

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

TD 9274

RIN 1545-BB16

Disclosure of Return Information by Certain Officers and Employees for Investigative Purposes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the disclosure of return information pursuant to section 6103(k)(6) of the Internal Revenue Code (Code). The final regulations describe the circumstances under which internal revenue and Office of Treasury Inspector General for Tax Administration (TIGTA) employees may disclose return information to the extent necessary to obtain information or to accomplish properly any activity connected with certain official duties. These regulations clarify and elaborate on the facts and circumstances in which disclosure pursuant to section 6103(k)(6) is authorized.

DATES: Effective Date: These regulations are effective July 11, 2006.

Applicability Date: For dates of applicability, see §301.6103(k)(6)-1(e).

FOR FURTHER INFORMATION CONTACT: Helene R. Newsome, 202-622-4570 (not a

toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 6103(a), returns and return information are confidential unless the Code authorizes disclosure. Section 6103(k)(6) authorizes an internal revenue officer or employee and an officer or employee of TIGTA, in connection with official duties relating to any audit, collection activity, civil or criminal tax investigation, or offense under the internal revenue laws, to disclose return information to a person other than the taxpayer to whom such return information relates (or his or her representative) to the extent that such disclosure is necessary to obtain information 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 or related statutes. Disclosure depends on situations and conditions prescribed by regulation.

On July 10, 2003, temporary regulations (TD 9073) under section 6103(k)(6) were published in the **Federal Register** (68 FR 41073). A notice of proposed rulemaking (REG-140808-02) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (68 FR 41089).

These regulations reflected a legislative amendment to section 6103(k)(6) clarifying that officers or employees of TIGTA are among those individuals authorized to make disclosures under section 6103(k)(6). See Consolidated Appropriations Act, 2001, Public Law 106-554 (114 Stat. 2763), section 1 enacting H.R. 5662, Community Renewal Tax

Relief Act of 2000, section 313(c).

These regulations also clarified the standard for determining whether disclosures are authorized under section 6103(k)(6). In particular, the regulations addressed the issues surrounding the disclosures that occur when internal revenue or TIGTA employees introduce themselves to third party witnesses or communicate in writing, e.g., using official letterhead that reveals affiliation with the IRS or TIGTA. The regulations also clarified that section 6103(k)(6) does not limit internal revenue or TIGTA employees with respect to the initiation or conduct of an investigation. Finally, the regulations clarified that section 6103 does not require internal revenue and TIGTA employees to contact a taxpayer for information before contacting third party witnesses.

No comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested or held. In this Treasury decision, the proposed regulations are adopted as revised below.

Explanation of Revisions

The proposed and temporary regulations provide that internal revenue and TIGTA employees may identify themselves, their organizational affiliation, and the nature of their investigation, when making an oral, written, or electronic contact with a third party witness through the use and presentation of any identification media (including, but not limited to, a Federal agency badge, credential, or business card) or through the use of an information document request, summons, or correspondence on Federal agency letterhead or which bears a return address or signature block that reveals affiliation with the Federal agency. In

the final regulations, §301.6103(k)(6)-1(a)(3) has been revised to make clear that internal revenue and TIGTA employees may identify themselves, their organizational affiliation, and the nature of their investigation, when making any oral, written, or electronic contact with a third party witness, not just when making a contact with a third party witness through the use and presentation of identification media, or through the use of an information document request, summons, or correspondence. This revision is intended as a clarification rather than a change in the effect of the regulations.

The proposed and temporary regulations define the term disclosure of return information to the extent necessary. The fourth sentence of §301.6103(k)(6)-1(c)(1) states that section 6103(k)(6) does not limit or restrict IRS or TIGTA officers and employees with respect to initiating or conducting an investigation. The final regulations revise this sentence to clarify that section 6103(k)(6) applies to all internal revenue officers and employees, not just IRS officers and employees. There are individuals, in addition to IRS officers and employees, who are internal revenue officers and employees because they are responsible for administering and enforcing certain tax administration provisions. This revision is intended as a clarification rather than a change in the effect of the regulations.

