



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

11.3.28

AUGUST 11, 2023

## EFFECTIVE DATE

(08-11-2023)

## PURPOSE

- (1) This transmits revised IRM 11.3.28, Disclosure of Official Information, Disclosure to Federal Agencies for Administration of Non-Tax Criminal Laws.

## MATERIAL CHANGES

- (1) IRM 11.3.28.1(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 11.3.28.1.4, 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 11.3.28, Disclosure of Official Information, Disclosure to Federal Agencies for Administration of Non-Tax Criminal Laws, dated July 23, 2018.

## AUDIENCE

All Operating Divisions and Functions.

## RELATED RESOURCES

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

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11.3.28

Disclosure to Federal Agencies for Administration of Non-Tax Criminal Laws

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11.3.28-3 Non-tax Federal Criminal Referral Check List IRC 6103(i)(3)(A) or (i)(3)(C)

11.3.28.1  
(07-23-2018)  
**Program Scope and  
Objectives**

- (1) Purpose: This IRM section provides instructions concerning the disclosure of returns and return information to officers and employees of federal agencies for the administration of federal non-tax criminal and terrorist-related laws.
- (2) Audience: These procedures apply to all IRS employees and contractors.
- (3) Policy Owner: The Director of Governmental Liaison, Disclosure and Safeguards (GLDS) is responsible for oversight of Disclosure policy.
- (4) Program Owner: The Disclosure office, under GLDS, is responsible for the Disclosure program and guidance. Each IRS organization is responsible for ensuring its employees are aware of and follow Servicewide Disclosure policy.
- (5) Primary Stakeholders: The following offices have responsibility for disclosures to federal agencies for the administration of federal non-tax crimes:
  - Criminal Investigation
  - Chief Counsel, Procedure & Administration (P&A)

11.3.28.1.1  
(07-23-2018)  
**Background**

- (1) Congress decided that federal law enforcement officials should not have easier access to information about a taxpayer maintained by the IRS than they would have if they sought to compel the production of that information from the taxpayer himself. With this in mind, Congress enacted section 6103(i), which establishes the general rule that a federal agency enforcing a non-tax criminal law must obtain court approval to obtain a return or return information submitted by the taxpayer or his or her representative.
- (2) IRC 6103(i) primarily permits disclosure of returns and return information to officers and employees of federal agencies for the administration of federal non-tax criminal and terrorist-related laws subject to the restrictions imposed by IRC 6103(i)(1) through IRC 6103(i)(7). Refer to Delegation Order 11-2, found in IRM 1.2.2.12.2 , for those authorized to disclose information under these sections.
- (3) IRC 6103(i) is the only code section where it may be necessary to distinguish between taxpayer return information and return information (other than taxpayer return information). See IRM 11.3.28.1.5 for the meaning of terms/ definitions pertinent to IRC 6103(i).
- (4) IRC 6103(i)(1)(A) and (B) provide that the Attorney General, Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, any U.S. Attorney, any special prosecutor (independent counsel) appointed under 28 USC 593, and any attorney in charge of an organized crime strike force (although strike forces no longer exist) may authorize an application for an Ex Parte order from a federal district court judge or magistrate allowing officers and employees of a federal agency in cooperation with the Department of Justice (DOJ) access to returns and return information, or portions thereof. This information will be disclosed only to officers and employees who are personally and directly engaged in:
  - a. preparation for any judicial or administrative proceeding pertaining to the enforcement of a specifically designated Federal criminal statute (not involving tax administration) to which the United States or such agency is or may be a party, or pertaining to the case of a missing or exploited child,

- b. any investigation which may result in such a proceeding, or
- c. any Federal grand jury proceeding pertaining to enforcement of such a criminal statute to which the United States or such agency is or may be a party, or to such a case of a missing or exploited child

**Note:** This information will be disclosed to these officers and employees solely for their use in such preparation or investigation or grand jury proceeding as noted above.

- (5) IRC 6103(i)(1)(C) provides, in the case of an investigation pertaining to a missing or exploited child, the head of any Federal agency, or his designee, may disclose any return or return information obtained under IRC 6103(i)(1)(A) to officers and employees of any State or local law enforcement agency, if such State or local law enforcement agency is part of a team with the Federal agency in such investigation, and such information is disclosed only to such officers and employees who are personally and directly engaged in such investigation.

**Note:** The disclosure of returns and return information under IRC 6103(i)(1)(C) are made by the head of the Federal Agency who obtained the information under an Ex Parte court order.

- (6) IRC 6103(i)(2) provides for a written request from the head of a federal agency, or the Inspector General thereof, or, in the case of the Department of Justice, the Attorney General, Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, any U.S. Attorney, any special prosecutor (independent counsel) appointed under 28 USC 593, or any attorney in charge of an organized crime strike force to request the disclosure of return information (other than taxpayer return information) to certain officers and employees of such agency. Taxpayer identity information for this purpose is not considered taxpayer return information. See IRM 11.3.28.6(4) for further discussion. This provision limits disclosure to officers and employees who are personally and directly engaged in:

- a. preparation for any judicial or administrative proceeding pertaining to the enforcement of a specifically designated Federal criminal statute (not involving tax administration) to which the United States or such agency is or may be a party, or pertaining to the case of a missing or exploited child,
- b. any investigation which may result in such a proceeding, or
- c. any Federal grand jury proceeding pertaining to enforcement of such a criminal statute to which the United States or such agency is or may be a party, or to such a case of a missing or exploited child

**Note:** This information will be disclosed to these officers and employees solely for their use in such preparation or investigation or grand jury proceedings as noted above.

**Note:** IRC 6103(i)(2) does not permit disclosure of “returns” or “return information”, only “other than taxpayer return information”.

- (7) IRC 6103(i)(3)(A) permits the Commissioner or his/her delegate to disclose in writing, return information (other than taxpayer return information) that may

constitute evidence of a violation of a federal non-tax criminal statute. Disclosures can be made to the extent necessary to apprise the head of the appropriate federal agency charged with enforcement responsibility. The head of the requesting agency may re-disclose that information to officers and employees of the agency to the extent necessary to enforce the law.

- (8) IRC 6103(i)(3)(B)(i) permits the Commissioner or his/her delegate to disclose return information (including taxpayer return information) to the extent necessary to apprise appropriate officers or employees of any federal or State law enforcement agency of the circumstances involving an imminent danger of death or physical injury to any individual. See IRM 11.3.28.7.2 regarding disclosures of tax information in terrorism and national security investigations.
- (9) IRC 6103(i)(3)(B)(ii) permits the Commissioner or his/her delegate to disclose return information (including taxpayer return information) to the extent necessary to apprise appropriate officers or employees of any federal law enforcement agency in circumstances involving the imminent flight of any individual from federal prosecution. This provision is intended to cover individuals who could be prosecuted for flight from prosecution, as a separate federal offense, and circumstances where an individual has attempted to change identity or intends to flee from the country.

**Note:** See IRM 11.3.28.1.1(10) for information concerning IRS initiated disclosures absent emergency circumstances in terrorism and national security investigations (IRC 6103(i)(3)(C)).

- (10) IRC 6103(i)(4) provides for information obtained under the other subsections of IRC 6103(i) to be entered into evidence in an administrative or judicial proceeding if the court determines that the tests provided by sections 6103(i)(4)(A)(i) or (i)(4)(A)(ii) have been met. See IRM 11.3.28.8 and IRM 11.3.35, Requests and Demands for Testimony and Production of Documents, for additional information. IRC 6103(i)(4)(C) states that no return or return information shall be admitted into evidence if the Secretary determines and notifies the Attorney General or his delegate or the head of the Federal agency that such admission would identify a confidential informant or seriously impair a civil or criminal tax investigation.
- (11) IRC 6103(i)(5) permits disclosure of the returns and return information of a fugitive pursuant to an Ex Parte court order signed by a federal district court judge or magistrate to officers and employees of any federal agency exclusively for their use in locating the fugitive. The same officials permitted to authorize applications for court orders under IRC 6103(i)(1) may authorize applications under IRC 6103(i)(5). Process these in the same manner as IRC 6103(i)(1) orders.
- (12) The Victims of Terrorism Tax Relief Act, enacted 1/2002, set out detailed rules for disclosures in terrorism and national security investigations. These provisions were made permanent by the passage of the Emergency Economic Stabilization Act of 2008. Disclosures must be approved by individuals having Delegation Order 11-2 authority (See IRM 1.2.2.12.2 ). The provisions are:
  - a. IRC 6103(i)(3)(C)(i) allows IRS on its own to disclose in writing return information (other than taxpayer return information) that may be related to a terrorist incident, threat, or activity to the extent necessary to apprise

the head of the appropriate investigating or responding federal law enforcement agency. This authority is exercised by officials having Delegation Order 11-2 authority (see IRM 1.2.2.12.2). Taxpayer identity information for this purpose is **not** considered taxpayer return information. The head of the agency may re-disclose the information received to officers and employees of that agency to the extent necessary to investigate or respond to the terrorist incident, threat, or activity.

- b. IRC 6103(i)(3)(C)(ii) permits the disclosure of returns and return information to the Attorney General to the extent necessary to prepare an application under IRC 6103(i)(7)(D).
- c. IRC 6103(i)(7)(A) allows IRS to disclose return information (other than taxpayer return information) to officers and employees of any federal law enforcement agency who are personally and directly engaged in responding to or investigating any terrorist incident, threat, or activity. A written request signed by the head of the federal law enforcement agency or his/her delegate is required. The written request must set forth the specific reason(s) why disclosure may be relevant to a terrorist incident, threat, or activity. Taxpayer identity information for this purpose is **not** considered taxpayer return information. Limited re-disclosure is allowed to State or local law enforcement employees personally and directly engaged as a part of a team with the federal law enforcement agency in the response or investigation.
- d. IRC 6103(i)(7)(B) allows IRS to disclose return information (other than taxpayer return information) upon the written request of an officer or employee of DOJ or Treasury who is appointed by the President with the advice and consent of the Senate or who is the Director of the U.S. Secret Service, if that individual is responsible for the collection and analysis of intelligence and counterintelligence concerning any terrorist incident, threat, or activity. Taxpayer identity information for this purpose is **not** considered taxpayer return information. The written request must set forth the specific reason(s) why disclosure may be relevant to a terrorist incident, threat, or activity. Disclosures under IRC 6103(i)(7)(B) may be made to those officers and employees of DOJ, Treasury, and other federal intelligence agencies who are personally and directly engaged in the collection or analysis of intelligence and counterintelligence information or investigation concerning any terrorist incident, threat, or activity. These disclosures may be made solely for the use of the officers and employees in the investigation, collection, or analysis.
- e. IRC 6103(i)(7)(C) creates an Ex Parte court order process similar to IRC 6103(i)(1). It provides that, upon grant of an Ex Parte order by a federal district court judge or magistrate, returns and return information with respect to a specified period(s), shall be disclosed to officers and employees of any federal law enforcement or federal intelligence agency who are personally and directly engaged in any investigation, response to, or analysis of intelligence and counterintelligence information concerning any terrorist incident, threat, or activity. These disclosures may be made solely for officers and employees to use in the investigation, response, or analysis, and, subject to IRC 6103(i)(4) provisions, in any judicial or administrative proceeding pertaining to the terrorist incident, threat, or activity.

**Note:** The application for the order must be approved by the Attorney General, Deputy Attorney General, Associate Attorney General, any Assistant Attorney General, or any U.S. Attorney. In granting the order, the judge/magistrate must determine that there is a reason-



able cause to believe, based on information believed to be reliable, that the return or return information may be relevant to a matter relating to the terrorist incident, threat, or activity. In addition, the judge/magistrate must determine that the return or return information is sought exclusively for use in a federal investigation, analysis, or proceeding concerning any terrorist incident, threat, or activity.

