



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

11.3.40

SEPTEMBER 6, 2023

EFFECTIVE DATE

(09-06-2023)

PURPOSE

- (1) This transmits revised 11.3.40, Disclosure of Official Information, Disclosures Involving Trust Fund Recovery Penalty Assessments.

MATERIAL CHANGES

- (1) IRM 11.3.40.1.4, Program Controls, were added in order to incorporate relevant internal controls. These items identify information about the program and procedures covered within this section.
- (2) Reviewed and updated the IRM where necessary for the following types of editorial changes: legal citations, published forms and documents and web addresses.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 11.3.40, Disclosures Involving Trust Fund Recovery Penalty Assessments, dated September 18, 2020.

AUDIENCE

All Operating Divisions and Functions.

Michael Oser
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Disclosure and Safeguards

11.3.40

Disclosures Involving Trust Fund Recovery Penalty Assessments

Table of Contents

11.3.40.1 Program Scope and Objectives

11.3.40.1.1 Background

11.3.40.1.2 Authority

11.3.40.1.3 Roles and Responsibilities

11.3.40.1.4 Program Controls

11.3.40.1.5 Terms/Definitions/Acronyms

11.3.40.1.6 Related Resources

11.3.40.2 Statutory Basis of Trust Fund Recovery Penalty Assessments (TFRP)

11.3.40.3 General Disclosure Considerations

11.3.40.4 Basic Disclosure Considerations and Disclosure in Response to a FOIA Request

11.3.40.4.1 Disclosure in Judicial and Administrative Tax Proceedings

11.3.40.5 Records Involved

11.3.40.5.1 The Business Case File

11.3.40.5.2 Trust Fund Recovery Penalty Case File

11.3.40.5.2.1 Form 941, Employer's Quarterly Federal Tax Return and Other Types of Returns

11.3.40.5.2.2 Form 4180, Report of Interview with Individual Relative to Trust Fund Recovery Penalty or Personal Liability for Excise Taxes and Form 4181 Questionnaire Relating to Federal Trust Fund Matters of Employer

11.3.40.5.2.3 Form 4183, Recommendation Re Trust Fund Recovery Penalty Assessment (Rev. 2-93)

11.3.40.5.2.4 Form 2209, Courtesy Investigation

11.3.40.5.2.5 Form 2749, Request for Trust Fund Recovery Penalty Assessment(s)

11.3.40.5.2.6 Form 2750, Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty, and Form 2751, Proposed Assessment of Trust Fund Recovery Penalty

11.3.40.5.2.7 Form 2644, Recommendation for Jeopardy/Termination Assessment, and Form 2859, Request for Quick or Prompt Assessment

11.3.40.5.2.8 Form 433-B, Collection Information Statement for Businesses

11.3.40.5.2.9 Routine Form Letters

11.3.40.5.2.10 Case History Notes

11.3.40.5.3 Individual Master File Balance Due Collection File

11.3.40.5.4 Case Control Files

11.3.40.6 Litigation

11.3.40.7 Disclosures by Collection Employees

11.3.40.7.1 Investigative Disclosure

11.3.40.7.2 Joint Appearances

11.3.40.7.3 Informal Requests

-
- 11.3.40.7.4 Other Disclosures
 - 11.3.40.8 IRC 6103(e)(9)

Exhibits

- 11.3.40-1 Access Provisions Applicable to Disclosure of TFRP Files

11.3.40.1
(09-18-2020)
Program Scope and Objectives

- (1) Purpose: This Internal Revenue Manual (IRM) provides guidance on disclosure aspects relating to the Trust Fund Recovery Penalty (TFRP).
- (2) Audience: These procedures apply to all IRS employees.
- (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 pertaining to Trust Fund Penalty Assessments made pursuant to IRC 6672
 - Small Business/Self Employed (SBSE)
 - Appeals
 - Privacy, Governmental Liaison and Disclosure (PGLD)

11.3.40.1.1
(09-18-2020)
Background

- (1) The disclosure guidance provided in this section applies to the collection of taxes subject to IRC 6672. In the case of employment taxes, IRC 6672 is limited to the trust fund portion of the tax; that is, to the tax that the **responsible person** is required to collect or withhold from the wages of employees. In the case of excise taxes, IRC 6672(a) is applied according to the plain language of the statute: the penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. This guidance also applies to the personal liability imposed by IRC 4103 against persons willfully causing a business entity to fail to pay certain excise taxes (for example the air transportation excise taxes under IRC 4261 and IRC 4271).
- (2) The same care should be exercised in disclosures involving collected excise tax assessment records as is exercised in disclosing TFRP assessment records. Careful consideration of the complicated relationships involved in these assessments is necessary prior to disclosure of any information.

11.3.40.1.2
(09-18-2020)
Authority

- (1) The following items govern the authority pertaining to the disclosures of TFRP information:
 - IRC 6103(a)
 - IRC 6672(a)
 - IRC 6672
 - IRC 4261
 - IRC 4271
 - IRC 4103

11.3.40.1.3
(09-18-2020)
Roles and Responsibilities

- (1) This IRM is intended to provide Collection or other compliance employees with information about their responsibilities in releasing TFRP penalty information. It is also meant to enable Disclosure personnel to provide advice and assistance to Revenue Officers, Appeals Officers and others engaged in the assessment, collection and litigation of such penalties and for Disclosure personnel to process Freedom of Information Act (FOIA) and Internal Revenue Code IRC 6103(a) requests for access to TFRP records.

Note: See IRM 11.3.2.4.14, Trust Fund Recovery Penalties and IRM 11.3.40.8, below for information on disclosures of TFRP information pursuant to IRC 6103(e)(9)

11.3.40.1.4
(09-06-2023)

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.

