



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

11.3.26

AUGUST 10, 2023

EFFECTIVE DATE

(08-10-2023)

PURPOSE

- (1) This transmits revised IRM 11.3.26, Disclosure of Official Information, Wagering Tax Information.

MATERIAL CHANGES

- (1) IRM 11.3.26.1(3) and (4), Updated Program Scope and Objectives, to align the Program and Policy owner sections to be in line with all other Disclosure IRMs.
- (2) IRM 11.3.26.1(5), Updated Program Scope and Objectives to align with the Primary Stakeholders section to conform with the internal controls requirement.
- (3) IRM 11.3.26.1.4, Program Controls, were added in order to incorporate relevant internal controls. These items identify information about the program and procedures covered within this section.
- (4) 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 11.3.26, Disclosure of Official Information, Wagering Tax Information, dated July 06, 2017.

AUDIENCE

All Operating Divisions and Functions.

RELATED RESOURCES

- (1) The Disclosure and Privacy Virtual Library is at: <https://portal.ds.irsnet.gov/sites/vl003/pages/default.aspx>

Michael Oser
Acting Director, Governmental Liaison, Disclosure and
Safeguards

11.3.26

Wagering Tax Information

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11.3.26.1
(07-06-2017)
Program Scope and Objectives

- (1) Purpose: This IRM section provides instructions concerning the disclosure of wagering tax information pursuant to IRC 6103(o)(2), as authorized by IRC 4424.
- (2) Audience: These procedures apply to all IRS employees and contractors.
- (3) Policy Owner: The Director of Governmental Liaison, Disclosure and Safeguards (GLDS) is responsible for oversight of Disclosure policy.
- (4) Program Owner: The Disclosure office, under GLDS, is responsible for the Disclosure program and guidance. Each IRS organization is responsible for ensuring its employees are aware of and follow Servicewide Disclosure policy.
- (5) Primary Stakeholders: All IRS business units and functions, that make disclosures of wagering tax information.

11.3.26.1.1
(07-06-2017)
Background

- (1) Internal Revenue Code (IRC) Title 26 IRC 6103(o)(2) provides that wagering tax information may be disclosed only as authorized by IRC 4424.
- (2) IRC 4424 permits disclosures of wagering tax information only in connection with the administration of civil or criminal enforcement of a tax imposed by the Internal Revenue Code. Further, IRC 4424 does not allow direct or indirect use of wagering tax documents, and other information derived from wagering tax documents through its exploitation, against the taxpayer in connection with any non-tax proceeding.

11.3.26.1.2
(07-06-2017)
Authority

- (1) The following items govern the authority pertaining to Disclosures for wagering tax information:
 - IRC 6103(o)(2)
 - IRC 4424
 - Delegation Order 11-2, found in IRM 1.2.2.12.2

11.3.26.1.3
(07-06-2017)
Roles and Responsibilities

- (1) This IRM is used by all IRS employees to help comply with the disclosure provisions of IRC 6103 and IRC 4424 pertaining to disclosures of wagering tax information.

11.3.26.1.4
(08-10-2023)
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.

11.3.26.1.5
(07-06-2017)
Acronyms

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

Acronym	Definition
GAO	Government Accountability Office
GLDS	Governmental Liaison, Disclosure and Safeguards
IRC	Internal Revenue Code
IRM	Internal Revenue Manual

Acronym	Definition
PGLD	Privacy, Governmental Liaison and Disclosure
USC	United States Code

11.3.26.1.6
(07-06-2017)

- (1) The following table lists other sources of guidance on Disclosures of wagering tax information:

Related Resources

Procedure	Title	Guidance
IRM 9.3.1.3.8	Wagering Tax Investigations	Provides Criminal Investigation employees with guidelines relating to disclosure of information during wagering tax investigations.
IRM 9.5.11.5	Wagering	Provides Criminal Investigation employees with procedures on working wagering investigations.
IRM 11.3.22	Disclosure to Federal Officers and Employees for Tax Administration Purposes	Provides guidance regarding disclosure of wagering tax information to Federal employees during the tax administration process.
IRM 11.3.23	Disclosure to the Government Accountability Office (GAO)	Provides guidance regarding disclosure of wagering tax information to the GAO.
IRM 11.3.28	Disclosure to Federal Agencies for Administration of Non-Tax Criminal Laws	Provides guidance regarding disclosure of wagering tax information to Federal Agencies for non-tax criminal laws.
IRM 11.3.32	Disclosure to States for Tax Administration Purposes	Provides guidance regarding disclosure of wagering tax information to State Agencies for state tax administration.
IRM 4.24.1	Introduction to Excise Taxes	Provides SBSE Excise Tax Managers, Examiners and Specialists with procedures on working excise tax examinations, including examinations on wagering tax.

