



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

11.3.22

JULY 31, 2023

EFFECTIVE DATE

(07-31-2023)

PURPOSE

- (1) This transmits revised text for IRM 11.3.22, Disclosure of Official Information, Disclosure to Certain Federal Officers and Employees for Purposes of Tax Administration under IRC 6103(h).

MATERIAL CHANGES

- (1) IRM 11.3.22.1(5) Updated Program Scope and Objectives to align with the Primary Stakeholders section to conform with the internal controls requirement.
- (2) IRM 11.3.22.1.4, Program Controls, were added in order to incorporate relevant internal controls. These items identify information about the program and procedures covered within this section.
- (3) Reviewed and updated the IRM where necessary for the following types of editorial changes: legal citations, published forms and documents and web addresses.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 11.3.22, Disclosure of Official Information, Disclosure to Certain Federal Officers and Employees for Purposes of Tax Administration under IRC 6103(h), dated August 04, 2021.

AUDIENCE

All Operating Divisions and Functions.

RELATED RESOURCES

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

Michael Oser
Acting Director, Governmental Liaison, Disclosure and
Safeguards

11.3.22

Disclosure to certain Federal Officers and Employees for Tax Administration Purposes under IRC 6103(h)

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11.3.22.1 (05-03-2018) Program Scope and Objectives

- (1) **Purpose:** This IRM section provides instructions concerning disclosures of return information to federal officers and employees for tax administration purposes under IRC 6103(h).
- (2) **Audience:** These procedures apply to all Department of Treasury and IRS employees in connection with official duties related to audit, collection activity, civil or criminal tax investigation or any other tax administration purpose.
- (3) **Policy Owner:** The Director of Governmental Liaison, Disclosure and Safeguards (GLDS) is responsible for oversight of Disclosure policy.
- (4) **Program Owner:** The Disclosure office, under GLDS, is responsible for the Disclosure program and guidance. Each IRS organization is responsible for ensuring its employees are aware of and follow Servicewide Disclosure policy.
- (5) **Primary Stakeholders:** All IRS business units and functions, that make disclosures of return information to federal officers and employees for tax administration purposes under IRC 6103(h).

11.3.22.1.1 (08-04-2021) Background

- (1) This section deals primarily with disclosure of returns and return information for tax administration purposes under IRC 6103(h).
- (2) IRC 6103(h) governs disclosures of returns and return information to federal officers and employees for tax administration purposes, unless more stringent conditions of disclosure apply, for example, IRC 6103(o)(2) and IRC 4424 (relating to wagering tax).
- (3) The Internal Revenue Service is responsible for administering and enforcing the internal revenue laws, except those laws relating to alcohol, tobacco, firearms, and explosives, which are administered by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) in Department of Justice (DOJ) and the Alcohol and Tobacco Tax and Trade Bureau (TTB) in Department of Treasury (Treasury).
- (4) Although tax administration activities are performed primarily by IRS and TTB personnel, other federal officers and employees also engage in tax administration activities. Generally, these are officers and employees of other Treasury offices and agencies, whose duties relate to IRS or alcohol, tobacco, and firearms tax administration, or officers and employees of the DOJ (including United States Attorneys) who represent the IRS and TTB in federal tax litigation matters. Another large Treasury recipient of IRC 6103(h)(1) information for tax administration activities is the Bureau of Fiscal Service (BFS) which issues tax refunds and administers the offset provisions of IRC 6402(c), IRC 6402(d) and IRC 6402(e).
- (5) Federal employees who have inspected or gained access to returns or return information under IRC 6103(h) may be subject to the criminal penalties and civil liability provided by IRC 7213, IRC 7213A and IRC 7431 for unauthorized inspection or disclosures of returns and return information.

11.3.22.1.2 (08-04-2021) Authority

- (1) IRC 6103(h)(1) provides for disclosure of returns and return information to officers and employees of the Department of the Treasury (including the IRS) whose official duties require access for tax administration. See IRM 11.3.22.2.

- (2) IRC 6103(h)(2) provides for disclosure of returns and return information to officers and employees of the DOJ (including United States Attorneys) personally and directly engaged in any proceeding before a federal grand jury or preparation for any proceeding before a federal grand jury or any federal or state court in a matter involving tax administration, but only under certain circumstances. Any investigation which may result in such a proceeding is included. See IRM 11.3.22.3.1.1 and IRM 11.3.22.3.1.2.
- (3) IRC 6103(h)(3) describes how the DOJ can get returns and return information, if IRC 6103(h)(2) permits the disclosure. See IRM 11.3.22.3 .
- (4) IRC 6103(h)(4) permits disclosure of returns and return information in federal and state judicial or administrative tax proceedings under specified conditions. This section authorizes further disclosure of information previously disclosed under IRC 6103(h)(2). See IRM 11.3.22.8 . It also authorizes further disclosure of information previously disclosed to state tax officials under IRC 6103(d). See IRM 11.3.32.17 , Use of Federal Tax Returns and Return Information in State Judicial or Administrative Proceedings, pursuant to IRC 6103(h)(4).
- (5) IRC 6103(h)(5) permits disclosure of address and alien status information to the Social Security Administration (SSA) and the Railroad Retirement Board (RRB) for purposes of withholding income tax from social security benefits of nonresident aliens. See IRM 11.3.22.12 .
- (6) IRC 6103(h)(6) permits certain limited disclosures of returns and return information to the IRS Oversight Board. See IRM 11.3.22.13 .

11.3.22.1.3
(05-03-2018)
**Roles and
Responsibilities**

- (1) This IRM section is applicable to all Treasury and IRS employees who are authorized by IRC 6103(h) to disclose return information to federal officers and employees relating to their official tax administration duties or to accomplish properly any activity connected with such official duties.

11.3.22.1.4
(07-31-2023)
Program Controls

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

11.3.22.1.5
(05-03-2018)
**Terms/Definitions/
Acronyms**

- (1) An understanding of certain terms is necessary for the proper application of IRC 6103(h). This section will provide the definition for the use of "Tax Administration," "Related Statutes" and "Judicial and Administrative Tax Proceeding" as they pertain to IRC 6103(h).

11.3.22.1.5.1
(05-03-2018)
Tax Administration

- (1) Most of the activities of the IRS, as well as certain activities of other federal agencies, constitute "tax administration." As defined in IRC 6103(b)(4), the term encompasses not only administration of the internal revenue laws, but to an extent, administration of certain other related federal or state civil and criminal statutes.
- (2) The term means the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes, equivalent laws and statutes of a state, and tax conventions between the United States and foreign jurisdictions. It includes assessment, collection, enforcement, litigation, publication, and statistical gathering functions under such laws, statutes, or conventions.

Note: The term “state” is defined in IRC 6103(b)(5) and IRM 11.3.32, Disclosure to States for Tax Administration Purposes.

- (3) Certain bankruptcy cases may also be considered proceedings pertaining to tax administration if the bankruptcy court properly invokes jurisdiction in any manner to determine a tax matter.

Example: The government has formally appeared in the case and put a tax matter in issue by filing a proof of claim for federal taxes. See Pub 4639, Disclosure & Privacy Law Reference Guide, for additional examples of bankruptcy issues involving tax administration matters.

- (4) Cases involving employee conduct violations by federal or state revenue employees related to the employees’ tax administration activities and their own tax violations are generally considered tax administration matters. However, IRC 6103(l)(4) generally will apply in IRS disciplinary matters.

11.3.22.1.5.2 (05-03-2018) Related Statutes

- (1) The term “related statutes” referenced in IRC 6103(b)(4) is not defined in the Code. However, it generally includes those sections of the U.S. Code, other than Title 26 (Internal Revenue Code), which, if violated, impede the administration of the internal revenue laws, and which directly relate to a tax matter.
- (2) Certain investigations by the IRS are inherently tax related. Examples include 18 USC 1001 (Statements or Entries Generally), when the underlying violation is a false statement on an income tax return, or 18 USC 371 (Conspiracy), when there is a conspiracy to commit a Title 26 violation or to defraud the United States of tax revenues in a refund claim.
- (3) In Bank Secrecy Act (BSA) and Money Laundering investigations, Criminal Investigation (CI) can make a related statute determination or “call”. Information received or prepared by the IRS after a related statute determination is made is return information protected by IRC 6103. See IRM 9.3.1, Disclosure, for further discussion of related statutes.

