

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8935]

RIN 1545-AY59

Disclosure of Returns and Return Information to Designee of Taxpayer

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulation.

SUMMARY: This document contains a temporary regulation relating to the disclosure of returns and return information to a designee of the taxpayer. The temporary regulation provides guidance to IRS employees responsible for disclosing returns and return information and to taxpayers who wish to designate a person or persons to whom returns and return information may be disclosed. The portion of this temporary regulation pertaining to nonwritten requests or consents reflects changes to the law made by the Taxpayer Bill of Rights II, Public Law 104-168, section 1207, 110 Stat. 1473. With respect to written requests or consents, the temporary regulation amends the existing regulation to provide further guidance in certain limited situations and to clarify existing procedures. The text of the temporary regulation also serves as the text of the proposed regulation set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Effective Date: This regulation is effective January 11, 2001.

Applicability Date: For dates of applicability, see §301.6103(c)-1T(g).

FOR FURTHER INFORMATION CONTACT: Joseph Conley, (202) 622-4580 (not a toll-free number).

## **Background**

Under section 6103(a), returns and return information are confidential unless disclosure is otherwise authorized by the Internal Revenue Code. Section 6103(c), as amended by section 1207 of the Taxpayer Bill of Rights II, Public Law 104-168 (110 Stat. 1452), authorizes the IRS to disclose returns and return information to such person or persons as the taxpayer may designate in a request for or consent to disclosure, or to any other person at the taxpayer's request to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. Disclosure is permitted subject to such requirements and conditions as may be prescribed by regulations. With the amendment in 1996, Congress eliminated the longstanding requirement that disclosures to designees of the taxpayer must be pursuant to the written request or consent of the taxpayer. The purpose of this amendment to section 6103(c) was to assist the IRS in developing a paperless tax administration system that relies on, among other things, electronic communication. H.R. Rep. No. 104-506, at 49 (1996), reprinted in 1996 U.S.C.A.N. 1143, 1172. This document contains a temporary regulation that authorizes the disclosure of tax returns and return information to a designee of the taxpayer pursuant to a nonwritten request or consent when the taxpayer seeks the assistance of a third party in resolving a tax matter.

This document also amends the existing regulation to clarify the rules applicable to written requests or consents to disclosure. On October 3, 1980, a final regulation (TD 7723) relating to the disclosure of tax returns and return information to a person designated by the taxpayer in a written request or consent were published in the **Federal Register** (45 FR 65564). Since the publication of this final regulation, the IRS and the Treasury Department have determined that further guidance on written consent requirements is necessary.

## **Explanation of Provisions**

### Nonwritten consents

Under the existing regulation, if a taxpayer wishes a third party to assist in the resolution of a tax matter between the taxpayer and the IRS, and the third party is not otherwise authorized to practice before the Internal Revenue Service, a written section 6103(c) request or consent must be executed by the taxpayer.

The temporary regulation authorizes the IRS to accept nonwritten requests or consents authorizing the disclosure of tax returns and return information to third parties assisting taxpayers in resolving tax related matters. Thus, for example, the temporary regulation clarifies that the taxpayer can orally consent to disclosures by the IRS to a person accompanying the taxpayer to meetings or interviews with the IRS, or participating in a telephone conversation with the taxpayer. When the taxpayer is present, either physically or on the telephone, the taxpayer will be able to knowingly and voluntarily consent to the disclosure without the need for further expressing that intent in writing.

Thus, the use of nonwritten consents will enable the IRS to improve its customer service in that, with the assistance of their designees, taxpayers will be able to resolve tax problems in a more timely fashion, without the need for burdensome paperwork. Additionally, nonwritten requests or consents will assist the IRS in moving to a paperless environment by further facilitating the use of electronic communication systems.

As with written requests or consents, before disclosing tax returns and return information to a third party pursuant to a taxpayer's nonwritten request or consent, the IRS will take reasonable steps to confirm the identity of the taxpayer and the designee. For example, IRS personnel, pursuant to existing procedures, verify that they are speaking to the taxpayer prior to disclosing

return information to that taxpayer.

Nonwritten requests for or consents to disclosure do not take the place of a power of attorney authorizing a third party to represent the taxpayer before the IRS. Practice before the IRS remains governed by the regulations at 26 CFR 601.501 *et seq.* and Treasury Department Circular 230 (31 CFR part 10).

