

Section 6103.—Confidentiality and Disclosure of Returns and Return Information

26 CFR 301.6103: Confidentiality of returns.

Clarification of scope of section 6103(a). This ruling clarifies the fact that government employees who receive returns or return information pursuant to disclosures under section 6103(c), (k)(6), or (e) of the Code, other than section 6103(e)(1)(D)(iii) (relating to certain shareholders), are not subject to the disclosure restrictions of section 6103(a) with regard to the returns or return information received.

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ISSUE

Whether Federal, State and local government officers or employees (“government employees”) are subject to the disclosure restrictions of Internal Revenue Code section 6103(a) with regard to returns or return information received as a result of disclosures under:

- section 6103(c) with the consent of the taxpayer (taxpayer consent exception)

- section 6103(e) as a person having a material interest, but not under section 6103(e)(1)(D)(iii) relating to disclosures to certain shareholders (material interest exception), or
- section 6103(k)(6) for investigative purposes (investigative disclosure exception).

FACTS

Situation 1. A requests the assistance of his friend B with respect to a tax matter. A also requests that the Internal Revenue Service provide A’s returns and return information to B. B subsequently discloses to a third party returns and return information obtained as a result of A’s request that the Service provide the returns and return information.

Situation 2. Same as situation 1, above, except that B happens to be an employee in the office of a State agency.

Situation 3. C is a lawyer employed by a law firm. The firm has a policy of taking disciplinary action against any of its attorneys who do not properly fulfill their tax obligations. The Service serves a notice of levy with respect to C’s tax liability on the payroll department of the firm. A payroll department employee (D) processes the notice of levy and informs the firm’s managing partners of C’s tax delinquency to enable the firm to take appropriate action consistent with firm policy.

Situation 4. E is an employee of a State agency. The agency has a policy of taking disciplinary action against employees who do not properly fulfill their tax obligations. The Service serves a notice of levy with respect to E’s tax liability on the payroll department of the agency. A payroll depart-

ment employee (F) processes the notice of levy and informs the agency’s labor relations office of E’s tax delinquency to enable the agency to take appropriate action consistent with its policy.

Situation 5. Same as Situation 4, above, except that E and F are employees of a Federal agency.

Situation 6. G is the unemployed father of 5-year-old film star H. H’s mother signs H’s return as parent for a minor child and dies shortly thereafter. G is the guardian of H’s estate under applicable State law. G receives notice that H’s return is under examination. G does not have a copy of H’s return. To assist in the examination, G obtains the return and return information from the Service. When subsequently asked by a news reporter how much income H reported on the return, G replies “three million dollars.”

Situation 7. Same as Situation 6, above, except that G happens to be an employee of a Federal agency.

LAW

Generally, section 6103 provides that returns and return information (as defined in section 6103(b)(2)) are confidential and may not be disclosed except as expressly authorized by the Code. Specifically, except as authorized by the Code, section 6103(a) prohibits the disclosure by officers or employees of the United States, of any State, or of specified local government agencies, or by certain other specified persons, of returns and return information obtained in connection with service as such an officer or employee or otherwise. *See Girard v. Bentsen*, 94–2 U.S.T.C. ¶ 50,625 (N.D. Cal. 1994) (“or otherwise” modifies “in connection with his service”, allow-

ing the statute to cover those who are neither “officers” nor “employees”, namely certain other persons specified in section 6103(a)).

There are, however, exceptions to the general rule of confidentiality. First, the taxpayer consent exception permits the disclosure of returns and return information to a designee of a taxpayer, pursuant to the taxpayer’s request or consent. To be valid, a consent must satisfy the requirements of section 6103(c) and § 301.6103(c)–1(a) of the Procedure and Administration Regulations. Second, the material interest exception permits the disclosure of returns and return information to specific persons with a *material interest* in the information. Third, the investigative disclosure exception, in conjunction with § 301.6103(k)(6)–1, authorizes the disclosure of return information (but not returns) to the extent that disclosure is necessary in obtaining information that is not otherwise reasonably available with respect to the correct determination of tax, liability for tax, or the amount to be collected, or with respect to the enforcement of any other provision of the Code.

When the general rule of confidentiality applies, section 6103(p) imposes certain accountings and safeguards. Section 6103(p)(3) generally requires the Service to maintain a permanent system of standardized records or accountings of all requests for, and disclosures of, returns and return information under particular provisions of section 6103. Section 6103(p)(4) generally requires recipients of returns or return information under particular provisions of section 6103 to keep records of requests and disclosures, to maintain secure storage, to establish restricted access, to report to the Service on confidentiality procedures, to return or destroy the returns or return information upon completion of the prescribed use, and to provide other necessary or appropriate safeguards. These accounting and safeguard requirements do not apply to returns or return information

disclosed under the taxpayer consent exception, the material interest exception, or the investigative disclosure exception.

ANALYSIS

Section 6103(c), (e), and (k)(6) contains no limitation or restriction on the redisclosure of returns or return information received pursuant to the taxpayer consent, material interest and investigative disclosure exceptions. Therefore, in Situations 1, 3, and 6 there are no statutory or regulatory restrictions on the redisclosures made by *B*, *D*, or *G*.

In Situations 2, 4, 5, and 7, however, the prohibition in section 6103(a) on redisclosure by government employees could be read to prohibit redisclosures by *B*, *F*, and *G* because they happen to be government employees. This reading would create a disparity in the application of section 6103(a) based on where the person receiving the disclosure of returns or return information happens to be employed.

By its terms, section 6103(a) does not regulate or control the use of returns and return information received under the taxpayer consent, material interest and investigative disclosure exceptions. Moreover, the requirements for accountings and safeguards that typically apply where redisclosure is limited do not apply to these exceptions.

There is no evidence that Congress intended disparate treatment of individuals receiving disclosures of returns or return information pursuant to these exceptions merely because they happen to be government employees. On the contrary, there are compelling reasons for those government employees to be subject to the same rules as other recipients. For example, a private sector employer may take disciplinary action against employees who do not properly fulfill their tax obligations. If redisclosure is not permitted because the employer happens to be the Federal government, the Federal employees who failed to

fulfill their tax obligations would be in a significantly better position than their private sector counterparts. This inappropriate result only occurs if section 6103(a) is read to apply to individuals merely because they happen to be government employees.

Accordingly, persons are not barred because of their status as government employees from redisclosing returns and return information received pursuant to section 6103(c), (e), and (k)(6).

HOLDING

Government employees who receive returns or return information pursuant to disclosures under section 6103(c), (k)(6) or (e), other than section 6103(e)(1)(D)(iii) (relating to certain shareholders), are not subject to the disclosure restrictions of section 6103(a) with regard to the returns or return information received.

DRAFTING INFORMATION

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