11.3.22.1.5.3 (05-03-2018) Judicial and Administrative Tax Proceeding

- (1) Judicial tax proceeding means a proceeding before a federal or state court or magistrate (including the U.S. Tax Court) regarding tax administration. It includes any proceeding about tax matters under the authority of a court.

Example: A probationary proceeding or investigation conducted by the U.S. Probation Service under the authority of a court concerning an individual convicted of tax violations is considered a judicial tax proceeding.

See IRM 11.3.22.10 for additional information on administrative tax proceedings.

11.3.22.1.5.4 (08-04-2021) Acronyms

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

Acronym	Definition
ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives

Acronym	Definition
BFS	Bureau of Fiscal Service
BMF	Business Master File
BSA	Bank Secrecy Act
CCDM	Chief Counsel Directives Manual
CFR	Code of Federal Regulations
CI	Criminal Investigation
CMIR	Currency or Monetary Instruments Report
CTR	Currency Transaction Report
CTRC	Currency Transaction Report by Casinos
CTRC-N	Currency Transaction Report by Casinos - Nevada
DLN	Document Locator Number
DOJ	Department of Justice
EIN	Employer Identification Number
EPF	Employee Performance File
FBAR	Foreign Bank and Financial Accounts Report
FinCEN	Financial Crimes Enforcement Network
FOIA	Freedom of Information Act
GAO	Government Accountability Office
GLDS	Governmental Liaison, Disclosure and Safeguards
GLS	General Legal Services
IGAA	Inspector General Act Amendments
IGPA	Intergovernmental Personnel Act
IRC	Internal Revenue Code
JCT	Joint Committee on Taxation
L&E	Learning and Education
MSB	Money Services Business
OPR	Office of Professional Responsibility

Acronym	Definition
PGLD	Privacy, Governmental Liaison and Disclosure
PPO	HQ Disclosure Policy and Program Operations
RRA	The Restructuring and Reform Act of 1998
RRB	Railroad Retirement Board
SAC	Special Agent in Charge
SAR	Suspicious Activity Report
SBU	Sensitive But Unclassified
SORN	System of Records Notice
SSA	Social Security Administration
SSN	Social Security Number
TIGTA	Treasury Inspector General for Tax Administration
TIN	Taxpayer Identification Number
TTB	Alcohol and Tobacco Tax and Trade Bureau
UNAX	Unauthorized Access
USC	United States Code
USTC	United States Tax Court

11.3.22.1.6
(08-04-2021)
Related Resources

- (1) The Disclosure and Privacy Knowledge Base has several articles that provide guidance related to disclosures of information to federal officers or employees for tax administration purposes.
- (2) For more information on privacy as it relates to disclosure of information, see IRM 10.5.1, Privacy Policy.

11.3.22.2
(08-04-2021)
Disclosure to Officers and Employees of the Department of Treasury for Purposes of Tax Administration - IRC 6103(h)(1)

- (1) IRC 6103(h)(1) authorizes disclosures of returns and return information to officers and employees of the Department of Treasury, including IRS and Chief Counsel employees, for tax administration purposes.
Note: Contractors are not Treasury employees for purposes of IRC 6103(h)(1). See IRM 11.3.24, Disclosures to Contractors, and IRC 6103(n).
- (2) 5 USC 3111(c)(2) provides that a student performing voluntary or federally uncompensated service in the IRS as part of an agency program providing educational experiences for the student will be considered a Treasury

employee for privacy and disclosure related matters. See IRM 11.3.24, Disclosures to Contractors, regarding contracts and a discussion of student service. Also see IRM 11.3.22.2.1.2.

- (3) Federal, state, or local government employees who are “appointed” to the IRS under the Intergovernmental Personnel Act (IGPA), 5 USC 3371-3376 are considered IRS employees for Privacy Act and IRC 6103 purposes. See 5 USC 3374(a)(1). IGPA “detailees” under 5 USC 3374(a)(2) are not considered IRS employees for confidential information access/disclosure.
- (4) IRC 6103(h)(1) does not require written requests. However, to assist the IRS in maintaining controls over access to returns and return information, requests from non-IRS employees not usually involved in tax administration matters generally should be in writing.

Note: See IRM 11.3.22.1.1(5) regarding penalty provisions.

11.3.22.2.1
(08-04-2021)
**Access by IRS
Employees**

- (1) The duties performed by IRS employees generally involve tax administration. However, IRS personnel do not have unlimited access to returns and return information.
- (2) IRS employees may access returns and return information only when there is a “need to know” the information for their tax administration duties. This is important in maintaining the confidentiality of information in the custody of the IRS. See also IRM 10.5.1.2.8, Need to Know and IRM 10.5.5, IRS Unauthorized Access, Attempted Access or Inspection of Taxpayer Records (UNAX) Program Policy, Guidance and Requirements.
- (3) Before disclosing returns or return information to other IRS personnel, employees should satisfy themselves that the proposed recipient has an official tax administration need for the information.
- (4) IRS employees can disclose return information to seek advice about legal, technical, or procedural issues in a specific case. However, a “need to know” must be established on a case by case basis.
- (5) When return information is appropriately disclosed to obtain legal, technical or procedural assistance, or to demonstrate investigative or enforcement techniques, IRS employees should not disclose taxpayers’ identities unless it is necessary. In some cases, withholding the taxpayer’s name would be sufficient, while in others, it may be necessary to withhold certain case facts which identify the taxpayer. Deleting identities doesn’t change the nature of the information (i.e., it remains tax information protected by IRC 6103) but it does further compliance with the need to know requirement.

Note: See IRM 11.3.22.1.1(5) for penalty provisions.

- (6) The Internal Revenue Restructuring and Reform Act (RRA) of 1998 (Public Law 105–206 Section 1001(a)(4)) prohibits ex-parte communications between appeals officers and other IRS employees to the extent that such communications appear to compromise the independence of the appeals officers.

Caution: Should such communications occur, they would probably fail the IRC 6103(h)(1) standards for disclosure and possibly subject the initiator to the penalty provisions of IRC 7213, IRC 7213A, and IRC 7431.

Note: IRC 7803(e)(6)(B) provides the guidance on communications between appeals officers and the Office of Chief Counsel.

- (7) The IRC 6103(h)(1) need to know access even extends to federal tax information disclosed to other agencies under Title 26.

Example: An IRS employee who meets IRC 6103(h)(1) requirements may access federal tax information protected by IRC 6103 in the hands of the SSA or a state child support agency to fulfill tax administration duties.

11.3.22.2.1.1
(08-04-2021)
**Use of Tax Returns in
Training Material**

- (1) IRC 6103(h)(1) permits the disclosure of returns and return information to IRS employees for the purposes of tax administration. Tax administration includes the education of employees.

Note: Returns and return information may not be published in internal management documents or posted to unsecure intranet sites.

- (2) Guidance for material that is subject to publication and/or public release may be obtained from the embedded Learning and Education (L&E) staff. L&E has written guidelines for creating acceptable fictitious taxpayer identification numbers, names, and addresses for training material. See IRM 6.410.1, Learning and Education Policy, and *Using Live Tax and Other SBU and PII Information for Publications, Training and Presentations*.
- (3) On rare occasions, it may be necessary to use returns or return information to illustrate key points, and to assist students in understanding tax law or procedure. Once a determination is made that the use of returns or return information is appropriate, care must be taken to withhold taxpayer identifying information. This includes items such as the name, address, Taxpayer Identification Number (TIN), Document Locator Number (DLN), signature, and any other information which would identify a specific taxpayer on any part of the tax return, including schedules, being used in the training material. See Document 13324, Guidelines and Examples for Fictionalizing Domestic Taxpayer Information.

Note: The term "live" tax information is different than "live data". See IRM 10.5.8.1.4.

