DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–131756–11]

RIN 1545–BL51

Transactions Between Related Persons and Partnerships; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects a notice of proposed rulemaking (REG–131756–11) published in the **Federal Register** on November 27, 2023, containing proposed regulations that would update regulations regarding whether persons are treated as related persons who are subject to certain special rules pertaining to transactions with partnerships.

DATES: Written or electronic comments were to be received by February 26, 2024.

ADDRESSES: Commenters were strongly encouraged to submit public comments electronically.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, relating to section 267, Livia Piccolo, (202) 317–7007 (not a toll-free number); concerning the proposed regulation relating to section 707, Charles D. Wien, (202) 317–5279 (not a toll-free number); concerning submissions of comments or the public hearing, Vivian Hayes, (202) 317–6901 (not toll-free number) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–131756–11) that is the subject of this correction is under sections 267 and 707 of the Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–131756–11) contains an error that needs to be corrected.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–131756–11) that is the subject of FR Doc. 2023–25715, published on November 27, 2023, is corrected on page 82792, in the third column, by correcting the fifth line of the heading to read ''1545–BL51''.

Oluwafunmilayo A. Taylor,

Section Chief, Publications and Regulations Section, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2024–06136 Filed 3–21–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–117542–22]

RIN 1545–BQ96

Advance Notice of Third-Party Contacts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the notice that the IRS must provide to a taxpayer in advance of IRS contact with a third party with respect to the determination or collection of the taxpayer's tax liability, to reflect amendments made to the applicable tax law by the Taxpayer First Act of 2019. The regulations would affect taxpayers to whom the IRS must provide advance notice of IRS contact with such third parties.

DATES: Electronic or written comments and requests for a public hearing must be received by May 21, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and IRS REG–117542–22) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for Public Hearing'' section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish any comments submitted electronically or on paper to the public docket. *Send paper submissions to:* CC:PA:01:PR (REG–117542–22), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Brittany Harrison of the Office of the Associate Chief Counsel (Procedure and Administration), (202) 317–6833 (not toll-free number); concerning the submission of comments and requests for a public hearing, Vivian Hayes, (202) 317–6901 (not toll-free number) or by sending an email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations that would amend the Procedure and Administration Regulations (26 CFR part 301) relating to the advance notice of IRS contact with third parties that must be provided to taxpayers under section 7602(c) of the Internal Revenue Code (Code).

Generally, the Federal tax system relies upon taxpayers' self-assessment and reporting of their tax liabilities. The expansive information-gathering authority that Congress has granted to the Secretary of the Treasury or her delegate (Secretary) under the Code includes the IRS's broad examination and summons authority, which allows the IRS to determine the accuracy of that self-assessment. *See United States* v. *Arthur Young & Co.,* 465 U.S. 805, 816 (1984). Section 7602(a) provides that, for the purpose of ascertaining the correctness of any return, making a return in cases in which none has been made, determining the liability of any person for any internal revenue tax, or collecting any such liability, the Secretary is authorized to examine books and records, issue summonses seeking documents and testimony, and take testimony from witnesses under oath as may be relevant or material. Section 7602(b) further provides that the purposes for which the Secretary may examine books and records, issue summonses, and take testimony under oath include the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws.

Section 7602(c) was added to the Code by section 3417 of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206, 112 Stat. 685 (RRA 98). Section 7602(c)(1), as added by RRA 98, required that the IRS provide the taxpayer ''reasonable notice in advance'' before it contacted a third party with respect to the determination or collection of the tax liability of such taxpayer. Final regulations interpreting and implementing section 7602(c) as enacted by RRA 98 were promulgated in 2002. TD 9028 (67 FR 77419). Section 301.7602–2(d)(1) of the Procedure and Administration Regulations provides that the pre-contact notice may be given either orally or in writing. If notice is written, it may be given in any manner that the IRS employee who gives such notice reasonably believes will be received by the taxpayer prior to the contact with the third party. Written notice is considered reasonable if it is mailed to the taxpayer's last known address, given in person, left at the taxpayer's dwelling or usual place of business, or actually received by the taxpayer. Section 301.7602–2(d)(2) provides that taxpayers need not be given pre-contact notice for contacts with third parties of which advance notice otherwise has been provided to the taxpayer pursuant to another statute, regulation, or administrative procedure.

