

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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to: Christine L. Davis
Office of Taxpayer Correspondence
(Return Integrity and Correspondence Services)

from: Barbara M. Pettoni *BMP*
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subject: Undeliverable Mail and Address Updating Issues

We received your request for advice on several legal issues involving undeliverable mail and updating a taxpayer's last known address.

ISSUES

1. Whether the Internal Revenue Service (IRS) can use the United States Postal Service (USPS) Address Correction Service (ACS) to change a taxpayer's last known address.
2. Whether the IRS communicate can directly with the USPS to validate a suspicious change of address.
3. Whether Revenue Procedure 2010-16 section 4.06 relating to governmental changes to addresses may be utilized for foreign mail.

CONCLUSIONS

1. The IRS may update a taxpayer's last known address using ACS if the IRS performs research and is reasonably confident that the individual is the taxpayer in question.
2. The IRS may communicate directly with the USPS to obtain change of address information for taxpayers if the IRS reasonably believes the communication is necessary to obtain the information to properly perform the IRS's official duties. However, the IRS may not update a taxpayer's last known address based on this information without receiving clear and concise notification from the taxpayer.

3. Revenue Procedure 2010-16 section 4.06 applies to changes to foreign addresses.

FACTS

In order to improve address quality and obtain postal discounts, the IRS utilizes the National Change of Address (NCOA) to update taxpayer addresses. In utilizing NCOA, the IRS receives weekly data from the USPS that contains change of address information. The IRS systems then perform a series of strict matching routines after which a taxpayer's address is updated in the IRS's computer systems. On occasion, a taxpayer's address is not automatically updated through the use of NCOA. This may occur because there is some mismatch of information between the NCOA and IRS databases.

In an effort to reduce the amount of undeliverable mail the IRS receives, improve customer service, reduce fraud, and to save resources including obtaining additional postal discounts, the IRS is exploring alternatives to the weekly update from NCOA. These alternatives include updating the taxpayer's last known address using ACS, communicating directly with the USPS to validate current address information, and automatically modifying foreign addresses when those addresses are changed pursuant to government action such as address reorganization or standardization.

ACS allows the IRS to request feedback from the USPS related to the address used for the recipient. This includes notifications that the piece of mail was undeliverable, the reason why the mail was undeliverable, and change of address information. Unlike the weekly data push from NCOA, the IRS must first request the feedback from the USPS before the information is provided. To utilize this system, the IRS prints a bar code on the bottom of a piece of mail. The IRS can trace that bar code to the specific piece of mail and the specific taxpayer. The USPS tracks the envelope as it goes through the mail using the bar code and provides feedback based on that bar code. When the USPS provides change of address feedback to the IRS through ACS the address information is retrieved from the same database as the weekly data push from NCOA.

LAW AND ANALYSIS

1. Use of ACS to Update a Taxpayer's Last Known Address

Treas. Reg. § 301.6212-2(b)(2) and Revenue Procedure 2010-16 govern updating a taxpayer's address in IRS records.¹ In order to change a taxpayer's address from the address on the taxpayer's most recently filed and properly processed tax return both require clear and concise notification of a different address. Section 301.6212-2(a); Rev. Proc. 2010-16, 2010-1 C.B. 664. Clear and concise notification does not include notification from a third party, except from the USPS under specific circumstances. Section 301.6212-2(b). In order for the IRS to receive clear and concise notification of a

¹ This address is referred to as the taxpayer's "last known address" or "address of record."

change in the taxpayer's address from the USPS, several conditions must be satisfied: (1) the information must come from the NCOA database, and (2) the taxpayer's name and last known address in the IRS records must match the taxpayer's name and old mailing address in the NCOA database. In addition to the requirements set out in the regulations and the revenue procedure, courts have held that the IRS is required to exercise reasonable due diligence based on information that the IRS knew or should have known in ascertaining the taxpayer's last known address and in determining whether the taxpayer gave clear and concise notification. See, e.g., Space v. Commissioner, T.C. Memo. 2009-230; Downing v. Commissioner, T.C. Memo. 2007-291; Pyo v. Commissioner, 83 T.C. 626, 636 (1984).