The proposed and temporary regulations define the term internal revenue employee as an officer or employee of the IRS or Office of Chief Counsel for the IRS. The final regulations add a phrase to §301.6103(k)(6)-1(c)(4) to encompass individuals responsible for administering and enforcing certain tax administration provisions who are not officers and employees of the IRS or the Office of Chief Counsel for the IRS. Pursuant to the duties

and powers established by the Homeland Security Act of 2002, Public Law 107-296, section 1111 et seq., 116 Stat. 2135 (2002), the Tax and Trade Bureau (TTB) in the Department of the Treasury has the responsibility for administering and enforcing the taxes under Chapters 32 (Part III of Subchapter D), 51, and 52 of the Code, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) in the Department of Justice has the responsibility for administering and enforcing the taxes under Chapter 53 of the Code. Pursuant to section 412 of the Homeland Security Act, the United States Customs Service continues to have the responsibilities it had when it was a bureau within the Department of the Treasury, which include administering and enforcing certain provisions of Chapters 51 and 52 of the Code. Pursuant to section 821 of the Homeland Security Act, the United States Secret Service continues to have the responsibilities it had when it was a bureau within the Department of the Treasury, which include investigating tax refund check fraud under 18 U.S.C. 510. Accordingly, paragraph (c)(4) of the final regulations has been revised to state that internal revenue employee means an officer or employee of the IRS or Office of Chief Counsel for the IRS, or an officer or employee of a Federal agency responsible for administering and enforcing taxes under Chapters 32 (Part III of Subchapter D), 51, 52, or 53 of the Code, or investigating tax refund check fraud under 18 U.S.C. 510. This revision is intended as a clarification rather than a change in the effect of the regulations.

The proposed and temporary regulations address the disclosure of return information in connection with investigations that affect or may affect the personnel or

employment status of Treasury employees or the status of persons authorized to practice before the Treasury Department. The final regulations revise §301.6103(k)(6)-1(b) to clarify that it applies to employees of ATF, United States Customs Service, and United States Secret Service, as well as to employees of the Treasury Department and that Federal officers and employees who are responsible for the investigations and who are properly in possession of relevant return information are authorized to disclose such return information for the purpose of obtaining, verifying, or establishing other information which is or may be relevant and material to the investigation. This revision is intended as a clarification rather than a change in the effect of the regulations.

The proposed and temporary regulations contain an example involving a private letter ruling request. Section 301.6103(k)(6)-1(d) Example 4. The final regulations revise this example to reflect a more common factual scenario involving a private letter ruling request. This revision is intended as a clarification rather than a change in the effect of the regulations.

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. It has also been determined that 5 U.S.C. 553(b), the Administrative Procedure Act, does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), the proposed regulations preceding these

regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Helene R. Newsome, Office of the Associate Chief Counsel (Procedure and Administration), Disclosure and Privacy Law Division.

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, in part, as follows:

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

Section 301.6103(k)(6)-1 also issued under 26 U.S.C. 6103(k)(6); * * *

Par. 2. Section 301.6103(k)(6)-1 is added to read as follows:

' 301.6103(k)(6)-1 Disclosure of return information by certain officers and employees for investigative purposes.

(a) General rule. (1) Pursuant to the provisions of section 6103(k)(6) and subject to the conditions of this section, an internal revenue employee or an Office of Treasury

Inspector General for Tax Administration (TIGTA) employee, in connection with official duties relating to any examination, administrative appeal, collection activity, administrative, civil or criminal investigation, enforcement activity, ruling, negotiated agreement, prefilling activity, or other proceeding or offense under the internal revenue laws or related statutes, or in preparation for any proceeding described in section 6103(h)(2) (or investigation which may result in such a proceeding), may disclose return information, of any taxpayer, to the extent necessary to obtain information relating to such official duties or to accomplish properly any activity connected with such official duties, including, but not limited to--

(i) Establishing or verifying the correctness or completeness of any return or return information;