- (4) The mere removal of personal identifiers from returns or return information does not cause the remaining information to lose its confidential return information status. If copies of sanitized returns or return information are distributed and the numeric fields contain unaltered original return information, employees with access to the tax information must have a "need to know" and must safeguard it in the same way as any return information. This includes precautions such as storing the information in locked cabinets and shredding the information, when it is no longer needed. Alternatively, returns and/or return information must be collected at the end of the meeting and be disposed of properly. If possible, return information in training materials needs to be marked clearly as IRC 6103 material and segregated from the rest of the material, because of the affirmative obligations to disclose training materials

under the Freedom of Information Act (FOIA). Questions about developing training material using tax return or return information may be directed to your supervisor or local training coordinator.

- (5) Occasionally, the desire to provide general educational material or to publicize an IRS matter on the intranet may be identified. The release of Sensitive but Unclassified (SBU) data in such circumstances is prohibited under applicable disclosure laws and computer security standards. However, a publicly available court record potentially could be released, see IRM 11.3.11.12, for additional information. Before releasing information from a publicly available court record, IRS employees must verify that the information conforms in all respects to what was made public. The source and attribution rules should be followed; i.e., obtain the document from the public source and attribute the released information to the sourced document.

11.3.22.2.1.2
(08-04-2021)

Trainees and Volunteers

- (1) There are several IRS programs providing opportunities for educational and work experiences to qualifying students. The students offered employment through these programs are considered to be “direct-hire” trainees, unpaid student volunteers, or “hosting” trainees.
- (2) “Direct-hire” trainees are employees of the Department of the Treasury. Therefore, IRC 6103(h)(1) authorizes them to have access to returns or return information when required to carry out tax administration duties.
- (3) Returns and return information cannot be disclosed to student volunteers or host trainees because they are not Department of Treasury employees qualifying for IRC 6103(h)(1) access, unless they qualify for the exception for student volunteers meeting all the conditions specified in 5 USC 3111 which concerns acceptance of volunteer service by students. IRC 6103(n) is not applicable in the absence of a qualifying contract. Privacy Act protected information also cannot be disclosed to a student volunteer or host trainee because that person does not qualify as an IRS employee under section (b)(1) of the Privacy Act, unless the person qualifies for the exception for student volunteers as defined in 5 USC 3111.
- (4) For purposes of 5 USC 3111, a student must be “an individual who is enrolled, not less than half-time, in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution.” One of the 5 USC 3111 requirements is that individuals from high schools or vocational schools must participate in a formal program with the IRS as part of their curriculum.
- (5) Students who qualify under the 5 USC 3111 exception are treated as IRS and/or Treasury employees by statute for the purposes of both the Privacy Act and IRC 6103. Qualifying students may have access to return information to the extent necessary to perform their tax administration duties. Qualifying students must obtain the approval of the institution where they are enrolled as part of a program to provide educational experiences for students. They must be uncompensated and may not be used to displace any federal employee. Student volunteers compensated by other than federal funds may be considered “uncompensated” for 5 USC 3111 purposes and qualify as Treasury employees for IRC 6103 and Privacy Act purposes. This does not cover volunteers from other organizations such as American Association of Retired Persons (AARP) or welfare to work programs.

- (6) "Hosting" trainees are hired and paid by non-Treasury Department organizations and assigned by these organizations to the IRS for training. Since the "hosting" trainees are not Treasury Department or IRS employees, they may not have access to returns or return information or information governed by the Privacy Act, such as certain personnel information, unless they are students who meet the criteria of 5 USC 3111.

11.3.22.2.2
(08-04-2021)
Access by Employees of the Office of Chief Counsel

- (1) The Office of Chief Counsel provides legal advice and services to the Commissioner in the administration and enforcement of the internal revenue laws and related statutes, as well as in all non-tax legal matters, including representing the Commissioner in the United States Tax Court.
- (2) Chief Counsel employees are Treasury employees who are authorized to access returns and return information in matters referred to that office by the IRS or in matters relating to the IRS's activities, pursuant to IRC 6103(h)(1).
- (3) Access by Chief Counsel employees to returns and return information occurs through IRS referrals pursuant to established procedures, or upon oral or written requests for information for tax administration duties.

Note: As with IRS employees, Chief Counsel employees must have a need to know and are subject to the penalty provisions of IRC 7213, IRC 7213A, and IRC 7431.

11.3.22.2.3
(08-04-2021)
Disclosures to Officers and Employees of Main Treasury

- (1) Main Treasury officials will send requests for returns and return information to IRS Headquarters. Main Treasury employees are authorized to receive returns and return information if they meet the need to know tax administration requirement. Requests from Main Treasury are generally in writing and signed by the Assistant Secretary or his/her designee.
- (2) Written requests should include:
 - a. The name, address, and taxpayer identification number (SSN, ITIN or EIN), if available, or a description of the tax information needed.
 - b. The type of tax involved, i.e., income, excise, employment, etc.
 - c. The taxable period(s) covered by the return or return information.
 - d. A brief explanation of the tax administration purpose for which the information is required.
- (3) Headquarters officials described below are responsible for compiling the information and transmitting it to the requestor or the designee.

If the request is for:	Office responsible for compiling the information:
returns and return information related to Statistics of Income and statistical tabulations of the return information	Director, Research, Applied Analytics, and Statistics - Statistics of Income.

If the request is for:	Office responsible for compiling the information:
extracts of return information from the master file systems and for statistical tabulations of such information	Director, Research, Applied Analytics, and Statistics - Statistics of Income.
letter rulings and determinations, rulings requests, and technical advice memorandums about employee plans or exempt organizations	Commissioner, Tax Exempt and Governmental Entities
letter rulings and determinations, rulings requests, and technical advice memorandums not covered above	Appropriate Associate Chief Counsel
returns and return information not covered above	Associate Director, Disclosure

- (4) Returns and return information must be transmitted to Treasury following established transmission procedures. See IRM 10.5.1.6.8, Email, and IRM 10.5.1.6.9, Other Forms of Transmission. The requesting Treasury official or the designee should acknowledge receipt of the material. The receipt should list the items disclosed and briefly describe the tax administration use of the information. Receipt may be acknowledged on a copy of the transmittal letter.
- (5) Treasury employees must follow all IRC 6103 confidentiality requirements and after the material has served its purpose, Treasury employees must ensure that all information is disposed of properly. Main Treasury officials are also responsible for destroying any additional copies that may have been made.
- (6) The Associate Director, Disclosure, should be contacted if there are any questions.
- (7) IRM 11.3.22.1.1(5) provides information on penalty provisions.

11.3.22.2.3.1
(08-04-2021)
**Alcohol and Tobacco
Tax and Trade Bureau
(TTB)**

- (1) The Treasury Alcohol and Tobacco Tax and Trade Bureau (TTB) is responsible for administering and enforcing the tax administration functions of:
 - a. Chapters 51, 52, and 53 (subtitle E) of the IRC, relating to alcohol, tobacco, and firearms.
 - b. IRC 7652 and IRC 7653 as they relate to commodities subject to tax under chapters 51-53.
 - c. Chapters 61–80 whenever these provisions relate to administration and enforcement of chapters 51-53.
- (2) When returns and return information relating to taxes administered by the IRS (such as income tax returns) are needed by TTB employees for tax administration purposes, written requests should be submitted to HQ Disclosure Policy and Program Operations (PPO). See Disclosure and Privacy Knowledge Base for a listing of Disclosure contacts.

- (3) Requests should be signed by an official not lower than a Special Agent in Charge (SAC), and should include:
 - a. Name, address and identification number (SSN, ITIN or EIN) of the taxpayer.
 - b. Description of the tax information needed.
 - c. Type of tax and taxable period(s).
 - d. Explanation of the tax administration use of the information.
- (4) The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) is part of the Department of Justice (DOJ). Since the revenue functions regarding excise taxes remained at Treasury, it is not anticipated that IRC 6103(h)(1) disclosures will need to be made to ATF. However, should ATF be involved with tax administration relative to alcohol, tobacco, firearms, and explosives, the law has been written in such a way, that for disclosure purposes, ATF falls under DOJ and is considered as if it was a Treasury component. Any request for tax information by ATF should be submitted to the Associate Director, Disclosure using the format prescribed in IRM 11.3.22.2.3.1(3).
- (5) When TTB makes IRC 6103 disclosures (e.g., to states under IRC 6103(d) for taxes it administers), TTB is responsible for any necessary administrative IRC 6103 requirements (e.g., IRC 6103(p)(3) accounting and IRC 6103(p)(4) safeguards provisions).