11.3.40.1.5
(09-18-2020)

**Terms/Definitions/
Acronyms**

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

Terms and Definitions

Term	Definition
Disclosure	The making known to any person in any manner whatever, a return or return information. See IRC 6103(b)(8)
Material Interest	An important interest which is generally, but not always, financial in nature. However, in the legal sense, the interest needs to be substantial or of consequence.
Return	Any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of Title 26 6103 which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed. See IRC 6103(b)(1)

Term	Definition
Return Information	The definition of return information is very broad and includes such things as a taxpayer's identity, the nature, source, or amount of a taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability tax withheld, deficiencies, overassessments, or tax payments; whether the taxpayer's returns is subject to collection, examination, investigation, or any other actions taken by the Secretary with respect to federal filing requirements. See IRC 6103(b)(2) for the statutory definition.

Acronyms

Acronym	Definition
ATFR	Automated Trust Fund Recovery
FOIA	Freedom of Information Act
GLDS	Governmental Liaison, Disclosure and Safeguards
ICS	Integrated Collection System
IMF	Individual Master File
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
LLC	Limited Liability Company
PGLD	Privacy, Governmental Liaison and Disclosure
SB/SE	Small Business/Self Employed
TDA	Taxpayer Delinquent Account
TFRP	Trust Fund Recovery Penalty

11.3.40.1.6
(09-18-2020)

Related Resources

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

- (2) The following table lists other sources of guidance on Disclosures involving Trust Fund Recovery Penalty Assessments

Citation	Title	Guidance
IRM 5.7.6	Trust Fund Penalty Assessment Action	Provides guidance to Collection employees for the processing of the Trust Fund Recovery Penalty (TFRP) cases, including protests and quick and prompt assessment actions.
IRM 11.3.2	Disclosure to Persons with a Material Interest	Provides a listing of persons who may generally request and receive returns and return information IRC 6103(e)(1)(6) and IRC 6103(e)(10) concern disclosures of "returns" IRC 6103(e)(7) through IRC 6103(e)(9)
IRM 11.3.13	Freedom of Information Act (FOIA)	Provides guidance when disclosure is requested through the Freedom of Information Act
IRM 11.3.22	Disclosure to Federal Officers and Employees for Tax Administration Purposes	Provides guidance on disclosure of returns and return information for tax administration purpose under IRC 6103(h)

11.3.40.2
(08-11-2017)

Statutory Basis of Trust Fund Recovery Penalty Assessments (TFRP)

- (1) IRC 6672 provides that any person required to collect, truthfully account for, and pay over any tax imposed by the Internal Revenue Code who willfully fails to do so or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall in addition to other penalties provided by law, be liable for a penalty equal to the total amount of the tax.
- (2) The TFRP provisions are administered by the Collection function of the Small Business/Self Employed (SB/SE) division.
- (3) Procedural instructions appear in IRM 5.7, Trust Fund Compliance. Additional information is provided in IRM 5.17.7, Liability of Third Parties for Unpaid Employment Taxes.

11.3.40.3
(08-11-2017)
**General Disclosure
Considerations**

- (4) The most common TFRP assessments are against one or more persons who are or were associated with a corporation or LLC that failed to pay a covered tax such as an employment tax.
- (1) At any point in the TFRP process, employees may receive a request for access to the files. Each request must be considered based on the current status of the case, whether taxes have been proposed or assessed, and the statutory provision under which the request is made. Requests for access to TFRP files may occur during the TFRP investigation but may also be after the assessment has taken place, and the assessment may be against one or more of the identified persons or there may be some that were considered but not assessed. That is a key component to know when reviewing access rights in a TFRP file.
- (2) Persons subject to the penalty may at one time have been closely associated in the business; they may be friends or relatives; they may at times have cooperated with each other and jointly proposed alternatives to the penalty; or, they openly or covertly have become adversaries seeking to avoid the penalty at each other's expense. Such relationships are irrelevant for Disclosure purposes.
- (3) Each person subject to the penalty is a separate taxpayer whose rights of access to records and whose right to privacy must be separately evaluated without regard to apparent personal relationships with another person subject to the penalty.
- (4) The close relationship between the persons who may be subject to penalty would generally mean that most of the information concerning any one of them is already known to one or more of the others. Such prior knowledge does not serve to authorize the disclosure of records which are not otherwise statutorily available.
- (5) Disclosure and Collection personnel should recognize that TFRP files and related information may be available under FOIA, or pursuant to IRC 6103(c), (e)(1), (e)(6), (e)(7) or (e)(9). Third party information cannot be disclosed under IRC 6103(h)(4) in response to a FOIA request. See Exhibit 11.3.40-1 for a brief description of each access provision.

Note: See IRM 11.3.13.7.10, Trust Fund Recovery Penalties, for a discussion of how to respond to requests citing both the FOIA and IRC 6103(e)(9).

- (6) Persons under investigation as potential responsible persons may, as a result of the investigatory process, learn information such as the identity of other persons under investigation. Such circumstances do not authorize additional disclosures and do not create a right to receive confirmation of information learned or surmised.

11.3.40.4
(08-11-2017)
**Basic Disclosure
Considerations and
Disclosure in Response
to a FOIA Request**

- (1) Records produced or maintained in connection with the TFRP assessment are return information of the person or entity involved.

Note: Records gathered or generated with respect to determining the liability of the entity are the return information of the entity, and not that of any person investigated as a potentially responsible person. Similarly, records gathered or

generated with the respect to determining a person's status as a responsible person are the return information of that person and not of the entity or of any other person.

