

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-248, title III, §311(c)(2), Sept. 3, 1982, 96 Stat. 601, provided that: "The amendments made by subsection (b) [amending this section] shall apply to summonses served after December 31, 1982."

Pub. L. 97-248, title III, §331(e), Sept. 3, 1982, 96 Stat. 621, provided that: "The amendments made by this section [amending this section] shall apply to summonses served after December 31, 1982."

Pub. L. 97-248, title III, §332(b), Sept. 3, 1982, 96 Stat. 622, provided that: "The amendment made by subsection (a) [amending this section] shall apply to summonses served after December 31, 1982."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-223 effective Jan. 1, 1979, see section 232(h)(2) of Pub. L. 96-223, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as a note under section 46 of this title.

Amendment by Pub. L. 95-599 effective Jan. 1, 1979, see section 505(d) of Pub. L. 95-599, set out as a note under section 6427 of this title.

EFFECTIVE DATE

Pub. L. 94-455, title XII, §1205(c), Oct. 4, 1976, 90 Stat. 1703, as amended by Pub. L. 94-528, §2(b), Oct. 17, 1976, 90 Stat. 2483, provided that: "The amendments made by this section [enacting this section and section 7610 of this title] shall apply with respect to any summons issued after February 28, 1977."

§ 7610. Fees and costs for witnesses**(a) In general**

The Secretary shall by regulations establish the rates and conditions under which payment may be made of—

- (1) fees and mileage to persons who are summoned to appear before the Secretary, and
- (2) reimbursement for such costs that are reasonably necessary which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required to be produced by summons.

(b) Exceptions

No payment may be made under paragraph (2) of subsection (a) if—

- (1) the person with respect to whose liability the summons is issued has a proprietary interest in the books, papers, records or other data required to be produced, or
- (2) the person summoned is the person with respect to whose liability the summons is issued or an officer, employee, agent, accountant, or attorney of such person who, at the time the summons is served, is acting as such.

(c) Summons to which section applies

This section applies with respect to any summons authorized under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602.

(Added Pub. L. 94-455, title XII, §1205(a), Oct. 4, 1976, 90 Stat. 1699; amended Pub. L. 95-599, title V, §505(c)(6), Nov. 6, 1978, 92 Stat. 2760; Pub. L. 96-223, title II, §232(d)(4)(E), Apr. 2, 1980, 94 Stat. 278; Pub. L. 97-424, title V, §515(b)(12), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 98-369, div. A, title IX, §911(d)(2)(G), July 18, 1984, 98 Stat. 1007; Pub. L. 99-514, title XVII, §1703(e)(2)(G), Oct. 22, 1986, 100

Stat. 2778; Pub. L. 100-647, title I, §1017(c)(9), (12), Nov. 10, 1988, 102 Stat. 3576, 3577.)

Editorial Notes

AMENDMENTS

1988—Subsec. (c). Pub. L. 100-647, §1017(c)(12), made technical correction to language of Pub. L. 99-514, §1703(e)(2)(G), see 1986 Amendment note below.

Pub. L. 100-647, §1017(c)(9), substituted "6421(g)(2)" for "6421(f)(2)".

1986—Subsec. (c). Pub. L. 99-514, as amended by Pub. L. 100-647, §1017(c)(12), substituted "6427(j)(2)" for "6427(i)(2)".

1984—Subsec. (c). Pub. L. 98-369 substituted "6427(i)(2)" for "6427(h)(2)".

1983—Subsec. (c). Pub. L. 97-424 struck out "6424(d)(2)," after "6421(f)(2),".

1980—Subsec. (c). Pub. L. 96-223 substituted "6427(h)(2)" for "6427(g)(2)".

1978—Subsec. (c). Pub. L. 95-599 substituted "6427(g)(2)" for "6427(e)(2)".

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to gasoline removed (as defined in section 4082 of this title as amended by section 1703 of Pub. L. 99-514) after Dec. 31, 1987, see section 1703(h) of Pub. L. 99-514, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective Aug. 1, 1984, see section 911(e) of Pub. L. 98-369, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-424 applicable with respect to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97-424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-223 effective Jan. 1, 1979, see section 232(h)(2) of Pub. L. 96-223, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-599 effective Jan. 1, 1979, see section 505(d) of Pub. L. 95-599, set out as a note under section 6427 of this title.

