

paragraph (f) as paragraph (g); and adding a new paragraph (f) to read as follows:

**§ 553.201 Requesting OPM approval for reemployment without reduction or termination of annuity in individual cases.**

(a) *Request by agency head.* The head of an agency may request OPM to approve individual exceptions on a case-by-case basis to meet temporary hiring needs based on an emergency or other unusual circumstances or when the agency has encountered exceptional difficulty in recruiting or retaining a qualified candidate for a particular position. Authority to submit such a request may not be redelegated to an official below the agency's headquarters level.

(b) \* \* \*

(2) The request must be submitted in accordance with the criteria set out in paragraphs (c), (d), (e), or (f) of this section.

\* \* \* \* \*

(c) *Requests based on an emergency hiring need.* An agency may request reemployment without penalty for an individual whose services are needed on a temporary basis to respond to an emergency involving a direct threat to life or property. Requests submitted on that basis must meet the following criteria:

\* \* \* \* \*

(f) *Requests based on other unusual circumstances.* An agency may request reemployment without penalty for an individual whose services are needed on a temporary basis due to unusual circumstances. Agencies must provide justification describing the unusual circumstances.

\* \* \* \* \*

4. Section 553.202 is amended by revising the section heading, and paragraph (b)(1) to read as follows:

**§ 553.202 Request for delegation of authority to approve reemployment without reduction or termination of annuity in emergencies or other unusual circumstances.**

\* \* \* \* \*

(b) \* \* \*

(1) Description of the situations for which authority is requested. The situation must result from emergencies posing immediate and direct threat to life or property or from other unusual circumstances.

\* \* \* \* \*

5. Section 553.203 is revised to read as follows:

**§ 553.203 Status of individuals serving without reduction.**

*Reemployed civilian annuitants.*  
Annuitants reemployed with full salary

and annuity under an exception granted in accordance with this part are not considered employees for purposes of subchapter III of chapter 83 or chapter 84 of title 5, United States Code. They may not elect to have retirement contributions withheld from their pay; they may not use any employment for which an exception is granted as a basis for a supplemental or recomputed annuity; and they may not participate in the Thrift Savings Plan.

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 301

[REG-153037-01]

RIN 1545-BA31

#### **Suspension of Statutes of Limitations in Third-Party and John Doe Summons Disputes and Expansion of Taxpayers' Rights To Receive Notice and Seek Judicial Review of Third-Party Summonses**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed amendments to the regulations relating to third-party and John Doe summonses. These proposed regulations reflect amendments to sections 7603 and 7609 of the Internal Revenue Code of 1986 made by the Internal Revenue Service Restructuring and Reform Act of 1998, the Omnibus Budget Reconciliation Act of 1990, the Technical and Miscellaneous Revenue Act of 1988, and the Tax Reform Act of 1986, which were enacted subsequent to adoption of the current regulations. These proposed regulations provide guidance relating to the manner in which summonses may be served on third-party recordkeepers, the expanded class of third-party summonses subject to notice requirements and other procedures, and the suspension of periods of limitations if a court proceeding is brought involving a challenge to a third-party summons, or if a third party's response to a summons is not finally resolved within six months after service. These proposed regulations affect third parties who are served with a summons, taxpayers identified in a third-party summons, and other persons entitled to notice of a third-party summons.

**DATES:** Written comments and requests for a public hearing must be received by October 19, 2006.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-153037-01), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, submissions may be hand delivered between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-153037-01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Comments may also be submitted electronically to <http://www.irs.gov/regs> or the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS-REG-153037-01).

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Rawlins at (202) 622-3630 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### **Background**

This document contains proposed regulations amending the Procedure and Administration Regulations (26 CFR part 301) under sections 7603 and 7609 of the Internal Revenue Code of 1986 (Code). The proposed regulations reflect amendments to sections 7603 and 7609 enacted in the Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. 105-206, 112 Stat. 685) (RRA 1998), the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647, 102 Stat. 3343) (TAMRA 1988), and the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2085) (TRA 1986). The proposed regulations also reflect changes made to section 6503(j) in the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508, 104 Stat. 1388) (OBRA 1990).

#### **Explanation of Provisions**

In general, section 7609 provides that if a summons is served on a third party requiring the third party to give testimony or produce records relating to a taxpayer or other person identified in the summons, the Internal Revenue Service (IRS) must provide notice of the summons to the taxpayer and to any other person identified in the description of summoned records and testimony within three days of the date on which the summons was served, but no later than 23 days prior to the date fixed in the summons as the day on which the examination of the summoned person or materials is scheduled. Persons entitled to notice of a third-party summons are entitled to bring a proceeding to quash the summons by filing a petition in district court within 20 days after notice is

given. Persons entitled to notice also may intervene in any proceeding to enforce the summons. During the pendency of a proceeding to quash a summons brought by the taxpayer, or during the pendency of a proceeding to enforce a summons in which the taxpayer has intervened, the periods of limitations on assessment and criminal prosecution are suspended. These periods of limitations are also suspended if the third-party's response to the summons remains unresolved six months after the summons is served, regardless of whether a proceeding has been brought with respect to the summons. These proposed regulations amend prior regulations relating to third-party summonses to reflect the statutory changes to sections 7603 and 7609 described below.