11.3.22.2.3.2
(08-04-2021)
Bureau of the Fiscal Service (BFS)

- (1) IRC 6103(h)(1) permits disclosures of returns and return information to the Bureau of the Fiscal Service (BFS) for tax administration purposes. Generally, BFS will submit written requests to the appropriate campus or field office. In expedited and hardship cases, BFS may make requests by telephone. Calls should be directed to the Headquarters Office of the National Taxpayer Advocate.

Note: IRS employees should refer to their specific business unit IRM, or functional office procedures (i.e., operational procedures) for specific business unit guidance or examples germane to their respective function. For example, IRM 13.1.21, Closing TAS Cases.

- (2) IRC 6103(h)(1) also authorizes disclosures to BFS to carry out other IRS tax administration programs. For example, BFS receives tax information to issue tax refund checks and to administer the IRC 6402 Tax Refund Offset Program.
- (3) See IRM 11.3.22.1.1(5) for penalty provisions.

11.3.22.2.3.3
(08-04-2021)
U.S. Customs Service

- (1) Prior to the Homeland Security Act, the U.S. Customs Service collected excise taxes levied under subtitle E (chapters 51 and 52) of the Internal Revenue Code on imports of tobacco products and paraphernalia, distilled spirits, rectified products, wine, and beer. While the U.S. Customs Service has moved from the Department of Treasury to the Department of Homeland Security, the revenue (tax) function of these Chapters technically remains with Treasury. However, via delegation (Treasury Order 100-16), Treasury has given this taxing authority to U.S. Customs and Border Protection. For reference purposes, we will refer to this Homeland Security component as "Customs."

- (2) Generally, Customs' tax administration functions will not require access to returns and return information obtained under other provisions of the Code.

Exception: If tax information is required for subtitle E responsibilities, written requests should be submitted as described in IRM 11.3.22.2.3.1(1) and (2) and signed by the appropriate agency official. The requests will be processed as described in IRM 11.3.22.2.3.1(4).

- (3) Customs or import duties on goods entering the United States are not internal revenue taxes. Therefore, the collection of customs duties does not constitute a tax administration activity for purposes of IRC 6103(h)(1).
- (4) Under IRC 6103(h)(4), Customs has access to the IRS Business Master file data base (BMF) for verification of Employer Identification Numbers (EINs), that are in their Automated Commercial Environment (ACE) data base.
- (5) See IRM 11.3.29.19, Disclosure of Return Information - U.S. Customs Service, for disclosure authority to Customs under IRC 6103(l)(14).
- (6) See IRM 11.3.22.1.1(5) for penalty provisions.

11.3.22.2.4
(08-04-2021)
**Treasury Inspector
General for Tax
Administration (TIGTA)**

- (1) TIGTA has all the responsibilities of an Inspector General of the Department with respect to the Department of the Treasury and the Secretary of the Treasury on all matters relating to the Internal Revenue Service. TIGTA has sole authority to conduct an audit or investigation of the IRS Oversight Board and the Office of Chief Counsel of the Internal Revenue Service.
- (2) TIGTA may initiate, conduct, and supervise such audits and investigations within the IRS which the TIGTA considers appropriate.
- (3) Treasury Order 115-01 sets out the functions of the Office of TIGTA. Section 6.a.2) states: "In executing the functions of TIGTA, the IG, and any duly authorized representative, is authorized to: access all facilities of the IRS...including computer facilities and computer rooms, electronic data bases and files, electronic and paper records, reports and documents, and other material available to the IRS....which relate to their programs and operations;..." IRC 6103(h)(1) provides that disclosures of tax information can be made to Treasury employees with a "need to know" for tax administration purposes.
- (4) For access for nontax criminal purposes, see IRM 11.3.28, Disclosure to Federal Agencies for Administration of Non-tax Criminal Laws.
- (5) IRC 6103(h)(1) does not require a written request, nor are disclosures under IRC 6103(h)(1) subject to accounting under IRC 6103(p)(3). However, the IRS and TIGTA have established standardized procedures for TIGTA audits and all IRS functions must observe those specific procedures developed by the Office of Enterprise Audit Management (EAM). 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 managers for guidance.
- (6) IRS does not oversee disclosures made by TIGTA under IRC 6103. To the extent such disclosures are made and they are subject to IRC 6103(p)(3) accounting and/or IRC 6103(p)(4) safeguards provisions, TIGTA and not IRS will ensure statutory compliance.

- (7) See IRM 11.3.22.1.1(5) for penalty provisions.

11.3.22.2.5
(08-04-2021)
**Other Treasury Bureaus,
Agencies and Offices**

- (1) Requests for inspection or disclosure of returns and return information by other Treasury components for tax administration should be handled in the manner described in IRM 11.3.22.2.3.1.
- (2) Requests should be signed by the head of the bureau, agency or office, or by a designated official not lower than a division director.
- (3) The penalty provisions as outlined in IRM 11.3.22.1.1(5) apply.

11.3.22.2.6
(08-04-2021)
**Disclosure in Claimant
Representative Matters**

- (1) This section contains information on disclosure in claimant representative matters. A claimant representative matter covers:
- Office of Professional Responsibility (OPR)
 - Treasury bureaus or agencies in accordance with 31 USC 330

11.3.22.2.6.1
(08-04-2021)
**To the Office of
Professional
Responsibility (OPR)**

- (1) Employees of the Office of Professional Responsibility (OPR) are IRS employees.
- (2) The OPR:
- a. Acts on protests of denials of applications for enrollment as an enrolled agent or enrolled retirement plan agent, and
 - b. Administers and enforces the Regulations Governing Practice before the Internal Revenue Service in Treasury Department Circular No. 230, including:
 - Processing and investigating referrals and complaints reporting suspected misconduct by claimant representatives—i.e., Circular 230 practitioners (attorneys, certified public accounts, enrolled agents, and enrolled retirement plan agents) and others who practice before the IRS
 - Instituting disciplinary proceedings against these representatives for violations of Circular 230.
- (3) Activities which the OPR conducts relating to claimant representation before the IRS constitute tax administration.
- (4) Returns and return information will be disclosed to the OPR in accordance with IRC 6103(h)(1) and the appropriate IRM procedures.

Note: See IRM 11.3.22.1.1(5) for penalty provisions.

11.3.22.2.6.2
(08-04-2021)
**To Other Treasury
Offices for Purposes of
Claimant Representative
Matters**

- (1) Officials of other Treasury bureaus or Treasury agencies who require returns and return information in claimant representative matters undertaken in accordance with 31 USC 330, may have access to such information under IRC 6103(l)(4)(B). See IRM 10.5.6.8.7, Disclosure Pursuant to IRC 6103(l)(4) and IRM 11.3.29.8, Disclosure of Returns and Return Information for use in Personnel or Claimant Representative Matters - IRC 6103(l)(4).

Note: Disclosures made in claimant representative matters are only permissible under the provisions of IRC 6103(l); these disclosures are not made pursuant to IRC 6103(h).

