Tax Settlement Programs - Tax Amnesty, Closing Agreements, IRS Voluntary Disclosures and Offers-in-Compromise

Three (3) Free NY CLE, NJ CLE and CPE Credits and Two (2) EA CE Credits

Tax Professionals that attend the seminar are encouraged to accept a pro bono tax controversy case assignment from NYCLA, an ABA-sponsored Tax Court Pro Bono program or a NY or NJ Low-Income Tax Clinic

<table>
<thead>
<tr>
<th>WHEN</th>
<th>WHERE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Tuesday, December 4, 2018</strong></td>
<td><strong>Bergen Community College</strong></td>
</tr>
<tr>
<td>Registration/Pizza @ 5:30 PM</td>
<td>Ciarco Learning Center</td>
</tr>
<tr>
<td>Seminar: 6:00 PM – 9:00 PM</td>
<td>355 Main Street</td>
</tr>
<tr>
<td></td>
<td>Room 102/103</td>
</tr>
<tr>
<td></td>
<td>Hackensack, NJ 07601</td>
</tr>
</tbody>
</table>

**Learning Objective**

This class will review procedures for resolving tax disputes without litigation

<table>
<thead>
<tr>
<th>Procedures for New Jersey Tax Amnesty</th>
<th>Information Sharing and IRS Voluntary Disclosure</th>
</tr>
</thead>
<tbody>
<tr>
<td>NJ Closing Agreements and Voluntary Disclosures</td>
<td>New IRS Guidelines for All Voluntary Disclosures</td>
</tr>
<tr>
<td></td>
<td>IRS Offers in Compromise - Forms 656</td>
</tr>
</tbody>
</table>

Tilesha McCall & Christina Quinones from the New Jersey Division of Taxation will be available to answer your questions
# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Timed Agenda</td>
<td>1</td>
</tr>
<tr>
<td>Speaker Biographies</td>
<td>2</td>
</tr>
<tr>
<td>Outline</td>
<td>8</td>
</tr>
<tr>
<td>Slides</td>
<td>162</td>
</tr>
</tbody>
</table>
TIMED AGENDA
Tax Settlement Programs: Tax Amnesty, Closing Agreements, IRS Voluntary Disclosures, and Offers-in Compromise
December 4, 2018 (6 pm – 9 pm)

6:00 - 6:05 Introduction & Opening Remarks
Frank Agostino, Esq., Agostino & Associates, PC

6:05 – 7:00 New Jersey Tax Amnesty
Tilesha McCall, New Jersey Division of Taxation
Christina Quinones, New Jersey Division of Taxation

7:00 - 7:10 Break

7:10– 8:00 Information Sharing and IRS Voluntary Disclosures
Frank Agostino, Esq., Agostino & Associates, PC

8:00 – 8:10 Break

8:10 – 8:45 IRS Offers-in-Compromise
Valerie Vlasenko, Esq., Agostino & Associates, PC
Caren Zahn, EA, Agostino & Associates, PC

8:45 – 8:55 NJ Closing Agreements
Frank Agostino, Esq., Agostino & Associates, PC

8:55 - 9:00 Closing Remarks and Questions and Answers
Frank Agostino, Esq., Agostino & Associates, PC
Profile

Frank Agostino is the president of Agostino & Associates, P.C., a law firm in Hackensack, New Jersey specializing in civil and white collar criminal litigation, tax controversies and tax planning.

Prior to entering private practice, Mr. Agostino was an attorney with the Internal Revenue Service’s District Counsel in Springfield, Illinois and Newark, New Jersey. He also served as a Special Assistant United States Attorney, where he prosecuted primarily criminal tax cases.

As an adjunct professor, Mr. Agostino taught tax controversy at Rutgers School of Law and served as the co-director of the Rutgers Federal Tax Law Clinic.

Mr. Agostino is a frequent speaker and author on tax controversy and litigation matters. He serves on the Advisory Board of the Journal of Tax Practice and Procedure. Mr. Agostino is actively involved with the American Bar Association and the New York County Lawyers’ Association.

Mr. Agostino is also the President of the Taxpayers Assistance Corp., which provides tax and legal advice to low income taxpayers in the NY/NJ area.

Recent Publications

- *Recent Developments in FATCA Compliance*, 93 TAXES 51 (July 2015)
- *Be Prepared: The IRS’s Duty to Foster Voluntary Compliance Through Code Secs. 6014(a) and 6020(a)*, 17 J. TAX PRAC. & PROC. 5 (Feb.-Mar. 2014)

Practice Areas

- Civil Tax
- Criminal Tax
- White Collar Defense

Education

- LL.M., Taxation, New York University School of Law
- J.D., New York Law School
- B.A., City College of New York

Awards & Recognition

- Recipient, ABA’s 2012 Janet Spragens Pro Bono Award
- Recipient, NJ State Bar Association’s 2015 Pro Bono Award

Admitted In

- New York
- New Jersey
- Tax Court
Agostino & Associates Contact Information:

Adam Brown, Esq.
Email: Abrown@agostinolaw.com
Tel. 201.488.5400

Philip Colasanto, Esq.
Email: Pcolasanto@agostinolaw.com
Tel. 201.488.5400 ext. 105

Jeffrey Dirmann, Esq.
Email: Jdirmann@agostinolaw.com
Tel. 201.488.5400 ext. 119

Eugene Kirman, Esq.
Email: Ekirman@agostinolaw.com
Tel. 201.488.5400 ext. 142

Dolores Knuckles, Esq.
Email: Dknuckles@agostinolaw.com
Tel. 201.488.5400 ext. 109

Steven Lechter, JD
Email: Slechter@agostinolaw.com
Tel. 201.488.5400 ext. 116

Alec Schwartz, Esq.
Email: Aschwartz@agostinolaw.com
Tel. 201.488.5400 ext. 118

Malinda Sederquist, Esq.
Email: Msederquist@agostinolaw.com
Tel. 201.488.5400 ext. 130

Christina Sierra, Esq.
Email: Csierra@agostinolaw.com
Tel. 201.488.5400

Joseph Stackhouse, JD
Email: Jstackhouse@agostinolaw.com
Tel. 201.488.5400 ext 131

Valerie Vlasenko, Esq.
Email: Vvlasenko@agostinolaw.com
Tel. 201.488.5400 ext. 112

Michael Wallace, EA
Email: Mwallace@agostinolaw.com
Tel. 201.488.5400 ext. 143

Caren Zahn, EA
Email: Czahn@agostinolaw.com
Tel. 201.488.5400 ext. 103
Tilesha McCall  
Taxpayer Service Representative  
New Jersey Division of Taxation  
Taxation University  
(609) 292-1132  
Taxation.University@treas.nj.gov

Tilesha provides training to Division employees and educates the public on all taxes and property tax relief programs administered by the State. She also instructs courses on professional development, leadership and team building skills.

She began her career with the Division’s Customer Service Call Center where she received extensive training. After a few years and wanting to fulfill her love for teaching, she joined Taxation University Team.

She’s happily married and a mother of two. She’s also the Creative Arts Director at her church and loves to travel. Let’s just say she keeps busy.
Christina Quinones  
Taxpayer Service Representative  
New Jersey Division of Taxation  
Taxation University  
(609) 292-1132  
Taxation.university@treas.nj.gov

Christina started with the Division in 2007 in the Customer Service Call Center. During her 8 years in the Division’s Customer Service center she gained a vast knowledge of all taxes and programs administered by the Division. Prior to joining Taxation University Christina was a Practitioner Hotline agent. She provided expert assistance to the tax professional and business community.

Christina’s tax knowledge and customer service experience is a strong asset to the Taxation University Team.

Christina is a loving mother of three and an avid baker.
Valerie Vlasenko is a tax controversy and litigation associate at Agostino & Associates, P.C. She represents individuals and corporate taxpayers at all stages of tax controversies, including audits, before the IRS Office of Appeals, and in litigation before the New Jersey Tax Court, U.S. Tax Court, District Courts, and Courts of Appeals. Prior to joining the firm, Ms. Vlasenko served as a law clerk for the New Jersey Tax Court. She is a graduate of Seton Hall University School of Law, where she was a director of the Volunteer Income Tax Assistance program.
Caren Zahn, EA is an Enrolled Agent with 25 years experience at Agostino & Associates, P.C., representing individual and business taxpayers in all administrative levels of the Internal Revenue Service - audits, collections, and appeals. She also works with State and Local taxing authorities on audit/collection cases. She specializes in Offers-in-Compromise, installment agreements, innocent spouse, penalty abatements, tax returns, tax return compliance, non-filers, and audits.
Offers in Compromise and New Jersey Closing Agreements

I. Internal Revenue Service ("IRS") Offers in Compromise

a. The IRS is granted broad authority to compromise tax liabilities in civil and criminal cases prior to referral to the Department of Justice by I.R.C. § 7122.

i. Policy Statement P-5-100 states: The Service will accept an offer in compromise when it is unlikely that the tax liability can be collected in full and the amount offered reasonably reflects collection potential. An offer in compromise is a legitimate alternative to declaring a case currently not collectible or to a protracted installment agreement. The goal is to achieve collection of what is potentially collectible at the earliest possible time and at the least cost to the Government.

b. Grounds for Offers in Compromise

i. Doubt as to Liability: “Doubt as to liability exists where there is a genuine dispute as to the existence or amount of the correct tax debt under the law.” Treas. Reg. § 301.7122-1(b)(1).

1. Doubt as to liability offers should only be submitted if the taxpayer unable to dispute the amount of tax the IRS claims you owe during the time allowed by the Internal Revenue Code or IRS guidelines. Possible reasons for submitting a doubt as to liability offer in compromise include the following: the examiner made a mistake interpreting the tax law; the examiner failed to consider the evidence presented; new evidence is available to support a change to the assessment. https://www.irs.gov/pub/irs-pdf/f656l.pdf.

2. Offers based on doubt as to liability should be made using Form 656-L, Offer in Compromise (Doubt as to Liability). You must provide a written statement explaining why the tax debt or portion of the tax debt is incorrect. In addition, you should provide supporting documentation or evidence that will help the IRS identify the reason(s) you doubt the accuracy of the tax debt. If you are unable to reconstruct your books and records, you can provide an explanation that supports reasonable doubt justifying a reduction to a portion or all your tax debt. https://www.irs.gov/pub/irs-pdf/f656l.pdf.

3. Offers solely based on doubt as to liability are exempt from being made with accompanying payment. I.R.M., pt. 4.18.1.4 (Feb. 28, 2017). To qualify, you must make an offer that is $1 or more and should be based on what you believe the correct amount of tax should be. If you believe you do not owe any tax, you should pursue alternative solutions listed below. See “What alternatives do I have to sending in an Offer in Compromise (Doubt as to

4. Examination will decide whether the offer merits further consideration. If an offer must be perfected, the Service should work with the taxpayer to provide an opportunity to perfect defects or errors in the offers. Offers that are frivolous, groundless, or have been submitted for delaying collection may be immediately returned as not processable. I.R.M., pt. 4.18.1.3 (Feb. 28, 2017).

5. Failure in filing compliance on other required returns should not be used as a basis for returning or rejecting doubt as to tax liability. However, offers involving doubt as to collectibility may be returned if the taxpayer is not in compliance. I.R.M., pt. 4.18.1.3 (Feb. 28, 2017).

6. The offers submitted for different tax periods may be considered simultaneously if the same issue is involved but are not required to be. Offers deemed processable are generally sent to field revenue agents and tax compliance officers for further consideration. I.R.M., pt. 4.18.1.3 (Feb. 28, 2017). Accepted offers based on DATL should only include the tax years or periods in question. I.R.M., pt. 5.8.1.6.7 (Jan 1, 2016).

7. The taxpayer cannot submit an offer based on doubt as to liability and a separate offer based on doubt as to collectibility at the same time. It is in your best interest to resolve any disagreements about the validity of the tax debt before filing an offer based on doubt as to collectibility. If taxpayer sends both kinds of offers at the same time, the doubt as to collectability offer will be returned without further consideration. However, when the IRS returns the doubt as to collectability offer to the taxpayer, it will not return the application fee or any payment you made with the offer but will apply any payment to your liability. https://www.irs.gov/pub/irs-pdf/f656l.pdf.

   ii. Doubt as to Collectibility: This applies when the taxpayer has a good defense to his or her liability and there are hazards of litigation for the IRS.

      1. For a more in-depth analysis, see Attachment 1.

   iii. Effective Tax Administration: IRS is authorized to compromise in order to promote effective tax administration.

      1. For a more in-depth analysis, see Attachment 1.

   iv. Offers during Examination, see Attachment 1.
c. Compromise requirements

i. Completed Form 656, *Offer in Compromise*, or Form 656-L, *Offer in Compromise (Doubt as to Liability)*;

ii. For Doubt as to Collectibility, a completed Form 433-A (OIC), *Collection Information Statement for Wage Earners and Self-Employed*, or Collection Information Statement for Businesses.

iii. Taxpayer must not be in bankruptcy;

iv. Taxpayer must be in compliance with all filing and tax payment requirements if filing an offer based on collectability;

v. Submit the processing fee, if applicable;

vi. Submit payment if offer is based on collectability:

1. Lump Sum Payment - Pay 20% non-refundable payment required at time of offer; (this payment is non-refundable if the Offer is rejected)

2. Periodic Payment - Pay 1st month of Offer (while the IRS considers the Offer, the taxpayer is required to make the monthly offer payments)

d. Taxpayers should note that while an offer is being evaluated:

i. They taxpayer’s payments and fees will be applied to the tax liability (taxpayers may designate payments to a specific tax year and tax debt);

ii. A Notice of Federal Tax Lien may be filed and will not be released until the offer terms are satisfied;

iii. Other collection activities are suspended;

iv. The legal assessment and collection period is extended;

v. All required payments associated with the offer should be made unless the taxpayer meets the Low-Income Certification; and

vi. Offers are automatically accepted if the IRS does not make a determination within two years of the IRS receipt date. https://www.irs.gov/payments/offer-in-compromise.

vii. Submission of an Offer stays the collection of an account, unless the taxpayer waives the stay or the collection of tax is in jeopardy. However, submission of an Offer does not serve to suspend interest and penalties from accruing on the outstanding tax liability. I.R.M., pt. 4.18.1.2 (Feb. 28, 2017).
e. Post offer considerations

i. Penalties and interest will continue to accrue during consideration of an offer. The taxpayer must continue to timely file and pay all required tax returns, estimated tax payments, and federal tax payments. Failure to meet filing and payment responsibilities during consideration of the offer will result in your offer being returned. If the offer is accepted, taxpayer must continue to stay current with all tax filing and payment obligations through the fifth year after the offer is accepted (including any extensions). https://www.irs.gov/pub/irs-pdf/f656b.pdf.

ii. The IRS may levy the taxpayer’s assets up to the time the IRS official signs and acknowledges your offer as pending. In addition, the IRS may keep any proceeds received from the levy. If the taxpayer’s assets are levied after the offer is submitted and pending evaluation, immediately contact the IRS person whose name and phone number are listed on the levy. If taxpayer has an approved installment agreement, he or she will not be required to make your installment agreement payments while the offer is being considered. If the offer is not accepted and the taxpayer has not incurred any additional tax debt, the installment agreement with the IRS will be reinstated with no additional fee. https://www.irs.gov/pub/irs-pdf/f656b.pdf.

f. Currently Not Collectible Status

i. If the IRS agrees you can’t both pay your taxes and your reasonable living expenses, it may place your account in Currently Not Collectible status. IRM § 5.16.1.1 (Aug. 25, 2014) provides that a taxpayer’s account may be marked Currently Not Collectible where either the taxpayer is insolvent or any payment would create economic hardship for the taxpayer by leaving him or her unable to meet reasonable living expenses. The determination that an account is uncollectible due to economic hardship is based on the taxpayer’s Form 433.

ii. Currently Not Collectible status means that the IRS will not engage in collection activity (i.e., levy the taxpayer’s assets and income) until the taxpayer’s financial condition improves.

iii. IRS will still assess interest and penalties and may keep your refunds and apply them to the debt.

iv. Before the IRS will place the taxpayer account in Currently Not Collectible status, it may ask you to file any past due tax returns.

v. The IRS may ask the taxpayer to provide financial information, including your income and expenses, and whether you can sell any assets or get a loan. During the time the IRS may collect the balance owed, it may review income annually to see if the financial situation improved.
vi. While a taxpayer’s account is in Currently Not Collectible the 10 year statute of limitations on collection set forth in IRC § 6502 continues to run.

vii. In contrast to the other collection alternatives discussed in this article, the Tax Court has concluded that the IRS can classify a taxpayer as Currently Not Collectible even if the taxpayer is not in compliance with his or her filing obligations.

II. New Jersey Closing Agreement and Offers in Compromise
   a. The primary method of settling cases is using Closing Agreements.
   b. Closing Agreements, in general
      i. A taxpayer may request a Closing Agreement at any time before a case is filed with the tax court. N.J.S.A. 54:53-5.
      ii. A closing agreement may be entered into in any case in which there appears to be an advantage in having the case permanently and conclusively closed, or if good and sufficient reasons are shown by the taxpayer for desiring a closing agreement, and it is determined by the director that the State of New Jersey will sustain no disadvantage through consummation of such an agreement. N.J.A.C. 18:33-1.1.
      iii. All requests for Closing Agreement are submitted on Form 906. Form 906 and accompanying instructions can be found at https://www.state.nj.us/treasury/taxation/pdf/other_forms/special_pro/906.pdf.
      iv. Taxable Periods
         1. Closing agreements with respect to taxable periods ended prior to the date of the agreement may relate to the total tax liability of the taxpayer or to any or more separate items affecting the tax liability of the taxpayer. N.J.A.C. 18:33-1.2.
         2. Closing agreements with respect to taxable periods ending subsequent to the date of the agreement may relate to one or more separate items affecting the tax liability of the taxpayer. N.J.A.C. 18:33-1.2.
   v. Finality
      1. A closing agreement which is approved within such time as may be stated in such agreement, or later agreed to, shall be final an conclusive, and, expect upon a showing of fraud or malfeasance, or misrepresentation of a material fact. N.J.A.C. 18:33-1.3.
a. The case shall not be reopened as to the matters agreed upon or the agreement modified by an officer, employee, or agent of the State of New Jersey; and

b. In any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded. However, a closing agreement with respect to a taxable period ending subsequent to the date of the agreement is subject to any change in, or modification of, the law enacted subsequent to the date of the agreement and made applicable to such taxable period, and each closing agreement so recited. N.J.A.C. 18:33-1.3.

2. Execution and approval of closing agreement does not preclude an additional inspection of the taxpayer’s records to determine whether fraud, malfeasance, or misrepresentation of material fact exists as to execution of agreement. N.J.A.C. 18:33-1.3.

vi. Procedure

1. The Director of the Division of Taxation can enter and approve written closing agreements with any person. Such agreement can relate to the liability of the taxpayer for any State tax administered by the Division of Taxation for any taxable period. The agreement can cover either the total liability of taxpayer or one or more of separate items affecting the liability, if it embraces a tax period ending before the date of the agreement; or one or more separate items affecting tax liability. There can be a series of agreements covering a single tax period. N.J.A.C. 18:33-1.5.

c. As an alternative, N.J.S.A. 54.53-7 authorizes the Division of Taxation to compromise.

i. The basis for compromises is limited to doubt as to the liability of the taxpayer or the collectability of the tax can be compromised. N.J.S.A. 54:53-7, et seq. All civil and criminal penalties can be reduced or eliminated, unless the matter has already been referred to the Attorney General for further action.

ii. Compromise the time to pay:

1. Time for payment is only compromised if the equities of the taxpayer’s liability indicate that a compromise would be in the interest of the State and that the taxpayer would not suffer extreme financial hardship.
a. Delayed payment or installment payments compromise agreements incur interest at 3 points above prime rate.

2. The Director may compromise criminal liability and civil liability prior to sending the case to the Attorney General based on two (2) grounds:
   a. Doubt as to liability; or
   b. Doubt as to collectability
      i. No compromise if:
         1. liability determined by a Court
         2. liability is certain and there is no reasonable doubt as to the ability of the State to collect the amount owed

3. Compromise is final except:
   a. Falsification or concealment of assets by taxpayers;
   b. Mutual mistake of a material fact sufficient to cause the contract to be set aside; or
   c. Significant change in the financial condition of the taxpayer.
      i. The Director may require periodic financial statements.

4. Submission of an offer does not automatically stay collection.
   a. Collection may be deferred if the interests of the State will not be jeopardized.

5. Waiver of Statute of Limitations by Taxpayer:
   a. No offer in compromise will be accepted unless:
      i. Taxpayer waives the running of the statutory period of limitations on assessment or collection for:
         1. the time that the offer is pending;
         2. period during which any installment remains unpaid; or
         3. for one year thereafter.

a. New Jersey Tax Court should have jurisdiction to review the denial of a request for an offer in compromise.

b. In cases where the Division of Taxation does not process a request within a reasonable amount of time, the filing of a complaint in Superior Court in lieu of a prerogative writ may compel the Division to act on the request.

III. IRS Voluntary Disclosure Programs

a. The IRS has released new guidelines for all voluntary disclosures. The guidelines are included as Attachment 2.
ATTACHMENT 1
Non-Traditional Offers in Compromise

By Frank Agostino and Valerie Vlasenko

In 2017, taxpayers proposed 62,000 offers in compromise to settle existing tax liabilities for less than the amount allegedly owed. The Internal Revenue Service (“IRS”) accepted 25,000 offers, amounting to almost $256 million. The offer in compromise program not only provides an efficient means of collecting outstanding liabilities, but also brings taxpayers into compliance for at least five years after their offers have been accepted. For a taxpayer, the program provides a path towards paying off burdensome tax debt and a fresh start.

An offer in compromise is typically considered when “payments of assessed liabilities are demanded, penalties for delinquency in filing returns are asserted, or specific civil or criminal penalties are incurred by taxpayers.” Doubt as to collectibility, however, may also exist during examinations and in cases before the United States Tax Court (“Tax Court”) and can form the basis for an offer in compromise. Whether the case is in the examination, litigation, or the collection stage, the logical solution is to resolve the case quickly to avoid unnecessary costs. A fair compromise where there is evidence of little or no collection potential can create a win-win situation for the IRS and the taxpayer.

The procedures for compromises of cases under examination and before the Tax Court are not widely publicized. This article aims to bring awareness to: 1) the goals of the IRS and its offer in compromise program; 2) the factors considered by the IRS in making determinations with respect to offers based on doubt as to collectibility and effective tax administration; 3) how to submit offers during examinations; and 4) the fundamentals of submitting offers based on collectibility while in litigation before the Tax Court.

I. The Offer in Compromise Program

The IRS is granted broad authority to compromise tax liabilities in civil and criminal cases prior to referral to the Department of Justice (“DoJ”) by I.R.C. § 7122. It is well established that where an account receivable cannot be collected in full or there is a dispute regarding what is owed, it is accepted business practice to resolve collection and liability issues through compromise. The goal is “achieve collection of what is potentially collectible at the earliest possible time and at the least cost to the Government” and to reach a compromise that suits the best interest of both the taxpayer and the IRS.

Congress has encouraged the IRS to be “flexible in finding ways to work with taxpayers who are sincerely trying to meet their obligations and remain in the tax system,” and to adopt a liberal acceptance policy for offers in compromise to provide an incentive for taxpayers to
continue to file tax returns and continue to pay their taxes. Such direction is consistent with research showing that fair treatment of taxpayer by the IRS encourages voluntary compliance with tax laws and the IRS mission to "provide America’s taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.”

Congress has instructed the IRS to also “take into account factors such as equity, hardship, and public policy where a compromise of an individual taxpayer’s income tax liability would promote effective tax administration.” Offers based on effective tax administration require a showing of either economic hardship or compelling public policy or other equitable grounds. Further, Congress has directed the IRS “to resolve longstanding cases by forgoing penalties and interest which have accumulated as a result of delay in determining the taxpayer’s liability.”

The IRS Examination function (“Examination”) generally has jurisdiction over offers based on doubt as to liability and provides the IRS Collection function (“Collection”) with recommendations on offers based on effective tax administration with public policy or equity issues upon request. Collection processes and investigates all offers based on: 1) doubt as to collectibility; 2) effective tax administration; and 3) doubt as to liability for either a trust fund recovery penalty or personal liability excise tax assessment. In certain circumstances, the Office of Appeals has jurisdiction to consider offers. While consideration of each offer depends on the facts and circumstances, all offers are subject to the basic requirements and principles set forth in Section II below.

II. Submitting an Offer Based on Doubt as to Collectibility or Effective Tax Administration

A taxpayer wishing to participate in the offer in compromise program must submit an offer in writing, signed by the taxpayer under penalty of perjury, which contains all the information prescribed or requested by the Secretary. The IRS requires that the taxpayer use Form 656-B, Offer in Compromise, and, if applicable, pay a filing fee. Offers other than doubt as to liability must also include a completed Form 433-A, Collection Information Statement for Wage Earners & Self-Employed Individuals, and/or Form 433-B, Collection Information Statement for Businesses. The standard terms of the forms may not be altered, and the offer must include “all liabilities to be covered by the compromise, the legal grounds for compromise, the amount the taxpayer proposed to pay, and the payment terms” (the amounts and due dates of payments).

To be eligible for a compromise based on doubt as to collectibility or effective tax administration the taxpayer must be current with his or her filing obligations. Prior to 2017, taxpayers were given a brief window of time to file any delinquent returns. However, any missing returns will now render the taxpayer ineligible for the program. Where the taxpayer has not fully complied with his or her filing obligations, the taxpayer’s application fee will be returned, but any initial payments will be applied to the outstanding tax liability. An offer rejected based on noncompliance may not be appealed.

The offer is effective for the entire assessed liability for tax, penalties, and interest for the years or periods covered by the offer. Like closing agreements, all questions of tax liability for
the years or periods covered by the agreement are conclusively settled. Neither the taxpayer nor the government can reopen a compromised tax year or period unless the offer included false information, the ability to pay or assets were concealed, or a mutual mistake of a material fact is discovered that would cause the agreement to be set aside or reformed, even if the taxpayer defaults.

Once the offer is pending, the statute of limitations on assessment and collection is suspended. The taxpayer must continue to timely file returns and make all required tax payment. Failure to meet filing and payment responsibilities during consideration of the offer will cause the offer to be returned without appeal rights. During this time, the IRS may credit any overpayments made by the taxpayer against the liability that is the subject of the offer.

The obligation to timely file all required tax returns and pay all required tax continues after the offer is accepted. If the taxpayer fails to timely file and pay any tax obligations within the five years of the offer being accepted the offer may be defaulted. A taxpayer in default is liable for the original tax debt, less any payments made, and all accrued interest and penalties.

III. **Doubt as to Collectibility**

"Doubt as to collectibility exists in any case where the taxpayer's assets and income are less than the full amount of the tax liability." An offer to compromise based on doubt as to collectibility generally will be considered acceptable if it is unlikely that the tax can be collected in full and the offer reasonably reflects the amount the IRS could collect through other means, including administrative and judicial collection remedies. An offer will not be accepted if the IRS believes the liability can be paid in full in a lump sum or through a payment agreement unless special circumstances exist.

Generally, the doubt as to collectibility offer amount must equal or exceed the taxpayer’s reasonable collection potential (“RCP”) to be acceptable. The RCP is based on the taxpayer’s: 1) assets, such as real property, vehicles, personal assets, and bank accounts; 2) anticipated future income less certain living expenses; 3) amounts collectible from third parties, and 4) assets and/or income available but beyond the reach of the government.

The taxpayer may submit a lump-sum or a periodic payment offer. The lump-sum offer is defined as an offer made in five or fewer installments. If the taxpayer makes a lump sum cash offer, the initial payment must equal twenty percent of the offered amount. Period payment offers should include twenty-four monthly installments. The first payment of a periodic payment offer must be included with Form 656. Failure to make an installment may be treated as a withdrawal of the offer.

When drafting the offer, the goal is to make an adequate proposal consistent with the taxpayer’s ability to pay. In most cases, offers exceeding reasonable collection potential will be accepted. However, even offers exceeding collection potential may be rejected based on public policy considerations if acceptance of the offer in any way may be detrimental to the interest of fair tax administration.
IV. Effective Tax Administration

“An offer may be accepted based on effective tax administration when there's no doubt that the tax is legally owed and that the full amount owed can be collected but requiring payment in full would either create an economic hardship or would be unfair and inequitable because of exceptional circumstances.” Such offers are accepted if they do not undermine compliance with the tax laws and collection of the full liability will be detrimental to voluntary compliance.

Factors that support a finding that the compromise would not undermine compliance with the tax laws include: 1) the taxpayer’s history of compliance with the filing and payment requirements; 2) the taxpayer has not taken deliberate actions to avoid the payment of taxes; and 3) the taxpayer has not encouraged others to refuse to comply with tax laws.

A. Hardship

An offer to compromise based on economic hardship generally will be considered acceptable when, even though the tax could be collected in full, the offer reflects the amount the IRS can collect without causing the taxpayer economic hardship. “Economic hardship is defined as inability to pay reasonable expenses.” Because economic hardship is defined as the inability to meet reasonable living expenses, such offers can only be made by individuals.

The determination to accept an amount is based on the taxpayer’s individual facts and circumstances. The IRS will examine the taxpayer’s financial information and any special circumstances. The IRS cannot reject an offer from a low-income taxpayer solely on the basis of the amount of the offer. Regulations explain that factors supporting a determination that collection would cause economic hardship include, but are not limited to:

- Taxpayer is incapable of earning a living because of a long term illness, medical condition, or disability, and it is reasonably foreseeable that taxpayer's financial resources will be exhausted providing for care and support during the course of the condition;
- Although taxpayer has certain monthly income, that income is exhausted each month in providing for the care of dependents with no other means of support; and
- Although taxpayer has certain assets, the taxpayer is unable to borrow against the equity in those assets and liquidation of those assets to pay outstanding tax liabilities would render the taxpayer unable to meet basic living expenses.

The Internal Revenue Manual (“I.R.M.”) adds other factors, such as: 1) basic living expenses for health, welfare, and production of income; 2) the taxpayer’s age and employment status; 3) number, age, and health of the taxpayer’s dependents; 4) cost of living in the area the taxpayer resides; and 5) any special education expenses, a medical catastrophe, or natural disaster.
Additionally, a taxpayer suffering or about to suffer a significant hardship because of the way the internal revenue laws are being administered by the IRS may seek assistance from the National Taxpayer Advocate Service. I.R.C. § 7811 explains that significant hardship includes:

- An immediate threat of adverse action;
- A delay of over thirty days in resolving taxpayer account problems;
- The incurring by the taxpayer of significant costs (including fees for professional representation) if relief is not granted; or
- Irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted.

While I.R.C. § 7811 is not directly linked to offers in compromise, the IRS is statutorily barred from imposing such hardship on taxpayers. Thus, the IRS should consider such hardships when processing offers in compromise. In the event of a current or imminent hardship, the taxpayer can file Form 911, Request for Taxpayer Advocate Service Assistance, with the Local Taxpayer Advocate. Under I.R.C. § 7811(a), the Taxpayer Advocate has the authority to issue Taxpayer Assistance Orders. The Order may require the IRS to “cease any action, take any action as permitted by law, or refrain from taking any action with respect to the taxpayer” relating to collection or discovery of liability and enforcement of title.

B. Public Policy or Equity

If there are no other grounds for compromise, the IRS may compromise a liability to promote effective tax administration where compelling public policy or equity considerations identified by the taxpayer provide a sufficient basis for compromising the liability. Compromise will be justified only where, due to exceptional circumstances, collection for the full liability would undermine public confidence that the tax laws are being administered in a fair and equitable manner.

Determinations in such cases are based on facts and circumstances. The taxpayer must justify why the offer should be accepted even though a similarly situated taxpayer may have paid his liability in full. The I.R.M. provides little guidance with respect to such offers because equity based compromises are fact sensitive. However, the I.R.M explains that a taxpayer entitled to relief on public policy or equity grounds: 1) must have remained in compliance since incurring the liability, and overall his or her compliance history must not weigh against compromise; 2) must have acted reasonably and responsibly in the situation giving rise to the liabilities; and 3) the circumstances of the case must be such that the result of the compromise does not place the taxpayer in a better position than he or she would occupy had the obligations been met timely and fully, unless special circumstances justifying the compromise are present.

Notable examples of situations where compromise based on public policy and equity is appropriate include:
• The taxpayer’s liability was directly caused by a processing error by the IRS;
• The liability resulted from the IRS’s unreasonable delayed resolution of the taxpayer’s case;
• The taxpayer incurred the liability because of following erroneous instruction from the IRS;
• The taxpayer demonstrated that the criminal or fraudulent act of a third party is responsible for the tax liability;
• The taxpayer was incapacitated or unable to comply with the tax laws; and
• Situations where there is clear and convincing evidence that rejecting the offer, and pursuing other collection alternatives, would have a significantly negative impact on the community in which the taxpayer lives or does business.  

V. Offers in Compromise During Examination

The I.R.M. specifically grants Collection jurisdiction over offers based on doubts as to collectibility. Thus, the IRS recommends that the taxpayer wait for a resolution of an audit before submitting an offer. A taxpayer unaware of IRS procedures for offers in compromise made during an examination may be inclined to concede the liability if he or she does not have the means to pay the potential liability or professional fees associated with defending the audit to submit an offer to Collection. Taxpayers wishing to make an offer based solely on collectibility should not be forced to agree to an arbitrary assessment because the Taxpayer Bill of Rights guarantees the right to pay no more than the correct tax, including interest and penalties.

Consideration of the likelihood of collection during examination is a significant factor in ensuring that quality assessments are made. The I.R.M. also dictates that Small Business and Self Employed Examiners “must strive for quality assessments and promote an increased emphasis on early collections in the continuing effort to reduce the Collection function's inventory and currently not collectible (CNC) accounts.” Accordingly, “[e]xaminers are required to consider the collectibility of a potential tax assessment during the pre-contact, audit, and closing phases of an examination.”

Consistent with the IRS mission and Congressional intent behind the IRS’s ability to compromise, the I.R.M. explains that “[t]he keystone of our compliance activities is to promote voluntary compliance, and examinations contribute to that by having an impact on changing taxpayer behavior and also providing a deterrent to other potentially noncompliant taxpayers.” Examiners “should consider the overall collectibility of the return during the pre-contact phase as one of many factors in determining whether to survey the return or limit the scope and depth of examination.”

When an offer in compromise appears to be the best approach to securing payment of the liability, the examiner should discuss compromise alternatives with the taxpayer and, in certain cases, assist the taxpayer in preparing the required forms. The I.R.M. also states that this
generally should not occur until the examiner has made a determination of the proper tax liability or deficiency, and the examiner should seek the group manager’s approval before discussing collection alternatives with the taxpayer.67 This provision, however, undermines not only the IRS mission and goals of the offer in compromise program, but also the taxpayer’s right to be informed. Taxpayers have the right to clear explanations of the laws and the IRS procedures,68 and should be informed of collection alternatives that can help alleviate or avoid hardship.

The procedures requiring examiners to consider collectibility during examinations are not well known, and often not followed by examiners. In 2016, the Treasury Inspector General For Tax Administration (“TIGTA”) found that if examiners do not follow the relevant I.R.M. procedures to consider and evaluate collectibility: 1) there is a higher risk of uncollectible assessments and inefficient use of both the Examination and Collection functions’ limited resources; 2) taxpayers with financial difficulties that cannot afford to make tax payments may be further burdened if the IRS audits them for additional assessments they cannot pay; and 3) taxpayers are not treated consistently.69

The division of responsibilities between Examination and Collection has frustrated the offer in compromise process because examiners do not always coordinate with Collection.70 Quality assessments, however, require consistent and constructive collaboration between the Examination and Collection functions. With its expertise, Collection can help Examination identify taxpayers who are unable to pay the potential liabilities early in the examination process, which will save IRS and taxpayer resources and maximize the collectible amounts. Effective communication between the two functions would also minimize undue delay between closing cases and eliminate duplicate efforts.71

Any delay in resolution during an examination due to lack of communication between the Examination and Collection function not only wastes the IRS’s precious resources, but also infringes on the taxpayers’ rights under I.R.C. § 7803. Specifically, the rights to: 1) finality; 2) a fair and a just tax system; and 3) privacy, if the subsequent IRS enforcement actions are more intrusive than necessary.72

Taxpayers should be aware that the I.R.M. allows submission of offers to the examiners during or at the conclusion of the examinations.73 To expedite processing of the offer, the examiner should review the offer package before forwarding it to Centralized Offer in Compromise. The examiner should verify that the offer includes:

- Full identification of taxpayer: name, address, social security number or employer identification number; both taxpayer names and signatures in instances of a joint liability offer.
- Identification of the liability (type of tax).
- Amount and terms of the offer.
- Appropriate signature(s).
- Basis for compromise.
- Completed Form 433-A, Collection Information Statement for Wage Earners & Self-Employed Individuals, and/or
Form 433-B, *Collection Information Statement for Businesses.*

- Minimum of equity in assets offered.
- All outstanding liabilities and tax periods included.
- Application fee and the TIPRA payment, if applicable. Under TIPRA, taxpayers who qualify as low income, based on current criteria, and check the box in Section 4 on Form 656, are not required to submit the application fee or any TIPRA payment(s) while OIC is being investigated.  

If the examination is not complete and group manager agrees with the examiner that doubt as to collectability exists, the scope of the examination should be limited. If agreement as to the liability is obtained, the case should be closed following existing procedures. The examiner should provide a copy of the audit report to the Collection employee handling the case. The I.R.M. asserts that the examiner should not solicit or obtain a conditional agreement where the taxpayer agrees to the proposed tax with the condition that an offer in compromise simultaneously submitted is accepted.

If agreement is not obtained, the case should be closed following normal unagreed procedures. The taxpayer's submission of the offer should be postponed until the issues and resulting liability are resolved. The taxpayer loses his or her right to appeal the merits of the liability if the offer is accepted by Collection. If the taxpayer submits the offer directly to Collection during an examination, Collection will return the offer based on “other investigations pending.” Once all examination issues are resolved, the taxpayer may submit a new offer.

Contrary to the I.R.M. provisions, some practitioners have been successful in resolving controversies by requesting that the examiner hold in escrow the following forms while the offer is being considered: 1) Forms 870, *Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment;* 2) Forms 866, *Agreement as to Final Determination of Tax Liability;* and 3) Forms 906, *Closing Agreement on Final Determination Covering Specific Matters.* Once the offer is accepted, the appropriate form can be processed to assess the liability and the taxpayer is simultaneously relieved of the liability by the compromise. This procedure mirrors the Tax Court offer in compromise process discussed in Section VII below.

Taxpayers who find themselves under examination should proactively evaluate their cases and ability to pay any potential liabilities, and present “adequate compromise proposals consistent with their ability to pay” so that the IRS can make prompt and reasonable decisions. Taxpayers with limited resources should reach out to low income tax clinics, and companies on the brink of bankruptcy should submit an offer as soon as possible. If the examiner is not willing to consider an offer, the taxpayer should file a Form 911 with the Local Taxpayer Advocate. As discussed above, the Taxpayer Advocate has statutory authority to prevent hardship using a Taxpayer Assistance Order.

**VI. Non-Traditional Use of Offers in Compromise**
The offer in compromise program may be useful for “Accidental Americans”, who are United States citizens, but do not live in, and have limited or no ties to, the United States. Such taxpayers may be surprised to learn that they are subject to failure to file, failure to pay, accuracy, or FBAR related penalties. An Accidental American unable to pay his or her unexpected tax liabilities should consider submitting an offer in compromise based on doubt as to collectibility or to promote effective tax administration.