#### *Notice of Third-Party Summonses*

Section 7609(a) requires the IRS to provide notice of a third-party summons to the taxpayer being investigated and every person identified in the description of summoned records and testimony unless the summons is excepted from the notice requirements under section 7609(c)(2). Prior to RRA 1998, the IRS was required to provide notice of a third-party summons only if the summons was served on a third-party recordkeeper and the summons required the production of records made or kept of another person's business transactions or affairs (or testimony about such records). RRA 1998 expanded the types of third-party summonses to which the notice, intervention, and proceeding to quash procedures apply by removing the prior specifically-defined third-party recordkeeper limitation. The proposed regulations reflect the expansion of the notice procedures to all third-party summonses not excepted by section 7609(c)(2).

#### *Exceptions To Notice, Intervention, and Proceeding To Quash Procedures*

Section 7609(c)(2) provides that certain summonses, including summonses served on the person with respect to whose liability the summons was issued, third-party summonses issued to confirm or deny the existence of records, and summonses that require court approval before service, are excepted from the notice, intervention, and proceeding to quash provisions of subsections 7609(a) and (b). Two additional exceptions, relating to third-party summonses issued in aid of collection under section 7609(c)(2)(D) and summonses issued by a criminal investigator under section 7602(c)(2)(E),

were the subject of recent statutory changes.

Prior to RRA 1998, former section 7609(c)(2)(B) broadly excepted from the notice requirements and other procedural rules a summons issued in aid of the collection of any person's liability. RRA 1998 narrowed the collection exception, now found in section 7609(c)(2)(D), to except only summonses issued in aid of the collection of either: (i) An assessment or judgment against the person with respect to whose liability the summons is issued, or (ii) the liability of a transferee or fiduciary of the liable person. Under section 7609(c)(2)(D), as amended, the IRS now must give notice of a third-party summons issued in aid of the collection of a person's potential liability for an unassessed tax. For example, the IRS must provide notice of a third-party summons to a potentially responsible person if the purpose of the third-party summons is to determine whether the person is liable for the trust fund recovery penalty under section 6672.

The exception from notice, intervention, and proceeding to quash procedures for summonses issued by a criminal investigator under section 7609(c)(2)(E) was added by RRA 1998. Section 7609(c)(2)(E) excepts third-party summonses issued by criminal investigators if the summoned third party is not a third-party recordkeeper, as that term is defined under new section 7603(b).

#### *Third-Party Recordkeepers*

Section 7603(b)(1) provides that third-party recordkeeper summonses may be served by certified or registered mail to the last known address of the third-party recordkeeper. Section 7603(b)(2) enumerates classes of persons that are third-party recordkeepers, including banks, credit card issuers, attorneys, accountants, and enrolled agents.

#### *1. When Third-Party Recordkeeper Status Arises*

Prior to RRA 1998, third-party recordkeeper summonses were defined under former section 7609(a)(1) as summonses that were served on a third-party recordkeeper, *i.e.*, a person belonging to one of several enumerated classes of business occupations, for the production of records made or kept of another person's business transactions or affairs. Based on these requirements, existing § 301.7609-2(b) provides that "[a] person is a 'third-party recordkeeper' with respect to a given set of records only if the person made or kept the records in the person's capacity as a third-party recordkeeper."

RRA 1998 amended section 7603, relating to service of summonses, by adding to new subsection (b) the enumerated classes of third-party recordkeepers, but did not incorporate the requirement of former section 7609(a)(1)(B) that the records of the business transactions or affairs be made or kept by the third-party recordkeeper in its capacity as such. There is no indication in the legislative history to RRA 1998 that Congress intended to alter the requirement under § 301.7609-2(b) that the records of a third-party recordkeeper be made or kept in the third-party recordkeeper's capacity as such. Accordingly, the proposed regulations maintain the requirement under existing § 301.7609-2(b).

#### *2. Owners or Developers of Computer Software Source Code*

RRA 1998 added owners or developers of computer software source code to the enumerated classes of third-party recordkeepers under section 7603(b)(2). The proposed regulations define owners or developers of computer software source code as third-party recordkeepers if they are summoned to produce the source code or the programs and data to which the source code relates, whether or not they make or keep records of another person's business transactions or affairs.

#### *Suspension of Periods of Limitations*

##### *1. Suspension Under Section 7609(e)(1)*

Section 7609(e)(1) provides that the periods of limitations under section 6501 (relating to assessment and collection) and section 6531 (relating to criminal prosecution) are suspended if any person with respect to whose liability a third-party summons was issued (or the agent, nominee, or other person acting under the direction and control of such person), pursuant to section 7609(b), intervenes in a judicial proceeding to enforce a third-party summons or brings a proceeding to quash a third-party summons. The suspension continues for the period during which the proceeding, including appeals, is pending.

##### *2. Suspension Under Section 7609(e)(2)*

Section 7609(e)(2) provides that the periods of limitations under section 6501 and section 6531, are suspended if there is no final resolution of the third party's response to the summons within six months after service of such summons, regardless of whether the person with respect to whose liability the summons was issued has intervened in an enforcement proceeding or brought a proceeding to quash.