- f. IRC 6103(i)(7)(D) allows the Commissioner of Internal Revenue to authorize an application for an Ex Parte order described in IRC 6103(i)(7)(C). In granting the order, the U.S. District Court judge/magistrate must determine that, on the basis of the facts submitted by the applicant, there is a reasonable cause to believe the return or return information may be relevant to a matter relating to the terrorist incident, threat, or activity. The facts submitted by the applicant must be based upon information believed to be reliable. Information may be disclosed pursuant to IRC 6103(i)(7)(D) only to the extent necessary to apprise the head of the appropriate federal law enforcement agency responsible for investigating or responding to a terrorist incident, threat, or activity. Information so disclosed shall be used solely in a federal investigation, analysis, or proceeding concerning a terrorist incident, threat, or activity. The head of the agency may re-disclose the information to officers and employees of that agency to the extent necessary to investigate or respond to the terrorist incident, threat, or activity. IRS disclosures to DOJ to make an application for the Ex Parte order described in IRC 6103(i)(7)(D) are authorized under IRC 6103(i)(3)(C)(ii). HQ Disclosure Policy and Program Operations coordinates the IRC 6103(i)(7)(D) process.
- g. Other than taxpayer return information obtained under IRC 6103(i)(3)(C) or IRC 6103(i)(7) can be disclosed in judicial or administrative proceedings consistent with IRC 6103(i)(4)(B). Returns and taxpayer return information obtained under IRC 6103(i)(7)(C) can be used in judicial or administrative proceedings consistent with the requirements of IRC 6103(i)(4)(A). The requirements of IRC 6103(i)(4) are discussed in IRM 11.3.28.8.
- h. Disclosures under the authority of IRC 6103(i)(3)(C) and IRC 6103(i)(7) are subject to a determination by the IRS that they will not identify a confidential informant or seriously impair a civil or criminal tax investigation.
- i. The term terrorist incident, threat, or activity means an incident, threat, or activity involving an act of international or domestic terrorism as defined in 18 USC 2331(1) and (5).

**Note:** See IRM 11.3.28.1.5(9) and (10) for definitions of international and domestic terrorism.

- j. Generally, processing of IRC 6103(i)(3)(C), IRC 6103(i)(7)(A), IRC 6103(i)(7)(B), and IRC 6103(i)(7)(C) requests are handled by HQ Disclosure Policy and Program Operations and will parallel processing of IRC 6103(i)(1), IRC 6103(i)(2), and IRC 6103(i)(5) requests.

11.3.28.1.2  
(07-23-2018)

**Authority**

- (1) The following items govern the authority pertaining to disclosures to federal agencies for administration of non-tax crimes:

- 26 USC 6103 (IRC 6103)
- 26 CFR 301.6103
- Delegation Order 11-2, found in IRM 1.2.2.12.2

- Delegation Order 4-12, found in IRM 1.2.2.5.11

11.3.28.1.3  
(07-23-2018)  
**Responsibilities**

- (1) This IRM is used by all IRS employees and contractors to help comply with the disclosure provisions of IRC 6103(i) pertaining to disclosures to federal agencies for administration of non-tax and terrorist related crimes.

11.3.28.1.4  
(08-11-2023)  
**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.

11.3.28.1.5  
(07-23-2018)  
**Terms and Definitions**

- (1) A **return** is any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of the Internal Revenue Code, which is filed with the IRS by, on behalf of, or with respect to any person. It includes any amendment or supplement to the return, including supporting schedules, attachments, or lists that are supplemental to, or part of, such a return. (See IRC 6103(b)(1)).
- (2) **Taxpayer identity** is:
- The name of a person with respect to whom a return is filed
  - His/her mailing address
  - His/her taxpayer identification number or
  - Any combination of a, b and/or c
- (3) **Return information** is:
- A taxpayer's identity.
  - The nature, source, or amount of his/her income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over assessments, or tax payments.
  - Whether the taxpayer's return was, is being or will be examined or subject to other investigation or processing.
  - Any other data, received by, recorded by, prepared by, furnished to, or collected by the IRS with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount of liability) of any person under the Internal Revenue Code for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense.
  - Any part of any written determination or background file document relating to a written determination, which is not open to public inspection under IRC 6110.
  - Any advance pricing agreement entered into by a taxpayer and the IRS and any background information related to such agreement or any application for an advance pricing agreement.
  - IRC 7121 agreements (closing agreements) and background documents as defined in IRC 6103(b)(2).

See IRC 6103(b)(2).

- (4) Return information does not include data in a form, which does not identify, directly or indirectly, a particular taxpayer, such as an amalgamation of returns or return information of a number of taxpayers. See IRC 6103(b)(2). Merely removing taxpayer identity information from a document, which is return information, however, does not change its status as return information. See *Church of Scientology of California v. IRS*, 484 U.S. 9 (1987).

**Example:** A third party witness statement, identifying the taxpayer who is the target of the investigation, is return information. Deleting the taxpayer identifiers does not change its status as return information.

(5) **Taxpayer return information** is return information filed with or furnished to the IRS by or on behalf of the taxpayer to whom such information relates.

- a. All books, records and the contents of oral statements received by the IRS from, or on behalf of, the taxpayer to whom such data relates are taxpayer return information. This includes information obtained as a result of a summons served on the taxpayer or his/her representative. In addition, any data, in written form or otherwise, obtained by any officer or employee of the IRS from these books, records, and oral statements are also taxpayer return information. Any data that has been secured from third parties or other sources as a result of leads that were identified from the taxpayer return information generally will not be classified as taxpayer return information.
- b. A third party is deemed to be acting on behalf of a taxpayer, and the data presented by that third party is considered taxpayer return information, if the third party, at the time of the IRS's request for the information, was acting as an authorized representative or agent for the taxpayer. Examples include a bookkeeper, return preparer, and an employee, or relative of the taxpayer acting for the taxpayer in connection with the preparation of a return or as custodian of the taxpayer's records. The information presented by the third party must be the taxpayer's own data, which the taxpayer provided to the third party as a representative or agent for the taxpayer, or which such third party derived from information so furnished. See IRM 11.3.28.1.5.1 for examples of taxpayer return information.

(6) **Return information (other than taxpayer return information)** is return information not provided to the IRS by or on behalf of the taxpayer. This term is sometimes shortened to "other than taxpayer return information." For examples, see IRM 11.3.28.1.5.2.

**Note:** Generally, information obtained from the taxpayer is considered taxpayer return information. (See IRM 11.3.28.1.5.2 examples (9) and (10) for exceptions.) If the source of the information cannot be determined, the information must be regarded as taxpayer return information.

(7) A **federal agency** is a generally independent authority of the federal government, whether or not within another agency, that has legal authority to take binding action. The title of the body (such as "office," "bureau," "board," "agency," or "department") is not relevant when determining its status.

(8) A **head of a federal agency** is the executive with the final review and control authority over the agency.

**Note:** With the implementation of the Disclosure electronic inventory management system, requests made under this statute will be processed in the office where assigned. But, the local Disclosure Offices will retain the responsibility for maintaining a relationship with their United States Attorney's office.

- (9) **International terrorism** is defined by 18 USC 2331(1) as activities that:
- a. involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the US or of any State or that would be if committed within the US;
  - b. appear to be intended to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of a government by mass destruction, assassination, or kidnapping and
  - c. occur primarily outside the territorial jurisdiction of the US, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce or the locality in which their perpetrators operate or seek asylum.
- (10) **Domestic terrorism** is defined by 18 USC 2331(5) as activities that:
- a. involve acts dangerous to human life that are violations of the criminal laws of the US or any state;
  - b. appear to be intended to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of a government by mass destruction, assassination, or kidnapping and
  - c. occur primarily within the territorial jurisdiction of the US.

11.3.28.1.5.1  
(07-23-2018)  
**Examples of Taxpayer  
Return Information**

- (1) A special agent obtains information from a former wife concerning actions taken by her former spouse that affected their previously filed joint income tax return. The information she provides is to be used against her former spouse in criminal proceedings resulting from the special agent's investigation. Although the former wife will not be charged as a principal in the criminal case, she would be jointly and severally liable for any resulting civil tax deficiency for the return at issue. In this example, the information obtained from the former wife is taxpayer return information because it relates to their joint return.
- (2) A special agent is investigating allegations of evasion of corporate income taxes by the president of Corporation X. The special agent interviews Y (the treasurer, who signed the corporate income tax return) and obtains information supporting the allegations. This is taxpayer return information because Y was representing the corporation when interviewed by the special agent.
- (3) A special agent questions a tax practitioner who prepared the return for a taxpayer who is under investigation. The information the practitioner gives to the special agent was obtained from the taxpayer (the taxpayer's records and statements) so the return could be prepared. The information is taxpayer return information because the taxpayer was the source of the information and the practitioner was representing the taxpayer.
- (4) Revenue agent reports, special agent reports, workpapers, and other administrative documents such as Individual Master File (IMF) transcripts may contain a combination of other than taxpayer return information and taxpayer return information. The source of each piece of information in IRS files must be determined if a disclosure under IRC 6103(i)(2), IRC 6103(i)(3)(A), IRC 6103(i)(3)(C), IRC 6103(i)(7)(A), or IRC 6103(i)(7)(B) is to be made. If the source cannot be determined, the information must be treated as taxpayer return information and cannot be released under the sections just mentioned, except to the extent it constitutes identity information.

- (5) An Information Returns Master File (IRMF) transcript, is taxpayer return information. The information comes from returns filed by the payer or information return filer and is both the payer's and payee's taxpayer return information.
- (6) When a summons is served on the taxpayer and data is received from the taxpayer or someone acting on his/her behalf, the information is taxpayer return information. This is also true for information received from the taxpayer as a result of a summons enforcement hearing.
- (7) In accordance with the Agreement on Coordination of Tax Administration (Basic Agreement), IRS has agreed to treat information provided by a state tax agency and used in a federal tax compliance matter as taxpayer return information.

## 11.3.28.1.5.2 (07-23-2018)

### **Examples of Other than Taxpayer Return Information**

- (1) The fact that IRS records indicate a specific taxpayer filed or failed to file a return is other than taxpayer return information.
- (2) Within the provisions of IRC 6103(i), taxpayer identity information (name, mailing address, Taxpayer Identification Number (TIN) or a combination thereof) may be considered other than taxpayer return information.
- (3) Local police seize the books and records of a taxpayer during a raid. The police subsequently turn over the books and records to the IRS. The source of this information is the police, who were not acting on behalf of the taxpayer. In this example, the books and records are other than taxpayer return information.
- (4) A special agent interviews H. who provides information to the IRS concerning G, the subject of the investigation. Thereafter, the special agent confirms the information in a discussion with G. The information originally obtained from H does not become taxpayer return information as a result of being confirmed by the taxpayer. The source of the information is the determining factor. In this example, the original information is other than taxpayer return information, and the confirming information is taxpayer return information.
- (5) If the special agent who was investigating G initially obtained information from G and subsequently received confirming information in the course of a discussion with H, the confirming information received from witness H would be other than taxpayer return information. This is so even if the information is the same as the information previously obtained from G, which is taxpayer return information.
- (6) A transcript is made of a conversation between an informant who consented to being monitored and the taxpayer who is the subject of the investigation. The transcript of both the informant's and the taxpayer's remarks is other than taxpayer return information. The source of the information in this instance is the informant.
- (7) A revenue agent examines a bank's records of the taxpayer's bank account. The bank is considered the owner of the records and is not acting on behalf of the taxpayer in producing them for inspection. Therefore, information obtained from the bank's records is other than taxpayer return information.
- (8) A special agent interviews J, who provides information to the IRS concerning I, the subject of the investigation. J provides information about I which also impli-

cates J in possible tax and non-tax violations. Based upon this information, the IRS subsequently opens an investigation of J. The information J initially provided is other than taxpayer return information since J was not the target of the investigation with respect to which the information was furnished. The fact that the same information is used in a later investigation of J does not change the character of the information at the time it was received.

- (9) A special agent interviews L, who provides information to the IRS concerning K, the subject of the investigation. At the time, an unrelated investigation of L is also in open status. The information provided by L about K's tax matters also implicated L in possible tax violations. Since the information was not obtained with respect to the unrelated investigation of L, it is other than taxpayer return information, not taxpayer return information. (If the existing investigation of L is a related case, however, the information is regarded as having been gathered with respect to both investigations and characterized as taxpayer return information of L.)
- (10) Substitute for Return (SFR) information not taken from information returns is considered to be other than taxpayer return information.
- (11) Information seized at the taxpayer's residence pursuant to a search warrant is other than taxpayer return information because the taxpayer did not voluntarily provide it. Information observed or seized that does not actually relate to a tax liability or potential tax liability is not considered tax information even if the search itself was tax motivated.
- (12) When a summons is served on a third party (e.g., bank) and data is received from the third party, the information is other than taxpayer return information. This is also true for information received from the third party as a result of a summons enforcement hearing.

