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DEPARTMENT OF THE TREASURY

Internal Revenue Service

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Procedures for administrative review of a determination that an authorized recipient has failed to safeguard tax returns or return information

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTIONS: Temporary regulations.

SUMMARY: This document contains temporary regulations regarding administrative review procedures for certain government agencies and other authorized recipients of tax returns or return information (authorized recipients) whose receipt of returns and return information may be suspended or terminated because they do not maintain proper safeguards. The temporary regulations provide guidance to responsible IRS personnel and authorized recipients as to these administrative procedures. The text of these temporary regulations serves as the text of the proposed regulations 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: These regulations are effective February 24, 2006.

Applicability Date: For dates of applicability, see §301.6103(p)(7)-1T(e).

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

**SUPPLEMENTARY INFORMATION:**

## **Background**

Under section 6103 of the Internal Revenue Code (Code), tax returns and return information are protected from disclosure except in specifically enumerated circumstances. Where disclosure is permitted, section 6103 generally imposes strict safeguarding requirements and requires the IRS to monitor and enforce compliance with those requirements. Section 6103(p)(7) requires the Secretary of the Treasury to prescribe procedures providing for administrative review of any determination under section 6103(p)(4) that an agency, body, or commission receiving returns or return information pursuant to section 6103(d) has failed to meet the safeguarding requirements. Withdrawn §301.6103(p)(7)-1 set forth the procedures for terminating future disclosures to these authorized recipients. These temporary regulations provide the intermediate review and termination procedures for all authorized recipients identified in section 6103(p)(4).

With an increasing volume of authorized disclosures of returns and return information, it is critical that authorized recipients of returns and return information adhere to the strict safeguard requirements of the Code and that the IRS take all necessary steps to ensure that those requirements are met. If unauthorized disclosures do occur, it is similarly important that the IRS take steps to address them and ensure that they are not repeated. Such steps include, as appropriate, suspension or termination of further disclosures to an authorized recipient. Nevertheless, because the authority to receive returns and return information is provided by law, authorized disclosures should not be suspended or terminated without appropriate administrative review procedures. These temporary regulations set forth procedures to ensure that

authorized recipients provide the proper security and protection to returns and return information.

### **Explanation of Provisions**

There are four basic parts to the statutory scheme Congress created in section 6103 of the Code to protect the confidentiality of tax returns and return information:

1. The general rule that makes returns and return information confidential except as expressly authorized in the Code;
2. The exceptions to the general rule detailing permissible disclosures;
3. Technical, administrative, and physical safeguard provisions to prevent authorized recipients of returns and return information from inspecting, using, or disclosing the returns and return information in an unauthorized manner, and accounting, recordkeeping and reporting requirements that detail what inspections and disclosures are made for certain purposes to assist in oversight; and
4. Criminal penalties for the willful unauthorized inspection or disclosure of returns and return information and a civil cause of action for the taxpayer whose returns or return information has been inspected or disclosed in manner not authorized by the Code.

Section 6103(p)(4) provides that no returns or return information may be disclosed by the IRS to certain government agencies and other authorized recipients unless they establish procedures satisfactory to the IRS for safeguarding the returns and return information they receive. These procedures are set forth in Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies, which is

available at [www.irs.gov/formspubs/list](http://www.irs.gov/formspubs/list). Disclosure of returns and return information to the authorized recipients described in section 6103(p)(4) is conditioned on the recipient maintaining a secure place for storing the returns and return information, restricting access to returns and return information to persons whose duty requires access and to whom disclosure can be made under the internal revenue laws, providing other safeguards necessary to keeping the returns and return information confidential, reporting to the IRS on the safeguard procedures, and returning to the IRS or destroying the returns and return information upon completion of use. The IRS reviews, on a regular basis, safeguards established by authorized recipients of returns and return information.

If there are any unauthorized inspections or disclosures of returns or return information by authorized recipients, further disclosures may be terminated or suspended until the IRS is satisfied that adequate protective measures have been taken to prevent a recurrence of unauthorized inspection or disclosure. In addition, the IRS may terminate or suspend disclosure to any authorized recipient if the IRS determines that adequate safeguards are not being maintained.

The Code, in section 6103(p)(4), (p)(7), and (q) authorizes the IRS to promulgate regulations to carry out its statutory safeguard responsibilities. More specifically, section 6103(p)(7) requires that the IRS promulgate regulations establishing procedures for an administrative review of any determination by the IRS under section 6103(p)(4) that a State tax agency authorized to receive returns and return information under section 6103(d) has failed to meet the requirements of section 6103(p)(4). See TAX REFORM ACT OF 1976, S. Rep. 94-938, 94<sup>th</sup> Cong., 2d Sess. 345 (1976). Under current

§301.6103(p)(7)-1 of the Procedure and Administration Regulations (26 CFR Part 301), the IRS has established procedures whereby State tax agencies that receive returns and return information pursuant to section 6103(d) have an opportunity, prior to a suspension or termination of disclosure, to contest a preliminary finding by the IRS of inadequate safeguards or unauthorized disclosure, or to establish that a State tax agency has taken steps to prevent a recurrence of the violation.