VII. Offers During Litigation

In litigation before the Tax Court, IRS Counsel will consider settling the case based on the merits, rather than the taxpayer’s ability to pay. The I.R.M. explains that “[i]t is preferable that all settlements be effectuated by a merits settlement rather than upon the basis of inability to pay. This general guideline is applicable even though there may be a substantial basis for concluding that the petitioner may not be able to pay the agreed deficiency. In this instance, the case should be settled on its merits, and if the petitioner is unable to pay such deficiency, he can later file an offer in compromise based upon doubt as to collectibility.” These guidelines are not absolute. Common sense suggests that an agency trying to do more with less consider collectibility before investing resources into litigation.

Additionally, the tax must be assessed before the taxpayer can make an offer based on doubt as to collectibility and effective tax administration. In cases docketed in Tax Court, the taxpayer can litigate the tax case on the merits and, then make an offer in compromise if a decision is entered against him or her. However, as per the I.R.M., a taxpayer may request permission from IRS Counsel (“Counsel”) to submit an offer based on collectibility or effective tax administration. The offer should include all outstanding liabilities, even if they are not before the Court.

When requesting permission to submit an offer, it is vital to impress upon Counsel that the policy of settling Tax Court cases solely on the merits and without consideration of collectibility is contrary to the responsibilities and goals of the IRS. The IRS has “the responsibility of applying and administering the law in a reasonable, practical matter.” While, “[a]dministration should be both reasonable and vigorous,” it should also be “conducted with as little delay as possible and with great courtesy and considerateness.” If a taxpayer that cannot pay the alleged liability presents a legitimate alternative, the offer should be considered by Counsel in lieu of protracted and costly litigation that will waste IRS resources and cause undue hardship for the taxpayer. If IRS Counsel refuses to allow the submission of an offer, the taxpayer may file Form 911 to request assistance from the local Taxpayer Advocate.

If Counsel agrees to allow the taxpayer to submit such an offer, the taxpayer must submit the offer in writing as discussed above and send it directly to Counsel. The I.R.M. requires that in such cases Counsel obtain from Petitioner a stipulation of the deficiencies and penalties to protect the IRS’s ability to collect additional amounts if the financial status of the petitioner should change or the IRS must seek collection of the amount owed if the Petitioner defaults on payment. The alternative, and recommended option, is that the stipulation be held in escrow by Counsel to be signed only if the offer is accepted.
Once an agreement is reached on the stipulation, IRS Counsel will forward the offer to the appropriate unit to be processed under the standard procedure. While the offer is pending, the Tax Court case should be continued. If the offer is rejected, the taxpayer can challenge the determination in Appeals or resume the Tax Court case. If the offer is accepted, a stipulation held in escrow should be filed with the Court. Once the stipulation is filed, the amount agreed is assessed, but the compromise simultaneously relieves the taxpayer of the liability.

By contrast to the Tax Court, DoJ attorneys can settle cases based on future ability to collect the liability. “Even though the Government may have a strong case on the merits, absent other considerations, Government lawyers should not expend substantial resources to obtain an uncollectible judgment. Instead, it may be more efficient to negotiate a collectibility settlement.” DoJ has the authority to settle a suit at any stage of the proceeding, regardless of the IRS’s position on the matter. However, the DOJ will generally request that the field offer specialist investigate and make a recommendation in doubt as to collection cases.90

VIII. Role of the IRS Office of Appeals

There must be an independent administrative review of any rejected offer before the rejection is communicated to the taxpayer.91 An offer has not been rejected until the IRS issues a written notice to the taxpayer, or his representative, advising of the rejection, and the right to an appeal.92 The taxpayer may administratively appeal the rejection of an offer to the IRS Office of Appeals (“Appeals”) if, within the thirty day period commencing the day after the date on the letter of rejection, the taxpayer requests such an administrative review in the manner provided by the secretary.93

A taxpayer can appeal a rejected offer within thirty days of the date on the rejection notice by filing Form 13711, Request for Appeal of Offer in Compromised. The appeal letter should address the issues raised in the rejection notice and the taxpayer may have to provide additional documentation. If accepted, the appeal will allow the taxpayer to renegotiate his or her rejected offer under more acceptable terms for the IRS.

Appeals also has jurisdiction to make decisions on offers: 1) submitted as an alternative to the proposed collection action in a CDP or equivalent hearing case before the CDP Notice of Determination or EH Decision Letter is issued; and 2) being evaluated by Collection when a Notice of Federal Tax Lien is filed and the taxpayer requests a CDP or equivalent hearing.94 Appeals, however, does not have jurisdiction to compromise a liability after referral of the tax years to the DoJ.

Once an offer is before Appeals, the conference settlement procedures differ from Compliance. In non-CDP offer appeals, the taxpayer must be provided with an opportunity for the conference he or she requested under I.R.C. § 7122(e)(2). At the hearing, Appeals will determine whether Compliance was correct in rejecting the taxpayer’s offer by addressing the disputed issues that caused the offer to be rejected, provide a reasonable opportunity for the taxpayer to submit clarifying information or other documentation that the taxpayer believes is necessary to properly evaluate the offer and/or make the offer acceptable, accept offers
improperly rejected by Compliance, and explain why offer cannot be accepted and discuss alternatives.\textsuperscript{95}

Appeals’s decision to sustain a rejection of a non-CDP offer is not subject to judicial review.\textsuperscript{96} Appeals should consider only the items in dispute at the time of the rejection, or which are raised later by the taxpayer, rather than continue to develop the offer rejected by Compliance.\textsuperscript{97} However, Appeals should evaluate the overall appropriateness of compromise. This often requires subjective judgment to be made by Appeals based on factors such as the success, or lack thereof, of prior collection efforts against the taxpayer and the advantage of the taxpayer’s future compliance, secured through acceptance of an offer.\textsuperscript{98}

Last, “[t]he Appeals mission is to resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer and in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service.” Appeals is more likely to consider the “hazards of litigation” in making its determination.

IX. Conclusion

TIGTA and the Taxpayer Advocate have written on the full measure of taxpayer rights with respect to offers in compromise. As advocates, tax professional must request and insist that the IRS follow the internal procedures that allow for compromise of cases during examinations and before the Tax Court. If the procedures discussed within this article are followed, the IRS can achieve its goals of maximizing collection in the most efficient and fair way possible and encouraging voluntary compliance in future years.

\textsuperscript{1} Frank Agostino, Esq. is the principal of, and Valerie Vlasenko, Esq. is an associate at Agostino & Associates, P.C. in Hackensack, New Jersey.
\textsuperscript{3} Treas. Reg. § 601.203(a)(2).
\textsuperscript{4} Outside the tax world, 80 to 92 percent of civil cases settle. A study found that defendants made the wrong decision by proceeding to trial in 24 percent of cases that do not settle and, on average, the cost for getting it wrong for those defendants was approximately $1.1 million dollars. The same logic can be applied in all areas of tax controversy. That is, the cost of a burdensome examination or a protracted litigation can significantly outweigh the collection potential for the IRS. See Jonathan Glater, \textit{Study Finds Settling Is Better Than Going to Trial}, NY Times (Aug. 7, 2008), https://www.nytimes.com/2008/08/08/business/08law.html.
\textsuperscript{5} I.R.C. § 7122 also grants and the Attorney General may compromise any such case after referral to the Department of Justice. However, this subject is outside the scope of this article.
\textsuperscript{6} I.R.M., pt. 4.18.1.2 (Feb. 28, 2017).
\textsuperscript{10} Id.
\textsuperscript{13} Treas. Reg. § 301.7122-1(b)(3); I.R.M., pt. 4.18.1.2 (Feb. 28, 2017); While this article focuses on offers in compromise, readers should also be aware of the Advance Pricing and Mutual Agreement Program that allows

15 Doubt as to liability exists where there is a genuine dispute as to the existence or amount of the correct tax debt under the law. Such offers are outside the scope of this article. For additional information regarding doubt as to liability review I.R.M., pt. 4.18.2 (Feb. 28, 2017).
17 Id.
19 Treas. Reg. § 301.7122-1(d)(1).
20 Low income taxpayers, whose adjusted total monthly income falls at or below 250 percent of the applicable poverty level are not required to pay the filing fee. To receive a waiver, taxpayers must submit a Form 656-A, Income Certification for Offer in Compromise Application Fee and Payment (Feb. 2017), available at http://www.unclefed.com/IRS-Forms/2011/f656a.pdf.
23 Id.
24 Form 656 Booklet, supra note 8.
26 Id.; See also I.R.M., pt. 5.8.1.7.1 (Feb. 26, 2013).
27 Form 656 Booklet, supra note 8.
29 Form 656 Booklet, supra note 8.
33 I.R.M., pt. 5.8.1.2.3 (May 5, 2017).
34 I.R.M., pt. 5.8.4.3.1 (Apr. 30, 2015).
35 I.R.C. § 7122(c)(1).
37 I.R.C. § 7122(c)(1)(B).
40 I.R.M., pt. 5.8.1.2.3 (May 5, 2017).
41 I.R.M., pt. 5.8.1.2.3 (May 5, 2017).
43 Topic 204, supra note 29.
45 I.R.M., pt. 4.18.3.2 (Feb. 28, 2017).
46 Treas. Reg. § 301.6343-1(d).
50 I.R.C. § 7122(d)(3).
51 Treas. Reg. § 301.7122-1. See regulation for examples.
54 I.R.C. § 7811(b).
56 Id.
57 Id.
58 Treas. Reg. § 301.7122-1.
60 Id.
63 See I.R.C. § 7803(a)(3).
67 Id.
70 Id.
71 Id.
73 I.R.M., pt. 4.18.7.1 (Feb. 28, 2018).
74 Id.
75 Id.
76 Id.
77 Id.
78 Id.
79 Id.
80 Id.
82 I.R.M., pt. 5.8.1.2.3 (May 5, 2017); Taxpayers should be careful not file offers that may be deemed frivolous by the IRS. Frivolous submissions may be subject to penalties under I.R.C. § 6702.
83 Note, the IRS will not consider offer under its administrative procedures while the taxpayer is in bankruptcy. See I.R.M., pt. 5.8.10.2 (Sep. 27, 2011).
85 See Frank Agostino and Joseph Stackhouse, United States Tax and the Accidental Americans, for a discussion of hardships faced by Accidental Americans not able to compromise their liabilities during examinations or litigation.
88 Id.
91 I.R.C. § 7122(c).
95 I.R.M., pt. 8.23.1.3 (Nov. 18, 2016).
90 Id.
97 Id.
98 Id.
ATTACHMENT 2
MEMORANDUM FOR DIVISION COMMISSIONERS
CHIEF, CRIMINAL INVESTIGATION

FROM: Kirsten B. Wielobob /s/ Kirsten B. Wielobob
Deputy Commissioner for Services and Enforcement

SUBJECT: Updated Voluntary Disclosure Practice

This memorandum addresses the process for all voluntary disclosures (domestic and offshore) following the closing of the Offshore Voluntary Disclosure Program (2014 OVDP) on September 28, 2018.

Background and Overview of Updated Procedures

The 2014 OVDP began as a modified version of the OVDP launched in 2012, which followed voluntary disclosure programs offered in 2011 and 2009. These programs were designed for taxpayers with exposure to potential criminal liability or substantial civil penalties due to a willful failure to report foreign financial assets and pay all tax due in respect of those assets. They provided taxpayers with such exposure potential protection from criminal liability and terms for resolving their civil tax and penalty obligations. Taxpayers with unfiled returns or unreported income who had no exposure to criminal liability or substantial civil penalties due to willful noncompliance could come into compliance using the Streamlined Filing Compliance Procedures (SFCP), the delinquent FBAR submission procedures, or the delinquent international information return submission procedures. Although they could be discontinued at any time, these other programs are still available.

Voluntary disclosure is a long-standing practice of the IRS to provide taxpayers with criminal exposure a means to come into compliance with the law and potentially avoid criminal prosecution. See I.R.M. 9.5.11.9. This memorandum updates that voluntary disclosure practice. Taxpayers who did not commit any tax or tax related crimes and do not need the voluntary disclosure practice to seek protection from potential criminal prosecution can continue to correct past mistakes using the procedures mentioned
above or by filing an amended or past due tax return. When these returns are examined, examiners will follow existing law and guidance governing audits of the issues.

Procedures in this memo will be effective for all voluntary disclosures received after the closing of the 2014 OVDP on September 28, 2018. All offshore voluntary disclosures conforming to the requirements of “Closing the 2014 Offshore Voluntary Disclosure Program Frequently Asked Questions and Answers” FAQ 3 received or postmarked by September 28, 2018 will be handled under the procedures of the 2014 OVDP. For all other voluntary disclosures (non-offshore) received on or before September 28, 2018, the Service has the discretion to apply the procedures outlined in this memorandum. The objective of the voluntary disclosure practice is to provide taxpayers concerned that their conduct is willful or fraudulent, and that may rise to the level of tax and tax-related criminal acts, with a means to come into compliance with the law and potentially avoid criminal prosecution.

Proper penalty consideration is important in these cases. A timely voluntary disclosure may mitigate exposure to civil penalties. Civil penalty mitigation occurs by focusing on a specific disclosure period and the application of examiner discretion based on all relevant facts and circumstances including prompt and full cooperation (see IRM 9.5.11.9.4) during the civil examination of a voluntary disclosure. Managers must ensure that penalties are applied consistently, fully developed, and documented in all cases.

The terms outlined in this memorandum are only applicable to taxpayers that make timely voluntary disclosures and who fully cooperate with the Service.

**Criminal Investigation Procedures**

Criminal Investigation (CI) will screen all voluntary disclosure requests whether domestic, offshore, or other to determine if a taxpayer is eligible to make a voluntary disclosure. To accomplish this, CI will require all taxpayers wishing to make a voluntary disclosure to submit a preclearance request on a forthcoming revision of Form 14457. IRM 9.5.11.9 will continue to serve as the basis for determining taxpayer eligibility.

Taxpayers must request preclearance from CI via fax or mail.

Fax: (267) - 466-1115
For all cases where CI grants preclearance, taxpayers must then promptly submit to CI all required voluntary disclosure documents using a forthcoming revision of Form 14457. This form will require information related to taxpayer noncompliance, including a narrative providing the facts and circumstances, assets, entities, related parties and any professional advisors involved in the noncompliance. Once CI has received and preliminarily accepted the taxpayer’s voluntary disclosure, CI will notify the taxpayer of preliminary acceptance by letter and simultaneously forward the voluntary disclosure letter and attachments to the LB&I Austin unit for case preparation before examination. CI will not process tax returns or payments.

**Civil Processing**

Once the LB&I Austin unit receives information from CI, LB&I will route the case as appropriate. The IRS will not require taxpayers to provide additional documents to the LB&I Austin unit. If a taxpayer or representative wishes to make a payment prior to case assignment with an examiner, payments may be remitted to the LB&I Austin unit. The LB&I Austin unit will establish the most recent tax year covered by the voluntary disclosure for examination. Then, the LB&I Austin unit will forward cases for case building and field assignment to the appropriate Business Operating Division and Exam function for civil examination. Civil examiners receiving the disclosure will establish any additional controls necessary on IRS systems.

**Case Development**

All voluntary disclosures handled by examination will follow standard examination procedures. Examiners must develop cases, use appropriate information gathering tools, and determine proper tax liabilities and applicable penalties. Under the voluntary disclosure practice, taxpayers are required to promptly and fully cooperate during civil examinations. In general, the Service expects that voluntary disclosures will be resolved by agreement with full payment of all taxes, interest, and penalties for the disclosure period. In the event a taxpayer fails to cooperate with the civil examination, the examiner may request that CI revoke preliminary acceptance. See I.R.M. 9.5.11.9.4 (discussing cooperation).
Civil Resolution Framework

For all voluntary disclosures received after September 28, 2018, the Service will apply the civil resolution framework outlined below. At the Service’s discretion, this civil resolution framework may extend to non-offshore voluntary disclosures that have not been resolved but were received on or before September 28, 2018.

Examiners are authorized to resolve tax and tax related noncompliance of taxpayers who make voluntary disclosures in the following manner:

a) In general, voluntary disclosures will include a six-year disclosure period. The disclosure period will require examinations of the most recent six tax years. Disclosure and examination periods may vary as described below:
   i. In voluntary disclosures not resolved by agreement, the examiner has discretion to expand the scope to include the full duration of the noncompliance and may assert maximum penalties under the law with the approval of management.
   ii. In cases where noncompliance involves fewer than the most recent six tax years, the voluntary disclosure must correct noncompliance for all tax periods involved.
   iii. With the IRS' review and consent, cooperative taxpayers may be allowed to expand the disclosure period. Taxpayers may wish to include additional tax years in the disclosure period for various reasons (e.g., correcting tax issues with other governments that require additional tax periods, correcting tax issues before a sale or acquisition of an entity, correcting tax issues relating to unreported taxable gifts in prior tax periods).

b) Taxpayers must submit all required returns and reports for the disclosure period.

c) Examiners will determine applicable taxes, interest, and penalties under existing law and procedures. Penalties will be asserted as follows:
   i. Except as set forth below, the civil penalty under I.R.C. § 6663 for fraud or the civil penalty under I.R.C. § 6651(f) for the fraudulent failure to file income tax returns will apply to the one tax year with the highest tax liability. For purposes of this memorandum, both penalties are referred to as the civil fraud penalty.
   ii. In limited circumstances, examiners may apply the civil fraud penalty to more than one year in the six-year scope (up to all six years) based on the facts and circumstances of the case, for example, if there is no agreement as to the tax liability.
   iii. Examiners may apply the civil fraud penalty beyond six years if the taxpayer fails to cooperate and resolve the examination by agreement.
iv. Willful FBAR penalties will be asserted in accordance with existing IRS penalty guidelines under IRM 4.26.16 and 4.26.17.

v. A taxpayer is not precluded from requesting the imposition of accuracy related penalties under I.R.C. § 6662 instead of civil fraud penalties or non-willful FBAR penalties instead of willful penalties. Given the objective of the voluntary disclosure practice, granting requests for the imposition of lesser penalties is expected to be exceptional. Where the facts and the law support the assertion of a civil fraud or willful FBAR penalty, a taxpayer must present convincing evidence to justify why the civil fraud penalty should not be imposed.

vi. Penalties for the failure to file information returns will not be automatically imposed. Examiner discretion will take into account the application of other penalties (such as civil fraud penalty and willful FBAR penalty) and resolve the examination by agreement.

vii. Penalties relating to excise taxes, employment taxes, estate and gift tax, etc. will be handled based upon the facts and circumstances with examiners coordinating with appropriate subject matter experts.

viii. Taxpayers retain the right to request an appeal with the Office of Appeals.

d) The Service will provide procedures for civil examiners to request revocation of preliminary acceptance when taxpayers fail to cooperate with civil disposition of cases.

e) All impacted IRM sections will be updated within two years of the date of this memorandum.

If you have any questions about this memorandum, please contact Scott Roberts, Team Manager at the LB&I Austin unit at (737) 800-7616 or Christine Stone, LB&I WIIC IPN Technical Specialist at (781) 876-1186.

cc: IRS.gov
Information Sharing Between the IRS and State Tax Authorities

IRS information sharing programs save government resources through partnerships between IRS and federal, state and municipal governmental agencies. The goal of these programs is to enhance voluntary compliance with tax laws.

This includes facilitating the exchange of taxpayer data, leveraging resources, providing assistance to taxpayers to improve compliance and communications, and identifying and reporting information on emerging tax administration issues.

Internal Revenue Code (IRC) Section 6103 authorizes the IRS to share tax information by entering into agreements with governmental agencies for tax administration purposes. Comparable laws allow agencies to share their information with the IRS. The three components of the IRS information sharing program are:

- Federal Information Sharing
- State Information Sharing
- Local Information Sharing

To ensure the privacy of all taxpayer data, the Disclosure program provides oversight and education to all employees and external partners ensuring the protection of taxpayer confidentiality rights.

I. Federal Information Sharing

The IRS Federal Intergovernmental Program (FIP), one of Governmental Liaison’s partnering components, strengthens existing relationships and develops new ones to support the development of initiatives with other federal agencies.

FIP increases collaboration and enhances effective tax administration by:

- Complementing efforts to identify and address non-compliance
- Leveraging outreach resources
- Assisting other federal agencies in achieving their goals

Under FIP, the Service has many initiatives with federal agencies that include information sharing and outreach programs, and data matching activities.

II. State Information Sharing

The IRS state partnering program, one of Governmental Liaison’s partnering components, facilitates and expands joint tax administration relationships between the IRS and state taxing authorities, such as departments of revenue and state workforce agencies.

---

1 This outline was prepared by Agostino & Associates, P.C. and represents only the views and/or positions of the preparers.
IRS and state/local agencies share data with each other through a variety of ongoing initiatives. The information includes:

- Audit results
- Federal individual and business return information
- Employment tax information.

III. Local Information Sharing

The Municipal Agency Partnering Program (MAPP), one of Governmental Liaison’s (GL's) partnering components, expands GL’s mission of governmental partnering and data sharing by engaging municipal agencies.

Examples of Agreements the Internal Revenue Service will enter into:

<table>
<thead>
<tr>
<th>Department/Agency</th>
<th>Agreement/Protocol</th>
</tr>
</thead>
<tbody>
<tr>
<td>Banking Department</td>
<td>MSB (Money Services Business) MOU</td>
</tr>
<tr>
<td>Department of Revenue</td>
<td>6103(p)(2) Agreement</td>
</tr>
<tr>
<td>State Workforce Agency</td>
<td>EWDM (Employer Wage Data Match) MOU</td>
</tr>
<tr>
<td>State Workforce Agency</td>
<td>IA (Implementing Agreement)</td>
</tr>
<tr>
<td>State Workforce Agency</td>
<td>QETP (Questionable Employment Tax Practices) MOU</td>
</tr>
<tr>
<td>State Workforce Agency</td>
<td>BA (Basic Agreement)</td>
</tr>
<tr>
<td>Department of Motor Vehicles</td>
<td>Motor Vehicle Data Access (DMV) MOU</td>
</tr>
<tr>
<td>Department of Revenue</td>
<td>CI (Criminal Investigation) MOU</td>
</tr>
<tr>
<td>Department of Revenue</td>
<td>ECDE (Employment Commission Data Exchange) MOU</td>
</tr>
<tr>
<td>Department of Revenue</td>
<td>E-File Participant Extracts MOU</td>
</tr>
<tr>
<td>Department of Revenue</td>
<td>EITC ERRP (Earned Income Tax Credit Erroneous Refund Reduction Program) MOU</td>
</tr>
<tr>
<td>Department of Revenue</td>
<td>ExSTARS (Excise Summary Terminal Activity Reporting System) MOU</td>
</tr>
<tr>
<td>Department of Revenue</td>
<td>JOC (Joint Operations Center) MOU</td>
</tr>
<tr>
<td>Department of Revenue</td>
<td>Joint Audit MOU</td>
</tr>
<tr>
<td>Department of Revenue</td>
<td>Joint Audit MOU</td>
</tr>
<tr>
<td>Department of Revenue</td>
<td>Joint Installment Agreement MOU</td>
</tr>
<tr>
<td>Department of Revenue</td>
<td>MeF (Modernized e-file) 1040 MOU</td>
</tr>
<tr>
<td>Department of Revenue</td>
<td>MeF (Modernized e-file) 1041 MOU</td>
</tr>
<tr>
<td>Department of Revenue</td>
<td>MeF (Modernized e-file) 1065 MOU</td>
</tr>
<tr>
<td>Department of Revenue</td>
<td>MeF (Modernized e-file) 1120 MOU</td>
</tr>
<tr>
<td>Department of Revenue</td>
<td>Reportable Transactions MOU</td>
</tr>
<tr>
<td>Department of Revenue</td>
<td>TDS (Transcript Delivery System) MOU</td>
</tr>
<tr>
<td>Department of Revenue</td>
<td>Detection and Prevention of ID Theft MOU (Security Summit)</td>
</tr>
<tr>
<td>Department of Revenue</td>
<td>IA (Implementing Agreement)</td>
</tr>
<tr>
<td>-----------------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td>Department of Revenue</td>
<td>BA (Basic Agreement)</td>
</tr>
<tr>
<td>Department of Revenue</td>
<td>Tax Modeling Need and Use Statement</td>
</tr>
<tr>
<td>Attorney General</td>
<td>6104c MOU</td>
</tr>
</tbody>
</table>
New York State Federal Change Statute

I. New York State Notice of Federal Change Requirements

When the Internal Revenue Service (“IRS”) audits a New York State (“NYS”) taxpayer, and a NYS taxpayer files an amended federal return, or an NYS taxpayer enters a federal voluntary disclosure program that changes his taxable income, the taxpayer must notify NYS within 90 days of the final determination. Changes which need to be reported include:

a) changes to federal taxable income;
b) changes to the total taxable amount or ordinary income portion of a lump sum distribution or includible gain of a trust;
c) changes to the amount of earned income credit;
d) changes to the credit for employment-related expenses;
e) changes to federal foreign tax credit affecting the calculation of the credit for Canadian provincial taxes;
f) changes to the amount of a claim of right adjustment;
g) changes because of a renegotiation of a contract or subcontract with the United States;
h) changes to the amount an employer is required to deduct and withhold from wages for federal income tax withholding purposes; or
i) disallowances of a taxpayer’s claim for credit or refund.

A final determination includes, but is not limited to:

a) a closing agreement made under Section 7121 of the Internal Revenue Code (“I.R.C.” or “Code”) finally and irrevocably adjusting and settling a taxpayer's Federal income tax liability;
b) an allowance by the Commissioner of Internal Revenue (“Commissioner”) of a refund of any part of the federal income tax shown on the taxpayer's federal income tax return or of any deficiency thereafter assessed whether such refund is made on the Commissioner's own motion or pursuant to a judgment of a court;
c) a 90-day deficiency notice under I.R.C. § 6212 unless a timely petition to redetermine the deficiency is filed in the Tax Court of the United States, in
which event the judgment of the court of last resort affirming the
deficiency or the redetermination of the deficiency pursuant to a judgment
of the court of last resort, is the final determination;

d) an assessment of a deficiency pursuant to a waiver filed under I.R.C. §
6213 where no 90-day deficiency notice is issued; and

e) the allowance of a tentative carry-back adjustment based upon the net
operating loss carryback under I.R.C. § 6411.

The circumstances for reporting federal changes include only those circumstances where a
federal change has increased or decreased a taxpayer's NYS tax liability. Thus, many changes by
the IRS, such as innocent spouse relief, changes in worker classification, acceptance of offers in
compromise, are only reportable when they result in one of the changes listed and the IRS issues
a final determination. The assessment of interest and penalties or changes to interest penalties do
not have to be reported.

NYS taxpayers should address potential changes to their NYS taxes by filing a Notice of Federal
change on an amended NYS income tax return. A complete Notice of Federal Change
submission requires the taxpayer to identify whether and where the IRS determination is accurate
or erroneous.

Failure to submit the required Notice of Federal Change results in an indefinite period of
limitations on assessment. Filing a Notice of Federal Change with NYSDTF extends the periods
of limitations on tax assessments and claims for refund or credit an additional two years from the
date the Notice of Federal change is filed

II. Penalties for Failure to Timely File a Notice of Federal Change

a. Monetary Penalties for Failure to File a Valid Notice of Federal Change

The penalties resulting from an individual's failure to file a valid Notice of Federal Change with
the Tax Commission are the same as those for not filing a tax return. Unless a taxpayer can prove
that failure to file the return is due to reasonable cause and not willful neglect, they may be
assessed additions to tax and civil penalties, including:

i. Failure to File: 5% of the tax due, if failure is for one month or less, and
an additional 5% for each additional month the failure continues, not to
exceed 25% in the aggregate, if the failure continues for up to 60 days the
addition to tax shall not be less than the lesser of $100 or 100% of the tax
due;

ii. Failure to Pay: 0.5% of the tax due, if failure is for one month or less, and
an additional 0.5% for each additional month the failure continues, not to
exceed 25% in the aggregate;
iii. Negligence Penalties: 5% of the deficiency, plus additions to tax equal to 50% of the interest attributable to the deficiency for the period beginning on the last date for payment of the deficiency and ending the earlier of the assessment of tax or the payment date; and

iv. Civil Fraud Penalties: 200% of the deficiency, if the Commissioner determines a civil fraud penalty is appropriate

Collateral Consequences for Failure to Report Federal Change

b. Effects on Taxpayer’s Ability to Discharge Tax Liabilities in Bankruptcy

Another consequence of failing to file a Notice of Federal Change may be the loss of the ability to discharge delinquent taxes in bankruptcy proceedings. Generally, a bankruptcy filing will discharge tax liabilities for taxes reported on returns filed over three years before the bankruptcy petition is filed. However, the discharge does not apply when a taxpayer fails to file a required return. In the U.S. District Court for the Southern District of New York, the Bankruptcy Court has opined that the Notice of Federal Change required under N.Y. Tax L. § 659 is a required tax return to apply the exception to the general discharge ability of taxes provision. Therefore, taxpayers who fail to file the required Notice of Federal Change are precluded from discharging taxes owed for those tax years, even if the IRS has notified the NYSDTF of the changes.

The Bankruptcy Court in the U.S. District Court for the Western District of New York has taken a different position. The court in In Re Dyer explained that where an initial return has been filed, the Notice of Federal Change requirement does not limit the discharge ability of taxes. The Western District concluded that the exception to discharge ability only requires that a taxpayer file an initial tax return for this year.

c. Forfeiture of the Corporate Charter or Franchise

Failure of a corporation to file a Notice of Federal Change allows the NYSDTF to request the attorney general sue “for the forfeiture of the charter or franchise of [such] corporation.” The Tax Commission must prove that failing to file the Notice of Federal Change was intentional. If it is found that the corporation’s actions were intentional, the court will enter a judgment for the dissolution of a domestic corporation, or annulment of a foreign corporation’s franchise to do business within NYS.

d. Effects on a Foreign Corporation’s Ability to Utilize NYS Courts

When a foreign corporation transacts business in NYS, it must obtain authorization to do business in the state and must pay all fees and taxes imposed against it. Before a foreign corporation can conduct business in NYS or maintain a cause of action in a NYS court, it must obtain consent from the NYSDTF who will verify that all required tax returns have been filed and all outstanding tax liabilities have been satisfied. A taxpayer seeking such consent must provide the NYSDTF with:
i. An affidavit that states the date that the corporation did business in NYS and the tax period it uses (calendar or fiscal);

ii. Copies of Franchise Tax Returns and copies of payments to the NYS;

iii. Application for Authority to transact business in the NYS (available at www.dos.state.ny.us); and

iv. A check for the filing fee for $225 payable to the NYS Department of State.

The NYSDTF may refuse to grant consent for failure to comply with Notice of Federal Change requirements, resulting in the foreign corporation’s inability to sue in NYS and Federal courts.

III. NYS Voluntary Disclosure and Compliance Program

To encourage taxpayers to comply voluntarily with NYS tax laws, NYS created the Voluntary Disclosure and Compliance Program (“VDCP”). The VDCP allows taxpayers to voluntarily disclose tax liabilities regardless of the reason for the initial non-compliance. The VDCP provides protection from criminal prosecution and civil penalties.

a. The Notice of Change v. the VDCP Application

The main difference between a VDCP and a Notice of Federal Change is that a Notice of Federal Change is required after the IRS makes a change and issues a determination, whereas a taxpayer does not have to enter the VDCP and can enter the VDCP without a Federal change or determination. A taxpayer may even enter the VDCP because of a Notice of Federal Change requirement because it would be more beneficial to enter the program than to file an amended return.

Any eligible taxpayer may enter into the VDCP. Eligible taxpayers include individuals, corporations, trusts and estates, pass-through entities, and other taxpayers in N.Y. Tax L. § 1700(2), who meet these criteria:

i. The taxpayer is not currently under audit;

ii. The tax liability being disclosed has not already been determined, calculated, or identified by the NYSDTF at the time of the disclosure;

iii. The taxpayer is not currently under criminal investigation by the state;

iv. The tax liability being disclosed did not result from participation in a tax avoidance transaction that is a federal or NYS reportable or listed transaction.
N.Y. Tax L. § 1700 states “[n]otwithstanding the provisions of any other law to the contrary, there is hereby established a voluntary disclosure and compliance program… for all eligible taxpayers as described in this section.”

The statute suggests that a taxpayer may enter the VDCP despite their obligation to file a Notice of Federal Change. A taxpayer would have to enter the VDCP before filing the amended return as the amended return would prompt the NYSDTF to identify and calculate the tax liability.

The eligible taxpayer must submit an application containing their identifying information, along with a disclosure statement outlining the tax liability and the tax periods covered by the application. Once the application is submitted the NYSDTF will determine the taxpayer’s eligibility for the VDCP. If the NYSDTF determines that the taxpayer is ineligible, or the taxpayer later opts out of the VDCP, their disclosure statement cannot be used against them as evidence in future proceedings.

Taxpayers making a domestic or offshore voluntary disclosure with the IRS should simultaneously make a VDCP. The VDCP filing should include all tax periods wherein the taxpayer has tax issues. However, if the period extends beyond three years, the NYSDTF recommends that taxpayers sign a limited look-back agreement that would restrict the years in the disclosure. NYS taxpayers who participate in the VCDP should include all periods in the federal program, even if those periods are for years closed because the statute of limitations expired on the originally filed tax return.

Not all taxpayers will utilize the VDCP: Some taxpayers may not be eligible for VDCP, and others may not know of its availability. In the spirit of encouraging voluntary disclosure, the NYSDTF states that individuals who take advantage of the VDCP are “viewed more favorably than [taxpayers] whose tax obligations are revealed only after an audit or investigation.” Taxpayers who want to disclose tax liabilities without utilizing the VDCP should call the NYSDTF, Voluntary Disclosure Unit at (518) 457-4448.

If a taxpayer qualifies for the VDCP, it would be beneficial to pursue that option over filing amended returns. Under the VDCP the NYSDTF will not charge penalties, whereas a taxpayer who files amended returns may face penalties and interest. If a taxpayer’s failure to file returns and pay taxes was criminal, the NYSDTF will not pursue criminal prosecution. Finally, any information provided in an application for the VDCP will be disclosed and will not be used against the taxpayer. The NYSDTF may only disclose those returns prepared under the VDCP.

b. The Voluntary Disclosure and Compliance Agreement

The NYSDTF will enter into a compliance agreement with the taxpayer if it determines that such taxpayer is eligible for the VDCP. The compliance agreement will include “those terms as the commissioner may reasonably require to satisfy the taxpayer’s disclosed tax obligation and require the taxpayer to comply with the tax law in the future.” Taxpayers without the financial means to immediately satisfy the tax obligation resulting from a voluntary disclosure should not be discouraged from entering into a compliance agreement. After the agreement is entered,
financially eligible taxpayers may enter into an installment agreement with the NYSDTF to satisfy their tax liability.

Taxpayers should review their VDCP application and make supplemental disclosures before signing a compliance agreement. If it is later determined that the taxpayer provided false material information or omitted material information during the application stage the compliance agreement will be rescinded.

c. Changes to the VDCP Information Sharing Rules

Prior to April 7, 2009, all disclosures made under the VDCP were confidential. The NYSDTF could not share any disclosures including information or tax returns. In 2009, NYS amended N.Y. Tax L § 1700, permitting the NYSDTF to disclose reports and returns filed under VDCP to the IRS or any state or city with which NYS has an information sharing agreement.

d. Notice of Federal Change Requirements of New York City Department of Finance

New York City also has its own Notice of Federal Change requirements. Under the NYC Administrative Code §§ 11-605(3) and 11-646(e), a taxpayer must report any change or correction in tax by the IRS or the NYSDTF (1) 90 days after the federal or state audit adjustment becomes final; or (2) 120 days of a final federal or state audit adjustment if a combined return is being filed.

The New York City Department of Finance (“NYCDF”) permits taxpayers to challenge the federal or NYS adjustments. Taxpayers may attach a statement to the report of federal or NYS change indicating why they believe the adjustments are erroneous. A deficiency is deemed to be self-assessed if a taxpayer concedes the accuracy of an adjustment or fails to attach a statement indicating why any adjustment is erroneous. This begins collection activity.

The NYCDF may assess a deficiency based on the federal or NYS adjustment if the taxpayer fails to report federal or state changes. The deficiency is assessed by mailing the taxpayer a Notice of Tax Due, and is deemed assessed, and subject to collection, after 30 days following the mailing of the notice. The taxpayer may still challenge the NYCDF assessment by properly reporting, during the 30 day period, the federal and/or state changes to the NYCDF with a statement indicating why the taxpayer believes the federal or state adjustment is erroneous.
New Jersey Notice of Federal Change Requirements

Once an IRS audit concludes, New Jersey taxpayers must notify the Division of any income tax changes at the federal level. Unless a taxpayer can establish reasonable cause, failure to timely file a notice of federal change will result in penalties under the State Tax Uniform Procedure Law. These penalties include:

- **Late Filing Penalties**: $100 per month that the filing is delinquent, plus 5% per month penalty of the underpayment not to exceed 25% of the underpayment;
- **Late Payment Penalty**: 5% of tax due;
- **Civil Fraud Penalties**: 50% of underpayment, if the Director determines a civil fraud penalty is appropriate;
- **Interest**: prime rate plus 3% of tax due per month.

Under N.J. REV. STAT. § 54A:8-7, a New Jersey taxpayer is generally required to notify the Division upon receipt of an IRS notification regarding:

a. changes to federal taxable income;
b. correction of a federal income tax return that may affect New Jersey taxable income; or
c. changes to federal earned income tax credit that may affect the New Jersey earned income tax credit.

New Jersey requires taxpayers to file a notice of federal change within 90 days of receipt of the final determination from the IRS. The notice of federal change requirement is satisfied by the taxpayer’s submission of an amended New Jersey income tax return.

I. What constitutes a Final Determination?

New Jersey case law provides that any letter that confirms the content of the Revenue Agent’s Report serves as a confirming letter that would commence the 90-day period. Where a taxpayer receives a Revenue Agent’s Report and agrees to the changes reported, the 90-day period runs on the date that the IRS issues a letter confirming the agreement, not the date that the taxpayer receives the Revenue Agent’s Report.

Besides starting the 90-day period in which the notice of federal change must be filed, an IRS Final Determination Notice commences the extension of the periods of limitation to make deficiency assessment and a claim for refund. Both limitations periods are extended for an additional four years where there is a correction or change by the IRS to a taxpayer’s federal income. Distinguish between federal changes as a result of the filing of federal amended returns, and federal changes resulting from an audit; the latter triggers the 90-day period, while the former does not. Consequently, the periods of limitations are only extended when a notice of federal change is filed reporting changes from an audit.
New Jersey provisions regarding extensions of limitations periods as a result of a federal change are different for individual and corporate taxpayers. Individuals must file a notice of federal change to begin the running of the limitations period. The statute explicitly states, “if [a] taxpayer fails to report a change or correction made by another taxing jurisdiction... the amount of the tax may be determined at any time.” Therefore, if an individual taxpayer fails to timely file a notice of federal change, the Division can commence an audit and make additional adjustments after the statute of limitations period for filing the original return would have expired. Conversely, the limitations period on deficiency assessments and refund claims runs “for [an] additional four year periods from the date that taxable income is finally changed or corrected by the Commissioner of Internal Revenue.”

