



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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Number: **199933006**

Release Date: 8/20/1999

MEMORANDUM FOR Southern California District Counsel

Attn: Miriam Howe, Assistant District Counsel

FROM: Assistant Chief Counsel (Disclosure Litigation)

SUBJECT: Administrative Claim under I.R.C. § 7431

LEGEND

Taxpayer Husband
Taxpayer Wife
Taxpayer Husband's Girlfriend

By letter dated December 18, 1998, addressed to the Commissioner of Internal Revenue Service, and the Southern California and Southwest District Directors, Taxpayer Husband, through his attorneys, submitted an administrative claim for unauthorized disclosure of return information under I.R.C. § 7431 and the Federal Tort Claims Act, 28 U.S.C. § 2671, as well as improper conduct by an agent under I.R.C. § 7433, the Federal Tort Claims Act and the Fourth and Fifth Amendments to the Constitution of the United States.

Based on discussions between Thomas Carter, Chief, Branch 1, Disclosure Litigation, Office of Chief Counsel and Miriam Howe, Assistant District Counsel, Southern California District, it was agreed that the Southern California District Counsel Office would respond to the section 7431 and 7433 claims. This memorandum contains our recommendations regarding Taxpayer Husband's section 7431 claim. Further, it is our understanding that the Office of Assistant Chief Counsel, General Legal Services (GLS), will issue a response to the Federal Tort Claims Act claim directly to Taxpayer Husband's attorneys.

Our understanding of the facts in this matter is based on Taxpayer Husband's letter and our conversations with attorneys in the Southern California District Counsel and Southwest District Counsel Offices. Based upon this understanding, it is our view that the technically and legally correct conclusion is that the Taxpayer Husband has no actionable claim under section 7431. However, as we indicated to you, due to

the nature of the allegations contained in Taxpayer Husband's letter, we referred the letter to the Office of Treasury Inspector General for Tax Administration (TIGTA) for its consideration. Given this referral, we would recommend that the district consult with TIGTA before responding to Taxpayer Husband's administrative claim. Finally, we note that Taxpayer Husband's letter raises questions as to certain information included in the Information Document Request (IDR) and about the mailing of the IDR to Taxpayer Wife's address. While the answers to these questions would not affect our disclosure response, they may be relevant to the district's overall consideration of Taxpayer Husband's claim. Our suggested language regarding the section 7431 administrative claim is as follows:

Your December 18, 1998, administrative claim seeks actual damages under I.R.C. § 7431 for the "improper disclosure and characterization of [Taxpayer Girlfriend] as [Taxpayer Husband]'s girlfriend to [Taxpayer Wife]".

Section 7431 of the Internal Revenue Code provides civil remedies for, inter alia, the unauthorized disclosure of return and/or return information. For a claim to exist under this Code section, a taxpayer must establish that an officer or employee of the United States knowingly, or by reason of negligence, disclosed a return or return information with respect to a taxpayer in violation of any provision of section 6103.

Section 6103(a) sets forth the general rule that tax returns and return information shall be confidential and shall not be disclosed by Service employees or certain other persons with access to such information, "except as authorized by [Title 26]." See Church of Scientology of California v. I.R.S., 484 U.S. 7 (1987). The term "return information" is defined, in pertinent part, as:

a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense. . .

I.R.C. § 6103(b)(2).

Your letter indicates that the Service was auditing a jointly filed income tax return of Taxpayer Husband and Wife. The February 6, 1997 Information Document Request (IDR), which was prepared and issued in furtherance of that audit and addressed to Taxpayer Husband and Wife is return information of Taxpayer Husband and Wife because it was prepared and issued with respect to the liability or possible liability of Taxpayer Husband and Wife.

Section 6103(e)(1)(B) states that a joint return “. . . shall, upon written request, be open to inspection by or disclosure to . . . either of the individuals with respect to whom the return is filed.” Further, I.R.C. § 6103(e)(7) states that, “Return information with respect to any taxpayer may be open to inspection by or disclosure to any person authorized by this subsection to inspect any return of such taxpayer . . .”

Accordingly, since the IDR is return information of Taxpayer Husband and Wife, relating as it does to the Service’s audit of the jointly filed return, sections 6103 (e)(1)(B) and (e)(7) provide authorization for the disclosure of the return information in the IDR to Taxpayer Wife. See generally Britt v. Internal Revenue Service, 83-2 U.S.T.C. (CCH) ¶ # 9675 (D.D.C. 1983); Solargistic Corporation v. United States, 921 F.2d 729 (7th Cir. 1991); Mid-South Music Corporation v. United States, 818 F.2d 536 (6th Cir. 1987). See also I.R.C. § 6103(h)(4)(A), which allows the disclosure of a return or return information in an administrative proceeding pertaining to tax administration “if the taxpayer is a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer’s civil or criminal liability . . .” An audit, such as the one that was performed with regards to Taxpayer Husband and Wife is an administrative proceeding under section 6103(h)(4)(A).

If you have any questions, please contact Branch 1, at (202) 622-4580.