

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 301**

[REG-149036-04]

RIN 1545-BE07

**Application of Section 6404(g) of the Internal Revenue Code Suspension Provisions****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the application of section 6404(g) of the Internal Revenue Code (Code) suspension provisions. The regulations reflect changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998, the American Jobs Creation Act of 2004, the Gulf Opportunity Zone Act of 2005, and the Tax Relief and Health Care Act of 2006. The regulations provide guidance to individual taxpayers who have participated in listed transactions or undisclosed reportable transactions. The text of those regulations also serve as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by September 19, 2007. Outlines of topics to be discussed at the public hearing scheduled for October 11, 2007, at 10 a.m. must be received by September 20, 2007.

**ADDRESSES:** Send submissions to CC:PA:LPD:PR (REG-149036-04), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-149036-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov>. (IRS REG-149036-04). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Stuart Spielman, (202) 622-7950; concerning submissions of comments, the hearing, and to be placed on the

building access list to attend the hearing, Richard Hurst, (202) 622-7180 (not toll-free numbers) or [Richard.A.Hurst@irs.counsel.treas.gov](mailto:Richard.A.Hurst@irs.counsel.treas.gov).

**SUPPLEMENTARY INFORMATION:****Background and Explanation of Provisions**

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Regulations on Procedure and Administration (26 CFR part 301) relating to section 6404(g). The temporary regulations add rules relating to the suspension of interest, penalties, additions to tax, or additional amounts with respect to listed or other reportable transactions. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. A regulatory assessment is therefore 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, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be made available for public inspection and copying.

A public hearing has been scheduled for October 11, 2007, beginning at 10 a.m. in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30

minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by September 19, 2007, and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 20, 2007. A period of ten minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

**Drafting information**

The principal author of these regulations is Stuart Spielman of the Office of Associate Chief Counsel (Procedure and Administration).

**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 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par. 2.** Section 301.6404-0 is amended as follows:

1. The introductory text is revised.
2. Entries are added for § 301.6404-4. The additions read as follows:

**§ 301.6404-0 Table of contents.**

This section lists the paragraphs contained in §§ 301.6404-1 through 301.6404-4.

\* \* \* \* \*

**§ 301.6404-4 Listed transactions and undisclosed reportable transactions.**

[Reserved]. The text of the entries or this section is the same as the text of the entries in § 301.6404T published elsewhere in this issue of the **Federal Register**.

**Par. 3.** Section 301.6404-4 is added to read as follows:

**§ 301.6404-4 Listed transactions and undisclosed reportable transactions.**

(a) through (b)(4) [Reserved].

(b)(5) [The text of proposed § 6404–4(b)(5) is the same as the text of § 301.6404–4T(b)(5) published elsewhere in this issue of the **Federal Register**].

(c) and (d) [Reserved].

**Kevin M. Brown,**

*Deputy Commissioner for Services and Enforcement.*

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## DEPARTMENT OF JUSTICE

### 28 CFR Part 16

[Docket No. OAG 106; A.G. Order No. 2884–2007]

RIN 1105–AB21

#### **Office of the Attorney General; Production of Certain Information or Testimony by State or Local Law Enforcement or Prosecutive Officials Serving on a Department of Justice Task Force**

**AGENCY:** Department of Justice.

**ACTION:** Proposed rule.

**SUMMARY:** The United States Department of Justice is proposing to amend its regulations concerning agency management. The production of certain information or testimony by Department officials in response to subpoenas or demands of courts or other authorities is governed by 28 CFR 16.21–16.29, often referred to as the Department’s *Touhy* regulations, *see United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). The revision avoids any doubt that the *Touhy* regulations cover information acquired by a State or local law enforcement and prosecutive official while serving as a task force official on a Department of Justice task force.