Suspension of the periods of limitations under section 7609(e)(2) begins six months after the summons is served and ends upon the final resolution of the summoned party's response. The proposed regulations describe the types of summonses to which the suspension of periods of limitations under section 7609(e)(2) apply and define final resolution.

**a. Summonses to Which Suspension Under Section 7609(e)(2) May Apply**

Prior to RRA 1998, former section 7609(e)(2) suspended a taxpayer's periods of limitations if either a third-party recordkeeper's response to a summons, for which the taxpayer was entitled to receive notice under section 7609(a), or if a summoned person's response to a John Doe summons was not finally resolved within six months after the summons was served. Nothing in the legislative history to RRA 1998 suggests that Congress intended to expand the basic statutory structure of section 7609(e)(2) to encompass any summonses other than John Doe summonses and third-party summonses subject to the notice requirement of section 7609(a). Therefore, the proposed regulations provide that the periods of limitations are suspended under section 7609(e)(2) only with respect to third-party summonses to which the notice requirements of section 7609(a) apply, or to John Doe summonses for which taxpayers are entitled to notice of any statute suspension pursuant to section 7609(i)(4).

**b. Final Resolution of a Third Party's Response to a Summons**

Section 7609(e)(2) provides that suspension of the periods of limitations ends on the date of final resolution of the third party's response to the summons. The purpose of section 7609(e)(2) is to suspend the periods of limitations if an investigation is delayed by a summoned person's failure to produce all of the summoned information within six months.

Although final resolution is not defined in section 7609, nor is it elaborated on in the legislative history of that statute, the same term is found in section 6503(j), which suspends the period of limitations on assessment during a judicial enforcement period relating to designated and related summonses. Like section 7609(e)(2), section 6503(j) provides that the suspension period will not end until there is final resolution of the summoned person's response to the summons. The legislative history of section 6503(j) indicated that the term *final resolution* means, in cases in which a court proceeding is brought,

that no court proceeding remains pending and the summoned party has complied with the summons to the extent the court required. Therefore, the proposed regulations define final resolution as occurring when the summoned person fully complies with the production required by the summons. If the summons is the subject of litigation, full compliance occurs when any order enforcing any part of the summons is fully complied with and all appeals are either disposed of or the period in which an appeal may be taken or a request for further review may be made has expired. The IRS will administratively create procedures by which taxpayers can inquire about the suspension of their periods of limitations under section 7609(e)(2).

***Protections for and Duties of Summoned Third Parties***

Section 7609(i)(3) provides that any summoned party who produces records or gives testimony in good faith reliance on an IRS certificate or court order is not liable to a customer or other person for disclosure of records or testimony in response to a third-party summons. RRA 1998 modified these provisions by extending protection to all recipients of third-party summonses subject to the notice requirements of section 7609(a) and by expanding the protection from liability to include the giving of testimony by a third party, in addition to the production of records. The proposed regulations reflect these statutory changes.

***Notification Requirement for John Doe Summonses Under Section 7609(i)(4)***

Section 7609(i)(4) requires the recipient of a John Doe summons to notify the unnamed taxpayers to which the summons applies if those taxpayers' periods of limitations are suspended by operation of section 7609(e)(2), relating to the absence of a resolution to the summoned party's response six months after service of the summons.

The proposed regulations specify the time and the manner for providing the notice required under section 7609(i)(4). Notice must be given as soon as possible after the suspension of the periods of limitations and must be made in writing. The written notification may be hand delivered, sent to the address of the taxpayer last known by the summoned person to be valid, or transmitted by any electronic means. Failure by the summoned party to comply with the notice requirements of section 7609(i)(4) will not preclude the suspension of the periods of limitations pursuant to section 7609(e)(2).

***Use of Informal Procedures Not Precluded by Section 7609***

Section 7609(j) provides that nothing in section 7609 shall be construed to limit the IRS's ability to obtain information through formal or informal procedures authorized by sections 7601 and 7602. The proposed regulations provide that section 7609 does not require the IRS to issue a third-party summons before conducting an informal inquiry of a third party or examining a third party's books, papers, records, or other data during an investigation.

**Proposed Effective Dates**

These amendments are proposed to be applicable on the date the final regulations are filed with the **Federal Register**.

**Special Analyses**

It has been determined that this notice of proposed rulemaking 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 and, because these regulations do not impose a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501), the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of these regulations is Elizabeth Rawlins of the Office of the Associate Chief Counsel, Procedure and Administration

(Collection, Bankruptcy and Summons Division), Internal Revenue Service.

#### List of Subjects in 26 CFR Part 301

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

#### Proposed Amendment to the Regulations

Accordingly, 26 CFR part 301 is proposed to be 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 301.7603-1 is revised to read as follows:

#### § 301.7603-1 Service of summons.

(a) *In general*—(1) *Hand delivery or delivery to place of abode.* Except as otherwise provided in paragraph (a)(2) of this section, a summons issued under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602 shall be served by an attested copy delivered in hand to the person to whom it is directed, or left at such person's last and usual place of abode.