- (2) Different persons may be subject to the penalty for different periods. This will result in variations in their right to records.
- (3) Having determined that a record is the return information of a taxpayer, that record will be available to any person who has established a material interest, as provided by IRC 6103(e), unless it is to be withheld pursuant to IRC 6103(e)(7) when release would impair tax administration or identify a confidential informant.
- (4) Persons who have not established a material interest as stated above, will not be permitted access pursuant to an IRC 6103(e) request, a FOIA request or a Privacy Act request.

Note: Because a material interest in the name of others assessed a penalty and the amount assessed exists for all assessed a penalty (because they are all liable for payment of the penalty amount) there are going to be situations where that information will appear on Forms or in case history notes contained within TFRP files. Access can be greater for those assessed than for those who were considered but not assessed. The specifics of those situations are covered in this IRM.

- (5) Responses denying records to IRC 6103(e) requesters will cite IRC 6103(a) and/or IRC 6103(e)(7) as appropriate.
- (6) Responses denying records to FOIA requesters where they have no right to another's tax information will cite 5 USC 552(b)(3) pursuant to IRC 6103(a). When the denied information is return information of the FOIA requester and release would impair the administration of tax determined by the owner of the records, responses will cite 5 USC 552(b)(3) in conjunction with IRC 6103(e)(7). Additionally, other FOIA exemptions may be cited whenever applicable. See IRM 11.3.13.7.10, Trust Fund Recovery Penalty.
- (7) Responses denying records to Privacy Act requesters will state that IRS System of Records 26.013 Trust Fund Recovery Penalties is exempt from access provisions of the Privacy Act pursuant to 5 USC 552a(k)(2). If, however the requester is the taxpayer or has a material interest, the documents may be provided in accordance with FOIA or IRC 6103(a) provisions unless IRC 6103(a) or (e)(7) apply as described in (6) above. See IRM 11.3.13.7.10, , Trust Fund Recovery Penalties.
- (8) Special care must be exercised when releasing transcripts contained in responsive files to ensure that disclosures are proper.

Note: See especially the note in *IRM 11.3.2.4.14(5)*, Trust Fund Recovery Penalties, regarding TXMODs and the display of TINs.

11.3.40.4.1
(08-11-2017)

Disclosure in Judicial and Administrative Tax Proceedings

- (1) An alternative approach to release of TFRP records is provided by IRC 6103(h)(4) when the tax proceeding is still "on going."

- (2) The judicial or administrative tax proceeding could be the TFRP investigation and assessment process itself conducted by Collection personnel or litigation involving the IRS which results from such assessment.
- (3) Revenue Officers must ensure that all requirements of IRC 6103(h)(4) are met before disclosing any information. See IRM 11.3.22.15, Disclosure of Returns and Return Information in Judicial and Administrative Tax Proceedings.
- (4) A Revenue Officer or others making disclosures in a judicial or administrative tax proceeding should demonstrate the applicability of IRC 6103(h)(4) to the request. However, it is important to remember that IRC 6103(h)(4) is **NOT** an access provision and disclosures are made only to the extent necessary and where the Revenue Officer or others determine the disclosure is authorized under the criteria of IRC 6103(h)(4).

11.3.40.5 (01-01-2006) **Records Involved**

- (1) There are various records contained in a TFRP case. The following sections discuss the types of information or documents that may be involved, as well as access to and release of the information or documents.

11.3.40.5.1 (08-11-2017) **The Business Case File**

- (1) Generally, TFRP cases begin with an attempt to collect employment or excise taxes from the business which was initially responsible for the filing and/or payment of such taxes. The business case file in connection with the examination or collection activity is the return or return information of the business.
- (2) If a FOIA request for the TFRP investigation file is received along with a request for the complete business case file the portion pertaining to the business case file should be worked following regular FOIA processing guidelines including the application of IRC 6103(e) as appropriate. See IRM 11.3.13, Disclosure of Official Information, Freedom of Information Act (FOIA) . Collection employees receiving a request for access should also apply IRC 6103(e) as appropriate, such as disclosure to an individual as authorized under IRC 6103(e)(1)(A). See IRM 11.3.2, Disclosure to Persons with a Material Interest, or Exhibit 11.3.40-1, for more information.
- (3) FOIA access to TFRP documents contained in the business case file is limited to persons against whom the penalty has been proposed or assessed and limited to documents relevant to determining that person's liability. Any information in the business case file pertaining to the determination that a TFRP should be assessed against a person is return information of only that person subject to the penalty. The return or return information of a corporation is available to:
 - a. a corporate officer authorized in accordance with State law to legally bind the corporation;
 - b. any person designated by resolution of its board of directors or any other similar governing body;
 - c. any officer or employee of the corporation upon written request signed by any principal officer and attested to by the secretary or other officer; or
 - d. a bona fide shareholder of record owning one percent or more of the outstanding stock of the corporation.

Note: See IRC 6103(e)(1)(D) and IRM 11.3.2, Disclosure to Persons with a Material Interest.

- (4) FOIA requesters seeking TFRP documents contained in the business case file who are not subject to investigation or who have been determined not to be subject to the penalty may not receive access to the business case file **except as otherwise provided in IRC 6103(e)**. Also see IRM 11.3.2.

Note: If the request comes from a Power of Attorney or an authorized third party designee, review the Form 2848 or Form 8821 to confirm the authority to access business information is proper.

Example: If a person under investigation as a potential responsible party executes a POA for only the 1st quarter 2011 TFRP (6672 Penalty/Civil Penalty), the attorney will be able to inspect/receive the person's return and return information to the extent authorized under IRC 6103(e). The attorney will be able to inspect/receive business related documents found in the TFRP investigation file directly related to the 1st quarter 2011 TFRP if the person has been assessed.