Section 1206 of the Taxpayer First Act of 2019 (TFA), Public Law 116–25 (133 Stat. 981), which was enacted into law on July 1, 2019, amended section 7602(c)(1) to provide that IRS officers or employees may not contact a third party with respect to the determination or collection of the tax liability of a taxpayer unless the IRS first provides the taxpayer with advance notice meeting certain requirements. The notice must specify the period, not to exceed one year, during which the IRS intends to make the contact. The IRS must provide the notice to the taxpayer no later than 45 days before the beginning of such period, except as otherwise provided by the Secretary. The IRS may issue multiple notices to the same taxpayer with respect to the same tax liability that, taken together, cover an aggregate period greater than one year. The IRS may not issue a notice under section 7602(c) unless the IRS intends, at the time the notice is issued, to contact third parties during the period specified in that notice. The IRS may meet this intent requirement based on the assumption that the information sought to be obtained by the contact will not be obtained by other means before such contact. The TFA amendments apply to notices provided, and contacts made, after August 15, 2019.

Explanation of Provisions

I. Overview

These proposed regulations would update the regulations in § 301.7602–2(a) and (d) pertaining to the advance notice that must be provided to taxpayers prior to IRS contact with third parties to conform to the new statutory language of section 7602(c). These proposed regulations also would provide, pursuant to the Secretary's authority in section 7602(c)(1)(B), exceptions to the 45-day advance notice requirement if delaying contact with third parties for 45 days after providing notice to the taxpayer would impair tax administration. In these situations, the 45-day advance notice period is proposed to be reduced or eliminated to ensure sufficient time for the IRS to properly conduct certain time-sensitive examination or collection activities.

II. Notice of Third-Party Contacts

The proposed regulations would amend § 301.7602–2(a) and (d) pertaining to third-party contacts to implement the amendments made to section 7602(c)(1) by section 1206 of the TFA. Like existing § 301.7602–2(a), proposed § 301.7602–2(a)(1) would provide that, subject to the exceptions in existing § 301.7602–2(f), IRS officers or employees may not contact third parties with respect to the determination or collection of the tax liability of a taxpayer unless the requirements of section 7602(c) and proposed § 301.7602–2(d) have been satisfied. The exceptions in existing § 301.7602–2(f) implement the statutory exceptions set forth in section 7602(c)(3) prior to, and unaffected by, the TFA.

In cases not covered by the exceptions in section 7602(c)(3) and existing § 301.7602–2(f), proposed § 301.7602–2(d)(1) would implement the requirements of section 7602(c)(1) as amended by the TFA that IRS officers or employees may not contact third parties with respect to the determination or collection of the tax liability of a taxpayer unless the IRS provides advance notice to the taxpayer (third-party contact notice). The third-party contact notice must specify a period, not to exceed one year, during which the contact is intended to occur and inform the taxpayer that third-party contacts are intended to be made during such period. Proposed § 301.7602–2(d)(1) further provides that the third-party contact notice must be in writing. The requirement that the third-party contact notice be in writing is intended to ensure compliance with the advance notice requirement and to eliminate any potential confusion as to the date on which notice was provided to the taxpayer or the contents of the third-party contact notice. Subject to certain enumerated exceptions described in part III of this Explanation of Provisions, proposed § 301.7602–2(d)(1)(iii) would implement the requirement of section 7602(c)(1)(B) that the third-party contact notice generally must be provided to the taxpayer no later than 45 days before the beginning of the period in which the contact is intended to be made (45-day advance notice period). Proposed § 301.7602–2(d)(2) would further provide the methods by which the IRS will provide a third-party contact notice to the taxpayer, which are similar to the methods set forth in existing § 301.7602–2(d)(1)(i) through (iv).

As provided in the second sentence of section 7602(c)(1), proposed § 301.7602–2(d)(3) provides that the IRS is not prevented from issuing successive notices to the same taxpayer with respect to the same tax liability for periods (each not greater than one year) that, in the aggregate, exceed one year.

As provided in the third and fourth sentences of section 7602(c)(1), proposed § 301.7602–2(d)(4) would provide that no third-party contact notice will be issued under proposed § 301.7602–2(d) unless there is an intent at the time such notice is issued to contact persons other than the taxpayer during the period specified in such notice, which intent may be met by the IRS on the basis of the assumption that the information sought to be obtained by the third-party contact will not be obtained by other means before such contact.

III. Exceptions to the 45-Day Advance Notice Requirement

Proposed § 301.7602–2(d)(5) provides several exceptions to the 45-day advance notice requirement, in particular with respect to the IRS's fuel compliance program, nonjudicial redemption investigations, and in limited time-sensitive circumstances involving assessment or collection of tax.

