FOIA & Disclosure Requests

LG Brooks, EA, CTRS, NTPI Fellow

ASTPS American Society of Tax Problem Solvers

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LG Brooks, EA, CTRS, NTPI Fellow

Senior Tax Resolution Consultant
Lawler & Witkowski CPAs

Education Director
American Society of Tax Problem Solvers

LG Brooks is the Education Director of the American Society of Tax Problem Solvers (ASTPS) and the Senior Tax Resolution Consultant at Lawler & Witkowski CPAs. He is a nationally recognized tax resolution expert and speaker. He brings over 25 years of experience to his presentations and has worked and consulted on thousands of IRS tax resolution cases. LG received a Bachelor of Arts degree from Bishop College at Dallas, Texas in 1977. He is a Certified Tax Resolution Specialist and a Fellow of the National Tax Practice Institute (NTPI)

Three Major Information Statutes

❑Public Law Information Statutes:

- The "Freedom of Information Act" (FOIA), 5 U.S.C §552
- The "Privacy Act", 5 U.S.C §552(a)
- The "FOIA Improvement Act of 2016" Pub. L. No.114-185

❑Tax Law Information Statute:

- Internal Revenue Code (IRC) §6103
- IRC §7803(7)

❑Administrative Provisions:

- Internal Revenue Manual (IRM) Cites

Fundamentals

The FOIA, Privacy Act & IRC §6103:

❑The FOIA statute was created to generate & promote **public access** to governmental records & information

❑The Privacy Act was created to *prohibit the government's collection & dissemination of unnecessary information* and to provide **all taxpayers** the ability to access & correct information maintained by the Government

❑IRC §6103 was enacted to **"prevent" public disclosure** of a *taxpayer's tax returns **and** tax return information*, due to the FOIA's inability to restrict such information disclosure.

Fundamentals

- *The FOIA is generally divided into three categories as follows*:
- **Category I-5 U. S. C. §552(a)(1):**
- The information contained under this provision of FOIA is the information required to be published in the Federal Register. This category includes the general rules and regulations of the federal agencies, such as the regulations of the U.S. Treasury Department.
- **Category II-5 U. S. C. §552(a)(2):**
- The information contained under this provision of FOIA is the information which the Government must publish and offer (for sale) to the general public and/ or also make such information available for public inspection. Additionally, this category includes agency decisions, policy statements and staff manuals.
- **Category III-5 U. S. C. §552(a)(3):**
- The third category under FOIA includes all information not otherwise made available to taxpayers as noted via categories I & II above. Generally, all tax returns and tax return information, that is subject to the FOIA guidelines, are available pursuant this category.

Fundamentals

The FOIA Improvement Act-Public Law #114-185:

- The FOIA Improvement Act was signed into law June 30, 2016, by then President Obama, which changed, updated & mandated various provisions of the FOIA Act establishing new requirements for:
  - Agency response letters
  - Notices to requesters extending certain response time frames, and
  - Increasing the legal period to file an Administrative Appeal to "90 Days"

Fundamentals

Disclosure & IRC §6103:

- **IRC §6103 (c)** – "Disclosure of Returns & Return Information to Designee of Taxpayer"
  - Typically, practitioners who provide POAs & TIAs to the IRS
- **IRC §6103 (e)** – "Disclosure to Persons Having a Material Interest"
  - Explains when the return of a person (which also includes various business entities) is open for inspection or disclosure
  - Usually upon "written request"

Fundamentals

Disclosure & IRC §7803:

- **Access to Case Files** – "The Administrative File"
  - Typically, this provisions of law applies to any "disclosure request" related to a formal request for IRS internal documents, reviews, information and IRS workpapers pursuant to a tax matter subject to the jurisdiction of the "**IRS Independent Office of Appeals**" (IRS Appeals).
  - This request is usually referred to as the "*Administrative File*".
  - The production of the "Administrative File" from IRS Appeals will not include any taxpayer provided documents, only IRS employee files, determinations & decisions

