

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

CC:PA:06:MSegal
DISSP-146182-10

UILC: 6103.02-02

date: December 20, 2010

to: Nathaniel Boyd
Disclosure Technical Advisor
(Office of Disclosure)

from: Donald M. Squires
Senior Technician Reviewer
(Procedure & Administration)

subject: Return Information and Employee Notification

This memorandum responds to your request for assistance dated November 9, 2010.
This advice may not be used or cited as precedent.

ISSUES

1. Whether the IRS may send an email to a taxpayer's power of attorney to acknowledge the IRS's receipt of a Central Withholding Agreement.
2. Whether an examiner may notify his spouse or other relative of his whereabouts when he conducts compliance activities at a taxpayer's business at night.

CONCLUSIONS

1. An IRS examiner may not send an email to a taxpayer's power of attorney to acknowledge the IRS's receipt of a Central Withholding Agreement because the acknowledgement of receipt would be return information and the transmission of the acknowledgement by unsecured email would violate the IRS's policy against the transmission of return information by unsecured email.
2. An IRS examiner may not notify his spouse or other relative of his specific location when he conducts compliance activities at a taxpayer's business or place of engagement at night if the location of a taxpayer's business would identify the taxpayer. An examiner may tell his relative his general location while conducting compliance activities in the field at night or give a phone number where his family can reach him if necessary.

PMTA 2010-68

FACTS

1. Generally non-resident alien entertainers or athletes with engagements in the United States are subject to 30 percent withholding of gross income made during the engagement. If the non-resident entertainer or athlete enters into a Central Withholding Agreement (CWA) with the IRS, the IRS will reduce the amount of tax withheld on behalf of the taxpayer. When a POA sends a CWA to the IRS, the POA often requests acknowledgement from the IRS that the IRS received the CWA. CWA examiners would like to send a return email to the POA which states "Rcvd." The email would not contain any other identifying information.
2. Due to the nature of their job, CWA examiners are out in the field at night conducting compliance activities, often at the location of a taxpayer's business or engagement. Examiners are concerned about their safety at these locations at night. The examiners wish to notify their spouses or other relatives of their location when they conduct compliance activities in the field at night. Examiners have also requested to have their spouse or other relative transport them to the site.

LAW AND ANALYSIS

1. Acknowledgement of receipt of a Central Withholding Agreement via an email to a taxpayer's power of attorney would violate section 6103(a) and the IRS' policy against the transmission of return information by unsecured email.

I.R.C. § 6103 requires the IRS to maintain the confidentiality of return information unless a provision of title 26 provides otherwise. The term return information is interpreted broadly and includes the taxpayer's identity and all other information received, acquired, or generated by the IRS in connection with the determination of a taxpayer's tax liability. See I.R.C. § 6103(b)(2); Payne v. United States, 289 F.3d 377, 382 (5th Cir. 2002); McQueen v. United States, 264 F.Supp.2d 502, 516 (S.D. Tex. 2003). Aside from a taxpayer's name, address, social security number, the nature and source of a taxpayer's income, deductions, credits, exemptions, taxes withheld, and whether the return is under examination, return information includes all information collected or generated with respect to a determination as to the taxpayer's liability.

The IRS currently does not transmit return information by email unless properly encrypted. See generally IRM 1.10.3.2.1(7) (February 20, 2009), Secure Messaging and Encryption. CWA examiners would like to send a taxpayer's POA an email to acknowledge receipt of the taxpayer's CWA. While the taxpayer's POA's email address, by itself and not associated with the taxpayer, would not constitute return information, the acknowledgement of receipt of the CWA would be return information because this acknowledgement of a CWA would be generated with respect to the taxpayer's liability. In fact, the taxpayer might seek to rely on this acknowledgement should there develop an issue of whether the IRS received the CWA. Thus, because the fact of receipt of the CWA is return information, communication of the receipt via

email would violate the IRS's policy against the transmission of return information via unencrypted email. Although use of regular email would certainly facilitate the IRS's acknowledgement of its receipt of a CWA, the IRS may properly send such an acknowledgement to a POA through a secure email messaging pilot program, by fax or through an e-fax service provider if the taxpayer has consented in writing to the transmission via e-fax.

2. The location of a taxpayer's business is return information, and therefore, an examiner cannot inform his spouse or other relative of his location when the examiner conducts compliance activities at a taxpayer's place of business, even at night.

As discussed above, return information includes all information collected or generated with respect to a determination as to the taxpayer's liability under the Internal Revenue Code and section 6103(a) prohibits the disclosure of such information. The exact address of a taxpayer might constitute return information if the context in which it is disclosed would identify the taxpayer. Thus, an examiner's disclosure to a relative that he is conducting compliance activities at a specific address or location may result in an unauthorized disclosure if the location identifies taxpayer's business. For the same reason, spouses and relatives of employees may not transport the employee to the field location and cannot accompany the examiner during the field visit. See generally IRM 11.3.1.12(4) (March 7, 2008), Relatives of IRS Employees and Protecting Confidentiality.

Employee safety is an important concern. Examiners should always notify a manager, secretary, or other IRS employee of their location when conducting compliance activities in the field, particularly at night. Examiners may also notify their spouse or other relative of their general location when conducting compliance activities in the field. For example, an examiner may tell a relative that he is in the Chelsea neighborhood in Manhattan. Because of the vast number of taxpayers that reside, do business, or perform in the Chelsea neighborhood, this information would not identify the taxpayer. However, as discussed above, the examiner could not tell his relative what business or venue in the Chelsea neighborhood he had visited. Similarly, an examiner could tell his relative that he planned to conduct compliance activities at the Empire State Building so long as he did not state which office within the building he planned to visit. Examiners may also tell their relatives that they have arrived safely at their location, how long they intend to be at the location, when they expect to be home, and give their relative a phone number where their relative can reach them. Examiners are also encouraged to utilize the IRS's armed escort program if the taxpayer has been designated a potentially dangerous taxpayer.

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) 622-7950 if you have any further questions.