Note: If the authorization does not cover income taxes, Form 1040, you cannot release information in relation to income taxes.

11.3.40.5.2
(08-11-2017)
**Trust Fund Recovery
Penalty Case File**

- (1) The contents of the TFRP files are generally not the return information of the business, although some supporting documents may consist of copies of records which originated in the business case file and were, in their original form and are, even after copying into a responsible person's TFRP case file, return information of the business.
- (2) TFRP case files consist of documents prepared or maintained to support and justify the penalty assessment and may contain return information of one, several, or all persons subject to, or potentially subject to, the penalty.
- TFRP files that involve more than one responsible person, or potential responsible person, are generally organized so that a primary or "key" file and a number of supplemental, or secondary files are created.
 - All penalty determination documents are placed in the primary file while documents that pertain to a potential responsible person are placed in a specific supplemental file, pertaining solely to each potentially responsible person.
 - If Disclosure personnel request a TFRP investigation file for all TFRP and/or related files and only receive a secondary or supplemental file, they will have to make another request to secure the primary file and ensure receipt of all documents.

Note: See IRM 5.7.6.14, Case File Documentation, for a list of documents that may be found in a TFRP investigation file.

- (3) Records and information gathered or generated in the course of determining whether a specific person is a responsible person subject to the TFRP is the return information of that person. Such information is available to that person in accordance with IRC 6103(e). Such information is generally not available to the business or to any other person.
- (4) Information obtained from a person being investigated for possible TFRP liability, with respect to that person's potential liability, is the return information of that person. This is true even if the information refers to other persons who

may also be liable for the same TFRP. The original provider may obtain a copy of what he/she provided even if it contains third party references.

Note: Care should be taken that any release consist only of what was said by or received from the original provider.

Note: Redact notations made by IRS personnel on documents submitted to the original provider.

- (5) Information obtained from a person with respect to the potential liability of another person for the TFRP penalty is the return information of the person whose liability is the reason the information was obtained or received. This is true even if the provider of the information is also potentially responsible for the same TFRP. Consideration should be given as to whether the release of the information to the person whose liability is being considered, could impair an investigation, identify an informant or otherwise be exempt from disclosure.
- (6) Documents found in the TFRP file may require redacting, depending upon the status and identity of the requester, whether there has been an assessment or not, or if release may impair an investigation, identify an informant or otherwise be exempt from disclosure.
- (7) Specific documents that may be found in the TFRP file can be found in IRM 5.7.6.14, Case File Documentation.
- (8) If an IRS employee uses a pseudonym and that is present in the file, their real name should be deleted. Disclosure should consider FOIA exemption 5 USC 552(b)(6) and/or (b)(7)(C) when responding to a FOIA request where this is noted. See IRM 11.3.13.5, Review and Redacting.

11.3.40.5.2.1
(08-11-2017)

Form 941, Employer's Quarterly Federal Tax Return and Other Types of Returns

- (1) This could be the original return filed by the business or an IRS filed IRC 6020(b) assessment, a copy of Form 941, the Employer's Quarterly Federal Tax Return, or a computer printout of the tax module for the form.
- (2) The Form 941 found in the collection case file can be disclosed under IRC 6103(h)(4) by Revenue Officers or others involved in TFRP investigation or litigation, or under IRC 6103(e) (as appropriate) to each person assessed the penalty for that period. Redactions to the form or computer module printout are unnecessary once the (h)(4) or (e) determination has been made.

Note: If a Revenue Officer receives a request for the Form 941, and there is no such Form currently in the case file, they should refer the requester to the Form 4506, Request for Copy of Tax Return, procedure.

- (3) This form is not available to a person not assessed the TFRP except if the requester otherwise can have access per IRC 6103(e) to the employment tax or other type of return.

Caution: Care must be taken to release only returns that match the periods for which the requester is subject to the penalty.

Note: This section may also apply to the following additional Forms if more than one person would be liable for payment of taxes:

- Form 720, Quarterly Federal Excise Tax Return (see IRM 5.7.3.1.2, TFRP For Collected Excise Taxes)
- *Form CT-1*, Employer's Annual Railroad Retirement Tax Return
- Form 943, Employer's Annual Tax Return for Agricultural Employees
- Form 944, Employer's Annual Federal Tax Return
- Form 945, Annual Return of Withheld Federal Income Tax
- Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons
- Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests
- Form 8804, Annual Return for Partnership Withholding Tax (Section 1446)

11.3.40.5.2.2
(08-11-2017)

Form 4180, Report of Interview with Individual Relative to Trust Fund Recovery Penalty or Personal Liability for Excise Taxes and Form 4181 Questionnaire Relating to Federal Trust Fund Matters of Employer

- (1) The Form 4180, Report of Interview with Individual Relative to Trust Fund Recovery Penalty or Personal Liability for Excise Taxes, is used by Revenue Officers to obtain information pertinent to who might be responsible and willful for the non-payment of the trust fund taxes. Each person may receive his or her own Form 4180 because the information was gathered to determine that person's potential liability under IRC 6672. This Form is the return information of the interviewee and must be withheld from all other requesters pursuant to IRC 6103(a). For FOIA requests, assert exemption (b)(3) in conjunction with IRC 6103(a) and exemption (b)(7)(C).
- (2) Form 4181, Questionnaire Relating to Federal Trust Fund Tax Matters Of Employer, is used to obtain information from any person pertaining to who in the business was responsible for filing and payment of trust fund taxes. The Revenue Officer uses the information in identifying potentially responsible persons. The Form 4181 can be provided in an unredacted form to the person who provided it. It can also be provided to any person identified on the form after redacting information pertaining to other persons. These redactions should be made pursuant to FOIA exemption (b)(3) with IRC 6103(a), and FOIA exemption (b)(7)(C). Revenue Officers should assert IRC 6103(a) to withhold this material.

