



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

9.3.1

JUNE 5, 2015

EFFECTIVE DATE

(06-05-2015)

PURPOSE

- (1) This transmits revised IRM 9.3.1, Disclosure.

MATERIAL CHANGES

- (1) Subsection 9.3.1.3(3) is revised to update how Sensitive But Unclassified (SBU) can be transmitted and to correct an outdated IRM reference.
- (2) Subsection 9.3.1.3.1.3 (4) is revised to change mechanical recording to electronic recording.
- (3) Subsection 9.3.1.3.3.2(1) is revised to clarify the content of letters to third parties.
- (4) Subsection 9.3.1.4.3.1 is revised to clarify the initiation of a Federal grand jury investigation.
- (5) Subsection 9.3.1.4.3.1.1.3(4) is updated to reference correct Delegation Order number.
- (6) Subsection 9.3.1.4.4(4) is updated to include that in limited circumstances, the prosecuting Assistant United States Attorney (AUSA) may disclose tax information to state and local law enforcement personnel.
- (7) Subsection 9.3.1.9.2 is re-named Antiterrorism Disclosures and updated.
- (8) Subsection 9.3.1.9.4.3 (2) is updated to reference correct Delegation Order number.
- (9) Subsection 9.3.1.9.4.4 is revised to clarify the procedures for disclosure of forged US Government checks.
- (10) Subsection 9.3.1.10.3(4) is updated to correct IRM reference.
- (11) Subsection 9.3.1.15.2(3) is updated to reference correct Delegation Order number.
- (12) Subsection 9.3.1.17(1) is updated to correct IRM reference.
- (13) Subsection 9.3.1.20(2) is updated to reflect revised procedures for reporting inadvertent unauthorized access, inspection and disclosure.
- (14) Additional revisions, deletions, and grammatical changes are made throughout the section, which did not result in substantive changes but contributed to procedural clarity of the subject matter.

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 9.3.1, dated September 25, 2006. This IRM also incorporates procedure(s) implemented by the Director, Operations Policy and Support, guidance memorandum dated April 16, 2013, [Subject: "Disclosure of Tax Information to State and Local Law Enforcement during Tax Grand Jury Investigations"].

AUDIENCE

Criminal Investigation

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9.3.1

Disclosure

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9.3.1.1
(04-13-2005)
Overview

- (1) Returns and return information are confidential and may not be accessed or disclosed except as authorized by Internal Revenue Code (IRC) §6103. This rule applies to all present and former IRS employees. Civil and criminal sanctions may be imposed upon intentional violators. Effective with respect to disclosures made after September 3, 1982, civil actions for damages are permitted against the government rather than against the employee.
- (2) Instructions and guidelines relating to disclosure of information from tax returns and other IRS documents, including disclosure under the Freedom of Information Act and the Privacy Act, are published in Internal Revenue Manual (IRM) 11.3, Disclosure of Official Information. This section will only highlight some of the situations that are frequently encountered in Criminal Investigation (CI).

9.3.1.2
(06-05-2015)
Definition of Disclosure Terms

- (1) **Disclosure** - **Disclosure** is the making known of returns or return information in any manner.
- (2) **Return** - A **return** is any tax **return** or information **return**, schedules, and attachments, including any amendment or supplement, which are required or permitted to be filed and is filed by a taxpayer with the Secretary of the Treasury. A photocopy of a **return** is considered to be a **return** for this purpose. Examples include:
 - a. income tax returns, such as Forms 1040, 1120, or 1065, including all schedules and attachments with the forms submitted in order to process the Forms 1040, 1120, or 1065
 - b. information returns such as Forms W-2 or 1099
 - c. Employer's Annual Federal Unemployment (FUTA) Tax Returns (Forms 940), Employer's Quarterly Federal Tax Return (Form 941), Quarterly Federal Excise Tax Returns (Forms 720) or US Estate Tax Returns (Forms 706)
- (3) **Return Information** - The statutory definition of **return information** is very broad and relates primarily to that information gathered during the course of an investigation that did not come from the taxpayer or his/her representative. It includes any information other than a taxpayer's return itself, which the IRS has obtained from any source or developed through any means that relates to the potential liability of any person under the IRC for any tax, penalty, interest, fine, forfeiture or other imposition or offense. **Return information** may also include, within the meaning of 26 USC §6103(b)(2) and (3), a suspicious return claiming a questionable refund if the suspicious return has not been determined to be a "return" within the meaning of 26 USC §6103(b)(1). A legal opinion should be sought as to the classification of the suspicious return (taxpayer return information versus **return information**) before proceeding with efforts to disclose information related to that return. Certain items of **Return information** may be disclosed by the IRS to the appropriate Federal agency head pursuant to the procedures set forth in 26 USC §6103(i)(3)(A). Such disclosures may not be made by CI, but must be referred to the local Disclosure Manager for possible disclosure to the Federal agency (see IRM 9.3.1.9 Reporting Violations of Crimes Outside of the Jurisdiction of IRS and IRM 11.3.28, Disclosure to Federal Agencies for Administration of Non-Tax Criminal Laws). Return information includes information extracted from a return (e.g., the names of dependents, locations of business interests, bank accounts, etc.) Examples include:
 - a. taxpayer identifying information, i.e., name, address or TIN

- b. the fact that a person has filed a return
- c. the fact that a person is under investigation
- d. the fact that the IRS has, in its possession, copies of public records which were secured from a county clerk's office pursuant to an audit or investigation of a taxpayer

Note: The distinction between **taxpayer return information** and **return information** (other than taxpayer return information) becomes an important distinction in relation to what can or cannot be disclosed and to whom (see IRM 9.3.1.9).

- (4) **Taxpayer Return Information** - 26 USC §6103(i) requires the IRS to make the distinction between **taxpayer return information** and return information (other than taxpayer return information) for disclosure purposes. **Taxpayer return information** is return information which is filed with or furnished to the IRS by or on behalf of the taxpayer to whom the return information relates (26 USC §6103(b)(3)). This includes, data supplied by a taxpayer's representative (e.g., his/her accountant) to the IRS in connection with an audit of the taxpayer's return (see IRM 11.3.28).
- (5) The distinction between **taxpayer return information** and return information (other than taxpayer return information) becomes an important distinction in relation to what may or may not be disclosed, and to whom the information may be disclosed (see IRM 9.3.1.9 and IRM 11.3.28).
- (6) **Tax Administration - Tax administration** includes the enforcement of not only the Internal Revenue laws, but also the enforcement of other related Federal statutes where such enforcement is related to the administration of tax laws, (example: use of 18 USC §286 and 18 USC §287 in a false claim investigation or 18 USC §371 for conspiracy) see IRM 11.3.22, Disclosure to Federal Officers and Employees for Tax Administration Purposes, for additional information.

9.3.1.3
(06-05-2015)
**Administrative
Investigation**

- (1) Official matters should not be discussed in public or within the hearing of the public. Further, when a discussion of findings, theories, and plans relating to an investigation is necessary in order to achieve a better understanding of the investigation, the discussion should be limited to the IRS personnel directly concerned, i.e., with a need to know. This does not preclude general (not case specific) discussions among special agents concerning investigative techniques, sources of information, etc.
- (2) The legal authority for facsimile transmission of tax return information is the same as for responding to an inquiry for tax information by telephone or mailing tax information to third parties. Guidelines regarding the faxing of return and return information can be found in IRM 11.3.1, Introduction to Disclosure (see subsection on Facsimile Transmission of Tax Information).
- (3) Employees may not use e-mail, text or instant messaging to transmit Sensitive But Unclassified (SBU) data unless they use an IRS Secure Messaging (SM) system. A secured messaging system is one that allows users to encrypt messages and attachments for transmission between IRS employees. However, both the sender and the recipient must have SM for transmission of enforcement information, even when encrypted.

Note: Sensitive law enforcement information, including information related to informants or undercover activities, must not be transmitted by e-mail even when encrypted.

See IRM 1.10.3, Standards for Using E-mail; IRM 11.3.1, Introduction to Disclosure; and IRM 10.8.1, Information Technology (IT) Security, Policy and Guidance.

- (4) Special agents are authorized by 26 USC §6103(k)(6) to disclose return information to the extent such disclosure is **necessary** in obtaining information which may be relevant to a tax investigation, but is not otherwise reasonably available. These disclosures are called “investigative disclosures.” A situation in which a special agent may have to make such a disclosure could arise when an agent contacts a third party believed to have information pertinent to a tax investigation and the information is not otherwise reasonably available.
- (5) Investigative disclosure, 26 USC §6103(k)(6), permits the disclosure of return information in the investigation process, but does not authorize the disclosure of the returns themselves. The returns may be disclosed during the investigation process only to the taxpayer, the taxpayer’s designated representative (26 USC §6103(c)) and the preparer of the return (see IRM 11.3.2, Disclosure to Persons with a Material Interest). These preparer disclosures are not 26 USC §6103 (k)(6) disclosures, but instead are covered under other disclosure provisions. An investigative disclosure is to be limited to the information that is necessary to obtain pertinent information.
- (6) The following subsections will provide an overview of the investigative situations that involve investigative disclosures.

9.3.1.3.1
(06-05-2015)
Interviews

- (1) When soliciting information during a tax investigation from a third party other than the preparer of the return, **a special agent may not show a taxpayer’s tax return to the third party.** However, pertinent data (e.g., the nature and amount of income, deductions, expenses, etc.) may be extracted from the tax return and used in questioning third parties. This may be done to the extent that reliable or information necessary to the investigation could not be secured without making the disclosure.
- (2) Situations in which necessary information must be obtained from sources other than the taxpayer typically are found when:
 - a. corroborating a taxpayer’s statements and/or records are needed
 - b. obtaining missing evidence in the hands of third parties, or
 - c. it is necessary to disclose return information to persons possessing special expertise in areas such as handwriting analysis, photographic development, sound recording enhancement, and voice identification
- (3) In determining whether to make an investigative disclosure under 26 USC §6103(k)(6), be certain that the disclosure is consistent with the requirements of that section and the related regulation. (Treasury Regulation 301.6103(k)(6)-1T).
- (4) The fact that information from the taxpayer’s investigative file is already public should not be the only factor for making investigative disclosures.
- (5) Questions concerning investigative disclosures should be brought to the attention of one’s Supervisory Special Agent (SSA) or the local Disclosure Manager.

9.3.1.3.1.1
(06-05-2015)

**Third Party
Accompanying the
Subject of an
Investigation**

- (1) **The taxpayer's presence is not considered implied consent for disclosure purposes when a third party accompanies the taxpayer** (see IRM 11.3.3, Disclosure to Designees and Practitioners). A written or oral authorization from the taxpayer, consenting to or requesting such disclosure, will be required during an investigation conducted by CI personnel. Details of the oral consent should be documented in a memorandum of interview or stated in a recorded statement.
- (2) Participation in a grand jury investigation does not suspend the special agent's conformance to disclosure provisions under 26 USC §6103. The special agent should consult Criminal Tax (CT) Counsel and the Disclosure Manager regarding any divergence from established procedures.

9.3.1.3.1.2
(06-05-2015)

**Third Party
Accompanying
Witnesses**

- (1) When a witness has a person other than his/her counsel present to assist him/her, such as an interpreter, adequate precautions should be taken to ensure that the third party's presence is necessary to obtain the information sought and that appropriate authorization from the taxpayer is obtained per 9.3.1.3.1.1.

