

# Section 7602.—Examination of Books and Witnesses

26 CFR 301.7602–1: Examination of books and witnesses.

**T.D. 9015**

## DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 301

### Designated IRS Officer or Employee Under Section 7602(a)(2) of the Internal Revenue Code

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

**SUMMARY:** This document contains temporary regulations that modify the existing regulations (T.D. 8091, 1986–2 C.B. 210) promulgated under section 7602(a) of the Internal Revenue Code relating to administrative summonses. Specifically, these temporary regulations confirm that officers and employees of the Office of Chief Counsel may be included as persons designated to receive summoned books, papers, records, or other data and to take summoned testimony under oath. The text of these temporary regulations serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject (REG–134026–02) on page 684 of this Bulletin.

**DATES:** *Effective Dates:* These regulations are effective on September 10, 2002.

*Applicability Dates:* For the date of applicability, see § 301.7602–1T(d).

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

## SUPPLEMENTARY INFORMATION:

### Explanation of Provisions

This document contains temporary regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 7602 of the Internal Revenue Code of 1986 (Code). The governing provision, section 7602(a)(2) of the Code, has not changed. The temporary regulations reflect three changes regarding the persons who may be designated to receive summoned books, papers, records, or other data or to take testimony under oath. While IRS examiners will continue to be responsible for developing and conducting examinations, these changes will allow, among other things, officers and employees of the Chief Counsel to participate fully along with an IRS employee or officer in a summoned interview.

The temporary regulations define an officer or employee of the IRS, for purposes of identifying those persons who may receive summoned information or take testimony under oath, to include all persons who administer and enforce the internal revenue laws or any other laws administered by the IRS, and who are appointed or employed by, or subject to the directions, instructions, or orders of the Secretary of the Treasury or the Secretary’s delegate. This amendment confirms that officers and employees of the Office of Chief Counsel may be designated as persons authorized to take testimony under oath and to receive summoned books, papers, records, or other data.

The temporary regulations also expressly provide that more than one person may be designated to receive summoned information or to take testimony under oath during a summoned interview. Finally, the temporary regulations eliminate the language in the existing regulations suggesting that a summons document needs to designate the specific officer or employee who is authorized to take testimony under oath and to receive and examine books, papers, records, or other data. The statute does not require that such a designation appear in the summons. Moreover, at times it is necessary for a summoned interview to be conducted by an officer or employee other than the one who may be identified in the summons document.

## Special Analyses

It has been determined that this Treasury decision 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) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. In addition, because no prior notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Code, this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Drafting Information

The principal author of this regulation is Elizabeth Rawlins of the Office of the Associate Chief Counsel (Procedure and Administration), Collection, Bankruptcy and Summonses Division.

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### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

#### PART 301—PROCEDURE AND ADMINISTRATION

Par. 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. In § 301.7602–1, paragraph (b) is revised to read as follows:

§ 301.7602–1 *Examination of books and witnesses.*

\* \* \* \* \*

(b) *Summons.* [Reserved]. For further guidance, see § 301.7602–1T(b).

\* \* \* \* \*

Par. 3. Section 301.7602–1T is added to read as follows:

§ 301.7602–1T *Examination of books and witnesses.*

(a) For further guidance, see § 301.7602–1(a).

(b) *Summons*—(1) *In general.* For the purposes described in § 301.7602–1(a), the Commissioner is authorized to summon the person liable for tax or required to perform the act, or any officer or employee of such person or any person having possession, custody, or care of books of accounts containing entries relating to the business of the person liable for tax or required to perform the act, or any other person deemed proper, to appear before one or more officers or employees of the Internal Revenue Service at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry. This summons power may be used in an investigation of either civil or criminal tax-related liability. The Commissioner may designate one or more officers or employees of the Internal Revenue Service as the individuals before whom a person summoned pursuant to section

6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602 shall appear. Any such officer or employee is authorized to take testimony under oath of the person summoned and to receive and examine books, papers, records, or other data produced in compliance with the summons.

(2) *Officer or employee of the Internal Revenue Service.* For purposes of this paragraph (b), officer or employee of the Internal Revenue Service means all officers and employees of the United States, who are engaged in the administration and enforcement of the internal revenue laws or any other laws administered by the Internal Revenue Service, and who are appointed or employed by, or subject to the directions, instructions, or orders of the Secretary of the Treasury or the Secretary's delegate. An officer or employee of the Internal Revenue Service, for purposes of this paragraph (b), shall include an officer or employee of the Office of Chief Counsel.

(c) For further guidance, see § 301.7602–1(c).

(d) *Effective date.* This section is applicable to summonses issued on or after September 10, 2002. This section expires on September 9, 2005.

David A. Mader,  
*Acting Deputy Commissioner  
of Internal Revenue.*

Approved August 27, 2002.

Pamela F. Olson,  
*Acting Assistant Secretary  
of the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on September 9, 2002, 8:45 a.m., and published in the issue of the Federal Register for September 10, 2002, 67 F.R. 57330)