Although the regulations require a "match" between the NCOA database and the IRS records before the taxpayer's address can be updated, the regulations do not define "match." It is our understanding that the IRS will utilize ACS if the taxpayer's address does not automatically update through the weekly data push from NCOA because of some mismatch of information between the NCOA database and the IRS records as part of the automatic updating process. It is also our understanding that the IRS automatic updating system has very strict parameters for what constitutes a match such that many legitimate address changes will result in a mismatch (i.e. Robert Smith and Bob Smith would not be considered a match). As the regulation does not define a "match" we view the IRS's decision to impose stringent requirements for matching as a business decision. However, if the IRS has conducted research and is reasonably confident that an updated address, received from the USPS through ACS, is a match to a specific taxpayer, despite a mismatch in the automatic updating process, the taxpayer's address may be updated. However, if there is any uncertainty as to whether there is a match, the IRS should examine it on a case-by-case basis and should consider sending a Form 2797, "Are You There Letter," to confirm that the individual is indeed the taxpayer in question. If the IRS is not reasonably confident, after research, that the individual in the information received from ACS is the taxpayer in question, the IRS should not update the address.

2. Communications with the USPS to Obtain Current Address Information

Section 6103 provides the general rule that returns and return information are confidential, except as authorized under the Code. Return information is defined as any information gathered by, collected by, created by, or otherwise in the hands of the Secretary in connection with determining a taxpayer's liability or potential liability under the Code and includes a taxpayer's identity. I.R.C. § 6103(b). In communicating with the USPS to obtain current address information of a taxpayer in order to validate a suspicious address, the IRS must provide the USPS with return information, specifically the taxpayer's identity. It is our understanding that, in the case of suspicious address changes, the IRS wishes to confirm with the USPS that the address change made with the IRS was also made with the USPS or that the taxpayer resides at the address in question. This communication may only take place if disclosure is authorized under the Code. It is our understanding that the IRS does not have a contract under section 6103(n) with the USPS.

Section 6103(k)(6) permits disclosures for tax administration purposes to the extent necessary in the performance of official duties, including to establish or verify the correctness of any return information. Section 301.6103(k)(6)-1(a)(1)(i). The disclosure does not have to be "essential or indispensable" but rather it just must be "appropriate and helpful in obtaining the information." Section 301.6103(k)(6)-1(c)(1). In order to make a disclosure under (k)(6), the IRS employee must reasonably believe, at the time the disclosure is made, that the information is not otherwise reasonably available or that the activity cannot properly occur without the disclosure. Section 301.6103(k)(6)-1(a)(2). The information is not reasonably available if, based on the facts and circumstances, accurate information cannot be obtained in a timely manner without making the disclosure. Section 301.6103(k)(6)-1(c)(3).

In this case, if the IRS reasonably believes at the time of the communication with the USPS that it cannot obtain accurate address information without disclosing the taxpayer's identity to the USPS and obtaining this information from the USPS would be helpful in establishing the taxpayer's correct address, then section 6103(k)(6) would likely authorize the disclosure to the USPS. However, this is a facts and circumstances determination that must be made for each disclosure to the USPS. As disclosure under section 6103(k)(6) does not restrict redisclosure by the recipient the IRS should exercise caution when making disclosures under section 6103(k)(6). See section 6103(a) (listing what subsections are subject to redisclosure limitations). Alternatively, the IRS could enter into a contract meeting the requirements of section 6103(n) which would limit the ability of the USPS to redisclose return information obtained under the contract and would be preferable to disclosures under section 6103(k)(6). Section 6103(a)(3).

However, once the IRS has obtained the information from the USPS, the IRS must still receive clear and concise from the taxpayer in order to change the taxpayer's last known address on the IRS's computer systems. Section 301.6212-2(a) states that a taxpayer's last known address is the address on the taxpayer's most recently filed tax

return unless clear and concise notification is given of a different address. Notification from a party other than the taxpayer is not clear and concise notification, except for information received from the USPS under certain circumstances. Section 301.6212-2(b). However, even if the address verification received from the USPS in this situation is received through NCOA, the exception to the general rule will not apply. The IRS may only update a taxpayer's last known address using NCOA if it has not received clear and concise notification of a different address and if there is a new address in the NCOA database. Section 301.6212-2(b)(2)(i). In this case, the IRS has received clear and concise notification in the form of a change of address sent to the IRS directly. It is our understanding that the IRS will only seek verification from the USPS in the event that there is a suspicious change of address and the IRS has not received notification of a change of address from the USPS through its normal processes. Additionally, if the USPS reports that the taxpayer in question has not changed his or her address with the USPS, there is no new address to update. As such, the IRS must receive confirmation from the taxpayer before changing the taxpayer's last known address. This could be accomplished by sending a Form 2797, "Are You There Letter." This would constitute new clear and concise notification of a different address.

3. Rev. Proc. 2010-16, Section 4.06

Revenue Procedure 2010-16, section 4.06 provides that if a taxpayer's last known address is modified due to address reorganization or standardization measures taken by the USPS or a legislative body, the IRS will treat the modified address as the taxpayer's new last known address. This section is not limited to domestic mail and may be utilized for foreign mail in similar instances.

Please call (202) 622-7950 if you have any further questions.