

Office of Chief Counsel
Internal Revenue Service
memorandum

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date: December 16, 2015

to: Joyce Peneau
Acting Director
(Governmental Liaison, Disclosure and Safeguards)

from: Charles B. Christopher
Branch Chief, Branch 7
(Procedure & Administration)



subject: Disclosure to Contractors of the Social Security Administration as part of the Ticket to Work Program

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

ISSUES

Whether the Social Security Administration (SSA) may disclose return information to the program manager of its Ticket to Work program when the program manager is a contractor of SSA.

CONCLUSIONS

SSA may not disclose return information to contactors unless the contractor is engaged in tax administration duties. As it is our understanding that the Ticket to Work program does not involve tax administration, SSA may not disclose return information to its contractors for the Ticket to Work program.

FACTS¹

On September 1, 2015, we received a request for legal advice from Jessica Vollmer, an attorney with SSA's Office of General Counsel. In the request, SSA asked whether it may disclose return information to its contractor, who is the program manager of the Ticket to Work program.

¹ The facts regarding the Ticket to Work program were received from Ms. Vollmer.

SSA's Ticket to Work Program is a free and voluntary program that can help Social Security beneficiaries go to work, get a good job that may lead to a career, and become financially independent, all while they keep their Medicare or Medicaid. The program is governed by section 1148 of the Social Security Act and SSA's implementing regulations. See 42 U.S.C. § 1320b-19; 20 C.F.R. pt. 411. The statute requires SSA to enter into agreements with one or more organizations in the private or public sector for service as a program manager to assist SSA in administering the program. 42 U.S.C. § 1320b-19(d). The statute and SSA's regulations also describe the responsibilities of the program manager. 42 U.S.C. § 1320b-19(e); 20 C.F.R. § 411.245. These responsibilities include facilitating payments to employment networks participating in the program. 42 U.S.C. §§ 1320b-19(e)(1), 1320b-19(e)(3); 20 C.F.R. § 411.245(c). Payments to employment networks are based on participating beneficiaries' earnings. 20 C.F.R. part 411.

In order to facilitate payments, SSA would need to provide the program manager with access to either individual beneficiary earnings or an indicator that would advise the program manager whether the individual had earnings within a range qualifying the employment network for payment (e.g., greater than 250 percent of poverty level). SSA believes this disclosure is necessary for continued operation of the Ticket to Work program. It is our understanding that this information would come from the Earnings Recording and Self-Employment Income System (Master Earnings File) (earnings database).

LAW AND ANALYSIS

Returns and return information are confidential, except as authorized under the Internal Revenue Code (Code). I.R.C. § 6103(a). Return information is defined broadly and includes "the nature, source, or amount" of a taxpayer's income and any other data gathered by, collected by, created by, or otherwise in the hands of the Secretary with respect to a return or in connection with determining a taxpayer's liability or potential liability under the Code. I.R.C. § 6103(b)(2).

In this case, the information at issue is an individual beneficiary's earnings or the fact that the individual beneficiary's earnings fall within specific range that qualifies for a payment under the program. As stated above, this information is located in SSA's earnings database. The earnings database includes return information received from the Service under section 6103(l)(1)(A) (self-employment earnings information) and information from Forms W-2 processed by SSA on the Service's behalf pursuant to the Combined Annual Wage Reporting Agreement (CAWR). Because SSA processes the Forms W-2 on the Service's behalf, the information taken from the W-2s is return information in SSA's hands. Judicial Watch, Inc. v. SSA, 799 F. Supp. 2d 91, 95-97 (D.D.C. 2011), aff'd, 701 F.3d 379 (D.C. Cir. 2012). Thus, the information to be disclosed (specific amount of earnings or whether the earnings is within a specific range) is return information protected by section 6103 because it is "the nature, source, or amount" of the taxpayer's income (or other data) and was received by the Secretary

with respect to a return (Form W-2) or as part of a determination of the taxpayer's liability under the Code. I.R.C. § 6103(b)(2). Accordingly, it may be disclosed by SSA only as specifically authorized by the Code.

