



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

JUL - 3 2002

MEMORANDUM FOR DIRECTOR, SPECIAL INVESTIGATIVE TECHNIQUES
ATTN: DOUGLAS BRICKER

FROM: Nancy J. Jardini 
Division Counsel/Associate Chief Counsel (Criminal Tax)

SUBJECT: Advertising Fugitive Awards

This responds to your February 11, 2002, memorandum requesting legal advice concerning offering and advertising awards for information concerning fugitives. Specifically, you asked whether 26 U.S.C. § 7623 allows Criminal Investigation ("CI") to pay a reward for information leading to the apprehension of a tax crime fugitive and whether the offering of such a reward may be advertised on the Internet, by poster and/or other advertising methods.

We forwarded your inquiries to the Associate Chief Counsel (General Legal Services) ("GLS") and pursuant to the attached memorandum GLS concluded § 7623 ". . . is not available as a basis of authority for these types of payments [information leading to the arrest of fugitives] because [§] 7623 rewards are limited to those based on amounts collected . . . [however] . . . CI may make payments that are not based on the amounts collected . . . and, thus, are not "rewards," from the Service's Tax Law Enforcement appropriation." GLS also concluded there appears to be no ". . . law or regulation that would prohibit CI from advertising . . . these payments for information . . . [except to the extent] . . . 44 U.S.C. [§] 3702 . . . prohibits the Service from advertising in newspapers." GLS also pointed out ". . . CI should consult with its Disclosure Officer, and possibly pertinent Department of Justice personnel, prior to advertising the availability of any payments for specific information."

Subsequent to receiving GLS's memorandum, we forwarded your inquiry to the Assistant Chief Counsel (Disclosure & Privacy Law) ("Disclosure"). Disclosure's response, which is attached hereto, referred to their 1993 memorandum to the Assistant Commissioner (Criminal Investigation) which responded to CI's inquiry as to the ". . . disclosure implications of featuring tax fugitives on "America's Most Wanted" or some similar program," wherein they concluded ". . . there is no authority in [26 U.S.C.] section 6103 for the public disclosure of returns and return information for the purpose of apprehending a tax fugitive." Disclosure notes, however, "[t]he authority, if ~~any, for the disclosure of tax information under these circumstances would have to be~~

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the so-called public record exception to section 6103 [and] . . . the information must have been made a part of the public record . . . [and] . . . any information must be derived from the publicly filed document . . . " Disclosure also pointed out "[t]he same rules would apply to crimes like kidnapping or assault of an agent, to the extent such crime was connected with an employee's tax administration duties . . . " Disclosure cautioned the Privacy Act regulates disclosures which are not tax related and in its 1993 memorandum listed caveats similar to Title 26, when relying on the Privacy Act's public record exception for the purpose of making disclosures.

In summary, GLS concluded there is no legal prohibition against CI advertising and paying for information concerning a fugitive and Disclosure concluded reliance on the public record exception of Title 26 or the Privacy Act is, likewise, not prohibited by law. Accordingly, whether CI chooses to advertise awards for information leading to the apprehension of fugitives will depend on the facts of each case and will ultimately turn on policy. To the extent CI advertises fugitive awards, CI should work closely with Criminal Tax and Disclosure in regard to the content of the advertisement.

If you have any questions concerning this matter, please contact Martin F. Klotz, Special Counsel to the Division Counsel/Associate Chief Counsel, on (202) 622-4470.



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MAY 10 2001

CC:PA:DPL
CT-112951-01

MEMORANDUM FOR NANCY J. JARDINI
DIVISION COUNSEL/ASSOCIATE CHIEF COUNSEL
(CRIMINAL TAX)

FROM: David L. Fish *DLF*
Chief, Branch 1
Assistant Chief Counsel (Disclosure & Privacy Law)

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

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.