9.3.1.3.1.3
(06-05-2015)

Recording an Interview

- (1) An interrogation or conference may be recorded only by a stenographer who is an employee of the IRS. This rule may be waived by the special agent's SSA. At the request of the IRS or witness, which includes a principal, the SSA may authorize the use of a/an:
 - a. stenographer employed by the US Attorney
 - b. court reporter of the US District Court
 - c. reporter licensed or certified by any state as a court reporter or to take depositions
 - d. independent reporter known to the IRS to be qualified to take depositions for use in a US District Court
- (2) The use of this procedure may be permissible under:
 - a. 26 USC §6103(n)—where the IRS contracts with a non-IRS reporter or stenographer
 - b. 26 USC §6103(c)—a consent by the subject taxpayer in an investigation
 - c. 26 USC §6103(k)(6)—where a disclosure is necessary for investigative purposes
- (3) A witness or principal will be permitted to engage a qualified reporter as described in (1) above to be present at his/her expense to transcribe testimony, provided that the IRS may secure a copy of the transcript at its expense or record the testimony using a mechanical recording device or its own stenographer or reporter. However, the IRS retains the right to refuse to permit verbatim recording by a non-IRS reporter or stenographer on the grounds that disclosure would "seriously impair Federal tax administration (26 USC §6103(e)(7))".
- (4) When no stenographer is readily available, electronic recording devices may be used to record statements by advising the witness, in advance, of the use of the device. If the witness does not object, this is considered implied consent to record. If the witness objects, the interrogator will refrain from electronically recording the statement. If the witness elects to electronically record the conversation, the IRS will make its own recording.

9.3.1.3.2
(04-13-2005)
Informants

- (1) If a special agent finds it necessary or desirable to have an informant accompany him/her on an investigative contact or activity such as identifying a witness or taxpayer, pinpointing a location, introducing the agent to a witness or potential informant, or, in exceptional circumstances, attending a witness interview, the special agent must exercise extreme care to prevent unauthorized 26 USC §6103 disclosure of returns or return information.
- (2) As a general rule, an informant should not be present while a special agent is conducting a witness interview. There are, however, exceptional circumstances when a special agent may have an informant accompany him/her on a witness interview (for example, when the informant's presence during the interview will make a reluctant witness feel more at ease). An informant's presence is permitted only when the witness requests the informant's presence or the witness expressly consents to the informant's presence. This request or consent must be documented by the special agent in the memorandum of interview or other interview record.
- (3) When it appears that an IRS informant is knowledgeable concerning potential narcotics violations, CI personnel will encourage the informant to meet directly with Drug Enforcement Administration (DEA) or Federal Bureau of Investigation (FBI) personnel. If the informant declines, CI personnel will debrief the informant of the information relating to potential narcotics violations and will transmit such information to the Disclosure Office for transmission to the DEA, the FBI, or to the Assistant Attorney General, Criminal Division, Department of Justice (DOJ), in accordance with the disclosure laws and regulations. Contact the local Disclosure Office for advice concerning whether such a disclosure may be made under 26 USC §6103(i).
- (4) If Federal, state or local agencies inquire as to the reliability of an individual who is an informant, the Special Agent in Charge (SAC), with the permission of the informant, may tell the other agency the extent and value of the informant's cooperation, consistent with disclosure policies. No information protected by 26 USC §6103 may be disclosed. The special agent will advise the informant that any information submitted by him/her concerning violations not under IRS jurisdiction will be furnished to the appropriate enforcement agency in accordance with IRS disclosure procedures.
- (5) Whenever an IRS employee learns that an IRS confidential informant/confidential witness (CI/CW), in obtaining information for the IRS, has employed illegal techniques such as breaking and entering into another's premises without a search warrant, the illegal seizure of papers or other property, or the illegal overhearing of conversations, the IRS employee will immediately notify the SAC. The SAC will determine the advisability of notifying the appropriate law enforcement authority using the information and criteria set forth in IRM 9.4.2, Sources of Information. The disclosure to the appropriate agency, will be in accordance with IRM 11.3, Disclosure of Official Information.

9.3.1.3.3
(04-13-2005)
Multiple Letters to Third Parties

- (1) In certain circumstances, letters to third parties may be the most efficient means of obtaining documentary evidence in an investigation. This option may be particularly useful when a large number of persons, widely scattered geographically, need to be contacted.
- (2) If not judiciously used, however, such correspondence may result in unwarranted embarrassment to the taxpayer.

9.3.1.3.3.1
(06-05-2015)
**Approval for Multiple
Letters to Third Parties**

- (1) A special agent will not send multiple letters of a similar nature to third parties for information without prior managerial approval. However, in all instances where the special agent will be sending ten or more letters of a similar nature to third parties, the SAC or the Assistant Special Agent in Charge (ASAC) will approve the mailing. Managerial approval will be indicated on the file copy of the letter.
- (2) The special agent or SSA should obtain the advice of the Disclosure Manager and the CT Counsel prior to submitting the template letter to the CI management official for approval. The advice may be provided in an informal format. However, it should be forwarded to the CI management official and documented in the administrative file.

9.3.1.3.3.2
(06-05-2015)
**Content of Multiple
Letters to Third Parties**

- (1) The body of the letter may not disclose that the special agent author is conducting a criminal investigation of the taxpayer. The special agent can include his/her title (Special Agent) in the body of the letter, but not that he/she is an employee of Criminal Investigation.
- (2) When authorizing multiple letters, management should ensure that:
 - a. Inquiries are being sent only to third parties who are known or potential sources of information.
 - b. The information sought is important to the investigation.
 - c. The letter is professional in tone and neither offensive nor suggestive of wrongdoing by the taxpayer; and
 - d. The requirements of 26 USC §6103(k)(6) and the regulations there under have been considered including:
 - The information sought is necessary to determine the taxpayer's correct tax liability, and the disclosure is the minimum amount of information necessary to obtain the requested information.
 - The information is not reasonably available through other means.

Note: If the information is available through other means, is the other means not practical because it will unduly delay the investigation, is unreasonably costly, or is not available in sufficiently probative form?

9.3.1.3.4
(06-05-2015)
Summons

- (1) Information obtained by the IRS through the use of a summons is considered return information, other than taxpayer return information, and is subject to the disclosure provisions of 26 USC §6103, §7213, §7213A, and §7431.
- (2) Except as otherwise authorized, no officer or employee of the Treasury Department or any component thereof shall:
 - a. Publicly name any person to whom a summons has been issued, or release any information to the public concerning that person or the issuance of a summons.
 - b. Disclose any testimony or material summoned (including the name of the witness) to anyone other than an officer or employee of the Treasury Department who has a need for such information in connection with assigned tax administration duties or in connection with or for tax administration purposes. This non-disclosure position does not preclude any officer or employee of the IRS from disclosing material necessary to obtain information for investigative purposes. Any disclosure of tax information must be in accordance with the provisions of 26 USC §6103 as explained in this text.

- 9.3.1.3.5
(04-13-2005)
Mail Covers
- (1) The mail cover request should be sufficiently detailed to establish the need for the mail cover. Disclosure of tax return information to the US Postal Service must be limited to the extent necessary to obtain the mail cover.
- 9.3.1.3.6
(09-25-2006)
Narcotics Investigations
- (1) During the course of an OCADETF, HIDTA or other narcotics investigations, facts or information may surface concerning the commission of non-tax Federal criminal offenses. This information generally may be disclosed (pursuant to 26 USC §6103(i)(3)(A) and only to the extent such information pertains to Federal criminal violations), but specific procedures need to be followed (see IRM 9.3.1.9, Reporting Violations of Crimes Outside of the Jurisdiction of IRS).
- 9.3.1.3.7
(09-25-2006)
Strike Force Investigations
- (1) During the course of a Strike Force investigation, facts or information may surface concerning the commission of non-tax Federal criminal offenses. This information generally may be disclosed (pursuant to 26 USC §6103(i)(3)(A) only to the extent such information pertains to Federal criminal violations) but specific procedures need to be followed (see IRM 9.3.1.9).
- 9.3.1.3.8
(09-25-2006)
Wagering Tax Investigations
- (1) Congress repealed 26 USC §6107, which allowed public inspection of certain tax records relating to wagering, and enacted 26 USC §4424. The new Code section was intended to remove any constitutional problems regarding enforcement of the wagering taxes resulting from improper disclosure of wagering tax information.
- (2) The SAC will meet with the United States (US) or Strike Force Attorney to discuss individual wagering tax investigations to determine if they are prosecutable under DOJ standards. Disclosure of information for this purpose is permissible under 26 USC §4424. The attorney for the government should be informed that any information gleaned from data subject to 26 USC §4424 must be used only for the administration of civil or criminal enforcement of the IRC, and that such information may not be used for intelligence or prosecutorial purposes such as the enforcement of gambling offenses set forth in Title 18 USC or any other non-tax administration purpose (see IRM 11.3.26, Wagering Tax Information).
- (3) If the US Attorney decides to prosecute a wagering tax defendant for a substantive non-tax gambling violation after a gambling tax investigation, he/she may need to prove that none of the information used at trial is tainted by the tax non-disclosure provisions. When this is not possible, the prosecution of non-tax violations may be precluded. To avoid this potential interference with non-tax gambling investigations and prosecutions, all information controlled by 26 USC §4424 (see IRM 11.3.26), which is forwarded to the US Attorney, will have the following statement on the cover sheet of each report: THIS DOCUMENT CONTAINS WAGERING INFORMATION WHICH UNDER 26 USC §4424 AND §6103 MAY BE DISCLOSED ONLY FOR THE ADMINISTRATION AND CRIMINAL ENFORCEMENT OF THE INTERNAL REVENUE CODE. IT MAY NOT BE USED FOR INTELLIGENCE OR PROSECUTORIAL PURPOSES FOR GAMBLING OFFENSES SET FORTH IN TITLE 18 USC, OR ANY OTHER PURPOSE.

9.3.1.3.9
(09-25-2006)

**Disclosures to Other
Treasury Employees**

- (1) On many occasions, IRS employees have an official need for certain returns or return information in the special agent's investigative file. Such employees include the special agent's SSA, another special agent, a revenue agent, a revenue officer, etc. The key is whether the employee has a "need to know" in connection with his/her official tax administration duties. A written request is not required for these "need to know" disclosures.
- (2) A written request will generally be required before tax information in the possession of the IRS will be disclosed to an employee of another component of the Department of the Treasury whose official duties require the information for tax administration purposes (see IRM 11.3.22, Disclosure to Federal Officers and Employees for Tax Administration Purposes).

Note: A written request is not required for The Office of the Treasury Inspector General for Tax Administration (TIGTA) investigations. For, TIGTA investigations, IRS employees should cooperate as fully as possible after having the TIGTA requester show proper identification. If employees have questions, they should consult their manager for guidance. If desired, IRS employees may use Form 11377 to record accesses made to provide information for TIGTA investigations (see IRM 11.3.22).

9.3.1.3.10
(06-05-2015)

**Disclosures to the
Department of Justice
for Tax Administration
Purposes**

- (1) Approved Special Agent Reports (SAR) are referred to DOJ under the authority of 26 USC §6103(h)(2) and (3). A disclosure may be made to DOJ of relevant returns or return information pertaining to the taxpayer who is or may be a party to a tax administration proceeding or investigation. Returns and return information of third parties gathered in connection with an investigation of a taxpayer may be disclosed to DOJ if such information satisfies the "item" or "transactional relationship" test provided in 26 USC §6103(h)(2).
- (2) The item test is met if an item on a third party's return may relate to the resolution of an issue in the tax administration proceeding or investigation of the taxpayer.
- (3) The transaction test is met if the third party's returns or return information may relate to a transaction between the taxpayer and the third party and the third party's information pertaining to the transaction may affect the resolution of an issue in a proceeding or investigation involving tax administration.
- (4) Special agents who are contacted by an attorney for the government and asked to provide returns or return information in connection with an investigation or prosecution which was not referred by the IRS should refer the requesting attorney to the Disclosure Manager.

9.3.1.3.11
(06-05-2015)

**Disclosures to a
Taxpayer's
Representative**

- (1) Disclosure of returns and return information to the taxpayer's representative will be made only in the following circumstances:
 - a. The taxpayer has executed a written consent to the disclosure. (Form 8821, Tax Information Authorization, may be used for this purpose. This form does not authorize practice before the IRS).
 - b. The taxpayer has provided his/her representative a tax power of attorney (Form 2848, Power of Attorney and Declaration of Representative, may be used for this purpose).
 - c. Participating in a grand jury investigation does not suspend the special agent's conformance to disclosure provisions under 26 USC §6103. The

special agent should consult CT Counsel and the Disclosure Manager regarding any divergence from established procedures.

