

(iii) *Examples.* The rules of paragraph (e)(2) are illustrated by the following examples:

Example 1. A revenue agent issues a summons to A, an accountant for B, requiring production of records relating to B's income tax liabilities for 2002. The summons is served on A on March 1, 2004. B files a petition to quash the summons in district court on March 15, 2004. The district court dismisses B's petition on July 1, 2004. B fails to appeal this decision by filing a notice of appeal within 60 days from the date of the district court's order of dismissal. The revenue agent notifies A that B did not appeal the district court's order. A turns over all of the records requested in the summons. The periods of limitations applicable to B for 2002 under sections 6501 and 6531 are suspended under section 7609(e)(1) from March 15, 2004, the date B filed a petition to quash, until August 30, 2004, the last day on which B could have filed a notice of appeal.

Example 2. A revenue agent issues a summons to A, an accountant for B, requiring production of records relating to B's income tax liabilities for 2003. The summons is served on A on June 1, 2005. B files an untimely petition to quash the summons in district court on June 29, 2005. The district court dismisses B's petition on July 29, 2005. B does not file an appeal of the district court's order. The periods of limitations applicable to B for 2003 under sections 6501 and 6531 are suspended under section 7609(e)(1) from June 29, 2005, the date B filed an untimely petition to quash, until September 27, 2005, the last day on which B could have filed a notice of appeal.

(3) *Final resolution of the summoned third party's response to a summons.* For purposes of section 7609(e)(2)(B), final resolution with respect to a summoned party's response to a third-party summons occurs when the summons or any order enforcing any part of the summons is fully complied with and all appeals or requests for further review are disposed of, the period in which an appeal may be taken has expired or the period in which a request for further review may be made has expired. The determination of whether there has been full compliance will be made within a reasonable time, given the volume and complexity of the records produced, after the later of the giving of all testimony or the production of all records requested by the summons or required by any order enforcing any part of the summons. If, following an enforcement order, collateral pro-

ceedings are brought challenging whether the production made by the summoned party fully satisfied the court order and whether sanctions should be imposed against the summoned party for a failing to do so, the suspension of the periods of limitations shall continue until the summons or any order enforcing any part of the summons is fully complied with and the decision in the collateral proceeding becomes final. A decision in a collateral proceeding becomes final when all appeals are disposed of, the period in which an appeal may be taken has expired or the period in which a request for further review may be made has expired.

(f) *Effective/applicability date.* This section is applicable on *April 30, 2008*.

[T.D. 9395, 73 FR 23345, Apr. 30, 2008]

§ 301.7610-1 Fees and costs for witnesses.

(a) *Introduction.* Section 7610 provides that the Internal Revenue Service may make payments to certain persons who are asked to give information to the Service. Under section 7610 witnesses generally will not be reimbursed for actual expenses incurred but instead will be paid in accordance with the payment rates established by regulations. Paragraph (b) of this section contains elaborations of certain terms found in section 7610 and definitions of other terms used in the regulations under section 7610(a)(b); and paragraphs (c) and (d) contain rules and rates applicable to payments under section 7610. Section 7610 and its regulations are effective for summonses issued after February 28, 1977, except as otherwise provided.

(b) *Definitions*—(1) Directly incurred costs. Directly incurred costs are costs incurred solely, immediately, and necessarily as a consequence of searching for, reproducing, or transporting records in order to comply with a summons. They do not include a proportionate allocation of fixed costs, such as overhead, equipment depreciation, etc. However, where a third party's records are stored at an independent storage facility that charges the third party a search fee to search for, reproduce, or transport particular records requested, these fees are considered to

be directly incurred by the summoned third party.

(2) *Reproduction cost.* Reproduction costs are costs incurred in making copies or duplicates of summoned documents, transcripts, and other similar material.

(3) *Search costs.* Search costs include only the total-cost of personnel time directly incurred in searching for records or information and the cost of retrieving information stored by computer. Salaries of persons locating and retrieving summoned material are not includible in search costs. Also, search costs do not include salaries, fees, or similar expenditures for analysis of material or for managerial or legal advice, expertise, or research, or time spent for these activities.

(4) *Third party.* A third party is any person served with a summons, other than a person with respect to whose liability a summons is issued, or an officer, employee, agent, accountant, or attorney of that person.

(5) *Third party records.* Third party records are books, papers, records, or other data in which the person with respect to whose liability a summons is issued does not have a proprietary interest at the time the summons is served.

(6) *Transportation costs.* Transportation costs include only costs incurred to transport personnel to search for records or information requested and costs incurred solely by the need to transport the summoned material to the place of examination. These costs do not include the cost of transporting the summoned witness for appearance at the place of examination. See paragraph (c)(2) of this section for payment of travel expenses.

