

Name
c/o Address
City, postal code 95XXX
CALIFORNIA

Certified Mail Ref.# 7002 2030 0003 XXXX XXXX
(Include the Requester's name and this number in your reply)

January XX, 200X

Internal Revenue Service
Agent for Department of the Treasury
ATTN: Disclosure Office, FOIA Request
55 South Market St., M/S HQ-4603
San Jose, CA 95113

Account No. XXX-XX-XXXX used to identify and maintain your system of records.
Year(s) 1995-1999

RE: FREEDOM OF INFORMATION REQUEST & IRC § 6103

Dear Disclosure Officer:

This is a request under the **FREEDOM OF INFORMATION ACT at 5 USC 552, PRIVACY ACT at 5 USC 552(a)** and **INTERNAL REVENUE CODE at 26 USC § 6103**. This request does not fall under exception 26 USC § 6103 (e)(7). This is my firm promise to pay fees and costs for locating and duplicating the records requested below, ultimately determined in accordance with 26 CFR 601.702(f).

If some of this request is exempt from release, please furnish me with those portions reasonable segregative. I am requesting copies in lieu of personal inspection of the requested records.

I am attesting under the penalty of perjury under the laws of the united States of America 28 U.S.C. § 1746(1), that I am a category 5 CFR 294.103(d) requester.

Requested Documents:

Please identify by the specific numbers used below in your response. Please send copies of all documents maintained in a system of records identified as:

1. **Form 5344.** (see attached Exhibit A- copy of IRM 4.4.9.8 for details on the specific document requested for tax years 1995-1999.)
2. **Examination Reports- Form 4549, Form 1902B, and Form 4466.** (see attached Exhibit A - copy of IRM 4.4.9.8 for details on the specific document requested for tax years 1995-1999.)
3. **Form 895.** (See attached Exhibit A - copy of IRM 4.4.9.8 for details on the specific document requested for tax years 1995-1999.)

4. **Form 1902E – Explanation of Adjustments** (See attached Exhibit B - copy of IRM 35.4.27.2 for details on the specific document requested for tax years 1995-1999.)
5. **IRC 6020(b) Assessment Case File – RCS Part and Item No. IV/57.** (See attached Exhibit C page 2 of 2 - copy of IRM 1.15.2.21 Exhibit 1.15.2.21-3 for details on the specific document requested for tax years 1995-1999.)
6. **Form 2644 Recommendation for Jeopardy Assessment or Termination Assessment.** (See attached Exhibit D - copy of IRM 40.5.2.7 for details on the specific document requested.)
7. **Form 2859 Request for Quick or Prompt Assessment.** (See attached Exhibit D - copy of IRM 40.5.2.7 for details on the specific document requested.)

Should you decide this request has been sent to the wrong office, please make certain that you forward this to the proper office and notify me of same.

I understand the penalties provided in 5 USC 552 (a)(i)(3) for requesting or obtaining access to records under false pretenses.

Respectfully submitted,

Requesters Name, All rights reserved.

Enclosure: Photocopy of Drivers License enclosed to provide proof of Identification.
Exhibit A – IRM 4.4.9.8 showing specific document 1, 2, and 3 requested
Exhibit B – IRM 35.4.27.2 showing specific document 4 requested
Exhibit C – IRM 1.15.2.21 Exhibit 1.15.2.21-3 showing specific document 5 requested
Exhibit D – IRM [1.3] 40.5.2.7 showing specific document 6 and 7 requested

EXHIBIT "A"

4.4.9.8 (02-08-1999) Group Closing Actions

1. When the examination is completed and the delinquent return/SFR administrative file is closed from the group, the following items must be present:
 - A. The original delinquent return or copy of the SFR.
 - B. Form 5344 with special attention to the completion of Items 37 and 414 for secured delinquent returns sent to the service center to be processed. The statute of limitations begins with the received date of a secured delinquent return. Enter the correct statute date in Item 14 of Form 5344.

NOTE:
Write in the top margin of the Form 5344, Original Return--SFR (on SFR cases) or Copy Processed as Original (on secured delinquent returns.)
 - C. An Examination Report, Form 4549, Form 1902B, or Form 4666. (A report is not required if a delinquent return is accepted as filed.) See e below.

NOTE:
The delinquency penalty, if assessed on the original return, must be adjusted and included in the examination report. If the estimated tax penalty is applicable, it is also asserted by the examiner on the examination report.
 - D. Form 895, if required. (Make note of TC 150 date per transcript, on all SFR.)
 - E. Form 3198 instructions. If a delinquent return is secured after the SFR (dummy 150) has posted, notate on Form 3198 that the return is incorporated into the examination report.
 - F. A current transcript (not more than 60 days old) is mandatory.
 - G. An AMDISA print must be attached to Form 5344 if a Form 5546 and labels are not available.

