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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9455]

RIN 1545-BC55

Suspension of Running of Period of Limitations During a Proceeding to Enforce or Quash a Designated or Related Summons

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the use of designated summonses and related summonses and the effect on the period of limitations on assessment when a case is brought with respect to a designated or related summons.

These final regulations reflect changes to section 6503 of the Internal Revenue Code of 1986 made by the Omnibus Budget Reconciliation Act of 1990 and the Small Business Job Protection Act of 1996. These final regulations affect corporate taxpayers that are examined under the coordinated industry case (CIC) program and are served with designated or related summonses. These final regulations also affect third parties that are served with designated or related summonses for information pertaining to the corporate examination.

DATES: Effective Date: These regulations are effective on **[INSERT THE DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]**.

Applicability Date: For the date of applicability, see §301.6503(j)-1(e).

FOR FURTHER INFORMATION CONTACT: Elizabeth Rawlins, (202) 622-3620 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration regulations (26 CFR part 301) under section 6503. Section 11311 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508, 104 Stat. 1388) amended section 6503(k) to suspend the period of limitations on assessment when a case is brought with respect to a designated or related summons. Section 6503(k) was redesignated as section 6503(j) by section 1702(h)(17)(A) of the Small Business Job Protection Act of 1996 (Public Law 104-188, 110 Stat. 1874).

On April 28, 2008, the IRS published in the **Federal Register** a notice of proposed rulemaking (REG-208199-91; 73 FR 22879), interpreting section 6503(j) and withdrawing a prior notice of proposed rulemaking, hereinafter referred to as the 2003 proposed regulations, published in the **Federal Register** on July 31, 2003 (68 FR 44905). Written comments from one commentator were received. No request for a public hearing was received, nor was one held. The proposed regulations are adopted as final regulations with one minor clarifying change.

As described more fully in the preamble to the proposed regulations, these regulations generally provide that the period of limitations on assessment provided for in section 6501 is suspended with respect to any return of tax by a corporation that is the subject of a designated or related summons if a court proceeding to enforce or

quash is instituted with respect to that summons. These final regulations define a designated summons, a related summons, and the period of suspension. The final regulations also provide guidance regarding the component concepts of judicial enforcement period, court proceeding, the date when the proceeding is no longer pending, final resolution, compliance, and the date when compliance occurs. These regulations also provide special rules on the number of designated and related summonses that may be issued, the time within which court proceedings must be brought to suspend the period of limitations on assessment, the computation of the suspension period if multiple court proceedings are instituted, the effect on the suspension provisions under section 7609(e), and the application of section 7503 when the last day of an assessment period falls on a Saturday, Sunday, or legal holiday.

Comments on the Proposed Regulations

§301.6503(j)-1(c)(5)(ii)--Date Compliance Occurs

Proposed §301.6503(j)-1(c)(5)(ii) provides, in pertinent part, that “[c]ompliance with a court order that grants enforcement, in whole or in part, of a designated or related summons, occurs on the date it is determined that the testimony given, or the books, papers, records, or other data produced, or both, by the summoned party fully satisfy the court order concerning the summons. The determination of whether there has been full compliance will be made within a reasonable time, given the volume and complexity of the records produced, after the later of the giving of all testimony or the production of all records requested by the summons or required by any order enforcing any part of the summons.” The commentator suggested that this provision be changed

to conform to the language appearing in the 2003 proposed regulation, which in pertinent part provides “[c]ompliance with a court order that grants enforcement ... occurs on the date the Commissioner or his delegate (Commissioner) determines that ... the summoned party fully satisf[ie]d the court order The determination whether there has been compliance will be made as soon as practicable after the testimony is given or the materials are produced.” In particular, the commentator recommended that the phrase “as soon as practicable,” used in the 2003 proposed regulations, be substituted for the phrase “within a reasonable time,” used in the 2008 proposed regulations. The commentator indicated this suggestion was intended to protect cooperative taxpayers from uncertainty about the suspension of their period of limitations.

This suggestion has not been adopted. The 2008 proposed regulations identify the facts and circumstances to which the phrase “within a reasonable time” is intended to relate, including whether a determination is “practicable,” by adding the phrase “given the volume and complexity of the records produced.” Moreover, the term “reasonable” is a term that is routinely interpreted by the courts.

The commentator also expressed concern over the 2008 proposed regulatory phrase “it is determined,” appearing in the phrase “occurs on the date it is determined that the testimony given ... or other data produced ... by the summoned party fully satisfy the court order.” Although the commentator did not expressly suggest other language, the commentator did note that the 2003 proposed regulations had provided “the Commissioner or his delegate determines” and expressed the view that the 2008

phrase “it is determined” is ambiguous and will leave the taxpayer without guidance as to who will actually make the determination.