A notice of federal change must be timely filed to allow the statute of limitations for a refund claim to be extended for corporate taxpayers. The Director of the Division is granted authority to “prescribe and issue rules and regulations, not inconsistent herewith, for the interpretation and application of the provisions of this act, as he may deem necessary.” The Director has interpreted N.J. REV STAT. §§ 54:49–14 and 54:10A–13 to condition refunds on the timely filing of a notice of federal change. The New Jersey Tax Court agrees with the Director.

New Jersey Tax Court has held that a notice of federal change is a tax return that must be timely filed to extend the statute of limitations on refund claims. The Court is clear that the statutory limitations periods must be strictly enforced, particularly in refund cases. A corporate taxpayer who does not adhere to the strict time limit prescribed in N.J. REV STAT. § 54:10A-13, will not qualify for the four year extension of the refund claims period. For instance, in Lenox Inc. v. Dir., Div. of Taxation, the taxpayer’s federal income tax liability was reduced during an examination because the IRS determined that the taxpayer could claim additional losses for abandoning two business operation divisions. The taxpayer filed a refund claim with the Division based on the IRS’s determination. However, the New Jersey Tax Court determined that the taxpayer was not entitled to an extension of the refund limitation period, because its notice of federal change was received one day late.

Above, we explained that a taxpayer may challenge the IRS determination in their notice of federal change. Similarly, after the notice of federal change is timely submitted, New Jersey will sometimes conduct a separate examination. The New Jersey Tax Court has determined that the Division is not bound by any IRS determination. In Booth v. Director, Division of Taxation, the Court rejected the taxpayer’s argument that the State of New Jersey should be bound by the IRS settlement as to the decedent’s marital status on death. The Tax Court found that the Division is not bound by the IRS settlement or the closing letter issued to an estate in the federal case. By contrast, in another recent case, the Tax Court disagreed with the Division’s rejection of an IRS determination. The Court reasoned that although the Division is not bound by the federal statute, some methods employed by the IRS in making its determination may serve as useful guidelines in resolving state tax issues.

Also related to the state’s ability to reject IRS determination, the New Jersey Tax Court recently reminded us of the limitations on the Division’s ability to disagree with IRS determinations. The court in Infosys Limited of India Inc. v. Director, Division of Taxation, held that New Jersey could not impose corporation business tax on a taxpayer’s foreign source
income that is not taxable for federal income tax purposes.\textsuperscript{xxii} In \textit{Infosys Limited of India Inc.}, a foreign corporation’s foreign source income was excluded from its federal taxable income because of a treaty benefit.\textsuperscript{xxiii} The Court reasoned that the state’s failure to adopt a legislative addback for exempt foreign source income requires a presumption that federal taxable income is the starting point for computing net income for New Jersey corporation business tax purposes.\textsuperscript{xxiv}
Internal Revenue Manual Provisions Concerning Information Sharing

11.3.32 Disclosure to States for Tax Administration Purposes

11.3.32.1 (10-22-2010)

General

1. The exchange of confidential tax information between the Internal Revenue Service (IRS) and states is intended to improve tax administration by reducing duplicate government resource expenditures and increasing taxpayer compliance. Congress has recognized the importance of this exchange program by permitting the disclosure of Federal tax information to state agencies for tax administration purposes. However, Congress balanced this disclosure authority with additional requirements designed to safeguard Federal tax information against misuse and unauthorized disclosure. A fundamental step toward reducing the risk of unauthorized disclosures is the elimination of unnecessary disclosures. Many of the guidelines, requirements and programs outlined in this IRM were developed with this goal in mind.

2. Governmental Liaisons (GLs) are assigned responsibility for liaison with state tax authorities and are to be personally involved in the cooperative tax administration program.

3. Disclosure Managers, GLs, and the Office of Safeguards personnel share responsibility for ensuring state tax agencies receive Federal tax information when appropriate and that they properly safeguard Federal tax information they receive. The GL may also represent the IRS at conferences and meetings with senior officials of state agencies.

4. This section deals with disclosure for state tax purposes in accordance with IRC §6103(d). Other parts of IRC §6103 may be used for Fed/State purposes when state tax administration is not the reason for the disclosure, or it is determined that another disclosure provision is more appropriate from an administrative viewpoint. Other sections of this IRM may be applicable when considering the feasibility of Fed/State exchanges.

Note:

Licensing initiatives may utilize consents under Treasury Regulation §301.6103(c)-1. IRM 11.3.3, Disclosure to Designees and Practitioners, contains specific instructions for the elements required in this type of an authorization. Note these authorizations must contain specifics that include, but are not limited to, the year(s) and type(s) of tax, and the IRS must receive them within 120 days of the date signed by the taxpayer.

The Chief of Disclosure must review and approve any non-6103(d) exchanges with state tax agencies involving tax information to ensure proper consideration of technical and operational aspects and that the exchange does not conflict with Treasury Tax Policy against broad-based consent programs or other disclosure provisions.

11.3.32.2 (10-22-2010)
Definitions

1. The following terms are defined for use in this IRM:

2. **State** - any of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any municipality with a population in excess of 250,000, as determined by the most recent decennial United States census data available, that imposes a tax on income or wages and with which the Commissioner of the Internal Revenue Service has entered into an agreement regarding disclosure. The definition of state also includes any governmental entity formed and operated by a qualified group of municipalities that includes two or more municipalities each of which imposes a tax on income or wages and administers the law relating to the imposition of taxes through such entity and that collectively have a population in excess of 250,000.

**Note:**

Some municipalities are combined with county government. Due to the statutory complexities of such governmental arrangements, close coordination with the Chief, Disclosure is needed before agreements are negotiated.

**Note:**

All agreements with the Commonwealth of Puerto Rico, Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands are tax conventions within the meaning of IRC §6105 even if information exchanges are covered by IRC §6103(d). See IRM 11.3.25, Disclosure to Foreign Countries Pursuant to Tax Treaty.

3. **State tax administration** - the administration, management, conduct, direction, and supervision of the execution and application of the revenue laws (or related statutes) of the state; the development and formulation of state tax policy relating to existing or proposed revenue laws or related statutes of the state, including assessment, collection, enforcement, litigation, and statistical gathering functions under such laws and statutes. The term does not include non-tax functions of a state agency such as the determination of eligibility for unemployment compensation or the collection of such benefits if erroneously paid. If a state transfers tax administration functions (e.g., statistical gathering or revenue forecasting) from a revenue agency to a state agency that does not actually administer taxes, disclosures under IRC §6103(d) cannot be made to this successor agency. If residual functional responsibilities remain with the revenue agency, close coordination with Disclosure personnel is necessary to determine the disclosure statutory provisions that apply.

4. **Basic agreement** - the Agreement on Coordination of Tax Administration executed by the Commissioner of Internal Revenue and the head of a state tax agency.

5. **Implementing agreement** - an agreement, complementing the basic agreement, entered into between the IRS and the head of a state tax agency with which IRS has finalized a written agreement on coordination of tax administration.
6. **Primary Disclosure Office** - the Disclosure office manager responsible for negotiating agreements and overseeing disclosures with the state tax agency.

7. **Secondary Disclosure Office** - used with reference to multi-Disclosure office states only, the Disclosure office(s) other than the primary Disclosure office. A multi-Disclosure office state is a state having more than one IRS Disclosure office within its borders, e.g., California.

8. **Affected Campus** - the campus(es) responsible for processing the returns of taxpayers residing in primary and/or secondary Disclosure offices’ geographical areas and involved in disclosures of data to a particular state tax agency.

9. **Field Disclosure Manager** - the Disclosure official at a local IRS office.

10. **Governmental Liaison** - the IRS Fed/State official designated to provide services to an identified state or states.

11. **The Office of Safeguards** - the Safeguards Program office within Communications, Liaison and Disclosure, is responsible for oversight of IRC §6103(p)(4) and conducts periodic safeguards and on-site "need and use" reviews of state tax agencies.

11.3.32.3 (10-22-2010)

**Authority for Disclosure**

1. IRC §6103(d)(1) permits the disclosure of returns and return information with respect to taxes imposed by chapters 1, 2, 6, 11, 12, 21, 23, 24, 31, 32, 44, 51, and 52, and subchapter D of chapter 36 of the Internal Revenue Code to any state agency, body or commission, or its legal representative charged under the laws of the state with the responsibility for administration of any state tax law. See (5) below for the titles of these chapters.

**Note:**

Basic agreements must be limited to the type of tax administered by the respective agency. For example, state employment offices will have no jurisdiction over consolidated corporate returns (Chapter 6 taxes) or excise taxes (Chapters 31 and 32 taxes). Thus, those types of taxes should not be listed in the basic agreement and no disclosures of those types of tax information can be made.

2. Disclosure may be made only in response to a written request by the head of the agency, body or commission only for the purpose of, and to the extent necessary in, the administration of such tax laws.

3. The request may designate representatives to inspect or receive copies of the returns or return information, but such representatives may not include any individual who is the chief executive officer of the state or anyone who is not an employee, legal representative, or authorized contractor of the agency (see IRC §6103(n)), body, or commission.

4. Disclosure of returns or return information must be denied if it will identify a confidential informant or seriously impair a civil or criminal tax investigation.

5. The titles of the chapters listed in IRC §6103(d)(1) are as follows:
Chapter   Title
1   Normal Taxes and Surtaxes
2   Tax on Self-Employment Income
6   Consolidated Returns
11   Estate Taxes
12   Gift Tax
21   Federal Insurance Contributions Act
23   Federal Unemployment Tax Act
24   Collection of Income Tax at Source on Wages
31   Retail Excise Taxes
32   Manufacturers Excise Taxes
44   Qualified Investment Entities
51   Distilled Spirits, Wines and Beer
52   Tobacco Products and Cigarette Papers and Tubes
36, Sub. D   Tax on Use of Certain Vehicles

6. IRC §6103(k)(5) permits the disclosure, to state or local agencies, bodies or commissions lawfully charged under any state or local law with the licensing, registration or regulation of income tax return preparers, of taxpayer identity information with regard to the preparers and information as to whether or not any penalty has been assessed against such preparers under IRC §6694, IRC §6695, or IRC §7216. In response to a written request from the head of the agency, body, or commission designating the officers or employees to whom the information is to be disclosed, the information may be furnished and used only for the purpose of licensing, registration, or regulation of the preparers. Disclosures are subject to the accounting requirements of IRC §6103(p)(3)(A), but are not subject to safeguards under IRC §6103(p)(4).

7. IRC §4102 permits the inspection of records required to be kept regarding taxes on gasoline and lubricating oils (Subchapter A, Part III of Chapter 32, Manufacturers Excise Taxes) by officers of a state or political subdivision charged with the enforcement or collection of any tax on such products. Disclosures under this Code section are to be made pursuant to regulation. See Treasury Regulation §48.4102-1. Information other than that taken directly from returns may not be disclosed under this provision. Disclosures involving sole proprietors must be accounted for under the Privacy Act.

8. Refund offset information disclosed to states by the Financial Management Service (FMS) under IRC §6103(l)(10), for offsets authorized by IRC §6402(e), is not governed by IRC §6103(d). The requirements and restrictions of IRC §6103(l)(10) apply to this information that differs from IRC §6103(d) and §6103(n) requirements and restrictions. For this reason, it is advisable that states not commingle IRC §6103(l)(10) data with IRC §6103(d) data, because contractors cannot have access to IRC §6103(l)(10) data.

11.3.32.4 (10-22-2010)

Need and Use
1. Disclosure of Federal returns and return information to a state tax agency under IRC §6103(d)(1) are restricted to the agency’s justified state tax administration need for and use of such information. See Policy Statement P-1-35.

2. Disclosure Managers will maintain separate written documentation of agency needs for and uses of information disclosed on a continuing basis, pursuant to an agreement on coordination of tax administration, and of each data item provided in digital or electronic format.

3. Every effort will be made to eliminate disclosure of unnecessary information to state tax agencies. Requests for copies of tax returns are to be carefully reviewed to determine what specific information is needed and whether a copy of the entire return should be provided or if a computer transcript is more appropriate.

**Example:**

An agency may simply need information concerning a specific item of information or schedule. If so, that item can be extracted or a copy of only the necessary schedule provided.

**Note:**

Because of the way some information is stored, it may be necessary in rare cases to disclose more tax information than can actually be used to ensure that the agency receives needed information. These accommodations should be temporary (i.e., used as a bridge until the necessary system changes can be made) and the state should destroy all unneeded information as soon as practicable. The overall disclosure scheme meets the need and use standard because without the accommodation, the core data could not be disclosed.

4. Tolerances and criteria will be established for information furnished on a continuing basis. Information that the agency cannot use should normally not be provided. See IRM 11.3.32.6.1(2)(c) below, for more about tolerances and criteria.

5. When discussing and documenting a state tax agency’s need for and use of specific information, it is understood that the state tax agency may subsequently use the Federal returns and return information for any state tax administration purpose authorized by the basic agreement even though such subsequent uses were not discussed or noted in the Disclosure manager’s documentation records. However, see IRM 11.3.32.21 for states' use of Federal returns and return information for special statistical studies, revenue projections, tax modeling, or similar purposes.

6. Office of Safeguards personnel will conduct an on-site "need and use" review of each state tax agency receiving Federal tax information in accordance with its established procedures. When determined appropriate by the Director, Office of Safeguards, GLs and Disclosure staff may accompany Safeguards staff on "need and use" reviews. See IRM 11.3.32.9.

7. Disclosures made to state and local agencies under IRC §4102 and IRC §6103(k)(5) will likewise be subject to the same need and use restrictions described above, except for the on-site review requirement.
Basic Agreements

1. The basic agreement provides for the mutual exchange of tax data between a specific state tax agency and the IRS. The provisions of the basic agreement encompass required procedures and safeguards.

2. Arrangements for continuing disclosures are made by means of an implementing agreement discussed in IRM 11.3.32.6 below. State tax agency requests for tax data not covered by an Agreement on Coordination of Tax Administration (referred to as the basic agreement) must be made in accordance with instructions contained in IRM 11.3.32.13 below.

3. A model Agreement on Coordination of Tax Administration is shown in Exhibit 11.3.32-1. Individual modifications to the standard provisions of the model are not permitted. Necessary departures from the standard provisions, however, may be proposed and submitted to the Director, GLD for consideration and approval by the Commissioner (office of the Secretariat).

Note:

The Headquarters Office of Governmental Liaison has this agreement available electronically on its website.

4. The scope of the basic agreement and subsequent implementing agreement will be initially developed and negotiated through discussions between the GLD Area Manager and the head of the state tax agency. The servicing Disclosure Manager is expected to play a key role in the development, negotiation and administration of such agreements. All legal questions must be addressed before an agreement is sent forward. It may be necessary to engage Area Counsel during this stage. Common questions include whether a municipality has a qualifying tax, whether an item called a "fee" is actually a tax, whether the structure of the revenue agency meets IRC §6103(d) standards, whether contemplated state uses of Federal tax information qualify as tax administration, etc. When legal questions are involved, Area GLD personnel must involve the Chief, Disclosure in their resolution.

5. The head of the state agency will sign two copies of the proposed basic agreement. For this purpose, the head of the agency is generally the official (other than the governor or mayor) responsible under the state law for the functions of the tax agency or department. While a governor or mayor could be a cosigner with this official, their signature alone is not sufficient. IRC §6103(d) prohibits a state’s chief executive officer from accessing Federal tax information.

6. The GLD Area Manager will send both signed copies to the Chief, Disclosure, for review and subsequent signature by the Commissioner. The transmittal document must include the reasons for entering into the agreement. In addition, need and use justifications and IRC §6103(p)(8) considerations must be addressed. See IRM 11.3.32.14.1 below. The Chief, Disclosure will coordinate with Chief Counsel, Procedure and Administration, if it is thought that Head Quarters (HQ) legal issues still need to be resolved. The agreement
will be returned to the field if the issue is one that Area Counsel should have addressed. Copies of applicable state statutes must accompany all new and revised agreements.

7. Following the Commissioner’s signature, one signed copy will be retained in Headquarters and the other will be returned to the GLD Area Manager, who will have copies made for the affected Disclosure offices. The other signed copy will be returned to the state tax agency or department.

8. The agreement becomes effective upon the signature of both parties and continues in effect unless terminated by either party. A change of incumbent in the office of either party to the agreement has no effect on the agreement.

9. Sections 2.5 and 3.3 of the basic agreement require that the agency head furnish the Disclosure Manager(s), with a list of designated agency representatives.

10. From time to time, it may become necessary to amend sections of a basic agreement. Usually this occurs when there is a change in state or Federal statutes or policy. Amendments will be made by addendum. A "model" addendum to be used for broadening the scope of basic agreements is shown in IRM Exhibit 11.3.32-2 below. The "model" addendum is also available electronically on the GLD website.

11. Addenda to the original basic agreement will be prepared, signed, and cleared as prescribed in (5)-(7) above. It is not necessary to formally amend the basic agreement for state tax agency responsibility changes that do not affect the chapters of tax covered in the agreement. However, see IRM 11.3.36, Safeguard Review Program, for information about the potential need for a new Safeguard Procedures Report.

12. Copies of basic agreements, including addenda, are made available to the general public through the Freedom of Information Act.

11.3.32.6 (10-22-2010)

Implementing Agreements

1. An implementing agreement is developed and negotiated with each state tax agency that wants to receive Federal returns and return information on a continuing basis.

2. This agreement will supplement the basic agreement by specifying the detailed working arrangements and items to be exchanged, including tolerances and criteria for selecting those items, as agreed to by the state tax agency and the Disclosure office. All provisions contained in implementing agreements must be consistent with the terms and conditions set forth in the basic agreement.

3. The implementing agreement can also be used to:
   A. Improve communications between the state tax agencies and IRS
   B. Eliminate unnecessary disclosures
   C. Identify additional areas when exchanges are beneficial

4. Wherever possible, the IRS should make efforts to use data available from state agencies to avoid duplicate resource expenditures. The appropriate IRS function can then evaluate the information in light of IRS tax compliance programs.

5. The majority of exchanges with a state tax agency are in a geographic area that is within the purview of the local Disclosure Manager. Disclosure Managers are encouraged to send any items that may have nationwide significance to the Chief, Disclosure.
6. Implementing agreements are reviewed periodically and amended or revised when necessary.
7. Agreements may be amended at any time to reflect the addition of new exchange programs or modifications to existing exchanges. Memorandums of Understanding (MOU) are used in lieu of amending implementing agreements. See IRM 11.3.32.8, below, for information on MOUs.
8. Copies of implementing agreements and any amendments are attached to the appropriate basic agreement maintained by the Disclosure Manager.
9. When any conflict arises between the provisions of the Agreement on Coordination of Tax Administration and the implementing agreement, the terms of the basic agreement will govern.

11.3.32.6.1 (10-22-2010)

Content of Implementing Agreements

1. **Federal and State Liaison Officials** - In order to establish one primary point of contact between state tax agencies and the IRS, a GL has been assigned to each state.
   A. The primary IRS liaison officials are the Disclosure Manager and the GL assigned to cover the state.
   B. The state agency should also designate a primary liaison official
   C. If desired, secondary liaison personnel may also be designated for contact regarding routine operational matters.

   **Note:**

   A campus employee could be designated to handle data processing questions or problems regarding transmittal of documents between the campus and the state tax agency. Likewise, an employee could be designated to handle problems with revenue agents’ reports, such as illegible copies.

2. **Information to be Exchanged** - This topic is covered in the implementing agreement in sections III to VII.
   A. These sections contain a description of the specific types of documents that are exchanged. Form numbers and titles are indicated wherever possible. These sections should also specify the function that provides and receives the information as well as any specific procedures for making requests.
   B. Section III, Part .01.1.a of the implementing agreement contains a brief description of the state tax agency’s participation in the GL Data Exchange Program. Through the Detroit Computing Center, the Chief, Data Services coordinates certain data extract programs whereby state tax agencies may obtain return information. These programs include, but are not limited to, the following data extracts:

   Individual Master File (IMF)
Individual Returns Transaction File (IRTF)

Business Master File (BMF)

Business Returns Transaction File (BRTF)

Information Return Master File (IRMF)

Exam/Appeals

Taxpayer Address Request (TAR)

Non-itemizer tape

CP-2000 (UNDERREPORTER)

Levy sources

P-TIN and ITIN

Corporate Affiliations

Form 1099-Miscellaneous

C. Tolerances and/or criteria for selection of the data described in (2) above are specific. Avoid vague statements such as "...to the extent that such adjustments may be reasonably expected to result in a state (or Federal) tax liability." Instead, dollar tolerances should be shown and should be based upon the projected volume of data available for exchange as well as the receiving agency’s anticipated ability to use the data. Whenever possible, criteria should be established that will prevent exchange of data that is of no value to the receiving agency (e.g., where a tax adjustment results solely from the use of an incorrect tax table). The most recent review of the state tax agency’s need for and use of IRS material is considered when establishing or revising the tolerances and criteria to be applied to data available to the agency. Portions of the agreement that contain tolerance and criteria information are designated as "Official Use Only" and accorded the same protection as all other Sensitive But Unclassified information. Tolerances and criteria for the formal data extract program (see IRM 11.3.32.11 below) are maintained and adjusted consistent with the documentation retained for that program. It is not necessary to repeat these in the implementing agreement, although the agreement must reference participation in the data extract program. Nothing in this section precludes disclosure programs based on state code extract.

D. Other Returns and Return Information are specified in .03 of Section III. This permits notification to state tax officials about returns and return information that may be evidence of noncompliance with state tax laws that would not be
transmitted to the state tax officials under other provisions of the implementing agreement.

E. This section also establishes a procedure for disclosing these returns and return information in a manner compliant with the need and use and written request requirements of IRC §6103(d)(1). IRM Exhibit 11.3.32-3 contains the necessary language.

F. Sections V and VI of the implementing agreement cover related disclosures. The state must use the specific language of Section VI if it wants to take advantage of IRS initiated disclosures when the specific information is not covered under other sections of the implementing agreement. These disclosures are necessary to insure the integrity of the tax administration system and retain public trust in the state tax agency.

3. The implementing agreement should also include additional topics regarding mutually agreed upon programs, practices and procedures. The topics must not repeat or modify statements contained in the Agreement on Coordination of Tax Administration or information required in other documents or reports.

A. Example:

The safeguard and recordkeeping requirements of IRC §6103(p)(4) are stated in the Agreements on Coordination of Tax Administration and need not be repeated in implementing agreements. Implementing agreements should likewise exclude methods used for disposal of copies of returns and return information since the state tax agencies are required to provide this information in their reports of safeguard procedures.

4. Disclosures field personnel are encouraged to use the implementing agreements to indicate all agreed-upon exchange activities when these activities are not specified elsewhere. Some possible topics include:
   A. Cooperative Training Programs.
   B. Cooperative Taxpayer Assistance Programs.
   C. Review of Lists of Authorized Personnel.
   D. Reproduction Costs.

Note:

Waiver of charges will not apply to special runs and re-creation requests. See IRM 11.3.32.11(10) below.

5. The primary signatories to an implementing agreement are the GLD Area Manager and the head of the state tax agency. Close coordination by the GL and the Disclosure Manager with all affected operating divisions, functions, and campuses during the negotiation process is necessary so that all participants clearly understand the exchange process. This coordination also ensures that necessary resources are available to carry out agreed upon exchanges.

Note:
Additional signatures must be obtained from all affected operating divisions, functions, and campuses in accordance with current operating procedures. The involvement of Modernization & Information Technology Services (MITS) resources will be a prime consideration.

6. Implementing agreements signed with the U.S. Possessions are considered Tax Conventions under IRC §6105. All such agreements must include the Deputy Director, International Large Business and International LB&I as a signatory. See IRC §6105, , and Delegation Order 4-12 .

11.3.32.7 (10-22-2010)

Implementing Agreement Roles, Responsibilities, and Procedures

1. The primary Disclosure Managers have responsibility for ensuring the development and negotiation of implementing agreements with the appropriate state tax agencies within their jurisdiction. This responsibility includes:
   A. Initiating contact with the state tax agencies through the GL.
   B. Seeking input from affected campuses, operating divisions, and functions.
   C. Drafting the implementing agreements.
   D. Arranging meetings between state and IRS officials through the GL.
   E. Ensuring timely submission and review of implementing agreements and any subsequent amendments.

2. The primary Disclosure Managers will be responsible for maintaining complete and current documentation of the state tax agency’s need for and use of all Federal returns, return information and data elements that are provided to the agency on a continuing basis pursuant to the implementing agreement.

3. Affected campuses, operating divisions, and functions are responsible for providing timely input to the Disclosure Managers and assuring that the Disclosure office is promptly appraised of any significant changes in programs, practices and procedures that might affect exchange program activities.

4. Disclosure offices involved in negotiating implementing agreements with the appropriate state tax agencies are to ensure that affected operating divisions, functions, and campuses are fully involved and concur with the terms of agreements that affect their operations.

5. Implementing agreements do not need the approval of the Director, GLD prior to signing. For that reason, local Disclosure Managers involved must be sure the information exchanged can be done so by statute - IRC §6103(d). For example, if the implementing agreement contemplates the exchange of Title 31 or CTR data, it is statutorily prohibited from being provided to state tax agencies if taken from the IRMF or Currency and Banking Retrieval System (CBRS) systems. The negotiating Disclosure office will distribute copies of signed implementing agreements to the GLD Area Manager and to affected campuses, operating divisions, and functions. Upon completion of signing the implementing agreement, one copy with original signatures will be given to the agency. The affected Disclosure office will maintain the other signed copy.
6. The Disclosure office staff will distribute copies of amended or revised implementing agreements to the GLD Area Manager and to the affected campuses, operating divisions, and functions. Retention of the agreements by the GLD Area Manager is optional.

7. Copies of implementing agreements are generally available to the public through the Freedom of Information Act. Portions of the implementing agreements that contain tolerance and criteria information are to be protected from disclosure and given the same protection accorded to all other material categorized as sensitive but unclassified (SBU). U.S. Possession agreements (e.g., Tax Information Agreements, Tax Coordination Agreements, MOUs), are considered Tax Conventions within the meaning of IRC §6105 and can only be disclosed consistent with IRC §6105.

8. The Office of Safeguards staff is responsible for ensuring that information exchanged via implementing agreements is safeguarded consistent with IRC §6103(p)(4) requirements. See IRM 11.3.32.2(11) above and IRM 11.3.36, *Safeguard Review Program*.

**11.3.32.8 (10-22-2010)**

**Memorandums of Understanding**

1. GLs have primary responsibility for the development and coordination of MOUs. MOUs should be considered for specific projects/exchanges that are short term or when the disclosure is authorized under some Code section other than IRC §6103(d).

   **Note:**

   MOUs may also augment an implementing agreement when instructions regarding the process are lengthy. MOUs should be later incorporated into the implementing agreement as appropriate, especially if they are going to be on-going exchanges.

2. MOUs are signed by an official in the operating division having jurisdiction for the project/exchange and who is authorized by Delegation Order 11-2. The head of the state tax agency will also sign since disclosures of Federal or state information are involved.

   **Note:**

   When disclosure of tax returns or tax information is involved, the agreement must be routed through the Disclosure Manager and GL for comment and concurrence since it constitutes an amendment to the implementing agreement. Nondisclosure agreements are routed the same way. For more information about signatory requirements, especially when MITS or U.S. Possessions are involved, see IRM 11.3.32.6.1(5)-(6) above.

3. The title section of the MOU should include the names of the agencies involved in the agreement.
4. Specific instructions for the project/exchange should be included to avoid confusion. All significant operational processes, including the roles and responsibilities of the IRS and the respective agency, should be included.

**Note:**

This may also contain who is responsible for completing any required accountings for disclosure.

5. If time is an issue, requirements for responsiveness should be described.
6. Comments regarding the security and disposition of exchanged information may be appropriate.
7. Before making commitments to provide resources, appropriate parties should be consulted.
8. Chief Counsel, Procedures and Administration Branch, should be contacted for any required legal opinions.
9. Disclosure Managers must be involved in the approval process for all MOUs.
10. Signature areas will contain blanks for name, date and location.
11. The Chief, Governmental Liaison, the Chief, Disclosure, and the operating divisions, functions, and campuses involved will maintain signed copies. Any other parties to the agreement will also receive a copy.

**Note:**

Two copies of the MOU are prepared for original signatures. Upon completion of signing, one copy with original signatures is sent to the agency, the other signed copy is maintained by the Chief, Governmental Liaison. Copies of the MOU are provided by GL to the Disclosure office and the involved operating divisions, functions, and campuses.

**Note:**

Prior to receipt of Federal tax information under any new MOU, the agency must certify that it meets IRS safeguard requirements. IRM 11.4.1, *Governmental Liaison Operations*, contains instructions pertaining to this certification.

11.3.32.9 (10-22-2010)

"Need and Use" Reviews

1. In accordance with the Office of Safeguards requirements, (see subsection 11.3.36.9.2, "Need and Use" Reviews) an on-site review is made of the agency’s actual use or non-use of data disclosed to them on a continuing basis under the implementing or other agreement. The Director, Office of Safeguards will notify the GL and Disclosure Manager in advance of the review as Safeguards deems appropriate and invite the GL and Disclosure Manager or staff member to attend. Magnetic media or electronic exchanges
are covered during this review. The report must address whether the agency receives electronic data and/or tape extracts and, if so, the agency’s use of such data.

2. Safeguards' report of their review conducted pursuant to IRC §6103(p)(4) will also include a report describing the method and scope of the "need and use" review, and a summary of review findings See IRM 11.3.36.9.2.

3. The data obtained during the review will help to identify tolerances and criteria that should be modified to reduce or eliminate disclosures of data the agency does not or cannot use. Safeguards will share that information with GLD as appropriate.

4. When appropriate, tolerances and criteria are modified. Disclosure managers should discuss the results of this aspect of the "need and use" reviews in meetings with appropriate state tax agency personnel.

5. Subsequent documentation that addresses any tolerance and criteria modifications by the agency are forwarded to the Director, Office of Safeguards.

11.3.32.10 (10-22-2010)

Authorized Disclosures

1. Disclosure Managers will ensure that requests are processed consistent with IRC §6103(d) requirements. These requests do not need to be processed in the primary Disclosure office. Alternate procedures may be developed between the primary Disclosure office and campuses, or secondary Disclosure offices located within the same state.

2. An officer or employee of a state tax agency may inspect or receive Federal returns or return information of specifically identified taxpayers if:
   A. The type of tax data is disclosable to the agency under an Agreement on Coordination of Tax Administration currently in effect between the agency and the IRS.
   B. The officer or employee has been designated in writing by the head of the state tax agency to receive the type of tax data requested.
   C. The officer or employee submits a proper written request in accordance with the Agreement on Coordination of Tax Administration and the implementing or other agreement; and
   D. Disclosure of the information sought would not identify a confidential informant or seriously impair any civil or criminal tax investigation and is not otherwise restricted. See IRM 11.3.32.17 below.

3. A proper request is one directed to the appropriate IRS official designated in the basic agreement or the implementing or other agreement that includes:
   A. The name, signature, title, and office location of the authorized individual who is to inspect or receive the returns or return information.
   B. The name and other identifying information of each person or entity whose return(s) or return information is to be disclosed and a description of the specific return(s) or information requested, including type of tax and taxable years, and
   C. The purpose for which the information is being requested, including the reason why the information is needed and how the agency intends to use the information.
4. An IRS official receiving a request from a state agency representative to inspect returns or obtain return information, shall satisfy himself/herself as to the identity of the individual, and with the assistance of the Disclosure office, ensure that the above requirements are met.
5. The means for transmitting returns and return information may vary according to the sensitivity of the material involved.
6. Form 8796, Request for Returns/Information (Federal/State Tax Exchange Program), is used by either IRS or employees of state tax agencies to request returns and/or return information in accordance with an approved Agreement on Coordination of Tax Administration (basic agreement). Use of this form is encouraged but not mandatory. When Form 8796, Request for Returns/Information (Federal/State Tax Exchange Program) is used, sections C and D are signed by officials who are authorized to make requests and/or release information under the terms of the basic and implementing agreements.

Caution:

Requests from IRS compliance employees seeking state tax information are not controlled as IRC §6103(d) requests, but are to be controlled as assisting office cases so not to be selected for later review by the DQMS process.

Note:

Supplies of Form 8796, Request for Returns/Information (Federal/State Tax Exchange Program) can be requested from the National Distribution Center or the electronic version on the IRS Publishing web page can be used.

7. State tax agencies can participate in the Transcript Delivery System (TDS) that allows approved state employees to order certain IRS transcript products on-line. All regular rules regarding IRC §6103(d) disclosures apply, including need and use monitoring and accounting for disclosures. Integrated Data Retrieval System (IDRS) Transaction Code (TC) 120s will automatically post to the Disclosure Accounting File. The transcripts contain information that would never be subject to an impairment call to withhold disclosure to the state.

11.3.32.10.1 (10-22-2010)

Continuing Disclosures

1. Disclosure of returns and return information on a continuing basis are carefully and thoroughly screened and evaluated to assure that the tolerances and criteria established by written agreement are observed.
2. Disclosure Managers must have a written document in place describing the procedures, tolerances, and criteria to be used by IRS personnel when releasing information to state tax agencies.
Example:

The written document may be an inter- or intra-functional procedural memo.

3. Disclosure Managers may periodically perform quality reviews of other IRS functions releasing documents to assure that the provisions of the implementing or other agreements are being met and that the restrictions imposed by IRM 11.3.32.17 are being followed. Both pre and post disclosure reviews can be conducted as appropriate as determined by the Chief, Disclosure.

11.3.32.11 (10-22-2010)

Release of Tax Data in Electronic Format

1. The Governmental Liaison Data Exchange Program (GLDEP) is the title given to certain electronic data-sharing activities between the IRS and participating state tax agencies. For more information about the GLDEP, see IRM 11.4.2.1, Overview of the Governmental Liaison Data Exchange Program.

2. Electronic extracts are available to state tax agencies that have entered into basic agreements with the IRS. These are provided to states via the IRS Secure Data Transfer (SDT) program.

3. The extracts are available to the extent that the state agency can justify the extract is needed for a state tax administration purpose. For certain extracts, specific data elements are included in the extract to the extent that the state agency can justify the specific data elements are necessary for a state tax administration purpose. Agencies will be asked to explain how they intend to use the extracts and/or the specific data elements. See IRM 11.3.32.4 above for more details.

4. The GLDEP consists of many data extracts and undergoes frequent changes. Although agencies must enroll for extracts on an annual basis, distribution schedules vary. Some extracts are distributed annually, monthly, weekly, and some have irregular distribution schedules. For more information about the extracts, see the Data Services web page and IRM 11.4.2.3, Scope of the Program.

5. Details on the production, content, and distribution of the extracts are published annually in a series of publications called "Specification Books." The Specification Books are distributed by the local GL prior to extract distribution. Enrollment information and instructions are available yearly in the "GL Data Exchange Enrollment Package." Pertinent information regarding selection of specific data elements are available each year in the "IMF/IRTF and BMF/BRTF Data Element Selection Package." This package is the mechanism by which states request specific data elements and submit a need and use justification for each. Both packages of forms are created and distributed each year by GLD Data Services staff. See IRM 11.4.2.5.2.

6. GLs are to contact the state tax agency liaison officials regarding these extracts and, in coordination with the Disclosure Manager, help interested agencies enroll for extracts and request specific data elements. The extracts, once approved, are sent electronically to the recipient agency.
7. Determinations and documentation of state tax agency need for and use of the data items selected are made by the local Disclosure Managers and are retained in their files for use in reviews by Safeguards personnel if requested. In addition, Disclosure Managers will determine whether the data items selected are consistent with the types of tax available to the state agencies under Section 3.2 of their basic agreement. See IRM 11.4.2.11.4.

8. All data received via the GLDEP is kept in a secured area under the immediate protection and control of the state tax authority or its authorized IRC §6103(n) contractor. Processing of data extracts are performed in a manner that will protect the confidentiality of the information on magnetic or digital media.

Note:
Publication 1075 (as revised), Tax Information Security Guidelines for Federal, State and Local Agencies and Entities, describes the specific requirements for insuring the confidentiality of the tax data.

9. Agencies that participate in the GLDEP may request enhancements or changes to the program. The IRS Governmental Liaison Data Exchange Enhancement or Data Availability Request Form is used to request GLDEP enhancements. The form includes detailed instructions and is available from the local GL. State requests are routed through the local GL to the servicing Disclosure office for approval of need and use, then to the GLD Area Manager, and finally to the Chief, Data Services for coordination and processing. Approval of such requests will depend on the availability of data and the impact on IRS resources. All requests are signed by the requesting agency head or an authorized agency representative.

Note:
The local Disclosure Manager is formally involved in the approval of the request.

10. The IRS made a policy decision to waive the charge to state and local tax agencies for extracts available under the GLDEP. Special runs and re-creation requests will continue to be processed on a cost reimbursable basis. IRC §6103(p)(2)(B) provides the authority to charge for extracts.

11.3.32.12 (10-22-2010)

Release of Tax Information Relating to State Tax Employees for Conduct Investigations or Employee Checks

1. State tax administration, as defined in Section 2.13 of the Agreement on Coordination of Tax Administration, includes ongoing or potential conduct-related investigations of state tax agency employees. (See Exhibit 11.3.32-1 for more detailed information.) This definition also includes compliance-type checks of employees and prospective employees of state tax agencies. The management and supervision of a state’s internal revenue laws includes verification that its tax employees are free from conflicts of interest that could
undermine the integrity of the state’s tax system. The standards for disclosures of this type are different from those for revenue compliance purposes.

2. When a state tax agency wants tax information for a purpose described in (1) above, a specific written request is submitted directly to the Disclosure Manager, generally following the procedures in IRM 11.3.32.10.

3. In order to meet the need and use standards of IRM 11.3.32.10(3)c), the request must include the following:
   A. Specific documentation regarding the particular conduct-related reason why disclosure of Federal tax information is necessary.
   B. Specific documentation why the requested return(s) and/or return information is, or may be, relevant to the inquiry.
   C. Where applicable, copies of, or reference to specific rules of conduct, regulations, personnel directives, etc.

4. State requests for conduct-related disclosures should be addressed in the implementing agreements.

5. In accordance with the principles of IRM 11.3.32.6.1(2), the IRS may initiate conduct-related disclosures when the state is eligible to receive the information and has shown a broad need for that category of information even though it has not identified a particular employee. In such cases, the IRS will make disclosures only if the following wording is contained in the implementing agreement:

"When the IRS Disclosure Manager has a Federal return and/or return information that will not be transmitted to the Agency under other provisions of this agreement, but that may be evidence of any violation, suspected violation, or potential violation by an employee of the state tax agency of Federal or state tax law or statutes, regulations, or rules governing the conduct of state tax employees that violation or potential violation could damage the integrity of the tax administration system or, if known to the general public, could decrease public trust in the state tax agency, that Manager will contact the Agency liaison official and, without disclosing identifying information, describe the return and/or return information in sufficient detail to ascertain the Agency’s need and potential use of the return and/or return information. If, in the judgment of the IRS Disclosure manager, the Agency has a need and use of the return and/or return information, he/she shall then transmit the return and/or return information to the Agency."

11.3.32.13 (10-22-2010)

Disclosure to Agencies that Have NotEntered Into Agreements on Coordination of Tax Administration

1. The head of a state tax agency (other than the governor or equivalent official) may request access to returns and return information on a case-by-case basis under IRC §6103(d) without entering into an Agreement on Coordination of Tax Administration.

