IRS Attempts to Reduce Warnings to Taxpayers About Making Third-Party Contacts

By Hale E. Sheppard*

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I. Introduction

When conducting an audit to determine whether a taxpayer owes additional taxes and penalties, the Internal Revenue Service ("IRS") tries to gather as much information and documentation as possible. It attempts to obtain the data directly from the taxpayer, but it often turns to other sources, too. This is known as making third-party contacts ("TPCs").

The IRS has been criticized over the years for giving insufficient warnings to taxpayers before starting TPCs, and Congress took notice. It first enacted a law preventing the IRS from engaging in TPCs without giving taxpayers "reasonable notice in advance." The IRS had trouble understanding the concept of reasonableness, so Congress later amended the law, this time expressly stating that the IRS must tell taxpayers 45 days before making TPCs. Now, the IRS has issued proposed regulations that severely undercut historical taxpayer protections. The proposed regulations identify several situations, all too common in IRS audits and collection actions, where a 10-day notice, instead of a 45-day notice, suffices.

This article, which builds on a couple of earlier ones by the same author, analyzes the filing and record-keeping duties of taxpayers, information-gathering tools of the IRS, original notice rules introduced in 1998, examples of ongoing IRS violations, updated notice requirements taking effect in 2019, and proposed regulations in 2024 that limit taxpayer protections when it comes to TPCs.[1]

HALE E. SHEPPARD, Esq. (B.S., M.A., J.D., LL.M., LL.M.T.) is a Shareholder in the Tax Controversy Section of Chamberlain Hrdlicka.

II. Filing and Record-Keeping Duties

A person liable for any tax normally must file a complete, accurate, and timely return, using the forms issued by the IRS.[2] Taxpayers also must retain records in case the IRS decides to audit them.[3] Indeed, the regulations dictate that taxpayers "shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other

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matters" shown on any return.[4] The regulations further require that taxpayers maintain their substantiation "at all times available for inspection" by the IRS and retain it for as long as it "may become material in the administration of any internal revenue law."[5]

III. Information-Gathering Tools

The IRS enjoys broad powers in doing its job. For instance, for purposes of auditing any return, determining a tax liability, and collecting such liability, the IRS can examine any books, records, or other data that might be relevant or material. The IRS can also issue Summonses to taxpayers, persons required to perform tax-related acts, persons in possession, custody, or control of pertinent data, and "any other person that the [IRS] may deem proper."[6] The IRS, moreover, can seek information from persons *other than* the taxpayer during audits; these are called TPCs.[7]

Now, the IRS has issued proposed regulations that severely undercut historical taxpayer protections. The proposed regulations identify several situations, all too common in IRS audits and collection actions, where a 10-day notice, instead of a 45-day notice, suffices.

IV. Notice Rules Starting in 1998

Various abuses by the IRS came to light, which led to the enactment of the IRS Restructuring and Reform Act of 1998 ("RRA"). Among other things, the RRA introduced limitations on TPCs made by the IRS. The relevant provision, Code Sec. 7602(c)(1), dictated the following:

> An officer or employee of the [IRS] may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of such taxpayer without providing reasonable notice in advance to the taxpayer that contacts with persons other than the taxpayer may be made.

In other words, as a result of the RRA, the IRS generally could not contact any person, other than the taxpayer, with respect to a tax liability, without providing "reasonable notice" to the taxpayer beforehand that the IRS might make TPCs.[8] The legislative history contained the following rationale for imposing new restrictions:

> The [Senate Finance] Committee believes that taxpayers should be notified *before* the IRS contacts third parties regarding examination and collection activities with respect to the taxpayer. Such contacts may have a chilling effect on the taxpayer's business and could damage the taxpayer's reputation in the community. Accordingly, the [Senate Finance] Committee believes that taxpayers should have the opportunity to resolve issues and volunteer information *before* the IRS contacts third parties.[9]

The legislative history contained caveats, of course. It explained that the restrictions do not apply in the following situations: criminal tax cases, matters in which the tax liability is in jeopardy of not being assessed or collected, instances where the taxpayer approves of the contact, and cases where disclosure might trigger reprisals on any person.[10]

V. General IRS Notice

Grounded in the portion of legislative history stating that a pre-contact notice can be "part of an existing IRS notice provided to taxpayers," the IRS previously adopted the position that it was sufficiently informing taxpayers about TPCs by sending them a general document at the beginning of an audit.[11] That document is IRS Publication 1 (*Your Rights as a Taxpayer*), which explains the following:

