



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

11.3.32

AUGUST 14, 2023

## EFFECTIVE DATE

(08-14-2023)

## PURPOSE

- (1) This transmits revised text for IRM 11.3.32, Disclosure of Information, Disclosure to States for Tax Administration Purposes.

## MATERIAL CHANGES

- (1) IRM 11.3.32.1.4, Program Controls, were added in order to incorporate relevant internal controls. These items identify information about the program and procedures covered within this section.
- (2) Reviewed and updated the IRM where necessary for the following types of editorial changes: legal citations, published forms and documents and web addresses.

## EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 11.3.32, Disclosure of Information, Disclosure to States for Tax Administration Purposes, dated January 06, 2022.

## AUDIENCE

All Operating Divisions and Functions.

## RELATED RESOURCES

- (1) The *Disclosure and Privacy Knowledge Base*.

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11.3.32

Disclosure to States for Tax Administration Purposes

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11.3.32.1  
(06-23-2020)  
**Program Scope and Objectives**

- (1) Purpose: This IRM section provides instructions concerning disclosures to states for tax administration purposes.
- (2) Audience: These procedures apply to all IRS employees and contractors.
- (3) Policy Owner: The Director of Governmental Liaison, Disclosure and Safeguards (GLDS) is responsible for oversight of Disclosure policy.
- (4) Program Owner: The Disclosure office, under GLDS, is responsible for the Disclosure program and guidance. Each IRS organization is responsible for ensuring its employees are aware of and follow Servicewide Disclosure policy.
- (5) Primary Stakeholders: The following GLDS offices have primary responsibility for disclosures to states for tax administration purposes:
  - Data Services
  - Disclosure
  - Governmental Liaison
  - Office of Safeguards
- (6) Other Stakeholders: Business Units Servicewide may engage in memoranda of understanding to exchange information with state tax agencies when appropriate, with guidance from GLDS.

11.3.32.1.1  
(06-23-2020)  
**Background**

- (1) The exchange of confidential tax information between the Internal Revenue Service (IRS) and state tax agencies 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 (GL) are assigned responsibility for liaison with state tax authorities and are to be personally involved in the cooperative tax administration program. The GL may also represent the IRS at conferences and meetings with senior officials of state agencies.
- (3) Disclosure Managers, GLs, Data Services and 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.
- (4) Business Units contemplating disclosure of federal tax information to state agencies should consult with the GL and Disclosure Manager assigned to their state.
- (5) This section primarily deals with disclosure for state tax purposes in accordance with Internal Revenue Code (IRC) 6103(d).

**Note:** Licensing initiatives are not a tax administration activity and therefore are not an authorized use of FTI obtained under IRC 6103(d).

11.3.32.1.2  
(01-06-2022)  
**Authority**

- (1) IRC 6103(d)(1) permits the disclosure of federal tax returns and return information with respect to taxes imposed by chapters 1, 2, 6, 11, 12, 21, 23, 24, 31, 32, 44, 51, 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 with a state tax agency and no disclosures of those types of tax information can be made unless the state tax function has responsibility for those types of taxes.

- (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 federal tax 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 federal tax 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 Tax
12	Gift Tax
21	Federal Insurance Contributions Act (FICA)
23	Federal Unemployment Tax Act (FUTA)
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

Chapter	Title
52	Tobacco Products and Cigarette Papers and Tubes
36, Sub. D	Tax on Use of Certain Vehicles

- (6) IRC 6103(h)(4) permits the disclosure of federal tax returns or return information in state judicial or administrative proceedings pertaining to tax administration, but only if -
- The taxpayer is a party to the 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; or
  - The treatment of an item reflected on such return is directly related to the resolution of an issue in the proceeding; or
  - Such returns or return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding; and
  - The disclosure does not identify a confidential informant or seriously impair a civil or criminal tax investigation See IRM 11.3.32.17, Use of Federal Tax Returns and Return Information in State Judicial or Administrative Proceedings, pursuant to IRC 6103(h)(4).
- (7) 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. See IRM 11.3.32.13, Disclosure of Tax Return Preparer Information pursuant to IRC 6103(k)(5).
- (8) 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 26 CFR 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. See IRM 11.3.32.14, Disclosure of Records Regarding Taxes on Gasoline and Lubricating Oil pursuant to IRC 4102.
- (9) Federal tax refunds offset by the Bureau of the Fiscal Service (BFS) are disclosed to state agencies under IRC 6103(l)(10). However, offsets authorized by IRC 6402(e), are governed by IRC 6103(d). State tax agencies disclose federal tax return information to contractors for tax administration purposes, including the collection of state income tax debts (6402(e)), but may not disclose federal tax return information to contractors for non-tax administration purposes, such as collection of state unemployment compensation debts

(6402(f)). For this reason, it is advisable that states **not** commingle IRC 6103(l)(10) federal tax return information with IRC 6103(d) federal tax information, because contractors cannot have access to IRC 6103(l)(10) federal tax return information for non-tax administration purposes. See IRM 11.3.29, Disclosure to Federal Government Agencies for Administration of Nontax Laws for additional information on IRC 6103(l)(10).

11.3.32.1.3  
(06-23-2020)  
**Responsibilities**

- (1) This Internal Revenue Manual (IRM) is used by all IRS employees and contractors to help comply with the disclosure provisions of IRC 6103(d) pertaining to disclosures to state agencies for tax administration purposes.

11.3.32.1.4  
(08-14-2023)  
**Program Controls**

- (1) Business Units are responsible for establishing and documenting the program controls developed to oversee their program as well as ensuring employee compliance with all applicable elements of this IRM.

11.3.32.1.5  
(06-23-2020)  
**Terms and Definitions**

- (1) The following terms are defined for use in this IRM:
- (2) **State** - As defined by IRC 6103(b)(5), any of the fifty states, the District of Columbia, American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, the United States Virgin 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 Disclosure Policy and Program Operations (PPO), is needed before agreements are negotiated.

**Note:** All agreements with America Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam and the United States Virgin 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 Treaties.

- (3) **State tax administration** - As defined by IRC 6103(b)(4), 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 Chief Privacy Officer 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 the IRS has finalized a written agreement on coordination of tax administration.
- (6) **Disclosure Office** - the Disclosure office manager responsible for negotiating agreements and overseeing disclosures with the state tax agency.
- (7) **Affected Campus** - the campus(es) responsible for processing the returns of taxpayers residing in Disclosure offices' geographical areas and involved in disclosures of data to a particular state tax agency.
- (8) **Field Disclosure Manager** - the Disclosure official at a local IRS office.
- (9) **Governmental Liaison** - the IRS Fed/State official designated to provide liaison services to an identified state or states.
- (10) **Office of Safeguards** - the Safeguards Program office within GLDS is responsible for oversight of IRC 6103(p)(4) and conducts periodic safeguards and on-site "need and use" reviews of state tax agencies.

