



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.2.5

JUNE 15, 2017

EFFECTIVE DATE

(06-15-2017)

PURPOSE

- (1) This transmits revised IRM 4.2.5, *General Examination Procedures, Disclosure of Official Information*.

MATERIAL CHANGES

- (1) This IRM provides Examination employees with a brief explanation of the more commonly encountered disclosure issues encountered in the course of an examination. Various subsections have been edited to update website addresses, legal references, and IRM cross references. Significant changes made to this IRM are summarized below:
- a. Added IRM 4.2.5.1, *Program Scope and Objectives*, to provide background information, legal authorities that govern the actions covered in this IRM, roles and responsibilities, terms and acronyms, and related resources available to assist examiners when conducting examinations.
 - b. Moved and clarified content from IRM 4.2.5.1 to IRM 4.2.5.2, *General Rule*.
 - c. Moved content from IRM 4.2.5.2 to IRM 4.2.5.1, *Program Scope and Objectives*.
 - d. Restructured and updated content in IRM 4.2.5.3, *Investigative Disclosures*, to combine investigative disclosures in one section.
 - e. Removed content in IRM 4.2.5.4 and referred readers to IRM 11.3.21.4, *Contractual Disclosures for Investigative Purposes*, in IRM 4.2.5.3.
 - f. Restructured and updated content in IRM 4.2.5.5, *Powers of Attorney, Designees, and Oral Authorizations*, to distinguish written and oral authorizations.
 - g. Restructured and updated content in IRM 4.2.5.6, *Testimony*, to notify Disclosure immediately.
 - h. Restructured and updated content in IRM 4.2.5.7, *Requests for File and Workpapers*, to combine situations where Disclosure should be contacted.

EFFECT ON OTHER DOCUMENTS

IRM 4.2.5, dated 07/29/2011 is superseded.

AUDIENCE

Small Business/Self-Employed (SB/SE) Examination-Field and Specialty employees and Large Business and International (LB&I) Exam employees

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4.2.5

Disclosure of Official Information

Table of Contents

- 4.2.5.1 Program Scope and Objectives
 - 4.2.5.1.1 Background
 - 4.2.5.1.2 Authority
 - 4.2.5.1.3 Responsibilities
 - 4.2.5.1.4 Terms and Acronyms
 - 4.2.5.1.5 Related Resources
- 4.2.5.2 General Rule
- 4.2.5.3 Investigative Disclosures
- 4.2.5.4 Contractual Disclosure for Investigative Purposes
- 4.2.5.5 Powers of Attorney, Designees, and Oral Authorizations
- 4.2.5.6 Testimony
- 4.2.5.7 Requests for File and Workpapers
- 4.2.5.8 Federal/State Exchanges
- 4.2.5.9 Reporting Losses, Thefts and Disclosures of Sensitive Information

4.2.5.1
(06-15-2017)
Program Scope and Objectives

- (1) **Purpose.** This IRM section provides examiners with a brief explanation of the more commonly encountered disclosure issues, which may arise in the course of the examination process.
- (2) **Audience.** These procedures apply to employees in Small Business/Self-Employed (SB/SE) Examination—Field and Specialty and Large Business and International (LB&I).
- (3) **Policy Owner.** The Director, Examination—Field and Campus Policy, which is under the Director, Headquarters Examination, owns the content within this IRM.
- (4) **Program Owner.** The Governmental Liaison, Disclosure, and Safeguards, an office of Privacy, Governmental Liaison and Disclosure (PGLD), is responsible for the disclosure program in the IRS.
- (5) **Contact Information.** To recommend changes or make any other suggestions related to this IRM section, see IRM 1.11.6.6, *Providing Feedback About an IRM Section - Outside of Clearance*.

4.2.5.1.1
(06-15-2017)
Background

- (1) Each employee in the Internal Revenue Service (IRS) is affected in the performance of duties by laws governing the confidentiality of records and information. These laws are collectively referred to as disclosure laws and they balance the competing interests of protecting the public's personal and financial privacy while maintaining open and effective administration of government. These laws establish what information is confidential, who may have access to it and for what purposes, and how employees must account for any release of confidential information. These laws also determine what information must be made public and, if so, whether the information must be published, made generally available, or made available only upon request. Additionally, these laws restrict the types of personal information gathered and maintained about individuals, and grant certain individuals the right to inspect records.

