

using the reporting form in Appendix A to this part:

(1) Spreadsheet in electronic format containing the raw data for each observation site and the observation site weight;

(2) Statewide seat belt use rate estimate and standard error;

(3) Nonresponse rate for the variable "belt use," as provided in § 1340.9(f);

(4) Dates of the reported data collection;

(5) Observation sites, identified by type of observation site (i.e., observation site selected in the original survey design, alternate observation site selected subsequent to the original survey design), and by characteristics of the observation site visit (i.e., at least one vehicle observed, no vehicles observed); and

(6) Name of the State survey statistician meeting the qualification requirements, as provided in § 1340.8(c).

(b) *Certifications by Governor's Highway Safety Representative.* The Governor's Highway Safety Representative (GR) or if delegated in writing, the Coordinator of the State Highway Safety Office, shall sign the reporting form certifying that—

(1) _____ has been designated by the Governor as the GR, and if applicable, the GR has delegated the authority to sign the certification in writing to _____, the

Coordinator of the State Highway Safety Office;

(2) The reported Statewide seat belt use rate is based on a survey design that was approved by NHTSA, in writing, as conforming to the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR Part 1340;

(3) The survey design has remained unchanged since the survey was approved by NHTSA; and

(4) _____, a qualified survey statistician, reviewed the seat belt use rate reported in Part A (of the certification) and information reported in Part B and has determined that they meet the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR part 1340.

(d) *Audits.* NHTSA may audit State survey results and data collection. The State shall retain the following records for five years and make them available to NHTSA in electronic format within four weeks of request:

(1) Computation programs used in the sample selection;

(2) Computation programs used to estimate the Statewide seat belt use rate and standard errors for the surveys conducted since the last NHTSA approval of the sample design; and

(3) Sampling frame(s) for design(s) used since the last NHTSA approval of the sample design.

APPENDIX A TO PART 1340—STATE SEAT BELT USE SURVEY REPORTING FORM

PART A: To be completed by the Governor's Highway Safety Representative (GR) or if applicable, the Coordinator of the State Highway Safety Office.

State: _____

Calendar Year of Survey: _____

Statewide Seat Belt Use Rate: _____

I hereby certify that:

- _____ has been designated by the Governor as the State's Highway Safety Representative (GR), and if applicable, the GR has delegated the authority to sign the certification in writing to _____, the Coordinator of the State Highway Safety Office.

- The reported Statewide seat belt use rate is based on a survey design that was approved by NHTSA, in writing, as conforming to the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR Part 1340.

- The survey design has remained unchanged since the survey was approved by NHTSA.

- _____, a qualified survey statistician, has reviewed the seat belt use rate reported above and information reported in Part B and has determined that they meet the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR Part 1340.

Signature _____

Date _____

Printed name of signing official _____

PART B—DATA COLLECTED AT OBSERVATION SITES

Site ID	Site type ¹	Date observed	Sample weight	Number of drivers	Number of front Passengers	Number of occupants ² belted	Number of occupants unbelted	Number of occupants with unknown belt use
Total								

Standard Error of Statewide Belt Use Rate ³ _____

Nonresponse Rate, as provided in § 1340.9(f)

Nonresponse rate for the survey variable seat belt use: _____

¹ Identify if the observation site is an original observation site or an alternate observation site.

² Occupants refer to both drivers and passengers.

³ The standard error may not exceed 2.5 percent.

Issued on: March 28, 2011.

David L. Strickland,
Administrator, National Highway Traffic Safety Administration.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9519]

RIN 1545-BF33

Taxpayer Assistance Orders

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to taxpayer

assistance orders. These regulations reflect changes to the law made by the Taxpayer Bill of Rights II, the Internal Revenue Service Restructuring and Reform Act of 1998, the Community Renewal Tax Relief Act of 2000, and the American Jobs Creation Act of 2004. The final regulations affect taxpayers in cases where a taxpayer assistance order is being considered or issued.

DATES: *Effective date:* These regulations are effective on April 1, 2011.