9.3.1.4
(04-13-2005)
**The Federal Grand Jury
Investigations**

- (1) There are two types of secrecy requirements surrounding information accumulated during a tax grand jury, a tax related grand jury, or non-tax grand jury investigation:
 - a. Those which are set forth in Federal Rules of Criminal Procedure Rule 6(e) (USCS Fed Rules Crim Proc R 6(e)) and deal with grand juries;
 - b. Those which are set forth in 26 USC §6103 and deal with tax related information.This subsection addresses grand jury secrecy, grand jury information available for civil tax matters, 26 USC §6103 disclosures in the grand jury investigation and how to deal with 26 USC §6103 disclosure when state and local law enforcement officers are assisting a Federal grand jury.

9.3.1.4.1
(06-05-2015)
**Grand Jury Secrecy
(Federal Rules of
Criminal Procedure
Rule 6)**

- (1) Grand jury proceedings are kept secret to:
 - a. protect the reputations of persons investigated but not indicted
 - b. ensure freedom of the grand jury in its deliberations by protecting its members from annoyance and undue influence
 - c. prevent subornation of perjury or tampering with witnesses
 - d. prevent the escape of those whose indictment may be contemplated but is not yet certain
- (2) Accordingly, while it is in session, the only persons who may be present in a grand jury proceeding are attorneys for the government, the witness under examination, a stenographer or operator of a recording device, and interpreters when needed. An indictment may be dismissed upon a showing that an unauthorized person was present during the proceedings. No person other than the jurors may be present while the grand jury is deliberating or voting (USCS Fed Rules Crim Proc R 6(e) for exceptions and other matters pertaining to grand jury disclosures).
- (3) Federal Rule of Criminal Procedure 6(e), (referred to as Rule 6(e)) provides, generally, that matters occurring before the grand jury are secret. For convenience, "matters occurring before the grand jury" will be referred to as grand jury information. No obligation of secrecy may be imposed on any person except in accordance with this rule.
- (4) Disclosure of grand jury information may be made to those government personnel deemed necessary by an attorney for the government to assist in the performance of his/her duty to enforce Federal criminal law. With the consent of the attorney for the government, agents of the IRS may:
 - a. examine documents and records which are before the grand jury
 - b. inspect the minutes of a grand jury proceeding
 - c. assist in the investigation of possible criminal tax violations
- (5) If the court orders disclosure of matters occurring before the grand jury, the disclosure shall be made in such manner, at such time, and under such conditions as the court may direct.

9.3.1.4.1.1
(04-13-2005)

**Witnesses Before the
Grand Jury**

- (1) Federal rules do not impose any obligation of secrecy upon witnesses, although some Federal jurisdictions require an oath of secrecy.
- (2) A grand jury is not obliged to grant a request from a prospective defendant to appear before it as a witness. However, DOJ procedures provide that where no burden upon the grand jury or delay of its proceedings is involved, reasonable requests of a prospective defendant to personally testify before the grand jury are to be given favorable consideration. This may be done provided that such witness:
 - a. explicitly waives his/her privilege against self-incrimination
 - b. is represented by counsel or voluntarily and knowingly appears without counsel
 - c. consents to full examination under oath

9.3.1.4.1.2
(04-13-2005)

**Defendant's Access to
Grand Jury Information**

- (1) After the grand jury's functions have ended, a trial court may order disclosure of grand jury minutes to the defendant if he/she shows a "particularized need" to:
 - a. support an attack upon the indictment
 - b. impeach a witness or refresh his/her recollection
 - c. inspect his/her own grand jury testimony while defending a perjury prosecution

9.3.1.4.1.3
(04-13-2005)

**Grand Jury
Investigations and
Assisting IRS Personnel**

- (1) Internal Revenue Service personnel who participate in a grand jury investigation do so for the purpose of assisting the attorney for the government in the enforcement of the Federal criminal law.
- (2) Internal Revenue Service personnel gaining access to grand jury information may not disclose this information except as authorized under the exceptions to the general rule of secrecy (IRM 9.3.1.4.1 above). Disclosures otherwise prohibited by Rule 6(e), other than the deliberations and the vote of any grand juror, may be made to:
 - a. an attorney for the government for use in the performance of his/her duty to enforce Federal criminal law
 - b. such government personnel (including a state) as are deemed necessary by an attorney for the government to assist an attorney for the government in the performance of his/her attorneys duty to enforce Federal criminal law
- (3) Internal Revenue Service personnel to whom disclosure is made under this authority shall not disclose matters occurring before the grand jury to any and all others (including other IRS personnel) except as deemed necessary by the attorney for the government.

9.3.1.4.1.4
(04-26-1999)

**Violations of Grand Jury
Secrecy**

- (1) An intentional violation of Rule 6(e) may be punished as contempt of court.

9.3.1.4.2

(04-13-2005)

**Grand Jury Information
and Civil Tax Matters**

- (1) Disclosure of matters occurring before the grand jury may also be made when so directed by a court preliminarily to or in connection with a judicial proceeding, but the court has held that IRS civil examinations are not preliminary to judicial proceedings within the meaning of Rule 6(e). In addition, the government must establish a “particularized need” to obtain an order.
- (2) At the end of the grand jury investigation, the special agent will prepare a final report similar to the final report in an administrative investigation. **The special agent should prepare separate exhibit folders for documents governed by Rule 6(e) and clearly identify them as grand jury information.** The SAC should give copies of the report to only those persons specifically on the Grand Jury Access List.
- (3) If a Rule 6(e) order cannot be obtained and the investigation has civil potential solely on the basis of non-grand jury information, the special agent will consult with the attorney for the government for his/her concurrence that the information is non-grand jury information and can be disclosed. The special agent will then confer with CT Counsel to determine whether IRS policy allows the information to be given to the appropriate civil operating division. If CT Counsel concurs, the SAC will transmit the non-grand jury information to the Territory Manager of the civil operating division by memorandum, but will neither refer to the grand jury investigation nor refer to or draw conclusions based on grand jury information.
- (4) If civil action is not to be pursued and the attorney for the government returns the records to CI for disposition, CI should document how the records are to be disposed of, secure the approval of the attorney for the government (original records of witnesses can generally be returned to the witnesses, if approval is received), and retain the record of disposition in the office files. Records which are to be retained should be stored in accordance with existing IRS guidelines.

Note: Special care should be taken to document sources of information as the IRS may have to prove that evidence used for civil purposes was properly obtained under a Rule 6(e) order or was obtained independently of the grand jury. The independently obtained information, even if identical to the grand jury information, is not governed by Rule 6(e) and may be disclosed in accordance with 26 USC §6103. For example, information supplied to a grand jury by the IRS from sources independent of the grand jury process may be used for the criminal purposes of the grand jury and the civil purposes of the IRS.

9.3.1.4.2.1

(04-13-2005)

Rule 6(e) Order

- (1) After all criminal matters have been concluded, CI will confer with the attorney for the government for the purpose of pursuing any civil action. If the attorney for the government agrees that civil action should be pursued, CI will seek CT Counsel's assistance in reviewing the information gathered for the purpose of pursuing civil action. If CT Counsel determines that civil action is warranted, an attorney for the government will apply for a Rule 6(e) order to allow use of the grand jury information by the appropriate civil operating division. If the court grants the Rule 6(e) order authorizing full disclosure for civil purposes, the SAC will forward a copy of the Special Agent's Report (SAR) and supporting documents to the appropriate civil operating division.
- (2) A court order under Rule 6(e) is applied for by an “attorney for the government.” “Attorney for the government” is defined by USCS Fed Rules Crim Proc

R 54(c) to include only “the Attorney General, an authorized assistant of the Attorney General, a United States Attorney, and an authorized assistant to a United States Attorney.” When the terms “attorney for the government” or “government attorney” are used, they refer to the attorney directly involved in the conduct of the grand jury proceeding.

9.3.1.4.3
(04-26-1999)

**The Grand Jury and
Disclosure of Tax Return
and Return Information**

- (1) The procedures for revealing tax information to the attorney for the government or others involved in conducting a grand jury investigation differ depending on whether the grand jury investigation or proceeding is for tax administration purposes or not.

9.3.1.4.3.1
(06-05-2015)

**Grand Juries for Tax
Administration Purposes**

- (1) A Federal grand jury investigation conducted to determine if there is a violation of criminal tax law (Title 26 charges) or tax related offense (e.g., 18 USC §286 and §287, 18 USC §371 or identity theft) is a Federal grand jury for tax administration purposes. There are three ways that a Federal grand jury investigation for tax administration purposes can be initiated:
 - a. An IRS initiated request (also referred to as a service initiated), which must be approved by DOJ-Tax and then referred to the U. S. Attorney's Office (USAO)
 - b. A request from an attorney for the government when an on-going non-tax Federal grand jury is not in place, which must also be approved by DOJ-Tax and then referred to the USAO
 - c. A request from an attorney for the government to expand an on-going non-tax Federal grand jury to include tax, which the SAC is authorized to approve the grand jury investigation in accordance with Tax Division Directive 86-59 and then directly refer to the USAO submitting a simultaneous copy to DOJ-Tax. Once appropriately referred to the USAO, the IRS can disclose returns and return information to DOJ consistent with 26 USC §6103(h)(2).
- (2) A grand jury for a matter of tax administration is utilized at the end of an administrative investigation. In this instance, the referral, for 26 USC §6103 purposes, occurs when IRS forwards its request through DOJ-Tax to the USAO to defend, prosecute, or take other affirmative action with respect to an investigation. Appropriate referral procedures should be followed (see 26 USC §6103(h)(2)).
- (3) There are other grand jury investigations in which tax charges and/or tax returns are related to the primary investigative charges but may not be the initial or primary focus. In this type of Federal grand jury proceeding, before returns or return information can be revealed to the attorney for the government, an ex parte order pursuant to 26 USC §6103(i)(1) must be secured or a related statute call made by the SAC. Even then, the IRS can only disclose returns and return information to DOJ personnel (including US Attorneys) or Federal personnel named in an ex parte order who are personally and directly engaged in the grand jury proceeding (or investigation that may result in such a proceeding), and solely for their use in preparation for any such proceeding.
- (4) For purposes of Federal grand jury investigations described in (1) and (2) above, as well as when a related statute call is made, returns or return information can be disclosed only if one or more of the following conditions are satisfied:

- a. The taxpayer whose returns and return information are to be disclosed is or may be a party to the proceeding.
 - b. The treatment of an item on the return is or may be related to the resolution of an issue in the proceeding or investigation.
 - c. The return or return information relates or may relate to a transactional relationship between a person who is or may be a party to the proceeding and the taxpayer which affects, or may affect, the resolution of an issue in the proceeding or investigation.
- (5) These conditions do not apply to the ex parte court order process under 26 USC §6103(i)(1). Any taxpayer under investigation by the Federal grand jury is considered to be an individual who is or may be a party to the proceeding.

Note: The IRS can still disclose the return and return information to the DOJ under 26 USC §6103(h)(2) and (3) as necessary in the litigation of the IRS civil tax cases. The decision to issue a Rule 6(e) order permitting the IRS to use grand jury information for civil purposes is at the discretion of the court having supervision over the grand jury.

