



OFFICE OF
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE CHIEF COUNSEL ADVICE

MEMORANDUM FOR ISP SHIPPING COORDINATOR

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

SUBJECT: MARAD Reporting Requirement

This document is not to be cited as precedent.

ISSUE: Whether, during the course of an examination of a taxpayer participating in the merchant marine capital construction funds program, the IRS may contact the Department of Transportation, Maritime Administration (MARAD) in order to obtain from MARAD the capital construction deductions and contract ceiling amounts of that taxpayer for purposes of the examination.

FACTS: I.R.C. § 7518 provides tax incentives relating to merchant marine capital construction funds. MARAD is charged with the administration of the capital construction program, *i.e.*, determining the program objectives and monitoring compliance of the program objectives of shipping companies involved in the program. It has been proposed that when examining shipping companies involved in the program, the IRS will inform MARAD that the taxpayer is under examination and will then request the construction deductions/ceiling limit amounts of said taxpayer.

CONCLUSION: The IRS may disclose to MARAD the fact of examination of certain taxpayers under I.R.C. § 6103(k)(6) in order to obtain the contract ceiling amounts or other discrete items of information necessary in determining the taxpayer's tax liability, if the IRS cannot obtain this information from the taxpayers directly. To the

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extent a dialogue with MARAD is sought, or MARAD needs information from the IRS to perform its statutory duties, the consent of the taxpayer under I.R.C. § 6103(c) should be obtained.

LAW AND ANALYSIS: In order to authorize disclosure to MARAD, the IRS must meet the requirements under section 6103(k)(6), which states that internal revenue officers and employees may disclose return information to the extent that such disclosure is necessary in obtaining information which is not otherwise reasonably available for certain tax administration activities, including examinations. The IRS may make such disclosures to MARAD provided that the IRS cannot obtain the contract ceiling information from the taxpayer directly. Treas. Reg. § 301.6103(k)(6)-1(a).¹ Furthermore, under section 6103(k)(6), the IRS may only disclose to MARAD that information which the IRS needs to obtain the information sought (i.e., identity and the fact of examination of the taxpayer).

However, the disclosure authority under section 6103 (k)(6), as described above, does not extend to the IRS reporting to MARAD the adjustments made to the taxpayers' tax return information, or other information that is not necessary for the IRS to obtain information. If a dialogue is sought, or MARAD seeks to obtain the resulting IRS adjustments to offset the taxpayer's capital account or perform other statutory responsibilities, MARAD must obtain a section 6103(c) consent from the taxpayers: Form 8821 ("Tax Information Authorization") is suitable for this purpose.

Section 3417 of the IRS Restructuring and Reform Act (Pub. L. No. 105-206, 112 Stat. 685, 757(1998)), notice of IRS contact of third parties, may apply to the IRS' communication with MARAD under the section 6103(k)(6) disclosure scenario. You should contact District Counsel or the Assistant Chief Counsel (General Litigation) for advice on this issue. Additionally, any further disclosure questions should be directed to your local disclosure office.

¹ Treas. Reg. § 301.6103(k)(6)-1(a) specifically states

Disclosure of taxpayer identity information to a person other than the taxpayer to whom such taxpayer identity information relates or such taxpayer's legal representative for the purpose of obtaining such necessary information or otherwise properly accomplishing such activities as authorized by this paragraph should be made, however, only if the necessary information cannot, under the facts and circumstances of the particular case, otherwise reasonably be obtained in accurate and sufficiently probative form, or in a timely manner, and without impairing the proper performance of the official duties, or if such activities cannot otherwise properly be accomplished without making such disclosure.

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

cc: Disclosure Office
South Florida District

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