

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

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to: Albert D. Adams
Senior Program Analyst
(GLD HQ Governmental Liaison)

from: A. M. Gulas
Senior Counsel
(Procedure & Administration)

subject: State Access to TIN Matching Database for Tax Administration

This Chief Counsel Advice responds to your request for assistance dated December 9, 2011. This advice may not be used or cited as precedent.

ISSUES

Whether the Service may grant state tax officials access to the e-Services TIN Matching application for general use in the administration of state tax laws.

CONCLUSIONS

The proposal to allow states access to the TIN Matching application for use in the administration of state tax laws is legally permissible; whether to implement it is a business decision.

FACTS

E-Services is a suite of web-based products that allow eligible registered tax professionals and payers to conduct business with the Service electronically. Once registered, frequent payers of Form 1099 income that is subject to the backup withholding requirements of I.R.C. § 3406(a)(1)(A) and (B) have access to the e-Services Taxpayer Identification Number (TIN) Matching application. Using the application, payers can quickly verify a TIN and name combination against existing Service records. The user receives an indicator of whether or not a given name and TIN combination are contained in Service system files. As part of the registration process for this application, payers are required to sign the TIN Matching Terms of

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Agreement. By doing so, they agree to comply with the certain requirements and match only those TINs, names and/or name controls provided by the payee for transactions which might receive payment as defined under I.R.C. § 3406(b)(1). Other uses of the application are prohibited and may constitute an unauthorized access and/or violation of the Computer Security Act of 1987. See IRS Publication 2108A.

Just as with any other payer, the Terms of Agreement restrict the States' usage of the TIN Matching application to inquiries related to backup withholding. Several state tax agencies, however, have recently expressed strong interest in utilizing the application for state tax administration purposes. States have argued, for example, that TIN matching could be valuable in verifying TINs on state tax returns before potentially fraudulent state refunds are issued.

LAW AND ANALYSIS

Section 6103(d) provides that "returns and return information...shall be open to inspection by, or disclosure to, any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for the administration of State tax laws for the purpose of, and only to the extent necessary in, the administration of such laws." Currently, numerous state tax agencies regularly receive federal tax information for state tax administration purposes under Fed/State Basic and Implementing Agreements developed in accordance with section 6103(d). This includes agreeing to the safeguard requirements of I.R.C. § 6103(p)(4) and the applicable guidelines set forth in Publication 1075, *Tax Information Security Guidelines for Federal, State and Local Agencies and Entities*.

One of the reasons state tax administrators have expressed additional need to access the TIN Matching application is to verify TINs to stop the issuance of fraudulent state tax refunds. Given the IRS' own efforts in this area, we can see a legitimate state tax administration purpose behind the request. Accordingly, we believe the proposal to allow the expanded use of the application is legally permissible.

Unlike the routine data exchange programs outlined in the Basic and Implementing Agreements, the TIN Matching application permits ad hoc inquiries by different users. Accordingly, it is similar to the Transcript Delivery Service (TDS), another e-Service function, which differentiates between access by different users. The TDS requires states to sign a Memorandum Of Understanding agreeing to abide by the requirements of section 6103 before accessing the service. The IRS proposes to make a similar arrangement with respect to the TIN Matching application. Specifically, states would digitally sign a revised Terms of Agreement or a separate Memorandum of Understanding certifying that they will comply with the provisions of section 6103.

Requiring states to certify through a revised Terms of Agreement that their use of the information will comport with section 6103 is an important first step toward safeguarding federal tax information. The Agreement satisfies the written request requirement of I.R.C. § 6103(d). Any certification must effectively mitigate the risk that federal tax

information could be accessed, or used, for purposes other than state tax administration. As currently proposed, the certification or MOU contemplated for this application would be read and signed by a state employee only upon registration, not for each login. [REDACTED]

[REDACTED]

[REDACTED]

In sum, there are no legal impediments to allowing states to access the TIN Matching application for state tax administration. The Service should [REDACTED]

[REDACTED]

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call (202) 622-4570 if you have any further questions.

¹ [REDACTED]