4.2.5.1.2
(06-15-2017)
Authority

- (1) The disclosure laws are principally composed of certain sections of the Internal Revenue Code (IRC), especially IRC 6103, IRC 6104, IRC 6105, IRC 6110, IRC 7213, IRC 7213A, and IRC 7431. The disclosure laws also include the Freedom of Information Act, 5 United States Code (U.S.C.) § 552, and the Privacy Act, 5 U.S.C. § 552a. See IRM 11.3.1.1(2), *Introduction*.

4.2.5.1.3
(06-15-2017)
Responsibilities

- (1) The Director, Headquarters Examination, is the executive responsible for providing policy and guidance for field employees and ensuring consistent application of policy, procedures and tax law to effect tax administration while protecting taxpayers' rights. See IRM 1.1.16.3.5, *Headquarters Examination*, for additional information.
- (2) The Director, Examination—Field and Campus Policy (formerly known as the Director, Examination AUR/Policy), reports to the Director, Headquarters Examination, and is responsible for the delivery of policy and guidance that impacts the field examination process. See IRM 1.1.16.3.5.1, *Exam/AUR Policy*, for additional information.
- (3) Field Examination General Processes (FEGP), which is under the Director, Examination—Field and Campus Policy, is the group responsible for providing

4.2 General Examining Procedures

policy and procedural guidance on standard examination processes to field employees. See IRM 1.1.16.3.5.1.1, *Examination- Field General Processes*, for additional information.

- (4) All examiners must perform their professional responsibilities in a way that supports the IRS Mission. This requires examiners to provide top quality service and to apply the law with integrity and fairness to all.
- (5) Income tax examiners and their managers should thoroughly acquaint themselves with the examination procedures and information contained in this IRM.

4.2.5.1.4
(06-15-2017)

Terms and Acronyms

- (1) The following table lists commonly used terms and acronyms and their definitions used throughout this IRM.

Term or Acronym	Definition
Discriminant Index Function (DIF)	A mathematical technique used to computer score income tax returns as to examination potential. Examination potential is indicated by a numeric score, which is assigned to each return by examination class; the greater the score, the greater the examination potential within each examination class.
Employee	Any employee of the IRS including examiners, managers, executives and support staff.
Examiner	Revenue agents and tax compliance officers/tax auditors located in one of the seven SB/SE Field Examination areas, SB/SE Speciality or LB&I, who conduct field examinations of income or speciality tax returns filed by individuals, businesses, and other entities to ensure compliance with Federal tax laws.
Financial Crimes Enforcement Network (FinCEN)	Bureau of the U.S. Department of the Treasury that provides a modernized foundation to better collect, store, safeguard, analyze and share data obtained pursuant to Treasury's regulatory authority under the Bank Secrecy Act (BSA).
Freedom of Information Act (FOIA)	Legislative act that provides for public access to records and information maintained by Federal agencies.
Suspicious Activity Report (SAR)	A SAR is a report made by a financial institution to the Financial Crimes Enforcement Network, an agency of the United States Department of the Treasury, regarding suspicious or potentially suspicious activity.
Third Party	A person other than the taxpayer.

4.2.5.1.5
(06-15-2017)

Related Resources

- (1) The Office of Disclosure (hereinafter referenced as Disclosure) helps all IRS employees protect confidential tax and other sensitive information.

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- (3) Refer to IRM 11.3, *Disclosure of Official Information*.
- (4) Access the *Disclosure web page* (<https://organization.ds.irsnet.gov/sites/vldp/disclosure/Pages/Home.aspx>) for additional guidance and contact information.

4.2.5.2
(06-15-2017)
General Rule

- (1) The general rule of disclosure states that return and return information are confidential and may not be disclosed by employees of the United States except under limited circumstances as provided by IRC 6103a. Information provided to or gathered by IRS employees is confidential under this law unless an exception is applicable.
- (2) Employees must understand the disclosure laws and procedures in order to balance the need to protect taxpayer confidentiality while making disclosures of tax information to complete assigned duties.

