

Can A Payroll Employee Disclose Tax Return Information?

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Tax returns and return information generally are protected from disclosure by Section 6103 of the Internal Revenue Code (Code), and unauthorized disclosures can result in penalties. Certain disclosures are permitted, but what happens when a person properly receiving return information “rediscloses” that information?

IRS recently addressed this question for certain redisclosures in [Revenue Ruling 2022-7](#).

Before Section 6103 was enacted in 1976, the confidentiality of tax returns and return information was debated for years. Among the many revelations during the Watergate investigations of President Nixon’s administration was President Nixon’s use of the Internal Revenue Service to go after his political enemies. This use of IRS as a weapon was unacceptable and contributed to the enactment of Section 6103.

Exceptions to the Rule

Generally, Section 6103 provides that tax returns and return information are confidential and may not be disclosed except as expressly authorized by the Code. While the general prohibition against disclosure is straightforward, the exceptions in Section 6103 are extensive and complicated, and significantly curtail the broad application of its general rule. Among the exceptions for situations in which it is necessary for tax returns or return information to be disclosed are:

1. disclosure with the consent of the taxpayer (taxpayer consent exception under Section 6103(c));
2. disclosure to a person having a material interest (material interest exception under Section 6103(e)) (but not under Section 6103(e)(1)(D)(iii) relating to disclosures to certain shareholders), and
3. disclosure for investigative purposes (investigative disclosure exception under Section 6103(k)(6)).

The Taxpayer First Act (TFA), enacted in 2019, amended Section 6103(a)(3) and (c) to limit redisclosures and uses of return information received pursuant to the taxpayer consent exception. Section 6103(c), as amended by the TFA, explicitly prohibits designees from using return information for any reason other than the express purpose for which the taxpayer grants consent and from redisclosing return information without the taxpayer’s express permission or request. Section 6103(a)(3), as amended by the TFA, imposes disclosure restrictions on all recipients of return information under the taxpayer consent exception (6103(c)). The TFA did not amend the material interest exception (Section 6103(e)) or the investigative disclosure exception ((k)(6)), or Section 6103(a) regarding disclosures under Section 6103(e) or (k)(6).

What happens when a redisclosure is made?

Given these amendments, what happens when a person who receives return information under one of these exceptions rediscloses the information? Does it make a difference if the person redisclosing is a federal, state, or local government official or employee? Revenue Ruling 2022-7 addresses these questions in seven factual situations.

Redisclosure of employee tax noncompliance is not prohibited

Three situations (Situations 3, 4, and 5 in the revenue ruling) involve employers that have a policy of taking disciplinary action against employees who do not properly fulfill their tax obligations. In each situation, IRS serves a notice of levy with respect to an employee's tax liability on the payroll department of the employee's employer. An employee in the payroll department then notifies management of the employee's tax delinquency to enable the employer to take appropriate action consistent with its policy. The only difference in the three situations is the status of the employer. In Situation 3, Situation 4, and Situation 5, the employer is a law firm, state agency, and federal agency, respectively.

Rationale: By its terms, Section 6103(a) does not regulate or control the use of returns and return information received under the material interest or investigative disclosure exceptions. Moreover, in situations in which redisclosure is permitted, but subject to limitations, "the requirements for accountings and safeguards that typically apply" to the material interest or investigative disclosure exemptions do not apply to these exceptions. The revenue ruling makes clear that persons are not barred because of their status as government employees from redisclosing returns and return information received pursuant to the material interest exception or the investigative disclosure exception. Thus, there are no statutory or regulatory restrictions on the redisclosures of return information made by the payroll employee who works for the law firm, as well as the payroll employees who work for the state and federal agencies.