A. Fuel Compliance Program

Section 4081 of the Code imposes an excise tax on certain motor and aviation fuels. Section 4082 of the Code exempts diesel fuel and kerosene from such tax if used for certain nontaxable purposes specified in section 4082(b), including fuel sold for use or used in a train, school bus, or intracity transportation; for farm use; or for an off-highway business use, as defined in section 6421(e)(2) of the Code, except mobile machinery, as defined in section 6421(e)(2)(C). Tax-exempt fuel is required to be indelibly dyed in a minimum concentration specified in § 48.4082–1(b)(1) of the Manufacturers and Retailers Excise Tax Regulations (26 CFR part 48) or otherwise pre-approved by the IRS. Section 4083(d) of the Code provides that in administering sections 4081 through 4084 of the Code the Secretary may enter any place at which taxable fuel is produced or is stored (or may be stored) for purposes of examining the equipment used to determine the amount or composition of such fuel and the equipment used to store such fuel, taking and removing samples of such fuel, and inspecting any books and records and any shipping papers pertaining to fuel. Section 4083(d) further provides that the Secretary may also detain, for these purposes, any container that contains or may contain any taxable fuel. Refusal to admit entry or other refusal to permit an action authorized by section 4083(d) may result in certain penalties under sections 6717 and 7342 of the Code.

Section 6715(a) of the Code provides that a penalty in the amount prescribed in section 6715(b) will be imposed, in addition to any tax, if (1) any dyed fuel is sold or held for sale by any person for any use which such person knows or has reason to know is not a nontaxable use of such fuel, (2) any dyed fuel is held for use or used by any person for a use other than a nontaxable use and such person knew, or had reason to know, that such fuel was so dyed, (3) any person willfully alters, chemically or otherwise, or attempts to so alter, the strength or composition of any dye or marking done pursuant to section 4082 in any dyed fuel, or (4) any person who has knowledge that a dyed fuel which has been altered (as described in section 6715(a)(3)) sells or holds for sale such fuel for any use which the person knows or has reason to know is not a nontaxable use of such fuel. Section 6715(d) provides that if a penalty is imposed under section 6715 on any business entity, each officer, employee, or agent of such entity who willfully participated in any act giving rise to such penalty is jointly and severally liable with such entity for such penalty.

Section 6715A of the Code provides that a person who tampers with a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082, or any operator of a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082 who fails to maintain the security standards for such system as established by the Secretary, must pay a penalty in the amount prescribed in section 6715A(b) in addition to any tax. As with section 6715, if a penalty is imposed under section 6715A on any business entity, each officer, employee, or agent of such entity who willfully participated in any act giving rise to such penalty is jointly and severally liable with such entity for such penalty.

Section 6720A(a) of the Code provides that any person who knowingly transfers for resale, sells for resale, or holds out for resale any liquid for use in a diesel-powered highway vehicle or a diesel-powered train that does not meet applicable Environmental Protection Agency regulations must pay, in addition to any tax, a penalty of $10,000 for each such transfer, sale, or holding out for resale. In addition, section 6720A(b) provides that any person who knowingly holds out for sale (other than for resale) any liquid described in section 6720A(a) must pay a penalty of $10,000 for each such holding out for sale, in addition to any tax on such liquid.

Under the IRS's Fuel Compliance Program, fuel compliance officers and agents (FCO/As) conduct field inspections authorized under section 4083(d). If they discover an improper use of dyed fuel or an improper dye concentration, they determine how the fuel came to be in the vehicles inspected. The individuals and entities inspected by FCO/As may be classified as either taxpayers or third parties, depending on the facts of a given inspection. FCO/As typically cannot know how to classify the parties involved until the inspection is conducted.

One type of inspection conducted by FCO/As occurs after fuel is removed via a terminal rack into a transporting truck or railcar. A terminal is a taxable fuel storage and distribution facility that is supplied by pipeline or vessel and from which taxable fuel may be removed at a rack. A rack is a mechanism capable of delivering taxable fuel, usually through pipes, into a means of transport other than a pipeline or vessel. *See* § 48.4081–1(b). The owner of the terminal rack could be liable for a penalty if the dye concentration is incorrect. Because the transport truck drivers are typically not employed by the owner of the terminal, they may be considered third parties relative to the owner of the terminal. FCO/As require immediate access to the fuel in the loaded transport trucks to determine the correct dye concentration prior to the fuel being delivered into the fuel distribution system. FCO/As also conduct inspections of various vehicles other than those leaving the terminal racks; for example, they may inspect a truck at a weigh station to determine if the truck contains dyed fuel. In such situations FCO/As require the ability to quickly investigate the origin of dyed fuel if impermissible dyed fuel is discovered. For example, if the driver of the vehicle is a company employee and the driver tells the FCO/A that the company owner instructed the driver to use dyed fuel, then the FCO/A ordinarily would want to conduct an investigation at the company's yard as soon as possible to determine culpability.

