

Disclosure Litigation **BULLETIN**

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RECENT DISCLOSURE LEGISLATION:
Balanced Budget Amendment Act of 1997,
Taxpayer Relief Act of 1997, and
Taxpayer Browsing Protection Act of 1997

President Clinton signed into law the three above referenced bills on August 5, 1997. The following is a brief summary of the various amendments or changes to I.R.C. sections 6103, 7213, 7213A and 7431 effected by these enactments, all of which were effective upon enactment except as specifically indicated below.

Balanced Budget Amendments Act of 1997 (P.L. 105-33)

1. Section 4631 - Permanently extends the authority to disclose specified return information under I.R.C. § 6103(1)(12) to the Social Security Administration and the Health Care Financing Administration for purposes of, and to the extent necessary in, determining the extent to which any Medicare beneficiary is covered under any group health plan.
2. Section 5573 - Authorizes the Social Security Administration to disclose calendar quarters of coverage information concerning an alien and an alien's spouse or parents to a government agency for any purpose set forth in Title 8, notwithstanding I.R.C. § 6103.
3. Section 11024 - Enacts a new I.R.C. § 6103(1)(16) authorizing the disclosure of specified return information to Treasury employees and the Trustee of the District of Columbia pension system solely for the purpose of, and to the extent necessary in, determining an individual's eligibility for, or the correct amount of benefits under, the District of Columbia Retirement Protection Act of 1997.

Taxpayer Relief Act of 1997 (P.L. 105-34)

1. Section 976 - Enacts a new I.R.C. § 6103(d)(5) authorizing the disclosure of taxpayer identity information and taxpayer signatures to the state of Montana for a period of five years for implementation of a demonstration project to assess the feasibility and desirability of expanding combined federal and state tax reporting.

2. Section 1023 - Permanently extends the authority for the Department of Veterans Affairs to receive return information under I.R.C. § 6103(1)(7) to assist in determining eligibility for, and establishing correct amount of benefits under, certain needs based programs.

3. Section 1026 - Enacts a new I.R.C. § 6103(k)(8) authorizing the disclosure of specified items of return information to the Financial Management Service for purposes of, and to the extent necessary in, implementing the continuous levy of certain recurring federal payments.

4. Section 1205(c) - Enacts another I.R.C. § 6103(k)(8) (YES, the new law enacts two new, but different, sections 6103(k)(8)), authorizing the disclosure of returns and return information to financial institutions for the administration of amended I.R.C. § 6311, Payment of Tax by Commercially Acceptable Means, *i.e.*, credit cards. The intention is that return information disclosed pursuant to the new provision will generally be restricted to those uses necessary to process payments and resolve billing errors, as well as other purposes specified in the statute. The Secretary is to issue published procedures on what constitutes authorized uses and disclosures. The section also creates a new I.R.C. § 7431(g) providing for civil damages for the unauthorized disclosure of this information. The amendments made by section 1205 will take effect nine months after the date of enactment.

5. Section 1283 - Repeals I.R.C. § 6103(h)(5) which provided authority to disclose whether a prospective juror had been audited. The repeal is effective for all tax administration judicial proceedings commencing after August 5, 1997. In civil cases, judicial proceedings commence upon the filing of a complaint. In criminal cases, judicial proceedings commence by way of formal charge, preliminary hearing, indictment, information, or arraignment.

Taxpayer Browsing Protection Act of 1997 (P.L. 105-35)

1. Section 2 - Enacts a new I.R.C. § 7213A. The willful, unauthorized inspection of any return or return information by officers or employees of the United States, officers and employees of persons described in I.R.C. § 6103(n) (Service

contractors), and state and other employees, is a misdemeanor punishable upon conviction by a fine not exceeding \$1,000 or one year in prison, or both. Additionally, officers and employees of the United States convicted of violating this statute are subject to mandatory discharge from employment.

2. Section 3 - Amends I.R.C. § 7431 by providing civil damages for the knowing or negligent inspection of returns or return information in violation of I.R.C. § 6103. New I.R.C. § 7431(e) requires the Service to notify a taxpayer when a person is charged criminally by indictment or information with unauthorized inspection or disclosure. Additionally, I.R.C. § 7431(b) is amended to provide that there is no civil liability for any inspection or disclosure requested by the taxpayer.

JOHNSON v. SAWYER, 1997 U.S. App. LEXIS 22322
(5th Cir. Aug. 21, 1997)

The Fifth Circuit has reversed the district court's \$9 million judgment entered against five individual defendants (current and former Service employees) for the unauthorized disclosures of return information pursuant to now-repealed I.R.C. § 7217, and remanded the case for a new jury trial. The disclosures occurred in 1981, as a result of Service news releases issued to publicize Johnson's guilty plea, made in open court, on a charge of tax evasion for 1975. Johnson had alleged that five items of return information in the news releases were wrongfully disclosed and resulted in his being fired from his position as an insurance company executive.

In a lengthy analysis, the court adopted the approach taken by the Seventh Circuit in Thomas v. United States, 890 F.2d 18 (7th Cir. 1989), which permits the Service to publicize information taken directly from public court proceedings or public court documents. In Johnson, the court held that four items included in the press release (Johnson's age, home address, occupation and middle initial) were wrongfully disclosed because they came directly from Service records. (In a prior decision the Fifth Circuit held that the description of the charges brought against Johnson and the generic "penalties and interest" statement included in the release were not return information.)

The court held that the district court erred by instructing the jury that the entire press release disclosed return information in violation of section 6103, and that this error warranted a new trial because it affected the outcome of the case.

The court refused to dismiss the actions against those defendants who participated in the preparation or review of,

but did not actually issue, the press release; holding that under former I.R.C. § 7217, Johnson could properly bring suit against any Service employee who "by acting or failing to act" contributed to a wrongful disclosure. The court also decided a number of evidentiary issues and declined to decide others, all of which were left to be decided by the trial court in the case on remand. The court did not address the issues of punitive damages or attorney's fees.

Finally, the court directed that the case be heard by a different trial judge, finding merit in the Government's assertion that the judge, who had presided over the trial, had demonstrated an appearance of a lack of impartiality against the Service.

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Your suggestions for topics to be included in future Bulletins are invited.