#### Acknowledgments of, and Notices Regarding, Electronically Filed Returns

The temporary regulation also provides parameters for the development of consents for the electronic filing program. The IRS currently provides an acknowledgment to an electronic return originator (ERO) to indicate that it has received information from the ERO in an acceptable form, and that the taxpayer identity information, as defined by section 6103(b)(6), matches IRS records. Alternatively, the IRS may notify the ERO that it has rejected the ERO's electronic submission because the taxpayer identity information does not match IRS records or, for example, because the taxpayer is not responsible for the tax payment. The taxpayer may also have authorized an electronic debit to pay a tax debt, and the taxpayer may want the IRS to send an acknowledgment to the ERO that the account has been properly debited, or to disclose information to the taxpayer's financial institution to resolve a problem with the electronic debit transaction. To ensure that the IRS is authorized to disclose tax returns and return information to third parties in an electronic system, the IRS must receive a valid request for or consent to disclosure pursuant to section 6103(c). The current system requires the taxpayer to execute a written consent on Form 8453 to permit these disclosures.

The temporary regulation authorizes an electronic consent to permit the disclosures of the return information described above and such other information as the IRS determines is necessary to the operation of the electronic filing program. Such consent must inform the taxpayer of the return information that

will be transmitted to the ERO and other third parties as a result of the electronic filing of the taxpayer's return or other information.

#### Combined FedState Filing Programs

The temporary regulation also reduces the burden on taxpayers in combined Federal-State (FedState) return filing programs. If the taxpayer files a single combined Federal and State tax return with the IRS, the information contained in such FedState return that is gathered with respect to a taxpayer's liability under both Federal and State law, including the taxpayer's name, taxpayer identification number, and adjusted gross income, is return information protected by section 6103. If the IRS discloses such return information to the State in satisfaction of the taxpayer's State filing obligations, the information can be used by the State only for State tax administration purposes under section 6103(d). On the other hand, if a State tax return is filed directly with the State, information on the State return is not subject to the restrictions of section 6103(d) and can be used for appropriate non-tax purposes permitted under State law.

In the current electronic FedState filing program, to avoid these section 6103 restrictions, return preparers make two separate electronic transmissions to the IRS--one for the Federal return and one for the State return. The common items of data are sent twice, once in the Federal "packet" and once in the State "packet." The items of information in the State packet are not restricted by section 6103 because they have not been filed with the IRS with regard to Federal tax liability.

Alternatively, in the FedState telefile program, a consent has been developed that permits the Internal Revenue Service to disclose common data items to the State tax agency. The information received by the State pursuant to the taxpayer's request or consent is treated, for purposes of section 6103, as if

the State had received the information directly from the taxpayer, and therefore the information can be used for appropriate non-tax purposes under State law.

Under the existing regulation, consents for FedState filing programs must comply with current §301.6103(c)-1(a). The existing regulation requires, among other things, a separate written consent document. The IRS and the Treasury Department believe a taxpayer's voluntary participation in an optional FedState filing program that provides the taxpayer with notice of the disclosures to be made to the State as part of the program constitutes a sufficient knowing and voluntary consent to permit disclosures to States in this situation. To reduce the burden on taxpayers and improve the efficiency of tax administration, the temporary regulation provides that by filing a combined FedState return, the taxpayer consents to the disclosure of the common data items to the State tax agency, and that the information will be treated as if it had been received directly by the State from the taxpayer. As noted above, the temporary regulation requires a notice of the disclosures that are to be made in the FedState filing program so that taxpayers may choose to participate in such programs with knowledge of such disclosures.

#### Other Changes

The temporary regulation also provides needed clarification in a number of areas not specifically addressed under the existing regulation. The temporary regulation provides rules for receipt of section 6103(c) consents by entities other than the IRS. Certain Treasury Department agencies, such as the Financial Management Service, perform Federal tax administration functions and receive tax information from the IRS. In addition, IRS contractors receive tax information to provide tax administration services pursuant to section 6103(n). The existing regulation provides only for receipt of requests for or consents to disclosure by the IRS. The temporary regulation permits Federal government agencies

performing Federal tax administration functions to receive section 6103(c) consents and disclose returns and return information in the possession of such agency to the taxpayer's designee. For example, the temporary regulation clarifies that the Financial Management Service can disclose return information related to the offset of the taxpayer's tax refund to the designee of the taxpayer, such as in response to a Congressional inquiry. The temporary regulation also clarifies that receipt of a request or consent by an agent or contractor of the IRS is the same as receipt by the IRS. However, an agent or contractor of the IRS may make disclosures with the taxpayer's consent only if such disclosures are specifically authorized in the contract or otherwise specifically authorized in writing by the IRS. §301.6103(n)-1(a).

