

geographic area and await instructions from an authorizing official.

In the case of a request or demand on behalf of a petitioner in a United States Tax Court case, IRS officers, employees and contractors shall notify promptly the IRS Chief Counsel attorney assigned to the case and await instructions from an authorizing official. In the case of a request or demand on behalf of an appellant, grievant, complainant or representative for IRS records or information in a personnel, labor relations, government contract, Bivens or FTCA matter, or a matter related to informant claims, IRS officers, employees or contractors shall notify promptly the IRS Associate Chief Counsel (General Legal Services) attorney assigned to the case. If there is no IRS Associate Chief Counsel (General Legal Services) attorney assigned to the case, the IRS officer, employee or contractor shall notify promptly the IRS Associate Chief Counsel (General Legal Services) attorney servicing the geographic area. The IRS officer, employee or contractor shall then await instructions from an authorizing official. In the case of a request or demand in an IRS congressional matter, the IRS officer, employee or contractor shall notify promptly the IRS Office of Legislative Affairs and await instructions.

If, in response to a demand for IRS records or information, an authorizing official has not had a sufficient opportunity to issue a testimony authorization, or determines that denial of the demand for IRS records or information is proper, the authorizing official shall request the attorney or other representative of the government to oppose such demand and respectfully inform the court, administrative agency or other authority, by appropriate action, that the authorizing official either has not yet issued a testimony authorization, or has issued a testimony authorization, to the IRS officer, employee or contractor, that denies permission, in whole or in part, to testify or disclose the IRS records or information. If the authorizing official denies a testimony authorization in whole or in part, the authorizing official shall request the attorney or other representative of the government to inform the court, administrative agency, or other authority of the reasons for not authorizing the testimony or the disclosure of the IRS records or information and to take such other action in opposition as may be appropriate (including, but not limited to, filing a motion to quash or a motion to remove to Federal district court).

In addition to providing specific procedural instructions, this proposed regulation clarifies and updates the provision in the existing regulation pertaining to penalties that apply to IRS officers, employees and contractors in case of failure to follow the requirements of the proposed regulation.

Section 301.9000-5 Written Statement Required by Party Seeking Testimony or Disclosure of IRS Records or Information in Non-IRS Matters

This proposed regulation formalizes the practice of requiring a party who seeks testimony or disclosure of IRS records or information for use in any non-IRS matter to provide detailed information that would enable the authorizing official to make an informed decision whether to grant or limit the request or demand. Such information is necessary to inform the authorizing official of the factual background of the non-IRS matter. By contrast, generally the factual background information already is known to the authorizing official in an IRS matter. The factual background is also useful in refining the scope of the testimony or document production, thereby conserving IRS resources and avoiding waste. For example, a request for testimony may be obviated by providing IRS records or information in a form admissible in court without need for the presence of an IRS officer or employee, or by submission of a declaration under penalty of perjury pursuant to 28 U.S.C. 1746.

This proposed regulation establishes requirements for a written statement setting forth particular information that will provide authorizing officials with the facts necessary to determine whether to grant or limit testimony or the disclosure of IRS records or information so as to comply with the law and conserve IRS resources. Parties in non-IRS matters sometimes serve process with extremely short time frames. The IRS will comply with such requests or demands only if the IRS has time to evaluate adequately the request. This proposed regulation establishes a reasonable time for compliance, generally, not less than fifteen (15) business days. Also, parties in non-IRS matters are sometimes unaware that a request or demand does not supersede the confidentiality accorded to returns and return information under section 6103 of the Code. This proposed regulation generally requires a statement of the applicable exception under section 6103 of the Code that would permit the disclosure of returns and return information for the purpose

sought. The authorizing official may waive the requirement of a written statement for good cause.

Section 301.9000-6 Examples

This proposed regulation gives examples of testimony authorization situations that illustrate the principles of this proposed regulation.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined that 5 U.S.C. 553(b), the Administrative Procedure Act, does not apply to these proposed regulations.

It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that of the estimated 1,400 requests received annually, less than 500 of those requests are estimated to be received from small entities. Moreover, the burden associated with complying with the collection of information in these regulations is estimated to be only 1 hour per respondent. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, the IRS will consider any written (a signed original and eight (8) copies) or electronic comments that the IRS timely receives. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person who timely submits a written comment. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

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