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From: [REDACTED]
Sent: Wednesday, September 28, 2022 5:03:10 PM
To: [REDACTED]
Cc: [REDACTED]
Bcc:
Subject: RE: Additional Disclosure Question

Hi Erin,

1. The [REDACTED] and [REDACTED] may be shared internally for use in examinations under section 6103(h)(1).

As discussed previously, the [REDACTED] are [REDACTED] return information, which would generally be confidential under section 6103(a). However, in this context, the [REDACTED] exam team could disclose the information to their colleagues for purpose of the [REDACTED] and the [REDACTED] examinations. This is because section 6103(h)(1) provides an exception to the general confidentiality rule, allowing for the inspection and disclosure of tax returns and return information to officers and employees of the Department of the Treasury where such inspection or disclosure is necessary for tax administration purposes. This means Service and Chief Counsel employees may have access to tax information if they have a “need to know” the information for tax administration reasons. A need to know is not strict necessity, but a situation where the information sought would be helpful/useful to the employee in carrying out their official tax administration duties. “Tax administration” has a sweeping definition. United States v. Mangan, 575 F.2d 32 (2nd Cir. 1978), cert denied, 439 U.S. 931 (1978); Tavery v. United States, 32 F.2d 1423 (10th Cir. 1994). The term expressly includes the “assessment, collection, enforcement, litigation, publication, and statistical gathering functions” under the internal revenue laws. IRC § 6103(b)(4)(B). And courts have found that section 6103(h)(1) authorizes IRS employees involved in one investigation to share third party taxpayer information with IRS employees on another, related investigation. E.g., United States v. Monumental Life Ins. Co., 440 F.3d 729, 734 (6th Cir. 2006).

Here, providing [REDACTED] return information [REDACTED] to the exam teams for [REDACTED] and [REDACTED] would enable them to better accomplish their official duty of determining the correct tax and/or penalties owed by the respective examinees, because it would provide them with useful information that they are not otherwise privy to. As such, the information may properly be shared among the exam teams under section 6103(h)(1).

Please remember that the establishment of a “need to know” should be done on a case by case basis, and while the standard for sharing is considered broad, care must be taken to avoid disclosing the identity of a third-party taxpayer unless it’s necessary, in order to further the spirit of the “need to know” exception. See IRM 13.3.22.2.1 (4)-(5). For what it’s worth, it does appear that the exam teams here would need to know the identity of . However, we caution that you should avoid sharing information indiscriminately. If an exam file for covers numerous issues, only documents pertaining to the issue relevant to the and the should be disclosed to the employees working those cases. This doesn’t mean you need to go through case files with a fine-tooth comb, but to the extent that there’s an easily identifiable demarcation of where the relevant information is located – i.e. a subheading – then only provide the documents in that section.

Also, whatever information is shared from to the other case teams should be segregated and labelled. In other words, the shared documents should be kept separately from the other files in Case 2 and not intermixed. The segregated file should also be clearly labelled as return information. This will become relevant when FOIA or discovery requests are made and having the files segregated will make appropriate responses much easier and another reason why we caution against indiscriminate sharing of large case files – not only are you obligated by statute to not share that which your fellow employee does not have a “need to know,” but also minimizing the volume of information shared makes for less work when FOIA and discovery requests later come in.

2. The engineer memo describing general deficiencies in conducted by may be shared internally under section 6103(h)(1).

We understand that engineers will not be assigned to audits. However, an engineering manager has offered to provide one memo that will explain why uses a flawed method and why the deficiencies in make them insufficient to allow an alternate valuation determination in cases. The memo would then be provided to all the agents.

It appears that this memorandum would be generated by the IRS with respect to tax liability, making it the return information of , even though identifiers are removed. See IRC section 6103(b)(2) (defining “return information” to include “any other data . . . prepared by . . . the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense”); Church of Scientology of Cal. v. IRS, 484 U.S. 9, 14-18 (1987) (return information from which identifiers have been deleted is still subject to section 6103 disclosure restrictions). As described above, return information may be disclosed among the IRS exam teams where the recipients have a “need to know” the information for tax administration reasons. It would be useful for the agents in audits to rely on the shared memo and piggyback upon the reasoning and explanations within it in order to justify adjustments proposed in their

respective examinations. Because it would be useful to the agents in carrying out their tax administration duties, the memo may be shared with them under section 6103(h)(1).

3. The [redacted] may be shared with the [redacted] and their POAs under section 6103(h)(4)(B).

The IRS may disclose returns or return information in a Federal or State judicial or administrative proceeding pertaining to tax administration under certain conditions. IRC § 6103(h)(4). One such condition arises where the treatment of an item on a third party's return is directly related to the resolution of an issue in the tax proceeding. IRC § 6103(h)(4)(B). It is Chief Counsel's position that an item directly relates to the resolution of an issue in the tax proceeding if "the item on the third party's return or return information directly relates to the elements for defending or proving the civil cause of action or crime at issue in the tax proceeding." Disclosure and Privacy Law Reference Guide at 3-14. Audits are "administrative tax proceedings" under section 6103(h)(4). See 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); Nevins v. United States, No. 84-4147, 1987 WL 47316, at *3 (D. Kan. Aug. 26, 1987). A disclosure in a proceeding includes, among other things, disclosure to the parties and their duly authorized representatives in the proceeding. Disclosure and Privacy Law Reference Guide at 3-12. Accordingly, the [redacted] may be disclosed to [redacted] and their POAs if they directly relate to the elements for defending or proving an issue in the respective examinations of [redacted].

Based on my understanding of the facts here, the [redacted]

[redacted] support the IRS's determination of the correct valuation of [redacted] at issue in the [redacted] examinations. By using the [redacted] to show the true value of [redacted] at issue, the IRS can prove that [redacted] claimed by [redacted] were inflated, and adjustments to [redacted] returns are appropriate. Since the correct amount of the [redacted] is an issue in [redacted] audits, and the [redacted] are directly related to the resolution of that issue, the [redacted] can be disclosed in the proceeding, including to the parties to the proceeding ([redacted] /POAs), under section 6103(h)(4)(B).

4. The [redacted] may be shared with [redacted] POA under section 6103(h)(4)(B).

As above, the information in the [redacted] shows the true value of the [redacted] at issue, which helps the IRS prove that [redacted] misstated the valuation of [redacted] in [redacted]. We understand an element of supporting the section 6695A penalties asserted against [redacted] is proving the valuation was misstated. If our understanding is correct, then the [redacted] are directly related to the resolution of issues in [redacted] audit, because they directly relate to the resolution of that issue. Accordingly, the [redacted] can be shared with [redacted] /POA, who is a party to the proceeding, under section 6103(h)(4)(B).

Please let me know if you would still like to discuss further. [REDACTED]

[REDACTED] I will let you know in the morning.

Thanks,

[REDACTED]