

**Office of Chief Counsel  
Internal Revenue Service  
memorandum**

Number: **201403006**

Release Date: 1/17/2014

CC:PA

DISSP-132562-13

UILC: 6103.08-01

date: September 26, 2013

to: Supervisory Internal Revenue Agent  
(Small Business/Self-Employed)

from: Special Counsel  
(Procedure and Administration)

---

subject: Disclosure of Federal Tax Information to OPR

This Chief Counsel Advice responds to your inquiry as to whether the Small Business/Self-Employed examination unit (SB/SE Exam) of the Internal Revenue Service (IRS) may provide to the Office of Professional Responsibility (OPR) information concerning the examination of an individual who engages in practice before the IRS before the examination is resolved for purposes of an OPR investigation into that individual's potential disreputable conduct due to tax noncompliance. This advice should not be used or cited as precedent.

ISSUE

Whether SB/SE Exam can disclose to OPR, for purposes of an OPR investigation, the audit report and unagreed case package regarding the examination of an individual who engages in practice before the IRS before the case is resolved (i.e., resolved in the Office of Appeals (Appeals) or through the issuance of a statutory notice of deficiency) when OPR referred the practitioner to SB/SE for examination.

CONCLUSION

SB/SE Exam may disclose the examination information concerning an individual who engages in practice before the IRS to OPR under I.R.C. section 6103(h)(1) for purposes of OPR's disreputable conduct investigation into the tax compliance of that individual.

## BACKGROUND

Section 330 of title 31 of the United States Code authorizes the Secretary of the Treasury (the Secretary) to regulate the practice of representatives before the Treasury Department. The Secretary has published regulations governing the practice of representatives before the IRS in 31 CFR Part 10 and reprinted the regulations as Treasury Department Circular No. 230 (Circular 230). OPR is responsible for enforcing Circular 230. See 31 C.F.R. § 10.1(a) (2011). As part of its enforcement authority, OPR has the authority to investigate whether a practitioner has violated Circular 230 and to propose sanctions against individual practitioners for violations. See 31 C.F.R. § 10.1(a)(1). Section 10.51(a) of Circular 230 provides that a practitioner may be sanctioned for certain “disreputable conduct,” including willfully failing to make a federal tax return in violation of federal tax laws, willfully evading or attempting to evade assessment or payment of federal tax, or conviction of any criminal offense under federal tax laws. As such, in the course of a Circular 230 investigation, OPR may determine it is appropriate to refer a practitioner to the IRS for examination of the practitioner’s own tax returns or the tax returns of an entity in which the practitioner is an owner or principal.

An SB/SE revenue agent may then conduct an examination of the practitioner’s return or returns and will ultimately issue a revenue agent’s report (RAR) containing a determination. The practitioner then has the opportunity to contest the RAR in Appeals. A question has arisen as to whether OPR can receive a copy of the RAR and unagreed case package, in particular, before Appeals completes its review of the case.

## LAW AND ANALYSIS

Pursuant to I.R.C. section 6103(a)(1), an officer or employee of the United States must keep returns and return information confidential unless disclosure is authorized under Title 26. Under section 6103(b)(2)(A), “return information” includes a taxpayer’s identity as well as whether the taxpayer’s return was, is being, or will be examined. It also includes “any other data received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense.” Id. Both the RAR and unagreed case package reflect the examination of the taxpayer. The RAR is prepared by the revenue agent at the conclusion of the audit. The case package, whether or not agreed, may include the taxpayer’s tax returns and normally contains data received by, recorded by, prepared by, furnished to, and/or collected by an IRS employee concerning the taxpayer’s tax liability. Therefore, the RAR and contents of the unagreed case package are “returns and return information” within the meaning of section 6103(b)(2). SB/SE employees are therefore prohibited from disclosing the RAR and unagreed case package to OPR unless an exception to section 6103(a)(1) applies.

Section 6103(h)(1) permits disclosure of returns and return information to officers and employees of the Department of Treasury, without written request, where the recipient needs to know the information to perform tax administration duties. OPR is a part of the IRS, which is in turn a bureau of the Department of Treasury. Tax administration is broadly defined under section 6103(b)(4) and includes “the administration, management, conduct, direction, and supervision of the execution and application of internal revenue laws and related statutes (or the equivalent laws and statutes of a state).” I.R.C. § 6103(b)(4)(A)(i). Circular 230 provides OPR with the authority to conduct investigations, to commence disciplinary proceedings, and to pursue sanctions, when appropriate. A practitioner’s failure to comply with federal tax laws may constitute sanctionable conduct. When OPR employees investigate the federal tax compliance of those who are subject to Circular 230, they are performing their official tax administration duties. Kenny v. United States, 489 Fed. Appx. 628, 631 (3d Cir. 2012)<sup>1</sup>. Section 6103(h)(1), therefore, authorizes the disclosure of a practitioner’s return information to OPR so that OPR can conduct investigations, institute disciplinary proceedings, and pursue sanctions.<sup>2</sup> Further, because OPR has the authority to investigate and proceed with disciplinary actions while a practitioner seeks review of Exam’s determination in Appeals, Exam may disclose the RAR to OPR before the conclusion of the Appeals hearing.<sup>3</sup>

Please call \_\_\_\_\_ if you have any further questions.

---

<sup>1</sup> The Court in Kenny also pointed out that disclosure is permitted under section 6103(l)(4)(B) when OPR employees investigate a practitioner's returns in preparation for a proceeding under 31 U.S.C. section 330(b) to suspend, disbar or censure a representative who is disreputable.

<sup>2</sup> Although our discussion in this advice is based on the background and issue you presented—specifically involving a referral from OPR to SB/SE (which is itself a permissible disclosure under section 6103(h)(1))—it is not necessary that there be a prior referral from OPR to SB/SE to provide return information to OPR when appropriate.

<sup>3</sup> Additionally, OPR makes its own evaluation of whether there has been a violation of Circular 230, independent of Appeals’ settlement or other action on a case.