Redisclosure is permitted by parent

The redisclosure of a daughter's return information by her father is not prohibited when the father is the guardian of the daughter's estate. In Situation 6 in the revenue ruling, G is the father of 5-year-old film star H. H's mother signs H's return as the parent of a minor child and dies shortly thereafter. G is the guardian of H's estate under applicable state law. G receives notice that H's return is under examination by IRS. G does not have a copy of H's return, so G obtains the return and return information from IRS. When subsequently asked by a news reporter how much income H reported on the return, G replies "three million dollars."

Rationale: Although the revenue ruling does not state the basis upon which the father received the daughter's tax return and return information, presumably it is because the father's status as the daughter's guardian makes him, by law, entitled to receive the daughter's tax return and return information. As a minor, the daughter cannot consent to her father receiving her tax return and return information, so the taxpayer consent exception is inapplicable. Redisclosures are prohibited under the taxpayer consent exception (without the taxpayer's

consent to redisclose), but because this exception does not apply, there are no statutory or regulatory restrictions on the redisclosure of the return information.

Redisclosure is prohibited under taxpayer consent exception

In Situation 1, A requests the assistance of a friend, B, with respect to a federal tax matter. A also requests that IRS provide A's returns and return information to B. B subsequently discloses to a third party return information obtained as a result of A's request. In Situation 2, the facts are the same, except that B happens to be a government employee. IRS concludes that B is prohibited from redisclosing A's return information in both situations because A did not authorize B to disclose A's return information further.

Rationale: Section 6103(c), as amended by the TFA, explicitly prohibits designees from using return information for any reason other than the express purpose for which the taxpayer grants consent and from redisclosing return information without the taxpayer's express permission or request. Section 6103(a)(3), as amended by the TFA, imposes disclosure restrictions on all recipients of return information under 6103(c).

Comment: When a taxpayer needs help from a tax practitioner (lawyer, certified public accountant, or enrolled agent) to deal with IRS, the taxpayer often files IRS Form 2848, Power of Attorney and Declaration of Representative, to request IRS to provide the taxpayer's return information to the tax practitioner. The tax practitioner is prohibited from redisclosing tax return information.

Prohibitions and Penalties

Although the amendments to Section 6103(a)(3) and 6103(c) prohibit redisclosures by a person who receives return information with the taxpayer's consent, there was no corresponding amendment to impose a penalty for making an unauthorized disclosure. Section 7213 of the Code makes an unauthorized disclosure of a tax return or return information by a federal officer or employee and certain other persons a felony punishable by up to five years in prison and a fine not exceeding \$5,000. However, TFA did not amend Section 7213 to impose a penalty on the redisclosure by a person who receives return information with the taxpayer's consent, resulting in a prohibition without a penalty.

A person who engages in such authorized redisclosure is not free of risk. Section 7431 gives the taxpayer whose return information was redisclosed without the taxpayer's consent a civil cause of action against the person who knowingly or negligently redisclosed the return information.

For someone who practices before IRS, such as a lawyer, certified public accountant, or enrolled agent, an unauthorized disclosure would raise concerns about sanctions by the IRS Office of Professional Responsibility. Whether the Office of Professional Responsibility would have the authority to act in such a case is unclear, but the concern exists.

It should also be noted that willfully printing or publishing return information that is obtained in an unauthorized matter is a felony punishable by up to five years in prison and a fine not exceeding \$5,000 under

Section 7213(a)(3). ProPublica's publication of "[The Secret IRS Files: Trove of Never-Before-Seen Records Reveal How the Wealthiest Avoid Income Tax](#)" last year raises questions about whether ProPublica violated Section 7213(a)(3). Whether ProPublica acted "willfully" or the First Amendment trumps Section 7213(a)(3) are discussions for others, but it is obvious that Congress does not want return information that is obtained in an unauthorized manner printed or published, and doing so comes with a high level of risk.

Wading into the murky waters of the exceptions to nondisclosure under Section 6103 is challenging. Possessing another taxpayer's tax returns and return information brings with it a duty to prevent an unauthorized disclosure. While disclosing tax returns and return information is permitted in certain situations, it is critical to ensure the requirements for a permitted disclosure are met.

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