§ 7611. Restrictions on church tax inquiries and examinations**(a) Restrictions on inquiries****(1) In general**

The Secretary may begin a church tax inquiry only if—

- (A) the reasonable belief requirements of paragraph (2), and
- (B) the notice requirements of paragraph (3), have been met.

(2) Reasonable belief requirements

The requirements of this paragraph are met with respect to any church tax inquiry if an appropriate high-level Treasury official rea-

sonably believes (on the basis of facts and circumstances recorded in writing) that the church—

(A) may not be exempt, by reason of its status as a church, from tax under section 501(a), or

(B) may be carrying on an unrelated trade or business (within the meaning of section 513) or otherwise engaged in activities subject to taxation under this title.

(3) Inquiry notice requirements

(A) In general

The requirements of this paragraph are met with respect to any church tax inquiry if, before beginning such inquiry, the Secretary provides written notice to the church of the beginning of such inquiry.

(B) Contents of inquiry notice

The notice required by this paragraph shall include—

(i) an explanation of—

(I) the concerns which gave rise to such inquiry, and

(II) the general subject matter of such inquiry, and

(ii) a general explanation of the applicable—

(I) administrative and constitutional provisions with respect to such inquiry (including the right to a conference with the Secretary before any examination of church records), and

(II) provisions of this title which authorize such inquiry or which may be otherwise involved in such inquiry.

(b) Restrictions on examinations

(1) In general

The Secretary may begin a church tax examination only if the requirements of paragraph (2) have been met and such examination may be made only—

(A) in the case of church records, to the extent necessary to determine the liability for, and the amount of, any tax imposed by this title, and

(B) in the case of religious activities, to the extent necessary to determine whether an organization claiming to be a church is a church for any period.

(2) Notice of examination; opportunity for conference

The requirements of this paragraph are met with respect to any church tax examination if—

(A) at least 15 days before the beginning of such examination, the Secretary provides the notice described in paragraph (3) to both the church and the appropriate regional counsel of the Internal Revenue Service, and

(B) the church has a reasonable time to participate in a conference described in paragraph (3)(A)(iii), but only if the church requests such a conference before the beginning of the examination.

(3) Contents of examination notice, et cetera

(A) In general

The notice described in this paragraph is a written notice which includes—

(i) a copy of the church tax inquiry notice provided to the church under subsection (a),

(ii) a description of the church records and activities which the Secretary seeks to examine,

(iii) an offer to have a conference between the church and the Secretary in order to discuss, and attempt to resolve, concerns relating to such examination, and

(iv) a copy of all documents which were collected or prepared by the Internal Revenue Service for use in such examination and the disclosure of which is required by the Freedom of Information Act (5 U.S.C. 552).

(B) Earliest day examination notice may be provided

The examination notice described in subparagraph (A) shall not be provided to the church before the 15th day after the date on which the church tax inquiry notice was provided to the church under subsection (a).

(C) Opinion of regional counsel with respect to examination

Any regional counsel of the Internal Revenue Service who receives an examination notice under paragraph (1) may, within 15 days after such notice is provided, submit to the regional commissioner for the region an advisory objection to the examination.

(4) Examination of records and activities not specified in notice

Within the course of a church tax examination which (at the time the examination begins) meets the requirements of paragraphs (1) and (2), the Secretary may examine any church records or religious activities which were not specified in the examination notice to the extent such examination meets the requirement of subparagraph (A) or (B) of paragraph (1) (whichever applies).

(c) Limitation on period of inquiries and examinations

(1) Inquiries and examinations must be completed within 2 years

(A) In general

The Secretary shall complete any church tax status inquiry or examination (and make a final determination with respect thereto) not later than the date which is 2 years after the examination notice date.

(B) Inquiries not followed by examinations

In the case of a church tax inquiry with respect to which there is no examination notice under subsection (b), the Secretary shall complete such inquiry (and make a final determination with respect thereto) not later than the date which is 90 days after the inquiry notice date.

