

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

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date: January 30, 2012

to: Janet Miner, Director
Office of Safeguards

from: Julie C. Schwartz
Senior Counsel
(Procedure & Administration)

subject: Interstate Child Support Access to Federal Tax Information

This is in response to your request for advice on whether the shared access to Federal tax information (FTI) between the Iowa and Nebraska Child Support Enforcement Agencies (CSEA), who share an office and operations, constitutes a violation of I.R.C. § 6103.

Issues

1. Whether two state CSEAs may operate an office where employees of each state have access to the FTI of the other state and each employee works cases regardless of in which state the custodial parent resides.
2. Under what authority, if any, may one state CSEA redisclose FTI to another state CSEA?

Conclusion

1. State employees of one state may not have unrestricted access FTI in the other state's cases.
2. One state CSEA may redisclose FTI to another state CSEA only where the states have a contractual relationship that qualifies under I.R.C. § 6103(I)(6)(B). In such circumstances, the state may redisclose only the three limited items of FTI permitted by I.R.C. § 6103(I)(6)(B).

Facts

During recent on-site reviews, the Office of Safeguards determined that Iowa and Nebraska CSEAs share an office located in Omaha, NE. At that shared office, one employee of the Iowa CSEA and one employee of the Nebraska CSEA work cases

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assigned to either the Iowa or Nebraska CSEA regardless of where the custodial parent resides and which state has jurisdiction over the child support matter. The Iowa employee will work Nebraska child support cases and vice versa. Your office confirmed that employees from both states have access to all child support information, including all FTI, in both the Iowa and Nebraska child support systems. Each employee has been assigned a user id and password to both states' online child support system. No contractual relationship exists between the Iowa and Nebraska CSEAs.

Legal Analysis

Returns and return information (Federal tax information or "FTI") are confidential, except as authorized under the Internal Revenue Code (Code). I.R.C. § 6103(a). Return information is defined, generally, as any information gathered by, collected by, created by, or otherwise in the hands of the Secretary in connection with determining a taxpayer's liability or potential liability under the Code. I.R.C. § 6103(b)(2). Absent such authority in the Code, disclosure is not permitted.

Three subsections authorize disclosure of FTI for child support purposes – I.R.C. §§ 6103(l)(6), (l)(8) and (l)(10). I.R.C. § 6103(l)(6) authorizes the Secretary to, upon written request, disclose specified FTI to "the appropriate" Federal, state, and local CSEAs upon a written request from that agency. I.R.C. § 6103(l)(6)(A). FTI can be disclosed under I.R.C. § 6103(l)(6) only for the purpose of establishing and collecting child support obligations and locating individuals owing such obligations. I.R.C. § 6103(l)(6)(C).

I.R.C. § 6103(l)(8) authorizes the Commissioner of Social Security to, upon written request, disclose specified FTI to employees or officers of Federal, state and local CSEAs for the purpose of establishing and collecting child support obligations and locating individuals owing such obligations.

I.R.C. § 6103(l)(10) authorizes the Secretary to disclose to officers and employees of certain agencies, not just CSEAs, specified FTI for the purpose of collecting a debt owed to that agency via a reduction of a tax overpayment (refund) under I.R.C. § 6402. I.R.C. § 6402(c) authorizes the offset of refunds to satisfy past due child support obligations.

Any Federal agency described in I.R.C. § 6103(l)(10), any agency, body or commission described in I.R.C. §§ 6103(l)(6) or (l)(8) or any other person described in I.R.C. § 6103(l)(10) are charged with safeguarding the FTI disclosed to them under those provisions. I.R.C. § 6103(p)(4). No Federal officer or employee, no officer of any state or any local child support enforcement agency, and no other person who has access to FTI under I.R.C. §§ 6103(l)(6) and (l)(10) shall disclose any FTI obtained under a provision of I.R.C. § 6103.¹

¹ Rev. Rul. 2004-53 clarified that government employees who receive FTI pursuant to disclosures under I.R.C. §§ 6103(c), (k)(6), or (e), other than § 6103(e)(1)(D)(iii)

One common theme under all provisions authorizing disclosure of FTI for purposes of collecting child support obligations is the notion that the disclosure comes from the Federal government. See I.R.C. §§ 6103(l)(6)(A), (l)(10)(A) (“The Secretary may, upon written request, disclose”); I.R.C. § 6103(l)(8)(A) (“Upon written request, the Commissioner of Social Security shall disclose”). The statute does not contemplate state to state redisclosure and Congress did not intend CSEAs to be able to redisclose FTI to third parties. Staff of the Joint Committee on Taxation, 94th Cong., 2d Sess., General Explanation of the Tax Reform Act of 1976, 337 (Comm. Print 1976). The only provision that allows a CSEA to disclose FTI is I.R.C. § 6103(l)(6)(B) which authorizes the redisclosure of only three items of FTI² to agents of the CSEA under contract with the CSEA for the purpose of establishing and collecting child support.

Iowa and Nebraska, by allowing mutual access to everything in their child support systems are effectively redisclosing to each other the FTI received under these various disclosure provisions. As discussed above, I.R.C. § 6103 does not authorize a state CSEA to disclose FTI to another state CSEA. The plain language of the statute only authorizes disclosure of FTI from the Federal government to the state establishing or collecting the child support obligation. See I.R.C. §§ 6103(l)(6), (8), (10).

Also, as discussed above, I.R.C. § 6103(l)(6)(B) authorizes CSEAs to redisclose limited items of FTI to agents under contract with the CSEA for the purpose of establishing and collecting child support. However, Iowa and Nebraska CSEAs are not limiting the redisclosure of FTI to the individual’s address, social security number, and amount of overpayment offset as authorized by I.R.C. § 6103(l)(6)(B). More importantly, there is no contract between Iowa and Nebraska for child support collection, rendering the redisclosure provision of I.R.C. § 6103(l)(6)(B) inapplicable.

If you have any questions, or if we can be of any further assistance, please do not hesitate to reach us at (202) 622-7950.

(relating to certain shareholders), are not subject to the disclosure restrictions of section 6103(a) with regard to the FTI received. These subsections are not at issue in the matter at hand.

² The three items of FTI which may be redisclosed to agents under contract with the CSEA for the purpose of establishing and collecting child support are the taxpayer’s address, social security number, and the amount of refund offset to satisfy child support obligations. I.R.C. § 6103(l)(6)(B).