

**Office of Chief Counsel  
Internal Revenue Service  
memorandum**

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(Privacy, Governmental Liaison & Disclosure)

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subject: Whether Keystone Collections Group meets the Requirements of a State Agency, Body, or Commission to Qualify as a Regional Income Tax Agency ("RITA") Under I.R.C. § 6103(b)(5)

**ISSUES**

1. Whether the Keystone Collections Group ("Keystone") qualifies as a regional income tax agency under I.R.C. § 6103(b)(5), permitting it to participate in the Federal/State Exchange Program under I.R.C. § 6103(d)(1).
2. If Keystone does not qualify as a regional income tax agency, whether any of its client tax collection committees qualify as regional income tax agencies, permitting those qualifying committees to participate in the Federal/State Exchange Program.

**CONCLUSIONS**

1. Keystone does not qualify as a regional income tax agency because it is not a governmental entity that is formed and operated by a group of qualified municipalities as required by I.R.C. § 6103(b)(5). Therefore, it cannot participate in the Federal/State Exchange Program under I.R.C. § 6103(d)(1) and cannot enter into an agreement with the IRS regarding disclosure.
2. Should they meet all of the requirements for qualification as a RITA and independently apply for RITA designation, any of Keystone's client tax collection committees would be permitted under I.R.C. § 6103(d) to participate in the Federal/State Exchange Program, subject to the sole discretion of the IRS in accordance with I.R.C. § 6103(b)(5)(A)(iii).

**BACKGROUND****The Federal/State Exchange Program under I.R.C. § 6103(d)**

Generally, under section 6103(d)(1), tax information with respect to specified taxes is open to inspection by, or disclosure to, state agencies, bodies, or commissions, or their legal representatives, charged under the laws of the state with tax administration responsibilities. "State" is generally defined to include any of the 50 states, the District of Columbia, and certain territories. I.R.C. § 6103(b)(5)(A). Certain municipalities and governmental entities, such as regional income tax agencies ("RITAs"), are also treated as "states" if they meet certain requirements including having collective populations over 250,000 (determined by the most recent decennial United States census data available), imposing a tax on income or wages, and entering into an agreement with the IRS regarding disclosure. I.R.C. § 6103(b)(5).

**Keystone Request for Regional Income Tax Agency Status under I.R.C. § 6103(b)(5)**

Keystone Collections Group ("Keystone") has requested that the IRS designate it as a RITA. Keystone is a for profit corporation, incorporated under the name Kratzenberg & Associates, Inc. doing business as Keystone Collections Group, formed in 1995. Their website is <https://www.keystonecollects.com>.

Under Pennsylvania law, Keystone acts as a tax officer for several tax collection districts in Pennsylvania, and is charged with collecting, reconciling, administering, and enforcing income taxes imposed on residents and nonresidents. As tax officer, Keystone services about 2 million taxpayers in current and delinquent income tax administration in these districts. In addition to serving as an income tax officer under Pennsylvania law, Keystone also serves in six other additional counties (Beaver, Berks, Somerset, Lehigh, Perry and Westmoreland) as the delinquent income tax collector, real estate tax collector, and collector of numerous other local taxes.

Keystone processes tax returns for approximately 1.8 million taxpayers. Keystone is requesting the IRS designate it as a RITA so that Keystone may participate in the Federal/State Exchange Program.

**Regional Income Tax Agency (RITA) Qualification Requirements**

The Tax Relief and Health Care Act of 2006, Pub. Law 109-432, effective December 20, 2006, amended I.R.C. § 6103(b)(5) by broadening the definition of "State" to include a RITA administering the tax laws of municipalities which have a collective population in excess of 250,000.

Specifically, under the provision, the term “State” includes any **governmental entity**:

- (I) which is formed and operated by a **qualified group of municipalities**, and
- (II) with which the Secretary (in his sole discretion) has entered into an agreement regarding disclosure.

I.R.C. § 6103(b)(5)(A)(iii) (emphasis added).

