

CC-2020-008

September 8, 2020

Examples Relating to Disclosure of
Third Party Tax Information in
Syndicated Conservation Easement

Subject: Matters

Cancel Date: Until Further Notice

I. PURPOSE

This Notice supplements Chief Counsel Notices CC-2006-003 and CC-2006-006, and provides additional examples in Q&A format.

II. DISCUSSION

Question 1. For a particular taxable year, a partnership engaged in a listed syndicated conservation easement (SCE) transaction and claimed a charitable deduction on its return. The charitable deduction claimed on the partnership return was supported by an appraisal prepared by Appraiser. Internal Revenue Service (IRS) examination determined that the appraisal substantially overvalued the property for which the charitable contribution was claimed. The IRS subsequently opens an examination of Appraiser under section 6695A. Pursuant to section 6103, can return information of the partnership be disclosed to Appraiser in a penalty examination of Appraiser under section 6695A?

Answer 1. Yes. For purposes of section 6103(h)(4), administrative tax proceedings include every process within the IRS designed to resolve taxpayer issues arising under the Internal Revenue Code, including the examination of an appraiser for a civil penalty. Third party return information in such circumstances could involve information from examination files of investors who claimed a deduction on their tax returns based on an appraisal done by Appraiser. Pursuant to section 6103(h)(4)(B), information regarding the deduction claimed on the investors' returns that directly affects the resolution of the examination of the appraiser with regard to a potential section 6695A penalty (i.e., whether the appraisal resulted in a substantial valuation misstatement or gross valuation misstatement) may be disclosed to the subject of the penalty examination as part of that examination.

Question 2. In a Tax Court case, the Government asserts that SCE A LLC, a partnership subject to TEFRA, committed civil tax fraud, based on the conduct of its managing member TMP A LLC. Promoter organized TMP A LLC and is a partner in TMP A LLC. Promoter organized ten other LLCs to act as managing members and TMPs in ten other SCE LLCs, which are also partnerships subject to TEFRA. Promoter is a direct or indirect partner in all ten of the other SCE LLCs. Each of those ten other SCE LLCs engaged in a listed SCE transaction

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and were examined by the IRS. In each case, the land at issue was purchased in an unencumbered state in an arm's length transaction (i.e., via the investors' acquisition of SCE LLC) followed shortly thereafter by a conservation easement appraisal concluding that the unencumbered value was multiple times higher than the value established in that prior arm's length transaction. Each TMP LLC retained the same appraiser to provide the appraisal in each of the ten other SCE transactions. Can the IRS introduce return information from the ten SCE LLCs regarding their SCE transactions in the Tax Court case?

Answer 2. Yes. An intent to mislead that may be inferred from a pattern of conduct is an indicator of fraud. As stated above, Promoter is a direct or indirect partner in all of the SCE LLCs through the ten different TMP LLCs. Under TEFRA, each direct and indirect partner in a TEFRA partnership is a party to any judicial or administrative proceeding under TEFRA. See section 6226(c); Chef's Choice Produce, Ltd. v. Commissioner, 95 T.C. 388, 395 (1990). Therefore, all return information generated in the examinations of the ten other SCE LLCs is the return information of those direct and indirect partners, which includes Promoter. Section 6103(h)(4)(A) authorizes the IRS to disclose in any administrative or judicial tax administration proceeding the return information of anyone who is a party to the proceeding. Promoter is a party to the proceeding involving SCE A LLC because Promoter is a direct or indirect partner through TMP A LLC. Therefore, Promoter's return information, including the return information of Promoter from the examinations of the ten other SCE LLCs, may be disclosed in this proceeding.

Question 3. Pursuant to section 6103, can third party returns or return information be disclosed to the IRS Office of Professional Responsibility (OPR) as part of a referral or investigation of a tax return preparer or appraiser?

