



OFFICE OF
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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR NANCY J. JARDINI
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(CRIMINAL TAX)

FROM: David L. Fish *DLF*
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SUBJECT: Use of Return Information to Locate IRS Fugitives and Wanted
Persons

This memorandum responds to your March 12, 2001, memorandum requesting our advice on whether return information may be disclosed to Criminal Investigation (CI) special agents to help in locating fugitives and wanted persons who are wanted for violations of the internal revenue laws or federal money laundering statutes. As discussed more fully below, whether return information may be used depends on whether the fugitive or wanted person is wanted for a tax violation or a non-tax violation (money laundering or Bank Secrecy Act). In the former case, return information of the individual may be disclosed to special agents, but in the latter case, only if a "related statute determination" has been made.

As we understand it, in the past, the Treasury Enforcement and Communication System (TECS)/National Crime Information Center (NCIC) Coordinator sent, monthly, to the Ogden Fraud Detection Center at the Ogden IRS Center a list of fugitives and wanted persons wanted by the IRS. The lists were compiled from the TECS and NCIC databases. When the lists were received, a Tax Examiner Assistant opened a file on each new fugitive or wanted person and entered the individual's name, social security number, and birth date in a database of fugitives and wanted persons. The Assistant also had credit checks run on each individual for a current address and inputted freeze codes in the individuals' IMF accounts that alerted her to all transactions posted to the accounts. When a new return was filed, or there was activity with an account, the Assistant contacted the special agent assigned to the fugitive or wanted person and informed the special agent of the new activity or new address, if there was one. The Assistant provided the special agent with any requested information, such as information

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off the newly-filed return or Form W-2 information. If there was a hold on a refund, the special agent would let the Assistant know if the hold could be released. When an individual's name no longer appeared on the monthly list, the information on that individual was deleted from the database and the associated file closed. Concerns were raised within CI over whether the disclosures were authorized under I.R.C. § 6103, and the practice was suspended pending an answer from your office.

I.R.C. § 6103(h)(1) allows for the inspection or disclosure of returns and return information¹ to Department of Treasury employees "whose official duties require such inspection or disclosure for tax administration purposes." Pursuant to this provision, return information of fugitives and wanted persons may be disclosed or inspected within the IRS if necessary for tax administration. Thus, the procedure set out above—disclosure of return information by the TECS/NCIC Coordinator to the Ogden Fraud Detection Center, inspection of return information on the IMF, and disclosure of return information to CI special agents—is permissible if it is necessary for tax administration. Where the underlying offense for which the fugitive or wanted person is sought is a Title 26 offense, tax or related Title 18 offenses, such as 18 U.S.C. § 1001 or 18 U.S.C. § 371, then any disclosures and inspections necessary to locate the individual are necessary for tax administration. Part of tax administration is the enforcement of the criminal provisions of the Code, and effective enforcement requires the apprehension and prosecution of tax fugitives and wanted persons. The disclosures and inspection of return information, as described, appear necessary to locate and apprehend these individuals.²

If, however, the fugitive or wanted person is wanted for a money laundering offense under Title 18 or a Bank Secrecy Act crime under Title 31, then his or her return information may not be disclosed or inspected, in the manner discussed above, for purposes of locating the person because there is no authority to do so under section 6103 or elsewhere in the Code, *unless* a "related statute determination" has been

¹ "Return information" is defined in section 6103(b)(2)(A) and essentially means any information "received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or . . . the 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."

² Of course, any inspection or disclosure of returns or return information that is not limited to what is necessary to assist in finding fugitives and wanted persons is impermissible, and CI should take steps to ensure that only necessary information is accessed and disclosed.

made.³ Money laundering offenses under Title 18 and Bank Secrecy Act crimes under Title 31 are not, in themselves, tax administration. In a particular case, they may be *related* to tax administration, if a related statute determination is made.⁴ A related statute determination is appropriate when the non-Title 26 violation was committed in furtherance of a Title 26 violation, or the violation is part of a pattern of Title 26 violations. The Special Agent in Charge makes the determination in writing. The practice of routinely⁵ using return information to locate money laundering or Bank Secrecy Act fugitives and wanted persons in the absence of a related statute determination should be permanently suspended.

If you have any questions on this matter, or if we can be of further assistance, please call us at 622-4580.

³ I.R.C. § 6103(i)(5) provides for the inspection or disclosure of returns and return information in a non-tax administration context for use in locating fugitives, but only pursuant to an *ex parte* judicial order. The application for the order must come from the Department of Justice (the Attorney General, Deputy Attorney General, United States attorney, etc.). For purposes of providing IRS special agents with information on a continuing basis that may be helpful to locating fugitives and wanted persons, an (i)(5) order is an inefficient and impractical tool.

Another provision, I.R.C. § 6103(i)(3)(B)(ii), permits the disclosure of return information to federal officers or employees necessary to prevent an accused's imminent flight from prosecution. An (i)(3) disclosure, like an (i)(5) disclosure, is for other than tax administration. The vast majority of the fugitives and wanted persons whose names will be sent to Ogden if the practice is started again will most likely have already flown from prosecution. Conceivably, in rare and unusual circumstances, return information may be necessary to prevent an initial flight from prosecution or to apprehend, before fleeing again, a fugitive or wanted person who has resurfaced. Implementing any such procedures under this provision should be coordinated with the Office of Governmental Liaison & Disclosure.

⁴ I.R.C. § 6103(b)(4), in pertinent part, defines "tax administration" as "the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or *related* statutes" (Emphasis added.)

⁵ Note the very narrow, non-routine circumstances authorizing non-tax administration disclosures discussed in footnote three.