Applicability date: For dates of applicability, see § 301.7811-1(f).

FOR FURTHER INFORMATION CONTACT: Janice R. Feldman, (202) 622-8488 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

These final regulations contain rules related to taxpayer assistance orders under sections 7811 of the Internal Revenue Code (Code). These regulations are necessary to reflect changes to the law made by the Taxpayer Bill of Rights II (TBOR 2), the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98), the Community Renewal Tax Relief Act of 2000, and the American Jobs Creation Act of 2004. On July 27, 2009, a notice of proposed rulemaking (REG-152166-05) relating to taxpayer assistance orders was published in the **Federal Register** (74 FR 36973). No comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested or held. The proposed regulations are adopted without substantive change by this Treasury decision with one exception. *Example 3* in § 301.7811-1(a)(4)(iv) of the regulations illustrating significant costs was revised slightly.

Furthermore, § 301.7811-1(g) of the final regulations (TD 8403) published on March 23, 1992, in the **Federal Register** (57 FR 9975) defined the term "Ombudsman." After these final regulations were published, section 101 of TBOR 2, Public Law 104-168, 110 Stat. 1452 (1996), amended section 7811 by changing the name of the "Ombudsman" to the "Taxpayer Advocate." Section 1102 of RRA 98, Public Law 105-206, 112 Stat. 685 (1998), further amended section 7811, by replacing "Taxpayer Advocate" with "National Taxpayer Advocate." Thus, § 301.7811-1(g), which defined the obsolete term "ombudsman" is being removed by these final regulations as it is obsolete. Section 301.7811-1(e) of the existing final regulations (TD 8403), which contains the term "ombudsman" and concerns the suspension of the statute of limitations, was not revised by

these final regulations as changes to that section may involve changes to IRS computer processing systems. Thus, all references to the term "ombudsman" in § 301.7811-1(e) should, consistent with the current version of the statute, be construed as referring to the "National Taxpayer Advocate." Possible revisions to § 301.7811-1(e) will be considered at a later date.

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 also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. The information required under this Treasury decision is already required by the current regulations and the Form 911, "Request for Taxpayer Advocate Service Assistance (and Application for Taxpayer Assistance Order)." In addition, the Form 911 takes minimal time and expense to prepare, and the filing of a Form 911 is optional. Therefore, preparing the Form 911 does not significantly increase the burden on taxpayers. Based on these facts, the Treasury Department and the IRS have determined that these regulations will not have a significant economic impact on a substantial number of small entities. Furthermore, the substance of the regulations does not concern the Form 911, but the procedures the Taxpayer Advocate Service (TAS) or the Internal Revenue Service (IRS) must follow with respect to taxpayer assistance orders. Therefore, any burden created by these regulations is on the TAS or IRS, not taxpayers. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations 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 Janice R. Feldman, Office of the Special Counsel (National Taxpayer Advocate Program) (CC:NTA).

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 the 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 301.7811-1 is amended by revising paragraphs (a), (b), (c) and (d), removing paragraphs (f), (g), (h) and redesignating paragraph (h) as (f) and revising newly designated paragraph (f) to read as follows:

§ 301.7811-1 Taxpayer assistance orders.

(a) *Authority To Issue—(1) In general.* When an application for a taxpayer assistance order (TAO) is filed by the taxpayer or the taxpayer's authorized representative in the form, manner and time specified in paragraph (b) of this section, the National Taxpayer Advocate (NTA) may issue a TAO if, in the determination of the NTA, the taxpayer is suffering or is about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Internal Revenue Service (IRS), including action or inaction on the part of the IRS.

(2) *The National Taxpayer Advocate defined.* The term *National Taxpayer Advocate* includes any designee of the NTA, such as a Local Taxpayer Advocate.

(3) *Issuance without a written application.* The NTA may issue a TAO in the absence of a written application by the taxpayer under section 7811(a).

(4) *Significant hardship—(i) Determination required.* Before a TAO may be issued, the NTA is required to make a determination regarding significant hardship.

