

Office of Chief Counsel
Internal Revenue Service
memorandum

CPNachman
CC:PA:APJP

date: March 14, 2003

to: W.R. Schwartz
Acting National Director
Low Income Taxpayer Clinic (LITC)
Taxpayer Advocate Service (TAS)

from: Deborah A. Butler *Deborah A. Butler*
Associate Chief Counsel (Procedure & Administration)

subject: Tax Compliance for LITC Grantees and Key Personnel

This responds to your request that we provide advice about your proposal to conduct federal tax compliance checks on prospective LITC grantees and their key personnel. You initially advised that the proposal was to include notification of the federal tax compliance checks in the grant application for the year 2004. You subsequently advised that you have decided to delay compliance checks on key LITC personnel until the 2005 grant year. As our discussion below illustrates, it is permissible to conduct the compliance checks, so long as certain guidelines are followed.

Authority for Conducting Audits

IRC § 6103(h)(1) permits Service personnel to access the returns and return information of the clinics and their key personnel when such access is required for a tax administration purpose. "Tax administration" includes "the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws. . . ." Section 6103(b)(4)(A). The administration of the LITC program, under section 7526, is the administration of and supervision of the execution and application of an internal revenue law by virtue of its inclusion in Title 26.

Nevertheless, while the Service has the authority to perform tax compliance checks in the present situation, there is a policy issue concerning how much notice we should provide the taxpayers. [REDACTED]

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While the grant application package does give advance notice to whomever is completing the grant application, it does not provide the requisite notice to the key personnel. That is, the words "key personnel" do not specifically identify the title/position of the individuals you will audit.

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Once it is determined which key personnel will be audited, you have the authority, under section 6109, to solicit the appropriate social security numbers. An uncodified section of the Privacy Act of 1974 requires that a Federal agency, when requesting the disclosure of a SSN, provide the individual with certain notice. Pub. L. 93-579, 93d Cong., 2d Sess. at § 7 (Dec. 31, 1974).

[REDACTED]

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Freedom of Information Act (FOIA) Concerns

Because the Service-reviewed application packages may be available under FOIA, you are concerned about the potential for any embarrassing consequences should a clinic be denied a grant based on the tax noncompliance of key personnel. The packages will be available under FOIA except for that portion for which an exemption is applicable and has been asserted. To the extent that the grant application is denied as a consequence of the noncompliance of key personnel, the material concerning the noncompliance would be the return information of the respective taxpayers. Accordingly, without a written consent from the taxpayers (a disclosure waiver), that material would be protected from disclosure under the FOIA by 5 U.S.C. § 552(b)(3), in conjunction with section 6103(a).

[REDACTED]

DP

Conclusion

It is appropriate to conduct compliance checks on LITC grant applicants and on their key personnel, as long as the latter are given appropriate notice. Because there is no notice requirement for the clinic itself, you may request the SSNs of the key personnel from the clinic.

[REDACTED]

DP

Should a clinic be denied a grant because of the noncompliance of key personnel, you will not be able to divulge that information because of section 6103 protections afforded the noncompliant person.

[REDACTED]

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If you have any questions, please contact Carol Nachman at (202) 622-7885.