

ID: CCA_2021121615442650

[Third Party Communication:

UILC: 6103.00-00, 6103.03-00,
6103.01-00

Date of Communication: Month DD, YYYY]

Number: **202205025**

Release Date: 2/4/2022

From: [REDACTED]
Sent: Thursday, December 16, 2021 3:44:26 PM
To: [REDACTED]
Cc: [REDACTED]
Bcc:
Subject: RE: Question Regarding Background Investigations

Hello,

[REDACTED]

Specifically, you requested the following:

- May the IRS provide any background check information on an employee to Wisconsin so that employee can obtain access to its information and to what extent?
- What restrictions apply to the IRS providing an employee's background check information in this context?

Based on the facts that you provided to us, we believe the IRS may disclose to Wisconsin the fact that an employee has undergone and passed a background check, as well as provide most other background check information **without** the employee's prior consent. However, to the extent these background checks contain returns or return information, such returns or return information may NOT be disclosed pursuant to I.R.C. section 6103 unless we first obtain the employee's consent.

Subject to certain statutory exceptions, the Privacy Act prohibits an agency from disclosing any record which is contained in a system of records except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains. 5 U.S.C. section 552a (b). One such exception is that records protected by

the Privacy Act may be disclosed without prior written request or consent in accordance with a routine use described in a System of Records Notice ("SORN") published by the agency in the Federal Register. 5 U.S.C. section 552a (b)(3) and (e)(4)(D).

Treasury/IRS SORNs 34.021 and 34.022 are the relevant SORNs covering systems of records maintained by the IRS/Treasury pertaining to the background investigations of current, former, and prospective IRS employees. Both SORNs contain a routine use authorizing the IRS to disclose records pertaining to background investigations to a "... state agency ... which has requested information relevant or necessary to ... issuing or continuing a contract, security clearance, license, grant, or other benefit."

The above-described routine use provides the IRS two bases for authority to disclose its employees' background investigation records to Wisconsin absent prior IRS employee request or consent. First, disclosure is authorized because Wisconsin has determined that such information is relevant or necessary to issuing or continuing its contract to provide revenue officers access to its DMV database. Alternatively, disclosure is authorized because Wisconsin has determined that such information is relevant or necessary to the State issuing a security clearance for, license to, or other benefit, i.e., revenue officer access to Wisconsin's DMV database.

However, while disclosure to Wisconsin of employee background investigation files is permissible under the Privacy Act, the Privacy Act does not supersede the confidentiality provisions set forth in I.R.C. section 6103. More specifically, Section 6103(a) makes confidential tax returns and return information unless otherwise authorized by the Code. Accordingly, any returns or return information contained in a background check file must not be disclosed unless an exception applies.

The applicable exception here would be the consent of the employee under section 6103(c), which authorizes the Secretary to disclose returns or return information "to such person or persons as the taxpayer may designate in a request for or consent to such disclosure." Without consent, the IRS would need to parse out any returns or return information contained in the background checks. For details about obtaining effective consent for section 6103 purposes, see [IRM 11.3.3.2.1 \(01-26-2021\) General Requirements for Disclosure to Designee of Taxpayer](#). For the statutory definition of returns and return information, see I.R.C. sections 6103(b)(1) and 6103(b)(2).

If you have any further questions, feel free to reach out to me either via email or directly at [REDACTED].

Thanks,

[REDACTED]