



TaxNewsFlash

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Proposed regulations: Non-government attorneys excluded from receiving records summoned by IRS

The U.S. Treasury Department and IRS today released for publication in the Federal Register a notice of proposed rulemaking (REG-132434-17) that would amend existing regulations relating to the involvement of non-government attorneys in IRS administrative proceedings.

Today's [proposed regulations](#) [PDF 221 KB] would narrow the scope by excluding non-government attorneys from receiving summoned books, papers, records, or other data, or from participating in the interview of a witness summoned by the IRS to provide testimony under oath, with a limited exception.

Comments and requests for a public hearing must be received by a date that is 90 days after March 28, 2018 (the scheduled date of publication of the proposed regulations in the Federal Register).

Background

Final regulations (July 2016) addressed the participation in a summons interview of "outside persons" hired by the IRS. The regulations allow outside economists, engineers, consultants, or attorneys to receive books, papers, records, or other data summoned by the IRS and participate fully in the interview of a person who the IRS has summoned as a witness to provide testimony under oath. Read [TaxNewsFlash-United States](#)

Those final regulations were subsequently listed in Notice 2017-38 (pursuant to Executive Order 13789) as one of eight regulatory projects identified for "burden reduction." The eight tax regulations were identified as either imposing an undue financial burden on taxpayers, or adding excessive complexity to the tax system. Read [TaxNewsFlash-United States](#)

Proposed regulations

Today's proposed regulations retain the rule from the 2016 final regulations authorizing section 6103(n) contractors to receive and review summoned information and fully participate in the summons interview, including questioning witnesses.

A new measures, however, is being added to prohibit contractors who are attorneys generally from participating in the administrative process. A non-government attorney generally may not review summoned books, papers, records, or other data or questioned summoned witnesses on behalf of the IRS unless the attorney is hired by the IRS for a permitted purpose.

There is a limited exception. The IRS is permitted to hire a non-governmental attorney if that person is being hired for "specialized substantive subject matter expertise" in an area other than federal tax law (e.g., patent law, property law, or environmental law). This exception does not apply to permit the IRS to hire an attorney for non-substantive specialized knowledge such as civil litigation skills. The IRS is also permitted to hire a contractor who may happen to be an attorney but is hired for knowledge, skills, or abilities other than providing legal services as an attorney.

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