9.3.1.4.3.1.1
(06-05-2015)

**Multi-Agency and Money
Laundering Grand Jury
Investigations**

- (1) The situation that most frequently causes confusion to a special agent arises when the special agent is participating in a money laundering investigation or a multi-agency money laundering or other multi-agency Federal grand jury investigation and tax charges are not the main focus of the investigation. In these cases, issues arise as to whether and how the special agent obtains tax information and how the tax information is to be transmitted to DOJ, and for what purposes it can be used by DOJ. Further, an issue arises when other agencies are participating in the investigation as to whether they may access returns and return information for purposes of the non-tax related charges (e.g., bank fraud, securities fraud, narcotics violations).
- a. If there are Title 26 charges that have been approved by the DOJ, Tax Division, then returns and return information may be used by the attorney for the government in the tax investigation and also for any non-tax matter that involves or arises out of the particular facts and circumstances giving rise to the tax investigation (see Treas. Reg. Section 301.6103(h)(2)-1(a)(2)(ii)). However, if the Title 26 charges are subsequently dropped, then an ex parte order under 26 USC §6103(i)(1) is required to continue using returns and tax return information in the non-tax portion of the investigation.
 - b. Money laundering or Bank Secrecy Act (BSA) investigations are not tax administration investigations. In money laundering and BSA investigations, the special agent may access returns and return information only when there has been a “related statute call” made by the SAC or when a court has issued an order pursuant to 26 USC §6103(i)(1). As discussed later in subsection IRM 9.3.1.4.3.1.1.2, Related Statute Determination, the related statute determination permits access by special agents to tax information for use in a money laundering and/or BSA investigation. That information may then be disclosed to DOJ under the provisions of 26 USC §6103(h)(2) and (3) - but solely for use in the related statute investigation. The information may not be used or disclosed to other agencies for any purpose other than the tax-related money laundering or BSA charge. In the absence of a related statute determination, a special agent may access tax information for use in a money laundering or BSA investigation only if the attorney for the government first obtains an ex parte court order under 26 USC §6103 (i)(1).

- c. In a multiple agency grand jury investigation which includes money laundering and/or BSA violations, the attorney for the government may apply for an ex parte order under 26 USC §6103(i)(1) that will permit returns and return information to be used by a special agent for the investigation of these charges. The information obtained via the ex parte order may also be used by other participating agencies, but only for the investigation and/or prosecution of the charges at issue in the current case. The information may not be used for any other cases or charges. If the SAC determines that the related statute test is met and makes a related statute call, disclosure to and use by a special agent and the attorney for the government of returns and return information is permitted only for the charges under the related statute money laundering or BSA charges. Such disclosures must comply with 26 USC §6103(h)(2) and (3). The other agencies may access the returns and return information for the charges other than money laundering only if an ex parte court order is obtained under 26 USC §6103(i)(1).
- (2) There are advantages and disadvantages to special agents obtaining access to returns and return information in money laundering or BSA investigations by an appropriate related statute determination versus obtaining access pursuant to an ex parte court order. The related statute determination does not require action by a court - the SAC authorizes the disclosure. On the other hand, any information gathered or collected during the investigation after the related statute call is made is return information protected by 26 USC §6103. This is the case whether or not the IRS has information in its files indicating a tax crime or whether or not any Title 26 charges are pursued. A related statute determination cannot be undone. Further, it may be difficult in those situations to later sort out what portion of the information obtained is covered by 26 USC §6103 and which is not.
- (3) Moreover, in multiple agency situations, an ex parte court order will be required, in any event, in order to disclose tax information from the IRS to the other Federal agencies participating in the investigation. Therefore, in multi-agency investigations involving money laundering or BSA, but not Title 26 violations, if returns and return information are sought, consideration should be given to obtaining returns and return information for both the money laundering, BSA, and other non-tax violations via an ex parte court order pursuant to 26 USC §6103(i)(1), thus obviating the need for a related statute determination. An ex parte court order, however, can only be used to obtain information for non-tax administration purposes.
- (4) Indications of money laundering or BSA violations will be identified from either tax information protected by the disclosure provisions of 26 USC §6103, including returns and return information as defined in 26 USC §6103(b)(1) and (2) or from sources not protected by 26 USC §6103. A Title 31 report is generally not protected by 26 USC §6103 unless it is used in a tax or tax-related investigation or placed in a tax investigation case file. If a Title 31 report is used in a tax or tax-related investigation or placed in a tax investigation case file, it becomes return information protected by 26 USC §6103.
- (5) Forms 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, may or may not be tax information protected by 26 USC §6103. As of January 1, 2002, pursuant to the provisions of the USA Patriot Act, Form 8300 has a dual filing requirement under both Titles 26 and 31. Care must be

taken to ensure that disclosure of Forms 8300 and information extracted from these forms is made under the appropriate guidelines. Generally, the following parameters are suggested:

- Pre USA Patriot Act (transactions occurring on or before 12/31/2001) Forms 8300 are solely Title 26 documents eligible for (among other 26 USC §6103 authorities) 26 USC §6103 (I)(15) disclosure.
- Post USA Patriot Act Forms 8300 (covering transactions occurring on or after 1/1/2002) are solely Title 31 returns when the source is the Currency and Banking Retrieval System (CBRS). Post USA Patriot Act Forms 8300 are Title 26 returns when the electronic source is the Information Return Master File (IRMF) or the filer is the clerk of the court.
- Paper copies of all Forms 8300 filed pre USA Patriot Act (and those Forms 8300 filed post USA Patriot Act by clerks of the court) are solely Title 26 in character. Paper copies of Forms 8300 filed post USA Patriot Act are generally (with the exception of those filed by clerks of the court) dual in character. As such, they are disclosed in accordance with the purpose of the request for disclosure (i.e., tax administration or not tax administration).

- (6) In order to ensure compliance with the appropriate statute (Title 26 or Title 31) and regulations, special agents considering disclosure of Forms 8300 should discuss the answers to the following questions with the Disclosure Manager:

- Is the filer a clerk of the court?
- Is the transaction date before 1/1/2002 or on or after 1/1/2002?
- Is the source of the Form 8300 being disclosed derived from IRMF or from CBRS?
- Is the Form 8300 required (for a transaction of more than \$10,000)?
- Is the purpose of the disclosure tax administration or a non-tax purpose?

9.3.1.4.3.1.1.1
(04-13-2005)
Ex Parte Court Order

- (1) Details concerning an *ex parte* court order are found in IRM 11.3, Disclosure of Official Information.
- (2) If the return or return information is obtained pursuant to an *ex parte* order requested by an attorney for the government, only the information received as a result of that *ex parte* order is protected by 26 USC §6103 non-disclosure provisions, not all the information collected during the investigation.
- (3) An *ex parte* order can only be obtained for Federal non-tax judicial or administrative proceedings pertaining to the enforcement of a Federal criminal statute (i.e., not in a Title 26 investigation, and generally not a investigation in which a previous related statute determination has been made).

9.3.1.4.3.1.1.2
(04-13-2005)
Related Statute Determination

- (1) Returns and return information may be used or disclosed to initiate or conduct a money laundering or BSA investigation if the investigation is considered to be for tax administration purposes according to 26 USC §6103(b)(4). When investigating potential money laundering or BSA violations, the key test (related statute test) is whether, under the facts and circumstances of the particular case, the money laundering and BSA provisions are considered related to the administration of the Internal Revenue laws.
- (2) The related statute determination is within the good faith judgment of the SAC. This determination is also known as the "related statute call." The SAC will make such determination in memorandum form with his/her signature for placement in the administrative investigative file. Returns and return informa-

tion cannot be used to evaluate information related to a money laundering or BSA investigation to determine whether a related statute call should be made.

- (3) The factors to be considered are whether the offense:
 - a. was committed in furtherance of a violation of the Internal Revenue laws, or
 - b. is part of a pattern of violations of the Internal Revenue laws.
- (4) Once the related statute determination is made by the SAC, all the information received, collected, and developed by the IRS, in that investigation, is protected from disclosure under 26 USC §6103 regardless of whether or not a formal tax investigation is opened and/or the ultimate determination with respect to any potential Title 26 charges.
- (5) Once the related statute determination is made, 26 USC §6103(h)(1) allows for the disclosure of returns and return information to Treasury Department employees whose official duties require inspection or disclosure for tax administration purposes. This allows for access to the returns and return information by the IRS investigating special agents. This does not allow the sharing of information to all other Treasury agents.
- (6) Once the related statute determination has been made, and the matter has been referred to DOJ, returns and return information can be disclosed to DOJ employees who are personally and directly engaged in the tax administration matter. Title 26 USC §6103 (h)(2) allows for DOJ employees to use the information solely for tax administration investigations and proceedings before a Federal grand jury or a court. This allows the IRS investigating special agents to disclose returns and return information to the investigating attorney for the government engaged in the proceedings of the related statute money laundering or BSA investigation. It does not allow disclosure to all other DOJ employees for purposes of investigating other non-tax charges. As discussed above, an ex parte order under 26 USC §6103(i)(1) must be obtained to use tax information for those non-tax charges (e.g., bank fraud, securities fraud). The attorney for the government may further disclose returns or return information to officers and employees of DOJ only to the extent necessary for their assistance with the tax administration Federal grand jury proceeding or in preparation for a proceeding.
- (7) A money laundering or BSA Federal grand jury request without Title 26 charges may be directly referred by the SAC to the attorney for the government in instances where the related statute call has been made but where tax charges are not pursued.
- (8) However, a money laundering investigation under 18 USC §1956(a)(1)(A)(ii) is always considered tax related and is never a pure money laundering investigation. A Federal grand jury request for violation of 18 USC §1956(a)(1)(A)(ii) must follow the referral procedures for Title 26 investigations.
- (9) It is not necessary to establish a Title 26 violation or a numbered Title 26 investigation to meet the related statute test. However, if subsequent to a related statute determination, the investigation is not expanded to include Title 26, then an ex parte court order must be obtained to utilize the return and return information.

9.3.1.4.3.1.1.3
(06-05-2015)

**Bank Secrecy Act
Report Information**

- (1) Treasury dissemination guidelines, promulgated under the authority of 31 CFR 103.43, permit IRS to disclose BSA report information (Title 31 reports) to Federal, state, and local agencies for use in criminal, tax, and regulatory law enforcement matters, including BSA enforcement. This includes disclosure to other investigators or prosecutors participating in joint Federal or joint Federal-state investigations (including state or local prosecutors or law enforcement agencies) and to the attorney for the government, for use in conjunction with joint investigations or prosecutions.
- (2) Suspicious Activity Reports (SARs), however, can only be disseminated in criminal matters and therefore cannot be shared with IRS employees handling civil examination or collection duties, or other civil enforcement divisions or agencies.
- (3) As of January 1, 2002, pursuant to the provisions of the USA Patriot Act, Form 8300 is required to be filed under both Title 26 and Title 31. Care must be taken to ensure that the use and disclosure of the Form 8300 and information extracted from it is done in accordance with the appropriate guidelines. Disclosure limitations vary depending on whether the Form 8300 reporting violation is being investigated under 26 USC §6050I or 31 USC §5331. If the special agent is investigating the violation under 26 USC §6050I disclosure is governed by 26 USC §6103. Generally, the form and underlying files may be disclosed as part of a referral for Federal grand jury tax investigations or prosecutions. Title 26 Form 8300 information may also be disclosed for law enforcement purposes in response to a written request pursuant to 26 USC §6103(l)(15). However, the form itself or related information cannot be disclosed. Under 26 USC §6103(l)(15), the special agents may access Title 26 Form 8300 information contained on CBRS. If, however, additional Title 26 information is sought beyond the information from the Form 8300, a related statute determination will be necessary. Alternatively, in any non-tax investigation, special agents have the option of obtaining the Title 26 Form 8300 information, the form itself and related files pursuant to a court order.
- (4) Disclosures made under 26 USC §6103(l)(15) must contain a warning statement on the use and further dissemination of all BSA information. In addition, the IRS must maintain a log of all such disclosure requests. Logs and warning statements are required upon dissemination. Currently, under National Treasury Delegation Order 25-5, the authority to release BSA report information is delegated to the SAC.
- (5) For Title 31 information on financial institutions not within the jurisdiction of the IRS where the related statute test has been met, but where prosecution potential is lacking, the SAC should forward a summary of the facts on Form 5104, Report of Apparent Violation of Financial Recordkeeping and Reporting Regulations, to the Chief, CI, who will advise the Executive Associate Director, Compliance and Regulatory Enforcement. If tax information is disclosed, it should be noted in the summary.