(ii) Determining the responsibility for filing a return, for making a return if none has been made, or for performing such acts as may be required by law concerning such matters;

(iii) Establishing or verifying the liability (or possible liability) of any person, or the liability (or possible liability) at law or in equity of any transferee or fiduciary of any person, for any tax, penalty, interest, fine, forfeiture, or other imposition or offense under the internal revenue laws or related statutes or the amount thereof for collection;

(iv) Establishing or verifying misconduct (or possible misconduct) or other activity proscribed by the internal revenue laws or related statutes;

(v) Obtaining the services of persons having special knowledge or technical skills (such as, but not limited to, knowledge of particular facts and circumstances relevant to a

correct determination of a liability described in paragraph (a)(1)(iii) of this section or skills relating to handwriting analysis, photographic development, sound recording enhancement, or voice identification) or having recognized expertise in matters involving the valuation of property if relevant to proper performance of official duties described in this paragraph;

(vi) Establishing or verifying the financial status or condition and location of the taxpayer against whom collection activity is or may be directed, to locate assets in which the taxpayer has an interest, to ascertain the amount of any liability described in paragraph (a)(1)(iii) of this section for collection, or otherwise to apply the provisions of the Internal Revenue Code relating to establishment of liens against such assets, or levy, seizure, or sale on or of the assets to satisfy any such liability;

(vii) Preparing for any proceeding described in section 6103(h)(2) or conducting an investigation which may result in such a proceeding; or

(viii) Obtaining, verifying, or establishing information concerned with making determinations regarding a taxpayer's liability under the Internal Revenue Code, including, but not limited to, the administrative appeals process and any ruling, negotiated agreement, or prefiling process.

(2) Disclosure of return information for the purpose of obtaining information to carry out properly the official duties described by this paragraph, or any activity connected with the official duties, is authorized only if the internal revenue or TIGTA employee reasonably believes, under the facts and circumstances, at the time of a disclosure, the information is not otherwise reasonably available, or if the activity connected with the official duties

cannot occur properly without the disclosure.

(3) Internal revenue and TIGTA employees may identify themselves, their organizational affiliation (e.g., Internal Revenue Service (IRS), Criminal Investigation (CI) or TIGTA, Office of Investigations (OI)), and the nature of their investigation, when making an oral, written, or electronic contact with a third party witness. Permitted disclosures include, but are not limited to, the use and presentation of any identification media (such as a Federal agency badge, credential, or business card) or the use of an information document request, summons, or correspondence on Federal agency letterhead or which bears a return address or signature block that reveals affiliation with the Federal agency.

(4) This section does not address or affect the requirements under section 7602(c) (relating to contact of third parties).

(b) Disclosure of return information in connection with certain personnel or claimant representative matters. In connection with official duties relating to any investigation concerned with enforcement of any provision of the Internal Revenue Code, including enforcement of any rule or directive prescribed by the Secretary or the Commissioner of Internal Revenue under any provision of the Internal Revenue Code, or the enforcement of any provision related to tax administration, that affects or may affect the personnel or employment rights or status, or civil or criminal liability, of any former, current, or prospective employee of the Treasury Department, Bureau of Alcohol, Tobacco, Firearms, and Explosives, United States Customs Service, United States Secret Service, or any successor agency, or the rights of any person who is, or may be, a party to an

administrative action or proceeding pursuant to 31 U.S.C. 330 (relating to practice before the Treasury Department), an internal revenue, TIGTA, or other Federal officer or employee who is responsible for investigating such employees and persons and is properly in possession of relevant return information is authorized to disclose such return information to the extent necessary for the purpose of obtaining, verifying, or establishing other information which is or may be relevant and material to the investigation.

