

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

CC:PA:07: MEAvrutine  
POSTS-134633-16

UILC: 6103.01-00

date: June 05, 2017

to: Brian Best  
Supervisory Revenue Officer  
(Collection Operations)

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

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subject: Disclosure of Return Information [REDACTED]  
[REDACTED]

This memorandum responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUE

[REDACTED]  
[REDACTED]  
[REDACTED]

CONCLUSION

[REDACTED]  
[REDACTED]  
[REDACTED]

FACTS

When the IRS certifies a taxpayer to the Department of State ("State") as having a seriously delinquent tax debt, pursuant to I.R.C. §§ 6103(k)(11) and (n), certain items of return information are disclosed to State. Pursuant to the FAST Act, after State is notified by the IRS of a seriously delinquent taxpayer for whom a passport application is pending, State will send letters to the taxpayer (information request letters and passport denial letters) to that taxpayer. The letter must contain the reason for the denial; that is, that pursuant to I.R.C. § 7345 the taxpayer is a seriously delinquent taxpayer. 22 C.F.R. § 51.65(a) ("The Department will notify in writing any person whose application

for issuance of a passport has been denied, or whose passport has been revoked. The notification will set forth the specific reasons for the denial or revocation, and, if applicable, the procedures for review available under 22 C.F.R. 51.70 through 51.74.”)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

LAW AND ANALYSIS

Because a determination that a taxpayer is a seriously delinquent taxpayer is a determination with respect to that taxpayer’s liability under the Internal Revenue Code, a taxpayer’s status as a seriously delinquent taxpayer is return information. See I.R.C. § 6103(b)(2)(A).

Tax returns and return information are confidential and no officer or employee of the United States can disclose a return or return information unless a provision of Title 26 provides otherwise. I.R.C. § 6103(a). As State employees are officers and employees of the United States, section 6103(a) prohibits State employees from disclosing return information unless otherwise provided by Title 26. [REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

Exceptions to section 6103(a)'s confidentiality requirements are contained within Title 26 of the United States Code. Section 6103 contains several exceptions that allow the IRS to disclose return information to specific federal agencies for specific purposes. No provision of the Internal Revenue Code permits the Secretary of Treasury to waive section 6103(a)'s confidentiality requirements. The relevant provisions of section 6103 and [REDACTED] are described below:

- DEA, FBI, Department of Defense, and NCTC: Under section 6103, these agencies may make discrete requests for specific items of return information pertaining to a specific taxpayer. Such a request for return information must be made to the Treasury Secretary; [REDACTED]. I.R.C. §§ 6103(i)(2); 6103(i)(8). [REDACTED]
- Department of Homeland Security: No provision of section 6103 authorizes disclosure of return information to DHS, unless DHS is an IRS contractor accessing the return information for a tax administration purpose. See I.R.C. § 6103(n). [REDACTED]
- TSC: As an intelligence-collecting agency, employees and officers of TSC may make written requests for return information if they are directly engaged in the collection of intelligence and counterintelligence information concerning a terrorist incident, threat, or activity. See I.R.C. § 6103(i)(7)(B). [REDACTED]
- Department of Treasury: Return information shall be disclosed to Treasury employees to the extent necessary for tax administration purposes. I.R.C. § 6103(h)(1). [REDACTED]
- Flight from Federal Prosecution, Terrorist Activities. Return information can be disclosed when there is an imminent threat of flight of any individual subject to prosecution or when the return information relates to terrorist investigations. I.R.C. §§ 6103(i)(3); 6103(i)(7). [REDACTED]

[REDACTED]

The Privacy Act of 1974, 5 U.S.C. § 552a, specifies procedures for the disclosure of individually identifiable information by a federal agency. One such procedure is pursuant to a "routine use" as set forth in a System of Records Notice ("SORN"). 5 U.S.C. § 552a(b)(3). [REDACTED]

[REDACTED]

[REDACTED], I.R.C. § 6103, not the Privacy Act, controls the disclosure of return information. Congress added section 6103 to the Internal Revenue Code in 1976 with the intent to override any inconsistent provisions of prior statutes. Cheek v. IRS, 703 F.3d 271 (7th Cir. 1983); see also S. Rep. No. 938, 94<sup>th</sup> Cong. 2d Sess. 318 (1976) ("Recent Congressional action with respect to privacy in general has had an impact on the disclosure of tax information [citing the Privacy Act]. However, the Congress did not specifically focus on the unique aspects of tax returns in the Privacy Act. The committee has reviewed each of the areas in which returns and return information are now subject to disclosure.... [T]he committee felt that returns and return information should generally be treated as confidential and not subject to disclosure except in those limited situations delineated in the newly amended section 6103 where the committee decided that disclosure was warranted.") Thus section 6103(a)'s confidentiality provisions control [REDACTED].

#### CASE DEVELOPMENT, HAZARDS, AND OTHER CONSIDERATIONS

[REDACTED]

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views. Please call (202) 317-6834 if you have any further questions.

[REDACTED]