



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

CC:EL:D
GL-502492-99

July 26, 1999

UILC: 6103.00-00
Number: **199938030**
Release Date: 9/24/1999

INTERNAL REVENUE SERVICE NATIONAL OFFICE CHIEF COUNSEL ADVICE

MEMORANDUM FOR

DISTRICT COUNSEL, ()

FROM: David L. Fish
Chief, Branch 4 (Disclosure Litigation) CC:EL:D

SUBJECT: Disclosures to Disciplinary Committee

This is in response to your memorandum dated March 30, 1999. This document is not to be cited as precedent.

LEGEND:

A =
B =
Corporation C =
Revenue Agent =
y =
z =

ISSUES:

1. Whether the State Supreme Court Disciplinary Committee (Disciplinary Committee) may discuss certain aspects of a former tax case with retired Revenue Agent. In particular, the Disciplinary Committee would like information regarding conversations that Revenue Agent had with A while conducting the tax investigation of Corporation C.
2. Whether any provision of I.R.C. § 6103 authorized the Disciplinary Committee to receive Revenue Agent's investigative history sheets on Corporation C.

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CONCLUSIONS:

1. Any conversations that Revenue Agent had with A in connection with his tax investigation of Corporation C constitute I.R.C. § 6103 protected return information of C, and cannot be disclosed to the Disciplinary Committee unless there is authority in the Internal Revenue Code permitting such disclosure. Under the given set of facts, no such authority exists.
2. The disclosure of Revenue Agent's investigative history sheets on Corporation C to the Disciplinary Committee does not appear to have been authorized by I.R.C. § 6103.

FACTS:

Our understanding of the facts is based upon your incoming request for advice, the letter dated z from the Disciplinary Committee to _____ of your office, and telephone conversations between _____ and _____ of our office.

Recently, your office was contacted by the Disciplinary Committee about A. The Disciplinary Committee is currently conducting an investigation into the alleged misconduct of A, whose father, B, was previously the subject of an Internal Revenue Service grand jury investigation resulting in his guilty plea for violating I.R.C. § 7201 for taxable year y. In order to proceed with the investigation, the Disciplinary Committee would like to speak with retired Revenue Agent relative to conversations that he has had with A.

Prior to retiring from the Service, Revenue Agent investigated Corporation C, a company operated by B. During the course of this investigation, Revenue Agent had several conversations with A. During the grand jury investigation, Revenue Agent's investigative history sheets on Corporation C were made available to the United States Attorney's Office pursuant to I.R.C. §§ 6103(h)(2) and (3). The United States Attorney's Office, which had reason to believe that A had violated the attorney ethics rules, in turn, provided the investigative history sheets to the Disciplinary Committee.

You question whether there are any disclosure implications raised by the above scenario.

LAW AND ANALYSIS:

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A. The General Rule

I.R.C. § 6103(a) prohibits the disclosure of returns and return information unless such disclosure is specifically authorized under the Internal Revenue Code. In particular, section 6103(a) provides, in pertinent part:

Returns and return information shall be confidential, and except as authorized by this title—

(1) no officer or employee of the United States

* * *

shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or employee or otherwise under the provisions of this section. For purposes of this subsection, the term “officer or employee” includes a former officer or employee.

B. Retired Revenue Agent Discussing Former Tax Case with Disciplinary Committee

Even as a former Service employee, Revenue Agent is bound by section 6103. As indicated above, section 6103(a) applies to, inter alia, officers and employees of the United States, including former officers and employees. Accordingly, Revenue Agent is precluded from disclosing any return or return information, unless disclosure is permitted by some specific provision of the Code.

The term “return information” is broadly defined at section 6103(b)(2) of the Code to include:

a taxpayer’s identity, the nature, source or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer’s return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected

by the [Service] with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the

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amount thereof) of any person under [Title 26] for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense

In short, the term “return information” includes any information collected or generated by the Service with regard to any person’s liability or possible liability under the Internal Revenue Code. Thus, any information collected by Revenue Agent with respect to the tax investigation of Corporation C is C’s return information. This includes any third party interviews conducted by Revenue Agent with respect to Corporation C’s tax investigation. So conversations that Revenue Agent had with A in connection with his tax investigation of Corporation C constitute return information, and cannot be disclosed to the Disciplinary Committee unless there is authority in the Code permitting such disclosure. Under the given set of facts, no such authority exists.

C. Disclosure by United States Attorney’s Office to Disciplinary Committee

Revenue Agent’s investigative history sheets on Corporation C are return information. They were provided to the United States Attorney’s Office pursuant to sections 6103(h)(2) and (3). The United States Attorney’s Office, which had reason to believe that A had violated the attorney ethics rules, in turn, provided the investigative history sheets to the Disciplinary Committee. This appears to have been an unauthorized disclosure, as no exception to section 6103 appears to be applicable here.

Allegations or evidence of unauthorized disclosures of returns and return information must be reported to the Treasury Inspector General for Tax

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Administration (TIGTA).¹ Field employees should report these matters to the Regional TIGTA office.

If you have any further questions, please call (202) 622-4570.

¹ The Internal Revenue Service Restructuring and Reform Act of 1998, Pub. Law 105-206, 112 Stat. 685 (RRA), at section 1103(a), amended the Inspector General Act of 1978, *inter alia*, by establishing the Office of Treasury Inspector General for Tax Administration and, at section 1103(c)(2), terminated the Office of Chief Inspector of the Internal Revenue Service. The legislative history of the RRA provides, in pertinent part:

The Treasury IG for Tax Administration is charged with investigating allegations of criminal misconduct (e.g., [Internal Revenue] Code sections 7212, 7213, 7214, 7216, and new section 7217), as well as administrative misconduct (e.g., violations of the Taxpayer Bill of Rights and the Taxpayer Bill of Rights 2, the Office of Government Ethics Standards of Ethical Conduct and the IRS Supplemental Standards of Ethical Conduct).

H.R. REP. NO. 105-599 at 222-223 (1998) (Conference Report to Accompany H.R. 2676 (the RRA)).