

Legislative Recommendation #64**Require the IRS to Specify the Information Needed in Third-Party Contact Notices****SUMMARY**

- *Problem:* The IRS may contact third parties to obtain information or documentation relating to taxpayers. Recognizing that third-party contacts (TPCs) “may have a chilling effect on the taxpayer’s business and could damage the taxpayer’s reputation in the community,” Congress has required the IRS to provide advance notice to affected taxpayers. However, the IRS sometimes does not tell the taxpayer what information it is seeking or give the taxpayer a reasonable opportunity to provide the information so it can avoid a TPC.
- *Solution:* Require the IRS to provide taxpayers with a tailored notice that identifies the specific information it plans to request from a third party, unless advance notice would jeopardize the collection of tax or another statutory exception applies.

PRESENT LAW

IRC § 7602(c)(1) generally requires the IRS to give taxpayers notice before contacting third parties (*e.g.*, banks, employers, employees, vendors, customers, friends, and neighbors) to request information about them. The IRS may provide this TPC notice only if it intends to make a TPC during the period specified in the notice, which may not exceed one year. Generally, the IRS must send the notice at least 45 days before making the TPC.¹ No law expressly requires the IRS to let the taxpayer know what specific information it needs (or seeks to verify) before contacting third parties.

IRC § 7602(c)(3) waives the TPC notice requirement if (i) the taxpayer has authorized the contact; (ii) the IRS determines for good cause that providing notice would jeopardize the IRS’s tax collection efforts or may involve reprisal against any person; or (iii) the contact is made in connection with a criminal investigation.

REASONS FOR CHANGE

The TPC notice requirement was enacted as part of the IRS Restructuring and Reform Act of 1998 (RRA 98).² The Senate report accompanying the bill explained that “taxpayers should have the opportunity to resolve issues and volunteer information before the IRS contacts third parties.”³ The House-Senate conference report accompanying RRA 98 stated that “in general [the TPC] notice will be provided as part of an existing IRS notice.”⁴ Based on the conference report language, the IRS implemented the TPC notice requirement by including generic language in Publication 1, *Your Rights as a Taxpayer*, which the IRS sends to taxpayers in a variety of circumstances, whether or not it plans to make a TPC.⁵

1 The 45-day requirement was enacted by the Taxpayer First Act (TFA). Pub. L. No. 116–25, § 1206, 133 Stat. 981, 990 (2019). The IRS has issued a notice of proposed rulemaking to address the TFA amendment that would shorten the 45-day notice period to ten days or eliminate it altogether under certain circumstances. See Advance Notice of Third-Party Contacts, 89 Fed. Reg. 20371, 20371-77 (proposed Mar. 22, 2024) (amending Treas. Reg. § 301.7602-2).

2 RRA 98, Pub. L. No. 105–206, § 3417(a), 112 Stat. 685, 757 (1998).

3 S. REP. NO. 105–174, at 77 (1998).

4 H.R. REP. NO. 105–599, at 277 (1998) (Conf. Rep.).

5 IRS, Pub. 1, *Your Rights as a Taxpayer* (Sept. 2017), <https://www.irs.gov/pub/irs-pdf/p1.pdf>. Under the heading “Potential Third Party Contacts,” Pub. 1 states, in part: “[W]e sometimes talk with other persons if we need information that you have been unable to provide, or to verify information we have received.”

When Congress enacted the Taxpayer First Act (TFA) in 2019, it rejected the generic approach of including the TPC language in Publication 1. The TFA amended IRC § 7602(c) to require the IRS to send the TPC notice only when it intends to make a TPC and to send the TPC notice at least 45 days before making the contact.⁶ In explaining the change, the House report accompanying the TFA quoted testimony from a former IRS official, who said the then-existing TPC notice requirement was “useless and does not effectively apprise taxpayers that such contact will be made, to whom it will be made, or that the taxpayer can request a third party contact report from the IRS.” The House report said TPCs “may have a chilling effect on the taxpayer’s business and could damage the taxpayer’s reputation in the community.” It also said the change would “provide taxpayers more of an opportunity to resolve issues and volunteer information before the IRS contacts third parties.”⁷

