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SUBJECT: Disclosure Issues in Dealing With Employees of Corporate
Taxpayers

This memorandum responds to your request for advice regarding the disclosure of returns and return information to corporate officers and employees. In particular, this memorandum discusses the corporate officers and employees to whom a revenue agent may disclose returns and return information during the course of an examination of a large corporation.

In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

ISSUES

When the Internal Revenue Service (IRS) is engaged in the examination of a large corporation, to what employees and/or officers may IRS revenue agents make information requests and otherwise disclose return information?

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CONCLUSIONS

As discussed below, the IRS may disclose tax information to certain high level corporate officers. In addition, the IRS may disclose tax information to corporate employees engaged in practice before the IRS if such employees are included on a valid power of attorney, such as a properly completed Form 2848. If corporate employees are not engaged in practice before the IRS, but are acting as contact points with the IRS for purposes of the examination, disclosures to such employees may be made only pursuant to a consent valid under I.R.C. § 6103(c) and new Treas. Reg. § 301.6103(c)-1T. Depending upon the circumstances, such a consent may be a general purpose consent, a written consent requesting that a corporate employee provide information or assistance related to a tax matter, or a nonwritten (oral) consent requesting that a corporate employee provide information or assistance related to a tax matter. In the absence of a POA or consent, disclosures may be made to a corporate officer or employee when necessary to obtain information not otherwise reasonably available, in accordance with IRC § 6103(k)(6) and Treas Reg § 301.6103(k)(6)-1. This disclosure authority, however, is very limited and is determined on the particular facts and circumstances of each case.

LAW AND ANALYSIS

As a general rule, I.R.C. § 6103(e) permits the IRS to disclose the taxpayer's own returns (see I.R.C. § 6103(e)(1)) and return information (see I.R.C. § 6103(e)(7)) to the taxpayer. In the case of legal entities such as corporations, such disclosures must of course be made by means of disclosures to officers and/or employees of such entities. However, such disclosures may not be made as a matter of course to any officer or employee; merely because a person is a corporate officer or employee does not give such person the right to receive a copy of the corporate returns or other corporate tax information. Thus, a corporation's lower level employees have no right, by virtue of their positions, to receive copies of the corporation's tax returns or other return information.

Set forth below is a discussion of when disclosures of a corporation's returns or return information may be provided to high level corporate officers and to other corporate employees.

I. Disclosures to high level corporate officers

The Internal Revenue Code (Code) generally provides that the IRS may disclose to the following persons the returns and return information of a corporation (and of any subsidiary of the corporation):

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(i) any person designated by resolution of the corporate board of directors or other similar governing body; and

(ii) any officer or employee of the corporation upon written request signed by any principal officer and attested to by the secretary or other officer.

I.R.C. § 6103(e)(1)(D)(i) & (ii), (7).¹ (As discussed below, one percent shareholders of record may also obtain corporate returns and return information. See I.R.C. § 6103(e)(1)(d)(iii).) In addition, under certain circumstances not relevant here, corporate returns and return information may be disclosed to additional persons. See, e.g., I.R.C. § 6103(e)(1)(vi) (disclosures in the case of dissolved corporations).

Moreover, based on section 6103(c) (permitting disclosures with the consent of “the taxpayer”) in conjunction with state law, there is an additional category of person to whom corporate returns and return information may be disclosed. The relevant subsection of the Internal Revenue Manual (IRM) permits disclosures to

Any corporate officer authorized by the corporation in accordance with applicable State law to legally bind the corporation.

IRM 1.3.2.4.3(1).

The IRM further provides that “[a] corporate officer authorized to legally bind the corporation” includes, but is not limited to, the president or other chief executive officer of the corporation. IRM 1.3.2.4.3(1)(a). With regard to the proof that the IRS may require to determine which officers have authority to legally bind the corporation, the IRM provides that [g]enerally, a written statement by the officer, on corporate letterhead stating, to the effect that he [or] she has authority to legally bind the corporation is sufficient to permit disclosure. IRM 1.3.2.4.3(1)(b).²

¹Returns may be disclosed to taxpayers pursuant to I.R.C. § 6103(e)(1) upon written request. Return information may be disclosed to taxpayers pursuant to I.R.C. § 6103(e)(7), which permits disclosures of a taxpayer’s return information to any person to whom disclosures of returns are authorized by subsection 6103(e), so long as the IRS determines that such disclosure would not seriously impair Federal tax administration. No written request is required to receive return information.

²The IRM provides that, if there is a question regarding the identity of the person who may receive returns or return information, the IRS employee should “mail the
(continued...)”

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In the case of telephone requests, the IRM provides that “employees must ask sufficient questions to establish the identity and position of the caller”; thus, in the case of a corporate officer who is not the president or other chief executive officer, the officer must be asked if he or she can legally bind the corporation. IRM 1.3.2.4.3(1)(c).