4.2.5.3
(06-15-2017)
Investigative Disclosures

- (1) Information should be obtained directly from taxpayers or their authorized representatives. However, in certain situations the information needed cannot be obtained from the taxpayer or representative in an accurate, useful, or timely manner. For example:
 - a. The taxpayer is unwilling or unable to obtain or provide requested records.
 - b. The taxpayer's statements or information must be corroborated.
 - c. The service of an outside appraiser for income, estate, or gift tax cases meeting specific requirements (generally in the Internal Revenue Manual) is required.
- (2) Investigative disclosures must be initiated solely to obtain information in connection with official duties. Examiners should disclose only the minimum amount of information necessary to secure the facts needed for their investigation. IRC 6103(k)(6), *Disclosure by Certain Officers and Employees for Investigative Purposes*, and its implementing 26 CFR 6103(k)(6)-1, allows examiners to make certain investigative disclosures to third parties to obtain information, but only when specific conditions are met.

Note: Investigative disclosures may be subject to the third party contact rules by IRC 7602(c), *Notice of contact of third parties*. 26 CFR 301.6103(k)(6)-1(a)(4) does not address or affect the requirements under IRC 7602(c) for conducting a third party contact. Also refer to IRM 4.11.57, *Examining Officers Guide (EOG), Third Party Contacts*.

- (3) Only return information, not the return itself, may be disclosed. Return information includes:
 - a. Taxpayer's identity data (name, address, taxpayer identification number).
 - b. Fact of tax investigation.
 - c. Information taken from a return. Pertinent data (sources and amounts of income, deductions, expenses, etc.), may be extracted from a return and used to solicit information for investigative disclosure purposes.

Note: See IRC 6103(b)(2) for a definition of return information.

- (4) Examiners must consider identity theft and only disclose appropriate information to the victim. See IRM 11.3.2, *Disclosure to Persons with a Material Interest*; IRM 25.23.2.2, *Taxpayer Interaction*; and IRM 4.10.27, *Identity Theft Case Processing for Field Examiners*, for more information.

- (5) Research of the internet for compliance purposes can involve disclosures of return information. It is important to ensure that such investigative disclosures comply with the requirements of IRC 6103(k)(6) and 26 CFR 301.6103(k)(6)-1. See IRM 11.3.21.8, *Internet Research*, for more information.

- (6) An investigative disclosure does not provide for an exchange of information.

Example: The examiner requests copies of invoices from a third party regarding sales made to a specific taxpayer. After providing the invoices, the third party solicits the current address of the taxpayer to collect a debt. The examiner may not provide the address because that disclosure would be for the benefit of the third party. It is only appropriate to provide the address if the address is necessary to assist the third party in identifying the requested invoices.

- (7) Suspicious Activity Report (SAR) data from the Financial Crimes Enforcement Network (FinCEN), formerly WebCBRS, must be afforded the same protection as information from a confidential informant and cannot be disclosed. See IRM 4.26.14, *Bank Secrecy Act, Disclosure*, for disclosure rules for the Title 31 data and IRM 4.10.4.7.3, *Guidelines for SAR Data Security and Disclosure Considerations*.

- (8) Refer to IRM 11.3.21, *Investigative Disclosure*, for additional guidance.

4.2.5.4
(06-15-2017)
**Contractual Disclosure
for Investigative
Purposes**

- (1) When the service of a qualified expert is needed during an examination or other enforcement activities, disclosure of return information may be required. See IRM 11.3.21.4, *Contractual Disclosures for Investigative Purposes*, for additional information.

