

## *IRS Summonses*

### **Experts Contracted to IRS May Receive Summoned Information, Take Testimony**

**O**utside experts and other individuals contracted by the Internal Revenue Service as described in tax code Section 6103(n) and related regulations may fully participate in IRS summonses, the agency said in new temporary and proposed rules.

Under the temporary rules (T.D. 9669, RIN 1545-BM25) and proposed rules (REG-121542-14, RIN 1545-BM24) issued June 17, service contractors to the IRS or the Office of Chief Counsel may receive books, papers, records, or other data summoned by the IRS and take testimony of a person the IRS has summoned as a witness to provide testimony under oath.

They also may be able to question a witness and ask a summoned person's representative to clarify an objection or an assertion of privilege, the proposed and temporary rules said.

The text of the temporary regulations serves as the text of the proposed regulations.

**IRS Retains Responsibility.** The rules modify regulations promulgated under Section 7602(a) on the IRS's summons authority for examinations of books and witnesses.

The Service clarified that IRS officers and employees will remain responsible for issuing summonses and developing and conducting examinations. Contractors' roles will be limited to functions that aren't inherently governmental, such as taking testimony by asking questions, reviewing books or papers, or analyzing other data, the IRS said.

The IRS will ensure that the inherently governmental functions associated with Section 7602 will still be performed by an IRS office or employee when an outside person is hired to assist in the review of taxpayer information or take witness testimony, the rules said. Those functions include deciding whether to issue a summons, deciding who should be summoned, what information must be produced and who may be required to testify.

"As a further safeguard, the temporary regulations expressly provide that any contractor that the IRS authorizes to ask questions of a summoned witness testifying under oath must do so in the presence and under the guidance of an IRS officer or employee," the IRS said.

The agency calls on the assistance of people outside the IRS or chief counsel's office when they have "specialized knowledge, skills, or abilities that the IRS officers or employees assigned to the case may not possess," the IRS said.

Such contracting "promotes efficient administration and enforcement of laws administered by the IRS," it said.

**Privacy Protections.** The proposed rules would greatly expand the role of private contractors in summonses, Dennis Brager, a former IRS senior trial attorney who now heads Brager Tax Law Group APC in Los Angeles, told Bloomberg BNA June 17.

"I think any time you do that it's not particularly a great idea," he said. "When you start dealing with people outside the government, you don't necessarily have the same privacy protections in place" that the IRS does, such as locked filing cabinets and encrypted computers, he said.

"If it's some large consulting firm that's used to dealing with this type of information, perhaps they have controls in place. But if you're hiring an expert witness that's got a two-man shop, maybe they're not quite as careful," said Brager.

However, these issues existed prior to the issuance of the new regulations, he said.

**Section 6103 Authority.** Section 6103 generally relates to the confidentiality and disclosure of returns and return information.

Section 6103(n) provides that returns and return information may be disclosed to any person to the extent necessary in connection with the processing, storage, transmission, and reproduction of the information, and the programming, maintenance, repair, testing, and procurement of equipment, and the providing of other services, for purposes of tax administration.

The regulations are effective for summons interviews conducted on or after June 18, the date they are to appear in the Federal Register. The temporary rules will expire June 16, 2017, the IRS said.

Comments or requests for a public hearing on the proposed rules are due Sept. 16.

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*Texts of REG-121542-14 and T.D. 9669 are in Tax-Core.*

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