> Potential Third Party Contacts. Generally, the IRS will deal directly with you or your duly authorized representative. However, we sometimes talk with other persons if we need information that you have been unable to provide, or to verify information we have received. If we do contact other persons, such as a neighbor, bank, employer, or employees, we will generally need to tell them limited information, such as your name. The law prohibits us from disclosing any more information than is necessary to obtain or verify the information we are seeking. Our need to contact other persons may continue as long as there is activity in your case. If we do contact other persons, you have a right to request a list of those contacted. Your request can be made by telephone, in writing, or during a personal interview.[12]

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VI. Reviewing Earlier Regulations

After Congress enacts a law, such as the RRA, the IRS often implements it by issuing regulations. The procedure normally involves issuing *proposed* regulations, obtaining written comments from the public, holding a hearing, and then unleashing *final* regulations. This is what occurred with respect to Code Sec. 7602, as explained further below.

A. Preamble to Proposed Regulations in 2001

The Preamble started with the obvious, which is that the RRA amended Code Sec. 7602 to prohibit the IRS from contacting anybody, other than the taxpayer, without giving reasonable, advance notice to the taxpayer about possible TPCs.[13] It then acknowledged that Congress was concerned that TPCs might have a "chilling effect" on a taxpayer's business and damage a taxpayer's reputation, such that the taxpayer should have the chance to resolve issues with, and voluntarily provide data to, the IRS before it communicates with third parties.[14]

Next, the Preamble explained that the proposed law morphed during the legislative process, ultimately requiring the IRS to supply the taxpayer a *general* pre-contact notice (*i.e.*, the IRS might make TPCs during the audit), followed by a *specific* post-contact report (*i.e.*, the IRS actually made certain TPCs).[15]

Finally, the Preamble underscored four exceptions, namely, the ability of the IRS to skip the pre-contact notice and post-contact report requirement in criminal tax cases, situations in which the tax liability is in jeopardy of not being assessed or collected, instances where the taxpayer grants permission, and matters where the IRS, in its sole discretion, determines that disclosure of TPCs might result in reprisals to any person.[16]

The IRS concluded in the Preamble that amended Code Sec. 7602 necessitates "an interpretive approach" balancing three distinct considerations: the business and reputational interests of the taxpayer, the privacy interests of third parties, and the responsibility of the IRS to administer the tax laws effectively.[17]

B. Proposed Regulations in 2001

Generally, the proposed regulations provide that no IRS employee may contact any person, other than the relevant taxpayer, with respect to a determination or collection of a tax liability, without providing such taxpayer "reasonable notice in advance" that the IRS might make TPCs, and the IRS must give the taxpayer, upon request, a record of the TPCs.[18]

They further state, on the definitional front, that a TPC is a communication that is initiated by an IRS employee, made to a person other than the taxpayer, with respect to the determination or collection of a tax liability of the taxpayer, during which the IRS employee discloses the identity of the taxpayer, as well as the fact that the IRS employee is just that, an IRS employee.[19]

The proposed regulations provide guidance about the general pre-contact notice duty. They explain that the IRS employee can give it orally or in writing, and in the case of the latter, the IRS employee can use any manner that he reasonably believes will result in the taxpayer receiving notice before he makes the TPCs.[20] Creating assumptions favorable to the IRS, the proposed regulations indicate that a written notice is "deemed reasonable" if the IRS employee mails it to the taxpayer's last known address, delivers it in person, or simply leaves it at the taxpayer's dwelling or usual place of business.[21]

Having the IRS make TPCs could permanently damage a taxpayer's business and/or personal reputation, and having merely 10 days to prevent these actions is not much time.

