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Confidentiality of the Taxpayer Identification Number under the Internal Revenue Code

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Summary

Section 6109 of the Internal Revenue Code makes an individual's Social Security number the individual's taxpayer identification number [TIN]. The same section requires taxpayers to furnish their TINS to the Internal Revenue Service and to other persons whenever the Internal Revenue Service determines that securing the proper identification of the person is necessary. Many Code sections require taxpayers to collect and furnish the TINS of third-parties with whom they have dealings in order to claim a benefit or a deduction. The first part of this report compiles instances in which individuals must furnish their TINS or the TINS of another person in order to file their tax return. The second and third parts examine the times when a taxpayer must furnish a TIN to a third party and the times when the Code permits disclosure of tax return information (which usually contains the TIN) to other parties. The last part discusses penalties for improper disclosure of tax return information and penalties for failing to disclose a TIN when required to furnish it.

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Background

In October 1961, Congress authorized the Internal Revenue Service to require identifying numbers on tax returns.[1] Fifteen years later, the Tax Reform Act of 1976[2] codified IRS practice that the Social Security number was to be used as the identifying number for individuals. Since that time Congress has adopted many provisions which require individuals to furnish their TINs or the TINs of other persons with whom they have dealings in order to claim a tax benefit or to enable the IRS to match returns with information reports in order to verify claims on returns. This report is intended to illustrate the wide variety of situations in which individuals are required by the Internal Revenue Code to furnish their taxpayer identification numbers, either to the IRS or to third parties.

TINS on Taxpayer's Return

The table below lists Code sections which require taxpayers to furnish either their TIN or another person's TIN on their individual tax returns.

Table 1. Requirements to Furnish TINs on Taxpayer's Return

Whose TIN	Why Required
Taxpayer's	IRC § 6109; 26 CFR §301.6109-1 Identify taxpayer's return
Taxpayer's spouse's	IRC § 6012; 26 CFR §301.6109-1 Joint return requirements IRC § 151 Personal exemption
Taxpayer's dependents'	IRC § 23 Adoption tax credit IRC § 24 Child tax credit IRC § 25A Hope Scholarship and Lifetime learning credits IRC § 32 Earned income credit IRC § 151 Dependency exemption
Child care provider's	IRC § 21 Child care tax credit IRC § 129 Dependent care assistance program income exclusion
Tax preparer's	IRC § 6109(a)(4)[3]
Parent's (if taxpayer is child under age 14)	IRC § 1(g) Minor child with unearned income is taxed at rates determined by parents' income
Former spouse's	IRC § 215(c) Alimony deduction

[1] P.L. 87-397, §1, enacted a new IRC § 6109.

[2] P.L. 94-455, §1211; IRC § 6109(d).

[3] Beginning in November 1999, tax return preparers can obtain a "preparer tax identification number" [PTIN] to use on returns which they are paid to prepare. This number is to protect the privacy of the preparer's TIN. The use of an alternative number was authorized by the IRS Restructuring and Reform Act of 1998, P.L. 105-206, § 3710.

TINs to Third Parties

In a wide variety of situations, the Internal Revenue Code requires taxpayers to give their TINs to third parties. Often the requirement is deemed necessary in order to permit the IRS to match the income and deduction side of the same transaction or to verify that the proper tax rates were used or the proper amount of tax was withheld or reported. The more persons with whom a taxpayer may be doing business or from whom a taxpayer may be receiving income the more persons there will be who are entitled to know a taxpayer's TIN.

Recently, there has been recognition that in some instances having to provide a TIN may make one vulnerable to identity theft.[4] Beginning with returns prepared after 1999, individual tax return preparers are permitted to request an alternative "Preparer Tax Identification Number" for use when preparing tax returns. Although there is no pending legislation to extend this idea to other taxpayers, this does provide a precedent for individuals having a public and a private TIN.

Table 2 below emphasizes the number of taxpayers who are required to furnish their TIN to third parties for a variety of purposes.

