

Internal Revenue Service
memorandum

DL-100059-96
Br4:JBernstein

date: December 12, 1996
to: Chief, Electronic Submissions Branch T:S:E:C
from: Chief, Branch 4 (Disclosure Litigation) CC:EL:D

Subject: Notifying Suspended Electronic Filers

This is in response to your request regarding notifying entities that an electronic filer¹ has been suspended from the Electronic Filing Program (ELF) when the electronic filer is listed as a principal or responsible official of that entity. You indicate that when an electronic filer is suspended, any other entity listing that filer as a principal or responsible official must be suspended. However, section 13.02 of Revenue Procedure (Rev. Proc.) 95-49 indicates that when a principal or responsible official is suspended from ELF, every entity listing the suspended principal or responsible official will also be suspended.² For your information, section 13.02 of the draft revenue procedure for the 1997 filing season provides that entities listing a suspended principal or responsible official may also be suspended from ELF.

It is our understanding that a principal or responsible official is subject to a suitability check, which includes fingerprint, credit and tax checks. While an entity may be suspended from ELF for electronic filing program violations, such as failing to forward the necessary signature documents or unauthorized advertising, a principal or responsible official will be rejected from ELF for failing the suitability check. Although I.R.C. § 6103 would not preclude the Service from notifying firms and organizations that its principal or responsible official is barred from participating in ELF, the Service may not provide the reason for the suspension without the consent of the official involved. The section 6103 prohibition is readily apparent in those situations where a principal or responsible official is rejected for failing this check for tax reasons, such as failing to file individual returns. In the case of a nontax reason, section 6103 is implicated because the Service would be making, in effect, the same disclosure if it explained the nontax reason for suspending a

¹ According to § 13.02 of Revenue Procedure 95-49 and the draft revenue procedure for the 1997 filing season, the term "electronic filer" includes electronic return originators, service bureaus, software developers and transmitters.

² Our response concerns notifying entities that a principal or responsible official listed on their Form 8633 is not permitted to participate in ELF.

principal or responsible official, but was unable to give a reason only in the case of a tax related suspension.

To the extent that the Service is maintaining records on individuals (principals and responsible officials acting on behalf of electronic filers), Privacy Act issues may be raised. We understand that David Silverman of the Office of Governmental Liaison and Disclosure is advising ELF as to implementation issues concerning the Privacy Act.

If you have any questions concerning this matter, please contact Jamie Bernstein at (202)622-4570.

Joseph J. Urban
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cc: Michael Sincavage CP:EX:GLD:D:O
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