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From:

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To:

Cc:

Subject: RE: I/S-Disclosure

I'm going to coordinate this with our Counsel folks at least on the first question, but I have a question about the second one. First of all I think the first question is too narrow. The information about a RS's current economic condition years has nothing to do with the returns for those years. Thus, the question really should be "can we share info regarding the RS's current financial condition." If the question is whether we can share info regarding the RS's current year separate returns, then the answer is no. As for the second question, I'm not clear on what is being asked. What info from years before the return at issue (again, not necessarily related to prior returns) would be relevant to establish knowledge at the time of signing the return at issue.

Further, are we talking about knowledge of an item giving rise to a deficiency or knowledge that the NRS would not pay the tax. On knowledge whether the tax was paid, we often use info from periods before the RS signed the return to establish knowledge, such as the fact that the RS knew that the NRS was having financial difficulties so that it was not reasonable for the RS to believe the NRS would pay the tax. Thus, if the RS provided info that says she was not aware of the NRS's financial troubles, we could provide that to the NRS and he could provide info to show that the RS really did know. As for knowledge of an item giving rise to a deficiency, I'm not sure what info from prior years would be relevant - maybe that the RS says she did not know that the NRS invested in a tax shelter in years before the year at issue (and benefits from that tax shelter we reported on the return for the year at issue) and the NRS would provide info that the RS did know. Nonetheless, I think the test would be really what the RS knew about the benefits reported on the return at issue. So bottom line, I'm not sure how relevant this question really is.

Finally, don't forget that the regulations at section 1.6015-6(a)(1) provide that "Upon request of either spouse, the IRS will share with one spouse the information submitted by the other spouse, unless such information would impair tax administration." What does "impair tax administration" mean? Certainly violations of the disclosure laws would fall under this term (thus why I am coordinating). But we should also remember that this works both ways, i.e., if the RS asks for information provided by the NRS then we should also provide that info to the RS. The Tax Court has raised this as an issue - the fact that we do not automatically, or maybe sometimes don't provide when

requested, info provided by the NRS to the RS so that the RS has a change to disprove what the NRS says.

Sorry this has run on so long, but I'll provide whatever response I get from CC