



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

OFFICE OF
CHIEF COUNSEL

August 19, 1999

Number: **199941038**
Release Date: 10/15/1999
GLS 705613-99
UILC: 6103-11.00

INTERNAL REVENUE SERVICE NATIONAL OFFICE CHIEF COUNSEL ADVICE

MEMORANDUM FOR GARY ANDERSON
ASSISTANT REGIONAL COUNSEL (CC:MSR:O:GLS)
GENERAL LEGAL SERVICES

FROM: David L. Fish
Chief, Branch 4 (Disclosure Litigation) (CC:EL:D)

SUBJECT: Accessing IDRS to Ascertain Whether Practitioners Who
Submit Form 2848 Have Possibly Engaged In Disreputable
Conduct Under 31 C.F.R § 10.51(d).

This Chief Counsel Advice responds to your correspondence requesting our assistance as to whether the Service may access the Integrated Data Retrieval System (IDRS) to ascertain whether practitioners who submit Form 2848, Power of Attorney and Declaration of Representative, are current in their Federal income tax obligations. This document is not to be cited as precedent.

ISSUE(S): Whether the Service may access the Integrated Data Retrieval System (IDRS) to ascertain whether practitioners who submit Form 2848, Power of Attorney and Declaration of Representative, are current in their Federal income tax obligations.

CONCLUSION: Under I.R.C. § 6103(h)(1), the Service may access the Integrated Data Retrieval System (IDRS) to ascertain whether practitioners who submit Form 2848, Power of Attorney and Declaration of Representative, are current in their Federal income tax obligations.

LAW AND ANALYSIS: Section 6103(a) of the Internal Revenue Code prohibits the Service from disclosing "returns" or "return information," as those terms are defined in I.R.C. § 6103(b)(1) and (b)(2), unless disclosure is authorized under a specific provision of Title 26. Church of Scientology of California v. Internal Revenue Service, 484 U.S. 9, 10 (1987); Aronson v. Internal Revenue Service, 973 F.2d 962 (1st Cir. 1992); Martin v. Internal Revenue Service, 857 F.2d 722, 726 (10th Cir. 1988).

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I.R.C. § 6103(h)(1) authorizes the disclosure of returns or return information to officers and employees of the Treasury Department for tax administration purposes. Tax administration is defined as “the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes . . .” I.R.C. § 6103(b)(4). The regulation of practice before the Service is within this broad definition of tax administration.

Here, the local IRS Office will be accessing IDRS to ascertain whether practitioners have possibly engaged in disreputable conduct under 31 C.F.R § 10.51(d), including the wilful failure to file a Federal tax return. Once the local office determines that a practitioner may not be current in his/her income tax obligations, a referral may be made to the Office of the Director of Practice for investigation. It is our understanding that the mere nonfiling of tax returns comes within the definition of wilful failure to file, and that such failure could result in the practitioner’s suspension or disbarment by the Office of the Director of Practice. Thus, the accessing of IDRS by the Service to determine if a practitioner has violated 31 C.F.R. § 10.5(d), is authorized under section 6103(h)(1).¹

Additionally, whether or not practitioners are current in their Federal income tax obligations is information subject to the confidentiality provisions of section 6103. As such, taxpayers who are represented by the practitioners are not to be notified of the Service’s accessing IDRS or the results of the access.

If you have any further questions, please call 202-622-4570.

¹ Please note that section 6103(k)(6) is only used when the Service is making a disclosure to third parties for investigative purposes.