9.3.1.4.3.2
(04-13-2005)
**Grand Jury
Investigations Not
Concerning Tax
Administration (Pure
Title 18 and Title 31
Money Laundering
Investigations)**

- (1) Pure Title 18 and Title 31 money laundering or BSA investigations are those investigations not involving tax or tax-related violations. The Title 31 reports and other information collected by the IRS during the investigation are not protected by 26 USC §6103.
- (2) If, after evaluation of Title 31 reports and other information collected during the (initial) investigation, a determination is made to conduct a pure money laundering grand jury investigation (e.g., the related statute test is not met), returns and return information may not be disclosed to Treasury (including IRS) and DOJ employees, except through the *ex parte* court order provisions of 26 USC §6103(i)(1), or the request provisions of 26 USC §6103(i)(2).

9.3.1.4.4
(06-05-2015)
**Disclosure To State And
Local Law Enforcement
Personnel Assisting The
Federal Grand Jury**

- (1) Tax information obtained under specific provisions of 26 USC §6103 for use in a tax or a non-tax Federal grand jury investigation generally may be disclosed by the attorney for the government to Federal officers and employees personally and directly engaged in the investigation.
- (2) The provisions of 26 USC §6103 generally prohibit disclosure of tax information to state and local law enforcement personnel assisting the attorney for the government in such investigations. However, the following exceptions exist to this general rule.
- (3) State and local personnel can be considered Federal employees for disclosure purposes. Specific prerequisites must be met to be considered a Federal employee:
 - a. those personnel formally appointed as Federal employees (rather than merely detailed)
 - b. are assisting in a Federal investigation
 - c. are supervised by a Federal employee

Such personnel could include, for example, special US Attorneys, special Deputy US Marshals, and other persons formally appointed as Federal employees. Special Deputy US Marshals are deputized by the US Marshals Service. State and local personnel deputized under 21 USC §878 by the DEA or the US Attorney's Office in a narcotics investigation may not have access to tax information because they are not considered Federal employees for purposes of the disclosure laws.

- (4) In the conduct of a tax grand jury investigation, the prosecuting Assistant United States Attorney (AUSA) may disclose tax information to state and local law enforcement personnel on a case-by-case basis under Treasury Regulation 301.6103(h)(2)-1(b)(1). The tax information disclosure by the prosecuting AUSA is permitted to the extent necessary to achieve investigative goals and so long as the purpose or activity cannot otherwise properly be accomplished without making such disclosure, dependent on the unique facts and circumstances of each investigation.
- (5) Factors which the AUSA should consider when making a determination whether or not to disclose tax information pursuant to Treas. Reg. § 301.6103(h)(2)-1(b)(1) include:
 - a. state and local law enforcement's possession of specific knowledge of the alleged crime, the geographic area where the crimes may have been committed or familiarity with person(s) believed to be involved in the tax crime

- b. the need for assistance to preserve evidence and witness testimony, to identify further culpable persons and protect government funds, or to initiate judicial process such as search warrants, arrest warrants, electronic surveillance, or compulsory orders
- (6) The mere assignment of state and local law enforcement personnel to a tax grand jury investigation is generally not enough to authorize disclosure of returns and return information to the state and local law enforcement personnel.
- (7) The provisions of 26 USC 6103 restrict the access, use, and further disclosure of any tax information disclosed in these cases, and applies to all personnel who receive tax information from the attorney for the government. Tax information may not be used by state or local law enforcement personnel for non-federal charges.
- (8) Additionally, the USCS Federal Rules of Criminal Procedure, Rule 6(e), prohibits the disclosure of grand jury material or information, except as specifically authorized, and apply to state and local law enforcement personnel assisting the attorney for the government with the investigation. See IRM 9.5.2, Grand Jury Investigations.

9.3.1.5
(04-13-2005)
**State Grand Jury
Information**

- (1) Because of various problems associated with information developed by state grand juries, access to and use of information developed by a state grand jury depends upon the law of the particular state involved. Therefore, CT Counsel should be consulted for legal advice prior to IRS acceptance of such information.

9.3.1.6
(09-25-2006)
Title 18 Seizures

- (1) Title 26 USC §6103(i)(4) permits tax information obtained under 26 USC §6103(i)(1) to be used in a non-tax Federal prosecution. In addition, 26 USC §6103(i)(4) permits the information to be used for 18 USC §981, 18 USC §982 and 31 USC §5317 civil or criminal forfeitures related to the non-tax violations of 18 USC §1956, §1957, or 31 USC §5313(a) or §5324(a). In addition, if a related statute determination has been made, 26 USC §6103(h)(4) would permit disclosure in a tax-related forfeiture.
- (2) There are two methods that allow an agent to utilize tax returns and return information when attempting to include this information in an affidavit for a seizure warrant and subsequent litigation:
 - a. Ex parte Order - If the matter is not related to tax administration.
 - b. Related Statute Determination - If the matter has been determined to be related to tax administration and such determination has been approved by the SAC.
- (3) Information gathered in a criminal grand jury investigation may be used in conjunction with any civil forfeiture provision of Federal law (see 18 USC §3322). The statute provides for disclosure between a criminal Assistant US Attorney and a civil Assistant US Attorney.

9.3.1.7
(04-13-2005)
**Agent Administrative
Information and
Management Documents**

- (1) Documents and data relating to an agent's daily activities, time reports and other investigation management and internal management documents are not considered to be background material or subject-related information and may be retained for management purposes. However, such documents and data may contain "return information" as defined in 26 USC §6103(b) and be subject to the disclosure provisions.

9.3.1.8
(09-25-2006)
**Post Conviction
Disclosures**

- (1) The two areas in which post conviction disclosure may become an issue are publicity and the probation office.
- (2) Publicity on an investigation can occur prior to trial, but more commonly happens upon conviction, see IRM 9.3.2, Publicity and Internal Communications, which discusses publicity and disclosure in detail. This subsection covers investigative publicity, as well as requirements and criteria, including clearance procedures for speeches and proposed articles.

9.3.1.8.1
(06-05-2015)
Probation Officer

- (1) Title 26 USC §6103(h)(4) allows disclosure of returns and return information to a US Probation Officer for the purposes of informing the court of any compliance or non-compliance by a taxpayer during such taxpayer's probationary period under the following circumstances:
 - a. The returns and return information must relate to a taxpayer convicted of a criminal tax violation.
 - b. The US Probation Officer must be charged with the responsibility of determining whether such taxpayer is complying with the terms of his/her probation to the extent that they relate to the Internal Revenue laws.
 - c. The returns and return information are limited to those years specified in the conditions of probation issued by the court, or alternatively to the conviction years and those years for which the taxpayer is placed on probation; and
 - d. The disclosure of the returns and return information would not identify a confidential informant or seriously impair a civil or criminal tax investigation.

Note: Any disclosure to a US Probation Officer will be coordinated with the local Disclosure Manager.

- (2) For the purpose of preparing the report contemplated by USCS Fed Rules Crim Proc R 32(c), the special agent's report may be disclosed to a US Probation Officer in instances where a taxpayer has pleaded guilty or nolo contendere, or has been found guilty of Federal tax law violations. Inspection of the prosecution recommendation report by the US Probation Officer, to the extent material and relevant, should be made at a convenient location such as the office of the US Attorney. Proper care should be exercised to provide adequate security of the report and the information contained therein to prevent unauthorized disclosure.
- (3) Occasionally, US Probation Officers will request tax information from the IRS as part of a pre-sentence investigation in a non-tax criminal matter. Disclosures may be made to US Probation Officers in these circumstances only as provided in 26 USC §6103(c). **Treasury Regulation 301.6103(c)-1 provides the format that must be followed in any taxpayer authorization or waiver that is submitted for the purpose of allowing a US Probation Officer to receive tax information.**

- (4) Following conviction for criminal tax violations, courts in some instances specify that probation of the sentence imposed is conditioned upon satisfactory settlement or payment of civil liability for taxes and penalties. The SAC will take whatever steps are necessary to initiate appropriate legal action in any instance where the taxpayer has failed to comply with the conditions of the probation or supervised release. Title 26 USC §6103(h)(4) permits the disclosure of information contained in IRS files to a US Probation Officer in a judicial proceeding pertaining to tax administration for the purpose of informing the court of any non-compliance with the terms of the taxpayer's probation or supervised release.

9.3.1.9
(04-13-2005)
**Reporting Violations of
Crimes Outside of the
Jurisdiction of IRS**

- (1) Title 26 USC §6103(i)(3) authorizes the disclosure of return information in certain circumstances involving possible violation of Federal statutes crimes, emergency circumstances and terrorist activities.
- (2) All disclosures under 26 USC §6103(i)(3) for non-tax Federal criminal violations should be in writing or sufficiently documented to provide a permanent record of the information released. This documentation should be retained in the investigative file.
- (3) If disclosure could impair a criminal tax investigation or any tax administration matter, the SAC should weigh the relative significance of the potential impact and the seriousness and significance of the non-tax violation in determining whether or not to report a crime outside of the jurisdiction of IRS. The SAC should periodically reevaluate the seriousness and significance of the non-tax violation and the impact of disclosure on the criminal tax investigation or tax administration matter to determine if the circumstances underlying the decision not to disclose remain valid.

9.3.1.9.1
(09-25-2006)
**Reporting Possible
Violations of Federal,
State, and Local
Criminal Laws**

- (1) Often in conducting tax investigations, special agents discover evidence of crimes outside the jurisdiction of IRS. What can be revealed and the manner in which it can be revealed depends on:
 - a. whether the information is "taxpayer return information" or "return information (other than taxpayer return information)" or non-tax information (see IRM 9.3.1.9)
 - b. whether the IRS offers the information or a different agency requests the information
 - c. the source of the information

9.3.1.9.1.1
(06-05-2015)
**Return Information
(Other Than Taxpayer
Return Information) and
the Non-Tax Violation**

- (1) Title 26 USC §6103(i)(3)(A) provides for disclosure in writing of return information (other than taxpayer return information) which may constitute evidence of a violation of Federal non-tax criminal statutes to the extent necessary to apprise the head of the appropriate Federal agency charged with enforcing such statutes. Information that merely indicates that a violation may have occurred is sufficient to warrant referral pursuant to 26 USC §6103 (i)(3)(A). However, the information submitted must sufficiently identify the specific criminal act or event or statute to which it relates.
- (2) Return information (other than taxpayer return information) is information in the possession of the IRS which was not received from the taxpayer, the taxpayer's representative, or the taxpayer's return and supporting schedules.

- (3) Return information (other than taxpayer return information) as it applies to CI may include:
 - a. Local police seize the books and records of a taxpayer during the execution of a search warrant. The police subsequently turn over the books and records to the IRS in conjunction with a Title 26 violation. The source of this information is the police, who were not acting on behalf of the taxpayer. In this example, the books and records are return information (other than taxpayer return information).
 - b. A transcript is made of a conversation between an informant who consented to being monitored and the taxpayer who is the subject of a Title 26 investigation. The transcript of both the informant's and the taxpayer's remarks is regarded as return information (other than taxpayer return information). The source of the information in this instance is the informant.
 - c. Additional examples can be found in IRM 11.3.28, Disclosure of Official Information, Disclosure to Federal Agencies for Administration of Non-tax Criminal Laws.
- (4) When return information (other than taxpayer return information) which may constitute evidence of a violation of Federal non-tax criminal statutes is received by a CI employee, he/she should prepare a memorandum to the SAC. The memorandum should contain the following information relating to the violation:
 - a. name, social security number, DOB, address, aliases of subject (if known), and related business entity information
 - b. business or occupation of subject (if known)
 - c. facts and circumstances surrounding the non-tax violation
 - d. statutes believed to have been violated
 - e. specific source of information, i.e., third party, taxpayer, taxpayer's representative, taxpayer's return
 - f. the circumstances under which the information was obtained
 - g. agency to which this violation would be of interest, i.e., US Attorney (Judicial District), Strike Force Attorney (location), other agency (specify)
 - h. address, and when practical name, of a local employee working for the agency to whom the information is being referred. (The referrals are forwarded to the head of the federal agency to which the information pertains. When possible, Disclosure attempts to provide the agency head with contact information for a local office to which the information can be referred).
 - i. system of Records from which information was obtained
 - j. a statement as to whether or not disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation
- (5) The SAC will furnish such information to the responsible Disclosure Manager for appropriate dissemination in accordance with IRM 11.3, Disclosure of Official Information. Return information relating to the commission of non-tax Federal criminal offenses or violations of non-tax Federal criminal laws may be disclosed pursuant to 26 USC §6103(i)(3)(A) by officials authorized under Delegation Order 11-2. Criminal Investigation personnel do not have 26 USC §6103(i)(3)(A) disclosure authority.
- (6) In instances where the information was obtained during the course of a wagering (26 USC Chapter 35) investigation, some information may be

disclosed in accordance with 26 USC §4424, see IRM 11.3, Disclosure of Official Information, for disclosure procedures.

