

FOR FURTHER INFORMATION CONTACT: Frances Kelly, (202) 622-7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this document are under section 1502 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9442) contains errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1502-13 is amended as follows:

1. The second sentence of paragraph (g)(3)(i)(B) is revised.
2. Paragraph (g)(3)(i)(B)(1)(vi) is revised.
3. Paragraph (g)(7)(ii) *Example 4.* (ii) is revised.
4. The paragraph title for paragraph (g)(7)(ii) *Example 4.* (iv) is added.
5. The sixth sentence of paragraph (g)(7)(ii) *Example 5.* (i) is revised.

§ 1.1502-13 Intercompany transactions.

- (g) * * *
- (3) * * *
- (i) * * *
- (B) * * *

In making this determination, if a creditor or debtor realizes an amount in a transaction in which a creditor assigns all or part of its rights under an intercompany obligation to the debtor, or a debtor assigns all or part of its obligations under an intercompany obligation to the creditor, the transaction will be treated as an extinguishment and will be excepted from the definition of “triggering transaction” only if either of the exceptions in paragraphs (g)(3)(i)(B)(5) or (6) of this section apply. * * *

(1) * * * (vi) The stock of the transferee member (or a higher-tier member other than a higher-tier member of an 80-percent chain that includes the

transferor and transferee) is disposed of within 12 months from the assignment of the intercompany obligation, unless at the time of the assignment, the transferor member, transferee member (or in the case of successive section 351 exchanges, each transferor and transferee member) and the debtor member are all in the same 80-percent chain; and all of the stock of the transferee (or in the case of successive section 351 exchanges, the lowest-tier transferee) held by members of the group is disposed of as part of the same plan or arrangement, either directly or indirectly, to persons that are not members of the group.

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- (7) * * *
- (ii) * * *

Example 4. * * * (ii) *No deemed satisfaction and reissuance.* Because the assignment of the B note is an exchange to which section 351 applies and neither S nor B recognize gain or loss, the transaction is not a triggering transaction under paragraph (g)(3)(i)(B)(1) of this section, and the note is not treated as satisfied and reissued under paragraph (g)(3)(ii) of this section.

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- (iv) *Transferee loss subject to limitation.*
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Example 5. * * * (i) * * * The terms and conditions of the note are not modified in connection with the sales transaction, the transaction does not result in a change in payment expectations, and no amount of income, gain, deduction, or loss is recognized by S, B, or T with respect to the note.

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Guy Traynor,
Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E9-2828 Filed 2-10-09; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9445]

RIN 1545-BF21

Procedures for Administrative Review of a Determination That an Authorized Recipient Has Failed To Safeguard Tax Returns or Return Information

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations regarding administrative review procedures for certain government agencies and other authorized recipients of returns or return information whose receipt of returns and return information may be suspended or terminated because they do not maintain proper safeguards. The regulations provide guidance to responsible IRS personnel and authorized recipients as to these administrative procedures.

DATES: *Effective Date:* These regulations are effective on February 11, 2009.

Applicability Date: These regulations apply to all authorized recipients of returns and return information that are subject to the safeguard requirements set forth in section 6103(p)(4) on or after February 11, 2009.

FOR FURTHER INFORMATION CONTACT: Wendy L. Kribell, (202) 622-4570 (not a toll-free number).

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR Part 301) under section 6103(p)(4), (p)(7), and (q) of the Internal Revenue Code (Code). Section 6103 protects returns and return information from disclosure except to certain government agencies and other authorized recipients, including State tax agencies as provided in section 6103(d). Section 6103(p)(4) provides that certain authorized recipients must establish procedures satisfactory to the IRS for safeguarding the returns and return information. The IRS reviews, on a regular basis, safeguards established by these authorized recipients. If the IRS determines that an authorized recipient has failed to maintain adequate safeguards or has made any unauthorized inspections or disclosures of returns or return information, section 6103(p)(4) authorizes the IRS to terminate or suspend disclosure of returns and return information to the authorized recipient until the IRS is satisfied that adequate steps have been taken to ensure adequate safeguards or prevent additional unauthorized inspections or disclosures.

