



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

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR ASSISTANT DISTRICT COUNSEL, FT. LAUDERDALE
CC:SER:SFL:FTL

FROM: David L. Fish
Chief, Branch 4 (Disclosure Litigation) CC:EL:D:Br4

SUBJECT: Notice Copies of Summonses

As we understand it, you are interested in our determining whether or not it is a violation of I.R.C. § 6103 to provide notice copies of summonses, as required by I.R.C. § 7609(a), to any person to whom the records or testimony relates who is identified in the summons. For example, the Service may have an open civil or criminal investigation of a particular taxpayer. As is commonly the case, the taxpayer conceals assets and operates through nominees. The concealment plan could involve the taxpayer ("T"), the taxpayer's spouse ("S"), or other related entities, such as corporations owned by T or S ("ABC Corp."). You have requested we address the following scenario, with a summons styled substantially as follows:

In the Matter of T

All records related to financial transactions with:

T
S
ABC Corp.

All records related to accounts held by the above persons.

All notice parties or their powers of attorney receive copies of the summonses pursuant to I.R.C. § 7609.¹

¹ Section 7609 of the Internal Revenue Code (IRC) provides any person to whom the records or testimony sought in the summons relates and who is identified in the

(continued...)

Section 6103(a) establishes the general rule that returns and return information are confidential, and cannot be disclosed except as authorized by Title 26. Section 6103(k)(6) provides that:

an internal revenue officer or employee may, in connection with his official duties relating to any audit, collection activity, or civil or criminal tax investigation or any other offense under the internal revenue laws, disclose return information to the extent that such disclosure is necessary in obtaining information, which is not otherwise reasonably available, with respect to the correct determination for tax or liability for tax, or the amount to be collected or with respect to the enforcement of any other provision of [Title 26].

Relevant portions of the regulations provide as follows:

. . . an officer or employee of the Service or Office of the Chief Counsel therefor is authorized to disclose return information (as defined in section 6103(b)(2)) in order to obtain necessary information relating to the following—

* * *

(3) To establish or verify the liability (or possible liability) of any person, or the liability of any person, or the liability (or possible liability) at law or in equity of any transferee or fiduciary of any person, for any tax, penalty, interest, fine, forfeiture, or other imposition or offense under the internal revenue laws or the amount thereof to be collected;

(4) To establish or verify misconduct (or possible misconduct) or other activity proscribed by the internal revenue laws;

* * *

(6) To establish or verify the financial status or condition and location of the taxpayer against whom collection activity is or may be directed, to locate assets in which the taxpayer has an interest, to ascertain the amount of any liability described in subparagraph (3) of this paragraph to be collected, or otherwise to apply the provisions of the Code relating to establishment of liens against such assets, or levy on, or seizure, or sale of, the assets to satisfy any such liability; or

* * *

where necessary in order to accomplish any activity described in subparagraph (6) of this paragraph

Treas. Reg. § 301.6103(k)(6)-1(b).

Under the scenario described, the Service has reason to suspect that the taxpayer is diverting funds to nominees. In an attempt to trace income, the summons may include

¹ (...continued)
summons shall receive notice and a copy of the summons

the name of the target and the names of non-target third parties who may have accounts that are likely being used by the taxpayer to divert his income. Accordingly, under these facts, all the information disclosed is necessary to obtain information from the financial institution. Barrett v. U.S., 795 F.2d 446 (5th Cir. 1986) (indicating that inquiry was not whether the information sought was necessary, but whether the disclosures were necessary to obtain the information sought and whether the information sought was otherwise reasonably available).²

As to disclosing the fact that the taxpayer is being investigated to the taxpayer's spouse and ABC Corp., because the IRS is required to give a copy of the summons to the noticees and the summons form must identify the taxpayer being investigated, it is clear that section 6103(k)(6) and/or sections 7602 and 7609 authorize the disclosure of the fact that T is being investigated to these third parties.

If you have any questions, please contact me at (202) 622-4570.

² This memorandum addresses whether the information disclosed in the summons is authorized under I.R.C. § 6103, not whether a summons may be issued for information relating to third parties. With regard to this latter issue, which is under the jurisdiction of the Assistant Chief Counsel (General Litigation), courts have held that when seeking records of third parties the Service needs to establish a nexus between the taxpayer's investigation and the records of the third party being sought. See United States v. Harrington, 388 F.2d 520 (2d Cir. 1968). Under these facts, that test is met.