11.3.28.1.6  
(07-23-2018)  
**Acronyms**

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

| <b>Acronym</b> | <b>Definition</b>                       |
|----------------|---|
| ACCI           | Associate Chief Counsel (International) |
| AUSA           | Assistant United States Attorney        |
| BSA            | Bank Secrecy Act                        |
| CAU            | Caution Upon Contact                    |
| CFR            | Code of Federal Regulations             |
| CI             | Criminal Investigation, (IRS)           |
| COLOR          | Certification of Lack of Record         |
| GSS            | GLDS Support Services                   |
| CTR            | Currency Transaction Report             |
| DAS            | Discriminant Analysis System            |
| DCI            | Deputy Commissioner International       |



| Acronym | Definition   |
|---------|--|
| DIF     | Discriminant Function                                    |
| DOJ     | Department of Justice                                    |
| DOJ OIA | Department of Justice Office of International Affairs    |
| EOI     | Exchange of Information Office, LB&I                     |
| FBAR    | Foreign Bank Account Report                              |
| FinCEN  | Financial Crimes Enforcement Network                     |
| FISA    | Foreign Intelligence Surveillance Act                    |
| FOIA    | Freedom of Information Act                               |
| FRC     | Federal Records Center                                   |
| GLDS    | Governmental Liaison, Disclosure and Safeguards          |
| IDRS    | Integrated Data Retrieval System                         |
| IMF     | Individual Master File                                   |
| IRC     | Internal Revenue Code                                    |
| IRMF    | Information Returns Master File                          |
| LB&I    | Large Business & International                           |
| LEO     | Law Enforcement Officer                                  |
| MF      | Master File  |
| MLAT    | Mutual Legal Assistance Treaty                           |
| PDT     | Potentially Dangerous Taxpayer                           |
| PGLD    | Privacy, Governmental Liaison and Disclosure             |
| RMSB    | Registration of Money Services Business                  |
| SAC     | Special Agent in Charge                                  |
| SAR     | Suspicious Activity Report                               |
| SERFE   | Selection of Exempt Organization Returns for Examination |
| SFR     | Substitute for Return                                    |
| SSA     | Social Security Administration                           |
| SSN     | Social Security Number                                   |

| Acronym | Definition  |
|---------|---|
| TIGTA   | Treasury Inspector General for Tax Administration |
| TIN     | Taxpayer Identification Number                    |
| TRPRT   | Tax Return Print                                  |
| UCMJ    | Uniform Code of Military Justice                  |
| UIDIF   | Underreported Income DIF                          |
| USC     | United States Code                                |
| W&I     | Wage and Investment                               |

11.3.28.1.7  
(07-23-2018)

#### Related Resources

- (1) The following table lists other sources of guidance on disclosures to federal agencies for administration of non-tax or terrorist related crimes.

| Resource    | Title  | Guidance  |
|-------------|--|---|
| IRM 11.3.25 | Disclosure to Foreign Countries Pursuant to Tax Treaties       | Procedures on release of returns and return information to foreign countries pursuant to IRC 6103(k)(4)                                       |
| IRM 11.3.35 | Requests and Demands for Testimony and Production of Documents | Procedures on release of IRS records or IRS employee testimony pursuant to a subpoena or other request from a court of competent jurisdiction |
| IRM 11.3.27 | Disclosure of Returns and Return Information to Grand Juries   | Procedures on release of returns and returns information to Grand Juries during the Grand Jury process  |
| IRM 11.3.37 | Recordkeeping and Accounting for Disclosures                   | Procedures for making an accounting of release of returns and return information pursuant to an Ex Parte court order                          |

- (2) Additional information may also be found at these related resources:



- *United States Attorney's Ex Parte Manual*
- *Suicide Threat Articles on Privacy and Disclosure Virtual Library*
- *Reporting non-tax federal crimes article on Privacy and Disclosure Virtual Library*

11.3.28.2  
(07-23-2018)  
**Disclosure of Returns  
and Return Information  
Pursuant to IRC  
6103(i)(1), IRC 6103(i)(2)  
and IRC 6103(i)(5)**

- (1) Disclosure Managers have been delegated the authority to approve IRC 6103(i)(1), IRC 6103(i)(2) and IRC 6103(i)(5) disclosures. After initial approval, the Disclosure staff may transmit the information.
- (2) The Disclosure caseworker assigned to process the order or written request will contact the requesting official, usually the Assistant United States Attorney (AUSA) named on the order and acknowledge receipt of the IRC 6103(i)(1) Ex Parte court order. Contacts are also to be made upon receipt of a written IRC 6103(i)(2), IRC 6103(i)(7)(A), or IRC 6103(i)(7)(B) request. If no AUSA is specifically named in the order or written request, a verbal statement from the United States Attorney indicating the name of the AUSA assigned to the case is acceptable. The contact must be recorded in the case history of the electronic inventory management system. Actions to be taken include:
  - a. Acknowledge receipt of and clarify what is needed in response to the Order or written request by contacting the AUSA named, within **seven working days**.
  - b. Inquire whether there is an imminent court date or discovery date necessitating expedite processing.
  - c. Discuss alternative products with the AUSA (for example, offering a transcript in lieu of a return), and
  - d. Document these actions in the case history notes of the electronic inventory management system.

**Note:** Contacts with the requesting official will not include any discussion of fact of filing or other return information until such disclosures are approved by the Disclosure Manager.

- (3) After receipt of a court order or written request, and until requests have been satisfied, the caseworker **must** maintain contact with the requesting official regarding the status of the order, the estimated date all actions will be completed and any other pertinent information.

**Note:** Disclosure Managers will ensure that the actions required by IRM 11.3.28.2(2) and (3) have been taken, when reviewing cases.

- (4) Internal IRM procedures do not require the IRS to review Ex Parte applications as part of responding to the orders themselves. When applications are provided, or references in the order to the application indicate the proper official did not approve the application, Disclosure personnel have a responsibility to ensure that the applications meet statutory requirements. Applications should not be solicited simply to check for adherence with the statute.
- (5) During the initial contact with the requesting agency, the caseworker will obtain the date the requester requires the information if the Ex Parte court order or written request does not already include this information. This date will be used to determine if expedite processing is needed or alternative methods will be used to locate the requested documents, such as using special messengers to obtain documents from the Federal Records Center (FRC).

**Note:** Disclosure personnel will request responsive documents from the FRC using Special Search procedures. Caseworkers will prepare an accurate Form 2275-A, Records Request, Charge and Recharge (for Disclosure Only), when ordering returns or administrative files. Form 2275-A will include the mailing address of GLDS Support Services (GSS) (Mail Stop number is mandatory), as well as the phone numbers of the caseworker and Disclosure Manager. Fax Form 2275-A to the proper Campus Special Search Unit or Federal Records Center (FRC). If no reply is received within three days, the caseworker will notify their Disclosure Manager who should follow up with the appropriate official at the applicable site. If the Disclosure Manager is unable to resolve the problem, he/she should contact the HQ Disclosure Business Unit Liaison for Wage & Investment (W&I) for assistance. Special Search and FRC site information is available on the Disclosure home page of SharePoint.

- (6) During the initial contact, the caseworker should advise the requester that the IRS no longer provides certified copies of returns with our initial response, but certified copies can be requested at a later date if needed for presentation in court.

**Note:** With IRC 6103(i)(1) orders, the requester often needs only the tax return, so expending resources by searching for and providing other documents such as audit workpapers, etc. may be unnecessary. If computer transcripts are acceptable or desirable, that option should be explored as well.

- (7) Where agreements with requesting officials are in effect regarding contacts, timeframe expectations, etc., document the agreements in the history notes and maintain the agreements in a permanent administrative file.
- (8) The Disclosure caseworker is responsible for ensuring that all request case files contain complete written audit trails including, but not limited to, information on communications with requesters and the extent and results of search efforts.
- (9) The Disclosure caseworker will review all releases of documents pursuant to IRC 6103(i)(1), IRC 6103(i)(2) or IRC 6103(i)(5) to ensure that only covered documents and information are released to the United States Attorney's Office.

**Note:** The Disclosure office is required to provide all applicable information to the United States Attorney's Office and it is under their authority to provide it to any other Federal employees actively involved in the case. Disclosure is not required to provide copies of information to anyone else named in the Order or to any Court Witness called to testify regarding the records.

- (10) Ex Parte court orders and written requests for disclosure that contain imperfections will be processed as if the request met the conditions of the statute. In these cases, the caseworker will immediately contact the requester and obtain an amended order or request, if required, while taking the necessary steps to obtain clearances and screen the requested files or returns. Requests that cannot be honored because they do not fall within the scope of the IRC 6103(i) process will also be discussed with the requester and the reason(s) for non-processing will be clearly communicated. The case history of the electronic inventory management system must also contain notes concerning problems with requests and any actions taken to correct these problems.

- a. Any order or request made under IRC 6103(i) citing only a possible Title 26 (tax) violation is considered invalid. The caseworker will contact the requesting official and advise that the Ex Parte process cannot be used for any possible tax violations, so the order is invalid. Refer the requester to IRC 6103(h) as the correct access statute if there are true tax violations being pursued.
- b. If a possible tax violation (Title 26) is cited in conjunction with other non-tax statutes, the caseworker will contact the requesting official and advise that we cannot provide any information in response to the possible tax violation. If the requesting official advises that the reference to Title 26 was in error, request that a written withdrawal of the possible tax violation on DOJ letterhead be forwarded to the caseworker. Use of fax is permitted. Document this contact in the electronic inventory management system's case history. Continue processing the request, since the information is available through the Ex Parte process for the other non-tax violations. Make no disclosure of tax information prior to the receipt of the written withdrawal. Ensure the response letter reflects the withdrawal of the possible tax violation.
- c. Title 18 USC 1956(a)(1)(A)(ii) is one of a number of Title 18 and Title 31 code sections that have tax implications. Carefully review the order and research any code section listed that is not further described in the order to ensure that there are no tax violations included.

**Note:** While information disclosed under IRC 6103(i) can be used in the sentencing phase of a case (see IRM 11.3.28.8), no disclosure can be made relative to requests where disclosed information will be used for sentencing purposes only. A requirement for using disclosed information in sentencing is that the information was obtained during the investigation stage (which can still be ongoing while court action is in progress). If a "sentencing only" request is received, contact the AUSA and explain that no disclosure of returns or return information can be made at that stage.

- (11) Do not delay processing requests for information pending the receipt of a perfected order or written request. Make no disclosures, however, until you receive the required written request that meets all statutory requirements.
- (12) Exhibit 11.3.28-1 contains guides for processing IRC 6103(i)(1), IRC 6103(i)(5) and IRC 6103(i)(7)(C) requests and Exhibit 11.3.28-2 contains a guide for processing IRC 6103(i)(2) requests.
- (13) An amended order or written request will not be required if the taxpayer's identification number (TIN) is not provided since IRC 6103(i)(1) and IRC 6103(i)(2) do not require the TIN. The Disclosure caseworker should attempt to secure the TIN from the U.S. Attorney or other requesting official, and should disclose the returns and/or return information **only** if certain that they pertain to the taxpayer named in the order or request. In some cases, the order may indicate that the name of the taxpayer is unknown and substitute a dummy name such as "John Doe." As long as sufficient other information (TIN, date of birth, address, etc.) is provided, the order can be honored. In such a case, it is still necessary for Disclosure personnel to be sure that the tax information being released is covered by the order.
- (14) Ex Parte court orders issued pursuant to IRC 6103(i)(1) should be as detailed as possible. If an Ex Parte order requests information concerning classes or

groups of individuals (e.g., all investors in X Corporation located in the State of X, without identifying each individual by name), the disclosure caseworker should do sufficient research to try and identify all relevant individuals. Contact with the AUSA should be made if additional information is needed. The Disclosure Manager, as the delegated authority, will determine if the circumstances outlined in the order warrant release of the information without requiring specific identification of each individual or other entity covered by the order. The Disclosure Manager may consider the following in determining how to respond to the Order:

- a. Verify that the Order covers the requested information.
  - b. Identify the purpose for the information and whether the AUSA can narrow the scope of records.
  - c. Determine the resources needed by the disclosure office to meet the request within the time frames provided. Discuss potential for interim responses and alternate time frames with the AUSA.
- (15) IRC 6103(i)(1) permits the disclosure of tax information to the DOJ in the investigation and prosecution of a non-tax criminal violation. If the non-tax violation listed in the order is identity theft (i.e., 18 USC 1028(a)), tax returns and/or return information may be released in full without redaction, including returns or return information that indicate identity theft.
- (16) If the non-tax violation listed in the order is something other than identity theft the Disclosure caseworker, after receiving an approved Authorization memo, must contact the AUSA and alert them to the ID theft issue. If the AUSA determines they want an un-redacted copy of the information, it will be provided in an un-redacted form. The Disclosure employee must inform the AUSA that it must seek approval from the IRS prior to disclosing the un-redacted information under IRC 6103(i)(4)(c).

**Note:** Delegation Order 11-2, as provided in IRM 1.2.2.12.2, authorizes the Area Manager to approve disclosure of information under IRC 6103(i)(4). The disclosing official must be contacted and must approve the disclosure if the AUSA requests the information be disclosed.