11.3.40.5.2.3
(08-11-2017)

Form 4183, Recommendation Re Trust Fund Recovery Penalty Assessment (Rev. 2-93)

- (1) Form 4183, Recommendation re: Trust Fund Recover Penalty Assessment, is used to capture the Revenue Officer's determination about who is responsible and willful for the non-payment of trust fund taxes based on the facts and circumstances of the investigation. The specific information about other persons available to a requester depends on the Revenue Officer and Collection Group Manager determination of the TFRP liability of each person. When determining what can be released, Disclosure and Collection employees should follow the instructions below.
- (2) For requesters deemed **not responsible**, the requester can receive information that pertains to that person only. Only the portion of the Form 4183 pertaining to the non-responsible requester may be disclosed to that requester. This includes the name of the business and the Service employee signatures and dates on page 1 of Form 4183. All other information on Form 4183 is return information of taxpayer(s) other than the requester, and must be withheld in full. Collection employees will cite IRC 6103(a) to withhold this information. For FOIA requests, cite FOIA exemption (b)(3) in conjunction with IRC 6103(a) and FOIA exemption (b)(7)(C).

- (3) For requesters deemed **responsible in part**, the requester can receive information that pertains to that requester and limited information about others also deemed responsible. The partially responsible requester may be provided the information authorized for disclosure pursuant to IRC 6103(e)(9). See IRM 11.3.40.8 for details on this provision. The requester may also be provided the name of the business and the Service employee signatures and dates on page 1 of Form 4183; this is return information of the requester. All other information on Form 4183 is return information of taxpayer(s) other than the requester, and must be withheld in full. This includes the block on the lower left of page 1 labeled “non-assertion approved” (regardless of whether it is checked). This is an indication that no penalties were asserted against one or more persons and is not available to persons who are determined to be liable, or partly liable, for the TFRP. Collection employees will cite IRC 6103(a) to withhold this information. For FOIA requests, cite FOIA exemption (b)(3) in conjunction with IRC 6103(a) and FOIA exemption (b)(7)(C).

Note: IRC 6103(e)(9) requires a written request. If Collection receives a verbal request, information about other assessed responsible persons cannot be disclosed until a written request is received.

Note: If the same TFRP has been assessed against more than one responsible person, IRC 6103(e)(9) authorizes disclosure of specific limited information about each assessed responsible person to other assessed responsible persons. See IRM 11.3.40.8 for information about disclosures pursuant to IRC 6103(e)(9).

Note: No provision of IRC 6103(a), including 6103(e)(9), authorizes disclosure to a partially responsible person of the trust fund outstanding balance. This information must be redacted from page 1 of Form 4183.

Note: Collection employees handling open TFRP cases may be authorized to disclose certain third party return information to a requester pursuant to IRC 6103(h)(4). See IRM 11.3.22.8, Disclosure of Returns and Return Information in Judicial and Administrative Tax Proceedings, for more information.

- (4) For requesters deemed **responsible** for payment of the entire trust fund penalty, the requester can receive information that pertains to that requester only and limited information about others also deemed responsible in full or in part. The responsible requester may be provided the information authorized for disclosure pursuant to IRC 6103(h)(4). See IRM 11.3.40.8 for details on this provision. The requester may also be provided the name of the business and the Service employee signatures and dates on page 1 of Form 4183; this is return information of the requester. All other information on Form 4183 is return information of taxpayer(s) other than the requester, and must be withheld in full. This includes the block on the lower left of page 1 labeled “non-assertion approved” (regardless of whether it is checked). This is an indication that no penalties were asserted against one or more persons and is not available to persons who are determined to be liable, or partly liable, for the TFRP. Collection employees will cite IRC 6103(a) to withhold this information. For FOIA requests, cite FOIA exemption (b)(3) in conjunction with IRC 6103(a) and FOIA exemption (b)(7)(C).

Note: IRC 6103(e)(9) requires a written request. If Collection receives a verbal request, information about other assessed responsible persons cannot be disclosed until a written request is received.

Note: If the same TFRP has been assessed against more than one responsible person, IRC 6103(e)(9) authorizes disclosure of specific limited information about each assessed responsible person to other assessed responsible persons. See IRM 11.3.40.8 for information about disclosures pursuant to IRC 6103(e)(9).

Note: Do not redact the trust fund outstanding balance. This information is the return information of the fully responsible person and can be disclosed to this requester.

Note: Collection employees handling open TFRP cases may be authorized to disclose certain third party return information to a requester pursuant to IRC 6103(h)(4). See IRM 11.3.22.8, Disclosure of Returns and Return Information in Judicial and Administrative Tax Proceedings, for more information.

11.3.40.5.2.4
(08-11-2017)
Form 2209, Courtesy Investigation

- (1) What can be released from Form 2209, Courtesy Investigation, will depend upon the specific content.
 - a. In some circumstances the name of the assigned Revenue Officer or the address of the Post of Duty to which sent may pinpoint the locality in which a taxpayer or an informant currently resides.
 - b. It may, therefore, be necessary to delete such information. In FOIA responses, exemptions which may be cited are (b)(3) in conjunction with IRC 6103(a) or (e)(7) and/or (b)(7)(A), (C) and/or (D).