(ii) *Term defined.* The term *significant hardship* means a serious privation caused or about to be caused to the taxpayer as the result of the particular manner in which the revenue laws are being administered by the IRS. Significant hardship includes situations in which a system or procedure fails to operate as intended or fails to resolve the taxpayer's problem or dispute with the IRS. A significant hardship also includes, but is not limited to:

(A) An immediate threat of adverse action;

(B) A delay of more than 30 days in resolving taxpayer account problems;

(C) The incurring by the taxpayer of significant costs (including fees for

professional representation) if relief is not granted; or

(D) Irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted.

(iii) *A delay of more than 30 days in resolving taxpayer account problems is further defined.* A delay of more than 30 days in resolving taxpayer account problems exists under the following conditions:

(A) When a taxpayer does not receive a response by the date promised by the IRS; or

(B) When the IRS has established a normal processing time for taking an action and the taxpayer experiences a delay of more than 30 days beyond the normal processing time.

(iv) *Examples of significant hardship.* The provisions of this section are illustrated by the following examples:

Example 1. Immediate threat of adverse action. The IRS serves a levy on A's bank account. A needs the bank funds to pay for a medically necessary surgical procedure that is scheduled to take place in one week. If the levy is not released, A will lack the funds necessary to have the procedure. A is experiencing an immediate threat of adverse action.

Example 2. Delay of more than 30 days. B files a Form 4506, "Request for a Copy of Tax Return." B does not receive the photocopy of the tax return after waiting more than 30 days beyond the normal time for processing. B is experiencing a delay of more than 30 days.

Example 3. Significant costs. The IRS sends XYZ, Inc. a notice requesting payment of the outstanding employment taxes and penalties owed by XYZ, Inc. The notice indicates that XYZ, Inc. has small employment tax balances with respect to 12 employment tax quarters totaling \$10X. XYZ, Inc. provides documentation to the IRS which it contends shows that if all payments were applied to each quarter correctly, there would be no balance due. The IRS requests additional records and documentation. Because there are 12 quarters involved, to comply with this request XYZ, Inc. asserts that it will need to hire an accountant, who estimates he will charge at least \$5X to organize all the records and provide a detailed analysis of how to apply the deposits and payments. XYZ, Inc. is facing significant costs.

Example 4. Irreparable injury. D has arranged with a bank to refinance his mortgage to lower his monthly payment. D is unable to make the current monthly payment. Unless the monthly payment amount is lowered, D will lose his residence to foreclosure. The IRS refuses to subordinate the Federal tax lien, as permitted by section 6325(d), or discharge the property subject to the lien, as permitted by section 6325(b). As a result, the bank will not allow D to refinance. D is facing an irreparable injury if relief is not granted.

(5) *Distinction between significant hardship and the issuance of a TAO.* A finding that a taxpayer is suffering or

about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the IRS will not automatically result in the issuance of a TAO. After making a determination of significant hardship, the NTA must determine whether the facts and the law support relief for the taxpayer. In cases where any IRS employee is not following applicable published administrative guidance (including the Internal Revenue Manual), the NTA shall construe the factors taken into account in determining whether to issue a TAO in the manner most favorable to the taxpayer.

(b) *Generally.* A TAO is an order by the NTA to the IRS. The IRS will comply with a TAO unless it is appealed and then modified or rescinded by the NTA, the Commissioner, or the Deputy Commissioner. If a TAO is modified or rescinded by the Commissioner or the Deputy Commissioner, a written explanation of the reasons for the modification or rescission must be provided to the NTA. The NTA may not make a substantive determination of any tax liability. A TAO is also not intended to be a substitute for an established administrative or judicial review procedure, but rather is intended to supplement existing procedures if a taxpayer is about to suffer or is suffering a significant hardship. A request for a TAO shall be made on a Form 911, "Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order)" (or other specified form) or in a written statement that provides sufficient information for the Taxpayer Advocate Service (TAS) to determine the nature of the harm or the need for assistance. A taxpayer's right to administrative or judicial review will not be diminished or expanded in any way as a result of the taxpayer's seeking assistance from TAS.