Table 2. Requirement to Furnish Taxpayer's TIN to Another Party

Who Provides	To Whom	When	Why Required
Parent	Child under age 14 with unearned income	If child's income not reported on parent's return, in time to file return	IRC § 1(g) Minor child with unearned income is taxed at rates determined by parents' income
Alimony recipient	Former spouse	In time for taxpayer to file return	IRC § 215(g) To verify alimony income compared to alimony deduction
Child care providers	Customers of child care providers	In time for customers to file return	IRC § 21 Child care tax credit IRC § 129 Child care assistance program provider
Medical Savings Account holder	Trustee of medical savings account	When account opened	IRC § 220(j)(4) Reporting by MSA trustees
Seller of real property	Buyer of real property	At time of sale of residence worth more than $300,000 or sale of nonresidential property	IRC § 1445(b) If seller's TIN not furnished, buyer must withhold 10% of amount realized
Seller of real property	Buyer of real property if seller provides financing	Buyer deducting interest includes seller's TIN on return	IRC § 6109(h) Requires taxpayers claiming a deduction under IRC § 163 for qualified residence interest where seller provided financing to include seller's TIN on return
Employee	Employer	On employment	IRC § 6109; IRC §§ 3101, 3102, 3111 To withhold Social Security taxes;

[4] IR-1999-72 states that the IRS Restructuring and Reform Act of 1998 authorized the use of PTINs to respond to "concerns that a preparer's SSN could be used inappropriately by clientele and others having access to a prepared return."

Who Provides	To Whom	When	Why Required
			IRC § 3402 Income taxes; IRC § 3301 Unemployment taxes; IRC § 6051 Statements of withholding to employees; IRC § 6039D Participants in fringe benefit plans; IRC § 6057 Participants in ERISA plans; IRC § 6053 To report tips; IRC § 6060 Where employee is income tax return preparer
Recipients of certain wage equivalents	Payers	At time of request for withholding of income taxes	IRC § 3401(o) Recipients of sick pay, certain annuities, or supplemental unemployment compensation can request withholding from third-party payer of benefit
Gamblers	Payers of winnings	On winning	IRC § 3402(q) Payers of certain gambling winnings are required to deduct and withhold
Pension recipients	Payers	Before payment	IRC § 3405 Requires withholding unless recipient elects out; no election out permitted unless recipient furnishes payer with TIN
Interest recipients	Payers, e.g. banks	On opening account	IRC § 3406 Back-up withholding required if TIN not furnished; IRC § 6049
Dividend recipients	Payers of dividends	On opening account, stock purchase	IRC § 3406 Back-up withholding if TIN not furnished; IRC § 6042(a), 6044
Other income recipients	Payers of income	Various	IRC § 3406 Back-up withholding if TIN not furnished: IRC § 6041 Payments of $600 or more made by a trade or business; IRC § 6041A Payments of $600 or more made by a trade or business for services rendered to the business; IRC § 6041A Transfers of goods worth $5,000 or more to direct sellers; IRC § 6045 Returns of brokers, middlemen, real estate persons; IRC § 6050A Fishing boat operators must report shares of the catch; IRC § 6050N Payers of royalties; IRC § 6050Q Payers of long-term health care benefits must report TIN of insured and TIN of individual recipient
Applicants for U.S. passport	IRS	Application	IRC § 6039E
Applicants for permanent resident status	IRS	Application	IRC § 6039E

Who Provides	To Whom	When	Why Required
Persons abandoning U.S. citizenship	IRS	Time of renunciation	IRC § 6039G
Purchasers using cash payments greater than $10,000	Recipients of more than $10,000 in cash, including from persons posting bail	At time of payment	IRC § 6050I Requires reporting receipt of payments aggregating more than $10,000 in cash to IRS
Donors of more than $5000 of property	Donee	Prior to sale of property by donee	IRC § 6050L requires donees who sell donations within two years of receipt to report donor's TIN to IRS
Contractors with federal government	Head of federal executive agency	Entry into contract	IRC § 6050M requires reporting of TIN of every person with whom the agency enters a contract during the year
Mortgagors	Mortgage holder	Entry into contract	IRC § 6050H requires mortgagees receiving $600 or more of interest to file annual return with IRS and mortgagor
Debtors	Financial entities and government agencies	When debt of $600 or more is canceled	IRC § 6050P requires reporting cancellation of indebtedness of more than $600
Students and parents	Educational institution, student loan providers, tuition plans	On enrollment	IRC § 6050S requires reporting of higher education tuition and related expenses
Taxpayer who pays return preparer	Tax return preparer	In order to prepare return	IRC § 6107 requires return preparers to keep a list of name and TIN of taxpayers whose returns they prepare
Tax return preparer	Taxpayer	On return	IRC § 6107, 6109(a)(4)[5]
Partner	Partners	For returns	IRC §§ 6229(e); 6230(e)

Permissible Disclosures

The Internal Revenue Code contains stringent penalties for disclosing taxpayers' returns and taxpayer return information. Consequently, the law is fairly explicit about when taxpayer return information may be disclosed and to whom. Most of the disclosure authority is contained in IRC § 6103. The following chart contains examples of instances in which taxpayers' returns, and thus their TINs, might be disclosed to other entities by the IRS. In many of these instances, however, the recipient of the return information may already have the taxpayer's identification number. In fact, the recipient may be required to identify the taxpayer by number in order to receive the requested return. The chart does not list the many entities that are entitled to statistical

[5] *See* footnote 3.

information which can only be produced in an anonymous form which does not identify a particular taxpayer directly or indirectly.

