ETHICS IN THE EYE OF THE BEHOLDER: WHAT CONDUCT IS MOST LIKELY TO RESULT IN DISCIPLINE UNDER CIRCULAR 230?

APPENDIX D

6103 REQUESTS-PROCEDURE AND SAMPLE LETTER¹

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¹ Public domain material drafted under the direction of the author while Director, OPR.
SECTION 6103 INFORMATION REQUEST PROCEDURE AND SAMPLE LETTER

OPR has created a standard section 6103 information-request letter for practitioners and their representatives to use to request tax information maintained in OPR case files and obtained as part of an inquiry into possible violations of the regulations governing practice before the IRS (Circular 230).

The letter functions as a request under section 6013 of the Internal Revenue Code (http://www.gpo.gov/fdsys/pkg/USCODE-2013-title26/pdf/USCODE-2013-title26-subtitleF-chap61-subchapB-sec6103.pdf) for access to tax returns and related tax information. A practitioner, or an authorized representative on a practitioner’s behalf, can use the letter to request copies of (1) the practitioner’s own tax information;

(2) relevant tax information of other taxpayers, such as clients or former clients of the practitioner; or (3) both the practitioner’s own tax information and the tax information of third parties, depending on the particular case.

The section 6103 information-request letter is based on certain provisions of the statute, which are different in their coverage:

- The provisions in section 6103(e)(1) and (7) provide the method for a practitioner, in his or her status as a taxpayer, to obtain disclosure of the practitioner’s tax information contained in the case file associated with the practitioner. More specifically, the provisions authorize a taxpayer, 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.

- With respect to another taxpayer’s returns and return information, section 6103(l)(4) authorizes their disclosure, upon written request, to “any person . . . whose rights are or may be affected by an administrative action or proceeding” under Circular 230. Additionally, 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 involving Circular 230. A practitioner, or a practitioner’s authorized representative, therefore, may use subsection (l)(4) in a Circular 230 matter or proceeding to request disclosure of relevant third-party tax information.

It is important to note that any information disclosed under section 6103(l)(4) is solely for use in, or to prepare 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 includes acknowledgments by the requester(s) of the disclosure restrictions and potential penalties for violations.

The section 6103 information-request letter is distinct from a Freedom of Information Act (FOIA) request. The section 6103 information-request letter generally will be an easier way to obtain the information requested and will most often result in release of more information than a FOIA request. 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 OPR on the identification and release of records responsive to a FOIA request. 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, regardless of the relevance and materiality of the information to a pending or prospective 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, in conjunction with section 6103. 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) request to obtain all available information relevant to the case.
Re: Request for records pursuant to 26 U.S.C. 6103

Dear Director:

I hereby request documents under any and all of the authorities described below that apply.

26 U.S.C. 6103 Request

Pursuant to section 6103(e)(1), I request from your files my own return information (including returns) that is, or may be, relevant and material to an administrative action or proceeding under Treasury Department Circular 230 (Circular 230).

Pursuant to 26 U.S.C. 6103(l)(4)(A)(ii), I request from your files return information (including returns) of third parties (e.g., clients or prospective clients) that is, or may be, relevant and material to an administrative action or proceeding under Circular 230.

I understand and hereby affirm that, as provided by section 6103(l)(4)(A)(ii), any return information disclosed to me is confidential and will be used solely in, or in preparation for, an administrative action or proceeding under Circular 230.

I hereby acknowledge that certain criminal penalties and civil liability apply to unauthorized disclosures, specifically: 26 U.S.C. 7213 (defining the unauthorized willful disclosure of returns or return information as a felony punishable by a fine not exceeding $5,000, imprisonment of not more than 5 years, or both, together with the costs of prosecution); and 26 U.S.C. 7431 (authorizing a taxpayer's civil action for damages against any individual who knowingly or negligently inspects or discloses any return or return information in violation of 26 U.S.C. 6103).

In order to authenticate my identity, this request includes my signature, my address, and [state (and enclose) one other identifier, such as a photocopy of a driver's license bearing your signature]. [If you are represented] My representative has signed this request also to acknowledge the responsibilities identified above in handling section 6103-protected information.

[Practitioner and/or Representative names] [addresses] [date]
If you have questions concerning this matter, please contact me at [state phone number]. Thank you for your attention to the matter.

Sincerely,

[typed name and legible signatures of both practitioner and, if represented, authorized representative]

Enclosure: [list an identifier, such as a photocopy of a driver's license bearing your signature]