

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Disclosure of Returns and Return Information by Other Agencies

REG-105344-01

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of the December 13, 2001, issue of the Federal Register, the IRS is issuing a temporary regulation to enable the Commissioner to authorize federal, state and local agencies with access to returns and return information under section 6103 of the Internal Revenue Code to redisclose such returns and return information, with the Commissioner's approval, to any authorized recipient set forth in section 6103 of the Internal Revenue Code, subject to the same restrictions and for the same purposes, as if the recipient had received the information from the IRS directly.

DATES: Written comments and electronic comments and requests for a public hearing must be received by February 14, 2002.

ADDRESSES: Send submissions to CC:ITA:RU (REG-105344-01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU (REG-105344-01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site: http://www.irs.gov/prod/tax_regs/comments/html.

FOR FURTHER INFORMATION CONTACT: Julie C. Schwartz, 202-622-4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by February 14, 2002. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced; How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in 26 CFR 301.6103(p)(2)(B)-1T. This information is required for the Commissioner to authorize agencies with access to returns and return information under section 6103 to disclose such to other authorized recipients of returns and return informa-

tion in accordance with section 6103. The collection of information is required to obtain a benefit. The likely respondents and recordkeepers are federal agencies and state or local governments.

Estimated total annual reporting and/or recordkeeping burden: 11 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 1 hour.

Estimated number of respondents and/or recordkeepers: 11.

Estimated annual frequency of responses: once.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of an internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 6103(p)(2)(B) provides that return information disclosed pursuant to the Code may be disclosed by any mode or means that the Secretary determines necessary or appropriate. 26 CFR 301.6103(p)(2)(B)-1 currently permits certain recipients of returns and return information under section 6103, with the Commissioner's approval, to disclose returns and return information to certain other permissible recipients under section 6103. Specifically, the existing regulation permits disclosure by Federal agencies, with the Commissioner's approval, to 1) other Federal agencies, 2) state tax agencies, 3) the General Accounting Office, 4) Federal, state and local child support enforcement agencies, 5) persons described in section 6103(c) (person designated in a taxpayer consent), and 6) persons described in section 6103(e) (person with a material interest).

The Consolidated Appropriations Act, 2001, Pub. L. No. 106-554 (114 Stat. 2763), was signed into law on December 21, 2000. Section 1 of that Act enacted

into law H.R. 5662, the Community Renewal Tax Relief Act of 2000. Section 310 of the Community Renewal Tax Relief Act of 2000 added section 6103(j)(6) to the Code, authorizing the Commissioner to disclose return information to the Congressional Budget Office (CBO) for the purpose of, but only to the extent necessary for, long term models of the Social Security and Medicare programs. The conference report, H.R. Conf. Rep. No. 106-1033, at 1020-21 (2000), provides that it is the intent of Congress that all requests for information made by CBO under this provision be made to the Commissioner, who will use his authority under section 6103(p)(2) such that the Social Security Administration (SSA) or other agency can furnish the information directly to CBO for the purpose of CBO's long term models of Social Security and Medicare. SSA, not IRS, collects and maintains much of the information sought by CBO and also receives the tax information CBO seeks under other provisions of section 6103. However, section 301.6103(p)(2)(B)-1 in its current form would not allow the Commissioner to authorize SSA to redisclose return information properly in its possession to CBO, an authorized recipient of the information under section 6103(j)(6). Updating the regulation would allow SSA to make return information in its possession available to CBO to the extent authorized by section 6103(j)(6).

There are other situations, similar to that found under section 6103(j)(6), where it is more efficient for returns and return information in the possession of one authorized agency recipient, to be disclosed by such agency to another statutorily authorized recipient. The inability of agencies, including Federal, state and local agencies, to share returns and return information between themselves or even inside a single agency, even where the information is more readily available from an agency other than the IRS, was highlighted by the Department of the Treasury on pages 89-90 of its October 2000 Report to the Congress on the Scope and Use of Taxpayer Confidentiality and Disclosure Provisions. The report notes, for example, that currently a single agency within a state (or even a single caseworker) may be administering both child support under Title IV-D of the

Social Security Act and welfare under Title IV-A of the Social Security Act. The agency may receive return information under both section 6103(l)(6) and section 6103(l)(7) to aid the agency in making determinations of eligibility for these programs, but the current regulation does not permit even intra-agency pooling or sharing of these data. The report notes that both intra- and inter-agency data sharing with respect to common data elements could be authorized by amendment to the Treasury regulations. Updating the regulation would allow the IRS to authorize such redisclosure in appropriate situations.

The text of the proposed temporary regulation also serves as the text of this proposed regulation. The preamble to the temporary regulation contains a full explanation of the reasons underlying the issuance of the proposed regulation.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel of the Small Business Administration for comment on its impact on small businesses.

Comments and Request for a Public Hearing

Before this proposed regulation is adopted as a final regulation, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of this regulation is Julie C. Schwartz, Office of the Associate Chief Counsel (Procedure and Administration), Disclosure and Privacy Law Division.

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Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are proposed to be 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(p)(2)(B)-1 also issued under 26 U.S.C. 6103(p)(2);***

§ 301.6103(p)(2)(B)-1 [Removed]

Par. 2. Section 301.6103(p)(2)(B)-1 is removed.

Par. 3. Section 301.6103(p)(2)(B)-1T is added to read as follows:

[The text of this proposed section is the same as the text of § 301.6103(p)(2)(B)-1T published elsewhere in this issue of the **Federal Register**].

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

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

Par. 5. In § 602.101, paragraph (b) is amended by adding an entry to the table in numerical order to read as follows:

[The text of this proposed section is the same as the text of § 602.101 published elsewhere in this issue of the **Federal Register**].

Robert E. Wenzel,
*Deputy Commissioner of
Internal Revenue.*

(Filed by the Office of the Federal Register on December 12, 2001, 8:45 a.m., and published in the issue of the Federal Register for December 13, 2001, 65 F.R. 64386)