Office of Chief Counsel
Internal Revenue Service
memorandum

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subject: **Disclosure of Unidentified Taxpayer Information in Non-Docketed Whistleblower Administrative Proceedings**

This memorandum responds to your request for assistance. This memo may not be used or cited as precedent. All references herein are to the Internal Revenue Code (the Code) and Income Tax Regulations, unless otherwise noted.

ISSUE

Whether, under section 6103 of the Internal Revenue Code, the return information of taxpayers that were not identified by, or are otherwise unknown to, a whistleblower may be disclosed during the whistleblower's review of the administrative claim file in a non-docketed whistleblower administrative proceeding?

CONCLUSION

The return information of taxpayers that were not identified by, or are otherwise unknown to, a whistleblower may be disclosed during the whistleblower's review of the administrative claim file in a non-docketed whistleblower administrative proceeding if such disclosure arose out of, or in connection with, determining the taxpayer's civil or criminal liability, and does not identify a confidential informant or seriously impair a tax investigation.

FACTS OR BACKGROUND

A whistleblower identified an entity and one officer on a Form 211. After conducting an audit on the returns of the entity and officer, the Service audited additional officers' returns that were not identified by, or are otherwise unknown to, the whistleblower ("unidentified taxpayers"). While adjustments were made to several of the unidentified taxpayers, only one of these additional officers received adjustments related to an issue the whistleblower identified. As part of the whistleblower administrative proceeding, the Whistleblower Office created an administrative claim file containing all information considered in making an award determination for the whistleblower. Some of the information included in this administrative claim file contains the return information of the unidentified taxpayers.

LAW

Pursuant to section 7623(b), when the Service proceeds with an administrative or judicial action against any taxpayer based on information provided by a whistleblower, the whistleblower is generally entitled to an award of a portion of the proceeds collected as a result of the action. As part of the whistleblower administrative proceeding, a preliminary award recommendation is determined by the Whistleblower Office based, in part, on the Whistleblower Office's review of the administrative claim file. See Treas. Reg. § 301.7623-3(c)(1). The administrative claim file contains all information related to the action(s) to which the award determination relates. See Treas. Reg. § 301.7623-3(e)(2). The administrative claim file would, therefore, include return information of the unidentified taxpayers as it relates to the actions to which the award determination relates.

Following the preliminary award recommendation, the Whistleblower Office may offer a whistleblower the opportunity to review its administrative claim file if requested by the whistleblower ("non-docketed review"). See Treas. Reg. § 301.7623-3(c)(5). Under section 6103(h)(4)(A), disclosure of returns and return information in administrative proceedings pertaining to tax administration is authorized when the taxpayer is a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability. Whistleblower administrative proceedings are administrative proceedings pertaining to tax administration within the meaning of section 6103(h)(4). See Treas. Reg. § 301.6103(h)(4)-1. The Whistleblower Office may disclose returns and return information to whistleblowers pursuant to I.R.C. § 6103(h)(4) "to the extent necessary to conduct a whistleblower administrative proceeding." Treas.

Reg. § 301.6103(h)(4)-1(b). Section 6103(h)(4) further provides that returns or return information shall not be disclosed if the Service determines that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation. For a listing of persons who have authority to make the determination that an investigation has been seriously impaired, see I.R.S. Deleg. Order 11-2 (Rev. 5), IRM 1.2.2.12.2, Exhibit 1.2.2-2.

DISCUSSION or ANALYSIS

In Whistleblower 972-17W, 159 T.C. 1 (2022), the Tax Court held that whistleblower administrative proceedings arise "in connection with" determining the liabilities of the target taxpayers, authorizing the disclosure of return information in certain situations. While it's holding does not directly address disclosure of the contents of a whistleblower administrative claim file before a case is docketed, dicta suggests that section 6103(h)(4)(A) provides the basis for disclosures in the administrative proceeding. Id., at 25-26. This position is bolstered by Treas. Reg. § 301.6103(h)(4)-1 which states that whistleblower administrative proceedings are administrative proceedings pertaining to tax administration within the meaning of section 6103(h)(4). Therefore, the Tax Court's interpretation of section 6103(h)(4)(A) in Whistleblower 972-17W applies in any other proceeding pertaining to tax administration, whether administrative or judicial, including a non-docketed whistleblower administrative proceeding.

