable to TTB.

The existing regulation contains a delegation of authority from the Secretary of the Treasury to the Commissioner of Internal Revenue (Commissioner) to respond to requests and demands for IRS records and information. This delegation has been deleted as unnecessary as it is contained in existing statutes and delegation orders. See, e.g., section 7804; Delegation Order 150-10.

This proposed regulation reflects changes in format and definitions to make it easier to understand and apply.

Explanation of Provisions

Overview

Under 5 U.S.C. 301, heads of Executive or military departments may prescribe regulations for, among other things, the custody, use, and preservation of the departments' records, papers, and property. Many departments and agencies have promulgated regulations under 5 U.S.C. 301 to provide procedures for the disclosure of official records and information. Generally, these are termed Touhy regulations, after the Supreme Court's decision in *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). In that case, the Supreme Court held that an agency employee could not be held