- (7) If the information concerns alleged impersonations of a Federal officer, see IRM 9.3.1.9.4.6. If the information indicates forgery of a United States government check is involved in an investigation within the jurisdiction of CI, see IRM 9.3.1.9.4.4.
- (8) In the event that a disclosure would seriously impair a criminal or civil tax investigation or identify a confidential informant, the SAC will forward his/her recommendations through channels to the appropriate official authorized to determine whether information should be withheld based on impairment considerations or the protection of the identity of a confidential source. The Disclosure Office may be contacted for assistance in this regard.
- (9) If in doubt as to whether the information may be disclosed, contact the local Disclosure Manager.

9.3.1.9.1.2
(04-13-2005)
**Emergency
Circumstances**

- (1) Title 26 USC §6103(i)(3)(B) contains provisions by which relevant return information may be disclosed in situations involving imminent danger of death or physical injury to any individual. Such situations may include imminent danger of death or physical injury due to a terrorist incident, threat, or activity. Criminal Investigation special agents are authorized to make an immediate determination and subsequent disclosures to the **extent necessary** to appraise appropriate officers or employees of any Federal or state law enforcement agency of such circumstances pursuant to 26 USC §6103(i)(3)(B)(i). In addressing immediate disclosures of this nature, and if time permits, CI personnel should consult with their local Disclosure Official.
- (2) For purposes of an imminent danger disclosure, both taxpayer and other than taxpayer return information may be disclosed. Disclosure is limited to only that data which is needed to stop the imminent danger. Returns cannot be disclosed, although data may be extracted from the returns for purposes of making a 26 USC §6103(i)(3)(B) disclosure.
- (3) If additional information beyond that which is necessary to stop the imminent danger is needed for a non-tax Federal criminal investigation, an ex parte court order must be obtained.

9.3.1.9.1.3
(04-13-2005)
**Non-Tax Crime
Information (Witnessed
or Received Orally or in
Writing) Not Related to
Tax Violations**

- (1) RESERVED

9.3.1.9.2
(06-05-2015)
**Antiterrorism
Disclosures**

- (1) The IRS's effort to cooperate with the various agencies investigating terrorist actions is led by CI. Criminal Investigation and Disclosure work in partnership to ensure that everything legally possible is done to assist in these investigations.
- (2) When performing their official duties, employees may come across information which could relate to terrorist activities. Law enforcement agents outside the IRS may ask an employee to provide information for a terrorism-related investi-

gation. In either case, CI should be contacted immediately. During disclosure presentations, Disclosure Managers or Specialists will caution employees that they should not browse taxpayer information in order to locate information related to terrorism that might be shared.

- (3) Disclosure personnel will give expedited assistance or technical guidance, when sought, to CI personnel considering disclosures under IRC § 6103(i)(3)(B)(i). Terrorism related disclosures under IRC § 6103(i)(3)(B)(i) should be rare and supported by compelling facts since Congress enacted specific legislation in IRC § 6103(i)(3)(C) and IRC § 6103(i)(7) regarding IRS interaction with terrorism and national security investigations.

Note: Questions concerning IRC § 6103(i)(3)(C) and IRC § 6103(i)(7) issues should be directed to the HQ Senior Disclosure Analyst for disclosures relating to terrorism. The analyst is currently located in Philadelphia, Pennsylvania.

Note: Any correspondence marked “Classified,” “Secret” or “Top Secret” should be immediately forwarded, **unopened**, to the HQ Senior Disclosure Analyst in Philadelphia.

- (4) Delegation Order 11-2 contains delegations of authority pertaining to IRC § 6103(i)(3)(C) and IRC § 6103(i)(7). The following compares processing procedures under IRC § 6103(i)(3)(C) and IRC § 6103(i)(7) provisions to those of other IRC § 6103(i) sections:
 - a. IRC § 6103(i)(3)(C) disclosures will be processed like IRC § 6103(i)(3)(A) disclosures;
 - b. IRC § 6103(i)(7)(A) and IRC § 6103(i)(7)(B) disclosures will be handled like IRC § 6103(i)(2) requests. Please see IRM 11.3.28.8.2(3) note for guidance if the request is marked “Secret” or “Top Secret”;
 - c. IRC § 6103(i)(7)(C) ex parte orders will be handled like § 6103(i)(1) ex parte orders;

Note: These ex parte court orders are worked by field Disclosure employees. Do not transfer them to the HQ Senior Disclosure Analyst for processing.

- d. Governmental Liaison & Disclosure Safeguard (GLDS), in close coordination with CI, will prepare and obtain approval for ex parte applications under IRC § 6103(i)(7)(D).

9.3.1.9.3 (09-25-2006)

Source of Information

- (1) Other considerations may prohibit the disclosure of tax information for non-tax criminal purposes. This includes:
 - a. information which would identify a confidential informant or seriously impair a civil or criminal tax investigation
 - b. information obtained under a tax treaty
 - c. wagering tax information protected under 26 USC §4424 (see 26 USC §6103(o)(2))
 - d. information obtained from, or on behalf of, a grand jury proceeding, unless a valid court order permitting the use of such information has been issued under the USCS Fed Rules Crim Proc R 6(e)
 - e. other information that cannot be disclosed under 18 USC §1905

9.3.1.9.4
(09-25-2006)
**Situations Which May
Require Disclosure**

- (1) Return information (other than taxpayer return information) relating to the commission of non-tax Federal criminal offenses or violations of non-tax Federal criminal laws, which is obtained by a special agent during the course of an official investigation, will be reported by memorandum to the SAC (see IRM 9.3.1.9.1.1) and may be disclosed pursuant to 26 USC §6103(i)(3)(A) by officials authorized under Delegation Order 11-2 (formerly Delegation Order 156 (Rev. 17)).

9.3.1.9.4.1
(04-13-2005)
Emergencies

- (1) In emergency circumstances involving the imminent danger of death or physical injury to any individual, the Secretary may disclose return information to the extent necessary to apprise appropriate officers and employees of any Federal or state law enforcement agency (26 USC §6103(i)(3)(B)(i)), see IRM 9.3.1.9.1.2 for further discussion.
- (2) In emergency circumstances involving flight from Federal prosecution, the Secretary may disclose return information to the extent necessary to apprise appropriate officers or employees of any Federal law enforcement agency (26 USC §6103(i)(3)(B)(ii)). Special Agents in Charge have 26 USC §6103(i)(3)(B)(ii) disclosure authority.

9.3.1.9.4.2
(04-13-2005)
**Threats To The
President and Certain
Government Officials**

- (1) The US Secret Service is charged with the responsibility of protecting the President and certain other government officials and public figures, including:
 - a. members of the President's immediate family
 - b. the President-elect
 - c. the Vice President or other officer next in the order of succession to the Office of President
 - d. former Presidents
 - e. the wife, widow, and minor children of former Presidents
 - f. Presidential and Vice Presidential candidates
 - g. visiting heads of foreign states or foreign governments
- (2) The Executive Protection Service, under the direction of the US Secret Service, is responsible for the protection of the Executive Mansion and foreign diplomatic missions in the District of Columbia metropolitan area.
- (3) Any employee who receives information either orally or in writing which indicates a potential threat to the health or safety of one of the individuals in (1) above should report the information immediately by telephone to the nearest US Secret Service office or to the US Secret Service Intelligence Division, Washington, DC.
- (4) If an employee discloses information as described in (3) above, he/she shall prepare a memorandum setting forth all the facts disclosed, together with any other facts bearing on the matter and full details as to the circumstances under which such information was acquired. The memorandum should be transmitted immediately to the SAC and a copy should be forwarded to the local Disclosure Manager who will prepare any necessary 26 USC §6103(p)(3) accounting forms.

9.3.1.9.4.3
(04-13-2005)

**Reporting Other
Information of Interest to
the Secret Service**

- (1) The US Secret Service is also charged with the responsibility of identifying individuals or groups who may be involved in the following activities:
 - a. the use of bodily harm, assassination, or kidnapping as a political weapon. This includes training and techniques used to carry out the act
 - b. persons or groups who insist upon personally contacting high government officials for redress of imaginary grievances, etc
 - c. any person who makes oral or written threatening, irrational, or abusive statements about high government officials
 - d. professional gate crashers
 - e. terrorists (individuals, groups) and their activities (bombing, etc.)
 - f. the ownership or concealment by individuals or groups of caches of firearms, explosives, or other implements of war, when it is believed that their intended use is for other than legal purposes
 - g. anti-American or anti-US government demonstrations in the United States or overseas
 - h. information regarding civil disturbances
 - i. counterfeiting of US or foreign obligations, i.e., currency, coins, stamps, bonds, US Treasurer's checks, Treasury securities, Department of Agriculture Food Stamp coupons (SNAP), etc
 - j. the forgery, alteration, and fraudulent negotiation of US Treasurer's checks, US Government bonds and Government Travel Requests (GTR's)
- (2) When the US Secret Service requests information concerning any of their responsibilities as described in (1) above when investigating threats against the President, disclosure can only be made to the US Secret Service by those individuals so authorized in Delegation Order 11-2.
- (3) Any disclosure made under (2) above is limited by the provisions of 26 USC §6103.
- (4) In all instances, the person making the referral will prepare and submit a memorandum detailing the information disclosed and the basis for the disclosure. The memorandum will be forwarded through the head of the office to the responsible Disclosure Manager.

9.3.1.9.4.4
(06-05-2015)

**Forgery of a United
States Government
Check**

- (1) Generally, forged United States government checks are under the jurisdiction of the United States Secret Service. However, forged US Government checks consisting of tax refunds are under the jurisdiction of CI (See IRM 9.5.3).
- (2) Disclosure regarding information received or discovered which indicates a US Treasury check has been forged when the check is not a tax refund check depends on the type of CI investigation being conducted:
 - a. Administrative Title 26: The local Privacy, Governmental Liaison & Disclosure (PGLD) officer should be contacted as discussed in IRM 9.3.1.9.1.
 - b. Grand Jury Title 26, solely or combined with Title 18 and/or Title 31: The supervising AUSA should be consulted, as well as the local PGLD officer as discussed in IRM 9.3.1.9.1.
 - c. Grand Jury Title 18 and/or Title 31 only: The supervising AUSA should be consulted.

Note: The SAC cannot make a disclosure to the Secret Service as it is no longer an agency of the Department of the Treasury.

