

Part I

Section 6103.—Confidentiality and disclosure of returns and return information

26 CFR 301.6103: Confidentiality of returns.

Rev. Rul. 2022-7

ISSUE

Whether Federal, State, and local government officers or employees (government employees) are subject to the disclosure restrictions of section 6103(a) of the Internal Revenue Code (Code) with regard to returns or return information received as a result of disclosure under:

- section 6103(c) with the consent of the taxpayer (taxpayer consent exception),
- section 6103(e) as a person having a material interest, but not under section 6103(e)(1)(D)(iii) relating to disclosures to certain shareholders (material interest exception), or

- section 6103(k)(6) for investigative purposes (investigative disclosure exception).

FACTS

Situation 1. A requests the assistance of a friend, B, with respect to a Federal tax matter. A also requests that the Internal Revenue Service (IRS) provide A's returns and return information to B. B subsequently discloses to a third party return information obtained as a result of A's request.

Situation 2. Same as Situation 1, above, except that B happens to be an employee in the office of a State agency.

Situation 3. C is an attorney employed by a law firm. The firm has a policy of taking disciplinary action against any of its attorneys who do not properly fulfill their tax obligations. The IRS serves a notice of levy with respect to C's tax liability on the payroll department of the firm. D is a payroll department employee of the firm. D processes the notice of levy and informs the firm's managing partners of C's tax delinquency to enable the firm to take appropriate action consistent with firm policy.

Situation 4. E is an employee of a State agency. The agency has a policy of taking disciplinary action against employees who do not properly fulfill their tax obligations. The IRS serves a notice of levy with respect to E's tax liability on the payroll department of the State agency. F is a payroll department employee of the State agency. F processes the notice of levy and informs the appropriate office of the State agency of E's tax delinquency to enable the agency to take appropriate action consistent with agency policy.

Situation 5. Same as Situation 4, above, except that E and F are employees of a Federal agency.

Situation 6. G is the father of 5-year-old film star H. H's mother signs H's return as parent for a minor child and dies shortly thereafter. G is the guardian of H's estate under applicable State law. G receives notice that H's return is under examination by the IRS. G does not have a copy of H's return, so G obtains the return and return information from the IRS. When subsequently asked by a news reporter how much income H reported on the return, G replies "three million dollars."

Situation 7. Same as Situation 6, above, except that G happens to be an employee of a Federal agency.

LAW

Generally, section 6103 provides that returns (as defined in section 6103(b)(1)) and return information (as defined in section 6103(b)(2)) are confidential and may not be disclosed except as expressly authorized by the Code. Specifically, "except as authorized by this title" (that is, the Code), section 6103(a) prohibits the disclosure by officers or employees of the United States, of any State, or of specified local government agencies, or by certain other specified persons, of returns and return information obtained in connection with their service as such an officer or employee or otherwise or under the provisions of section 6103 (disclosure restrictions). See *Girard v. Bentsen*, 94-2 U.S.T.C. ¶ 50,625 (N.D. Cal. 1994) ("or otherwise" modifies "in connection with his service," allowing the statute to cover those who are neither "officers" nor "employees," namely certain other persons specified in section 6103(a)).

For purposes of section 6103(a), the term “officer or employee” includes a former officer or employee.

There are, however, exceptions to the general rule of confidentiality. First, the taxpayer consent exception permits the disclosure of returns and return information to a designee of the taxpayer, pursuant to the taxpayer’s request or consent. To be valid, a consent must satisfy the requirements of section 6103(c) and § 301.6103(c)-1 of the Procedure and Administration Regulations. Second, the material interest exception permits the disclosure of returns and return information to specific persons with a material interest in the information. Third, the investigative disclosure exception, in conjunction with § 301.6103(k)(6)-1, authorizes the disclosure of return information (but not returns) to the extent that disclosure is necessary in obtaining information that is not otherwise reasonably available with respect to the correct determination of tax, liability for tax, or the amount to be collected, or with respect to the enforcement of any other provision of the Code.

