

**Office of Chief Counsel  
Internal Revenue Service**

**memorandum**

CC:EL:D:Br4:DFish  
DL-247537-96

date: October 2, 1996  
to: Director, Office of Overseas Operations CP:IN:OO  
from: Chief, Branch 4 (Disclosure Litigation) CC:EL:D

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subject: Form W-7 Processing in Mexico City

You requested our advice on a proposal to enter into an interagency agreement with the Department of State. Under the agreement, Foreign Service Nationals (FSNs) employed by the State Department would accept Form W-7 Individual Taxpayer Identification Number (ITIN) applications and transmit them to the IRS, also ensuring that adequate proof of identity is provided by each applicant and that the applications are complete and accurate. The ITIN will be transmitted directly to the applicant, and the State Department will not have access to IRS systems or other tax data.

Information concerning liability or potential liability under the Internal Revenue Code, collected or generated by the IRS or a person performing services for the IRS, is protected by I.R.C. § 6103. By filing a Form W-7, a nonresident alien indicates that he or she potentially has some tax consequences under the Internal Revenue Code or may be claimed as a dependent on a United States income tax return. Thus, the Form W-7, when filed with IRS, or with the State Department acting as an IRS contractor, will be I.R.C. § 6103 information. The regulations under I.R.C. § 6103(n), as well as I.R.C. § 6103(p), impose certain requirements on IRS contractors with respect to their handling of tax information, and require certain provisions to be included in any contract involving such information. You should contact the Director, Safeguards and Tax Checks, or the Disclosure Officer (International), with questions regarding required safeguards or contractual provisions.

We note that the State Department acting in this capacity would not be considered an acceptance agent under Treas. Reg. § 301.6109-1(d)(3)(iv). Acceptance agents act on behalf of taxpayers, while in this capacity the State Department would be providing a service to and acting on behalf of the IRS. Also, the State Department will not be keeping records concerning applicants, which is required of acceptance agents. Because acceptance agents are agents of taxpayers, records maintained by them are not protected by I.R.C. § 6103.

The Privacy Act regulates the maintenance of records by the government concerning individuals. The term "maintain" is defined to include maintain, collect, use or disseminate. 5 U.S.C. § 552a(a)(3). Because the State Department would be collecting information as the Service's contractor, certain provisions may have to be included in the agreement with the State Department and changes may be required in the Privacy Act System of Records Notice that is published in the Federal Register. See 5 U.S.C. § 552a(m) (Privacy Act applies to agency system of records maintained by contractor). We note that individual is defined in the Privacy

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Act to mean a citizen of the United States or an alien lawfully admitted for permanent residence. 5 U.S.C. § 552a(a)(2). Questions concerning potential application of the Privacy Act should be directed to the Director, 6103/Privacy Operations.

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

(signed)

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JOSEPH J. URBAN

cc: Director, Safeguards and Tax Checks  
Director, 6103/Privacy Act Operations  
Disclosure Officer (International)