

[4830-01-p]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[TD 9054]

RIN 1545-AX85

Disclosure of Returns and Return Information to Designee of Taxpayer

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation and removal of temporary regulation.

SUMMARY: This final regulation relates to the disclosure of returns and return information to a designee of the taxpayer. The regulation provides guidance to IRS employees responsible for disclosing returns and return information and to taxpayers who wish to designate a person or persons to whom returns and return information may be disclosed.

DATES: Effective Date: This regulation is effective April 29, 2003.

Applicability Date: For dates of applicability, see §301.6103(c)-1(f).

FOR FURTHER INFORMATION CONTACT: Joseph Conley, (202) 622-4580 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this final regulation have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-1816.

The collections of information relating to requests for or consents to disclosure of returns and return information are in §301.6103(c)-1(b), (c) and (d). Information provided in a request or consent under paragraph (b) is required by the IRS to identify the return or return information described in the request or consent; to search for and, where found, compile such return or return information; and to identify the person to whom any such

return or return information is to be provided. Information provided in a request under paragraph (c) is required by the IRS to determine the nature and extent of the information or assistance requested by the taxpayer; to determine any return or return information to be disclosed to a third party in order to comply with the taxpayer's request; and to search for and, where found, to compile any such return or return information. Information provided in a request under paragraph (c)(2) is also required by the IRS to confirm the identity of the taxpayer and the designee. Information provided in a consent under paragraph (d)(1) is required by the IRS to make certain disclosures to an electronic return transmitter or other third party in connection with the taxpayer's electronic filing of returns or other documents or information, such as disclosures to a transmitter of the IRS's receipt of a taxpayer's return and its acceptance or rejection by the IRS. The collections of information in this regulation are not mandatory, but are required if the IRS is to make disclosures to designees under the regulation. The likely respondents are individuals and households; farms, businesses, and other for-profit institutions; nonprofit institutions; and small businesses and organizations.

Comments on the collections of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington DC 20224. Comments on the collections of information should be received by June 30, 2003.

Comments on the collections of information are specifically requested concerning the following:

- (a) Whether the collections of information are necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

(b) The accuracy of the estimated burden associated with the collections of information (see below);

(c) How the quality, utility, and clarity of the information to be collected may be enhanced;

(d) How the burden of complying with the collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

Portions of the burden for the reporting requirements contained in paragraph (b) will be reflected in IRS Forms 4506, 6847, and 8821, and in the United States Department of Education form entitled “William D. Ford Federal Direct Loan Program Income Contingent Repayment Plan Consent to Disclosure of Tax Information.” A portion of the burden for the reporting requirement contained in paragraph (c)(1) will be reflected in the return of the taxpayer. The burden for the reporting requirement contained in paragraph (d)(1) will be reflected in IRS Forms 8453 and 8879 and the income tax return of the taxpayer.

Estimated total annual reporting burden under §301.6103(c)-1(b) for consents not using forms disclosed above: 800 hours.

Estimated annual burden per respondent: 0.2 hours (12 minutes).

Estimated number of respondents: 4,000.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C.

6103.

Background

On January 11, 2001, a temporary regulation (TD 8935) and a cross-referenced notice of proposed rulemaking (REG-103320-00) under section 6103(c) of the Internal Revenue Code (Code) were published in the **Federal Register** (66 FR 2261).

No written comments were received on the proposed regulation. In this Treasury decision, the regulation proposed by REG-103320-00 is adopted as revised in six minor respects.

Explanation of Provisions

Under section 6103(a), returns and return information are confidential unless disclosure is otherwise authorized by the Code. Section 6103(c), as amended in 1996 by section 1207 of the Taxpayer Bill of Rights II, Public Law 104-168 (110 Stat. 1452), authorizes the IRS to disclose returns and return information to such person or persons as the taxpayer may designate in a request for or consent to disclosure, or to any other person at the taxpayer's request to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. Disclosure is permitted subject to such requirements and conditions as may be prescribed by regulations. With the amendment in 1996, Congress eliminated the longstanding requirement that disclosures to designees of the taxpayer must be pursuant to the written request or consent of the taxpayer.