Fundamentals

Disclosure & The IRM:

- **IRM 1.3.2.3 –** "Processing Requests for Return & Return Information"
- **IRM 4.2.5.6 –** "Requests for Open Examination File & Workpapers"
- **IRM 11.3.2.4.1.1 –** "Disclosure of Collection Activities with Respect to Joint Returns"

"FOIA REQUESTS"

Processing the FOIA Request:

- The IRS is required to respond to the initial FOIA request within "***20 days***" (excepting Saturdays, Sundays, and legal public holidays). However, IRS Disclosure may request an "extension" of at least "10 or more days" (subject to the taxpayer's or representative's approval). *Judicial review* is allowed subsequent to the 10-day or 20-day response period if the request is denied and the taxpayer has exhausted their administrative remedy via the Appeals.
- ***Treasury Regulation (Treas. Reg.) §601.702***

"FOIA REQUESTS"

- **Granting the FOIA Request:**

❑If the request is granted by the IRS in full or in part, and if the requester wants a copy of the records, a statement of the applicable fees, if there are any, shall be mailed to the requester either at the time of the determination or shortly thereafter.

❑If the taxpayer or representative has made request only to inspect records or documents, the IRS is required to make the records available promptly for inspection, at the time & place stated (which is normally at the appropriate IRS office where the requested records are controlled).

"FOIA REQUESTS"

- **Requests for Expedited Processing of the FOIA:**

❑When a taxpayer or representative demonstrates a "compelling need" pertaining to a FOIA request, the request shall be taken out of order & given *expedited treatment*. A "compelling need involves"

✓Circumstances in which the lack of expedited treatment could reasonably be expected to pose an **imminent threat** to the life or physical safety of an individual

✓An urgency to inform the public concerning actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information

✓The loss of **substantial due process rights**

"FOIA REQUESTS"

- **Administrative Appeal Rights:**

❑Treasury Regulation (Treas. Reg.) §601.702 (10) provides & explains the taxpayer's rights & general guidelines related to requesting an administrative appeal concerning the denial of either a FOIA or Disclosure.

❑However, please be aware that Treas. Reg. §601.702 has not been officially updated subsequent to the implementation of the "FOIA Improvement Act of 2016", which increase the time period to file an administrative appeal to "**90 days**" from the previous "*35 da*ys" which continues to be noted via Treas. Reg. §601.702.

"FOIA REQUESTS"

❑***FOIA Practice Pointer #1:***

➢Please note that pursuant to **IRM §4.4.7.2.2.5-1(H)**, "Mailing", the IRS representative is actually and *specifically instructed* to "**NEVER send the taxpayer or power of attorney copies of Form 4665"**. However, please refer to *IRM 11.3.13.5.2.6, "Exemption (b)(5)"* which contravenes this statement.

❑***FOIA Practice Pointer #2:***

- The representative's request for information via a FOIA must specifically identify the information, documentation and/or records requested. A "**blanket request**" for all records is invalid and does not meet the statutory criteria regarding the requests for information via a FOIA.

"FOIA REQUESTS"

❑***FOIA Practice Pointer #3:***

- Both the envelope and the appeal itself shall be clearly marked. "**Appeal for Expedited Processing**". Also, the IRS's action to deny or affirm denial of a request for expedited processing and/or the IRS's failure to respond in a timely manner to such request shall be subject **to judicial review**.

"FOIA & Disclosure Requests"

❑Other FOIA "MUST Request Documents"

- ✓ TXMODA
- ✓ PINEX
- ✓ MFTRAX
- ✓ AMDISA

NOTE: The above type transcripts are **ONLY provided** if they exist in the administrative file at the time of your request. IRS Disclosure employees are not required to create, produce or acquire such transcripts (or other documents) that do not exist in the actual file.

❑FOIA Examples

- ✓ FOIA Request – As prepared by practitioner.

