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Issue Number 2025-7. Requesting IRC 6103 Information from the OPR

The Office of Professional Responsibility (OPR) is responsible for matters related to the regulation of tax professionals and other individuals' practice before the IRS under section 330 of Title 31 of the U.S. Code and 31 Code of Fed'l Regulations (CFR) Subtitle A, Part 10, complied in [Circular 230](#), *Regulations Governing Practice before the Internal Revenue Service*.¹ The OPR also has exclusive responsibility for discipline imposed on "practitioners" (as well as appraisers and firms or other entities that conduct a tax practice subject to the regulations).² The office's jurisdiction encompasses instituting disciplinary proceedings³ and pursuing sanctions (censures, suspensions or disbarments from practice, monetary penalties, and appraiser disqualifications).⁴

Although the OPR operates pursuant to a statute in Title 31 (USC) and regulations promulgated thereunder, instead of Title 26 (the Internal Revenue Code (IRC)) and its regulations, and acts generally independently from the IRS's tax compliance and collection functions, the OPR is, of course, still an IRS business unit and a part of Treasury Department. As such, the OPR is subject to [section 6013 of the IRC](#), Confidentiality and Disclosure of Returns and Return Information, and not only must adhere to the section's provisions but also apply them in carrying out our casework, as needed.

Additionally, in performing the office's core responsibilities described above (handling oversight and disciplinary matters related to practice), we work with other IRS business units to safeguard confidential taxpayer information from unauthorized disclosure. The OPR's case files include federal tax information (FTI) of or pertaining to practitioners who've been referred⁵ to the OPR for possible misconduct and the FTI of third parties.

¹ See section (§) 10.1(a)(1) of Circular 230.

² *Id.* See also Delegation Order 25-16 (Rev. 2), Authority of the Office of Professional Responsibility to Perform Certain Functions Concerning Practice before the Internal Revenue Service (IRM 1.2.2.15.16 (09-11-2022)) (delegating the authority to "exercise responsibility for all matters related to practice before the" IRS under Circular 230, and "practitioner conduct and discipline . . .").

³ Disciplinary proceedings are the subject of Subpart D of Circular 230, "Rules Applicable to Disciplinary Proceedings."

⁴ See D.O. 25-16, par. b (conferring authority for: "Pursuing, imposing and enforcing all sanctions for violations of Circular 230 . . ."), par. c ("Initiating all disciplinary proceedings against individuals and firms or other entities for violations of Circular 230 and accepting consents to be sanctioned in lieu of instituting or continuing disciplinary proceedings."); see also IRM 1.25.1.1.2(1) (01-12-2023) ("The OPR's Authority is listed in [IRM 1.25.1.3, Authorities Relating to Practice.](#)"); IRM 1.25.1.3 (11-30-2016); Circular 230 §§ 10.50 (Sanctions), 10.52 (Violations subject to sanction), 10.60 (Institution of proceeding), 10.61(b) (Voluntary sanction).

⁵ The OPR receives referrals from both internal (IRS) and various external sources. Section 10.53(a) of Circular 230 requires IRS employees to promptly submit a report to the OPR whenever they have "reason to believe a practitioner has violated any provision of this part [Cir. 230]." Employees use Form 8484, *Suspected Practitioner Misconduct*

When the OPR opens a case upon receipt of an actionable referral to investigate or inquire into the allegations that were reported, the office conducts research, case and development, and analysis. Upon determining to continue with the case, we notify the affected practitioner in writing of the referral and the open case and solicit a response from the practitioner. The letter also informs the practitioner of the opportunity to request, themselves or through their authorized representative(s), underlying documents and other information in the case file. Practitioners and their representatives can obtain copies of non-privileged and otherwise releasable material from the files.

To exercise this opportunity, the OPR created and makes available a standard [section 6103 information-request letter](#) for practitioners and their representatives to use to request FTI maintained in the OPRs case files.

The section 6103 information-request letter enables access to tax returns and related tax information. A practitioner or representative can use the letter for copies of: (1) the practitioner's own FTI; (2) relevant FTI of other taxpayers, such as clients or former clients of the practitioner; or (3) both the practitioner's own information and that of third parties, depending on the case.