Answer 3. Yes. Section 6103(l)(4)(B) states that "The Secretary may disclose returns and return information to officers and employees of the Department of the Treasury for use in [an administrative action or proceeding under section 330 of title 31, United States Code], or in preparation for such action or proceeding, to the extent necessary to advance or protect the interests of the United States." The OPR is the office responsible for interpreting and applying the regulations governing practice before the IRS (i.e., Treasury Department Circular 230, issued under 31 U.S.C. 330). The OPR has exclusive responsibility for practitioner conduct and discipline, including instituting disciplinary proceedings and pursuing sanctions. Circular 230, section 10.1(a)(1). OPR personnel have access to returns and return information of subjects of referrals or investigations and of other taxpayers, such as clients of the preparer or appraiser, whose returns or return information are relevant to the proper administration of these responsibilities. OPR personnel have access to returns and return information under section 6103(l)(4)(B) as part of their title 31 duties.

Question 4. Pursuant to section 6103, can third party returns or return information be disclosed to the IRS Director and staff of the Office of Fraud Enforcement (OFE) or the IRS Promoter Investigations Coordinator, as part of an examination or investigation of another person, such as a partnership, promoter, tax return preparer, or appraiser?

Answer 4. Yes. Section 6103(h)(1) provides that "returns and return information shall, without written request, be open to inspection by or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure for tax administration purposes." The IRS Director of the OFE reports to the Deputy Commissioner for Services and Enforcement (DCSE) and provides executive leadership and direction in the design, development, and delivery of major activities within the OFE in support of the IRS's

agency-wide efforts to detect and deter fraud. If, as part of the Director's oversight of Fraud Enforcement activities, the Director has a need to know about an investigation of a partnership, promoter, return preparer, or appraiser, the Director may be provided returns and return information of the partnership, promoter, return preparer, or appraiser that is the subject of the investigation and any third party return information that may be relevant to such investigation, which he or she can then disclose as needed to appropriate staff of the OFE. The Director and staff of the OFE have access to returns and return information under section 6103(h)(1) as part of their tax administration duties. Likewise, the IRS Promoter Investigations Coordinator reports to the DCSE and is responsible for coordinating promoter investigation activity agency wide. The Promoter Investigations Coordinator works with the Business Operating Divisions (BODs), OPR, Criminal Investigation (CI), the Office of Chief Counsel, and other functions to ensure coordination of on-going investigations, develop new approaches to identify promoters of abusive tax arrangements, and assist the BODs in developing and resolving cases both individually and with a view toward strategic promoter enforcement. To the extent the Promoter Investigations Coordinator has a need to know about an investigation of a partnership, promoter, return preparer, or appraiser, he or she may be provided returns and return information of the partnership, promoter, return preparer, or appraiser that is the subject of the investigation and any third party returns or return information that may be relevant to such investigation. The Promoter Investigations Coordinator has access to returns and return information under section 6103(h)(1) as part of his or her tax administration duties.

Question 5. Promoter is a promoter of SCE transactions described in Notice 2017-10, 2017-4 I.R.B. 544. Promoter is under both criminal investigation by CI with respect to its SCE and under a civil investigation by Exam under sections 6700 and 6701. Partnership Z and several other investor partnerships are under civil examination for their investments in SCE transactions promoted by the Promoter. All partnerships are TEFRA partnerships. Pursuant to section 6103, can the revenue agent working the partnership income tax examinations access the Promoter's tax information obtained in the criminal investigation and the promoter investigation of Promoter to determine whether the partnerships properly claimed a charitable contribution for a conservation easement? Can the revenue agent working the Partnership Z income tax examination disclose the Promoter's tax information to Partnership Z as part of conducting the examination of Partnership Z?

Answer 5. Yes. Everything obtained, received, or generated by either CI or Exam with respect to determining Promoter's liability under title 26, including penalties under sections 6700 and 6701, is Promoter's return information. Section 6103(h)(1) authorizes disclosure of returns and return information to IRS employees necessary for the employees to perform their official tax administration duties. Thus, disclosure of Promoter's return information to the revenue agent examining the partnerships to assist with the partnership return audits is authorized.

If Promoter is a partner in TEFRA Partnership Z, then Promoter is a party to the Partnership Z audit and Promoter's return information, including return information relating to investments in other SCEs as a partner in other TEFRA partnerships, may be disclosed within the Partnership Z exam proceeding pursuant to section 6103(h)(4)(A).

Any information secured using Grand Jury process may not be accessed or disclosed except as authorized under Rule 6(e) of the Federal Rules of Criminal Procedure.

