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[Third Party Communication:

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From: [REDACTED]

Sent: Wednesday, August 26, 2015 10:05:30 AM

To: [REDACTED]

Cc:

Bcc:

Subject: RE: D&B - 6103 issue

Hi ,

It is our understanding that you wish to give a vendor access to the FFI database (which contains information on FFIs – including the information we publically publish as well as additional information such as address, rep, phone number, etc) for the purpose of doing a demonstration. It is our understanding that the demonstration would be for the purpose of determining whether to enter into a contract with the vendor for the provision of technical services to help identify gaps in registration/compliance with FATCA.

The disclosures you wish to make are allowable under section 6103(k)(6).

Section 6103(k)(6) authorizes IRS employees to disclose return information “in connection with [their] official duties relating to any audit, collection activity, or civil or criminal tax investigation or any other offense under the internal revenue laws” to the extent the disclosure is necessary in obtaining information that is not otherwise reasonably available or “with respect to the enforcement of any other provision of [Title 26].” I.R.C. § 6103(k)(6). Disclosures under section 6103(k)(6) may only be made in such situations and under such conditions as the Secretary prescribes by regulation. Treas. Reg. § 301.6103(k)(6)-1(a)(1) permits disclosures of return information in connection with an IRS employee’s official duties related to, among other things, administrative, criminal, and civil investigations and enforcement activities, to the extent the disclosure is necessary to obtain information related to those official duties or “to accomplish properly any activity connected with such official duties.” This includes, but is not limited to, disclosures to obtain the services of persons having special knowledge or technical skills, including disclosures necessary in connection with preliminary inquiries to the prospective contractee. Treas. Reg. § 301.6103(k)(6)-1(a)(1)(v); Pub. 4639, 4-17. Disclosure under section 6103(k)(6) is only authorized if the IRS employee reasonably believes that, at the time of the disclosure, the information was not otherwise reasonably available or if the employee needs to make the disclosure to carry out the employee’s official duties. Treas. Reg. § 301.6103(k)(6)-1(a)(2).

When determining whether or not the disclosure of the information is necessary, the issue is whether the IRS employee reasonably believes, based on the facts and circumstances at the time of the disclosure, that the disclosure is “appropriate and helpful” to “accomplish properly the activities connected with carrying out” the employee’s official duties. Treas. Reg. § 301.6103(k)(6)-1(c)(1). Disclosures to “accomplish properly an activity connected with official duties” is defined as a disclosure of return information to carry out a function associated with official duties generally consistent with established practices and procedures.” Id. § 301.6103(k)(6)-1(c)(2).

In this case, the disclosures would be made in order to determine whether or not to enter into a contract with this vendor for the performance of technical services to identify non-compliance with FATCA. At the time of the disclosure, the IRS is obtaining information (in the form of a demonstration) from the vendor to determine whether to enter into a contract with the vendor for services for identifying non-compliance with FATCA. The IRS cannot make a decision whether to contract with the vendor without the demonstration. The demonstration requires access to the information contained in the FFI database. Accordingly, disclosure of the FFI database to the vendor for purposes of the demonstration is authorized by section 6103(k)(6) because the disclosures are appropriate and helpful to the IRS’s official duties (identifying non-compliance with FATCA), the IRS is attempting to obtain the services of persons with technical skills, and, at the time of the disclosure, the IRS cannot properly accomplish its official duties (contracting with individuals for the provision of services for tax administration) without making the disclosure.

However, when making disclosures to the vendor, the IRS should carefully consider what information is necessary and limit the disclosures it makes to only that information which is necessary for purposes of the demonstration.

Please let me know if you have any questions of if I can be of further assistance.

Thanks,