



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE  
TECHNICAL ASSISTANCE

MEMORANDUM FOR CHIEF, DOMESTIC & INTERNATIONAL SECTION  
OP:FS:S:P:P  
Attn: Juan Santiago

FROM: W. Edward Williams  
Senior Technical Reviewer, Branch 1  
Associate Chief Counsel (International)  
CC:INTL:BR1

SUBJECT: Impact of IRC 7602(c) on International Processing

This Technical Assistance responds to your request dated September 27, 1999. Technical Assistance does not relate to a specific case and is not binding on Examination or Appeals. This document is not to be cited as precedent.

This memorandum concerns the impact of taxpayer notification under section 7602(c) pertaining to various third party contacts. Your specific concerns and questions are addressed in the order presented.

ISSUES

1. Whether a third party contact must be initiated 10 days after the issuance of Letter 3164, or whether more time can be granted to allow taxpayers outside the United States ample time to receive the notice prior to the commencement of the third party contact.
2. Whether contact with the competent authority of a treaty partner for purposes of verifying a taxpayer's entitlement to treaty benefits is a third party contact within the purview of section 7602(c).

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3. Whether contact by the Virgin Islands for a cover over of taxes is a third party contact under section 7602(c).
4. Whether contact with an unauthorized agent for purposes of identifying a taxpayer is a third party contact under section 7602(c).

## CONCLUSIONS

### **1. 10 day waiting period before initiating third party contact.**

Your concern involves the possibility that taxpayers outside the United States may not have received Letter 3164, providing notice of third party contacts, before the third party contact is initiated. You suggest an increased waiting time beyond the previously expressed 10 day period for overseas taxpayers, so as to ensure receipt of the notice. We recognize your concern and, because section 7602(c) does not specify a time frame, we believe it is reasonable to allow a longer period of time for taxpayers outside the United States. The 10 day waiting period is the minimum amount of period of time that must pass after Letter 3164 is issued, and before a third party contact may be initiated. For example, section 7609(d) provides for a waiting period of 23 days following the issuance of a summons. It would not be inappropriate to wait 23 days following the issuance of Letter 3164 as well.

### **2. OECD and Foreign governments.**

You asked whether section 7602(c) is implicated in a request by the United States competent authority to a competent authority of a treaty partner for verification as to whether a specific taxpayer is entitled to treaty benefits. This type of contact is a *specific outbound request for an exchange of information*. In the absence of regulations providing a specific exception for foreign governments, it is our view that a specific request, relating to an identified taxpayer, is a third-party contact for purposes of section 7602(c).

### **3. Virgin Islands Cover Overs.**

You expressed a concern that a request to the Internal Revenue Service by the Virgin Islands government for a cover over of taxes constitutes a third party contact under section 7602(c). Cover overs are outside the scope of section 7602(c). First, it is a contact initiated by the Virgin Islands government, not the Internal Revenue Service. Second, the purpose of the contact is not for the determination or collection of a tax liability owed to the United States. The contact occurs after the taxes are paid to the United States, and is for the purpose of determining the Virgin Islands' ability to receive in its treasury the amount to be covered over.

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#### 4. **FIRPTA and Form 8288.**

Your concern pertains to incorrect Forms 8288. Generally Form 8288 is to be completed by the withholding agent/transferee. In some instances they are completed and filed by independent settlement officers who are not considered to be agents representative of the taxpayer or withholding agent, such as title companies and realtors. You stated that these settlement officers sometimes provide their own entity information in lieu of the correct withholding agent, such as the buyer or other transferee, as is required by Form 8288. As a result, when penalties and interest are owed due to late filing the bill is mailed to the entity whose information is indicated on the form. Because the bill is sent to an entity which is not the actual withholding agent/transferee, you are concerned that a third party contact is made. You question whether such contacts are within the scope of section 7602(c).

In cases involving contacts in which the IRS agent is not aware that the Form 8288 was incorrectly completed, and believes the contact is with the withholding agent, such contact with settlement officers is outside the scope of section 7602(c) because there is no advance indication that the contact is with a third party. "Section 7602(c) applies to contacts made with respect to the determination or collection of the tax liability 'of such taxpayer' and requires that advance notice be given 'to the taxpayer.' When a taxpayer's identity has not yet been determined, it would be impossible to provide 'such taxpayer' with advance notice that contacts with third parties may be made." Memorandum for District Counsel, New Jersey District, Newark, 1998 PRL LEXIS 2215 (Dec. 21, 1998).

In cases involving contacts in which the IRS agent knows that the Form 8288 was incorrectly completed, and that the contact is with a settlement officer, then the contact is not within the scope of section 7602(c) because it is not a contact with regard to an identified taxpayer's liability. It is a contact for purposes of determining the taxpayer's identification. Section 7602(c) applies only for contacts with third parties regarding the tax liability of identified taxpayers.

If you have any further questions please contact Leslie Rubenstein or Ed Williams at (202) 622-3880.