

§ 301.6103(k)(6)-1

26 CFR Ch. I (4-1-14 Edition)

- (vii) Gross income;
- (viii) Master File Tax (MFT) code;
- (ix) Document Locator Number (DLN);
- (x) Cycle posted;
- (xi) Final return indicator;
- (xii) Part year return indicator; and
- (xiii) Taxpayer telephone number.

(3) From Form 943, "Employer's Annual Tax Return for Agricultural Employees"—

- (i) Taxpayer identity information;
- (ii) Annual accounting period;
- (iii) Total wages subject to Medicare taxes;
- (iv) MFT code;
- (v) DLN;
- (vi) Cycle posted;
- (vii) Final return indicator; and
- (viii) Part year return indicator.

(4) From Form 1120 series, "U.S. Corporation Income Tax Return"—

- (i) Taxpayer identity information;
- (ii) Annual accounting period;
- (iii) Gross receipts less returns and allowances;
- (iv) PBA code;
- (v) MFT Code;
- (vi) DLN;
- (vii) Cycle posted;
- (viii) Final return indicator;
- (ix) Part year return indicator; and
- (x) Consolidated return indicator.

(5) From Form 1065 series, "U.S. Return of Partnership Income"—

- (i) Taxpayer identity information;
- (ii) Annual accounting period;
- (iii) PBA code;
- (iv) Gross receipts less returns and allowances;
- (v) Net farm profit (loss);
- (vi) MFT code;
- (vii) DLN;
- (viii) Cycle posted;
- (ix) Final return indicator; and
- (x) Part year return indicator.

(c) *Procedures and Restrictions.* (1) Disclosure of return information reflected on returns by officers or employees of the Internal Revenue Service as provided by paragraph (b) of this section will be made only upon written request designating, by name and title, the officers and employees of the Department of Agriculture to whom such disclosure is authorized, to the Commissioner of Internal Revenue by the Secretary of Agriculture and describing—

- (i) The particular return information reflected on returns for disclosure;

(ii) The taxable period or date to which such return information reflected on returns relates; and

(iii) The particular purpose for the requested return information reflected on returns.

(2)(i) No such officer or employee to whom the Internal Revenue Service discloses return information reflected on returns pursuant to the provisions of paragraph (b) of this section shall disclose such information to any person, other than the taxpayer to whom such return information reflected on returns relates or other officers or employees of the Department of Agriculture whose duties or responsibilities require such disclosure for a purpose described in paragraph (b)(1) of this section, except in a form that cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

(ii) If the Internal Revenue Service determines that the Department of Agriculture, or any officer or employee thereof, has failed to, or does not, satisfy the requirements of section 6103(p)(4) of the Internal Revenue Code or regulations or published procedures, the Internal Revenue Service may take such actions as are deemed necessary to ensure that such requirements are or will be satisfied, including suspension of disclosures of return information reflected on returns otherwise authorized by section 6103(j)(5) and paragraph (b) of this section, until the Internal Revenue Service determines that such requirements have been or will be satisfied.

(d) *Effective date.* This section is applicable on February 22, 2006.

[T.D. 9245, 71 FR 8945, Feb. 22, 2006]

§ 301.6103(k)(6)-1 Disclosure of return information by certain officers and employees for investigative purposes.

(a) *General rule.* (1) Pursuant to the provisions of section 6103(k)(6) and subject to the conditions of this section, an internal revenue employee or an Office of Treasury Inspector General for Tax Administration (TIGTA) employee, in connection with official duties relating to any examination, administrative appeal, collection activity, administrative, civil or criminal

investigation, enforcement activity, ruling, negotiated agreement, prefilling 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, of any taxpayer, to the extent necessary to obtain information relating to such official duties or to accomplish properly any activity connected with such official duties, including, but not limited to—

(i) Establishing or verifying the correctness or completeness of any return or return information;

(ii) Determining the responsibility for filing a return, for making a return if none has been made, or for performing such acts as may be required by law concerning such matters;

(iii) Establishing or verifying the liability (or possible 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 related statutes or the amount thereof for collection;

(iv) Establishing or verifying misconduct (or possible misconduct) or other activity proscribed by the internal revenue laws or related statutes;

(v) Obtaining the services of persons having special knowledge or technical skills (such as, but not limited to, knowledge of particular facts and circumstances relevant to a correct determination of a liability described in paragraph (a)(1)(iii) of this section or skills relating to handwriting analysis, photographic development, sound recording enhancement, or voice identification) or having recognized expertise in matters involving the valuation of property if relevant to proper performance of official duties described in this paragraph;