Procedure	Title	Guidance
IRM 4.24.20	Excise Tax Report Writing Guide	Provides SBSE Excise Tax Managers, and Examiners with reporting procedures on excise tax examinations, including examinations on wagering tax.

- 11.3.26.2
(05-29-2009)
Tax Information Subject to IRC 4424
- (1) Wagering tax information subject to the disclosure provisions of IRC 4424 includes any return or return information relating to a taxpayer's liability for IRC Chapter 35 wagering taxes obtained by or provided to the IRS in connection with the administration of civil or criminal enforcement of IRC Chapter 35 taxes.
 - (2) Wagering tax information subject to the provisions of IRC 4424 also includes any information derived by exploitation of IRC Chapter 35 tax returns or return information.
- 11.3.26.3
(05-29-2009)
Tax Information Subject to IRC 6103
- (1) Any return or return information reflecting wagering transactions subject to IRC Chapter 35 taxes but obtained by or provided to the IRS solely in connection with the administration of taxes other than IRC Chapter 35 taxes (for example, IRC Chapter 1, Income Taxes) is non-wagering tax information. IRC 6103(o)(2) does not apply to non-wagering tax information.
- 11.3.26.4
(05-29-2009)
Maintaining Wagering Tax Information Separate from Non-Wagering Tax Information
- (1) To comply with IRC 4424, maintain all wagering tax information about a taxpayer (including wagering tax information that has become part of an income tax file or other IRS records relating to Form 11-C, Occupational Tax and Registration Return for Wagering, and Form 730, Monthly Tax Return for Wagers) either separately from non-wagering tax information concerning the taxpayer, or in such a fashion to identify and remove it from other non-wagering tax information.
- 11.3.26.4.1
(05-29-2009)
Open Wagering Tax Investigation
- (1) This example will help to clarify the information discussed in the subsections above. A wagering excise tax return has not been filed and an occupational stamp has not been purchased. The following describes various documents that may have been obtained or developed during a wagering tax investigation along with the disclosure restrictions for each such document.
 - a. Police arrest record of the subject of the wagering tax investigation: After obtaining the police arrest record in the course of the tax investigation, the record becomes wagering tax information and may be disclosed only in accordance with the provisions of IRC 4424. The reason is that any information compiled during a wagering tax investigation is wagering tax information subject to IRC 4424, unless the information could not have a bearing on the wagering tax liability of the taxpayer.
 - b. Police surveillance report regarding an alleged numbers drop: As in a) above, the information is wagering tax information subject to the provisions of IRC 4424 if obtained in a wagering tax investigation.
 - c. Memorandum of interview with a witness where the witness states that the subject of the wagering tax investigation threatened to murder another person within the next 48 hours: In this situation, the information

about the murder threat is not wagering tax information because it has no bearing on the wagering tax liability of the taxpayer. This information also has no bearing on the taxpayer's liability under any other chapter of the Code. As a result, such information may be disclosed to the appropriate law enforcement agency according to the provisions of IRM 11.3.34, Disclosure for Non-tax Criminal Violations.

- d. A special agent's surveillance report on the subject of the wagering tax investigation: Since the IRS developed this evidence in a wagering tax investigation, it is wagering tax information, and may be disclosed **only** in accordance with the provisions of IRC 4424.
- e. Reports of a criminal investigation undercover agent detailing the layout of the counting room: As in d) above, this is clearly evidence developed by the IRS pursuant to a wagering tax investigation. It is wagering tax information and may be disclosed only in accordance with the provisions of IRC 4424.
- f. A copy of the Schedule C of the Form 1040 of the subject of the wagering tax investigation where the subject reported wagering income: In this situation, the copy of the Schedule C becomes wagering tax information, and is associated with the wagering tax investigative file or the purpose of determining possible wagering tax liability of the subject. However, the **original** Schedule C is non-wagering tax information because it was filed for income tax purposes, not under IRC Chapter 35.

11.3.26.4.2
(05-29-2009)

Open Income Tax Investigation

- (1) In this example, a Revenue Agent is conducting an income tax examination and one of the documents in the examination file is a Form 1040, Schedule C, that includes wagering income.
 - a. Simply reporting wagering income on a Schedule C does not make it wagering tax information.
 - b. Unless the agent obtained Schedule C in connection with a Chapter 35 related investigation, it is non-wagering tax information. However, if the agent made adjustments to the Schedule C based upon a wagering tax audit, the adjustment information **would** constitute wagering tax information.

11.3.26.4.3
(05-29-2009)

Income Tax Investigation Opened Upon Termination of Wagering Tax Investigation

- (1) In this example, an income tax investigation is begun after a wagering tax investigation on the same taxpayer has been terminated.
 - a. The information gathered for wagering tax enforcement purpose is wagering tax information regardless of where it is maintained.
 - b. Disclose and use the information for tax administration purposes only as provided by IRC 4424.