**Note:** Use the appropriate pattern letter for the circumstances present in your case.

- (17) If after contacting the AUSA it is determined that the AUSA wants the information in a redacted form then the employee must redact the information to protect the identity of the victim and/or alleged ID thief (whoever is the party not named in the Order). The Disclosure employee must use pattern language to inform the AUSA that the redactions were applied as there is an ID theft marker on the account and to protect the un-named party.

**Note:** The Disclosure Manager holds the delegated authority to make the impairment determination on whether the identity theft information will be redacted. If the caseworker discovers identity theft indicators or any indication that a fraudulent tax return exists they should discuss the matter with their Disclosure Manager.

**Note:** No certification of the tax return can be done where the Service redacted the return provided in response to the Ex Parte court order.

**Reminder:** Case notes must reflect all actions taken, determinations made to release or withhold and any other relevant information documenting what was provided to the AUSA.

- (18) If an IRC 6103(i)(1) order (after coordination with the requesting agency under (5) above) is determined to include tax documents (e.g., wage histories, letters to employers regarding incorrect SSNs submitted on Forms W-2), in the possession of the Social Security Administration (SSA), the case should be processed by the field Tax Law Specialist, who will obtain the necessary responsive documents from SSA. SSA has no statutory authority to provide tax documents to the requesting agency pursuant to an IRC 6103(i) request, only IRS can release tax documents in such cases. SSA will refer requesters who contact them for these records to the IRS. Additional information regarding these types of requests, and a processing Job Aid can be found on the Disclosure Share Point website.
- (19) An Ex Parte court order case may be closed only when all requested documents have been provided or all required special search efforts are exhausted. If a caseworker is unable to locate the requested records, they must notify the requesting official that the records cannot be retrieved and offer to provide alternative products. This contact must be noted in the electronic inventory management system's case history and confirmed in writing in the response letter to the requesting official.

**Note:** Time should be charged to a closed case if a previously requested return is subsequently received, a return was filed after the court order was initiated, but before the order expires, or the certification of documents previously provided is needed.

**Note:** All certification of records by Disclosure employees is primarily done through the use of a certification stamp and embossed seal affixed to the first page of the document itself. Care must be taken to avoid covering important data, such as entity information, received date stamp, income reported, taxpayer signature, etc. Occasionally, there may be exceptions to Disclosure's method of certifying documents. Any exception to the certification stamp process should be handled on a case by case basis. See IRM 11.3.6, Seals and Certifications, for additional information on certification procedures.

- (20) Recipients who have inspected or gained access to returns and return information pursuant to IRC 6103(i)(1), IRC 6103(i)(2), and IRC 6103(i)(5) are subject to the penalty provisions of IRC 7213, IRC 7213A, IRC 7431, and Title 18 USC 1905.
- (21) Disclosures made pursuant to IRC 6103 (i)(1), IRC 6103(i)(2), IRC 6103(i)(3), IRC 6103(i)(5), or IRC 6103(i)(7) are subject to the statutory safeguarding requirements of IRC 6103(p)(4) and IRS oversight. Federal agencies receiving return information from DOJ pursuant to court orders are responsible for maintaining the confidentiality of the information and comply with Pub 1075, Tax Information Security Guidelines for Federal, State and Local Agencies. See IRM 11.3.36, Safeguard Review Program, for additional information.



11.3.28.2.1  
(07-23-2018)

**Disclosures Based on a Mutual Legal Assistance Treaty (MLAT) Request in Criminal Matters**

- (1) A summary of the procedures for processing the requests for assistance in criminal matters (e.g., providing tax returns and return information) under the Mutual Legal Assistance Treaties (MLATS) follows:
  - a. The Department of Justice Office of International Affairs, Criminal Division (DOJ OIA) is authorized to act as the “Central Authority” under all MLATS. The DOJ OIA forwards all requests under MLATS for assistance pertaining to tax information to Director, International section, Criminal Investigation (CI).
  - b. CI staff reviews the request and determines if returns/return information are requested or if the request is solely for financial investigative assistance. Only requests for returns/return information will be sent to the Large Business & International (LB&I), Deputy Commissioner International (DCI), Exchange of Information Office (EOI). CI will process financial investigative assistance requests.
  - c. CI forwards the request package to EOI. EOI then forwards a copy of the request package to Associate Chief Counsel (International) (ACCI) for a legal opinion whether the respective MLAT and the Internal Revenue Code authorize compliance with the request for tax information.

**Example:** ACCI determines if the MLAT is a convention relating to the exchange of tax information within the meaning of IRC 6103(k)(4).

- (2) In a memo, ACCI conveys to EOI and CI the conclusions of its evaluation of the MLAT. The conclusion is limited to:
  - a. Whether the respective MLAT and the Internal Revenue Code authorize compliance with the request for tax information and
  - b. The conditions to be met before disclosing the information (such as an Ex Parte order from the District Court under IRC 6103(i)(1) or a letter under IRC 6103(i)(2) from the appropriate Department of Justice official).
- (3) Based on the ACCI approval letter and the receipt of an Ex Parte Court Order under 6103(i)(1) or a letter under 6103(i)(2), EOI will fax the request to GLDS Support Services (GSS).

**Note:** If EOI faxes the request to a local Disclosure office that office should follow the current procedures to make sure the request is forwarded to GSS for input and assignment.

- (4) Upon the receipt and assignment of an MLAT Ex Parte court order, the Disclosure caseworker will review the order for validity. With all valid Ex Parte court orders, the authority in Delegation Order 11-2 for disclosing confidential tax information pursuant to IRC 6103(i)(1) is delegated to the Disclosure Manager.

**Note:** If Disclosure personnel receive any correspondence marked “Confidential”, “Secret”, or “Top Secret” the employee must immediately contact their manager who will then contact the Disclosure HQ Policy and Program Operations Manager for additional guidance. The Disclosure employee(s) must not open any envelopes and/or transfer any records to their computer which are marked “Confidential”, “Secret”, or “Top Secret”.

- (5) The LB&I employee will research IDRS and request and secure the tax returns and transcripts. The LB&I employee will also certify/notarize all documents and

prepare the attestation, Form 3210, Form 3050 and/or Form 5466-B or Narrative Record of Accounting. Finally LB&I will provide Disclosure with a copy of the attestation, the completed Form 3210, and the research conducted. The Disclosure caseworker will compare the information LB&I provided against the order and IDRS research performed to ensure conformity with the order. Information to be reviewed includes, but is not limited to taxpayer identity, tax periods/years, the existence of any open functional controls, and information being released was received by the IRS before the expiration date of order. E-mail LB&I employee with review findings (okay to be released or errors/issues found). Once the authorization memo is complete, the caseworker will send the signed authorization memo to the LB&I, Exchange of Information, Competent Authority by secure message.

- (6) The Disclosure caseworker will import the attestation, IDRS research and Form 3210 into the case and notate whether or not LB&I can send the information to the treaty partner. See the MLAT Ex Parte Court Order Procedures document on the Disclosure Share Point site for additional information.
- (7) Although these disclosures are made to DOJ (to be passed on to the treaty partner), they are considered to be IRC 6103(k)(4) disclosures and must be accounted for under that section.

11.3.28.2.2  
(08-05-2014)  
**Disclosures to Main  
Department of Justice  
(DOJ)**

- (1) Requests from Main DOJ will be forwarded to GSS for import into the electronic inventory management system.
- (2) Any Disclosure Office can process a request from Main DOJ.

11.3.28.2.2.1  
(08-25-2009)  
**Military Judge Requests  
and Ex Parte Court  
Orders**

- (1) IRC 6103(i)(1), IRC 6103(i)(5), IRC 6103(i)(7)(C) and IRC 6103(i)(7)(D) specify that an Ex Parte court order must be granted by a federal district court judge or magistrate. The Uniform Code of Military Justice (UCMJ) is a federal statute and investigations/actions involving criminal violations of the UCMJ meet the requirements of the IRC 6103(i). If a military branch needs information under IRC 6103(i)(1), IRC 6103(i)(5) or IRC 6103(i)(7)(C), it should apply for the order through one of the Department of Justice employees listed in IRC 6103(i)(1)(B) or IRC 6103(i)(7)(C)(ii), as appropriate. One of the listed individuals must authorize the application and a federal district court judge or magistrate must grant the order. A military court judge cannot grant an IRC 6103(i)(1), IRC 6103(i)(5), IRC 6103(i)(7)(C) or IRC 6103(i)(7)(D) order.

11.3.28.2.2.2  
(07-23-2018)  
**FISA Courts and Ex  
Parte Court Orders**

- (1) The Foreign Intelligence Surveillance Act (FISA) established courts which can authorize the gathering of data for intelligence purposes. These courts are known as FISA courts.
- (2) FISA Courts have been authorized by 50 USC 1805 to issue Ex Parte court orders. The United States Attorney General is authorized to issue an Application for a FISA court order. Since the information contained in the Application contains sensitive information related to terrorist activities, the Application itself is classified as Top Secret and only those individuals with that clearance can have access to the Application and process FISA court orders. Top Secret is the highest level of classification of material on a national level. Such material would cause "exceptionally grave damage" to national security if publicly available.

**Note:** Disclosure has no access to any system authorized to store or maintain national security classified information. If Disclosure personnel receive any correspondence marked “Confidential”, “Secret” or “Top Secret,” the employee must immediately contact their manager who will then contact the Disclosure HQ Policy and Program Operations manager for additional guidance. The Disclosure employee(s) must not open any envelopes which are marked “Confidential”, “Secret” or “Top Secret” and must not transfer any electronic records which are marked “Confidential”, “Secret” or “Top Secret”, to their computer or any other database.

- (3) The Headquarters Senior Tax Law Specialist for Criminal Investigation (CI), processes all FISA court Ex Parte orders because that individual has obtained a Top Secret clearance. FISA court orders are processed as they are for all other non-FISA Ex Parte court orders. All issues regarding FISA matters should be referred to the Senior Tax Law Specialist for CI.

11.3.28.2.3  
(08-05-2014)  
**Special Requests for  
Returns, Taxpayer  
Return Information, and  
Return Information  
(Other than Taxpayer  
Return Information)**

- (1) When circumstances require an expeditious approval for disclosure of returns, taxpayer return information or return information (other than taxpayer return information), all affected IRS functions will cooperate fully with the Disclosure Office.
- (2) Based on the best use of available resources, you may consider other measures to expedite processing, including special trips to Federal Records Centers, campuses, or posts of duty, to retrieve returns or related files.
- (3) When the files need to be screened, division/functional personnel should assist the Disclosure Office. This should include, at the least, a written recommendation on the releasability of the documents in any open compliance case.

**Note:** All Ex Parte orders and other requests for returns under the authority of IRC 6103(i) qualify for priority special search treatment per IRM 3.5.61.16. Accordingly, Disclosure personnel will use Special Search rather than IDRS procedures when requesting returns or administrative files from campus file or FRC sites for such requests. Special Search requests require preparation of Form 2275-A, Records Request, Charge and Recharge (for Disclosure Only). The completed form will be faxed to the appropriate Special Search Unit or FRC.

11.3.28.3  
(08-01-2005)  
**Procedures for Access  
to Returns and Return  
Information**

- (1) Access to returns and return information under an IRC 6103(i)(1), IRC 6103(i)(5), or IRC 6103(i)(7)(C) court order is accomplished in five stages.
  - a. Approval of an application for an Ex Parte order to a federal district court judge or magistrate by the Attorney General, the Deputy Attorney General, any Assistant Attorney General, any U.S. Attorney, any special prosecutor appointed under 28 USC 593, or any attorney in charge of an organized crime strike force.

**Note:** Only the officials named above or someone officially “acting in their absence” may approve the application. If the application is invalid because it was not approved by the correct official, follow the procedures in IRM 11.3.28.2(11). An Ex Parte court order predicated on an invalid application is also considered invalid. The requirement of this Code section is that one of the named officials personally authorize (approve) the application for order. It is not necessary



that the official actually sign the application. See IRM 11.3.28.2(4) for additional information.

1. In the case of U.S. Attorneys, documentation should be secured to indicate that any application not signed by the U.S. Attorney was, in fact, personally reviewed and approved by the U.S. Attorney (or someone officially acting for the U. S. Attorney in his/her absence).
  2. U.S. Attorneys should maintain written documentation (for safeguard purposes) in their files indicating that the U.S. Attorney has “personally reviewed and authorized” the application, or send a letter to the Disclosure Manager documenting the U.S. Attorney’s practice of reviewing and approving each application before submission, or have the order itself indicate U.S. Attorney approval.
  3. This documentation must be maintained in a general administrative file.
- 
- b. Issuance of the Ex Parte court order.
  - c. Clearance by the IRS (i.e., determination that disclosure of the information would not identify a confidential informant or seriously impair a civil or criminal tax investigation).
  - d. Disclosure authorized by an official designated in Delegation Order 11-2, found in IRM 1.2.2.12.2 .
  - e. Disclosure of the requested documents and information in conformity with the Ex Parte court order.