The temporary regulation defines the term separate written document to conform to current IRS practice. The temporary regulation also specifies the Secretary of the Treasury's authority to provide for methods of signing requests for or consents to disclosure. See §301.6061-1(b).

The temporary regulation clarifies the requirements for identifying the designee to whom disclosure is to be made when the disclosure occurs in a public forum, such as a courtroom, a congressional hearing, or in the media. In these circumstances, it may not be possible to designate specifically every person to whom disclosure is to be made. While identifying individual designees in a public forum may not be practical, a taxpayer can knowingly and voluntarily authorize disclosure in a public forum by specifically indicating the circumstances surrounding the public disclosure, including, for example, a description of the place, date, and time. The temporary regulation also incorporates the longstanding IRS practice that entities, such as corporations and State and local government agencies, are appropriate designees.

The temporary regulation also affirms longstanding practices of the IRS

regarding the authority to execute consents. Generally, persons that may receive returns pursuant to section 6103(e), paragraphs (1) through (5), may execute disclosure consents under section 6103(c). However, a one percent shareholder of a corporation, who may receive corporate returns pursuant to section 6103(e)(1)(D)(iii), may not execute disclosure consents because the right of inspection is personal to the shareholder, and such shareholder is not permitted to redisclose such information. See Internal Revenue Code §§6103(a)(3), 7213(a)(5). The temporary regulation also provides that if the taxpayer is an entity, generally a person with authority under State law to bind the entity may execute a section 6103(c) consent. Finally, the temporary regulation provides that the holder of a taxpayer's power of attorney may not execute a disclosure consent unless that authority is specifically granted in the power.

### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. This temporary regulation provides taxpayers with enhanced procedures to resolve problems with the IRS. For this reason, notice and public procedure and a delayed effective date would be contrary to the public interest pursuant to 5 U.S.C. 553(b)(B) and 553(d), respectively. Because this notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### **Drafting Information**

The principal author of this regulation is Jamie Bernstein, Office of the

Associate Chief Counsel, Procedure and Administration (Disclosure & Privacy Law Division). However, other personnel from the IRS and Treasury Department participated in its development.

### **List of Subjects in 26 CFR Part 301**

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

### **Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 301 is amended as follows:

#### **PART 301--PROCEDURE AND ADMINISTRATION**

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 301.6103(c)-1T also issued under 26 U.S.C. 6103(c). \* \* \*

#### **§301.6103(c)-1 [Removed]**

Par. 2. Section 301.6103(c)-1 is removed.

Par. 3. Section 301.6103(c)-1T is added to read as follows:

§301.6103(c)-1T Disclosure of returns and return information to designee of taxpayer.

(a) Overview. Subject to such requirements and conditions as the Secretary of the Treasury may prescribe by regulation, section 6103(c) of the Internal Revenue Code authorizes the Internal Revenue Service to disclose a taxpayer's return or return information to such person or persons as the taxpayer may designate in a request for or consent to such disclosure, or to any other person at the taxpayer's request to the extent necessary to comply with the taxpayer's request to such other person for information or assistance. This regulation contains the requirements that must be met before, and the conditions under which, the Internal Revenue Service may make such disclosures.

Paragraph (b) of this section provides the requirements that are generally applicable to designate a third party to receive the taxpayer's returns and return information. Paragraph (c) of this section provides requirements under which the Internal Revenue Service may disclose information in connection with a taxpayer's written or nonwritten request for a third party to provide information or assistance with regard to a tax matter, for example, a Congressional inquiry. Paragraph (d) of this section provides the parameters for disclosure consents connected with electronic return filing programs and combined Federal State filing. Finally, paragraph (e) provides definitions and general rules related to requests for or consents to disclosure.