(vi) Establishing or verifying 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

paragraph (a)(1)(iii) of this section for collection, or otherwise to apply the provisions of the Internal Revenue Code relating to establishment of liens against such assets, or levy, seizure, or sale on or of the assets to satisfy any such liability;

(vii) Preparing for any proceeding described in section 6103(h)(2) or conducting an investigation which may result in such a proceeding; or

(viii) Obtaining, verifying, or establishing information concerned with making determinations regarding a taxpayer's liability under the Internal Revenue Code, including, but not limited to, the administrative appeals process and any ruling, negotiated agreement, or prefilling process.

(2) Disclosure of return information for the purpose of obtaining information to carry out properly the official duties described by this paragraph, or any activity connected with the official duties, is authorized only if the internal revenue or TIGTA employee reasonably believes, under the facts and circumstances, at the time of a disclosure, the information is not otherwise reasonably available, or if the activity connected with the official duties cannot occur properly without the disclosure.

(3) Internal revenue and TIGTA employees may identify themselves, their organizational affiliation (e.g., Internal Revenue Service (IRS), Criminal Investigation (CI) or TIGTA, Office of Investigations (OI)), and the nature of their investigation, when making an oral, written, or electronic contact with a third party witness. Permitted disclosures include, but are not limited to, the use and presentation of any identification media (such as a Federal agency badge, credential, or business card) or the use of an information document request, summons, or correspondence on Federal agency letterhead or which bears a return address or signature block that reveals affiliation with the Federal agency.

(4) This section does not address or affect the requirements under section 7602(c) (relating to contact of third parties).

(b) *Disclosure of return information in connection with certain personnel or*

claimant representative matters. In connection with official duties relating to any investigation concerned with enforcement of any provision of the Internal Revenue Code, including enforcement of any rule or directive prescribed by the Secretary or the Commissioner of Internal Revenue under any provision of the Internal Revenue Code, or the enforcement of any provision related to tax administration, that affects or may affect the personnel or employment rights or status, or civil or criminal liability, of any former, current, or prospective employee of the Treasury Department, Bureau of Alcohol, Tobacco, Firearms, and Explosives, United States Customs Service, United States Secret Service, or any successor agency, or the rights of any person who is, or may be, a party to an administrative action or proceeding pursuant to 31 U.S.C. 330 (relating to practice before the Treasury Department), an internal revenue, TIGTA, or other Federal officer or employee who is responsible for investigating such employees and persons and is properly in possession of relevant return information is authorized to disclose such return information to the extent necessary for the purpose of obtaining, verifying, or establishing other information which is or may be relevant and material to the investigation.

(c) *Definitions.* The following definitions apply to this section—

(1) *Disclosure of return information to the extent necessary* means a disclosure of return information which an internal revenue or TIGTA employee, based on the facts and circumstances, at the time of the disclosure, reasonably believes is necessary to obtain information to perform properly the official duties described by this section, or to accomplish properly the activities connected with carrying out those official duties. The term *necessary* in this context does not mean essential or indispensable, but rather appropriate and helpful in obtaining the information sought. Nor does *necessary* in this context refer to the necessity of conducting an investigation or the appropriateness of the means or methods chosen to conduct the investigation. Section 6103(k)(6) does not limit or re-

strict internal revenue or TIGTA employees with respect to the decision to initiate or the conduct of an investigation. Disclosures under this paragraph (c)(1), however, may not be made indiscriminately or solely for the benefit of the recipient or as part of a negotiated quid pro quo arrangement. This paragraph (c)(1) is illustrated by the following examples:

Example 1. A revenue agent contacts a taxpayer's customer regarding the customer's purchases made from the taxpayer during the year under investigation. The revenue agent is able to obtain the purchase information only by disclosing the taxpayer's identity and the fact of the investigation. Depending on the facts and circumstances known to the revenue agent at the time of the disclosure, such as the way the customer maintains his records, it also may be necessary for the revenue agent to inform the customer of the date of the purchases and the types of merchandise involved for the customer to find the purchase information.

Example 2. A revenue agent contacts a third party witness to obtain copies of invoices of sales made to a taxpayer under examination. The third party witness provides copies of the sales invoices in question and then asks the revenue agent for the current address of the taxpayer because the taxpayer still owes money to the third party witness. The revenue agent may not disclose that current address because this disclosure would be only for the benefit of the third party witness and not necessary to obtain information for the examination.