- (2) Treasury officials to whom disclosures are made should be informed of the penalty provisions of IRC 7213, IRC 7213A, and IRC 7431 relating to unauthorized disclosure and inspection of returns and return information.
- 11.3.22.3
(08-04-2021)
Disclosure to Officers and Employees of the Department of Justice for Purposes of Tax Administration - IRC 6103(h)(2)
- (1) Except for cases before the U.S. Tax Court, the Department of Justice (DOJ) represents the Government in all tax litigation to which the United States is party.
- (2) To carry out this responsibility, the DOJ must have access to returns and return information and the penalty provisions of IRC 7213, IRC 7213A, and IRC 7431 apply.
- (3) The DOJ is subject to IRC 6103(h)(4) safeguarding oversight for the protection of return information pursuant to IRC 6103(p)(4).
- 11.3.22.3.1
(07-13-2005)
What May be Disclosed
- (1) The IRS may disclose returns and return information (including taxpayer return information) to officers and employees of the DOJ (including United States Attorneys) personally and directly engaged in, and solely for their use in, any federal grand jury tax proceeding, or preparation for any tax proceeding (or investigation which may result in such tax proceeding) before a federal grand jury or any federal or state court.
- (2) Returns and return information may be disclosed under the following conditions:
- The returns or return information pertain to a taxpayer who is or may be a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such civil liability in respect of any tax imposed under the Internal Revenue Code (IRC 6103(h)(2)(A)).
 - The treatment of an item reflected on such return is or may be related to the resolution of an issue in the proceeding or investigation (IRC 6103(h)(2)(B)). Or
 - 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 (IRC 6103(h)(2)(C)).
- 11.3.22.3.1.1
(07-13-2005)
IRC 6103(h)(2)(A)
- (1) Disclosures under IRC 6103(h)(2)(A), are straightforward as they involve the returns and return information of the taxpayer(s) whose tax liability is at issue.
- 11.3.22.3.1.2
(05-03-2018)
IRC 6103(h)(2)(B) and (h)(2)(C)
- (1) Disclosures under IRC 6103(h)(2)(B) and (C) involve third parties' returns and return information, so careful analysis is required.
- (2) The "item" test in IRC 6103(h)(2)(B) is satisfied, for example, if the returns of corporations, partnerships, estates and trusts reflect the treatment of items relevant to resolving the liability of a taxpayer who is a shareholder, partner, or beneficiary.
- (3) In trust fund recovery penalty cases involving failure to pay withholding taxes, items on a corporate return such as wages paid, taxes withheld and the corporate office held by a "responsible officer" may be relevant to determining

liability for the penalty. (See IRM 11.3.40, Disclosures Involving Trust Fund Recovery Penalty Assessments, for discussion of disclosure in trust fund recovery penalty cases.)

- (4) The “transactional relationship” test in IRC 6103(h)(2)(C) is satisfied, for example, if the treatment on a buyer’s return regarding the purchase of a business is relevant to the seller’s tax liability resulting from the sale of the business. The buyer may have amortized a “covenant not to compete,” whereas the seller may have claimed capital gain treatment of a sale of “goodwill.”
- (5) In considering the “item” and “transactional relationship” tests, Congress specifically noted that certain third party return information used by the IRS for investigative purposes (termed “comparables”) does not satisfy the tests of either IRC 6103(h)(2)(B) or (C). Thus, the IRS may not disclose such information to the DOJ in judicial or administrative proceedings.

Note: Common “comparable transactions” involve reasonable compensation cases and IRC 482 cases (involving the reallocation of profits and losses among related companies). See IRM 11.3.22.11 .

- (6) The IRS will not disclose returns and return information concerning witnesses for the sole purpose of impeachment of the witness and/or his or her testimony unless the “item” and/or “transaction” tests set forth in IRC 6103(h)(2)(B) and (C) are satisfied. IRS employees making IRC 6103(h)(2) disclosures should be alert to this criteria.
- (7) Tax information obtained under IRC 6103 for use in a federal grand jury tax investigation generally may be disclosed by the DOJ to federal officers and employees personally and directly engaged in the investigation.
- (8) IRC 6103 generally prohibits disclosure of tax information to state and local law enforcement personnel assisting the attorney for the government in such investigations.

Exception: State and local government personnel can be considered federal employees for disclosure purposes as long as those personnel are formally appointed as federal employees (rather than merely detailed), are assisting in a federal investigation, and are supervised by a federal employee.

Example: Such personnel would include Special Assistant U.S. Attorneys, Special Deputy U.S. Marshals, and other persons formally appointed as federal employees under the Intergovernmental Personnel Act. Special Deputy U.S. Marshals are deputized by the U.S. Marshals Service. Other appointments are made by the U.S. Attorney’s Office directing the grand jury investigation.

- (9) State and local personnel deputized under Title 21, United States Code, Section 878 (21 USC 878) by the Drug Enforcement Administration or the U.S. 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.

- (10) Once state or local personnel are formally appointed, they become subject to all the prohibitions on use and disclosure of tax information in the IRC and, therefore, subject to the penalties for unauthorized disclosures.
- (11) When state and local personnel are formally appointed, they will be advised in writing of the disclosure restrictions and penalties for unauthorized disclosures and inspections. See IRM Exhibit 9.3.1-2, Statement Regarding Use and Disclosure of Federal Tax Information By State or Local Government Employee Appointed to Assist a Federal Grand Jury Investigation.

11.3.22.3.2
(08-04-2021)
**Referred Cases - IRC
6103(h)(3)(A)**

- (1) IRC 6103(h)(3) prescribes the procedural prerequisites for disclosures to the DOJ in tax matters under IRC 6103(h)(2).
- (2) IRC 6103(h)(3)(A) permits disclosure by the IRS on its own motion in cases that have been “referred” by the Secretary to the DOJ or the U.S. Attorney.
- (3) The term “referred” case is not defined in IRC 6103. However, the legislative history of IRC 6103 indicates that Congress intended a broad interpretation of the term and acceptance of the definition traditionally used by the IRS and the DOJ.
- (4) Referral has traditionally included all tax cases where the Secretary has requested the DOJ to prosecute, defend, or take other action regarding a criminal matter before a federal grand jury, or in civil and criminal federal or state judicial proceedings. If the Secretary has analyzed a case, decided that the DOJ should take action, and requested that action be taken, it is a referred case.

Note: A referral for purposes of IRC 6103(h)(3)(A) may include a request for pre-referral advice. The IRS may make disclosures to the DOJ in connection with the necessary solicitation of advice and assistance with respect to a case prior to the formal referral. The referral for procedural advice must be made by a person with delegated authority to refer. The referral terminates once the advice or assistance is rendered.

- (5) The term is not limited to cases involving violations of the IRC. “Referred” cases also may include violations of related statutes which have been investigated by the IRS.

11.3.22.3.3
(08-04-2021)
**Non-referred Cases
“(Reverse Referrals)” -
IRC 6103(h)(3)(B)**

- (1) IRC 6103(h)(3)(B) provides for disclosure of returns and return information to the DOJ in non-referred cases. These requests are called “reverse referrals.”
- (2) The statute requires a written request signed by the Attorney General, the Deputy Attorney General, or an Assistant Attorney General. The authority cannot be redelegated. Therefore, a request from a United States Attorney in these circumstances cannot be honored.
- (3) Generally, such requests are made by the Assistant Attorney General (Tax Division), since the Tax Division must authorize any DOJ tax investigation.
- (4) Written requests should be sent to the Associate Chief Counsel, Criminal Tax, in Headquarters. The requests should identify the specific information required and explain the need for it.

- (5) IRC 6103(h)(3)(B) disclosures require IRC 6103(p)(3)(A) accounting and are subject to IRC 6103(p)(4) safeguards provisions.

11.3.22.4
(08-04-2021)
Disclosure Channels

- (1) Disclosure to the DOJ in tax cases generally will be made by Chief Counsel employees, and the SAC, CI, as described in IRM 9.3, and Chief Counsel Directives Manual (CCDM) Part 31, Criminal Tax. See Delegation Order 11-2, found in IRM 1.2.2.12.2 for a full list of employees delegated to make disclosure to the DOJ under IRC 6103(h)(2) in conjunction with 6103(h)(3)(A) or (h)(3)(B).
- (2) The routing of cases within the IRS and the referral to the DOJ, Tax Division, or directly to the United States Attorney depends on the type of case involved.

11.3.22.4.1
(07-13-2005)
Requests for Grand Jury Investigations

- (1) Under certain circumstances, the IRS may seek to develop a tax case through the grand jury process rather than the administrative process. IRM 9.5, Investigative Process, describes the referral procedure.
- (2) See IRM 11.3.27, Disclosure of Returns and Return Information to Grand Juries, for information on the disclosure of returns and return information to grand juries.

11.3.22.5
(05-03-2018)
Use of Tax Information in Grand Jury Investigations

- (1) Tax information obtained under IRC 6103 for use in a federal grand jury tax investigation generally may be disclosed by the DOJ to federal officers and employees personally and directly engaged in the investigation.
- (2) IRC 6103 generally prohibits disclosure of tax information to state and local law enforcement personnel assisting the attorney for the government in such investigations, except as detailed in IRM 11.3.22.3.1.2 (8) through (11).