Requiring that the IRS provide 45 days advance notice of third-party contacts in the context of these fuel compliance examinations would significantly impair the enforcement work performed by FCO/As. Because these inspections are conducted in real time and are not based on a tax return, it is imperative that FCO/As have the ability to obtain information, develop facts, and determine potential liability in real time, given the risk that any delay would result in an inability to properly conduct the examination as information dissipates. For example, dyed diesel fuel may be removed or replaced from an oil drilling rig before the FCO/A is able to complete an investigation. Proposed § 301.7602–2(d)(5)(i) therefore would provide that the IRS may provide same-day third-party contact notices to the taxpayer with respect to contacts intended to be made by the IRS, which would be made after the provision of the third-party contact notice on that day, in connection with investigations involving potential liability for penalties under section 6715, 6715A, or 6720A or in connection with the IRS's exercise of authority under section 4083(d). The IRS would therefore be able to make third-party contacts in these types of investigations immediately after providing the taxpayer with a third-party contact notice.

B. Nonjudicial Sale Redemption Investigations

Creditors may foreclose on property through judicial or nonjudicial processes, as provided by State law. Pursuant to section 7425(b) of the Code, a nonjudicial foreclosure sale will discharge a junior Federal tax lien from real or personal property if a notice of Federal tax lien has been filed more than 30 days before the sale and the foreclosing creditor gives the IRS notice of the sale at least 25 days in advance. Under section 7425(d) of the Code, however, the IRS has 120 days from the date of the nonjudicial foreclosure sale (or longer if provided by State law) to redeem real property from the purchaser. Redemption is accomplished by paying the purchaser the amount paid at the sale, interest, and certain expenses. The purpose of the redemption is for the IRS to sell the real property for a higher amount, a result which would benefit the taxpayer as well, as any additional sale proceeds would satisfy more of the taxpayer's liability or potentially lead to a surplus over the amount of the liability.

Prior to redeeming the property, the IRS must undertake an investigation in order to determine the potential benefits and viability of a potential redemption. The IRS's Civil Enforcement Advisory and Support Office (CEASO) has primary responsibility for receiving and screening nonjudicial sale notices for redemption potential. Generally, if the property value significantly exceeds the nonjudicial sale price, the CEASO refers the case to a revenue officer for a more thorough investigation and, if appropriate, redemption action. Such an investigation may involve the CEASO or the assigned revenue officer discussing the property and foreclosure with third parties. For example, it may be necessary for the IRS to determine the value of the property by researching records or consulting valuation specialists; to gather information about the nonjudicial sale by researching the balances of encumbrances against the property and inquiring about issues that could affect the amount realized through a redemption sale, for example, renter's claims; to notify the nonjudicial sale purchaser of the possible redemption; to secure a guaranteed bidder for the post-redemption sale by contacting prospective bidders or advertising for bids; to obtain management approval for the redemption; to secure funding for the redemption from the revolving fund for redemption of real property under section 7810 of the Code; to deliver the redemption check to the sale purchaser; and to complete the redemption by filing the necessary documentation with the recording office within 120 days from the date of sale. Some of these contacts may be considered third party contacts subject to the 45-day advance notice requirement.

The 45-day advance notice requirement of section 7602(c) would jeopardize the IRS's ability to redeem property. The redemption investigation cannot begin in earnest until after the foreclosure sale, at which point the sale price is known, and which commences the 120-day redemption period. The earliest date that the IRS could give the taxpayer advance notice of third-party contacts is on the date the CEASO receives notice of the sale. The 45-day advance notice period would thus necessarily start after the beginning of the 120-day redemption period, and the IRS may not be able to notify the sale purchaser of the possible redemption until the 46th day of the redemption period. As a consequence, the IRS would have fewer than 74 days to fully determine the redemption potential, negotiate with the purchaser on potentially releasing the IRS's redemption rights, canvas for bidders, secure funding, and complete the redemption process. This is highly unlikely to be feasible. Therefore, proposed § 301.7602–2(d)(5)(ii) would reduce the 45-day advance notice period to 10 days of advance notice in these situations.