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As to the specific post-contact reports, the proposed regulations indicate that a taxpayer may request a report "in any manner the [IRS] reasonably permits," ominously followed by the disclaimer that the IRS "may set reasonable limits on how frequently taxpayer requests need to be honored."[22] The proposed regulations reveal that the data the IRS is willing to share might be limited, too. They state the name of the third party or other information that "reasonably identifies" him or her suffices, the IRS is not obligated to solicit any other data from the third party for purposes of completing the post-contact report, the IRS does not need to specify how many times it interacted with a particular third party, and the IRS is under no obligation to disclose the nature of its inquiry with third parties or their responses.[23]

C. Final Regulations in 2002

The final regulations were essentially identical to the proposed ones.[24] The Preamble to the final regulations contained some rationales for the IRS' decision to forge ahead without material alterations. As it did earlier in the Preamble to the proposed regulations, the IRS explained that it must balance three considerations: the business and reputational concerns of the taxpayer under audit, the privacy interests of third parties, and the need for the IRS to implement the tax laws effectively.[25] Then, without explaining exactly how, the Preamble suggested that by providing a taxpayer with a general pre-contact notice, followed by a specific post-contact report, a taxpayer is able to come forward with the information required by the IRS before it contacts third parties.[26]

VII. Internal IRS Guidance

The IRS provided *external* guidance to taxpayers and their advisors by promulgating the regulations described above. The next step was supplying *internal* data to IRS employees, through the Internal Revenue Manual ("IRM").

The IRM emphasizes that Revenue Agents should not utilize TPCs as a primary auditing tool, but rather they should first grant the taxpayer being audited a chance to personally supply the data sought by the IRS. The IRM makes this clear in several places:

> [Revenue Agents are directed] to give notice to taxpayers, allowing them an opportunity to provide the information, *before* disclosing to a third party that the taxpayer is the subject of an [IRS] action.[27]

> A [TPC] is made when the taxpayer is unable or unwilling to provide the necessary information or when the examiner needs to verify information provided. The examiner should generally request the information on a Form 4564, *Information Document Request*, *before* making a TPC. Examiners should document the case file to support the need to verify information *already provided* by the taxpayer.[28]

> The intent behind this statute is to provide the taxpayer, in most cases, with the opportunity to produce the information and documents requested *before* the IRS must obtain the information from third parties.[29]

> It is the IRS's practice to obtain information relating to a liability or collectibility determination *directly from the taxpayer whenever possible*. In most cases, it is preferable for the employee *to first try* to obtain the information directly from the taxpayer and/or representative or obtain taxpayer approval to contact third parties.[30]

VIII. Non-Compliance and Nonchalance

Setting standards is one thing, but implementing them is another. Various events showed that the IRS experienced difficulties following the letter and spirit of Code Sec. 7602.

A. Oversight Outcome

Reports indicate that the IRS has not always met its notification duties. The IRS watchdog, the Treasury Inspector General for Tax Administration, concluded that the IRS sometimes gives no notice whatsoever to taxpayers about potential TPCs.[31] Specifically, the relevant study determined that the IRS failed to issue required notifications nearly 20 percent of the time.[32]

B. Judicial Rebuke

A recent case, *Vaught et al.*, demonstrates that the IRS continued to cross the line with respect to TPCs, despite the rules established in the RRA, corresponding regulations, and IRM.[33] The facts and procedural history in the case are complicated, but here are the essentials.

The IRS started an audit of Mr. Crow in November 2015 to determine whether the installment sales transactions with which he was involved were "tax shelters" subject to special disclosure requirements, whether he or his company ("SCCC") had "promoted" such transactions, and whether he had made false statements about alleged tax benefits. The IRS gave Mr. Crow a copy of Publication 1 on the first day of the audit, which, as explained earlier, contains general information about TPCs. Approximately two months later, Revenue Agents initially met with Mr. Crow and supposedly told him, orally, that they might make TPCs. The IRS audited Mr. Crow and SCCC for nearly six years, making at least 16 TPCs during that period.

In 2018, the IRS issued two Summonses to Mr. Vaught, in his role as an executive of two companies that served as lenders or escrow agents for SCCC in connection with the installment sale transactions ("Vaught Summonses").

Mr. Vaught did not comply, so the IRS filed a suit in District Court asking it to enforce the Vaught Summonses. Mr. Vaught opposed, and Mr. Crow and SCCC, as intervenors, did the same. Mr. Vaught, Mr. Crow, and SCCC argued that the District Court should quash the Vaught Summonses for several reasons, the primary one being that the IRS violated the pre-contact notice requirements in Code Sec. 7602.

The District Court began by reciting and exploring the relevant standards for upholding a Summons under *Powell*. It then noted that the only standard in dispute was the fourth; that is, whether the IRS had obeyed the administrative procedures related to Code Sec. 7602.

