

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG-120135-01]

RIN 1545-AY94

Definition of Agent for Certain Purposes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the definition of agent for certain purposes. The proposed regulations clarify that the term agent in certain provisions of section 6103 of the Internal Revenue Code includes contractors.

DATES: Written and electronic comments and requests for a public hearing must be received by May 1, 2002.

ADDRESSES: Send submissions to CC:ITA:RU (REG-120135-01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044.

Submissions may be delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU (REG-120135-01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site:

[http://www.irs.ustreas.gov/tax\\_reg/regslist.html](http://www.irs.ustreas.gov/tax_reg/regslist.html).

FOR FURTHER INFORMATION CONTACT: Helene R. Newsome, 202-622-4580 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

### **Background**

Generally, returns and return information are confidential under section 6103 of the Internal Revenue Code (Code) unless a specific statutory exception applies. In cases of non-tax-related disclosures, returns and return information generally may only be disclosed to officers and employees of Federal, state, and local government agencies, and not to contractors or agents of such agencies. In certain limited circumstances, however, Congress has permitted disclosures to agents of these agencies. See sections 6103(l)(6)(B), 6103(l)(12), 6103(m)(2), 6103(m)(4), 6103(m)(5), and 6103(m)(7).

This document contains proposed regulations that clarify that the term agent in sections 6103(l) and (m) includes contractors. Clarification that the term agent includes contractors is necessary for the purpose of bringing certain statutory grants of disclosure authority into alignment with the reality of many agencies' operations. Agencies generally procure the services of third parties under public contracting laws, which do not necessarily correlate with common law concepts of agent. This clarification is also consistent with Congressional intent. For example, the Senate Finance Committee, in amending section 6103(m)(2), stated, "Agents are those who are engaged directly in performing or assisting in collection functions for the federal

government, presumably, private collection agencies who have contracted with the government to collect claims...” S. Rep. No. 97-378, at 15 (1982).

This clarification does not provide any new disclosure authority, nor does it authorize the disclosure of return information to contractors that Congress has not previously specifically authorized in the Code. With regard to protection of taxpayer data, agents/contractors are subject to safeguard requirements, redisclosure prohibitions, and civil and criminal penalties for unauthorized disclosures. Accordingly, the proposed regulations do not have an impact on taxpayer privacy.

### **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) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel of the Small Business Administration for comment on its impact on small businesses.

### **Comments and Request for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department 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 that 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 Helene R. Newsome, Office of the Associate Chief Counsel (Procedure & Administration), Disclosure & Privacy Law Division.

### **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, 26 CFR part 301 is proposed to be amended as follows:

#### **PART 301--PROCEDURE AND ADMINISTRATION**

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

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

Section 301.6103(l)-1 also issued under 26 U.S.C. 6103(q);\*\*\*

Section 301.6103(m)-1 also issued under 26 U.S.C. 6103(q);\*\*\*

Par. 2. Section 301.6103(l)-1 is added to read as follows:

§301.6103(l)-1 Disclosure of returns and return information for purposes other than tax administration.

(a) Definition. For purposes of applying the provisions of section 6103(l) of the Internal Revenue Code, the term agent includes a contractor.

(b) Effective date. This section is applicable on or after the date of publication of the Treasury decision adopting these regulations as final regulations in the **Federal Register**.

Par. 3. Section 301.6103(m)-1 is added to read as follows:

§301.6103(m)-1 Disclosure of taxpayer identity information.

(a) Definition. For purposes of applying the provisions of section 6103(m) of the Internal Revenue Code, the term agent includes a contractor.

(b) Effective date. This section is applicable on or after the date of publication of the Treasury decision adopting these regulations as final regulations in the **Federal Register**.

Deputy Commissioner of Internal Revenue