

Whistle-Blower Regs Allow Limited Return Information Disclosure

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The temporary regulations (T.D. 9389), referenced as new reg. section 301.6103(n)-2T, permit limited disclosure of return information to whistle-blowers and their legal representatives when the IRS deems disclosure necessary for tax administration. Both whistle-blowers and their attorneys will be required to sign a written tax administration contract to receive information the Service deems necessary for the informant's "services." (For T.D. 9389, see Doc 2008-6391 [PDF] or 2008 TNT 58-5 2008 TNT 58-5: IRS Temporary Regulations. For the proposed regs (REG-114942-07), which are identical to the temporary regs, see Doc 2008-6392 [PDF] or 2008 TNT 58-6 2008 TNT 58-6: IRS Proposed Regulations.)

The tax code generally prevents the IRS from sharing tax return information with anyone outside the Service. The IRS, however, is using its authority under section 6103(n) to disclose "carefully tailored" information based on the facts of each specific case to whistle-blowers. Under the regs, the IRS could provide to whistle-blowers the status of their claims for monetary awards, such as whether a claim is being investigated or pending. The regulations envision disclosing only parts or portions of returns when the whistle-blower's services can be "reasonably or properly" performed without full disclosure.

The preamble to the temporary regulations says that the decision to give information to a whistle-blower will be made at the commissioner's discretion, and only infrequently.

Safeguards in the temporary regulations to prevent unauthorized disclosure and ensure confidentiality provide that parties to the contract must dispose of and destroy all disclosed return information on completion of the contract, as well as submit to an inspection of their premises by the Service. Civil and criminal penalties are authorized for failure to abide by the contract terms.

Gregory Lynam of the Ferraro Law Firm said the real effect of the temporary and proposed regs is to allow the IRS to obtain additional information from the informants. The regs are not so much about protecting the privacy of taxpayer information, he said, as they are about giving the Service the ability to gain more help from whistle-blowers in pursuing a submitted claim.

"There was strong congressional intent that the IRS seek additional help from informants," Lynam said. "It's refreshing to see the IRS take that seriously in these regulations." Important for the IRS, he said, is the ability to get quality information and be able to effectively use that knowledge in analyzing a potential case. Whistle-blowers have much in the way of additional intelligence they can pass along from viewing taxpayer records, he said.

Lynam said, however, that "this regulation will only be effective if it is used by the Service. We're very willing to assist the IRS in all of our submissions to the Whistle-Blower Office, which total nearly \$5 billion."