- (3) Disclosures related to allegedly forged US Government checks issued as tax refunds may be made during criminal tax investigations consistent with:
 - a. investigative disclosure provisions in IRM 9.3.1.3(4) and (5)
 - b. referral disclosure provisions in IRM 9.3.1.4.3

9.3.1.9.4.5
(04-13-2005)
**Diversion of Nuclear
Material**

- (1) Information concerning potential diversion of nuclear material should be immediately reported by the special agent to his/her SSA who will transmit the information at once to the nearest FBI field office and, as soon as practicable, to the SAC.
- (2) In all instances, the SSA making the referral will prepare a written report containing:
 - a. all the information furnished to the FBI
 - b. the name and title of the person to whom the information was given
 - c. time and date of the referral
- (3) This report should be forwarded by the SAC to the Chief, CI, as confirmation of the telephone referral. If this information is return information, the procedures in IRM 9.3.1.9.1 should be followed. In emergency situations, the Disclosure Manager should be contacted immediately so that he/she may contact the Office of Governmental Liaison and Disclosure for consultation, if necessary.

9.3.1.9.4.6
(12-02-2005)
**Impersonations of a
Federal Officer**

- (1) The Treasury Inspector General for Tax Administration (TIGTA) is charged with the responsibility to investigate charges against persons alleged to be impersonating employees of the IRS or wrongly using IRS seals or other identifying marks. All allegations of this nature should be reported promptly to TIGTA.

9.3.1.9.4.7
(09-25-2006)
**Violations of Law
Involving Serious
Crimes by Informants
Not Connected with a
IRS Assignment**

- (1) Whenever the IRS has knowledge of the actual commission of a serious crime not connected with a IRS assignment by a CI/CW, the SAC shall make a determination of the advisability of notifying appropriate law enforcement authorities in accordance with IRM 11.3, Disclosure of Official Information. For the purpose of these IRM procedures, the phrase, "serious crime," means any crime which is a felony under Federal or state law.
- (2) Approval of the Director, Field Operations will be required when it is advisable not to notify another law enforcement agency. In such cases, the SAC will notify the Director, Field Operations, by memorandum, of the facts and circumstances concerning the informant's violation of the law and also provide a recommendation on reporting the violation and on continued use of the CI/CW.
- (3) In determining the advisability of notifying appropriate law enforcement authorities of criminal activity by a CI/CW, the reviewing or approving officials, as appropriate, shall consider the following factors:
 - a. the seriousness of the crime in terms of danger to life and property
 - b. the degree of certainty of the information regarding the criminal activity
 - c. whether the appropriate authorities already know of the criminal activity and the CI/CW's identity
 - d. the degree to which notification would endanger the life of the CI/CW or any other person.

- (4) Disclosures involving tax information must follow the procedures (see IRM 9.3.1.9).

9.3.1.10
(09-25-2006)

Liaison Duties

- (1) In all liaison contacts, IRS personnel shall adhere to existing disclosure provisions, particularly 26 USC §4424 and 26 USC §6103. Also, see IRM 9.3.1.9.

9.3.1.10.1
(04-13-2005)

Liaison with State and Local Law Enforcement Officials

- (1) The SAC shall maintain liaison with local and state law enforcement officials to identify violations which warrant action by CI and to keep current in regard to enforcement problems in his/her office.

9.3.1.10.2
(04-13-2005)

Liaison with Other Federal Agencies

- (1) The SAC will meet with other agencies to set up direct lines of communication for overall cooperation aimed at enhancing the respective law enforcement efforts of both agencies, including all civil and criminal aspects of financial crimes. Information will be obtained at the local level on an investigation-by-investigation basis, only as authorized by 26 USC §6103.
- (2) The SAC will brief local Federal law enforcement officials on the disclosure provisions contained in the wagering law (26 USC §4424); those implemented through the Tax Reform Act of 1976 (26 USC §6103); and the implications of these provisions upon the IRS disclosure of information to other Federal agencies and the IRS procedures for informing other agencies of non-tax violations. The SAC will ensure that special agents follow the procedures set out in IRM 9.3.1.9 above concerning instances of other Federal violations observed during an investigation.

9.3.1.10.3
(06-05-2015)

Disclosure of Information Received From Other Federal Law Enforcement Agencies

- (1) The IRS is authorized by other Federal law enforcement agencies to receive certain information and reports from their investigative files. Access to information or reports received from other Federal investigative agencies should be limited to IRS personnel who require the information in the performance of their official duties.
- (2) Unless specifically provided for under 26 USC §6103 or other laws or regulations, reports of investigations or other information received from other Federal agencies will not be:
 - a. made available to the subject of an investigation, his/her attorney, or any other representative in connection with any official or private litigation
 - b. introduced into evidence (example presentencing reports)
 - c. incorporated into any paper or record of a court or other proceeding, which the subject, his/her attorney, or other representative have a right to see
- (3) During inquiries conducted by CI involving information received from another law enforcement agency, there should be no disclosure to any person that his/her name was obtained from or that he/she is mentioned in any report or information obtained from that agency, unless specifically provided for under 26 USC §6103 or other laws or regulations.
- (4) Reports received from other Federal enforcement agencies shall be maintained in secure storage facilities (see IRM 10.2.8, Emergency Planning and Incident Reporting). Sufficient records shall be maintained to show the name and

position of each individual who inspects such a report, the date of the inspection, and the purpose of the inspection. Such reports shall not be removed from CI custody and no copies of any such reports shall be made.

- (5) Any information or leads obtained from such reports shall be developed by independent investigation, and such reports shall not be used as exhibits or mentioned in final reports.
- (6) No action shall be taken which identifies informants or investigative techniques employed by other Federal agencies.
- (7) Such reports shall be returned upon request or when existing operating procedures require that such reports be returned to the agency involved. The report must be returned prior to submission of the special agent's final report.
- (8) Upon receipt of financial information from other Federal agencies involving a completed investigation, which contains possible tax related information, e.g., evidence of gross wagers received by a gambling operation reflecting a liability for wagering excise and income tax or evidence of income by an individual from embezzlement, bribery, extortion, or shylocking, an information item will be prepared. The information item will be evaluated for criminal potential. If criminal potential does not exist, the information item will be forwarded to the appropriate civil operating division provided that it does not contain grand jury information.

9.3.1.10.4
(04-13-2005)
**Details of CI Employees
to Other Agencies**

- (1) The Chief, CI; Director, Field Operations; or the SAC will provide a letter of notification to his/her employees who are detailed to other agencies. Exhibit 9.11.3–8 found in IRM 9.11.3, Investigative Property, is an example of such a letter.
- (2) The letter should address issues of access to tax returns and return information. Access to tax returns and return information is authorized for those official duties which require disclosure for tax administration purposes. Access for other matters is governed by the provisions of 26 USC §6103(i).
- (3) The letter must also address the use of IRS pocket commissions and enforcement badges. They may be used for official identification purposes, but the letter will clarify the advice IRS employees should give those contacted (see IRM 9.5.2, Grand Jury Investigations).
- (4) Employees who have a need to know the details will receive an information copy of the appointment letter.

9.3.1.11
(09-25-2006)
**Subpoenas Served on CI
Employees and
Requests To Testify**

- (1) Periodically, CI employees are served with subpoenas to produce Internal Revenue records, information, or testify in a judicial or administrative proceeding. Treasury Regulation 301.9000–1 requires IRS employees to obtain appropriate authorization before they comply with a subpoena.
- (2) The authorities permitted to approve the testimony or production of record vary with the type of request. See Delegation Order 11-2, Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents.

9.3.1.11.1
(04-13-2005)

**IRS Tax Administration
Proceedings**

- (1) An exception to the general rule is that no authorization is needed when testimony or production of records is requested by the attorney for the government in a tax administration investigation, e.g., testifying for the government in a criminal tax prosecution or Tax Court case. However, authorization is needed when testimony or records are sought by a party to the litigation other than the government (e.g., the defense in a criminal investigation, a petitioner in a US Tax Court case, the plaintiff in a Federal tort claims case against an IRS employee, or the plaintiff in a refund litigation case).
- (2) If the request to testify or produce information in a tax proceeding comes from someone other than the attorney for the government, contact CT Counsel immediately. Criminal Tax Counsel is responsible for preparing the authorization for approval and signature in this type of situation.

9.3.1.11.2
(04-26-1999)

**Subpoenas Requesting
Grand Jury Information**

- (1) Subpoenas and requests for information and documents obtained during a grand jury investigation should be referred to the attorney for the government in order to comply with the requirements of Fed R Crim P R6(e).

Note: Be aware that if any of the information was collected during the administrative phase of the investigation, IRS may have to authorize the release of that portion of the requested information.

9.3.1.11.3
(04-13-2005)

**Procedures for
Obtaining Authorization
To Testify In Other Than
Tax Administration
Cases**

- (1) Any request or demand for testimony or production of IRS information, along with any pertinent facts and/or background information, is to be immediately forwarded through the manager to the Disclosure Manager. Failure to do so in a timely manner may subject the employee and the IRS to sanctions such as contempt of court. This information may be transmitted by telephone or fax when there is not enough time for a formal transmittal and mailing.
- (2) The Disclosure Manager will prepare the authorization and clear it through Chief Counsel prior to its submission to the appropriate official for signature.

9.3.1.12
(04-13-2005)

**Requests From
Congressional
Committees, the
President, or Pursuant
to a Tax Treaty**

- (1) Any requests for on-site visits, or demands for testimony or production of Internal Revenue information from Congressional Committees, the President, or other persons under 26 USC §6103(g) or pursuant to a Tax Treaty must be immediately transmitted through the SSA to the SAC, along with any pertinent facts and/or background information. He/she will send the request to the Chief, CI.
- (2) Authorizations in these instances are prepared by the Governmental Liaison and Disclosure Office (or other designated office), cleared through Procedure and Administration and authorized by the Commissioner or the Deputy Commissioner.

9.3.1.13
(04-13-2005)

**Requests From Other
Federal Agencies**

- (1) Requests for tax-related information from the following governmental offices located in Washington, DC, shall be sent by the SAC to the Chief, CI:
 - a. national headquarters office of the FBI
 - b. national headquarters office of Selective Service (records of Selective Service applicants are confidential and the information therein may not be released except in instances where extraordinary circumstances, such as national security consideration, require disclosure)
 - c. all Congressional committees and subcommittees and their investigatory staffs

- d. Securities and Exchange Commission
- e. Headquarters IRS
- f. Federal Deposit Insurance Corporation
- g. any other requests for information to be obtained from departments and agencies in Washington, DC, which are not routine in nature

- (2) If there is a question as to whether the material is of a routine nature, the request should be sent to the Chief, CI, who will determine its disposition.
- (3) Any requests for information from other governmental offices located in Washington, DC, other than those covered in paragraph (1), shall be forwarded to the head of the other agency by the SAC.

9.3.1.14
(04-26-1999)
**Reports To
Congressional
Committees Including
The General Accounting
Office**

- (1) Other than ad hoc information requested by Congressional Committees, certain reports and procedures have been established in dealing with recurring reports or specific situations involving Congressional Committees. The following subsections describe a few that might concern CI.

9.3.1.14.1
(09-25-2006)
**Approval of the Joint
Committee on Taxation
to Correct Misstatement
of Fact on an
Investigation**

- (1) There may be instances when the limited disclosure of tax information, to the extent necessary to correct a misstatement of fact, may be warranted. When it is determined that such a correction is necessary for tax administration purposes, the Commissioner is authorized to make such disclosures, but only with the approval of the Joint Committee on Taxation on an investigation-by-investigation basis (see 26 USC §6103(k)(3)).
- (2) The IRS should seek authorization to disclose when:
 - a. A misstatement of fact has the potential for instigating taxpayer noncompliance or causing a proliferation of taxpayer noncompliance.
 - b. A misstatement of fact discredits the integrity of the IRS.
- (3) Whenever field personnel become aware of any situation where a misstatement may warrant correction by the IRS through the disclosure of return information, they should contact their Disclosure Office for assistance. Particular attention should be paid to those situations involving abusive tax shelters.
- (4) Additional information may be found in IRM 11.3, Disclosure of Official Information.

9.3.1.15
(04-13-2005)
**Treasury Inspector
General for Tax
Administration and
Office Of Personnel
Management
Disclosures**

- (1) Disclosure to the Treasury Inspector General for Tax Administration (TIGTA) and the Office of Personnel Management (OPM) have certain unique features.

