

**Office of Chief Counsel
Internal Revenue Service**
memorandum

CC:PA:03:JBlack

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to: Edward T. Killen
Director
Governmental Liaison, Disclosure & Safeguards

from: Richard G. Goldman
Acting Deputy Associate Chief Counsel
(Procedure & Administration)

subject: Disclosure of Treasury Refund Offset Program (TOP) Data to State Tax Agencies'
Contractors

ISSUE

Whether state tax agencies can disclosure return information received as part of the TOP program to their contractors.

CONCLUSION

State tax agencies may disclose return information to contractors for tax administration purposes, including the collection of state income tax debts, but may not disclose return information to contractors for non-tax administration purposes, such as collection of state unemployment compensation debts.

LEGAL ANALYSIS

Section 6402 authorizes the Service to offset a taxpayer's federal tax refund against specified debts. Section 6402(e) authorizes a state to seek an offset of an individual's federal tax refund in order to satisfy a past-due, legally enforceable state income tax obligation and section 6402(f) authorizes an offset to collect an unemployment compensation debt. In order to effectuate the refund offset, section 6103(l)(10) authorizes the disclosure of specified return information to "officers and employees of any agency seeking a reduction under subsection (c), (d), (e) or (f) of section 6402" Information received by an agency under section 6103(l)(10) may only be used to establish appropriate agency records, locate the individual who owes the debt being collected through the offset for the purposes of collecting the debt, or in defense of any litigation or administrative procedure resulting from the tax refund offset. I.R.C. § 6103(l)(10)(B)(i). Section 6103(l)(10) only authorizes disclosure of return information to "officers and employees" of the agency seeking the offset. Accordingly, it does not allow for disclosures to nonemployees of the agency, e.g., contractors.

Section 6103(n) and its regulation, Treas. Reg. § 301.6103(n)-1, govern the use of contractors for the acquisition of property or services for tax administration purposes. State tax agencies are authorized to disclose returns and return information to any person for the purposes of tax administration, provided the disclosure is necessary in connection with a written contract for the acquisition of property or services. Treas. Reg. § 301.6103(n)-1(a)(1). For purposes of the regulation, state tax agency is defined as “an agency, body, or commission described in section 6103(d).” Treas. Reg. § 301.6103(n)-1(f)(2). Accordingly, state tax agencies, as described in section 6103(d), are authorized to disclose return information to contractors, provided the disclosure is for tax administration purposes and is necessary in connection with a contract for the provision of goods or services. A state tax agency, as described in section 6103(d), is “any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for the administration of State tax laws.” Section 6103(d)(1). Tax administration is defined as “the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes (or equivalent laws and statutes of a State)” Section 6103(b)(4).

As indicated above, section 6402(e) permits a state to seek an offset of a taxpayer’s federal tax refund in order to satisfy a state income tax debt and section 6103(l)(10) authorizes the Service to disclose specified return information about that offset to the state.¹ Collection of a state income tax debt is unquestionably for tax administration purposes inasmuch as it involves the administration of the state tax laws. Although section 6103(l)(10) does not specifically authorize the state tax agency to disclose return information to contractors, Treas. Reg. § 301.6103(n)-1 allows state tax agencies to disclose such information to contractors for tax administration purposes. Therefore, state tax agencies may disclose return information to contractors under Treas. Reg. § 301.6103(n)-1 who are engaged in the collection of state income tax debts through the Treasury Refund Offset Program.

In contrast, offsets under section 6402(f) are for the collection of state unemployment compensation debts. The collection of unemployment compensation debts would not be for the purpose of tax administration, even if done by a state tax agency, because the collection of unemployment compensation debt is not the “administration, management, conduct, direction, and supervision of the execution and application” of the state’s internal revenue laws. Accordingly, because disclosures under section 6103(l)(10) for offsets under section 6402(f) are not for tax administration purposes, state tax agencies may not disclose return information to contractors under Treas. Reg. § 301.6103(n)-1 who are engaged in the collection of state unemployment compensation debts through the Treasury Refund Offset Program, even though the offset is authorized under the Code.

Please contact attorney Jenni Black for questions regarding the foregoing.

¹ A state tax agency would also have access to this return information under section 6103(d).