

**Office of Chief Counsel
Internal Revenue Service**

memorandum

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to: Robert W. West, Associate Area Counsel (SB/SE) (Area 3) CC:SB/SE
Attention: John Driscoll, Senior Attorney
from: MICHAEL B. FROSCH
Chief, Branch 3
Disclosure & Privacy Law

subject: **Mississippi Department of Transportation**

This Chief Counsel Advice responds to your memorandum dated April 2, 2003. In accordance with I.R.C. 6110(k)(3), Chief Counsel Advice may not be used or cited as precedent.

LEGEND

none

ISSUES

Whether the Mississippi Department of Transportation (DOT) qualifies under I.R.C. § 6103(d)(1) as a state agency charged under the laws of Mississippi with responsibility to administer the state tax laws?

CONCLUSIONS

The laws of the State of Mississippi assign to the DOT the responsibilities for the assessment and collection of certain excise and fuel taxes. Therefore, the IRS may enter an agreement with the DOT to exchange returns and return information pursuant to I.R.C. § 6103(d).

FACTS

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LAW AND ANALYSIS

The Mississippi Code has transferred enforcement of certain excise and motor fuel taxes from the State Tax Commission to the DOT. See, Miss. Code § 65-1-8(2)(x) as modified by 2003 Miss. S.B. 2814 (effective July 1, 2003). The DOT has the power:

To cooperate with the State Tax Commission by providing for weight enforcement personnel to collect and assess taxes, fees and penalties and to perform all duties as required pursuant to Section 27-55-501 et seq., Sections 27-19-1 et seq., 27-55-1 et seq., 27-59-1 et seq. and 27-61-1 Mississippi Code of 1972, with regard to vehicles subject to the jurisdiction of the Office of Weight Enforcement. All collections and assessments shall be transferred daily to the State Tax Commission.

It is clear from this statute that the responsibility for assessment and collection of these taxes, fees and penalties has devolved to the DOT. Equally clear, assessment and collection responsibilities are the essence of tax administration. I.R.C. § 6103(b)(4)(B).

Your inquiry accurately points out that the impetus for the change to I.R.C. § 6103(d) in the legislative history of the Tax Reform Act of 1976 was Congress' concern about the liberal access to, use of and safeguards of the confidentiality of federal tax information. Staff of Joint Committee on Taxation, 94th Cong., General Explanation of the Tax Reform Act of 1976, 332 (Comm. Print 1976) *reprinted at* 1976-3 C.B. (Vol. 2) 1, 344 (hereinafter Jt. Comm. Expl.).

While the legislative history contains some conflicting instructions on who has the authority to enter into an agreement with the IRS under § 6103(d)¹, the statutory language is unambiguous on its face. The language of § 6103(d) is:

any State agency, body, or commission, . . . which is charged under the laws of such State with the responsibility for the administration of State tax laws for the purpose of, and only to the extent necessary in, the administration of such laws. . . . (Emphasis added).

The use of the word “any” as opposed to the more restrictive “the” leads to the conclusion that the statute contemplates more than one eligible agency, body, or commission. Further, the use of the word “laws” rather than the singular “law” or even “code” reflects the possibility of more than one law being administered by more than one agency.

¹ Compare, “[t]he Act authorizes, upon the written request of the principal tax official of the State . . .” *with*, “open to inspection by or disclosure to . . . a State agency, body, or commission charged with the responsibility of the administration of State tax laws. . . .” Jt. Comm. Expl. 332, 333.

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Congress' concerns about safeguards are addressed in the limitations on use by the authorized State agency, body, or commission which are contained in the statutory language, and the basic agreement and implementing agreement entered into by the State agency and the IRS. See, IRM 11.3.32. There are many states which, by statute, divide their tax administration functions amongst more than one agency. It makes no difference with respect to Congress' concerns whether the state is represented by one or more than one agency. Each of the agencies signing an agreement with the IRS will be subject to the applicable safeguards.²

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

Please call _____ if you have any further questions.

cc:

² IRM Exhibit 11.3.32-1 (Cont. 2) at section 3.1 requires the state agency to specify precisely for what part of the administration of taxes that agency is responsible.