

and the taxpayer subpoenas an IRS special agent for testimony regarding the investigation. The records and information collected during the administrative stage of the investigation, including the taxpayer's tax returns from IRS files, are IRS records and information. A testimony authorization is required for the IRS special agent to testify regarding this information. However, no IRS testimony authorization is required regarding the information collected by the IRS special agent when the IRS special agent was acting under the direction and control of the United States Attorney's Office in the Federal grand jury investigation. That information is not IRS records or information within the meaning of § 301.9000-1(a).

Example 5. The United States Department of Justice attorney representing the IRS in a suit for refund requests testimony from an IRS revenue agent. This is an IRS matter. A testimony authorization would not be required in order for the IRS revenue agent to testify because the testimony was requested by government counsel.

Example 6. A state assistant attorney general, acting in accordance with a recommendation from his state's department of revenue, is prosecuting a taxpayer under a state criminal law proscribing the intentional failure to file a state income tax return. The assistant attorney general serves an IRS employee with a subpoena to testify concerning the taxpayer's Federal income tax return filing history. This is a non-IRS matter. This is also a state judicial proceeding pertaining to tax administration within the meaning of section 6103(h)(4) and (b)(4). As such, the procedures of section 6103(h)(4) apply. A testimony authorization would be required for the testimony demand in the subpoena.

Example 7. A former IRS revenue agent is requested to testify in a divorce proceeding. The request seeks testimony explaining the meaning of entries appearing on one of the parties' transcript of account which is already in the possession of the parties. This is a non-IRS matter. No testimony authorization is required because the testimony requested from the former IRS employee involves general knowledge gained while the former IRS revenue agent was employed with the IRS.

§ 301.9000-7 Effective date.

The provisions of §§ 301.9000-1 through 301.9000-6 apply to any request or demand for IRS records or information received by any IRS officer, employee or contractor on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG-141669-02]

RIN 1545-BB41

Waiver of Information Reporting Penalties—Determining Whether Correction is Prompt

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to waiver under section 6724 of the Internal Revenue Code (Code) of a penalty imposed by section 6721 for failure to file a correct information return. The proposed regulations provide guidance on the requirement of prompt correction of the failure to file or file correctly. The proposed regulations provide that the IRS will deem information returns promptly corrected if corrected within 30 days of the required filing date, or by August 1 following that required filing date. After August 1, a correction is prompt if made by the time announced by the IRS in published guidance. The proposed regulations do not change the rules for determining reasonable cause for waiving the penalty for failure to furnish correct payee statements under section 6722 or the time to comply with other information reporting requirements under section 6723.

DATES: Written and electronic comments are due by October 7, 2003. Requests to speak (with outlines of topics to be discussed) at the public hearing scheduled for October 21, 2003, are due by September 30, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG-141669-02), Room 5526, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Commenters may hand deliver submissions Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:RU (REG-141669-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, commenters may submit comments electronically to the IRS Internet site at <http://www.irs.gov/regs>. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, contact Robert A. Desilets, Jr. at (202)

622-4910; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 6724(a) of the Code. Section 301.6724-1(d)(1)(ii)(D) of the proposed regulations will clarify when a correction of an information return is prompt for purposes of establishing reasonable cause to waive the penalty under section 6721 of the Code. Existing § 301.6724-1(d)(1)(ii)(D), adopted on December 31, 1991 (56 FR 67178), provides in pertinent part that a correction is prompt if it occurs on the earliest date of a regular submission of corrections, defining regular submissions as occurring at intervals of 30 or fewer days. Many information return filers have urged the IRS to replace the 30-day correction interval with an interval corresponding to the schedule for tiered penalties.

Explanation of Provisions

I. Section 6721

Section 6721 imposes penalties on failures to file, or file correct, information returns. Section 6721 creates a three-tiered penalty structure to encourage timely filing and prompt correction of errors in previously filed returns. Congress enacted the three-tiered penalty structure in the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239, 103 Stat. 2388, 2389). Section 6721 generally imposes a penalty in the amount of \$50 for each return with respect to which a failure occurs, but not to exceed \$250,000 per person per calendar year. However, if a filer corrects a failure within 30 days after the required filing date, the penalty with respect to such return shall be \$15 in lieu of \$50, but not to exceed \$75,000 per filer per calendar year. Moreover, if a filer corrects a failure more than 30 days after the required filing date, but before August 1 of the calendar year in which the required filing date occurs, the penalty with respect to each return shall be \$30 in lieu of \$50, but not to exceed \$150,000 per filer per calendar year. Section 6721 provides these penalties to encourage prompt corrections of failures to file, or file correct, information returns. H.R. Rep. 101-386, at 648-649 (1989).