Document 1

Document 2

Document 3

EXHIBIT "B"

35.4.27.2 (11-16-1999)**What constitutes a return prepared for or executed by the Secretary under section 6020(b)?**

As discussed more fully below, a return prepared pursuant to the Automated Substitute for Return [hereinafter "ASFR"] procedures and accompanied by a signed thirty day letter or revenue agent's report generally constitutes a valid section 6020(b) return. Section 6020(b) (1) authorizes the Secretary to make a return upon either a taxpayer's failure to file a return or upon a taxpayer's filing of a fraudulent return. Section 6020(b)(2) provides that this return, which is also known as a substitute for return, will be considered as prima facie valid for all legal purposes. Currently, the majority of substitutes for return are prepared pursuant to the Service's ASFR procedures, which allow the Service to generate substitutes for return via computer for non-filers. An ASFR, which is prepared by the Service through information gathered from past filings and/or third parties, generally contains the taxpayer's name, address, social security number, filing status and categories and amounts of taxable income. As part of the ASFR procedure, the Service simultaneously prepares and mails a thirty day letter to the taxpayer, and attaches an explanation of proposed adjustments (which contains the same information as is contained in the ASFR), as well as a tax calculation summary report. If the taxpayer fails to respond to the thirty day letter, the Service sends a statutory notice of deficiency to the taxpayer by certified mail with the same attachment.

A substitute for return prepared for a taxpayer pursuant to section 6020(b) must meet three requirements. First, the return must contain taxpayer identifying information, including the taxpayer's name, address and social security number. Second, the return must contain sufficient data to compute the taxpayer's liability. Third, the Secretary or his delegate must sign the return. I.R.C. § 6020(b)(2). See Millsap v. Commissioner, 91 T.C. 926, 930 (1988). See also Hartman v. Commissioner, 65 T.C. 542, 545, 546 (1975), holding that section 6020(b)(2) requires that the return be subscribed, but need not be signed under oath. Section 7701(a)(11) defines the Secretary as the Secretary of the Treasury or his delegate. A delegate includes any officer, employee or agency of the Department of the Treasury authorized by the Secretary of the Treasury to perform functions described in the context. I.R.C. § 7701(a)(12)(A)(i). The Regulations under section 6020(b) provide that such a return may be executed by the district director or other authorized internal revenue officer or employee. Treas. Reg. § 301.6020-1(b)(1). The Internal Revenue Manual provides that Service employees, such as revenue agents and tax auditors, as well as revenue officers and collection office function managers who are at least at the GS-9 level, may execute a section 6020(b) return. I.R.M., Handbook No. 1229, Handbook of Delegation Orders, Order No. 182. See also I.R.M. 5290-5293.3. A section 6020(b) return is not necessarily contained in a single document, but may consist of several documents which, together, satisfy these requirements. Thus, for example, an ASFR and a thirty day letter or revenue agent's report will suffice to constitute a valid section 6020(b) return. A statutory notice of deficiency does not constitute a valid section 6020(b) return.

A return merely containing taxpayer identifying information, but no data which could be used to establish tax liability, commonly referred to as a "dummy return," does not *per se* constitute a valid section 6020(b) return. See Phillips v. Commissioner, 86 T.C. 433, 437, 438 (1986), *aff'd in part and rev'd in part*, 851 F.2d 1492 (D.C. Cir. 1988). See also Britt v. Commissioner, T.C. Memo. 1988-419 (front page of Form 1040 listing taxpayer's name, address, identification number, dependency exemptions and filing status is not a valid 6020(b) return, as it was unsigned and contained insufficient data to compute tax liability). A dummy return is generated to open up an account for the taxpayer on the master file, and normally consists of a first page of a Form 1040 which contains a taxpayer's name, address and social security number. If, however, a dummy return is accompanied by other documents which satisfy the three requirements listed above, then the dummy return and those documents will, together, constitute a valid section 6020(b) return.

The Tax Court has held that various combinations of documents meeting the above requirements constituted valid returns under section 6020(b). In Millsap v. Commissioner, the court held that a dummy return consisting of taxpayer's name, address and social security number, and a signed revenue agent's report containing an explanation of taxpayer's income, exemptions, deductions, and filing status represented a valid section 6020(b) return. Millsap v. Commissioner, 91 T.C. 926, 928 (1988). The Tax Court similarly found that a Form 1902E, Explanation of Adjustments, containing information on taxpayer's income, deductions, and exemptions, as well as a dummy return, consisting of taxpayer's name, address and social security number, satisfied the requirements of section 6020(b). Conovitz v. Commissioner, T.C. Memo. 1980-022, 39 T.C.M. 929, 930. See also Smallbridge v. Commissioner, 804 F.2d 125, 128, n.3 (10th Cir. 1986) (document signed by examiner containing taxpayer's name, address, social security number, wage and exemption information and filing status was valid under section 6020(b)). Although the Tax Court indicated in Millsap v. Commissioner that it would not follow the Smallbridge case outside of the 10th Circuit in reference to its analysis of section 6103, the court did not reject the portion of the opinion addressing the validity of the section 6020(b) return.

Document 4

EXHIBIT "C" pg 1 of 2

Exhibit [1.15.2] 21-3 (09/30/98)
Numerical Cross-Index

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Document 5

EXHIBIT "D"

[1.3] 40.5.2.7 (08-19-1998)

Form 2644, *Recommendation for Jeopardy or Termination Assessment*, and Form 2859, *Request for Quick or Prompt Assessment*

Document 6

Document 7

1. These forms are the return information of the individual to whom they pertain and are not available to any other person.
2. Care must be exercised in the manner in which access to these forms is denied to a third party, since the fact they exist is itself return information which cannot be disclosed and the denial should not intimate or confirm their existence.
3. In FOIA responses, the entire document should be withheld citing exemption (b)(3) in conjunction with IRC 6103(a).