The IRS contended that it met the requirements by notifying Mr. Crow of possible TPCs three times. First, the IRS maintained that it gave Mr. Crow a copy of Publication 1 when the audit began. The District Court held that merely providing Publication 1 is inadequate. It also pointed out that the IRS issued the Vaught Summonses 26 months after it supplied Mr. Crow with Publication 1. Grounded in this extended passage of time, the District Court said that it "cannot find that the IRS satisfied its administrative duty of giving Crow a meaningful opportunity to provide the relevant documents … by generally informing Crow, over two years before, that it may talk with other persons in the course of its investigation." The District Court added that the willingness of the IRS to wait more than two years before issuing the Vaught Summonses shows a "lack of urgency" and illustrates that the IRS' interest in obtaining the data would not have been compromised by providing Mr. Crow with additional pre-contact notice.

Second, the IRS underscored that two Revenue Agents met with Mr. Crow in December 2015 and orally notified him, again, of possible TPCs. The District Court challenged this stance, emphasizing that the IRS failed to provide any specific details about the supposed oral notice.

Third, the IRS contended that it discussed possible TPCs with Mr. Crow in April 2017. The District Court pointed out, though, that such discussions occurred only after Mr. Crow had sent the IRS a letter complaining that it had failed to give him pre-contact notices. Apparently, in response to the letter, the Revenue Agents called Mr. Crow's attorney, stated that they previously gave Mr. Crow a copy of Publication 1, and that sufficed. The intransigence of the IRS did not escape the District Court, which summarized the IRS' position as follows: "The government cites a conversation in which the IRS refused to provide notice other than Publication 1 as an example of the IRS providing reasonable advance notice." The District Court rejected the argument that one phone call, after the IRS had already made many TPCs, in which the IRS announced that it would do nothing more, constituted adequate notice.

The District Court acknowledged that the IRS is not obligated to give audited taxpayers a separate notice before each TPC. It clarified, however, that the IRS must still provide taxpayers with "sufficient notice to allow them to respond with the relevant information themselves so as to maintain their privacy and avoid the potential embarrassment of IRS contact with third parties."

The District Court expanded on the shortcomings of the IRS, identifying several "reasonable steps" that it could have taken to provide Mr. Crow with adequate pre-contact notice. For instance, the IRS could have renewed its request for data directly from Mr. Crow in 2018, before issuing the Vaught Summonses. At that time, the IRS could have advised Mr. Crow that, if he were unwilling or unable to provide the data personally, the IRS would be forced to make TPCs. Moreover, explained the District Court, the IRS could have better informed Mr. Crow about what data was still missing after Mr. Crow had responded to all IDRs issued to him, supplied materials in response to all Summonses issued to him, and asked the Revenue Agents to enlist the involvement of the IRS National Office. It appears that the Revenue Agents simply took what Mr. Crow provided, ignored his request for help from IRS superiors, ceased communicating with him for many months, and then launched the Vaught Summonses.

Lastly, the District Court emphasized that the IRS' own internal records suggest that it intentionally deprived Mr. Crow of adequate pre-contact notice. As part of the dispute with the IRS, Mr. Crow filed a request for audit-related materials pursuant to the Freedom of Information Act. He obtained, among other things, a copy of the "Case Activity Report" maintained by the Revenue Agents. That document revealed that the Revenue Agents had concluded, erroneously, that Mr. Vaught and related companies were not "third parties" for purposes of Code Sec. 7602, such that the IRS was not required to give Mr. Crow pre-contact notice about interactions with them.

Because the IRS failed to meet the pre-contact notice duties, the District Court quashed the Vaught Summonses.

IX. Statutory Changes Beneficial to Taxpayers

Congress strengthened taxpayer protection by imposing notification duties on the IRS as part of the RRA back

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in 1998. The IRS, building on that idea, enacted final regulations in 2002. They mandated a general pre-contact notice, a specific post-contact report, and a reasonable period during which taxpayers could personally provide the data sought and thus avoid TPCs.

Time passed, problems with the IRS continued, and Congress again tried to remedy matters, this time by making changes in the Taxpayer First Act in 2019.[34] Among other things, Congress amended the key provision, Code Sec. 7602(c)(1), to read as follows:

> An officer or employee of the [IRS] may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of such taxpayer, unless such contact occurs during a period (not greater than 1 year) which is specified in a notice which (A) informs the taxpayer that contacts with persons other than the taxpayer are intended to be made during such period, and (B) except as otherwise provided by the [IRS], is provided to the taxpayer not later than 45 days before the beginning of such period.