11.3.28.3.1  
(07-23-2018)

### **Notifying the IRS of Intent to Apply for an Ex Parte Court Order**

- (1) The appropriate official will notify the IRS Disclosure Office in advance when a determination is made to apply for an Ex Parte court order. This advance notification allows the IRS to expedite efforts to obtain and review returns and return information prior to receipt of the court order. Disclosure Offices will start processing procedures upon receipt of advance notice that application for an Ex Parte court order is being made. If advance notice is received, take immediate action to research for and order responsive documents. The possibility that an application may be rejected by the U. S. District Court is not a reason for inaction.

**Note:** When there is a short deadline for receipt of the documents (usually 15 business days or less), the DOJ will often contact their local Disclosure Office to advise of the pending order. If an application for an Ex Parte court order sent to GSS is assigned to a Disclosure office and the short deadline applies, contact the local office to determine if the case should be reassigned to their office (e.g., the DOJ has already contacted the local office to discuss what is needed.) It is imperative to take action upon receipt of the advance notice rather than wait for the actual court order. Beginning the processing prior to receipt of the actual Ex Parte court order will help ensure all documents are received and forwarded to the US Attorney in a timely manner. Upon receipt of the Ex Parte court order application, to avoid duplicate cases, the Disclosure caseworker must contact the AUSA within 24 hours to ensure that he/she mails or faxes the court order to the caseworker and not GSS. The Disclosure caseworker should also discuss alternative products that are available.

- (2) Whenever advance notice is not received, the response letter should contain a statement reminding the requester that the IRS can process future requests more efficiently and effectively if the requester gives advance notice before submitting the application for the Ex Parte court order to the federal district court judge or magistrate.
- (3) The United States Attorney (or other authorized individual) or an individual officially acting in that capacity must authorize the application for an Ex Parte court order. See IRM 11.3.28.3(1)a) and subsequent note for additional information.

11.3.28.3.2  
(08-05-2014)

**Information Required in  
an Application for an Ex  
Parte Court Order**

- (1) To obtain an Ex Parte court order under IRC 6103(i)(1), the requester must show the district court judge or magistrate that:
  - a. There is reasonable cause to believe, based on information believed to be reliable, that a specific federal non-tax criminal act has been committed,
  - b. There is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of that non-tax criminal act, and
  - c. The return or return information is sought exclusively for use in a federal non-tax criminal investigation or proceeding concerning that act, and cannot reasonably be obtained, under the circumstances, from any other source.
- (2) An Ex Parte order cannot be obtained solely for purposes of a civil forfeiture matter. If information is appropriately requested pursuant to IRC 6103(i)(1), as indicated in (1) above it may subsequently be used in a civil forfeiture matter (see IRC 6103(i)(4)(B)).
- (3) To obtain an Ex Parte court order under IRC 6103(i)(5), the requester must show the judge or magistrate that:
  - a. A federal arrest warrant relating to a federal felony offense has been issued for an individual who is a fugitive from justice,
  - b. The tax return of the individual or return information relating to the individual is sought exclusively for use in locating that individual, and
  - c. There is reasonable cause to believe that the return or return information is or may be relevant to determine the location of the individual.
- (4) Disclosure may not extend beyond the scope of the Ex Parte court order so it is essential that the applicant carefully word the proposed order.
- (5) Normally, the application will conform precisely to the statute. It is within the discretion of the judge or magistrate, however, to accept oral testimony from the applicant in support of information contained in the application.
- (6) A valid court order pursuant to IRC 6103(i)(1), IRC 6103(i)(5), or IRC 6103(i)(7)(C) need not repeat the information provided in the application and/or oral testimony of the prosecuting attorney. However, any questions concerning the federal statutes should be clarified with the requesting official prior to the release of any tax information. See IRM 11.3.28.2(10)c) for additional information.
- (7) When considering the application for the Ex Parte order, the judge or magistrate may wish to view the IRS's records in camera. If in camera inspection is

requested, the Disclosure Office will obtain copies of the requested documents and have them delivered directly to the judge or magistrate for his/her inspection, instead of to the requesting official. In such cases, the disclosure is not considered to be made unless the judge/magistrate approves the disclosure.

11.3.28.3.3  
(08-05-2014)  
**Information Required in  
an Ex Parte Court Order**

- (1) An Ex Parte court order issued pursuant to IRC 6103(i)(1) or IRC 6103(i)(5) must:
  - a. Be granted and/or signed by a federal district court judge or magistrate,
  - b. Include sufficient identifying information (for example, name, TIN, address and/or date of birth) of the taxpayer to whom the return or return information relates (see IRM 11.3.28.2(14) and IRM 11.3.28.2(15)) so that proper records can be secured, and
  - c. Specify the tax years involved.

**Note:** Some court jurisdictions approve Ex Parte orders with an electronic signature in lieu of an ink signature. If the court has a practice whereby the judge or magistrate uses an electronic signature, the order is valid and should be worked (assuming the order meets all other requirements).

- (2) A valid court order pursuant to IRC 6103(i)(1), IRC 6103(i)(5), or IRC 6103(i)(7)(C) need not repeat the information provided in the application and/or oral testimony of the prosecuting attorney. However, if the order doesn't specify the criminal violations being investigated or prosecuted, contact the requesting official to obtain the information. Caseworkers may accept oral or written confirmation of the statutes.
- (3) Process any Ex Parte order that does not conform to the requirements in (1) as specified in IRM 11.3.28.2(11).

11.3.28.4  
(07-23-2018)  
**Disclosures in  
Conformity with an Ex  
Parte Court Order**

- (1) The Disclosure Office will conduct a search of the Master File (MF) to identify the taxpayer's account(s) for the tax period(s) requested and order the necessary returns and taxpayer return information.

**Note:** For those requests containing numerous taxpayers, caseworkers may use a spreadsheet to document and track research, requests for and receipt of returns, and documents or other information that were provided to the requester, instead of in the electronic inventory management system. If using a spreadsheet, however, you must upload a copy into the electronic inventory management system.

**Note:** SSA's Numident file should not be accessed to compile information for the order. However, if Numident information is already in a tax case file for a covered taxpayer, it is considered IRC 6103 information.

**Note:** TIGTA records in TIGTA's possession do not fall within the scope of an Ex Parte court order to the IRS. A separate order to TIGTA needs to be made for such records.

- (2) If there are indicators of identity theft or a fraudulent tax return on the taxpayers account, the Disclosure caseworker should discuss this matter with

their manager and document their findings in the electronic inventory management system. Disclosure Managers hold the delegated authority to make the impairment determination on whether the identity theft information should be released or redacted. See IRM 11.3.28.2(15), (16) and (17) for additional information.

- (3) If there are periods with open collection, examination, criminal investigation(CI) or other compliance activity, the Disclosure Office will obtain clearances from the applicable functions before releasing any return information pertaining to those periods.

**Note:** Functional clearances are not required for the disclosure of returns or return information on periods with no open Compliance or CI activity. Any local alternative procedures for securing clearances should be documented and be kept in a permanent administrative file.

- (4) Consider the following when obtaining clearances:
  - a. Is there a pending criminal investigation of the taxpayer?
  - b. Is the taxpayer the subject of an open examination?
  - c. Does the IRS object to the use of the information in an administrative or judicial proceeding? See IRC 6103(i)(4).
  - d. Will disclosure of the requested information seriously impair a civil or criminal tax investigation? If so, can any information be furnished that would not impair the tax investigation?
  - e. Will the information identify a confidential informant, and, if so, can it be excised?
- (5) Maintain documentation of clearances in the electronic inventory management system and notate in the case history.
- (6) Since the official designated in Delegation Order 11-2 (as revised) must certify to the court the basis for denying disclosure under IRC 6103(i)(1) or IRC 6103(i)(5), any objection must clearly show that disclosure would seriously impair a civil or criminal tax investigation or identify a confidential informant. Possible alternatives should be explored.

**Example:** If the disclosure would identify a confidential informant, it might be possible to delete the information about the informant.

- (7) In the event there is an objection to granting disclosure, a memorandum of explanation will be prepared by the function for the case file and will include detailed facts and circumstances to establish a basis for justifying denial of disclosure, i.e., it will identify a confidential informant or specifically **how** it will seriously impair a civil or criminal tax investigation. The functional representative should also be prepared to discuss their objection with the requesting official.
- (8) If a determination is made to withhold information, notify the requester that the official making the determination is available to discuss the decision and that the requester can appeal a decision to withhold information to the next level of delegated authority, up to the Director, Office of Governmental Liaison, Disclosure and Safeguards.

- (9) In situations involving unusually large volumes of records, the Disclosure Office caseworker may contact the requesting agency to determine whether a more limited response would be acceptable.
  - (10) Where a requester initiates contact with the Disclosure Office in advance of obtaining an Ex Parte court order, the office should also attempt (without disclosing the scope or existence of a record) to have the requester pinpoint the information that is actually needed.
  - (11) When the MF indicates no record of filing, the Disclosure Office will certify lack of any record using Form 3050, Certification of Lack of Record, or equivalent (see IRM 11.3.6, Seals and Certifications). The Form 3050 must clearly indicate that the lack of record does not extend beyond any disclosure cut-off date (see (17) and (18) below) in the order. In order to ensure that the Certification of Lack of Record does not extend beyond any disclosure cut off date the following language should be added to the Form 3050 in the **Description of Information Sought** section:  
**As of DD/MM/YYYY, the Internal Revenue Service shows no return(s) filed for the following [tax year(s) or tax period(s)] pertaining to the [individual or business entity] described above.**  
The DD/MM/YYYY date entered in the pattern language should be the cut-off date of the Order. Case documentation should also state that all information being provided to the AUSA is within the time frames of the Order.
- Note:** Form 3050, Certification of Lack of Record, should only be prepared when there is no record of a return being filed. This includes situations where the taxpayer was not required to file a return and/or should have filed a return and didn't. Form 3050 should not be used when the return was not required to be filed yet (i.e., before April 15th). Document the electronic inventory management system's case history and specifically address the fact that a return was not due to be filed, yet, in the response letter.
- (12) If the MF shows "no entity" and a TIN was furnished, the Disclosure Office caseworker should contact the U.S. Attorney or other requesting official to verify the accuracy of the TIN.
  - (13) The caseworker will follow-up with Special Search or the FRC within 3 working days, if the documents or confirmation of documents being forwarded to GSS were not received. If the Disclosure Office caseworker experiences any delay in obtaining the returns and files after the initial follow-up, he/she should contact their Disclosure Manager who will contact the Files or FRC supervisor where the returns are located for assistance.
  - (14) An Ex Parte court order for copy of any Freedom of Information Act (FOIA) requests submitted by the subject(s) of the order and the FOIA case file information must also cite the Privacy Act, 5 USC 552a. Per Counsel advice, these documents are protected by the Privacy Act and not releasable under IRC 6103(i). If the order includes the appropriate language, process the request. If the order does not contain the appropriate language, contact the AUSA and secure a letter signed by the U.S. Attorney requesting the disclosure of the FOIA case information pursuant to the Privacy Act.

**Note:** The requirements for such a request are that it be made in writing by the US Attorney (not an AUSA), specify the particular portions of the FOIA records

desired, state that the information will be used for civil or criminal law enforcement, and specify what that law enforcement activity is.

