

will be declared sold to the United States for the minimum price. If no one offers the minimum price and the Secretary has not determined that it would be in the best interest of the United States to purchase the property for the minimum price, the property shall be released to the owner of the property and the expense of the levy and sale shall be added to the amount of tax for the collection of which the United States made the levy. Any property released shall remain subject to any lien imposed by subchapter C of chapter 64 of subtitle F of the Code.

The regulations reflect the changes made by the Tax Reform Act of 1986. The regulations authorize district directors to make the required determination whether it would be in the best interest of the United States to purchase seized property for the minimum price. In addition, the regulations set forth factors the district director may consider when determining the best interest of the United States. The district director may consider all relevant facts and circumstances including for example: (1) marketability of the property; (2) cost of maintaining the property; (3) cost of repairing or restoring the property; (4) cost of transporting the property; (5) cost of safeguarding the property; (6) cost of potential toxic waste cleanup; and (7) other factors pertinent to the type of property.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 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) of the Internal Revenue Code, the notice of proposed rulemaking was 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 these regulations is Kevin B. Connelly, Office of Assistant Chief Counsel (General Litigation) CC:EL:GL, IRS. However, other personnel from the IRS and Treasury Department participated in their development.

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 continues to read in part as follows:

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

Par. 2. Section 301.6335-1 is amended as follows:

1. Paragraph (c)(3) is revised.
 2. Paragraphs (c)(4) through (c)(9) are redesignated as paragraphs (c)(5) through (c)(10), respectively.
 3. New paragraph (c)(4) is added.
- The addition and revision read as follows:

§ 301.6335-1 Sale of seized property.

* * * * *

(c) * * *

(3) *Determinations relating to minimum price*—(i) *Minimum price*. Before the sale of property seized by levy, the district director shall determine a minimum price, taking into account the expenses of levy and sale, for which the property shall be sold. The internal revenue officer conducting the sale may either announce the minimum price before the sale begins, or defer announcement of the minimum price until after the receipt of the highest bid, in which case, if the highest bid is greater than the minimum price, no announcement of the minimum price shall be made.

(ii) *Purchase by the United States*. Before the sale of property seized by levy, the district director shall determine whether the purchase of property by the United States at the minimum price would be in the best interest of the United States. In determining whether the purchase of property would be in the best interest of the United States, the district director may consider all relevant facts and circumstances including for example—

- (a) Marketability of the property;
- (b) Cost of maintaining the property;
- (c) Cost of repairing or restoring the property;
- (d) Cost of transporting the property;
- (e) Cost of safeguarding the property;
- (f) Cost of potential toxic waste cleanup; and
- (g) Other factors pertinent to the type of property.

(iii) *Effective date*. This paragraph (c)(3) applies to determinations relating to minimum price made on or after December 17, 1996.

(4) *Disposition of property at sale*—(i) *Sale to highest bidder at or above minimum price*. If one or more persons offer to buy the property for at least the amount of the minimum price, the property shall be sold to the highest bidder.

(ii) *Property deemed sold to United States at minimum price*. If no one offers at least the amount of the minimum price for the property and the Secretary has determined that it would be in the best interest of the United States to purchase the property for the minimum price, the property shall be declared to be sold to the United States for the minimum price.

(iii) *Release to owner*. If the property is not declared to be sold under paragraph (c)(4)(i) or (ii) of this section, the property shall be released to the owner of the property and the expense of the levy and sale shall be added to the amount of tax for the collection of which the United States made the levy. Any property released under this paragraph (c)(4)(iii) shall remain subject to any lien imposed by subchapter C of chapter 64 of subtitle F of the Internal Revenue Code.

(iv) *Effective date*. This paragraph (c)(4) applies to dispositions of property at sale made on or after December 17, 1996.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: November 19, 1996.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

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26 CFR Part 301

[TD 8695]

RIN 1545-AT48

Disclosure of Returns and Return Information To Procure Property or Services for Tax Administration Purposes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the disclosure of returns and return information in connection with the procurement of property and services for tax administration purposes. The regulations authorize the Department of

Justice, including offices of United States Attorneys, to make such disclosures. Prior to these amendments, disclosure authority within the Department of Justice rested only with the Tax Division. The amendments also reflect a change to the law made by the Omnibus Budget Reconciliation Act of 1990 regarding the type of services about which disclosures may be made.