2. These requests are signed by the agency head and addressed to the Commissioner of Internal Revenue, Attention: Director, GLD. The request should contain the following data:
A. The name, title and office location of the state tax agency representative who is to inspect or receive returns, return information or taxpayer identity information on behalf of the agency.
B. The specific state tax law that the agency is charged with administering.
C. The agency’s specific tax administration need for the information being requested and an explanation of how the information will be used to satisfy that need (statements that information is needed for or will be used in administering state tax laws are not sufficient).
D. The name and identifying information of each person or entity whose return or return information is to be disclosed, and a description of the returns or return information sought, including the type of tax and the taxable periods for such return or return information.
E. When applicable, a copy of the state’s statutes that protect the confidentiality of a copy of any portion of a Federal return or information reflected on such returns that taxpayers are required to attach to or include in their state tax returns (see IRM 11.3.32.14.1 below, for specifics).

3. The state tax agency must also indicate in its request that it agrees to all of the requirements of IRC §6103(p)(4) and any additional requirements imposed by the IRS. These requirements are described in detail in IRM 11.3.32.14 below.

4. The Director, GLD will provide specific disclosure instructions in response to these requests after coordination with the Director, Office of Safeguards and Disclosure Managers in affected offices to determine whether there is any objection to release of the information requested.

5. Requests for return information in magnetic tape format are made in the same manner as described in (1), (2), and (3) above, except that item (2)(d) would be inapplicable. Also see IRM 11.3.32.11 above, for specific instructions.

11.3.32.14 (10-22-2010)

State Agency Requirements

1. IRC §6103(p)(4) authorizes the IRS to require that state agencies maintain adequate safeguard procedures for the returns and return information they receive pursuant to IRC §6103(d).

2. This is necessary to ensure Federal tax information received is protected and not compromised. In the event a state agency does not maintain adequate safeguards or take action to prevent and detect unauthorized disclosures or inspections, the IRS can withhold Federal returns and return information, subject to an administrative appeal procedure. However, when a state agency is known to be allowing unauthorized accesses/disclosure, as opposed to being vulnerable to such prohibited acts, the IRS may immediately suspend disclosures after notifying the state. See Treasury Regulation §301.6103(p)(7)-1(a)(2), and IRM 11.3.36, Safeguard Review Program.

3. Direct or indirect disclosure of Federal returns and return information by the state tax agency to local tax authorities or others, except for legal representatives, IRC §6103(n) contractors or state auditors, is not permitted.
Note:

This is not intended to limit the disclosure of state tax returns and return information by state tax officials to local tax authorities. State return information that may be disclosed consistent with state law includes information resulting from tax audits and investigations conducted by state authorities, even where that information is based on or is substantially similar to Federal return information supplied to the state agency. State tax officials may not, however, merely transcribe Federal return information, designate it as state tax information, and furnish it to local tax authorities as information resulting from a state audit or investigation. No Federal tax information can be disclosed directly or indirectly (e.g., by revealing the fact of an IRS audit).

4. Congress intended that the statutory criteria applicable to access to Federal tax data by the Justice Department in a Federal tax investigation or in preparing for Federal tax litigation be applicable to disclosures to the state tax agency’s legal representative.

5. IRC §6103(d) does not authorize the IRS to disclose information to a state tax agency or its legal representative for non-tax purposes, including joint tax/non-tax state criminal investigations/prosecutions. Further, there is no other provision in IRC §6103 that permits the IRS to make disclosures for state non-tax criminal prosecutions.

6. As a condition for their access to Federal returns or return information, state agencies must agree to the following requirements:
   A. Establish and maintain, to the satisfaction of IRS, a permanent system of standardized records with respect to any request made by the agency for inspection or disclosure, the reason for the request and the date of the request, and, in addition, any disclosure made by or to it.
   B. Establish and maintain, to the satisfaction of IRS, a secure area or place in which the returns or return information are stored.
   C. Restrict, to the satisfaction of IRS, access to the returns and return information to persons whose duties or responsibilities require access and to whom disclosure may be made.
   D. Provide such other safeguards as IRS may determine necessary or appropriate to protect the confidentiality of the returns and return information.
   E. Furnish to the IRS the safeguard reports described in IRM 11.3.36.6.3, Agency Reports. The Safeguard Procedures Report is submitted no later than 45 days before scheduled receipt of Federal tax information. The Safeguard Activity Report is submitted annually.
   F. Upon completion of use, either return the tax information, along with any copies, to IRS or destroy the returns, return information, and copies, and furnish a written report to IRS describing how the destruction was accomplished.
   G. Permit IRS, and to effectuate the provisions of IRC §6103(p)(6)(A), the Government Accountability Office, to review the extent to which the agency is complying with these requirements.
   H. Give written notification to all agency representatives and any other person authorized to access Federal returns or Federal return information of the criminal penalties and civil liability provided by IRC §§7213, 7213A, and 7431 for unauthorized disclosures or inspection of Federal returns or return information.
I. Provide the IRS with the notification required in IRM 11.3.32.19(4) below.

7. Guidelines for the periodic review of safeguard procedures are included in IRM 11.3.36, Safeguard Review Program. Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies and Entities, provides state agencies with further information about these requirements. Publication 1075 is available on the IRS’ website at: http://www.irs.gov

11.3.32.14.1 (10-22-2010)

State Law Requirements

1. IRC §6103(p)(8) provides that no return or return information shall be disclosed to any officer or employee of any state that requires a taxpayer to attach to, or include in, any state tax return a copy of any portion of his/her Federal return, or information reflected on such Federal return, unless the state adopts provisions of law that protect the confidentiality of the copy of the Federal return, or portion thereof, attached to, or the Federal return information reflected on the state tax return.

2. At the request of a state, the IRS will render an advisory opinion as to whether any existing or proposed legislation fulfills the requirements of IRC §6103(p)(8). At a minimum, the expectation is that the confidentiality statute provides for at least a misdemeanor for unauthorized disclosure and that it covers both past and present agency employees.

3. It is not intended that states enact confidentiality statutes that are copies of the Federal statute. State returns and return information, including any copy of any portion of a Federal return or any information on a Federal return required to be attached or included with a state return, may be disclosed by state tax officers or employees to other officers or employees of the state or its political subdivisions whose official duties or responsibilities require access to the state return or return information pursuant to the laws of the state. Interstate disclosures of IRC §6103(p)(8) information can only be made to state revenue agencies for tax administration purposes. The underlying policy is the attached copy of the return and the included information is treated by state and local governments as confidential rather than as public information.

11.3.32.15 (10-22-2010)

Disclosure of Tax Return Preparer Information

1. The information is furnished only upon receipt of a written request signed by the head of the agency, body or commission designating the officers or employees to whom such information is to be furnished.

2. The following information is furnished and used only for the purpose of licensing, registering, or regulation of the preparers:
   - Name
   - Mailing Address
   - Taxpayer Identification Number; and
• Information as to whether any penalty has been assessed against such preparer under IRC §§6694, 6695, or 7216

3. The agency need not specifically list the names of return preparers for whom the information is requested. The agency could request information with respect to any preparer who was assessed a penalty under any of the Code sections listed above.

11.3.32.16 (10-22-2010)

Disclosure of Records Regarding Taxes on Gasoline and Lubricating Oil

1. Pursuant to IRC §4102, records required to be kept regarding taxes on gasoline and lubricating oil may be inspected by officers of a State or a political subdivision of any such state, charged with the enforcement or collection of any tax on any taxable fuel, as defined in IRC §4083. Inspection may be made only for purposes of such collection or enforcement. See IRC §4102 and 26 Code of Federal Regulations (CFR) §48.4102-1.

2. Requests for inspection must be in writing, addressed to the appropriate management official having custody of the records requested and signed by an officer of the state or political subdivision who is charged with the enforcement or collection of such taxes.

3. Requests must state the:
   A. Kind of records requested, whether pertaining to taxable fuel or aviation fuel.
   B. Period(s) covered (by the records involved).
   C. Name of the officer who will inspect the records.
   D. Name of any representative (of the officer) designated to make the inspection.
   E. Law imposing state or local tax to be enforced or collected.
   F. Law under which the officer is so charged; and
   G. Purpose for the inspection.

4. After approval or disapproval of the request, the appropriate management official will notify the person making the request, after obtaining any needed technical advice from the local Disclosure Manager.

5. Inspection is made:
   A. In the office of the appropriate management official having custody of the records requested,
   B. In the presence of an IRS employee, and
   C. During regular business hours.

Caution:

Since excise taxes on gasoline and lubricating oil are reported on Form 720, Quarterly Federal Excise Tax Return, and other excise taxes are also reported on that form, care must be taken to see that information concerning other taxes is deleted from documents to be inspected.

6. Although the safeguarding and recordkeeping requirements of IRC §6103(p) do not specifically apply to disclosures made under IRC §4102, state and local officials are encouraged to make reasonable efforts to safeguard this information.
7. Arrangements to exchange gasoline and lubricating oil information between the IRS and a particular state or local agency may be made upon written agreement by the GLD Area Manager and the head of the agency. In the case of a state tax agency that has already entered into a basic agreement under IRC §6103(d), this exchange should be specified in the implementing agreement. The implementing agreement should indicate that the excise disclosures are being made pursuant to IRC §4102.

11.3.32.17 (10-22-2010)

Restrictions on Disclosure of Returns and Return Information

1. The disclosure of certain returns and return information and other information is prohibited by law, notwithstanding the provisions of IRC §6103 or IRC §4102. This data must be identified and removed from the file prior to disclosure of the record or documents to any authorized state or local agency representative, as follows:
   A. Information obtained pursuant to tax treaty or covered by IRC §6105.
   B. Wagering tax information as defined in IRC §6103(o)(2) and IRC §4424.
   C. Currency Transaction Reports or information taken from these reports filed under Title 31 are available to state tax agencies under the Bank Secrecy Act Re-Dissemination Guidelines (or Title 31 regulations). State agencies seeking this information can enter into separate agreements with FinCEN to obtain that information. The IRS cannot provide states with Title 31 data extracted from the CBRS database pursuant to IRC §6103(d) unless that information was disclosed from an IRS administrative file and actually used in the administrative Federal tax determination.
   D. Grand Jury information.

2. Information obtained under immunity procedures must be referred to the Director, Office of Governmental Liaison and Disclosure.

3. No information is disclosed to any authorized agency representative without a determination that the disclosure would not identify a confidential informant or seriously impair a civil or criminal tax investigation. If it is determined subsequent to disclosure, that further use of the return or return information would identify a confidential informant or seriously impair a civil or criminal tax investigation, the state tax agency will be requested to discontinue its use of the information.

11.3.32.18 (10-22-2010)

Unauthorized Access or Disclosure

1. All persons having access to Federal returns or return information under the terms of this IRM shall be informed, in accordance with the instructions in IRM 11.3.1, *Introduction to Disclosure*, of the criminal penalties and civil liability for unauthorized accesses or disclosure.

2. Unauthorized disclosures where no willfulness is involved, and as described in IRM 11.3.38, are not willful, are excepted from the TIGTA reporting procedures. Employees
must follow the procedures in IRM 10.5, *Reporting Losses, Thefts, and Disclosures of Sensitive Information*, to report violations of this nature.

11.3.32.19 (10-22-2010)

**Use of Returns and Return Information in State Judicial or Administrative Proceedings**

1. The disclosure of Federal returns or return information by state tax agencies, bodies, or commissions to their legal representatives for use in preparation for proceedings involving tax administration (or investigation that may result in such proceedings) is governed by the same standards that apply to tax administration disclosures by the IRS to attorneys at the Department of Justice. Thus, Federal returns or return information may be disclosed to state attorneys personally and directly engaged in, and solely for their use in, preparing for such proceedings only if:
   A. The taxpayer is or may be a party to such proceeding or the proceeding arose out of or in connection with determining the taxpayer's civil or criminal liability or the collection of such civil liability in respect of any tax imposed;
   B. The treatment of an item reflected on such return is or may be related to the resolution of an issue in the proceeding or investigation; or
   C. Such return or return information relates or may relate to a transactional relationship between a person who is or may be a party to the proceeding and the taxpayer that affects or may affect, the resolution of an issue in such proceeding or investigation.

2. State tax agencies may not disclose Federal tax information to their legal representative or other participating agencies where the state investigation involves non-tax as well as tax aspects. That is, the provisions of Treasury Regulation §301.6103(h)(2)-1 do not apply to comparable state situations.

3. The disclosure of Federal returns or return information in state judicial or administrative proceedings pertaining to tax administration is further limited by IRC §6103(h)(4) that permits disclosure only if:
   A. The taxpayer is a party to such proceeding or the proceeding arose out of or in connection with determining the taxpayer’s civil or criminal liability, or the collection of such civil liability in respect of any tax imposed; the return information relates to the resolution of a tax issue in the proceeding; or
   B. The treatment of an item reflected on such return is directly related to the resolution of a tax issue in the proceeding; or
   C. Such return or return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer that directly affects the resolution of a tax issue in the proceeding; and
   D. The disclosure does not identify a confidential informant or seriously impair a civil or criminal tax investigation as determined by the IRS.

4. At the time of disclosure to the agency, or at the time an Agreement on Coordination of Tax Administration is signed, each agency receiving returns or return information is advised of its obligation to notify the IRS in writing of its intention to disclose any such
returns or return information in a state judicial proceeding or to any party other than the taxpayer or his/her designee in a state administrative proceeding.

5. The notice is signed by the head or legal representative of the agency and directed to the liaison GLD Area Manager or primary Disclosure Manager, from whom the information was originally received, at least 30 days prior to the date the disclosure is to be made. The following information is included in the notice:
   A. The name and other identifying information.
   B. The tax periods involved and type of tax.
   C. A description of the information to be disclosed.
   D. The purpose for which the proceeding is being conducted; and
   E. How the provisions of IRC §6103(h)(4) will apply.

6. The GLD official receiving the notification referred to above will coordinate the proposed disclosure in the manner described in IRM 11.3.32.17(3). In any case where it is known that the actions described in IRM 11.3.32.17(1)-(2) have not been taken, those actions should also be taken.

7. Except in unusual circumstances, the coordinating GLD official will prepare a response to the state official proposing the disclosure within 30 days of receipt of notification by the state. In every case, GLD must verify that a response is made prior to the date the disclosure is to be made.

8. State tax agencies will be advised to edit any documents that they intend to disclose in a judicial or administrative tax proceeding to delete Federal returns and return information where IRC §6103(h)(4) does not permit disclosure.

9. When state tax agencies are authorized to release information under IRC §6103(h)(4), it is irrelevant if the state hearing body/agency also hears non-tax cases. While the hearing agency would not be subject to IRC §6103(p)(4) requirements, the hearing agency should be advised to refrain from any re-disclosure of the Federal tax information except in proceedings before the hearing agency or appeals therefrom, because of the wording of IRC §6103(a)(2).

11.3.32.20 (10-22-2010)

Letters to Taxpayers

1. Form letters to taxpayers from state or local agencies should clearly state that any information received from the IRS was obtained pursuant to law.

2. Agency representatives are asked to use the language in (3) below, or equivalent wording, in letters to taxpayers where changes were made based upon information obtained from the IRS.

3. Statutory Authority Reference: "Under authorization of Federal law, [specify appropriate section of the IRC], this office [or name of the agency, body, commission] has obtained from the Internal Revenue Service information that...."

4. Subsequent phrases might contain the following language:
   A. "...you filed a Federal income tax return for the year showing an address within this state but we have been unable to locate your [name of state] income tax return...."
   B. "...a change has been made in your Federal income tax liability...."
C. "...you received dividend and/or interest income and thus may own property subject to state intangible personal property taxes..."
D. "...you have been assessed a penalty under IRC §6695...."
E. "...you reported excise tax on lubricating oil on your Form 720, Federal Quarterly Excise Tax Return, for period ending [tax period], but we have been unable to locate your [name of jurisdiction] excise tax return...."

11.3.32.21 (10-22-2010)

Special Statistical Studies, Compilations, and Other Services

1. State tax agencies as well as other agencies and organizations seeking statistical information compiled from Federal return information for non-tax purposes are advised to make their requests pursuant to IRC §6108(b). Address these requests to:

   Internal Revenue Service
   Director, Statistics of Income Division
   500 North Capitol Street, NW
   Washington, DC 20001

2. State tax agencies may use Federal returns and return information to prepare statistical tabulations for state tax administration where that agency has the statutory/delegated responsibility for preparing such direct tax administration tabulations. Examples of allowable uses of Federal tax information are revenue projections, tax modeling or other similar activities related to state tax administration. Such tabulations may not be released outside the agency except in a form that cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. State employees engaged in preparing statistical tabulations can have access to Federal tax information for this purpose. The end result or final model must be sufficiently blurred if it is to be further released to those inside the agency with no need to know or to anyone outside the state agency, such as a state legislative body.

3. Questions states may have concerning the preparation of statistical tabulations in anonymous form are directed to the Director, Statistics of Income Division.

4. Generally, release of statistical tabulations outside the agency or to others in the agency with no need to know, are to conform to the following:
   A. No statistical tabulation at the state level is released with cells containing data from fewer than three returns;
   B. Statistical tabulations prepared for geographic areas below the state level is not released with cells containing data from fewer than ten returns; and
   C. Tabulations that would pertain to specifically identified taxpayers or would tend to identify a particular taxpayer either directly or indirectly may not be provided.

5. There have been a number of recent concerns with state agencies using contractors to perform tax modeling or revenue projection activities. If state agencies use contractors, they must obtain IRS approval prior to any release of Federal tax information to contractors.
6. State tax agencies that conduct statistical analyses for tax modeling or revenue projection purposes must submit a need and use statement to the servicing Disclosure office for approval. Exhibit 11.3.32-4 contains additional information about the content and process to be used for agency need and use statements and approvals.

11.3.32.22 (10-22-2010)

Charges for Copies, Data Extracts, etc.

1. For instructions regarding photocopy charges, billing, controls, and procedures, see IRM 11.3.5, Fees, for more information.
2. State and local tax agencies may also be charged on a reimbursable cost basis for the time expended by IRS employees to comply with disclosure and recordkeeping requirements such as: stripping return files of un-disclosable information, preparing records of disclosure in accordance with IRC §6103(p), or programming costs for special requests. As a general policy consistent with budgetary constraints, the IRS has not passed on these costs except for those associated with special extract requests.

Note:

Appropriate records of time spent performing such functions should be maintained to support billing.

3. Charges may be waived for routine photocopying of documents in those instances where the state reciprocates and does not charge the IRS for similar services. If the agency has entered into an Agreement on Coordination of Tax Administration with the IRS, the waiver of charges is incorporated into the implementing agreement (see IRM 11.3.32.6.1 above). A waiver in the implementing agreement will not, however, automatically extend to charges for special extracts or statistical studies. Currently, charges for all permanent extracts are waived, except in instances of special requests that are determined on a case-by-case basis.

11.3.32.23 (10-22-2010)

Combined Federal/State Information Return Reporting

1. This program permits payers who file information returns, Forms 1099, and Form 1087, Nominee’s Information Return, in electronic format to make a single filing with the IRS that satisfies both Federal and state information reporting requirements.
2. The payer must apply to participate and must meet IRS specifications. Revenue Procedures provide detailed instructions for filing electronically. The Revenue Procedures are published yearly in Publication 1220, Specifications for Filing Form 1098, 1099, 3921, 3922, 5498, 8935, and W2-G or Electronically.
3. The Director, GLD will provide technical assistance to Martinsburg Computing Center magnetic media coordinator to assure that payers participating in the Combined Federal/State Information Return Reporting Program submit valid IRC §6103(c)
Form 6847, Consent For IRS to Release Tax Information, is currently used for this purpose. The Combined Filing program is not an IRC §6103(d) exchange program and, therefore, is not subject to IRC §6103(d) requirements.

4. The records filed under this combined reporting program are Federal tax returns. Before a payer participates and before information is provided to a state tax agency, the payer must submit an authorization meeting the requirements of IRC §6103(c) and related regulations. The authorization will permit the state tax agency to treat data received pursuant to this program as state tax information.

11.3.32.24 (10-22-2010)

Disclosure of Returns and Return Information to State Audit Agencies

1. Pursuant to IRC §6103(d)(2), any returns and return information obtained by a state tax agency in accordance with IRC §6103(d)(1) may be open to inspection by, or disclosure to, officers and employees of the state audit agency.

2. Disclosures are made only for the purpose of, and only to the extent necessary in, making an audit of the state tax agency, body, or commission.

3. A "state audit agency" means any state agency, body, or commission charged under the laws of the state with the responsibility for auditing state revenues and programs.

11.3.32.25 (10-22-2010)

Re-disclosures by State Tax Agencies

1. IRC §6103(p)(2)(B) and its corresponding Treasury Regulation, §301.6103(p)(2)(B)-1, allow for the re-disclosure of returns and return information obtained by Federal, state or local agencies in accordance with IRC §6103. Disclosures are subject to the same use restrictions and safeguards as if the secondary agency received the information from IRS directly.

2. Agencies involved in these types of exchanges may receive only returns or return information authorized by the provisions of IRC §6103 applicable to each respective recipient agency. Any returns or return information disclosed by one agency to another agency are used only for a purpose authorized by, and subject to, any conditions imposed by IRC §6103 and the regulations. If there is no current statutory exception to IRC §6103 allowing the IRS to provide tax information to all agencies involved in the request, then IRC §6103(p)(2)(B) cannot be used.

Example:

It would not be possible for the IRS to approve an IRC §6103(p)(2)(B) request allowing a state tax agency that receives federal tax information under IRC §6103(d) to provide federal tax information to another state agency unless the second receiving agency would use the information either for state tax administration purposes, pursuant to IRC §6103(d), or the agency qualifies for receipt of federal tax information under some other provision of IRC §6103.
Caution:

The Treasury Regulation is designed to give the IRS the flexibility to deal with certain re-disclosure needs. It was not anticipated that such needs would be routine or widespread. Agencies should consider the resources needed to obtain approval, make the disclosures and monitor the disclosures made, versus getting the tax information directly from the IRS, before making such requests.

3. Written requests to engage in these types of exchanges are initiated by either the initial recipient of the tax information or an agency that wants to obtain tax information provided by the IRS to another agency, and must identify all other agencies involved in the exchange of tax information.

4. Agencies should also be advised of the fact that the agency providing tax information to all other participating agencies is responsible for maintaining a permanent system of standardized records that identifies any disclosure of returns and return information made to any other recipient agency or agencies. The agency shall provide this information to the IRS, in order to comply with the IRS’s obligation to keep accountings for disclosures and to make annual reports of disclosures to the Joint Committee on Taxation in accordance with IRC §6103(p)(3)(A).

Note:

If there is no accounting requirement noted in IRC §6103(p)(3)(A) for the information provided under the governing provision of IRC §6103, then this requirement does not apply.

11.3.32.25.1 (10-22-2010)

Form of Request

1. Agencies must make a written request from an appropriate agency official and direct that request to:

   Internal Revenue Service
   Director, Governmental Liaison and Disclosure
   230 S. Dearborn Street MS 7002
   Chicago, Illinois 60604

2. Agencies must include the following information in their request:
   A. Approval is requested to disclose information the agency receives from the IRS to another state or federal agency under the provisions of IRC §6103(p)(2)(B).
   B. Background information that explains why the federal tax information to be provided to the receiving agency or agencies is more readily available from the agency providing the tax information than from the IRS. The request must fully explain why use of this method is preferable to direct receipt of information from the IRS by the proposed recipients.
C. The requesting agency must specify the Federal tax information (i.e., specific data extracts, including the specific data fields or other information received from the IRS) that they would like to provide or receive through this exchange to or from the other involved agency or agencies. They must specify how the information will be transmitted or made available to the other recipient agency or agencies and whether the tax information will be provided electronically or on paper. Their comments must also indicate if the data will be housed in the computer systems of the requesting agency or the other agency, how recipients will access the data, and any other pertinent information about the receipt of and access to the data to be provided. In addition, the request must state how the agency will account for the disclosures of tax information when required.

D. The request must include detailed statements from all agencies that will receive information demonstrating their need for and use of requested tax information. Information specific to each item or element of tax information must be provided. The statements are necessary to determine first, that recipient agencies are statutorily allowed to receive the information, and second, their actual need for and use of the tax information to be exchanged.

11.3.32.25.2 (10-22-2010)

Acknowledgement Process

1. Disclosure offices or GLs receiving IRC §6103(p)(2)(B) requests should promptly forward them to Chief, Disclosure. The receiving employee should maintain a copy of the request in the event of any questions.
2. Once a request is received from a Disclosure Manager or GL, the Chief, Disclosure, or a member of his/her staff, will acknowledge receipt by telephone call, e-mail, or brief memorandum.
3. If a request is received directly from a state tax agency, the Disclosure Manager and GL with jurisdiction over the agency will be notified.
4. The agency official signing the request will also be notified in writing that the IRS has received the request. The notification letter will include the contact person’s name and telephone number.

11.3.32.25.3 (10-22-2010)

Assignment and Initial Review

1. The Chief, Disclosure, will assign the request to a staff member. The assigned employee will conduct an initial review of the request to ensure it contains all information necessary for approval, including adequate need and use justification from all agencies.
2. Imperfect or incomplete requests are returned to the Disclosure Manager or GL, along with written instructions detailing what is required to perfect the request. This information is shared or discussed with requesting agency point-of-contact.
3. Once the Chief, Disclosure determines that the request meets all requirements, it is coordinated with the Director, Office of Safeguards to further ensure that all agencies
involved have safeguard measures in place to adequately protect any Federal tax information they receive.

4. The assigned Disclosure employee will prepare a notification memorandum to the Director, Office of Safeguards for signature by the Chief, Disclosure. The memorandum will summarize the determination and will include as an attachment, a copy of the request with all supporting documents provided by the requesting agency.

11.3.32.25.4 (10-22-2010)

Office of Safeguards Review

1. The Director, Office of Safeguards will review the request to determine if all agencies involved are compliant with safeguard requirements. Safeguards can make this determination by reference to prior reviews of the agencies involved, or may initiate a new safeguard review, if required.

2. The Director, Office of Safeguards will notify the Chief, Disclosure of the reasons for any denial including what the requesting or receiving agencies must do to correct noted deficiencies.

3. If adequate safeguards are in place, the Director, Office of Safeguards will provide a letter or memorandum to that effect, to the Chief, Disclosure.

4. The Director, Office of Safeguards will recommend how long the agreement should remain in place, based upon his/her assessment of the security features, the amount of data exchanged, and the period of time before the next scheduled safeguard reviews. All such exchanges will be subject to time limitations.

11.3.32.25.5 (10-22-2010)

Final Approval and Agency Notification

1. The Chief, Disclosure will forward the certification letter from the Director, Office of Safeguards to the assigned Disclosure employee.

2. If the Director, Office of Safeguards approves the exchange, the assigned employee will draft an authorization letter for the signature of the Director, GLD addressed to the head of the agency providing the federal tax information. The letter will include any necessary conditions or restrictions.

3. If Safeguards does not approve the exchange, the assigned Disclosure employee will inform the requesting agency and include the specific reasons why.

4. The authorization letter will include a statement that the Commissioner or his delegate may revoke the exchange agreement at any time. The authorization letter will also contain a statement requiring the agencies to notify the IRS at least 90 days prior to implementing any changes to the pattern of receipt or disclosure of the approved federal tax information. The authorization letter must be signed by Director, GLD.

5. Copies are provided to other recipient agency officials who have signed the request to enter into this exchange agreement.
6. Copies are also provided to the Disclosure Manager and the GL with jurisdiction over the agency or agencies involved. A copy is provided to Safeguards Program Office, attention, Director, Office of Safeguards, for inclusion in agency files.

11.3.32.26 (10-22-2010)

Availability and Use of Death Information

1. Pursuant to IRC §6103(d)(4), all states must have in place a signed contract with the Social Security Administration (SSA) that allows SSA to re-disclose the death information it receives from states to other Federal agencies. Any state that has not entered into such a contract will no longer be able to receive Federal tax information under the provisions of IRC §6103(d).

2. SSA will notify the Director, Office of Governmental Liaison and Disclosure when contracts are scheduled for renewal. If any changes are made that would adversely affect the re-disclosure clause, or if the contract is not renewed, any exchange of Federal tax information with that state under IRC §6103(d) is terminated.

3. Any termination of an Agreement must be coordinated through the Director, Office of Governmental Liaison and Disclosure.

Exhibit 11.3.32-1

Agreement on Coordination of Tax Administration

SECTION 1. Introduction

1.1 This agreement provides the basis for coordination of Federal and State tax administration. The parties to this agreement will explore and adopt mutually acceptable techniques and modes of exchange most beneficial to improved tax administration with the least possible interruption of their respective operating routines and with strict adherence to laws, regulations, and rules for protecting the confidentiality of exchanged information.

1.2 This agreement may be supplemented by an implementing agreement, prescribing the nature, quantity and mechanics for the continuous exchange of tax information, including criteria and tolerance for selection of tax returns and return information as well as other cooperative activities. If an implementing agreement has been approved, subsections preceded by asterisks(*) will have corresponding provisions in the implementing agreement that should be consulted for more detailed information about specific working arrangements and operational procedures for the exchange of tax information authorized by this agreement. All provisions contained in implementing agreements must be consistent with the terms and conditions in this agreement. In any situation where a conflict arises between the provisions of this agreement and the implementing agreement, the terms of this agreement will govern.

SECTION 2. Definitions

For purposes of this agreement, the following definitions apply:

2.1 Agency. The term "Agency" means (Name of State agency, body, or commission).

2.2 IRS. The term "IRS" means the Internal Revenue Service, U.S. Department of Treasury.
2.3 State Audit Agency. The term "State Audit Agency" is defined in the same manner as provided in IRC §6103(d)(2)(B). State Audit Agency means (Name of State agency, body, or commission).

2.4 State. The term "State" means the (Name of State, Commonwealth, etc.).

2.5 Agency Representative. The term "Agency Representative" means an Agency officer or employee designated in writing by the head of the Agency, to the designated IRS Disclosure Manager, as an individual who is to inspect or receive Federal returns or Federal return information on behalf of the Agency as provided by IRC §6103(d), but only so long as the duties and employment of such officer or employee require access to Federal returns and Federal return information for purposes of State tax administration.

2.6 IRS Representative. The term "IRS Representative" means an officer or employee of the IRS who has been designated in writing to the head of the Agency by the designated IRS Disclosure Manager, as an individual who is to inspect or receive State returns or State return information on behalf of IRS, but only so long as the duties and employment of such officer or employee require access to State returns and return information for the purpose of Federal tax administration.

2.7 Federal Return. The term "Federal Return" is defined in the same manner as provided in IRC §6103(b)(1).

2.8 Federal Return Information. The term "Federal Return Information" is defined in the same manner as provided in IRC §6103(b)(2). However, "Federal Return Information" does not include that information in the hands of the State that is obtained by means wholly from sources independent from the IRS.

2.9 State Return. The term "State Return" means any tax or information return, declaration of estimated tax, or claim for refund required by or provided for or permitted under the provisions of the internal revenue laws, or related statutes, of the State, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed.

2.10 State Return Information. The term "State Return Information" means a taxpayer's identity, the nature, source, or amount of his/her income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over assessments, or tax payments, whether the taxpayer's State 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 Agency with respect to a State return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under the internal revenue laws, or related statutes, of the State, for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense.

2.11 Inspection. The term "Inspection" means any examination of a return or return information.

2.12 Disclosure. The term "Disclosure" means the making known to any person in any manner whatever a return or return information.

2.13 State Tax Administration. The term "State Tax Administration"
(a) means:
(i) the administration, management, conduct, direction, and supervision of the execution and application of the revenue laws, or related statutes of the State, and
the development and formulation of State tax policy relating to existing or proposed internal revenue laws, or related statutes, of the State, and

(b) includes assessment, collection, enforcement, litigation, and statistical gathering functions under such laws or statutes.


SECTION 3. Disclosure of Federal Returns and Federal Return Information

3.1 Pursuant to the laws of the State, the Agency is charged with the responsibility for the administration of State taxes imposed on (specify) (list the type of tax e.g. income, employment, excise, etc.). Federal returns and Federal return information (whether originals, paper copy, photocopy, microfilm, magnetic media, or any other form) received from IRS will be used for the purpose of, and only to the extent necessary in, State tax administration.

3.2 This agreement constitutes the requisite authorization pursuant to IRC §6103(d)(1) for IRS to disclose to, and permit inspection by, an Agency Representative of Federal returns and Federal return information relating to taxes imposed by chapter(s) (list only those that are applicable to the agency from chapters 1, 2, 6, 11, 12, 21, 23, 24, 31, 32, 44, 51, 52, and 36 (D) of the Code).

3.3 Upon the occurrence of any change in employment, duties, or relevant matters affecting an Agency Representative's right of access to Federal returns and Federal return information or status as Agency Representative, the head of the Agency shall promptly advise in writing the designated IRS Disclosure Manager that such individual is no longer an Agency representative.

3.4 An Agency representative to whom a Federal return or Federal return information has been disclosed, may thereafter disclose such return or return information to:

(a) another employee of the Agency for the purpose of, and only to the extent necessary in, the administration of the State tax laws for which the Agency is responsible;

(b) a person described in IRC §6103(n) or to any officer or employee of such person, solely for the purpose of State tax administration and in a manner consistent with applicable regulations, published rules or procedures, or written communications. Additionally, pursuant to Treasury Regulation §301.6103(n)–1, whenever Federal tax returns and return information are to be disclosed to a person described in IRC §6103(n), the above named State agency will notify the IRS prior to the execution of any agreement to disclose to such person, but in no event less than 45 days prior to the disclosure of that information to the person.

(c) a legal representative of the Agency personally and directly engaged in, and for use in, preparation for a civil or criminal proceeding (or investigation that may result in a proceeding) before a State administrative body, grand jury, or court in a matter involving State tax administration, if the returns and return information satisfy one or more of the criteria established in IRC §6103(h)(2)(A), IRC §6103(h)(2)(B) or IRC §6103(h)(2)(C).

(d) an officer or employee of the State audit agency for the purpose of, and only to the extent necessary in, making an audit of the State tax agency.

3.5 A Federal return or Federal return information may be disclosed in a judicial or administrative proceeding pertaining to State tax administration, but only if the same
criteria established in IRC §§6103(h)(4)(A), 6103(h)(4)(B) or 6103(h)(4)(C) are met.

3.6 Notwithstanding any other provision of this section, IRS will not disclose a Federal return or Federal return information under this section if such disclosure would identify a confidential informant or seriously impair a Federal civil or criminal tax investigation. The Agency agrees that neither it nor its legal representatives will make any further use or disclosure of a Federal return or Federal return information disclosed to an Agency Representative by IRS if IRS notifies the head of the Agency in writing that such further use or disclosure would identify a confidential informant or seriously impair a Federal civil or criminal tax investigation. The Agency further agrees that prior to the disclosure of any Federal return or Federal return information in a State judicial proceeding or to any party other than the taxpayer or his/her designee in a State administrative proceeding as provided by paragraph 3.5 of this agreement, the head or legal representative of the Agency will notify in writing the designated IRS Disclosure Manager, from whom the return or return information was received, of the intention to make such disclosure. No officer, employee or legal representative shall so disclose a Federal return or Federal return information in such State judicial or administrative proceeding if the designated IRS Disclosure Manager or other IRS official, within 30 days following receipt of such written notice, informs the head or legal representative of the Agency that such disclosure would identify a confidential informant or seriously impair a Federal civil or criminal tax investigation.

3.7 Additionally, the Agency agrees that it will notify the IRS when, during an audit of the Agency by the State Audit Agency, Federal returns and Federal return information are disclosed to the State Audit Agency and such information is made part of the State Audit Agency's work papers.

SECTION 4. Disclosure of State Returns and Return Information

4.1 This agreement constitutes the requisite authorization for the Agency to disclose to, and permit inspection by, IRS Representatives of State returns and State return information for the purpose of, and only to the extent necessary in, the administration of the internal revenue laws, or related statutes, of the United States.

4.2 Nothing in this agreement shall be construed as authority for the Agency to disclose State returns and State return information where such disclosure would be contrary to State law.

4.3 Upon the occurrence of any change in employment duties, or other relevant matters affecting an IRS representatives right of access to State returns and State return information or status as an IRS Representative, the designated IRS Disclosure Manager, shall promptly advise the Agency in writing that such individual is no longer an IRS Representative.

SECTION 5. Other Cooperative Activities

5.1 Subject to the restrictions and other provisions of this agreement and the availability of enforcement resources, the Agency and IRS will develop cooperative return selection and examination programs with the objective of avoiding unnecessary duplication of Federal and State audit coverage.

5.2 Information other than Federal or State returns and return information, that the Agency and IRS may deem to be relevant or useful to the administration of State and Federal tax laws, may be exchanged pursuant to arrangements made by the Agency and IRS.

5.3 In addition to the exchange of tax and other information, the Agency and IRS will, to the extent feasible, extend to each other assistance in other tax administration matters. This may
include such activities as taxpayer assistance, stocking tax forms for the public, training of personnel, special statistical studies and compilations of data, development and improvement of tax administration systems and procedures, and such other activities as may improve tax administration.

SECTION 6. Safeguards and Other Requirements

6.1 As an express condition for the inspection and disclosure of Federal returns and Federal return information, the Agency agrees to comply with the safeguards and requirements prescribed by IRC §6103(p)(4) and any implementation of such safeguards and requirements as may be provided by regulations and published procedures including:

(a) furnishing an annual report to the IRS describing the procedures established and utilized by the agency for ensuring the confidentiality of such returns and return information;

(b) permitting IRS to review the extent to which the Agency is complying with the requirements of this paragraph; and

(c) informing in writing all Agency Representatives and other persons to or by whom disclosure or inspection of Federal returns or Federal return information is authorized of the criminal penalties and civil liability provided by IRC §§7213, 7213A, and 7431 for a disclosure and inspection of such returns and return information that is unauthorized by the Code.

6.2 To the extent consistent with Federal law, IRS will accord State returns and State return information confidentiality safeguards comparable to those required of the Agency pursuant to this agreement.

6.3 Processing of Federal returns and Federal return information received by the Agency from IRS in electronic, digital, hardcopy or other format, and transmission and storage of such Federal returns or Federal return information by or on behalf of the Agency may be performed by either Agency owned and/or operated computer facilities, or State shared facilities, or by any other person described in IRC §6103(n). In those cases where such facilities used by the State Agency are shared with other State agencies or operated by any other person described by IRC §6103(n), the Agency will ensure the confidentiality of the Federal returns and Federal return information provided to such shared facility or person. As part of this responsibility the terms of any contract or agreement between the Agency and a shared computer facility or other person to whom Federal return or Federal return information is or may be disclosed for a purpose described in this subsection, will provide, or will be amended to provide, that such person, and officers and employees of the person, will comply with the applicable safeguard conditions contained in regulations, published rules or procedures, or written communications.

6.4 Because some taxpayers may be unaware that Agency tax officials are authorized under Federal law to obtain Federal returns and Federal return information for State tax administration purposes, the Agency will publicize, in a manner satisfactory to IRS, that such returns or return information were obtained pursuant to specific authority granted by the Code. Similar publicity will be provided by IRS, if requested by the Agency, for State tax information furnished IRS pursuant to State law.