(2) *Summonses issued to third-party recordkeepers.* A summons issued under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602 for the production of records (or testimony about such records) by a third-party recordkeeper, as described in section 7603(b)(2) and § 301.7603-2, may also be served by certified or registered mail to the third-party recordkeeper's last known address, as defined in § 301.6212-2. If service to a third-party recordkeeper is made by certified or registered mail, the date of service is the date on which the summons is mailed.

(b) *Persons who may serve a summons.* The officers and employees of the Internal Revenue Service whom the Commissioner has designated to carry out the authority described in § 301.7602-1(b) to issue a summons are authorized to serve a summons issued under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602.

(c) *Effect of certificate of service.* The certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons.

(d) *Sufficiency of description of summoned records.* When a summons requires the production of records, it

shall be sufficient if such records are described with reasonable certainty.

(e) *Records.* For purposes of this section and § 301.7603-2, the term *records* includes books, papers, or other data.

(f) *Effective date.* This section is applicable on the date final regulations are published in the **Federal Register**.

**Par. 3.** Section 301.7603-2 is added to read as follows:

#### § 301.7603-2 Third-party recordkeepers.

(a) *Definitions*—(1) *Accountant.* A person is an accountant under section 7603(b)(2)(F) for purposes of determining whether that person is a third-party recordkeeper if, on the date the records described in the summons were created, the person was registered, licensed, or certified as an accountant under the authority of any state, commonwealth, territory, or possession of the United States, or of the District of Columbia.

(2) *Attorney.* A person is an attorney under section 7603(b)(2)(E) for purposes of determining whether that person is a third-party recordkeeper if, on the date the records described in the summons were created, the person was registered, licensed, or certified as an attorney under the authority of any state, commonwealth, territory, or possession of the United States, or of the District of Columbia.

(3) *Credit cards*—(i) *Person extending credit through credit cards.* The term *person extending credit through the use of credit cards or similar devices* under section 7603(b)(2)(C) generally includes any person who issues a credit card. The term does not include a seller of goods or services who honors credit cards issued by other parties but who does not extend credit through the use of credit cards or similar devices.

(ii) *Devices similar to credit cards.* An object is a device similar to a credit card under section 7603(b)(2)(C) only if it is physical in nature, such as a charge plate or similar device that may be tendered to obtain an extension of credit. Thus, a person who extends credit by requiring customers to sign sales slips without requiring the use of, or reference to, a physical object issued by that person is not a third-party recordkeeper under section 7603(b)(2)(C).

(iii) *Debit cards.* A debit card is not a credit card or similar device because a debit card is not tendered to obtain an extension of credit.

(4) *Enrolled agent.* A person is an enrolled agent under section 7603(b)(2)(I) for purposes of determining whether that person is a third-party recordkeeper if the person is

enrolled as an agent authorized to practice before the Internal Revenue Service pursuant to Circular 230, 31 CFR part 10.

(5) *Owner or developer of certain computer code and data.* An owner or developer of computer software source code under section 7603(b)(2)(J) is a third-party recordkeeper when summoned to produce a computer software source code (as defined in section 7612(d)(2)), or an executable code and associated data described in section 7612(b)(1)(A)(ii), even if that person did not make or keep records of another person's business transactions or affairs.

(b) *When third-party recordkeeper status arises*—(1) *In general.* Except as provided in paragraph (a)(5) of this section, a person listed in section 7603(b)(2) is a third-party recordkeeper for purposes of section 7609(c)(2)(E) and § 301.7603-1 only if the summons served on that person seeks records (or testimony regarding such records) of a third party's business transactions or affairs and such recordkeeper made or kept the records in the capacity of a third-party recordkeeper. For instance, an accountant is not a third-party recordkeeper (by reason of being an accountant) with respect to the accountant's records of a sale of property by the accountant to another person. Similarly, a credit card issuer is not a third-party recordkeeper (by reason of being a person extending credit through the use of credit cards or similar devices) with respect to—

(i) Records relating to non-credit card transactions, such as a cash sale by the issuer to a holder of the issuer's credit card; or

(ii) Records relating to transactions involving the use of another issuer's credit card.

(2) *Examples.* The rules of paragraph (b)(1) of this section are illustrated by the following examples:

*Example 1.* V issues a credit card (the V card) that is honored by R, a retailer. When using the V card, C, a customer, signs a sales slip in triplicate. C, R, and V each retain one copy. Only the copy held by V is held by a third-party recordkeeper under section 7603(b)(2), even though R may issue its own credit card.

*Example 2.* R, a retailer, issues its own credit card (the R card) to C, a customer. When C makes a credit purchase from R using the R card, C signs a sales slip in duplicate. C and R each retain one copy. Because R keeps the copy in its capacity as credit card issuer, as well as in its capacity as a retailer, it is a third-party recordkeeper under section 7603(b)(2) with respect to its copy of the sales slip.

(c) *Effective date.* This section is applicable on the date the final

regulations are published in the **Federal Register**.

**Par. 4.** Sections 301.7609–1 through 301.7609–5 are revised to read as follows:

**§ 301.7609–1 Special procedures for third-party summonses.**

(a) *In general*—(1) Section 7609 requires the Internal Revenue Service (IRS) to follow special procedures when summoning a third party's testimony, records, or computer software source code. Except as provided in § 301.7609–2(b), the IRS must provide notice of a third-party summons to any person identified in the summons, other than the person summoned. A person entitled to notice of a third-party summons may intervene in any proceeding brought to enforce the summons or may bring a proceeding to quash the summons, regardless of whether they receive notice of the summons from the IRS pursuant to section 7609(a) and § 301.7609–2.