11.3.40.5.2.5
(08-11-2017)
Form 2749, Request for Trust Fund Recovery Penalty Assessment(s)

- (1) Form 2749, Request for Trust Fund Recovery Penalty Assessment(s), is the return information of the responsible person to whom it pertains. Form 2749 is prepared by the Revenue Officer proposing the TFRP, reviewed in Advisory and processed for assessment in Compliance Services, Collection Operations.
- (2) Form 2749 is the return information of the responsible person named on the form. This form may be disclosed to that person, after deleting any information the disclosure of which would impair tax administration. Collection should assert IRC 6103(e)(7) to withhold such information. For FOIA requests, assert FOIA exemption (b)(3) in conjunction with IRC 6103(e)(7) and FOIA exemption (b)(7)(A). This form is not disclosable to any person other than the person whose proposed TFRP assessment is reflected on it.
- (3) The box "No Related Assessments" should be deleted entirely regardless of whether the box for related assessments was checked.
- (4) When processing FOIA requests for Form 2749, exemption 5 USC 552(b)(3) in conjunction with IRC 6103(a) should be cited, as appropriate, whenever necessary to withhold the form from a third party requester.

11.3.40.5.2.6
(08-11-2017)

Form 2750, Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty, and Form 2751, Proposed Assessment of Trust Fund Recovery Penalty

- (1) Form 2750, Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty, and Form 2751, Proposed Assessment of Trust Fund Recovery Penalty, constitute a contractual agreement between the taxpayer and the IRS.
- (2) They are the return information of the taxpayer who signs them and may be released only to that person.
- (3) In FOIA responses, if the requester is someone other than the taxpayer or the holder of a valid power of attorney or a designee of the taxpayer, exemption (b)(3) in conjunction with IRC 6103(a) should be cited.

11.3.40.5.2.7
(08-11-2017)

Form 2644, Recommendation for Jeopardy/Termination Assessment, and Form 2859, Request for Quick or Prompt Assessment

- (1) Form 2644, Recommendation for Jeopardy/Termination Assessment, and Form 2859, Request for Quick or Prompt Assessment, are the return information of the person to whom they pertain and are not available to any other person.
- (2) Care must be exercised in the manner in which access to these forms is denied to a third party who has no right to access the information, since the fact they exist is itself return information which cannot be disclosed and the denial should not intimate or confirm their existence. That will only be an issue if the specific form itself is requested, not if it is being withheld as part of the third party return information material responsive to a request for the TFRP file.

Note: Consider whether disclosure of Form 2644 would impair the collection of the TFRP. If so, the form should be withheld in full from the taxpayer whose return information it is pursuant to IRC 6103(e)(7). For FOIA requests, assert FOIA exemption (b)(3) in conjunction with IRC 6103(e)(7) and exemption (b)(7)(A).

- (3) In FOIA responses, the entire document should be withheld citing exemption 5 USC 552(b)(3) in conjunction with IRC 6103(a).

11.3.40.5.2.8
(08-11-2017)

Form 433-B, Collection Information Statement for Businesses

- (1) A copy of Form 433-B, Collection Information Statement for Businesses, from the business file may be contained in the penalty file. This form is the return information of the business, and may be provided to the business without redaction.
- (2) Collection employees with an open TFRP case may disclose this form to a potential responsible person in accordance with IRC 6103(h)(4). See IRM 11.3.22.8, Disclosure of Returns and Return Information in Judicial and Administrative Tax Proceedings, for additional information. Personal information of persons other than the requester should be redacted.
- (3) A FOIA requester other than the business can only have access to this form if the requester provides an applicable disclosure consent or Power of Attorney with the request. If the requester does not provide a disclosure authorization (Form 8821, Tax Information Authorization or Form 2848, Power of Attorney and Declaration of Representative, withhold this form in full and assert exemption (b)(3) in conjunction with IRC 6103(a). If the requester provides a disclosure authorization, then personal privacy information of individuals named in section 2 should be withheld and FOIA exemptions (b)(6) and/or (b)(7)(C) should be asserted, as applicable.

Note: See IRM 11.3.13.5, Reviewing and Redacting, for a further discussion.

11.3.40.5.2.9
(08-11-2017)
Routine Form Letters

- (1) Letter 1153, Proposed Trust Fund Recovery Penalty Notification, *Letter 1155 (DO)*, Notice of Agreed Trust Fund Recovery Penalty and Letter 3164-A Third Party Contact, are generally sent to all responsible or potentially responsible persons subject to the penalty.
- (2) Requesters can receive copies of letters addressed to them. Letters sent to other parties are not available without proper authorization from the person to whom they pertain, using Form 2848, Power of Attorney and Declaration of Representative, or Form 8821, Tax Information Authorization, or equivalent.
- (3) FOIA responses should cite exemption 5 USC 552(b)(3) in conjunction with IRC 6103(a).
- (4) Letter 3586, Meeting Scheduled with Individual for TFRP Interview. This is a letter sent to schedule a meeting to a person with information relevant to the penalty determination. This usually will precede the completion of Form 4180. This letter is not available to any third party FOIA requester unless the requester provides a disclosure authorization using Form 8821, Form 2848, or equivalent. Withhold the letter in full asserting FOIA exemption (b)(3) in conjunction with IRC 6103(a).

Note: IRC 6103(e)(9) does not authorize disclosure of any information from this letter.

Note: Collection personnel working an open case may be authorized to disclose information from this letter pursuant to IRC 6103(h)(4). See IRM 11.3.22.8, Disclosure of Returns and Return Information in Judicial and Administrative Tax Proceedings, for more information.

