



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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MEMORANDUM FOR DEPUTY AREA COUNSEL, TAX EXEMPT/GOVERNMENT
ENTITIES, AREA 7

FROM: Chief, Branch 1
Assistant Chief Counsel (Disclosure & Privacy Law)

SUBJECT: Proposed Intergovernmental Agreement Between Nebraska
Department of Revenue and IRS

We have reviewed the proposed Memorandum of Understanding (MOU) between the IRS and the Nebraska Department of Revenue, Charitable Gaming Services, concerning the conduct of joint civil and criminal tax investigations and the sharing of tax information between the two agencies. We have minor recommended changes. This memorandum is not to be cited as precedent.

We have attached to this memorandum is a sample, standard Memorandum of Understanding for joint Fed-State examinations that we prepared based on numerous prior MOUs that we have been asked to review. Most of the provisions of the proposed MOU between the IRS and the Nebraska Department of Revenue are similar to provisions in the attached sample, and we recommend that where similar, you use the language in the sample MOU. We also recommend that you add any provisions in the sample MOU not found in the proposed MOU. To the extent the sample MOU contains language that is inapplicable to your situation, then we recommend you not add such language or modify it as you see fit. (We are available to discuss any of the language in the sample MOU and to offer suggestions on how to adapt it to the proposed joint agreement between the IRS and the Nebraska Department of Revenue.)

We also note that several paragraphs of the proposed MOU reference "state charitable gaming issues." We recommend defining "state charitable gaming issues" in the MOU. I.R.C. § 6103(d)(1) provides that returns and return information may only be disclosed to state tax authorities for the purpose of, and to the extent necessary for, the administration of state tax laws. Presumably, the Charitable Gaming Division's principal, if not sole, function is the enforcement of state revenue laws pertaining to the

conduct of charitable gaming activities (see Neb. Rev. Stat. § 9-1,101), such as bingo, raffles, and lotteries; however, to the extent the division has responsibilities other than enforcement of state tax laws, the MOU should make clear that any tax return information received from the IRS will be used solely for the administration of Nebraska tax laws.

If you have any questions, or if we can provide any further assistance, please call us at (202) 622-4580.

Memorandum of Understanding

Joint Income Tax Audit Compliance Project between IRS-A District and the State Department of Revenue

This includes Disclosure & Privacy Law's standard comments with respect to joint examinations. It was derived from an MOU sent in for comment, and not every MOU will include every clause shown here. These are Disclosure & Privacy Law's comments, which have not been coordinated with GLS.

In order to facilitate cooperative civil tax examinations and exchange of information regarding income and franchise tax returns, the Internal Revenue **Service-** A District, hereafter referred to as *IRS-A District* and the State Department of Revenue, hereafter referred to as *SDOR*, agree to the following provisions of this Memorandum of Agreement. **The Agreement on Coordination of Tax Administration between the IRS and SDOR and/or this memorandum constitute the written request required for the disclosure of Federal return information pursuant to Internal Revenue Code section 6103(d)(1) and State return information pursuant to State Code 123.456 for the Joint Income Tax Audit Compliance Project, hereinafter be referred to as the Project.:**

- I. **PURPOSE:** This Memorandum of Understanding (MOU) outlines the scope and responsibilities of agents working for the *IRS-A District* and the *SDOR* who will participate in the Project.

Both agencies believe this project will yield the following benefits:

- Improve audit selection techniques;
- Prove to be a positive influence for taxpayer voluntary compliance;
- Expedite information sharing of legal research on income tax issues;
- Enhance taxpayer education of federal vs. state law (during the audit process);
- Speed resolution of federal vs. state tax issues;
- Reduce audit cycle time;
- Expedite the examination process for audited taxpayers;
- Promote more efficient information exchange venues;
- Reduce taxpayer burden; and
- Promote increased agent competency via joint training and skills transference.

- II. PROJECT MANAGERS--RESPONSIBILITIES:** The Project Managers for the Project will be the Chief Examination Division for the IRS-A District and the Director Audit Division for the SDOR. The responsibilities of the Project Managers will be to provide oversight of the project and to issue measurement reports stating the accomplishments achieved by the joint effort. Additional responsibilities of the Project Managers will be to make recommendations for implementation of the project to their respective offices throughout the State.
- II PROJECT PLAN:** The IRS-A District and SDOR agree to perform joint tax examinations on returns selected for the Project. IRS-A agents assigned to the project will **conduct the focus on federal income tax examination issues**. SDOR agents assigned to the project will **conduct the focus on state income tax issues examination**. The results from these examinations will be ~~shared~~ disclosed based on current federal/state exchange agreements and to the extent that the results relate to, or impact, the determination of correct federal and/or state income tax proposed.

