

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

CC:PA:06:GTArmstrong  
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date: February 04, 2011

to: Lawrence F. Randall  
Project Manager  
(Appeals Tax Policy and Art Valuation Office)

from: Barbara M. Pettoni *Barbara Pettoni*  
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subject: Assistance in Connection with the Modernization of Art Appraisal Services

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

ISSUES

Whether certain disclosures made by the Service's Office of Art Appraisal Services in connection with investigations of fair market value claims for works of art are permissible under the Internal Revenue Code.

CONCLUSIONS

Yes. The disclosures at issue are permissible under section 6103 provided they are made pursuant to the contours set forth in section 6103(k)(6) and the regulations thereunder.

BACKGROUND

The Service's Office of Art Appraisal Services (AAS) reviews and evaluates property appraisals submitted by taxpayers in support of fair market value claims for works of art on certain federal tax returns. As part of this review, AAS contacts sundry museums, galleries, auction houses, and individual art appraisers or historians (collectively, "third party appraisers") to determine the validity of the valuation claims made on those appraisals. This includes obtaining the third party appraiser's own opinion as to the value of the work at issue and acquiring information on sales of similar works. When making these contacts, AAS does not identify the taxpayer whose valuation is at issue or disclose what type of return is under examination. AAS may, however, disclose

identifying details about the artwork including the artist's name, the title of the piece, its size, the medium, its physical condition, or the provenance of the particular work. All of this information derives from the property appraisal attached to the taxpayer's return. The AAS employee may also disclose the fair market value for the work of art at issue as determined in the appraisal and as claimed on the taxpayer's return. In return, the third party appraiser will offer his opinion as to the value of the object at issue and any relevant information regarding sales of similar artwork. It is our understanding that this information is exchanged, for the most part, during a telephone conversation with the third party appraiser. In certain cases, however, a follow-up email or letter is requested by AAS to memorialize the appraiser's opinion.

Depending on the work of art at issue, a third party appraiser may be able to discern the identity of the taxpayer simply because of the identity of the object. For example, if a renowned collector of Remington drawings has recently died and an AAS employee contacts a museum curator about recent sales of Remington drawings, that curator may deduce that the collector is under investigation by the Service. Generally, however, the AAS employee will make every effort to avoid this result including not disclosing that he or she works for the Service. Though sometimes, the employee's affiliation with the Service is provided if the third party appraiser would not otherwise provide the solicited information.

#### LAW AND ANALYSIS

Section 6103 of the Internal Revenue Code provides for the confidentiality of returns and return information. Section 6103(b)(2)(A) provides the term "return information" includes, but is not limited to, the following: a taxpayer's identity; the nature, source, amount of his income, payments, or deductions; whether the taxpayer's return was or is under investigation; and any other data received by, prepared by, or collected by the Service with respect to a return or the determination of the existence of tax liability. "Return information" is broadly construed and generally includes any information collected or gathered by the Service with regard to a taxpayer's liability. See, e.g., Chamberlain v. Kurtz, 589 F.2d 827, 841 (5th Cir.), cert. denied, 444 U.S. 842 (1979) ("[M]aterial prepared or collected by the Service with regard to [a taxpayer's] potential liability for deficiencies or penalties clearly represents return information.").

Pursuant to section 6103(b)(2)(A), appraisals attached to tax returns and submitted by taxpayers to support a fair market value claim are return information. The appraisals are "with respect to a return" and are furnished to the Service for the purposes of determining the taxpayer's liability. While property appraisals have been held not to constitute return information in other contexts, here, the appraisals plainly fall within the section 6103(b)(2)(A) definition. Compare Kamman v. United States Internal Revenue Service, 56 F.3d 46 (9th Cir. 1995) (private appraisals of property seized from taxpayers and sold at IRS auctions were found not to be return information because they were furnished to the Service after the taxpayer's liability had already been determined). Unlike in Kamman, the appraisals here are commissioned by the taxpayer, attached to



a tax return, and submitted for the purposes of, and prior to, determining the taxpayer's liability and therefore constitute "return information."

Because the appraisals at issue and the information contained therein constitute return information, section 6103 governs their confidentiality. Generally, that section provides that return information shall be confidential and that no employee of the Service shall disclose such information. Section 6103(k)(6), however, provides an exception for disclosures made by certain employees for investigative purposes. A Service employee may, in connection with his official duties relating to an audit or civil investigation of a taxpayer, disclose return information to the extent that such disclosure is necessary in obtaining information, which is not otherwise reasonably available, with respect to the correct determination of tax liability. I.R.C. § 6103(k)(6). Such disclosures are only permitted, however, under circumstances prescribed by Treasury regulations. Id.