Table 3. Examples of Persons to Whom IRS Can Disclose Taxpayer Return Information

To Whom	Reason	Authority
Designee of taxpayer	Taxpayer request	IRC § 6103(c)
State tax officials and law enforcement agencies, state audit agencies	Administration of state tax laws, tax refunds, auditing state revenues, determining reward for assisting in recovery of federal taxes	IRC § 6103(d)
Taxpayer, taxpayer's spouse or child, partners, certain shareholders or officers, guardian of incompetent, administrator of estate, bankruptcy trustee	Disclosure to persons with material interest, who filed joint return, who need information to perform fiduciary duties	IRC § 6103(e)
Tax Committees of Congress	On request, but only when sitting in closed executive session	IRC § 6103(f)(1)
Other Committees	By House or Senate Resolution, but only when sitting in closed executive session	IRC § 6103(f)(3)
FBI, Executive Office of the President, agency head	Where individual is under consideration for executive or judicial appointment	IRC § 6103(g)
Treasury employees	Where official duties require disclosure for tax administration purposes	IRC § 6103(h)(1)
Justice employees	Grand jury proceedings, where taxpayer is a party to the proceedings	IRC § 6103(h)(2)
Federal criminal investigators with court order	Reasonable cause to believe a criminal act has been committed and tax return may be relevant; to locate fugitives from justice	IRC § 6103(i)
Federal agency head	Evidence of a violation of a federal non-tax criminal law	IRC § 6103(i)(3)
Comptroller General, GAO employees	Auditing IRS	IRC § 6103(i)(7)
General public	Inspection of accepted offers-in-compromise; unclaimed tax refunds	IRC § 6103(k)(1), (m)
Potential lien-holders	Disclosure of amount of outstanding obligation secured by liens	IRC § 6103(k)(2)
Foreign government "competent authority"	Exchange of information under tax treaties	IRC § 6103(k)(4)
Financial Management Service	To levy on government payments	IRC § 6103(k)(8)
Credit card companies	To accept payments to IRS by credit card	IRC § 6103(k)(9)

To Whom	Reason	Authority
Various government agencies	To carry out acts relating to Social Security, food stamps, housing assistance, student loans, FERS, HCFA, Medicare, DC Retirement Protection Act, blood donor locators	IRC § 6103(*l*)
National Archives	To evaluate records for destruction or retention	IRC § 6103(*l*)(17)

Penalties for Disclosure

The Internal Revenue Code contains two main penalties for disclosure of tax returns and tax return information. Section 7213 makes willful disclosure which is not authorized by the Internal Revenue Code a felony punishable by a fine up to $5,000 or imprisonment of not more than 5 years, or both, plus the costs of prosecution. In addition to any other punishment imposed by law, federal employees must be discharged from employment upon conviction. Different paragraphs of the section apply to federal employees and contractors and to state and local employees. In addition recipients of information which was not authorized to be disclosed by the Internal Revenue Code can be subject to the same punishment for printing or publishing a return or return information in a manner not provided for by law. It is also a felony to offer to exchange any item of material value in exchange for a return or return information, and to receive in exchange for such solicitation any return or return information. The same $5,000/5-year potential penalties apply.

The second major penalty, contained in IRC § 7216, applies to tax return preparers. If any person who prepares a return for compensation knowingly or recklessly discloses any information furnished to him in connection with the preparation of a return, or knowingly or recklessly uses any such information for any purpose other than to prepare a return, then that person is guilty of a misdemeanor and can be fined up to $1,000 or imprisoned up to one year, or both, plus the costs of prosecution. There are exceptions for disclosures permitted under the Internal Revenue Code, ordered by a court, or made in order to prepare the person's state or local tax returns.

Penalties for Failing to Disclose

The principal penalty for failing to disclose one's TIN when requested is contained in IRC § 6723, which provides for a $50 penalty for each failure to comply with a "specified information reporting requirement." The maximum annual penalty is $100,000. There are also "penalties" in the sense that certain deductions cannot be taken unless a TIN is furnished or that additional withholding on certain distributions will be required. For example, IRC § 151(e) provides that no exemption shall be allowed unless the TIN of such individual is included on the return claiming the exemption. The loss of the exemption amount may exceed the $50 penalty amount. Under IRC §§ 3405 and 3406, backup withholding is required unless the taxpayer furnishes the proper TIN to the payer of income.

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