11.3.40.5.2.10
(08-11-2017)
Case History Notes

- (1) History notes from TFRP files are often difficult to review and sanitize, especially when multiple persons are considered for assertion of the TFRP. The Revenue Officer maintains:
 - The business case history is the return information of the business. ICS history notes containing TFRP collection matters must be carefully reviewed to ensure that return information of each person identified as a potential responsible person and/or assessed as a responsible person is disclosed only as authorized.
 - Automated Trust Fund Recovery (ATFR) history/notes which are used to document systematic actions and calculations that pertain to trust fund taxes.
- (2) For ICS and ATFR history/notes, care must be taken to ensure the type of tax and tax periods referenced in the history match those being sought by the requester, and that personal information about third parties is redacted. That will include:
 - a. Personal information (phone numbers, addresses, etc.),
 - b. Any reference to the decision to hold (or not to hold) a person responsible for the TFRP,
 - c. Interview notes taken during an interview with a potentially responsible person referencing his/her liability for the penalty and/or ability to pay.

Note: History notes documenting efforts to schedule an interview to prepare a Form 4180 may be disclosed only to the person the Revenue Officer seeks

to interview. Like the form itself, this information is the return information of the interviewee, and should be withheld from all other requesters pursuant to IRC 6103(a). For FOIA requests, assert exemption (b)(3) in conjunction with IRC 6103(a) and exemption (b)(7)(C).

Note: History notes documenting efforts to solicit a Form 4181 may be released to any person named on the Form, after redacting all personal information of every other person named on the form. This information is the return information of those other persons and should be withheld pursuant to IRC 6103(a). For FOIA, assert exemption (b)(3) in conjunction with IRC 6103(a) and exemption (b)(7)(C). Also consider whether any information should be withheld because disclosure would impair tax administration. If so, assert IRC 6103(e)(7). For FOIA, assert exemption (b)(3) in conjunction with IRC 6103(e)(7) and exemption (b)(7)(A).

11.3.40.5.3

(08-11-2017)

Individual Master File Balance Due Collection File

- (1) A separate Balance Due file (Master File Transaction 55 Transaction Code 240 with Action Code 618) Taxpayer Delinquent Account (TDA) file is issued for each person against whom the TFRP has been assessed.
- (2) Prior to releasing the Individual Master File (IMF) Balance Due File to the taxpayer to whom it pertains, the file must also be reviewed in order to delete information which would interfere with tax administration or the law enforcement process and/or would identify an informant. See IRM 11.3.13 ,Disclosure of Official Information, Freedom of Information Act, for general disclosure information.
- (3) The file may also include tax or personal information concerning other persons. Such information should be deleted before the file is released.
- (4) In FOIA responses, exemptions (b)(3) in conjunction with IRC 6103(a) and/or (e)(7), (b)(6) and/or (b)(7)(A), (C), (D) and/or (F) should be considered when reviewing the TDA file. See, Disclosure of Official Information, Freedom of Information Act .

11.3.40.5.4

(08-11-2017)

Case Control Files

- (1) The originating SB/SE function (see IRM 5) has responsibility for controlling related TFRP cases. Information contained in the case control files may have various disclosure characteristics depending upon the circumstances involved.
- (2) Information concerning a claim for relief or the filing of a bond pursuant to IRC 667(b) is return information of the taxpayer involved and should not be released to other persons.
- (3) Initiation of a refund suit may make available to any member of the public any documents which have become public in the course of a judicial tax proceeding, including the fact that such suit has been filed. See IRM 11.3.40.6, Litigation.

11.3.40.6

(08-11-2017)

Litigation

- (1) Disclosure personnel should recognize that litigation of some type may have caused certain identity information to be made public. This factor may affect the redaction of records.

- (2) In light of the inconsistent posture adopted by the courts, disclosure personnel will maintain a general policy to redact such information. In the event of a FOIA request, consider the public information facts along with other applicable FOIA considerations.

Note: See IRM 11.3.11.12, Information Which Has Become Public Record, for further discussions.

11.3.40.7
(08-11-2017)
**Disclosures by
Collection Employees**

- (1) While Collection compliance employees are conducting a TFRP investigation, issues involving investigative disclosures, joint appearances, informal requests, and/or oral disclosures may arise.

11.3.40.7.1
(01-01-2006)
Investigative Disclosure

- (1) Investigative disclosures are made at the initiative of the IRS in the process of obtaining information, collecting tax or performing law enforcement activities. They cannot be made in response to a taxpayer's request to obtain information. Investigative disclosures are not authorized for the purpose of obtaining greater cooperation from the taxpayer and cannot be offered as a trade-off for other information.

Note: Investigative disclosures are discussed in detail in IRM 11.3.21.

- (2) Each person subject to the TFRP may be a valid source of information concerning other persons subject to the penalty. Consequently, such person may easily infer the identity of other persons involved. Such inference does not authorize further disclosure of information and should not be confirmed.
- (3) Whenever this section requires the editing of identity or personal information, such editing should be performed, even if the requester has inferred or claims to know the information being deleted.

11.3.40.7.2
(08-11-2017)
Joint Appearances

- (1) The process of asserting the TFRP may include conferences with persons subject to the penalty. Several or all of the persons subject to the penalty may appear at such conferences. Appearing jointly creates an atmosphere where Collection employees must be sensitive to the privacy considerations of each participant. Those participating should be advised up front that there is a possibility that their private information will be overheard by the other participants. If they understand that fact and agree to proceed, the case file should be adequately documented that they have given verbal consent and that they have indicated their agreement to that fact.

Note: See, Requirements for Oral Authorization, for procedures related to verbal authorization to disclose pursuant to IRC 6103(c).

- (2) Any record maintained of such joint conference would constitute the return information of all the persons subject to the penalty who were present.
- (3) The appearance of a person at such a conference does not, however, authorize any further disclosures about the other persons present after the conference is concluded. The verbal disclosure consent expires at the conclusion of the joint conference. If the participants want the disclosure authority to extend beyond the conference, they must provide a written disclosure authorization (Form 8821, Form 2848, or equivalent).