4.2.5.5
(06-15-2017)
**Powers of Attorney,
Designees, and Oral
Authorizations**

- (1) IRC 6103(c) and 26 CFR 301.6103(c)-1 allow examiners to make disclosures of federal tax returns or return information to persons or organizations designated by the taxpayer. Other information about disclosures to designees and practitioners can be found in IRM 11.3.3, *Disclosure to Designee and Practitioners*.
- (2) Examiners typically obtain a **written authorization** from the taxpayer allowing them to disclose tax matters to powers of attorney or designees.
- Form 2848, *Power of Attorney and Declaration of Representative*, is used by a taxpayer to authorize disclosure of tax information and to permit a representative to act on behalf of the taxpayer.
 - Form 8821, *Tax Information Authorization*, authorizes any individual, corporation, firm, organization, or partnership the taxpayer designates to inspect and/or receive their confidential information. It does not authorize the appointee to advocate the taxpayer's position with respect to the Federal tax laws; to execute waivers, consents, or closing agreements; or to otherwise represent the taxpayer before the IRS. See IRM 4.11.55.1.7.2, *Form 8821 - Tax Information Authorization*.
 - Disclosure authority is limited to only those tax years listed on the authorization (i.e., Form 2848 or Form 8821). If the examiner expands the scope of the examination to include additional tax years or types of returns, the examiner must secure an authorization with the additional tax years or types of returns before disclosing information related to the additional tax years or types of returns.

- (3) Examiners can obtain an **oral authorization** from the taxpayer allowing them to discuss tax matters for any periods not covered by an authorization form. Additional guidance is provided in IRM 11.3.3.2.1, *Requirements for Oral Authorization*; IRM 11.3.2.3.2, *Requirements for Verbal or Electronic Requests*; and IRM 4.11.55.1.4.2.4, *Verbal Requests*.

Reminder: Examiners must take reasonable steps to confirm the identity of the taxpayer and the designee before disclosing any return information to a third party. The disclosure of return information must be limited to the information covered in the verbal consent and in these instances, disclosure can only be made to third parties helping taxpayers resolve a federal tax matter.

- a. Details of the oral authorization should be recorded on Form 9984, *Examining Officer's Activity Record*, or equivalent form.
- b. Oral authorizations do not take the place of a Form 2848 authorizing a third party to represent the taxpayer before the IRS or a Form 8821 authorizing an appointee to receive the taxpayer's confidential information. Although taxpayers may give examiners oral authorization to work with a representative or an appointee, examiners must still secure a Form 2848 or Form 8821 that includes the additional years or types of returns.
- c. Oral authorization should be obtained when another person (e.g., relative, friend, translator, employee, etc.) is present during a meeting with the taxpayer.
- d. Additional information concerning oral authorizations can be found on the *Disclosure website*. See also the *Access and Authentication* section on the Disclosure website.

4.2.5.6 (06-15-2017) Testimony

- (1) Examiners who receive a subpoena or are asked to testify must contact Disclosure immediately. An examiner cannot agree to testify or produce records without authorization. Contact information for Disclosure is located at the *Disclosure help desk*.
- a. If the IRS is a party in the matter, that is, the examiner is being asked to provide records or testify for the government in a tax case, the examiner must follow Disclosure's direction. In some cases, the matter will be referred to Counsel. If an appearance is required, either Disclosure or Counsel (as appropriate) will coordinate the necessary testimony authorization.
 - b. If the IRS is not a party to the matter but the subpoena requests IRS records or testimony, the examiner must follow Disclosure's direction.

Example: An examiner is subpoenaed to testify or produce IRS records in a divorce proceeding.

- (2) Most subpoenas have a short response time, so time is always of the essence. The Disclosure or Counsel employee assigned will ask the examiner for the information contained in the subpoena, as well as the examiner's involvement in the matter. If Disclosure or Counsel personnel needs to be involved, they will request the examiner hand carry, fax, or email (secure mail if taxpayer information or personally identifiable information) a copy of the subpoena to them.
- (3) Disclosure or Counsel will contact the individual who issued the subpoena to explain IRS's procedure and the disclosure provisions of IRC 6103, *Confidentiality and Disclosure of Returns and Return Information*. They will also

determine if the IRS can substitute certified documents in lieu of an appearance by an IRS employee. If an appearance is required, either Disclosure or Counsel will coordinate the necessary testimony authorizations. Without this authorization, employees may **not** testify or even discuss the case with the requesting party.

- (4) If the examiner must testify in court or give a deposition, an attorney from Counsel or the Office of the United States Attorney will typically accompany the examiner. When testifying or presenting documents, the examiner must keep the disclosure restrictions in mind. Testimony should be limited to the issue at hand and stay within the bounds of the testimony authorization. For additional advice on testimony see IRM 11.3.35, *Requests and Demands for Testimony and Production of Documents*, 26 CFR 301.9000-1, and *Subpoenaed to Testify? Here's what to do* on the Disclosure website.

