Office of Chief Counsel
Internal Revenue Service

memorandum

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POSTN-116228-10

UILC: 6103.08-00, 7213.01-01

date: April 19, 2010

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(Wage & Investment)

from: Brinton T. Warren
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subject: Disclosure of Customer's status as Potentially Dangerous Taxpayer or Caution Upon
Contact Taxpayer

This Chief Counsel Advice responds to your request for assistance. This advice may
not be used or cited as precedent.

ISSUE

Whether disclosure of taxpayer return information to Service employees should be
permitted for nearly all contacts for the purpose of confirming whether or not the
customer has a Potentially Dangerous Taxpayer (PDT) or Caution Upon Contact (CAU)
indicator on their accounts as a means to improve employee safety.

CONCLUSION

Disclosure of return information to a Service employee is permitted under section
6103(h)(1) to determine whether a customer has a PDT or CAU indicator, as the safety
of Service employees is an important factor in performing official tax administration
duties.

FACTS

Field Assistance Headquarters is proposing to change how and when they conduct
disclosure verification with customers when the customer visits the office for assistance.
They have requested that Individual Tax Assistance Specialists be permitted to conduct
disclosure by accessing IDRS/AMS and verifying the customer's identity to determine if
there is a PDT/CAU indicator every time a customer comes in to sit at the employee's

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desk for an issue that requires discussion. The discussions would include tax law inquiries, return preparation, account contacts including notices, 2290 look-ups, transcripts, etc. The only issues that would not require disclosure are forms contacts and payment drop-offs.

LAW AND ANALYSIS

The general rule under section 6103 is that returns and return information are confidential and that no officer or employee of the United States shall disclose any return or return information. Return and return information is defined under section 6103(b)(1) and (2). A return is defined in section 6103(b)(1) as any tax or information return, declaration of estimated tax, or claim for refund required or permitted under the provisions of the Internal Revenue Code which is filed with the Secretary. Return information can mean a variety of information, but includes a taxpayer's identity, income, and payments as described in section 6103(b)(2). There are several exceptions to this rule, including the exception under section 6103(h)(1), which allows for disclosure, without written request, to officers or employees of the Department of Treasury where such inspection or disclosure is for tax administration purposes.

Not only is return information protected from disclosure, but access is limited. The Taxpayer Browsing Protection Act, which added section 7213A to the Code, provides that willful unauthorized access or inspection of non-computerized taxpayer records, including hard copies or returns, as well as computerized information, is a crime, punishable upon conviction, by fines, prison terms and termination of employment. Pub. L. 105-35, 105th Congress, H.R. 1226 (1997). Section 7213A(a)(1) makes it unlawful for any officer or employee of the United States, or any person described in section 6103 (l)(18) or (n) or officer or employee of such person, to willfully inspect, except as authorized in title 26, any return or return information. Section 7213A(b) provides that a conviction can result in a fine in any amount not exceeding $1,000, or imprisonment of not more than a year, or both. In addition, a conviction results in a dismissal from the office or discharge from employment.

To sustain a conviction under section 7213A(a), the United States must prove beyond a reasonable doubt that: (1) an officer or employee of the United States, any person described in section 6103(l)(18) or (n), or a state or other employee described in section 7213A(a)(2); (2) inspected; (3) any return or return information; (4) in a manner not authorized by the Internal Revenue Code; and (5) such inspection was made willfully. The elements are identical to the elements of a section 7213 offense, with the exception that in the place of an unauthorized "disclosure," the prosecution must demonstrate that there was an unauthorized "inspection."

The Service's policy has been to allow employees access to taxpayer records when it is needed by that employee to carry out their tax related duties. I.R.M. 4.10.1.6.11(1). Recent events have amply demonstrated that the safety of Service employees should be a high priority. In order for a Service employee to carry out their official tax administration duties, it is vital to have a safe work environment. In order to properly

prepare for a taxpayer who is PDT or CAU, the posture of the Service employee must be appropriate for the interaction with that taxpayer. A Service employee may need to request security or make other arrangements to insure the safety of not just that employee, but others in the building. Because the disclosure would be permitted under section 6103(h)(1), the employee would not be in violation of section 7213A.

In their interactions with the customers, the Individual Tax Assistance Specialists may need to access returns and return information when there is no formal assignment of a case directly corresponding to the entity or individual being researched. As there will probably not be a case history file for these instances, and the employee may believe that the access could raise questions later, the employee should use Form 11377, Taxpayer Data Access Form, or other authorized forms to document these accesses. IRM 4.10.1.6.11(5).

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call (202) 622-3630 if you have any further questions.