



The Department of Treasury Releases Second Report on Identifying and Reducing Tax Regulatory Burdens

October 6, 2017: The Department of Treasury (“Treasury”) has released a second report (the “Second Report”), dated October 2, 2017, on “Identifying and Reducing Tax Regulatory Burdens.”

Executive Order 13789, signed by President Trump on April 21, 2017, instructs Treasury to review all significant regulations issued by Treasury on or after January 1, 2016 that (1) impose an undue financial burden on U.S. taxpayers, (2) add undue complexity to the Federal tax laws, and (3) exceed the statutory authority of the Internal Revenue Service.

On May 30, 2017, the Internal Revenue Service (“IRS”) issued Notice 2017-38, “Implementation of Executive Order 13789 (Identifying and Reducing Tax Regulatory Burdens),” which announced eight regulations Treasury has concluded meet at least one of the first two review criteria specified in Executive Order 13789 (i.e., impose an undue financial burden on U.S. taxpayers and add undue complexity to the Federal tax law). These eight identified regulations were also listed in an interim report to the President dated June 22, 2017. Notice 2017-38 and the interim report stated Treasury’s intention to propose reforms to the eight identified regulations to mitigate the burdens of the regulations.

The eight identified regulations included the finalized regulations under I.R.C. § 7602 that clarify that persons described in I.R.C. § 6103(n) and Treas. Reg. § 301.6103(n)-1(a) with whom the IRS or IRS Chief Counsel contracts for services (such as outside economists, engineers, consultants, or attorneys) may receive books, papers, records, or other data summoned by the IRS. Additionally, the final regulations provide that such contractors may, in the presence of an IRS officer or employee, participate fully in the interview of a person the IRS has summoned as a witness to provide testimony under oath.

The Second Report of October 2 sets forth Treasury’s recommendations with respect to the identified regulations, including the regulations of section 7602. The report provides that Treasury and the IRS are looking into proposing an amendment to the section 7602 regulations which would prohibit the IRS from hiring outside attorneys to participate in an examination, including a summons interview. The contemplated amendment would also prohibit outside attorneys from playing a “behind-the-scenes role” in an examination (i.e., reviewing summoned records or consulting on legal strategy).

The Coalition for Effective & Efficient Tax Administration (“CEETA”), supports the recommended section 7602 regulatory amendment and urges Treasury and the IRS to act

expeditiously in finalizing such amendment. CEETA agrees with the recommended amendment, as it is a step in the right direction to ensure that inherently governmental functions are conducted by government employees, not outside attorneys.

In conjunction with its support of the Second Report's recommendations, CEETA offers its public support for H.R. 3220, *Preserving Taxpayers' Rights Act*, a bipartisan bill introduced on July 13, 2017, by Representatives Jason Smith and Terri Sewell and referred to the Committee on Ways and Means. The bill would amend section 7602 to prevent any person, other than an officer or employee of the IRS or for the sole purpose of serving as an expert, to receive any books, papers, records, or other data obtained in an examination. H.R. 3220 would ensure a statutory solution, not just a regulatory amendment, to the current section 7602 regulatory overreach in allowing outside contractors to exert influence in an IRS examination.

For further insight and discussion, please see:

Letter: CEETA Statement on House Ways & Means Oversight Subcommittee Hearing on IRS Dispute Resolution (September 18, 2017)
http://www.eetax.org/images/EETAX/CEETA_StatementToWaysAndMeansForSept13HearingFINAL.pdf

Letter: CEETA Recommends Regulations to be Considered for Repeal in Response to Executive Orders 13771 and 13789 (May 25, 2017)
http://www.eetax.org/images/EETAX/CEETA%20Ltr_Regulations_5_25_2017%20FINAL.pdf

Letter: CEETA Letter to IRS on Inclusion of Sec. 7602 Temporary/Proposed Regulations in Priority Guidance Plan (May 5, 2016)
<http://www.eetax.org/images/EETAX/CEETA7602FINAL5-5-16.pdf>

Contact:

Pam Olson
Principal, PricewaterhouseCoopers LLP
600 13th Street, NW
Suite 1000
Washington, DC 20005
Telephone: (202) 414-1401

Kevin Brown
Principal, PricewaterhouseCoopers LLP
600 13th Street, NW
Suite 1000
Washington, DC 20005
Telephone: (202) 346-5051