The section 6103 letter is based on certain provisions of the statute, which vary in their coverage:

■ **Section 6103(e)(1) and (7)** provides a method for a practitioner, in their status as a taxpayer, to obtain disclosure of the practitioner's FTI contained in the case file associated with the practitioner. More specifically, the provisions (in subsections (e)(1) and (e)(7)) authorize a taxpayer,⁶ through a written request, to inspect and receive the taxpayer's returns filed with the IRS and the taxpayer's "return information" (defined in section 6103(b)(2)), unless the IRS determines that disclosure of some or all of the return information would seriously impair federal tax administration.⁷

Report for the Office of Professional Responsibility, accompanied by supporting documentation. The referrals, including the supporting documentation, routinely contain section 6103 FTI.

⁶ IRC 7701(a)(14) defines a "taxpayer" as "any *person* subject to any internal revenue tax." (Emphasis added.) Section 7701(a)(1) defines, for purposes of the Code, a "person" as "an individual, a trust, estate, partnership, association, company or corporation." *See also* Treas. Reg. § 301.7701-6(a) ("The term person includes an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization or group . . . or any person acting in a fiduciary capacity.").

The OPR opens cases on law, accounting, and other firms whose partners, officers, employees, associates, or other members practice before the IRS. These firms are, like their practitioners, regulated under Circular 230. As such, a firm, however it's organized under state law (as an LLC, partnership, professional corporation, etc.) can be sanctioned — in particular with a monetary penalty. *See* 31 USC 330 ("The Secretary may impose a monetary penalty on . . . [a] representative," and if "the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on . . . [the] entity if it knew, or reasonably should have known, of such conduct."); *Accord* Circular 230 § 10.50(c)(1)(ii).

A firm, acting through a legally authorized constituent (such as a partner of a partnership, the president or treasurer of a corporation, or a shareholder of an S corporation), or the firm's representative appointed for the Circular 230 case or proceeding, can use the request letter to obtain FTI, the same as a practitioner can.

⁷ The Director of OPR and the OPR's managers have the delegated authority to determine impairment under subsection (e)(7) for any disclosure of return information in the OPR's records. D.O. 11-2 (Rev. 5), Reference Chart (IRM Exhibit 1.2.2-2 (04-08-2024)) (delegating authority for impairment determinations to "IRS and Chief Counsel supervisors to the extent necessary to perform . . . official duties" of their positions); D.O. 11-2 (Rev. 5), Authority to

■ **Section 6103(l)(4)** authorizes disclosure of the returns and return information of a taxpayer other than the practitioner. Per subsection (l)(4)(A), returns and return information may be disclosed, upon written request, to “any person . . . whose rights are or may be affected by an administrative action or proceeding under section 330 of title 31, United States Code” (i.e., a Circular 230 action or proceeding). Likewise, the same returns and return information may also be disclosed to a “duly authorized legal representative” of the person. Disclosure under this provision is limited only to returns and return information that are or may be “relevant and material” to the action or proceeding under Circular 230. Thus, a practitioner or representative may rely on the subsection to request and obtain disclosure of materially relevant⁸ third-party FTI in a Circular 230 matter or proceeding, provided the latter is open and ongoing. The subsection does not apply to an action or proceeding that is closed or otherwise over (resolved, concluded).⁹

It is important to note that any information disclosed under section 6103(l)(4) is “solely for use in, or in preparation for, the action or proceeding.” Any other use or disclosure of the third-party tax data is prohibited. A practitioner or representative who makes an unauthorized disclosure is subject to potential civil and criminal liability. The section 6103 information-request letter

Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents (IRM 1.2.2.12.2 (09-19-2024)), ¶ (2) (the authority delegated is, in pertinent part, “To permit the disclosure of returns and return information . . . under the authority vested in the Commissioner of Internal Revenue and the Chief Counsel to act in matters officially before their respective functions.”), ¶ 3 (authority delegated to: “Officers and employees identified in the reference chart located in Exhibit 1.2.2-2, Reference Chart and Exhibit 1.2.2-3, Authorization Tables 1-8 [not applicable].”).

⁸ OPR’s Director determines relevance and materiality.

⁹ The words “may be” in the phrase “[person] whose rights are or may be affected by an administrative action or proceeding” means the action or proceeding (its results) could affect the person’s eligibility to practice before the IRS, rather than meaning an action or proceeding might occur at some indeterminate future time that could affect such eligibility. That is the most natural interpretation of the wording. *See Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687, 694 (1995) (refencing the *noscitur a sociis* canon of statutory construction, which is that a word in a statutory provision “is known by the company it keeps”); *In re Robinson*, 449 B.R. 473, 481 n. 18 (Bankr. E.D. Va. 2011) (a statutory term should not be considered in a vacuum).

