



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

OFFICE OF
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE CHIEF COUNSEL ADVICE

MEMORANDUM FOR EDWARD D. FICKESS
ACTING DISTRICT COUNSEL
UPSTATE NEW YORK DISTRICT CC:NER:UNY:BUF

FROM: David L. Fish
Chief, Branch 4 (Disclosure Litigation) CC:EL:D

SUBJECT: Proposed Internal Revenue Service-New York State Department
of Taxation and Finance Joint Installment Agreements
Memorandum of Understanding

This office has reviewed the proposed Internal Revenue Service-New York State Department of Taxation and Finance Joint Installment Agreements Memorandum of Understanding (MOU). Our comments follow.¹

Federal tax returns and return information protected under I.R.C. § 6103(a) may be disclosed to State tax officials "upon written request by the head of" the State taxing authority, "for purposes of, and only to the extent necessary in, the administration of State tax laws." Such written request must (1) be made "by the head of" the State tax agency; and (2) designate individuals who are the representatives of the State taxing authority to receive the information. The representatives named in the written request may not be the Chief Executive Officer of the State, nor any person who is not an employee, or legal representative, or contractor, of the State taxing authority. Taylor v. United States, 106 F.3d 833 (8th Cir. 1997).

The Agreement on Coordination of Tax Administration between the Internal Revenue Service (Service) and the New York State Department of Taxation and Finance (the "Basic Agreement") meets the written request requirements of section 6103(d)(1). Taylor v. United States, *supra*; Smith v. United States, 964 F.2d 630 (7th Cir. 1992),

¹ Our comments are confined to I.R.C. § 6103 disclosure issues and do not incorporate the comments of any other counsel function.

cert. denied, 506 U.S. 1067 (1993). However, we strongly recommend that you ensure that the information to be disclosed by the MOU comes within the terms of the Service's implementing agreement with the New York Department of Taxation and Finance (State).² Moreover, we recommend that you structure the MOU so that it meets the requirements of a written request under section 6103(d)(1) independent of the Basic Agreement. We have incorporated the necessary changes in our comments below.

It is important that the MOU set forth with clarity exactly what is going on and the procedures to be followed. This will avoid misunderstandings between the parties. In this regard, we recommend that the disclosure and confidentiality provisions not be placed first in the MOU. The MOU is about entering into joint installment agreements, not disclosure. Accordingly, we recommend that the MOU be restructured in the following manner.

General Understanding: (text remains the same)

1. **Type of Tax:** Any tax subject to IRS and State installment agreement procedures may be included in joint installment agreements under this MOU.
2. **Forms:** (text remains the same)
3. **General Procedures:**

(a) Financial Analysis Based on Liability Amount.

Analysis of the taxpayer's circumstances and financial situation will indicate whether an installment agreement is appropriate. That analysis may be performed by either agency, provided however, IRS Collection Financial Analysis standards must be used if the taxpayer's liability to **[IRS or State or both agencies -- this needs to be clarified]** exceeds \$25,000. When analysis of the taxpayer's circumstances and financial situation indicates that an installment agreement is appropriate, a taxpayer expressing a desire for a payment arrangement to an employee of one agency will be queried as to whether an outstanding liability also is owed to the other agency. When liabilities are owed to both agencies, the taxpayer will be apprized of the potential for a joint installment agreement, and asked whether they wish to enter into an agreement that will apply to the tax debts owed to both agencies. If so, Form 433-D and DTF-980 will be completed at this time.

² An Implementing Agreement supplements a Basic Agreement and outlines the types of section 6103 protected information available for sharing and procedures for requesting, transmitting and using the information. See IRM Handbook 1.3.32.6. Because the information to be disclosed under a specific MOU may not come within the terms of an implementing agreement, it is important that the MOU meet section 6103(d) requirements.

(b) Completion of Joint Installment Agreements.

Representatives of either agency are authorized to complete the appropriate installment agreement forms for both agencies. In so doing, each agency's representatives will endeavor to contact the other agency's representative's to obtain a correct balance due amount which will be used to determine the actual monthly payment amount allotted to each agency. If current balance due amounts are not available, the taxpayer will be advised of the total monthly payment and that such amount will be subject to a "ratio of payment" calculation that will determine the precise amount paid to each agency. The taxpayer will be advised that confirmation, from the other agency, that such other agency has received a copy of the taxpayer's joint installment agreement, may be obtained by contacting the other agency. The taxpayer will be instructed as to the proper method of making payments and will be notified that the joint installment agreement requires approval by both agencies before it is effective with respect to both agencies. Approval by one agency, only, means that the installment agreement is effective only with respect to that one agency. Fees currently charged to the taxpayer by each agency for utilizing installment agreement privileges will continue to be charged by each agency when joint installment agreement procedures are utilized.

(c) Calculation of Payment Amounts.

Payment amounts shall be calculated based on the current outstanding balance owed to each agency at the time of the joint installment agreement as follows:

- (i) (insert text of current item 7.A)
 - (ii) (Insert text of current item 7.B)
4. **Current Filing:** (insert text of current item 2)
 5. **Non-qualifying Debts:** (insert text of current item 4)
 6. **Period of Joint Installment Agreement:** (insert text of current item 5 except that the reference to "the installment agreement" in the first sentence should be changed to "the **joint** installment agreement")
 7. **Review and Approval:** (insert text of current item 11)
 8. **Method of Payment:** The taxpayer will remit separate payments to each agency in accordance with the terms of the joint installment agreement.
 9. **Liens:** (insert text of current item 10)
 10. **Defaulted Joint Installment Agreements:** (insert text of current item 12 except that the reference to "the installment agreement" in the first sentence should be changed to "the **joint** installment agreement")

11. **Jeopardy Situations:** (insert text of current item 13)
12. **Authorized Recipients:** IRS and State employees authorized to request and receive Federal and State tax information, respectively, pursuant to this MOU are set forth on the attached Appendix 1.
13. **Accounting for Disclosures:** All IRS employees disclosing Federal return information to the State pursuant to this MOU will complete Form 5466-B, Multiple Record of Disclosure, and forward the completed copy to the Upstate New York District Disclosure Office.
14. **Confidentiality:** The State will comply with the requirements of I.R.C. § 6103(p)(4) with respect to the Federal return information disclosed pursuant to this MOU, following the procedures prescribed in section **[insert]** of the Basic Agreement. The IRS will safeguard information provided to it by the State consistent with section **[insert]** of the Basic Agreement.
15. **Fraud:** (insert text of current item 14)
16. **Training:** (insert text of current item 15)
17. **Monitoring for Success:** (insert text of current item 17)
18. **Disclosure Authority:** The Basic Agreement and/or this MOU shall constitute the written request required for the disclosure of Federal return information to the State pursuant to I.R.C. § 6103(d)(1).
19. **Cooperation:** (insert text of current item 19)
20. **Liability:** (insert text of current item 18)
21. **Termination, Alteration or Modification of Joint Installment Agreements:** (insert text of current item 16 except that the reference to “an installment payment agreement” in the first sentence should be changed to “**a joint** installment agreement”)
22. **Term of Agreement:** (insert text of current item 20)