The term “qualified group of municipalities” means, with respect to any governmental entity, two or more municipalities:

- (I) each of which **imposes a tax on income or wages**,
- (II) each of which, under the authority of a State statute, **administers the laws** relating to the imposition of such taxes through such entity, and
- (III) which **collectively have a population in excess of 250,000** (as determined under the most recent decennial United States census data available).

I.R.C. § 6103(b)(5)(B)(i) (emphasis added).

Under the Internal Revenue Code (Code), a RITA is treated as a “state” for purposes of applying the confidentiality and disclosure provisions for state tax officials in I.R.C. § 6103(d)(1), determining the scope of tax administration, applying the rules governing disclosures in judicial and administrative tax proceedings, and applying the safeguard procedures. See I.R.C. §§ 6103(b)(5), (d). Because a RITA administers the laws of its member municipalities, the provision requires that references to state law, state proceedings, or state tax returns be treated as references to the law, proceedings, or tax returns of the municipalities which form and operate the RITA. See Staff of Joint Committee on Taxation, *Technical Explanation of H.R. 6408, the “Tax Relief and Health Care Act of 2006” as Introduced in the House on December 7, 2006*, No. JCX-50-06, at 111 (2006). Determining whether a RITA should be treated as a “state” for purposes of § 6103(b)(5) depends, in part, on the state law under which the RITA was formed.

### Pennsylvania’s Local Earned Income Tax

In 1965, Pennsylvania enacted Act 511, known as “The Local Tax Enabling Act,” which authorized most municipalities to assess and collect “local earned income taxes.” P.L. 1257, No. 511. Local earned income tax is levied on salaries, wages, commissions, net profits, or other compensation of people subject to the jurisdiction of the taxing body. See 53 P.S. §6924.501; 72 P.S. §7303. The tax is imposed on “taxable income” earned or received based on the method of accounting used by the taxpayer in the period beginning January 1 of the current year and ending December 31 of the current year....” 53 P.S. § 6924.502(a). Taxable income for purposes of the earned income and net profits tax is defined by reference to the terms “earned income” and “net profits.” 53 P.S. § 6924.501. The local earned income tax follows closely the amount taxed under Pennsylvania’s personal income tax rules. The Pennsylvania personal income tax is imposed under Article III of the Tax Reform Code of 1971, which is codified at 72 P.S.

§§ 7301 through 7359. Section 7303 of the Pennsylvania Income Tax Code contains provisions on the type of income taxed.

### Pennsylvania's Act 32 Tax Collection Districts, Tax Collection Committees, and Tax Officers

In 2008, Pennsylvania amended the Local Tax Enabling Act by enacting Act 32, changing the local earned income tax withholding system and establishing tax collection districts for the reporting and collection of local earned income taxes. P.L. 197, No. 32. The rules are codified at 53 P.S. §§ 6924.101 through 6924.901.

Under Act 32, a single tax collection district was established in each county. Due to its size, Allegheny County has four tax collection districts. 53 P.S. § 6924.504. The County/City of Philadelphia is exempt from the requirements of Act 32.

Each tax collection district must establish a tax collection committee, made up of delegates from each political subdivision (taxing body) located in the tax collection district. 53 P.S. §§ 6924.504 and 6924.505(b). The committee takes official action by a vote of the delegates at tax collection committee meetings. 53 P.S. §6924.505(c). The delegates also adopt bylaws governing the management of the tax collection committee's affairs. 53 P.S. § 6924.505(f).

Each tax collection committee also appoints a tax officer to collect earned income taxes on behalf of all of the political subdivisions in each tax collection district. 53 P.S. §§ 6924.501(a.1) & 6924.507. The appointed tax officer may be a political subdivision, public employee, tax bureau, county, or a private entity. 53 P.S. § 6924.501. Generally, all appointments of a tax officer shall be made pursuant to a written agreement between the tax officer and the tax collection committee, which shall be approved by the committee by resolution. 53 P.S. § 6924.501(d).

