

The Department of the Treasury Study Regarding Taxpayer Confidentiality

Announcement 99-101

AGENCY: Department of the Treasury

ACTION: Solicitation for comment.

SUMMARY: This is a solicitation for public comment in connection with a study being conducted by the Department of the Treasury relating to the scope and use of provisions regarding taxpayer confidentiality. This study is required by section 3802 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105-206, 112 Stat. 782).

DATES: Written comments must be submitted by November 15, 1999.

ADDRESSES: Send comments to: Elizabeth P. Askey, Office of Tax Legislative Counsel, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Room 1321A, Washington, DC 20220. Comments may also be submitted to: **taxpolicy@do.treas.gov** – the subject line should contain the phrase “Confidentiality Study.” All comments will be available for public inspection and copying.

FOR FURTHER INFORMATION CONTACT: Elizabeth Askey at 202-622-0224 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 6103 of the Internal Revenue Code (Code) prohibits the disclosure of tax returns or return information except as

otherwise authorized by the Code. Permitted disclosures include: 1) disclosures to a taxpayer or the taxpayer’s designee pursuant to the taxpayer’s consent;

2) disclosures for purposes of tax administration (including state tax administration);

3) disclosures to federal, state, or local governmental agencies for nontax purposes such as child support enforcement and verifying taxpayers’ eligibility for certain designated needs based programs, including food stamps, and certain Social Security benefits; and 4) disclosures for nontax law enforcement purposes. Permitted disclosures generally are subject to strict procedural safeguards. Unauthorized disclosure or inspection of returns and return information may result in civil damages against the United States and/or criminal penalties against individuals who unlawfully disclose or inspect tax information.

Section 6104 makes available to the public certain tax information related to tax-exempt organizations and certain other entities. In the case of any tax-exempt organization, section 6104 generally provides that the organization’s application for tax exemption and supporting documents, IRS determination letter, and annual information returns filed under section 6033 are available for public inspection at certain IRS offices and at the organization’s principal office (and certain regional and district offices). In addition, copies of such documents are generally available upon request made to the organization or the IRS. Section 6104 also authorizes the Secretary to disclose to certain state officials charged with overseeing charitable organizations described in section 501(c)(3) information relating to any organization’s failure to qualify for, or subsequent loss of, section 501(c)(3) status, or the mailing of certain notices of tax deficiency.

Section 3802 of the IRS Restructuring and Reform Act of 1998 requires the Secretary of the Treasury to study the scope and use of provisions regarding taxpayer confidentiality. Specifically, the study is to examine:

1. the present protections for taxpayer privacy,
2. any need for third parties to use tax return information,
3. whether greater levels of voluntary

compliance may be achieved by allowing the public to know who is legally required to file tax returns, but does not file tax returns,

4. the interrelationship of the taxpayer confidentiality provisions in the Internal Revenue Code of 1986 with provisions in other Federal law, including 5 U.S.C. 552a (commonly known as the Freedom of Information Act),

5. the impact on taxpayer privacy of the sharing of income tax return information for purposes of enforcement of state and local tax laws other than income tax laws, including the impact on the taxpayer privacy intended to be protected at the Federal, state, and local levels under Public Law 105-35, the Taxpayer Browsing Protection Act of 1997, and,

6. whether the public interest would be served by greater disclosure of information relating to tax-exempt organizations described in section 501 of the Internal Revenue Code of 1986.

Request for Public Comment

The Department of the Treasury invites comments relative to the six topics described. In particular, the Department of the Treasury invites comments with respect to the following:

1. How is the privacy protection provided by section 6103 beneficial to taxpayers?

2. How is the section 6103 statutory scheme burdensome for taxpayers? Does section 6103 affect the IRS's ability to deliver quality customer service and, if so, in what ways?

3. Is the statutory structure and/or administration of section 6103 consistent, simple, administrable, and fair? What changes, if any, should be made to the content and/or administration of section 6103?

4. What is the relationship between taxpayer confidentiality as provided by section 6103 and compliance with the internal revenue laws? What effect, if any, might publishing the names of nonfilers have on compliance with the internal revenue laws? What effect, if any, might broadening the scope of permissible disclosures have on compliance with the internal revenue laws?

5. What impact has technology had on the protection of taxpayer privacy and what, if any, additional safeguards may be necessary as a result? As the IRS moves toward electronic filing and maintenance of tax records, what, if any, changes should be made to the confidentiality rules under section 6103?

6. What impact have taxpayer privacy protections had on the ability of federal, state, and local agencies to receive information critical to their operation, particularly information not easily obtainable from other sources?

7. Should tax information be used for nontax purposes? If so, what factors should influence whether agencies and others should be permitted direct access under section 6103 to taxpayer information for nontax purposes? What factors should influence whether agencies and others should be allowed to obtain such information by consent from the taxpayer, for example, as a condition to approval of mortgages or other loans, or for obtaining government benefits? Should there be any conditions or restrictions on the recipient's use of tax information obtained by consent?

8. What factors should influence whether federal, state, or local agencies that receive tax information to carry out particular programs, and who use private contractors for data processing and other services, should be permitted to disclose tax information to those contractors for the purpose of performing those programs?

9. What changes, if any, should be made to either the safeguard program or the consent process?

10. What, if any, additional restrictions should be placed on the ability of those who receive tax information to redisclose the information to other parties? What means should be used to implement any such redisclosure protections?

11. How can taxpayer privacy concerns and a desire for more information-sharing within government be balanced?

12. Would the public interest be served by allowing greater sharing of information between the IRS and other federal and state agencies for joint investigations relating to the enforcement of federal and

state laws affecting tax-exempt organizations? What restrictions, if any, should be imposed on use of the information by those agencies?

13. Do the public inspection provisions of section 6104 and section 6110 provide adequate disclosure of IRS determinations affecting tax-exempt organizations? If not, what additional information should be made available?

14. Is the information currently reported by tax-exempt organizations to the IRS adequate to ensure effective oversight? If not, what additional information should be reported? Should there be more detailed disclosure regarding transactions between tax-exempt organizations and their subsidiaries or other affiliates?

Joseph Mikrut,
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