Within 30 days of the designation of team members, the individuals will meet to conduct training and prepare audit plans. Ten cases will be selected for examination (five for joint examination and five separate examination (control group) from lists of potential returns, which will be provided by the Project Manager of both agencies. The cases selected for examination by IRS-A District will be determined by using * *****. * The dollar amount associated with these * *****. * Each party has the option to decline the examination of any specific entity.

Coordination of these examinations will be handled by the Team Leader, IRS-A and the Team Leader, SDOR. The purpose of the tax examinations is to determine the level of federal and state tax compliance and whether any additional state or federal taxes are due. Project cases (Addenda 2) will be selected and attached to the agreement within 30 days from the date of execution. Both agencies agree to share legal research on technical aspects of the interaction between state law and federal law. In addition, if it becomes necessary for the SDOR to request formal technical advice from the IRS-A District, the District Director will use his office to expedite such requests.

[If joint notices, joint interviews, joint IDRs or other joint activities are planned, the MOU should spell out from beginning to end all the steps in the joint examination--from the notice of examination to the RAR and notice of deficiency. The term "joint examination" has no standard meaning and the extent of the joint activities will vary from district to district. This particular MOU involved only simultaneous federal and state examinations and sharing of results.]

- IV. AUTHORIZED PERSONNEL:** The Director, IRS-A District and Director, SDOR will designate, in writing, agents under their jurisdiction and control who will be assigned to the Project. Agents so designated will be authorized to request and

receive tax information which is directly related to the examination and resolution of cases assigned to the Project. Information may be obtained from various sources, including open and closed cases. A list of authorized IRS and State employees assigned to the Project will be attached to this memorandum of understanding (Addenda 1) within 30 days of execution of this agreement. The list will be updated annually or as needed by the Project Leaders.

Changes to either entities under examination and/or employees assigned to the project may be made at any time via a written request to the appropriate Project Manager. Project Managers will survey the effected parties in their agencies quarterly and provide updates as necessary to the IRS-A Disclosure Officer, who will disseminate the information to the Team Leaders. Any documentation or information transmitted in regards to the Project will be sent to the attention of the Team Leader for each agency for appropriate handling.

- V. ADMINISTRATIVE SUMMONSES and SUBPOENAS:** IRS administrative summonses will not be used to secure records or testimony relating to state tax issues. However, information secured through the administrative summons¹ procedure and utilized to develop Federal tax issues will be ~~shared with~~ **disclosed to** SDOR agents if the information directly relates to or impacts on state tax issues.

State administrative subpoenas will not be used to secure records or testimony relating to federal tax issues. However, information secured through the administrative subpoena procedure and utilized to develop state tax issues will be ~~shared with~~ disclosed to IRS-A if the information directly relates to or impacts on federal tax issues.

- VI. INDICATIONS OF CRIMINAL TAX VIOLATIONS:** In the event there are indications of fraud in a Project examination sufficient to indicate the possibility of criminal fraud, the IRS agent will prepare a Fraud Referral, Form 2797, and route it through the Team Leader and Project Manager to the Chief, Criminal Investigation Division, A. If potential criminal violations of state **tax** laws are identified, a fraud investigation referral will be prepared by the SDOR agent and forwarded to the SDOR Fraud Section. Pursuant to acceptance of either referral, the Chief, Criminal Investigation and representative from SDOR will coordinate regarding the disposition of any criminal investigation and/or subsequent referrals for prosecution. If necessary, a specific MOU covering cooperation in a joint criminal investigation will be initiated.

SDOR agrees that prior to using any investigation data received from the IRS in any criminal prosecution, an agreement will be secured from the District Director. Similarly, prior to using data obtained from SDOR in a criminal prosecution, the IRS-A will secure agreement from an appropriate official of the State Director's Office. Neither SDOR nor IRS-A will reveal information that would identify an informant.

