



WHISTLEBLOWER OFFICE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

April 12, 2017

MEMORANDUM FOR: Commissioner, Large Business and International
Commissioner, Small Business/Self-Employed
Commissioner, Tax Exempt and Government Entities
Chief, Criminal Investigation

FROM: Lee D. Martin
Director, Whistleblower Office

SUBJECT: 6103(n) Contracts

The IRS Whistleblower Program, which was revised and expanded by Congress in 2006, is an important tax administration tool. Since that time, thousands of whistleblowers have reported billions of dollars in suspected tax noncompliance, resulting in a wide range of audits and investigations. On countless occasions whistleblowers and whistleblower information have proven to be important tools in our compliance efforts.

One area we have focused on since the inception of the Whistleblower Program is maximizing the information and knowledge to be learned from whistleblowers with respect to taxpayer noncompliance. Thus, earlier memoranda have emphasized the importance of a timely debriefing of the whistleblower to better leverage the insights and information that may help the Service understand complex issues and hidden relationships. A debriefing interview allows the whistleblower an opportunity to explain and clarify documents or information submitted with a Form 211, Application for Original Information. Further, a timely debriefing can identify connections between the taxpayer and others who may have had a significant role in the alleged tax noncompliance.

In connection with our continuous efforts to improve the Whistleblower Program, we have reviewed operating procedures with respect to our communications with whistleblowers. While frequently it is in the best interests of tax administration to obtain all information from a whistleblower as part of the Form 211 and initial debriefing, there may be instances when ongoing interaction with a whistleblower during an examination can assist in the timely and correct resolution of issues. The legislative history

accompanying the expansion of section 7623 indicates that to the extent disclosure of return information is required for purposes of such assistance the disclosure should be pursuant to a section 6103(n) contract for services related to tax administration.

Under section 6103(a), returns and return information are confidential unless the Code authorizes disclosure. Section 6103(n) is the authority by which returns and return information may be shared pursuant to a tax administration contract. Regulations published under section 6103(n) describe the circumstances in which the Service may disclose information to a whistleblower and, if applicable, the legal representative of the whistleblower, in connection with written contracts for services.

These regulations provide that it is in the Commissioner's discretion to determine whether to enter into a written contract with the whistleblower and, if applicable, the legal representative of the whistleblower. The Service cannot enter into a contract solely for the purpose of sharing return information with a whistleblower, the purpose of entering the contract must be for services for tax administration purposes.

The following outlines the principles and steps to be followed when considering a section 6103(n) contract with a whistleblower. Additional guidance can be found at Treasury Regulation §301.6103(n)-2 and should be consulted for specific guidance and definitions.

- A debriefing interview should be conducted first by the SME prior to consideration of a contract. If necessary, a secondary debriefing should be completed to clarify any submitted information and the knowledge of the whistleblower prior to entering a contract. The secondary debriefing could be done after the claim is in the field so the field could have input in the questions asked.
- Exam team(s) should evaluate whether the claim is one in which the disclosure of return information to the whistleblower and ongoing interaction with the whistleblower would benefit tax administration and promote the effective resolution of the issues. In coordination with Division Counsel, exam teams should also consider evidentiary risks of ongoing interaction with the whistleblower, for instance, entering into a 6103(n) contract with a whistleblower currently employed by the entity being examined could be viewed as engaging the whistleblower as an agent of the Service. Also, entering into a 6103(n) contract with a whistleblower that has access to privileged and confidential information could cause concerns under the exclusionary rule and the attorney-client or other privileges. Exam team(s) considering a 6103(n) contract should ensure the premises of the whistleblower are consistent with IRS requirements set forth in Publication 4812, Contractor Security Controls.

- Some examples of factors where, if present, a 6103(n) contract should be considered are:
 - Issues involving transactions not recorded on the books and records of the taxpayer;
 - Issues where the whistleblower has substantial industry expertise. Particularly when there are complex transactions, or emerging compliance issues, it may be beneficial to have a whistleblower assist in evaluating the taxpayer's responses to IDRs; and
 - Issues involving substantial factual development where the whistleblower's knowledge could be beneficial.
- The decision to use a 6103(n) contract to develop an examination or investigation with the assistance of a whistleblower ultimately rests with the Business Operating Division.
- When an Exam team believes a contract is appropriate, a request should be initiated through the Operating Division SME. Approval is required by the executive responsible for the team and final approval by the Business Operating Division at no lower than the Deputy Commissioner level. A template copy of a section 6103(n) contract is attached to this memorandum.
- If approved, the SME will contact the whistleblower and whistleblower's representative to confirm that the whistleblower wants to enter into and execute on such contract. All 6103(n) contracts must be coordinated with Division Counsel, General Legal Services (GLS) and Procurement.
- The SME will provide the Whistleblower Office notice of any 6103(n) contract and send a copy of the contract to wo@irs.gov within ten days. These contracts will be tracked by the Whistleblower Office. After receiving notice, the Whistleblower Office will provide notification of the contract to the Deputy Commissioner's (Services and Enforcement) Office. However, questions regarding the contract terms/conditions should be coordinated with local Field Counsel as necessary.
- Employees considering such contracts should be aware of the limitations associated with sharing information pursuant to 6103(n) contracts. A 6103(n) contract does not allow the IRS to share all information with a whistleblower – only such information the IRS deems necessary in connection with the proper or reasonable performance

of the contract. If the contract can be performed by sharing only parts or portions of the returns or return information, then only those parts or portions may be disclosed.

- Further, as a condition of the contract, a whistleblower must agree that any return information disclosed will not be disclosed or otherwise used by the whistleblower except as expressly authorized by the IRS in writing.
- Whistleblowers must be made aware that he or she becomes subject to civil and criminal penalties for the unauthorized inspection or disclosure of return information as provided in sections 7431, 7213 and 7213A.
- The regulations governing 6103(n) contracts also provide that whistleblowers and their legal representatives who receive return information pursuant to a 6103(n) contract must comply with all applicable conditions and requirements that the IRS may prescribe for purposes of protecting the confidentiality of the return information and preventing unauthorized disclosures and inspections of the return information. These requirements, which include standards for computer security, physical security of return information, and methods of destruction of return information, are set forth in Publication 4812. IT Security and Physical Security can be contacted via email at Pub4812@irs.gov to assist in the safeguard review and provide their respective expertise.
- As part of a 6103(n) contract, whistleblowers and their legal representatives who receive return information must agree to permit an inspection of their premises by the IRS relative to the maintenance of the return information disclosed to them under the contract. If the services contemplated by the 6103(n) contract can be performed without the physical release of returns or return information to the whistleblower or the return or return information can be shared with the whistleblower in an IRS office, the IRS should retain control of the documents.