11.3.32.1.6  
(06-23-2020)  
**Acronyms**

- (1) The following is a list of the acronyms that are used in this IRM section:

Acronym	Definition
BFS	Bureau of the Fiscal Service
BMF	Business Master File
BRTF	Business Return Transaction File
CFR	Code of Federal Regulations
CTR	Currency Transaction Report
DEQI	Data Exchange & Quality Initiatives
EOAD	Examination Operational Automation Database
ERRP	EITC Erroneous Refund Reduction Program
ExSTARS	Excise Summary Terminal Activity Reporting System
FEIN	Federal Employer Identification Number

<b>Acronym</b>	<b>Definition</b>
FICA	Federal Insurance Contributions Act
FinCEN	Financial Crimes Enforcement Network
FUTA	Federal Unemployment Tax Act
GL	Governmental Liaison
GLDEP	Governmental Liaison Data Exchange Program
GLDS	Governmental Liaison, Disclosure and Safeguards
GSS	GLDS Support Services
IAD	IRS Agreement Database
IDRS	Integrated Data Retrieval System
IMF	Individual Master File
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IRMF	Information Returns Master File
IRS	Internal Revenue Service
IRTF	Individual Return Transaction File
IT	Information Technology
ITIN	Individual Taxpayer Identification Number
ITPI	Identify Theft Protection Indicator
LB&I	Large Business and International
MCZ	Military Combat Zone (MCZ)
MeF	Modernized e-File
MOU	Memorandum of Understanding
PGLD	Privacy, Governmental Liaison and Disclosure
PPO	Policy and Program Operations
PTIN	Preparer Taxpayer Identification Number
RAAS	Research, Applied Analytics & Statistics
SDT	Secure Data Transfer
SOI	Statistics of Income

Acronym	Definition
SBU	Sensitive but Unclassified
SITLP	State Income Tax Levy Program
SSA	Social Security Administration
TAR	Taxpayer Address Request
TC	Transaction Code
TDS	Transcript Delivery System
TIGTA	Treasury Inspector General for Tax Administration
TIN	Taxpayer Identification Number

11.3.32.1.7  
(06-23-2020)

#### Related Resources

- (1) The following table lists other sources of guidance on disclosures to state agencies for tax administration.

Resource	Guidance
IRM 10.5.1, Privacy and Information Protection, Privacy Policy	Provides framework for IRS privacy policy.
IRM 11.4.1, Office of Governmental Liaison, Governmental Liaison Operations	Provides instructions concerning the GL program that facilitates the exchange of data and fosters partnerships with federal, state, and local governmental agencies for tax administration purposes.
IRM 11.3.21, Disclosure of Official Information, Investigative Disclosure	Provides instructions, guidelines, and procedures necessary for Investigative Disclosure.
IRM 11.3.25, Disclosure to Foreign Countries Pursuant to Tax Treaties	Provides the instructions, guidelines, and procedures necessary for Disclosure to Foreign Countries Pursuant to Tax Treaties as well as the legal authority for the program.
IRM 11.3.24, Disclosure of Official Information, Disclosures to Contractors	Provides instructions for assuring that IRS contracts involving the inspection or disclosure of federal tax returns and return information under Internal Revenue Code (IRC) 6103(n) comply with all applicable laws, regulations and procedures.

Resource	Guidance
IRM 11.4.2, Office of Governmental Liaison, Data Exchange Program	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.
Publication 1075	Tax Information Security Guidelines for Federal, State and Local Agencies

11.3.32.2  
(01-06-2022)  
**Need and Use**

- (1) Disclosure of federal tax returns and return information to a state tax agency under IRC 6103(d)(1) is restricted to the agency's justified state tax administration need for and use of such information. See Policy Statement P-11-90 (formerly P-1-35) found in IRM 1.2.1.11.5, Agreements to exchange tax information with states entered into when in interests of good tax administration.
- (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.

**Example:** Disclosure Managers will meet annually with each state tax agency point of contact to conduct a review of their need and use justification for each extract requested in the Governmental Liaison Data Exchange Program (GLDEP) Annual Enrollment Package.

- (3) Disclosure's role is to evaluate a state tax agency's need and use of federal tax returns or return information before information is disclosed. See IRM 11.3.41, Disclosure Case Processing and Inventory Management, for specific Disclosure employee procedures.
- (4) Every effort will be made to eliminate disclosure of unnecessary information to state tax agencies. Requests for copies of federal tax returns or return information 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.

- (5) When reviewing a state tax agency's ad hoc request for disclosure of federal tax returns or return information, employees should ensure the request

includes enough information to determine the need for and intended use of the information. Use of Form 8796-A, Request for Returns/Information (Federal/State Tax Exchange Program – State and Local Government Use Only), will generally meet this requirement. In some situations, more information may be necessary. For example, if an agency is seeking information about a taxpayer residing in another state, the agency must establish the need and use nexus of their tax administration authority over the non-resident taxpayer.

- (6) Tolerances and criteria will be established for information furnished on a continuing basis and documented in written agreements and enrollment forms. Information that the agency cannot use should normally not be provided. See IRM 11.3.32.4.1(2)(c) below, for more about tolerances and criteria.
- (7) 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 tax 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 11.3.32.19, Special Statistical Studies, Compilations, and Other Services for states' use of federal tax returns and return information for special statistical studies, revenue projections, tax modeling, or similar purposes.
- (8) Office of Safeguards personnel will conduct an on-site "need and use" review of each state tax agency after receiving federal tax information in accordance with its established procedures. When determined appropriate by the Associate Director, Office of Safeguards, GLs and Disclosure staff may accompany Safeguards staff on "need and use" reviews. See IRM 11.3.32.7, "Need and Use" Reviews and IRM 11.3.36, Safeguard Review Program.
- (9) 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.

11.3.32.3  
(01-06-2022)  
**Basic Agreements**

- (1) The Agreement on Coordination of Tax Administration (referred to as 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 of IRC 6103(d)(1) and 6103(p)(4).
- (2) Arrangements for continuing disclosures are made by means of an implementing agreement discussed in IRM 11.3.32.4, Implementing Agreements. State tax agency requests for tax data not covered by a basic agreement must be made in accordance with instructions contained in IRM 11.3.32.11, Disclosure to Agencies that Have Not Entered into Agreements on Coordination of Tax Administration.
- (3) When the state agency proposes language that deviates from the basic agreement template, GL coordinates with IRS Counsel and GLDS functions to review the changes. If the changes are acceptable, the basic agreement will be signed by the head of the state tax agency and then routed to the Chief Privacy Officer for signature.
- (4) The scope of the basic agreement and subsequent implementing agreement will be initially developed and negotiated through discussions between the respective GL 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 for review and approval. It may be necessary to engage Chief Counsel (Procedure & Administration, Area Counsel, or both) 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, Disclosure PPO will reach out to Counsel and involve the Associate Director, Disclosure in any resolution.

