



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
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MEMORANDUM FOR DISTRICT COUNSEL, SOUTH FLORIDA
DISTRICT CC:SER:SFL:FTL

FROM: Chief, Branch 1
Assistant Chief Counsel (Disclosure & Privacy Law) CC:PA:DPL

SUBJECT: Proposed Intergovernmental Agreement Between Florida
Division of Unemployment Compensation and IRS

This is in response to your fax transmission dated June 26, 2000, requesting that we review the above-referenced agreement. This document is not to be cited as precedent.

ISSUE:

Whether any provisions of the proposed agreement between the IRS and Florida's Division of Unemployment Compensation should be revised or removed consistent with I.R.C. § 6103 and related disclosure laws contained in Title 26.

CONCLUSION:

We have reviewed the proposed agreement and recommend eliminating those provisions in the agreement that purport to make the IRS subject to Florida law regarding the handling, maintenance, and disclosure of information obtained under the agreement from the Division of Unemployment Compensation.

FACTS:

As we understand it, under the agreement, the Division of Unemployment Compensation will grant the IRS on-line access to certain of its computerized tax information in furtherance of the IRS' tax collection efforts. The agreement contains several provisions regarding the handling, maintenance, and disclosure of information accessed from the Division's database(s).

LAW AND ANALYSIS:

Most of the provisions appear in part (or section) E of the agreement, which concerns "Confidentiality of Information." Paragraph two thereof concerns disclosure of information obtained from the database(s), while paragraph three concerns the IRS' use of the information, and paragraphs four, five, and six relate to safeguarding the information. Similarly, paragraph two of part D concerns disclosure, and paragraph two of part G purports to bind the IRS to Department of Labor rules, policy decisions, and directives that the Division deems applicable to the agreement. Once the information is obtained from the Division, it will become, in the hands of the IRS, the tax return information of the individual taxpayers to whom the information pertains. As such, the information is confidential under I.R.C. § 6103(a), and section 6103 requires the safeguarding of the information and provides the circumstances under which the information may be disclosed, including disclosure within the IRS for purposes of tax administration, i.e., use of the information within the agency. Therefore, paragraphs two through five of part E, paragraph two of part D, and paragraph two of part G should be eliminated and replaced with a provision to the effect that:

All information obtained by the IRS under this Agreement shall be treated as the return information, within the meaning of Internal Revenue Code (I.R.C.) section 6103(b)(2), of the taxpayers to whom the information relates, and such information shall be maintained, used, and disclosed by the IRS in accordance with I.R.C. section 6103 and implementing regulations. The IRS will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of information accessed from the Division computer system in accordance with I.R.C. section 6103.

Additionally, paragraph seven of part E of the agreement reads:

The IRS shall instruct all personnel with access to the information [of] . . . the confidential nature of the information, the requirements of this part and the sanctions specified in Florida Unemployment Compensation Law against unauthorized disclosure of information covered by this part and any other relevant state statutes. The IRS shall also require all personnel with access to the information to sign an acknowledgment of confidentiality on a form approved by the Division.

Pursuant to section 6103, all IRS employees are under an existing obligation to treat returns and return information as confidential and to disclose returns and return information only as authorized under section 6103 or another section of Title 26. Also, section 6103, sections 7213 and 7213A, which establish criminal penalties for the willful unauthorized disclosure or inspection of returns or return information, and section 7431, which provides for civil remedies against the United States for the knowing or negligent unauthorized disclosure of returns or return information, supercede any sanctions specified in the Florida Unemployment Compensation Law or other state statutes.

Consequently, paragraph seven should either be removed or rewritten in language similar to the preceding two sentences.

Finally, part F, "Inspection of Records," of the proposed agreement provides that the Division of Unemployment Compensation may conduct on-site inspections of information obtained under the agreement and in the possession of the IRS "to ensure that the requirements of Section 1102 of the Social Security Act, 20 CFR 603, and sections 443.171(7) and 443.1715, Florida Statutes[,] are being met." However, 20 C.F.R. § 603.7, which implements section 1102 of the Social Security Act (42 U.S.C. § 1302) and provides certain security measures to protect the confidentiality of unemployment compensation information, applies only to state and local agencies and the Department of Health and Human Services, not the IRS. See, 20 C.F.R. § 603.2(d) (defining "requesting agency"). Also, sections 6103, 7213, and 7213A control over Florida Statutes 443.1715(3), which states, "Except as otherwise provided by law, the receiving agency must retain the confidentiality of [unemployment compensation] . . . information as provided in this section[,]" and 443.171(7), which states, "any . . . person receiving confidential information, who violates any provision of this subsection is guilty of a misdemeanor of the second degree" Because the statutes and regulations referenced in part F are inapposite, we recommend that part F be removed from the agreement. However, it would be appropriate for the IRS to add a paragraph describing whatever measures the IRS will take to ensure that its employees allowed access comply with the provisions of the agreement.

If you have any questions, or if we can provide any further assistance, please call us at (202) 622-4580.