EFFECTIVE DATE: These regulations are effective on December 17, 1996.

FOR FURTHER INFORMATION CONTACT: Donald Squires, 202-622-4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 15, 1995, a notice of proposed rulemaking (DL-40-95) relating to the disclosure of returns and return information in connection with the procurement of property and services for tax administration purposes was published in the Federal Register (60 FR 64402). No public hearing was requested or held nor were any comments submitted by the public in response to this notice.

The regulations proposed by DL-40-95 are adopted by this Treasury decision without revision and are discussed below.

Explanation of Provisions

As previously written, 26 CFR 301.6103(n)-1 authorized the Tax Division of the Department of Justice, among other entities and individuals, to disclose returns and return information pursuant to section 6103(n) of the Internal Revenue Code. This authority allowed the Tax Division to disclose tax information incident to its contracts to private parties for, among other purposes, automated litigation support services.

The Department of Justice indicated its intention to establish an expanded automated tracking system for all monetary judgments in favor of the United States, which will be operated by a private company under contract with the Department. Although the majority of tax cases are handled by the Tax Division, there are several United States Attorneys' offices that also have litigation responsibility in the civil tax area. In addition, the Tax Division refers some judgments in tax cases to the United States Attorneys for collection. The previously existing regulations arguably would not have permitted these offices, which are technically not part of the Tax Division, to disclose tax information incident to their inclusion of tax judgments in the automated tracking system.

The amendments adopted by this Treasury decision authorize the Department of Justice, including offices of United States Attorneys, to make disclosures to procure property and services for tax administration purposes. Any such disclosures will be made under the same conditions and restrictions already set forth in the previously existing regulations. By definition, any office within the Department of Justice without tax administration duties will not have occasion or authority pursuant to these regulations to make such disclosures.

The amendments also authorize disclosures in connection with "the providing of other services," i.e., services not related to the strict mechanical processing or manipulation of tax returns or return information. This conforms the regulations to the language of the statute, as amended by the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508, 104 Stat. 1388-353).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Donald Squires, Office of the Assistant Chief Counsel (Disclosure Litigation), IRS. However, other personnel from the IRS, Department of Justice and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adopted 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 continues to read in part as follows:

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

Paragraph 2. Section 301.6103(n)-1 is amended as follows:

1. The first sentence of paragraph (a) introductory text is amended by removing the language "Tax Division,".
2. Paragraph (a)(2) is amended by removing the language "or to".
3. Paragraph (a)(2) is further amended by adding the language "or the providing of other services," immediately following the text "other property,".
4. The concluding text of paragraph (a) is amended by removing the language "Tax Division,".
5. The second sentence of paragraph (d) introductory text is amended by removing the language "Tax Division,".
6. Paragraph (d)(2) is amended by removing the language "Tax Division,".
7. Paragraph (e)(1) is amended by removing the language " , and " at the end of the paragraph and adding a semicolon in its place.
8. Paragraph (e)(2) is amended by removing the period at the end of the paragraph and adding " ; and " in its place.
9. Paragraph (e)(3) is added.
10. The authority citation immediately following § 301.6103(n)-1 is removed.

The addition reads as follows:

§ 301.6103(n)-1 Disclosure of returns and return information in connection with procurement of property and services for tax administration purposes.

* * * * *

(e) * * *

(3) The term *Department of Justice* includes offices of the United States Attorneys.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: June 26, 1996.

Donald C. Lubick,
Acting Assistant Secretary of the Treasury.
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26 CFR Part 301

[TD 8694]

RIN 1545-AS52

Disclosure of Return Information to the U.S. Customs Service

AGENCY: Internal Revenue Service (IRS), Treasury.