

will state the reason(s) for the adverse determination.

**Charles W. Winwood,**

*Acting Commissioner of Customs.*

Approved: January 29, 2002.

**Timothy E. Skud,**

*Acting Deputy Assistant Secretary of the Treasury.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 301

[REG-120135-01]

RIN 1545-AY94

#### Definition of Agent for Certain Purposes

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to the definition of agent for certain purposes. The proposed regulations clarify that the term agent in certain provisions of section 6103 of the Internal Revenue Code includes contractors.

**DATES:** Written and electronic comments and requests for a public hearing must be received by May 2, 2002.

**ADDRESSES:** Send submissions to CC:ITA:RU (REG-120135-01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU (REG-120135-01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site: [http://www.irs.ustreas.gov/tax\\_regs/regslst.html](http://www.irs.ustreas.gov/tax_regs/regslst.html).

**FOR FURTHER INFORMATION CONTACT:** Helene R. Newsome, 202-622-4580 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

Generally, returns and return information are confidential under section 6103 of the Internal Revenue Code (Code) unless a specific statutory exception applies. In cases of non-tax-related disclosures, returns and return

information generally may only be disclosed to officers and employees of Federal, state, and local government agencies, and not to contractors or agents of such agencies. In certain limited circumstances, however, Congress has permitted disclosures to agents of these agencies. See sections 6103(l)(6)(B), 6103(l)(12), 6103(m)(2), 6103(m)(4), 6103(m)(5), and 6103(m)(7).

This document contains proposed regulations that clarify that the term agent in sections 6103(l) and (m) includes contractors. Clarification that the term agent includes contractors is necessary for the purpose of bringing certain statutory grants of disclosure authority into alignment with the reality of many agencies' operations. Agencies generally procure the services of third parties under public contracting laws, which do not necessarily correlate with common law concepts of agent. This clarification is also consistent with Congressional intent. For example, the Senate Finance Committee, in amending section 6103(m)(2), stated, "Agents are those who are engaged directly in performing or assisting in collection functions for the federal government, presumably, private collection agencies who have contracted with the government to collect claims . . ." S. Rep. No. 97-378, at 15 (1982).

This clarification does not provide any new disclosure authority, nor does it authorize the disclosure of return information to contractors that Congress has not previously specifically authorized in the Code. With regard to protection of taxpayer data, agents/contractors are subject to safeguard requirements, redisclosure prohibitions, and civil and criminal penalties for unauthorized disclosures. Accordingly, the proposed regulations do not have an impact on taxpayer privacy.

##### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel of the Small Business Administration for comment on its impact on small businesses.

##### Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

##### Drafting Information

The principal author of these regulations is Helene R. Newsome, Office of the Associate Chief Counsel (Procedure & Administration), Disclosure & Privacy Law Division.

##### List of Subjects in 26 CFR part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

##### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

#### PART 301—PROCEDURE AND ADMINISTRATION

**Paragraph 1.** The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*  
Section 301.6103(l)-1 also issued under 26 U.S.C. 6103(q); \* \* \*  
Section 301.6103(m)-1 also issued under 26 U.S.C. 6103(q); \* \* \*

**Par. 2.** Section 301.6103(l)-1 is added to read as follows:

#### § 301.6103(l)-1 Disclosure of returns and return information for purposes other than tax administration.

(a) *Definition.* For purposes of applying the provisions of section 6103(l) of the Internal Revenue Code, the term *agent* includes a contractor.

(b) *Effective date.* This section is applicable on or after the date of publication of the Treasury decision adopting these regulations as final regulations in the **Federal Register**.

**Par. 3.** Section 301.6103(m)-1 is added to read as follows:

**§ 301.6103(m)-1 Disclosure of taxpayer identity information.**

(a) *Definition.* For purposes of applying the provisions of section 6103(m) of the Internal Revenue Code, the term *agent* includes a contractor.