SECTION 7. Limitations

7.1 Pursuant to the provisions of IRC §6103(p)(2), and of State law, if any, IRS and the Agency
may charge each other a reasonable fee for furnishing returns and return information under
the terms of this agreement. IRS and the Agency may agree not to charge each other for the
costs of routine reproduction of returns and return information mutually exchanged.

7.2 Under no circumstances will the Agency permit any Federal return or Federal return
information to be inspected by, or disclosed to an individual who is the chief executive
officer of the State or any person other than one described in section 3 of this agreement.

7.3 Notwithstanding any other provision of this agreement, IRS will not disclose or make
known in any manner whatever to any person described in section 3 of this agreement;
(a) any original, copy, abstract of any return, payment, or registration made pursuant to
chapter 35 of the Code (relating to taxes on wagering);
(b) any record required for making any such return, payment, or registration made or
required pursuant to chapter 35 that IRS is permitted by the taxpayer to examine or
that is produced pursuant to IRC §7602 (relating to the examination of books and
witnesses); or
(c) any information obtained by the exploitation of any such return, payment,
registration, or record made or required pursuant to chapter 35.

7.4 Notwithstanding any other provision of this agreement, IRS will not disclose or make
known in any manner to any person described in section 3 of this agreement information
that was obtained pursuant to a tax convention between the United States and a foreign
government.

SECTION 8. Officials to Contact for Obtaining Information

8.1 Requests by the Agency for Federal returns or Federal return information should be made to
the officials named in the implementing agreement or to the officials below if an
implementing agreement has not been executed.
(a) Requests by the Agency for Federal return information in electronic or digital mode
are made to the designated IRS Disclosure Manager who coordinates the requests
with Headquarters.
(b) Requests for physical inspection or copying of Federal returns, or requests for audit
abstracts and reports pertaining to such returns, showing addresses within the State
are made to the designated IRS Disclosure Manager, who is responsible for making
the proper arrangements for inspection or copying.
(c) Requests by the head of the Agency or his/her designee for Federal returns of
taxpayers or Federal return information relating to taxpayers showing addresses
outside the State are made to the designated IRS Disclosure Manager unless viable
separately stated procedures for such requests are specified within the implementing
agreement.

8.2 Requests by authorized officers and employees of the IRS for inspection or copying of State
returns and State return information are made to the officials named in the implementing
agreement supplementing this agreement, or to the (title of agency officials) if an
implementing agreement has not been executed.

SECTION 9. Termination or Modification of Agreement

9.1 The provisions of the agreement are subject to provisions of the Code, implementing
regulations, published procedures, and to the provisions of State statutes and regulations.
This agreement may be terminated or modified at the discretion of IRS or the Agency due to changes in Federal or State statutes and regulations or whenever in the administration of Federal or State laws that action seems appropriate.

9.2 Any unauthorized use or disclosure of Federal returns or Federal return information furnished pursuant to this agreement or inadequate procedures for safeguarding the confidentiality of such returns and return information also constitutes grounds for termination of this agreement and the exchange of information there under, subject to the rights of administrative appeal as provided by regulations prescribed by IRC §6103(p)(7).

9.3 Notwithstanding any other provision of this agreement, no Federal return or Federal return information shall be disclosed by IRS to any person described in section 3 of this agreement if the requirements of IRC §6103(p)(8) are not met.

APPROVED:

(signature)
Commissioner of Internal Revenue
Signed at Washington, DC, this day of , 20 .

Exhibit 11.3.32-2

Addendum to Agreement on Coordination of Tax Administration

Section 3.1 and 3.2 of the Agreement on Coordination of Tax Administration signed by the Commissioner of the Internal Revenue on , 20 , and the (title of agency official), of the (name of agency) on , 20 , are hereby supplemented as follows:

3.1 In addition to those State taxes listed in the original Agreement, the Agency is also responsible for the administration of State laws imposed on (list the additional type of tax the agency is now responsible for) Federal returns and return information (whether originals, paper copy, photocopy, electronic, digital or any other form) received pursuant to this agreement will be used for the purpose of, and only to the extent necessary in,
3.2 In addition to the disclosure authorization in the original Agreement, this addendum constitutes the requisite authorization pursuant to IRC §6103(d) for IRS to disclose to, and permit inspection by, an Agency Representative of Federal returns and return information relating to the taxes imposed by chapter ____________ of the Code.

APPROVED:

(signature)
Commissioner of Internal Revenue
Signed at Washington, DC, this day of ____________.

(signature)
(title of agency official)
Signed at ____________, this day of ____________.

Exhibit 11.3.32-3

Implementing Agreement

Implementing Agreement

for

The Agreement On Coordination of Tax Administration

between the

Xxxxxxxx Department Of Revenue

and the

Internal Revenue Service
## Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I.</td>
<td>Purpose and Definitions</td>
<td>2</td>
</tr>
<tr>
<td>II.</td>
<td>Federal and State Liaison Officials</td>
<td>2</td>
</tr>
<tr>
<td>III.</td>
<td>Information to be Exchanged on a Continuing Basis</td>
<td>3</td>
</tr>
<tr>
<td>IV.</td>
<td>Requests for Information not Exchanged on a Continuing Basis</td>
<td>4</td>
</tr>
<tr>
<td>V.</td>
<td>Disclosures Concerning State Employees in Conduct Investigations or Employee Checks</td>
<td>5</td>
</tr>
<tr>
<td>VI.</td>
<td>IRS Initiated Conduct Related Disclosures</td>
<td>5</td>
</tr>
<tr>
<td>VII.</td>
<td>Administering the Federal State Filing Program</td>
<td>6</td>
</tr>
<tr>
<td>VIII.</td>
<td>Transmittal Procedures</td>
<td>6</td>
</tr>
<tr>
<td>IX.</td>
<td>Restrictions on Disclosures by IRS</td>
<td>6</td>
</tr>
<tr>
<td>X.</td>
<td>Meetings Between State and IRS Personnel</td>
<td>7</td>
</tr>
<tr>
<td>XI.</td>
<td>List of Individuals Authorized to Receive Tax Information</td>
<td>7</td>
</tr>
<tr>
<td>XII.</td>
<td>Memoranda of Understanding</td>
<td>7</td>
</tr>
<tr>
<td>XIII.</td>
<td>Limitations of this Implementing Agreement</td>
<td>8</td>
</tr>
<tr>
<td>XIV.</td>
<td>Reproduction Costs</td>
<td>8</td>
</tr>
<tr>
<td>XV.</td>
<td>Modifications to the Implementing Agreement</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>Approval Signatures</td>
<td>9</td>
</tr>
</tbody>
</table>

### I. PURPOSE AND DEFINITIONS

The purpose of this agreement is to provided implementing procedures for the Agreement on Coordination of Tax Administration between the Internal Revenue Service and xxxxxxx (hereafter referred to as the "Agency").

The terms of this Implementing Agreement cover, but are not limited to, areas of early intervention and education, joint compliance, data exchanges and technological advances and improvements.

This Implementing Agreement supersedes any and all other Implementing Agreements except for the Agreement on Coordination of Tax Administration between the parties that predate this one. Notwithstanding this statement, this Implementing Agreement does not
For the purposes of this document the following definitions apply:

Agency refers to the XXXXXX Department of Revenue.

IRS Campus refers to the Internal Revenue Service Campus (formerly known as Service Center).

Commissioner refers to the Commissioner of Internal Revenue.

Area Manager refers to the Area Manager, Governmental Liaison and Disclosure, SB/SE Communications, Liaison & Disclosure, Internal Revenue Service.

Directors IRS Campus refers to the Directors, Compliance, CAS and Submission Processing located at the IRS Campuses.

Implementing Agreement refers to this document entitled "Implementing Agreement for the Agreement on the Coordination of Tax Administration between the xxxxxxxxxxxxxxxx Department of Revenue and the Internal Revenue Service."

IRS or Service refers to the Internal Revenue Service, U.S. Department of the Treasury.

II. FEDERAL AND STATE LIAISON OFFICIALS

Liaison officials have been designated to establish points of contact between the Agency and the IRS. The primary IRS liaison officials are the Disclosure Manager and the Governmental Liaison. The IRS Disclosure Manager is the contact for matters of policy and procedure with regard to: Agency requests for case-specific Federal returns and return information, any/all disclosures of Federal returns and return information, and safeguards of Federal returns and return information. The Governmental Liaison is the contact for developing and implementing local and area long-range planning and the design and establishment of joint Fed/State programs, including joint projects between the Agency and the IRS. Governmental Liaisons have responsibility for administering the IRS Data Exchange Program. The IRS Disclosure Manager must still be involved in any negotiation or planning that includes the disclosure of tax or other confidential information.

The primary liaison official for the Agency is the xxxxxxxxxxx. (A secondary may be named if the Agency so desires.)

III. INFORMATION TO BE EXCHANGED ON A CONTINUING BASIS

01. Types of Returns and Return Information

To the State Taxing Agency From IRS

1. Information to be sent to the Agency from IRS Campuses

   a. Information provided to the Agency under the IRS Data Exchange Program

   The Agency may participate in the Data Exchange Program. The items to be exchanged will be provided annually in the IRS Governmental Liaison Data Exchange Enrollment Form along with a Need and Use justification statement. These exchanges include, but are not limited to the following data extracts: Individual Master File (IMF), Information Returns Master File (IRMF), Taxpayer Address Request (TAR), Non-itemizer, CP2000 (Underreporter), and Levy sources. Please refer to the annual enrollment forms for a comprehensive listing.
2. Information to be sent to the Agency from the IRS
3. Transcripts obtained via IRS Transcript Delivery System (TDS)

To the IRS from the State
1. Information to be sent to the IRS Campus from the Agency
2. Information to be sent to the IRS from the Agency

02. Tolerances and Criteria
Tolerances and criteria may be listed here or as an exhibit to the Implementing Agreement.

03. Other Returns and Return Information
When the IRS Disclosure Manager has a Federal return and/or return information that will not be transmitted to the Agency under other provisions of this agreement but that may be evidence of any inadvertent or intentional understatement of any State tax described in section 3 of the Agreement on Coordination of Tax Administration, the IRS Disclosure Manager shall, if the understatement is of tax that potentially exceeds $_______ or if the understatement is potentially a criminal tax violation, contact the Agency liaison official and, without disclosing identifying information, describe the return and/or return information in sufficient detail to ascertain the Agency’s need and potential use of the return and/or return information. If, in the judgment of the IRS Disclosure Manager, the Agency has a need and use for the return and/or return information, he/she shall then transmit the return/return information to the Agency.

IV. REQUESTS FOR INFORMATION NOT EXCHANGED ON A CONTINUING BASIS

1. Specific Written Requests for Information
The IRS and Agency personnel designated in writing by the IRS and the Agency are the only individuals authorized to request information not specifically outlined in this Agreement. See Section VII below for address information and transmittal procedures. Such requests are directed to the appropriate liaison official as follows:

a. The Agency will direct requests to the IRS Liaison Disclosure Manager using Form 8796 (or its equivalent), Request for Return/Information (Federal/State Tax Exchange Program), written request for Federal returns and return information, e.g., Federal returns, Master File transcripts and/or Return Views (RTVUE).

b. The IRS will direct, using Form 8796, Request for Returns/Information (Federal/State Tax Exchange Program) (or its equivalent), written requests for State tax information to the Agency liaison, for specific returns and/or return information.

c. Requests from the Agency for a list of Potentially Dangerous Taxpayers (PDT) will be sent on Form 8796, Request for Returns/Information (Federal/State Tax Exchange Program) (or its equivalent) to the IRS Liaison Disclosure Manager for the State.

Note:
Use of Form 8796, Request for Returns/Information (Federal/State Tax Exchange Program) by IRS or employees of the State tax agency is encouraged, but not mandatory as long as the written request conforms to the form.

V. DISCLOSURES CONCERNING STATE EMPLOYEES FOR CONDUCT INVESTIGATIONS OR EMPLOYEE CHECKS

Agency requests for returns and information on conduct-related investigations of State tax agency employees will be submitted to the IRS Liaison Disclosure Manager and will include the following information:

a. Specific documentation regarding the particular conduct-related reason why the disclosure of Federal tax information is necessary.

b. Specific documentation why the requested return(s) and/or return information is, or may be, relevant to the inquiry.

c. Where applicable, copies of, or reference to specific rules of conduct, regulations, personnel directives, etc.

VI. IRS INITIATED CONDUCT RELATED DISCLOSURES

When the IRS Disclosure Manager has a Federal return and/or return information that will not be transmitted to the Agency under other provisions of this Agreement, but that may be evidence of any violation, suspected violation, or potential violation by an employee of the State tax agency, of Federal or State tax law or statutes, regulations, or rules governing the conduct of State tax employees that violation or potential violation could damage the integrity of the tax administration system or, if known to the general public, could decrease public trust in the state tax agency, the IRS Disclosure Manager will contact the Agency liaison official and, without disclosing identifying information, describe the return and/or return information in sufficient detail to ascertain the Agency’s need and potential use for the return and/or return information. If, in the judgment of the IRS Disclosure Manager the Agency has a need and use for the return and/or return information, he/she shall then transmit the return and/or return information to the Agency.

VII. ADMINISTERING THE FEDERAL/STATE FILING PROGRAM

During the course of administering the Federal/State Filing Program, it may become necessary for State tax administration to make disclosures of Federal tax information beyond the scope outlined in the MOU. It is agreed that this document shall constitute the requisite authorization (or request). The type of information may include, but is not limited to, tax information about return preparers and/or transmitters developed during suitability testing and incidental disclosures necessary during testing or problem resolution, and information concerning indications of fraud. Specific procedures will be developed as needs are identified and these will be in accordance with the provision of the existing agreements.

VIII. TRANSMITTAL PROCEDURES

1. Disclosures by IRS Liaison Disclosure Office and IRS Campus to the Agency

A count of documents by type is recorded on Form 3210, Document Transmittal, in preparation for physical release of Federal returns and return information to the Agency. The Form 3210 and documents are inserted into an envelope marked with the name of the official designated under Section II of this Implementing Agreement. The package is hand delivered to the address shown below or mailed...
via the United State Postal Service, Federal Express, United Parcel Service, or a Federally accredited expedited mail delivery service, in a second envelope marked "TO BE OPENED BY ADDRESSEE ONLY" inscribed with the following address:

[INSERT APPROPRIATE MAILING ADDRESS]

2. Disclosures by the Agency to IRS Disclosure Offices or Campuses
State returns and return information is disclosed to the IRS Liaison Disclosure office at the following address:

[ INSERT APPROPRIATE MAILING ADDRESS ]

State returns and return information are disclosed to the IRS Campus at the following address:

[ INSERT APPROPRIATE MAILING ADDRESS ]

IX. RESTRICTIONS ON DISCLOSURES BY IRS
The disclosure of certain returns and return information is prohibited by law notwithstanding the provisions of IRC §§6103 or 4102.

a. Information obtained pursuant to tax conventions;
b. Wagering tax information as defined in IRC §§6103(o)(2) and 4424;
c. Currency transaction reports filed under Title 31;
d. Grand Jury information;
e. Information obtained under immunity procedures (must be referred to the Director, Office of Governmental Liaison and Disclosure).

Disclosures by IRS to the Agency are made only after a determination that disclosure will not identify a confidential informant or seriously impair any Federal civil or criminal tax investigation. If it is determined subsequent to disclosure that further use of the return/return information would identify a confidential informant or seriously impair a civil or criminal tax investigation, the State tax agency will be requested to discontinue use of the information.

Refer to the Agreement on Coordination of Tax Administration, Section 3, Disclosure of Federal Returns and Federal Return Information, for additional contingencies prior to actual disclosure of Federal tax returns or Federal tax return information.

X. MEETINGS BETWEEN STATE AND IRS PERSONNEL
Liaison officials from IRS Communications, Liaison and Disclosure, IRS Operating Divisions, IRS Campus(es) and the Agency will meet to: review the success of the existing exchange program, examine the need and use for data being exchanged, explore additional areas where exchange would be beneficial and determine whether the provisions of the Implementing Agreement require amendment or revision. The frequency of the meetings are determined by the liaison officials based on local circumstances and needs.

XI. LIST OF INDIVIDUALS AUTHORIZED TO RECEIVE TAX INFORMATION
The parties agree to review their respective lists of employees authorized to receive
Federal or State tax information on at least a semi-annual basis and to promptly inform each other of additions and/or deletions to such lists. The Agency will send notifications of changes to the Internal Revenue Service Liaison Disclosure Manager.

XII. MEMORANDA OF UNDERSTANDING
When the Agency and the IRS mutually agree in writing to a joint project that may be for a limited duration, or when disclosure is authorized under an Internal Revenue Code section other than IRC §6103(d), a description of the project, its purpose, and the roles of the parties is documented in a separate Memorandum of Understanding (MOU). No amendment to this agreement is required. However, such MOU may be incorporated into this Implementing Agreement by reference in this section. Governmental Liaisons have primary responsibility for the development and coordination of MOUs.

MOUs must normally be signed by the Operating Division (by an official with Delegation Order 11-2 authority), having jurisdiction for the project/exchange and the head of the State tax agency, if disclosures are involved.

IRS Disclosure Managers are involved in the approval process for all MOUs.

XIII. LIMITATIONS OF THIS IMPLEMENTING AGREEMENT
The terms of this Implementing Agreement are not intended to alter, amend or rescind any provision of the Agreement on Coordination of Tax Administration now in effect between the Agency and the Commissioner of Internal Revenue. In the event of conflict, the provisions of the Agreement on Coordination of Tax Administration will govern, and conflicting provisions of the agreement are null and void.

The terms of any Memorandum of Understanding are not intended to alter, amend or rescind any provision of this Implementing Agreement. In the event of any conflict, the Implementing Agreement will take priority unless such discrepancy is noted in the MOU and the MOU is signed by the same officials as for the Implementing Agreement.

XIV. REPRODUCTION COSTS
It is mutually agreed that the parties signing this agreement will not charge each other for costs incurred in production or reproduction costs incurred in providing the information outlined in this agreement.

XV. MODIFICATIONS TO THE IMPLEMENTING AGREEMENT
If the need for any of the information being exchanged ceases, each agency shall notify the other to discontinue submission within 30 calendar days of the determination.

It is understood by the parties to this agreement that the exchange of tax information is not a static program and that changes may be necessary from time to time. It may, therefore, become necessary to amend or supersede this agreement. Any such changes in the agreement will be made upon approval of the parties signing this document. The amendments will be reduced to writing and signed by the parties to this agreement.

The IRS anticipates that there may be changes to the titles and/or responsibilities of officers and employees designated within this agreement. In the event of such changes, any actions that may be taken under this agreement by said officers or employees, may be taken by any officer(s) or employee(s) the IRS determines to have succeeded to the relevant portions of said employee’s authorities or responsibilities. Such changes will not require modification of the Implementing Agreement.
11.4.2 Data Exchange Program

Manual Transmittal

October 16, 2017

Purpose

(1) This transmits revised IRM 11.4.2, Office of Governmental Liaison, Data Exchange Program.

Material Changes

(1) Editorial changes have been made throughout to update IRM/organizational references and processing dates, clarify existing procedures and make text easier to follow. Web references were added/updated throughout to make text easier to research in electronic media.

(2) IRM 11.4.2.1 - Revised the title to Program Scope and Objectives to reflect internal control attributes. Added content to identify policy owner, program owner and to properly reflect the information communicated in this subsection. Included important information to conform to the new internal and management control standards under the following titles:

(3) IRM 11.4.2.1(5) - Removed reference to frequently used terminology; terminology was incorporated into IRM 11.4.2.1.5

(4) IRM 11.4.2.1.1 - IRM 11.4.2.1.6 - Added content to provide background and identify authority, responsibilities, acronyms, terminology and related resources.

(5) IRM 11.4.2.2(3) - Removed paragraph; was incorporated into IRM 11.4.2.1.1.
(6) IRM 11.4.2.3 - Revised the title to Data Extracts to appropriately identify the information contained in this subsection.

(7) IRM 11.4.2.3(1) - Updated acronyms to address data extracts appropriately.

(8) IRM 11.4.2.5.1(2) - Updated to clarify the enrollment package contents.

(9) IRM 11.4.2.5.2(4) - Added paragraph to clarify ODES package contains Sensitive But Unclassified (SBU) information; agencies must adhere to IRS encryption and media transport guidelines.

(10) IRM 11.4.2.6(5) - Updated to clarify spec books are revised annually and sent electronically from Data Services to GLs in the field via a GLADIS Task on AFOIA.

(11) IRM 11.4.2.7.8(1) - Updated additional 4th & 5th digits for ITIN validity.

(12) IRM 11.4.2.8(3) - Added reference to IRM 11.3.36, Safeguard Review Program and removed reference to IRM 11.3.35, Requests and Demands for Testimony and Production of Documents.

(13) Exhibit 11.4.2-1 - Updated title to Terminology to reflect information appropriately.

(14) Exhibit 11.4.2-2 - Added Exhibit to reference comprehensive list of acronyms.

**Effect on Other Documents**

This material supersedes IRM 11.4.2 dated May 19, 2014.

**Audience**

This IRM is intended for all employees of Governmental Liaison, Disclosure and Safeguards.

**Effective Date**

(10-16-2017)

**Related Resources**

The Governmental Liaison Data Exchange Program home page can be found at the following: https://organization.ds.irsnet.gov/sites/vldp/DEP/GL/GLDEP/Pages/default.aspx.

Phyllis Grimes
Director, Governmental Liaison, Disclosure and Safeguards

**11.4.2.1 (10-16-2017)**
Program Scope and Objectives

1. Purpose: This IRM section provides instruction on the Governmental Liaison Data Exchange Program (GLDEP) which involves the disclosure of Federal tax information (FTI) under the authority of IRC §6103(d) to state tax agencies for state tax administration purposes.

Note:

For purposes of the GLDEP, a state is defined as any of the 50 states, the District of Columbia, certain U.S. possessions or territories, regional income tax agencies and any municipality with a population in excess of 250,000 that imposes a tax on income or wages according to IRC §6103(b)(5).

2. Audience: This IRM section provides procedures applicable to Governmental Liaison, Disclosure and Safeguards personnel.

3. Policy Owner: Office of Data Services, under Governmental Liaison, Disclosure and Safeguards (GLDS), is responsible for administering the GLDEP. Information Technology (IT) management and staff play a key role in the program's design and operation. Significant IT resources are devoted to programming and distribution.

4. Program Owner: GLDS function, under Privacy, Governmental Liaison and Disclosure (PGLD), is responsible for oversight of the GLDEP.

11.4.2.1.1 (10-16-2017)

Background

1. IRS provides data extracts containing Federal tax information (FTI) to state tax agencies on a recurring basis, which state tax agencies use to administer state tax laws. A data extract is a computer-generated file that contains specific data elements. Extracts are currently provided electronically via the IRS Secure Data Transfer (SDT) program. SDT is a file sharing information system used to securely exchange electronic files with external entities over the internet. State tax agencies may choose from multiple data extracts that make up the program. For some extracts, state tax agencies are required to submit input files, also known as tickler files, to IRS. These GLDEP tickler files must be submitted to IRS via SDT.

2. Extracts may only be used as authorized by IRC §6103(d). Data contains FTI which is shared with state tax agencies based on their need and use of the information for state tax administration purposes. The safeguarding requirements of IRC 6103(p)(4) apply to state tax agencies receiving FTI under IRC 6103(d). State tax agency personnel and authorized contractors must maintain the confidentiality of FTI received via the GLDEP and are subject to the civil and criminal sanctions of IRC sections IRC §7213 and IRC §7431 for unauthorized access or disclosure of FTI. Applicable safeguard procedures may be found in IRS Pub 1075, Tax Information Security Guidelines for Federal, State, and Local Agencies.
11.4.2.1.2 (10-16-2017)

Authority

1. The following items govern the authority pertaining to the GLDEP in which certain data-sharing activities take place between IRS and state tax agencies:
   - IRC §6103
   - 26 CFR §301.6103
   - Delegation Order 11-2, found in IRM 1.2.49.3
   - IRM 10.5, Privacy and Information Protection

11.4.2.1.3 (10-16-2017)

Responsibilities

1. This Internal Revenue Manual (IRM) is used by all Governmental Liaison, Disclosure and Safeguards (GLDS) personnel and ensure policies comply with the disclosure and safeguarding requirements of IRC§ 6103.

11.4.2.1.4 (10-16-2017)

Acronyms

1. A comprehensive list of acronyms used in this IRM section can be found in Exhibit 11.4.2-2.

11.4.2.1.5 (10-16-2017)

Terminology

1. A comprehensive list of terms used in this IRM section can be found in Exhibit 11.4.2-1.

11.4.2.1.6 (10-16-2017)

Related Resources

1. The following is a list of other related resources regarding the GLDEP:
   - IRM 11.3.32, Disclosure to States for Tax Administration Purposes
   - IRM 11.3.36, Safeguard Review Program
   - IRM 11.4.1, Communications and Liaison, Office of Governmental Liaison, Governmental Liaison Operations
   - Federation of Tax Administrators web site: https://www.taxadmin.org/

11.4.2.2 (10-16-2017)

History
1. IRS has been sharing FTI with state tax agencies since the 1920s. These exchanges were initially paper-oriented and provided on magnetic media in the form of tape cartridges. Today, FTI is provided electronically using the IRS Secure Data Transfer (SDT) program. Initially, state tax agencies were charged a small fee for obtaining extract information. In 1994, IRS waived charges because of the shared mission of tax administration; so the FTI is now provided free of charge.

2. Originally, state tax agencies received all information available pertaining to taxpayers residing in their state. In 1978, the Government Accountability Office (GAO) (formerly the General Accounting Office) issued a report stating IRS needed to limit information provided to state tax agencies to only the information necessary to administer a state's tax laws which conforms to the statutory language of IRC§ 6103(d) that restricts disclosure "only to the extent necessary in, the administration of such laws". In addition, the report said IRS had additional sources of information that would be valuable to state tax agencies which had not yet been tapped. In response to that report, the program was redesigned and further expanded to its current status.

11.4.2.3 (10-16-2017)

Data Extracts

1. The following data extracts are currently part of the GLDEP:
   - 1099-MISC
   - Business Master File (BMF)
   - Business Return Transaction File (BRTF)
   - Corporate Affiliations
   - CP 2000
   - Examination Operational Automation Database (EOAD)
   - Exam/Appeals
   - Federal Employer Identification Number (FEIN)
   - Individual Master File (IMF)
   - Individual Return Transaction File (IRTF)
   - Identity Theft Protection Indicator (ITPI)
   - Individual Taxpayer Identification Number (ITIN)
   - Information Returns Master File (IRMF) by Payee State Code
   - Information Returns Master File (IRMF) Non-Resident K-1
   - Levy
   - Military Combat Zone (MCZ)
   - Non-Itemizer
   - Preparer Tax Identification Number (PTIN)
   - Taxpayer Address Request (TAR)

2. There are many other data exchange activities between IRS and "FedState trading partners" that are not part of the GLDEP. More information on non-GLDEP exchanges can be found on the GLDS Data Services Home Page Intranet site at: https://program.ds.irsnet.gov/sites/PGLDds/gldep/SitePages/Home.aspx. Some examples are as follows:
• **Reimbursable Federal Program:** A data exchange program between IRS and other federal agencies. This program is owned by GLDS Data Services but is not part of the GLDEP.

• **Compliance Programs:** Some data exchanges are part of specific compliance programs such as Abusive Tax Avoidance Transactions (ATAT). More information may be obtained by contacting the specific Operating Division (OD) that has ownership of the program.

• **User Applications:** Some data exchanges are user applications that fall under the E-services umbrella. More information on these programs may be obtained by contacting E-Services or the specific OD that has ownership of the application.

11.4.2.4 (10-16-2017)

**Communications and Marketing**

1. **Internal Communications:** Information about the GLDEP is available internally on the GLDS Data Services Home Page Intranet site at: https://program.ds.irsnet.gov/sites/PGLDds/gldep/SitePages/Home.aspx

2. **External Communications:** Information about the GLDEP is available to external partners through IRS Governmental Liaisons (GLs). Some information is also available on the Federation of Tax Administrators' (FTA) web site at: https://www.taxadmin.org/, and via the FTA Data Exchange E-List. FTA is a non-profit group representing the interests of state tax administrators. The E-List is for personnel, both state tax agencies and IRS, who work with the GLDEP. GLDEP analysts at IRS use E-List to alert state tax agency personnel about expected release dates of extracts, to provide updated technical guidance, and to remind them of approaching deadlines. State tax agency personnel use the E-List to explore such questions as how to better use the extracts in compliance programs and whether other state tax agencies have encountered particular difficulties. To subscribe or unsubscribe to the FTA Data Exchange E-List, personnel should go to https://www.taxadmin.org/e-lists and enter name and e-mail address. Choose subscribe or unsubscribe, select "IRS Extract E-List" and submit.

11.4.2.5 (10-16-2017)

**Program Participation**

1. Each state tax agency wishing to participate must meet the following criteria:
   A. The agency must have an Agreement on the Coordination of Tax Administration (Basic Agreement) in place to exchange data with IRS.
   B. The agency must have a Safeguards Security Report approved by the Office of Safeguards on file with IRS.
   C. The agency must complete an Annual Enrollment Form.
   D. The agency must satisfy the requirements of IRC §6103(d); that is, the agency must be a state tax agency as defined in IRC §6103 (b), be responsible for state tax administration, demonstrate a need for the FTI being disclosed and demonstrate the FTI will be used for the purposes of state tax administration.
2. There are two annual processes that state tax agencies must complete to participate in the GLDEP.
   - Annual Enrollment Process
   - Annual Optional Data Element Selection (ODES) Process (for agencies that enroll for the IMF/IRTF and/or BMF/BRTF Extracts)

11.4.2.5.1 (10-16-2017)

Annual Enrollment Process

1. The enrollment process takes place from June until the beginning of September, which provides the Governmental Liaisons (GLs) and the state tax agencies adequate time for the enrollment and approval process. State tax agencies wishing to participate in the GLDEP must complete an Annual Enrollment Form. The form is used by the enrolling state tax agency to designate which extracts are needed for the enrollment year. Need and Use Statements must accompany all enrollment forms. Need and Use Statements are required for state tax agencies to notify IRS why they need the FTI they are requesting and how they will use that information. All Need and Use Statements submitted with Annual Enrollment Forms must be approved by an IRS Disclosure Manager (DM) before FTI may be disclosed to the state agency. By law, IRS may only disclose FTI to state tax agencies which establish a need and use for the FTI requested.

2. The mechanics of the Annual Enrollment Process are as follows:
   - Each year in June an "enrollment package" is sent electronically (via the IRS e-mail system) from GLDS Data Services to GLs in the field.
   - The enrollment package contains the Annual Enrollment Form, Signature Form, Need & Use Justification Form, instructions for completing the forms, Description & Use Document, Safeguard Security Report Notice, an e-mail with basic instructions, and a "sample" e-mail for the GLs to forward to their state tax agencies. The completed enrollment forms should be returned to the designated Data Services GLDEP analyst.

3. The GL and DM will act as consultants to the enrolling state tax agency during the enrollment process. The GL should become involved in the process of completing the enrollment form and should review the form carefully when received from the enrolling state tax agency. If a state tax agency is ordering an extract not previously ordered, the GL must discuss how the state tax agency plans to use the information. If a state tax agency is not ordering an extract they have ordered in the past, the GL should question the omission of that extract. The more familiar a GL becomes with the operation of state tax agencies within their jurisdiction, the better able they will be to assist with their decision regarding which FTI to request.

11.4.2.5.2 (10-16-2017)

Annual Optional Data Element Selection Process

1. The Annual Optional Data Element Selection (ODES) Process takes place in the spring of each year. State tax agencies that have requested either the IMF/IRTF and/or
BMF/BRTF extracts must complete an Annual ODES Package. The ODES forms are used by the enrolling state tax agency to identify which of the optional data elements they need for these extracts. Need and Use Justifications must accompany all data element selections. Need and Use Justifications, in this case, are statements used by state tax agencies to tell IRS why they need the specific optional data elements they are requesting and how they will use those optional data elements. An IRS DM must approve the Annual ODES Forms prior to receipt of the optional data elements by the state tax agency.

2. The mechanics of the Annual ODES Process are as follows:
   - Each year in April an ODES package is sent electronically (via the IRS e-mail system) from GLDS Data Services to GLs in the field.
   - GLs must forward the package by e-mail to their state tax agency counterparts. The ODES package contains the Annual ODES Forms, instructions for completing the forms, an Authorization Document, and a cover memo. The cover memo contains submission instructions for these packages.

3. The GL and DM will act as consultants to the enrolling state tax agency during the ODES Process. The GL should provide guidance to enrolling state tax agencies to ensure they accurately complete the ODES Package and carefully review the packages submitted to them to ensure they are accurate and complete. The Authorization Document, which is in PDF format, must be digitally signed by the state tax agency and be included as part of the ODES package. Since the forms are machine read, the ODES tables must remain in Microsoft Word.

4. The ODES package contains Sensitive But Unclassified (SBU) information. State tax agencies must adhere to IRS encryption and media transport guidelines as stated in Pub 1075, Tax Information Security Guidelines for Federal, State and Local Agencies, Section 7.1.2 Encryption Requirements and Section 9.3.10.5 Media Transport (MP-5).

11.4.2.6 (10-16-2017)

**Specification Books**

1. Each data extract has a specification book, or "spec book", that serves as a technical and administrative user guide for both state tax agency and IRS personnel. The spec books contain 3 basic sections:
   - Administrative Section
   - Record Layout
   - Core Record Layout

2. The administrative section contains a basic description of each extract including information on production and distribution schedules, disclosure and security issues, annual changes to the extract, tickler file submission instructions, and labeling procedures. This section also has information on the file(s) from which the data is extracted.

3. The record layout section contains a narrative description of the various data elements contained in the extract.

4. The Core Record Layout section contains graphic representations of the data for use by programmers.
5. The spec books are distributed in the following manner:
   - Spec books are revised annually and sent electronically from GLDS Data Services to GLs in the field via a Governmental Liaison and Disclosure Information System (GLADIS) Task on Automated Freedom of Information Act (AFOIA).
   - The GLs distribute the spec books to enrolled state tax agencies approximately two months prior to the distribution of the data extract. The spec books can be sent from the GLs to enrolled state tax agencies by e-mail. However if the spec book has an Official Use Only (OUO) supplement, the OUO supplement must be sent to the enrolled state tax agency by hard mail or fax (not e-mail).
   - The spec books are also posted on the Data Services Home Page Intranet site: https://program.ds.irsnet.gov/sites/PGLDds/gldep/SitePages/Home.aspx.

6. The GL is responsible for ensuring each participating state tax agency receives a current copy of a spec book for each data extract the state tax agency has enrolled.

11.4.2.7 (10-16-2017)

Description of the Extracts

1. There is a great deal of variance among the extracts with regard to production and distribution schedules, how the data is sorted, and the time period upon which the extract is based. Some extracts are based on tax year and some on "extract year." If an extract is based on tax year, all data in that extract is from a specific tax year. The term extract year indicates that IRS has determined the time period of the extract based on various factors that affect production. These factors may include the due date of returns included in the extract or availability of resources for extract production.

2. Extracts are sorted by various criteria including state code, ZIP code, Social Security Number (SSN) or Employer Identification Number (EIN). Some extracts require a tickler file be submitted by participating state tax agencies to request information about specific taxpayers. A tickler file is an input file that is merged with IRS data to produce the requested extract. For example, a state tax agency may provide IRS with a tickler file of SSNs to be used in production of the IMF/IRTF extract by SSN. The formats for the various tickler files are found in the respective spec books.

3. Extracts that are distributed on an annual basis have a 60-day data recreation period. This means that if a state tax agency notifies the IRS computing center within 60 days that a file cannot be read, the computing center can recreate the extract file for the state tax agency. For extracts that are distributed on a more frequent than annual basis the extract spec book will address the recreation period, if any. It is imperative that state tax agencies read extracts upon receipt. If it is determined that an extract is damaged after the data recreation period, the computing center may not be able to recreate the extract for the state tax agency.

11.4.2.7.1 (05-19-2014)

1099-MISC
1. **Source of Data:** Data is extracted from the IRS Information Returns Master File (IRMF). The 1099-MISC extract provides non-employee compensation information from the federal Form 1099-MISC, Miscellaneous Income.

2. **Distribution:** The 1099-MISC extract is distributed annually in May.

3. **Uses:**
   A. The 1099-MISC extract was developed in response to a request by the Federal Department of Labor (DOL), based on a recommendation by the DOL Office of Inspector General. The non-employee compensation information, as reported by payers, is to be used for state tax administration by the State Workforce Agencies (SWAs) as a component in the audit selection process to increase the discovery of unreported wages. Information provided under IRC §6103 (d) through the GLDEP may not be used for purposes other than state tax administration such as the administration of benefits. The payment information provided on the extract is limited to Box 7 (Non-employee Compensation) of the Form 1099-MISC.
   B. The 1099-MISC extract was initially developed to provide Form 1099-MISC non-employee compensation (Box 7) information to SWAs by payee state code, that is, the address of the recipient of the income. This information is also available on the IRMF extract but the IRMF provides more information than the SWAs need. After the initial year of distribution, an enhancement was added to include records on the extract by payer state code, that is, the address of the payer, in addition to payee state code. The SWAs would use the Non-employee compensation information as a component in the audit selection process to increase the discovery of unreported wages.

11.4.2.7.2 (05-19-2014)

**BMF/BRTF**

1. **Source of Data:** The BMF and BRTF are master files created from returns filed under the business income tax reporting requirements of the Internal Revenue Code (IRC). These extracts are developed by taking data from the BMF and BRTF master files annually by state code, ZIP code, and taxpayer identification number (TIN). The BRTF information is as initially processed and is not updated to reflect amended returns or adjustments. State tax agencies must receive the BMF to get the BRTF, as name and address information is only included on the BMF; the only exception is that an agency may obtain the BRTF only for the Form 706 which includes name and address information. Participants may enroll to receive the extracts by state code, ZIP code, and/or Employer Identification Number (EIN).

2. **Distribution:** The BMF and BRTF extracts are created and transmitted separately. They are distributed annually in October, November and December, depending on the sort (State Code, ZIP Code and EIN).

