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From:

Sent: Friday, January 27, 2012 2:15 PM

To:

Cc:

Subject: Response to request for advice under 6103

We received your request for request for advice on whether an expert retained by the IRS to provide actuarial services in a Tax Court case may disclose information obtained from his participation in this case to the actuarial disciplinary board.

It is our understanding that the expert was hired to review the work of petitioner's actuary and provide expert witness services in a case being handled by your office. The expert signed a section 6103(n) contract in which he agreed to treat as confidential and not disclose any returns or return information made available to him for the purpose of carrying out his contract. Based on information the expert acquired during the performance of his contract, the expert indicated that he believed petitioner's actuary had committed a professional violation and wished to refer petitioner's actuary to the actuarial board for disciplinary proceedings. In order to make the referral, the expert would need to disclose to the board items prepared by petitioner's actuary and potentially other supporting documents prepared or acquired during the course of the case. The case at issue was settled.

I.R.C. § 6103 prohibits the disclosure of returns or return information except as authorized by the Code. Return information is any information gathered by, collected by, created by, or otherwise in the hands of the Secretary in connection with determining a taxpayer's liability or potential liability under the Code. I.R.C. § 6103(b)(2). In this case, it appears as if everything the expert may want to disclose to the actuarial board is return information under the Code. All of the documents referenced were acquired or created in the course of determining the taxpayer's liability under the Code. We are unaware of any provision of the Code which would allow the expert to disclose, without consent of the taxpayer, the return information in this case to the actuary board.

A taxpayer may give the IRS consent to disclose his return information to a designated third party. I.R.C. § 6103(c). In order to provide consent, the taxpayer must execute a written consent which meets all the requirements in Treas. Reg. § 301.6103(c)-1. [REDACTED]

Lastly, the expert may obtain information from the public record to make a referral to the actuary board. The IRS's position is that I.R.C. § 6103 does not ban the disclosure of information actually taken from the public record but has confined its position to information in the public record as the result of collection activities or judicial tax proceedings. See, e.g., Lampert v. United States, 854 F.2d 335, 338 (9th Cir. 1988). [REDACTED]

In sum, I.R.C. § 6103 prohibits the expert from disclosing any return or return information in this case except if the taxpayer consents to the disclosure or if the information is taken from the public record. If the expert wishes to use information contained in the public court record, he must request the documents from the court and only use the versions provided by the court.

Thanks and have a great day,