

**Internal Revenue Service
Memorandum**

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Br4:LPlatt

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to: John M. Staples
Assistant to the Commissioner C

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

subject: Disclosure of collection activities with respect to joint returns

This memorandum examines the authority of the Internal Revenue Service (Service) to disclose a jointly filed return, or return information relating to a jointly filed return, to either spouse.

As background, we note a pending legislative proposal which, if enacted, would add a new provision to section 6103(e) of the Internal Revenue Code (Code) that would mandate disclosure of collection activities with respect to joint returns by explicitly requiring that

[i]f any deficiency of tax with respect to a joint return is assessed and the individuals filing such return are no longer married or no longer reside in the same household, upon request in writing by either of such individuals, the Secretary shall disclose in writing to the individual making the request whether the Secretary has attempted to collect such deficiency from such other individual, the general nature of such collection activities, and the amount collected.

H.R. 2491, 104th Cong., 1st Sess. § 13318 (1995).

We understand that this legislative proposal also is being considered for administrative implementation by the Service. For the reasons explained in the legal analysis set forth below, legislative action in this regard is unnecessary since the proposal can be implemented administratively.

ANALYSIS

A. LEGAL FRAMEWORK

1. General Rule -- Confidentiality

The general rule regarding the disclosure of taxpayers' returns and return information is found in I.R.C. § 6103(a) which provides that:

Returns and return information shall be confidential, and except as authorized by this title [title 26 of the United States Code]—

(1) no officer or employee of the United States

shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section.

Thus, returns and return information are to be kept confidential unless disclosure is permitted by some specific provision of the Code. Church of Scientology of California v. Internal Revenue Service, 484 U.S. 9 (1987). The unauthorized disclosure of returns or return information may result in civil damages against the United States (section 7431) and/or criminal penalties against the individual who disclosed the information (section 7213).

2. Definition of "Return" and "Return Information"

"Return" is defined broadly to include "any tax or information return ... filed with the Secretary by, on behalf of, or with respect to any person," including schedules, attachments, amendments, and supplements thereto. I.R.C. § 6103(b)(1). Thus, a return would include, for example, a Form 1040 or a Form 1040A (U.S. Individual Income Tax Return) or a Form 1040EZ (Income Tax Return for Single Filers and Joint Filers With No Dependents) filed jointly by a married couple.

"Return information" is a highly inclusive term encompassing virtually all data received or prepared by the IRS with respect to liability or possible liability "for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense" under the Code, including, for example, a taxpayer's identity, the nature, source or amount of his income, assets, or liabilities, whether or not the taxpayer's return, has been, is being or will be investigated. I.R.C. § 6103(b)(2).¹

¹ The term "return information" includes:

a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the

Thus, with respect to a return, whether filed jointly or otherwise, information including, for example, whether any deficiency of tax with respect to such return has been assessed and if so, the amount thereof, and whether the Service has attempted to collect any such deficiency and if so, the status and details of such collection activities and the amount, if any, collected, constitutes section 6103 protected return information. Cf. I.R.C. § 6103(k)(1) (authority to disclose accepted offers-in-compromise of assessed tax liability); I.R.C. § 6103(k)(2) (authority to disclose amount of outstanding tax lien); and Treas. Reg. § 301.6103(k)(6)-1(a) and (b) (authority to disclose return information in connection with collection activity).

Accordingly, the Service is precluded, by the terms of section 6103(a), from disclosing a joint return or any part thereof or any item reflected thereon, and, from releasing information that constitutes "return information" with respect to a joint return, including information regarding any deficiency of tax assessed with respect to a joint return and information regarding collection activity related thereto, except as expressly authorized by the provisions of section 6103 or another section of the Code.

