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From: [REDACTED]
Sent: Tuesday, October 24, 2017 10:33:37 AM
To: [REDACTED]
Cc: [REDACTED]
Bcc:
Subject: RE: Sign Language Interpreter

I am providing you with my analysis on this issue and ask that you pass it along to those functions where this issue is likely to arise.

I have reviewed the documents that you provided, and I agree that the contract under which the interpreters operate, holding them to all the criminal and civil penalties that apply to the unauthorized disclosure of tax data, is sufficient assurance to taxpayers that their confidential tax data is being adequately protected. There is no basis for an interpreter to be required to sign a non-disclosure agreement (NDA) furnished by a taxpayer. In fact, there are many good reasons to refuse to sign such an agreement. First, as a general matter, the IRS has authority under I.R.C. section 7605 to set the time, place and manner of an examination and section 7602 provides broad authority to gather records. If an interpreter working under contract for the IRS were to sign a private taxpayer's NDA, the taxpayer could attempt to use that agreement to limit the IRS's authority to obtain information from third parties in order to protect "confidentiality," thereby creating collateral issues, and the potential for argument among the parties, as to the intent of the NDA is debated,

A second, more specific, reason to refuse to allow our contract interpreters to sign a taxpayer furnished NDA, are the exceptions to the confidentiality provisions of I.R.C. section 6103. While an NDA may limit redisclosure of any information communicated to or received by the interpreter, this would not be consistent with the provisions of section 6103 which allow for the disclosure of such information in a variety of circumstances, including to other Treasury/IRS employees who have a need to know for tax administration purposes (6103(h)(1)), to the Department of Justice for use in a matter involving tax administration (6103(h)(2)) or when a taxpayer demonstrates they have a material interest in the information under 6103(e). . This is especially true if the taxpayer inserts language into the NDA that disclosures are limited to those that are necessary. The taxpayer could argue that for a limited interpretation of "necessary" (as in "absolutely necessary") while the IRS relies on the broader interpretation of necessary ("useful or helpful") that is set forth in the regulations under 6103(k)(6).

For these reasons, our office has always taken the position that no IRS employee or contractor should ever sign a NDA furnished by a taxpayer.

I hope this provides you with the information you need. Please contact me if you have questions or need further assistance.