

disclosure by the introduction of the special agent through the presentation of a CI or OI badge, credential, or business card, or through the use of information document requests, summonses, or correspondence, about an identified taxpayer, on CI or OI letterhead or that bears a CI or OI return address or signature block. In litigation, taxpayers have asserted that CI special agents, by various means, wrongfully disclosed the criminal nature of the investigation of the taxpayers in the course of conducting third party witness interviews or inquiries. *See, e.g., Comyns v. United States*, 155 F. Supp. 2d 1344 (S.D. Fla. 2001), *aff'd*, 287 F.3d 1034 (11th Cir. 2002); *Payne v. United States*, 91 F. Supp. 2d 1014 (S.D. Tex. 1999), *rev'd*, 289 F.3d 377 (5th Cir. 2002); *Gandy v. United States*, 99–1 U.S. Tax Cas. (CCH) ¶ 50,237 (E.D. Tex. 1999), *aff'd*, 234 F.3d 281 (5th Cir. 2000); *Rhodes v. United States*, 903 F. Supp. 819 (M.D. Pa. 1995); *Diamond v. United States*, 944 F.2d 431 (8th Cir. 1991).

When CI special agents disclose to third party witnesses that a taxpayer is under criminal investigation, there is a risk that the disclosure may adversely affect the taxpayer's reputation, particularly if the third party witnesses have no prior independent knowledge of the investigation. The government and third party witnesses have equally important interests at stake: The CI special agents' authority to accurately identify themselves so as not to mislead third party witnesses, and the third party witnesses' interest in knowing that the inquiry involves a criminal investigation to fairly assess the situation and protect their own interests. *See Roebuck v. United States*, 83 A.F.T.R.2d (RIA) ¶ 99–2947 (E.D.N.C. 1999), *aff'd*, 84 A.F.T.R.2d (RIA) ¶ 99–7051 (4th Cir. 1999). This issue has concerned the Department of the Treasury and the Staff of the Joint Committee on Taxation, both of which have recommended legislation to clarify that CI special agents may identify themselves as CI special agents when contacting third party witnesses in the course of a criminal investigation. *See Study of Present-Law Taxpayer Confidentiality and Disclosure Provisions as Required by Section 3802 of the Internal Revenue Service Restructuring and Reform Act of 1998*, Vol. I: Study of General Disclosure Provisions (JCS–1–00), at 208–11, Joint Committee on Taxation, January 28, 2000; *Report to the Congress on Scope and Use of Taxpayer Confidentiality and Disclosure Provisions*, Vol. I: Study of General Provisions, at 51–52, Office

of Tax Policy, Department of the Treasury, October 2000. The temporary regulations clarify that section 6103(k)(6) permits, but does not require, IRS or TIGTA officers or employees, including CI or OI special agents, to identify themselves, their organizational affiliation with the IRS or TIGTA, and the nature of the investigation, when making oral, written, or electronic contacts with third party witnesses.

Moreover, the temporary regulations do not require IRS or TIGTA officers or employees to contact a taxpayer for information before contacting a third party witness. The temporary regulations clarify that, if an IRS or TIGTA officer or employee reasonably believes, under the facts and circumstances, at the time of a disclosure, that information cannot be obtained from a taxpayer in a sufficiently accurate or probative form, or in a timely manner, without impairing the proper performance of official duties, then the officer or employee may disclose taxpayer identity or other return information in seeking information from a third party. For example, a taxpayer may be a reasonable source of routine business records, but not of records detailing alleged illegal transactions or sources of income. The facts and circumstances will help determine the necessity of the disclosures, but IRS and TIGTA officers or employees have wide latitude to determine whether the taxpayer is a reasonable source of information. The temporary regulations clarify that disclosures are authorized to verify independently, or to corroborate, from third party sources, information obtained from or concerning the taxpayer.

The temporary regulations expand upon the list of official duties relating to tax administration for which disclosure, pursuant to section 6103(k)(6), is authorized, and clarify that this list is not exhaustive. Finally, the temporary regulations retain the authority for IRS and TIGTA officers or employees to make section 6103(k)(6) disclosures in certain personnel or claimant representative matters.

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 5 U.S.C. 553(b), the Administrative Procedure Act, does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility

Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Helene R. Newsome, Office of the Associate Chief Counsel (Procedure and Administration), Disclosure and Privacy Law Division.

List of Subjects in 26 CFR Part 301

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

Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is 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(k)(6)–1T also issued under 26 U.S.C. 6103(k)(6); * * *

§ 301.6103(k)(6)–1 [Removed]

■ **Par. 2.** Section 301.6103(k)(6)–1 is removed.

■ **Par. 3.** Section 301.6103(k)(6)–1T is added to read as follows:

§ 301.6103(k)(6)–1T Disclosure of return information by certain officers and employees for investigative purposes (temporary).

(a) *General rule.* (1) Pursuant to the provisions of section 6103(k)(6) and subject to the conditions of this section, an internal revenue employee or an Office of Treasury Inspector General for Tax Administration (TIGTA) employee, in connection with official duties relating to any examination, administrative appeal, collection activity, administrative, civil or criminal investigation, enforcement activity, ruling, negotiated agreement, pre-filing activity, or other proceeding or offense under the internal revenue laws or related statutes, or in preparation for any proceeding described in section 6103(h)(2) (or investigation which may result in such a proceeding), may disclose return information, of any taxpayer, to the extent necessary to obtain information relating to such official duties or to accomplish properly any activity connected with such official duties, including, but not limited to—