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

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MEMORANDUM FOR

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

SUBJECT: Sharing Identities in CID Investigations

This is in response to your memorandum dated June 17, 1999. This document is not to be cited as precedent.

ISSUE(S): Whether the IRS Criminal Investigation Division can share the identities of three types of current criminal investigations with the North and South Carolina Departments of Revenue.

CONCLUSION(S): Under Internal Revenue Code (Code) § 6103(d)(1), tax information, including identities of taxpayers, with respect to certain specified taxes can be disclosed to the North and South Carolina offices charged with tax administration responsibilities so long as the information is to be used only for state tax administration purposes. Tax information should not be disclosed in accordance with this authority if it would identify a confidential informant or seriously impair a civil or criminal tax investigation. Identities of targets of non-tax investigations can be disclosed to local law enforcement agencies upon the specified written request of the head of the agency in accordance with the Privacy Act 5 U.S.C. § 552a(b)(7).

LAW AND ANALYSIS: According to a June 3, 1999, memorandum from a Branch Chief in the Criminal Investigation Division, the North Carolina and South Carolina Departments of Revenue are interested in sharing the identities of current investigations with the IRS CID to insure coordination and eliminate the potential for duplication of investigation efforts. Specifically, the IRS CID is interested in sharing with the states information pertaining to administrative tax investigations, authorized

grand jury tax investigations and authorized grand jury non-tax investigations. We understand from your memorandum dated June 17, 1999, only the identities of current targets of such investigations are to be disclosed to the states.

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. Any such request should be structured so that it meets the requirements of a written request under section 6103(d)(1) independent of the Basic Agreement.

Thus, section 6103(d)(1) authorizes the disclosure of the identities of targets of criminal tax investigations to the extent the state taxing authorities will use such information in the administration of state tax laws. Tax information should not be disclosed in accordance with this authority if it would identify a confidential informant or seriously impair a civil or criminal tax investigation. I.R.C. § 6103(d)(1).¹

Identities of targets of non-tax investigations can be disclosed to local law enforcement agencies upon the written request of the head of the agency in accordance with the Privacy Act 5 U.S.C. § 552a(b)(7). The written request, however, must be sufficiently specific so that it is not a “fishing expedition” by the

state law enforcement agency. A request for the identities of all authorized grand-jury non-tax investigations would not, for example, be sufficiently specific.

¹ Furthermore, Fed. Rule Crim. Proc. 6(e) mandates a general rule of secrecy surrounding grand jury proceedings. To the extent identifying targets of tax and non-tax grand jury investigations, as proposed here, could identify the nature, scope or extent of a matter pending before the grand jury, the information can not be disclosed to the North and South Carolina Departments of Revenue. Issues concerning the application of Fed. Rule Crim. Proc. 6(e) fall within the jurisdiction of the Assistant Chief Counsel (Criminal Tax)

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