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From:

Sent: Friday, February 24, 2012 2:45:25 PM

To:

Cc:

Subject: RE: Questions

Hi

I.R.C. § 6103 requires the IRS to maintain the confidentiality of return information unless a provision of title 26 provides otherwise. Courts interpret the term return information broadly to include the taxpayer's identity and all other information received, acquired, or generated by the IRS in connection with the determination of a taxpayer's tax liability. See I.R.C. § 6103(b)(2); *Payne v. United States*, 289 F.3d 377, 382 (5th Cir. 2002).

In the situation presented, the issue is whether return information gathered during the examination of an estate tax return can be disclosed to the subject of a section 6695A examination. The subject of the section 6695A examination, an appraiser, drafted an appraisal for purposes of the estate tax return.

The IRS may disclose return information in a federal or state judicial or administrative proceeding related to tax administration if the proceeding arose out of a determination of the taxpayer's liability or if the return information directly relates to the outcome of the proceeding. I.R.C. § 6103(h)(4). Although not defined by statute or regulation, we have interpreted an administrative proceeding to be a proceeding conducted by an administrative agency, body, or commission charged by law to make determinations regarding a taxpayer's liability under the Code or related statutes. Thus, an administrative proceeding includes examination procedures. The IRS may disclose the return information gathered from the estate tax examination to the subject of the section 6695A examination but only if the estate tax return information directly relates to the determination under section 6695A. Any of the estate tax return information that does not directly relate to the determination of the section 6695A penalty, such as information about the executor or items of income and deductions unrelated to the appraisal, may not be disclosed to the appraiser.

Return information also includes the fact that a taxpayer is under examination. Accordingly, the fact that the Service is examining the corporation is the corporation's return information and the fact that the Service is examining the corporation's employee is the employee's return information. Neither of these items of return information may be disclosed unless a provision of title 26 provides otherwise. Based on the facts available, no provision of title 26 would appear to authorize the disclosure to the

corporation that its employee is under examination or to the employee that the corporation is under examination.

I hope that this response answers the questions presented. Please contact me if you have additional questions or need further assistance.

Thanks,