

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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date: September 16, 2010

to: Disclosure Technical Advisor
(Office of Governmental Liaison and Disclosure)

from: Chief, Branch 7
(Procedure & Administration)

subject: Combined Federal State Information Reporting Program

This memorandum responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUES

1. Whether the Internal Revenue Service (Service) can eliminate the use of Form 6847, *Consent for the Internal Revenue Service to Release Tax Information*, currently submitted by taxpayers that are required to file information returns.
2. Whether the Combined Federal/State Information Return Reporting (Combined Filing) program can be treated as an exchange of Federal Tax Information (FTI) subject to section 6103(d) of the Internal Revenue Code.

CONCLUSIONS

1. Treasury Regulation § 301.6103(c)-1(d)(2) permits the Service to treat the taxpayer's participation in a Combined Filing program as a consent for the Service to disclose items of return information to the State thereby eliminating the need for a separate consent.
2. We recommend against treating the Combined Filing as a section 6103(d)(1) data exchange because such an exchange limits the State's use of the data.

FACTS

The Combined Federal/State Information Return Reporting (Combined Filing) program permits payers who file information returns, such as the Forms 1098, 1099 (DIV; INT, G, MISC, OID, PATR, R) and 5498, to make a single filing with the Service to satisfy both

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Federal and State information reporting requirements. The Service provides instructions in Publication 1220 for taxpayers who file these forms electronically. The records filed under the combined reporting program are Federal tax returns. Currently, before the payer participates and the Service provides information to the State tax agency, the payer must submit Form 6847, *Consent for Internal Revenue Service to Release Tax Information*.

You indicated that the Electronic Tax Administration Advisory Committee (ETAAC) has asked the Service to eliminate the separate consent because it is unduly burdensome on the payers, thereby negatively affecting electronic filing. The system owner, Wage and Investment (W&I) and your office (GLD) suggested two alternate approaches to eliminate the need for a consent: (1) disclosing pursuant to Treas. Reg. § 301.6013(c)-1(d)(2), or (2) entering into a memorandum of understanding to provide participating States with data pursuant to section 6103(d). You asked us to opine on these alternatives.

LAW AND ANALYSIS

1. *Treasury Regulation § 301.6103(c)-1(d)(2)*:

The first alternative method to eliminate a separate consent is to rely on Treas. Reg. § 301.6103(c)-1(d)(2)(i). That regulation provides that a taxpayer's participation in a combined return filing program involving the Service and a State revenue agency constitutes a consent authorizing the Service to disclose to such State revenue agency certain items of return information: the taxpayer's identity, signature and items of common data on the returns. For purposes of paragraph (d)(2)(i), "common data" means information that appears on a Federal return that the State requires by law to be attached to or included on the State return.

The language in the regulation does not distinguish between combined filing of income tax returns and the combined filing of payer information returns, and the regulation contains no language limiting its application solely to either program. Accordingly, we conclude that this regulatory provision applies to the combined information report filing. Thus, as a general matter, the plain language of the regulation authorizes the Service to treat the taxpayer's participation in the Combined Filing program as consent for the Service to disclose specific items of information to the State agency.

We note, however, that because the safeguard provisions of section 6103(p)(4) do not apply to disclosures authorized by a section 6103(c) consent, the Service cannot enforce safeguard requirements on any State receiving FTI through consent. To address this potential lapse of taxpayer privacy, Treas. Reg. § 301.6103(c)-1(d)(2)(ii) provides that the Service cannot disclose any of these items of return information unless there are "provisions of State law protecting the confidentiality of such items of common data." Second, the regulation requires that the Service include in any forms or instructions relating to such program language informing the taxpayer that, by participating in the program, the taxpayer consents to the Service disclosing its return

information to the State and that such data will be treated as though it was filed directly with the State. By participating in the combined filing program, the taxpayer is put on notice that its participation is consent for the Service to disclose the enumerated items of data.

2. *Section 6103(d)*:

The other alternative is for the Service to enter into an MOU with each state to permit the Service to disclose these items of return information pursuant to section 6103(d)(1). Section 6103(d)(1) authorizes the Service to disclose federal returns and return information (FTI) pertaining to specific tax classes to a State revenue agency upon written request from the head of that agency, solely for use in state tax administration. Because section 6103(d)(1) limits a State's use of FTI for state tax administration purposes, with one exception,¹ the state revenue agency cannot disclose FTI to another state agency for use in a non-tax purpose. For example, generally, the State revenue agency cannot disclose FTI to the state work force agency unless a provision of State law permits the revenue agency to disclose an item or items of information from the State return to the non-taxing body.²

The Service's current position, as evidenced by IRM 11.3.32.23(4), is that the Combined Filing program is not a section 6103(d) exchange program. Because we believe that reliance on Treas. Reg. § 301.6103(c)-1(2)(i) is more appropriate, we will not opine on whether the IRM policy should be reexamined.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

We recommend

We also recommend

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

¹ Section 6103(d)(2) authorizes the State revenue agency to disclose to the State audit agency for purposes of auditing the State's revenue and programs.

² Section 6103(p)(8)(B) provides that items of FTI that appear on a state return (e.g., AGI) can be disclosed to non-tax State agencies, or a political subdivision, if such disclosure is specifically authorized by State law.

Please call (202) 622-4570 if you have any further questions.