4.2.5.7
(06-15-2017)
**Requests for File and
Workpapers**

- (1) The examiner may be asked by a taxpayer or representative for a copy of the examiner's files or workpapers. IRC 6103(e), *Disclosure to Persons Having Material Interest*, provides for the release of information to the taxpayer or their representative. This section advises that the Service must give taxpayers access to their returns or return information unless the Secretary determines that the release of the information would seriously impair tax administration.
- (2) IRC 6103(e)(7) allows the IRS to withhold return information (administrative file and workpapers) if that release would impair tax administration. Impairment determinations should not be so narrowly construed to prevent the release of all information and are generally made at the supervisory level.

Note: Any number, including zero or a blank space, following the term DIF (or any other reference such as DIF Category, DIF Formula, DIF Score, DIF Inc Srt) must be withheld. The release of DIF scores could feasibly reveal how returns may be selected for audit and are prohibited from being released by IRC 6103(b)(2).

- (3) Before any information is released, examiners must be sure the person requesting access has a legal right to the information and must review the information. Examiners should request assistance from Disclosure if:
 - a. The file contains informant information.
 - b. The file contains sensitive information that could hamper the investigation (for example development of badges of fraud).
 - c. The file contains third party tax information that cannot be disclosed.
 - d. The request involves complex or unusual circumstances.
 - e. There are **any** concerns about whether something in the file should be released.
- (4) At times the IRS is required to summons documents as well as contact third parties to obtain necessary information. Any summoned document and/or third party contact information is return information. Such information can be withheld if the IRS determines that its release would:
 - a. Jeopardize collection of any tax,
 - b. Involve reprisal against any person, or
 - c. Jeopardize any pending criminal investigation.

- (5) If a Freedom of Information Act (FOIA) request is received, the Disclosure office has jurisdiction. See IRM 11.3.13, *Freedom of Information Act*, and *IRS Freedom of Information* on the IRS.gov website.
- (6) IRM 11.3.2, *Disclosure to Persons with a Material Interest*, provides additional information concerning who may be authorized to receive return information, including copies of files or workpapers.

4.2.5.8
(07-29-2011)
Federal/State Exchanges

- (1) The IRS provides tax information to the states for their use in administering state tax laws. IRC 6103(d), *Disclosure to State Tax Officials and State and Local Law Enforcement Agencies*, provides the requirements for states to receive tax information.
- (2) Examiners can receive information directly from a state taxing agency, but they **cannot** disburse any information. All requests from state agencies must be referred to Disclosure. See IRM 11.3.32, *Disclosure to States for Tax Administration Purposes*. If assistance is needed with securing information from a state agency, the examiner should contact Disclosure.

4.2.5.9
(07-29-2011)
**Reporting Losses,
Thefts and Disclosures
of Sensitive Information**

- (1) Employees may become aware of an unauthorized disclosure and/or inspection of records during the course of their examination. Actions to be taken by the employee and time frames are as follows:
 - a. Information Loss—**All** information losses or thefts must be reported **within one hour**. See IRM 10.5.4.3.1, *Timely Reporting: Within One Hour*.
 - b. Intentional Unauthorized Disclosure—If the employee becomes aware of an **intentional** unauthorized disclosure, the incident must be reported to the Treasury Inspector General for Tax Administration (TIGTA) **as soon as possible**. See IRM 10.5.4.3.2, *Intentional Unauthorized Disclosures*.
 - c. Inadvertent Disclosure—If the employee becomes aware of an **inadvertent** disclosure of sensitive information, or the loss or theft of an IT asset or hardcopy record or document containing sensitive information, the employee is required to report the incident **within one hour**. See IRM 10.5.4.3.3, *Inadvertent Unauthorized Disclosures and Losses or Thefts of IT Assets and Hardcopy Records/Documents*.
- (2) The *Incident Management Breach/Data Loss Notification Process* website assists IRS employees in understanding and applying their disclosure responsibilities.

