

Internal Revenue Service, Treasury

§ 301.7602-1

inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects with respect to which any tax is imposed.

[T.D. 7297, 38 FR 34803, Dec. 19, 1973]

§ 301.7602-1 Examination of books and witnesses.

(a) *In general.* For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax (including any interest, additional amount, addition to the tax, or civil penalty) or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, collecting any such liability or inquiring into any offense connected with the administration or enforcement of the internal revenue laws, any authorized officer or employee of the Internal Revenue Service may examine any books, papers, records or other data which may be relevant or material to such inquiry; and take such testimony of the person concerned, under oath, as may be relevant to such inquiry.

(b) *Summons—(1) In general.* For the purposes described in § 301.7602-1(a), the Commissioner is authorized to summon the person liable for tax or required to perform the act, or any officer or employee of such person or any person having possession, custody, or care of books of accounts containing entries relating to the business of the person liable for tax or required to perform the act, or any other person deemed proper, to appear before one or more officers or employees of the Internal Revenue Service at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry. This summons power may be used in an investigation of either civil or criminal tax-related liability. The Commissioner may designate one or more officers or employees of the IRS as the individuals before

whom a person summoned pursuant to section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602 shall appear. Any such officer or employee is authorized to take testimony under oath of the person summoned and to receive and examine books, papers, records, or other data produced in compliance with the summons.

(2) *Officer or employee of the IRS.* For purposes of this paragraph (b), officer or employee of the IRS means all officers and employees of the United States, who are engaged in the administration and enforcement of the internal revenue laws or any other laws administered by the IRS, and who are appointed or employed by, or subject to the directions, instructions, or orders of the Secretary of the Treasury or the Secretary's delegate. An officer or employee of the IRS, for purposes of this paragraph (b), shall include an officer or employee of the Office of Chief Counsel.

(c) *Proscription on issuing of administrative summons when a Justice Department referral is in effect—(1) In general.* The Commissioner may neither issue a summons under this title nor initiate a proceeding to enforce a previously issued summons by way of section 7604 with respect to any person whose tax liability is in issue, if a Justice Department referral is in effect with respect to that person for that liability.

(2) *Justice Department referral in effect.* A Justice Department referral is in effect with respect to any person when:

(i) The Secretary recommends, within the meaning of this paragraph, that the Attorney General either commence a grand jury investigation of or criminal prosecution of such person for any alleged offense connected with the administration or enforcement of the internal revenue laws, or

(ii) The Attorney General (or Deputy Attorney General or Assistant Attorney General) under section 6103(h)(3)(B) requests in writing that the Secretary disclose a return of, or return information relating to, such person. The request must set forth that the need for disclosure is for the purpose of a grand jury investigation of or potential or pending criminal prosecution of such

person for any alleged offense connected with the administration or enforcement of the internal revenue laws. The referral is effective at the time the document recommending criminal prosecution or grand jury investigation is signed by the Secretary or upon the Secretary's receipt of the section 6103(h)(3)(B) request.

(3) *Cessation of Justice Department referral.* A Justice Department referral ceases to be in effect with respect to a person:

(i) When the Secretary receives written notification from the Attorney General that the Justice Department:

(A) Will not prosecute that person for any offense connected with the administration or enforcement of the internal revenue laws that gave rise to the referral under paragraph (2)(i) of this section, or

(B) Will not authorize a grand jury investigation of that person with respect to such offense, or

(C) Will discontinue any grand jury investigation of that person with respect to such offense;

(ii) When a final disposition with respect to a criminal proceeding brought against that person has been made; or

(iii) When the Secretary receives written notification from the Attorney General, Deputy Attorney General, or an Assistant Attorney General, that the Justice Department will not prosecute such person for any offense connected with the administration or enforcement of the internal revenue laws, based upon a previous request for disclosure under section 6103(h)(3)(B).

(4) *Taxable years and taxes imposed by separate chapters of the Code treated separately*—(i) *In general.* For purposes of this section, each taxable period (or, if there is no taxable period, each taxable event) and each tax imposed by a separate chapter of the Code is treated separately.

(ii) *Examples.* The following examples illustrate the application of this paragraph (c)(4):

Example 1. A Justice Department referral is in effect for D's criminal evasion of income tax for the taxable year 1979. The Commission may issue a summons respecting D's 1980 criminal and/or civil tax liability. The Commissioner may not issue a summons respecting D's 1979 income tax liability.

Example 2. A referral has been made to the Department of Justice for the criminal prosecution of F with regard to F's income tax liability for the taxable year 1978. The Commissioner may issue a summons respecting F's gift tax liability for the taxable year 1978.

Example 3. A referral has been made to the Department of Justice for a grand jury investigation respecting G's 1980 income tax liability. The Commissioner may issue a summons related to an investigation of G's liability for Federal Insurance Contribution Act (FICA) taxes for the taxable year 1980.

Example 4. A referral has been made to the Department of Justice respecting J's criminal evasion of windfall profit tax for all quarters of the calendar year 1982. The Commissioner may issue a summons respecting J's liability for highway motor vehicle use tax covering the same periods.

Example 5. A referral has been made to the Department of Justice for a grand jury investigation respecting L's 1983 income tax liability. The Commissioner may issue a summons related to the investigation of L's liability under sections 6700 (abusive tax shelter promoter penalty) and 7408 of the Code for his conduct during 1983.

(d) *Effective dates.* This section is applicable after September 3, 1982, except for paragraph (b), which is applicable on and after April 1, 2005. For rules under paragraph (b) that are applicable to summonses issued on or after September 10, 2002, see 26 CFR 301.7602-1T. For rules applicable on or before September 3, 1982, see 26 CFR 301.7602-1 (revised as of April 1, 1984).

[T.D. 8091, 51 FR 23053, June 25, 1986, as amended by T.D. 9015, 67 FR 57331, Sept. 10, 2002; T.D. 9195, 70 FR 16711, Apr. 1, 2005]

§ 301.7602-2 Third party contacts.

(a) *In general.* Subject to the exceptions in paragraph (f) of this section, no officer or employee of the Internal Revenue Service (IRS) may contact any person other than the taxpayer with respect to the determination or collection of such taxpayer's tax liability without giving the taxpayer reasonable notice in advance that such contacts may be made. A record of persons so contacted must be made and given to the taxpayer upon the taxpayer's request.

(b) *Third-party contact defined.* Contacts subject to section 7602(c) and this regulation shall be called "third-party contacts." A third-party contact is a communication which—