

Proposed Regulations Restrict Role of IRS Contractors in Audits and Summons Interviews

On August 6, 2020, the IRS issued proposed regulations ([REG-132434-17](#)) limiting the role of contractors hired to assist the IRS in audits, including during summons interviews. The proposed regulations implement Section 7602(f), enacted by the Taxpayer First Act (P.L. 116-25), which became effective on July 1, 2019. They withdraw and replace proposed regulations issued in March 2018 (prior to the passage of the Taxpayer First Act) that placed looser restrictions on the roles of contractors.

Section 7602(f) limits the provision of taxpayer materials to those the contractor requires “for the sole purpose of providing expert evaluation and assistance to the [IRS].” The proposed regulations echo this restriction, and set forth non-exclusive types of contractors that the IRS may hire to provide “expert evaluation and assistance”:

- **Contractors with expertise in substantive areas.** They may include subject matter experts (*e.g.* economists, engineers, and certain lawyers) and industry experts. Prop. Reg. § 301.7602-1(b)(3)(i)(B)(1). Attorney experts could include, for instance, patent or environmental attorneys, lawyers who specialize in international, state, or local tax law, or contractors providing non-legal services who happen to also be attorneys. Prop. Reg. § 301.7602-1(b)(3)(i)(C). The preamble to the proposed regulations makes clear that federal tax lawyers and U.S. civil litigators may not be hired for such expertise. Although this restriction is not imposed in the Taxpayer First Act, the IRS determined that the IRS (including the Office of Chief Counsel) already possessed adequate knowledge, skills, and abilities with respect to federal tax law and U.S. civil litigation.
- **Contractors who provide ancillary services** such as court reporters, translators, and photocopy providers (Prop. Reg. § 301.7602-1(b)(3)(i)(B)(2)).
- **Whistleblower-related contractors** described in Treas. Reg. § 301.6103(n)-2 who may possess special factual knowledge that would assist the IRS (*Id.* at § 301.7602-1(b)(3)(i)(B)(3)).

Section 7602(f) further prohibits contractors from questioning witnesses under oath in summons interviews. The proposed regulation implementing this restriction allows contractors to attend summons interviews, but makes clear that they may not ask questions of people who are under oath or ask a witness’ representative to clarify an objection or assertion of privilege. Prop. Reg. § 301.7602-1(b)(3)(ii)(A). Further, the preamble to the proposed regulations provides that such contractors may continue to ask questions *informally* and *not under oath* of a taxpayer, a taxpayer’s employee or third party. The proposed regulations also clarify that court reporters are not prohibited from asking “housekeeping” questions that are essential to their job (*e.g.* asking a witness to spell her name), and interpreters are permitted to ask clarifying questions necessary to the translation. Prop. Reg. § 301.7602-1(b)(3)(ii)(B).

The proposed regulations are proposed to be effective for summonses issued after August 7, 2020 (the date they were published in the Federal Register).