If the IRS were to include TPC notices as part of an existing IRS notice (such as Form 4564, Information Document Request) that requests information from the taxpayer, the 45-day period would give the taxpayer a realistic opportunity to avoid a TPC by providing the information requested on the form.⁸ However, the IRS generally does not include a request for that information with the TPC notice.⁹

A tailored notice that identifies the specific information the IRS plans to request from a third party would be more effective in motivating taxpayers to provide the information themselves. The IRS previously tailored TPC notices in this way.¹⁰ Generating tailored notices would not unduly burden the IRS because most TPCs are made in the collection context, where the IRS is seeking assets rather than information; TPC notices in the collection context are not implicated by this recommendation.¹¹ In the subset of cases where the IRS is seeking specific information, identifying what information the IRS is seeking would empower the taxpayer to protect their reputation by providing the information themselves so the TPC is unnecessary. Thus, using tailored TPC notices is consistent with a taxpayer’s *right to be informed* and *right to privacy*, which includes the right to expect enforcement to be no more intrusive than necessary,¹² and it might save IRS resources by reducing the number of TPCs.

6 Pub. L. No. 116-25, § 1206, 133 Stat. 981, 990 (2019); see Advance Notice of Third-Party Contacts, 89 Fed. Reg. 20371, 20371-77 (proposed Mar. 22, 2024) (which would amend Treas. Reg. § 301.7602-2 to address TFA amendments and create several exceptions allowing it to shorten the 45-day notice requirement to 10 days or eliminate it altogether).

7 H.R. REP. NO. 116-39, pt. 1, at 44-45 (2019). This report accompanied H.R. 1957, 116th Cong. (2019). Congress ultimately made one change to H.R. 1957 unrelated to the TPC provision and enacted the TFA as H.R. 3151, 116th Cong. (2019). However, H.R. REP. NO. 116-39 remains the sole committee report explaining the TFA.

8 IRS Form 4564, Information Document Request (May 2023).

9 See, e.g., Internal Revenue Manual 5.9.3.12.1, Third Party Contacts (May 26, 2020), https://www.irs.gov/irm/part5/irm_05-009-003r; IRS, Letter 3164, Third-Party Notice.

10 For further discussion, see National Taxpayer Advocate 2015 Annual Report to Congress 123, 127 (Most Serious Problem: *Third Party Contacts: IRS Third Party Contact Procedures Do Not Follow the Law and May Unnecessarily Damage Taxpayers’ Businesses and Reputations*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC15_Volume1_MSP_12_Third-Party-Contacts.pdf; National Taxpayer Advocate Fiscal Year 2018 Objectives Report to Congress 98 (Area of Focus: *IRS Third Party Contact (TPC) Notices Should Be More Specific, Actionable, and Effective*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/JRC18_Volume1_AOF_12.pdf.

11 TPCs often arise from IRS requests for payment from third parties, such as banks served with a levy for the taxpayer’s funds on deposit or in connection with the advertising or conduct of public auction sales of the taxpayer’s property. A prior TAS study found the IRS made TPCs in 68.1 percent of its field collection cases and 8.5 percent of its field examination cases. National Taxpayer Advocate 2015 Annual Report to Congress 123 (Most Serious Problem: *Third Party Contacts: IRS Third Party Contact Procedures Do Not Follow the Law and May Unnecessarily Damage Taxpayers’ Businesses and Reputations*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC15_Volume1_MSP_12_Third-Party-Contacts.pdf. This recommendation generally does not cover collection contacts, because in those cases, the IRS is not asking a third party for information that the taxpayer could provide.

12 See Taxpayer Bill of Rights (TBOR), <https://www.taxpayeradvocate.irs.gov/get-help/taxpayer-rights> (last visited Oct. 1, 2024). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

RECOMMENDATION

- Amend IRC § 7602(c) to require the IRS to provide taxpayers with tailored notices that identify the specific information it plans to request from a third party. Before the IRS seeks such information from a third party, it should include the third-party contact notice with another IRS notice requesting such information in order to give taxpayers a reasonable opportunity to respond and provide the required information, unless an exception under IRC § 7602(c)(3) applies.¹³

¹³ If the taxpayer responds, the IRS may still contact a third party if it has a legitimate need to interview witnesses or corroborate information provided by the taxpayer.