

[4830-01-p]

Published January 21, 2003

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[TD 9036]

RIN 1545-AY77

Disclosure of Returns and Return Information by Other Agencies

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains a final regulation relating to the disclosure of returns and return information by Federal, state and local agencies other than the IRS. The final regulation permits the IRS to authorize agencies with access to returns and return information under section 6103 of the Internal Revenue Code (Code) to redisclose returns and return information, with the approval of the Commissioner of Internal Revenue (Commissioner), to any authorized recipient set forth in section 6103, subject to the same conditions and restrictions, and for the same purposes, as if the recipient had received the information from the IRS directly.

DATES: This regulation is effective January 21, 2003.

FOR FURTHER INFORMATION CONTACT: Julie C. Schwartz, 202-622-4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

**Paperwork Reduction Act**

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 4507(d)) under control number 1545-1757. The collection of information in this regulation is in §301.6103(p)(2)(B)-1. This information is required for the Commissioner to authorize the disclosure of returns and return information from agencies with access to returns and return information under section 6103 to other authorized recipients of returns and return information in accordance with section 6103.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The estimated annual burden per respondent varies from one half-hour to two hours, depending on individual circumstances, with an estimated average of one hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S Washington, DC 20224, and to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law.

Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

## **Background**

This document contains amendments to 26 CFR parts 301 and 602. On December 13, 2001, a notice of proposed rulemaking (REG-105344-01) was published in the **Federal Register** (66 FR 64386). No comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested or held. The proposed regulations are adopted by this Treasury decision.

### **Explanation of Provisions**

The final regulation expands the number of agencies that may redisclose returns and return information if authorized by the Commissioner to any Federal, state or local agency that receives such information under section 6103. Similarly, it expands the universe of authorized recipients of returns and return information pursuant to this redisclosure authority to any recipient authorized to receive returns and return information in accordance with section 6103. All redisclosures by agencies pursuant to this regulation will be made subject to the same conditions, restrictions, safeguards, recordkeeping requirements, and civil and criminal penalties that would apply if the disclosure were made by the IRS. Federal, state and local agencies making disclosures of return information under the final regulation will continue to provide to the IRS certain information regarding disclosures made pursuant to this authority, in order for the IRS to fulfill its reporting requirements under section 6103(p).

### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure

Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. The disclosure authorized by the rule is voluntary on the part of small governmental jurisdictions and, as discussed earlier in this preamble, the burden associated with requesting authorization from the Commissioner to disclose returns and return information, and to maintain the necessary records concerning the disclosure of return information, is minimal.

Accordingly, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel of the Small Business Administration for comment on their impact on small businesses.

### **Drafting Information**

The principal author of these regulations is Julie C. Schwartz, Office of the Associate Chief Counsel (Procedure and Administration), Disclosure and Privacy Law Division.

### **List of Subjects**

#### 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and Recordkeeping requirements.

#### 26 CFR Part 602

Reporting and recordkeeping requirements.

### **Amendments to the Regulations**

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

PART 301--PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 \*\*\*

Section 301.6103(p)(2)(B)-1 also issued under 26 U.S.C. 6103(p)(2);\*\*\*

Par. 2. Section 301.6103(p)(2)(B)-1 is added to read as follows:

§301.6103(p)(2)(B)-1 Disclosure of Returns and Return Information by Other Agencies.

(a) General rule. Subject to the requirements of paragraphs (b), (c), and (d) of this section, returns or return information that have been obtained by a Federal, state or local agency, or its agents or contractors, in accordance with section 6103 (the first recipient) may be disclosed by the first recipient to another recipient authorized to receive such returns or return information under section 6103 (the second recipient).

(b) Approval by Commissioner. A disclosure described in paragraph (a) of this section may be made if the Commissioner of Internal Revenue (the Commissioner) determines, after receiving a written request under this section, that such returns or return information are more readily available from the first recipient than from the Internal Revenue Service (IRS). The disclosure authorization by the Commissioner shall be directed to the head of the first recipient and may contain such conditions or restrictions as the Commissioner may prescribe. The disclosure authorization may be revoked by the Commissioner at any time.

(c) Requirements and restrictions. The second recipient may receive only returns or return information as authorized by the provision of section 6103 applicable to such second recipient. Any returns or return information disclosed may be used by the second recipient only for a purpose authorized by and subject to any conditions imposed by section 6103 and the regulations thereunder, including, if applicable, safeguards imposed by section 6103(p)(4).

(d) Records and reports of disclosure. The first recipient shall maintain to the satisfaction of the IRS a permanent system of standardized records regarding such disclosure authorization described in paragraph (a) of this section and any disclosure of returns and return information made pursuant to such authorization, and shall provide such information as prescribed by the Commissioner in order to enable the IRS to comply with its obligations under section 6103(p)(3) to keep accountings for disclosures and to make annual reports of disclosures to the Joint Committee on Taxation. The information required for reports to the Joint Committee on Taxation must be provided within 30 days after the close of each calendar year. The requirements of this paragraph do not apply to the disclosure of returns and return information as provided by paragraph (a) of this section which, had such disclosures been made directly by the IRS, would not have been subject to the recordkeeping requirements imposed by section 6103(p)(3)(A).

(e) Effective date. This section is applicable on January 21, 2003.

**§301.6103(p)(2)(B)-1T [Removed]**

Par. 3. Section 301.6103(p)(2)(B)-1T is removed

PART 602--OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Paragraph 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805 \*\*\*

Paragraph 5. In § 602.101, paragraph (b) is amended by removing the entry “301.6103(p)(2)(B)-1T” from the table and adding the entry “301.6103(p)(2)(B)-1” in numerical order to read as follows:

§602.101 OMB Control numbers.

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(b)\*\*\*

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CFR part or section where  
identified and described

Current OMB  
control No.

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301.6103(p)(2)(B)-1 .....1545-1757  
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David A. Mader,  
Assistant Deputy Commissioner of Internal Revenue

Approved: December 20, 2002.

Pamela F. Olson,  
Assistant Secretary Department of the Treasury (Tax Policy)