Treas. Reg. § 301.6103(k)(6)-1(a)(1) provides that framework. It provides that disclosures to accomplish properly any activity connected with a Service employee's official duties are permissible, including:

- (i) establishing or verifying the correctness or completeness of any return or return information . . .

- (v) obtaining the services of persons having special knowledge or technical skills . . . or recognized expertise in matters involving the valuation of property if relevant to the proper performance of official duties . . .

- (viii) obtaining, verifying, or establishing information concerned with making determinations regarding a taxpayer's liability under the Code . . . .

Treas. Reg. § 301.6103(k)(6)-1(a)(1). Disclosures made while performing the above duties are authorized only if the Service employee reasonably believes, at the time of a disclosure, the information sought is not otherwise reasonably available or if the activity cannot occur properly without such information. Treas. Reg. § 301.6103(k)(6)-1(a)(2).

It is our understanding that consultation with third party appraisers is central to AAS' assessment of the veracity and correctness of the fair market value claims supported by the appraisals at issue. This consultation is necessary to obtain the opinion of an expert with respect to the particular object, its artist or its subject matter and to acquire information on sales of similar works of art. While information on public sales is available, information regarding private sales is not. Without this information, an AAS employee cannot compile a complete picture of the objective value of the work of art at issue. As a result, AAS would not be able to properly opine on the correctness of the value claimed by the appraisal, and the Service could not properly determine the taxpayer's liability. We are informed that these contacts, as described in your request for assistance, are the only means by which the Service can gather this information necessary to the examination.

We conclude, therefore, that the disclosures here, including contacting third party appraisers, disclosing identifying details about the work of art at issue, and revealing the employee's affiliation with the Service are permissible if certain conditions are met. First, the disclosure must be made in connection with an examination or other official proceeding relating to the liability of the taxpayer whose valuation is at issue. Under the facts as set forth in your request for assistance, it appears this requirement is met. The disclosures at issue are only made by AAS when contacting third party appraisers during an examination of a valuation claim.

Second, the employee should only disclose information to the extent such disclosure is necessary to obtain information from the third party appraiser. "Necessary" here does not mean essential or indispensable, but rather appropriate and helpful in obtaining the information sought. See Treas. Reg. § 301.6103(k)(6)-1(c)(1). From what we understand, AAS currently complies with this requirement by not disclosing the identity of the taxpayer, the type of return under exam, or that the valuation is being analyzed in the context of a federal tax examination. AAS should continue to only disclose information necessary for a third party appraiser to opine on the value of the object at issue or to provide relevant information on the sales of similar works of art. To this end, we call your attention to the necessity of disclosing the actual value claimed for the work at issue. Under the facts presented, we are unable to determine whether disclosure of this amount is "necessary" within the meaning of Treas. Reg. § 301.6103(k)(6)-1(c)(1). Accordingly, AAS should be mindful only to disclose return information to the extent that disclosure is appropriate under the circumstances and helpful in obtaining information from the third party appraiser.

Third, the disclosure should be made to accomplish an activity connected with the official duties of the office. The disclosures here by AAS are aimed toward learning the expert opinions of third party appraisers to help verify the correctness of taxpayers' fair market value claims and to obtain information regarding sales of objects similar to the one at issue. It is our understanding that this information is vital to a determination of federal tax liability. Therefore, these activities plainly fall within those described in Treas. Reg. § 301.6103(k)(6)-1(a)(1)(i), (v), and (viii).

Fourth, at the time of disclosure, the Service employee must reasonably believe the information sought from the appraiser is not otherwise reasonably available or the examination activity could not proceed without it. Based on our understanding of the facts, this last requirement is also satisfied. The very reason for soliciting information from third party appraisers is because that type of information and expert analysis is not otherwise available. While you state in your request that information on public sales is accessible on the Internet, information on private sales is typically not. Third party appraisers are often the only source of this type of information. In addition, a third party appraiser is the only source for his or her own expert opinion regarding a particular work of art or artist. Accordingly, the information sought by AAS from these third party appraisers is not otherwise reasonably available and appears vital to the examination.



Lastly, the employee may identify himself as a Service employee subject to the contours set forth above. See Treas. Reg. § 301.6103(k)(6)-1(a)(3).

Accordingly, we conclude that the disclosures as described in your request for assistance are permissible under the Internal Revenue Code provided those disclosures are made pursuant to the contours set forth in section 6103(k)(6). Please note though, while we conclude that section 6103(k)(6) permits AAS employees to disclose return information under the conditions described above, we caution that section does not permit disclosure of actual returns or appraisals. The AAS employee can only properly make a disclosure of "return information" under section 6103(k)(6).

Please call (202) 622-7950 if you have any further questions.

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