



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

February 10, 1999

GL-810676-98

UILC: § 6103

9999.98-00

Number: **199931001**

Release Date: 8/6/1999

INTERNAL REVENUE SERVICE NATIONAL OFFICE CHIEF COUNSEL ADVICE

MEMORANDUM FOR BENJAMIN R. DUNCAN
ASSISTANT DISTRICT COUNSEL
LOS ANGELES DISTRICT COUNSEL CC:WR:LAD:LA

FROM: David Fish
Chief, Branch 4 (Disclosure Litigation) CC:EL:D

SUBJECT: IRS/FTB Joint Check Cashing Project

This Chief Counsel Advice responds to your e-mail dated October 28, 1998. This document is not to be cited as precedent.

In an October 6, 1998 memorandum to your office, the Manager of the [REDACTED] Group outlined four questions regarding the above captioned check cashing project and requested Counsel's assistance to address those questions. This opinion addresses those four questions.

Internal Revenue Code § 6103(d)(1) provides that Federal tax returns and return information may be disclosed to State tax officials "upon written request by the head of" the state taxing authority, "for the purpose of, and only to the extent necessary in, the administration of State tax laws." This written request must: (1) be made "by the head of" the state tax agency; (2) designate the individuals who are the representatives of the state taxing authority to receive the information; and (3) not name the Chief Executive Officer of the state or any person who is not an employee of the taxing authority as the representatives to receive tax information. Taylor v. United States, 106 F.3d 833 (8th Cir. 1997). Generally, the basic and/or implementing agreement between the IRS and the state taxing agency is sufficient for the exchange of the requested tax information, assuming the information requested comes within the terms of the implementing agreement. If, however, the information does not come within the terms of the implementing agreement, the IRS should obtain a separate written request from the head of the state tax agency.

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The first question raised in the October 6, 1998 memorandum is whether Exam can use information that was obtained during an FTB examination through taxpayer requests, third parties and bank subpoenas to establish deficiencies. Generally, Exam may use information obtained from any source, including the FTB, to establish deficiencies without raising section 6103 issues.

The second question is whether FTB officials may be used as experts and/or witnesses for IRS unagreed cases. Under section 6103(d), the IRS may make disclosures to the state tax agency for the administration of state tax laws. However, under section 6103(d) the IRS may not make disclosures to the state tax agency for the purpose of administering Federal tax laws. FTB officials who act as witnesses or experts for IRS unagreed cases should be treated, for section 6103 purposes, like any other fact witness, (I.R.C. § 6103(k)(6)), or an expert witness (I.R.C. § 6103(n)).

The third question is whether under section 6103, Revenue Agents may testify on information and/or oral testimony obtained during an IRS examination that is later sent to the FTB for use in their income tax examination. Under section 6103(d), the IRS may disclose returns or return information to state tax officials for the administration of state tax laws. The state has the authority to then use or disclose the returns or return information, which includes the testimony of Revenue Agents, under section 6103(h)(4) in a State judicial or administrative proceeding pertaining to tax administration. Further, the Revenue Agent would have to be authorized under Treas. Reg. §301.9000-1 to provide testimony in the state proceeding.

The fourth question is whether under section 6103, Exam is allowed to disclose information obtained during an examination or information obtained through use of a summons to the FTB. Under section 6103(d), Exam is permitted to disclose information obtained during an examination or information obtained through use of a summons to the FTB, provided that the requirements of section 6103(d), as outlined above, have been met.

If you have any questions please call 202-622-4570.