



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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OFFICE OF
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INTERNAL REVENUE SERVICE NATIONAL OFFICE CHIEF COUNSEL ADVICE

MEMORANDUM FOR TEAM COORDINATOR

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

SUBJECT: Disclosure of Return Information In Expert Report of IRS
Economist

This is in response to your memorandum dated July 15, 1999 requesting our assistance as to whether an IRS Economist may disclose, in his expert report to be included in the examination files of two separate entities which formed a joint venture, return information of those two separate entities where that expert report discusses the valuation of assets contributed by one of the two entities, and where the return information to be disclosed in the report was obtained by the Service during the examinations of those two separate entities. This document is not to be cited as precedent.

LEGEND: Taxpayer A =
Taxpayer B =
AB =
Year 1 =
X =

ISSUE: Whether an IRS Economist may disclose, in his expert report to be included in the examination files of two separate entities which formed a joint venture, return information of those two separate entities where that expert report discusses the valuation of assets contributed by one of the two entities to

the joint venture, and where the return information to be disclosed was obtained by the Service during the respective examinations of those two separate entities.

CONCLUSION: Under I.R.C. § 6103(h)(4)(B)/(C) the IRS Economist may disclose, in his expert report, return information of the two separate entities that formed a joint venture where that expert report discusses the valuation of assets contributed by one of the two entities to the joint venture, to the extent such information directly relates to or directly effects the resolution of examination issues in the respective entities' proceedings.

FACTS: In year 1, Taxpayer A, an , and Taxpayer B, a , formed AB as a joint venture. Taxpayer A owns a percent interest in the joint venture; taxpayer B owns an percent interest. Taxpayer A contributed its assets, and Taxpayer B contributed some lesser assets in addition to a large sum of cash. The Service contends that there is a possibility that the assets contributed by Taxpayer A were not properly valued at the time of the creation of the joint venture. Consequently, an X issue has arisen in the examination of Taxpayer A; the valuation issue may also create adjustments for Taxpayer B.

During the course of the examination of Taxpayer A and the examination of Taxpayer B, an IRS Economist prepared a report analyzing the valuation of the assets contributed by Taxpayer A at the time of the creation of the joint venture, AB. This expert report contains the return information of both Taxpayer A and Taxpayer B which was collected by the Service during the respective examinations of those two taxpayers.

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).

I.R.C. § 6103(h)(4) is a narrowly tailored exception to the confidentiality requirements of section 6103(a), which specifically lifts the confidentiality constraints and authorizes disclosure of certain tax returns and return information in judicial or administrative tax proceedings. Subparagraph (A) of section 6103(h)(4) states that returns or return information may be disclosed in a Federal or State judicial or administrative tax proceeding pertaining to tax administration "if the taxpayer is a party to the proceeding" Subparagraphs (B) and (C) of section

6103(h)(4) establish an “item” and “transaction” test, respectively, under which returns and return information of taxpayers who are not parties to such proceedings may nevertheless be disclosed. Under section 6013(h)(4)(B), a third party taxpayer’s statutorily protected information may be disclosed in judicial or administrative tax proceedings only “if the treatment of an item reflected on such [third party’s] return is directly related to the resolution of an issue in the proceeding.” Under section 6013(h)(4)(C), a third party taxpayer’s statutorily protected information may be disclosed in judicial or administrative tax proceedings only “if such [third party’s] return or return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding”

As stated above, section 6103(h)(4) speaks in terms of judicial and administrative tax administration proceedings. In First Western Government Securities, Inc. v. United States, 796 F. 2d 356 (10th CIR. 1986), and in Nevins v. United States, 88-1 U.S. Tax Cas. (CCH) P 9199 (D. Kan. 1987), examinations were found to be administrative tax proceedings for purposes of the statute. In the circumstances presented here, the expert report was drafted in connection with the examination of Taxpayer A and the examination of Taxpayer B. Thus, Taxpayer A and Taxpayer B are each a party to a separate “administrative tax proceeding” based on the fact that each entity is under examination by the Service.

Although the examinations of Taxpayer A and Taxpayer B are being separately conducted, both taxpayers were parties to the transaction at issue i.e., the formation of AB. The information collected by the Service during Taxpayer A’s examination is Taxpayer A’s return information. The information collected by the Service during Taxpayer B’s examination is Taxpayer B’s return information. Under I.R.C. §§ 6103(h)(4)(A) and 6103(e), the Service may disclose, in the respective examinations, Taxpayer A’s return information to Taxpayer A and Taxpayer B’s return information to Taxpayer B. However, in order for the Service to be authorized to disclose Taxpayer A’s return information in Taxpayer B’s administrative proceeding, and vice versa, those disclosures must pass muster under the item and/or transaction tests of section 6103(h)(4)(B)/(C). Both Taxpayer A and Taxpayer B were involved in the transaction which resulted in the joint venture that included Taxpayer A’s contribution of assets. Further, based on the facts presented to us, the valuation of the assets directly relates to the resolution of issues in the respective tax administration proceedings of Taxpayer A and Taxpayer B. Therefore, under section 6103(h)(4)(B)/(C) the IRS Economist may disclose, in his expert report, return information of the two separate

entities that formed a joint venture where that expert report discusses the valuation of assets contributed by one of the two entities to the joint venture.

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