3. **Uses:** General uses of the BMF/BRTF extract include:
   - Identifying non-filers
   - Determining discrepancies between federal and state returns
   - Verifying taxpayer information in state tax agency records
• Assisting with collections by identifying business assets and determining ability to collect

11.4.2.7.3 (05-19-2014)

Corporate Affiliations

1. **Source of Data:** Data is extracted from the IRS Business Master File.
2. The extract will provide entity information on parent corporations filing a consolidated return as well as on the subsidiary corporations in the affiliated group on whose behalf the parent filed. When a parent corporation files a consolidated return (Form 1120, *U.S. Corporation Income Tax Return*), a Form 851, *Affiliations Schedule*, is attached which lists the subsidiary corporations in the affiliated group. The Corporate Affiliations Extract by State Code (a range of ZIP codes will be used for city taxing agencies) will provide state tax agencies with entity information on parent and subsidiary corporations. Records for state tax agencies will be extracted based on a subsidiary corporation having an address within the state of the requesting state tax agency (by state code). When a subsidiary corporation's address matches the state of the requesting state tax agency, the requesting state tax agency will receive a set of records that will include all subsidiary corporations in the affiliated group and the parent corporation, regardless of what state the parent or the other affiliated subsidiaries are located.
3. Records are extracted by state code based on the subsidiary corporation appearing on a Form 851. A subsidiary corporation will only be associated with the most current parent corporation that is filing on their behalf.
4. In addition to the state code sort, the extract is also available by an EIN sort based on a tickler file submission by enrolled state tax agencies. City tax agencies can receive the extract based on an approved list of ZIP codes or by EIN sort.
5. **Distribution:** The Corporate Affiliations Extract by State Code and EIN are scheduled to be distributed annually in September.
6. **Uses:** General uses of the Corporate Affiliations extract include:
   • Information used as a component in the audit selection process for corporations filing a consolidated return
   • To identify non-filers

11.4.2.7.4 (10-05-2006)

CP 2000

1. **Source of Data:** The CP 2000 extract contains information from IRS Underreporter cases. IRS matches information returns, such as Form W-2 and Form 1099 filed by employers, banks, businesses, and other payers with information from individual tax returns. Discrepancies are reviewed and, if not resolved at the campus, an Automated Underreporter (AUR) case is generated. The CP 2000 is sent to the taxpayer proposing an adjustment to their account. Taxpayer information from accounts, that result in additional federal assessments, is provided in the extract for participating state tax agencies.
2. Only fully agreed cases are provided on the CP 2000 extract. After the assessment, a taxpayer may provide information that could result in an adjustment or abatement of the liability. If changes are made to the fully agreed cases, there is currently no way to capture the information by IRS. It may be necessary for the state tax agency to contact the taxpayer to resolve the issue. Partially agreed case amounts are not included in the file. Inventory levels on the CP 2000 extract vary as the inventory levels worked at the campuses fluctuate.

3. **Distribution:** The CP 2000 extract has an irregular distribution schedule with 6 distributions over approximately 20 months, followed by a one-time SSN tickler option (Distribution #7).

4. **Uses:** General uses of the CP 2000 extract include:
   - Generating a notice of proposed assessment based on federal tax changes
   - Identifying employers and payers not reporting to the state tax agency

**Note:**

The CP 2000 extract presents one of the easiest methods for state departments of revenue to generate correct assessments and increase collections. An automated program in the state tax agency can be developed to generate an assessment letter to the taxpayer based on the federal assessment. When automation is used, few cases need to be worked manually. State tax agencies which generate assessments and collect additional revenue based on the federal tax assessment, are able to do so with minimal cost.

11.4.2.7.5 (02-28-2011)

**Examination Operational Automation Database (EOAD)**

1. **Source of data:** Examination closing reports systems:
   - Reports Generation Software (RGS)
   - Audit Information Management System (AIMS)
   - Issues Management System (IMS)

   Enrolled state tax agencies provide specific criteria for use in getting information about the following return types:
   - Form 1040
   - Form 1065
   - Form 1120
   - Form 1120S

2. **Distribution:** Monthly beginning in February of each year, with data extracted from previous month, for the period January through December.

3. **Uses:** Uses of the Examination Operation Automation Database (EOAD) extract include (same as for Exam/Appeals):
   - Ensure reporting of audit changes on businesses operated in one state but registered in another
   - Identify individuals residing in one state but with a filing requirement in another
• Develop leads on non-resident taxpayers to determine the impact of federal audit assessments on state tax liability
• Determine the impact of federal audit assessments on state tax liabilities

11.4.2.7.6 (10-16-2017)

Exam/Appeals

1. **Source of Data:** Examination records reflect results of individual and/or business cases closed by Examination during a fiscal year (October 1st - September 30). The data is extracted annually from the IRS database, the Audit Information Management System (AIMS). The Appeals records provide the same type of information pertaining to cases closed by Appeals during a calendar year (January 1 - December 31). This information is taken from the IRS database, Appeals and Non-Docketed Reporting System (LAND).
2. The state tax agency submits an annual tickler file of TINs to generate the extract. This tickler is due by April 30th each year.
3. **Distribution:** The extract is distributed annually in May.
4. **Uses:** General uses of the Exam/Appeals extract include:
   - Identifying individuals residing in one state but with a filing requirement in another
   - Developing leads on non-resident taxpayers
   - Determining the impact of federal audit assessments on state tax liabilities
   - Ensuring reporting of audit changes on businesses operated in one state but registered in another

**Note:**

Document 6036, *Examination Division Reporting System Codes Booklet*, is useful in interpreting the coding for this extract and should be supplied by the GL to the state tax agency receiving the extract.

11.4.2.7.7 (07-03-2009)

Federal Employer Identification Number (FEIN)

1. **Source of Data:** The data for the FEIN extract is obtained from the Business Master File using the EIN Research and Assessment System (ERAS). The source of that file is the federal Form SS-4, *Application for Employer Identification Number*. The newly issued FEINs will be provided monthly regardless of how the FEIN is issued i.e., Internet EIN, fax, or mail. This extract will be sorted by the address of the entity receiving the new FEIN for the state code sort and further sorted for the cities based on a pre-approved listing of ZIP codes. The majority of data elements (line items) from the Form SS-4 are captured.
2. **Distribution:** The FEIN extract is distributed monthly. The distribution year runs from February to January. Each distribution will consist of new FEINs issued in the previous month.
3. **Uses:** General uses of the FEIN extract include:
   - Validating master file accounts
   - Identifying businesses that are required to register
   - Identifying non-filers
   - Outreach

11.4.2.7.8 (10-16-2017)

**Individual Taxpayer Identification Number (ITIN)**

1. **Source of Data:** The data will be extracted from the Individual Taxpayer Identification Number (ITIN) Database which contains information captured from the Form W-7 application. ITIN information can also be obtained from the IMF/IRTF extracts. All of the FTI provided by the taxpayer will be included in the data fields provided to the requesting state tax agencies. The information on this extract is similar to the FEIN extract, except it is for individual returns instead of business returns. Only validated ITINs will show up in this extract. ITINs always begin with a "9" and will have the numbers **50 to 65**, **70 to 88**, **90 to 92**, or **94 to 99** as the 4th and 5th digits.

2. **Distribution:** The ITIN extract is distributed from February through January on a monthly basis. All ITINs issued for the previous month will be included. There is also a TIN tickler option. The annual tickler is due in November, and the output file is distributed the following January. State tax agencies enroll for the tickler option separately on the annual enrollment form.

3. **Uses:** General uses of ITINs include:
   - Reducing erroneous refunds
   - Determining the validity of state tax agency entity data
   - Providing state tax agency refunds to those taxpayers who rightfully are entitled to them
   - Identifying Non-Filers

11.4.2.7.9 (10-16-2017)

**Individual Master File/Individual Return Transaction File (IMF/IRTF)**

1. **Source of Data:** The IMF/IRTF extract contains data from the Individual Master File (IMF) and the Individual Returns Transaction File (IRTF).

2. The IMF contains general entity information (SSN, name, address, wages, adjusted gross income, interest income, etc.) for individual income taxpayers.

3. The IRTF contains fields currently transcribed from Form 1040, *U.S. Individual Income Tax Return*, Form 1040A, *U.S. Individual Income Tax Return* or Form 1040EZ, *Income Tax Return for Single Filers and Joint Filers With No Dependents*, and their accompanying forms and schedules. IRTF information is obtained from the tax return as originally filed by the taxpayer but can reflect math error corrections. The information is not updated to reflect amended returns or subsequent adjustments. Data in these records will reflect any corrections that were made by the campus before the return could be posted (math error corrections). Information that is obviously incorrect, such as math
errors, cannot be posted to master file. When a math error is corrected, a notice is sent to the taxpayer explaining the change. Brief explanations of these notices are included in the IMF/IRTF spec book.

4. Since the IMF contains entity information and IRTF does not, the files must be received together. The state tax agency may receive their IMF/IRTF extracts based on the address of the taxpayer (state code), by state supplied ZIP code (ZIP code tickler file) or state supplied SSNs (the SSN tickler file can include Individual Tax Identification Numbers, ITINs). IMF/IRTF extracts by ZIP code are most frequently requested by city tax agencies, allowing the city tax agencies to receive information on taxpayers located within their jurisdiction; city tax agencies cannot receive the extracts by state code.

5. **Production:**
   A. At the end of August (cycle/week 34), a major extract is created from the IMF and the IRTF. It contains one record for every account posted during the past 12 months. The IMF/IRTF extract is created the same week in August each year and reflects any returns that have posted since the previous extract whether current or prior-year returns. It is sorted by state code and sent to each participating state tax agency.
   B. At the end of October, the same major extract is resorted by ZIP code and matched to ZIP code tickler files provided by the state tax agencies.
   C. At the end of November, the extract is again sorted, this time by SSN then matched with SSN tickler file provided by the state tax agencies.

6. **Distribution:** The IMF/IRTF extract is distributed annually in September by state code sort, in October by ZIP code sort, and in November by SSN sort.

7. **Uses:** General uses of the IMF/IRTF extract include:
   - Identifying non-filers
   - Determining discrepancies between federal and state reported income
   - Using Schedule C information for compliance leads

11.4.2.7.10 (05-19-2014)

**Identity Theft Protection Indicator (ITPI)**

1. **Source of Data:** The data for the ITPI extract is obtained from the Individual Master File. The extract includes entity information (name, address, taxpayer identification number) for an individual that has been identified as either at potential risk for identity theft (e.g. the taxpayer has reported an incident that could lead to identity theft) or the taxpayer has experienced identity theft which impacted a tax record or tax records.

2. **Distribution:** The ITPI extract is distributed monthly. The distribution year runs from January to December. Records on the monthly extract will be cumulative so that all taxpayers that remain at risk from the previous month will be on the extract for the following month and any newly identified taxpayers.

3. **Uses:** State tax agencies use the extract to identify a taxpayer that either is at potential risk for or has been impacted by identity theft in order to further scrutinize the processing of that taxpayer's returns.

11.4.2.7.11 (05-19-2014)
Information Returns Master File (IRMF)

1. **Source of Data:** The IRMF extract contains data from the Information Returns Master File (IRMF) which is a database containing all information returns transcribed by IRS. It contains data about both the payer (filer) as well as data about the payee (recipient of income) from various forms including Form 1099, Form 1098, Schedule K-1, and Form W-2/W-2G.

2. The IRMF Extract by Payee State Code is provided annually to the state tax agencies by payee state code. Records are included in this extract based on the payee (recipient of income) having an address within the requesting state tax agency’s state.

3. The IRMF Non-resident extract includes records based on the address of the payer being within the requesting state tax agency’s state and the address of the payee being outside the requesting state tax agency’s state. Schedule K-1s for Form 1041, Form 1065 and Form 1120S are included on the Non-resident extract. Form W-2/W-2G and Form 1099-MISC can also be requested on the Non-resident extract option.

4. The IRMF extracts are large files. Each file takes approximately 18 months to create.

5. **Distribution:** The IRMF Extract by Payee State Code is scheduled for distribution in June. The IRMF Non-Resident Extract is scheduled for distribution in October. If multiple payee addresses are present for the same taxpayer on the IRMF by Payee State Code Extract, each state tax agency participating in the extract receives all information returns for that taxpayer.

**Example:**

If a taxpayer receives two Form W-2, one listing a home address in Illinois and the other listing a home address in Wisconsin, both state tax agencies will receive all FTI for that taxpayer.

6. The IRMF extracts are divided into 26 segments (files) using the last two digits of the payee's TIN as the indicator for the divisions.

7. **Uses:**
   - Identifying underreporters
   - Identifying excess deductions
   - Identifying employers who are withholding but not remitting
   - Matching Schedule K-1 data to state tax agency databases to identify resident and non-resident non-filers

**11.4.2.7.12 (05-19-2014)**

**Levy**

1. **Source of Data:** The Levy extract contains data extracted from the IRMF and reflects payer and payee data for specific taxpayers from Form 1099-INT, Form 1099-DIV, Form 1099-MISC, Form 1099-K, Form 5498, *Schedule of Reimbursable Earnings*, and Form W-2, as well as Schedule K-1.
2. The data is extracted monthly using a state tickler file that contains the name control and TIN of payers. State tax agencies enrolled for the Levy extract will receive an output file for each month that they submit a tickler file; however, they need not submit a tickler file every month.

3. **Distribution:** Distribution is on a monthly basis depending on a tickler file submission. The distribution year begins in February and ends in December.

4. **Uses:** General uses of the Levy extract include:
   - Locating names of payers of income for levy sources
   - Identifying current address information
   - Identifying income from out-of-state sources
   - Identifying active military personnel for removal from non-filer lists

**11.4.2.7.13 (07-03-2009)**

**Military Combat Zone**

1. **Source of Data:** The Department of Defense (DOD) Active Duty Military Combat Zone personnel information (PC 500 Combat Zone) file is received by the IRS on a monthly basis and posted to the IRS Master File.

2. The extract file contains a combat zone entrance date and exit date for all active duty military personnel that DOD has identified as deployed in a military combat zone. The file includes full-time and reserve personnel from the five branches of the military (Army, Navy, Air Force, Marines and Coast Guard) as well as National Guard personnel (Army and Air Force). Information is validated by each branch of service. The extract will be sorted by state code (address of taxpayer) using the legal state of residence from military records. This extract is not available to city tax agencies because the ZIP code is not captured by DOD and this would be the only way city tax agencies could be authorized to receive the information.

3. **Distribution:** The Military Combat Zone extract will be distributed monthly beginning in January and ending in December each year.

4. **Uses:** The Military Combat Zone extract will be used to suspend collection efforts and/or enforcement actions against military personnel while serving in a combat zone.

**11.4.2.7.14 (07-03-2009)**

**Non-Itemizer Extract**

1. **Source of Data:** Data is extracted from the IRS Individual Master File (IMF) and the Individual Return Transaction File (IRTF). This extract is available to state tax agencies based on state code and to city tax agencies based on ZIP Codes.

The Non-Itemizer extract provides a list of individuals who did not itemize on their prior year federal income tax return. The extract is based on the address of the taxpayer as indicated on the federal tax return (state code sort). By matching extract data with state tax agency refund recipients, state tax agencies can identify those refund recipients who did not itemize on their prior year federal tax return. Because these taxpayers did not
itemize, the state tax agency is not required to issue Forms 1099-G to these taxpayers, therefore providing a cost and resource savings to the state. There will be a record on the Non-Itemizer extract as long as there is not a duplicate or amended return posted for the same tax year.

2. **Distribution:** The Non-Itemizer extract is distributed annually in November.
3. **Uses:** Uses of the Non-Itemizer extract include:
   - Identification of state refund recipients who did not itemize on their prior year federal tax return, eliminating the need for a state tax agency to send Form 1099-G.

11.4.2.7.15 (05-19-2014)

Preparer Tax Identification Number (PTIN)

1. **Source of Data:** Data is extracted from the PTIN Database and the National Accounts Profile (NAP). The PTIN extract provides the SSN and PTIN for tax preparers nationwide who have been issued a PTIN. All tax preparers must apply for a PTIN as a result of the PTIN Initiative effective 1/1/2011. The PTIN must be used as an identifying number by paid tax preparers.
2. **Distribution:** The PTIN extract is distributed weekly (January through December) and is cumulative.
3. **Uses:** Providing the PTIN extract to state tax agencies allows practitioners the added security of using the IRS PTIN on the state returns while allowing the state tax agency to continue compliance and education programs with practitioners.

11.4.2.7.16 (05-19-2014)

Taxpayer Address Request (TAR)

1. **Source of Data:** The source of data for the TAR extract is the IRS Individual Master File (IMF). The extract contains taxpayer address data from the Individual Master File and is based on a state tax agency supplied tickler file containing the SSNs and name controls of specific taxpayers.
2. Accounts for married individuals are established on the IMF using the SSN of one spouse as the primary SSN. Submissions for TAR will be run against the Spouse-Primary Cross-Reference File to determine the primary SSN. Primary and secondary SSNs and the taxpayer's name and address will be extracted for the file returned to the state tax agency. In addition, the latest tax module year is provided to establish currency of the information.
3. **Distribution:** This extract is distributed weekly from February through January in response to a state-submitted tickler file. Participants who enroll during the enrollment period can begin to submit ticklers in February the following year.
4. **Uses:** Some uses of the TAR extract include locating taxpayers that have moved as well as those who are delinquent.
Note:

Federal agencies may receive address information through TAR under IRC §6103(m)(2), (3), (4), (5), and (7). However, federal agencies are not permitted the same disclosures as the state taxing agencies. The federal TAR extract is separate from the GLDEP state TAR extract. The federal TAR extract is NOT part of the GLDEP, federal agencies reimburse the IRS for this service.

11.4.2.7.17 (05-19-2014)

State Reverse File Match Initiative (SRFMI)

1. **Background:** IRS provides state tax agencies with various extracts to match against their files and identify both individual and business non-compliant taxpayers. For SRFMI, IRS is asking the state tax agencies to provide data back to the Service when a state tax return has been filed but a federal tax return has not, or when the amounts reported on a state tax return are greater than those reported on a federal tax return. State tax agencies may have obtained these taxpayer returns through normal taxpayer filings, an amnesty program, or other compliance efforts.

2. State tax agencies are asked to compare the last BMF/BRTF by State Code, BMF/BRTF by EIN, IMF/IRTF by State Code, and IMF/IRTF by SSN extracts received from the IRS against their business and individual master file records to produce an extract for the IRS. The extract should include records that exist on the state master file but not on IRS files or contain discrepancies between state and IRS amounts.

3. **Uses:** The IRS uses for the SRFMI Extract include:
   - Identify federal non-filers - Identify records on the state tax agency's master file that are not present on the IRS master file.
   - Determine discrepancies between federal and state returns - The return appears on both the extract and state tax agency files but there are differences in income, expenses, credits, business type, etc.
   - Identify obsolete or out-of-business taxpayers.
   - Use state sales tax information as a comparison to gross receipts to identify federal underreporters and non-filers.
   - Compare wages on state withholding records with IRS employment tax records.

11.4.2.8 (10-16-2017)

Legal Issues: Safeguards, Disclosure, Need and Use

1. **Safeguards:** Each state tax agency receiving FTI via the GLDEP is responsible for safeguarding the confidentiality of FTI in accordance with IRC §6103(p)(4) and for maintaining the integrity of the FTI if commingled with information from other sources. The IRS Office of Safeguards is responsible for safeguard oversight of state tax agency compliance with IRC §6103(p)(4). Refer to IRM 11.3.36, *Safeguard Review Program* for more information.
2. **Disclosure**: The sharing of FTI via the GLDEP is governed by IRC §6103(d). All requests for FTI from state tax agencies must be approved by an IRS DM.

3. **Need and Use**: FTI may be obtained by state tax agencies via the GLDEP to the extent that the information is needed for and is reasonably expected to be used for state tax administration under the jurisdiction of that agency. The information may not be used for any purpose inconsistent with the state tax administration responsibilities of that state tax agency. Oversight of compliance with the need and use provisions is a function of both Disclosure and Safeguards. Refer to IRM 11.3.32, *Disclosure to States for Tax Administration Purposes* and IRM 11.3.36, *Safeguard Review Program* for more information.

11.4.2.9 (05-19-2014)

**Work Request (WR)**

1. An annual Work Request (WR) must be submitted through the Work Request Management System (WRMS) for each data extract. The WR must be submitted before the programming/processing of the extract can begin. Any request for changes must be included in the WR. The submission of WRs for the GLDEP is the responsibility of the GLDEP analysts on the Data Services staff.

2. The WR process is used by the business area and IT to request, control, and monitor changes to information systems. The WR process provides a vehicle for formal communication about information systems requirements between the business area and the IT office being asked to do the work. The WR process serves as a communications, configuration management and documentation tool for the IRS to manage resources.

3. The WR coordinator for a specific business area has primary responsibility for assisting the WR originator in entering and tracking individual WRs in the WRMS.

4. The Demand Management Executive Advisory Committee sets the due date for work requests based on work request operational dates. In general work requests must be submitted eight to fourteen months in advance of the operational date.

11.4.2.10 (05-19-2014)

**Testing of Data Exchanges**

1. **Validity Testing**: Testing the validity of GLDEP extract data before extract distribution ensures the integrity of the data.

2. Roles and responsibilities of participants in the testing process are as follows:
   
   A. IT will build checks into the GLDEP extract programming/processing to ensure extract output criteria are met. When extract programming/processing criteria is not met, it can cause extract processing to abort. At the IRS Computing Centers, IT Quality Review teams review the extract content to ensure that only agencies enrolled in the GLDEP receive the federal tax information for which they are enrolled.

   B. Secondary testing of the more complex extracts is also accomplished periodically in addition to the regular testing/quality review accomplished by IT. For
secondary testing, IT provides a GLDEP analyst with an Automated Business Rule (ABR) report or sample of extract records for review. The GLDEP analyst examines the report or records to ensure that extract record selection criteria is being met.

3. For certain extracts such as the IMF/IRTF and BMF/BRTF extracts, secondary testing can also be accomplished in conjunction with select state tax agencies, in addition to the regular testing/quality review accomplished by IT. Prior to the production run for the extract, IT sends out a test extract to the test state tax agencies. The GLDEP analyst provides the test state tax agencies with an advance copy of the extract record layout and test criteria. When a test state tax agency discovers a problem, they should notify their GL who should in turn notify the Data Services GLDEP team. The GLDEP team will work with IT personnel responsible for programming and production of the extract to resolve problems, keeping the GL informed of progress. In some cases, it is necessary for state tax agency and IRS programmers to communicate directly. In these cases, the contact will be coordinated through the GL and the GLDEP team.

11.4.2.11 (05-19-2014)

Enhancement Request (Procedures for Requesting Changes to the GLDEP)

1. State tax agencies that participate in the GLDEP may request enhancements or changes to the program. The "IRS Governmental Liaison Data Exchange Enhancement or Data Availability Request Form" must be used to request GLDEP enhancements. The form must also be used to ask about the feasibility of an enhancement.

   Example of a Request: If a state tax agency wants to know if a particular data element can be made available but has not yet decided whether or not they want to actually request that the data element be made available, the form must still be used. The reason for this is that it often takes as many resources and as much time to determine the availability of a data element as to actually make the data element available.

2. The form includes detailed instructions on how to submit a request to GLDEP analysts and is designed to assist the GL in helping the state tax agency through the enhancement request process. The form prompts the GL and the state tax agency counterparts to think through the request and answer the many questions that arise. The request should be as specific and complete as possible.

3. These enhancement request procedures apply only to the GLDEP extracts listed at IRM 11.4.2.3.

11.4.2.11.1 (05-19-2014)

Enhancement Request General Procedures

1. IRS can only provide data that is currently transcribed to IRS Master File. IRS cannot incur expenses for transcribing data not required for federal tax administration.
Note:

Participating state tax agencies requesting enhancements and data availability should recognize that the process within IRS could be a time-intensive process.

2. If a tickler file will be submitted as part of the state tax agency request, the following information is required:
   • List all fields proposed to be included on the tickler file that is submitted to IRS
   • Indicate the frequency of proposed tickler submissions (annually, monthly or weekly)
   • Determine approximately how many records will be on each tickler file
   • List all fields requested to be part of the output file (IRS file sent to state tax agencies)

11.4.2.11.2 (05-19-2014)

Enhancement Request Participating Agency Procedures

1. Any state, city, or qualifying group of municipalities covered by IRC §6103 (d) and currently enrolled in the IRS GLDEP may use the enhancement process.
2. The state tax agency must identify the specific information requested by preparing and submitting the request form to the GL. The GL can assist with research and preparation of the request form. A need and use justification must also be provided. If the request is for additional data elements, the request must contain the specific line items (data elements) requested.

11.4.2.11.3 (10-16-2017)

Enhancement Request Governmental Liaison (GL) Procedures

1. GLs must research the request to determine if it is a potential enhancement or a request for FTI availability.
2. GLs must attach a statement of the detailed research conducted for the request. The following documents will help the GL in determining if the requested information is currently offered or if the request is valid:
   • Extract spec book for the presence of the form or data
   • Annual Enrollment Form and Annual ODES Form to determine if the data is already offered and if the state tax agency has previously requested the data elements
   • IRS forms and publications to confirm the information description
   • Document 6209 ,IRS Processing Codes and Information , for status indicators not found on forms
3. The GL will forward the request to the appropriate DM (based on the requesting state) for review and approval before submitting it to GLDEP.

11.4.2.11.4 (05-19-2014)
Enhancement Request Disclosure Manager (DM) Procedures

1. The DM reviews the request for appropriate need and use justification and approves/denies the proposed need and use. If approved, the DM signs the request form indicating approval of the need and use based on the information available and returns the request to the GL.

11.4.2.11.5 (10-16-2017)

Enhancement Request Data Services Responsibilities

1. The request will be assigned to a Data Services GLDEP analyst who will review and forward the request to Information Technology (IT) as appropriate. The analyst will work with IT to prepare a Work Request (WR) or any other required documents and will keep the GL informed of progress. The response from IT may take as long as 90 days. Once the GLDEP analyst receives a definitive response from IT, they will complete the Enhancement Response portion of the form to be signed by the Chief, Data Exchange and Quality Initiatives and return to the GL. The GL will then prepare a response to the requesting state tax agency.

Exhibit 11.4.2-1

Terminology

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Agreement:</td>
<td>Agreement on Coordination of Tax Administration executed by the Commissioner of the Internal Revenue Service and the head of a state tax agency.</td>
</tr>
<tr>
<td>Data Element:</td>
<td>Any item of information such as an SSN that can be selected from a return. May also be called a field.</td>
</tr>
<tr>
<td>Extract:</td>
<td>A computer-generated file that contains specific data elements.</td>
</tr>
<tr>
<td>Record:</td>
<td>A set of data elements.</td>
</tr>
<tr>
<td>Work Request (WR):</td>
<td>A process used to request services from Information Technology (IT) through the Work Request Management System (WRMS). The WR serves as the official agreement or contract between IT and the requesting office. The term WR is also used to refer to the resulting document containing the specifics of the WR process.</td>
</tr>
<tr>
<td>Specification Book:</td>
<td>A technical and administrative user guide for extracts that are part of the Governmental Liaison Data Exchange Program (GLDEP) for use by both state and IRS personnel. Also called a “spec book”.</td>
</tr>
<tr>
<td>Secure Data Transfer (SDT):</td>
<td>Secure Data Transfer (SDT) is a means to exchange files with FedState agencies electronically in a secure and automated environment over the Internet. SDT is currently used to deliver outgoing GLDEP files to FedState agencies and accept incoming files.</td>
</tr>
</tbody>
</table>
Term | Definition
--- | ---
Tickler File: | A tickler file is an input file that is merged with IRS data to produce a specific output data extract. Tickler files must be submitted to IRS via SDT.

Exhibit 11.4.2-2

Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Definition</th>
<th>Acronym</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABR</td>
<td>Automated Business Rule</td>
<td>IRMF</td>
<td>Information Returns Master File</td>
</tr>
<tr>
<td>AFOIA</td>
<td>Act</td>
<td>IRS</td>
<td>Internal Revenue Service</td>
</tr>
<tr>
<td>AIMS</td>
<td>Abusive Tax Avoidance System</td>
<td>IRTF</td>
<td>Individual Return Transaction File</td>
</tr>
<tr>
<td>ATAT</td>
<td>Transactions</td>
<td>IT</td>
<td>Information Technology</td>
</tr>
<tr>
<td>BMF</td>
<td>Business Master File</td>
<td>ITIN</td>
<td>Individual Taxpayer Identification Number</td>
</tr>
<tr>
<td>BRTF</td>
<td>Business Return Transaction File</td>
<td>ITPI</td>
<td>Identity Theft Protection Indicator</td>
</tr>
<tr>
<td>CP</td>
<td>Computer Program</td>
<td>LAND</td>
<td>Appeals and Non-Docketed Reporting System</td>
</tr>
<tr>
<td>DM</td>
<td>Disclosure Manager</td>
<td>MCZ</td>
<td>Military Combat Zone</td>
</tr>
<tr>
<td>DOD</td>
<td>Department of Defense</td>
<td>NAP</td>
<td>National Accounts Profile</td>
</tr>
<tr>
<td>DOL</td>
<td>Department of Labor</td>
<td>OD</td>
<td>Operating Division</td>
</tr>
<tr>
<td>EIN</td>
<td>Employer Identification Number</td>
<td>ODES</td>
<td>Optional Data Element Selection</td>
</tr>
<tr>
<td>EOAD</td>
<td>Examination Operational Automation Database</td>
<td>OUO</td>
<td>Official Use Only</td>
</tr>
<tr>
<td>ERAS</td>
<td>System</td>
<td>PDF</td>
<td>Portable Document Format</td>
</tr>
<tr>
<td>FEIN</td>
<td>Federal Employer Identification Number</td>
<td>PGLD</td>
<td>Privacy, Governmental Liaison, Disclosure and Safeguards</td>
</tr>
<tr>
<td>FTA</td>
<td>Federation of Tax Administrators</td>
<td>PTIN</td>
<td>Preparer Tax Identification Number</td>
</tr>
<tr>
<td>FTI</td>
<td>Federal Tax Information</td>
<td>RGS</td>
<td>Reports Generation Software</td>
</tr>
<tr>
<td>GAO</td>
<td>Government Accountability Office</td>
<td>SBU</td>
<td>Sensitive But Unclassified</td>
</tr>
<tr>
<td>GL</td>
<td>Governmental Liaison</td>
<td>SDT</td>
<td>Secure Data Transfer</td>
</tr>
<tr>
<td>GLADIS</td>
<td>Government Liaison and Disclosure Information System</td>
<td>SRFMI</td>
<td>State Reverse File Match Initiative</td>
</tr>
<tr>
<td>GLDEP</td>
<td>Exchange Program</td>
<td>SSN</td>
<td>Social Security Number</td>
</tr>
</tbody>
</table>
ii Sharps, Pixley, Inc. v. Dir. Div. of Taxation, 16 N.J. Tax 626, 636 (N.J. Tax 1997). In Sharps, the taxpayer received a Revenue Agent’s Report followed by a letter from the IRS that confirmed that the United States Joint Committee on Taxation took no exception to the adjustments stated in the Revenue Agent’s Report. Thereafter, the taxpayer received a Final Determination Notice from the IRS. The New Jersey Tax Court concluded that the letter that referenced the Joint Committee decision triggered the 90-day period. The Court disagreed with the taxpayer’s contention that the 90-day period could not begin until the Final Determination Notice was issued.

v Id.
vi N.J. REV. STAT. § 54:10A-13 (2016), H.B. Acquisitions, Inc. v. Director, Div. of Taxation, 12 N.J. Tax 60, (Tax 1991) (holding that a taxpayer’s action of furnishing an amended return does not constitute a correction or change by the IRS to a taxpayer’s federal income as required by N.J. REV. STAT. § 54:10A-13).

xiv Lenox Inc., 19 N.J. Tax at 448.
xv Id.
xvi Stella A. Schaevitz Trust v. Director, Div. of Taxation, 15 N.J. 296, 310 (N.J. Tax Ct. 1995) (reasoning that “[i]f the taxpayer can challenge the IRS determination, so too can the Director”).
xvii Id.
xviii Booth v. Director, Division of Taxation, 27 N.J. Tax 600 (N.J. Tax 2014) (finding that the New Jersey Division of Taxation was not barred from with the IRS determination).
xix Estate of Oberg v. Director, Div. of Taxation, 30 N.J. Tax 256 (N.J. Tax 2017) (rejecting the taxpayer’s argument that New Jersey Division of Taxation was precluded from assessing estate taxes in excess of the state death tax allowance on the federal estate tax return accepted by the IRS).
xxii Id.
xxiii Id.
xxiv Id.
Purpose

This guide provides information on examining taxpayers who have filed amended returns reflecting additional tax liabilities. It is not an exhaustive discussion, nor should this guide be cited as authority.

The topics covered in this guide are limited to their impact on quiet amended returns. For complete coverage of the topics herein, examiners should refer to the IRM.

Background

In the last few years, IRS has initiated a number of programs to encourage non-compliant taxpayers with undisclosed offshore accounts or assets to disclose their non-compliance voluntarily and to pay the tax, interest, and penalties due. In return, IRS has agreed to resolve these cases based on pre-determined terms.

Despite the opportunity to resolve the amount of tax, interest, and penalties on terms favorable to taxpayers, many taxpayers choose not to participate in a voluntary program, but instead simply file amended returns to report the additional tax they owe. While IRS appreciates taxpayers who come forward to self-correct errors, it has a duty to insure that these self-corrections are accurate and complete and that penalties, if applicable, are addressed.

Therefore, the purpose of conducting these examinations is twofold:

- Insure that the corrected tax liability reflected on the amended return is correct and
- Address any penalties that might apply

Definition

These amended returns are sometimes called “quiet or silent amended returns,” because taxpayers file them outside of any of the offshore disclosure initiatives, i.e. “silently.” The terms quiet amended and silent amended returns are used interchangeably in this guide.

Program

The Quiet Disclosure program is undergoing several
<table>
<thead>
<tr>
<th>Plans</th>
<th>modifications at the Campus in order to adapt and meet the ever-changing needs of the Service.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Scope of the Examination</strong></td>
<td>The examination of a case with a quiet amended return is actually an examination of the original tax return. It just happens to have the added component that the taxpayer self-corrected an item improperly reported on the original return. As in any examination the examiner’s role is to determine a taxpayer’s correct tax liability for a specific period of time, i.e., a “tax year.” In the example on page 3 the examiner assigned Taxpayer’s 2009 tax year may inquire into any issue related to 2009. The examiner is not limited to inquiring only into the unreported interest income disclosed on the 1040-X. Any penalties applicable to 2009 are also at issue. <strong>The entire tax year is under examination in these cases – not simply the amended return.</strong> Of course, if after consultation with the group manager, it is decided to perform a limited scope examination under IRM 4.10.2.6.1.1 or other authority, the examiner may limit the scope of the examination. <strong>If the original 1040 is not included in the case file with the 1040-X, request a copy in your initial IDR.</strong></td>
</tr>
<tr>
<td><strong>Legal Status of a Quiet Amended Return</strong></td>
<td>Examiners are generally familiar with amended returns (1040-X) requesting refunds of previously paid tax. A 1040-X seeking a refund is a claim for the refund of an overpayment of tax authorized under IRC § 6401. There are special rules concerning claims for refund, including statutes of limitations, computations of the amount that may be refunded, and provisions for IRS to recover refunds made in error. Quiet amended returns are not subject to the special rules for claims for refunds of tax, because they are not claims for refunds. They are corrections to filed returns which result in a tax liability greater than what was reported on the original return. Quiet amended returns are subject to the statutory provisions that apply to assessments of tax, not to refunds of overpayments.</td>
</tr>
</tbody>
</table>
A quiet amended return does not extend the statute of limitations for IRS to assess tax for that tax year.

Example: Taxpayer timely filed his 2009 Form 1040. The 3 year statute of limitations under IRC § 6501(a) expires on April 15, 2013. On October 1, 2012 Taxpayer filed an amended return reflecting additional tax of $3,000 based on interest income he omitted from his original return. IRS must assess the additional $3,000 on or before April 15, 2013.

IRC § 6501(c)(7) provides a limited exception to the above general rule which will be discussed later.

Examiners, taxpayers, and representatives are accustomed to IRS examining tax years with “open” statutes of limitations and if additional time is needed, extending the assessment date under IRC § 6501(c)(4) with Form 872. Representatives may question whether IRS can begin an examination after the 3 year statute of limitations under IRC § 6501(a) has expired. The answer to this question is an unequivocal “Yes.”

IRS is authorized to examine books and records to determine a taxpayer’s liability (IRC § 7602), but IRS may not subject a taxpayer to an unnecessary examination. (IRC § 7605(b). An examination of a tax year after the statute of limitations is expired is an unnecessary examination, because generally no assessment of tax can be made for an expired year.

Notwithstanding the above, IRS does not have to prove that the statute of limitations is open before starting an examination. IRS may start an audit to determine if there is an open statute which would allow an assessment of tax.

In United States v Powell, 379 U.S. 48 (1964) IRS issued a re-opening letter to the taxpayer after the 3 year statute of limitations had expired, because IRS believed the statute of limitations was still open due to fraud. The taxpayer refused to comply with an administrative summons, alleging the examination was unnecessary because of the expired statute of limitations.
The Circuit Court refused to enforce the summons because IRS did not first establish that there was fraud.

The Supreme Court reversed and enforced the IRS summons even though the 3 year statute of limitations was expired and an assessment could only be made if the IRS proved fraud. The Court did not require IRS to prove fraud before issuing the summons, stating:

We do not equate necessity as contemplated by this provision with probable cause or any like notion. If a taxpayer has filed fraudulent returns, a tax liability exists without regard to any period of limitations. Section 7602 authorizes the Commissioner to investigate any such liability. If, in order to determine the existence or nonexistence of fraud in the taxpayer's returns, information in the taxpayer's records is needed which is not already in the Commissioner's possession, we think the examination is not "unnecessary" within the meaning of 7605 (b). Although a more stringent interpretation is possible, one which would require some showing of cause for suspecting fraud, we reject such an interpretation because it might seriously hamper the Commissioner in carrying out investigations he thinks warranted, forcing him to litigate and prosecute appeals on the very subject which he desires to investigate, and because the legislative history of 7605 (b) indicates that no severe restriction was intended. [emphasis added]

In other words, an examination undertaken by IRS to determine if an exception to IRC § 6501(a) is present is not an unnecessary examination. Put another way, proof of an exception to the 3 year statute of limitations is not a condition precedent to starting an audit.

**Statutes of Limitations and Assessments**

**Assessments**

An assessment of tax is merely the recording of a tax liability in IRS’s books and records, but it is the critical event in IRS’s compliance efforts. IRC § 6203

Generally, the IRS is authorized to summarily assess tax reported to the IRS by the taxpayer on a tax return (Form 1040 and 1040-X). IRC § 6201(a)(1).
For deficiency assessments, the IRS may not assess tax until the taxpayer receives a statutory notice of deficiency (90 Day Letter) and during the 90 days the taxpayer has to decide whether to petition the Tax Court. IRC § 6213(a).

There are several exceptions to the “No Statutory Notice = No Assessment” rule.

- IRC § 6213(a) – permits IRS to assess tax if a taxpayer waives his right to receive a notice of deficiency prior to assessment (Forms 4549, 870, 870-AD)
- IRC § 6213(b) – permits IRS to assess tax attributable to a math or clerical error on a filed return
- IRC § 6213(c) – permits immediate assessment of tax if a taxpayer does not file a petition after receiving a notice of deficiency
- IRC § 6861(a) – permits IRS to immediately assess tax if assessment and collection of the tax is in jeopardy
- IRC § 7121(a) – permits IRS to enter into an agreement where both the taxpayer and the IRS agree to an assessment

When a quiet amended return is received, the IRS should immediately assess the additional tax reflected on it to insure that the Government’s interests are protected. However, an assessment of tax cannot be made in a tax year otherwise barred by statute.

Because the processing Campus has no mechanism for determining if one of the excepted statute of limitations provisions applies (25% omission; FATCA; Failure to notify the Secretary of certain foreign transfers), they generally process only those amended returns where the IRC 6501(a) statute remains open.

As such, upon assignment of a quiet amended return, the examiner must make sure the additional tax has been assessed in all years where there is an open statute, including those where the excepted statute of limitations provisions apply. If the additional tax has not been assessed, the examiner needs to protect the Government’s interest, and
forward the amended return for manual (i.e. quick) assessment. (See IRM 4.4.25 for Quick Assessment Procedures.)