C. Statutory Period for Assessment Expiring in One Year or Less

Section 6501(a) of the Code provides that the IRS generally has three years after an original return is filed or three years from the due date of the original return, whichever is later, within which to assess tax with respect to a particular tax year (statutory assessment period). Taxpayers and the IRS may extend the statutory assessment period by agreement under section 6501(c)(4). If the IRS needs to contact third parties in situations in which certain circumstances are present and one year or less remains on the statutory assessment period, tax administration would be impaired if the IRS were required to provide 45 days advance notice to the taxpayer before contacting the third parties.

1. Certain Examination Cases

Proposed § 301.7602–2(d)(5)(iii) would reduce the 45-day advance notice requirement to 10 days of advance notice in certain examinations in which the statutory assessment period will expire one year or less from the date the IRS intends to contact third parties and delaying such contacts for 45 days will impair the government's ability to expeditiously determine and assess tax. This proposed reduction would allow the IRS to move forward and promptly conduct examination activities in cases in which the time to do so is limited and a delay will impair the government's ability to expeditiously determine and assess tax.

The 45-day advance notice period would be reduced to 10 days of advance notice if both the IRS has requested that the taxpayer provide, and the taxpayer has not provided within the time requested, a Form 872, *Consent to Extend the Time to Assess Tax,* to extend the statutory assessment period for a period necessary to complete the examination and other administrative actions, and the IRS case involves an issue or issues with respect to which the burden of proof would rest with the IRS in a court proceeding. The amount of evidence necessary to support the IRS's position will generally be greater in cases in which the IRS would have the burden of proof if a case were to proceed to trial (for example, in cases involving unreported income). The IRS therefore needs additional time within which to attempt to gather this evidence through the use of, among other things, contacts with third parties. Requiring the IRS to wait 45 days prior to making contact with third parties after notifying the taxpayer that such contacts are intended to be made would hinder the IRS's ability to complete its investigation prior to the end of the statutory assessment period and would negatively impact its ability to meet its burden. Proposed § 301.7602–2(d)(5)(iii) would therefore reduce the 45-day advance notice period to 10 days of advance notice in these situations.

2. Trust Fund Recovery Penalty Cases

Proposed § 301.7602–2(d)(5)(iv) would reduce the 45-day advance notice period to 10 days of advance notice in cases in which the IRS's contact with third parties is made as part of an investigation into potential liability for the trust fund recovery penalty (TFRP) under section 6672 of the Code that includes one or more tax periods with one year or less remaining on the assessment statute of limitations as of the date the IRS intends to contact third parties. A revenue officer investigating potential TFRP liability must determine whether a person is both responsible and willful, and multiple persons may be liable for the same TFRP liability, making such investigations highly fact-intensive and challenging. As a result, an investigating revenue officer who is faced with a statutory assessment period that is ending will need to obtain information and documentation from third parties expeditiously in order to identify all responsible persons liable for the TFRP before the statutory assessment period ends. Waiting 45 days to contact third parties may prevent the revenue officer from identifying all responsible persons and from completing the TFRP investigation before the statutory assessment period ends. For example, if a potentially responsible person does not provide requested information and documentation by the deadline set by the revenue officer, provides only part of the information and documentation by the deadline, or asks for one or more extensions of time to respond, a revenue officer faced with a statutory assessment period that is ending will need to obtain information and documentation from third parties. Waiting 45 days before contacting third parties could result in assessments against some but not all responsible persons, assessments made against persons who were not responsible, or assessments against responsible persons who were not willful for some of the tax periods for which the trust fund taxes were not turned over to the IRS.

D. Statutory Period for Collection Expiring in One Year or Less

Section 6502 of the Code provides that the length of the period for collection after assessment of a tax liability generally is 10 years (statutory collection period). The end of the statutory collection period ends the government's right to pursue collection of an unpaid tax liability. If the IRS needs to contact third parties in situations in which certain circumstances are present and one year or less remains on the statutory collection period, tax administration would be impaired if the IRS were required to provide 45 days advance notice to the taxpayer before contacting the third parties.

Proposed § 301.7602–2(d)(5)(v) would reduce the 45-day advance notice requirement to 10 days of advance notice in two situations in which there is one year or less remaining before the statutory collection period ends as of the date the IRS intends to make contact with third parties. The first situation is if providing 45 days advance notice would prevent the IRS from having sufficient time to prepare a suit referral and deliver it to the Department of Justice (DOJ). The second situation is if reducing the 45-day advance notice period to 10 days of advance notice is necessary to allow sufficient time for collection activities.