11.3.22.5.1
(07-13-2005)
Joint Title 18/26 Grand Jury Investigations

- (1) During an on-going Title 18 grand jury investigation, tax or tax related violations may surface. As a result, the United States Attorney, strike force attorney or the DOJ may request IRS participation in the investigation.
- (2) Grand jury information may be given to the IRS with a request that the IRS determine whether it wishes to commit personnel to assist the grand jury.
- (3) If the IRS determines that a Title 26 grand jury investigation is warranted, such recommendation will be made, and the IRS will commit personnel to the investigation.
- (4) The referral channels for IRS initiated grand jury referrals also apply to requests to the IRS for grand jury participation. See IRM 9.5, Investigative Process.
- (5) IRS concurrence in the joint Title 18/26 investigation constitutes a referral under IRC 6103(h)(3)(A).

11.3.22.5.2
(05-03-2018)
**Use of Tax Information
in Joint Tax-Non-tax
Grand Jury
Investigations**

- (1) Treasury Regulations in 26 CFR 301.6103(h)(2)-1 describes the use and further disclosure of tax information disclosed to the DOJ under IRC 6103(h)(2). Tax information can be used in a joint tax/non-tax grand jury investigation if the non-tax investigation arises out of the particular facts and circumstances of the tax investigation, and the tax administration portion of the investigation has been approved by the Assistant Attorney General (Tax Division) at the request of the IRS.
- (2) In a joint Title 18/26 investigation which has been approved by the Assistant Attorney General for Tax Division of DOJ, if the tax administration portion of a federal grand jury proceeding, etc., is terminated, further use or disclosure of returns or return information in the proceeding, etc., requires an ex-parte order as provided by IRC 6103(i)(1)(A).
- (3) The regulation does not require the DOJ to notify the IRS of the intended use of return information other than taxpayer return information. However, DOJ employees should be asked to notify the Area Manager, East or West, for the office in which the referred tax case originated, so that the appropriate official can determine, under IRC 6103(i)(4), if the use will identify a confidential informant or impair tax administration.
- (4) The above restrictions apply to litigation cases when the Title 18/26 cases have been severed during litigation (e.g., an acquittal on Title 26 counts and a retrial on Title 18 counts.)

Note: Return information that has been publicly disclosed as evidence in the Title 26 action may be used in subsequent actions without regard to these restrictions as long as the public record is the source. See IRM 11.3.11.12, Information Which Has Become Public Record.

11.3.22.6
(05-03-2018)
**Disclosure of Tax
Information in
Possession of the Social
Security Administration
(SSA)**

- (1) During the investigation of a referred tax case or for use at trial, the DOJ attorney or United States Attorney may require returns or return information in the possession of the SSA.
- (2) In these cases, the IRS will determine whether the requirements of IRC 6103(h)(2) or (h)(4) have been satisfied before permitting disclosure of the information.
- (3) Specific procedures for obtaining this information are contained in IRM 9.4.4.2.2.
- (4) See IRM 11.3.28.2(18), Disclosure of Returns and Return Information Pursuant to IRC 6103(i)(1), IRC 6103(i)(2) and IRC 6103(i)(5), for any requests of SSA records for non-tax purposes.

11.3.22.7
(08-04-2021)
**Requests for Additional
Records and/or
Information**

- (1) United States Attorneys and other DOJ employees involved in IRS tax cases should go through Chief Counsel attorneys or CI to obtain additional returns and return information required to work the cases.

11.3.22.8

(08-04-2021)

Disclosure of Returns and Return Information in Judicial and Administrative Tax Proceedings - IRC 6103(h)(4)

- (1) Returns and return information disclosed to officers and employees of the Department of Treasury, attorneys of the DOJ (including United States Attorneys), and state tax officials pursuant to IRC 6103(h)(1), (h)(2) and (d), respectively, may be disclosed by such persons in judicial or administrative tax proceedings under IRC 6103(h)(4). (See IRM 11.3.22.1.4.3 for definition of judicial tax proceeding.)
- (2) The information that can be disclosed is as follows:
 - a. IRC 6103(h)(4)(A) - the return or return information relates to a taxpayer who is a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such liability in respect of any tax imposed under the IRC;
 - b. IRC 6103(h)(4)(B) - the treatment of an item reflected on such return is directly related to the resolution of an issue in the proceeding; or
 - c. IRC 6103(h)(4)(C) - such return or return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding.
- (3) IRC 6103(h)(2) uses more general "is or may be" language in applying standards for disclosure.
- (4) Under IRC 6103(h)(4), the taxpayer must be the party; the item must be directly related to the resolution of an issue; or the third party information must directly relate to a transactional relationship between the third party and the taxpayer, and must directly affect the resolution of an issue in the proceeding. IRC 6103(h)(4) permits disclosures in a judicial or administrative tax proceeding but does not give an independent right of access to the taxpayer outside of the proceeding.
- (5) The statute requires that returns and return information be withheld if the IRS determines that disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation even if the conditions of IRC 6103(h)(4)(A), (B), or (C) have been satisfied.
- (6) Persons outside of the IRS who receive returns and return information under IRC 6103(h)(1), (h)(2) or (d) should notify the IRS of the intent to use the records pursuant to IRC 6103(h)(4) in a judicial or administrative tax proceeding so that the IRS may determine whether it objects to the use on the basis of (5) above.
- (7) In addition to the conditions of IRC 6103(h)(4)(A), (B), and (C); IRC 6103(h)(4)(D) provides that a return or return information may be disclosed "to the extent required by order of a court pursuant to section 3500 of Title 18, United States Code, or rule 16 of the Federal Rules of Criminal Procedure, such court being authorized in the issuance of such order to give due consideration to congressional policy favoring the confidentiality of returns and return information as set forth in this title."
 - a. Title 18 USC 3500 (Jencks Act) concerns pretrial statements of government witnesses in federal criminal cases. On motion of the defendant, the court will order production of such statements given to the government which are related to the content of the witness' testimony. In federal

criminal tax cases, “Jencks” statements are disclosable under IRC 6103(h)(4)(D) regardless of whether the “item” or “transactional relationship” tests are met.

- b. Under Rule 16(a)(1)(A) and (C) of the Federal Rules of Criminal Procedure, a defendant may request the government to permit inspection of relevant statements made by the defendant, of any documents obtained from or belonging to the defendant, and any results or reports of any physical or mental examination and of any scientific test or experiment. Discovery of tax information only applies to information provided by the taxpayer or his/her representative (i.e., returns and taxpayer return information). Rule 16 does not apply to third party information such as reports, memoranda, or other internal government documents prepared by government agents in connection with the case. It also does not apply to statements made by witnesses (other than the defendant) to agents of the government except as provided in 18 USC 3500.
- c. If the government is ordered to produce returns or return information which the IRS wishes to withhold, the court should be requested to inspect the information in camera to determine its relevance and materiality to the proceeding. Where production of the information is required, government counsel generally will seek a protective order such as that entered in U.S., et al. v. Moriarity, 69-1 USTC 9169 and 69-1 USTC 9212. In the order, defense counsel agrees to restrict disclosure of the material to people who are parties to the tax case and their counsel. Defense counsel also agrees not to make copies, unless necessary for proper presentation of the case.

11.3.22.9
(12-31-2001)
**Proceedings in Criminal
Tax Cases**

- (1) The section contains instructions for use of return information in Criminal Tax Case proceedings.

11.3.22.9.1
(08-04-2021)
**Pre-sentence
Investigations and
Reports and Probation
Proceedings**

- (1) Rule 32(c) of the Federal Rules of Criminal Procedure provides that the U.S. Probation Service, an arm of the court, investigates defendants, and it reports to the court before defendants are sentenced or granted probation.

Exception: With court permission, the defendant may waive the pre-sentence investigation and report. Also, the court may determine that it does not need an investigation and report.

- (2) The preparation of a pre-sentence report is part of the judicial process. In a criminal tax case, returns and return information pertaining to the defendant may be disclosed to the Probation Service under IRC 6103(h)(4).

Note: IRC 6103(h)(4) is the authority for the disclosure whether the information is released directly to the probation officer assigned to the pre-sentence investigation, or to the United States Attorney who will transmit the information to the probation officer.