In summary, the authority to receive returns and return information, under the express terms of the Code and IRM, is kept at a fairly high level. This is consistent with other authority inside (and outside) the Code concerning dealings with corporations. See I.R.C. § 6062 (authority to sign corporate income tax returns limited to president, vice president, treasurer, assistant treasurer, chief accounting officer or any officer duly authorized so to act); Rev. Rul. 83-41, 1983-1 C.B. 349 (person described in section 6062 can execute consent to extend statute of limitations for corporations); Treas. Reg. § 601.503(c)(3) (in the case of a corporation, a power of attorney must be executed by an officer of the corporation having authority to legally bind the corporation, who must certify that he/she has such authority).

II. Disclosures to employees other than high level officials

Where an examination team interacts with corporate employees who are not the high level officials discussed above, there must be other authority for interactions with such employees which involve the disclosure of return information. The type of authority utilized will depend upon the types of activities in which the corporate employees are engaged. In particular, there are three types of authority that may be used in order to interact with, and disclose return information to, corporate employees. The disclosure authority to be utilized depends upon the following:

- (1) whether the employee is engaged in practice before the IRS;
- (2) whether the employee is acting as a contact point between the IRS and the corporation; and
- (3) whether the employee is providing information to the IRS in response to a limited, discrete IRS request.

A. Corporate employees engaged in practice before the IRS

²(...continued)
requested returns or return information to the corporate address of record.” IRM 1.3.2.4.3(1)(b).

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If a corporate employee is engaged in practice before the IRS, a power of attorney is necessary in order for the IRS to disclose returns and return information. See I.R.C. § 6103(e)(6) (permitting disclosures to attorneys-in-fact). The power of attorney must be executed by an officer of the corporation having the authority to legally bind the corporation; generally such individual will be a high level corporate official.

It is sometimes difficult to determine whether corporate employees are practicing before the IRS, requiring a power of attorney, or are merely receiving and transmitting information, which, as discussed immediately below, only requires a section 6103(c) consent. See 31 C.F.R. § 10.2(e); Treas. Reg. § 601.501(b)(10). Whether activities constitute practice before the IRS is a question for the Director of Practice, who regards advocacy of the taxpayer's position as a key indicator of practice. If the corporate employees are practicing before the IRS, powers of attorney need to be secured before disclosures to such employees may be made. Any questions regarding whether corporate employees are practicing before the IRS should be directed to the Director of Practice.

B. Corporate employees acting as a contact point

If the corporate employee is acting as a contact point for receiving tax information and correspondence from the IRS, providing information to the IRS, and discussing issues that arise during the examination, then a disclosure consent under section 6103(c) may be obtained from the corporation in order to authorize disclosures of return information to the employee. There are different types of section 6103(c) consents that may be used, and they are discussed below.

C. Corporate employees responding to a request for information

In the absence of a POA or consent, disclosures may be made to a corporate officer or employee when necessary to obtain information not otherwise reasonably available, in accordance with IRC § 6103(k)(6) and Treas Reg § 301.6103(k)(6)-1.³ This disclosure authority, however, is very limited and is determined on the particular facts and circumstances of each case. Moreover, section 6103(k)(6) and Treas. Reg. § 301.6103(k)(6)-1 do not provide IRS employees with authority to discuss issues with the corporate employees.

³These contacts with corporate employees are not third party contacts for purposes of the proposed regulations under section 7602. Proposed Regulations on Third Party Contacts, 66 Fed. Reg. 77 (2001) (to be codified at Treas. Reg. § 301.7601-2) (proposed Jan. 2, 2001). However, this conclusion does not affect disclosure issues under section 6103.

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III. Disclosures to corporate employees pursuant to I.R.C. § 6103(c) consents

Section 6103(c) provides as follows:

The Secretary may, subject to such requirements and conditions as he may prescribe by regulations, disclose the return of any taxpayer, or return information with respect to such taxpayer, to such person or persons as the taxpayer may designate in a request for or consent to such disclosure, or to any other person at the taxpayer's request to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, return information shall not be disclosed to such person or persons if the Secretary determines that such disclosure would seriously impair Federal tax administration.

If it is determined that a consent under section 6103(c) is the appropriate vehicle for making disclosures, such a consent may take one of several forms under the new temporary regulation published in January 2001. See Treas. Reg. § 301.6103(c)-1T. Such temporary regulation, which replaced a regulation that had been in place since the late 1970's, formalizes the Service's longstanding positions in certain areas, such as the authority to execute a consent. In addition, pursuant to authority provided to the IRS under Taxpayer Bill of Rights 2 (TBOR 2), the temporary regulation permits nonwritten consents under certain circumstances.

Under the temporary regulation, as under the statute itself, there are two types of consents: general purpose consents, Treas. Reg. § 301.6103(c)-1T(b); and consents to disclosures relating to a taxpayer's request for information or assistance with regard to a tax matter, Treas. Reg. § 301.6103(c)-1T(c). Because each of these types of consents may apply in the case of disclosures to corporate employees, we will discuss briefly the requirements of each and the circumstances under which each applies.