Example 3. A revenue agent contacts a third party witness to obtain copies of invoices of sales made to a taxpayer under examination. The third party witness agrees to provide copies of the sales invoices in question only if the revenue agent provides him with the current address of the taxpayer because the taxpayer still owes money to the third party witness. The revenue agent may not disclose that current address because this disclosure would be a negotiated quid pro quo arrangement.

(2) *Disclosure of return information to accomplish properly an activity connected with official duties* means a disclosure of return information to carry out a function associated with official duties generally consistent with established practices and procedures. This paragraph (c)(2) is illustrated by the following example:

Example. A taxpayer failed to file an income tax return and pay the taxes owed.

After the taxes were assessed and the taxpayer was notified of the balance due, a revenue officer filed a notice of federal tax lien and then served a notice of levy on the taxpayer's bank. The notices of lien and levy contained the taxpayer's name, social security number, amount of outstanding liability, and the tax period and type of tax involved. The taxpayer's assets were levied to satisfy the tax debt, but it was determined that, prior to the levy, the revenue officer failed to issue the taxpayer a notice of intent to levy, as required by section 6331, and a notice of right to hearing before the levy, as required by section 6330. The disclosure of the taxpayer's return information in the notice of levy is authorized by section 6103(k)(6) despite the revenue officer's failure to issue the notice of intent to levy or the notice of right to hearing. The ultimate validity of the underlying levy is irrelevant to the issue of whether the disclosure was authorized by section 6103(k)(6).

(3) *Information not otherwise reasonably available* means information that an internal revenue or TIGTA employee reasonably believes, under the facts and circumstances, at the time of a disclosure, cannot be obtained in a sufficiently accurate or probative form, or in a timely manner, and without impairing the proper performance of the official duties described by this section, without making the disclosure. This definition does not require or create the presumption or expectation that an internal revenue or TIGTA employee must seek information from a taxpayer or authorized representative prior to contacting a third party witness in an investigation. Neither the Internal Revenue Code, IRS procedures, nor these regulations require repeated contacting of an uncooperative taxpayer. Moreover, an internal revenue or TIGTA employee may make a disclosure to a third party witness to corroborate information provided by a taxpayer. This paragraph (c)(3) is illustrated by the following examples:

Example 1. A revenue agent is conducting an examination of a taxpayer. The taxpayer refuses to cooperate or provide any information to the revenue agent. Information relating to the taxpayer's examination would be information not otherwise reasonably available because of the taxpayer's refusal to cooperate and supply any information to the revenue agent. The revenue agent may seek information from a third party witness.

Example 2. A special agent is conducting a criminal investigation of a taxpayer. The

special agent has acquired certain information from the taxpayer. Although the special agent has no specific reason to disbelieve the taxpayer's information, the special agent contacts several third party witnesses to confirm the information. The special agent may contact third party witnesses to verify the correctness of the information provided by the taxpayer because the IRS is not required to rely solely on information provided by a taxpayer, and a special agent may take appropriate steps, including disclosures to third party witnesses under section 6103(k)(6), to verify independently or corroborate information obtained from a taxpayer.

(4) *Internal revenue employee* means, for purposes of this section, an officer or employee of the IRS or Office of Chief Counsel for the IRS, or an officer or employee of a Federal agency responsible for administering and enforcing taxes under Chapters 32 (Part III of Subchapter D), 51, 52, or 53 of the Internal Revenue Code, or investigating tax refund check fraud under 18 U.S.C. 510.

(5) *TIGTA employee* means an officer or employee of the Office of Treasury Inspector General for Tax Administration.

(d) *Examples.* The following examples illustrate the application of this section:

Example 1. A revenue agent is conducting an examination of a taxpayer. The taxpayer has been very cooperative and has supplied copies of invoices as requested. Some of the taxpayer's invoices show purchases that seem excessive in comparison to the size of the taxpayer's business. The revenue agent contacts the taxpayer's suppliers for the purpose of corroborating the invoices the taxpayer provided. In contacting the suppliers, the revenue agent discloses the taxpayer's name, the dates of purchase, and the type of merchandise at issue. These disclosures are permissible under section 6103(k)(6) because, under the facts and circumstances known to the revenue agent at the time of the disclosures, the disclosures were necessary to obtain information (corroboration of invoices) not otherwise reasonably available because suppliers would be the only source available for corroboration of this information.

