

sewerage disposal facility is acquired as a contribution to the capital of the taxpayer under paragraph (a) of this section, the basis of the contributed facility is zero.

(2) *Repayment of contribution.* If a contribution to the capital of the taxpayer under paragraph (a) of this section is repaid to the contributor, either in whole or in part, then the repayment amount is a capital expenditure in the taxable year in which it is paid or incurred, resulting in an increase in the property's adjusted basis in such year. Capital expenditures allocated to depreciable property under paragraph (d)(3) of this section may be depreciated over the remaining recovery period for that property.

(3) *Allocation of contributions.* An amount treated as a capital expenditure under this paragraph (d) is to be allocated proportionately to the adjusted basis of each property acquired or constructed with the contribution based on the relative cost of such property.

(4) *Example.* The application of this paragraph (d) is illustrated by the following example:

*Example.* A, a calendar year regulated public utility that provides water services, received a \$1,000,000 contribution in aid of construction in 2000 as an advance from B, a developer, for the purpose of constructing a water facility. To the extent that the \$1,000,000 exceeds the actual cost of the facility, the contribution is subject to being returned. Under the terms of the advance, A agrees to pay to B a percentage of the receipts from the facility over a fixed period, but limited to the cost of the facility. In 2001, A builds the facility at a cost of \$700,000 and returns \$300,000 to B. In 2002, A pays \$20,000 to B out of the receipts from the facility. Assuming accurate records are kept, the \$700,000 advance is a contribution to the capital of A under paragraph (a) of this section and is excludable from A's income. The basis of the \$700,000 facility constructed with this contribution to capital is zero. The \$300,000 excess amount is not a contribution to the capital of A under paragraph (a) of this section because it does not meet the expenditure rule described in paragraph (c)(1) of this section. However, this excess amount is not includible in A's income pursuant to paragraph (c)(2)(ii) of this section since the amount is repaid to B within the required time period. The repayment of the \$300,000 excess amount to B in 2001 is not treated as a capital expenditure by A. The \$20,000 payment to B in 2002 is treated as a capital expenditure by A in 2002 resulting in an increase in the adjusted basis of the water facility from zero to \$20,000.

(e) *Statute of limitations—(1) Extension of statute of limitations.* Under section 118(d)(1), the statutory period for assessment of any deficiency attributable to a contribution to capital under paragraph (a) of this section does

not expire before the expiration of 3 years after the date the taxpayer notifies the Secretary in the time and manner prescribed in paragraph (e)(2) of this section.

(2) *Time and manner of notification.* Notification is made by attaching a statement to the taxpayer's federal income tax return for the taxable year in which any of the reportable items in paragraphs (e)(2)(i) through (iii) of this section occur. The statement must contain the taxpayer's name, address, employer identification number, taxable year, and the following information with respect to contributions of property other than water or sewerage disposal facilities that are subject to the expenditure rule described in paragraph (c) of this section—

(i) The amount of contributions in aid of construction expended during the taxable year for property described in section 118(c)(2)(A) (qualified property) as required under paragraph (c)(1) of this section, identified by taxable year in which the contributions were received;

(ii) The amount of contributions in aid of construction that the taxpayer does not intend to expend for qualified property as required under paragraph (c)(1) of this section, identified by taxable year in which the contributions were received; and

(iii) The amount of contributions in aid of construction that the taxpayer failed to expend for qualified property as required under paragraph (c)(1) of this section, identified by taxable year in which the contributions were received.

(f) *Effective date.* This section is applicable for any money or other property received by a regulated public utility that provides water or sewerage disposal services on or after January 11, 2001.

[T.D. 8936, 66 FR 2254, Jan. 11, 2001]

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## DEPARTMENT OF JUSTICE

### 28 CFR Part 16

[AAG/A Order No. 003-2006]

### Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Final rule.

**SUMMARY:** The Department of Justice, Tax Division, is amending 28 CFR part 16 to exempt a newly revised Privacy Act system of records entitled "Files of Applicants For Attorney and Non-

Attorney Positions with the Tax Division, Justice/TAX-003," as described in today's notice section of the **Federal Register**, from 5 U.S.C. 552a(c)(3) and (d)(1). The exemptions will be applied only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(k)(5). The exemptions are necessary to protect the confidentiality of employment records. The Department also is deleting as obsolete provisions exempting two former Tax Division systems of records: "Freedom of Information/Privacy Act Request Files, Justice/TAX-004;" and "Tax Division Special Project Files, Justice/TAX-005." The records in TAX-004 are now covered by a Departmentwide system notice, "Freedom of Information Act, Privacy Act, and Mandatory Declassification Review Requests and Administrative Appeals, DOJ-004". The relevant records in TAX-005 are now part of the revised system entitled "Criminal Tax Case Files, Special Project Files, Docket Cards, and Associated Records, Justice/TAX-001."