- (5) The head of the state agency will sign 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 GL, in GL Headquarters Policy, will prepare the signature package and send the signed agreement to Disclosure PPO for review and then to the Chief Privacy Officer for approval and signature. 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 11.3.32.12.1, State Law Requirements pursuant to IRC 6103(p)(8) below. The Disclosure PPO Analyst will coordinate with Chief Counsel, Procedure & Administration, if legal issues still need to be resolved. The Chief Privacy Officer will sign the agreement on behalf of the Commissioner. 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 signature of the Chief Privacy Officer, the signed basic agreements will be returned to the GL. The GL will forward one signed original to the agency. The GL will scan and send a copy of the second signed basic agreement to the GL SharePoint site coordinator for posting to the SharePoint agreements folder for the state and will record the agreement within the IRS Agreement Database (IAD).
- (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 changing the scope of basic agreements is available electronically on the GL SharePoint site.
- (11) Addenda to the original basic agreement will be prepared, signed, and cleared as prescribed in paragraphs (4) through (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 Security Report.

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

11.3.32.4  
(06-23-2020)  
**Implementing  
Agreements**

- (1) An implementing agreement is developed and negotiated with each state tax agency that wants to receive federal tax 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 can request and leverage the use of data available from state agencies to avoid duplicate resource expenditures. The appropriate IRS Business Unit can utilize state tax information to support 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 Field Disclosure Manager. Disclosure Managers are encouraged to send any items that may have nationwide significance to Disclosure PPO.
- (6) Implementing agreements are reviewed periodically and amended or revised when necessary.
- (7) Agreements may be amended from time to time to reflect the addition of new exchange programs or modifications to existing exchanges. A Memorandum of Understanding (MOU) may be considered in lieu of amending implementing agreements. See IRM 11.3.32.6, Memorandums of Understanding for information on MOUs.
- (8) Copies of implementing agreements and any amendments are posted on the GL SharePoint site.
- (9) When any conflict arises between the provisions of the basic and implementing agreements, the terms of the basic agreement will govern.
- (10) Copies of implementing agreements, including exhibits and addenda, are made available to the general public through the Freedom of Information Act. Disclosure caseworkers processing requests should carefully review any implementing agreement prior to release since many will contain criteria and tolerances, the release of which could impair federal tax administration.



11.3.32.4.1  
(06-23-2020)

**Content of Implementing Agreements**

- (1) **Federal and State Liaison Officials** - Section II of the implementing agreement addresses the liaison officials.
  - a. Each state tax agency will have one primary point of contact. The GL assigned to each state is the primary IRS point of contact.
  - b. In addition to the GL, the Disclosure Manager responsible for the state is the point of contact for Disclosure related issues.
  - 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.
- (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, covers information exchanged on a continuing basis, including the state tax agency's participation in the GLDEP. Through the Detroit Computing Center, the Chief, Data Exchange & Quality Initiatives (DEQI) coordinates certain data extract programs whereby state tax agencies may obtain federal tax return information. These programs include, but are not limited to, the following data extracts:
    - Individual Master File (IMF)
    - Individual Return Transaction File (IRTF)
    - Business Master File (BMF)
    - Business Return Transaction File (BRTF)
    - Information Returns Master File (IRMF)
    - Exam/Appeals
    - Taxpayer Address Request (TAR)
    - Non-itemizer
    - CP-2000 (UNDERREPORTER)
    - Examination Operational Automation Database (EOAD)
    - Levy
    - Preparer Tax Identification Number (PTIN)
    - Individual Taxpayer Identification Number (ITIN)
    - Federal Employer Identification Number (FEIN)
    - Identity Theft Protection Indicator (ITPI)
    - Corporate Affiliations
    - Military Combat Zone (MCZ)
    - 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.

- d. 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 (SBU) information. Tolerances and criteria for the formal data extract program (see IRM 11.3.32.9, Release of Tax Data in Electronic Format) 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.
  - e. Other Returns and Return Information are specified in .03 of Section III. This permits notification to state tax officials about federal tax 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.
  - f. This section establishes a procedure for disclosing these federal tax returns and return information in a manner compliant with the need and use and written request requirements of IRC 6103(d)(1).
  - g. 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 ensure 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 basic agreement or information required in other documents or reports.

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

- (4) IRS personnel are encouraged to use the implementing agreements to indicate all agreed-upon exchange activities when these activities are not specified elsewhere. These must be coordinated with the GL and Disclosure Manager for that state tax agency. 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 11.3.32.9(10), Release of Tax Data in Electronic Format.

- (5) The primary signatories to an implementing agreement are the Director, GLDS 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. The Disclosure Manager should consult with Disclosure PPO if they have questions or need technical guidance.

**Note:** Additional signatures must be obtained from all affected Business Units, functions, and campuses in accordance with current operating procedures. The involvement of Information Technology (IT) 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 (Rev. 4), Authority to Act as Competent Authority or Taxation Authority Under Certain International Agreements, Authorize the Disclosure of Tax Information Under Mutual Legal Assistance Treaties, and Disclose Certain Tax Convention Information, found in IRM 1.2.2.5.11 .

11.3.32.5  
(06-23-2020)  
**Implementing  
Agreement Roles,  
Responsibilities, and  
Procedures**

- (1) The GL has primary responsibility for the development and negotiation of implementing agreements; the GL is also responsible for coordinating with the Disclosure Manager who has the appropriate state tax agencies within their jurisdiction.  
This responsibility includes:
- Initiating contact with the state tax agencies.
  - Seeking input from affected campuses and Business Units.
  - Drafting the implementing agreements.
  - Arranging meetings between state and IRS officials.
  - Ensuring timely submission and review of implementing agreements and any subsequent amendments.
- (2) The Disclosure Managers will be responsible for maintaining complete and current documentation of the state tax agency's need for and use of all federal tax returns, return information and data elements that are provided to the agency on a continuing basis pursuant to the implementing agreement. The Disclosure Manager should consult with Disclosure PPO if they have questions or need technical guidance.
- (3) Affected campuses and Business Units are responsible for providing timely input to the Disclosure Managers and assuring that the Disclosure office is promptly apprised of any significant changes in programs, practices and procedures that might affect exchange program activities.
- (4) GLs in coordination with the Disclosure Managers involved in negotiating implementing agreements with the appropriate state tax agencies are to ensure that affected Business Units 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, GLDS prior to signing. For that reason, Disclosure Managers involved must be sure the information exchanged is authorized by statute - IRC 6103(d). The information disclosed must fall within the specified chapters of IRC 6103(d)(1) and IRM 11.3.32.1.2, Authority above. GLs and Disclosure Managers must consult with Disclosure PPO when needed.

