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May 4, 2010

The Honorable Glenn A. Fine
Inspector General
U.S. Department of Justice
Investigations Division
950 Pennsylvania Ave., N.W.
Room 4706
Washington, DC 20530

Via email to oig.hotline@usdoj.gov

**Re: Report of Criminal Violation of the Privacy Protections Found in
Internal Revenue Code § 6103**

Dear Inspector General Fine:

I write today to bring a criminal violation of the Internal Revenue Code to your attention, and I respectfully request that your office open an investigation into this violation and refer for prosecution the individuals involved.

Background

Recent news reports indicate that the Internal Revenue Service (IRS) is investigating the personal tax returns of several Florida politicians, including Republican U.S. Senate candidate Marco Rubio:

Meanwhile, in a separate inquiry, the IRS is also looking at the tax records of at least three former party credit card holders -- former Florida House Speaker Marco Rubio, ex-state party chairman Jim Greer and ex-party executive director Delmar Johnson -- to determine whether they misused their party credit cards for personal expenses, **according to a source familiar with the preliminary inquiry**.¹ (Emphasis added.)

Any individual familiar with this type of law enforcement activity understands that the typical response from law enforcement agencies is “neither confirm nor deny” when

¹ Jay Weaver, Beth Reinhard, and Lucy Morgan, *Feds launch inquiry into Florida GOP credit-card expenses*, THE MIAMI HERALD, April 21, 2010. Available online at: <http://www.miamiherald.com/2010/04/20/1589469/feds-launch-inquiry-into-gop-credit.html>. (Accessed May 4, 2010.)

asked about current investigatory activities. In the context of tax information and investigations into tax issues federal law prohibits the release of such information.

Relevant Authority

The Internal Revenue Code (IRC) states that “no officer or employee of the United States”... “shall disclose any **return or return information** obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section.” IRC § 6103(a). (Emphasis added.)

The terms “return and return information” are defined by the IRC to include:

- (2) Return information. The term "return information" means--
- (A) a taxpayer's identity, the nature, source, or amount of his 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**, or 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. IRC § 6103(b)(2). (Emphasis added.)

Disclosure of tax return or return information is a felony punishable by five years in prison and a \$5,000 fine.

(a) Returns and return information.

- (1) Federal employees and other persons. **It shall be unlawful** for any officer or employee of the United States or any person described in section 6103(n) [IRC Sec. 6103(n)] (or an officer or employee of any such person), or any former officer or employee, willfully **to disclose to any person, except as authorized in this title, any return or return information** (as defined in section 6103(b) [IRC Sec. 6103(b)]). Any violation of this paragraph shall be a **felony punishable upon conviction by a fine in any amount not exceeding \$ 5,000, or imprisonment of not more than 5 years**, or both, together with the costs of prosecution, and if such offense is committed by any officer or employee of the United States, he shall, **in addition to any other punishment, be dismissed from office or discharged from employment upon conviction for such offense**. IRC § 7213(a)(1). (Emphasis added.)

Analysis - Violation of Privacy Provisions in the Internal Revenue Code

The news reports about the possible investigation occurring into the personal tax returns of certain Florida politicians indicate that the information came from “sources

familiar to the probe.” Assuming that there is in fact a “probe” underway, there are only two logical sources for this information: (1) a government source with knowledge about the probe, or (2) the subject of that probe. Given the denials of wrongdoing by the subjects a reasonable person could easily conclude that the subjects were not the “sources familiar to the probe” who gave the media outlets the information. That leaves only a government officer or employee as the source of the information.

Under the IRC all employees of the United States are expressly prohibited, with exceptions not relevant here, from disclosing facts about a tax payer including “whether the taxpayer’s return was, is being, or will be examined or subject of other investigation or processing.” This statutory prohibition while found in the IRC applies not only to IRS employees and officers but every other officer or employee of the United States.

According to the news report cited above, “the IRS is also looking at the tax records of at least three former party credit card holders.”² Since the only logical source of information to substantiate a claim that the IRS is taking action in connection with a tax return is someone in position to know, *i.e.*, an employee or officer of the United States, a violation of the privacy protections found in the IRC has occurred when that employee or officer disclosed the information to the media. Given the responsibilities of the Internal Revenue Service in administering the IRC and the DOJ’s prosecutorial responsibilities, it is apparent that the source of the information that was leaked was either an employee of the IRS or DOJ.

Conclusion

Assuming that the facts presented in the news report cited above are true, the media has been provided tax information in an unlawful manner. The official responsible has committed a felony in providing this information and is in jeopardy of five years imprisonment, a \$5,000 fine, and termination from their position.

Based on the foregoing, I request that your office open an investigation into this illegal activity, ascertain whether one or more DOJ employees were the source of the illegal disclosure, and refer for prosecution the individuals responsible.

Thank you for your prompt attention and action on this very serious matter.

Sincerely,



William Wilson
President

² Jay Weaver, *et al*, *supra*.