- (3) Third party tax information may be disclosed for purposes of sentencing when the information relates to conduct not the subject of the indictment or conviction (“uncharged conduct”) if the court can consider such conduct for sentencing purposes. Such third party information must meet the IRC 6103(h)(4)(B) or (C) tests to be disclosed.

- (4) An individual convicted of a criminal tax violation may be granted probation conditioned on payment or settlement of his/her civil tax liability. IRC 6103(h)(4) permits disclosure to a probation officer only in connection with a criminal tax case for which the defendant is on probation.
- (5) Generally, CI, and/or the appropriate IRS compliance function will monitor the taxpayer's account(s) in these cases to ensure that the court is notified of non-compliance. CI will generally prepare a report for the court as provided in IRM 9.3.1.8.1. The reports generally will be transmitted to the Probation Service through the United States Attorney to whom the report is released.
- (6) Information concerning the taxpayer's filing status for years specified in the conditions of probation may be disclosed under IRC 6103(h)(4).
- (7) Information about other tax years generally will not be disclosed without written consent from the taxpayer. However, if the probation officer shows that the information is material and for consideration of the court in revoking or extending probation, it may be disclosed under IRC 6103(h)(4)(A).
- (8) Disclosures under IRC 6103(h)(4) are exempt from the accounting requirements.

11.3.22.10
(08-04-2021)
Disclosures of Third Party Tax Information in Administrative Proceedings

- (1) IRC 6103(h)(4) authorizes the use of returns and return information by federal and state employees in judicial tax proceedings, and also permits disclosure to taxpayers involved in administrative tax proceedings, under certain circumstances.
- (2) Third party tax information may be disclosed if such disclosures satisfy the item test of IRC 6103(h)(4)(B) or the transactional relationship test of IRC 6103(h)(4)(C).
- (3) The statute does not define "administrative proceeding." However, the term generally includes any proceedings regarding proposed or actual actions against a person(s) that are enforceable under agency laws or regulations.
- (4) IRS employees should refer to their specific business unit IRM, or functional procedures for specific business unit guidance or examples germane to their respective function.

11.3.22.11
(08-04-2021)
Use and Disclosure of Third Party Returns and Return Information Relating to Transactions - "Comparables"

- (1) IRC 6103(h)(1) permits the IRS's internal access and use of comparables for tax cases. However, the IRS is prohibited from disclosing this information to the DOJ under IRC 6103(h)(2) or in tax proceedings under IRC 6103(h)(4) since neither the "item" nor the "transactional relationship" test is met. The comparable taxpayer must consent in writing to the disclosure.
Example: When the IRS has used comparables to determine reasonable compensation, the IRS can neither advise the taxpayer under investigation nor the DOJ what comparables were used and how they were analyzed, without the unrelated parties' consent. Further, the information may not be used in resulting litigation.
- (2) To satisfy IRC 6103(h)(2) and (h)(4), the IRS may employ other means of obtaining similar information which can be disclosed to the DOJ and used in tax proceedings.

- (3) Information may be obtained directly from a third party as a witness even though the information may be the same as or similar to comparable return information already in the IRS's possession. Information obtained this way is return information of the taxpayer under examination or investigation, and may be disclosed under IRC 6103(h)(2)(A) or (h)(4)(A).
- 11.3.22.12
(08-04-2021)
Disclosures of Address and Nonresident Alien or Resident Status Information for Withholding of Tax from Social Security Benefits - IRC 6103(h)(5)
- (1) IRC 6103(h)(5) provides for the disclosure of address information and the status of an individual as a nonresident alien or as a citizen or resident of the United States to the SSA or the RRB for purposes of withholding income tax from social security benefits of nonresident aliens.
- (2) Inquiries about IRC 6103(h)(5) disclosures should be referred to HQ Disclosure PPO.
- (3) Other IRS functions, such as Wage & Investment, have jurisdiction over the agreements and exchange processes used to provide the information allowed by the statute. Any questions regarding a specific exchange should be directed to the function providing the information.
- (4) IRC 6103(h)(5) disclosures require IRC 6103(p)(3)(A) accounting and are subject to IRC 6103(p)(4) safeguards provisions.
- 11.3.22.13
(08-04-2021)
Disclosure to the Internal Revenue Service Oversight Board - IRC 6103(h)(6)
- (1) IRC 6103(h)(6) allows the Internal Revenue Service Oversight Board (Oversight Board) to have limited access to returns and return information.
- (2) To qualify for disclosure to the Oversight Board, returns and return information must be provided within the context of a report prepared by the Commissioner or the Treasury Inspector General for Tax Administration (TIGTA) to assist the Oversight Board in carrying out its duties, and its inclusion in the report must have been deemed necessary by the Commissioner or TIGTA.
- (3) Any disclosure of returns or return information under IRC 6103(h)(6) require IRC 6103(p)(3)(A) accounting and are subject to IRC 6103(p)(4) safeguards provisions.
- (4) Other than as permitted above, no return or return information may be disclosed to any member of the Oversight Board or to any IRS employee or detailee of the Oversight Board by reason of their service to the Oversight Board.
- (5) Any request for information not permitted to be disclosed and any contact regarding a specific taxpayer, made by an individual as described in (4) above to an officer or employee of the IRS must be reported by the employee to the Secretary, TIGTA, and to the Joint Committee on Taxation (JCT).
- Note:** See IRM 11.3.22.1.1(5) for penalty provisions.
- 11.3.22.14
(08-04-2021)
Disclosure Provisions for Bank Secrecy Act and Money Laundering Cases
- (1) Money laundering is the process of converting illegal or "dirty" money into money or assets that appear to be from legitimate or "clean" sources. People launder money to avoid suspicion and detection by law enforcement officials, and/or to avoid paying income taxes.
- (2) Narcotics trafficking, illegal gambling, extortion and political corruption are all crimes that involve large, illegal cash transactions. Money is laundered to hide the source.

- (3) “Legitimate” business/professional people may be laundering money to hide income and thus evade taxes.
- (4) Purchasing cars, boats, furs and houses for cash instead of check or credit is one method used to hide income. (It is easier for enforcement agencies to trace check and credit purchases because they leave a “paper trail” behind.)
- (5) Another method used to evade the law is smuggling cash into foreign countries that have very lenient banking laws. The funds are then transferred to a U.S. bank. This makes it difficult for U.S. authorities to track the money back to its source.
- (6) To provide information on large cash transactions, Congress enacted laws to allow law enforcement and regulatory agencies to receive data regarding the movement of cash.
- (7) The Bank Secrecy Act (BSA), Title 31 USC, requires that certain reports be made to the Secretary of the Treasury.
 - a. FinCEN Form 101, Suspicious Activity Report by the Securities and Futures Industries;
 - b. FinCEN Form 102, Suspicious Activity Report by Casinos and Card Clubs;
 - c. FinCEN Form 103, Currency Transaction Report by Casinos (CTRC) - [formerly Form 8362];
 - d. FinCEN Form 104, Currency Transaction Report (CTR) - [formerly Form 4789];
 - e. FinCEN Form 105, Report of International Transportation of Currency or Monetary Instruments (CMIR) - [formerly Form 4790];
 - f. FinCEN Form 105-N, Currency Transaction Report by Casinos Nevada (CTRC-N) - [formerly Form 8262];
 - g. TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR);
 - h. TD F 90-22.47, Suspicious Activity Report (SAR) for Depository Institutions;
 - i. TD F 90-22.53, Designation of Exempt Person;
 - j. TD F 90-22.55, Registration of Money Services Business (MSB);
 - k. TD F 90-22.56, Suspicious Activity Report by Money Services Business; and
 - l. Form 8300, Report of Cash Payments over \$10,000 Received in a Trade or Business, elements as required by 31 USC 5331.

Note: Even though Treasury regulations and instructions provide that CTRs and FBARs are to be filed with the IRS, neither CTRs, FBARs nor CMIRs (which are filed with U.S. Customs and Border Protection) are “returns” as defined in IRC 6103(b)(1) because they are not filed under provisions of Title 26, but under Title 31.

- (8) Information from these reports, or copies of the reports themselves, are “return information” as defined by IRC 6103(b)(2) only when they are used in tax or tax-related investigations. As such, they are protected by IRC 6103 when used in a tax context.