(2) Suspension of 2-year period

The running of the 2-year period described in paragraph (1)(A) and the 90-day period in paragraph (1)(B) shall be suspended—

(A) for any period during which—

(i) a judicial proceeding brought by the church against the Secretary with respect to the church tax inquiry or examination is pending or being appealed,

(ii) a judicial proceeding brought by the Secretary against the church (or any official thereof) to compel compliance with any reasonable request of the Secretary in a church tax examination for examination of church records or religious activities is pending or being appealed, or

(iii) the Secretary is unable to take actions with respect to the church tax inquiry or examination by reason of an order issued in any judicial proceeding brought under section 7609,

(B) for any period in excess of 20 days (but not in excess of 6 months) in which the church or its agents fail to comply with any reasonable request of the Secretary for church records or other information, or

(C) for any period mutually agreed upon by the Secretary and the church.

(d) Limitations on revocation of tax-exempt status, etc.

(1) In general

The Secretary may—

(A) determine that an organization is not a church which—

(i) is exempt from taxation by reason of section 501(a), or

(ii) is described in section 170(c), or

(B)(i) send a notice of deficiency of any tax involved in a church tax examination, or

(ii) in the case of any tax with respect to which subchapter B of chapter 63 (relating to deficiency procedures) does not apply, assess any underpayment of such tax involved in a church tax examination,

only if the appropriate regional counsel of the Internal Revenue Service determines in writing that there has been substantial compliance with the requirements of this section and approves in writing of such revocation, notice of deficiency, or assessment.

(2) Limitations on period of assessment

(A) Revocation of tax-exempt status

(i) 3-year statute of limitations generally

In the case of any church tax examination with respect to the revocation of tax-exempt status under section 501(a), any tax imposed by chapter 1 (other than section 511) may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, only for the 3 most recent taxable years ending before the examination notice date.

(ii) 6-year statute of limitations where tax-exempt status revoked

If an organization is not a church exempt from tax under section 501(a) for any of the 3 taxable years described in clause (i), clause (i) shall be applied by substituting “6 most recent taxable years” for “3 most recent taxable years”.

(B) Unrelated business tax

In the case of any church tax examination with respect to the tax imposed by section

511 (relating to unrelated business income), such tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, only with respect to the 6 most recent taxable years ending before the examination notice date.

(C) Exception where shorter statute of limitations otherwise applicable

Subparagraphs (A) and (B) shall not be construed to increase the period otherwise applicable under subchapter A of chapter 66 (relating to limitations on assessment and collection).

(e) Information not collected in substantial compliance with procedures to stay summons proceeding

(1) In general

If there has not been substantial compliance with—

(A) the notice requirements of subsection (a) or (b),

(B) the conference requirement described in subsection (b)(3)(A)(iii), or

(C) the approval requirement of subsection (d)(1) (if applicable),

with respect to any church tax inquiry or examination, any proceeding to compel compliance with any summons with respect to such inquiry or examination shall be stayed until the court finds that all practicable steps to correct the noncompliance have been taken. The period applicable under paragraph (1) or subsection (c) shall not be suspended during the period of any stay under the preceding sentence.

(2) Remedy to be exclusive

No suit may be maintained, and no defense may be raised in any proceeding (other than as provided in paragraph (1)), by reason of any noncompliance by the Secretary with the requirements of this section.

(f) Limitations on additional inquiries and examinations

(1) In general

If any church tax inquiry or examination with respect to any church is completed and does not result in—

(A) a revocation, notice of deficiency, or assessment described in subsection (d)(1), or

(B) a request by the Secretary for any significant change in the operational practices of the church (including the adequacy of accounting practices),

no other church tax inquiry or examination may begin with respect to such church during the applicable 5-year period unless such inquiry or examination is approved in writing by the Secretary or does not involve the same or similar issues involved in the preceding inquiry or examination. For purposes of the preceding sentence, an inquiry or examination shall be treated as completed not later than the expiration of the applicable period under paragraph (1) of subsection (c).

(2) Applicable 5-year period

For purposes of paragraph (1), the term “applicable 5-year period” means the 5-year pe-

riod beginning on the date the notice taken into account for purposes of subsection (c)(1) was provided. For purposes of the preceding sentence, the rules of subsection (c)(2) shall apply.