A. General purpose consents

Under the regulatory requirements for a general purpose consent, the consent must be in the form of a separate written document (such as one side of an 8 ½" by 11" piece of paper or a separate computer screen) pertaining solely to the authorized disclosure. Treas. Reg. § 301.6103(c)-1T(b). The document must be signed and dated by the taxpayer. In the case of a corporation, the consent must be signed by "any officer of the entity with authority under applicable State law to legally bind the entity[.]" Id. § 301.6103(c)-1T(e)(4). It must contain the identity of the taxpayer, the

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identity of the designee,⁴ the tax year, and the type of tax or items of tax information to be disclosed. The Form 8821 has been designed to meet the requirements of this part of the regulation.

A valid general purpose consent may be used to enable IRS revenue agents to disclose tax information to a corporate employee who is acting as a contact point with regard to an IRS examination. The consent must properly identify the type of tax or items of tax information to be disclosed to the corporate employee. For example, if the examination related to the corporation's Forms 1120 for 1995 and 1996, the relevant portion of the consent could state "1995 and 1996 Forms 1120."

B. Consents related to requests to provide information or assistance

Under Treas. Reg. § 301.6103(c)-1T(c), the IRS may sometimes disclose tax information to a third party when the taxpayer requests that such third party provide information or assistance with regard to a tax matter. The most common disclosures made by the IRS under this provision are in response to congressional inquiries. In such cases, the taxpayer writes a letter to his or her member of Congress complaining about treatment by the IRS, and the member forwards such letter to the IRS. In these circumstances, the constituent's letter to his or her member of Congress constitutes a valid consent which permits the IRS to write back to the member and to explain the situation. The requirements under this part of the regulation are somewhat less restrictive than those under the general consent provision (as noted below). Disclosures under Treas. Reg. § 301.6103(c)-1T(c) may also be appropriate where the taxpayer brings a friend or relative to a meeting, for moral support or general assistance.

We believe that, where a corporate employee (who is not practicing before the IRS) acts as a contact point for a corporate examination, disclosures under this part of the regulation would be appropriate. We therefore set forth below the requirements for such types of disclosures. Disclosures under this part of the regulation may be made pursuant to written or, under certain circumstances, nonwritten (oral) requests for information or assistance. Put another way, disclosures under this part of the regulation may be made pursuant to valid written or nonwritten consents.

1. Written request for information or assistance

Under Treas. Reg. § 301.6103(c)-1T(c)(1), the writing must be signed and dated by the taxpayer and contain the taxpayer's identity, the identity of the designee, and sufficient facts underlying the request for information or assistance to enable the

⁴If there is more than one designee, a list may be attached.

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IRS to determine the nature of the assistance requested and the tax information to be disclosed. Under this part of the regulation, the writing does not have to pertain solely to the authorized disclosure--it may be included in another document. Thus, if an audit plan designates the corporate employees who will work with the IRS during the audit and receive tax information, and the audit plan is signed and dated by a high level official with authority to execute a consent, the audit plan may function as a consent under Treas. Reg. § 301.6103(c)-1T(c)(1).

2. Nonwritten (oral) request for information or assistance

Under Treas. Reg. § 301.6103(c)-1T(c)(2), a taxpayer may orally designate a third party to receive tax information in connection with the taxpayer's request for information or assistance in a tax matter. The IRS must obtain from the taxpayer sufficient facts to determine the nature of the assistance requested and the tax information to be disclosed to the third party. Moreover, before making disclosures the IRS must confirm the identity of the taxpayer, the identity of the designee, and the date, nature and extent of the assistance requested.

This regulation may apply in the case of an examination of a corporate taxpayer. For example, the president of a corporation could tell a revenue agent that "Your contact points for the examination are Mr. Smith and Mr. Jones, and I want you to work with them." In such situation, it is expected that the revenue agent will immediately record the date and the fact that the corporate president indicated that the IRS should work with Mr. Smith and Mr. Jones.⁵ If there are any ambiguities in the statement or the circumstances, the revenue agent should resolve them. (For example, the revenue agent might ask "Should we work with Mr. Smith and Mr. Jones on both income and employment tax issues or just income tax issues?") .

This regulation might also be utilized where a corporate officer with authority to bind the corporation brings a number of corporate employees to a meeting with IRS agents. In that situation, merely because the CEO brings the employees to the meeting does not mean that can consent may be inferred. Under the regulation, there is no implied consent. Thus, each of the employees attending the meeting must be included on a power of attorney, must be included on a general purpose consent valid under Treas. Reg. § 301.6103-1T(b), or must be the subject of a valid written or nonwritten consent under Treas. Reg. § 301.6103-1T(c). As noted above, in the case of a nonwritten consent, the IRS agent should record the date and the fact of the nonwritten consent.

⁵If the IRS makes no written record of a taxpayer's oral consent, it will be very difficult to defend a lawsuit under I.R.C. § 7431 alleging unauthorized disclosures of return information.

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Please call 202-622-4580 if you have any further questions.