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50 DTR G-3

## ***Taxpayer Privacy***

### **IRS Finalizes Whistleblower Rules Requiring Contract for Disclosure of Return Information**

The Internal Revenue Service March 14 finalized rules that will require that a contract be in place when Treasury Department employees disclose return information to whistleblowers or their legal representatives.

The final rules (T.D. 9516) largely mirror proposed rules (REG-114942-07) and temporary rules (T.D. 9389) issued in March of 2008, with a few minor changes to the language.

The rules specify the conditions under which the Treasury Department can disclose taxpayer information to a whistleblower if there are suspected violations of the tax code (57 DTR G-1, 3/25/08).

The disclosures will be allowed only to the extent necessary for "reasonable or proper performance" of the contract, IRS said.

#### **IRS Reluctant to Enter Into Contracts**

"What is particularly noteworthy about the finalization of the regulations is that the IRS has simply refused to enter into a section 6103(n) agreement with a whistleblower to date," said Erica Brady with The Ferraro Law Firm in Washington. "The IRS is squandering what could easily be their best asset in uncovering millions, if not billions, in unreported taxes, by avoiding entering into section 6103(n) agreements," she said.

There was only one comment on the proposed rules, and it asked the IRS to eliminate the requirement that a written contract be in place.

"The regulations illustrate the somewhat imperfect fit between tax code Section 6103(n) and the whistleblower statute," Michael Desmond, partner with Bingham McCutchen, told BNA.

That section has almost exclusively been used in the context of tax administration contractors, such as mail service providers, he said. "Yet the whistleblower is really serving a role that is much more substantive."

Returns and return information are confidential unless the tax code authorizes disclosure under Section 6103(n). The section speaks of disclosure in connection with "the processing, storage, transmission, and reproduction of returns and return information," or under other programming or procurement situations. The final rule will appear in the Federal Register March 15.

*By Diane Freda*

*Text of T.D. 9516 is in Section L.*

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