- (15) The Disclosure Manager will edit any information prohibited from disclosure.
- (16) Information that must be edited includes:
  - a. Information that would identify a confidential informant or seriously impair a civil or criminal tax investigation.
  - b. Identity Theft indicators or fraudulent tax returns. Specifically, information of the person not covered in the Ex Parte court order, whether the victim and/or the perpetrator, when redacted records are requested from the AUSA. See IRM 11.3.28.2(15), (16), and (17) for additional information.
  - c. Tax convention information (see IRC 6105 and note the exception for IRC 6103(i)(3)(C) and IRC 6103(i)(7) disclosures). See Delegation Order 4-12, found in IRM 1.2.2.5.11 , for those authorized to disclose tax convention information pursuant to IRC 6103(i)(3)(C) or IRC 6103(i)(7).
  - d. Wagering tax information protected under 26 USC 4424 (see IRC 6103(o)(2)).
  - e. Information obtained from, or on behalf of, a grand jury proceeding, unless a valid order permitting the use of the information has been issued under Rule 6(e) of the Federal Rules of Criminal Procedure.
  - f. Returns and return information of a third party or unrelated taxpayer (e.g., another taxpayer's information that is in a case file because of a possible connection under a provision of IRC 6103(h)(2) or IRC 6103(h)(4)).
  - g. Returns and return information concerning tax years not specifically covered by the order.
  - h. Numeric Discriminant Function (DIF) scores, Discriminant Analysis System (DAS) scores, and Underreported Income DIF (UIDIF) scores and Selection of Exempt Organization Returns for Examination (SERFE) indicators. The requesting official may appeal any withholding determination to the next level of delegated authority up to the Director, Governmental Liaison, Disclosure and Safeguards. The requesting official should be made aware that it is IRS policy to delete all DIF, DAS, and UIDIF scores and SERFE indicators. This is a one-time notification and can be incorporated into the documentation described in IRM 11.3.28.2(7).
  - i. Other information where disclosure is prohibited by 18 USC 1905 (for example, trade secrets and other business proprietary information).
- (17) Unless otherwise provided in the Ex Parte order, disclosure will be limited to those returns and return information in the IRS's possession on the date of the order.
- (18) Returns or related return information subsequently received or developed for the years authorized by the order may be disclosed only if the order provides for further disclosures and designates a specific cut off period.

**Example:** An order may state that the IRS disclose information as may come into its possession subsequent to the date of the order, and for a period no longer than xx number of days thereafter. Generally, the order will specify a 30, 60 or 90 day cutoff. When no cut off is given, the date of the order is the cutoff date.



**Note:** The end of the extended time frame of the order (e.g., 90 days) does not mean that all disclosures in response to the order must stop. If a return that was received by the IRS prior to the end of the cutoff date (e.g., order date plus 90 days in this case) of the order is finally obtained from files after the cutoff date, it should be furnished to the requester. The determining factor is that the IRS must receive the responsive data prior to the end of the cutoff date of the order. The fact that the responsive data has not been obtained by the Disclosure Office prior to the cutoff date does not change the fact that the data was in the IRS's possession prior to the cutoff date.

- (19) In no case will the cutoff date exceed 90 days, even if the order specifies a cutoff date that exceeds the 90 day limit. This 90 day period is incorporated in *DOJ's U.S. Attorney's Manual*. Certification of Form 3050 must apply to non-filing only for the time frame covered by the Ex Parte court order. See (10) above for information on how to address the cutoff date of the Order when completing the Form 3050. See IRM 11.3.6 for more information on using the Form 3050 to certify a lack of record.
- (20) Generally, information disclosed under IRC 6103(i) can only be re-disclosed to federal employees personally and directly engaged in the investigation. State and local personnel will be considered federal employees for disclosure purposes as long as the employees are:
  - a. Formally appointed, rather than merely detailed.
  - b. Assisting in a federal investigation.
  - c. Supervised by a federal employee.

**Example:** These personnel include those whose job titles are: Special United States Attorneys, Special Deputy United States Marshals, and other persons appointed under the Intergovernmental Personnel Act. As such, state and local personnel formally appointed as federal employees under these provisions would be permissible recipients of tax information under IRC 6103(i). As federal employees, they are subject to the penalty provisions of IRC 7213, IRC 7213A, IRC 7431, and 18 USC 1905. See IRM 11.3.22.12.1.2(8).

**Note:** Narcotics deputations pursuant to 21 USC 878 are not qualifying appointments.

- (21) When state and local personnel are formally appointed, they will be advised in writing of disclosure restrictions and the 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.
- (22) State and local government personnel involved in the federal investigation are prohibited from using or disclosing the data obtained through the federal Ex Parte Court Order process for state or local law enforcement purposes.
- (23) After clearance actions and screening of returns and files have been completed, the Disclosure Office caseworker will prepare a response transmittal letter using the appropriate Pattern Letter for the signature of the Disclosure Manager.

- (24) Some offices may have procedures in place for the authorizing official (usually the Disclosure Manager) to approve the disclosures separately from the response transmittal process. In this situation, the authorization memo Pattern Letter(s) on the Disclosure Share Point site must be used to obtain the Disclosure Manager's authorization. This is acceptable as long as the written approval record is maintained with the case.
- (25) Once the initial response transmittal letter authorized by the official designated by Delegation Order 11-2, found in IRM 1.2.2.12.2, is sent to the requester, the Disclosure Office caseworker assigned to work the court order may make subsequent transmittals of information.

**Note:** If necessary, consider providing the requester with an interim response rather than waiting until a complete response can be made. This provides better customer service.

- (26) The existence of a transaction code on a transcript for a Substitute For Return (SFR) doesn't mean an actual paper SFR was prepared. See IRM 11.3.6, Seals and Certifications, for details on certifying SFRs and lack of records.
- (27) Once a related statute call is made in a Bank Secrecy Act or money laundering investigation, the investigation is treated as a tax administration activity, even though the violation is not a pure tax violation. An Ex Parte court order applies only to enforcement of federal criminal statutes **not** involving tax administration. Therefore, it is not necessary for Criminal Investigation to obtain an Ex Parte order for itself on related statute cases as long as IRC 6103(h) procedures have been followed. In a multi-agency investigation/grand jury involving other non-tax charges such as bank fraud, Medicare fraud, and money laundering (with no substantive tax charges), an Ex Parte court order is required if the return/tax information will be used for the non-tax charges, even though the IRS representative is working on a related statute case. If a related statute call is not made, IRS special agents must obtain an Ex Parte order prior to accessing returns and return information for the non-tax (e.g., money laundering) charges they are investigating.
- (28) The use of information contained in a sealed IRC 6103(i)(1), IRC 6103(i)(5), or IRC 6103(i)(7)(C) order to initiate a tax investigation depends on the instructions in the application. Generally, the sealed document will indicate how long and to what extent the information is to remain sealed. If the instructions impose no disclosure constraints, the IRS may use pertinent information to initiate a tax investigation. In any such case, contact Area Counsel for advice on whether the instructions in the application limit the IRS's use of the information.
- (29) Providing copies of returns and taxpayer return information in response to an Ex Parte Court Order is per an agreement between the IRS, the Department of Justice and the federal courts. Copies will always be provided on the initial response to the order. If, on the rare occasion, the original returns are needed at a later date in order to successfully prosecute the case, to the extent the documents still exist the Disclosure caseworker should secure the original returns, certify them, if necessary, and send them to the DOJ.



11.3.28.4.1  
(07-23-2018)

## **Disclosure of Bank Secrecy Act Information**

- (1) Effective January 3, 2012, Disclosure no longer processes Ex Parte court order requests for Bank Secrecy Act (BSA) records. Should Disclosure receive an Ex Parte court order requesting BSA records, contact the requesting official and advise that per the December 22, 2011 Department of Justice memorandum United States Attorneys are required to submit all requests for copies of BSA records to FinCEN (Financial Crimes Enforcement Network).
- (2) BSA records include the following documents:
  - a. Currency Transaction Reports (CTRs), including Casino CTRs;  
**Note:** For CTR data that is on an Information Returns Master File (IRMF) transcript, the order does not have to specifically require the release of BSA data. There must, however, be an indication, either by language in the order or by agreement between the Disclosure Office and the U.S. Attorney's Office that IRMF transcripts will be provided in the response to Ex Parte court orders. Preferably, the order should contain language such as "including information returns" or "including Information Returns Master File data." Providing IRMF transcripts may be a routine part of a Disclosure Office's response to Ex Parte court orders and, thus, they are expected by the U.S. Attorney's Office. In this case, the case file must contain a note documenting this practice. If receipt of the IRMF data is anticipated in response to the court order, BSA information on the IRMF transcript may be released. This discussion must be documented in the electronic inventory management system's case history.
  - b. Registration of Money Services Business (RMSB);
  - c. Foreign Bank Account Reports (FBARs);
  - d. Suspicious Activity Reports (SARs); and
  - e. Report of Cash Payments Over \$10,000 Received in a Trade or Business (Form 8300) filed on or after January 1, 2002.
- (3) To the extent BSA information is contained in an IRS file and used to determine tax liability or the ability to pay tax it is considered Title 26 information that can be released to the DOJ. However, on the rare occasion that it is in the file and not used for any tax purpose, it must be removed prior to releasing file to the DOJ.
- (4) When releasing Bank Secrecy Act information in an (i) Order, you must include the "BSA Warning Statement" pattern language in your final response. See Appendix II of the BSA Redissemination guidelines for additional information.

11.3.28.4.2  
(07-23-2018)

## **Re-disclosure Rules for US Attorneys**

- (1) The regulations at 26 CFR 301.6103(i)-1(b)(i) permit the U.S. Attorney to disclose return information obtained under IRC 6103(i)(1) to private contractors to provide special expertise to the investigation. Their services must meet the special knowledge or technical skills requirement. Disclosures are allowed only if the activity cannot otherwise be properly accomplished without making the disclosures.

**Example:** Includes handwriting analysis, photographic development, sound recording enhancement, or voice identification. This list is not comprehensive; other special skills may meet the technical requirements of the regulations.

**Note:** This provision cannot be used to circumvent the rules regarding disclosures to state and local law enforcement personnel, or as general authority for “contracting out.” General accounting or law enforcement skills that should be available to the Government would not meet the special requirement. The intent of this provision is not to provide a mechanism to overcome resource problems that the Government should address through normal channels. The intent is to provide a way to get special help where needed. For example, accounting skills/analysis applicable to a specific industry or methodology of commerce could meet the special test while general accounting skills would not. Although it is impossible to cover every possible situation, it is unlikely that state and local law enforcement personnel possess the type of special skills necessary to fall under this provision. However, retired federal law enforcement personnel with specialized skills and/or knowledge in pursuing complicated financial crimes, such as money laundering, can be hired as “rehired annuitants” or as employees, which will allow access to tax information.

11.3.28.5  
(07-23-2018)  
**Disclosure of Return  
Information Other Than  
Taxpayer Return  
Information**

- (1) A request under IRC 6103(i)(2) must be in writing and signed (approved) by the head of the federal agency or the Inspector General of the agency, or in the case of the Department of Justice, the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, any U.S. Attorney, any special prosecutor appointed under 28 USC 593, any attorney in charge of an organized crime strike force, the Director, Federal Bureau of Investigation, or the Administrator of the Drug Enforcement Administration.

**Note:** The approving official does not need to actually sign the request as long as the request makes a declarative statement that the delegated IRC 6103(i)(2) official has actually approved the specific request. The authority to approve an IRC 6103(i)(2) request **cannot** be re-delegated.

**Note:** IRC 6103(i)(2) does not allow disclosure of other than taxpayer return information to the Department of Justice for use in collecting restitution due to the U.S. government as a result of the Fair Debt Collection Procedures Act. Clearly at the point that the DOJ is seeking restitution, all judicial and administrative actions related to the investigation or proceedings pertaining to the identified defendants criminal actions have been completed. So, the IRC 6103(i)(2) provision does not apply.

- (2) If possible, the requester should provide advance notice of his/her intent to make an IRC 6103(i)(2) request. The actions to be taken are the same as for Ex Parte court orders.
- (3) The caseworker responsible for processing the request will segregate the other than taxpayer return information from the returns and taxpayer return information. See IRM 11.3.28.4(14) for other information that must be segregated.
- (4) Disclose the name and address of the taxpayer under IRC 6103(i)(2) only if other than taxpayer return information is also requested. Requests for addresses only cannot be honored because IRC 6103(i)(2) requires that the requester provide an address.

**Note:** See IRM 11.3.28.1.5.2 for records considered other than taxpayer return information.

- (5) Seek approval by the designated official per Delegation Order 11-2, found in IRM 1.2.2.12.2, prior to releasing any information. The authorization memo Pattern Letter(s) on the Disclosure Share Point site must be used to obtain the Disclosure Manager's authorization.
- (6) Disclosure of related material subsequently developed for the years authorized may be made on a continuing basis even though the original IRC 6103(i)(2) letter might not include a request for continued disclosures. Such disclosures may be made only if the requester indicates an interest in or need for this information subsequent to the initial disclosure. The information disclosed may be discussed as often as necessary.

**Note:** This does not require Disclosure to continually monitor the account for any changes; but allows for the requester to seek additional information using the initial request.

- (7) Transmit the requested information, after approval by the designated official per Delegation Order 11-2, using the appropriate Pattern Letter.

