

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

N o t i c e

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Local Taxpayer Advocate's
Discretion Not to Disclose
Subject: Information to the IRS
Until Incorporation
Cancellation Date: into the CCDM

PURPOSE

The purpose of this Notice is to provide advice to all Chief Counsel attorneys regarding IRC § 7803(c)(4)(A)(iv) which grants Local Taxpayer Advocates ("LTAs") discretion not to disclose to the IRS taxpayer contact or taxpayer-provided information. Consistent with this authority, any Chief Counsel attorney providing advice to the Taxpayer Advocate Service ("TAS") involving an identified or identifiable taxpayer is required to limit the issuance/circulation of the response(s) to the request for advice to the TAS. Advice provided to the TAS involving identified or identifiable taxpayers will not be shared with other functions within the IRS.

DISCUSSION

Section 7803(c)(4)(A)(iv) was added to the Internal Revenue Code by the Internal Revenue Service Restructuring and Reform Act of 1998 ("RRA 98"). This provision was one of several related to the organization and functions of the Taxpayer Advocate Service. The Office of the National Taxpayer Advocate will be developing guidance and procedures to assist local advocates in reaching appropriate determinations regarding the withholding of information from the IRS. Until such guidance is available, LTAs may contact attorneys in the field offices of the Division Counsel (SB/SE), the primary contact for legal advice for field TAS offices, for advice and assistance regarding issues arising under § 7803(c)(4)(A)(iv).

There are no statutory limitations on the nature and extent of the information that can be withheld from the IRS pursuant to an LTA's exercise of discretion under section 7803(c)(4)(A)(iv). Determining what information to withhold from the IRS and what to disclose is a determination to be made by the LTA. It is important to note, however, that the discretionary authority granted by section 7803(c)(4)(A)(iv) can only be exercised to protect taxpayer contact or taxpayer-provided information from disclosure to the IRS. This provision does not allow LTAs to withhold

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information from non-IRS entities, such as the Treasury Inspector General for Tax Administration, the Department of Justice, or the U.S. Attorney's Office. Likewise, it does not except LTAs from requests submitted through FOIA, compulsory process, e.g., court orders and subpoenas, or other requests for information associated with cases in litigation.

We have determined that section 7803(c)(4)(A)(iv), when applicable, supercedes the requirements of section 7214(a)(8) of the Code that officers and employees of the United States report violations of and/or fraud committed under the internal revenue laws. While neither the express terms of section 7803(c)(4)(A)(iv) nor the legislative history underlying that provision provide guidance regarding the effect this provision has on other statutes, standard rules of statutory construction compel the conclusion that LTAs acting under the authority of section 7803(c)(4)(A)(iv) are provided a limited exception to the general reporting requirements of I.R.C. § 7214(a)(8).

Although RRA 98 makes it clear that LTAs may seek the assistance of Counsel as they perform their duties, the statute is explicit that the determination whether to disclose information belongs to the LTA. In providing legal advice and support to the TAS, Counsel attorneys should identify any information that would normally have to be reported by a non-TAS employee under section 7214(a)(8) and inform the requesting office about the potential reporting issue. But the decision whether to report the violation or transaction under section 7214(a)(8) or to extend confidentiality rests with the LTA, not Counsel. The obligation of Counsel attorneys under section 7214(a)(8) is complete upon advising the LTA that information that would normally have to be reported under section 7214(a)(8) exists or appears to exist based on the facts presented and a subsequent response from the LTA indicating that a section 7803(c)(4)(A)(iv) determination has been made.

In the event a Chief Counsel attorney who previously provided advice to the TAS regarding the taxpayer is subsequently assigned an advisory request on the same taxpayer from another IRS function or operating division, the attorney should ascertain whether the LTA to whom advice was previously rendered exercised his or her discretion to withhold information from the other functions of IRS. If the LTA did exercise the discretion authorized by section 7803(c)(4)(A)(iv), subsequently rendered advice must be based solely on the facts provided by the office making the subsequent request. The response to that office may not include information obtained as a result of prior contacts with the TAS. If the assigned attorney is unable to provide a response without using information received from the TAS, the attorney's manager will assign another attorney who was not involved with the earlier TAS advisory.

Finally, Counsel attorneys may gain access to information provided by LTAs in connection with the processing of Chief Counsel Advice (CCA) pursuant to IRC § 6110. An LTA's exercise of discretion under section 7803(c)(4)(A)(iv) provides no basis for withholding information required to be disclosed under section 6110.

Attorneys with questions regarding the issues raised herein may contact Carol A. Campbell, the Acting Counsel to the National Taxpayer Advocate at (202) 622-4947.

 /s/
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(Operations)