(g) Treatment of final report of revenue agent

Any final report of an agent of the Internal Revenue Service shall be treated as a determination of the Secretary under paragraph (1) of section 7428(a), and any church receiving such a report shall be treated for purposes of sections 7428 and 7430 as having exhausted the administrative remedies available to it.

(h) Definitions

For purposes of this section—

(1) Church

The term “church” includes—

- (A) any organization claiming to be a church, and
- (B) any convention or association of churches.

(2) Church tax inquiry

The term “church tax inquiry” means any inquiry to a church (other than an examination) to serve as a basis for determining whether a church—

- (A) is exempt from tax under section 501(a) by reason of its status as a church, or
- (B) is carrying on an unrelated trade or business (within the meaning of section 513) or otherwise engaged in activities which may be subject to taxation under this title.

(3) Church tax examination

The term “church tax examination” means any examination for purposes of making a determination described in paragraph (2) of—

- (A) church records at the request of the Internal Revenue Service, or
- (B) the religious activities of any church.

(4) Church records

(A) In general

The term “church records” means all corporate and financial records regularly kept by a church, including corporate minute books and lists of members and contributors.

(B) Exception

Such term shall not include records acquired—

- (i) pursuant to a summons to which section 7609 applies, or
- (ii) from any governmental agency.

(5) Inquiry notice date

The term “inquiry notice date” means the date the notice with respect to a church tax inquiry is provided under subsection (a).

(6) Examination notice date

The term “examination notice date” means the date the notice with respect to a church tax examination is provided under subsection (b) to the church.

(7) Appropriate high-level Treasury official

The term “appropriate high-level Treasury official” means the Secretary of the Treasury or any delegate of the Secretary whose rank is

no lower than that of a principal Internal Revenue officer for an internal revenue region.

(i) Section not to apply to criminal investigations, etc.

This section shall not apply to—

- (1) any criminal investigation,
- (2) any inquiry or examination relating to the tax liability of any person other than a church,
- (3) any assessment under section 6851 (relating to termination assessments of income tax), section 6852 (relating to termination assessments in case of flagrant political expenditures of section 501(c)(3) organizations), or section 6861 (relating to jeopardy assessments of income taxes, etc.),
- (4) any willful attempt to defeat or evade any tax imposed by this title, or
- (5) any knowing failure to file a return of tax imposed by this title.

(Added Pub. L. 98-369, div. A, title X, §1033(a), July 18, 1984, 98 Stat. 1034; amended Pub. L. 99-514, title XVIII, §1899A(61), (62), Oct. 22, 1986, 100 Stat. 2962; Pub. L. 100-203, title X, §10713(b)(2)(G), Dec. 22, 1987, 101 Stat. 1330-470; Pub. L. 100-647, title I, §1018(u)(49), Nov. 10, 1988, 102 Stat. 3593; Pub. L. 101-239, title VII, §7822(d)(1), Dec. 19, 1989, 103 Stat. 2425; Pub. L. 104-188, title I, §1704(t)(59), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 105-206, title I, §1102(e)(3), July 22, 1998, 112 Stat. 705.)

Editorial Notes

PRIOR PROVISIONS

A prior section 7611 was renumbered section 7613 of this title.

AMENDMENTS

1998—Subsec. (f)(1). Pub. L. 105-206 substituted “Secretary” for “Assistant Commissioner for Employee Plans and Exempt Organizations of the Internal Revenue Service” in concluding provisions.

1996—Subsec. (h)(7). Pub. L. 104-188 substituted “appropriate” for “appropriate” in text.

1989—Subsec. (i)(3). Pub. L. 101-239 made technical correction to directory language of Pub. L. 100-203, see 1987 Amendment note below.

1988—Subsec. (i)(5). Pub. L. 100-647 substituted “this title” for “the title”.

1987—Subsec. (i)(3). Pub. L. 100-203, as amended by Pub. L. 101-239, substituted “, section 6852 (relating to termination assessments in case of flagrant political expenditures of section 501(c)(3) organizations), or section 6861 (relating to jeopardy assessments of income taxes, etc.)” for “or section 6861 (relating to jeopardy assessments of income taxes, etc.)”.