3. Disclosures Authorized Under Section 6103(e)

I.R.C. § 6103(e)(1)(B), in conjunction with I.R.C. § 6103(e)(7), permits disclosure to either or both spouses of any return filed jointly by such spouses as well as return information pertaining to any such jointly filed return. In material part, section 6103(e) provides as follows:

(e) DISCLOSURE TO PERSONS HAVING MATERIAL INTEREST.--

(1) IN GENERAL.--The return of a person shall, upon written request, be open to inspection by or disclosure to--

(B) in the case of an income tax return filed jointly, either of the individuals with respect to whom the return is filed;

determination of the existence, or possible existence of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense

I.R.C. § 6103(b)(2) (emphasis added). See also I.R.C. § 6103(b)(6) which defines the term "taxpayer identity" as including the taxpayer's "name," "mailing address," "his taxpayer identifying number," or "a combination thereof."

(7) RETURN INFORMATION.--Return information with respect to any taxpayer may be open to inspection by or disclosure to any person authorized by this subsection [i.e., subsection (e) of section 6103] to inspect any return of such taxpayer if the Secretary determines that such disclosure would not seriously impair Federal tax administration.²

B. DISCUSSION

The simple rationale underpinning the exceptions to the general non-disclosure rule contained in subsection 6103(a) that are found in subsection 6103(e), is that certain "persons" are deemed to have a "material interest" in certain returns and return information justifying disclosure to them (e.g., an individual taxpayer in the case of a return filed by such individual (subsection 6103(e)(1)(A) and either spouse in the case of their joint return (subsection 6103(e)(1)(B)), while certain other "persons" are to be afforded an opportunity to demonstrate their material interest in returns or return information to which they seek access (e.g., certain trust beneficiaries with respect to the return of a trust (subsection 6103(e)(1)(F)(ii)) .

With respect to section 6103(e)(1)(B), the language of the statute is clear and unambiguous on its face. Such language plainly provides that a jointly filed income tax return shall be disclosed, "upon written request" to "either of the individuals with respect to whom the return is filed." Subsection 6103(e)(1)(B). Moreover, return information associated with a jointly filed return also may be disclosed to either of the individuals with respect to whom the return is filed, i.e., "to any person authorized by this subsection" to inspect a jointly filed return, provided such disclosure would not seriously impair Federal tax administration. I.R.C. § 6103(e)(7).

Clearly, return information available to either spouse to a joint return, pursuant to the express terms of I.R.C. § 6103(e)(7), includes, in a case where a tax deficiency has been assessed with respect to such joint return, information as to whether the Service has attempted to collect such deficiency from either or both spouses to the joint return, the general nature of such collection activities, and the amount (if any) collected. In short, it encompasses the return information described in the pending legislative proposal referenced above (H.R. 2491, § 13318).

Thus, disclosure to either spouse of the return information described in the pending legislative proposal, clearly is authorized, currently, under the explicit statutory grant of disclosure authority contained in I.R.C. § 6103(e)(1)(B), (e)(7).

² I.R.C. § 6103(e)(7) permits the disclosure of return information without a "written" request. See I.R.M. 1272, 220(4), Disclosure of Official Information Handbook.

There is no court decision or IRS ruling directly interpreting I.R.C. § 6103(e)(1)(B) whether standing alone or in conjunction with the provisions of I.R.C. § 6103(e)(7). Nor is the intended scope and application of the two provisions discussed in the legislative history of section 6103 as amended by the Tax Reform Act of 1976. However, one court has considered the application of subsection 6103(e)(1)(B), and in so doing, clearly indicated its reliance on the plain meaning of the plain language of the provision. See Britt v. Internal Revenue Service, 52 A.F.T.R. 2d ¶ 83-5218 (D.D.C. 1983).

Additionally, G.C.M. 37727, 1978 IRS GCM LEXIS 57, in the context of a proposed revenue ruling, addressed the question of whether section 6103 bars disclosure of a purported joint return if it is determined by the Service or alleged by the spouse seeking disclosure, that, in fact, the purported joint return was not a valid return of both the husband and wife. See Rev. Rul. 79-64, 1979-1 C.B. 390.

The facts presented were as follows: a joint return was timely filed for 1975 containing the signatures of A and B who were husband and wife. During an audit in which an adjustment was proposed, A contended that A had signed the return under duress and that the return was therefore not a joint return. A requested a copy of the return and other information relating to the proposed adjustment. It was concluded that giving A the requested material would not constitute an unauthorized disclosure of a return or return information under section 6103 as amended by the Tax Reform Act of 1976, nor under the predecessor section 6103 and implementing regulations applicable for periods prior to January 1, 1977.

