

Enhance Confidentiality and Disclosure Protections

#39 LIMIT REDISCLOSURES AND UNAUTHORIZED USES OF TAX RETURNS AND TAX RETURN INFORMATION OBTAINED THROUGH SECTION 6103-BASED “CONSENT” DISCLOSURES

Present Law

Under IRC § 6103, tax returns and tax return information generally must be kept confidential and may not be disclosed. This general rule is subject to certain exceptions, including an exception for disclosures requested or consented to by the taxpayer.¹³⁵ For example, a taxpayer may request that the IRS disclose his or her tax return or tax return information, or sign a form providing consent to the disclosure, when the taxpayer is applying for a mortgage and the lending bank requires the documents for income-verification purposes.¹³⁶ A taxpayer may request or provide a consent to disclosure in other circumstances as well.

Under present law, recipients of a taxpayer’s tax return or tax return information are not prohibited from using it for other purposes or from re-disclosing it. In theory, recipients may share the information with an affiliate, sell it, or even publish it. Recipients are also free to use the information for purposes other than the purpose for which the taxpayer granted consent. Thus, a bank might use the information to market ancillary products to the taxpayer.

Reasons for Change

It is widely agreed that tax returns and tax reform information should be kept confidential except in limited circumstances where a compelling need exists for the disclosure. Maintaining general confidentiality and defining exceptions as narrowly as possible to accomplish their intended purposes protects taxpayers and promotes tax compliance.

If a taxpayer applies for a mortgage or must provide his tax return or tax return information to a third party for another purpose, the third party should be limited to using it only for the intended purpose, and should not be permitted to disclose it further without the express, written permission of the taxpayer.

Recommendation

Amend IRC § 6103 to provide that persons designated by a taxpayer to receive tax returns or tax return information may not use the information for any purpose other than the limited purpose for which the authorization was granted and may not disclose the information to any other party without the express, written permission of the taxpayer.¹³⁷

¹³⁵ See IRC § 6103(c). See also Treas. Reg. § 301.6103(c)-1.

¹³⁶ The taxpayer often signs a copy of Form 4506-T, *Request for Transcript of Tax Return*, which gives the lender access to the taxpayer’s return information pertaining to the tax periods or years specified on the form.

¹³⁷ For legislative language that is generally consistent with this recommendation, see Taxpayer Protection Act of 2016, S. 3156, 114th Cong. § 112 (2016) and accompanying committee report, S. REP. NO. 114-298, at 14-15 (2016).

#40 AUTHORIZE THE TREASURY DEPARTMENT TO ISSUE GUIDANCE SPECIFIC TO IRC § 6713 REGARDING THE DISCLOSURE OR USE OF TAX RETURN INFORMATION BY PREPARERS

Present Law

IRC §§ 7216 and 6713 impose criminal and civil sanctions, respectively, on preparers who, with the requisite level of intent,¹³⁸ disclose or use tax return information, except where they are expressly permitted to do so by an exception provided in the statute or regulations. Exceptions to the broad prohibition in IRC § 6713 are provided in IRC § 6713(b), which states that the rules of IRC § 7216(b) apply. IRC § 7216(b) authorizes the Secretary to create regulatory exceptions to the criminal penalty statute. Thus, the current statutory framework seemingly requires that exceptions be made either to both the criminal and civil statutes or to neither.

Reasons for Change

IRC § 6713 has historically been identified as the civil counterpart to the criminal penalty imposed on tax return preparers under IRC § 7216. The penalty regime under IRC § 7216 is significantly harsher than under IRC § 6713.¹³⁹ The Treasury Department is understandably reluctant to subject preparers to criminal sanctions except for egregious conduct, so it has used its regulatory authority to carve out broad exceptions from the general prohibition on the disclosure or use of tax return information set forth in IRC § 7216.¹⁴⁰ Because the exceptions under IRC § 7216 (criminal statute) are deemed to apply to IRC § 6713 (civil statute), there is no room for the Treasury Department and the IRS to designate the disclosure or use of tax return information for certain questionable business practices or the sale of certain products with high-abuse potential as civil violations without also making them criminal violations. Therefore, such disclosures and uses are generally permitted. The Treasury Department and the IRS would be more likely to strengthen taxpayer protections against the improper disclosure or use of taxpayer return information by return preparers if they are given the flexibility to promulgate regulations applicable only to the civil penalty, without concern that the criminal penalty would also apply.¹⁴¹

Recommendation

The National Taxpayer Advocate recommends that Congress amend IRC § 6713 to authorize the Secretary to prescribe regulations under IRC § 6713.

138 Unlike IRC § 7216, IRC § 6713 does not require that the disclosure or use be knowing or reckless.

139 IRC § 6713 imposes a \$250 penalty for each improper disclosure or use. In contrast, IRC § 7216 makes the preparer guilty of a misdemeanor, and upon conviction, the preparer will be fined not more than \$1000 or imprisoned not more than one year, or both, together with the costs of prosecution.

140 See Treas. Reg. § 301.7216-2.

141 IRC § 7805(a) provides the Secretary general authority to promulgate regulations under Code provisions. However, because IRC § 7216(b)(3) provide the Secretary express authority to carve out exceptions, IRC § 6713 should provide similar authority.