1986—Subsec. (a)(1)(B). Pub. L. 99-514, §1899A(62), re-enacted subpar. (B) without change.

Subsec. (i). Pub. L. 99-514, §1899A(61), redesignated pars. (A) to (E) as (1) to (5), in par. (3), substituted “etc.” for “etc.”, and in par. (5), substituted “the title” for “the title”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective as if included in the provision of the Revenue Act of 1987, Pub. L. 100-203, title X, to which such amendment relates, see section 7823 of Pub. L. 101-239, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of

the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 98-369, div. A, title X, §1033(d), July 18, 1984, 98 Stat. 1039, provided that: "The amendments made by this section [enacting this section and amending sections 7428 and 7605 of this title] shall apply with respect to inquiries and examinations beginning after December 31, 1984."

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

§ 7612. Special procedures for summonses for computer software

(a) General rule

For purposes of this title—

(1) except as provided in subsection (b), no summons may be issued under this title, and the Secretary may not begin any action under section 7604 to enforce any summons to produce or analyze any tax-related computer software source code; and

(2) any software and related materials which are provided to the Secretary under this title shall be subject to the safeguards under subsection (c).

(b) Circumstances under which computer software source code may be provided

(1) In general

Subsection (a)(1) shall not apply to any portion, item, or component of tax-related computer software source code if—

(A) the Secretary is unable to otherwise reasonably ascertain the correctness of any item on a return from—

(i) the taxpayer's books, papers, records, or other data; or

(ii) the computer software executable code (and any modifications thereof) to which such source code relates and any associated data which, when executed, produces the output to ascertain the correctness of the item;

(B) the Secretary identifies with reasonable specificity the portion, item, or component of such source code needed to verify the correctness of such item on the return; and

(C) the Secretary determines that the need for the portion, item, or component of such source code with respect to such item outweighs the risks of unauthorized disclosure of trade secrets.

(2) Exceptions

Subsection (a)(1) shall not apply to—

(A) any inquiry into any offense connected with the administration or enforcement of the internal revenue laws;

(B) any tax-related computer software source code acquired or developed by the

taxpayer or a related person primarily for internal use by the taxpayer or such person rather than for commercial distribution;

(C) any communications between the owner of the tax-related computer software source code and the taxpayer or related persons; or

(D) any tax-related computer software source code which is required to be provided or made available pursuant to any other provision of this title.

(3) Cooperation required

For purposes of paragraph (1), the Secretary shall be treated as meeting the requirements of subparagraphs (A) and (B) of such paragraph if—

(A) the Secretary determines that it is not feasible to determine the correctness of an item without access to the computer software executable code and associated data described in paragraph (1)(A)(ii);

(B) the Secretary makes a formal request to the taxpayer for such code and data and to the owner of the computer software source code for such executable code; and

(C) such code and data is not provided within 180 days of such request.

(4) Right to contest summonses

In any proceeding brought under section 7604 to enforce a summons issued under the authority of this subsection, the court shall, at the request of any party, hold a hearing to determine whether the applicable requirements of this subsection have been met.

(c) Safeguards to ensure protection of trade secrets and other confidential information

(1) Entry of protective order

In any court proceeding to enforce a summons for any portion of software, the court may receive evidence and issue any order necessary to prevent the disclosure of trade secrets or other confidential information with respect to such software, including requiring that any information be placed under seal to be opened only as directed by the court.

(2) Protection of software

Notwithstanding any other provision of this section, and in addition to any protections ordered pursuant to paragraph (1), in the case of software that comes into the possession or control of the Secretary in the course of any examination with respect to any taxpayer—

(A) the software may be used only in connection with the examination of such taxpayer's return, any appeal by the taxpayer to the Internal Revenue Service Independent Office of Appeals, any judicial proceeding (and any appeals therefrom), and any inquiry into any offense connected with the administration or enforcement of the internal revenue laws;

(B) the Secretary shall provide, in advance, to the taxpayer and the owner of the software a written list of the names of all individuals who will analyze or otherwise have access to the software;

(C) the software shall be maintained in a secure area or place, and, in the case of com-