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Subject: Credit Reports and Community Property, GL-110366-14

This responds to your question regarding the Fair Credit Reporting Act and community property law issues. We apologize for the delays in getting back to you on this.

We conclude that it is generally permissible for the Service to obtain a credit report from a non-liable spouse in a community property state because such report could constitute the “consumer report” of the liable taxpayer, as defined in the FCRA.

The Service’s source of authority for obtaining credit reports in connection with the collection of tax liability can be found at 31 U.S.C. § 3711(h), which provides:

(h) (1) The head of an executive, judicial, or legislative agency acting under subsection (a) (1), (2), or (3) of this section to collect a claim, compromise a claim, or terminate collection action on a claim may obtain a consumer report (as that term is defined in section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a)) or comparable credit information on any person who is liable for the claim.

(2) The obtaining of a consumer report under this subsection is deemed to be a circumstance or purpose authorized or listed under section 604 of the Fair Credit Reporting Act (15 U.S.C. 1681b).

See also IRM 5.17.6.10 (09-26-2014). There are very few cases interpreting this provision. We found no cases addressing the spousal issue for purposes of section 3711(h) authority, but as you can see from the quoted language above, it directly imports the definition of “consumer report” from the FCRA.

We agree with you regarding the cases and FTC commentary providing that a nonliable spouse’s credit report is the liable spouse’s consumer report in community property states. We also found an ALR which summarized several cases which held that a spouse’s credit report may constitute the other spouse’s consumer report, though without discussion of community law implications. See 37 ALR Fed2d 203, What Constitutes “Consumer Report” Within the Meaning of the FCRA. The ALR only cited 1 case which held to the contrary, Washington v. CSC Credit Services, Inc., 194 F.R.D. 244 (E.D. La. 2000), which, again, doesn’t address community property and appears

limited to its facts (document disclosed by consumer reporting agency does not qualify as wife's "consumer report" where it only held her identifying information and the actual credit reports listed the husband's jointly held accounts with no indication that the wife was a joint holder).

You may wish to note that shortly before the Consumer Financial Protection Bureau assumed jurisdiction over the FCRA, the FTC revised its commentary on the FCRA, replacing the 1990 guidance published in the Federal Register with a document entitled "40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretations." That document can be found here:

<http://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcrrreport.pdf>

Please let me know if we can be of further assistance.