Example 2. A revenue agent is conducting an examination of a taxpayer. The revenue agent asks the taxpayer for business records to document the deduction of the cost of goods sold shown on Schedule C of the taxpayer's return. The taxpayer will not provide the business records to the revenue agent, who contacts a third party witness for verification of the amount on the Schedule

§ 301.6103(k)(9)-1

26 CFR Ch. I (4-1-14 Edition)

C. In the course of the contact, the revenue agent shows the Schedule C to the third party witness. This disclosure is not authorized under section 6103(k)(6). Section 6103(k)(6) permits disclosure only of return information, not the return (including schedules and attachments) itself. If necessary, a revenue agent may disclose return information extracted from a return when questioning a third party witness. Thus, the revenue agent could have extracted the amount of cost of goods sold from the Schedule C and disclosed that amount to the third party witness.

Example 3. A special agent is conducting a criminal investigation of a taxpayer, a doctor, for tax evasion. Notwithstanding the records provided by the taxpayer and the taxpayer's bank, the special agent decided to obtain information from the taxpayer's patients to verify amounts paid to the taxpayer for his services. Accordingly, the special agent sent letters to the taxpayer's patients to verify these amounts. In the letters, the agent disclosed that he was a special agent with IRS-CI and that he was conducting a criminal investigation of the taxpayer. Section 6103(k)(6) permits these disclosures (including the special agent disclosing his affiliation with CI and the nature of the investigation) to confirm the taxpayer's income. The decision whether to verify information already obtained is a matter of investigative judgment and is not limited by section 6103(k)(6).

Example 4. Corporation A requests a private letter ruling (PLR) as to the tax consequences of a planned transaction. Corporation A has represented that it is in compliance with laws administered by Agency B that may relate to the tax consequences of the proposed transaction. Further information is needed from Agency B relating to possible tax consequences. Under section 6103(k)(6), the IRS may disclose Corporation A's return information to Agency B to the extent necessary to obtain information from Agency B for the purpose of properly considering the tax consequences of the proposed transaction that is the subject of the PLR.

(e) *Effective date.* This section is applicable on July 11, 2006.

[T.D. 9274, 71 FR 38986, July 11, 2006, as amended by 71 FR 60827, Oct. 17, 2006; 71 FR 61833, Oct. 19, 2006]

§ 301.6103(k)(9)-1 Disclosure of returns and return information relating to payment of tax by credit card and debit card.

Officers and employees of the Internal Revenue Service may disclose to card issuers, financial institutions, or other persons such return information

as the Commissioner deems necessary in connection with processing credit card and debit card transactions to effectuate payment of tax as authorized by § 301.6311-2. Officers and employees of the Internal Revenue Service may disclose such return information to such persons as the Commissioner deems necessary in connection with billing or collection of the amounts charged or debited, including resolution of errors relating to the credit card or debit card account as described in § 301.6311-2(d).

[T.D. 8969, 66 FR 64742, Dec. 14, 2001]

§ 301.6103(l)-1 Disclosure of returns and return information for purposes other than tax administration.

(a) *Definition.* For purposes of applying the provisions of section 6103(l) of the Internal Revenue Code, the term *agent* includes a contractor.

(b) *Effective date.* This section is applicable January 6, 2004.

[T.D. 9111, 69 FR 507, Jan. 6, 2004]

§ 301.6103(l)(2)-1 Disclosure of returns and return information to Pension Benefit Guaranty Corporation for purposes of research and studies.

(a) *General rule.* Pursuant to the provisions of section 6103(l)(2) of the Internal Revenue Code and subject to the requirements of paragraph (b) of this section, officers and employees of the Internal Revenue Service may disclose returns and return information (as defined by section 6103(b)) to officers and employees of the Pension Benefit Guaranty Corporation for purposes of, but only to the extent necessary in, conducting research and studies authorized by title IV of the Employee Retirement Income Security Act of 1974.

(b) *Procedures and restrictions.* Disclosure of returns or return information by officers or employees of the Service as provided by paragraph (a) of this section will be made only upon written request to the Commissioner of Internal Revenue by the Executive Director of the Pension Benefit Guaranty Corporation describing the returns or return information to be disclosed, the taxable period or date to which such returns or return information relates, and the purpose for which the returns