(b) Disclosure of returns and return information to person or persons designated in a written request or consent--(1) General requirements. Pursuant to section 6103(c) of the Internal Revenue Code, the Internal Revenue Service (or an agent or contractor of the Internal Revenue Service) may disclose a taxpayer's return or return information to such person or persons as the taxpayer may designate in a request for or consent to such disclosure. A request for or consent to disclosure under this paragraph (b) must be in the form of a separate written document pertaining solely to the authorized disclosure. (For the meaning of separate written document, see paragraph (e)(1) of this section.) The separate written document must be signed (see paragraph (e)(2) of this section) and dated by the taxpayer who filed the return or to whom the return information relates. The taxpayer must also indicate in the written document--

(i) The taxpayer's taxpayer identity information described in section 6103(b)(6);

(ii) The identity of the person or persons to whom the disclosure is to be made;

(iii) The type of return (or specified portion of the return) or return

information (and the particular data) that is to be disclosed; and

(iv) The taxable year or years covered by the return or return information.

(2) Requirement that request or consent be received within sixty days of when signed and dated. The disclosure of a return or return information authorized by a written request for or written consent to the disclosure shall not be made unless the request or consent is received by the Internal Revenue Service (or an agent or contractor of the Internal Revenue Service) within 60 days following the date upon which the request or consent was signed and dated by the taxpayer.

(c) Disclosure of returns and return information to designee of taxpayer to comply with a taxpayer's request for information or assistance. Where a taxpayer makes a written or nonwritten request, directly to another person or to the Internal Revenue Service, that such other person (for example, a member of Congress, friend, or relative of the taxpayer) provide information or assistance relating to the taxpayer's return or to a transaction or other contact between the taxpayer and the Internal Revenue Service, the Internal Revenue Service (or an agent or contractor of the Internal Revenue Service or a Federal government agency performing a Federal tax administration function) may disclose returns or return information to such other person under the circumstances set forth in paragraphs (c) (1) through- (3) of this section.

(1) Written request for information or assistance. (i) The taxpayer's request for information or assistance may be in the form of a letter or other written document, which must be signed (see paragraph (e)(2) of this section) and dated by the taxpayer. The taxpayer must also indicate in the written request--

(A) The taxpayer's taxpayer identity information described in section 6103(b)(6);

(B) The identity of the person or persons to whom disclosure is to be made; and

(C) Sufficient facts underlying the request for information or assistance to enable the Internal Revenue Service to determine the nature and extent of the information or assistance requested and the returns or return information to be disclosed in order to comply with the taxpayer's request.

(ii) A person who receives a copy of a taxpayer's written request for information or assistance but who is not the addressee of the request, such as a member of Congress who is provided with a courtesy copy of a taxpayer's letter to another member of Congress or to the Internal Revenue Service, cannot receive returns or return information under paragraph (c)(1) of this section.

(2) Nonwritten request or consent. (i) A request for information or assistance may also be nonwritten. Disclosure of returns and return information to a designee pursuant to a taxpayer's nonwritten request will be made only after the Internal Revenue Service has--

(A) Obtained from the taxpayer sufficient facts underlying the request for information or assistance to enable the Internal Revenue Service to determine the nature and extent of the information or assistance requested and the return or return information to be disclosed in order to comply with the taxpayer's request;

(B) Confirmed the identity of the taxpayer and the designee; and

(C) Confirmed the date, the nature, and the extent of the information or assistance requested.

(ii) Examples of disclosures pursuant to nonwritten requests for information or assistance under this paragraph (c)(2) include, but are not limited to, disclosures to a friend, relative, or other person whom the taxpayer brings to an interview or meeting with Internal Revenue Service officials, or disclosures to

a person whom the taxpayer wishes to involve in a telephone conversation with Internal Revenue Service officials.

(3) Rules applicable to written and nonwritten requests for information or assistance. A return or return information will be disclosed to the taxpayer's designee as provided by this paragraph only to the extent considered necessary by the Internal Revenue Service to comply with the taxpayer's request or consent. Such disclosures shall not be made unless the request or consent is received by the Internal Revenue Service, its agent or contractor, or a Federal government agency performing a Federal tax administration function in connection with a request for advice or assistance relating to such function. This paragraph (c) does not apply to disclosures to a taxpayer's representative in connection with practice before the Internal Revenue Service (as defined in Treasury Department Circular No. 230). For disclosures in these cases, see section 6103(e)(6) and §§601.501 through 601.508 of this chapter.