(2) Neither section 7609 nor § 301.7603–1, § 301.7603–2, or §§ 301.7609–1 through 301.7609–5 limit the IRS's ability to obtain information, other than by summons, through formal or informal procedures authorized by sections 7601 and 7602.

(b) *Cross references.* See § 301.7609–2 for rules relating to persons who must be notified of a third-party summons and exceptions to the notification requirements. See § 301.7609–3 for rules relating to the rights and duties of summoned parties. See § 301.7609–4 for rules relating to actions to quash a summons or to intervene in a summons enforcement proceeding. See § 301.7609–5 for rules relating to the suspension of periods of limitations.

(c) *Records.* For purposes of §§ 301.7609–1 through 301.7609–5, the term "records" includes books, papers, or other data.

(d) *Effective date.* This section is applicable on the date the final regulations are published in the **Federal Register**.

**§ 301.7609–2 Notification of persons identified in third-party summonses.**

(a) *In general*—(1) *Persons entitled to notice.* Except as provided in § 301.7609–2(b), the Internal Revenue Service (IRS) shall give notice of a third-party summons to any person, other than the person summoned, who is identified in the summons. The only persons so identified are the person with respect to whose liability the summons is issued and any other person identified in the description of summoned records or testimony. For example, if the IRS issues a summons to

a bank with respect to the liability of C that requires the production of account records of A and B, both of whom are named in the summons, the IRS must notify A, B and C of the summons.

(2) *Time for providing notice.* If notice is required by paragraph (a)(2) of this section, such notice must be given within three days of the date on which the summons is served on the third party, but no later than 23 days prior to the date fixed in the summons as the date on which the examination of the summoned person or records is scheduled.

(3) *Methods for serving notice.* Notice may be served by hand delivery to any person entitled to notice or by leaving notice at such person's last and usual place of abode. Notice also may be served by certified or registered mail to the person's last known address, as defined in § 301.6212–2. If service to a person entitled to notice is made by certified or registered mail, the date of service is the date on which the notice is mailed.

(4) *Content of the notice.* Notice required to be given to any person entitled to notice must be accompanied by a copy of the summons that has been served and must include an explanation of the right to bring a proceeding to quash the summons. The copy of the summons accompanying the notice is not required to contain the attestation that appears pursuant to section 7603 on the copy of the summons served on the summoned person.

(b) *Exceptions.* The IRS is not required to provide notice to persons identified in the following third-party summonses:

(1) *Summons served on the taxpayer.* The IRS is not required to provide notice of a summons served on the person with respect to whose liability the summons was issued, or any officer or employee of such person.

(2) *Existence of records.* The IRS is not required to provide notice in the case of a summons issued to determine whether or not records of the business transactions or affairs of a person identified in the summons have been made or kept.

(3) *Numbered account or similar arrangement.* The IRS is not required to provide notice in the case of a summons issued solely to determine the identity of a person having a numbered account or similar arrangement with a bank or other institution. An account is a numbered account or similar arrangement within the meaning of this paragraph (b)(3) if it is an account through which a person may authorize transactions solely through the use of a number, symbol, code name, or other

device not involving the disclosure of the person's identity. The term *person having a numbered account or similar arrangement* includes the person who opened the account and any person authorized to access the account or to receive records or statements concerning it.

(4) *Summonses in aid of the collection of liabilities*—(i) *In general.* The IRS is not required to provide notice in the case of a summons issued in aid of the collection of liabilities. A summons is in aid of the collection of liabilities within the meaning of this paragraph if it is issued in connection with the collection of—

(A) An assessment or judgment against the person with respect to whose liability the summons is issued; or

(B) The liability determined at law or in equity of any transferee or fiduciary of a person described in paragraph (b)(4)(i)(A) of this section.

(ii) *Examples.* The rules of paragraph (b)(4) of this section are illustrated by the following examples:

*Example 1.* A third-party summons is issued to a bank to determine the amount held in an account in the name of A, against whom unpaid income taxes have been assessed. Notice of the summons is not required to be given to A or any other persons identified in the summons because the summons is issued in connection with the collection of taxes that have been assessed.

*Example 2.* A third-party summons is issued to determine whether assessments should be made against A, who is potentially liable for a trust fund recovery penalty under section 6672 with respect to the assessed but unpaid withholding tax liability of employer E. The summons is captioned: In the matter of A. Notice of the summons must be provided to A and to any other persons identified in the summons because the summons was issued with respect to A's potential, unassessed liability under section 6672.

(5) *Summonses issued by a criminal investigator.* The IRS is not required to provide notice in the case of a summons issued by a criminal investigator to a person other than a third-party recordkeeper, as defined in section 7603(b). For purposes of section 7609(c)(2)(E), a summons issued by a criminal investigator is any summons issued as part of a criminal investigation by an IRS officer or employee having authority to conduct a criminal investigation and to issue a summons.

(6) *John Doe summons.* The IRS is not required to provide notice in the case of a John Doe summons issued under section 7609(f).