The temporary regulation contained in TD 8935 authorized the disclosure of tax returns and return information to a designee of the taxpayer pursuant to a nonwritten request or consent when the taxpayer seeks the assistance of a third party in resolving a tax matter. TD 8935 also amended the existing regulation to clarify the rules applicable to written requests or consents to disclosure. The temporary regulation is scheduled to expire on January 10, 2004.

This final regulation adopts the proposed regulation as revised in six minor

respects.

Paragraphs (b) and (c) of the proposed regulation permit disclosures of returns or return information to the designee of a taxpayer when the requirements of such paragraphs are met. In the final regulation, paragraphs (b) and (c) have been amended to state that returns or return information may be disclosed in written or nonwritten form. This amendment is intended as a clarification rather than a change in the effect of the regulation.

Paragraph (b) of the proposed regulation concerns disclosures of returns and return information to a designee of the taxpayer pursuant to a written request or consent. Paragraph (b)(1) (i) - (iv) lists four pieces of information that must be included in the written request or consent (taxpayer identify information, the identity of the person to whom disclosure is to be made, the type of return or return information to be disclosed, and the taxable years covered by the return or return information). The final regulation adds language to paragraph (b) to make clear that, in order to constitute a valid written request or consent, a writing must contain the four pieces of information when it is signed and dated by the taxpayer. A written request or consent is not valid if the taxpayer signs it in blank, i.e., signs the written request or consent with any of the four pieces of information or the date missing, even if another party later adds such information or the date. This addition is intended as a clarification rather than a change in the effect of the regulation.

Paragraph (c)(2) of the proposed regulation concerns disclosures of returns and return information to a designee of the taxpayer pursuant to a nonwritten request or consent. Paragraph (c)(2)(i) sets forth the requirements to be met in order for such disclosures to be authorized. Paragraph (c)(2)(ii) provides two examples of circumstances under which such disclosures may be useful or convenient: a meeting or interview with the IRS to which a taxpayer brings a friend, relative, or other person, and a telephone conversation with the IRS when the taxpayer wishes to involve another person. In the final regulation, a new paragraph (c)(2)(iii) has been added, which states that the

taxpayer does not need to be present, either in person or as part of a telephone conversation, for disclosures of returns and return information to be made to the other person under paragraph (c)(2). This addition is intended as a clarification rather than a change in the effect of the regulation.

Paragraphs (d)(1) and (d)(2) of the proposed regulation provide parameters for the development of consents for, respectively, the IRS's electronic filing program and combined Federal-State (FedState) return filing programs. Each of these paragraphs permits the creation of limited purpose disclosure consents that would not otherwise be effective under paragraph (b) (relating to general purpose consents in the form of separate written documents pertaining solely to an authorized disclosure) or paragraph (c) (relating to disclosures to designees to comply with a taxpayer's request for information or assistance). Accordingly, the last sentence in paragraph (d)(1) of the proposed regulation states that the requirements of paragraphs (b) and (c) do not apply to a consent under paragraph (d)(1). The final regulation deletes such sentence and adds a similar sentence at the beginning of paragraph (d), stating that the requirements of paragraphs (b) and (c) do not apply under paragraph (d). This modification is intended as a clarification rather than a change in the effect of the regulation.

Paragraph (e)(1) of the proposed regulation defines the phrase "separate written document." (To be valid under paragraph (b), a request for or consent to disclosure must be in the form of a separate written document pertaining solely to the authorized disclosure.) Under paragraph (e)(1)(A), one meaning of the phrase "separate written document" is the text appearing on a sheet of 8 ½-inch by 11-inch or larger paper. Similarly, under paragraph (e)(1)(B), another meaning of the phrase "separate written document" is the text appearing on a single computer screen containing all the elements described in paragraph (b)(1), which can be signed and dated by the taxpayer, and which can be reproduced if necessary. In the final regulation, paragraphs (e)(1)(A) and (e)(1)(B) have been amended to provide that the text at issue in such paragraphs may appear,

respectively, on one or more sheets of 8 ½-inch by 11-inch or larger paper or on one or more computer screens. This amendment will provide taxpayers and their representatives with additional flexibility in drafting written and electronic consents while continuing to require that language authorizing disclosures of tax information be kept separate and distinct from language regarding other matters.

