

(A) is exempt from tax under section 501(a) by reason of its status as a church, or

(B) is carrying on an unrelated trade or business (within the meaning of section 513) or otherwise engaged in activities which may be subject to taxation under this title.

(3) Church tax examination

The term “church tax examination” means any examination for purposes of making a determination described in paragraph (2) of—

(A) church records at the request of the Internal Revenue Service, or

(B) the religious activities of any church.

(4) Church records

(A) In general

The term “church records” means all corporate and financial records regularly kept by a church, including corporate minute books and lists of members and contributors.

(B) Exception

Such term shall not include records acquired—

(i) pursuant to a summons to which section 7609 applies, or

(ii) from any governmental agency.

(5) Inquiry notice date

The term “inquiry notice date” means the date the notice with respect to a church tax inquiry is provided under subsection (a).

(6) Examination notice date

The term “examination notice date” means the date the notice with respect to a church tax examination is provided under subsection (b) to the church.

(7) Appropriate high-level Treasury official

The term “appropriate high-level Treasury official” means the Secretary of the Treasury or any delegate of the Secretary whose rank is no lower than that of a principal Internal Revenue officer for an internal revenue region.

(i) Section not to apply to criminal investigations, etc.

This section shall not apply to—

(1) any criminal investigation,

(2) any inquiry or examination relating to the tax liability of any person other than a church,

(3) any assessment under section 6851 (relating to termination assessments of income tax), section 6852 (relating to termination assessments in case of flagrant political expenditures of section 501(c)(3) organizations), or section 6861 (relating to jeopardy assessments of income taxes, etc.),

(4) any willful attempt to defeat or evade any tax imposed by this title, or

(5) any knowing failure to file a return of tax imposed by this title.

(Added Pub. L. 98-369, div. A, title X, §1033(a), July 18, 1984, 98 Stat. 1034; amended Pub. L. 99-514, title XVIII, §1899A(61), (62), Oct. 22, 1986, 100 Stat. 2962; Pub. L. 100-203, title X, §10713(b)(2)(G), Dec. 22, 1987, 101 Stat. 1330-470; Pub. L. 100-647, title I, §1018(u)(49), Nov. 10, 1988, 102 Stat. 3593; Pub. L. 101-239, title VII, §7822(d)(1), Dec. 19, 1989, 103 Stat. 2425; Pub. L.

104-188, title I, §1704(t)(59), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 105-206, title I, §1102(e)(3), July 22, 1998, 112 Stat. 705.)

PRIOR PROVISIONS

A prior section 7611 was renumbered section 7613 of this title.

AMENDMENTS

1998—Subsec. (f)(1). Pub. L. 105-206 substituted “Secretary” for “Assistant Commissioner for Employee Plans and Exempt Organizations of the Internal Revenue Service” in concluding provisions.

1996—Subsec. (h)(7). Pub. L. 104-188 substituted “appropriate” for “appropriate” in text.

1989—Subsec. (i)(3). Pub. L. 101-239 made technical correction to directory language of Pub. L. 100-203, see 1987 Amendment note below.

1988—Subsec. (i)(5). Pub. L. 100-647 substituted “this title” for “the title”.

1987—Subsec. (i)(3). Pub. L. 100-203, as amended by Pub. L. 101-239, substituted “, section 6852 (relating to termination assessments in case of flagrant political expenditures of section 501(c)(3) organizations), or section 6861 (relating to jeopardy assessments of income taxes, etc.),” for “or section 6861 (relating to jeopardy assessments of income taxes, etc.),”.

1986—Subsec. (a)(1)(B). Pub. L. 99-514, §1899A(62), re-enacted subpar. (B) without change.

Subsec. (i). Pub. L. 99-514, §1899A(61), redesignated pars. (A) to (E) as (1) to (5), in par. (3), substituted “etc.” for “etc.”, and in par. (5), substituted “the title” for “the title”.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective as if included in the provision of the Revenue Act of 1987, Pub. L. 100-203, title X, to which such amendment relates, see section 7823 of Pub. L. 101-239, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 98-369, div. A, title X, §1033(d), July 18, 1984, 98 Stat. 1039, provided that: “The amendments made by this section [enacting this section and amending sections 7428 and 7605 of this title] shall apply with respect to inquiries and examinations beginning after December 31, 1984.”

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

§ 7612. Special procedures for summonses for computer software

(a) General rule

For purposes of this title—

(1) except as provided in subsection (b), no summons may be issued under this title, and the Secretary may not begin any action under section 7604 to enforce any summons to produce or analyze any tax-related computer software source code; and

(2) any software and related materials which are provided to the Secretary under this title shall be subject to the safeguards under subsection (c).