Section 6103(p)(7) requires the Secretary to prescribe regulations providing for administrative review of an IRS determination that a State tax agency has failed to meet the safeguarding requirements. Former § 301.6103(p)(7)-1 contained procedures to allow State tax agencies, prior to a suspension or termination of disclosure, to appeal a preliminary finding by the IRS of inadequate safeguards or

unauthorized disclosure, or to establish that the agency had taken steps to prevent a recurrence of the violation. Section 6103(q) further authorizes the Secretary to prescribe such other regulations as are necessary to carry out the provisions of section 6103 generally.

On February 24, 2006, the Treasury Department and IRS published in the **Federal Register** proposed regulations (REG-157271-05, 71 FR 9487) and temporary regulations (TD 9252, 71 FR 9449) to extend the administrative review procedure for State tax agencies to “any” authorized recipient specified in section 6103(p)(4), and to include unauthorized inspection within the IRS’s scope of review (in addition to inadequate safeguards and unauthorized disclosure). Two written comments were received, and no public hearing was requested or held. After consideration of the comments received, the proposed regulations are adopted as final regulations, and the corresponding temporary regulations are removed. See § 601.601(d)(2)(ii)(b).

Explanation and Summary of Comments

The first commentator suggested that the final regulations expressly provide that the IRS may give written notice of its intention to terminate or suspend disclosure via facsimile or electronic mail. This suggestion was not adopted because nothing in the regulations precludes a written notice from being delivered electronically. Not specifying the means by which written notice is conveyed would also afford greater flexibility in providing notice as other means might evolve.

The second commentator suggested that the proposed regulations would legalize the misuse of returns and return information and thereby discourage taxpayers from seeking tax advice. This suggestion is unwarranted. Section 6103 protects returns and return information from disclosure except to authorized recipients. Section 6103(p)(4) requires certain authorized recipients to establish procedures for safeguarding returns and return information. If the authorized recipient fails to maintain adequate safeguards or has made any unauthorized inspections or disclosures, additional disclosures to that recipient may be suspended or terminated until the IRS is satisfied that adequate steps have been taken to ensure adequate safeguards or prevent additional unauthorized inspections or disclosures. Prior to these final regulations, procedures were available pursuant to section 6103(p)(7) to allow State tax agencies, prior to a suspension or termination of disclosure, to appeal a

preliminary finding of inadequate safeguards or unauthorized disclosure, or to establish that the agency had taken steps to prevent a recurrence of the violation. The purpose of these final regulations is to extend these administrative review procedures from State tax agencies to all authorized recipients described in section 6103(p)(4) and to include a preliminary finding of unauthorized inspection within the scope of review. The extension of these provisions to all authorized recipients enhances the protections afforded to returns and return information.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is Wendy L. Kribell, Office of the Associate Chief Counsel (Procedure & Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR Part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 301.6103(p)(4)–1 is added to read as follows:

§ 301.6103(p)(4)–1 Procedures relating to safeguards for returns or return information.

For security guidelines and other safeguards for protecting returns and return information, see guidance published by the Internal Revenue Service. For procedures for administrative review of a determination that an authorized recipient has failed to safeguard returns or return information, see § 301.6103(p)(7)–1.

§ 301.6103(p)(4)–1T [Removed]

■ **Par. 3.** Section 301.6103(p)(4)–1T is removed.

■ **Par. 4.** Section 301.6103(p)(7)–1 is added to read as follows:

§ 301.6103(p)(7)–1 Procedures for administrative review of a determination that an authorized recipient has failed to safeguard returns or return information.

(a) *In general.* Notwithstanding any section of the Internal Revenue Code (Code), the Internal Revenue Service (IRS) may terminate or suspend disclosure of returns and return information to any authorized recipient specified in section (p)(4) of section 6103, if the IRS determines that:

(1) The authorized recipient has allowed an unauthorized inspection or disclosure of returns or return information and that the authorized recipient has not taken adequate corrective action to prevent the recurrence of an unauthorized inspection or disclosure; or

(2) The authorized recipient does not satisfactorily maintain the safeguards prescribed by section 6103(p)(4), and has made no adequate plan to improve its system to maintain the safeguards satisfactorily.

(b) *Notice of IRS’s intention to terminate or suspend disclosure.* Prior to terminating or suspending authorized disclosures, the IRS will notify the authorized recipient in writing of the IRS’s preliminary determination and of the IRS’s intention to discontinue disclosure of returns and return information to the authorized recipient. Upon so notifying the authorized recipient, the IRS, if it determines that tax administration otherwise would be seriously impaired, may suspend further disclosures of returns and return information to the authorized recipient pending a final determination by the Commissioner or a Deputy Commissioner described in paragraph (d)(2) of this section.