(c) Definitions. The following definitions apply to this section--

(1) Disclosure of return information to the extent necessary means a disclosure of return information which an internal revenue or TIGTA employee, based on the facts and circumstances, at the time of the disclosure, reasonably believes is necessary to obtain information to perform properly the official duties described by this section, or to accomplish properly the activities connected with carrying out those official duties. The term necessary in this context does not mean essential or indispensable, but rather appropriate and helpful in obtaining the information sought. Nor does necessary in this context refer to the necessity of conducting an investigation or the appropriateness of the means or methods chosen to conduct the investigation. Section 6103(k)(6) does not limit or restrict internal revenue or TIGTA employees with respect to the decision to initiate or the conduct of an investigation. Disclosures under this paragraph (c)(1), however, may not be made indiscriminately or solely for the benefit of the recipient or as part of a negotiated quid pro quo arrangement. This paragraph (c)(1) is illustrated by the following examples:

Example 1. A revenue agent contacts a taxpayer's customer regarding the customer's purchases made from the taxpayer during the year under investigation. The

revenue agent is able to obtain the purchase information only by disclosing the taxpayer's identity and the fact of the investigation. Depending on the facts and circumstances known to the revenue agent at the time of the disclosure, such as the way the customer maintains his records, it also may be necessary for the revenue agent to inform the customer of the date of the purchases and the types of merchandise involved for the customer to find the purchase information.

Example 2. A revenue agent contacts a third party witness to obtain copies of invoices of sales made to a taxpayer under examination. The third party witness provides copies of the sales invoices in question and then asks the revenue agent for the current address of the taxpayer because the taxpayer still owes money to the third party witness. The revenue agent may not disclose that current address because this disclosure would be only for the benefit of the third party witness and not necessary to obtain information for the examination.

Example 3. A revenue agent contacts a third party witness to obtain copies of invoices of sales made to a taxpayer under examination. The third party witness agrees to provide copies of the sales invoices in question only if the revenue agent provides him with the current address of the taxpayer because the taxpayer still owes money to the third party witness. The revenue agent may not disclose that current address because this disclosure would be a negotiated quid pro quo arrangement.

(2) Disclosure of return information to accomplish properly an activity connected with official duties means a disclosure of return information to carry out a function associated with official duties generally consistent with established practices and procedures. This paragraph (c)(2) is illustrated by the following example:

Example. A taxpayer failed to file an income tax return and pay the taxes owed. After the taxes were assessed and the taxpayer was notified of the balance due, a revenue officer filed a notice of federal tax lien and then served a notice of levy on the taxpayer's bank. The notices of lien and levy contained the taxpayer's name, social security number, amount of outstanding liability, and the tax period and type of tax involved. The taxpayer's assets were levied to satisfy the tax debt, but it was determined that, prior to the levy, the revenue officer failed to issue the taxpayer a notice of intent to levy, as required by section 6331, and a notice of right to hearing before the levy, as required by section 6330. The disclosure of the taxpayer's return information in the notice of levy is authorized by section 6103(k)(6) despite the revenue officer's failure to issue the notice of intent to levy or the notice of right to hearing. The ultimate validity of the underlying levy is irrelevant to the issue of whether the disclosure was authorized by section 6103(k)(6).

(3) Information not otherwise reasonably available means information that an internal revenue or TIGTA employee reasonably believes, under the facts and circumstances, at the time of a disclosure, cannot be obtained in a sufficiently accurate or probative form, or in a timely manner, and without impairing the proper performance of the official duties described by this section, without making the disclosure. This definition does not require or create the presumption or expectation that an internal revenue or TIGTA employee must seek information from a taxpayer or authorized representative prior to contacting a third party witness in an investigation. Neither the Internal Revenue Code, IRS procedures, nor these regulations require repeated contacting of an uncooperative taxpayer. Moreover, an internal revenue or TIGTA employee may make a disclosure to a third party witness to corroborate information provided by a taxpayer. This paragraph (c)(3) is illustrated by the following examples:

Example 1. A revenue agent is conducting an examination of a taxpayer. The taxpayer refuses to cooperate or provide any information to the revenue agent. Information relating to the taxpayer's examination would be information not otherwise reasonably available because of the taxpayer's refusal to cooperate and supply any information to the revenue agent. The revenue agent may seek information from a third party witness.