1. SSA May Only Disclose Return Information to Contractors Performing a Tax Administration Function

As stated above, absent specific authority in the Code, disclosure of return information is not permitted. Section 6103 contains six specific instances when SSA may redisclose return information received by it to specified third parties, none of which are applicable here. See I.R.C. § 6103(l)(5) (disclosures by SSA for return processing programs or epidemiological research), (l)(7) (disclosures by SSA to state and local governments for specified welfare programs), (l)(8) (disclosures by SSA to state and local child support agencies), (l)(11) (disclosures by SSA to the Office of Personnel Management), (l)(12)(A) (disclosures by SSA to Centers for Medicare and Medicaid Services), and (l)(16) (disclosures by SSA to the Trustee of the District of Columbia Retirement Protection Act of 1997).

In addition to the six instances listed above, section 6103(n) authorizes SSA to disclose returns and return information, for tax administration purposes, to any person to the extent necessary in connection with a written contract for the acquisition of property or services. Treas. Reg. § 301.6103(n)-1(a)(1). "Tax administration" is defined as the "administration, management, conduct, direction, and supervision of the execution of the internal revenue laws or related statutes . . . and tax conventions to which the United States is a party" and "the development and formulation of Federal tax policy relating to existing or proposed internal revenue laws, related statutes, and tax conventions" and "includes assessment, collection, enforcement, litigation, publication, and statistical gathering functions under such laws, statutes, or conventions." I.R.C. § 6103(b)(4). Whether or not a statute is "related" to the internal revenue laws depends on the nature and purpose of the statute and the facts and circumstances in which the statute is being enforced or administered. See generally IRM 9.3.1.4.3.1.1.2 (stating that the key test in determining whether another statute is a related statute is where, under the facts and circumstances of the particular case, the other statute is considered related to the administration of the internal revenue laws).

In this case, the Ticket to Work program does not involve the "administration, management, conduct, direction, and supervision of the execution" of the Code nor does the purpose or administration of the Ticket to Work program appear to be in any way related to taxes or the Code. Accordingly, the Ticket to Work program does not involve tax administration and, therefore, SSA is not authorized under section 6103 to disclose return information to its contractors under the Ticket to Work program.

2. The February 12, 1980 Letter from the Commissioner is Inapplicable to Ticket to Work

As part of SSA's request for advice, it noted that, in limited circumstances, the Service has authorized SSA to disclose return information to other agencies and entities under section 6103(l)(1)(A) when disclosure was necessary for SSA's administration of the Social Security Act. SSA cited a memorandum, dated February 12, 1980, from the Commissioner of the Internal Revenue Service to the Commissioner of Social Security. Although the memorandum notes that section 6103(l)(1)(A) does not authorize non-SSA employees to use or access the return information provided to SSA, the IRS Commissioner authorized SSA to disclose information to state agencies for purposes of making disability determinations under section 221 of the Social Security Act, to agencies handling SSA matter abroad, and to the Railroad Retirement Board for purposes of determining and paying social security benefits to individuals qualifying under the Social Security Act and the Railroad Retirement Act. The memorandum noted that because of the roles these agencies played in the direct administration of the Social Security Act and the necessity of their access to return information, "it is unlikely that Congress intended to deny such access when it enacted section 6103(l)(1)(A)."

The February 12, 1980 memorandum is limited to its facts and the programs specifically referenced in it. Although the Ticket to Work program manager plays an important and necessary role in the direct administration of the Social Security Act, it cannot be said that Congress did not intend to deny access to the Ticket to Work contractor when it enacted section 6103(l)(1)(A) as the Ticket to Work program did not come into existence until over 20 years after the enactment of section 6103(l)(1)(A). In fact, Congress would have been aware of section 6103 and the limits on SSA's use of contractors when it enacted the Ticket to Work program. Accordingly, the February 12, 1980 memorandum does not provide support for SSA's disclosures to contractors under the Ticket to Work program.

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.