(c) *Conditions and rates of payments—*

(1) *Basis for payment.* Payment for search, reproduction, and transportation costs will be made only to third parties served with a summons to produce third party records or information and only for material requested by the summons. Payment will be made only for these costs that are both directly incurred and reasonably necessary. Search, reproduction, and transportation costs must be considered separately in determining whether costs are reasonably necessary. No pay-

ment will be made until the third party has satisfactorily complied with the summons and has submitted an itemized bill or invoice showing specific details concerning the costs to the Internal Revenue Service employee before whom the third party was summoned. If a third party charges any other person for any cost for which the third party is seeking payment from the Service, the amount charged to the other person must be subtracted from the amount the Internal Revenue Service must pay.

(2) *Payment rates.* The following rates are established.

(i) *Search costs.* (A) For the total amount of personnel time required to locate records or information, \$8.50 per person hour for summonses issued after July 19, 1983. For summonses issued on or before such date, \$5.00 per person hour.

(B) For retrieval of information stored by computer in the format in which it is normally produced, actual costs, based on computer time and necessary supplies, except that personnel time for computer search is payable only under subparagraph (2)(i)(A) of this paragraph.

(ii) *Reproductions costs.* (A) For copies of documents \$.20 per page for summonses issued after July 19, 1983. For copies of documents issued on or before such date, \$.10 per page.

(B) For photographers, films and other materials, actual cost, except that personnel time is payable only under subparagraph (2)(i)(A) of this paragraph.

(iii) *Transportation costs.* For transportation costs, actual cost, except that personnel time is payable only under subparagraph (2)(i)(A) of this paragraph.

(d) *Appearance fees and allowances—*

(1) In general. Under section 7610(a)(1) and this paragraph, the Service shall pay a summoned person certain fees and allowances. No payments will be made until after the party summoned appears and has submitted any necessary receipts or other evidence of costs to the Service employee before whom the person was summoned. This paragraph is effective with respect to appearances made after October 26, 1978.

(2) *Attendance fees.* A summoned person shall be paid an attendance fee for each day's attendance. A summoned person shall also be paid the attendance fee for the time necessarily occupied in going to and returning from the place of attendance at the beginning and end of the attendance or at any time during the attendance. The attendance fee is the higher of \$30 per day or the amount paid under 28 U.S.C. 1821(b) to witnesses in attendance at courts of the United States at the time of the summoned person's appearance.

(3) *Travel allowances.* A summoned person who travels by common carrier shall be paid for the actual expenses of travel on the basis of the means of transportation reasonably utilized and the distance necessarily traveled to and from the summoned person's residence by the shortest practical route in going to and returning from the place of attendance. Such a summoned person shall utilize a common carrier at the most economical rate reasonably available. A receipt or other evidence of actual cost shall be furnished. A travel allowance equal to the mileage allowance which the Administrator of General Services has prescribed, under 5 U.S.C. 5704, for official travel of employees of the Federal Government shall be paid to each summoned person who travels by privately owned vehicle. That rate is \$.20 per mile as of April 20, 1980. Computation of mileage under this paragraph shall be made on the basis of a uniform table of distances adopted by the Administrator of General Services. Toll charges for toll roads, bridges, tunnels, and ferries, taxicab fares between places of lodging and carrier terminals, and parking fees (upon presentation of a valid parking receipt) shall be paid in full to a summoned person incurring those expenses.

(4) *Subsistence allowances.* A subsistence allowance shall be paid to a summoned person (other than a summoned person who is incarcerated) when an overnight stay is required at the place of attendance because the place is so far removed from the residence of the summoned person as to prohibit return thereto from day to day. A subsistence allowance for a summoned person shall be paid in an amount not to exceed the maximum per diem allowance pre-

scribed by the Administrator of General Services, under 5 U.S.C. 5702(a), for official travel in the area of attendance by employees of the Federal Government. As of April 30, 1979, that maximum per diem allowance is \$35 per day. A subsistence allowance for a summoned person attending in an area designated by the Administrator of General Services as a high-cost area shall be paid in an amount not to exceed the maximum actual subsistence allowance prescribed by the Administrator, under 5, U.S.C. 5702(c)(B), for official travel in that area by employees of the Federal Government. As of April 30, 1979, maximum rates of up to \$50 per day have been prescribed by the Administrator for certain areas. An alien who has been paroled into the United States for prosecution, under section 212 (d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)), or an alien who either has admitted belonging to a class of aliens who are deportable or has been determined under section 242(b) of that Act (8 U.S.C. 1252(b)) to be deportable, shall be ineligible to receive the fees or allowances provided for under section 7610(a)(1).

(Secs. 7610(a) and 7805 of the Internal Revenue Code of 1954 (26 U.S.C. 7610(a) and 7805))

[T.D. 7899, 48 FR 32773, July 19, 1983; 48 FR 36449, Aug. 11, 1983]

§ 301.7611-1 Questions and answers relating to church tax inquiries and examinations.

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