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From:

Sent: Tuesday, August 05, 2008 3:52:17 PM

To:

Cc:

Subject: FW: Appraiser/Disclosure

As we discussed on the phone:

The Privacy Act does not limit its restrictions to the disclosure of *return information*. The Privacy Act applies to information which uses individual identifiers for retrieval. For example, employee personnel information is subject to the Privacy Act's limitations on disclosure, when that information is clearly not return information. This is not really a problem, however, since the Privacy Act disclosures are going to be subsumed, for all intents and purposes, by IRC section 6103.

Second, it is an incorrect assumption that this information is not return information. The fact that an appraiser has been found liable for the 6701 penalty is the return information of the appraiser. IRC section 6103(b)(2) defines return information, *inter alia*, as information gathered/obtained/received or prepared by the IRS with respect to any tax, *penalty*, interest, fine, or forfeiture, etc. under the IRC. A determination that someone was subject to a penalty under section 6701 would be return information.

Since this information is return information, it can only be disclosed as permitted by the IRC. IRC 6103(k)(6) does not apply, as the disclosure of the appraiser's penalty information to the estate representative is not tied to our obtaining information in the case. IRC 6103(h)(4)(B)-(C) do not apply, as there is no transactional or return item nexus between the appraiser's penalty and the estate's return. It is unlikely that the appraiser would consent to the disclosure of his previous misconduct, so IRC 6103(c) will not work. I have discussed the issue with Chief Counsel () who concurs with this analysis and also could not think of a disclosure authorization that could be used in this instance.

Please let me know if you have any additional questions.