

Office of Chief Counsel
Internal Revenue Service
Memorandum

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to: Carla G. Young, Field Advocacy Analyst
(Taxpayer Advocate Service)

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

subject: Disclosures to a Corporate Fiduciary

This memorandum is in response to a request for an opinion received in our office on May 5, 2010. This advice may not be used or cited as precedent.

ISSUES

1. Whether returns and return information can be disclosed to an employee of a corporation, exempt organization or other entity where the entity is named as a taxpayer's fiduciary on Form 56 (Notice of a Fiduciary Relationship).
2. Whether the IRS will require additional verification of the fiduciary employee's material interest before disclosing a taxpayer's return or return information.

CONCLUSIONS

1. Customer Service Representatives (CSRs) may disclose returns or return information to individuals authorized to bind the corporation, exempt organization or other entity when Form 56 names an entity as the fiduciary. When a specific entity department is named as fiduciary, employees of the named department or office acting as a fiduciary can receive returns and return information pertaining to the taxpayer identified as the person for whom the fiduciary is acting upon providing documentation that he or she is employed by the entity.

2. CSRs generally should accept the entity's designation as fiduciary on Form 56 as sufficient evidence that the requester has a material interest in receiving the tax information.

BACKGROUND

The Taxpayer Advocate Service (TAS) sought advice from the Office of Disclosure (Disclosure) whether CSRs can disclose returns and return information to employees acting in a fiduciary capacity in a corporate department when the specific department is designated as a fiduciary on Form 56. TAS further inquired regarding the verification procedures required if such disclosure is permissible.

The example presented by the TAS concerned an indigent taxpayer with a social services organization designated as court appointed fiduciary. Because the fiduciary is a business and the CSRs do not know who within the organization was authorized to act as a fiduciary, they refused to provide tax information to the representative of the entity requester. The organization was not filing returns on behalf of the taxpayer, but was attempting to obtain information on his or her behalf via the telephone.

Disclosure rendered its opinion that disclosure to all employees of an organization's department acting in a fiduciary capacity is permissible if the rules for employees of a bank trust department are followed. Disclosure further opined that researching the IDRS is sufficient verification absent a good reason to inquire further. Because I.R.M. § 11.3.2.4.8 is silent on the specific example provided, Disclosure recommended further review by Counsel.

LAW AND ANALYSIS

Disclosures to Entity Fiduciaries

We see no difference between disclosures to a bank trust department and a social service organization department if the department is designated as a fiduciary on a Form 56 properly filed with the IRS. Our rationale is as follows.

Section 6903 of the Internal Revenue Code requires any person acting as a fiduciary to notify the IRS of the formation or termination of a fiduciary relationship. A fiduciary may file Form 56 with the IRS to comply with this requirement. Section 7701(a)(6) of the Internal Revenue Code provides that a fiduciary is any person acting in a fiduciary capacity for any other person. A "person" includes any individual, trust, estate, partnership, association, company or corporation. I.R.C. § 7701(a)(1). A fiduciary assumes the powers, rights, duties, and privileges of the individual taxpayer for whom it acts. I.R.C. § 6903(a).

Section 6103(e) permits disclosure of returns and return information to persons having a material interest in receiving such information and defines certain groups of persons as having a material interest. Thus, only those types of individuals listed in section 6103(e) may receive disclosure of tax information because they have been statutorily defined as having a material interest in receiving the information. See *Martin v. IRS*, 857 F.2d 722, 726 (10th Cir. 1988). Individual taxpayers are defined by statute as having a material interest in their own tax information. I.R.C. § 6103(e)(1)(A). Because a fiduciary steps in and acts as the taxpayer himself, a fiduciary is entitled to disclosure of the taxpayer's information under section 6103(e)(1)(A) of the Code, unless such disclosure would impair tax administration. I.R.C. § 6103(e)(7).

When a corporation is solely designated as a fiduciary on Form 56, disclosure can be made to a corporate officer, such as the president or chief executive officer, authorized under state law to legally bind the corporation. I.R.C. § 6103(e)(1)(D). Because it is unlikely that the officer will personally perform the necessary functions, such corporate officer has authority to designate other individuals within the organization to receive disclosures on his or her behalf. See Treas. Reg. § 301.6103(c)-1(e)(4).

If the Form 56 designates a specific office or department of an entity, as with a bank trust department, CSRs may disclose tax information to the employees of that department. The CSR must verify that the requester is the person listed on Form 56 or is an employee of the department before disclosure may be made.

Verification Procedures

Absent circumstances that bring the fiduciary relationship into question, the IRS generally will accept the designation as fiduciary as sufficient evidence that the requester has a material interest in receiving the tax information. Because a fiduciary assumes the powers, rights, duties, and privileges of the taxpayer and an individual taxpayer is presumed to have a material interest in receiving his or her own tax information, when an entity acts as the fiduciary of an individual taxpayer it need not provide additional evidence of material interest. As when an individual taxpayer personally seeks disclosure of his tax information, the representative of a fiduciary need only furnish proof of his identity to properly obtain disclosure. Because in the matter presented an entity or department of an entity is named as fiduciary, the requester needs to provide documentation that he is employed by the fiduciary entity in such capacity as he may properly obtain returns and return information. If there is a question as to the requester's authority to receive the information, it should be mailed to the entity's address of record.

Please call (202) 622-4570 if you have any further questions.