CC:EL:D-2071-96
Br2:JAClark

April 19, 1996

Chief, Electronic Submissions Branch T:S:E:C

Acting Chief, Branch 2 (Disclosure Litigation) CC:EL:D

Form 8453, U.S. Individual Tax Declaration for Electronic Filing

This is in response to your memorandum dated April 1, 1996, in which you ask that we concur with the provision of certain information regarding electronically filed returns to electronic return originators. For the reasons set forth below, we do not concur with your proposal.

Facts

Form 8453, U.S. Individual Income Tax Declaration for Electronic Filing, tax year 1995, is executed by a taxpayer who files electronically. This form contains, inter alia, the following statement: "I also consent to the IRS sending my ERO [electronic return originator] and/or transmitter an acknowledgment of receipt of transmission and an indication of whether or not my return is accepted, and, if rejected, the reason(s) for the rejection." The consent is not optional; when a taxpayer executes Form 8453, the taxpayer automatically executes the consent.

When an ERO makes a telephone inquiry to the Service about the status of an electronically-filed return, and the Service verifies that the caller is in fact the ERO, certain information is provided to the ERO as follows.

1. If an inquiry concerns a delay in return and/or refund processing, the ERO is advised that "the return is under review."

2. If an inquiry concerns a refund mail date, the ERO is advised that "the refund has been mailed or is due to be mailed."

3. If an inquiry concerns a refund that the taxpayer has received that is different from the amount due per the electronically filed return and

Form 8453, the ERO is advised that, "possibly an offset has occurred or an additional payment could be forthcoming pending further review."

Question Presented

1. Is the above information provided to ERO's who make inquiries to the Service on behalf of their clients "return information" pursuant to 26 U.S.C. § 6103(a)?

2. If the information is "return information," does the consent executed on the 1995 Form 8453 permit the Service to provide the information to the ERO?

Conclusions

1. The information is "return information" pursuant to 26 U.S.C. § 6103(a), and may not be disclosed to an ERO unless the taxpayer has executed a written consent pursuant to 26 U.S.C. § 6103(c).

2. The limited consent provided on the 1995 Form 8453 does not permit the disclosure of the return information to the ERO.

Legal Analysis

"Return information" is defined in 26 U.S.C. § 6103(b)(2), which states, in pertinent part, that return information includes:

> . . . a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense.

26 U.S.C. § 6103(b)(2). The definition of return information has been interpreted broadly. Church of Scientology of California v. IRS, 484 U.S. 9 (1987). All *information concerning a return, including an electronically filed return, is return* information; even the fact of whether a return is filed is return information.

Therefore, the facts that a return is under review, that a refund has been mailed, or is due to be mailed, that an offset may have occurred, and that an additional refund may be made pending a review, all as pertaining to a particular taxpayer, is return information.

Return information is confidential under 26 U.S.C. § 6103(a), which states as follows.

> General Rule. -- Returns and return information shall be confidential, and except as authorized by this title --
>
> (1) no officer or employee of the United States . . .
>
> shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee of otherwise or under the provisions of the section.

The term "disclosure" is defined in 26 U.S.C. § 6103(b)(8) as "the making known to any person in any manner whatever a return or return information." Disclosure is also commonly defined as "the act or an instance of opening up to view." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 645 (1986). In a legal sense, "disclose" has a similar definition: "To bring into view by uncovering; to expose; to make known; to lay bare; to reveal to knowledge; to free from secrecy or ignorance, or make known." BLACK'S LAW DICTIONARY 464 (6th ed. 1990).

Therefore, absent an applicable exception to the rule of confidentiality, disclosure of the return information described above to an ERO is prohibited by 26 U.S.C. § 6103(a).

Pursuant to 26 U.S.C. § 6103(c), the Service may disclose return information "to such person or persons as the taxpayer may designate in a written request for or consent to such disclosure." However, the limited consent to disclose information to ERO's that is provided by a taxpayer who executes a 1995 Form 8453 applies only to "an acknowledgment of receipt of transmission and an indication of whether or not my return is accepted, and, if rejected, the reason(s) for the rejection." The disclosures at issue herein do not constitute such acknowledgement of receipt of transmission, an indication of whether or not the return is accepted or rejected, or reasons for rejection. Therefore, the limited consent contained in the 1995 Form 8453 does not permit the Service to disclose the return information at issue herein.

Policy Considerations

[redacted] DP

Inquiries concerning this matter may be directed to attorney James A. Clark at (202) 622-4570.

/s/ Elissa M. Sissman
ELISSA M. SISSMAN

~~cc: Office of Disclosure CP:EX:D~~