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National Director, Governmental Liaison and Disclosure

CP:EX:GLD

Chief, Branch 4 (Disclosure Litigation) CC:EL:D

Disclosures by California State Tax Agencies

By letter dated February 28, 1996, the heads of the three major California state tax agencies (the Franchise Tax Board, the Employment Development Department, and the State Board of Equalization) requested the Commissioner of Internal Revenue to provide permission for those agencies to share Federal tax information among themselves. This memorandum will address the legal restrictions on the sharing of Federal tax data among state tax agencies.

I.R.C. § 6103(d) states that certain returns and return information:

shall be open to inspection by, or disclosure to, any State agency, body, or commission ... which is charged under the laws of such State with responsibility for administration of State tax laws for the purpose of, and only to the extent necessary in, the administration of such laws

[Emphasis added.] The statute only permits use by a state tax agency for the purpose of the state tax laws it administers. Section 6103(d) does not permit disclosure by one state tax agency to another state tax agency, either in the same or a different state.¹

Section 6103(p)(2)(B) provides that where return information can be disclosed to any person, it "may be provided in the form of written documents, reproduction of such documents, films or photoimpressions, or electronically produced tapes . . . or by any other mode or means which the Secretary determines necessary or appropriate." Under this authority, the Secretary has promulgated a regulation that permits, with the approval of the Commissioner, the disclosure of tax information directly by certain authorized recipients to other recipients authorized to receive tax information under I.R.C. § 6103:

¹ Similarly, there is no authority for treating the separate tax agencies of a state as one agency. See, e.g., section 6103(d) ("any State agency, body, or commission"); Treas. Reg. § 301.6103(p)(7)-1 ("Procedures for administrative review of a determination that a State tax agency has failed to safeguard Federal returns or return information").

[R]eturns and return information disclosed by the Internal Revenue Service to officers and employees of another Federal agency ... as provided by section 6103 may, if the Commissioner of Internal Revenue determines that such returns or return information is more readily available from such Federal agency, be disclosed by such officers and employees to officers and employees of another Federal agency, the General Accounting Office, an agency, body or commission described in section 6103(d) or (l)(6), or to a person described in section 6103(c) or (e) for a purpose or use authorized or required by, but subject to any requirements imposed by, any other provision of section 6103 and the regulations thereunder.

Treas. Reg. § 301.6103(p)(2)(B)-1.² The regulation also provides rules to permit the IRS to account for these disclosures, and permits the Commissioner to impose conditions and restrictions on the disclosing agency as he or she may prescribe.

Although the regulation permits disclosures by a Federal agency to a state tax agency, the regulation does not permit redisclosures by a state tax agency to another state tax agency. As such, to accommodate California's request would require amendment of the regulation to permit disclosures by state tax agencies to other state tax agencies.³

² The file for T.D. 7723 indicates that as initially drafted, the regulation would only have permitted redisclosures by the Social Security Administration (SSA). In later drafts it was expanded to include other Federal agencies. We also note that in subsequent legislation, in situations where SSA had tax information, Congress provided specific authority for SSA to make certain disclosures directly. See, e.g., I.R.C. § 6103(l)(7)(A) and (l)(8). Finally, we note that the regulations under section 6103(j) permit, subject to the conditions in Treas. Reg. § 301.6103(p)(2)-1, SSA to disclose certain information to the Bureau of the Census. Treas. Reg. § 301.6103(j)(1)-1(b)(5).

³ The question has been raised whether the Franchise Tax Board (FTB) could make a disclosure to the other California tax agencies as an IRS contractor under I.R.C. § 6103(n). Section 6103(n) is the general authority for the IRS to disclose tax information in connection with obtaining tax administration services, and in some situations the regulations under section 6103(n) permit redisclosures by persons providing those services. It does not specifically address disclosures by one authorized recipient of tax data to another authorized recipient. Because Treas. Reg. 301.6103(p)(2)(B)-1 specifically addresses this situation, that regulation, and not the regulations under section 6103(n), would apply.

In addition, we note that in the past the FTB would prepare a specialized extract of Federal tax information for another state tax agency and give it to the IRS, who would

then give the extract to the requesting agency. We have doubts about the legality of this procedure since the FTB, in preparing the extract for the other agency, is not using the information for purposes of the laws it administers.

We have only addressed here whether or not the requested permission can be given under existing authority. We express no opinion as to whether or not the regulation should be amended.

If you have any further questions or comments, please contact David Fish, the attorney assigned to this matter, at (202) 622-4570.

(signed)

JOSEPH J. URBAN