

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

CC:PA:03:DMGrogan  
DIS/A-136469-11

UILC: 9999.92-00, 6103.00-00

date: November 4, 2011

to: Doug Beazley  
Chief, CSCO Balance Due  
(Wage & Investment)

from: Gerald Ryan  
Senior Technician Reviewer, Branch 3  
(Procedure & Administration)

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subject: Predictive Dialer (PD) Campaign Opinion Request

You requested our views on whether the use of the predictive dialer automated system to call a taxpayer's telephone number and leave a pre-recorded message comports with the requirements of I.R.C. § 6304(b). The proposed use of the predictive dialer is acceptable, provided the Service fully informs the taxpayer regarding the manner in which it will be used, including that a third party may hear the pre-recorded message and the taxpayer requests the reminders and acknowledges the possibility of disclosure.

#### BACKGROUND

Under consideration is a test using the predictive dialer automated system to provide monthly installment agreement reminder notices to taxpayers. During this test, Service employees securing an installment agreement over the telephone will seek the consent of the taxpayer for the Service to provide, for a six-month period, monthly payment reminders by pre-recorded telephone messages rather than by mail. The predictive dialer would be programmed to dial the number provided by the taxpayer and leave a pre-recorded message with a person answering the telephone or with an answering machine or voice mail.

As proposed, the predictive dialer will contain as detailed a message as possible, such as one of the following messages:

PMTA 2011-40

This is an automated call from the Internal Revenue Service that replaces your monthly installment agreement reminder notice sent via mail. If you have any questions about the amount of your payment or where to send it, please refer to the letter we sent you or call 1-800-829-0922.

or:

This is an automated call from the Internal Revenue Service reminding you to send your monthly payment. If you have any questions about the amount of your payment or where to send it, please refer to the letter we sent you or call 1-800-829-0922.

or:

This is an automated call from the Internal Revenue Service reminding you to send a payment. If you have any questions about making a payment, please refer to the letter we sent you or call 1-800-829-0922.

## DISCUSSION

Section 6304(b) provides, in part:

(b) Prohibition of harassment and abuse.--The Secretary may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of any unpaid tax. Without limiting the general application of the foregoing, the following conduct is a violation of this subsection:

...

(4) Except as provided under rules similar to the rules in section 804 of the Fair Debt Collection Practices Act (15 U.S.C. 1692b), the placement of telephone calls without meaningful disclosure of the caller's identity.

Section 6304 is patterned after provisions of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 et seq. In cases decided under the FDCPA, the “meaningful disclosure of the caller’s identity” requirement has been interpreted to require identification of the caller’s employer. For example, see Hosseinzadeh v. M.R.S. Associates, Inc., 387 F.Supp.2d 1104, 1111-1112 (C.D. Cal. 2005).

The provisions of the FDCPA as incorporated by reference in section 6304(b)(4) contain an exception to the meaningful disclosure rule applicable when the caller seeks “location information” concerning the debtor as set out in section 804 of the FDCPA. That provision, codified at 15 U.S.C. § 1692b, provides, in part:

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall--

(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(2) not state that such consumer owes any debt; . . . .

"Location information" is defined in the FDCPA as "a consumer's place of abode and his telephone number at such place, or his place of employment." 15 U.S.C. § 1692a(7).<sup>1</sup>

The provisions of the FDCPA have been held to apply when leaving a message on the answering machine or voice mail of the debtor, see Hosseinzadeh, 387 F.Supp.2d 1104, and when the mechanism for leaving the message is an automated, pre-recorded message. Joseph v. J.J. MacIntyre Companies, L.L.C., 281 F.Supp.2d 1156 (N.D.Cal. 2003); Foti, 424 F.Supp.2d 643, 659 (S.D.N.Y 2006); Hosseinzadeh, 387 F.Supp.2d at 1112.

As applied to the proposed use of predictive dialers to send reminder messages, section 6304(b)(4) means the reminder message should state that the call is from the Service. The conflicting requirement imposed by the location information rule, to refrain from identifying the creditor or debt collector (the Service) unless requested, should not apply if the taxpayer asks to be reminded in this manner. When the Service makes a reminder call to the taxpayer's number at the taxpayer's request, the Service is not seeking location information. Because the three proposed sample pre-recorded messages identify the Service as the caller, any of the messages should be acceptable under section 6304.

Accordingly, we 

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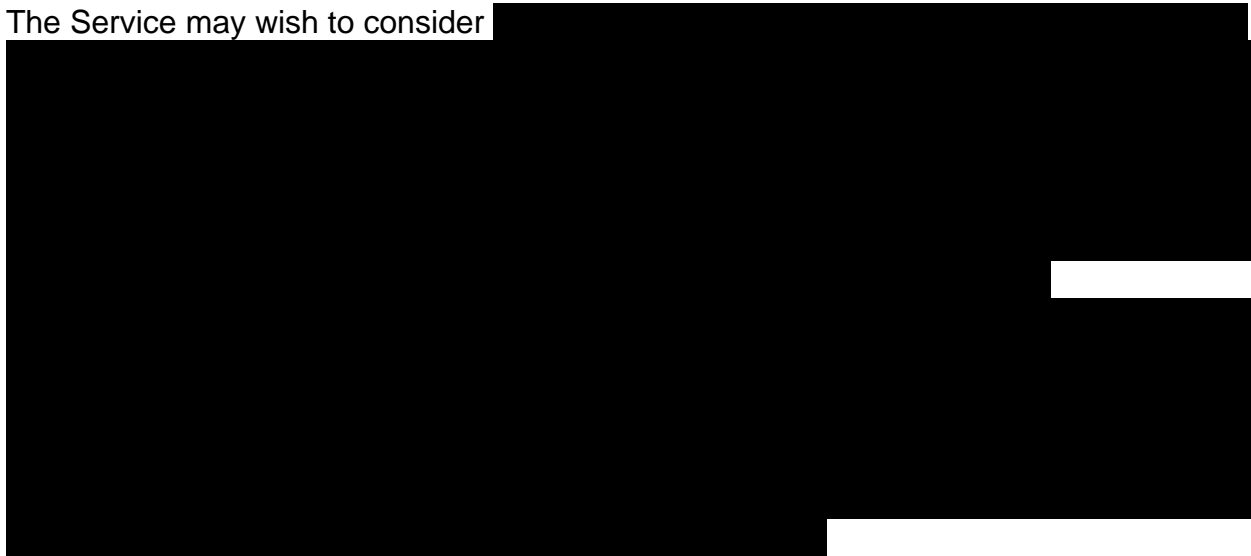
<sup>1</sup> Unlike the Service, private collectors cannot contact third parties in connection with collection of a prejudgment debt unless authorized by the debtor or a court. 15 U.S.C. § 1692c(b). For private debt collectors, the location information rule provides an exception to the general prohibition in the FDCPA against third-party contacts. The Service would appear to be subject to the narrow confines of the location information rule when it seeks location information from third parties. Otherwise, section 7602 of the Code provides permits the Service to make third-party contacts after notifying the taxpayer that such contacts may be made. I.R.C. § 7602(c)(1).

<sup>2</sup> 



As stated above, the proposal is acceptable provided that the taxpayer asks to participate in the predictive dialer program and acknowledges the risks of disclosure to third parties inherent in the use of this technology. The risk of Service liability for violations of section 6304(b) and the location information rule and section 6103, if a third party hears the pre-recorded message identifying the Service as the caller, is minimal.

The Service may wish to consider



Please call Deborah Grogan at (202) 622-3600 if you have questions regarding this advice.