(b) Circumstances under which computer software source code may be provided

(1) In general

Subsection (a)(1) shall not apply to any portion, item, or component of tax-related computer software source code if—

(A) the Secretary is unable to otherwise reasonably ascertain the correctness of any item on a return from—

(i) the taxpayer's books, papers, records, or other data; or

(ii) the computer software executable code (and any modifications thereof) to which such source code relates and any associated data which, when executed, produces the output to ascertain the correctness of the item;

(B) the Secretary identifies with reasonable specificity the portion, item, or component of such source code needed to verify the correctness of such item on the return; and

(C) the Secretary determines that the need for the portion, item, or component of such source code with respect to such item outweighs the risks of unauthorized disclosure of trade secrets.

(2) Exceptions

Subsection (a)(1) shall not apply to—

(A) any inquiry into any offense connected with the administration or enforcement of the internal revenue laws;

(B) any tax-related computer software source code acquired or developed by the taxpayer or a related person primarily for internal use by the taxpayer or such person rather than for commercial distribution;

(C) any communications between the owner of the tax-related computer software source code and the taxpayer or related persons; or

(D) any tax-related computer software source code which is required to be provided or made available pursuant to any other provision of this title.

(3) Cooperation required

For purposes of paragraph (1), the Secretary shall be treated as meeting the requirements of subparagraphs (A) and (B) of such paragraph if—

(A) the Secretary determines that it is not feasible to determine the correctness of an item without access to the computer software executable code and associated data described in paragraph (1)(A)(ii);

(B) the Secretary makes a formal request to the taxpayer for such code and data and to the owner of the computer software source code for such executable code; and

(C) such code and data is not provided within 180 days of such request.

(4) Right to contest summons

In any proceeding brought under section 7604 to enforce a summons issued under the authority of this subsection, the court shall, at the

request of any party, hold a hearing to determine whether the applicable requirements of this subsection have been met.

(c) Safeguards to ensure protection of trade secrets and other confidential information

(1) Entry of protective order

In any court proceeding to enforce a summons for any portion of software, the court may receive evidence and issue any order necessary to prevent the disclosure of trade secrets or other confidential information with respect to such software, including requiring that any information be placed under seal to be opened only as directed by the court.

(2) Protection of software

Notwithstanding any other provision of this section, and in addition to any protections ordered pursuant to paragraph (1), in the case of software that comes into the possession or control of the Secretary in the course of any examination with respect to any taxpayer—

(A) the software may be used only in connection with the examination of such taxpayer's return, any appeal by the taxpayer to the Internal Revenue Service Independent Office of Appeals, any judicial proceeding (and any appeals therefrom), and any inquiry into any offense connected with the administration or enforcement of the internal revenue laws;

(B) the Secretary shall provide, in advance, to the taxpayer and the owner of the software a written list of the names of all individuals who will analyze or otherwise have access to the software;

(C) the software shall be maintained in a secure area or place, and, in the case of computer software source code, shall not be removed from the owner's place of business unless the owner permits, or a court orders, such removal;

(D) the software may not be copied except as necessary to perform such analysis, and the Secretary shall number all copies made and certify in writing that no other copies have been (or will be) made;

(E) at the end of the period during which the software may be used under subparagraph (A)—

(i) the software and all copies thereof shall be returned to the person from whom they were obtained and any copies thereof made under subparagraph (D) on the hard drive of a machine or other mass storage device shall be permanently deleted; and

(ii) the Secretary shall obtain from any person who analyzes or otherwise had access to such software a written certification under penalty of perjury that all copies and related materials have been returned and that no copies were made of them;

(F) the software may not be decompiled or disassembled;

(G) the Secretary shall provide to the taxpayer and the owner of any interest in such software, as the case may be, a written agreement, between the Secretary and any person who is not an officer or employee of

the United States and who will analyze or otherwise have access to such software, which provides that such person agrees not to—

(i) disclose such software to any person other than persons to whom such information could be disclosed for tax administration purposes under section 6103; or

(ii) participate for 2 years in the development of software which is intended for a similar purpose as the software examined; and

(H) the software shall be treated as return information for purposes of section 6103.

For purposes of subparagraph (C), the owner shall make available any necessary equipment or materials for analysis of computer software source code required to be conducted on the owner's premises. The owner of any interest in the software shall be considered a party to any agreement described in subparagraph (G).

(d) Definitions

For purposes of this section—

(1) Software

The term “software” includes computer software source code and computer software executable code.