Tax officers are covered by sections 506, 507, and 509 of Act 32. Section 509 of Act 32 sets forth the tax officer's powers and duties. Some of the duties include the following:

- To collect, reconcile, administer and enforce income taxes imposed on residents and nonresidents of each political subdivision included in the tax collection district; 53 P.S. § 6924.509(a)(1); and
- To ensure that the tax collection district enters into an agreement with the Department of Revenue for the exchange of information as necessary for the collection of income taxes. 53 P.S. § 6924.509(g)(1).

## ANALYSIS

### *Issue 1. Keystone's Qualifications for RITA Designation*

Although tax officers such as Keystone are not states or municipalities *per se*, I.R.C. § 6103(b)(5)(A)(iii) expands the term "state" for purposes of subsection (d)(1), to include **any governmental entity** (I) which is **formed and operated** by a qualified group of municipalities, and (II) with which the Secretary (in his sole discretion) has entered into an agreement regarding disclosure. (Emphasis added.)

It is unlikely that tax officers such as Keystone, that effectively operate as private contractors for the tax committees, were intended to qualify as a general governmental entity under the statute. The term "governmental entity" is not defined in the Code or the legislative history of the amendment to I.R.C. § 6103(b)(5). On the one hand, while it is not a state or municipality, Keystone serves as the Act 32 income tax officer for 18 tax collection districts in Pennsylvania, each of which is comprised of various municipalities, including cities, boroughs, and townships. 53 P.S. §§ 6924.504 and 6924.505. State statute 53 P.S. §6924.501 permits the tax officer to be, among other things, a private entity and Keystone is unquestionably a private entity, for-profit corporation. Each tax collection district is governed by a tax collection committee, which consists of one delegate from each municipality within the tax collection district. 53 P.S. § 6924.505(b). Moreover, the tax officer's powers and duties include, in relevant part, the collection, administration, and enforcement of income taxes imposed on residents and nonresidents of each political subdivision included in the tax collection district; 53 P.S. § 6924.509(a)(1). As such, the role of the Act 32 tax officer is arguably governmental in function, even though Keystone is a private entity.

On the other hand, however, even if tax officers such as Keystone can be considered governmental entities, they are not governmental entities that are "formed and operated" by a qualified group of municipalities, as required by I.R.C. § 6103(b)(5)(A)(iii)(I). Keystone tax officers, like other tax officers in Pennsylvania, are appointed pursuant to a written agreement between the tax officer and the tax collection committee. 53 P.S. § 6924.501(d). Thus, Keystone appears to serve a role more like a contractor, performing duties that include enforcing income tax laws, rather than a government entity that is formed and operated for such purpose.

Because it is not "formed and operated" by a qualified group of municipalities, Keystone fails to meet I.R.C. § 6103(b)(5)(A)(iii) requirements to be considered a "governmental entity" and does not qualify for RITA designation for purposes of I.R.C. § 6103(d)(1).

In reaching this conclusion, we would be remiss in not mentioning the statutory construct of I.R.C. § 6103 in general contains limited direct disclosure authority to nongovernmental entities. Section 6103(c) authorizes disclosure to anyone, including private persons and entities, but only pursuant to the taxpayer's consent. Section 6103(k)(6) authorizes very limited disclosures to anyone, including private persons and entities, but only on a case by case basis and to the extent necessary, to gather

information not available elsewhere to assist with a Federal tax administration goal. Section 6103(k)(14) authorizes disclosures of specifically identified items of return information to ISAC participants, including private entity industry partners, who meet strict statutory requirements and only for purposes of combatting identity theft related tax refund fraud. Finally, I.R.C. § 6103(n) authorizes disclosure to agents conducting discrete tax administration responsibilities pursuant to strict guidelines and protections.<sup>1</sup> Authorizing broad disclosures to a nongovernmental private entity such as a for profit corporation like Keystone is inconsistent with the general construct and intent of I.R.C. § 6103.

