

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

26 CFR 301.6103(n)–1: Disclosure of returns and return information in connection with procurement of property and services for tax administration purposes.

T.D. 9044

**DEPARTMENT OF THE
TREASURY
Internal Revenue Service
26 CFR Parts 301 and 602**

**Amendment of 26 CFR
§301.6103(n)–1 to
Incorporate Taxpayer
Browsing Protection Act**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This final regulation requires persons to whom returns or return information is or may be disclosed as authorized by §301.6103(n)–1(a) (generally, contractors employed to perform tax administration services) to notify their officers and employees of the prohibitions against and penalties for unauthorized inspection of returns or return information.

DATES: *Effective Date:* This final regulation is effective March 12, 2003.

FOR FURTHER INFORMATION CONTACT: Carol Marchant, 202-622-4590 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information in this final rule has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned control number 1545-1821. The collection of information in this regulation is in §301.6103(n)-1(c). This information is required and will be used to promote compliance by officers and employees with the restrictions of sections 6103, 7213, and 7213A, and to protect the privacy of American taxpayers. The collection of information is required to obtain a benefit. The likely respondents are state or local governments, business or other for-profit institutions, Federal agencies, and/or small businesses or organizations.

Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by May 12, 2003.

Comments are specifically requested concerning: Whether the collection of information is necessary for the proper performance of the functions of the **Internal Revenue Service**, including whether the information will have practical utility; The accuracy of the estimated burden associated with the collection of information (see below); How the quality, utility, and clarity of the information to be collected may be enhanced; How the burden of complying with the collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information. Estimated total annual reporting burden: 250 hours. Estimated average annual burden hours per respondent: 6 minutes. Estimated

number of respondents: 2500. Estimated annual frequency of responses: Annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. 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, returns and return information are confidential, as required by 26 U.S.C. 6103.

Background

Under section 7213A of the Internal Revenue Code (Code) as added by Public Law 105-35 (111 Stat. 1104) (the Taxpayer Browsing Protection Act of 1997), any person described in section 6103(n), or an officer or employee of any such person, is prohibited from willfully inspecting any returns or return information, except as authorized by the Code. Any person who violates section 7213A may be subject to a fine in any amount not exceeding \$1,000, or imprisonment of not more than one year, or both. Currently, §301.6103(n)-1(c) provides that each officer or employee of any person to whom returns or return information is or may be disclosed as authorized by §301.6103(n)-1(a) must be notified of the prohibitions against unauthorized disclosure of returns or return information, and the potential penalties for such acts, imposed under section 7213. The regulation does not reflect the penalties imposed by section 7213A.

This document adopts a final regulation amending §301.6103(n)-1(c) to reflect the penalties contained in section 7213A. The regulation requires that each officer or employee of any person to whom returns or return information is or may be disclosed as authorized by §301.6103(n)-1(a) must also receive notification of the prohibitions against unauthorized inspection of returns or return information and the potential penalties for such acts, in addition to the notifications of the penalties for unauthorized disclosure. The Internal Revenue Service (IRS) already requires, in all section 6103(n) contracts, that contractors notify their officers and employees of the penalties for unauthorized inspection. The final regulation updates the regula-

tory requirements to conform to the present law for both unauthorized inspection and disclosure.

Explanation of Provisions

This final regulation adds a requirement that persons to whom returns or return information is or may be disclosed as authorized by §301.6103(n)-1(a) notify their officers and employees that such officers and employees are prohibited from willfully inspecting any returns or return information, except as authorized by the Code, and that they may be subject to a fine in any amount not exceeding \$1,000, or imprisonment of not more than one year, or both, for any violation of section 7213A.

The IRS has a number of section 6103(n) agreements with federal agencies. This final regulation also clarifies the penalty provisions that are applicable to officers and employees of Federal agencies who are performing tax administration services for the IRS pursuant to section 6103(n).

Special Analyses

Section 553 of the Administrative Procedure Act (5 U.S.C. chapter 5) requires that a notice of proposed rulemaking be published in the **Federal Register** and, after such notice, that the Federal agency that issued the notice give interested persons an opportunity to participate in the rulemaking through submission of written comments, with or without opportunity for oral presentation. These requirements are subject to certain exceptions set forth in 5 U.S.C. 553(b), including when the agency for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. Because the final regulation merely amends an existing regulation to add an additional notification requirement that has already been imposed administratively, it is determined that the notice and public-comment procedure required by 5 U.S.C. 553 is unnecessary in this case. For the same reason, a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(3).

It has also 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. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act

(5 U.S.C. 601–612) do not apply. Pursuant to section 7805(f) of the Code, this regulation was submitted to the Chief Counsel of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this final regulation is Carol Marchant, Office of Associate Chief Counsel (Procedure & Administration), Disclosure and Privacy Law Division.

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Adoption of 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 continues to read in part as follows:

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

Par. 2. In §301.6103(n)–1, paragraph (c) is revised and paragraph (f) is added to read as follows:

§301.6103(n)–1 Disclosure of returns and return information in connection with procurement of property and services for tax administration purposes.

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(c) *Notification requirements.* Persons to whom returns or return information is or may be disclosed as authorized by paragraph (a) of this section shall provide written notice to their officers or employees —

(1) That returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized by paragraph (a) of this section;

(2) That further inspection of any returns or return information for a purpose or to an extent unauthorized by paragraph (a) of this section constitutes a misdemeanor, punishable upon conviction by a fine of as much as \$1,000, or imprisonment for as long as 1 year, or both, together with costs of prosecution;

(3) That further disclosure of any returns or return information for a purpose or to an extent unauthorized by paragraph (a) of this section constitutes a felony, punishable upon conviction by a fine of as much as \$5,000, or imprisonment for as long as 5 years, or both, together with the costs of prosecution;

(4) That any such unauthorized further inspection or disclosure of returns or

return information may also result in an award of civil damages against any person who is not an officer or employee of the United States in an amount not less than \$1,000 for each act of unauthorized inspection or disclosure or the sum of actual damages sustained by the plaintiff as a result of such unauthorized disclosure or inspection as well as an award of costs and reasonable attorneys fees; and

(5) If such person is an officer or employee of the United States, a conviction for an offense referenced in paragraph (c)(2) or (c)(3) of this section shall result in dismissal from office or discharge from employment.

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(f) *Effective date.* Section 301.6103(n)–1(c) is applicable on March 12, 2003.

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 in numerical order to the table to read as follows:

§602.101 OMB Control numbers.

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(b) * * *

CFR part or section where identified and described	Current OMB control No.
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301.6103(n)–1	1545–1841
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David A. Mader,
Assistant Deputy Commissioner
of Internal Revenue.

Approved February 11, 2003.

Pamela F. Olson,
Assistant Secretary of the Treasury.