

**Internal Revenue Service
Memorandum
CC:EL:D-249242-96
Br3:AMGulas**

date: Oct 10, 1996

to: Linda Wallace T:EIS
Electronic Information Services Team Leader

from: Assistant Chief Counsel (Disclosure Litigation) CC:EL:D

subject: Application for Taxpayer Assistance Order Form (911) Via
Internet

We received your memorandum of September 12, 1996, relating to the development of an Application for Taxpayer Assistance Order, Form 911, to be transmitted to the Internal Revenue Service on the Internet. Your memorandum requested that we express our opinion as to the potential issues arising from the possible disclosure of return information connected with the transmittal of the Form 911 over the Internet.

ISSUES

Whether the transmission of taxpayer information on Form 911 via the Internet will result in the disclosure of confidential return information.

Whether the transmission of taxpayer information on Form 911 via the Internet will impact on the privacy rights of the taxpayer.

CONCLUSIONS

Because the taxpayer's information does not become "return information" until it is received by the Internal Revenue Service, the use of the Internet to transmit a Form 911 to the Problem Resolution Office does not result in the disclosure of return information. Similarly, the transmission of the Form 911 does not impact upon Privacy Act concerns, inasmuch as the Form 911 does not become an agency record until received by the Service.

BACKGROUND

The Problem Resolution Program (PRP) Advocacy Team is developing an Internet application for taxpayer assistance filed on the Form 911. This form is filed by, or on behalf of, a taxpayer for relief from significant hardship, *i.e.*, when the taxpayer is unable to provide necessities for his or her family. The information needed by the PRP officers in order to begin processing the case includes the taxpayer's name, social security number,

address, authorized representative's name and telephone number, and the tax years at issue.¹ The issue becomes one of whether the transmission of this information via the Internet will result in the disclosure of return information in contravention of I.R.C. § 6103, or raise Privacy Act concerns.

ANALYSIS

I.R.C. § 6103(a) provides the general rule prohibiting the disclosure of returns or return information: "Returns and return information shall be confidential." The Code defines "return information" as follows:

a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense....

I.R.C. § 6103(b)(2). The definition of return information has been interpreted broadly. Church of Scientology of California v. IRS, 484 U.S. 9, 12 (1987); Long v. IRS, 891 F.2d 222 (9th Cir. 1989).

While the definition of return information is quite broad, it is nonetheless restricted to information "received by, recorded by, prepared by, furnished to, or collected by the Secretary...." I.R.C. § 6103(b)(2)(A). Thus, "the statutory definition of 'return information' confines it to information that has passed through the IRS." Ryan v. United States, 74 F.3d 1161, 1163 (11th Cir. 1996). Accord Stokwitz v. United States, 831 F.2d 893, 897 (9th Cir. 1987), cert. den., 485 U.S. 1033 (1988) ("section 6103 applies only to information filed with and disclosed by the IRS").

¹ In Dave Cook's memorandum of July 17, 1996, accompanying your memorandum, Mr. Cook opines that the minimum amount of information necessary to follow up on a contact is a name and telephone number or address.

With this concept in mind, we address the issue of whether the transmission of taxpayer information on the Form 911 is return information. We conclude that until the Form 911 containing a particular taxpayer's information is actually received by the Service, it is not "return information." The court of appeals in Stokwitz, suggested that § 6103 was intended to control the "loose disclosure practices" of the Service, 831 F.2d at 894.² See also Ryan, 74 F.3d at 1162. Therefore, until the Form 911 is actually received from the Internet by the Service, it is not protected by the general, confidentiality rule of I.R.C. § 6103. Nonetheless, once the form is received by the Service, the information becomes the taxpayer's return information and is subject to the same rules of confidentiality as all returns or return information.³

In the same manner, the Form 911 is not an agency record subject to the Privacy Act until received by the agency. The Act defines "record" as

any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular....

5 U.S.C. § 552a(a)(4). The Act defines "maintain" as "maintain, collect, use or disseminate." 5 U.S.C. § 552a(a)(3). Therefore, once received, the form will be an agency record subject to all the provisions of the Privacy Act.⁴

² The Stokwitz Court stated that "Congress was concerned that IRS had become a 'lending library' to other government agencies of tax information filed with the IRS, and feared the public's confidence in the privacy of returns filed with the IRS would suffer." 831 F.2d at 894, citing, 122 Cong. Rec. 24013 (1976) (remarks of Sen. Weicker).

³ The information on the Form 911 after receipt is return information because, by the very nature of the form, the information relates to hardships encountered by the taxpayer as a result of agency action. It is difficult to conceive of an agency action resulting in hardship which does not arise from the Service's activities with regard to the taxpayer's liability. See I.R.C. § 6103(b)(2)(A).

⁴ In preparing this memorandum, it came to our attention that there currently is no notice published for the PRP PROMIS system of records. Inasmuch as the Service will be maintaining the PROMIS system to track the outcome of the Taxpayer Assistance cases, it is required that the Service publish a notice of the PRP system of records in the Federal Register to cover both the paper and Internet versions of the Form 911 as maintained by the Service in the PROMIS system of records. See 5 U.S.C. § 552a(e)(4).

We submit that, while there are no statutory disclosure concerns during transmission from the taxpayer or other concerned third party until receipt by the Service, there are security concerns in the event the information is intercepted prior to receipt by the Service.⁵ However, this matter is a policy issue, not a disclosure one. We suggest that this is more properly within the province of the Privacy Advocate than within this office.

If you have any additional questions, or require further information, please call A.M. Gulas at (202) 622-4590.

/s/ Margo L. Stevens _____
(FOR) JOHN B. CUMMINGS

cc: Linda Stiff, National Director, Governmental Liaison &
Disclosure
Robert Veeder, Privacy Advocate
Thomas Tiffany, Office of Taxpayer Advocate

⁵ We note that the current Form 911 (Rev. 1-94) does not contain a Privacy Act Notice in conformity with 5 U.S.C. 552a (e)(3). Inasmuch as the form may be used to solicit information from an individual, the Privacy Act mandates that certain information be included with the solicitation. The form solicits, in addition to the individual's name, address, social security number and other personal data, a "[d]escription of significant hardship" and a "[d]escription of relief requested." Each of those data elements has the potential to be a solicitation of information for which a Privacy Act Notice is required and for which notice has not previously been issued. We would urge that an appropriate notice be crafted and included on the Form 911, in its present paper incarnation, and the proposed Internet version. The Office of Governmental Liaison and Disclosure, CP:EX:GLD, can assist in the creation of the notice for both the Internet version and the existing form.