

ID: CCA\_2016102809052543

UILC: 6103.08-04, 6222.03-00, 6222.00-00

Number: **201711010**

Release Date: 3/17/2017

---

**From:** [REDACTED]  
**Sent:** Friday, October 28, 2016 9:05:25 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Bcc:**  
**Subject:** RE: Disclosure

Hi ,

I am familiar with the Disclosure Manual. While an audit is also an administrative proceeding, it is not limited to audits. The language you cite is (emphasis added):

Administrative proceeding pertaining to tax administration under section 6103(h)(4) means **any procedure or other action arising out of or in connection with a determination of a person's liability or potential liability, or in connection with the collection of that person's liability**, under the internal revenue laws or related statutes and tax conventions to which the United States is a party, **and in which a person, whose liability or potential liability, or collection of that person's liability, is or may be at issue, is given notice and an opportunity to present information to the IRS**. In *First W. Gov't Sec, Inc. v. United States*, 578 F. Supp. 212, 217-18 (D. Colo. 1984), *aff'd*, 796 F.2d 356 (10th Cir. 1986), and in *Nevins v. United States*, No. 84-4147, 1987 WL 47316, at \*3 (D. Kan. Aug. 26, 1987), audits were found to be administrative tax proceedings for purposes of the statute. See also *Abelein v. United States*, 323 F.3d 1210, 1214-15 (9th Cir. 2003) (by statute – I.R.C. § 6223 – TEFRA audits are administrative tax proceedings).

So, there are several elements:

1. Procedure or other action
2. In which liability is determined or collected under the Code
3. In which the person is given notice and opportunity to present information

If we assess following an inconsistent treatment:

1. It's a procedure or other action
2. Liability is determined under the Code

3. The person is given notice and has an opportunity to present information

I am comfortable saying that an assessment for inconsistent treatment under 6222 is an administrative proceeding for purposes of 6103(h)(4). I also discussed this issue with my other senior counsel colleague (cc'd on this email) who also specializes in disclosure, and she is in full agreement as well.

Thanks,