

**DESCRIPTION OF H.R. 3209,
THE RECOVERING MISSING CHILDREN ACT**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on April 28, 2016

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 3209, the Recovering Missing Children Act, on April 28, 2016. This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 3209, the Recovering Missing Children Act* (JCX-37-16), April 27, 2016. This document can also be found on the Joint Committee on Taxation website at www.jct.gov.

A. Disclosure of Certain Return Information Relating to Missing or Exploited Children Investigations

Present Law

Overview of Section 6103

General rule: returns and return information are confidential

Section 6103 of the Internal Revenue Code (“the Code”)² provides the general rule that returns and return information are confidential. Section 6103 also states that returns and return information are not to be disclosed unless such disclosure is specifically authorized in section 6103 or other provision of the Code.³

Definition of return

A “return” means any tax or information return, declaration of estimated tax, or claim for refund which, under the Code, is required (or permitted) to be filed on behalf of, or with respect to, any person. It also includes any amendment, supplemental schedule or attachment filed with the tax return, information return, declaration of estimated tax, or claim for refund. For example, Form W-2, Wage and Tax Statement, is an information return, and is the return of both the employer who filed it with the IRS and the employee with respect to whom it was filed.

Definition of return information

The Code defines “return information” broadly. It includes a taxpayer's identity (the name of the person with respect to whom a return is filed, his mailing address, his taxpayer identifying number (TIN or SSN) or a combination thereof). In addition to taxpayer identity, return information includes any information gathered by the IRS with regard to taxpayer's liability under the Code.⁴

² Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended.

³ See section 6103(c) (disclosure by taxpayer consent); 6103(d) (disclosure to State tax officials); 6103(e) (disclosure to persons having material interest); 6103(f) (disclosure to committees of Congress); 6103(g) (disclosure to the President and certain other persons); 6103(h) (disclosure to Federal officers and employees for tax administration purposes); 6103(i) (disclosure to Federal officer and employees for administration of Federal laws not relating to tax administration); 6103(j) (statistical use); 6103(k) (disclosure of certain returns and return information for tax administration purposes); 6103(l) (disclosure for purposes other than tax administration); 6103(m) (disclosure of taxpayer identity information); 6103(n) (tax administration contractors); and 6103(o) (disclosure of return and return information with respect to certain taxes)

⁴ In addition to a taxpayer's identity, return information also is:

- the nature, source or amount of income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments;
- whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing;

Definition of “taxpayer return information”

“Taxpayer return information” is another defined term for purposes of section 6103 and is a subset of return information. “Taxpayer return information” means return information that is filed with, or furnished to, the IRS by or on behalf of the taxpayer to whom such return information relates. For example, information filed with the IRS by a taxpayer's attorney or accountant is taxpayer return information. Information transcribed directly from a taxpayer's return is taxpayer return information. The distinction between return information and taxpayer return information is significant for disclosures in non-tax criminal matters for which a court order generally is required to obtain “taxpayer return information.”

Recordkeeping, safeguards, penalties for unauthorized disclosure

Section 6103 requires that certain recordkeeping and safeguard requirements be met by the certain recipients of returns and return information (section 6103(p)(4)) as a condition of receiving such information. These requirements establish a system of records to keep track of disclosure requests and disclosures, ensure that the information is securely stored, and that access to the information is restricted to authorized persons. These requirements and restrictions are intended to ensure that an individual's right to privacy is not unduly compromised and the information is not misused or improperly disclosed. The IRS also must submit reports to the Joint Committee on Taxation and to the public regarding requests for and disclosures made of returns and return information 90 days after the close of the calendar year (sec. 6103(p)(3)).

Criminal sanctions apply to the unauthorized disclosure or inspection of returns and return information (secs. 7213, 7213A, and 7431) including fines, jail time, and for Federal employees, dismissal or discharge from office upon conviction.

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- any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense;
 - any part of any written determination or any background file document relating to such written determination which is not open to public inspection under section 6110;
 - any advance pricing agreement entered into by a taxpayer and the Secretary and any background information related to the agreement or any application for an advance pricing agreement; and
 - any agreement under section 7121 (relating to closing agreements), and any similar agreement, and any background information related to such agreement or request for such agreement (sec. 6103(b)(2)).

The term “return information” does not include data in a form that cannot be associated with or otherwise identify, directly or indirectly, a particular taxpayer. However, return information with the identifiers (name, address, SSN) simply removed is still protected by section 6103.

