

Section 1288.—Treatment of Original Issue Discounts on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term, rates are set forth for the month of January 2002. See Rev. Rul. 2002–2, page 271.

Section 6103.—Confidentiality and Disclosure of Returns and Return Information

26 CFR 301.6103(p)(2)(B)–1T: Disclosure of returns and return information by other agencies.

T.D. 8968

DEPARTMENT OF THE TREASURY

Internal Revenue Service 26 CFR Parts 301 and 602

Disclosure of Returns and Return Information by Other Agencies

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulation.

SUMMARY: This temporary regulation relates to the disclosure of returns and return information by Federal, state and local agencies other than the IRS. The temporary regulation permits the IRS to authorize agencies with access to returns and return information under section 6103 of the Internal Revenue Code (Code) to redisclose returns and return information, with the Commissioner's approval, to any authorized recipient set forth in section 6103, subject to the same conditions and restrictions, and for the same purposes, as if the recipient had received the information from the IRS directly.

DATES: This regulation is effective December 13, 2001.

FOR FURTHER INFORMATION CONTACT: Julie C. Schwartz, 202–622–4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1757. Responses to this collection of information are required if the Commissioner is to authorize the disclosure of returns and return information from agencies with access to returns and return information under section 6103 to other authorized recipients of returns and return information in accordance with section 6103.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 6103(p)(2)(B) provides that return information disclosed pursuant to the Code may be disclosed by any mode or means that the Secretary determines necessary or appropriate. 26 C.F.R. section 301.6103(p)(2)(B)–1 currently permits certain recipients of returns and return information under section 6103, with the Commissioner's approval, to disclose returns and return information to certain other permissible recipients under section 6103. Specifically, the existing

regulation permits disclosure by Federal agencies, with the Commissioner's approval, to 1) other Federal agencies, 2) state tax agencies, 3) the General Accounting Office, 4) Federal, state and local child support enforcement agencies, 5) persons described in section 6103(c) (person designated in a taxpayer consent), and 6) persons described in section 6103(e) (person with a material interest).

The Consolidated Appropriations Act, 2001, Pub. L. No. 106–554 (114 Stat. 2763), was signed into law on December 21, 2000. Section 1 of that Act enacted into law H.R. 5662, the Community Renewal Tax Relief Act of 2000. Section 310 of the Community Renewal Tax Relief Act of 2000 added section 6103(j)(6) to the Code, authorizing the Commissioner to disclose return information to the Congressional Budget Office (CBO) for the purpose of, but only to the extent necessary for, long term models of the Social Security and Medicare programs. The conference report, H.R. Conf. Rep. No. 106–1033, at 1020–21 (2000), provides that it is the intent of Congress that all requests for information made by CBO under this provision be made to the Commissioner, who will use his authority under section 6103(p)(2) such that the Social Security Administration (SSA) or other agency can furnish the information directly to CBO for the purpose of CBO's long term models of Social Security and Medicare. SSA, not IRS, collects and maintains much of the information sought by CBO and also receives the tax information CBO seeks under other provisions of section 6103. However, section 301.6103(p)(2)(B)–1 in its current form would not allow the Commissioner to authorize SSA to redisclose return information properly in its possession to CBO, an authorized recipient of the information under section 6103(j)(6). The temporary regulation allows SSA to make return information in its possession available to CBO to the extent authorized by section 6103(j)(6).

There are other situations, similar to that found under section 6103(j)(6), where it is more efficient for returns and return information in the possession of one authorized agency recipient, to be disclosed by such agency to another statutorily authorized recipient. The inability of agencies, including Federal, state and

local agencies, to share returns and return information between themselves or even inside a single agency, even where the information is more readily available from an agency other than the IRS, was highlighted by the Department of the Treasury on pages 89-90 of its October 2000 Report to the Congress on the Scope and Use of Taxpayer Confidentiality and Disclosure Provisions. The report notes, for example, that currently a single agency within a state (or even a single caseworker) may be administering both child support under Title IV-D of the Social Security Act and welfare under Title IV-A of the Social Security Act. The agency may receive return information under both section 6103(l)(6) and section 6103(l)(7) to aid the agency in making determinations of eligibility for these programs, but the current regulation does not permit even intra-agency pooling or sharing of these data. The report notes that both intra- and inter-agency data sharing with respect to common data elements could be authorized by amendment to the Treasury regulations. The temporary regulation allows the IRS to authorize redisclosure in appropriate situations.

