

Office of Chief Counsel
Internal Revenue Service
memorandum

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DIS/A-129874-13

date: AUG 12 2013

to: Jennifer Best
Special Assistant to the Commissioner

from: Thomas J. Travers
Acting Deputy Associate Chief Counsel
(Procedure and Administration)

subject: Disclosure of Federal Tax Information to TIGTA to Investigate or Administer the Tax Compliance of its Employees Who Are Tax Delinquent

This memorandum responds to your inquiry as to whether the Internal Revenue Service (IRS) can disclose federal tax information to the Treasury Inspector General for Tax Administration (TIGTA) so that TIGTA can investigate or administer its employees' tax compliance. This advice should not be used or cited as precedent.

ISSUE

Whether the IRS can disclose the tax returns and return information of TIGTA employees to TIGTA so that it can investigate or administer compliance of its own employees who are tax delinquent.

CONCLUSION

The IRS may disclose the federal tax information of delinquent TIGTA employees to TIGTA under I.R.C. section 6103(h)(1) because the tax compliance of TIGTA employees is a matter of tax administration.

BACKGROUND

The Internal Revenue Service Restructuring and Reform Act of 1998, Pub. Law 105-206, 112 Stat. 685, at section 1103(a), established TIGTA to provide independent review of the IRS's activities. Organizationally, TIGTA is considered to be a part of the Department of Treasury, but it is functionally independent of the Department. Treas. Order 115-01 (Feb. 14, 2013). TIGTA's employees are mainly auditors and investigators who focus on monitoring tax administration and matters that relate to the IRS, the IRS Oversight Board, and the Office of the Chief Counsel of the IRS. Id. TIGTA was established to audit IRS programs and operations and to assess their efficiency and effectiveness, as well as to prevent abuse and waste. See S. REP. NO. 105-174, section 1103 at 581 (1998). The agency also investigates reports of fraud,

mismanagement, or other misconduct within the IRS. Treas. Order 115-01, supra. TIGTA representatives have the same authority, duties and responsibilities as the former IRS Chief Inspector, and thus, may access the returns and return information of taxpayers for tax administration purposes pursuant to I.R.C. section 6103(h)(1). S. REP. No. 105-174, section 1103, supra at 582 (1998); Treas. Order 115-01; IRM 11.3.22.9(3). TIGTA has requested access to the tax returns and return information of its own employees. The request from TIGTA is limited to a list identifying TIGTA employees who were determined to be delinquent in their federal tax obligations according to a federal employee delinquency report for 2011. This information requested is stated to be vital to TIGTA's efforts to minimize or eliminate tax noncompliance within TIGTA, which impacts tax administration.

LAW AND ANALYSIS

I.R.C. section 6103(a)(1) provides that an officer or employee of the United States must keep returns and return information confidential unless disclosure is authorized under Title 26. One such exception to the rule of confidentiality is set forth in I.R.C. section 6103(h)(1), which provides that returns and return information may be disclosed to officers and employees of the Department of Treasury "whose official duties require such inspection or disclosure for tax administration purposes." This section essentially permits disclosure of returns and return information when the recipient needs to know the information to perform tax administration duties. TIGTA is a part of the Department of Treasury and is permitted to access returns and return information for tax administration purposes under I.R.C. section 6103(h)(1); therefore, the question here turns on whether ensuring the tax compliance of TIGTA employees is a tax administration purpose.

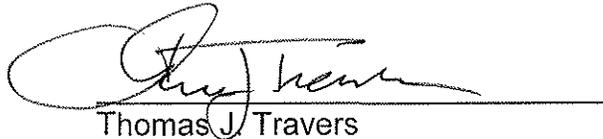
Tax administration is defined broadly under I.R.C. section 6103(b)(4) and includes "the administration, management, conduct, direction, and supervision of the execution and application of internal revenue laws and related statutes (or the equivalent laws and statutes of a state)." I.R.C. section 6103(b)(4)(A)(i). It has been the IRS's position, and the courts have agreed, that there is a connection between ensuring the tax compliance of the IRS's own employees and the effective and efficient administration of the nation's tax system.

In Gardner v. United States, 213 F.3d 735 (D.C. Cir. 2000), a former IRS Office of Chief Counsel attorney was terminated after his supervisors discovered that he was not properly filing tax returns. The attorney sued, alleging in part a violation of I.R.C. section 6103 due to an unauthorized disclosure of his return and return information by the IRS to his supervisors. The district court dismissed the case, and on appeal, the D.C. Circuit reasoned that the IRS has a "legitimate need to maintain the integrity of its tax enforcement operations by ensuring that its employees were in compliance with the tax laws." Id. at 740. The court concluded that the disclosures were made for purposes of "tax administration" and were permitted under I.R.C. section 6103(h)(1) and (h)(4). Id.

In short, inasmuch as TIGTA is charged with overseeing and investigating the activities of the IRS, TIGTA has a similar, if not stronger, interest in maintaining the integrity and effectiveness of its oversight operations by ensuring that its own employees comply with tax laws. Thus, disclosure to TIGTA of the returns and return information of delinquent employees in order to investigate or administer their compliance is for a tax administration purpose within the meaning of I.R.C. section 6103(h)(1).

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as attorney client privilege. If disclosure becomes necessary or if you have any other questions, please call (202) 622-7950.

A handwritten signature in black ink, appearing to read "Thomas J. Travers", is written over a horizontal line.

Thomas J. Travers
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