(7) *Summons issued pursuant to a court order to prevent spoliation of evidence.* The IRS is not required to

provide notice in the case of a summons for which a court determines there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.

(c) *Effective date.* This section is applicable on date the final regulations are published in the **Federal Register**.

**§ 301.7609–3 Duty of and protection for the summoned party.**

(a) *Duty of the summoned party.* Upon receipt of a summons, the summoned party must begin to assemble the summoned records. The summoned party must be prepared to produce the summoned records on the date on which the summons states that they are to be examined, regardless of the institution or anticipated institution of a proceeding to quash or the summoned party's intervention in a proceeding to quash, as allowed under section 7609(b)(2)(C).

(b) *Disclosing summoned party not liable—(1) In general.* A summoned party, or an agent or employee thereof, who makes a disclosure of records or gives testimony as required by a summons in good faith reliance on the certificate of the Secretary (as defined in paragraph (b)(2) of this section) or an order of a court requiring production of records or giving of testimony, will not be liable for any claim arising from such disclosure brought by any customer, any party with respect to whose tax liability the summons was issued, or any other person.

(2) *Certificate of the Secretary.* The Secretary may issue to the summoned party a certificate if the person with respect to whose liability the summons was issued expressly consents to the examination of the records summoned and the taking of testimony. The Secretary also may issue to the summoned party a certificate stating that—

(i) The 20-day period within which a person entitled to notice of the summons may institute a proceeding to quash the summons has expired; and

(ii) No proceeding has been instituted within that period.

(c) *Reimbursement of costs.* Summoned third parties may be entitled to reimbursement of their costs of assembling and preparing to produce summoned records, to the extent allowed by section 7610 and § 301.7610–1.

(d) *Notification of suspension of periods of limitations in connection with a John Doe summons—(1) Requirement of notification.* If any periods of limitations are suspended under section 7609(e)(2) and § 301.7609–5(d) with respect to a John Doe summons described in section 7609(f), the summoned party is required under section 7609(i)(4) to provide notice of such suspension to all persons with respect to whose liability the summons was issued.

(2) *Content of notification.* A summoned party required to notify a person of the suspension of the periods of limitations shall provide the following information to such person—

(i) A John Doe summons was served on the summoned party seeking records that may be relevant to the person's tax liability;

(ii) The date on which the summons was served;

(iii) The tax period(s) to which the summons relates;

(iv) Six months has passed since service of the summons and the summoned party's response to the summons has not been finally resolved;

(v) The periods of limitations under section 6501 (relating to assessment and collection) and section 6531 (relating to criminal prosecution), have been suspended; and

(vi) The date on which suspension of the periods of limitations under sections 6501 and 6531 began.

(3) *Time and manner of notification.* The notification must be made in writing and may be delivered in person, by mail sent to the address last known by the summoned party, or by use of any electronic means of transmission. Notification should be made as soon as possible after the suspension of the periods of limitations begins. Failure by a summoned party to give notice of the suspension of periods of limitations as required by section 7609(i)(4) does not prevent the suspension of the periods of limitations under section 7609(e)(2).

(e) *Effective date.* This section is applicable on the date the final regulations are published in the **Federal Register**.

**§ 301.7609–4 Right to intervene; right to institute a proceeding to quash.**

(a) *Intervention in proceeding with respect to enforcement of a summons.* Under section 7609(b)(1), a person entitled to notice of a summons under section 7609(a) and § 301.7609–2 is entitled to intervene in any proceeding brought under section 7604 with respect to the enforcement of that summons.

(b) *Right to institute a proceeding to quash—(1) In general.* Under section

7609(b), a person entitled to notice of a summons under section 7609(a) and § 301.7609–2 may institute a proceeding to quash the summons in the United States district court for the district in which the summoned person resides or is found.

(2) *Requirements for a proceeding to quash.* To institute a proceeding to quash a summons, a person entitled to notice of the summons must, not later than the 20th day following the day the notice of the summons was served on or mailed to such person—

(i) File a petition to quash a summons in the name of the person entitled to notice of the summons in the proper district court;

(ii) Notify the Internal Revenue Service (IRS) by sending a copy of that petition to quash by registered or certified mail to the IRS employee and office designated in the notice of summons to receive the copy; and

(iii) Notify the summoned person by sending by registered or certified mail a copy of the petition to quash to the summoned person.

(3) *Failure to give timely notice.* If a person entitled to notice of the summons fails to give proper and timely notice to either the summoned person or the IRS in the manner described in paragraph (b)(2) of this section, that person has failed to institute a proceeding to quash and the district court lacks jurisdiction to hear the proceeding. For example, if the person entitled to notice mails a copy of the petition to the summoned person, but fails to mail a copy of the petition to the designated IRS employee and office, the person entitled to notice has failed to institute a proceeding to quash. Similarly, if the person entitled to notice mails a copy of such petition to the summoned person but, instead of sending a copy of the petition by registered or certified mail to the designated IRS employee and office, the person entitled to notice provides the designated IRS employee and office the petition by some other means, the person entitled to notice has failed to institute a proceeding to quash.