Paragraph (e)(3) of the proposed regulation provides rules regarding permissible designees. Paragraph (e)(3) has been amended to include an additional sentence stating that when a designee is an individual, this regulation does not authorize disclosures to other individuals associated with such individual, such as employees of such individual or members of such individual's staff. This modification is intended as a clarification rather than a change in the effect of the regulation.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. This final regulation provides taxpayers with enhanced procedures to resolve problems with the IRS, and it clarifies the requirements for a valid request for or consent to the disclosure of returns or return information. Therefore, notice and public procedure are not required pursuant to 5 U.S.C. 553(b)(B). Moreover, a delayed effective date would be contrary to the public interest and is not required under 5 U.S.C. 553(d). Pursuant to section 7805(f) of the Code, the temporary regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

It is hereby certified that the collection of information in this regulation will not have a significant economic impact of a substantial number of small entities. This certification is based upon the fact that any burden on taxpayers is minimal, since the regulation only applies to taxpayers which request or consent to the disclosure of returns or return information, and since the information collected is only that necessary to carry out the

disclosure of returns or return information requested or consented to by the taxpayer (such as the name and taxpayer identification number of the taxpayer, the return or return information to be disclosed, and the identity of the designee). Moreover, it is based upon the fact that the regulation reduces the burden imposed upon taxpayers by the prior regulation by clarifying the requirements for and conditions of a request for or consent to disclosure and by permitting certain disclosures pursuant to nonwritten requests or consents. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Drafting Information

The principal author of this regulation is Joseph Conley, Office of the Associate Chief Counsel, Procedure and Administration (Disclosure and Privacy Law Division).

List of Subjects

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting the recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 and 26 CFR part 602 are amended as follows:

PART 301--PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6103(c)-1 is added to read as follows:

§301.6103(c)-1 Disclosure of returns and return information to designee of taxpayer.

(a) Overview. Subject to such requirements and conditions as the Secretary may prescribe by regulation, section 6103(c) of the Internal Revenue Code authorizes the Internal Revenue Service to disclose a taxpayer's return or return information to such

person or persons as the taxpayer may designate in a request for or consent to such disclosure, or to any other person at the taxpayer's request to the extent necessary to comply with the taxpayer's request to such other person for information or assistance. This regulation contains the requirements that must be met before, and the conditions under which, the Internal Revenue Service may make such disclosures. Paragraph (b) of this section provides the requirements that are generally applicable to designate a third party to receive the taxpayer's returns and return information. Paragraph (c) of this section provides requirements under which the Internal Revenue Service may disclose information in connection with a taxpayer's written or nonwritten request for a third party to provide information or assistance with regard to a tax matter, for example, a Congressional inquiry. Paragraph (d) of this section provides the parameters for disclosure consents connected with electronic return filing programs and combined Federal-State filing. Finally, paragraph (e) of this section provides definitions and general rules related to requests for or consents to disclosure.

(b) Disclosure of returns and return information to person or persons designated in a written request or consent--(1) General requirements. Pursuant to section 6103(c) of the Internal Revenue Code, the Internal Revenue Service (or an agent or contractor of the Internal Revenue Service) may disclose a taxpayer's return or return information (in written or nonwritten form) to such person or persons as the taxpayer may designate in a request for or consent to such disclosure. A request for or consent to disclosure under this paragraph (b) must be in the form of a separate written document pertaining solely to the authorized disclosure. (For the meaning of separate written document, see paragraph (e)(1) of this section.) The separate written document must be signed (see paragraph (e)(2) of this section) and dated by the taxpayer who filed the return or to whom the return information relates. At the time it is signed and dated by the taxpayer, the written document must also indicate--

(i) The taxpayer's taxpayer identity information described in section 6103(b)(6);

(ii) The identity of the person or persons to whom the disclosure is to be made;
(iii) The type of return (or specified portion of the return) or return information (and the particular data) that is to be disclosed; and

(iv) The taxable year or years covered by the return or return information.

(2) Requirement that request or consent be received within sixty days of when signed and dated. The disclosure of a return or return information authorized by a written request for or written consent to the disclosure shall not be made unless the request or consent is received by the Internal Revenue Service (or an agent or contractor of the Internal Revenue Service) within 60 days following the date upon which the request or consent was signed and dated by the taxpayer.