**Example:** If the implementing agreement contemplates the exchange of Title 31 or Currency Transaction Report (CTR) data, it is statutorily prohibited from being provided to state tax agencies if taken from the IRMF or Financial Crimes Enforcement Network (FinCEN) systems.

- (6) Once the implementing agreement is signed by the head of the partner agency or someone that has delegated authority to legally bind the agency and the Director of GLDS, the GL will forward one copy to the agency and upload a copy to SharePoint.
- (7) The GL will distribute copies of amended or revised implementing agreements to the affected campuses and business units.
- (8) 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 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.
- (9) 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 11.3.32.1.5, Terms and Definitions(11) above and IRM 11.3.36, Safeguard Review Program.

11.3.32.6  
(01-06-2022)  
**Memorandums of  
Understanding**

- (1) GLs have primary responsibility for the development and coordination of MOUs between the IRS and state agencies. GLs will also coordinate with the primary Disclosure Manager. See IRM 11.4.1, Governmental Liaison Operations for policy guidance, including an MOU template. 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). Examples of some standard MOUs are:
  - EITC Erroneous Refund Reduction Program (ERRP)
  - Excise Summary Terminal Activity Reporting System (ExSTARS)
  - Modernized e-File (MeF) Electronic Filing Program
  - Reportable Transactions
  - State Income Tax Levy Program (SITLP)
  - Tax Modeling Need and Use
  - Taxpayer Identification Number (TIN) Matching
  - Transcript Delivery System (TDS)

**Note:** MOUs may also augment an implementing agreement when instructions regarding the process are lengthy. If an MOU is expected to be long-term or involves an on-going exchange, it should be incorporated into the implementing agreement.

- (2) MOUs involving disclosure of federal tax returns or return information are signed by an official in the Business Unit having jurisdiction for the project/exchange and who is authorized by Delegation Order 11-2 (Rev 4), found in IRM 1.2.2.12.2, Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents. The head of the state tax agency must also sign when disclosures of federal or state information are involved.
- (3) When disclosure of federal tax returns or return 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 IT or U.S. Possessions are involved, see IRM 11.3.32.4.1(5)-(6) above.
- (4) The title section of the MOU should include the names of the agencies involved in the agreement.
- (5) 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.
- (6) When the MOU authorizes disclosure of federal tax returns or return information subject to any required accountings for disclosure under IRC 6103(p)(3), the document must identify who is responsible for preparing and submitting the accounting information. Refer to IRM 11.3.37, Recordkeeping and Accounting for Disclosures.
- (7) If time is an issue, requirements for responsiveness should be described.
- (8) Clauses regarding the security and disposition of exchanged information are required.
- (9) Before making commitments to provide resources, appropriate parties should be consulted.
- (10) Chief Counsel, Procedure & Administration, should be contacted for any required legal opinions.
- (11) Disclosure Managers must be involved in the approval process for all MOUs.
- (12) Signature areas will contain blanks for name, date and location.
- (13) The Associate Director, Governmental Liaison, the Associate Director, 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:** 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.

11.3.32.7  
(06-23-2020)  
**“Need and Use”  
Reviews**

- (1) In accordance with Office of Safeguards requirements, (see IRM 11.3.36.15.3, Need and Use Reviews) an on-site review is made of the state tax agency’s actual use or non-use of data disclosed to them on a continuing basis under the implementing or other agreement and other ad hoc requests. The Associate 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. Electronic exchanges are covered during this review. The report must address whether the agency receives electronic data and/or 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 11.3.36.15.4, Preliminary Findings Report
- (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 GLDS as appropriate.
- (4) When Safeguards recommends modification of tolerances and criteria, 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 Associate Director, Office of Safeguards.

11.3.32.8  
(01-06-2022)  
**Authorized Disclosures  
pursuant to IRC  
6103(d)(1)**

- (1) Disclosure Managers will ensure that state tax agency ad hoc requests for federal tax returns or return information are processed consistent with IRC 6103(d)(1) requirements. These requests are received by the GLDS Support Services (GSS), input into the Disclosure automated inventory management system and electronically assigned to the Field Disclosure Office.
- (2) Form 8796-A, Request for Returns/Information (Federal/State Tax Exchange Program - State and Local Government Use Only) is used by employees of state tax agencies to request federal tax returns and/or return information in accordance with an approved basic agreement. Use of this form is encouraged but not mandatory. When Form 8796-A is used, section C is signed by officials who are authorized to make requests and/or release information under the terms of the basic and implementing agreements. See IRM 11.3.41, Disclosure Case Processing and Inventory Management, for specific Disclosure employee procedures.

**Note:** Form 8796-A and Form 8796 are available in the IRS Electronic Publishing Library. Form 8796-A is also available to state tax agencies on [www.irs.gov](http://www.irs.gov).

- (3) An officer or employee of a state tax agency may inspect or receive federal tax returns or return information of specifically identified taxpayers if:
  - a. The type of tax data is able to be disclosed to the agency under a basic agreement currently in effect between the agency and the IRS.

- b. The officer or employee has been designated by name, 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 basic agreement, 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 11.3.32.15, Restrictions on Disclosure of Federal Tax Returns and Return Information.
- (4) The Disclosure Manager will maintain an authorization list of state employees who have the delegated authority to sign a request for disclosure of federal tax returns or return information. Each Disclosure office will ensure the list is periodically reviewed and updated.
- (5) A valid 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 federal tax returns or return information.
  - b. The name and other identifying information of each person or entity whose federal tax return(s) or return information is to be disclosed and a description of the specific federal tax 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 (need and use; nexus to state tax administration).
  - d. Requesting tax information compiled under a chapter of the Code as enumerated under IRC 6103(d) and the agency's authority.
- (6) An IRS official receiving a request from a state tax agency representative to inspect federal tax returns or obtain return information, shall confirm the identity of the individual, and with the assistance of the Disclosure office, ensure that the above requirements are met.
- (7) Employees should follow official policy for receipt and transmission of tax information. The means for transmitting federal tax returns and return information may vary according to the sensitivity of the material involved. Refer to the Transmission section of IRM 10.5.1, Privacy and Information Protection, Privacy Policy. In the event alternative transmission methods are considered, please ensure they are commensurate with, and adhere to, established IRM policy and/or other approved agency guidance regarding secure transmission (i.e. Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies).
- (8) IRC 6103(d) disclosures to a state tax agency require accounting by the IRS employee that makes the disclosure, pursuant to IRC 6103(p)(3). Form 5466-B, Multiple Record of Disclosure, or a Narrative Record of Accounting can be used for this purpose. Refer to guidance found in IRM 11.3.37, Record-keeping and Accounting for Disclosure. Disclosure employees may provide guidance to the IRS employee if requested.
- (9) Requests from IRS compliance employees seeking information from state tax agencies are not controlled as IRC 6103(d)(1) requests by the Disclosure office. Employees should complete Form 8796, Request for Return/Information (Federal/State Tax Exchange Program), sections A, B and C. An authorized IRS representative must sign the form (section C, box 3) before the state tax



agency can process the request. Disclosure maintains a list of authorized IRS employees the state tax agency recognizes. Contact the Disclosure Help Desk for a list of IRS employees authorized to approve the request specific to a particular state tax agency.