In addition to its holding that whistleblower administrative proceedings arise "in connection with" determining the liabilities of the target taxpayers, the Tax Court in Whistleblower 972-17W found that the term "in connection with" establishes a standard that is "quite broad," and that the strength of the connection present when a whistleblower asserts that their information contributed to the IRS's determination of additional tax against the taxpayer is more than enough to satisfy that standard. In the current case, the civil liability of the unidentified taxpayers was determined following the Service's investigation into the entity and officer identified by the whistleblower. There is a link sufficient to satisfy the standard established in Whistleblower 972-17W between the whistleblower's information and the Service's determination of additional tax against the unidentified taxpayers. Thus, the civil tax liabilities of the unidentified taxpayers arose in connection with the whistleblower administrative proceeding.

Although "to the extent necessary to conduct a whistleblower administrative proceeding" is not explicitly defined under the regulations, Treas. Reg. § 301.6103(h)(4)-1(b) identifies particular authorized disclosures that the Whistleblower Office might make to the whistleblower pursuant to a review of the administrative claim file.[1] The regulations,

[1] These disclosures include 1) communicating a preliminary award recommendation or a preliminary denial letter to the whistleblower; 2) providing the whistleblower with an award report package; 3) conducting a meeting with the whistleblower to review documents supporting the preliminary award recommendation; and 4) sending an award decision letter, award determination letter, or award denial letter to the whistleblower. See Treas. Reg. § 301.6103(h)(4)-1(b). The Court in Whistleblower 972-17W

however, do not limit authorization to only those disclosures. In fact, the regulations do not provide any guidance on limiting the disclosure of any specific item or category of information during non-docketed reviews.[2] On the other hand, section 6103(h)(4) provides a limitation on disclosure in its flush language stating that returns or return information shall not be disclosed if the Service determines that such disclosure would identify a confidential informant or seriously impair a tax investigation. There are no facts in the current case indicating that this limitation may be invoked. Thus, the disclosure of the returns or return information of unidentified taxpayers is permitted in a non-docketed review, so long as the disclosure does not identify a confidential informant or seriously impair a tax investigation.

Finally, it is important to point out that the 2019 enactment of section 6103(k)(13)[3] does not restrict the scope of section 6103(h)(4)(A). When Congress enacted section 6103(k)(13), it also amended section 6103(k)(6) to exclude from its reach disclosures covered by section 6103(k)(13). See Taxpayer First Act of 2019, Pub. L. No. 116-25, § 1405(a), 133 Stat. 981, 997–98 (2019). Congress, however, made no amendments to section 6103(h)(4). Their silence signifies that sections 6103(k)(13) and 6103(h)(4) govern in distinct roles and serve different purposes. Therefore, the Tax Court held in Whistleblower 972-17W that the 2019 amendments to section 6103(k)(13) did not affect the disclosures of return information in a tax administration proceeding under section 6103(h)(4).

Attachments:

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concluded that a non-docketed review of the file at issue would have allowed the whistleblower to review both pertinent and non-pertinent parts of the administrative claim file.

[2] In dicta discussing whether section 6103(h)(4)(A) would apply to non-docketed reviews, the Court in Whistleblower 972-17W noted that "the [section 7623] proposed regulations limited the information that could be viewed in [non-docketed reviews] to 'pertinent' information in the file," while the final regulations dropped the term "pertinent" in response to a public comment. 159 T.C. No. 1, at 24; see also T.D. 9687, 2014-36 I.R.B. 486, 500.

[3] Section 6103(k)(13) authorizes the Service to disclose returns and return information to a whistleblower who provides information under section 7623(a), but only to the extent necessary to obtain information that is not "otherwise reasonably available" regarding the correct determination of tax liability or the amount to be collected for enforcement purposes.