

**Office of Chief Counsel  
Internal Revenue Service**  
memorandum

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to: Office of Servicewide Penalties  
SE:S:E:EP:SP  
Attn: Michael M. Berue

from: Charles B. Christopher  
Chief, Branch 7  
(Procedure & Administration)

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subject: Including taxpayer identification numbers on Form 872-AP, Consent to Extend the Time on Assessment of IRC Section 6695A Penalty

ISSUE

Whether, when an appraiser is under a section 6695A penalty investigation and the Service seeks to extend the time for assessment of the penalty, the taxpayer identification number (TIN) of client/taxpayer(s) that used the appraisal(s) giving rise to the penalty investigation can be included on the Form 872-AP used to obtain the extension.

CONCLUSION

Including these TINs on the Form 872-AP is authorized under section 6103(h)(4)(C).

FACTS

Section 6695A provides for a penalty against an appraiser who prepares an appraisal used in connection with a tax return or claim for refund that results in a substantial/gross valuation misstatement or understatement. Section 6696(d) provides that the statute of limitations on assessment for the appraiser penalty expires three years after the return with respect to which the penalty is assessed was filed. The statute can be extended by consent of the appraiser under investigation using Form 872-AP. Form 872-AP is currently designed to list the tax year, tax type, taxpayer name, and TIN of each client/taxpayer that used the appraisal for tax purposes. This listing identifies the tax returns on which the statute of limitations for assessment of the appraiser penalty is based.

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LAW AND ANALYSIS:

Section 6103(a) provides that returns and return information shall be confidential and shall not be disclosed except as authorized under title 26. Section 6103(h)(4)(C) provides that returns and return information may be disclosed in an administrative or judicial proceeding pertaining to tax administration if “the return or return information directly relates to a transactional relationship between a person who is a party to the proceeding [the appraiser] and the taxpayer whose return or return information would be disclosed [the client/taxpayer] which directly affects the resolution of an issue in the proceeding.”

An appraiser penalty investigation is an administrative proceeding pertaining to tax administration and the appraiser providing an appraisal to a client is a transactional relationship for purposes of section 6103(h)(4)(C). See *First W. Gov't Sec, Inc. v. U.S.*, 578 F. Supp. 212, 217-18 (D. Colo. 1984) (audit is administrative proceeding described in 6103(h)(4)), *aff'd*, 796 F.2d 356 (10th Cir. 1986); *Nevins v. U.S.*, No. 84-4147, 1987 WL 47316, at \*3 (D. Kan. Aug. 26, 1987) (same). But see *Mallas v. U.S.*, 993 F.2d 1111, 1122 (4th Cir. 1993) (an audit was held *not* to be an administrative proceeding described in section 6103(h)(4)).

The issue to be resolved is whether the appraiser will consent to extending the statute of limitations for assessment of the penalty. Information that directly affects the appraiser's decision to consent to an extension can be disclosed to the appraiser in the context of the section 6695A penalty investigation. The phrase “directly affects” does not require that the third-party return information be *necessary* to, or dispositive of, the resolution of issues in the tax proceeding, only that it directly affect resolution of any of those issues. *First W. Gov't Sec., Inc.* at 217-18. If information materially assists the decision-maker to resolve an issue then that information can be disclosed in the proceeding. Here, an appraiser cannot make an informed decision whether to consent to the extension unless the appraiser knows exactly which return(s) form(s) the basis of the statute of limitations calculation. Thus, return information of the appraiser's client(s) that used the appraisal(s) under investigation can be disclosed to the appraiser to the extent necessary to reliably identify the tax return(s) on which the statute of limitations is calculated. Taxpayer name(s), tax type(s), and tax period(s) are not necessarily uniquely identifying. Including the TIN significantly helps to ensure that the appraiser knows without question or confusion which client return(s) are at issue. A specific tax return is uniquely identified by the combination of taxpayer name, TIN, tax type, and tax period; omitting any of these elements can leave open the possibility of confusion.

The return information of a taxpayer that used the appraisal for tax purposes may be disclosed in the appraiser penalty investigation to the extent that the taxpayer's return information directly affects resolution of the issue of whether the appraiser will consent to an extension of the statute of limitations for assessment of the penalty. Note that this disclosure authority includes disclosure to the appraiser's properly designated legal representative.

OTHER CONSIDERATIONS:

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If you have any questions please contact me at (202) 622-4570.