- (10) IRS employees should not use Form 8796 when seeking information from sources other than state tax agencies. IRS employees seeking information from non-tax agencies must follow their business unit's procedures for requesting information.

11.3.32.8.1  
(06-23-2020)

**Continuing Disclosures**

- (1) Disclosure of federal tax returns and return information on a continuing basis are carefully and thoroughly screened and evaluated to ensure 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) When the Disclosure Manager has federal tax returns and/or return information, which will not be transmitted to the state tax agency under other processes, but which may be evidence of any inadvertent or intentional understatement of any state tax, the Disclosure Manager shall contact the agency liaison official and, without disclosing identifying information, describe the federal tax returns and/or return information in sufficient detail to ascertain the agency's need and potential use for the federal tax returns and/or return information. If, in the judgment of the Disclosure Manager, the agency has a need and use for the federal tax returns and/or return information he/she shall have the liaison formally request the information via Form 8796-A, and then transmit the federal tax returns and/or return information to the agency.
- (4) The Disclosure office may periodically perform quality reviews of other IRS functions releasing documents to ensure that the provisions of the implementing or other agreements are being met, the restrictions imposed by IRM 11.3.32.15, Restrictions on Disclosure of Federal Tax Returns and Return Information are being followed, and the necessary accountings for disclosure are made. Both pre- and post- disclosure reviews can be conducted as appropriate as determined by the Associate Director, Disclosure.

11.3.32.8.2  
(01-06-2022)

**Two-way Memorandum  
Between the IRS and  
State Tax Agency  
Employees**

- (1) State tax agency or IRS compliance employees may, under specific circumstances, wish to discuss specific returns or return information directly with each other. This could occur, for example, if each agency is engaged in collection, examination or criminal investigation work independently of each other, at or near the same time. Typically, the taxpayer would alert either or both agencies of this situation. Allowing both the IRS and state tax agency employees to discuss their respective findings can facilitate efficient tax administration, reduce taxpayer burden, provide consistent development and application of the facts, and effectively leverage resources.
- (2) The general rule under IRC 6103(d) authorizes the IRS, absent any impairment to tax administration or identification of a confidential informant, to disclose federal tax returns and return information to state tax agencies upon

written request. This includes oral disclosures. Section 5 of the basic agreement introduces these types of cooperative activities. If the state agency has signed an implementing agreement, section IV, paragraph 01 also provides guidance for how a state tax agency requests two-way discussions.

- (3) A state tax agency employee must submit a written request if he or she wants to engage in a discussion with an IRS employee about a specific taxpayer. They would use Form 8796-A, Request for Return/Information (Federal/State Tax Exchange Program - State and Local Government Use Only), or similar written document to request a meeting or a continuous dialog with an IRS employee. See IRM 11.3.41, Disclosure Case Processing and Inventory Management, for specific Disclosure employee procedures.
- (4) The Disclosure office, through the GSS, will process all requests from the state tax agency seeking a dialog with an IRS employee. See paragraph (7), below for the exceptions.
  - a. IRS employees who directly receive verbal or written requests from a state employee must not disclose any federal tax returns or return information until Disclosure provides written authorization. All state agency inquiries must be in writing and directed to Disclosure through routine case processing.
  - b. The IRS employee granted permission under this section must keep a copy of the authorization memo in the taxpayer administrative file and document all contacts with and a general explanation of the information disclosed to the state tax agency employee.
- (5) If an IRS employee wants to initiate a discussion with a state tax agency employee about a specific taxpayer, a written request is required. Use Form 8796, Request for Return/Information (Federal/State Tax Exchange Program). Although only asking for information about a taxpayer from a third party (in this case a state tax agency employee) is generally an investigative disclosure under IRC 6103(k)(6), the IRS employee should still submit a written request using this form. See IRM 11.3.21, Disclosure of Official Information, Investigative Disclosure, for additional information on IRC 6103(k)(6). Also see IRM 11.3.41, Disclosure Case Processing and Inventory Management, for specific Disclosure employee procedures.
- (6) The IRS employee making the disclosure - who discusses taxpayer information - with a state tax agency employee is responsible for completing Form 5466-B, Multiple Record of Disclosure, accounting for the disclosure. Refer to IRM 11.3.37, Recordkeeping and Accounting for Disclosure. Disclosure employees may provide guidance to the IRS employee if requested.
- (7) There is one exception to submitting requests directly to Disclosure for verbal discussions between IRS and state tax agency employees. The IRS business unit, function or group may enter into a written MOU with the state tax agency that contemplates an exchange of tax information. See IRM 11.3.41, Disclosure Case Processing and Inventory Management, for specific Disclosure employee procedures.

11.3.32.9  
(06-23-2020)  
**Release of Tax Data in  
Electronic Format**

- (1) The GLDEP involves certain electronic data-sharing activities between the IRS and participating state tax agencies. For more information about the GLDEP, see IRM 11.4.2, 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 are asked annually to explain how they intend to use the extracts and/or the specific data elements. See IRM 11.3.32.2 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 11.4.2.1, Program Scope and Objectives.
- (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 assigned 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 the GLDS Data Services staff. See IRM 11.4.2.5.1, Annual Enrollment Process.
- (6) Field GLs 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 Disclosure Manager assigned to a state tax agency and are retained in their files for use in reviews by Safeguards personnel if requested.
- (8) In addition, Disclosure Managers will determine whether the data items selected are consistent with the types of tax information available to the state agencies under IRC 6103(d)(1), Section 3.2 of their basic agreement, and IRM 11.3.32.1.2, Authority, above.
- (9) 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, Tax Information Security Guidelines for Federal, State and Local Agencies, describes the specific requirements for insuring the confidentiality of the tax data.

