

Treas. Reg. § 301.7602-1

CODE OF FEDERAL REGULATIONS
TITLE 26--INTERNAL REVENUE
CHAPTER I--INTERNAL REVENUE SERVICE,
DEPARTMENT OF THE TREASURY
SUBCHAPTER F--PROCEDURE AND
ADMINISTRATION
PART 301--PROCEDURE AND
ADMINISTRATION
DISCOVERY OF LIABILITY AND
ENFORCEMENT OF TITLE
EXAMINATION AND INSPECTION
Current through October 21, 2003; 68 FR 60046

§ 301.7602-1 Examination of books and witnesses.

(a) In general. For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax (including any interest, additional amount, addition to the tax, or civil penalty) or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, collecting any such liability or inquiring into any offense connected with the administration or enforcement of the internal revenue laws, any authorized officer or employee of the Internal Revenue Service may examine any books, papers, records or other data which may be relevant or material to such inquiry; and take such testimony of the person concerned, under oath, as may be relevant to such inquiry.

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

(c) Proscription on issuing of administrative summons when a Justice Department referral is in effect--(1) In general. The Commissioner may neither issue a summons under this title nor initiate a proceeding to enforce a previously issued summons by way of section 7604 with respect to any person whose tax liability is in issue, if a Justice Department referral is in effect with respect to that person for that liability.

(2) Justice Department referral in effect. A Justice Department referral is in effect with respect to any person when:

(i) The Secretary recommends, within the meaning

of this paragraph, that the Attorney General either commence a grand jury investigation of or criminal prosecution of such person for any alleged offense connected with the administration or enforcement of the internal revenue laws, or

(ii) The Attorney General (or Deputy Attorney General or Assistant Attorney General) under section 6103(h)(3)(B) requests in writing that the Secretary disclose a return of, or return information relating to, such person. The request must set forth that the need for disclosure is for the purpose of a grand jury investigation of or potential or pending criminal prosecution of such person for any alleged offense connected with the administration or enforcement of the internal revenue laws.

The referral is effective at the time the document recommending criminal prosecution or grand jury investigation is signed by the Secretary or upon the Secretary's receipt of the section 6103(h)(3)(B) request.

(3) Cessation of Justice Department referral. A Justice Department referral ceases to be in effect with respect to a person:

(i) When the Secretary receives written notification from the Attorney General that the Justice Department:

(A) Will not prosecute that person for any offense connected with the administration or enforcement of the internal revenue laws that gave rise to the referral under paragraph (2)(i) of this section, or

(B) Will not authorize a grand jury investigation of that person with respect to such offense, or

(C) Will discontinue any grand jury investigation of that person with respect to such offense;

(ii) When a final disposition with respect to a criminal proceeding brought against that person has been made; or

(iii) When the Secretary receives written notification from the Attorney General, Deputy Attorney General, or an Assistant Attorney General, that the Justice Department will not prosecute such person for any offense connected with the administration or enforcement of the internal revenue laws, based upon a previous request for disclosure under section 6103(h)(3)(B).

(4) Taxable years and taxes imposed by separate chapters of the Code treated separately--(i) In general. For purposes of this section, each taxable period (or, if there is no taxable period, each taxable event) and each tax imposed by a separate chapter of the Code is treated separately.

June 25, 1986; T.D. 9015, 67 FR 57331, Sept. 10, 2002]

<General Materials (GM) - References, Annotations, or Tables>

(ii) Examples. The following examples illustrate the application of this paragraph (c)(4):

26 C. F. R. § 301.7602-1

Example 1. A Justice Department referral is in effect for D's criminal evasion of income tax for the taxable year 1979. The Commission may issue a summons respecting D's 1980 criminal and/or civil tax liability. The Commissioner may not issue a summons respecting D's 1979 income tax liability.

26 CFR § 301.7602-1

Example 2. A referral has been made to the Department of Justice for the criminal prosecution of F with regard to F's income tax liability for the taxable year 1978. The Commissioner may issue a summons respecting F's gift tax liability for the taxable year 1978.

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Example 3. A referral has been made to the Department of Justice for a grand jury investigation respecting G's 1980 income tax liability. The Commissioner may issue a summons related to an investigation of G's liability for Federal Insurance Contribution Act (FICA) taxes for the taxable year 1980.

Example 4. A referral has been made to the Department of Justice respecting J's criminal evasion of windfall profit tax for all quarters of the calendar year 1982. The Commissioner may issue a summons respecting J's liability for highway motor vehicle use tax covering the same periods.

Example 5. A referral has been made to the Department of Justice for a grand jury investigation respecting L's 1983 income tax liability. The Commissioner may issue a summons related to the investigation of L's liability under sections 6700 (abusive tax shelter promoter penalty) and 7408 of the Code for his conduct during 1983.

(d) Effective date. This section is effective after September 3, 1982. For rules effective on or before September 3, 1982, see 26 CFR 301.7602-1 (revised as of April 1, 1984).

[32 FR 15241, Nov. 3, 1967, as amended by T.D. 7188, 37 FR 12796, June 29, 1972; T.D. 7297, 38 FR 34803, Dec. 19, 1973; T.D. 8091, 51 FR 23053,