In simpler terms, the amended law required IRS employees to give notice to the taxpayer at least 45 days before starting any TPCs, have "present intent" to make TPCs when issuing the pre-contact notice, and specify in the notice the time period, not to exceed one year, within which the IRS plans to make the TPCs.[35]

X. Regulatory Changes Detrimental to Taxpayers

In what seems like a common occurrence these days, what Congress initially gives taxpayers, the IRS later takes away, at least to an extent.

Among the examples are the proposed regulations about TPCs issued in 2024, which are related to the law previously amended in 2019.[36] As explained above, Congress modified Code Sec. 7602(c)(1) in 2019 to generally obligate the IRS to give taxpayers 45 days to provide the data sought before resorting to TPCs. The proposed regulations create exceptions to the normal 45-day advance notice requirement, shortening it to merely 10 days in several situations.[37]

First, the notice period would be reduced if an IRS employee intends to make a TPC in connection with an investigation into a potential non-judicial sale redemption.[38] This might occur in situations where the IRS is considering whether to exercise its right to redeem, at a certain price, property previously owned by the taxpayer that was purchased by somebody else during a non-judicial foreclosure sale.[39] According to the Preamble to the proposed regulations, the purpose of redemption by the IRS is for it to buy the property for a low amount (*i.e.*, the fire-sale price at foreclosure) and then sell it for a higher amount to another purchaser. This theoretically benefits the taxpayer because "any additional sales proceeds would satisfy more of the taxpayer's liability or potentially lead to a surplus over the amount of the liability." The Preamble further explains that the IRS must undertake an extensive investigation regarding the viability and potential benefits of redeeming property, this often requires consultation with valuation specialists and lots of additional legwork, and the investigation "cannot begin in earnest" until after the foreclosure sale. The Preamble concludes that, if the IRS were obligated to adhere to the normal 45-day notice period, completing all its tasks during the limited redemption period "is highly unlikely to be feasible."[40]

Second, the abbreviated notice period would apply to audits where there is a year or less before the assessment period for any relevant year expires, the case involves an issue with respect to which the IRS would have the burden of proof in any court proceeding, *and* the taxpayer has not granted the IRS an extension by supplying an executed Form 872 (*Consent to Extend the Time to Assess Tax*).[41] What is the rationale here? According to the Preamble to the proposed regulations, the shorter notice period "would allow the IRS to move forward and promptly conduct examination activities in cases in which the time do so is limited and delay will impair the [IRS's] ability to expeditiously determine and assess tax."[42] The Preamble then adds some commentary about evidentiary burdens, such as challenges it might face in litigating a case focused on unreported income by a taxpayer. The Preamble explains that the IRS needs additional time during an audit of this type to gather evidence through all acceptable means, including by making TPCs. It then concludes that "requiring the IRS to wait 45 days prior to making contact with third parties after notifying the taxpayer ... would hinder the IRS's ability to complete its investigation [on time] and would negatively impact its ability to meet its burden."[43]

Third, the smaller notice period would govern trust fund recovery penalty investigations centered on employment taxes, provided that there is a year or less before the assessment period for any relevant year lapses.[44] The Preamble to the proposed regulations argues that abbreviated notice is appropriate here because Revenue Officers

must ascertain whether a person is both "responsible" and "willful" under particular legal standards, multiple persons might be held liable for the same taxes, and trust fund investigations are "highly fact-intensive and challenging." The Preamble warns that waiting 45 days before contacting third parties could result in assessments against only some of the responsible persons or erroneous assessments against persons who were not both responsible and willful.[45]

Fourth, the IRS could provide less notice when it comes to tax collection actions where a year or less remains open on the general 10-year collection period for any pertinent year, and either of the following two scenarios arises. One possibility is that the IRS intends to refer the matter to the Department of Justice ("DOJ") so that it can file a lawsuit to convert a tax assessment into a court judgment or foreclose federal tax liens.[46] The Preamble to the proposed regulations indicates that the referral process "can take a significant amount of time" because it involves a Revenue Officer developing evidence through various means (including by making TPCs), the IRS Office of Chief Counsel reviewing matters and approving a lawsuit recommendation, and the DOJ analyzing the case, drafting the pleadings, and filing suit. The Preamble further points out that the success or failure of the DOJ in litigation "is highly dependent upon full and complete development of factual and legal issues before the suit is filed."[47]