- (10) 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 assigned GL.
- Below are the roles, responsibilities, and steps taken to address these requests.
- a. Data Services will review the request and confer with IT to ensure the enhancement is possible based on system resources. Approval of such requests will depend on the availability of data and the impact on IRS resources.
  - b. If IT provides provisional approval, Data Services will forward the request through the assigned GL to the servicing Disclosure office. The Disclosure Manager will determine whether the requested data is consistent with the types of tax statutorily available to the state agencies under IRC 6103(d)(1), section 3.2 of their basic agreement and IRM 11.3.32.1.2, Authority, above. The Disclosure Manager will evaluate the agency's need and use for the additional data elements.
  - c. If the Disclosure Manager determines the need and use justification provided by the agency is not adequate, the Disclosure Manager will prepare a denial letter and forward it to the GL. The GL will then forward the denial letter to the requesting state tax agency and keep a copy for their records.
  - d. If the Disclosure Manager determines the need and use justification provided by the agency is adequate, the Disclosure Manager will sign the form indicating approval based on the information available and will forward the request to their Disclosure Area Technical Analyst (TA).
  - e. The TA will review and ensure the Disclosure Manager conducted, documented (i.e. within the e-mail to the TA), and arrived at the appropriate determination, and then forward to the Disclosure PPO point of contact for review and concurrence, or non-concurrence.
  - f. The Disclosure PPO POC will provide the TA, via e-mail, concurrence or non-concurrence based on the documented research/substantiation/ statutory authority provided by state/ Disclosure Manager /TA, etc.
  - g. If the Disclosure PPO POC concurs, then the TA will coordinate with the Disclosure Area Manager for approval and signature; then return it to the GL, and copy the Disclosure Manager, for continued GL coordination with Data Services. See also IRM 11.4.2.11.4, Extract Modification Request Disclosure Procedures.
- (11) 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.

11.3.32.10  
(01-06-2022)  
**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 basic agreement, includes ongoing or potential conduct-related investigations of state tax agency employees. This definition also includes tax compliance-type checks related to suitability or background investigations of employees and prospective employees of state tax agencies. Disclosure will process these state requests. See IRM 11.3.41, Disclosure Case Processing and Inventory Management, for specific Disclosure employee procedures.

11.3.32.11  
(10-22-2010)  
**Disclosure to Agencies  
that Have Not Entered  
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 federal tax returns and return information on a case-by-case basis under IRC 6103(d) without entering into a basic agreement.
- (2) These requests are signed by the agency head and addressed to the Commissioner of Internal Revenue, Attention: Director, GLDS. 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 federal tax 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 federal tax returns or return information is to be disclosed, and a description of the federal tax returns or return information sought, including the type of tax and the taxable periods for such federal tax returns 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 tax returns or information reflected on such returns that taxpayers are required to attach to or include in their state tax returns (see IRM 11.3.32.12.1, State Law Requirements pursuant to IRC 6103(p)(8), for specifics).
- (3) The state tax agency must also indicate in its request that it agrees to all the requirements of IRC 6103(p)(4) and any additional requirements imposed by the IRS. These requirements are described in detail in IRM 11.3.32.12, State Agency Requirements.
- (4) The Director, GLDS will provide specific disclosure instructions in response to these requests after coordination with the Director, Office of Safeguards, GL and the Disclosure Managers in affected offices to determine whether there is any objection to release of the information requested.
- (5) Requests for federal tax return information in electronic format are made in the same manner as described in (1), (2), and (3) above. Also see IRM 11.3.32.9 above, for specific instructions.

11.3.32.12  
(06-23-2020)  
**State Agency  
Requirements**

- (1) IRC 6103(p)(4) authorizes the IRS to require that state agencies maintain adequate safeguard procedures for the federal tax returns and return information they receive pursuant to IRC 6103(d).
- (2) This is necessary to ensure federal tax returns and return information received are 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 tax 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 26 CFR 301.6103(p)(7)-1(a)(2), and IRM 11.3.36, Safeguard Review Program.

- (3) Direct or indirect disclosure of federal tax 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 under IRC 6103(h)(1) be similarly applicable to disclosures to the state tax agency's legal representative under IRC 6103(h)(4). See IRM 11.3.32.17, Use of Federal Tax Returns and Return Information in State Judicial or Administrative Proceedings, pursuant to IRC 6103(h)(4), below.
- (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 tax 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 federal tax returns or return information are stored.
  - c. Restrict, to the satisfaction of IRS, access to the federal tax 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 federal tax returns and return information.
  - e. Furnish to the IRS the safeguard reports described in IRM 11.3.36, Safeguard Review Program. Refer to this IRM Section for detailed procedures.
  - 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 tax returns or federal return informa-

tion 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 11.3.32.17, Use of Federal Tax Returns and Return Information in State Judicial or Administrative Proceedings, pursuant to IRC 6103(h)(4).

- (7) Guidelines for the periodic review of safeguard procedures are included in IRM 11.3.36, Safeguard Review Program. Publication 1075, provides state agencies with further information about these requirements. Publication 1075 is available on the IRS' website at: <http://www.irs.gov>

11.3.32.12.1  
(10-22-2010)  
**State Law Requirements  
pursuant to IRC  
6103(p)(8)**

- (1) IRC 6103(p)(8) provides that no federal tax returns 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.

11.3.32.13  
(01-06-2022)  
**Disclosure of Tax Return  
Preparer Information  
pursuant to IRC  
6103(k)(5)**

- (1) IRC 6103(k)(5) permits the disclosure of limited information to state agencies charged with licensing, registration, or regulation of tax return preparers. The state agency responsible for these rules may or may not be the state tax agency.
- (2) The IRS may not disclose information regarding preparer penalties under IRC 6694, 6695, or 7216 to a state tax agency if the agency is not responsible for tax return preparer licensing, registration, or regulation. This is because IRC 6103(d)(1) only authorizes disclosure of information under specified IRC Chapters and these three penalty sections are not within the scope of the Chapters listed in IRC 6103(d)(1).

**Note:** This does not preclude a state tax agency requesting or receiving federal tax information for which the agency has established a need and use for return preparers or the taxpayers for whom they prepared returns so long as the request is for tax information covered by one of the IRS Chapters listed in IRC 6103(d)(1).

- (3) The IRS will only disclose the following information under IRC 6103(k)(5) 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.
- (4) Written requests are submitted to the GLDS Data Service's GLDS Support Services and worked in Disclosure.
- (5) See IRM 11.3.41, Disclosure Case Processing and Inventory Management, for specific Disclosure employee procedures.
- (6) Disclosures pursuant to IRC 6103(k)(5) are subject to the accounting requirements of IRC 6103(p)(3)(A) but are not subject to safeguards under 6103(p)(4).

11.3.32.14  
(10-22-2010)

**Disclosure of Records  
Regarding Taxes on  
Gasoline and  
Lubricating Oil pursuant  
to IRC 4102**

- (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 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.
- (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 state or local agency may be made upon written agreement by the GL 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.