(c) Disclosure of returns and return information to designee of taxpayer to comply with a taxpayer's request for information or assistance. If a taxpayer makes a written or nonwritten request, directly to another person or to the Internal Revenue Service, that such other person (for example, a member of Congress, friend, or relative of the taxpayer) provide information or assistance relating to the taxpayer's return or to a transaction or other contact between the taxpayer and the Internal Revenue Service, the Internal Revenue Service (or an agent or contractor of the Internal Revenue Service or a Federal government agency performing a Federal tax administration function) may disclose returns or return information (in written or nonwritten form) to such other person under the circumstances set forth in paragraphs (c) (1) through (3) of this section.

(1) Written request for information or assistance. (i) The taxpayer's request for information or assistance may be in the form of a letter or other written document, which must be signed (see paragraph (e)(2) of this section) and dated by the taxpayer. The taxpayer must also indicate in the written request--

(A) The taxpayer's taxpayer identity information described in section 6103(b)(6);

(B) The identity of the person or persons to whom disclosure is to be made; and

(C) Sufficient facts underlying the request for information or assistance to enable

the Internal Revenue Service to determine the nature and extent of the information or assistance requested and the returns or return information to be disclosed in order to comply with the taxpayer's request.

(ii) A person who receives a copy of a taxpayer's written request for information or assistance but who is not the addressee of the request, such as a member of Congress who is provided with a courtesy copy of a taxpayer's letter to another member of Congress or to the Internal Revenue Service, cannot receive returns or return information under paragraph (c)(1) of this section.

(2) Nonwritten request or consent. (i) A request for information or assistance may also be nonwritten. Disclosure of returns and return information to a designee pursuant to a taxpayer's nonwritten request will be made only after the Internal Revenue Service has--

(A) Obtained from the taxpayer sufficient facts underlying the request for information or assistance to enable the Internal Revenue Service to determine the nature and extent of the information or assistance requested and the return or return information to be disclosed in order to comply with the taxpayer's request;

(B) Confirmed the identity of the taxpayer and the designee; and

(C) Confirmed the date, the nature, and the extent of the information or assistance requested.

(ii) Examples of disclosures pursuant to nonwritten requests for information or assistance under this paragraph (c)(2) include, but are not limited to, disclosures to a friend, relative, or other person whom the taxpayer brings to an interview or meeting with Internal Revenue Service officials, and disclosures to a person whom the taxpayer wishes to involve in a telephone conversation with Internal Revenue Service officials.

(iii) As long as the requirements of this paragraph (c)(2) are met, the taxpayer does not need to be present, either in person or as part of a telephone conversation, for disclosures of returns and return information to be made to the other person.

(3) Rules applicable to written and nonwritten requests for information or

assistance. A return or return information will be disclosed to the taxpayer's designee as provided by this paragraph only to the extent considered necessary by the Internal Revenue Service to comply with the taxpayer's request or consent. Such disclosures shall not be made unless the request or consent is received by the Internal Revenue Service, its agent or contractor, or a Federal government agency performing a Federal tax administration function in connection with a request for advice or assistance relating to such function. This paragraph (c) does not apply to disclosures to a taxpayer's representative in connection with practice before the Internal Revenue Service (as defined in Treasury Department Circular No. 230, 31 CFR Part 10). For disclosures in these cases, see section 6103(e)(6) and §§601.501 through 601.508 of this chapter.

(d) Acknowledgments of electronically filed returns and other documents; combined filing programs with State tax agencies. The requirements of paragraphs (b) and (c) of this section do not apply to this paragraph (d).

(1) Acknowledgment of, and notices regarding, electronically filed returns and other documents. When a taxpayer files returns or other documents or information with the Internal Revenue Service electronically, the taxpayer may consent to the disclosure of return information to the transmitter or other third party, such as the taxpayer's financial institution, necessary to acknowledge that the electronic transmission was received and either accepted or rejected by the Internal Revenue Service, the reason for any rejection, and such other information as the Internal Revenue Service determines is necessary to the operation of the electronic filing program. The consent must inform the taxpayer of the return information that will be transmitted and to whom disclosure will be made.

