

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

TD 9111

RIN 1545-AY94

Definition of Agent for Certain Purposes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

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

DATES: Effective Date: These regulations are effective January 6, 2004.

Applicability Date: For dates of applicability, see §§301.6103(l)-1(b) and 301.6103(m)-1(b).

FOR FURTHER INFORMATION CONTACT: Helene R. Newsome, 202-622-4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 301 under section 6103(l) and (m) of the Code. On February 1, 2002, the **Federal Register** published a notice of proposed rulemaking (REG-120135-01) regarding the definition of agent for certain

purposes (67 FR 4938). No public comments or requests for hearing were received. The Treasury decision adopts the regulations as proposed.

Generally, returns and return information are confidential under section 6103 of the Code unless a specific statutory exception applies. In cases of non-tax-related disclosures, returns and return information generally may be disclosed only 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 section 6103(l)(6)(B), (l)(12), (m)(2), (m)(4), (m)(5), (m)(7).

This document contains final regulations that clarify that the term agent in section 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 incorporate 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, “[a]gents 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 regulations do not have an impact on taxpayer privacy.

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) 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) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel of the Small Business Administration for comment on its impact on small businesses.

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.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301--PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding entries 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 January 6, 2004.

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 January 6, 2004.

/s/ Mark E. Matthews

Deputy Commissioner for Services and Enforcement.

Approved: December 16, 2003

/s/ Pamela F. Olson

Assistant Secretary of the Treasury (Tax Policy).