11.3.28.6  
(08-05-2014)  
**IRS Initiated Disclosures  
of Return Information  
Concerning Non-Tax  
Criminal Violations**

- (1) While performing their official duties, IRS employees may obtain information indicating that non-tax criminal violations may have occurred, or they may witness criminal acts that are under the jurisdiction of another federal agency.
- (2) IRC 6103(i)(3)(A) provides for disclosure in writing of other than taxpayer return information that may constitute evidence of a violation of a non-tax federal criminal statute. Care must be taken in determining whether the referral information is taxpayer return information, as defined in IRC 6103(b), or other than taxpayer return information.
- (3) Information may be disclosed to the extent necessary to tell the head of the federal agency having enforcement responsibility over the federal criminal statutes thought to be violated.
- (4) Information will not be disclosed if disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.
- (5) Information disclosed pursuant to IRC 6103(i)(3)(A) need only be such that it may constitute evidence of a non-tax federal criminal violation.
- (6) Information that merely indicates a violation may have occurred is adequate to warrant referral to the appropriate federal agency. The information must sufficiently identify the specific criminal act or event or statute to which it relates.

**Note:** Any information referred to another federal agency must be able to be independently verified by that agency, outside of the use of confidential tax information.

- (7) For referrals made under IRC 6103(i)(3)(A), when return information (other than taxpayer return information) that may constitute evidence of a violation of a non-tax federal criminal law is disclosed, the identity (name, address, SSN and date of birth) of the taxpayer may also be disclosed. The taxpayer identity information is treated as return information, other than taxpayer return information, in this instance. However, taxpayer identity information may not be disclosed by itself under IRC 6103(i)(3)(A).

- (8) If a return or taxpayer return information contains the evidence of the violation, the IRS may not initiate the disclosure.

**Example:** If the “other income” line on a tax return shows drug proceeds of \$400,000, a disclosure may not be initiated, since this is taxpayer return information.

- (9) IRC 6103(i)(3)(B)(i) provides for the disclosure of return information, including taxpayer return information, to the extent necessary to advise appropriate officers or employees of any federal or state law enforcement agency of the imminent danger of death or physical injury to any individual. The source of information detailing the threat of imminent harm is irrelevant. IRS makes its own determination whether an emergency situation exists. These disclosures are limited to federal or state law enforcement agencies and cannot be made to **local** law enforcement agencies such as county or city police departments.
- (10) Return information, including taxpayer return information, may be disclosed to appropriate officers or employees of any federal law enforcement agency under IRC 6103(i)(3)(B)(ii) in circumstances involving imminent flight of any individual from federal prosecution.
- (11) Delegation Order 11-2, found in IRM 1.2.2.12.2 , names those authorized to disclose or authorize disclosures under IRC 6103(i)(3).
- (12) IRM 11.3.34, Disclosure for Non-Tax Criminal Violations, provides instructions for instances when IRS employees receive non-tax information about a possible non-tax violation of federal, State or local criminal laws.

11.3.28.6.1  
(08-05-2014)

**Disclosures of Return  
Information (Other than  
Taxpayer Return  
Information) Concerning  
Non-Tax Criminal  
Violations**

- (1) When an employee discovers information that may include evidence of a potential non-tax federal criminal violation outside the IRS’s jurisdiction, the employee will report the information by memorandum through functional channels to the appropriate Disclosure Office.
- (2) Headquarters employees will send reports of potential non-tax federal criminal violations through channels to the Director, Governmental Liaison, Disclosure and Safeguards.
- (3) The memorandum prepared should contain the following information about the violation:
- Name, social security number, address, and any aliases, of subject. To the extent necessary, the subject’s date of birth may also be disclosed.
  - Subject’s business or occupation, if known.
  - Summary of the facts and circumstances surrounding the non-tax federal criminal violation.
  - U.S. Code sections potentially violated, if known.
  - Specific source of the information, (e.g. 3rd party, taxpayer, taxpayer’s representative, taxpayer’s return), and how the information was obtained.
  - The tax years where the information applies; e.g. the year(s) where an examination or criminal activity took place. If unknown, indicate that in the memorandum.

**Note:** This information will be used to account for any authorized disclosures on Form 5466-B, Multiple Record of Disclosure

- g. The agency that would have an interest in this violation, e.g. U.S. Department of Homeland Security, other agency (specify).
- h. System of Records where information was obtained.
- i. Determination whether disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

- (4) The Disclosure Office will review the information to ensure it qualifies for referral under IRC 6103(i)(3)(A).

**Note:** Exhibit 11.3.28-3 may be used as a guide to analyze the information provided for an IRC 6103(i)(3)(A) referral.

- (5) The Director, Office of Governmental Liaison, Disclosure and Safeguards will review all referral memorandums submitted by Headquarters personnel to ensure that all relevant information has been reported.
- (6) A letter will be prepared by Disclosure detailing the information to be disclosed. The Disclosure Office will forward the letter to the head of the appropriate federal agency and send a copy of the letter to the employee who initiated the referral.
- (7) Taxpayer identity information (i.e., name, address and social security number) may not be disclosed under IRC 6103(i)(3)(A) unless return information, other than taxpayer return information is also disclosed.

**Example:** A referral to Department of Homeland Security pertaining to illegal activity in the United States consisting of only the name, address and TIN of the individual (other than taxpayer return information), without other independently verifiable non-tax information, is not permitted under IRC 6103(i)(3)(A).

- (8) Oral discussions or clarifications with an employee of the other federal agency are prohibited. Should an IRS employee receive a telephone call from the agency, the employee should advise that the letter sent contains all of the information permitted to be disclosed under IRC 6103(i)(3)(A) and that the statute does not permit oral discussions on the information.

11.3.28.7  
(08-05-2014)  
**Disclosure in  
Emergency Situations  
Pursuant to IRC  
6103(i)(3)(B)**

- (1) The Disclosure Manager or other IRS employee having IRC 6103(i)(3)(B)(i) authority should be informed in situations involving the imminent danger of death or physical injury to any individual.
- (2) The Disclosure Manager or receiving office will contact the authorized IRS official (see Delegation Order 11-2, found in IRM 1.2.2.12.2 ) for consultation and disclosure authorization, as necessary.

**Note:** In situations involving imminent danger of death or physical injury, special agents are the only non-supervisors having the authority to make an immediate determination and subsequent disclosure.

- (3) When disclosure is authorized, the Disclosure Manager or other function may provide the information by telephone to the appropriate officer or employee of the **federal or state** law enforcement agency that could take action on the imminent situation.

**Note:** These disclosures **cannot** be made to local law enforcement agencies nor to assistance agencies such as suicide prevention bureaus.

**Note:** When appropriate, these disclosures may also be made to other IRS functions. For example, some Potentially Dangerous Taxpayer (PDT) or Caution Upon Contact (CAU) information may be disclosed to IRS employees conducting non-tax investigations (e.g. Title 31) when disclosure is necessary to protect individual safety. Even though such disclosures are internal, the accounting requirements of IRC 6103(p)(3)(A) and safeguarding requirements of IRC 6103(p)(4) still apply. See IRM 11.3.37, Recordkeeping and Accounting for Disclosures, and IRM 11.3.36, Safeguard Review Program. Safeguarding questions should be directed to the Office of Safeguards.

(4) The U.S. Secret Service is responsible for protecting the President and certain other Government officials and public figures including the:

- President's immediate family
- President-elect
- Vice President or other officer next in line for succession to the Presidency
- Former Presidents
- Wife, widow, and minor children of former Presidents
- Presidential and Vice-Presidential candidates
- Visiting heads of foreign states or foreign governments

(5) When a taxpayer makes a threat against any of these individuals during an official contact (e.g., during the preparation of a tax return in an IRS office, or by written statements contained on the tax return), the Disclosure Manager, special agent or other authorized person will immediately disclose the threat, together with the name and address of the taxpayer by telephone to the local Secret Service field office.

(6) IRC 6103(i)(3)(B)(ii) permits the disclosure of return information to the appropriate officers or employees of any federal law enforcement agency in situations involving the imminent flight of an individual from federal prosecution. See Delegation Order 11-2 for those having delegated authority to make this type of disclosure.

**Note:** Special agents do not have the authority to make a disclosure in imminent flight situations. However, Special Agents in Charge (SACs) may make these disclosures.

(7) The referring office must maintain thorough documentation to provide a review trail for each disclosure under IRC 6103(i)(3)(B). The accounting requirements of IRC 6103(p)(3) apply to these disclosures. See IRM 11.3.37, Recordkeeping and Accounting for Disclosures.

(8) IRC 6103(i)(3)(B) permits disclosure of both taxpayer return information and return information (other than taxpayer return information). The source of the information concerning the threat is irrelevant. IRS must decide on its own whether an emergency situation exists.



- (9) Disclosures under IRC 6103(i)(3)(B) are not subject to the confidential informant and tax impairment determinations required under IRC 6103(i)(6). However, it is IRS policy never to release the identity of confidential informants.

11.3.28.7.1  
(08-05-2014)  
**Suicide Threats**

- (1) By itself, a suicide threat to IRS is not considered tax information. Therefore, the threat, itself, is not covered by the rules limiting tax disclosures. IRC 6103 limitations on disclosure do not apply to location information provided directly by the taxpayer while making the threat or location information obtained from a public source. To verify the address or current location of the taxpayer making the threat without accessing tax return information, take the following steps:
- Ask the taxpayer for his/her address or location, i.e. "Where are you, right now?"
  - Attempt to look up the taxpayer's location in the telephone book, on the Internet or from some other public source.

**Note:** Do not use IDRS to look up the taxpayer's address. IDRS information is taxpayer return information protected by IRC 6103. For example, when verifying a caller is actually the taxpayer, we verify their name, TIN, address, etc. against information contained in IDRS. This verification cannot be used when reporting a suicide threat. By asking where the taxpayer is, specifically, you will be able to direct a Law Enforcement Officer (LEO) to where the taxpayer is instead of the address of record which may be an empty house.

- (2) If the taxpayer's location comes from one of the above sources, call 911 for assistance. Be careful not to mention the underlying reason for the taxpayer's call or the fact the call is related to a tax issue.

**Note:** It is permissible to state that the threat was made during a contact involving official business.

- (3) If the taxpayer's location must be obtained by accessing tax information (e.g., through IDRS), IRS employees must follow the procedures related to disclosures under IRC 6103(i)(3)(B)(i).
- These disclosures can only be made to State or federal law enforcement authorities.
  - Only authorized IRS employees (IRS and Chief Counsel supervisors; Special Agents, CI) can make the disclosure. See Delegation Order 11-2, found in IRM 1.2.2.12.2 .
  - Form 5466-B, Multiple Records of Disclosure, must be prepared for accounting purposes after making any disclosure of taxpayer return information to state or federal law enforcement authorities. The completed Form 5466-B will be sent to the Disclosure Manager.
  - Any disclosures made to local law enforcement of taxpayer location information obtained from IRS systems or files constitutes an unauthorized disclosure. See Reporting Unauthorized Disclosures on the Privacy and Disclosure Virtual Library.
- (4) IRM 21.1.3.12, Suicide Threats, contains step-by-step procedures for dealing with suicide threats.



11.3.28.7.2  
(07-23-2018)  
**Antiterrorism  
Disclosures**

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

**Caution:** During disclosure presentations, Disclosure Managers or Specialists will caution employees that they should not browse taxpayer information in order to locate information related to terrorism that might be shared.

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

**Note:** Questions concerning IRC 6103(i)(3)(C) and IRC 6103(i)(7) issues should be directed to the *HQ Senior Disclosure Analyst* liaison to Criminal Investigation.

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

- (4) Delegation Order 11-2, found in IRM 1.2.2.12.2, contains delegations of authority pertaining to IRC 6103(i)(3)(C) and IRC 6103(i)(7). The following compares processing procedures under IRC 6103(i)(3)(C) and IRC 6103(i)(7) provisions to those of other IRC 6103(i) sections:
  - a. IRC 6103(i)(3)(C) disclosures will be processed like IRC 6103(i)(3)(A) disclosures;
  - b. IRC 6103(i)(7)(A) and IRC 6103(i)(7)(B) disclosures will be handled like IRC 6103(i)(2) requests. Please see IRM 11.3.28.7.2(3) Note for guidance if the request is marked "Secret" or "Top Secret";
  - c. IRC 6103(i)(7)(C) Ex Parte orders will be handled like IRC 6103(i)(1) Ex Parte orders;

**Note:** These Ex Parte court orders are worked by field Disclosure employees. See IRM 11.3.28.7.2(3) if an Ex Parte court order or the documents responsive to the order are marked **Secret** or **Top Secret**.

- d. GLDS, in close coordination with CI, will prepare and obtain approval for Ex Parte applications under IRC 6103(i)(7)(D).

