

# Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

## Disclosure of Return Information by Certain Officers and Employees for Investigative Purposes

### REG-140808-02

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9073) relating to the disclosure of return information pursuant to section 6103(k)(6) of the Internal Revenue Code. The temporary regulations describe the circumstances under which officers or employees of the IRS, the IRS Office of Chief Counsel, and the Office of Treasury Inspector General for Tax Administration (TIGTA), in connection with official duties relating to any examination, administrative appeal, collection activity, administrative, civil or criminal investigation, enforcement activity, ruling, negotiated agreement, prefiling activity, or other proceeding or offense under the internal revenue laws or related statutes, or in preparation for any proceeding described in section 6103(h)(2) (or investigation which may result in such a proceeding), may disclose return information to the extent necessary to obtain information relating to such official duties or to accomplish properly any activity connected with such official duties. The temporary regulations amend the existing regulations to clarify and elaborate on the facts and circumstances in which disclosure pursuant to section 6103(k)(6) is authorized. The temporary regulations clarify that IRS and TIGTA officers and employees make the determination, based on the facts and circumstances, at the time of the disclosure, whether a disclosure is necessary to obtain the information

sought, and that section 6103(k)(6) does not affect the authority or decision of IRS and TIGTA officers and employees to initiate, or to conduct, an investigation, or to determine the nature of the investigation. The temporary regulations clarify that the return information of any taxpayer, not only the taxpayer under investigation, may be disclosed when necessary to obtain the particular information sought. The temporary regulations clarify that section 6103(k)(6) permits IRS and TIGTA officers and employees to identify themselves, their organizational affiliation with the IRS (*e.g.*, Criminal Investigation (CI)) or TIGTA (*e.g.*, Office of Investigations (OI)), and the nature of their investigation when making oral, written, or electronic contacts with third party witnesses.

DATES: Written and electronic comments and requests for a public hearing must be received by October 8, 2003.

ADDRESSES: Send submissions to CC:PA:RU (REG-140808-02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:RU (REG-140808-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet directly to the IRS Internet site: [www.irs.gov/reg.s](http://www.irs.gov/reg.s).

FOR FURTHER INFORMATION CONTACT: Helene R. Newsome, 202-622-4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

#### Background

Under section 6103(a), returns and return information are confidential unless the Internal Revenue Code (Code) authorizes disclosure. Section 6103(k)(6) authorizes an internal revenue officer or employee and an officer or employee of TIGTA, in connection with official duties relating to any audit, collection activity, civil or criminal tax investigation, or offense under the internal revenue laws or related statutes,

to disclose return information to a person other than the taxpayer to whom such return information relates (or his or her representative) to the extent that such disclosure is necessary to obtain information not otherwise reasonably available with respect to the correct determination of tax, liability for tax, or the amount to be collected, or with respect to the enforcement of any other provision of the Code or related statutes. Disclosure is subject to situations and conditions prescribed by regulation.

The proposed regulations amend the existing regulations to reflect a recent legislative amendment to section 6103(k)(6). The Consolidated Appropriations Act, 2001, Public Law 106-554 (114 Stat. 2763), was signed into law on December 21, 2000. Section 1 of that Act enacted into law H.R. 5662, the Community Renewal Tax Relief Act of 2000. Section 313(c) of the Community Renewal Tax Relief Act of 2000 amended section 6103(k)(6) to clarify that officers or employees of TIGTA are among those persons authorized to make disclosures under section 6103(k)(6).

The proposed regulations also clarify the standard used in determining whether disclosures are authorized under section 6103(k)(6). Recent litigation indicates that there is some confusion as to the authority of IRS (and now TIGTA) officers and employees to make disclosures in certain situations under section 6103(k)(6). The proposed regulations seek to address these issues. In particular, the proposed regulations address the issues surrounding the disclosures that occur when IRS or TIGTA officers and employees introduce themselves to third party witnesses or communicate in writing using, *e.g.*, official letterhead that reveals affiliation with IRS or TIGTA. The proposed regulations also clarify that section 6103(k)(6) does not limit IRS or TIGTA officers and employees with respect to the initiation or conduct of an investigation. Finally, the proposed regulations clarify that section 6103 does not require IRS and TIGTA officers or employees to contact a taxpayer for information before contacting third party witnesses.

The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations contains a full explanation of the reasons underlying the issuance of the proposed regulations.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that 5 U.S.C. 553(b), the Administrative Procedure Act does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

### Drafting Information

The principal author of these regulations is Helene R. Newsome, Office of the Associate Chief Counsel (Procedure and Administration), Disclosure and Privacy Law Division.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

#### PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 301.6103(k)(6)–1 also issued under 26 U.S.C. 6103(k)(6); \* \* \*

Par. 2. Section 301.6103(k)(6)–1 is removed.

Par. 3. Section 301.6103(k)(6)–1T is added to read as follows:

[The text of this proposed section is the same as the text of §301.6103(k)(6)–1T published elsewhere in this issue of the Bulletin].

Robert E. Wenzel,  
*Deputy Commissioner of  
Internal Revenue.*

(Filed by the Office of the Federal Register on July 9, 2003, 8:45 a.m., and published in the issue of the Federal Register for July 10, 2003, 68 F.R. 41089)