(4) *Failure to institute a proceeding to quash.* If a person entitled to notice fails to institute a proceeding to quash within 20 days following the day the notice of the summons was served on or mailed to such person, the IRS may examine the summoned records and take summoned testimony following the 23rd day after notice of the summons was served on or mailed to the person entitled to notice.

(c) *Presumption no notice has been mailed.* Section 7609(b)(2)(B) permits a person entitled to notice to institute a

proceeding to quash by filing a petition in district court and notifying both the IRS and the summoned person. Unless the person entitled to notice has notified both the IRS and the summoned person in the appropriate manner, the person entitled to notice has failed to institute a proceeding to quash. For the purpose of permitting the IRS to examine the summoned witnesses and records, it is presumed that the notification was not timely mailed if the copy of the petition was not delivered to the summoned person or to the person and office designated to receive the notice on behalf of the IRS within three days after the close of the 20-day period allowed for instituting a proceeding to quash.

(d) *Effective date.* This section is applicable on the date the final regulations are published in the **Federal Register**.

#### **§ 301.7609-5 Suspension of periods of limitations.**

(a) *In general.* Except in the case of a summons that is a designated or related summons described in section 6503(j), the following rules relating to the suspension of certain periods of limitations apply to all third-party summonses subject to the notice requirements of section 7609(a) and to all John Doe summonses subject to the requirements of section 7609(f).

(b) *Intervention in an action to enforce the summons—(1) In general.* If a person entitled to notice of a summons under section 7609(a) and § 301.7609-2 with respect to whose liability the summons was issued, or such person's agent, nominee, or other person acting under the direction or control of the person entitled to notice, takes any action to intervene in a proceeding with respect to enforcement of such summons brought pursuant to section 7604, that person's periods of limitations under sections 6501 (relating to assessment and collection) and 6531 (relating to criminal prosecutions) for the tax period or periods that are the subject of the summons are suspended for the period during which such proceeding is pending.

(2) *Action to intervene.* A person entitled to notice takes any action to intervene in a proceeding to enforce a summons within the meaning of § 301.7609-4(a) on the date when a motion to intervene is filed with the court.

(c) *Institution of a proceeding to quash a summons—(1) In general.* If a person entitled to notice of a summons under section 7609(a) and § 301.7609-2 with respect to whose liability the summons was issued, or such person's agent, nominee, or other person acting

under the direction or control of such person, takes any action described in § 301.7609-4(b) to institute a proceeding to quash such summons, that person's periods of limitations under sections 6501 and 6531 for the tax period or periods that are the subject of the summons are suspended for the period during which such proceeding is pending.

(2) *Action to institute a proceeding to quash a summons.* A person entitled to notice takes any action to institute a proceeding to quash if he or she files a petition to quash the summons in any district court, regardless of whether the timely filing requirements of section 7609(b)(2)(A) or the notice requirements of section 7609(b)(2)(B) are satisfied. For example, a person entitled to notice takes an action to institute a proceeding to quash a summons for purposes of this section if that person files a petition to quash the summons in district court and notifies the summoned person by sending a copy of the petition by registered or certified mail, but fails to mail a copy of that notice to the appropriate Internal Revenue Service (IRS) person and office.

(d) *Summoned party's failure to finally resolve the response to a summons after six months from service—(1) In general.* If a third party's response to a summons for which the IRS was required to provide notice to persons identified in the summons, or to a John Doe summons described in section 7609(f), is not finally resolved within six months after the date of service of the summons, the periods of limitations are suspended under sections 6501 and 6531, for the person with respect to whose liability the summons was issued and for any person whose identity is sought to be obtained by a John Doe summons, for the tax period or periods that are the subject of the summons. The suspension shall begin on the date which is six months after the service of the summons and shall end on the date on which there is a final resolution of the summoned party's response to the summons.

(2) *Example.* The rules of paragraph (d)(1) of this section are illustrated by the following example:

*Example.* A John Doe summons is issued on April 1, 2000, to the promoter of a tax shelter and seeks the names of all participants in the shelter in order to investigate the participants' income tax liabilities for 1997 and 1998. The district court approves service of the summons on April 30, 2000, and the summons is served on the promoter on May 1, 2000. The promoter does not provide the names of the participants. The periods of limitations for the participants' income tax liabilities and

criminal prosecution for 1997 and 1998 are suspended under section 7609(e)(2) beginning on November 1, 2000, the date which is six months after the date the John Doe summons was served until the date on which the promoter's response to the summons is finally resolved.

(e) *Definitions—(1) Agent, nominee, etc.* A person is the agent, nominee, or other person of a person entitled to notice under section 7609(a) and § 301.7609-2, and is acting under the direction or control of the person entitled to notice for purposes of section 7609(e)(1), if the person entitled to notice has the ability in fact or at law to cause the agent, nominee or other person, to take the actions permitted under section 7609(b).