9.3.1.15.1
(04-13-2005)
Office of Audit

- (1) The Office of the Treasury Inspector General for Tax Administration can have access to information covered under 26 USC §6103.

- (2) Criminal Investigation field offices should follow established protocol when responding to TIGTA auditors' requests for information on grand jury investigations.
- (3) When TIGTA makes a request involving a matter investigated by a grand jury, the CI special agent handling or responsible for the case will review the case file and redact any grand jury information.
- (4) Information obtained prior to the grand jury referral and all information obtained during the investigation which does not constitute a matter occurring before the grand jury, will be furnished to TIGTA. The IRS takes the position that grand jury material is any matter occurring before the grand jury, i.e., testimony, information obtained pursuant to a subpoena, and/or any information that discloses the scope or direction of the investigation. Criminal Investigation will advise the Office of Audit if full disclosure cannot be made of all items in the file because certain items fall within the scope of Rule 6(e). Criminal Investigation Division will describe in general terms the nature of the items (e.g., a transcript of testimony).
- (5) If the CI special agent has questions about any specific items, he/she should consult with CT Counsel about whether the information should be redacted. If the special agent and CT Counsel cannot resolve the question as to whether specific information is grand jury material, CI may then consult with the attorney for the government who handled the criminal case.
- (6) On open investigations (not fully adjudicated), prior to providing any documents to TIGTA auditors, CI will consult the attorney for the government assigned to the investigation to ensure that the attorney for the government does not object to the information being released to TIGTA auditors. If the attorney for the government believes that the release of such information could damage the ongoing investigation, CI, TIGTA and the government attorney will determine whether an accommodation can be made.
- (7) If TIGTA believes that the items are not covered by Rule 6(e) and should be released, TIGTA will make a specific request to CI limited to the items important to completing the audit. Criminal Investigation will promptly reconsider releasing the items in the request and advise TIGTA of their decision. If TIGTA and CI cannot agree, the final decision will be made by the attorney for the government.
- (8) All parties to the dispute will treat it as a priority and will provide an expedited review of the issues. They will attempt to resolve the dispute at the lowest possible level, seeking CT Counsel advice as soon as possible. If all attempts within the IRS fail to resolve the issue, the Division Counsel/Associate Chief Counsel (Criminal Tax) may, if unable to resolve the matter, refer the matter to the DOJ for final resolution.

9.3.1.15.2
(06-05-2015)
**Office of Personnel
Management**

- (1) Title 26 USC §6103(l)(4)(B) permits the disclosure of returns and return information to Department of the Treasury officers and employees for use in a personnel action or proceeding, or in preparation for such action or proceeding, to the extent necessary to advance or protect the government's interests.
- (2) This provision permits the IRS to disclose returns and return information to OPM when such information is needed in a personnel action of any kind. The

reclassification of position grade levels by OPM is an “administrative action” within the meaning of 26 USC §6103(l)(4)(B), and OPM’s desk audits are considered preparation for this action.

- (3) Disclosure to OPM under the provisions of 26 USC §6103(l)(4)(B) does not require a written request, but only officials with Delegation Order 11-2 authority may authorize such disclosures. Blanket disclosures of returns and return information to OPM should not be made. The need for confidentiality must be balanced against the need for specificity of information. See IRM 11.3.20, Personnel Records for additional guidelines to be followed.

9.3.1.16
(04-13-2005)
**Foreign Tax Treaty
Information Exchanges**

- (1) Tax treaties may contain secrecy clauses restricting disclosure of information exchanged pursuant to the treaty. (This is currently true of the US-Canadian Simultaneous Criminal Investigation Program. Canadian Customs and Revenue Agency (CCRA) should be alerted if any disclosure is contemplated). Access to such information is governed by 26 USC §6103.
- (2) Director, Operations Policy and Support must be consulted prior to any disclosure or publicity involving international investigations wherein another country has participated in the investigation.

9.3.1.17
(06-05-2015)
**Protecting Records
From Unauthorized
Disclosure**

- (1) The Chief, CI; Directors, Field Operations; SACs, and ASACs, are responsible for safeguarding CI records maintained in their respective offices. They will take adequate precautions, by arranging for safe storage facilities and the installation of necessary security devices, to guard against the loss or unauthorized disclosure of these records. The Physical Security Program, IRM 10.2, lists the minimum protection required for the various kinds of CI records and documents.
- (2) Special agents and other CI personnel are responsible for the safeguarding of CI records in their custody against loss, destruction, or unauthorized access, and against unauthorized disclosure of information. To prevent unauthorized access or disclosure, documents and records in their possession, when not in use, will be provided with three protection points in accordance with IRM 10.2.

9.3.1.18
(04-13-2005)
**Protecting Taxpayer
Records Against
Unauthorized Access**

- (1) Unauthorized Access (UNAX) is the willful unauthorized access or inspection of any return or return information. This does not include accidental or inadvertent access or inspection of a return or return information.
- (2) Special agents and other CI personnel are not allowed to access or inspect taxpayer records when involvement in the matter could cause a possible financial conflict of interest or when there is a personal relationship or an outside business relationship that could raise questions about impartiality in handling the tax matter.
- (3) Unauthorized Access (UNAX) covers both paper and electronic records of returns and return information, including local databases with return information.
- (4) The Office of the Treasury Inspector General for Tax Administration, has full responsibility for the investigation of all allegations of UNAX.

- 9.3.1.19
(09-13-2006)
Penalties For Unauthorized Inspection and Disclosure
- (1) Criminal and/or civil sanctions may be imposed upon persons who have made intentional UNAX or disclosure violations.
 - (2) The TIGTA has investigative jurisdiction over unauthorized inspection or disclosure of Federal tax information by Federal or state employees, corporate shareholders, contractors, and others.
- 9.3.1.19.1
(04-13-2005)
Unauthorized Disclosure of Information
- (1) Title 26 USC §7213 provides criminal penalties of up to a \$5,000 maximum fine, imprisonment for a maximum of 5 years, or both, together with the cost of prosecution and dismissal from employment for the willful unauthorized disclosure of a return or return information.
 - (2) An unauthorized disclosure is made willfully when it is done voluntarily and intentionally with full knowledge that it is wrong.
- 9.3.1.19.2
(09-13-2006)
Unauthorized Access or Inspection of Return or Return Information
- (1) Title 26 USC §7213A provides criminal penalties of a fine not to exceed \$1000, imprisonment for a period of not more than one year, or both, together with the cost of prosecution and dismissal for the willful unlawful access or inspection of any return and return information.
 - (2) Unauthorized access to return or return information is to be reported to the immediate CI supervisor. The CI supervisor will advise TIGTA of all intentional unauthorized accesses.
 - (3) For a complete discussion of unauthorized accesses or disclosures of confidential tax information, see IRM 11.3.38.6, Reporting Unauthorized Accesses or Disclosures.
- 9.3.1.19.3
(04-13-2005)
Civil Liability Under 26 USC §7431
- (1) Civil actions for damages are permitted against the Federal government rather than against the Federal employee.
 - (2) Title 26 USC §7431 provides that where a Federal officer or employee knowingly or negligently discloses a return or return information in violation of the disclosure restrictions, the wronged party may bring a civil action for damages against the government.
 - (3) Certain non-Federal employees may be sued for damages under 26 USC §7431, if they have violated the disclosure statutes.
 - (4) No liability shall arise under 26 USC §7431 where the disclosure was the result of a good faith but erroneous interpretation of 26 USC §6103.
 - (5) If employees are criminally charged with inspection or disclosure of a taxpayer's return or return information, the IRS is required to notify the taxpayer that their records were inspected or disclosed.
 - (6) Any IRS official or employee who receives a complaint or summons in a civil suit containing allegations of unauthorized disclosure should immediately notify his/her supervisor and Chief Counsel.
- 9.3.1.20
(06-05-2015)
Reporting Unauthorized Access, Inspections and Disclosures
- (1) Internal Revenue Service employees are required to report suspected instances of willful (voluntarily and intentional with full knowledge of wrong doing) unauthorized access, inspection, or disclosure of returns and return information to TIGTA.

- (2) Inadvertent unauthorized access, inspections and disclosures are not willful and are therefore exempt from the above TIGTA reporting procedures. Criminal Investigation employees must report violations of this nature within one hour directly to their immediate CI supervisor and CSIRC online or at 866-216-4809 (see IRM 11.3.38.6.1).

9.3.1.21
(04-13-2005)
**Non-Disclosure Laws
Other Than 26 USC
§6103 Pertaining to
Criminal Investigation
Division Activities**

- (1) Employees of the IRS have access to information falling under the provisions of other non-disclosure regulations. IRS employees must abide by those regulations, just as the IRS subjects parties permitted to have tax information to the limitations and penalties associated with 26 USC §6103. Criminal Investigation Division employees most frequently encounter disclosure regulations in the areas of information obtained in the grand jury setting, from intercepted communications, or from the Social Security Administration.

9.3.1.21.1
(04-26-1999)
**Disclosure of Grand
Jury Information**

- (1) See IRM 9.3.1.4.

9.3.1.21.2
(09-25-2006)
**Disclosure of
Intercepted
Communications**

- (1) All persons having access to transcripts of private conversations are reminded that the contents of intercepted communications may be disclosed solely within the course of their official duties and on a need-to-know basis. Any disclosure of the contents of intercepted messages, which is not pursuant to 18 USC §2517, may subject the offending party to a civil action for damages under 18 USC §2520, and the possibility of having to show cause why he/she should not be held in contempt under 18 USC §2518(8)(c).

Note: Once the contents of intercepted communications are made known to IRS officials, the access and disclosure provisions of 26 USC §6103, §7213A, §7213, and §7431 are applicable (see 18 USC §1905).

9.3.1.21.3
(09-25-2006)
**Disclosure of Social
Security Administration
Records**

- (1) Regulations under the Social Security Act authorize the Social Security Administration to disclose information to any officer or employee of the Department of the Treasury lawfully charged with the administration of Titles II, VIII, or IX of the Social Security Act, the Federal Insurance Contributions Act, the Self-Employment Act, the Federal Unemployment Tax Act, or any Federal income tax law for the purpose of such administration only. The regulations expressly forbid further disclosure of information thus obtained, or its use for any purpose other than administration of the employment and income tax laws.
- (2) If an attorney for the government requires returns or return information in the possession of the Social Security Administration, he/she should submit a written request to the Chief, Communications & Liaison requesting authorization for Social Security Administration to release the information (see IRM 11.3.22, Disclosure to Federal Officers and Employees for Tax Administration Purposes).

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Exhibit 9.3.1-1 (04-26-1999)

Memorandum of Understanding: Access to Grand Jury Matters for Internal Audit Purposes

RESERVED

Exhibit 9.3.1-2 (04-26-1999)**Statement Regarding Use and Disclosure of Federal Tax Information By State or Local Government Employee Appointed to Assist A Federal Grand Jury Investigation**

**STATEMENT REGARDING USE AND DISCLOSURE OF FEDERAL TAX
INFORMATION BY STATE OR LOCAL GOVERNMENT EMPLOYEE
APPOINTED TO ASSIST A FEDERAL GRAND JURY INVESTIGATION**

I understand that I have been formally appointed pursuant to **(US CODE SECTION UNDER WHICH APPOINTED)** to assist in a Federal grand jury investigation and that because of this appointment I am considered a Federal employee for Federal tax information disclosure purposes.

I understand that during the course of this appointment I may receive Federal tax information under 26 USC §6103(h) or (i). I understand that such information is provided solely for use in the Federal grand jury investigation in which I am assisting and related Federal judicial or administrative proceedings, and for no other purpose. I specifically understand that such information may not be used or disclosed for state or local law enforcement.

I understand that the willful, unauthorized disclosure of Federal tax information is a crime (felony) under 26 USC §7213(a) punishable by a fine of not more than \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution. Such disclosure may also give rise to civil liability under 26 USC §7431.

(Signature)

Name: _____

Title: _____

Address: _____

Department: _____