Disclosure exception for non-tax criminal purposes

Disclosure of returns and return information pursuant to *ex parte* court order

A Federal agency enforcing a non-tax criminal law must obtain an *ex parte* court order to receive a return or taxpayer return information (i.e., that information submitted by or on behalf of a taxpayer to the IRS) (sec. 6103(i)(1)).⁵ Only specified Federal law enforcement officials--the Attorney General, Deputy Attorney General, Assistant Attorney Generals, United States Attorneys, Independent Counsels, or an attorney in charge of an organized crime strike force may authorize an application for the order.

A judge or magistrate may grant the application for court order if it is determined, on the basis of the facts submitted by the applicant, that:

- there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed;
- there is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of such act;
- the return or return information is sought exclusively for use in a Federal criminal investigation or proceeding concerning such act; and
- the information sought reasonably cannot be obtained, under the circumstances, from another source.

Pursuant to the *ex parte* order, the information may be disclosed to officers and employees of the Federal agency who are personally and directly engaged in (1) the preparation for any judicial or administrative proceeding pertaining to the enforcement of a specifically designated Federal criminal statute (not involving tax administration) to which the United States or such agency is a party, (2) any investigation which may result in such a proceeding, or (3) any Federal grand jury proceeding pertaining to enforcement of such a criminal statute to which the United States or such agency is or may be a party. The information can be used solely by such officers and employees in such preparation, investigation or grand jury proceeding.

With respect to terrorist activities, an order may be granted if there is (1) reasonable cause to believe, based upon information believed to be reliable, that the return or return information may be relevant to a matter relating to a terrorist incident, threat or activity, and (2) the return or return information is sought exclusively for use in a Federal investigation, analysis, or proceeding concerning any terrorist incident, threat or activity. The information may be shared with a State and local law enforcement agency if such law enforcement agency is part of a team with the Federal law enforcement agency and then only disclosed to such State and local law enforcement officers and employees who are personally and directly engaged in the investigation or response to terrorist activity and can be used only for that purpose.

⁵ Return information other than that submitted by the taxpayer may be obtained by *ex parte* court order under this provision as well.

Disclosure without a court order (information obtained from a source other than the taxpayer)

A court order is not required for the disclosure of return information obtained from a source other than the taxpayer. This authority allows the IRS to make disclosures of return information (other than “taxpayer return information”) to apprise the appropriate Federal officials of possible violations of Federal criminal law, and to respond to requests from the head of any Federal agency and certain other Federal officials responsible for non-tax Federal criminal purposes.

The IRS may also disclose return information to Federal and State law enforcement agencies in cases of imminent danger of death or physical injury. The statute does not grant authority, however, to disclose return information to local law enforcement, such as city, county, or town police.

Description of Proposal

The proposal permits specified Federal law enforcement officials to seek an *ex parte* court order for the disclosure of return and return information in cases of missing or exploited children. A judge or magistrate may grant the application if, on the basis of facts submitted by the applicant, it is determined that (1) there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed; (2) there is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of such act; and (3) the return or return information is sought exclusively, for use in a criminal investigation or proceeding in the case of a matter relating to a missing or exploited child, and the information sought reasonably cannot be obtained, under the circumstances, from another source.

Upon the grant of the *ex parte* court order, the information may be disclosed to Federal officers and employees who are personally and directly engaged in:

- the preparation for any judicial or administrative proceeding pertaining to the enforcement of a specifically designated Federal criminal statute (not involving tax administration) to which the United States or such agency is a party or pertaining to the case of a missing or exploited child,
- any investigation which may result in such a proceeding, or
- any Federal grand jury proceeding pertaining to enforcement of such a criminal statute to which the United States or such agency is or may be a party or pertaining to such a case of a missing or exploited child.

The proposal allows, upon the grant of an *ex parte* court order application made by a specified Federal law enforcement official, the head of the Federal agency (or his designee) to disclose returns (including tax returns and information returns) and return information to officers and employees of State or local law enforcement agencies who are (1) part of a team with the Federal agency in investigations of missing or exploited child cases, and (2) who are personally and directly engaged in such investigations. The proposal limits the use of such information to

locating a missing child, use in a grand jury proceeding, or use in any preparation for judicial or administrative proceedings.

The recipient State and local law enforcement agency and its personnel are subject to the general rule of confidentiality, safeguard requirements, and civil and criminal penalties for the unauthorized disclosure or inspection of returns or return information.

Effective Date

The proposal is effective for disclosures made after the date of enactment.