(d) Acknowledgments of electronically filed returns and other documents; combined filing programs with State tax agencies--(1) Acknowledgment of, and notices regarding, electronically filed returns and other documents. When a taxpayer files returns or other documents or information with the Internal Revenue Service electronically, the taxpayer may consent to the disclosure of return information to the transmitter or other third party, such as the taxpayer's financial institution, necessary to acknowledge that the electronic transmission was received and either accepted or rejected by the Internal Revenue Service, the reason for any rejection, and such other information as the Internal Revenue Service determines is necessary to the operation of the electronic filing program. The consent must inform the taxpayer of the return information that will be transmitted and to whom disclosure will be made. The requirements of paragraphs (b) and (c) of this section do not apply to a consent under this

paragraph (d)(1).

(2) Combined return filing programs with State tax agencies. (i) A taxpayer's participation in a combined return filing program between the Internal Revenue Service and a State agency, body, or commission (State agency) described in section 6103(d)(1) constitutes a consent to the disclosure by the Internal Revenue Service, to the State agency, of taxpayer identity information, signature, and items of common data contained on such return. For purposes of this paragraph, common data means information reflected on the Federal return required by State law to be attached to or included on the State return. Instructions accompanying the forms or published procedures involved in such program must indicate that by participating in the program, the taxpayer is consenting to the Internal Revenue Service's disclosure to the State agency of the taxpayer identity information, signature, and items of common data, and that such information will be treated by the State agency as if it had been directly filed with the State agency. Such instructions or procedures must also describe any verification that takes place before the taxpayer identity information, signature and common data is transmitted by the Internal Revenue Service to the State agency.

(ii) No disclosures may be made under this paragraph (d)(2) unless there are provisions of State law protecting the confidentiality of such items of common data.

(e) Definitions and rules applicable to this section--(1) Separate written document. (i) For the purposes of paragraph (b) of this section, separate written document means--

(A) One side of a standard (8 ½" by 11" or larger) sheet of paper, which may be included as part of a larger document;

(B) Text appearing on a single computer screen containing all the

elements described in paragraph (b)(1) of this section, which can be signed (see paragraph (e)(2) of this section) and dated by the taxpayer, and which can be reproduced, if necessary; or

(C) A consent on the record in an administrative or judicial proceeding, or a transcript of such proceeding recording such consent, containing the information required under paragraph (b)(1) of this section.

(ii) A provision included in a taxpayer's application for a loan or other benefit authorizing the grantor of the loan or other benefit to obtain any financial information, including returns or return information, from any source as the grantor may request for purposes of verifying information supplied on the application, does not meet the requirements of paragraph (b)(1) of this section because the provision is not a separate written document relating solely to the disclosure of returns and return information. In addition, the provision does not contain the other information specified in paragraph (b)(1) of this section.

(2) Method of signing. A request for or consent to disclosure may be signed by any method of signing the Secretary of the Treasury has prescribed pursuant to §301.6061-1(b) in forms, instructions, or other appropriate guidance.

(3) Permissible designees and public forums. Permissible designees under this section include individuals; trusts; estates; corporations; partnerships; Federal, State, local and foreign government agencies or subunits of such agencies; or the general public. When disclosures are to be made in a public forum, such as in a courtroom or congressional hearing, the request for or consent to disclosure must describe the circumstances surrounding the public disclosure, *e.g.*, congressional hearing, judicial proceeding, media, and the date or dates of the disclosure.

(4) Authority to execute a request for or consent to disclosure. Any person who may obtain returns under section 6103(e)(1) through (5), except section

6103(e)(1)(D)(iii), may execute a request for or consent to disclose a return or return information to third parties. For taxpayers that are legal entities, such as corporations and municipal bond issuers, any officer of the entity with authority under applicable State law to legally bind the entity may execute a request for or consent to disclosure. A person described in section 6103(e)(6) (a taxpayer's representative or individual holding a power of attorney) may not execute a request for or consent to disclosure unless the designation of representation or power of attorney specifically delegates such authority. A designee pursuant to this section does not have authority to execute a request for or consent to disclosure permitting the Internal Revenue Service to disclose returns or return information to another person.

(5) No disclosure of return information if impairment. A disclosure of return information shall not be made under this section if the Internal Revenue Service determines that the disclosure would seriously impair Federal tax administration (as defined in section 6103(b)(4) of the Internal Revenue Code).

(f) Effective date. This section is applicable on January 11, 2001 through January 10, 2004.

Robert E. Wenzel

Deputy Commissioner of Internal Revenue

Approved: December 29, 2000

Jonathan Talisman

Assistant Secretary of the Treasury