

Customs Service. The Act directed the Treasury Department to adopt temporary regulations to implement the new section.

On March 11, 1994, temporary regulations were published in the **Federal Register** (59 FR 11547) specifying the procedure by which return information may be disclosed to officers and employees of the United States Customs Service, and describing the conditions and restrictions on the use and redisclosure of that information. A notice of proposed rulemaking (DL-21-94) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (59 FR 11566).

The IRS received two comments on the proposed regulations but did not hold a public hearing. After consideration of the comments, this Treasury decision adopts the proposed regulations without revision. The comments are discussed below.

Explanation of Provisions

The regulations authorize disclosure of return information only to the extent necessary to the purposes authorized by the statute, i.e., ascertaining the correctness of entries in audits under the Tariff Act of 1930 and other actions to recover any loss of revenue or collect amounts determined to be due and owing as a result of these audits. The regulations permit redisclosure to the Department of Justice for civil enforcement actions related to these collection efforts. Consistent with the statute's legislative history, the regulations prohibit disclosure of information (i) relating to Advance Pricing Agreements (as described in Rev. Proc. 91-22 (1991-1 C.B. 526)), or (ii) covered by tax treaties and executive agreements with respect to which the United States is a party. The regulations also specifically prohibit any use or redisclosure of the information by the Customs Service in a manner inconsistent with section 6103 and the regulations.

Notice to Taxpayers/Importers

One commentator suggested that the regulations should provide taxpayers with advance notice of a Customs Service request for tax data and an opportunity to comment upon or object to the request. The legislation authorizing these disclosures did not, however, make any provision for such advance notice and pre-disclosure challenges to Customs

Section 6103.—Confidentiality and Disclosure of Returns and Return Information

26 CFR 301.6103(l)(14)-1: Disclosure of return information to United States Customs Service.

T.D. 8694

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 301

Disclosure of Return Information to the U.S. Customs Service

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: These amendments to the regulations under 26 CFR part 301 implement section 6103(l)(14) of the Internal Revenue Code, which authorizes the disclosure of certain return information to the U.S. Customs Service. The regulations specify the procedure by which return information may be disclosed and describe the conditions and restrictions on the use of the information by the U.S. Customs Service.

EFFECTIVE DATE: These regulations are effective December 17, 1996.

FOR FURTHER INFORMATION CONTACT: Donald Squires, 202-622-4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The North American Free Trade Agreement Implementation Act (Act), Public Law 103-182, 107 Stat. 2057, was signed into law on December 8, 1993. Section 522 of the Act added section 6103(l)(14) to the Internal Revenue Code (Code), authorizing the IRS to disclose certain tax data to the U.S.

Service requests for disclosure of tax data. Such procedures would, moreover, run counter to the existing statutory scheme of section 6103. Disclosures under section 6103 are governed by the requirements of that statute and applicable regulations, none of which offers a procedural opportunity for a taxpayer to challenge, in advance, a proposed disclosure of tax information by the IRS.

The same commentator suggested that, in the alternative, a taxpayer should be notified in the event of a disclosure so the taxpayer can prepare its response to inquiries from the Customs Service that might be based on such tax data. Otherwise, the commentator argued, the taxpayer would be forced to defend itself against an “unexpressed suspicion” based on information the taxpayer does not know the Customs Service has obtained and possibly has misinterpreted.

Nothing in the statute’s legislative history suggests that Congress intended the Service to notify taxpayers upon disclosure of their tax data to the Customs Service. As noted above, such a requirement would be at odds with general practice under section 6103. Moreover, the IRS understands that the usual practice of the Customs Service is not to request information from the IRS unless the data has been first directly requested from, but not provided by, importers. When importers receive such a request, therefore, they will effectively be on notice, whether or not they choose to comply with the request, that the Customs Service is likely to consider tax information in the course of its audit.

Misinterpretation of Tax Data by Customs

Both commentators expressed a concern that due to the different reporting requirements of the IRS and the Customs Service, tax data is susceptible to misinterpretation by Customs Service auditors. For example, it was noted that the cost of goods reported for tax pur-

poses includes certain amounts (e.g., duty, transportation, insurance, storage, design costs) not relevant to, or included in, the value of goods for customs purposes.

Congress was aware when it enacted the legislation, however, that IRS tax information may not correlate exactly with the information required to be reported to the Customs Service. Congress nonetheless concluded that the value of the tax information to the Customs Service would outweigh the possible difficulties caused by the necessity of adjusting the IRS data for use in Customs Service audits. Moreover, the Customs Service has informed the IRS that the Customs Service is committed to a policy of full disclosure and communication with importers during audits. In light of that policy, any apparent discrepancies between tax data and Customs Service reporting will be brought to the attention of the importer when discovered in order to allow the importer to explain or reconcile the data. The Customs Service also notes that importers have an additional opportunity to review and comment upon the findings of an auditor before the preparation of the auditor’s final report.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Donald Squires, Office of the Assistant Chief Counsel (Disclosure Litigation), IRS. However, other personnel from the IRS, Customs Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

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

Adoption of 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 removing the entry for Section 301.6103(l)(14)–1T” and adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6103(l)(14)–1 also issued under 26 U.S.C. 6103(l)(14). * * *

§ 301.6103(l)(14)–1T [Redesignated as § 301.6103(l)(14)–1]

Par. 2. Section 301.6103(l)(14)–1T is redesignated as § 301.6103(l)(14)–1 and the section heading is amended by removing the language “(temporary)”.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved November 13, 1996.

Donald C. Lubick,
*Acting Assistant Secretary
of the Treasury.*

(Filed by the Office of the Federal Register on December 16, 1996, 8:45 a.m., and published in the issue of the Federal Register for December 17, 1996, 61 F.R. 66218)