

promptly the IRS Office of Legislative Affairs. The IRS officer, employee or contractor who received such request or demand shall await instructions from the authorizing official.

(f) *Opposition to a demand for IRS records or information in IRS and non-IRS matters.* 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 the demand for IRS records or information should be denied, 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 to testify or disclose the IRS records or information. If the authorizing official denies authorization in whole or in part, the attorney or other representative of the government shall inform the court, administrative agency or other authority of the reasons the authorizing official gives for not authorizing the testimony or the disclosure of the IRS records or information or 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 court).

(g) *Procedure in the event of an adverse ruling.* In the event such court, administrative agency, or other authority rules adversely with respect to the refusal to disclose the IRS records or information pursuant to the testimony authorization, or declines to defer a ruling until a testimony authorization has been received, the IRS officer, employee or contractor who has received the request or demand shall, pursuant to this section, respectfully decline to testify or disclose the IRS records or information.

(h) *Penalties.* Any IRS officer or employee who discloses IRS records or information without following the provisions of this section or § 301.9000-3, may be subject to administrative discipline, up to and including dismissal. Any IRS officer, employee or contractor may be subject to applicable contractual sanctions and/or criminal penalties, including prosecution under 5 U.S.C. 552a(i), for willful disclosure in an unauthorized manner of information protected by the Privacy Act, or under section 7213 of the Code, for willful disclosure in an unauthorized manner of return information.

(i) *No creation of benefit or separate privilege.* Nothing in this section, and nothing in §§ 301.9000-1 through 301.9000-6, creates, is intended to create, or may be relied upon to create, any right or benefit, substantive or procedural, enforceable at law by a party against the United States. Nothing in these regulations creates a separate privilege or basis to withhold IRS records or information.

§ 301.9000-5 Written statement required for requests or demands in non-IRS matters.

(a) *Written statement.* A request or demand for IRS records or information for use in a non-IRS matter shall be accompanied by a written statement made by or on behalf of the party seeking the testimony or disclosure of IRS records or information, setting forth—

(1) A brief description of the parties to and subject matter of the proceeding and the issues;

(2) A summary of the testimony, IRS records or information sought, the relevance to the proceeding, and the estimated volume of IRS records involved;

(3) The time that will be required to present the testimony (on both direct and cross examination);

(4) Whether any of the IRS records or information is a return or is return information (as defined in section 6103(b) of the Internal Revenue Code (Code)), or tax convention information (as defined in section 6105(c)(1) of the Code), and the statutory authority for the disclosure of such return or return information (and, if no consent to disclose pursuant to section 6103(c) of the Code accompanies the request or demand, the reason such consent is not necessary);

(5) Whether a declaration of an IRS officer, employee or contractor under penalties of perjury pursuant to 28 U.S.C. 1746 would suffice in lieu of deposition or trial testimony;

(6) Whether deposition or trial testimony is necessary where IRS records are authenticated under applicable rules of evidence and procedure;

(7) Whether IRS records or information are available from other sources; and

(8) A statement that the request or demand allows a reasonable time (generally, at least fifteen business days) for compliance.

(b) *Permissible waiver of statement.* The requirement of a written statement in paragraph (a) of this section may be waived by the authorizing official for good cause.

§ 301.9000-6 Examples.

The following examples illustrate the provisions of §§ 301.9000-1 through 301.9000-5:

Example 1. A taxpayer sues a practitioner in state court for malpractice in connection with the practitioner's preparation of a Federal income tax return. The taxpayer subpoenas an IRS employee to testify concerning the IRS employee's examination of the taxpayer's Federal income tax return. The taxpayer provides the statement required by § 301.9000-5. This is a non-IRS matter. A testimony authorization would be required for the IRS employee to give such testimony. (In addition, the taxpayer would be required to execute an appropriate consent under section 6103(c) of the Internal Revenue Code (Code)). The IRS generally opposes an IRS officer's, employee's or contractor's appearance in such cases because the IRS is a disinterested party with respect to the dispute and would consider the commitment of resources to comply with the subpoena inappropriate.

Example 2. In a state judicial proceeding concerning child support, the child's custodial parent subpoenas for a deposition an Internal Revenue Service (IRS) agent who is examining certain of the non-custodial parent's post-divorce Federal income tax returns. This is a non-IRS matter. The custodial parent submits with the subpoena the statement required by § 301.9000-5 stating as the reason for the lack of taxpayer consent to disclosure that the non-custodial parent has refused to provide the consent. (Both a consent from the taxpayer complying with section 6103(c) and a testimony authorization would be required prior to the IRS agent testifying at the deposition.) Should taxpayer consent be obtained, where appropriate, the IRS may provide a declaration and/or certified return information of the taxpayer. A deposition would be unnecessary under the circumstances.

Example 3. The chairperson of a congressional committee requests the appearance of an IRS employee before the committee and committee staff to submit to questioning by committee staff concerning the procedures for processing Federal employment tax returns. This is an IRS congressional matter. Even though questioning would not involve the disclosure of returns or return information, the questioning would involve the disclosure of IRS records or information; therefore, a testimony authorization would be required. The IRS employee must contact the IRS Office of Legislative Affairs for instructions before appearing.

Example 4. The IRS opens a criminal investigation as to the tax liabilities of a taxpayer. This is an IRS matter. At some point during the criminal investigation, the IRS refers the matter to the United States Department of Justice, requesting the institution of a Federal grand jury to investigate further potential criminal tax violations. Subsequently, the United States Department of Justice approves the request and initiates a grand jury investigation. The grand jury subsequently indicts the taxpayer,