(c) *Authorized recipient’s right to appeal.* An authorized recipient shall have 30 days from the date of receipt of a notice described in paragraph (b) of

this section to appeal the preliminary determination described in paragraph (b) of this section. The appeal shall be made directly to the Commissioner.

(d) *Procedures for administrative review.* (1) To appeal a preliminary determination described in paragraph (b) of this section, the authorized recipient shall send a written request for a conference to: Commissioner of Internal Revenue (Attention: SE:S:CLD:GLD), 1111 Constitution Avenue, NW., Washington, DC 20224. The request must include a complete description of the authorized recipient's present system of safeguarding returns or return information received by the authorized recipient (and its authorized contractors or agents, if any). The request must state the reason or reasons the authorized recipient believes that such system or practice (including improvements, if any, to such system or practice expected to be made in the near future) is or will be adequate to safeguard returns or return information.

(2) Within 45 days of the receipt of the request made in accordance with the provisions of paragraph (d)(1) of this section, the Commissioner or Deputy Commissioner personally shall hold a conference with representatives of the authorized recipient, after which the Commissioner or Deputy Commissioner shall make a final determination with respect to the appeal.

(e) *Effective/applicability date.* This section applies to all authorized recipients of returns and return information that are subject to the safeguard requirements set forth in section 6103(p)(4) on or after February 11, 2009.

§ 301.6103(p)(7)–1T [Removed]

■ **Par. 5.** Section 301.6103(p)(7)–1T is removed.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: January 13, 2009.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E9–2827 Filed 2–10–09; 8:45 am]

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1611

Privacy Act Regulations

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission is revising its regulations at 29 CFR Part 1611, which implement the Privacy Act of 1974, to exempt one of its systems of records from one of the Act's requirements.

DATES: *Effective Date:* February 11, 2009.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Schlageter, Assistant Legal Counsel, or Kathleen Oram, Senior Attorney, at (202) 663–4640 (voice) or (202) 663–7026 (TTY). Copies of this final rule are also available in the following alternate formats: large print, Braille, audiotape and electronic file on computer disk. Requests for this notice in an alternative format should be made to EEOC's Publication Center at 1–800–669–3362 (voice) or 1–800–800–3302 (TTY).

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission is adding a new section 1611.15 to its Privacy Act regulations to exempt records contained in EEOC–22, EEOC Personnel Security Files, from the accounting and disclosure provisions of the Privacy Act in accordance with section k(5) of the Act, but only to the extent that an accounting of disclosures or a disclosure itself identifies witnesses promised confidentiality as a condition of providing information during the course of a background investigation. The Commission is also amending sections 1611.5(a)(5) and 1611.5(b) to conform them to the addition of the new exemption.

The Commission published these proposed changes in a Proposed Rule on March 31, 2008. 73 FR 16806. EEOC did not receive any comments on the proposed rule. This final rule, therefore, adopts the amendments proposed without change.

Regulatory Procedures

Executive Order 12866

Pursuant to Executive Order 12866, EEOC has determined that the regulation will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Therefore, a detailed cost-benefit assessment of the regulation is not required.

Paperwork Reduction Act

This rule contains no new information collection requirements subject to review by the Office of Management and Budget under the

Paperwork Reduction Act (44 U.S.C. Chapter 35).

Regulatory Flexibility Act

The Commission, in accordance with the Regulatory Flexibility Act (5 U.S.C. 606(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action concerns agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 29 CFR Part 1611

Privacy Act.

Dated: February 4, 2009.
For the Commission.

Stuart J. Ishimaru,

Acting Chairman.

■ Accordingly, chapter XIV of title 29 of the Code of Federal Regulations is amended as follows:

PART 1611—PRIVACY ACT REGULATIONS

■ 1. The authority citation for Part 1611 continues to read as follows:

Authority: 5 U.S.C. 552a.

■ 2. In section 1611.5 revise paragraphs (a)(5) and (b) to read as follows:

§ 1611.5 Disclosure of requested information to individuals.

(a) * * *
* * * * *

(5) The Commission shall not deny any request under § 1611.3 concerning the existence of records about the requester in any system of records it maintains, or any request for access to such records, unless that system is exempted from the requirements of 5