Rev. Rul. 2004-53, 2004-1 C.B. 1026 (June 7, 2004) clarified the scope of section 6103(a) with respect to government employees and held that government employees who receive returns or return information pursuant to section 6103(c), (e), or (k)(6) are not subject to the disclosure restrictions of section 6103(a). Although not addressed by Rev. Rul. 2004-53, any shareholder of a corporation permitted to inspect or receive return information of the corporation or its subsidiaries under section 6103(e)(1)(D)(iii) is subject to the disclosure restrictions imposed by section 6103(a).

Section 2202 of the Taxpayer First Act (TFA), Public Law 116-25, 133 Stat. 981, 1012 (2019), amended section 6103(a)(3) and (c) to limit redisclosures and uses of return information received pursuant to the taxpayer consent exception. Section 6103(c), as amended by the TFA, explicitly prohibits designees from using return information for any reason other than the express purpose for which the taxpayer grants consent and from redisclosing return information without the taxpayer's express permission or request. Section 6103(a)(3), as amended by the TFA, imposes disclosure restrictions on all recipients of return information under 6103(c). The TFA did not amend section 6103(e) or (k)(6), or section 6103(a) with respect to disclosures under section 6103(e) or (k)(6).

ANALYSIS

Under section 6103(c), as amended, the restrictions on redisclosure of returns or return information received pursuant to the taxpayer consent exception apply to all designees, including government employees. Therefore, in Situations 1 and 2, B is prohibited from redisclosing A's return information, because A did not authorize B to further disclose A's return information.

After the TFA, the analysis of the scope of disclosures under section 6103(e) and (k)(6) is materially unchanged from that in Rev. Rul. 2004-53. Section 6103(e) and (k)(6) contains no limitation or restriction on the redisclosure of returns or return information received pursuant to the material interest or investigative disclosure exceptions. Therefore, in Situations 3 and 6 there are no statutory or regulatory restrictions on the redisclosures of return information made by D or G.

In Situations 4, 5, and 7, however, the prohibition in section 6103(a) on redisclosure of returns or return information by government employees could be read to prohibit such redisclosures by F and G because they happen to be government employees. This reading would create a disparity in the application of section 6103(a) based on who the employer of the person receiving the disclosure of returns or return information happens to be.

By its terms, section 6103(a) does not regulate or control the use of returns and return information received under the material interest or investigative disclosure exceptions. Moreover, the requirements for accountings and safeguards that typically apply where redisclosure of returns or return information is limited do not apply to these exceptions.

There is no evidence that Congress intended to limit the redisclosure of return information received by government employees under section 6103(e) and (k)(6) merely because they happen to be government employees. On the contrary, there are compelling reasons for those government employees to be subject to the same rules as other recipients. For example, a private sector employer may take disciplinary action against employees who do not properly fulfill their tax obligations. If redisclosure of return information is not permitted because the employer happens to be the Federal government, the Federal employees who failed to fulfill their tax obligations would be in a significantly better position than their private sector counterparts. This inappropriate result only occurs if section 6103(a) is read to apply to individuals merely because they happen to be government employees.

Accordingly, persons are not barred because of their status as government employees from redisclosing returns and return information received pursuant to section 6103(e) or (k)(6). Therefore, in Situations 4, 5, and 7, there are no statutory or regulatory restrictions on the redisclosures of return information made by F or G.

HOLDING

Government employees who receive returns or return information pursuant to disclosures under section 6103(c), like all designees who receive returns or return information pursuant to taxpayer consent, are subject to the disclosure restrictions of section 6103(a). Government employees who receive returns or return information pursuant to disclosures under section 6103(k)(6) or (e), other than section 6103(e)(1)(D)(iii) (relating to certain shareholders), are not subject to the disclosure restrictions of section 6103(a) with regard to the returns or return information received.

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 2004-53 is modified and superseded.

DRAFTING INFORMATION

The principal author of this revenue ruling is Andrew C. Keaton of the Office of the Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue ruling, contact Mr. Keaton at (202) 317-5404 (not a toll-free call).