**Quick Assessment vs. Processed Return**

When a Quick Assessment is input into a tax module, only the Tax is adjusted. The Taxable Income, AGI, Exemptions, SE tax, and certain tax credit remain unchanged on the tax module. Failure to recognize and correct this mismatch prior to closing the case will cause it case to be returned to the examiner.

The following steps should be taken to recognize a quick assessment and to correct the mismatch in the tax module:

- To determine if a quick assessment has been posted, use IDRS to secure:
  - an IMFOL/BMFOL “T”
    A quick assessment can be identified if a TC 370 is posted just prior to a TC 290 tax assessment
  - an IMFOL/BMFOL “R”
    A quick assessment can be confirmed if the Tax per the tax modules matches the amended return, but the AGI and TI still reflect the original return amounts

- If the tax was quick assessed, complete Form 3870, *Request for Adjustment*. The following language should be included:
  - Line 11, Reason for Adjustment
    “To post and correct AGI and TI from quick assessment on xx/xx/2012”
  - Line 29, Assessment, Item or Credit Adjustment Processing Information

<table>
<thead>
<tr>
<th>Ref. No.</th>
<th>Item Adjustment</th>
<th>Ref. No.</th>
<th>Credit Adjustment</th>
</tr>
</thead>
<tbody>
<tr>
<td>888</td>
<td>AGI</td>
<td></td>
<td>12,345</td>
</tr>
<tr>
<td>886</td>
<td>TAXABLE INCOME</td>
<td></td>
<td>1,234</td>
</tr>
</tbody>
</table>

**NOTE:** Amended returns with adjustments to Exemptions, SE tax, and credits will require additional reference codes.

- Fax the completed Form 3870 to the FORT:
  - Memphis
  - SBSE Areas 201 – 207
  - Fax Number 901-786-7106

Once the tax is **fully** assessed/processed, in
determining any additional underpayment, the examiner will work from the total tax reflected on the 1040-X. That figure will be the “tax as previously adjusted” on a subsequent Form 4549 or 4549-A.

A discussion of the statute of limitations in the context of quiet amended returns is covered later in this guide.

Review case and IDRS transcripts to determine how many years of “Quiet Disclosures” were filed. Consider establishing additional years on ERCS with form 5345D (using project code 1160) after careful review of statutes, discussing case with manager and Fraud Technical Advisor (FTA) (as appropriate), and using statute exceptions including:

- Fraud/ and 6501(e) for 25% omission of income; or
- FATCA-6501(e) for $5,000 omission of income from foreign financial assets (6038D) if ASED was open on March 18, 2010 or
- 7609(e)(2) may apply in some cases where a third party summons was issued and unresolved for more than six months i.e. John Doe Summons; or
- 6501(c)(8) for failure to notify Secretary of certain foreign transfers, or
- “YY” memo (discussed later) or
- F906-to assess tax on barred years

FBAR- research CBRS (F10509) to determine FBAR filing history. If taxpayer has an FBAR violation, submit RSM (F13535) to TM, contact FBAR coordinator for assistance (if necessary), and then add FBAR years to ERCS following the attached guide. Complete and forward FBAR Monitoring Document(F13536) to DCC and then agent can begin FBAR examination.

Refer to Exhibit 1 for the FBAR-ERCS Guidelines.

Because some of the taxable amended returns have been filed in tax years that appear to be barred by statute, the processing Campus may have moved the
taxpayer’s payment to the Excess Collection File (XCF). The Excess Collection File (XCF) controls remittances that cannot be applied to a taxpayer account and must be accounted for as excess collections (e.g. conscience money and voluntary contributions to reduce the national debt).

To determine if a taxpayer’s payment has been moved to XCF, look for a TC 672 debit followed by a notation “EXCESS-COLL” on either an IMFOLT or TXMOD.

To have this payment credited back, complete Form 3870, Request for Adjustment, requesting that the payment be moved out of XCF and credited back to the taxpayer’s tax module. A statement justifying the viability of statute of limitations will need to be included (i.e. IRC 6501(e)(1)(A)(ii) or IRC 6501(c)(8), etc.).

A sample of a completed Form 3870 is provided. See Exhibit 2.

After securing a Group Manager’s signature/approval, the completed Form 3870 should be faxed to Centralized Case Processing (CCP) for processing.

CCP Exam Fax number for SBSE (Memphis): 901-786-7106

**Refunded Payments**
In some instances, the taxpayer may receive a refund of the payments he submitted with his amended return. This may happen when only the payment posts to the tax module, but the amended return doesn’t get processed, hence the payments on account do not match the payments due.

After an examination is initiated, the taxpayer or his representative may contact the Revenue Agent, seeking directions for returning refund checks.

Returned Checks Procedures can be found in the IRM, IRM 21.4.3.4.4, including the mailing addresses of the Refund Inquiry Unit for each Campus.

In order to insure that payment doesn’t refund again,
verify that an unreversed TC 570 (-R freeze) or TC 130 (V- freeze) has posted to the tax module.

**Starting the Examination**

The examination of a tax year when a quiet amended return was filed is a regular examination. Normal examination protocols apply. The examiner will:

- Send the taxpayer a standard examination letter including all “stuffers” such as Pub. 1
- Set the scope of examination after consulting with the group manager
- Prepare a pre-audit analysis identifying any Large, Unusual, or Questionable (LUQ) items
- Adhere to the package audit requirements and inspect prior and subsequent year returns, related returns, etc.
- Perform minimum income probes (IRM 4.10.4)
- Comply with restrictions on lifestyle and financial status examinations (IRC § 7205(e))

**The Initial IDR**

It is difficult to provide a pro forma IDR for these cases, because examiners are likely to raise additional issues other than the issue on the quiet amended return. It is not practical to try to anticipate all the issues that may warrant investigation. However, a sample IDR is attached which includes a number of documents that should be requested to address the amended return filing. Examiners should expand the partial IDR as needed. **Refer to Exhibit 3.**

**The Taxpayer Interview**

If a representative under a valid power of attorney is handling the examination for the taxpayer, the examiner may not disregard that designation without reason. However, the examiner, not the taxpayer or representative, should control the examination, including its time and place. See IRC § 7605(a).

Examiners have the right to interview a taxpayer or other witness when necessary. Even a taxpayer with a representative can be summoned if the taxpayer has relevant information and the other Powell requirements are met.

Local Counsel attorneys are available to assist with
summonses and interviews.

Representatives often request a list of questions in lieu of the taxpayer’s appearance. Examiners are cautioned that this approach severely restricts the ability to ask follow-up questions and explore other areas of inquiry. It also eliminates the opportunity to observe a taxpayer’s (or other witness’s) demeanor. Further, providing a list of questions gives a taxpayer time and opportunity to craft responses that may or may not be responsive.

More information regarding interviews is included in the Internal Revenue Manual.

Additional information and authority for interviewing taxpayers and witnesses and controlling an examination can be found at:

- IRC § 6001 - Requirement for taxpayers to keep records
- IRC § 7521(c) - IRS cannot require the presence of a represented taxpayer without an administrative summons
- IRC § 7525 - Confidentiality privileges relating to taxpayer communications with practitioners
- IRC § 7601 - Authority to examine taxpayers
- IRC § 7602 - Authority to Request Information
- IRC § 7605 - Authority to Fix Time & Place of Appointment
- IRM 4.10.1.5.7. Confidentiality - Privileges Relating to Taxpayer Communications
- IRM 4.10.2.7.5 - Scheduling Appointment With the Taxpayer and/or Representative
- IRM 4.10.2.8 - Scheduling Problems
- IRM 4.10.2.9.3 - Authority to Request Books, Records, and Accountant's Workpapers
- IRM 4.10.2.10.2 - Rescheduling the Initial Appointment
- IRM 4.10.3.2.1 - Who To Interview
- IRM 4.10.3.4.5.2 - Interview Techniques
- IRM 25.5 - Summons Handbook
- IRM 21.3.7 - Processing Third Party Authorizations onto the Centralized Authorization File (CAF)
- SB/SE Delegation Order 145.7 - Authority to
Request and Inspect Preparers Records
- Circular 230 (31 CFR 10.0 through 10.93) - Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers before the IRS
- Publication 947 - Practice Before the IRS and Power of Attorney

While it is not the intent of this workshop to provide a pro forma interview questionnaire, there is a sample interview questionnaire included at the end of this material. See Exhibit 3. These interview areas are merely suggestions of the types of areas that need to be covered and are not meant to be used as an interview tool/checksheet.

**Estate & Gift Issues: How to address**

The most common type of Estate or Gift Tax issues encountered by Internal Revenue Agents (RA's) with this type of case will be:

1. The taxpayer states that the foreign bank account is the result of a gift, or
2. The taxpayer states that the foreign bank account is the result of an inheritance, bequest or estate distribution, or
3. Outright denial of the existence of, or any knowledge of, the account.

**1. Taxpayer states that the foreign bank account is the result of a gift.**

In this case, the RA will ask the following pertinent questions and provide the answers on a referral form:

1. Who was the donor (gift giver)?
2. What was the date of the gift?
3. What is the address of the donor?
4. What was the amount of the gift?
5. What was the form of the gift (cash, securities, etc.)?
6. Was there a gift tax return (709) filed?
7. If so, do you have a copy or the name of someone who does?

**The gift tax filing requirement in the years in**
**question:** Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, is used to report transfers subject to the federal gift tax and certain generation skipping tax and to compute the tax, if any, due on these transfers.

A gift must exceed Table 1 per donee or Table 2 to a spouse who is not a citizen of the United States, before the gift is potentially taxable. Any tax due is imposed on the person giving the gift (donor).

<table>
<thead>
<tr>
<th>Tax Year</th>
<th>Table 1 Individual Donee Exclusions</th>
<th>Table 2 Non-US Citizen Spouse</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997</td>
<td>$10,000</td>
<td>$10,000</td>
</tr>
<tr>
<td>1998</td>
<td>$10,000</td>
<td>$100,000</td>
</tr>
<tr>
<td>1999</td>
<td>$10,000</td>
<td>$101,000</td>
</tr>
<tr>
<td>2000</td>
<td>$10,000</td>
<td>$103,000</td>
</tr>
<tr>
<td>2001</td>
<td>$10,000</td>
<td>$106,000</td>
</tr>
<tr>
<td>2002</td>
<td>$11,000</td>
<td>$110,000</td>
</tr>
<tr>
<td>2003</td>
<td>$11,000</td>
<td>$112,000</td>
</tr>
<tr>
<td>2004</td>
<td>$11,000</td>
<td>$114,000</td>
</tr>
<tr>
<td>2005</td>
<td>$11,000</td>
<td>$117,000</td>
</tr>
<tr>
<td>2006</td>
<td>$12,000</td>
<td>$120,000</td>
</tr>
<tr>
<td>2007</td>
<td>$12,000</td>
<td>$125,000</td>
</tr>
<tr>
<td>2008</td>
<td>$12,000</td>
<td>$128,000</td>
</tr>
<tr>
<td>2009</td>
<td>$13,000</td>
<td>$133,000</td>
</tr>
<tr>
<td>2010</td>
<td>$13,000</td>
<td>$134,000</td>
</tr>
<tr>
<td>2011</td>
<td>$13,000</td>
<td>$136,000</td>
</tr>
<tr>
<td>2012</td>
<td>$13,000</td>
<td>$136,000</td>
</tr>
</tbody>
</table>

Form 709 is due generally no later than April 15 of the year following the calendar year in which the gifts were made. If the donor dies during the year the gifts were made, the executor must file the Form 709 the earlier of the due date (including extensions) of the donor's estate tax return (Form 706) or April 15 of the year following the year the gifts were made.

2. **Taxpayer states that the foreign bank account is the result of an inheritance, bequest or estate distribution.**

In this case, the RA will ask the following pertinent
questions and provide the answers on a referral form:

1. What was the name of the decedent?
2. What was the address of the decedent?
3. What relationship was the decedent to the volunteering taxpayer?
4. When did the decedent die (date of death)?
5. Who was the executor, administrator or personal representative for the decedent?
6. What was the nature of the bequest or inheritance (cash, securities, partnership interest, closely held business shares, any other asset)?
7. What was the value of the bequest or inheritance when received from the decedent’s estate?
8. Was there an estate tax return (706) filed?
9. If so, do you have a copy or the name of someone who does (you may have received it due to step up in basis of the assets you received from the estate)?

The Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, is used to report the estate tax for a taxable estate and to compute the generation-skipping transfer tax on transfers to skip persons of interests in property included in the decedent’s gross estate. The Form 706 is due generally 9 months after the date of the decedent’s death.

The estate tax filing requirement for the years in question is:

<table>
<thead>
<tr>
<th>Estate of Decedents Dying During:</th>
<th>Applicable Exclusion Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>2003</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>2004</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>2005</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>2006</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>2007</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>2008</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>2009</td>
<td>$3,500,000</td>
</tr>
<tr>
<td>2010</td>
<td>$5,000,000*</td>
</tr>
</tbody>
</table>
1. Check IDRS to see if the donor (typically, a parent or other relative) filed any gift tax returns or an estate tax return. This would be done by utilizing the IDRS command code BMFOLI followed by the original donor’s SSN, followed by the letter V. For example: BMFOL123-45-6789V
2. If IDRS shows that either a Form 706 (MFT 52) or Form 709 (MFT 51) was filed, contact the E & G Liaison to request the original return (the liaison will order the return and review it for you, you cannot order these returns yourself).
3. If no information is available on IDRS, you should contact the E & G Liaison to determine whether a referral to E & G is warranted. If so, then you would continue to work your case and, when the referral is assigned within E & G, you will be contacted by the E & G attorney and will coordinate case actions with him/her.

3. **Outright denial of the existence of, or any knowledge of, the account**

While this is an unlikely position taken by the taxpayer in light of having filed amended returns, you may encounter situations where the taxpayer denies all knowledge of the existence of what we know, or suspect, as a result of preliminary research conducted to be either an inherited or a gifted account. At that time, there are certain things that can be done.

- Technically, there was no estate tax due for decedents in calendar year 2010. However, there was an option provided to those estates in excess of $5,000,000 for filing a return in order to adjust the basis of the estate’s assets as defined under IRC §1022. If your decedent’s tax year is 2010, contact the E & G Liaison.

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>$5,000,000</td>
</tr>
<tr>
<td>2012</td>
<td>$5,120,000</td>
</tr>
</tbody>
</table>
The Utilization of Court Reporters

If the examiner issues a summons to the taxpayer for an appearance, Local Counsel may request that a court reporter transcribe the interview. A transcript of the summoned interview may be pivotal in any future trial.

It is the examiner’s responsibility to initiate the procurement of the court reporter. Group Manager (GM) and Territory Manager (TM) approval will be required prior to having your request input into the Integrated Procurement System (IPS) by an approved IPS user (typically a GM or TM’s secretary).

The procurement process should be initiated a minimum of 30 days prior to the needed services.

The following steps should be taken to initiate the approval of funds for procurement of a court reporter:

- Complete the Court Reporter portion (lines 1-19) of Part 1 of the Court Reporter/Arbitrator Request Form:

  NOTE: This form was designed for use by Labor Relations (LR); however it can be used by Exam to capture the information necessary to requisition a Court Reporter. Ignore all references to LR or EDI.

Line-by-line instructions:
Line 1: Today’s date
Line 4: Name, telephone, and address of the GM/TM’s secretary that has access to the IPS. This person will serve as the Point of Contact (POC) for follow-up during the requisition & procurement process.
Line 5: Same as 4 above
Line 7: Your GM’s name and telephone number
Line 8: Your Business Unit/Operating Unit/Area, including your group number
Line 9: Complete only if you know the name of a vendor; otherwise, leave blank.
Line 11: A brief description of the services requested: “Transcription of taxpayer interview under summons”
Line 12: Dates and times of taxpayer interview, as per the summons

Line 13: a) Address where interview will be conducted.
   b) If the interview is in the examiner’s Post of Duty, then the POC should be the examiner/phone number; If the interview is offsite, provide the name and number of someone within that location.

Line 16: An electronic version (i.e. “Disk”) is preferred

Line 18: A brief justification for the services requested: “Court reporter services recommended by Counsel for interview under summons of a Quiet Disclosure taxpayer.”

Line 19: $1,500 (this represents a reasonable estimate for 8 hours of transcription services plus the final report/disc)

The rest of the document should be left blank.

- Forward the completed Court Reporter/Arbitrator Request Form through your GM and TM for approval.
- Once approved, forward the Form to an IPS user (typically a GM/TM’s secretary), who will input the requisition request.
  - IPS will automatically channel the request through the funding approval process
  - The IPS user will receive a requisition number for any necessary follow-up.
- Once the funding is approved, the requisition will be assigned to a Contract Specialist, who will make the initial contact with the vendor, and generate the vendor contract. A copy of the contract will be provided to the IPS user.
- The Contract Specialist will provide the IPS user and/or the examiner with vendor contact information so that final logistical details can be arranged.
- The examiner should not accept a copy of the invoice for payment. Instead, she should refer the vendor to the written contract which directs vendors to submit their invoice electronically, through the Invoice Processing Platform (IPP). Once the invoice is received in IPP, the IPS user will receive a notification seeking to confirm delivery of services (i.e. the transcript). The IPS user will then input
Receipt and Acceptance into IPS, after which Beckley Finance Center will issue payment to the vendor.

Questions regarding the Procurement process can be directed to the Procurement Hotline: (202) 283-1478, Option 5.

**Summons**

Taxpayers required to file returns must keep permanent books of account or records sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown in any return. IRC § 6001; Treas. Reg. 1.6001-1(a). Wage earners are required to keep records so the IRS can determine the correct amount of tax. Treas. Reg. 1.6001-1(b) Examiners determine the time and place of an examination, which must be reasonable under the circumstances. IRC § 7605.

IRC § 7602 authorizes examiners to examine any books, papers, records, or other data which is or may be relevant or material to an examination. This includes issuing a summons to the taxpayer under examination or anyone an examiner deems proper. The summons power also includes the right to take testimony, under oath, of the summoned person. A summons can be used to determine a taxpayer’s tax liability; to collect a tax; or to secure information to prepare a return when a taxpayer has failed to file one.

Statutory authority, Internal Revenue Manual guidance, and court cases relevant to this topic include, but are not limited to:

**Internal Revenue Code**

- IRC § 6001 – Taxpayers are required to keep records
- IRC § 6201 – IRS is authorized to make inquiries, determinations and assessments of tax, interest, and penalties
- IRC § 7602 – Examination of Books and Witnesses
- IRC § 7603 – Service of Summons
- IRC § 7604 – Enforcement of Summons
Although examiners have broad authority to issue a summons, this authority is not absolute. An examiner must insure that the summons passes the “Powell Test.” In United States v Powell, 379 U.S. 48 (1964), the Supreme Court held that a summons is enforceable if it meets 4 tests:

- The investigation is for a legitimate purpose;
- The requested material is relevant to the investigation;
- IRS does not already possess the information and
- All administrative steps are followed.

The threshold for a valid summons is broadly interpreted and courts should be cautious in restricting the IRS’s authority, because it might “undermine the efficacy of the federal tax system.” United States v. Bisceglia, 420 U.S. 141 (1975).

In subsequent cases, courts have analyzed the 4-prong test by holding that:
• **Legitimate** Purpose – An IRS examination is a legitimate purpose. In *Powell*, the Supreme Court thus noted that the IRS can issue a summons to investigate “merely on suspicion that the law is being violated or even just because it wants assurance that it is not.” 379 U.S. at 57 (quoting *United States v. Morton Salt Co.*, 338 U.S. 632, 642-43 (1950)). Courts have also held that once IRS has secured information relevant to a legitimate investigation, the information may be used for other legitimate reasons as well. In other words, the use of summoned information is not limited to one specific case. *Tiffany Fine Arts v. United States*, et al, 469 U.S. 310 (105 S.Ct. 725, 83 L.Ed.2d 678).


• **Documents not in IRS's possession** – IRS may not require production of documents already in its possession. Therefore, examiners may not summons copies of filed returns. In *United States v. Monumental Life Ins. Co.*, 440 F.3d 729 (6th Cir. 2006) the court rejected the IRS's claim that documents obtained by IRS during the audit of a different taxpayer were not accessible because of disclosure laws.

        Courts have, however, required production of documents already in the IRS’s possession in situations when the IRS only had copies and wished to inspect the originals. *United States v. Davey*, 543 F.2d 996, 1001 (2d Cir. 1976); *United States v. Luther*, 481 F.2d 429, 432 (9th Cir.1973).

        Courts have also held this prong of the test was
met upon a showing that the documents were too difficult to retrieve United States v. First Nat’l State Bank, 616F.2d 668, 673-74 (3d Cir. 1980) (the IRS can summon documents that may be in its possession but which are difficult to retrieve).

- **Administrative Steps Followed** – Administrative steps are followed if the summons is properly served and if notice is given to anyone required to receive it.

**Formal Document Requests**

IRC § 982 provides a procedure for formally requesting foreign based documentation from the taxpayer. If the taxpayer fails to respond to an informal request for foreign records, the Service may formally request the records under IRC § 982. If the taxpayer fails to produce the records within 90 days of the formal request, without reasonable cause, any court later handling the taxpayer’s case will prohibit the taxpayer (but not the Government) from using in evidence any records not produced. The Code explicitly states that foreign secrecy laws do not provide reasonable cause for failing to reply to a Formal Document Request.

IRC § 982 is normally thought of as useful in deduction cases, where the burden is on the taxpayer to prove his deductions. However, in any case where the Service ultimately develops some evidence of the receipt of income, it may prove beneficial to have used the formal document request earlier in the case. For this reason, examiners are encouraged to use a Formal Document Request for foreign based records as a complement to summoning the taxpayer for all records, foreign and domestic.

The process begins with serving the taxpayer with an IDR for foreign records. The foreign record IDR is similar to a *pro forma* initial IDR, but is limited to foreign records. Once the taxpayer fails to comply, the foreign IDR becomes an attachment to a cover letter, and together they constitute the 982 Formal Document Request. A full discussion of FDRs is in the IRM at 4.61.2.5.
The Law

The statute of limitations begins to run when a return is filed. A return is filed when IRS receives it. There are two exceptions to this general rule.

1 – Under IRC § 6501(b), for statute of limitations purposes only, a return filed before its original due date is deemed filed on the due date. That is why every 1040 filed between January 1 and April 15 has a statute of limitations which begins on April 15 and expires three years later.

2 – Under IRC § 7502 (the Mailbox Rule), if a return is postmarked prior to the due date and received after the due date, the postmark date is the date of delivery (i.e. filing date). That is why there are lines at the post office on April 15. Taxpayers must have their returns postmarked before midnight, April 15th.

Now that we know when the statute of limitations on assessment begins, we can turn to when it ends.

Under the general rule IRS must assess tax within 3 years of the original due date or date the return is filed, whichever is later. IRC § 6501(a).

Example: The tax for a 2010 tax year when Form 1040 is filed on or before April 15, 2011 must be assessed by April 15, 2014.

Example: The tax for a 2010 tax year when Form 1040 is timely-filed under extension on October 1, 2011 must be assessed by October 1, 2014

Although the general rule under IRC § 6501(a) applies to the majority of tax returns, there are a number of exceptions to the general rule that provide the IRS with more than 3 years for assessing tax.

Under IRC § 6501(c)(3) the statute of limitations does not start to run until a return is filed. Once filed, the statute runs for 3 years. If a taxpayer never files a return, there is no statute of limitations on IRS assessing tax for that year.
Under IRC §§ 6501(c)(1) and (2) if a return is false or fraudulent or is filed as part of an attempt to evade taxes, there is no statute of limitations on assessment of tax for that tax year.

This exception to the general rule means that there is no time limit on IRS starting an audit of a fraudulent tax return and if IRS discovers fraud during an audit, there is no limit on the amount of time IRS has to develop fully all the issues on the return.

From a taxpayer’s perspective, the consequences of filing a fraudulent return are final. In fact, as previously mentioned, a taxpayer cannot even purge the fraud on an original tax return by filing a completely accurate and truthful amended return. See Badaracco v. Commissioner, 464 U.S. 386 (1984) (filing a subsequent non-fraudulent amended return does not start the running of the statute of limitations under IRC § 6501(a)).

Congress has recognized that on rare occasions the 3 year general rule does not provide IRS with sufficient time to identify and audit some non-fraudulent returns. In the following situations, Congress has extended the 3 year statute of limitations to 6 years. The statutorily extended statute of limitations generally applies when a taxpayer fails to disclose required information on a return and the IRS is placed at a disadvantage, because it must develop facts not readily obvious from reviewing the tax return.

Under IRC § 6501(e) if a taxpayer omits more than 25% of his gross income from his tax return, the statute of limitations on assessment is 6 years. The computation of the amount of the omission is a fraction:

\[
\text{Gross income omitted from the return} \quad \frac{\text{Gross income omitted from the return}}{\text{Total Gross Income Reported on the Return}}
\]

Two adjustments may be required.

Because the 6 year statute of limitations gives IRS more time to audit items that it cannot know about by merely looking at the return, if a taxpayer discloses the omitted gross income from the return, but tells the IRS about it
by including a statement in the return (or attached to it),
it is not considered “omitted” for purposes of computing
the percentage of the omission. The disclosure must be
adequate to apprise the Commissioner of the nature
and amount of the omitted item. In effect, disclosure of
the omitted item by the taxpayer on the return reduces
the numerator in the above equation.

The second adjustment impacts the denominator. A
taxpayer is deemed to have reported not only the gross
income on his tax return, but also his share of any flow-
through entity’s gross receipts. This means that if a
taxpayer reports flow-through income or loss, the
percentage of omission of gross income cannot be
computed without reviewing the flow-through entity’s
return. See Revenue Ruling 55-14; Rose v.
Commissioner, 24 T.C. 755 (1955); Roshuni v.
Commissioner, 44 T.C. 80 (1965).

A final word. If the omission of gross income is greater
than 25%, the 6 year statute of limitations applies to the
entire tax return, not just the omitted gross income. See
Colesstock v Commissioner, 102 T.C. 380 (1994) (6 year
statute of limitations on assessment applies not just for
the “omitted” income but for the entire return).

In United States v. Home Concrete & Supply, LLC, Sup.
Ct. No. 11-139 (Apr. 25, 2012), the Supreme Court held
that overstated basis is not an omission of gross
income. Therefore, it does not extend the statute of
limitations on assessment from 3 to 6 years.

If a quiet amended return reports additional gross
income in excess of 25% of the amount of gross
income reported on the original return, the 6 statute
of limitations applies. IRC § 6501(e).

The principle that a taxpayer should not benefit by
withholding required information from IRS also applies
in cases where a taxpayer is required to file certain
information returns.

If a taxpayer holds an interest in a foreign entity such as
a controlled foreign corporation (CFC), partnership or
trust, he is required to file information returns reflecting
his foreign interests. The most common required
returns are Forms 926, 5471 and 5472 for foreign corporations; Forms 3520 and 3520-A for foreign trusts; and Form 8865 for foreign partnerships. Under IRC § 6501(c)(8), the statute of limitations on the individual’s return does not start to run until the information return is filed. Once filed, the statute of limitations runs for 3 years.

Prior to FATCA, IRC § 6501(c)(8) kept the statute of limitations open only for items related to the failure to file. Under FATCA, it keeps the entire tax return open, unless the failure to file the return was due to reasonable cause. If the failure to file was due to reasonable cause, the statute of limitations on assessment remains open only with respect to issues related to the undisclosed entity.

FATCA also extended the statute of limitations on assessment in cases where foreign accounts are present, but there are no foreign entities. Under IRC § 6501(e)(1)(A)(ii), the statute of limitations is 6 years in cases where a taxpayer omits more than $5,000 in gross income from a foreign asset. There is a spreadsheet that can be utilized in a tool to determine whether the $5,000 in gross income has been met.: Refer to Exhibit 4.

Under IRC § 6501(c)(4), the taxpayer and IRS can agree to an extension of the statute of limitations on assessment by entering into a written agreement prior to the current statute of limitations date. This agreement is memorialized on Form 872 (or one of its spin-off forms).

The critical factor in agreements by consent is the requirement that the statute of limitations must still be open when the agreement is executed by both parties. It is an agreement to extend the statute of limitations on assessment, not an agreement to revive an expired statute of limitations.

Under IRC § 7609(e)(2) special rules may apply to determining the statute of limitations. If the IRS issues a John Doe summons, the statute of limitations on assessing tax on any member of the John Doe class is
suspended starting 6 months from service of the summons and ending on the date the final resolution of the summons occurs.

A final note on statutes of limitations. The law generally provides sufficient time for the performance of a routine, perfunctory act. There is such a provision under IRC § 6501(c)(7), which holds, that if a taxpayer files an amended return reflecting an additional tax liability (i.e., a quiet amended) within 60 days of the statute of limitations date, IRS has 60 days from the date of receipt of that amended return to assess the tax reflected in it.

Example: Taxpayer timely-filed his 2009 Form 1040 on April 15, 2010. The 3 year statute of limitations expires on April 15, 2013. On April 1, 2013 IRS received an amended return from Taxpayer reflecting a $10,000 additional tax liability. Normally, IRS would have to assess the additional tax by April 15, 2013. Fortunately, IRC § 6501(c)(7) gives IRS until May 30 (60 days after April 1) to make the assessment.

When the examiners receive the Quiet Disclosure cases, they will need to determine if the statutes have been updated, or need to be updated, to the alpha statute: yy.

Alpha code yy is used when the decision is made to allow the normal statute to expire. This decision must be made in a timely manner, must be fully documented, and be approved by the Territory/Program Manager. Refer to Exhibit 5 for a copy of the YY Statute Memorandum.

The documentation required to support the determination that special conditions exist will be satisfied by including the statement that it has been determined that there is a likelihood in the case that one or a combination of the following conditions exist:

- The tax return is false/fraudulent;
- There is a sufficiently large omission of gross income to rely on the six-year assessment statute; or
- The taxpayer has failed to notify the Secretary of foreign transfers under IRC 6501(c)(8).
Typically, the alpha code yy should only be used for tax returns filed by participants in abusive offshore arrangements where it has yet to be determined whether or not a specific statutory exception to the normal three-year period of time for assessment of tax applies. However, the alpha code yy may also be used to update the AIMS ASED when the normal three-year period of time for assessment of tax has already expired before the commencement of the examination of a return for a tax period which involves abusive offshore arrangements and it has yet to be determined whether or not a specific statutory exception to the normal three-year period of time for assessment of tax applies.

Civil Penalties

Examiners must consider whether penalties are appropriate during every examination. With the limited exception of a qualified amended return discussed below, filing an amended return does not insulate a taxpayer from most civil penalties. These penalties may be due to underpayments of tax, failure to file required offshore information returns, failure to comply with FATCA’s requirement to report foreign financial accounts, or failure to file FBARs.

Accuracy-related Penalties

IRC §§ 6662(a) and (b) impose a 20% penalty on an underpayment of tax that is due to: (1) negligence or disregard of rules or regulations, (2) any substantial understatement of income tax, (3) any substantial valuation misstatement, (4) any substantial overstatement of pension liabilities, and (5) any substantial estate or gift tax valuation understatement.

Only one penalty may be imposed on an underpayment of tax, even though the underpayment may be due to more than one of the above reasons (e.g. only one penalty may be asserted on an underpayment that is due to negligence and also meets the dollar criteria for a substantial understatement of income tax.)

In a quiet amended return situation the accuracy-related penalty may arise in one of two contexts:

1 - If the examiner determines that the failure to report
correctly on the original return the items now reflected on the amended return was due to negligence or is a substantial understatement of tax, the accuracy-related penalty can be imposed on the additional tax reflected on the amended return.

2 – If the examiner makes adjustments to items on the original return and determines they were due to negligence or a substantial understatement of tax the accuracy-related penalty can be imposed on the underpayment attributable to those items.

If a taxpayer exercised reasonable cause and acted in good faith regarding all or a part of an underpayment, no penalty is imposed on that part. IRC §6664(c)(1); Income Tax Regulations §1.6664-4(a).

A penalty cannot be imposed on the additional tax reflected on a quiet amended return if the quiet amended return is a “qualified amended return.”

Congress encourages a taxpayer to correct mistakes on his original tax return and pay any additional tax he may owe. Obviously if IRS were to penalize a taxpayer who voluntarily corrects an error, taxpayers would be discouraged from “doing the right thing.” Therefore, Income Tax Regulation § 1.6664-2 states that an underpayment of tax does not include an amount of additional tax reflected on a qualified amended return.

A return is a qualified amended return if it is filed before:

1. The date the taxpayer is first contacted by IRS concerning any examination (including a criminal investigation) with respect to the return;

2. The date any person is first contacted by the IRS concerning an examination of that person relating to the penalty for promoting abusive tax shelters for an activity with respect to which the taxpayer claimed any tax benefit

3. In the case of a pass-through item the date the pass-through entity (as defined in § 1.6662-4(f)(5)) is first contacted by the IRS in connection with an examination of the return to which the pass-through item relates; or
4. The date on which the IRS serves a John Doe summons relating directly or indirectly to the tax liability of a group that includes the taxpayer.

For purposes of the last factor, examiners must consider the date of the John Doe summons and the tax years covered. The following dates that IRS served John Doe summonses are relevant for determining whether an amended return is a qualified amended return.

<table>
<thead>
<tr>
<th>Witness</th>
<th>Date Served</th>
<th>Years Covered</th>
</tr>
</thead>
<tbody>
<tr>
<td>HSBC</td>
<td>April 8, 2011</td>
<td>2002 – 2010</td>
</tr>
<tr>
<td>UBS Wegelin</td>
<td>February 1, 2013</td>
<td>2002 – 2011</td>
</tr>
</tbody>
</table>

**Civil Fraud**

The filing of an amended return to correct fraudulent items on an original return does not correct or "purge" the fraud. The filing of the non-fraudulent amended return also does not start the running of the statute of limitations under IRC § 6501(a). Badaracco v Commissioner, 464 U.S. 386 (1984).


Because fraud requires an inquiry into a taxpayer's intent there is seldom direct evidence of fraud. Therefore, certain “badges of fraud” are recognized as indicators of fraudulent intent:

1. Understating income,
2. Maintaining inadequate records,
3. Failing to file tax returns,
4. Implausible or inconsistent explanations of behavior,
5. Concealment of income or assets,
6. Failing to cooperate with tax authorities,
7. Engaging in illegal activities,
(8) an intent to mislead which may be inferred from a pattern of conduct,
(9) lack of credibility of the taxpayer’s testimony,
(10) filing false documents, and
(11) Dealing in cash.


Examiners should be alert to indications of fraud and contact their Fraud Technical Advisor for further guidance if they believe fraud is present.

**Offshore Penalties**

Taxpayers with an interest in certain foreign entities are required to file information returns to report transactions or relationships with those entities. Depending on a taxpayer’s particular facts and circumstances, the following penalties could apply:

- A penalty for failing to file Form 3520, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts. Taxpayers must also report various transactions involving foreign trusts, including creation of a foreign trust by a United States person, transfers of property from a United States person to a foreign trust and receipt of distributions from foreign trusts under IRC § 6048. This return also reports the receipt of gifts from foreign entities under section 6039F. The penalty for failing to file each one of these information returns, or for filing an incomplete return, is the greater of $10,000 or 35 percent of the gross reportable amount, except for returns reporting gifts, where the penalty is five percent of the gift per month, up to a maximum penalty of 25 percent of the gift.

- A penalty for failing to file Form 3520-A, Information Return of Foreign Trust with a U.S. Owner. Taxpayers must also report ownership interests in foreign trusts, by United States persons with various interests in and powers over those trusts under IRC § 6048(b). The penalty for failing to file each one of these information returns or for filing an incomplete return, is the greater of $10,000 or 5 percent of the gross value of trust assets determined to be owned by the United States person.

- A penalty for failing to file Form 5471, Information Return of U.S. Persons with Respect to Certain
Foreign Corporations. Certain United States persons who are officers, directors or shareholders in certain foreign corporations (including International Business Corporations) are required to report information under IRC §§ 6035, 6038 and 6046. The penalty for failing to file each one of these information returns is $10,000, with an additional $10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency, up to a maximum of $50,000 per return.

- A penalty for failing to file Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. Taxpayers may be required to report transactions between a 25 percent foreign-owned domestic corporation or a foreign corporation engaged in a trade or business in the United States and a related party as required by IRC §§ 6038A and 6038C. The penalty for failing to file each one of these information returns, or to keep certain records regarding reportable transactions, is $10,000, with an additional $10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency.

- A penalty for failing to file Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation. Taxpayers are required to report transfers of property to foreign corporations and other information under IRC § 6038B. The penalty for failing to file each one of these information returns is ten percent of the value of the property transferred, up to a maximum of $100,000 per return, with no limit if the failure to report the transfer was intentional.

- A penalty for failing to file Form 8865, Return of U.S. Persons with Respect to Certain Foreign Partnerships. United States persons with certain interests in foreign partnerships use this form to report interests in and transactions of the foreign partnerships, transfers of property to the foreign partnerships, and acquisitions, dispositions and changes in foreign partnership interests under IRC §§ 6038, 6038B, and 6046A. Penalties include $10,000 for failure to file each return, with an additional $10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency, up to a maximum of
$50,000 per return, and ten percent of the value of any transferred property that is not reported, subject to a $100,000 limit.

- Beginning with the 2011 tax year, a penalty for failing to file form 8938 reporting the taxpayer’s interest in certain foreign financial assets, including financial accounts, certain foreign securities and interests in foreign entities, as required by I.R.C. §6038D. The penalty for failing to file each one of these information returns is $10,000, with an additional $10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency, up to a maximum of $50,000 per return.

FBAR Penalty Cases

This section of the guide contains a brief summary of FBAR penalties and FBAR case procedures. Additional details regarding FBAR penalties is contained in the following guides:

- FBAR Penalty ERCS Guide
- FBAR Penalty Case File Procedures
- FBAR Penalty Investigative Techniques

The FBAR portion of the Centra PowerPoint presentation on Quiet Disclosures also contains additional details on FBAR penalty cases.

FBAR Overview

FBAR is the acronym for the Foreign Bank and Financial Account Report, Form TD F 90.22-1, which a person must file to report foreign bank and financial accounts. FBAR may refer to both the form itself and the penalties for failing to file the form (for example, FBAR penalties).

A U.S. Person with a financial interest in, or signature or other authority over foreign financial accounts, the aggregate value of which exceeded $10,000 at any time during the calendar year must file an FBAR.

The IRM provisions for Title 31, FBAR law, and FBAR procedures are in IRM §§ 4.26.15, 4.26.16, and 4.26.17, respectively.

Examiners responsibilities include:

- Investigate possible civil FBAR violations and
- Assess and collect civil FBAR penalties
Due Dates, etc.:
- Filed on a calendar year basis
- Due by June 30 of the following year
- Filed by mailing it to Detroit Computing Center
- Not filed with Form 1040
- Filed when it is received in Detroit, not when it is postmarked. (IRC § 7503 does not apply)

Statute of Limitations:
- 6 years from due date
- SOL runs even if no FBAR is filed
- 2005 and prior FBARs are expired
- 2006 FBARs expire on June 30, 2013
- Do not use Form 872 to extend SOL
- Counsel has approved an FBAR SOL extension

Related Statute Determination
The examiner must secure a related statute determination prior to using Title 26 income tax information in an FBAR penalty case. For Quiet Disclosure cases, the examiner should secure a related statute determination immediately, preferably before the initial contact with the taxpayer.