CIC corporate taxpayers and their tax advisors are aware that the first point of inquiry for any matter involving the examination is the examination team conducting the audit and the team’s management and supervisory chain of command. These are the persons who will examine the summoned information and, under Internal Revenue Manual (IRM) procedures that will be issued based on these regulations, will decide whether the summoned person’s production satisfies the court’s order. The final regulations amend the proposed regulations to clarify this understanding and practice.

§301.6503(j)-1(d)—Special Rules

Proposed §301.6503(j)-1(d)(1) through (5) provides several special rules that apply to designated and related summonses, such as the rule limiting the number of designated summonses that may be issued. Proposed §301.6503(j)-1(d) does not include provisions appearing in the 2003 proposed regulations as §301.6503(j)-1(d)(6) and (7), containing a procedure whereby a summoned person could request from the IRS a determination that the summoned person had fully complied with a designated or related summons to the extent required by court order. According to this 2003 proposed regulatory procedure, unless the taxpayer’s request was responded to timely, the summons would be treated as having been fully complied with as of the 180th day. This proposed procedure was not included in the 2008 proposed regulations.

The commentator suggested that this provision be revised to include 2003 proposed §301.6503(j)-1(d)(6) and (7), with one modification. The commentator

suggested that the “fully complied with” procedure be reinstated and that a new provision be added to permit the taxpayer to request a “fully complied with” determination in cases where the summons was served on a third party. The commentator suggested that reinserting the procedure would protect cooperative CIC taxpayers from receiving unnecessary designated summonses, assist CIC taxpayers in knowing the date on which the suspension terminates, and avoid unnecessary litigation.

This commentator’s suggestion has not been adopted. The final regulations and existing extensive safeguard protect cooperative CIC taxpayers from receiving unnecessary designated summonses. For example, pursuant to section 1003 of the Taxpayer Bill of Rights 2 of 1996 (Public Law 104-168, 110 Stat.1468), Congress requires the Treasury Department to report on an annual basis the number of designated summonses issued in the preceding year. Also, pursuant to section 6503(j)(2)(A)(i), Congress requires preissuance review by a high ranking executive of the Office of Chief Counsel. The IRS and these regulations require preissuance review by both the Division Counsel of the Office of Chief Counsel and the Division Commissioner for the organizations that have jurisdiction over the corporate taxpayer. Additionally, the Office of Chief Counsel requires that the National Office provide preissuance review of all designated summonses. IRM 34.6.3.1(6)c. The public may access the IRM at <http://www.irs.gov/irm/index.html>. To obtain approval for the issuance of a designated summons, the issuing office must explain why the corporate taxpayer refused to extend the period of limitations on assessment, and if the summons is to be issued near the end of the period permitted by section 6503(j), the issuing office

must explain why the summons was not issued at an earlier date. IRM 25.5.3.3(3)b.

The effectiveness of these safeguards is evidenced by the IRS's circumspect use of the designated summons authority.

The IRS also will issue IRM provisions that will include procedures whereby the CIC taxpayer will be promptly informed of whether the production of summoned information fully complies with the summons. The IRM procedures depend on the issuance of the interpretative rules in these regulations, particularly the definition of final resolution and compliance, and cannot be published until these final regulations are effective. Once these regulations are effective, the IRM procedures will be published. Moreover, even without such IRM procedures, a CIC taxpayer may ascertain when the IRS determined full compliance and when the suspension terminated by contacting the examining agent.

The final regulations also effectively prevent unnecessary litigation. In addition to the extensive safeguards discussed above, the IRS is committed to examining the summoned information and determining whether the production satisfies the enforcement order within a reasonable time given the volume and complexity of the information produced. The CIC taxpayer may contact the IRS at any time to inquire about the status of the suspension.

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 has been determined that section 553(b) of the Administrative Procedure

Act (5 U.S.C. chapter 5) does not apply to this regulation, and because the regulation does not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), the notice of proposed rulemaking preceding this final regulation 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 Elizabeth Rawlins of the Office of the Associate Chief Counsel, Procedure and Administration, Internal Revenue Service.

Lists 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 301.6503(j)-1 is added to read as follows:

§301.6503(j)-1 Suspension of running of period of limitations; extension in case of designated and related summonses.

(a) General rule. The running of the applicable period of limitations on

assessment provided for in section 6501 is suspended with respect to any return of tax by a corporation that is the subject of a designated or related summons if a court proceeding is instituted with respect to that summons.

