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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1631

Availability of Records

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Federal Retirement Thrift Investment Board (Agency) is amending its regulations on availability of records to establish the manner of service for administrative subpoenas issued by the Agency and to delegate authority to the Agency's General Counsel to issue administrative subpoenas. These changes implement section 107 of the Thrift Savings Plan Enhancement Act of 2009, which gave the Agency authority to issue subpoenas duces tecum in order to carry out the Agency's functions.

DATES: This final rule is effective February 26, 2010.

FOR FURTHER INFORMATION CONTACT: Laurissa Stokes at 202-942-1645.

SUPPLEMENTARY INFORMATION: The Agency administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401-79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

This regulation was published in proposed form on January 19, 2010 (75 FR 2822). No comments were received.

Issuance of Subpoenas

Section 107 of the Thrift Savings Plan Enhancement Act of 2009 ("the Act"),

Public Law 111-31 (123 Stat. 1776, 1853)(codified at 5 U.S.C. 8480) authorizes the Agency to issue administrative subpoenas to compel production of designated books, documents, records, electronically stored information, or tangible things. The Agency, like other financial institutions, has been the subject of fraudulent withdrawals from its participants' accounts. The Agency anticipates using its subpoena authority to obtain information necessary to prevent or investigate fraudulent or otherwise improper routing of participants' money to financial institutions.

The Agency, therefore, needs an expeditious means to obtain information from financial institutions to which participants' money is transferred. Prompt action and cooperation from financial institutions is the best way to recover or deter fraudulent or improper routing of participants' money.

This regulation provides three means by which the Agency may serve an administrative subpoena: (1) Certified or registered mail, return receipt requested, (2) fax or electronic transmission, provided the subpoenaed party gives prior approval, or (3) personal delivery at the principal place of business or the last known residential address of the subpoenaed party. This regulation also delegates authority to the General Counsel to issue administrative subpoenas.

Allowing the use of several alternative means to accomplish service is intended to facilitate expeditious cooperation between the Agency and financial institutions in an effort to prevent or investigate fraudulent withdrawals and transfers. Delegation to the General Counsel of the authority to issue administrative subpoenas is intended to expedite the issuances of subpoenas, e.g. by removing the need for the staff of the Office of General Counsel to seek Executive Director approval for issuances that are routine or urgent.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal employees and members of the uniformed services who participate in the Thrift Savings Plan, which is a Federal defined contribution retirement savings plan created under the Federal

Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514, and which is administered by the Agency. Although it will also occasionally require financial institutions to provide information, such entities rarely constitute small entities. Additionally, this regulation provides the Agency with no new authority; it merely provides guidance on existing statutory authority.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501-1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of \$100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the Agency submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of this rule in the **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects in 5 CFR Part 1631

Government employees, Courts, Freedom of information.

Gregory T. Long,

Executive Director, Federal Retirement Thrift Investment Board.

■ For the reasons stated in the preamble, the Agency amends 5 CFR chapter VI as follows:

PART 1631—AVAILABILITY OF RECORDS

■ 1. Remove the existing authority citation for part 1631.

Subpart A—[Amended]

■ 2. Add an authority citation to subpart A of part 1631 to read as follows:

Authority: 5 U.S.C. 552.

Subpart B—[Amended]

■ 3. Add an authority citation to subpart B of part 1631 to read as follows:

Authority: 5 U.S.C. 552.

■ 4. Add subpart C to subpart 1631 to read as follows:

Subpart C—Administrative Subpoenas

Sec.

- 1631.40 Subpoena authority.
- 1631.41 Production of records.
- 1631.42 Service.
- 1631.43 Enforcement.

Authority: 5 U.S.C. 8480.

Subpart C—Administrative Subpoenas**§ 1631.40 Subpoena authority.**

The Executive Director or General Counsel may issue subpoenas pursuant to 5 U.S.C. 8480. The General Counsel may delegate this authority to a Deputy General Counsel, Associate General Counsel, or Assistant General Counsel.

§ 1631.41 Production of records.

A subpoena may require the production of designated books, documents, records, electronically stored information, or tangible materials in the possession or control of the subpoenaed party when the individual signing the subpoena has determined that production is necessary to carry out any of the Agency's functions.

§ 1631.42 Service.

(a) *Return of service.* Each subpoena shall be accompanied by a Return of Service certificate stating the date and manner of service and the names of the persons served.

(b) *Methods of service.* Subpoenas shall be served by one of the following methods:

(1) Certified or registered mail, return receipt requested to the principal place of business or the last known residential address of the subpoenaed party.

(2) Fax or electronic transmission to the subpoenaed party or the subpoenaed party's counsel, provided the subpoenaed party gives prior approval.

(3) Personal delivery at the principal place of business or residence of the subpoenaed party during normal business hours.

§ 1631.43 Enforcement.

Upon the failure of any party to comply with a subpoena, the General Counsel shall request that the Attorney General seek enforcement of the

subpoena in the appropriate United States district court.

[FR Doc. 2010–3917 Filed 2–25–10; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[TD 9477]

RIN 1545–BI14

Use of Controlled Corporations To Avoid the Application of Section 304; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final and temporary regulations (TD 9477) that were published in the **Federal Register** on Wednesday, December 30, 2009 (74 FR 69021) regarding certain transactions that are subject to section 304 but that are entered into with a principal purpose of avoiding the application of section 304 to a corporation that is controlled by the issuing corporation in the transaction, or with a principal purpose of avoiding the application of section 304 to a corporation that controls the acquiring corporation in the transaction.

DATES: These corrections are effective on February 26, 2010 and are applicable on or after December 29, 2009.

FOR FURTHER INFORMATION CONTACT: Sean W. Mullaney, (202) 622–3860 (not a toll free number).

SUPPLEMENTARY INFORMATION:**Background**

The final and temporary regulations (TD 9477) that are the subject of these corrections are under section 304 of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations (TD 9477) contain an error that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

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

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.304–4T is amended by revising paragraph (e) to read as follows:

§ 1.304–4T Special rule for the use of related corporations to avoid the application of section 304 (temporary).

* * * * *

(e) *Expiration date.* This section expires on or before December 28, 2012.

Diane Williams,

Federal Register Liaison, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2010–3927 Filed 2–25–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR**Employee Benefits Security Administration****29 CFR Parts 2560 and 2570**

RIN 1210–AB31

Civil Penalties Under ERISA Section 502(c)(8)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains a final regulation that establishes procedures relating to the assessment of civil penalties by the Department of Labor under section 502(c)(8) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act). Under the provision, which was added by the Pension Protection Act of 2006, the Secretary of Labor is granted authority to assess civil penalties not to exceed \$1,100 per day against any plan sponsor of a multiemployer plan for certain violations of section 305 of ERISA. The regulation will affect multiemployer plans that are in either endangered or critical status.

DATES: This final rule is effective on March 29, 2010.

FOR FURTHER INFORMATION CONTACT: Michael Del Conte, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: