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Tax Regs in Plain English

IRS Restructuring and Reform Act of 1998

3702 - Archive of Records of IRS

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Section 3702

A. Provision(s) covered: Section 3702 (Archive of Records of Internal Revenue Service) [added IRC § 6103(1)(17)]

B. Background: The Service, like all other Federal agencies, must create, maintain, and preserve agency records in accordance with title 44 of the United States Code. The National Archives and Records administration (NARA) is the Government agency responsible for overseeing the management of the records, for establishing standards for the selective retention of records of continuing value, and for the custody, use, and withdrawal of records transferred to it. Among its responsibilities, NARA approves or rejects agency-submitted lists of record types for which dispositions are proposed (i.e., record control schedules) and that are not already covered by NARA's Governmentwide schedules. NARA examines the list to determine if any of the records on the list have sufficient administrative, legal research, or other value to warrant their continued preservation.

In many cases, the description of the record on the list is sufficient for NARA to make the determination, but NARA may find it helpful to examine a particular record or records. However, pursuant to IRC § 6103(a), which prohibits disclosure of tax information except as specifically authorized under the Internal Revenue Code, IRS is obligated to protect taxpayers' confidential tax information from disclosure. These two competing requirements have created conflict between NARA and IRS. Prior to

enactment of the Internal Revenue Service Restructuring and Reform Act of 1998, the Internal Revenue Code did not authorize disclosure of confidential tax information to NARA. Accordingly, IRS would determine whether its records contained confidential tax information protected under IRC § 6103(a). Such tax information could not be disclosed to NARA, and NARA, therefore, was unable to inspect section 6103 protected IRS records for the purpose of determining their historical significance and whether such records should be scheduled for retention or destruction.

C. Change(s): Section 3702 amends IRC § 6103(l) by adding a new paragraph designated as section 6103(l)(17) which requires IRS to disclose section 6103 protected records to officers and employees of NARA, upon written request of the Archivist of the United States, for purposes of the appraisal of such records for destruction or retention.

Present law prohibitions on and penalties for the unauthorized inspection or disclosure of confidential tax information apply to officers and employees of NARA. Under present law, unauthorized disclosure or inspection of tax information is a felony punishable by a fine not exceeding \$5,000 or imprisonment for not more than five years, or both (IRC §§ 7213, 7213A). An action for civil damages also may be brought against the United States by a taxpayer whose information is inspected or disclosed without authorization (IRC § 7431).

D. Impact: From the date of enactment of section 6103(l)(17), IRS is required to disclose section 6103 protected tax records to NARA for purposes of the appraisal of such records for destruction or retention, pursuant to written requests for disclosure for such purposes, received from the Archivist of the United States.

E. Necessary Actions

1. Development of IRM or other appropriate explanation of, and guidance with respect to, this provision.
2. Affected Internal Revenue Service and Chief Counsel employees can be advised that, notwithstanding enactment of section 3702, IRS records still must be reviewed to determine whether they constitute or contain section 6103 protected tax information prior to disclosure to NARA pursuant to section 6103(l)(17). Such review and determination is necessary to properly alert NARA that specified records or portions thereof disclosed to NARA under section 6103(l)(17) are section 6103 protected tax information that may not be inspected or disclosed by officers or employees of NARA, except as specifically authorized under section 6103(l)(17). Additionally, review will be required to prevent disclosure of information to which NARA is not entitled, such as grand jury and wiretap information.

F. Other Special Comments: None.

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