11.3.28.8  
(07-23-2018)  
**Use of Returns and  
Return Information in  
Administrative and  
Judicial Proceedings**

- (1) Subject to the conditions prescribed in IRC 6103(i)(4), returns and return information, including taxpayer return information and other than taxpayer return information, disclosed under IRC 6103(i)(1), IRC 6103(i)(2), IRC 6103(i)(3)(A), IRC 6103(i)(3)(C), or IRC 6103(i)(7) may be disclosed in an administrative or judicial proceeding (including the sentencing phase) pertaining to the enforcement of a specifically designated non-tax federal criminal statute or related civil forfeiture where the U.S. or a federal agency is a party.

**Note:** IRC 6103(i)(4) permits the information to be used for 18 USC 981 or 982 civil or criminal forfeitures related to the non-tax violations of 18 USC 1956 or 1957, or 31 USC 5313(a) or 5324(a).

- (2) In the case of returns and taxpayer return information obtained under IRC 6103(i)(1) and IRC 6103(i)(7)(C), disclosure is conditioned upon the court's determination that the return or taxpayer return information is probative of a matter in an issue relevant to establishing the commission of a crime or guilt or liability of a party, or to the extent required by order of the court pursuant to Title 18, U.S. Code, or rule 16 of the Federal Rules of Criminal Procedure. The judge's determination may be oral or in writing, consistent with that court's practice. The IRC 6103(i)(4) determination cannot be made as part of the initial Ex Parte court order.

**Note:** If the AUSA indicates they have made an (i)(4) determination in their initial court order the following language should be used pertaining to IRC 6103(i)(4) requirements.

"Prior to the disclosure of the enclosed information in any judicial or administrative proceeding pertaining to the enforcement of a specifically designated federal criminal statute or related civil forfeiture (not involving tax administration) to which the United States or a federal agency is a party, the court must make a determination pursuant to IRC 6103(i)(4) that the information is probative of a matter in issue relevant in establishing the commission of a crime or the guilt or liability of a party."

- (3) Return information that is other than taxpayer return information disclosed pursuant to IRC 6103(i)(1), (i)(2), (i)(3)(A) or (i)(3)(C) and (7), does not require a court determination described in IRM 11.3.28.8(2) prior to being introduced into a court proceeding.
- (4) No returns or return information, including taxpayer return information, may be admitted into evidence in these proceedings if the IRS determines that introducing the information into evidence would identify a confidential informant or seriously impair a civil or criminal tax investigation.
- (5) The U.S. Attorney or other federal official should notify the IRS in all cases where the United States intends to seek to introduce returns or return information, including taxpayer return information, into evidence.
- (6) An accounting for disclosures made under IRC 6103(i)(4) is not required. See IRM 11.3.37.1(7).

11.3.28.9  
(07-23-2018)  
**Notifying Individuals  
That Their Records Were  
Made Available Under a  
Compulsory Legal  
Process**

- (1) Subsection (e)(8) of the Privacy Act requires that agencies ". . . make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record."
- (2) If disclosure is made in response to an Ex Parte court order pursuant to IRC 6103(i)(1), IRC 6103(i)(5), or IRC 6103(i)(7)(C), notice will not be given until the Ex Parte court order becomes a matter of public record.

- (3) If the Ex Parte court order does not indicate whether it is a matter of public record, the issuing authority will be asked to advise the IRS if the matter becomes public so that the required notice may be issued.
- (4) The required notice should include the following sample language:  
Subsection (e)(8) of the Privacy Act requires that agencies ...“make reasonable efforts to serve notice on an individual when any record of such individual is made available to any person under compulsory legal process when such process becomes a matter of public record.” This is your legal notice that your YYYY tax return/return information was provided to [name of third party].
- (5) The notice will be mailed to the individual’s last known address. One copy of the notice will be maintained in the disclosure file and one copy should be associated with the record disclosed, if practical.
- (6) This procedure will be carried out by the Disclosure Manager or under his/her direction.
- (7) See IRM 11.3.41.14.5 and IRM 11.3.35.17, Notifying Individuals That Their Records Were Made Available to a Person Under Compulsory Legal Process, and IRM 11.3.35.16, Accounting Requirements, for a full explanation of requirements and procedures.

11.3.28.10  
(07-23-2018)  
**Accounting for  
Disclosures**

- (1) Accountings for disclosures of tax returns and return information must be made in accordance with IRM 11.3.37, Recordkeeping and Accounting for Disclosures.
- (2) A notation must be placed in the electronic inventory management system’s history notes indicating the completion of Form 5466-B, Multiple Records of Disclosure, or accounting for disclosures by some other means. A copy of Form 5466-B or other accounting document, may also be placed in the file, but is not required.
- (3) Submit a narrative record of accounting for Ex Parte court orders that are sealed or not a matter of public record. The 5466-B accounting places a Transaction Code on the taxpayer account that can be requested and/or released on a transcript of account. A narrative accounting avoids the potential for taxpayer notification that their information has been disclosed, prior to the order being made a public record.

**Exhibit 11.3.28-1 (07-23-2018)****Processing IRC 6103(i)(1), (i)(5), and (i)(7)(C) Requests:**

- AUSA determines need for tax information
  - Advance notice/court order received
  - Use GSS or local procedures to have case input and assigned
  - Analyze Order, confirm violations listed are non-tax
  - Contact the AUSA and acknowledge receipt of the court order
  - Discuss with the AUSA time frames and specific information requested. Attempt to re-scope the request as needed.
  - Document actions in the electronic inventory management system case history
  - Prepare and forward appropriate authorization memo for Disclosure Manager approval
  - Make sure signed authorization memo is input into case file
  - Conduct research and document findings in the electronic inventory management system
  - Secure functional clearances (e.g., if open compliance activity present) and import any relevant documentation into the electronic inventory management system
  - Secure requested returns and return information
  - Import responsive documents into the electronic inventory management system
  - Analyze returns and return information for potential redactions
  - Certify lack of record(s), if any, and import copies into the electronic inventory management system
  - Prepare an interim or final response letter for signature (the Disclosure Manager must sign all response letter(s) if prior authorization was not given to the caseworker via a signed authorization memo)
  - Export responsive records from the electronic inventory management system and print records or copy onto a CD/DVD using encryption software
  - Prepare separate response letter providing requester with the password for the encrypted CD/DVD, if applicable
  - Mail certified lack of record documents, paper records or encrypted CD/DVD and response letter together to the requester
  - Mail response letter with the password for the encrypted CD/DVD separately to the requester
  - Account for disclosures using Form 5466-B or a narrative accounting
  - Forward case for closure in the electronic inventory management system
- Note:** The AUSA may need certified copies of tax returns that were previously provided under the court order. The caseworker will work from the closed case and provide the requested certification of records. See IRM 11.3.6, Seals and Certifications, for certification procedures.

**Exhibit 11.3.28-2 (07-23-2018)****Processing IRC 6103(i)(2) Requests:**

- AUSA determines need for other than taxpayer return information, IRC 6103(i)(2) permits the disclosure of other than taxpayer return information only
- Advanced notice/request received
- Use GSS or local procedures to have case input and assigned
- Analyze request, confirm violations listed are non-tax
- Contact the AUSA and acknowledge receipt of the request
- Discuss with the AUSA time frames and specific information requested
- Document actions in the electronic inventory management system case history
- Prepare and forward appropriate authorization memo for Disclosure Manager approval
- Make sure signed authorization memo is input into case file
- Conduct research and document findings in the electronic inventory management system
- Secure functional clearances (i.e. if open compliance activity present)
- Secure requested return information (other than taxpayer return information)
- Import responsive documents into the electronic inventory management system (if providing actual documents)
- Analyze return information (other than taxpayer return information), for potential redactions
- Prepare interim or final response letter for signature (the Disclosure Manager must sign all response letter(s) if prior authorization was not given to the caseworker via a signed authorization memo)
- Export responsive records from the electronic inventory management system and print records or copy onto CD/DVD using encryption software
- Prepare separate response letter providing requester with the password for the encrypted CD/DVD, if applicable
- Mail paper records or encrypted CD/DVD and/or response letter together to the requester
- Mail response letter with the password for the encrypted CD/DVD separately to the requester, if applicable
- Account for disclosures using Form 5466-B or a narrative record of accounting
- Forward case for closure in the electronic inventory management system

**Exhibit 11.3.28-3 (07-23-2018)**

**Non-tax Federal Criminal Referral Check List IRC 6103(i)(3)(A) or (i)(3)(C)**

**Non-Tax Federal Criminal Referral Check List  
IRC § 6103(i)(3)(A) or IRC § 6103(i)(3)(C)**

This checklist may be used as a guide to analyze the information provided for an IRC §6103(i)(3)(A) or (i)(3)(C) referral. Complete all fields as accurately and with as much detail as possible, as the information will be used for recordkeeping, disclosure accounting, and other processing purposes.

|   |                 |           |
|---|-----------------|-----------|
| <b>PART I. Taxpayer Identification</b>  |                 |           |
| The subject of the IRC §6103(i)(3)(A) or (i)(3)(C) criminal referral may or may not be the taxpayer about whose tax affairs the IRS was primarily interested. In all cases, it is necessary to make this distinction so that it can be determined whether information relevant to the referral is other than taxpayer return information. Please provide the following: |                 |           |
| A. Subject of Underlying Case:  |                 |           |
| B. Identification of Return Information for Accounting  |                 |           |
| System of Records   | ADP Source Code | Tax Years |
|   |                 |           |
|   |                 |           |
|   |                 |           |
| <b>PART II. Subject of IRC §6103(i)(3)(A) or (i)(3)(C) referral:*</b>   |                 |           |
| A. Individual's name(s):  |                 |           |
| B. Taxpayer Identification Number(s):   |                 |           |
| *Multiple subjects should be listed individually (with all of the above identity information) on a continuation page. Subjects may be individuals or businesses.  |                 |           |
| <b>PART III. Questionnaire (Please answer questions as fully as possible.)</b>  |                 |           |
| A. What is/was the nature of the underlying tax case (e.g., examination, collection, CI investigation)?   |                 |           |
| B. Which taxpayer is the central figure in the underlying tax case?   |                 |           |
| C. Which non-tax federal criminal statutes were potentially violated?   |                 |           |
| D. Identify any third-party witnesses and describe: <ol style="list-style-type: none"> <li>1. Their relationships to the subject of this referral and/or to the taxpayer.</li> <li>2. The nature of the information provided by each</li> <li>3. The specific criminal act(s) or event(s) to which their information relates.</li> </ol>                                |                 |           |



**Exhibit 11.3.28-3 (Cont. 1) (07-23-2018)****Non-tax Federal Criminal Referral Check List IRC 6103(i)(3)(A) or (i)(3)(C)****Non-Tax Federal Criminal Referral Check List  
IRC § 6103(i)(3)(A) or IRC § 6103(i)(3)(C)**

| <b>PART III. Questionnaire – continued (Please answer questions as fully as possible.)</b>   |
|--|
| <p>E. Are any third-party witnesses confidential informants?</p> <ol style="list-style-type: none"> <li>1. List Informant name(s)</li> <li>2. Will any confidential informants be identifiable by the information they provided?<br/>If yes, specify who and how.</li> </ol>   |
| <p>F. What, if any, information is being provided by a third party, but not on behalf of the individual(s) or entity(s) involved in this referral?</p> <ol style="list-style-type: none"> <li>1. Can the information provided be verified outside access to confidential tax information?</li> <li>2. List the information and describe how and where the information has been verified outside access to confidential tax information. (e.g. Travel outside of US - Department of Homeland Security; Suspicious Activity Reports (SAR) - FinCEN; Claims for reimbursement on food purchases for federally-backed lunch programs - Department of Agriculture; etc.)</li> </ol> |
| a.   |
| b.   |
| c.   |
| <p>G. Was any of the information provided by, or on behalf of, the individual(s) or entity(s) involved in this referral relative to their own tax matters?</p> <ol style="list-style-type: none"> <li>1. Was any of this same information also obtained from a third party, but not for or on behalf of the taxpayer or individual?<br/>If yes, identify the information:</li> <li>2. <b>Note: If not and there is no other information supporting the referral, stop here. The referral cannot be made.</b></li> </ol>  |
| <p>H. If all return information was removed, would the remaining information still support a charge of criminal conduct to allow a referral under IRM 11.3.34, Disclosure for Non-tax Criminal Violations?</p> <p><b>Note: If not, stop here. The referral cannot be made.</b></p>   |
| <p>I. Are there any special circumstances involved (e.g., will referral impair federal tax administration, contains Grand Jury information, etc.)?</p>   |