**DATES:** Comments must be received on or before August 20, 2007.

**ADDRESSES:** To ensure proper handling of comments, please reference “Docket No. OAG 106” on all written and electronic correspondence. Written comments being sent via regular mail should be sent to Robert Hinchman, Senior Counsel, Office of Legal Policy, 950 Pennsylvania Avenue, NW., Room 4252, Washington, DC 20530. Comments may be directly sent to the Office of Legal Policy (OLP) electronically by sending an electronic message to [olpregs@usdoj.gov](mailto:olpregs@usdoj.gov). Comments may also be sent electronically through [www.regulations.gov](http://www.regulations.gov) using the electronic comment form provided on that site. An electronic copy of this

document is also available at the [www.regulations.gov](http://www.regulations.gov) Web site. OLP will accept electronic comments containing MS Word, WordPerfect, Adobe PDF, or Excel files only. OLP will not accept any file format other than those specifically listed here.

#### **FOR FURTHER INFORMATION CONTACT:**

Robert Hinchman, Senior Counsel, Office of Legal Policy, 950 Pennsylvania Avenue, NW., Room 4252, Washington, DC 20530; Telephone: (202) 514–8059.

**SUPPLEMENTARY INFORMATION:** State and local law enforcement and prosecutive personnel often participate voluntarily and cooperatively on Department of Justice task forces. The cohesive efforts of task force members serve to multiply the expertise of each participating law enforcement organization in pursuing its law enforcement mission. Examples of these mutually beneficial Department task forces include drug task forces, joint terrorism task forces, gun violence reduction task forces, and fugitive apprehension task forces. Depending upon operational needs, these task forces operate on an *ad hoc* basis or more formally, such as pursuant to written agreement, *see, e.g.,* 21 U.S.C. 873(a)(7); 31 U.S.C. 6305; 28 U.S.C. 566(c) and (c)(1)(B). When such Department task forces are established—whether on an *ad hoc* basis or under formal arrangements, involving, for example, a memorandum of understanding between the participating agencies or the deputation of the participating State and local law enforcement officials—State or local law enforcement and prosecutive officials are frequently provided access to sensitive Department information. The Department has always considered Special Deputy United States Marshals and Special Assistant United States Attorneys to be subject to the Attorney General’s direction with respect to carrying out their respective responsibilities. It is also recognized that although Department task force investigations generally will be prosecuted in Federal courts, there may be specific circumstances to indicate that prosecution should be made in State court, depending upon which method of prosecution will result in the greatest benefit to law enforcement and the public.

To clarify that the Department retains appropriate controls over the use and dissemination of such sensitive information by non-Department employees who acquire the information through service on Department task forces, this revision is being proposed to the Department’s *Touhy* regulations, Subpart B of part 16, chapter I, Title 28,

CFR, *i.e.,* 28 CFR 16.21–16.29. Those regulations take their name for *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), which held that the Attorney General could validly prescribe regulations regarding the release of government documents and witnesses.

The *Touhy* regulations set forth procedures to be followed for producing or disclosing Department materials or information in response to subpoenas or demands of courts or other authorities. The proposed revision of the regulations would make clear that the regulation now also covers any proceeding relating to a task force investigation where the Department has declined to exercise jurisdiction over a particular case or class of cases. The proposed rule defines the term “task force official” as meaning “an employee of a State or local law enforcement agency or prosecutive office serving on a Department of Justice task force established for a law enforcement or national security purpose under the authority of the Attorney General or one of the components of the Department of Justice.” In addition, the term “current and former task force official” would be inserted in appropriate parts of the regulation to ensure that such officials are subject to the same requirements with respect to responding to demands for information acquired through task force service as apply to current and former Department employees responding to requests for information acquired through their official status.

#### **Regulatory Flexibility Act**

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department. The rule affects only State and local law enforcement and prosecutive officials voluntarily serving under *ad hoc* or formal arrangements on Department task forces and does not impose any economic impact on small entities.

#### **Executive Order 12866**

This rule has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a “significant regulatory action” under Executive Order 12866, section 3(f), and accordingly this rule has not been