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MEMORANDUM FOR MARION K. MORTENSEN
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Attn: Mark H. Howard

FROM: Michael B. Frosch
Chief, Branch 3
Disclosure & Privacy Law

SUBJECT: OGD-Tax Shelter Registration

Having reviewed your Request for Service Center Advice regarding Disclosure Issues involving the Tax Shelter Registration Program, I offer the following advice. I've copied the employee's original questions and inserted responses beneath each, as appropriate.

(1). In some instances the Forms 8264 are missing a small item (EIN number of shelter or organizer, address of organizer, etc.). In many of those cases we have been contacting the organizer/promoter by phone in an attempt to perfect the Forms 8264 in the most expedient manner and to avoid having mail flowing back and forth. Since many of the organizers are large organizations it is very difficult to talk directly with the person who signed the 8264 (they might not know many of the details anyway) and we have been attempting to gain the missing information from the employees of the organizer. Would you recommend that we discontinue this practice and request all missing information directly from the organizer by letter?

No, discontinuance of this practice is not necessary. It is preferable to deal with the person signing the Form 8264. However, to the extent that such a process is unworkable or unwieldy, limited, discrete disclosures in dealing with employees is permissible. Under IRC Section 6103(k)(6) and Treas. Reg. § 301.6103(k)(6)-1, the IRS may disclose return information (but not returns) in the course of making investigative inquiries of *any* employee, when such disclosures are necessary to obtain information that is not otherwise reasonably available. Here, the fact of filing for Tax Shelter Registration on the part of the organizer constitutes return information under

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section 6103(b)(2), and therefore, any inquiries directed to any employee regarding the Tax Shelter Registration of the organizer necessarily results in the disclosure of this return information. However, the disclosure contemplated here is to be undertaken in order to *obtain* information not otherwise reasonably available (the correct EIN). It is permissible under section 6103(k)(6) and Treas. Reg. § 301.6103(k)(6)-1 to disclose the fact-of-filing information in the process of this limited, discrete request.

Furthermore, it is permissible for the employee to *disclose* the information sought without obtaining any consent or authorization from the organizer. The organizer's employee is merely responding to a limited, discrete IRS inquiry and is not required to be the subject of a 6103(c) consent for such limited disclosures.

(2). Many organizers lose their registration numbers and an employee of the organizer/promoter will call me and request either the registration number or a copy of the registration letter. Is it proper to give them the registration number over the phone? Is it proper to send a copy of the registration letter to the organizer but direct it to the attention of the employee who is requesting a copy?

There is a subtle, yet statutorily significant distinction between the scenario here and that contemplated by the previous question. Here, the IRS is not disclosing return information for the purpose of *obtaining* additional information, but is merely providing information at the request of a *third party* (an employee). Under the plain language of section 6103(k)(6), the fact that the Service is not obtaining information but is merely providing information eliminates the availability of (k)(6) as a suitable disclosure authority. Disclosure authority may exist, however, under sections 6103(e) or (c).

As a general rule, Section 6103(e) permits the IRS to disclose the taxpayer's own returns and return information to the taxpayer, and in the case of legal entities such as the organizers contemplated here, such disclosures must be made by means of disclosures to officers and/or employees. However, one's status as an employee or officer does not confer upon such person the right to receive a copy of the entity's returns or other return information. Section 6103(e)(1)(D) provides that entity returns (and return information under (e)(7)) may be disclosed to, inter alia, any person designated by resolution of its board of directors or governing body to receive such information, or any officer or employee of such corporation upon written request signed by any principle officer and attested to by the secretary or other officer. In addition, anyone who has authority to bind the entity under the laws of the applicable jurisdiction also may obtain the entity's returns and return information. See IRM 11.3.2.4.3(1).

Under section 6103(c), disclosure of returns and return information may be made to anyone the taxpayer may designate. If an employee of the entity is acting as a contact point for receiving tax information and correspondence from the IRS, providing information to the IRS, discussing issues that arise, then a disclosure consent under section 6103(c) must be obtained from the entity authorizing disclosures of tax information to the employee. This is typically only the case where the Service has

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ongoing or in-depth, issue-related interactions with a particular employee or group of employees. Under the provisions of the statute, however, the need for a consent under section 6103(c) still applies in the instant scenario. Here, the Service is not soliciting information from the entity, but rather is being asked to *provide* information regarding the entity to one of the entity's employees. In such a case, the information requested may be disclosed only to a person designated on a 6103(c) consent as eligible to receive the entity's return information, or to a high level officer of the entity (one that is authorized to bind the entity under applicable state law). Where it is uncertain whether the individual requesting the information is someone designated on such a consent, or if a consent is not on file at all, the registration number should not be disclosed to the requester via telephone. Instead, it may be preferable to handle such requests by mailing a new registration letter to the entity's address of record, allowing dissemination within the organization as deemed appropriate. Directing correspondence to a legal entity using an "attention" note as part of the address is impermissible unless the person so identified is authorized to receive the information directly from the IRS.

(3). Many organizers call and inquire as to the status of their registrations. In most cases the call is made by an employee of the organizer/promoter. We normally tell them the status (such as, we haven't processed the 8264 yet, the registration letter is in the mail or we mailed the registration letter some time ago and it must have been misrouted in your organization). How much information can we disclose for these informal inquiries?

This is much the same scenario as that of Question (2), above. Fact-of-filing information *is* return information. The Service personnel handling the request should attempt to determine the identity of the person requesting the information in order to determine whether a valid consent exists with regard to that individual. If no such consent exists, or the requester's identity cannot be ascertained to the satisfaction of the Service employee handling the request, then no information regarding the status of the filing may be disclosed to the requester. Again, it may be preferable to send appropriate correspondence to the entity's address of record and allow it to be disseminated within the organization as deemed appropriate.

In conclusion, Section 6103(k)(6) does permit the disclosures contemplated in the first scenario, however, alternative disclosure authority under section 6103(c) or 6103(e) must be utilized with regard to the second and third scenarios.