1. Preparation and Delivery of Suit Referral to DOJ

Proposed § 301.7602–2(d)(5)(v)(A) would reduce the 45-day advance notice period to 10 days of advance notice in cases in which one year or less remains before the statutory collection period ends as of the date the IRS intends to contact third parties and the IRS plans to prepare a suit referral requesting that DOJ file suit to reduce assessments to judgment or to foreclose Federal tax liens before the statutory collection period ends. In these types of cases, collection cannot be accomplished by administrative methods within the normal statutory period. The United States' success in litigation, however, is highly dependent upon the full and complete development of factual and legal issues before the suit is filed. The IRS therefore needs as much time as possible to develop its case prior to making the referral, and requiring a revenue officer to wait 45 days to contact third parties after notifying the taxpayer that such contact is intended to be made would impair the IRS's ability to timely make the referral. A suit recommendation to foreclose Federal tax liens against specific property titled in the name of someone other than the taxpayer, for example, may require a revenue officer to develop evidence, including by issuing third-party summonses, to prove the taxpayer's property was fraudulently transferred or that a person holds the property as the taxpayer's nominee. The IRS's Office of Chief Counsel must then review and approve the suit recommendation before a referral is made to DOJ. Finally, DOJ reviews the recommendation, drafts the pleadings, and files suit. Depending on the complexity of facts, this process can take a significant amount of time. Therefore, in these situations, proposed § 301.7602–2(d)(5)(v)(A) would provide that the IRS may contact the third parties 10 days after providing the third-party contact notice to the taxpayer.

2. Insufficient Time for Collection Activities

Proposed § 301.7602–2(d)(5)(v)(B) would reduce the 45-day advance notice period to 10 days of advance notice in cases in which there is one year or less remaining before the statutory collection period ends as of the date the revenue officer intends to contact third parties and the revenue officer is unable to contact the taxpayer or the taxpayer refuses to pay, if the revenue officer concludes that the period should be reduced in order to maximize the amount of unpaid tax that can be collected by levy within the time remaining before the statutory collection period expires. This reduction in advance notice will allow the IRS sufficient time for investigative work, including to serve collection summonses, to find assets on which to levy, and to execute levies. Proposed § 301.7602–2(d)(5)(vi) would provide that a revenue officer is considered unable to contact the taxpayer if the taxpayer fails to respond to the revenue officer's reasonable attempts to contact the taxpayer directly within the time requested by the revenue officer.

Proposed § 301.7602–2(d)(5)(vii) would provide that the category of taxpayers who are considered to have refused to pay includes: (1) taxpayers who have the ability to pay their currently due and owing taxes including required tax deposits and estimated tax payments and to pay their delinquent taxes through an alternative collection method but will not do so; (2) taxpayers who cannot pay currently due taxes or pay their delinquent taxes, but who have assets in excess of amounts exempt from levy that will yield net proceeds and are unwilling or unable to borrow against or liquidate these assets; (3) taxpayers who are accruing employment tax liabilities without making required tax deposits; (4) taxpayers who use frivolous tax arguments and continue to resist the requirements to file and pay; (5) taxpayers who will not cooperate with the IRS (for example, taxpayers that evade contact or will not provide financial information); (6) taxpayers who will not comply with the results of the IRS's financial analysis or will not enter into an installment agreement or offer in compromise; (7) taxpayers who are wage earners who have not paid their tax liability and will not adjust their withholdings to prevent future delinquencies; (8) taxpayers who are self-employed, have not paid their tax liability, and will not make estimated tax payments to prevent future delinquencies; and (9) taxpayers who do not meet their commitments (without a valid reason) as required by an installment agreement, offer in compromise, or extension of time to pay. Proposed § 301.7602–2(d)(5)(vii) does not provide an exhaustive list of taxpayers who are considered to have refused to pay, and taxpayers who engage in conduct not specifically listed in the text of proposed § 301.7602–2(d)(5)(vii) may be considered to have refused to pay.

In these situations, the IRS faces significant delays in carrying out its collection activities and often must contact third parties. Requiring the IRS to wait 45 days prior to making contact with third parties after notifying the taxpayer that such contacts are intended to be made would hinder the IRS's ability to complete its collection activities in time. Therefore, in these situations, proposed § 301.7602–2(d)(5)(v)(B) and (d)(5)(vii) would provide the IRS the ability to contact third parties 10 days after providing the third-party contact notice to the taxpayer.

