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From: [REDACTED]
Sent: Thursday, September 28, 2017 3:12:09 PM
To: [REDACTED]
Cc:
Bcc:
Subject: RE: Disclosure Question

Your disclosure question was referred to me for response. Under the facts you pose, disclosure may be permissible if the “transaction test” of § 6103(h)(4)(C) is satisfied. Under the transaction test, if there is a transactional relationship, and the information on the return “directly affects the resolution of an issue in the proceeding,” then that which is necessary for resolution may be disclosed.

The Tax Court has noted that “to ‘transact’ means simply ‘to carry on business’.” Mescalero Apache Tribe v. C.I.R., 28120-14., 2017 WL 1278708 at *4 (Tax Apr. 5, 2017.) As such, a partnership (i.e. an unincorporated entity organized to carry on business per § 761(a)) qualifies as a “transactional relationship” within the purview of § 6103(h)(4)(C). Therefore, if the information you wish to disclose in the Closing Agreement will directly help resolve an issue in C’s exam, disclosure under § 6103(h)(4)(C) is likely permissible.

Note that disclosure should be limited to that which is necessary to resolve C’s issue, rather than the whole Closing Agreement. See Guarantee Mut. Life Co. v. U.S., Civ. No. 77-0-407, 1978 WL 4574, at *3 (D. Neb. Aug. 28, 1978) (“A clear policy in favor of the privacy of the individual exists under the Internal Revenue Code”).

Please let us know if you have any further questions.