This document adopts temporary regulations that extend the administrative review procedure applicable to State tax agencies to any authorized recipient specified in section 6103(p)(4) with respect to which the IRS has made a preliminary finding of inadequate safeguards or unauthorized disclosure. The temporary regulations also apply this administrative review procedure to any such authorized recipient with respect to which the IRS has made a preliminary finding as to unauthorized inspection of returns or return information. The temporary regulations treat unauthorized inspection in the same manner as unauthorized disclosure because both unauthorized acts are proscribed by the Code. In particular, section 7213A, enacted by the Taxpayer Browsing Protection Act of 1997, Public Law No. 105-35 (111 Stat. 1104), specifically treats the unauthorized inspection of a return or return information as a misdemeanor.

### **Special Analyses**

It has been determined that these temporary regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to 5 U.S.C. 553(b)(B) it has been determined that prior notice and public comment on these temporary regulations are unnecessary and contrary to the public interest. These regulations do not impose any burdens or

obligations on any person, but instead provide certain rights of administrative review. Moreover, these regulations are necessary to protect taxpayer confidentiality and the integrity of return information. For the same reasons, it has been determined pursuant to 5 U.S.C. 553(d)(3) that good cause exists to dispense with a delayed effective date for these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be 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 temporary regulations is Melinda K. Fisher, Office of the Associate Chief Counsel (Procedure & 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.

### **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 \* \* \*

Sections 301.6103(p)(4)-1 and 301.6103(p)(7)-1T also issued under 26 U.S.C. 6103(p)(4) and (7) and (q), \* \* \*

Par. 2. Section 301.6103(p)(4)-1T is added to read as follows:

§ 301.6103(p)(4)-1T Procedures relating to safeguards for returns or return information (temporary).

For security guidelines and other safeguards for protecting returns and return information, see guidance published by the Internal Revenue Service. For procedures for administrative review of a determination that an authorized recipient has failed to safeguard returns or return information, see §301.6103(p)(7)-1T.

Par. 3. Section 301.6103(p)(7)-1 is removed.

Par. 4. Section 301.6103(p)(7)-1T is added to read as follows:

§301.6103(p)(7)-1T Procedures for administrative review of a determination that an authorized recipient has failed to safeguard returns or return information (temporary).

(a) In general. Notwithstanding any section of the Internal Revenue Code, the Internal Revenue Service (IRS) may terminate or suspend disclosure of returns and return information to any authorized recipient specified in subsection (p)(4) of section 6103, if the IRS makes a determination that:

(1) The authorized recipient has allowed an unauthorized inspection or disclosure of returns or return information and that the authorized recipient has not taken adequate corrective action to prevent the recurrence of an unauthorized inspection or disclosure, or

(2) The authorized recipient does not satisfactorily maintain the safeguards prescribed by section 6103(p)(4), and has made no adequate plan to improve its system to maintain the safeguards satisfactorily.

(b) Notice of IRS's intention to terminate or suspend disclosure. Prior to terminating or suspending authorized disclosures, the IRS will notify the authorized recipient in writing of the IRS's preliminary determination and of the IRS's intention to discontinue disclosure of returns and return information to the authorized recipient. Upon so notifying the authorized recipient, the IRS, if it determines that tax administration otherwise would be seriously impaired, may suspend further disclosures of returns and return information to the authorized recipient pending a final determination by the Commissioner or a Deputy Commissioner described in paragraph (d)(2) of this section.

(c) Authorized recipient's right to appeal. An authorized recipient shall have 30 days from the date of receipt of a notice described in paragraph (b) of this section to appeal the preliminary determination described in paragraph (b) of this section. The appeal shall be made directly to the Commissioner.

(d) Procedures for administrative review. (1) To appeal a preliminary determination described in paragraph (b) of this section, the authorized recipient shall send a written request for a conference to: Commissioner of Internal Revenue (Attention: SE:S:CLD:GLD), 1111 Constitution Avenue, NW., Washington, DC 20224. The request must include a complete description of the authorized recipient's present system of safeguarding returns or return information, as well as a complete description of its practices with respect to the inspection, disclosure, and use of the returns or return



information it (including any authorized contractors or agents) receives under the Internal Revenue Code. The request then must state the reason or reasons the authorized recipient believes that such system, or practice, including improvements, if any, to such system or practice expected to be made in the near future, is or will be adequate to safeguard returns or return information.

(2) Within 45 days of the receipt of the request made in accordance with the provisions of paragraph (d)(1) of this section, the Commissioner or Deputy Commissioner personally will hold a conference with representatives of the authorized recipient, after which the Commissioner or Deputy Commissioner will make a final determination with respect to the appeal.

(e) Effective date. This section is applicable to all authorized recipients of returns and return information that are subject to the safeguard requirements set forth in section 6103(p)(4) on or after February 23, 2006.

Deputy Commissioner for Services and Enforcement.

Approved:

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).