Proposed Applicability Date

The proposed regulations are proposed to apply to any contacts made on or after the date 30 days after the date of publication of final regulations in the **Federal Register**.

Special Analyses

I. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Regulatory Flexibility Act

The Secretary of the Treasury hereby certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that the regulation solely provides for the elimination or reduction of the time period between when the IRS informs a taxpayer that it intends to contact third parties and when the actual contact may take place in certain situations. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. This rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the Treasury Department and the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic and paper comments submitted will be available at *https://www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person that timely submits electronic or written comments. Requests for a public hearing are encouraged to be made electronically. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Announcement 2023–16, 2023–20 I.R.B. 854 (May 15, 2023), provides that public hearings will be conducted in person, although the IRS will continue to provide a telephonic option for individuals who wish to attend or testify at a hearing by telephone. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal author of these temporary regulations is Brittany Harrison of the Office of the Associate Chief Counsel (Procedure and Administration). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 301

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

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and IRS propose to amend 26 CFR part 301 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 301.7602–2 is amended by revising paragraphs (a), (d), and (g) to read as follows:

§ 301.7602–2 Third party contacts.

(a) *Advance notice of third-party contacts*—(1) *In general.* Subject to the exceptions in paragraph (f) of this section, no officer or employee of the Internal Revenue Service (IRS) may contact any person other than the taxpayer with respect to the determination or collection of such taxpayer's tax liability unless the requirements of section 7602(c) of the Internal Revenue Code (Code) and paragraph (d) of this section have been satisfied.

(2) *Record of contacts.* A record of persons so contacted must be made and given to the taxpayer upon the taxpayer's request in accordance with paragraph (e) of this section.

* * * * *

(d) *Notice of third-party contacts*—(1) *In general.* An officer or employee of the IRS may not make third-party contacts with respect to the determination or collection of the liability of a taxpayer unless such contact occurs during a period (not greater than one year) that is specified in a written notice (third-party contact notice) that—

(i) The IRS provides to the taxpayer in accordance with paragraph (d)(2) of this section;

(ii) Informs the taxpayer that third-party contacts are intended to be made during such period; and

(iii) Except as set forth in paragraph (d)(5) of this section, is provided to the taxpayer no later than 45 days before the beginning of such period (45-day advance notice period).

(2) *Provision of third-party contact notice.* A third-party contact notice must be—

(i) Mailed to the taxpayer's last known address;

(ii) Given in person to the taxpayer;

(iii) Left at the taxpayer's dwelling or usual place of business; or

(iv) Actually received by the taxpayer.

(3) *Successive notices.* Nothing in paragraph (d)(1) of this section prevents the IRS from issuing successive notices to the same taxpayer with respect to the same tax liability for periods (each not greater than one year) that, in the aggregate, exceed one year.

(4) *Intent to contact.* A third-party contact notice will not be issued under paragraph (d) of this section unless there is an intent at the time such notice is issued to contact persons other than the taxpayer during the period specified in such notice. Nothing in the preceding sentence will prevent the issuance of a third-party contact notice if the requirement of such sentence is met on the basis of the assumption that the information sought to be obtained by such contact will not be obtained by other means before such contact.

(5) *Exceptions to 45-day advance notice period.* The 45-day advance notice period of section 7602(c)(1)(B) of the Code and paragraph (d)(1) of this section is reduced in the case of third-party contacts described in paragraphs (d)(5)(i) through (v) of this section.

(i) *Fuel compliance program.* The 45-day advance notice period is reduced to zero days, and the IRS may make a third-party contact at any time after the third-party contact notice has been given to the taxpayer, if—

(A) The IRS officer or employee intends to make a third-party contact in connection with its investigation of potential liability for penalties under section 6715, 6715A, or 6720A of the Code; or

(B) The IRS officer or employee intends to make a third-party contact in connection with its exercise of authority under section 4083(d) of the Code.

(ii) *Nonjudicial sale redemption investigations.* The 45-day advance notice period is reduced to 10 days if the IRS officer or employee intends to make a third-party contact in connection with an investigation into a potential nonjudicial sale redemption.