VII. DISCLOSURE and RECORD KEEPING REQUIREMENTS: All records and documents **maintained or collected by IRS-A District and shared disclosed to SDOR** under this agreement **[add language re any joint activities, e.g. “including information collected as a result of joint correspondence, joint interviews, or joint information document requests”]** will ~~maintain~~ **be subject to** the confidentiality requirements of IRC 6103. The Team Leader, IRS-A District will be responsible for the record keeping requirements of Internal Revenue Code Section 6103(p)(3). When a disclosure is made to the SDOR under the provisions of this MOU, a Form 5466B (Multiple Record of Disclosure) will be prepared as required. The forms will be forwarded to the District Disclosure Officer no less than monthly. The District Disclosure Officer will ensure safeguards required under IRC 6103(p)(4) are met.

When a disclosure of state **return** information is required by IRS under this MOU, the team leader, IRS-A District, will supply the SDOR’s representative with a signed, written request describing the information to be disclosed. Once IRS no longer needs the disclosed state information, it will be destroyed in the same manner as the IRS destroys federal tax information, or the disclosed state information and all copies will be returned to the SDOR’s representative. The team leader, IRS-A must provide SDOR with a signed written statement indicating whether the disclosed state information was destroyed or returned to the state when IRS’s use of the information is complete.

~~All records and documents collected and shared under this agreement will maintain the confidentiality requirements of IRC 6103. Hence,~~ **Any requests [by the public]** for records and/or documents related to these examinations will be referred to the appropriate IRS or SDOR Disclosure Officer.

VIII. PROJECT ASSESSMENT: Semi-annual meetings in the months of September and March will be held between the IRS and the SDOR to review project activities and results. An evaluation of the joint venture will be made and shared during these meetings. The group may agree to more frequent meetings as necessary. Should circumstances develop that require the involvement of management officials with greater authority than those named, it will be the responsibility of the project managers to coordinate the appropriate discussions. A final report will be jointly compiled and will be forwarded to the Director, IRS-A and the Director, SDOR.

IX. CHANGES TO MOU OR APPLICABLE LAW: Any changes to this agreement must be agreed upon, in writing, by the signers **[signers or signatories]** or their successors. Any changes to the addenda must be agreed upon by each Project Manager, as previously stated. If significant changes are made to either federal or state legislation, either party will provide written notification of changes, a copy of the statute, and will offer space, if available, in their respective training classes.

X. MOU DURATION: This MOU is effective on the date of the last signature and remains in effect for one year **or until the last case is closed, whichever is sooner**. An annual review of the MOU will be an agenda item at the semi-annual meetings between IRS and the SDOR. If the results of the annual review reflect desired (or above) performance goals, this agreement will be automatically extended for a period of one year (not to exceed three years (based on annual review results)), unless written notice of agreement termination is received from with the Director, IRS-A or the Director, SDOR within 60 days of receipt of the annual report. If such notice is received, the agreement will terminate within 30 days.

~~The Project will commence no later than 60 days after the final signature is applied to this MOU. The Project will continue for a period of one year or until the last case is closed, which ever is sooner. Authorization to expand or extend the Project may be effected by an addendum to this agreement signed by the appropriate executives shown on the last page of this MOU.~~

XI. DISPUTE RESOLUTION: In the case of a conflict, the provisions of the **Agreement on Coordination of Tax Administration and/or Guidelines for Implementation of the Agreement on Coordination of Tax Administration**~~Basic and/or Implementing Agreement~~ will control.

XII. COSTS: Each agency will cover its own costs associated with this project.

The terms of this memorandum are not intended to alter, amend, or rescind any provisions of the Agreement on Coordination of Tax Administration or Guidelines for Implementation of the Agreement on Coordination of Tax Administration now in effect.

APPROVED:

**STATE
STATE DEPARTMENT OF REVENUE**

**INTERNAL REVENUE SERVICE
A DISTRICT**

Signed at , this

Signed at , this

_____ day of _____, 1998.

_____ day of _____, 1998.

Project - Authorized Personnel Listing

Internal Revenue Service - A (IRS-A)

Title	Name	Phone	FAX
FedState Coordinator			
Disclosure Officer			
Project Manager			
Team Leader			
Group Manager			
Revenue Agents			

(SDOR)

Disclosure Officer			
Project Manager			
Team Leader			
Group Managers			
Revenue Agents			