Example 2. A special agent is conducting a criminal investigation of a taxpayer. The special agent has acquired certain information from the taxpayer. Although the special agent has no specific reason to disbelieve the taxpayer's information, the special agent contacts several third party witnesses to confirm the information. The special agent may contact third party witnesses to verify the correctness of the information provided by the taxpayer because the IRS is not required to rely solely on information provided by a taxpayer, and a special agent may take appropriate steps, including disclosures to third party witnesses under section 6103(k)(6), to verify independently or corroborate information obtained from a taxpayer.

(4) Internal revenue employee means, for purposes of this section, an officer or employee of the IRS or Office of Chief Counsel for the IRS, or an officer or employee of a Federal agency responsible for administering and enforcing taxes under Chapters 32 (Part III of Subchapter D), 51, 52, or 53 of the Internal Revenue Code, or investigating tax refund check fraud under 18 U.S.C. 510.

(5) TIGTA employee means an officer or employee of the Office of Treasury Inspector General for Tax Administration.

(d) Examples. The following examples illustrate the application of this section:

Example 1. A revenue agent is conducting an examination of a taxpayer. The taxpayer has been very cooperative and has supplied copies of invoices as requested. Some of the taxpayer's invoices show purchases that seem excessive in comparison to the size of the taxpayer's business. The revenue agent contacts the taxpayer's suppliers for the purpose of corroborating the invoices the taxpayer provided. In contacting the suppliers, the revenue agent discloses the taxpayer's name, the dates of purchase, and the type of merchandise at issue. These disclosures are permissible under section 6103(k)(6) because, under the facts and circumstances known to the revenue agent at the time of the disclosures, the disclosures were necessary to obtain information (corroboration of invoices) not otherwise reasonably available because suppliers would be the only source available for corroboration of this information.

Example 2. A revenue agent is conducting an examination of a taxpayer. The revenue agent asks the taxpayer for business records to document the deduction of the cost of goods sold shown on Schedule C of the taxpayer's return. The taxpayer will not provide the business records to the revenue agent, who contacts a third party witness for verification of the amount on the Schedule C. In the course of the contact, the revenue agent shows the Schedule C to the third party witness. This disclosure is not authorized under section 6103(k)(6). Section 6103(k)(6) permits disclosure only of return information, not the return (including schedules and attachments) itself. If necessary, a revenue agent may disclose return information extracted from a return when questioning a third party witness. Thus, the revenue agent could have extracted the amount of cost of goods sold from the Schedule C and disclosed that amount to the third party witness.

Example 3. A special agent is conducting a criminal investigation of a taxpayer, a doctor, for tax evasion. Notwithstanding the records provided by the taxpayer and the

taxpayer's bank, the special agent decided to obtain information from the taxpayer's patients to verify amounts paid to the taxpayer for his services. Accordingly, the special agent sent letters to the taxpayer's patients to verify these amounts. In the letters, the agent disclosed that he was a special agent with IRS-CI and that he was conducting a criminal investigation of the taxpayer. Section 6103(k)(6) permits these disclosures (including the special agent disclosing his affiliation with CI and the nature of the investigation) to confirm the taxpayer's income. The decision whether to verify information already obtained is a matter of investigative judgment and is not limited by section 6103(k)(6).

Example 4. Corporation A requests a private letter ruling (PLR) as to the tax consequences of a planned transaction. Corporation A has represented that it is in compliance with laws administered by Agency B that may relate to the tax consequences of the proposed transaction. Further information is needed from Agency B relating to possible tax consequences. Under section 6103(k)(6), the IRS may disclose Corporation A's return information to Agency B to the extent necessary to obtain information from Agency B for the purpose of properly considering the tax consequences of the proposed transaction that is the subject of the PLR.

(e) Effective date. This section is applicable on July 11, 2006.

' **301.6103(k)(6)-1T [Removed]**

Par. 3. Section 301.6103(k)(6)-1T is removed.

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

Approved: July 5, 2006.

Eric Solomon,
Acting Deputy Assistant Secretary for Tax Policy.