Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:NED:BOS:TL-[redacted]
MASullivan

date: July 23, 1999

to: Craig A. Leeker, Group Manager, Group 1111
Examiination Division, Connecticut-Rhode Island District

from: Assistant District Counsel, New England District, Boston

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subject: [redacted]
Review of Third Party Contact Letters

THIS DOCUMENT INCLUDES STATEMENTS SUBJECT TO THE ATTORNEY-CLIENT PRIVILEGE AND THE ATTORNEY WORK PRODUCT PRIVILEGE. THIS DOCUMENT SHOULD NOT BE DISCLOSED TO ANYONE OUTSIDE THE I.R.S., INCLUDING THE TAXPAYER INVOLVED, AND ITS USE WITHIN THE I.R.S. SHOULD BE LIMITED TO THOSE WITH A NEED TO REVIEW THE DOCUMENT FOR USE IN THEIR OWN CASES.

By memorandum dated July 7, 1999, you requested this office to review three draft letters by which you intend to request information relevant to an examination of the above taxpayer from third parties. You asked that we confirm that the letters do not violate the disclosure restrictions of section 6103(k)(6). We discussed the matter at our meeting on July 20, 1999. By email sent on July 21st, you sent revised drafts that include the standard language notice to third parties regarding possible reprisals.

The draft letters request information on expenses incurred by the taxpayer in restructuring operations at [redacted]. They are addressed to [redacted], [redacted], and [redacted]. Your memorandum indicates that you requested contracts with these parties from the taxpayer by information document request on [redacted]. A second request was issued on [redacted], and a third request on [redacted]. The taxpayer has not responded to these requests, a matter that you discussed with them most recently on [redacted] and [redacted]. On [redacted]st, you informed the taxpayer that you would be contacting the third parties directly.

In your transmittal memorandum, you noted that the requests to be made of the third parties are broader than the requests directed to the taxpayer. You believe that trying to obtain the

additional information would be fruitless given the taxpayer's refusal to cooperate with your prior requests.

Under the disclosure provisions of section 6103(k)(6) of the Internal Revenue Code and section 301.6103(k)(6) of the Income Tax Regulations, you generally must first try to obtain information from the taxpayer if it can reasonably be obtained in accurate and sufficiently probative form, or in a timely manner. You have satisfied this requirement with respect to the contracts sought from the taxpayer. We believe that your judgement that the taxpayer would not cooperate with a request for further information concerning the contracts is reasonable, given the events you have outlined. Accordingly, we believe that your draft letters accord with the tenets of section 6103(k)(6).

You received advice on how section 7602(c) operates in a memorandum dated May 5, 1999, from the Assistant District Counsel, Connecticut-Rhode Island District. The memorandum notes that the Service has had a longstanding policy of trying to obtain additional information from the taxpayer before making third party contacts. The information requested from third parties does not have to be identical to that requested from the taxpayer, but it should in your judgment be comparable to it, to satisfy the Service's policy of trying first to obtain information from the taxpayer.

DAVID N. BRODSKY
Assistant District Counsel