(b) Period of suspension. The period of suspension is the time during which the running of the applicable period of limitations on assessment provided for in section 6501 is suspended under section 6503(j). If a court requires any compliance with a designated or related summons by ordering that any record, document, paper, object, or items be produced, or the testimony of any person be given, the period of suspension consists of the judicial enforcement period plus 120 days. If a court does not require any compliance with a designated or related summons, the period of suspension consists of the judicial enforcement period, and the period of limitations on assessment provided in section 6501 shall not expire before the 60th day after the close of the judicial enforcement period.

(c) Definitions--(1) A designated summons is a summons issued to a corporation (or to any other person to whom the corporation has transferred records) with respect to any return of tax by such corporation for a taxable period for which such corporation is being examined under the coordinated industry case program or any other successor to the coordinated examination program if--

(i) The Division Commissioner and the Division Counsel of the Office of Chief Counsel (or their successors) for the organizations that have jurisdiction over the corporation whose tax liability is the subject of the summons have reviewed the summons before it is issued;

(ii) The Internal Revenue Service (IRS) issues the summons at least 60 days before the day the period prescribed in section 6501 for the assessment of tax expires (determined with regard to extensions); and

(iii) The summons states that it is a designated summons for purposes of section 6503(j).

(2) A related summons is any summons issued that--

(i) Relates to the same return of the corporation under examination as the designated summons; and

(ii) Is issued to any person, including the person to whom the designated summons was issued, during the 30-day period that begins on the day the designated summons is issued.

(3) The judicial enforcement period is the period that begins on the day on which a court proceeding is instituted with respect to a designated or related summons and ends on the day on which there is a final resolution as to the summoned person's response to that summons.

(4) Court proceeding--(i) In general. For purposes of this section, a court proceeding is a proceeding filed in a United States district court either to quash a designated or related summons under section 7609(b)(2) or to enforce a designated or related summons under section 7604. A court proceeding includes any collateral proceeding, such as a civil contempt proceeding.

(ii) Date when proceeding is no longer pending. A proceeding to quash or to enforce a designated or related summons is no longer pending when all appeals

(including review by the Supreme Court) are disposed of or after the expiration of the period in which an appeal may be taken or a request for further review (including review by the Supreme Court) may be made. If, however, following an enforcement order, a collateral proceeding is brought challenging whether the testimony given or production made by the summoned party fully satisfied the court order and whether sanctions should be imposed against the summoned party for a failure to so testify or produce, the proceeding to quash or to enforce the summons shall include the time from which the proceeding to quash or to enforce the summons was brought until the decision in the collateral proceeding becomes final. The decision becomes final on the date when all appeals (including review by the Supreme Court) are disposed of or when all appeal periods or all periods for further review (including review by the Supreme Court) expire. A decision in a collateral proceeding becomes final when all appeals (including review by the Supreme Court) are disposed of or when all appeal periods or all periods for further review (including review by the Supreme Court) expire.

(5) Compliance--(i) In general. Compliance is the giving of testimony or the performance of an act or acts of production, or both, in response to a court order concerning the designated or related summons and the determination that the terms of the court order have been satisfied.

(ii) Date compliance occurs. Compliance with a court order that wholly denies enforcement of a designated or related summons is deemed to occur on the date when all appeals (including review by the Supreme Court) are disposed of or when the period in which an appeal may be taken or a request for further review (including review by the

Supreme Court) may be made expires. Compliance with a court order that grants enforcement, in whole or in part, of a designated or related summons, occurs on the date the IRS determines that the testimony given, or the books, papers, records, or other data produced, or both, by the summoned party fully satisfy the court order concerning the summons. The IRS will determine whether there has been full compliance within a reasonable time, given the volume and complexity of the records produced, after the later of the giving of all testimony or the production of all records requested by the summons or required by any order enforcing any part of the summons. If, following an enforcement order, collateral proceedings are brought challenging whether the production made by the summoned party fully satisfied the court order and whether sanctions should be imposed against the summoned party for a failing to do so, the suspension of the periods of limitations shall continue until the order enforcing any part of the summons is fully complied with and the decision in the collateral proceeding becomes final. A decision in a collateral proceeding becomes final when all appeals are disposed of, the period in which an appeal may be taken has expired or the period in which a request for further review may be made has expired.

(6) Final resolution occurs when the designated or related summons or any order enforcing any part of the designated or related summons is fully complied with and all appeals or requests for further review are disposed of, the period in which an appeal may be taken has expired or the period in which a request for further review may be made has expired.

(d) Special rules--(1) Number of summonses that may be issued--(i)

Designated summons. Only one designated summons may be issued in connection with the examination of a specific taxable year or other period of a corporation.

A designated summons may cover more than one year or other period of a corporation.

The designated summons may require production of information that was previously sought in a summons (other than a designated summons) issued in the course of the examination of that particular corporation if that information was not previously produced.