11.3.26.5
(05-29-2009)

Investigative Disclosures of Wagering Tax Information

- (1) IRC 4424 permits disclosures only in connection with the administration, or civil or criminal enforcement of Title 26.
- (2) IRC 4424 is not intended to impede a special agent's legitimate tax investigation by placing insurmountable administrative obstacles in the agent's path.
- (3) As a general rule, do not make a disclosure in a wagering case under the provisions of IRC 4424 if it would not be allowed in an income tax case under the provisions of IRC 6103.

- (4) Congress did not intend, nor does IRS policy permit, to use IRC 4424 as a vehicle for making disclosures to other law enforcement agencies beyond those necessary for Federal tax administration.

11.3.26.5.1
(05-29-2009)
**Similarity of
Investigative
Disclosures Under IRC
4424 and Investigative
Disclosures Under IRC
6103**

- (1) A similarity exists between investigative disclosures made in a wagering tax investigation pursuant to IRC 4424 and those investigative disclosures allowed by IRC 6103(k)(6).
- (2) Although IRC 6103 is not the controlling statute for disclosures in the wagering tax area, IRS employees should look to IRC 6103(k)(6) guidelines when making investigative disclosures of wagering tax information.
- (3) Before making a wagering tax disclosure, IRS employees should be able to answer affirmatively the following four questions, just as in situations involving IRC 6103(k)(6):
 - a. Am I acting within the scope of my employment and authority?
 - b. Am I acting to complete an authorized and assigned investigation, information gathering project, or other project?
 - c. Am I making this disclosure only for the purpose of obtaining the desired information, and am I limiting the disclosure of information to only that which is necessary to obtain this information?
 - d. Am I making this disclosure in good faith?

11.3.26.5.2
(05-29-2009)
**Permissible Investigative
Disclosures**

- (1) In this example, a Special Agent opens a wagering tax investigation of an individual and, as a logical first step, contacts the local police to examine their files for possible leads. Pursuant to IRC 4424, the IRS may divulge sufficient wagering tax information to third parties to obtain information necessary for the administration or civil or criminal enforcement of Title 26. The following situations illustrate the practice of limiting disclosure to the extent required to elicit the information sought:
 - a. The agent begins by stating, "I am a special agent of the Internal Revenue Service conducting an investigation of the tax liability of John Doe. Do you have any information in your files that I could review?" This minimal disclosure may be sufficient to obtain the desired information.
 - b. The police officer then stated that there are files on three different John Does. The officer asked the special agent what file she wanted to inspect. Only then would it become necessary to reveal more specific information about the taxpayer such as address, description, or other identifying characteristics to confirm identification. Disclosure is permissible since it was limited to the extent necessary to obtain information relevant to a wagering tax investigation.
 - c. If the police officer then responded that there are separate files on the identified John Doe that deal with his involvement in prostitution, bootlegging, and gambling, the special agent could then state an interest in the gambling files. At this juncture, disclosing the fact of wagering tax investigation is necessary to obtain the desired information.

11.3.26.6
(05-29-2009)

Disclosure to Other Law Enforcement Officials

(1) IRC 4424(c) prohibits the use of tax information gathered for wagering tax enforcement purposes in the prosecution of non-tax offenses. The coverage is broad; it precludes:

- a. The use of the information directly, for non-tax purposes; and
- b. Exploitation of that information to gather leads in non-tax situations.

(2) Where possible, identify and segregate information gathered or developed in connection with a wagering tax investigation from other tax information.

(3) Associate a caveat such as the one below with all wagering tax information:

“THIS DOCUMENT CONTAINS WAGERING INFORMATION UNDER IRC 4424 AND 6103. THIS INFORMATION MAY BE DISCLOSED ONLY FOR THE ADMINISTRATION OR CIVIL OR 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.”

(4) Disclosures to local law enforcement officers may cause more harm than good in the long run. They may have to segregate the information provided by the IRS from that developed on their own to avoid tainting their independently developed case.

11.3.26.6.1
(08-29-2016)

Disclosure of Fact of Wagering Tax Investigation to a United States Attorney

(1) The Criminal Investigation Division, Special Agent in Charge, may disclose that Criminal Investigation contemplates or has begun a wagering tax investigation of a specific taxpayer to a U.S. and/or Strike Force Attorney.

(2) The Special Agent in Charge may initiate such a disclosure to determine whether the Department of Justice would prosecute that individual upon submission of sufficient evidence to make a wagering tax case.

Note: IRC 4424 permits disclosure of wagering tax information for this purpose.