EXAMPLE: The OPR opened a case based on a practitioner’s failure to file her own required individual income tax returns for two consecutive tax years, with the later discovery that the practitioner prepared several tax returns for clients in the last filing season using an inactive PTIN; also, certain of those returns had minor inaccurate entries resulting in IRS math error corrections. Upon contact by the OPR, the practitioner filed the delinquent returns and renewed the PTIN. The OPR chooses to close the case without further action and informs the practitioner by letter of the closing. The letter reminds the practitioner of the obligations to timely file returns and pay taxes when due, annually renew the PTIN as needed, and ensure the practitioner performs due diligence in preparing tax returns. It also warns that future tax noncompliance may warrant a different outcome, possibly a disciplinary sanction, depending on the facts and circumstances. After the letter is sent and the case closed, there is no action or proceeding under section 6103(l)(4)(A)(ii).

The letter’s allusion to a possible Circular 230 action or proceeding that might materialize sometime later does not make the third-party returns or return information available to the practitioner under the provision.

includes acknowledgments by the requester(s) of the disclosure restrictions and potential penalties for violations.¹⁰

The section 6103 information-request letter is distinct from a Freedom of Information Act (FOIA) request. The letter generally will be an easier and quicker way to obtain the information sought and will most often result in greater release of information than a FOIA request. The OPR receives and directly handles section 6103 requests, whereas FOIA requests are received and processed, on a first-in, first-out basis, by Privacy, Governmental Liaison and Disclosure within the IRS, which must coordinate with the OPR on the identification (search for), potential redaction, and release of responsive records.¹¹ In addition, a section 6103 request is not subject to fees for search and review time or for photocopying that apply to FOIA requests. The most significant difference is that the IRS will not release any third-party tax information in response to a FOIA request. That holds true regardless of the relevance and materiality of the information to a pending or prospective¹² action or proceeding that could affect the rights of the practitioner making the request or on whose behalf the request is made. The third-party tax information is required to be withheld under FOIA Exemption 3 (5 USC 552(b)(3)), in conjunction with section 6103. Thus, a practitioner or representative's submission of a FOIA request may be a waste of time and resources, to the extent it is necessary to submit a subsequent section 6103(l)(4)(A) request to obtain all available information relevant to the case. Finally, practitioners should be aware that a section 6103 request submitted to the OPR will only yield responsive records held by the OPR itself, not records maintained in files elsewhere in the IRS.

If you have questions about this article, please contact our office by phone at 202-317-6897 or eFax at 855-814-1722.

¹⁰ Although not mentioned in the section 6103 information-request letter, a representative, of a client before the OPR, who receives a third-party taxpayer's FTI will most often be a Circular 230 practitioner themselves. And because they are, the representative can also be held liable under the Circular for any unauthorized use or disclosure under section 10.51(a)(15) (stating (as prohibited conduct), "Willfully disclosing or otherwise using a tax return or tax return information in a manner not authorized by the Internal Revenue Code, . . .").

¹¹ A "record" essentially means "any information" that is "maintained by an agency in any format, including an electronic format." 5 USC 552(f)(2).

¹² Consistent with the proviso stated above, "prospective" in this context means imminent or reasonably anticipated, and not hypothetical or conjectural. See BLACK'S LAW DICTIONARY (12th ed. 2024) PROSPECTIVE ("2. Anticipated or expected; likely to come about"); Merriam-Webster Online Dictionary (2.a, b) (defining "prospective" as meaning "likely to come about: expected" and "likely to be or become"); cf. *Diversified Indus., Inc. v. Meredith*, 572 F.2d 596, 604 (8th Cir. 1977) (explaining in a case involving the issue of protection of a law firm's report for a client as attorney work product (when prepared in anticipation of litigation) that "the work product rule" will not "come into play merely because there is a remote prospect of future litigation") (internal citation omitted); *In re Gabapentin Patent Litigation*, 214 F.R.D.178, 183 (D.N.J. 2003) (stating, for purposes of the attorney work product doctrine's applicability, "In general, . . . a party must show more than a 'remote prospect,' an 'inchoate possibility,' or a 'likely chance of litigation.'") (internal citations omitted).