(2) Combined return filing programs with State tax agencies. (i) A taxpayer's participation in a combined return filing program between the Internal Revenue Service and a State agency, body, or commission (State agency) described in section 6103(d)(1) constitutes a consent to the disclosure by the Internal Revenue Service, to the State agency, of taxpayer identity information, signature, and items of common data contained on the

return. For purposes of this paragraph, common data means information reflected on the Federal return required by State law to be attached to or included on the State return. Instructions accompanying the forms or published procedures involved in such program must indicate that by participating in the program, the taxpayer is consenting to the Internal Revenue Service's disclosure to the State agency of the taxpayer identity information, signature, and items of common data, and that such information will be treated by the State agency as if it had been directly filed with the State agency. Such instructions or procedures must also describe any verification that takes place before the taxpayer identity information, signature and common data is transmitted by the Internal Revenue Service to the State agency.

(ii) No disclosures may be made under this paragraph (d)(2) unless there are provisions of State law protecting the confidentiality of such items of common data.

(e) Definitions and rules applicable to this section--(1) Separate written document.

(i) For the purposes of paragraph (b) of this section, separate written document means--

(A) Text appearing on one or more sheets of 8 ½ -inch by 11-inch or larger paper, each of which pertains solely to the authorized disclosure, so long as such sheet or sheets, taken together, contain all the elements described in paragraph (b)(1) of this section;

(B) Text appearing on one or more computer screens, each of which pertains solely to the authorized disclosure, so long as such screen or, taken together, such screens--

(1) contain all the elements described in paragraph (b)(1) of this section,

(2) can be signed (see paragraph (e)(2) of this section) and dated by the taxpayer,

and

(3) can be reproduced, if necessary; or

(C) A consent on the record in an administrative or judicial proceeding, or a transcript of such proceeding recording such consent, containing the information required under paragraph (b)(1) of this section.

(ii) A provision included in a taxpayer's application for a loan or other benefit

authorizing the grantor of the loan or other benefit to obtain any financial information, including returns or return information, from any source as the grantor may request for purposes of verifying information supplied on the application, does not meet the requirements of paragraph (b)(1) of this section because the provision is not a separate written document relating solely to the disclosure of returns and return information. In addition, the provision does not contain the other information specified in paragraph (b)(1) of this section.

(2) Method of signing. A request for or consent to disclosure may be signed by any method of signing the Secretary has prescribed pursuant to §301.6061-1(b) in forms, instructions, or other appropriate guidance.

(3) Permissible designees and public forums. Permissible designees under this section include individuals; trusts; estates; corporations; partnerships; Federal, State, local and foreign government agencies or subunits of such agencies; or the general public. When disclosures are to be made in a public forum, such as in a courtroom or congressional hearing, the request for or consent to disclosure must describe the circumstances surrounding the public disclosure, *e.g.*, congressional hearing, judicial proceeding, media, and the date or dates of the disclosure. When a designee is an individual, this section does not authorize disclosures to other individuals associated with such individual, such as employees of such individual or members of such individual's staff.

(4) Authority to execute a request for or consent to disclosure. Any person who may obtain returns under section 6103(e)(1) through (5), except section 6103(e)(1)(D)(iii), may execute a request for or consent to disclose a return or return information to third parties. For taxpayers that are legal entities, such as corporations and municipal bond issuers, any officer of the entity with authority under applicable State law to legally bind the entity may execute a request for or consent to disclosure. A person described in section 6103(e)(6) (a taxpayer's representative or individual holding a power of attorney) may not execute a request for or consent to disclosure unless the designation of representation or power of

attorney specifically delegates such authority. A designee pursuant to this section does not have authority to execute a request for or consent to disclosure permitting the Internal Revenue Service to disclose returns or return information to another person.

(5) No disclosure of return information if impairment. A disclosure of return information shall not be made under this section if the Internal Revenue Service determines that the disclosure would seriously impair Federal tax administration (as defined in section 6103(b)(4) of the Internal Revenue Code).

(f) Effective date. This section is applicable on April 29, 2003.

§301.6103(c)-1T [Removed]

Par. 3. Section 301.6103(c)-1T is removed.

PART 602--OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101, paragraph (b) is revised as follows:

1. The following entry to the table is removed:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
301.6103(c)-1.....	1545-0280

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2. The following entry is added in numerical order to the table:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

_CFR part or section where
identified and described

Current OMB
control No.

* * * * *

301.6103(c)-1.....1545-1816

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David A. Mader,
Assistant Deputy Commissioner of Internal Revenue.

Approved: April 9, 2003

Pamela F. Olson,
Assistant Secretary of the Treasury.