(c) *Contents of taxpayer assistance orders.* After establishing that the taxpayer is facing significant hardship and determining that the facts and law support relief to the taxpayer, the NTA may issue a TAO ordering the IRS within a specified time to—

(1) *Release a levy.* Release levied property (to the extent that the IRS may by law release such property); or

(2) *Take certain other actions.* Cease any action, take any action as permitted by law, or refrain from taking any action with respect to a taxpayer pursuant to—

(i) Chapter 64 (relating to collection);

(ii) Chapter 70, subchapter B (relating to bankruptcy and receiverships);

(iii) Chapter 78 (relating to discovery of liability and enforcement of title); or

(iv) Any other provision of the internal revenue laws specifically described by the NTA in the TAO.

(3) *Expedite, review, or reconsider an action at a higher level.* Although the NTA may not make the substantive determination, a TAO may be issued to require the IRS to expedite, reconsider, or review at a higher level an action taken with respect to a determination or collection of a tax liability.

(4) *Examples.* The following examples assume the existence of significant hardship:

Example 1. J contacts a Local Taxpayer Advocate because a wage levy is causing financial difficulties. The NTA determines that the levy should be released as it is causing economic hardship (within the meaning of section 6343(a)(1)(D) and § 301.6343-1(b)(4)). The NTA may issue a TAO ordering the IRS to release the levy in whole or in part by a specified date.

Example 2. The IRS rejects K's offer in compromise. K files a Form 911, "Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order)." The NTA discovers facts that support acceptance of the offer in compromise. The NTA may issue a TAO ordering the IRS to reconsider its rejection of the offer or to review the rejection of the offer at a higher level. The TAO may include the NTA's analysis of and recommendation for resolving the case.

Example 3. L files a protest requesting Appeals consideration of IRS's proposed denial of L's request for innocent spouse relief. Appeals advises L that it is going to issue a Final Determination denying the request for innocent spouse relief. L files a Form 911, "Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order)." The NTA reviews the administrative record and concludes that the facts support granting innocent spouse relief. The NTA may issue a TAO ordering Appeals to refrain from issuing a Final Determination and reconsider or review at a higher level its decision to deny innocent spouse relief. The TAO may include the NTA's analysis of and recommendation for resolving the case.

(d) *Issuance.* A TAO may be issued to any office, operating division, or function of the IRS. A TAO shall apply to persons performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as the order applies to IRS employees. A TAO will not be issued to IRS Criminal Investigation division (CI), or any successor IRS division responsible for the criminal investigation function, if the action ordered in the TAO could reasonably be expected to impede a criminal investigation. CI will determine whether the action ordered in the TAO could reasonably be expected to impede an investigation. Generally, a

TAO may not be issued to the Office of Chief Counsel.

* * * * *

(f) *Effective/applicability date.* These regulations are applicable for TAOs issued on or after April 1, 2011, except that paragraph (e) of this section is applicable beginning March 20, 1992.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: March 25, 2011.

Michael Mundaca,

Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 306, 356, 357, and 363

U.S. Securities; Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds; Book-Entry Treasury Bonds, Notes and Bills Held in Treasury/Reserve Automated Debt Entry System (TRADES) and Legacy Treasury Direct; Securities Held in TreasuryDirect

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: In order to reduce costs and duplication of systems, the Department of the Treasury (Treasury) is limiting options available in its Legacy Treasury Direct system. New customer accounts will no longer be opened and transfers of securities from other book-entry systems will no longer be accepted. Treasury also intends to limit the securities that will be available for purchase or reinvestment in existing accounts.

DATES: *Effective date:* May 1, 2011.

ADDRESSES: You can download this Final Rule at the following Internet addresses: <http://www.publicdebt.treas.gov>, <http://www.gpo.gov>, or <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Elisha Whipkey, Director, Division of Program Administration, Office of Retail Securities, Bureau of the Public Debt, at (304) 480-6319 or elisha.whipkey@bpd.treas.gov.