The second scenario involves a Revenue Officer who is unable to contact the taxpayer or the taxpayer refuses to pay, and the Revenue Officer, apparently without any need for approval by his or her superiors, "concludes that the advance notice period should be reduced in order to maximize the amount of unpaid taxes that can be collected by levy" before the normal collection period expires.[48] The Preamble to the proposed regulations suggests that shortening the advance notice period here "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."[49]

For these purposes, a Revenue Officer is unable to contact a taxpayer if he or she fails to respond to "reasonable attempts" at direct contact within the time designated.[50] Also, in this context, the proposed regulations indicate that the following taxpayers are considered to have refused to pay: those who have the financial ability to pay their current taxes, as well as pay their back taxes through an Installment Agreement, but refuse to do so; those who refuse to sell or borrow against certain assets to pay their tax liabilities; those who are accruing employment tax liabilities and not making required deposits; those who raise "frivolous tax arguments" to justify not filing returns and/or paying taxes; those who refuse to cooperate with the IRS by avoiding contact or not supplying financial data; those who will not comply with the results of a financial analysis by the IRS; those who decline to enter into an Installment Agreement or Offer-in-Compromise; those who are employees and refuse to adjust their tax withholdings to prevent future shortfalls; those who are self-employed and will not make estimated tax payments to avoid future liabilities; and those who fail to meet their commitments to the IRS, without a "valid reason," as required under an Installment Agreement, Offer-in-Compromise, or extension to pay.[51] The proposed regulations emphasize that the preceding does not constitute an "exhaustive list" of taxpayers who will be deemed unwilling to pay.[52]

XI. Conclusion

If the IRS manages to finalize regulations consistent with the proposed ones, this could negatively affect taxpayers in several situations. Why? Having the IRS make TPCs could permanently damage a taxpayer's business and/or personal reputation, and having merely 10 days to prevent these actions is not much time. Given the importance of this issue, taxpayers should be tracking the evolution of the proposed regulations. Timing, cooperation levels, and strategies might change in the future if procedural protections are reduced.

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ENDNOTES

* Hale specializes in tax audits, tax appeals, and tax litigation. You can reach Hale by phone at (404) 658-5441 or by email at *hale.sheppard@chamberlainlaw.com*.

1 This article supplements earlier ones by the same author. *See* Hale E. Sheppard, *IRS Suffers Second Court Loss for Failing to Properly Warn Taxpayers about Third Party Contacts during Audit*, TAXES, December 2021, at 31; Hale E. Sheppard, *Can the IRS Really Do That? Third Party Contacts, Notification Duties, Reprisal Exception, and More*, J. TAX PRACTICE & PROCEDURE., Summer 2021, at 33.

2 Code Sec. 6011(a); Reg. §1.6011-1(a).

3 Code Sec. 6001.

4 Reg. §1.6011-1(a).

5 Reg. §1.6011-1(e).

6 Code Sec. 7602(a); Reg. §301.7602-1(a).

7 Code Sec. 7602.

8 Public Law 105-206, Internal Revenue Service Restructuring and Reform Act of 1998 (July 22, 1998), Code Sec. 3417. *See* Code Sec. 7602(c)(1) of the Internal Revenue Code.

9 U.S Senate, Committee on Finance. Internal Revenue Service Restructuring and Reform Act of 1998. 105th Congress, 2nd Session, Report 105-174 (April 22, 1998), pg. 77.

10 U.S Senate, Committee on Finance. Internal Revenue Service Restructuring and Reform Act of 1998. 105th Congress, 2nd Session, Report 105-174 (April 22, 1998), pg. 77; U.S. House of Representatives. Conference Report. Internal Revenue Service Restructuring and Reform Act of 1998. 105th Congress, 2nd Session, Report 105-599 (June 24, 1998), pg. 277.

Public Law 105-206, Internal Revenue Service Restructuring and Reform Act of 1998 (July 22, 1998), Code Sec. 3417. *See* Code Sec. 7602(c)(1) of the Internal Revenue Code.