**DATES:** *Effective Date:* This final rule is effective March 7, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mary Cahill, (202) 307-1823.

**SUPPLEMENTARY INFORMATION:** On November 16, 2005 (70 FR 69486), a proposed rule was published in the **Federal Register** with an invitation to comment. Based on suggestions received, the Department is eliminating the reference to 5 U.S.C. 552a(k)(2) as a basis for exemption, and is removing the exemption from 5 U.S.C. 552a(e)(1).

This rule relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, this rule will not have a significant economic impact on a substantial number of small entities.

### List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information, Sunshine Act and Privacy.

■ Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, 28 CFR part 16 is amended as follows:

### PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

■ 1. The authority for part 16 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 552b(g), and 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, and 9701.

- 2. Section 16.93 is amended by:
  - a. Removing the first sentence of paragraph (a)(2);
  - b. Revising paragraph (b) introductory text;
  - c. Revising paragraphs (e) and (f).
- Therefore, amend the section to read as follows:

**§ 16.93 Exemption of Tax Division Systems—limited access.**

\* \* \* \* \*

(b) The system of records listed under paragraph (a)(1) of this section is exempted for the reasons set forth below, from the following provisions of 5 U.S.C. 552a:

\* \* \* \* \*

(e) The following system of records is exempt from subsections (c)(3) and (d)(1) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5): Files of Applicants for Attorney and Non-Attorney Positions with the Tax Division, Justice/TAX-003. These exemptions apply only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(k)(5).

(f) Exemption from the particular subsections is justified for the following reasons:

(1) From subsection (c)(3) because an accounting could reveal the identity of confidential sources and result in an unwarranted invasion of the privacy of others. Many persons are contacted who, without an assurance of anonymity, refuse to provide information concerning an applicant for a position with the Tax Division. Disclosure of an accounting could reveal the identity of a source of information and constitutes a breach of the promise of confidentiality by the Tax Division. This would result in the reduction in the free flow of information vital to a determination of an applicant's qualifications and suitability for federal employment.

(2) From subsection (d)(1) because disclosure of records in the system could reveal the identity of confidential sources and result in an unwarranted invasion of the privacy of others. Many persons are contacted who, without an assurance of anonymity, refuse to provide information concerning an applicant for a Tax Division position. Access could reveal the identity of the source of the information and constitute a breach of the promise of confidentiality on the part of the Tax Division. Such breaches ultimately would restrict the free flow of information vital to a determination of

an applicant's qualifications and suitability.

Dated: February 27, 2006.

**Paul R. Cortis,**  
*Assistant Attorney General for Administration.*

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**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**29 CFR Part 1611**

**Privacy Act Fee Schedule**

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Final rule.

**SUMMARY:** The Equal Employment Opportunity Commission (EEOC or the Commission) is adopting revisions to its Privacy Act fee schedule. The updated schedule of fees conforms to EEOC's Freedom of Information Act (FOIA) fee schedule which was recently updated (70 FR 57510 of October 3, 2005).

**DATES:** *Effective Date:* March 7, 2006.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Schlageter, Assistant Legal Counsel, or Michelle Zinman, Senior General Attorney at (202) 663-4640 (voice) or (202) 663-7026 (TTY). This notice of final rule is also available in the following formats: Large print, Braille, audiotope and electronic file on computer disk. Requests for this notice of final rule in an alternative format should be made to EEOC's Publication Center at 1-800-669-3362.

**SUPPLEMENTARY INFORMATION:** On December 12, 2005, at 70 FR 73413, the EEOC published a notice of proposed rulemaking proposing to amend 29 CFR 1611.11 which concerns the fees assessed to persons who request records under the Privacy Act, 5 U.S.C. 552a. The changes conform the fees charged under the Privacy Act to the fees charged under the FOIA. See 29 CFR 1610.15, as amended by 70 FR 57510 (2005). Comments from the public were due on or before January 11, 2006. No comments were received. Therefore, EEOC is adopting the proposed revisions, without change, as its final rule.

**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 or local 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.

**List of Subjects in 29 CFR Part 1611**

Privacy Act.

Dated: March 1, 2006.

For the Commission.

**Cari M. Dominguez,**  
*Chair.*

■ Accordingly, for the reasons set forth in the preamble, EEOC amends 29 CFR part 1611 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. Section 1611.11 is revised to read as follows:

**§ 1611.11 Fees.**

(a) No fee shall be charged for searches necessary to locate records. No charge shall be made if the total fees authorized are less than \$1.00. Fees shall be charged for services rendered under this part as follows:

(1) For copies made by photocopy—\$0.15 per page (maximum of 10 copies). For copies prepared by computer, such as tapes or printouts, EEOC will charge the direct cost incurred by the agency, including operator time. For other forms