Lisa Martin, Attorney-Adviser; Mary Schaffer, Attorney-Adviser; Edward Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480-8692 or lisa.martin@bpd.treas.gov.

SUPPLEMENTARY INFORMATION: Legacy Treasury Direct® is a book-entry, non-Internet-based system established in 1986 for customers to buy, hold, and conduct permitted transactions in eligible marketable Treasury securities directly with Treasury rather than indirectly through an intermediary such as a dealer or a depository institution (51 FR 18260-01 (May 16, 1986) (codified at 31 CFR part 357)). Legacy Treasury Direct customers conduct transactions in paper form, although certain transactions can be made through an Internet interface or through an automated phone system.

In 2002, Treasury launched TreasuryDirect®, an Internet-based system for purchasing, holding, and conducting permitted transactions in eligible Treasury securities in book-entry form directly with Treasury rather than indirectly through an intermediary (67 FR 64276-01 (Oct. 17, 2002) (codified at 31 CFR part 363)). TreasuryDirect allows customers to invest in both savings bonds and marketable Treasury securities—Treasury bills, notes, bonds, and inflation-protected securities (TIPS)—using one Web-based account. In TreasuryDirect, customers can purchase securities and manage their holdings online and can conduct most transactions without assistance.

When TreasuryDirect was implemented, the goal was to provide an up-to-date system that would eventually become Treasury's only system for holding marketable securities directly with Treasury. It remains Treasury's long-term plan to consolidate all retail sales of marketable Treasury securities in one system to avoid duplication of services and to create an all-electronic, cost-effective environment for holding marketable Treasury securities directly with Treasury. By gradually eliminating redundant systems and eventually consolidating all directly-held marketable securities into one system, Treasury will realize savings in administrative costs, and customers will be able to manage their accounts independently.

As a step toward achieving this goal, Treasury will no longer accept the establishment of new accounts in Legacy Treasury Direct or transfers of marketable securities into existing Legacy Treasury Direct accounts, effective May 1, 2011. Concurrently, Treasury intends to limit the opportunities for purchasing and reinvesting in new securities in Legacy Treasury Direct by reducing the number of securities offered for auction that are eligible to be held in Legacy Treasury

Direct. Treasury further intends to discontinue all offerings of securities eligible to be held in Legacy Treasury Direct by November 2012.

For now, customers with existing Legacy Treasury Direct accounts can continue to hold and make permitted transactions in securities in those accounts. Current Legacy Treasury Direct account holders will be encouraged to transfer their holdings to accounts in TreasuryDirect. Customers will be provided with information about creating TreasuryDirect accounts and the transfer process, and assistance will be available for those choosing to make the transition to TreasuryDirect.

Procedural Requirements

Executive Order 12866. This rule is not a significant regulatory action pursuant to Executive Order 12866.

Administrative Procedure Act (APA). Because this rule relates to United States securities, which are contracts between Treasury and the owner of the security, this rule falls within the contract exception to the APA, 5 U.S.C. 553(a)(2). As a result, the notice, public comment, and delayed effective date provisions of the APA are inapplicable to this rule.

Regulatory Flexibility Act. The provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply to this rule because, pursuant to 5 U.S.C. 553(a)(2), it is not required to be issued with notice and opportunity for public comment.

Paperwork Reduction Act (PRA). There is no new collection of information contained in this final rule that would be subject to the PRA, 44 U.S.C. 3501 *et seq.* Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The Office of Management and Budget already has approved all collections of information for these parts (OMB No. 1535-0059, OMB No. 1535-0112, OMB No. 1535-0068, and OMB No. 1535-0138).

Congressional Review Act (CRA). This rule is not a major rule pursuant to the CRA, 5 U.S.C. 801 *et seq.*, because it is a minor amendment that is expected to decrease costs for taxpayers; therefore, this rule is not expected to lead to any of the results listed in 5 U.S.C. 804(2). This rule may take immediate effect after we submit a copy of it to Congress and the Comptroller General.