In G.C.M. 37727 it was determined that the language of subsection 6103(e)(1)(B), as amended by Congress in 1976, as well as that of the pre-1976 statutory provision and implementing regulation governing the disclosure of joint returns, was intended to apply to "documents submitted in the name of the taxpayer, even if they are later determined to be invalid for any reason." G.C.M. 37727 at 3. See I.R.C. § 6103(e)(1)(B), (e)(7) applicable for periods beginning on or after January 1, 1977; compare Treas. Reg. § 301.6103(a)-1(c)(1)(iii), applicable to periods prior to January 1, 1977, which specified that a joint return was to be open to inspection by "either of the individuals for whom the return was made." Thus, although the facts at issue in G.C.M. 37727 occurred prior to the 1976 amendments to section 6103, the G.C.M. indicated that the conclusion would be the same regardless of whether the facts were analyzed under pre-1976 law or under the provisions of section 6103 for periods beginning after January 1, 1977.

The conclusion reached in G.C.M. 37727 is supported by the legislative history of the 1976 amendments to section 6103 with respect to the disclosure of returns and return information to persons with a material interest in such returns or information, including disclosures to "either spouse who filed a joint return." The legislative history states that Congress "decided that persons with a material interest should continue to have the right to inspect returns and, where appropriate, return information to the same extent as provided under current regulations." S. Rep. No. 938, 94th Cong., 2d Sess. 339 (1976), 1976-3 C.B. (Vol. 3).

The conclusion reached in G.C.M. 37727 was supported on two grounds. First:

we do not believe that it can be assumed Congress intended to prevent a taxpayer from having access to a document filed in the taxpayer's name, even if it was not actually filed by the taxpayer (as, for example, when the return was filed on behalf of a person who was legally incompetent when the return was filed, but later became legally competent and requested a copy of the return). The argument is even stronger with respect to a return that was actually signed by a taxpayer, as in the present case, but was invalid because the signature was obtained under duress. The return may not be a valid joint return, but it was filed on behalf of the taxpayer, and the language of the statute and the regulations does not prevent the Service from providing a copy to the taxpayer, A. The other ground for allowing access to the return by A lies in the purpose of the statute. Section 6103 is designed to protect the privacy of the taxpayer by limiting disclosure of the taxpayer's returns and taxpayer return information. The taxpayer, however, may waive this protection in a number of ways. In our opinion, the filing of a joint return is a waiver of privacy by each spouse with respect to that return concerning disclosure of the return to the other spouse.

Id. at 4-5.

Accordingly, the reasoning and analysis set forth in G.C.M. 37727 further supports the conclusion that, consistent with a plain reading of I.R.C. § 6103(e)(1)(B), (e)(7), the disclosures contemplated by the pending legislative proposal are authorized under current law.³

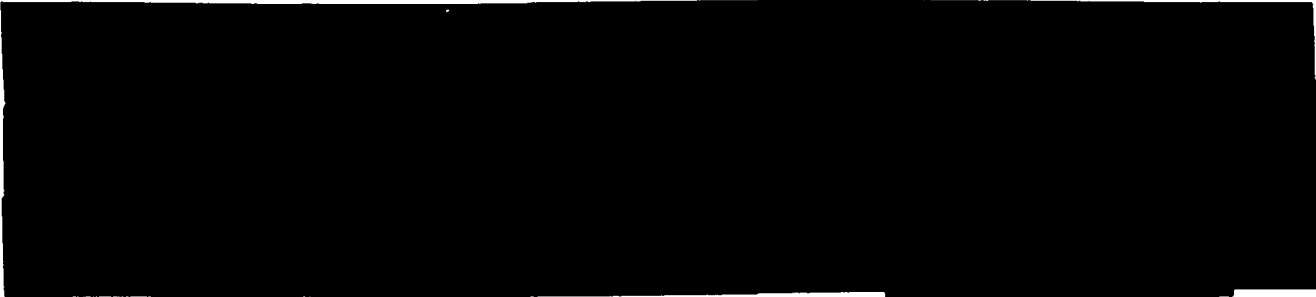
³ Aside from clearly being authorized under the provisions of section 6103(e), an argument can be made that the disclosures contemplated in the pending legislative proposal also are authorized under I.R.C. § 6103(h)(4)(C), which permits disclosure of a third party's tax data where there is a "transactional relationship" between the third party and the taxpayer provided the third party's tax data affects an issue in a tax administration proceeding.