(3) The Government attorney should be informed that he or she may use any information obtained from data subject to IRC 4424 for the purpose of civil or criminal enforcement of the Internal Revenue Code, and that any such information may not be used for intelligence or prosecutorial purposes, including enforcement of gambling offenses set forth in Title 18 USC, or any other non-tax administration purposes.

11.3.26.6.2
(05-29-2009)

Disclosure to Local Law Enforcement Authorities

(1) The IRS **cannot** notify law enforcement officers or invite them to accompany its agents on a raid if the purpose of the invitation is to notify local law enforcement that the IRS expects to encounter non-tax information that may fall within the jurisdiction of the local police.

(2) If, in the judgment of an agent, or his/her manager, the assistance of the local police is necessary to effectively conduct a raid or make an arrest, the agent may notify local police to request such assistance. IRC 4424(b) permits this limited disclosure since it is made for wagering tax enforcement purposes. Typical situations requiring local police help might include crowd control and securing the premises.

(3) Local police may inform IRS special agents that they wish to accompany them on a raid to execute a search warrant where the affidavit for issuance was

based on information received from the local police. The fact that the information obtained from the local police formed the basis for the warrant is not an appropriate reason to permit their participation in the raid. The specificity that is generally required of a search warrant would normally limit the scope of the search to IRC Chapter 35 tax information.

- (4) Generally, IRS personnel should not actively participate in the execution of non-IRS search and arrest warrants. However, local police authorities may, of their own volition, invite IRS personnel to observe their activities regarding the possible target of a police gambling investigation. Prior to accompanying any law enforcement agency on a raid, the agent should consult with his/her group manager to obtain all required approvals. After obtaining the necessary approvals, IRS agents may observe the police activities. However, under no circumstances may IRS agents disclose wagering tax information to local police authorities.

11.3.26.6.3
(05-29-2009)
**Disclosure of Non-tax
Criminal Violations**

- (1) The IRS may uncover evidence of crimes falling outside its jurisdiction during the course of a wagering tax raid.
- (2) The disclosure limitations of IRC 4424 or IRC 6103 apply to any return information seized.
- (3) Appropriate Federal, State, or local law enforcement authorities may receive any evidence that is not a tax return or return information as provided in IRM 11.3.34, Disclosure for Non-tax Criminal Violations.

11.3.26.7
(05-29-2009)
**Investigative Disclosure
to Informants**

- (1) A special agent may disclose limited tax return or return information to informants when asking relevant questions or guiding them as necessary in relation to a wagering tax investigation.
- (2) If a special agent determines that an informant is passing tax information to any other law enforcement authority, the agent should, with the advice of his/her manager, either terminate the relationship or cease disclosure.

11.3.26.8
(05-29-2009)
Use of Outside Expert

- (1) If the IRS cannot decipher records obtained in a wagering tax investigation due to codes used by the bookmaker, the agent may have an expert decipher the codes.

Example: The expert might be an informant, an FBI agent, or a State or local police officer. The agent should attach a cover sheet to the records using caveat language, such as that set forth in IRM 11.3.26.6 (3) above.

11.3.26.9
(08-29-2016)
**Disclosure to Taxpayers
and to Designees**

- (1) IRC 4424(b) provides that wagering tax information may be disclosed in connection with the administration or civil or criminal enforcement of any tax imposed by Title 26.
- (2) IRC 4424(b)(1) further provides that information so disclosed may not be “divulged or made known in any manner whatever by any officer or employee of the United States to any person” except in connection with the administration or civil or criminal enforcement of Title 26.
- (3) Taxpayers and their designees may receive wagering tax information under IRC 4424 if the disclosures are made “in connection with the administration or civil or criminal enforcement of” any tax imposed by Title 26.

Example: The filer of a Form 11-C or a Form 730 (or the person on whose behalf the return was filed), his or her designee, fiduciary, or attorney-in-fact may receive copies of these returns if the IRC 4424(b) standard is met.

- (4) Although IRC 6103 is not the controlling statute in wagering tax situations, IRS employees can look to the IRC 6103(c) guidelines in IRM 11.3.3, Disclosure to Designees and Practitioners, to determine whether the taxpayer has authorized another person to access the wagering tax information.
- (5) In the example shown in (3) above, disclosures may also be made to representatives or designees in accordance with a properly executed disclosure consent document such as Form 2848, Power of Attorney and Declaration of Representation, when practice is involved/contemplated, or a Form 8821, Tax Information Authorization, if any of the individuals meet the IRC 4424(b) standard.
- (6) The disclosure restrictions of IRC 4424 apply only to officers and employees of the United States.
- (7) If a disclosure is made under IRC 4424(b) to any individual other than an officer or employee of the United States, the individual has no further restrictions on re-disclosure of that information.