


Office of Chief Counsel
Internal Revenue Service

memorandum

date: February 17, 2010

CC:PA:Br7:JVogel
PUBWE-105317-10

to: Forms and Publications
SE:W:CAR:MP:T:T:FP
Attn: Trene' D Cheek

from: Charles B. Christopher 
Chief, Branch 7
Procedure & Administration

subject: Privacy Act Notice for Form 5306, Application for Approval of Prototype or Employer Sponsored Individual Retirement Arrangement (IRA).

ISSUE:

Whether Form 5306, Application for Approval of Prototype or Employer Sponsored Individual Retirement Arrangement (IRA), requires a Privacy Act Notice.

CONCLUSION:

A Privacy Act Notice should be added to Form 5306 in order to comply with the provisions of the Privacy Act.

FACTS:

Our office reviews new and revised tax forms to determine whether those forms meet the notice requirements of the Privacy Act of 1974. We were recently asked to review the Privacy Act Notice for this form. This form is used by sponsoring organizations, employers, or employee associations to request an opinion letter as to whether a prototype trust or custodial account agreement meets the requirements of Internal Revenue Code section 408(a), 408(c), 408(p), or 408A, or as to whether a specific prototype individual annuity meets the requirements of section 408(b), 408(p), or 408A. This form properly can be filed by an individual, and is filed separately from any other return or form.

LAW AND ANALYSIS:

Paragraph (e)(3) of the Privacy Act requires each Federal agency that maintains records in systems of records to inform each individual from whom it solicits information (a) the authority under which the information is requested, and whether providing the information is voluntary or mandatory; (b) the principal purpose(s) for which the information will be used; (c) the routine uses which will be made of the information; and (d) the effects, if any, on the individual for failure to provide the requested information. A sole proprietorship falls within the meaning of an individual as defined by the Privacy

Act, and because this form can be filed separately by a sole proprietorship acting as the requesting employer, it requires a Privacy Act Notice.

In order to comply with the requirements of the Privacy Act, we recommend the following revisions:

- Revise the bold heading, "Paperwork Reduction Act Notice" to read "Privacy Act and Paperwork Reduction Act Notice"
- Replace the existing first paragraph with the following:

We ask for the information on this form to carry out the Internal Revenue laws of the United States. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax. This information is needed to process your application and to determine whether your prototype individual retirement account or individual retirement annuity meets the requirements of section 408(a), 408(b), 408(c), 408(p), or 408A. You are not required to apply for approval; however, if you want to receive an opinion letter from the IRS regarding your prototype or employee sponsored individual retirement arrangement, you are required to provide the information requested on this form. Section 6109 requires you to provide the requested identification numbers. Failure to provide the information may delay or prevent processing your application; providing any false information may subject you to penalties.

- Remove the last sentence of the existing second paragraph (beginning "Generally...") and insert the following as a new third paragraph:

Generally, tax returns and return information are confidential, as stated in section 6103. However, section 6103 allows or requires the Internal Revenue Service to disclose or give such information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

- Change the footer on the first page of Form 5306 to read as follows:

For Privacy Act and Paperwork Reduction Act Notice, see back of form.

These recommendations reflect our understanding of the usage of Form 5306. If you disagree or have questions, please call Jennifer Vogel at 202-622-3884.

cc: Office of Governmental Liaison and Disclosure
Attn: Mahlon Blagg and David Silverman