Examiners use Form 13535, FBAR Related Statute Memorandum, to secure a determination that the FBAR violation may have been in furtherance of a Title 26 violation. The examiner prepares a separate related statute memorandum for each person required to file an FBAR for each year there is a violation.

The related statute memorandum is a good-faith determination that the FBAR violation was in furtherance of a Title 26 violation. For quiet disclosure cases, the examiner may use one of the following explanations, with appropriate modifications, on the related statute memorandum:

For a year where the taxpayer filed an amended income tax return:

This taxpayer filed an amended income tax return on [insert date] to correct a previously-filed, inaccurate return that failed to include income from foreign sources. On [insert date] the taxpayer also filed a delinquent FBAR. Based upon the information shown
on the amended return there is good-faith belief that the taxpayer’s failure to file a timely FBAR was to conceal Title 26 violations that existed up to the time the taxpayer filed the amended return.

For a year where the taxpayer filed a delinquent income tax return:

This taxpayer filed a delinquent income tax return on [insert date] to report income from foreign sources. On [insert date] the taxpayer also filed a delinquent FBAR. Based upon the information shown on the delinquent return there is good-faith belief that the taxpayer's failure to file timely an FBAR was to conceal Title 26 violations that existed up to the time the taxpayer filed the delinquent return.

For a year where the taxpayer filed only a delinquent foreign information return:

This taxpayer filed a delinquent information return on [insert date]. The information on this return relates to an entity that may own, or an activity that may appear in, a foreign bank account. On [insert date] the taxpayer also filed a delinquent FBAR. There is good-faith belief that the taxpayer’s failure to file a timely FBAR was to conceal Title 26 violations that existed up to the time when the taxpayer filed the delinquent information return.

If the taxpayer filed both a delinquent information return and a delinquent or amended income tax return for a year, then it is only necessary to include in the related statute memorandum the language for the amended or delinquent income tax return.

Once the designated official (currently the territory manager) makes a related determination, the examiner may use Title 26 information in the FBAR penalty case. Until that time, the examiner may not
- Ask the taxpayer specifically about the FBAR,
- Request a copy of the FBAR, or
- Request information, on an IDR, that relates only to the FBAR violation.

After the designated official signs the related statute
memorandum, the taxpayer may use, and the examiner may accept, Form 2848 to designate a person to represent the taxpayer in matters related to the FBAR penalty.

To designate a representative for FBAR-related matters, the taxpayer must place the following entries on Form 2848, line 3:

- Column 1: “FBAR Examination”
- Column 2: “TD F 90-22.1”
- Column 3: the relevant calendar years

The taxpayer may use a single Form 2848 to designate a representative for both income tax matters and FBAR-related matters.

Examiners follow the regular procedures to process an FBAR-related Form 2848.

The Detroit Computing Center, DCC, maintains a database of all open FBAR penalty cases. Examiners use Form 13536, FBAR Monitoring Document, to notify the DCC that they started an FBAR penalty case. The examiner prepares a separate FBAR monitoring document for each taxpayer and for each year where the designated official made a related statute determination. Examiners also use the FBAR monitoring document to notify the DCC of the examination results, including accepted referrals to criminal investigation and cases where the taxpayer appealed the FBAR penalty.

To open the FBAR case, the examiner prepares the FBAR monitoring document, attaches a copy of the related statute memorandum, and faxes or scans and emails the documents to the DCC. The fax and email address appear in the next section.

Additional information on the FBAR monitoring document is in the FBAR Penalty Case Procedures guide.

The DCC fax number for the FBAR monitoring document is (313) 234-2278.

The email address for the DCC is *SBSE BSA
**FBAR ERCS Procedures**

The ERCS procedures for FBAR cases are in the FBAR Penalty ERCS guide.

The examiner must establish a penalty case on ERCS for each year the designated official made a related statute determination; the FBAR cases on ERCS must match the FBAR cases on the DCC database.

Examiners establish FBAR penalty cases on ERCS using MFT P9 and activity code 545.

Examiner charge time working FBAR penalties directly to the case.

**FBAR IDR**

Provided the examiner secured a related statute determination prior to the first contact with the taxpayer, the initial IDR should solicit a list of foreign bank accounts subject to reporting on an FBAR. Do not assume the taxpayer reported all of his account on the filed FBAR, if any.

On the initial IDR the examiner also should request from the taxpayer a statement of reasonable cause for failing to file the FBARs.

There is no need to issue a separate FBAR IDR. As long as the designated official made a related statute determination, the examiner may include the FBAR-related items on the income tax IDR.

**Working the FBAR Case**

It is important that examiners do not propose FBAR penalties until Counsel has opined on whether the facts support a specific FBAR penalty. See the next section of this guide for additional information.

The purpose of the FBAR penalty case is to determine whether the taxpayer is liable for an FBAR penalty or whether an FBAR warning letter is appropriate.

Since the government has the burden of proof in all penalty cases, it is up the examiner to locate and secure the necessary evidence to support the FBAR penalty. FBAR coordinators, fraud technical advisors, Counsel attorneys, and national office FBAR analysts are
available to assist examiners with their FBAR penalty investigations.

In all FBAR cases the examiner must attempt to interview both the taxpayer and the return preparer (or return preparers).

During the interview of the return preparer, the examiner should focus on the exchange of information between the return preparer and the taxpayer to identify the opportunities for the taxpayer to reveal the existence of the foreign bank account. Opportunities include both direct questions by the return preparer about the existence of the foreign bank account (for example, does the taxpayer have a foreign bank account), and indirect questions about the foreign bank account (for example, sources of interest or dividend income).

The examiner should summons a copy of the tax return preparation files and workpapers for each year of the FBAR penalty investigation. If the return preparer claims privilege, contact Counsel for guidance.

During the interview of the taxpayer, one focus of the interview will be the question of why the taxpayer did not reveal the foreign bank account to the only tax professional who may have been in a position to provide competent advice.

Additional details regarding the FBAR penalty investigation, including investigative techniques, are contained in the FBAR Penalty Investigative Techniques guide.

Once the examiner identifies an FBAR violation and completes the FBAR penalty investigation, there are two possible outcomes to the case:

- Issue a warning letter either because the violation does not warrant an FBAR penalty or the taxpayer had a reasonable cause, or
- Assess an FBAR penalty

If a penalty is warranted, the examiner must decide whether the taxpayer’s failure to file the FBAR was non-willful or willful. If the failure was non-willful, the maximum penalty is $10,000 per violation. If the failure
was willful, the penalty is the greater of $100,000 or 50% of the account balance on the date of the violation. The date of the violation is the due date of the FBAR, which is June 30 of the subsequent year.

Unlike Title 26 that defines a specific computation of all penalties (for example the civil fraud penalty is equal to 75% of the understatement of tax due to fraud), the Title 31 FBAR penalty statute only defines the maximum penalty. While the examiner has no authority to mitigate the Title 26 civil fraud penalty, for example from 75% to 40%, in appropriate cases, the examiner may assess less than the maximum statutory penalty. IRM section 4.26.16.4.6 and IRS Exhibit 4.26.16-2 contain the FBAR penalty mitigation guidelines.

Reasonable Cause – evidence of reasonable cause in an FBAR setting is similar to that in a Title 26 examination. Defenses may include:

- Reliance on professional advice,
- Ignorance of the FBAR filing requirement,
- Mistake as to law – not knowing the foreign account fell within the reporting requirements, and
- Failure despite exercise of ordinary care.

Examiners should use general reasonable cause principles in determining whether or not to apply the FBAR penalty. Treas. Reg. 1.6664-4, Reasonable Cause and Good Faith Exception to § 6662 penalties, may serve as useful guidance in determining the factors to consider. Although this tax regulation does not apply to FBARs, the information it contains may still be helpful in determining whether the FBAR violation was due to reasonable cause and not due to negligence.


Willfulness also includes the failure to inquire as to whether a law exists (“willful blindness”). “Willfully"
includes conduct marked by careless disregard whether or not one has the right to so act." Therefore, "willfulness" may be satisfied by establishing the individual's reckless disregard of a statutory duty, as opposed to acts that are known to violate the statutory duty at issue. An improper motive or bad purpose is not necessary to establish willfulness in the civil context. U.S. v McBride, Case No. 2:09-cv-378 DN. (USDC D. Utah, Central Division., 11/8/2012).

FBAR coordinators, fraud technical advisors, Counsel attorneys, and national office FBAR analysts are available to assist examiners and group manager with matters related to the appropriate FBAR penalty to assert.

Summary
What’s an examiner to do?
- 1 – was taxpayer required to file FBAR?
- 2 – did taxpayer file an FBAR?
- 3 – there is an FBAR violation
- 4 – is the violation due to reasonable cause and not negligence?
- 4a – if yes, issue a warning letter
- 4b – if no, consider appropriate penalty and whether mitigation applies
- 5 – what is the amount of the FBAR penalty? (willful v non-willful)

FBAR Penalty Memorandum
If the examiner and group manager determine that penalties are appropriate, the examiner must prepare a memorandum to summarize the FBAR penalty investigation and the penalty recommendation. The purpose of the FBAR penalty memorandum is to secure legal advice from Counsel on whether the facts of the case support the penalty determination.

The FBAR coordinator must review this memorandum before it is sent to Counsel. Where the examiner proposes a willful FBAR penalty, a fraud technical advisor also must review the memorandum.

Counsel requires 45-60 days to review the memorandum and render legal advice. If Counsel advises against asserting FBAR penalties, the examiner and group manager must consult an FBAR coordinator.
for guidance.

**Letter 3800, FBAR Warning Letter**

If the group manager and the examiner agree that no FBAR penalty is appropriate, they should discuss that decision with an FBAR coordinator. If all agree not to assert FBAR penalties, then the examiner must send an FBAR warning letter, Letter 3800 to the taxpayer.

The warning letter is the conclusion of the FBAR penalty case. The FBAR Penalty Case File Procedures guide contains the details for closing FBAR penalties cases where the examiner issued a warning letter.

**FBAR 30-day Letter Package: Letter 3709 Form 13449**

Do not send the taxpayer a copy of the FBAR penalty memorandum sent to Counsel. That memorandum and Counsel’s response may contain confidential information and legal advice. The examiner may provide the taxpayer with the FBAR lead sheet to explain the nature of the proposed FBAR penalties.

If the group manager and the examiner agree that it is appropriate to assert FBAR penalties, and Counsel concurs with this decision, the examiner prepares the FBAR 30-day package to send to the taxpayer.

The FBAR 30-day package includes Letter 3709, the FBAR 30-day letter, and Form 13449, the agreement form for FBAR penalties. The FBAR Penalty Case File Procedures guide contains the details for issuing the FBAR 30-day letter.

**FBAR Appeals**

Taxpayers may appeal proposed FBAR penalties to Appeals.

For the taxpayer to have pre-assessment appeal rights, Appeals must receive the case with at least 180 days on the FBAR penalty assessment statute.

The taxpayer has post-assessment, pre-payment appeal rights in cases where there will be less than 180 days on the assessment statute when the case arrives in Appeals. For these cases:

1. The examiner directs the DCC to assess the FBAR penalties;
2. DCC sends to the examiner proof of the FBAR
penalty assessment; and

3. The examiner sends the case to Appeals.

DCC will delay collection activity during the appeals process.

The FBAR Penalty Case File Procedures guide contains the details for sending FBAR penalty cases to Appeals.

**No-Response FBAR Penalty Cases**

If the taxpayer fails to respond to the FBAR 30-day letter, the examiner closes the case to Detroit as an unagreed case. DCC will assess the proposed FBAR penalties and the taxpayer only has post-assessment, pre-payment appeal rights. If the taxpayer appeals the assessment, DCC will route the case to Appeals for consideration.

The FBAR Penalty Case File Procedures guide contains the details for closing a no-response FBAR penalty case.

**Agree FBAR Penalty Cases**

To agree to the FBAR penalties, the taxpayer signs Form 13449 and returns it to the examiner.

The FBAR Penalty Case File Procedures guide contains the details for closing an agreed FBAR penalty case.

**FBAR Penalty Payments**

Taxpayers who wish to pay the FBAR penalties must do with a separate check or money order. The taxpayer may pay multiple FBAR penalties with a single check or money order, but the taxpayer cannot use a single check or money order to make both a Title 26 and Title 31 payment.

The examiner sends the check or money order to the DCC for posting. **FBAR penalty payments are not posted to the Master File.**

The FBAR Penalty Case File Procedures guide contains the details for processing FBAR penalty payments.

If the examiner mistakenly posts an FBAR penalty payment to Master File, the group manager must contact a national office FBAR analyst for directions on how to transfer the payment to DCC.
Dave

When a taxpayer executes Form 870 or Form 4549 he agrees that IRS may assess the underpayment of tax reflected on it without receiving a notice of deficiency, but he does not necessarily agree that he owes the additional tax. He could file a claim for refund and contest the underlying adjustments through refund litigation.

During the examination of quiet amended returns, it may be advantageous for a taxpayer and the IRS to enter into an agreement that determines certain facts with finality, that is, an agreement that binds the parties forever unless someone misrepresents a material fact. The device used to bind taxpayers and the IRS to specific facts is Form 906, *Closing Agreement on Final Determination Covering Specific Matters* or simply “closing agreement.” The statutory authority is IRC § 7121.

Detailed information on preparing and processing closing agreements is in IRM 8.13.1.

In the context of quiet amended returns, a closing agreement can be used to determine with finality any number of facts:
- The amount of unreported income
- The amount of penalties
- The basis of securities or other assets
- The classification of offshore entities
- The designation of investments (i.e. PFICs)

A closing agreement determines facts that are relevant in computing a tax liability. It does not determine the tax liability itself. For example, if the taxpayer and IRS agree that a taxpayer’s dividend income in 2009 was $25,000, not $15,000 as he reported, they could enter into a closing agreement stating that his 2009 dividend income was $25,000. Because the parties agree that is an absolute fact, IRS can now compute his tax liability for 2009 based on $25,000 of dividend income.

A closing agreement can also be used by a taxpayer to waive rights he would otherwise be entitled to raise. For example, a taxpayer can agree that IRS may assess and collect a tax even though the statute of limitations is
Unlike Form 872 used by taxpayers and the IRS to extend the statute of limitations before it has expired (See IRC § 6501(c)(4)), a closing agreement can be used to permit assessment and collection of tax after the statute of limitations is expired. See Dubinsky v. Becker, 64 F. 2d 601 (8th Cir. 1933), agg’g 15 A.F.T.R. 691 (E.D. Mo. 1931) and IRM 8.13.1.7.1(1).

A closing agreement cannot be used to determine FBAR penalties, because a closing agreement under IRC § 7121 can only be used for Title 26 purposes.

Because closing agreements can cover a multitude of facts and be used in many situations, it is not practical to discuss every aspect of them in this guide. Examiners must work closely with their technical advisors and local Counsel attorneys to insure that the language in every closing agreement is enforceable and that it does not bind the IRS to facts that are in dispute.
Why Tax Amnesty?

- Many Find it Difficult to Meet Tax Obligations:
  - Balances due
  - Filed tax returns, but unable to pay tax obligations in full
  - Non-filed returns
    - A troubling number of previous filers have not kept up with filing

- Affects Funding for Critical State Budget Projects

Amnesty Reduces Burden

- All Penalties Removed
  - Including late filing and late payment penalties

- 50% Reduction in Interest
  - Pay one-half the interest as of November 1, 2018

- Cost of Collection & Recovery Fees Removed
Timing

- A Limited Time Opportunity
  - Runs November 15, 2018 – January 15, 2019

- Many Tax Periods are Included
  - Returns due between February 1, 2009 – September 1, 2017
  - Calendar year filings:
    - Tax years 2008 – 2016
  - Quarterly filings:
    - Q1 2009 – Q2 2017

Eligibility

- Applies to All Taxes Administered by Taxation
  - Not UI/ID (Labor) or any fees imposed by other agencies

- Almost Everyone Who Needs to File or Pay is Eligible
  - Except those under criminal investigation
  - Debts under appeal or in bankruptcy
    - May need special approval

How Amnesty Helps New Jersey

- Amnesty Funds Important Programs and Services
  - Schools and education programs
  - Government services
  - Meet financial obligations to improve long-term outlook
Applying for Amnesty

- NJ's Dept. of Treasury is Notifying Over 700,000 in Need of Relief Who:
  - Owe taxes
  - Need to file tax returns

- Most of Amnesty is Electronic
  - Use amnesty ID and PIN
  - Can file most tax returns
  - Make amnesty payments with interest calculation

Amnesty Amounts Due

- Those Who Receive an ID and PIN
  - Use them to access the online amnesty payment module
  - Review all outstanding items
  - Website calculates the amnesty interest
  - Pay the tax and half interest in full for any items covered under amnesty
  - There is no partial amnesty

- Those Who Do Not Receive an ID and PIN
    - Select "I do not have an amnesty ID/PIN"
  - User tells us:
    - Who they are
    - What they owe
  - Businesses will be prompted to register
    - Will be necessary to file outstanding tax returns that require a PIN (e.g. sales tax)
Filing Tax Returns Under Amnesty

- Website Directs You to Which Periods Need to be Filed
  - Links to electronic or paper forms
  - File the tax return as normal
- Come Back to the Amnesty Website to Make Payments
  - This is the only way to accurately get the amnesty interest calculation
- Remember: A Return Needs to Be Filed and Paid with Half Interest to Receive Amnesty

If You Don’t Apply for Amnesty

- The State of NJ May Impose:
  - A 5% amnesty penalty (non-abatable) in addition to other penalties and interest owed by law
- The State Will Return to Collection Methods

Benefits of Amnesty

- Relieves Your Client and the Tax Burden on Other New Jersey Taxpayers
- Brings in Revenue to Fund Programs and Services
- Encourages Non-Registered Taxpayers to Come Forward
- Clears Up Backlogs
Disputing Debts

• Dispute Debts Early in Amnesty
• Ability to Pay Agreed Items While Working Out Disputes
• Questions or Disputes? Call the Amnesty Hotline: (800) 781-8407.

Debts Under Judgment (COD)

• COD Debts are Eligible Under the Same Return Periods and Guidelines
• Amnesty Does Not Guarantee a Warrant for Satisfaction
  • All items related to the COD must be paid, including non-amnesty items, in order to get a warrant of satisfaction.

Bankruptcy Cases

• Will Need Court or Trustee Approval
  • Don’t pay debts in bankruptcy without court approval
• Contact the Division’s Bankruptcy Section
  • (609) 292-6616
Voided and Revoked Companies

- Debts are Still Eligible for Amnesty
  - Reinstatement fees are not eligible

- File and Pay Any Eligible Debts for Amnesty

- When Filing for Reinstatement
  - All tax filings and payments must be current, including non-amnesty periods

Returns and Tax Periods Under Audit

- Eligible for Amnesty Covered Periods

- Work Quickly With Auditor/Caseworker
  - Provide documents necessary to complete audit
  - Must pay tax and half interest by January 15, 2019

Help With Amnesty

- Information, Payments and Tax Returns
  - www.TaxAmnesty.nj.gov

- Amnesty Hotline
  - (800) 781-8407

- Walk-in Assistance
  - 7 regional centers across New Jersey
  - Visit www.njtaxation.org, select “About Us”
Information Sharing

- I.R.C. § 6103 authorizes the IRS to share tax information by entering into agreements with government agencies for tax administration purposes
- Three Components:
  - Federal Information Sharing
  - State Information Sharing
  - Local Information Sharing
Federal Information Sharing

The IRS Federal Intergovernmental Program, one of Governmental Liaison’s partnering components, strengthens existing relationships and develops new ones to support the development of initiatives with other federal agencies.

State Information Sharing

The IRS state partnering program, one of Governmental Liaison’s partnering components, facilitates and expands joint tax administration relationships between the IRS and state taxing authorities, such as departments of revenue and state workforce agencies.

State Information Sharing

IRS and state/local agencies share data with each other through a variety of ongoing initiatives. The information includes:

– Audit results
– Federal individual and business return information
– Employment tax information.
Local Information Sharing

The Municipal Agency Partnering Program (MAPP), one of Governmental Liaison’s (GL’s) partnering components, expands GL’s mission of governmental partnering and data sharing by engaging municipal agencies.

New IRS Voluntary Disclosure Guidelines

New IRS Voluntary Disclosure Guidelines – November 20, 2018

• The IRS released a Memorandum for Division Commissioners on November 20, 2018.
• The memorandum addresses the process for all voluntary disclosures (domestic and offshore) following the closing of the OVDP on September 28, 2018. The memorandum is retroactive.
All offshore voluntary disclosures conforming to the requirements of “Closing the 2014 Offshore Voluntary Disclosure Program Frequently Asked Questions and Answers” FAQ 3 received or postmarked by September 28, 2018 will be handled under the procedures of the 2014 OVDP.

For all other voluntary disclosures (non-offshore) received on or before September 28, 2018, the Service has the discretion to apply the procedures outlined in this memorandum.

Procedures in the memorandum will be effective for all voluntary disclosures received after the closing of the 2014 OVDP on September 28, 2018.

Criminal Investigation (CI) will screen all voluntary disclosure requests whether domestic, offshore, or other to determine if a taxpayer is eligible to make a voluntary disclosure.

To accomplish this, CI will require all taxpayers wishing to make a voluntary disclosure to submit a preclearance request on a forthcoming revision of Form 14457. IRM 9.5.11.9 will continue to serve as the basis for determining taxpayer eligibility.
New Voluntary Disclosure Guidelines

- Taxpayers must request preclearance from CI via fax or mail.
- Fax: (267) - 466-1115 Or
- Mail:
  – IRS Criminal Investigation
  – Attn.: Voluntary Disclosure Coordinator
  – 2970 Market St.
  – 1-D04-100
  – Philadelphia, PA 19104

New Voluntary Disclosure Guidelines

For all cases where CI grants preclearance, taxpayers must then promptly submit to CI all required voluntary disclosure documents using a forthcoming revision of Form 14457.

New Voluntary Disclosure Guidelines

This form will require information related to taxpayer noncompliance, including a narrative providing the facts and circumstances, assets, entities, related parties and any professional advisors involved in the noncompliance.
New Voluntary Disclosure Guidelines

Once CI has received and preliminarily accepted the taxpayer's voluntary disclosure, CI will notify the taxpayer of preliminary acceptance by letter and simultaneously forward the voluntary disclosure letter and attachments to the LB&I Austin unit for case preparation before examination.

New Voluntary Disclosure Guidelines

The LB&I Austin unit will forward cases for case building and field assignment to the appropriate Business Operating Division and Exam function for civil examination.

New Voluntary Disclosure Guidelines

All voluntary disclosures handled by examination will follow standard examination procedures. Examiners must develop cases, use appropriate information gathering tools, and determine proper tax liabilities and applicable penalties.
For all voluntary disclosures received after September 28, 2018, the Service will apply the civil resolution framework outlined as follows.

a) In general, voluntary disclosures will include a six-year disclosure period. The disclosure period will require examinations of the most recent six tax years. Disclosure and examination periods may vary as described below:

i. In voluntary disclosures not resolved by agreement, the examiner has discretion to expand the scope to include the full duration of the noncompliance and may assert maximum penalties under the law with the approval of management. (cont.)

ii. In cases where noncompliance involves fewer than the most recent six tax years, the voluntary disclosure must correct noncompliance for all tax periods involved.
New VD Guidelines – Civil Resolution Framework

iii. With the IRS’ review and consent, cooperative taxpayers may be allowed to expand the disclosure period. Taxpayers may wish to include additional tax years in the disclosure period for various reasons (e.g., correcting tax issues with other governments that require additional tax periods, correcting tax issues before a sale or acquisition of an entity, correcting tax issues relating to unreported taxable gifts in prior tax periods).

New VD Guidelines – Civil Resolution Framework

b) Taxpayers must submit all required returns and reports for the disclosure period.

c) Examiners will determine applicable taxes, interest, and penalties under existing law and procedures. Penalties will be asserted as follows:

1. Except as set forth below, the civil penalty under I.R.C. § 6663 for fraud or the civil penalty under I.R.C. § 6651(f) for the fraudulent failure to file income tax returns will apply to the one tax year with the highest tax liability. For purposes of this memorandum, both penalties are referred to as the civil fraud penalty.
New VD Guidelines – Civil Resolution Framework

ii. In limited circumstances, examiners may apply the civil fraud penalty to more than one year in the six-year scope (up to all six years) based on the facts and circumstances of the case, for example, if there is no agreement as to the tax liability.

iii. Examiners may apply the civil fraud penalty beyond six years if the taxpayer fails to cooperate and resolve the examination by agreement.

iv. Willful FBAR penalties will be asserted in accordance with existing IRS penalty guidelines under IRM 4.26.16 and 4.26.17.

v. A taxpayer is not precluded from requesting the imposition of accuracy related penalties under I.R.C. § 6662 instead of civil fraud penalties or non-willful FBAR penalties instead of willful penalties. Given the objective of the voluntary disclosure practice, granting requests for the imposition of lesser penalties is expected to be exceptional. Where the facts and the law support the assertion of a civil fraud or willful FBAR penalty, a taxpayer must present convincing evidence to justify why the civil fraud penalty should not be imposed.

vi. Penalties for the failure to file information returns will not be automatically imposed. Examiner discretion will take into account the application of other penalties (such as civil fraud penalty and willful FBAR penalty) and resolve the examination by agreement.
vii. Penalties relating to excise taxes, employment taxes, estate and gift tax, etc. will be handled based upon the facts and circumstances with examiners coordinating with appropriate subject matter experts.

viii. Taxpayers retain the right to request an appeal with the Office of Appeals.

New VD Guidelines – Civil Resolution Framework

• d) The Service will provide procedures for civil examiners to request revocation of preliminary acceptance when taxpayers fail to cooperate with civil disposition of cases.
• e) All impacted IRM sections will be updated within two years of the date of this memorandum.

Consider Qualified Amended Returns

• The updated voluntary disclosure procedures require taxpayers to seriously consider the qualified amended return procedures.
• A qualified amended return can eliminate accuracy-related penalties, by removing amounts shown on the amended return from the penalty calculation.
• I.R.C. § 6664 and Treas. Reg. § 6664-2 specifically preclude the IRS from asserting the I.R.C. § 6662 accuracy-related penalties following the filing of a timely qualified amended return.
Qualified Amended Returns

- Treas. Reg. § 6664-2(c)(3) provides that a qualified amended return is an amended return, or a timely request under I.R.C. § 6227, filed after the due date of the original return for the specific tax year (determined with regard to extensions) and before the earliest of:
  
  - The date the taxpayer is first contacted by the IRS concerning any examination (including a criminal investigation) with respect to the return;
  - The date any person is first contacted by the IRS concerning an examination of that person under section 6700 (relating to the penalty for promoting abusive tax shelters) for an activity with respect to which the taxpayer claimed any tax benefit on the return directly or indirectly through the entity, plan or arrangement described in Code § 6700(a)(1)(A);
  - In the case of a pass-through item, the date the pass-through entity is first contacted by the IRS in connection with an examination of the return to which the pass-through item relates;
  - The date on which the IRS serves a “John Doe” summons relating to the tax liability of a person, group, or class that includes the taxpayer (or pass-through entity of which the taxpayer is a partner, shareholder, beneficiary, or holder of a residual interest in a REMIC) with respect to an activity for which the taxpayer directly or indirectly claimed any tax benefit on the return; and
Qualified Amended Returns

- (E) The date on which the IRS announces by revenue ruling, revenue procedure, notice, or announcement, to be published in the Internal Revenue Bulletin, a settlement initiative to compromise or waive penalties, in whole or in part, with respect to a "listed transaction". The foregoing only applies to a taxpayer who participated in the listed transaction and for the tax year(s) in which the taxpayer claimed any direct or indirect tax benefits from the listed transaction.

Qualified Amended Returns

- Even if timely, an amended return does not qualify as a qualified amended return if the tax deficiencies that are corrected in the amended return relate to a fraudulent position on the original return.

IRS Offers in Compromise
Policy Statement P-5-100

The Service will accept an offer in compromise when it is unlikely that the tax liability can be collected in full and the amount offered reasonably reflects collection potential. An offer in compromise is a legitimate alternative to declaring a case currently not collectible or to a protracted installment agreement. The goal is to achieve collection of what is potentially collectible at the earliest possible time and at the least cost to the Government.

I.R.C. § 7122

• The Internal Revenue Service is granted broad authority to compromise tax liabilities in civil and criminal cases prior to referral to the Department of Justice
• Grounds for Compromise:
  – Doubt as to Liability
  – Doubt as to Collectability
  – Effective Tax Administration

Doubt as to Liability

• “Doubt as to liability exists where there is a genuine dispute as to the existence or amount of the correct tax debt under the law.” Treas. Reg. § 301.7122-1(b)(1).
• Possible reasons for submitting a doubt as to liability offer in compromise include the following:
  – the examiner made a mistake interpreting the tax law;
  – the examiner failed to consider the evidence presented;
  – new evidence is available to support a change to the assessment.
Doubt as to Liability

• Submit:
  – Form 656-L, Offer in Compromise (Doubt as to Liability);
  – Written statement explaining why the tax debt or portion of the tax debt is incorrect;
  – Supporting documentation or evidence that will help the IRS identify the reason(s) you doubt the accuracy of the tax debt.
  – If you are unable to reconstruct your books and records, you can provide an explanation that supports reasonable doubt justifying a reduction to a portion or all your tax debt.

Doubt as to Liability

• Offers solely based on doubt as to liability are exempt from being made with accompanying payment. I.R.M., pt. 4.18.1.4 (Feb. 28, 2017).
• To qualify, you must make an offer that is $1 or more and should be based on what you believe the correct amount.
• Failure in filing compliance on other required returns should not be used as a basis for returning or rejecting doubt as to tax liability. of tax should be.
  I.R.M., pt. 4.18.1.3 (Feb. 28, 2017).

Doubt as to Collectibility

• Doubt as to collectibility exists in any case where the taxpayer's assets and income are less than the full amount of the tax liability.
• An offer to compromise based on doubt as to collectibility generally will be considered acceptable if it is unlikely that the tax can be collected in full and the offer reasonably reflects the amount the IRS could collect through other means, including administrative and judicial collection remedies.
Doubt as to Collectibility

- The doubt as to collectibility offer amount must equal or exceed the taxpayer's reasonable collection potential ("RCP") to be acceptable.

- The RCP is based on the taxpayer's:
  - assets, such as real property, vehicles, personal assets, and bank accounts;
  - anticipated future income less certain living expenses;
  - amounts collectible from third parties, and
  - assets and/or income available but beyond the reach of the government

Doubt as to Collectibility

- The taxpayer may submit a lump-sum or a periodic payment offer
  - The lump-sum offer is defined as an offer made in five or fewer installments. If the taxpayer makes a lump sum cash offer, the initial payment must equal twenty percent of the offered amount.
  - Period payment offers should include twenty-four monthly installments. The first payment of a periodic payment offer must be included with Form 656.

- Failure to make an installment may be treated as a withdrawal of the offer

Doubt as to Collectibility

- Submit:
  - Form 656-B, Offer in Compromise
  - Filing fee, if applicable
  - Form 433-A, Collection Information Statement for Wage Earners & Self-Employed Individuals, and/or Form 433-B, Collection Information Statement for Businesses
  - The standard terms of the forms may not be altered
  - The offer must include "all liabilities to be covered by the compromise, the legal grounds for compromise, the amount the taxpayer proposed to pay, and the payment terms" (the amounts and due dates of payments).
Doubt as to Collectibility

• Eligibility Requirements:
  – Taxpayer must be current with filing obligations

Effective Tax Administration

• An offer may be accepted based on effective tax administration when there's no doubt that the tax is legally owed and that the full amount owed can be collected but requiring payment in full would either create an economic hardship or would be unfair and inequitable because of exceptional circumstances.
• See outline for additional information.

Considerations during Pendency of all Offers

• They taxpayer’s payments and fees will be applied to the tax liability (taxpayers may designate payments to a specific tax year and tax debt);
• A Notice of Federal Tax Lien may be filed and will not be released until the offer terms are satisfied;
• Other collection activities are suspended;
• The legal assessment and collection period is extended;
Considerations during Pendency of all Offers

- All required payments associated with the offer should be made unless the taxpayer meets the Low-Income Certification;
- Taxpayers are not required to make payments on existing installment agreements; and
- Offers are automatically accepted if the IRS does not make a determination within two years of the IRS receipt date.

Considerations during Pendency of all Offers

- Submission of an OIC stays the collection of an account, unless the taxpayer waives the stay or the collection of tax is in jeopardy.
- However, submission of an OIC does not serve to suspend interest and penalties from accruing on the outstanding tax liability. I.R.M., pt. 4.18.1.2 (Feb. 28, 2017).

Post Offer Considerations

- Continue to timely file and pay all required tax returns, estimated tax payments, and federal tax payments.
- Remain current with all tax filing and payment obligations through the fifth years after the offer is accepted.
Currently Not Collectible Status

• A taxpayer’s account may be marked Currently Not Collectible where either the taxpayer is insolvent or any payment would create economic hardship for the taxpayer by leaving him or her unable to meet reasonable living expenses.

• Currently Not Collectible status means that the IRS will not engage in collection activity (i.e., levy the taxpayer’s assets and income) until the taxpayer’s financial condition improves.

• See outline for further information.

Offers During Examination

• The I.R.M. dictates that Small Business and Self Employed Examiners “must strive for quality assessments and promote an increased emphasis on early collections in the continuing effort to reduce the Collection function’s inventory and currently not collectible (CNC) accounts.”

• Accordingly, “[e]xaminers are required to consider the collectibility of a potential tax assessment during the pre-contact, audit, and closing phases of an examination.”
Offers During Examination

- I.R.M. allows submission of offers to the examiners during or at the conclusion of the examinations.
- If the examination is not complete and group manager agrees with the examiner that doubt as to collectability exists, the scope of the examination should be limited.
- If agreement as to the liability is obtained, the case should be closed following existing procedures.

Offers During Examination

- Some practitioners have been successful in resolving controversies by requesting that the examiner hold in escrow the following forms while the offer is being considered:
  - Forms 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment;
  - Forms 866, Agreement as to Final Determination of Tax Liability; and
  - Forms 906, Closing Agreement on Final Determination Covering Specific Matters.
- Once the offer is accepted, the appropriate form can be processed to assess the liability and the taxpayer is simultaneously relieved of the liability by the compromise.

Offers during Litigation

- IRS Counsel will consider settling the case based on the merits, rather than the taxpayer’s ability to pay.
- A taxpayer may request permission from IRS Counsel (“Counsel”) to submit an offer based on collectibility or effective tax administration.
- The offer should include all outstanding liabilities, even if they are not before the Court.
Offers during Litigation

- If Counsel agrees to allow the taxpayer to submit such an offer, the taxpayer must submit the offer in writing as discussed above and send it directly to Counsel.
- Counsel must obtain from Petitioner a stipulation of the deficiencies and penalties to protect the IRS’s ability to collect additional amounts if the financial status of the petitioner should change or the IRS must seek collection of the amount owed if the Petitioner defaults on payment.
- The alternative, and recommended option, is that the stipulation be held in escrow by Counsel to be signed only if the offer is accepted.

Once an agreement is reached on the stipulation, IRS Counsel will forward the offer to the appropriate unit to be processed under the standard procedure.
- While the offer is pending, the Tax Court case should be continued.
- If the offer is rejected, the taxpayer can challenge the determination in Appeals or resume the Tax Court case.
- If the offer is accepted, a stipulation held in escrow should be filed with the Court.
- Once the stipulation is filed, the amount agreed is assessed, but the compromise simultaneously relieves the taxpayer of the liability

New Jersey Settlement Programs
Settlement Programs

• The primary method of settling cases is through the use of Closing Agreements.
• As an alternative, N.J.S.A. 54:53-7 authorizes the Division of Taxation to compromise.

Closing Agreements

• A closing agreement may be entered into in any case in which there appears to be an advantage in having the case permanently and conclusively closed, or if good and sufficient reasons are shown by the taxpayer for desiring a closing agreement, and it is determined by the director that the State of New Jersey will sustain no disadvantage through consummation of such an agreement. N.J.A.C. 18:33-1.1.

• May be requested at any time before a case is filed with the tax court. N.J.S.A. 54:53-5.
• The agreement can cover either the total liability of taxpayer or one or more of separate items affecting the liability, if it embraces a tax period ending before the date of the agreement; or one or more separate items affecting tax liability. There can be a series of agreements covering a single tax period. N.J.A.C. 18:33-1.5.
• All requests for Closing Agreement are submitted on Form 906.
Closing Agreements

- Taxable Periods
  - Closing agreements with respect to taxable periods ended prior to the date of the agreement may relate to the total tax liability of the taxpayer or to any or more separate items affecting the tax liability of the taxpayer. N.J.A.C. 18:33-1.2.
  - Closing agreements with respect to taxable periods ending subsequent to the date of the agreement may relate to one or more separate items affecting the tax liability of the taxpayer. N.J.A.C. 18:33-1.2.

Compromises

- N.J.S.A. 54.53-7 authorizes the Division of Taxation to compromise.
- The basis for compromises is limited to doubt as to the liability of the taxpayer or the collectability of the tax can be compromised.
- All civil and criminal penalties can be reduced or eliminated, unless the matter has already been referred to the Attorney General for further action.

Compromises

- Compromise the time to pay:
  - Time for payment is only compromised if the equities of the taxpayer’s liability indicate that a compromise would be in the interest of the State and that the taxpayer would not suffer extreme financial hardship.
  - Delayed payment or installment payments compromise agreements incur interest at 3 points above prime rate.
Compromises

• Compromise is final except:
  – Falsification or concealment of assets by taxpayers;
  – Mutual mistake of a material fact sufficient to cause the contract to be set aside; or
  – Significant change in the financial condition of the taxpayer.
    • The Director may require periodic financial statements.

Compromises

• Submission of an offer does not automatically stay collection.
  – Collection may be deferred if the interests of the State will not be jeopardized.

Compromises

• Waiver of Statute of Limitations by Taxpayer:
  – No offer in compromise will be accepted unless:
    • Taxpayer waives the running of the statutory period of limitations on assessment or collection for:
      – the time that the offer is pending;
      – period during which any installment remains unpaid; or
      – for one year thereafter.
Compromises

• Judicial Review of Offer in Compromise Submission
  – New Jersey Tax Court should have jurisdiction to review the denial of a request for an offer in compromise.
  – In cases where the Division does not process a request within a reasonable amount of time, the filing of a complaint in Superior Court in lieu of a prerogative writ may compel the Division to act on the request.

Questions?

AGOSTINO & ASSOCIATES

14 Washington Place
Hackensack, NJ 07601
(201) 488-5400

Follow Us!
Website:
www.agostinolaw.com

Seminar and Newsletter information:
https://sites.google.com/site/seminarmaterials/home

Join our mailing list:
http://goo.gl/5Rmjcp
UNITED STATES TAX COURT
CALENDAR CALLS:

All Calendar Calls are Held at:
Jacob K. Javits Federal Building
26 Federal Plaza
Rooms 206, 208
New York, NY 10278

December 17, 2018

Contact Jeffrey Dirmann, Esq. at (201) 488-5400, Ext 119
or jdirmann@agostinolaw.com to volunteer.

Join our U.S. Tax Court Online Forum
The group is intended to provide a forum for those taking the Agostino & Associates 2018 seminar series and the 2018 US Tax Court Exam. It also provides a forum for the Taxpayer Assistance Corporation volunteers to discuss our pro bono outreach.

To join please email Alec Schwartz at aschwartz@agostinolaw.com with your full name & email address.