(2) *Period during which a proceeding is pending—(i) Intervention in an enforcement proceeding.* The period during which the periods of limitations under sections 6501 and 6531 are suspended under section 7609(e)(1) begins on the date any person described in paragraph (b) of this section intervenes in an action to enforce the summons. The periods of limitations remain suspended until all appeals are disposed of, or until the expiration of the period during which an appeal may be taken or a request for further review may be made. The periods of limitations remain suspended for the period during which a proceeding is pending, regardless of compliance (or partial compliance) with the summons during that period. If, following issuance of an order to enforce a third-party summons, a collateral proceeding is brought challenging whether production made by the summoned party fully satisfied the court order and whether sanctions should be imposed against the summoned party for a failure to satisfy that order, the periods of limitations remain suspended until all appeals of the collateral proceeding are disposed of, or until the expiration of the period during which an appeal may be taken or a request for further review of the collateral proceeding may be made. Any collateral proceeding to the original proceeding shall be considered to be a continuation of the original proceeding.

(ii) *Proceeding to quash a summons.* The period during which the periods of limitations under sections 6501 and 6531 are suspended under section 7609(e)(1) begins on the date any person described in paragraph (c) of this section files a petition to quash the summons in district court. The periods of limitations remain suspended until all appeals are disposed of, or until expiration of the period in which an appeal may be taken or a request for further review may be made. The

periods of limitations remain suspended for the period during which a proceeding is pending, regardless of compliance (or partial compliance) with the summons during that period.

(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 1998. The summons is served on A on March 1, 2000. B files a petition to quash the summons in district court on March 15, 2000. The district court dismisses B's petition on July 1, 2000. 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 1998 under sections 6501 and 6531 are suspended under section 7609(e)(1) from March 15, 2000, the date B filed a petition to quash, until August 30, 2000, 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 1999. The summons is served on A on June 1, 2001. B files an untimely petition to quash the summons in district court on June 30, 2001. The district court dismisses B's petition on July 31, 2001. B does not file an appeal of the district court's order. The periods of limitations applicable to B for 1999 under sections 6501 and 6531 are suspended under section 7609(e)(1) from June 30, 2001, the date B filed an untimely petition to quash, until September 29, 2001, 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 are disposed of or the period in which an appeal may be taken or 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. If, following an enforcement order, collateral proceedings 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 or when the period in which an appeal may be taken or a request for further review may be made has expired.

(f) *Effective date.* This section is applicable on the date the final regulations are published in the **Federal Register**.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

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## **OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

### **29 CFR Part 2201**

#### **Regulations Implementing the Freedom of Information Act**

**AGENCY:** Occupational Safety and Health Review Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Occupational Safety and Health Review Commission (OSHRC) is proposing to revise its regulations implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. The proposed regulations contain new provisions to comply with Executive Order 13392. In addition, the proposed regulations have been updated to reflect changes in OSHRC's policies and procedures. As a result of these proposed amendments, the public will have a clearer understanding of OSHRC's policies and procedures implementing the FOIA.

**DATES:** Submit comments on or before August 21, 2006.

**ADDRESSES:** You may submit comments by any of the following methods:

- E-mail: [regsdocket@oshrc.gov](mailto:regsdocket@oshrc.gov). Include "FOIA PROPOSED RULEMAKING" in the subject line of the message.
- Fax: (202) 606-5417.
- Mail: 1120 20th Street, NW., Ninth Floor, Washington, DC 20036-3457.
- Hand Delivery/Courier: Same as mailing address.

*Instructions:* All submissions must include your name, return address and e-mail address, if applicable. Please clearly label submissions as "FOIA PROPOSED RULEMAKING." If you submit comments by e-mail, you will receive an automatic confirmation e-

mail from the system indicating that we have received your submission. If, in response to your comments submitted via e-mail, you do not receive a confirmation e-mail within five working days, please contact us directly at (202) 606-5410.

**FOR FURTHER INFORMATION CONTACT:** Jin H. Kim, Attorney-Advisor, Office of the General Counsel, via telephone: (202) 606-5410, or via e-mail: [jkim@oshrc.gov](mailto:jkim@oshrc.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The Occupational Safety and Health Review Commission (OSHRC) proposes several substantive and technical revisions governing its regulations implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. OSHRC proposes revising its FOIA regulations, including the addition of new provisions and the modification of existing provisions, to comply with Executive Order 13392 (E.O. 13392), 70 FR 75373, December 19, 2005. In E.O. 13392, the President directs each agency to ensure that its FOIA operations treat FOIA requesters courteously and appropriately and to provide requesters with prompt information regarding the status of their FOIA requests, as well as appropriate information regarding the agency's response. In addition, each agency is to provide FOIA requesters and the public in general with "citizen-centered" ways to learn about the agency's FOIA process and how to receive agency records that are publicly available. By ensuring that its FOIA operations are "citizen-centered" and "results-oriented," each agency will improve service and performance, thereby strengthening compliance with the FOIA.

In order to achieve these goals, E.O. 13392 requires each agency head to designate a Chief FOIA Officer, who has agency-wide responsibility for the efficient and appropriate compliance with the FOIA. As part of his or her duties under E.O. 13392, the Chief FOIA Officer must review the agency's FOIA operations and identify any areas for improvement. In addition, E.O. 13392 requires agencies to establish FOIA Requester Service Centers to enable any FOIA requester to seek information concerning the status of his or her FOIA request as well as appropriate information about the agency's FOIA response. As part of the FOIA Requester Service Center, E.O. 13392 further requires an agency to designate its own FOIA Public Liaison(s) to serve as the supervisory official(s) to whom a FOIA