

procedures, the effectiveness of which could thereby be impaired.

(b) *Assertion of privileges.* Any applicable privilege or protection under law may be asserted in response to a request or demand for testimony or disclosure of IRS records or information, including, but not limited to, the following—

- (1) Attorney-client privilege;
- (2) Attorney work product doctrine; and
- (3) Deliberative process (executive) privilege.

(c) *Non-IRS matters.* If any person makes a request or demand for IRS records or information in connection with a non-IRS matter, authorizing officials shall take into account the following additional factors in responding to such request or demand—

- (1) Whether the requester is a Federal agency, or a state or local government or agency thereof;
- (2) Whether the demand was issued by a Federal or State court, administrative agency or other authority;

(3) The potential effect of the case on the administration of the internal revenue laws or any other laws administered by or concerning the IRS;

(4) The importance of the legal issues presented;

(5) Whether the IRS records or information are available from other sources;

(6) The IRS's anticipated commitment of time and anticipated expenditure of funds necessary to comply with the request or demand;

(7) The number of similar requests and their cumulative effect on the expenditure of IRS resources;

(8) Whether the request or demand allows a reasonable time for compliance (generally, at least fifteen business days);

(9) Whether the testimony or disclosure is appropriate under the rules of procedure governing the case or matter in which the request or demand arises;

(10) Whether the request or demand involves expert witness testimony;

(11) Whether the request or demand is for the testimony of an IRS officer, employee or contractor who is without personal knowledge of relevant facts;

(12) Whether the request or demand is for the testimony of a presidential appointee or senior executive and whether the testimony of a lower-level official would suffice;

(13) Whether the procedures in § 301.9000-5 have been followed; and

(14) Any other relevant factors that may be brought to the attention of the authorizing official.

§ 301.9000-3 Testimony authorizations.

(a) *Prohibition on disclosure of IRS records or information without testimony authorization.* Except as provided in paragraph (b) of this section, when a request or demand for IRS records or information is made, no IRS officer, employee or contractor shall testify or disclose IRS records or information to any court, administrative agency or other authority, or to the Congress, or to a committee or subcommittee of the Congress without a testimony authorization. However, an IRS officer, employee or contractor may appear in person to advise that he or she is awaiting instructions from an authorizing official with respect to the request or demand.

(b) *Exceptions.* No testimony authorization is required in the following circumstances—

(1) To respond to a request or demand for IRS records or information by an attorney or other government representative regarding an IRS matter;

(2) To respond solely in writing, under the direction of an attorney or other representative of the government, to requests and demands in IRS matters, including, but not limited to, admissions, document production, and written interrogatories to parties;

(3) To respond to a request or demand issued to a former IRS officer, employee or contractor for expert or opinion testimony if the testimony involves general knowledge (such as information contained in published procedures of the IRS or the IRS Office of Chief Counsel) gained while the former IRS officer, employee or contractor was employed or under contract with the IRS; or

(4) If a more specific procedure established by the Commissioner governs the disclosure of IRS records or information. These procedures include, but are not limited to, those relating to: procedures pursuant to 26 CFR 601.702(d), Freedom of Information Act requests pursuant to 5 U.S.C. 552, Privacy Act of 1974 requests pursuant to 5 U.S.C. 552a, disclosures to state tax agencies pursuant to section 6103(d) of the Code, and disclosures to the United States Department of Justice pursuant to an *ex parte* order under section 6103(i)(1) of the Code.

§ 301.9000-4 Procedure in the event of a request or demand for IRS records or information.

(a) *Purpose and scope.* This section prescribes procedures to be followed by IRS officers, employees and contractors upon receipt of a request or demand in matters where a testimony authorization is or may be required.

(b) *Notification of the Disclosure Officer.* Except for requests or demands in United States Tax Court cases, in personnel, labor relations, government contract, or IRS congressional matters, or in matters related to informant claims or the rules of *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) (*Bivens matters*), or the Federal Tort Claims Act (FTCA), an IRS officer, employee or contractor who receives a request or demand for IRS records or information for which a testimony authorization is or may be required shall notify promptly the Disclosure Officer servicing the IRS officer's, employee's or contractor's geographic area. Such IRS officer, employee or contractor shall await instructions from the authorizing official concerning the response to the request or demand.

(c) *Requests or demands in United States Tax Court cases.* An IRS officer, employee or contractor who receives a request or demand for IRS records or information on behalf of a petitioner in a United States Tax Court case shall notify promptly the IRS Chief Counsel attorney assigned to the case. Such IRS Chief Counsel attorney shall notify promptly the authorizing official. The IRS officer, employee or contractor who received such request or demand shall await instructions from the authorizing official.

(d) *Requests or demands in personnel, labor relations, government contract, Bivens or FTCA matters, or matters related to informant claims.* An IRS officer, employee or contractor who receives 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 matter related to informant claims, shall notify promptly the IRS Associate Chief Counsel (General Legal Services) attorney assigned to the case. If no IRS Associate Chief Counsel (General Legal Services) attorney is 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. Such IRS Associate Chief Counsel (General Legal Services) attorney shall notify promptly the authorizing official. The IRS officer, employee or contractor who received such request or demand shall await instructions from the authorizing official.

(e) *Requests or demands in IRS congressional matters.* An IRS officer, employee or contractor who receives a request or demand in an IRS congressional matter shall notify