11.3.40.7.3
(01-01-2006)
Informal Requests

- (1) Revenue Officers and Appeals Officers may release information pertaining to an open TFRP matter assigned to them in response to a request (other than a FOIA request) from a taxpayer provided the release is in accordance with this section.
- (2) If information is withheld on the basis of impairment to tax administration, the authority to withhold such information pursuant to IRC 6103(e)(7) rests with the supervisor. Unless the requester is authorized to access under IRC 6103(e)(1) and (e)(7) for the requester's own return information, or pursuant to a written request for the specific information about other assessed responsible persons pursuant to IRC 6103(e)(9).
- (3) Disclosure personnel will provide any necessary advice to accomplish the quickest and least expensive resolution of any request.
- (4) Telephonic contact with the requester is strongly encouraged in order to clarify the extent and intent of the request, explain the type of information which may be released and reduce the effort and expense necessary to resolve the request.
- (5) Requests that formally cite FOIA must be processed by the Disclosure office. In situations where the requester agrees, the Revenue Officer or Appeals Officer may respond if the formal FOIA request is withdrawn.

11.3.40.7.4
(08-11-2017)
Other Disclosures

- (1) Some frequently asked questions may be simply answered without necessitating a written request or a written response.
 - (2) Pub 594, The IRS Collection Process, provides a general description about employment tax, trust fund taxes and the trust fund recovery penalty.
 - (3) More information can be found in Notice 784, Could you be Personally Liable for Certain Unpaid Federal Taxes? or on *Trust Fund Taxes*.
 - (4) Prior to assessment, a person subject to the penalty may be advised whether or not other persons are also being considered unless to do so would identify those persons due to the size of the company. Other persons being considered for the penalty should not be specifically identified. A requester may be advised of the types of persons generally considered for the penalty, as discussed in IRM 5.7. Generally, the requester should not, however, be provided any specific information concerning any other persons against whom the penalty is being considered.
- Note:** See IRM 11.3.2.4.14, Trust Fund Recovery Penalties, and IRM 11.3.40.8, below, regarding IRC 6103(e)(9) and the eligibility to receive information about others who are assessed the TFRP.
- (5) A taxpayer may always be advised of the current payoff figure for that taxpayer's own liability, reflecting payments and credits.
 - (6) A taxpayer may be advised of any related judicial tax proceeding and any information which becomes public as a result of such proceeding. See IRC 6103(h)(4) and IRM 11.3.40.6, Litigation.

11.3.40.8
(08-11-2017)
IRC 6103(e)(9)

- (1) Disclosures made pursuant to IRC 6103(e)(9) shall be made in written form upon receipt of a proper written request from a person who has been assessed the penalty or their duly authorized attorney-in-fact. The disclosure will be limited to the specific tax period associated with the requester's TFRP and must include:

- a. Names of the other persons assessed the same penalty,
- b. Amount collected from each person assessed the penalty,
- c. Current collection status (e.g., notice, TDA, installment agreement, suspended), and
- d. If suspended, the reason (e.g., unable to locate, hardship)

Note: Collection personnel should not make premature disclosure of the information based on IRC 6103(e)(9) because a proposed assessment may not actually be assessed for a variety of compliance reasons.

Note: IRC 6103(e)(9) does not authorize disclosure of the amount assessed with respect to each responsible person.

- (2) If the Disclosure office receives a FOIA request for the TFRP file and for access to information under IRC 6103(e)(9), they must work the FOIA portion and forward the (e)(9) portion to Collection for a response. If the Collection office receives a FOIA request for the TFRP file and for access to information under IRC 6103(e)(9), collection must work the (e)(9) portion and forward the FOIA request to Disclosure for a response.
- (3) When Collection forwards the FOIA portion of the request to Disclosure, they should also indicate if/when they are going to respond to the (e)(9) portion and if applicable, provide a copy of the response letter provided to the taxpayer.
- (4) Compliance personnel are responsible for processing these requests, and will not refer an IRC 6103(e)(9) TFRP disclosure to Disclosure. See IRM 5.1.22.5.1, IRC 6103(e)(9) Disclosure Procedures, and IRM 5.1.22.5.2, Guidelines for TFRP Disclosure, for processing instructions.

Note: See IRM 11.3.2.4.14, Trust Fund Recovery Penalties, for a complete discussion of IRC 6103(e)(9).

Disclosures Involving Trust Fund Recovery Penalty Assessments 11.3.40

page 19

Exhibit 11.3.40-1 (08-11-2017)

Access Provisions Applicable to Disclosure of TFRP Files

Code section	Disclosure guidance	Additional resource
5 USC 552 Freedom of Information Act, FOIA	Provides for public access to records and information maintained by Federal agencies.	IRM 11.3.13, Freedom of Information Act (FOIA)
IRC 6103(c)	Disclosure of returns and return information to designee of taxpayer.	IRM 11.3.3, Disclosure to Designees and Practitioners
IRC 6103(e)(1)	Disclosure to persons having a material interest, in general.	IRM 11.3.2, Disclosure to Persons with a Material Interest
IRC 6103(e)(6)	Disclosure to persons having a material interest, attorney-in-fact.	IRM 11.3.2, Disclosure to Persons with a Material Interest
IRC 6103(e)(9)	Disclosure to persons having a material interest, Disclosure of certain information where more than 1 person subject to penalty under 6672.	IRM 11.3.2, Disclosure to Persons with a Material Interest
IRC 6103(h)(4)	Disclosure for purposes of tax administration, disclosure in judicial and administrative tax proceedings.	IRM 11.3.22, Disclosure to Federal Officers and Employees for Tax Administration Purposes