11.3.32.15  
(10-22-2010)  
**Restrictions on  
Disclosure of Federal  
Tax Returns and Return  
Information**

- (1) The disclosure of certain federal tax 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 FinCEN 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, GLDS.
- (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 after disclosure, that further use of the federal tax returns 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.

11.3.32.16  
(10-22-2010)  
**Unauthorized Access or  
Disclosure by State tax  
agencies**

- (1) All state agency officers, employees, and contractors having access to federal tax returns or return information under 6103(d) are required to maintain confidentiality over the information pursuant to 6103(a)(2) or (3). They shall be informed, in accordance with the instructions in Publication 1075, of the criminal penalties and civil liability for unauthorized access or disclosure.
- (2) Upon discovering a possible improper inspection or disclosure of federal tax information, including breaches and security incidents by a state agency or officer, employee, contractor, or any other person, the individual making the observation or receiving information, must contact the office of the appropriate special-agent-in-charge, TIGTA, immediately, but no later than 24 hours after

identification of a possible issue involving federal tax information. Concurrent to notifying TIGTA, the agency must notify Office of Safeguards. See Publication 1075, Section 10.

- (3) When a disciplinary action is proposed for a state agency employee for unauthorized access or disclosure, state tax agencies are required to notify the affected taxpayer. The tax agency is also required to report such notification action to Office of Safeguards (Taxpayer First Act Section 3002 amended 26 U.S. Code 7431).

11.3.32.17  
(06-23-2020)  
**Use of Federal Tax  
Returns and Return  
Information in State  
Judicial or  
Administrative  
Proceedings, pursuant  
to IRC 6103(h)(4)**

- (1) The disclosure of federal tax 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 an investigation that may result in such proceedings) is governed by similar standards that apply to tax administration disclosures by the IRS to attorneys at the Department of Justice. Federal tax 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.
- (2) The disclosure of federal tax 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 federal tax returns 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.
- (3) State tax agencies may not disclose federal tax information to their legal representative or other participating agencies where the state investigation, administrative or judicial proceeding only involves non-tax matters. The provisions of 26 CFR. 301.6103(h)(2)-1 do not apply to comparable state situations.
- (4) State tax agencies may not disclose federal tax information to their legal representative where the state investigation, administrative or judicial proceeding contemplates using federal tax returns or return information for a non-tax matter. For proceedings that involve both tax and non-tax matters, the state may only re-disclose federal tax returns or return information in furtherance of the tax administration matter under one of the subsections in IRC 6103(h)(4).

**Note:** A state tax agency received federal tax information under IRC 6103(d) that identified a violation of state income tax refund fraud (tax matter) and identity theft (non-tax matter). If the state agency needs to use this information in an administrative or judicial proceeding, the IRS would allow the re-disclosure for the income tax refund fraud matter alone or together with the identity theft, but not just the identity theft matter.



- (5) At the time of the initial disclosure to the agency, or at the time a basic agreement is signed, the IRS will advise an agency receiving federal tax returns or return information of its obligation to notify the IRS in writing of its intention to disclose any such federal tax 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.
- (6) The state tax agency is only required to notify the IRS of its intention to re-disclose federal tax returns or return information in a criminal administrative or judicial tax proceeding or if the agency is seeking to disclose any information obtained from a Reportable Transaction MOU. If the proceeding is for a civil tax matter, the agency is not required to submit a re-disclosure request. The purpose for submitting a request to re-disclose is so the IRS can consider if such disclosure would impair federal tax administration or identify a confidential informant. The agency may not submit a request for federal tax returns or return information under IRC 6103(d) and 6103(h)(4) at the same time. These are two separate actions based on different statutes, therefore must be in two separate requests.
- (7) The request to re-disclose federal tax information under this section must be signed by an authorized employee of the agency and directed to the Disclosure Manager for that state, 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.
- (8) The Disclosure office receiving the notification referred to above will coordinate the proposed disclosure in the manner described in IRM 11.3.32.15(3), Restrictions on Disclosure of Federal Tax Returns and Return Information. In any case where it is known that the actions described in IRM 11.3.32.15(1)-(2) have not been taken, those actions should also be taken.
- (9) Except in unusual circumstances, the coordinating Disclosure office will prepare a response to the state official proposing the disclosure within 30 days of receipt of notification by the state. In every case, the Disclosure office must ensure that a response is made prior to the date the disclosure is to be made.
- (10) 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 tax returns and return information where IRC 6103(h)(4) does not permit disclosure.
- (11) When state tax agencies are authorized to release information under IRC 6103(h)(4), it is irrelevant that 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).

11.3.32.18  
(10-22-2010)

**Agency 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 federal 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) Examples of 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...."

11.3.32.19  
(06-23-2020)

**Special Statistical  
Studies, Compilations,  
and Other Services**

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

Internal Revenue Service  
Statistics of Income  
Statistical Information Services  
1111 Constitution Avenue, NW K-Room 4112  
Washington, DC 20224

- (2) State tax agencies may use federal tax 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 include developing tax models to assess the impact of changes in tax policy on state tax revenues, or the use of data to project estimated revenues for future tax years. A state tax administration purpose pertains to activities that directly relate to the administration of the state's tax laws or the formulation of policy concerning existing or proposed tax laws.
- (3) 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 tax agency employees engaged in preparing statistical tabulations can have access to federal tax information for this purpose. Any findings, reports, or models must be sufficiently blurred if it is released to those inside the agency without a need to know or to anyone outside the state agency, such as a state legislative body.

- (4) Questions states may have concerning the preparation of statistical tabulations in anonymous form are directed through the IRS Governmental Liaison to the Director, Statistics of Income (SOI), a function of Research, Applied Analytics & Statistics (RAAS).
- (5) 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. Agencies should contact their Disclosure Manager and GL, who can assist and provide a template need and use agreement.
- (6) The Disclosure Manager will serve as the primary point of contact for all agency tax modeling tasks and coordinate the review and approval of the need and use statement with other IRS functions, including Office of Safeguards. This may also include review and/or approval by SOI, if the agency's tax modeling plans included the use of contractors. The Disclosure Manager should consult with Disclosure PPO if they have questions or need technical guidance.
- (7) Generally, release of statistical tabulations outside the agency or to others in the agency without a need to know, are to conform to the following guidelines:
  - 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.
- (8) If state agencies use contractors to perform tax modeling or revenue projection activities, they must obtain IRS approval prior to any release of federal tax information to contractors.

11.3.32.20  
(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 a basic agreement with the IRS, the waiver of charges is incorporated into the implementing agreement (see IRM 11.3.32.4.1, Content of Implementing Agreements, 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.

11.3.32.21  
(06-23-2020)

**Combined Federal/State  
Information Return  
Reporting**

- (1) This program permits payers who file information returns 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 Electronic Filing of Forms 1097, 1098, 1099, 3921, 3922, 5498, and W2-G.
- (3) The Director, GLDS will provide technical assistance to Martinsburg Computing Center coordinator to assure that payers participating in the Combined Federal/State Information Return Reporting Program submit valid IRC 6103(c) authorizations. 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.

