

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).