

IRS Can Share Taxpayer Information with Immigration Authorities

Cross References

- *Centro De Trabajadores Unidos v. US Treasury*, DC District Court, April 7, 2025

The IRS issues Individual Taxpayer Identification Numbers (ITINs) to alien taxpayers for use in connection with filing requirements. A taxpayer must submit a Form W-7 to apply for an ITIN. The Form W-7 asks for information including an applicant's mailing and foreign address, country of citizen, type of United States visa, and date of entry into the United States. This information is considered to be tax return information under IRS regulations.

IRC section 6103 sets forth the general rule that tax return information shall be confidential. Tax return information includes a taxpayer's identity and any other data, received by, recorded by, prepared by, furnished to, or collected by the IRS with respect to a tax return or with respect to the determination of the existence, or possible existence, of liability under the Internal Revenue Code (IRC). The willful unauthorized disclosure and inspection of tax return information carries criminal penalties under IRC section 7213 and section 7213A.

IRC section 6103 contains numerous exceptions to the disclosure prohibition, including some that require disclosure of information. The exception relevant to this court case is IRC section 6103(i)(2) which states the IRS must provide requested tax return information to officers and employees of the requesting agency who are personally and directly engaged in preparation for a criminal proceeding, and investigation that may result in a proceeding, or a federal grand jury proceeding.

The agency must make a request that includes the following:

- 1) The taxpayer's name and address,
- 2) The relevant taxable periods,
- 3) The statutory authority for the criminal investigation, and
- 4) The reasons the tax return information is relevant to the investigation.

The disclosure must be solely for the use of the officers and employees personally and directly engaged in the criminal investigation or proceeding.

The agency receiving tax return information under IRC section 6103(i)(2) must follow stringent safeguards for protecting the information. Because the receiving agency is bound by the confidentiality mandate under IRC section 6103, redisclosures of tax return information must also be authorized under IRC section 6103. The receiving agency must establish and maintain a system of records that tracks its requests and the tax return information it receives. The records must be securely stored and access must be

restricted to agency personnel whose duties require access and to whom disclosures may be made.

The plaintiffs in this case are four immigrant rights advocacy groups who filed suit to stop the IRS from providing tax return information to the Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE).

A Memorandum of Understanding (MOU) signed by the Department of the Treasury and DHS reiterates the agencies' commitment to sharing information only in the way that IRC section 6103 permits. Some statutes impose criminal penalties for immigration-related offenses, such as up to 4 years imprisonment for willfully remaining in the United States for over 90 days after a final removal order is issued. An alien who illegally reenters the United States can be imprisoned for up to 2 years. As laid out in the MOU, DHS can legally request tax return information from the IRS relating to individuals under criminal investigation, and the IRS must provide it.

The court ruled in favor of the government because the conduct expressly contemplated in the MOU providing information to assist criminal investigations is lawful.