(iii) *Examination cases involving certain issues in which statutory period for assessment expiring within one year or less.* The 45-day advance notice period is reduced to 10 days in cases under examination in which there is one year or less remaining before the expiration of the period for assessment under section 6501(a) of the Code determined with regard to extensions (statutory assessment period) for any period included in the examination as of the date the IRS intends to make a third-party contact if:

(A) The case involves an issue with respect to which the IRS would have the burden of proof in any court proceeding; and

(B) The IRS has requested that the taxpayer provide the IRS with an unrestricted, signed Form 872, *Consent to Extend the Time to Assess Tax,* to extend the statutory assessment period by a period necessary to complete the examination and other administrative actions, and the taxpayer has not provided the requested signed Form 872 within the time requested.

(iv) *Trust fund recovery penalty investigations in which statutory period for assessment expiring within one year or less.* The 45-day advance notice period is reduced to 10 days in investigations into potential liability for penalties under section 6672 of the Code if there is one year or less remaining before the expiration of the statutory assessment period for any period included in the investigation as of the date the IRS intends to make a third-party contact.

(v) *Statutory period for collection expiring within one year or less.* The 45-day advance notice period is reduced to 10 days if there is one year or less remaining in the time period (or, in cases involving multiple time periods, in any time period in the case) under section 6502 of the Code within which the IRS may collect an assessed tax by levy or by a proceeding in court (statutory collection period) as of the date the IRS intends to make a third-party contact and either—

(A) The IRS intends to prepare and deliver to the Department of Justice (DOJ) a suit referral requesting that DOJ file suit to reduce assessments to judgment or to foreclose Federal tax liens before the expiration of the statutory collection period; or

(B) The revenue officer is unable to contact the taxpayer (as defined in paragraph (d)(5)(vi) of this section), or the taxpayer refuses to pay (as defined in paragraph (d)(5)(vii) of this section), and the revenue officer concludes that the advance notice period should be reduced in order to maximize the amount of unpaid tax that can be collected by levy within the time remaining before the statutory collection period expires.

(vi) *Unable to contact the taxpayer.* The revenue officer is unable to contact the taxpayer for purposes of paragraph (d)(5)(v)(B) of this section if the taxpayer fails to respond to the revenue officer's reasonable attempts to contact the taxpayer directly within the time requested by the revenue officer.

(vii) *Taxpayer refuses to pay.* The category of taxpayers who are considered to have refused to pay for purposes of paragraph (d)(5)(v)(B) of this section includes taxpayers described in this paragraph (d)(5)(vii). This paragraph (d)(5)(vii) is not an exhaustive list of taxpayers considered to have refused to pay, and taxpayers who engage in conduct not specifically described in this paragraph (d)(5)(vii) may be considered to have refused to pay.

(A) Taxpayers who have the ability to pay their currently due and owing taxes including required tax deposits and estimated tax payments and to pay their delinquent taxes through an alternative collection method but will not do so.

(B) Taxpayers who cannot pay currently due taxes or pay their delinquent taxes, but who have assets in excess of amounts exempt from levy that will yield net proceeds and are unwilling or unable to borrow against or liquidate these assets.

(C) Taxpayers who are accruing employment tax liabilities without making required tax deposits.

(D) Taxpayers who use frivolous tax arguments and continue to resist the requirements to file returns and pay their tax liability.

(E) Taxpayers who will not cooperate with the IRS (for example, taxpayers that evade contact or will not provide financial information).

(F) Taxpayers who will not comply with the results of the IRS's financial analysis or will not enter into an installment agreement or offer in compromise.

(G) Taxpayers who are wage earners who have not paid their tax liability and will not adjust their withholdings to prevent future delinquencies.

(H) Taxpayers who are self-employed, have not paid their tax liability, and will not make estimated tax payments to prevent future delinquencies.

(I) Taxpayers who do not meet their commitments (without a valid reason) as required by an installment agreement, offer in compromise, or extension of time to pay.

* * * * *

(g) *Applicability dates*—(1) *In general.* Except as provided for in paragraph (g)(2) of this section, this section is applicable on December 18, 2002.

(2) *Exceptions.* Paragraphs (a)(1) and (d) of this section apply to third-party contacts made on or after 30 days after [DATE OF PUBLICATION OF FINAL RULE].

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2024–05968 Filed 3–21–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0079]

RIN 1625–AA00

Safety Zone; Gulf of Mexico, Marathon, FL

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for certain waters in the Gulf of Mexico offshore Marathon, Florida. This action is necessary to provide for the safety of life on these navigable waters of Marathon, FL, during the 2024 Race World Offshore 7 Mile Grand Prix. The proposed rule prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Key West or a designated representative. We invite your comments on this proposed rulemaking.