"FOIAs-Where to Send Your Request"

❑**All requests for IRS Policy and procedure agency documents that are not already publicly available in the FOIA Library:**
Internal Revenue Service
Central Processing Unit
Stop 211
PO Box 621506
Atlanta, GA 30362-3006
Fax: 877-807-9215

❑**For personal/business taxpayer records:**

Internal Revenue Service
Central Processing Unit
Stop 93A
Post Office Box 621506
Atlanta, GA 30362
Fax: 877-891-6035

*****OR*****

"FOIAs-Where to Send Your Request"

❑**Submit your FOIA Request Electronically via:**

FOIA.GOV

“FOIA &Disclosure Requests”

- “Facts, Observations, Information & Advocation”
  - _____
  - _____
  - _____
  - _____
  - _____

Best in the Southwest, CPAs, PC

Houston Office:
2250 Rodeo Dr., Suite #3
Houston, TX 77777

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(281) 222-2222 **Houston** (972) 999-9999 **Dallas**
Website: www.bitscpas.com
E-mail: amurphy@bitscpas.com

"Remitted via Facsimile to (877) 891-6035"

June 15, 2022

Internal Revenue Service (IRS)
IRS-FOIA Request
STOP-93A
P. O. Box 621506
Atlanta, GA 30362-3006

RE: Calamity Jane
SS#: 123-45-6789
Tax Years/Periods: 2018 & 2019

Disclosure Officer:

I represent the taxpayer noted above as indicated via the attached "*Power of Attorney*" forms (**Form 2848**), which has been filed with the IRS-CAF Unit. Under the provisions of the **Privacy Act of 1974, 5 U.S.C. §552A**, and the **Freedom of Information Act, 5 U.S.C. §552A**, in addition to Internal Revenue Code (**IRC**) **§6110, IRC §6103,** Treasury Regulation **(Treas. Reg.) §301.6110-1** and Internal Revenue Manual (IRM) **§4.2.5.7,** I request copies of the following documents:

1. **ALL FILES & AUDIT WORKPAPERS** relevant to the audit/examination of the above referenced taxpayer's 2018 & 2019 Individual Income Tax Returns (Form 1040), related to the tax years referenced above including, but not limited to:
   - **Audit Checklist**
   - **Audit Interview Sheets/Lists**
   - **Review Notes** & Supervisor Comments
   - **History Sheets** & Activity Reports
   - Revenue Agent **Workpapers** (*Forms 4700 and/or 4700A*)
   - **Form 1900**, "Income Tax Survey After Assignment"
   - **Form 4318**, "Examination Workpapers Index "
   - **Form 4466**, "Income Tax Survey After Assignment "
   - **Form 4665**, "Report Transmittal " (for Unagreed Employment Tax Cases)
   - **Form 5346**, "Examination Information Report"
   - **Form 9984**, "Examining Officer's Activity Record"
   - **Form 12175**, "Third Party Contact Report"
   - **All Third-Party Statements and Communications**
   - **All internal Revenue Ruling** & background documents
   - **All internal legal research** & background documents
   - **TAXMODA** Transcripts (If present in the case file)
   - **AMDISA** Transcripts (If present in the case file)
   - **MFTRAX** Transcript (If present in the case file)

- **PINEX** Transcript (If present in the case file)
- **Any & all <u>Non-Master File (NMF) Data & Information</u>**

2. A copy of my government issued identification, my (State Driver's License or other Stated ID), has been attached for proper identification (ID) purposes. Please contact me should you need any additional forms of ID.

I agree to pay reasonable charges in locating and reproducing the requested documents, to an upper limit of **<u>$100</u>**. If the fees are expected to exceed $100, please contact me for further authorization.

If you determine that any portion of a requested record is exempt, *<u>please identify the document, the number of pages withheld, and cite the specific exemption</u>* which you think justifies the refusal to release the information and inform me of the appeal procedures available to the taxpayers under the law.

We respectfully request that this information be provided within the **twenty (20) business-day** statutory period, (if possible). Thank you.

Cordially,

Audie Murphy, EA, CPA, Esq., CTRS