(ii) Related summonses. There is no restriction on the number of related summonses that may be issued in connection with the examination of a corporation. As provided in paragraph (c)(2) of this section, however, a related summons must be issued within the 30-day period that begins on the date on which the designated summons to which it relates is issued and must relate to the same return as the designated summons. A related summons may request the same information as the designated summons.

(2) Time within which court proceedings must be brought. In order for the period of limitations on assessment to be suspended under section 6503(j), a court proceeding to enforce or to quash a designated or related summons must be instituted within the period of limitations on assessment provided in section 6501 that is otherwise applicable to the tax return.

(3) Computation of suspension period if multiple court proceedings are instituted. If multiple court proceedings are instituted to enforce or to quash a designated or one or more related summonses concerning the same tax return, the

period of limitations on assessment is suspended beginning on the date the first court proceeding is brought. The suspension shall end on the date that is the latest date on which the judicial enforcement period, plus the 120 day or 60 day period (depending on whether the court requires any compliance) as provided in paragraph (b) of this section, expires with respect to each summons.

(4) Effect on other suspension periods--(i) In general. Suspensions of the period of limitations under section 6501 provided for under subsections 7609(e)(1) and (e)(2) do not apply to any summons that is issued pursuant to section 6503(j).

The suspension under section 6503(j) of the running of the period of limitations on assessment under section 6501 is independent of, and may run concurrent with, any other suspension of the period of limitations on assessment that applies to the tax return to which the designated or related summons relates.

(ii) Examples. The rules of paragraph (d)(4)(i) of this section are illustrated by the following examples:

Example 1. The period of limitations on assessment against Corporation P, a calendar year taxpayer, for its 2007 return is scheduled to end on March 17, 2011. (Ordinarily, Corporation P's returns are filed on March 15th of the following year, but March 15, 2008, was a Saturday, and Corporation P timely filed its return on the subsequent Monday, March 17, 2008, making March 17, 2011 the last day of the period of limitations on assessment for Corporation P's 2007 tax year.) On January 4, 2011, a designated summons is issued to Corporation P concerning its 2007 return. On March 3, 2011 (14 days before the period of limitations on assessment would otherwise expire with respect to Corporation P's 2007 return), a court proceeding is brought to enforce the designated summons issued to Corporation P. On June 6, 2011, the court orders Corporation P to comply with the designated summons. Corporation P does not appeal the court's order. On September 6, 2011, agents for Corporation P deliver material that they state are the records requested by the designated summons. On October 13, 2011, a final resolution to Corporation P's response to the designated summons occurs when it is determined that Corporation P has fully complied with the court's order. The suspension period applicable with respect to the designated summons issued to

Corporation P consists of the judicial enforcement period (March 3, 2011, through October 13, 2011) and an additional 120-day period under section 6503(j)(1)(B), because the court required Corporation P to comply with the designated summons. Thus, the suspension period applicable with respect to the designated summons issued to Corporation P begins on March 3, 2011, and ends on February 10, 2012. Under the facts of this Example 1, the period of limitations on assessment against Corporation P further extends to February 24, 2012, to account for the additional 14 days that remained on the period of limitations on assessment under section 6501 when the suspension period under section 6503(j) began.

Example 2. Assume the same facts set forth in Example 1, except that in addition to the issuance of the designated summons and related enforcement proceedings, on April 5, 2011, a summons concerning Corporation P's 2007 return is issued and served on individual A, a third party. This summons is not a related summons because it was not issued during the 30-day period that began on the date the designated summons was issued. The third-party summons served on individual A is subject to the notice requirements of section 7609(a). Final resolution of individual A's response to this summons does not occur until February 15, 2012. Because there is no final resolution of individual A's response to this summons by October 5, 2011, which is six months from the date of service of the summons, the period of limitations on assessment against Corporation P is suspended under section 7609(e)(2) to the date on which there is a final resolution to that response for the purposes of section 7609(e)(2). Moreover, because final resolution to the summons served on individual A does not occur until after February 10, 2012, the end of the suspension period for the designated summons, the period of limitations on assessment against Corporation P expires 14 days after the date that the final resolution as provided for in section 7609(e)(2) occurs with respect to the summons served on individual A.

(5) Computation of 60-day period when last day of assessment period falls on a weekend or holiday. For purposes of paragraph (c)(1)(ii) of this section, in determining whether a designated summons has been issued at least 60 days before the date on which the period of limitations on assessment prescribed in section 6501 expires, the provisions of section 7503 apply when the last day of the assessment period falls on a Saturday, Sunday, or legal holiday.

(e) Effective/applicability date. This section is applicable on **[INSERT DATE
THE REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER]**.

Linda E. Stiff
Deputy Commissioner for Services and Enforcement.

Approved: July 15, 2009

Michael Mundaca
Acting Assistant Secretary of the Treasury (Tax Policy).