It is within the IRS's "sole discretion" to engage in an information exchange agreement with a governmental entity in accordance with the definition of "state" in I.R.C. § 6103(b)(5)(A)(iii). Because Keystone's role is more consistent with a contractor conducting tax administration tasks for a governmental entity, and the statutory construct of section 6103 authorizes only limited disclosure authority to nongovernmental entities, even if Keystone could provide evidence to support its claim that it is a governmental entity within the definition in the statute, the IRS could, in its sole discretion, decline to enter into an agreement regarding disclosure with Keystone.

### ***Issue 2. Tax Collection Committees' Qualifications for RITA Designation***

As Keystone does not qualify as a RITA, we consider whether its client tax collection committees might qualify as RITAs, should they independently apply for this designation.

Pursuant to Pennsylvania law, each tax collection district is governed by a tax collection committee. 53 P.S. § 6924.505(a). Therefore, the tax collection committee is the governing entity for its member tax collection districts.

As discussed above, to qualify as a RITA, the tax collection committee, as the governmental entity, must be formed and operated by a "qualified group of municipalities" which as stated above, means with respect to any governmental entity, two or more municipalities—

- (I) each of which imposes a tax on income or wages,
- (II) each of which, under the authority of a State statute, administers the laws relating to the imposition of such taxes through such entity, and
- (III) which collectively have a population in excess of 250,000 (as determined under the most recent decennial United States census data available).

I.R.C. § 6103(b)(5)(B)(i).

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<sup>1</sup> To the extent a state tax administration agency is authorized under 26 C.F.R. §301.6103(n)-1, *et. seq.*, to make disclosures to contractors for state tax administration reasons, those contractors cannot enter into their own information exchange agreements with the IRS under I.R.C. § 6103(d).

The tax collection committee is made up of delegates from each political subdivision (taxing body) located in the tax collection district. See 53 P.S. §§ 6924.504 and 6924.505(b).

The term "municipality" is not defined in the Code. Under Pennsylvania law, a "municipality" is a "county, city, town, borough, township or school district of the Commonwealth." 53 P.S. § 5206. However, not all counties are municipalities. Greene County, for example, has 26 municipalities: 20 townships and 6 boroughs. The Pennsylvania Department of Community & Economic Development's website lists 2,560 municipalities in Pennsylvania (<https://dced.pa.gov/local-government/municipal-statistics/municipalities/>).

### Criteria I and III

We do not have population statistics for each of the municipalities in the tax collection districts. However, Keystone provided population numbers for each of the tax collection districts as of the last decennial census. Assuming Keystone's numbers approximate the collective population of the municipalities in each tax collection district for purposes of criterion (III), there are only six tax collection districts with a population in excess of 250,000: Allegheny County North, Bucks, Chester, Dauphin, Delaware, and Northampton. Allegheny County Southeast has a listed population of 245,461 (apparently based on figures from the Census Bureau), which is very close to the 250,000 threshold, but we do not have sufficient information to determine if the collective municipal population has now exceeded 250,000. Also, it's unclear how many municipalities are in Allegheny County North; the remaining tax collection districts listed contain more than two municipalities.

Of the six counties with a population in excess of 250,000, only three of the counties meet criterion (I), which requires that each of the municipalities in the group impose a tax on income and wages. In Pennsylvania, local earned income tax is levied on salaries, wages, commissions, net profits, or other compensation of people subject to the jurisdiction of the taxing body. See 53 P.S. §6924.501; 72 P.S. §7303. According to the attached Excel spreadsheet (retrieved from [http://munstats.pa.gov/Reports/ReportInformation2.aspx?report=taxes\\_Dyn\\_Excel](http://munstats.pa.gov/Reports/ReportInformation2.aspx?report=taxes_Dyn_Excel)), for reporting year 2018, the following municipalities (within the respective counties) do not impose an earned income tax:

Bucks County: Bristol Borough, Falls Township, Langhorne Borough, Langhorne Manor Borough, Lower Makefield Township, Morrisville Borough, Pendel Borough, Tullytown Borough, Yardley Borough;