(2) Computer software source code

The term “computer software source code” means—

(A) the code written by a programmer using a programming language which is comprehensible to appropriately trained persons and is not capable of directly being used to give instructions to a computer;

(B) related programmers' notes, design documents, memoranda, and similar documentation; and

(C) related customer communications.

(3) Computer software executable code

The term “computer software executable code” means—

(A) any object code, machine code, or other code readable by a computer when loaded into its memory and used directly by such computer to execute instructions; and

(B) any related user manuals.

(4) Owner

The term “owner” shall, with respect to any software, include the developer of the software.

(5) Related person

A person shall be treated as related to another person if such persons are related persons under section 267 or 707(b).

(6) Tax-related computer software source code

The term “tax-related computer software source code” means the computer source code for any computer software program intended for accounting, tax return preparation or compliance, or tax planning.

(Added Pub. L. 105–206, title III, § 3413(a), July 22, 1998, 112 Stat. 751; amended Pub. L. 116–25, title I, § 1001(b)(1)(J), July 1, 2019, 133 Stat. 985.)

PRIOR PROVISIONS

A prior section 7612 was renumbered section 7613 of this title.

AMENDMENTS

2019—Subsec. (c)(2)(A). Pub. L. 116–25 substituted “Internal Revenue Service Independent Office of Appeals” for “Internal Revenue Service Office of Appeals”.

EFFECTIVE DATE

Pub. L. 105–206, title III, § 3413(e), July 22, 1998, 112 Stat. 754, provided that:

“(1) **IN GENERAL.**—The amendments made by this section [enacting this section, amending sections 7213 and 7603 of this title, and renumbering former section 7612 of this title as 7613] shall apply to summonses issued, and software acquired, after the date of the enactment of this Act [July 22, 1998].

“(2) **SOFTWARE PROTECTION.**—In the case of any software acquired on or before such date of enactment, the requirements of section 7612(a)(2) of the Internal Revenue Code of 1986 (as added by such amendments) shall apply after the 90th day after such date. The preceding sentence shall not apply to the requirement under section 7612(c)(2)(G)(ii) of such Code (as so added).”

§ 7613. Cross references

(a) Inspection of books, papers, records, or other data

For inspection of books, papers, records, or other data in the case of—

(1) Wagering, see section 4423.

(2) Alcohol, tobacco, and firearms taxes, see subtitle E.

(b) Search warrants

For provisions relating to—

(1) Searches and seizures, see Rule 41 of the Federal Rules of Criminal Procedure.

(2) Issuance of search warrants with respect to subtitle E, see section 5557.

(3) Search warrants with respect to property used in violation of the internal revenue laws, see section 7302.

(Aug. 16, 1954, ch. 736, 68A Stat. 903, § 7607; renumbered § 7608, July 18, 1956, ch. 629, title I, § 104(a), 70 Stat. 570; renumbered § 7609 and amended Pub. L. 85–859, title II, § 204(14), (15), Sept. 2, 1958, 72 Stat. 1429, 1430; Pub. L. 91–513, title III, § 1102(h), Oct. 27, 1970, 84 Stat. 1293; renumbered § 7611 and amended Pub. L. 94–455, title XII, § 1205(a), title XIX, § 1904(b)(7)(D), (9)(E), Oct. 4, 1976, 90 Stat. 1699, 1815, 1816; renumbered § 7612, Pub. L. 98–369, div. A, title X, § 1033(a), July 18, 1984, 98 Stat. 1034; renumbered § 7613, Pub. L. 105–206, title III, § 3413(a), July 22, 1998, 112 Stat. 751.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455, § 1904(b)(7)(D), (9)(E), struck out pars. (1) and (2) relating to cross references to wholesale dealers in oleomargarine and wholesale dealers in process or renovated butter or adulterated butter, respectively, and redesignated pars. (5) and (6) as (1) and (2), respectively.

1970—Subsec. (a). Pub. L. 91–513 struck out pars. (3) and (4) which related to opium, opiates, and coca leaves and to marihuana, respectively, and which made reference to sections 4702(a), 4705, 4721, and 4773, and to sections 4742, 4753(b), and 4773, respectively.

1958—Subsec. (a)(6). Pub. L. 85–859, § 204(15), added par. (6).

Subsec. (b)(2). Pub. L. 85–859, § 204(15), substituted “with respect to subtitle E, see section 5557” for “in connection with industrial alcohol, etc., see sections 5314 and 7302”.

Subsec. (b)(3). Pub. L. 85–859, § 204(15), added par. (3).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–513 effective on first day of seventh calendar month that begins after Oct. 26, 1970,