Explanation of Provisions

The temporary regulation expands the agencies that may redisclose returns and return information if authorized by the Commissioner of Internal Revenue to any Federal, state or local agency that receives information under section 6103. Similarly, it expands the authorized recipients of returns and return information pursuant to this redisclosure authority to any recipient authorized to receive returns and return information in accordance with section 6103. All redisclosures by agencies pursuant to this regulation will be made subject to the same conditions, restrictions, safeguards, record-keeping requirements, and civil and criminal penalties that would apply if the disclosure were made by the IRS. The reference in the existing regulation excepting redisclosures of return information under section 6103(m) from the recordkeeping requirements has been deleted as unnecessary because section 6103(p)(3) does not require recordkeeping by the IRS of section 6103(m) disclosures. As under the existing regulation, Federal, state and local agencies making

disclosures of return information under the temporary regulation will continue to provide to the IRS certain information regarding disclosures made pursuant to this authority, in order for the IRS to fulfill its reporting requirements under section 6103(p).

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 section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these regulations is Julie C. Schwartz, Office of the Associate Chief Counsel (Procedure and Administration), Disclosure and Privacy Law Division.

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Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are 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 as follows:

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

Section 301.6103(p)(2)(B)–1T also issued under 26 U.S.C. 6103(p)(2);***

§ 301.6103(p)(2)(B)–1 [Removed]

Par. 2. Section 301.6103(p)(2)(B)–1 is removed.

Par. 3. Section 301.6103(p)(2)(B)–1T is added to read as follows:

§ 301.6103(p)(2)(B)–1T Disclosure of Returns and Return Information by Other Agencies

(a) *General Rule.* Subject to the requirements of paragraphs (b), (c), and (d) of this section, returns or return information that have been obtained by a Federal, state or local agency, or its agents or contractors in accordance with section 6103 (the “first recipient”) may be disclosed by the first recipient to another recipient authorized to receive such returns or return information under section 6103 (the “second recipient”).

(b) *Approval by Commissioner.* A disclosure described in paragraph (a) of this section may be made if the Commissioner of Internal Revenue (the “Commissioner”) determines, after receiving a written request under this section, that such returns or return information are more readily available from the first recipient than from the Internal Revenue Service. The disclosure authorization by the Commissioner shall be directed to the head of the first recipient and may contain such conditions or restrictions as the Commissioner may prescribe. The disclosure authorization may be revoked by the Commissioner at any time.

(c) *Requirements and restrictions.* The second recipient may only receive returns or return information as authorized by the provision of section 6103 applicable to such second recipient. Any returns or return information disclosed may only be used by the second recipient for a purpose authorized by and subject to any conditions imposed by section 6103 and the regulations thereunder, including, if applicable, safeguards imposed by section 6103(p)(4).

(d) *Records and reports of disclosure.* The first recipient shall maintain to the satisfaction of the Internal Revenue Service a permanent system of standardized records regarding such disclosure authorization described in paragraph (a) of this section and any disclosure of returns and return information made pursuant to such authorization, and shall provide such information as prescribed by the Commissioner in order to enable the Internal Revenue Service to comply with its obligations under section 6103(p)(3) to keep accountings for disclosures and to make annual reports of disclosures to the Joint Committee on Taxation. The information

required for reports to the Joint Committee on Taxation must be provided within 30 days after the close of each calendar year. The requirements of this paragraph do not apply to the disclosure of returns and return information as provided by paragraph (a) of this section which, had such disclosures been made directly by the Service, would not have been subject to the recordkeeping requirements imposed by section 6103(p)(3)(A).

(e) *Effective Date.* This section is applicable on December 13, 2001.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

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

Par. 5. In § 602.101, paragraph (b) is amended by adding an entry to the table in numerical order to read as follows: § 602.101 OMB Control Numbers.

(b)***

CFR part or section where identified and described	Current OMB control No.

301.6103(p)(2)(B)–1T	1545–1757

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved December 4, 2001.

Mark Weinberger,
Assistant Secretary (Tax Policy)
Department of the Treasury.