Chester County: Birmingham Township, Easttown Township, London Britain Township, Tredyfrin Township; and

Delaware County: Aldan Borough, Bethel Township, Chadds Ford Township, Chester Heights Borough, Clifton Heights Borough, Collingdale Borough, Colwyn

Borough, Concord Township, Darby Township, Edgmont Township, Glenolden Borough, Haverford Township, Lansdowne Borough, Marple Township, Middletown Township, Millbourne Borough, Morton Borough, Nether Providence Township, Newton Township, Norwood Borough, Prospect Park, Borough, Radnor Township, Ridley Park Borough, Ridley Township, Rose Valley Borough, Rutledge Borough, Springfield Township, Swarthmore Borough, Upper Darby Township, Upper Providence Township.

The municipalities that impose an income tax show a figure for “EIT resident” and sometimes, a figure for “EIT nonresident,” which is earned income tax for resident and for nonresident. Based on the spreadsheet, all of the municipalities in Allegheny County, Dauphin County, and Northhampton County impose a tax on income or wages. Therefore, assuming Allegheny County North contains more than one municipality, only Allegheny County North, Dauphin, and Northhampton meet the criteria contained in both I.R.C. § 6103(b)(5)(B)(i)(I) and I.R.C. § 6103(b)(5)(B)(i)(III).

### Criterion II

Criterion II requires each municipality in the group administer, under the authority of a state statute, laws related to the imposition of such (income or wage) taxes through the governmental entity. This is the most difficult criterion to for us to analyze and apply.

Pennsylvania statutes authorize the establishment of a tax collection district generally for each county, rather than for each municipality. 53 P.S. § 6924.504(a). The local earned income tax is administered through tax collection districts to simplify and standardize the collecting of these taxes. Pennsylvania statutes grant the tax collection committees (which govern the tax collection districts) with various duties and powers, including the duty to appoint a tax officer and the duty to adopt and amend policies and procedures for the administration of income taxes. 53 P.S. §6924.505(a.1). However, it is the tax officer’s duty “to collect, reconcile, administer and enforce income taxes imposed on residents and nonresidents of each political subdivision included in the tax collection district.” 53 P.S. §6924.509(a).

Therefore, there is a significant question whether the tax collection committee is the entity that administers “laws” related to the imposition of such taxes, or whether it is the tax officer that does so. Arguably, both the tax collection committee and the tax officer are responsible for administering the local income tax laws, albeit their responsibilities are different. However, the tax collection committee is the only “governmental entity” that is formed and operated by the political subdivisions. Then, assuming Allegheny County Southeast does not meet the population criteria, the client tax collection committees that potentially qualify as regional tax collection agencies by meeting all three criteria are those for Allegheny County North, Dauphin, and Northhampton. More information would be necessary to verify that these tax collection districts are each made up of a group of municipalities and meet the population criterion before disclosing information to them for purposes of tax administration.



At this time, we do not have enough information to determine if any of the groups of municipalities within Keystone's client tax collection districts collectively meet the criteria for the respective committees to qualify as a state under I.R.C. § 6103(b)(5). Based on Pennsylvania's 2010 census report (found at <https://www.census.gov/prod/cen2010/cph-2-40.pdf>), it does not appear any of the municipalities within the tax collection districts handled by Keystone alone meets the population criteria. In Allegheny County, only the City of Pittsburgh is listed as having a population in excess of 250,000. The population for Pittsburgh is listed at 305,704, but the population for Allegheny County North TCD and Allegheny County Southeast TCD (both of which are within Keystone's jurisdiction) is 283,525 and 245,461, respectively. Therefore, it is unlikely that Keystone administers the City of Pittsburgh's taxes.

Even if any of Keystone's client tax collection committees qualify as RITAs and independently apply for this designation, as explained above it is within the IRS's sole discretion to engage in an information exchange agreement regarding disclosure with a governmental entity in accordance with the definition of "state" in I.R.C. § 6103(b)(5)(A)(iii).

Please call (202) 317-5194 if you have any further questions.