11.3.32.22  
(10-22-2010)

**Disclosure of Federal  
Tax Returns and Return  
Information to State  
Audit Agencies pursuant  
to IRC 6103(d)(2)**

- (1) Pursuant to IRC 6103(d)(2), any federal tax 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 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.

11.3.32.23  
(10-22-2010)

**Re-disclosures by State  
Tax Agencies pursuant  
to IRC 6103(p)(2)(B)**

- (1) IRC 6103(p)(2)(B) and 26 CFR 301.6103(p)(2)(B)-1, allow for the IRS to authorize the re-disclosure of federal tax 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 second recipient agency received the information directly from the IRS.
- (2) Agencies involved in these types of exchanges may receive only federal tax returns or return information authorized by the provisions of IRC 6103 applicable to each respective recipient agency. Any federal tax 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 disclosure provision in IRC 6103 that allows the IRS to provide federal 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 directly 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 federal tax information or an agency that wants to obtain federal tax information provided by the IRS to another agency, and must identify all other agencies involved in the exchange of federal tax information.
- (4) Agencies should also be advised of the fact that the agency providing federal tax information to all other participating agencies is responsible for maintaining a permanent system of standardized records that identifies any disclosure of federal tax 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.

11.3.32.23.1  
(06-23-2020)  
**Form of Request**

- (1) Agency written requests must be addressed to the IRS authority required by the underlying statute and/or regulation governing access (i.e. Commissioner or GLDS Director). Agency written requests must be signed by the appropriate agency official(s) as required by the underlying statute and/or regulation governing access and mail the request to:

Internal Revenue Service  
Director, Governmental Liaison, Disclosure and Safeguards  
1111 Constitution Ave., NW  
Washington, DC 20224-0002

**Note:** Agencies are encouraged to work with their GL before submitting a written request under IRC 6103(p)(2)(B) to ensure the request conforms to all the required elements noted below. This also allows the IRS to coordinate processing the request with Disclosure PPO and Office of Safeguards.

- (2) Agencies must include the following statements and information in their request, as outlined in 26 CFR 301.6103(p)(2)(B)-1:
  - a. Approval is requested to re-disclose federal tax information the agency receives from the IRS directly to another state or federal agency under the provisions of IRC 6103(p)(2)(B).

- b. Provide 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.

**Note:** The functional processing of data is in a form or format more readily available or in a form that is more easily processed if received directly from the first agency to the recipient agency. This could include when the federal tax information has been commingled with state tax information or manipulated in such a way that is more useful to the recipient agency.

- c. The requesting agency must specify the federal tax information (e.g., 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.
- 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.
- e. The request must state that the disclosing agency will maintain a permanent system of accounting for the re-disclosure, including the numbers of disclosure, how, when and to whom the agency will report the disclosures of tax information when required. Narrative records of accounting can be sent to [pgld.disclosure.accounting@irs.gov](mailto:pgld.disclosure.accounting@irs.gov). This accounting report must be provided to the Disclosure Manager servicing the agency making the re-disclosure no later than 30 days after the close of each calendar year in which re-disclosures under IRC 6103(p)(2)(B) are made.
- f. If applicable, request should indicate agencies comply with 26 USC 6103(p)(4) safeguarding requirements and that agency employees are aware of the criminal penalty and civil liability provisions of 26 USC 7213, 7213A, and 7431 regarding unauthorized inspection or disclosure of federal tax information.

11.3.32.23.2  
(06-23-2020)  
**Acknowledgement  
Process**

- (1) The Disclosure office or GL receiving an IRC 6103(p)(2)(B) request should promptly forward it to the Supervisor, Disclosure PPO. 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 Supervisor, Disclosure PPO, or a member of his/her staff, will acknowledge receipt by telephone call, email, or brief memorandum.



- (3) If a request is received by Disclosure PPO, 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.

11.3.32.23.3  
(01-06-2022)  
**Assignment and Initial Review**

- (1) The Supervisor, PPO 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 will be discussed with the agency contact(s) on how to perfect the request.
- (3) Once the Disclosure PPO Analyst determines that the request meets all requirements, the Analyst will draft an authorization letter for the signature of the Director, GLDS addressed to the head of both the agency providing the federal tax information and the recipient agency. The letters will include any necessary conditions or restrictions. The authorization letter will include a statement that the Commissioner or his delegate may revoke the authorization 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, GLDS.
- (4) A signature package containing all documents necessary to make a decision will then be prepared. The signature package will include documents necessary to support the decision including a copy of the request and agency draft response letters, along with supporting documents, which may include agency provided documents, disclosure review documents, and prior approval documents.
- (5) This package is forwarded to the Associate Director, Office of Safeguards to ensure all agencies involved have safeguard measures in place to adequately protect any federal tax information they receive. Safeguards will assign an analyst to coordinate and work with the Disclosure PPO analyst.

11.3.32.23.4  
(01-06-2022)  
**Office of Safeguards Review**

- (1) The assigned Office of Safeguards analyst 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 Associate Director, Office of Safeguards will notify the Associate Director, Disclosure of the reasons for any denial including what the requesting or receiving agencies must do to correct noted deficiencies. Courtesy copies should be sent to the Disclosure Manager, Disclosure PPO and the assigned analyst.
- (3) If adequate safeguards are in place, the Associate Director, Office of Safeguards will sign off on the Action Routing Sheet, Form 14074.
- (4) The Associate Director, Office of Safeguards will recommend any change to how long an authorization should remain in place, based upon his/her assess-



ment of the security features, the amount of data exchanged, and the period of time before the next scheduled safeguard reviews.

11.3.32.23.5  
(06-23-2020)

**Final Approval and  
Agency Notification**

- (1) The Associate Director, Disclosure will forward the certification letter from the Associate Director, Office of Safeguards to the assigned Disclosure Analyst.
- (2) If Safeguards does not approve the re-disclosure, the assigned Disclosure employee will inform the requesting agency and include the specific reasons why.
- (3) Upon approval, the agency letters outlining the requirements of the re-disclosure, and the original request, will be mailed out by the Director's staff. Courtesy copies can be provided to other agency officials who have entered into the re-disclosure agreement.
- (4) Copies are also provided to the Field Disclosure Manager and the GL with jurisdiction over the agency or agencies involved. A copy is provided to Safeguards Program Office, attention, Associate Director, Office of Safeguards, for inclusion in agency files.

11.3.32.24  
(10-22-2010)

**Availability and Use of  
Death Information  
pursuant to IRC  
6103(d)(4)**

- (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, GLDS 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.