- (9) Title 31 report information which is “return information” is not “taxpayer return information” because the information was not information submitted by or on behalf of the taxpayer in connection with a Title 26 matter.
- (10) Returns and return information include tax information returns and other tax information secured from IRS sources/files or developed by the IRS in determining a person’s tax liability.
- (11) Form 8300 is a return protected by IRC 6103. However, for transactions occurring after 12/31/2001, there is a virtually identical reporting requirement in Title 31 USC 5331. The new Form 8300 will be used to report under both IRC 6050I and 31 USC 5331. The Title 31 information is given to Financial Crimes Enforcement Network (FinCEN). The Form 8300 entered into IRS information return files is protected under Title 26. For information on redisclosure of Form 8300 see the “Revised Re-Dissemination Guidelines for BSA Information” link on the Disclosure Share Point site in the IRC 6103(i) folder.
- (12) The money laundering provisions of Title 18 do not involve the filing of reports.

11.3.22.14.1
(08-04-2021)

**Use of Tax Information
in Tax or Tax-Related
Bank Secrecy Act and
Money Laundering
Investigations**

- (1) Returns and return information may be used or disclosed to initiate or conduct a money laundering investigation if the investigation is considered tax administration according to IRC 6103(b)(4).
- (2) The key test is whether, under the facts and circumstances of the particular case, the money laundering provisions meet the “related statute” test.
- (3) A money laundering or BSA provision(s) will be deemed a “related statute” if the money laundering or BSA violation:
 - 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) It is not necessary to establish a Title 26 violation or a “numbered” Title 26 investigation to meet the related statute test. Large amounts of currency being deposited and concealed from the IRS provide indications that income has been earned that has not been, or may not be, reported on an income tax return.
- (5) The related statute determination, or “call,” is within the good faith judgments of the SAC CI or Area Director/Territory Manager for the appropriate function. The appropriate official will make such determination in memorandum form, with his/her signature, for placement in the administrative investigative file.
- (6) Returns and return information (including Form 8300) cannot be used to evaluate information related to a money laundering investigation to determine whether a related statute call should be made. (Note that FinCEN has data from most Forms 8300 filed after 12/31/2001, that are not protected by IRC 6103, as they are now required under 31 USC 5331, as well as IRC 6050I.)
- (7) If the related statute call is made, the disclosure of returns and return information to Treasury Department employees, including IRS employees, for use in the criminal investigation is permissible under IRC 6103(h)(1).
- (8) Returns and return information may also be disclosed to DOJ employees personally and directly engaged in the investigation once the investigation has been referred from IRS to the DOJ according to IRC 6103(h)(2) and (3).

- (9) Appropriate referral procedures should be followed based on the nature and type of alleged violations. (See IRM 11.3.22.3.2 , IRM 9.3.1, Disclosure, and IRM 9.5.5, Money Laundering and Currency Crimes.)
- (10) The SAC, CI, has the authority to directly refer matters involving 18 USC 1956 and 1957 and Title 31 to the U.S. Attorney, pursuant to IRS Delegation Order No. 11-2, found in IRM 1.2.2.12.2.
- (11) Information received or collected by the IRS in the money laundering or BSA investigation after the related statute call is made, is return information protected by IRC 6103, regardless of whether or not the information is ever used for Title 26 prosecution purposes. If the related statute investigation progresses to a grand jury investigation, information obtained from other than IRS sources will usually be solely protected by the Federal Rule of Criminal Procedure, Rule 6(e) Secrecy. Rule 6(e) does not override the protection of IRC 6103, if IRC 6103 applies to the information.
- (12) In a multi-agency money laundering or BSA investigation including non-tax Title 18 charges, (e.g. bank fraud, bankruptcy fraud), tax information may not be used or disclosed for purposes of the other non-tax Title 18 charges, unless:
 - a. There is also a Title 26 or tax related charge that has been approved by the DOJ (Tax Division) and the tax and non-tax charges arise out of the same facts and circumstances or
 - b. The provisions of IRC 6103(i) are followed (e.g. IRC 6103(i)(1) ex-parte order) to obtain tax information for purposes of the non-tax Title 18 charges (e.g. bank fraud, bankruptcy fraud).

11.3.22.14.2
(08-04-2021)

**Pure Money Laundering
Investigations (Not
Related to a Tax
Investigation)**

- (1) "Pure" Title 18 and Title 31 money laundering investigations are those investigations not involving tax or tax related violations.
- (2) Title 31 reports and other information collected by the IRS during the investigation are not protected by IRC 6103. However, Privacy Act requirements may apply.
- (3) CI personnel may seek the advice of the Disclosure Manager concerning access to returns and return information in a pure money laundering investigation.
- (4) In the absence of a determination that the related statute test is 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 IRC 6103(i)(1), or the request provisions of IRC 6103(i)(2).
- (5) Although the potential for meeting the related statute test may be present, it is preferable to use IRC 6103(i)(1) to obtain returns and return information. A related statute call by the appropriate official is subjective and open to scrutiny in the event of a claim of improper disclosure. (See IRM 9.3.1, Disclosure, and IRM 9.5, Investigative Process.)
- (6) A money laundering investigation under 18 USC 1956(a)(1)(A)(ii) is always tax-related, and is never a pure money laundering investigation.

11.3.22.14.3
(08-04-2021)
**Use and Disclosure of
Title 31 Report
Information**

- (1) FinCEN's Re-Dissemination Guidelines for Bank Secrecy Act Information, promulgated under the authority of 31 CFR 103.43, permit IRS without prior specific FinCEN approval 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 under certain conditions. These include:
 - a. Same or related investigations on a related prosecution and
 - b. Members of the same Joint Task Force to which IRS belongs.
- (2) Disclosures are subject to certain administrative requirements (e.g., they must contain a BSA warning statement, as prescribed in the Re-Dissemination Guidelines, on the use and further dissemination of the information). The Re-Dissemination Guidelines must be consulted to determine the specific requirements of a contemplated disclosure.
- (3) Currently, under Delegation Order 25-5 (formerly DO-143 Rev. 6), found in IRM 1.2.2.15.5, the authority to perform certain functions to enforce Title 31 regulations is delegated to the SAC, CI.
- (4) 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 is lacking, the SAC, CI 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 FinCEN. If tax information is disclosed, it should be noted in the summary.

11.3.22.15
(08-04-2021)
**Maintaining Tax Return
Information in Employee
Performance Files**

- (1) Employee performance appraisals are a tool for executing basic management and supervisory responsibilities, and of improving individual and organizational effectiveness in accomplishing the IRS's mission and objectives. Many of the activities of IRS employees involve the handling of specific taxpayer matters. In the process of reviewing and evaluating the performance of an employee against prescribed performance standards, it may be necessary to discuss with some specificity how the employee handled a particular taxpayer's case to provide an accurate, fair, and objective evaluation. The inclusion of return information in the EPF, under these circumstances, would be appropriate. Obviously, non-inclusion of confidential tax information best protects the IRS and employee from UNAX or unauthorized disclosure concerns.
- (2) Deleting (or failing to include) taxpayer identifiers does not change the character of return information. Even without taxpayer identifying information, return information continues to be subject to all confidentiality, retention, and security provisions of IRC 6103. See IRM 10.5.6.8, Personnel Records.
- (3) Disclosure of any third party return information in the EPF must be authorized under IRC 6103. If IRC 6103 does not authorize disclosure of the third party return information to that entity for the intended purpose, then the EPF must be sanitized of third party return information before any disclosure is made. An employee reviewing his/her own EPF may see third party return information in the EPF, if the employee's review is for the purpose of improving his/her performance handling tax administration duties and the "need to know" requirement of IRC 6103(h) is met. An employee may not see third party return information in his/her own EPF for purposes of use in a personnel action (such as a grievance) unless the requirements of IRC 6103(l)(4) have been met.

Note: No employee is authorized by IRC 6103(l)(4) to make a disclosure to himself/herself or to anyone else for purposes of that employee's personnel action. See IRM 10.5.6.8, Personnel Records, and IRM 6.751.1, Discipline and Disciplinary Actions - Policies, Responsibilities, Authorities, and Guidance, for procedures employees must follow to obtain authorized access to third party return information for use in personnel actions.