(b) *Effective date.* This section is applicable on or after the date of publication of the Treasury decision adopting these regulations as final regulations in the **Federal Register**.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

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**DEPARTMENT OF VETERANS AFFAIRS****38 CFR Part 20**

RIN 2900-AK71

**Board of Veterans' Appeals: Rules of Practice—Appeal Withdrawal**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes amending a Board of Veterans' Appeals Rule of Practice to remove an unnecessary restriction on who may withdraw an appeal to the Board of Veterans' Appeals and to clarify appeal withdrawal procedures.

**DATES:** Comments must be received on or before April 2, 2002.

**ADDRESSES:** Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273-9289; or e-mail comments to "OGCRegulations@mail.va.gov". Comments should indicate that they are submitted in response to "RIN 2900-AK71." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**FOR FURTHER INFORMATION CONTACT:** Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565-5978.

**SUPPLEMENTARY INFORMATION:** Initial decisions on claims for Federal veterans' benefits are made at VA field offices throughout the nation. Claimants may appeal those decisions to the Board of Veterans' Appeals (Board).

Appellants may appoint a representative, typically a state or

national veterans' service organization or an attorney-at-law, to assist them and act on their behalf throughout the appeal process. The Board's current Rule of Practice 204(c) (38 CFR 20.204(c)) bars an appellant's representative from withdrawing without the appellant's written consent a Notice of Disagreement or a Substantive Appeal (documents filed to initiate and to complete an appeal to the Board, respectively) that the appellant filed personally.

VA proposes removing the restriction on a representative's authority to withdraw an appeal. VA believes that the restriction, adopted in the early 1960s, is an outdated and unnecessary intrusion into the relationship between appellants and their representatives which creates needless delay through unnecessary procedural complexity. Appellants appoint representatives because of the representatives' expertise in making appropriate tactical decisions about how best to pursue the appellants' interests. They entrust the representatives with any number of important procedural decisions. While an appellant could contractually limit the authority of his or her representative, VA believes that those decisions are best left to the parties.

This proposed amendment would also fill in currently missing details about appeal withdrawal filing procedures, such as where to file, what to include in the filing, and the effect of filing. Among other things, an appellant or representative would file an appeal withdrawal with the local VA regional office, called the "agency of original jurisdiction" in the proposed rule, up until the time that they receive notice that the appeal has been transferred to the Board. (Such notice is required by 38 CFR 19.36.) Thereafter, they would file a withdrawal directly with the Board. The withdrawal would be effective when received by the agency of original jurisdiction up until the time the appeal is transferred to the Board. Thereafter, the withdrawal would be effective upon receipt by the Board.

VA also proposes removing the statement in the Board's current Rule of Practice 204(c) that the agency of original jurisdiction may not withdraw a Notice of Disagreement or a Substantive Appeal because the restriction would be covered under revised 38 CFR 20.204(a).

**Paperwork Reduction Act**

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3520).

**Executive Order 12866**

This document has been reviewed by the Office of Management and Budget Under Executive Order 12866.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612, inasmuch as this rule applies to individual claimants for veterans' benefits and does not affect such entities. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

**Unfunded Mandates**

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

**Catalog of Federal Domestic Assistance**

There is no Catalog of Federal Domestic Assistance number for this proposed rule.

**List of Subjects in 38 CFR Part 20**

Administrative practice and procedure, Claims, Veterans.

Approved: January 23, 2002.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, VA proposes amending 38 CFR part 20 as follows:

**PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE**

1. The authority citation for part 20 continues to read as follows:

**Authority:** 38 U.S.C. 501(a) and as noted in specific sections.

2. Section 20.204 is revised to read as follows:

**§ 20.204 Rule 204. Withdrawal of Appeal.**

(a) *When and by whom filed.* Only an appellant, or an appellant's authorized representative, may withdraw an appeal. An appeal maybe withdrawn as to any or all issues involved in the appeal.

(b) *Filing.* (1) *Form and content.* Except for appeals withdrawn on the record at a hearing, appeal withdrawals