Arguably, tax assessment and collection related activities are administrative proceedings pertaining to tax administration and the spousal relationship between parties to a joint return constitutes a "transactional relationship," such that disclosure to either

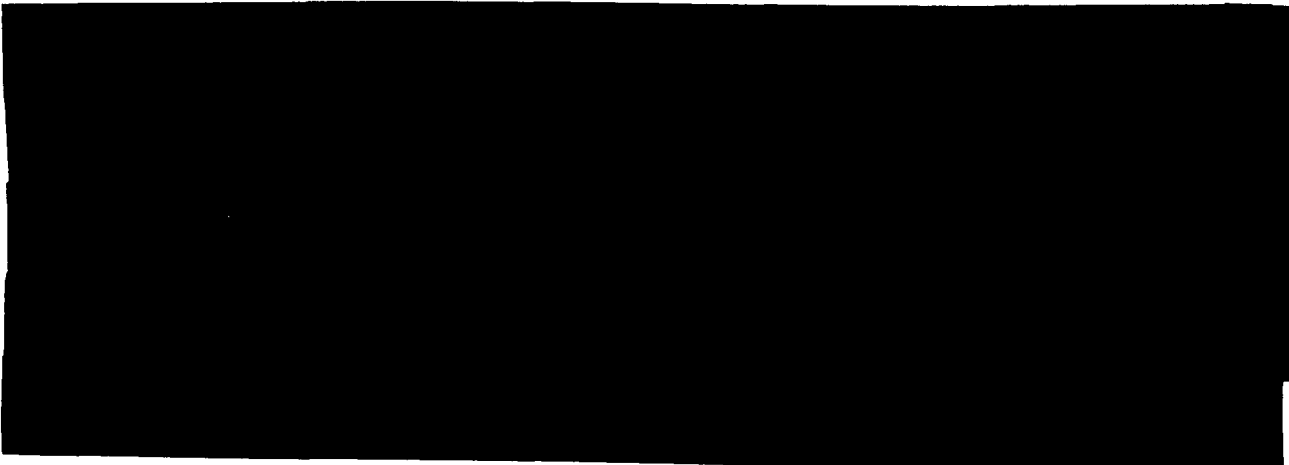
C. CONCLUSION

Under current law, upon written request from either spouse, the Service may disclose to such spouse the jointly filed return of both spouses. I.R.C. § 6103(e)(1)(B). Moreover, the Service currently is authorized to disclose return information with respect to a jointly filed return to either spouse (including, without limitation, information regarding collection of the joint liability), without written request, so long as the disclosure would not seriously impair Federal tax administration. I.R.C. § 6103(e)(1)(B), (e)(7). Specifically, under current law, the Service is authorized to disclose, to either spouse to a joint return, each of the three items of return information identified in the pending legislative proposal. I.R.C. § 6103(e)(1)(B), (e)(7).⁴

spouse, of details of the status of the Service's efforts to collect unpaid taxes owed with respect to the couples' joint return affects an issue in the proceedings, i.e., the joint and several liability of either spouse for taxes owed with respect to their joint return. See e.g., Tavery v. United States, 32 F.3d 1423 (1994) (without deciding the issue, the Tenth Circuit adverted to the possibility that "marriage" might constitute a "transactional relationship" within the meaning of I.R.C. § 6103(h)(4)(C)).



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If you have any questions, please contact Lynnette Platt, the attorney assigned to this matter, at (202) 622-4570.

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