[11] 66 FR 77 (January 2, 2001); REG-104906-99, Preamble. The IRS later changed its mind and began advising its personnel that merely handing taxpayers a copy of Publication 1 at the start of an audit will no longer constitute adequate warning about TPCs. *See* IRS Memorandum SBSE-04-0719-0034 (July 26, 2019), Attachment 3, Sample Letter 3164-X; Alberotanza and March, *Collection: IRS Third Party Contacts in 2020 and Beyond*, J. Tax Practice & Procedure, December 2019-January 2020, at 15; IRM 25.27.1.3.1 (April 07, 2021).

[12] IRS Publication 1 (*Your Rights as a Taxpayer*) (Rev. 9-2017); *See also* Publication 556 (*Examination of Returns, Appeal Rights, and Claims for Refund*) (Rev. 9-2013), pg. 3.

[13] 66 FR 77 (January 2, 2001); REG-104906-99, Preamble.

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] Reg. §301.7602-2(a).

[19] Reg. §301.7602-2(b).

[20] Reg. §301.7602-2(d)(1).

[21] *Id.*

[22] Reg. §301.7602-2(e)(1).

[23] Reg. §301.7602-2(e)(2)(i).

[24] T.D. 9028 (December 17, 2002).

[25] T.D. 9028 (December 17, 2002), Preamble.

[26] *Id.*

[27] IRM 4.11.57.1 (May 26, 2017).

[28] IRM 4.11.57.2 (May 26, 2017).

[29] *Id.*

[30] IRM 25.27.1.3 (October 19, 2017).

[31] Treasury Inspector General for Tax Administration. Some Tax Returns Selected for Fraud Screening Did Not Have Refunds Held and Required Notifications Were Not Always Sent to Taxpayers. Reference Number 2018-40-024 (March 27, 2018).

[32] *Id.*, pg. 6.

[33] *Vaught et al.*, 128 AFTR 2d 2021-XXXX (Aug. 16, 2021); *see also* Emily L. Foster, *IRS's Notice of Third-Party Summonses Doesn't Pass Muster*, 2021 Tax Notes Today Federal 159-1 (August 16, 2021); *see also J.B. and P.B.*, 123 AFTR 2d 2019-859 (February 26, 2019).

[34] Public Law 116-25 (July 1, 2019). The change was featured in the Title of the Taxpayer First Act called "Putting Taxpayers First," with a Subtitle of "Sensible Enforcement."

[35] IRM 4.11.51.1 (July 20, 2020); U.S. Joint Committee on Taxation. Description of H.R. 1957, the Taxpayer First Act of 2019. JCX-15-19. April 1, 2019, pg. 17.

[36] REG-117542-22 (March 22, 2024).

[37] One exception, which is not discussed in this article, applies to IRS investigations regarding the fuel compliance program. *See* REG-117542-22 (March 22, 2024), Proposed Reg. §301.7602-2(d)(5)(i).

[38] REG-117542-22 (March 22, 2024), Proposed Reg. §301.7602-2(d)(5)(ii).

[39] Code Sec. 7425.

[40] REG-117542-22 (March 22, 2024), Preamble, Section III(B).

[41] REG-117542-22 (March 22, 2024), Proposed Reg. §301.7602-2(d)(5)(iii).

[42] REG-117542-22 (March 22, 2024), Preamble, Section III(C)(1).

[43] *Id.*

[44] REG-117542-22 (March 22, 2024), Proposed Reg. §301.7602-2(d)(5)(iv).

[45] REG-117542-22 (March 22, 2024), Preamble, Section III(C)(2).

[46] REG-117542-22 (March 22, 2024), Proposed Reg. §301.7602-2(d)(5)(v).

[47] REG-117542-22 (March 22, 2024), Preamble, Section III(D)(1).

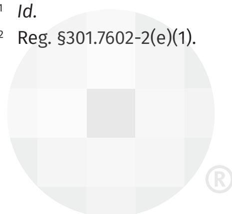
[48] REG-117542-22 (March 22, 2024), Proposed Reg. §301.7602-2(d)(5)(v).

[49] REG-117542-22 (March 22, 2024), Preamble, Section III(D)(2).

[50] REG-117542-22 (March 22, 2024), Proposed Reg. §301.7602-2(d)(5)(vi).

[51] REG-117542-22 (March 22, 2024), Proposed Reg. §301.7602-2(d)(5)(vii).

[52] *Id.*



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