

**Internal Revenue Service**  
**Memorandum**  
CC:EL:D:4053-95  
Br4:JSchwartz

date: FEB 15 1995

to: Assistant Commissioner (Employee Plans and Exempt  
Organizations) CP:E

from: Assistant Chief Counsel (Disclosure Litigation) CC:EL:D

subject: PBGC And Tax Refund Offset

This is in response to PBGC's letter of December 16, 1994 in which the Pension Benefit Guaranty Corporation (PBGC) raises several issues, including its authority to disclose tax information received for refund offset purposes to its contractors.

#### FACTS

In 1995, PBGC referred only a small number of premium-related debts to the IRS for refund offset, and has assured the IRS that due to the small volume of debts, PBGC can participate in the refund offset program in 1995 without providing contractors access to return information disclosed to PBGC for refund offset purposes. However, PBGC speculates that in future years it will expand its tax refund offset activities and may, therefore, need to make greater use of contractors in the refund offset program, including providing these contractors with return information necessary to administer the program.

PBGC opines that because return information provided to PBGC under the tax refund offset program pursuant to I.R.C. § 6103(l)(10) would also be disclosable to PBGC if requested under I.R.C. § 6103(l)(2), it should be so deemed, and PBGC would therefore be authorized to redisclose this return information to its contractors under I.R.C. § 6103(l)(2). It is our opinion that this position is incorrect.

#### ANALYSIS

Section 6103(l)(2) authorizes the disclosure of returns and return information to PBGC for purposes of, but only to the extent necessary in, the administration of Titles I and IV of the Employee Retirement Income Security Act of 1974 (ERISA). This section, along with several others, was intended to provide authority under which certain federal agencies could receive tax information for a non-tax purpose, by limiting disclosures where the tax information is directly related to programs administered by the agency. S. Rep. No. 938, 94th Cong., 2nd Sess. 335 (1976), 1976-3 C.B. (Vol. 3) 373.

In 1976 when I.R.C. § 6103(l)(2) was enacted, the federal agency refund offset program did not exist, as there was no statutory authority for the offset of federal tax

refunds to satisfy debts owed to federal agencies. Therefore, I.R.C. § 6103(l)(2) clearly could not be and was not intended to provide disclosure authority necessary to effectuate refund offsets.

Statutory authority for the refund offset of non-tax debts owed to federal agencies was passed in 1984 to implement the Grace Commission recommendation for collecting federal debts in the same way certain child support debts could be collected. Pub. L. No. 98-369, § 2653, 98 Stat. 494, 1153 (1984); H.R. Rep. No. 861, 98th Cong., 2d Sess., 1984-3 C.B. (Vol. 2) 551. Section 6402 is the Code authority for the IRS to make refunds, and subsection (d) authorizes the IRS to reduce a refund due to a taxpayer to the extent necessary to collect a debt owed to a federal agency. i.e., a refund offset.

Realizing that a corresponding statute was necessary to authorize the disclosure of tax information to effectuate this new refund offset program, in 1984 Congress enacted a specific statutory scheme for the disclosure of tax information for refund offset purposes, I.R.C. § 6103(l)(10). Section 6103(l)(10) is captioned "Disclosure of Return Information to Agencies Seeking a Reduction Under Section 6402(c) or 6402(d)." Section 6103(l)(10) specifically authorizes the disclosure of tax information for the purpose of, and only to the extent necessary in, administering the I.R.C. § 6402 refund offset procedure. S. Pt. No. 169, (Vol. 1), 98th Cong., 2d Sess. 996-997 (1984).

From the enactment of I.R.C. § 6402 in 1984 to authorize refund offsets to satisfy federal non-tax debts, the specific inclusion in I.R.C. § 6103(l)(10) of disclosure authority to implement such refund offsets, and from the use restriction contained in the provision itself providing that its disclosure authority extends only for the purposes of and to the extent necessary in administering an I.R.C. § 6402 refund offset, it is clear that I.R.C. § 6103(l)(10) was intended to be the specific statutory authority for the disclosure of tax information necessary to effectuate refund offsets. Regardless of the more general disclosure authority provided to PBGC in I.R.C. § 6103(l)(2) in 1976 for ERISA administration, we conclude that the more specific 1984 statute, I.R.C. § 6103(l)(10), authorizing disclosures only to administer the newly enacted refund offset provision governs the disclosure of tax information to PBGC for refund offset purposes:<sup>1</sup>

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<sup>1</sup> PBGC's argument that I.R.C. § 6103(l)(2) authorizes disclosures to contractors is incorrect, and will be addressed in more detail in a separate memorandum (CC:EL:D:4470-94). Assuming, for sake of argument, that section 6103(l)(2) does authorize the IRS to provide tax information to PBGC for refund offset purposes, and that section 6103(l)(2) permits PBGC to disclose tax information to its contractors, PBGC would still be precluded from disclosing tax information to its contractors for all refund offsets. Under 31 U.S.C. § 3720A, federal agencies are required to submit virtually every type of debt to the IRS for refund offset. Under PBGC's analysis, it would be required to establish a dual refund offset system: one in which it would use contractors to process tax information obtained pursuant to section 6103(l)(2) for Title IV ERISA debts, and one (continued...)

Section 6103(l)(10) authorizes the disclosure of specified items of tax information for refund offset purposes to officers and employees only, of an agency seeking such offset. There is no authority for the redisclosure of this tax information to contractors of the federal agency. Thus PBGC receives and will continue to receive tax information for refund offset purposes from the IRS pursuant to I.R.C. § 6103(l)(10) only, and is not and will not be authorized to share this information with its contractors.

Finally, we should note that PBGC is treated no differently than every other federal agency seeking refund offsets. Every federal agency participating in the refund offset program receives the necessary tax information to administer the program from the IRS pursuant to I.R.C. § 6103(l)(10), regardless of any other I.R.C. § 6103 provision authorizing disclosure of tax information to those agencies for other purposes. In this regard, each agency participating in the refund offset program executes a Memorandum of Understanding (MOU) with the IRS and Financial Management Service (FMS) providing that tax information is being disclosed pursuant to I.R.C. § 6103(l)(10). (Address information is provided pursuant to I.R.C. § 6103(m)(2), (4) or(5) •)<sup>2</sup>

/s/ John B. Cummings  
PETER V. FILPI

cc: Director, Employee Plans Division CP:E:EP  
Director; Office of Disclosure CP:EX:D  
Associate Chief Counsel (Employee Benefits and Exempt  
Organizations) CC:EBEO

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(continued...)

without contractors for tax information obtained under section 6103(l)(10) for all other type of debts.

<sup>2</sup> PBGC's letter refers, at footnote 16, to another agency's position that tax information can be disclosed to contractors under I.R.C. § 6103(l)(10). The IRS has, however, consistently taken the position that I.R.C. § 6103(l)(10) does not authorize the disclosure of tax information to contractors, and has apprised each participating agency of this position. Every agency so advised has taken remedial action, making changes to their programs, to ensure compliance with the IRS position on I.R.C. § 6103(l)(10) and contractors.

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