

Department  
of the  
Treasury

Internal  
Revenue  
Service

Office of  
Chief Counsel

# Notice

CC-2016-003

December 18, 2015

**Subject:** FOIA Requests for Joint Committee on Taxation Information      **Cancel Date:** Upon incorporation into CCDM

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## Purpose

This Notice announces a new CCDM provision on the treatment of Joint Committee on Taxation (JCT) documents as congressional records.

## Discussion

This new CCDM provision codifies longstanding agency practice on the treatment of JCT documents. The fundamental rule is that an incoming JCT document, as well as any documents created by the IRS in connection with a response to the JCT document, including (but not limited to) any replies to the Joint Committee, are records of the JCT and shall be segregated from IRS agency records and remain subject to the control of the JCT. Accordingly, the aforementioned documents are not IRS agency records for purposes of the Freedom of Information Act, 5 USC § 552.

The new CCDM provision provides:

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Distribute to:	Tax Litigation staff	Tax Litigation staff & Support personnel
	X All Personnel	X Electronic Reading Room

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**CCDM 35.5.4.9  
(12-xx-2015)  
Joint Committee on  
Taxation – FOIA Requests**

- (1) The Joint Committee on Taxation (Joint Committee or JCT) is authorized under IRC § 8021 to obtain and inspect information, including returns and return information pursuant to IRC § 6103(f), for the purpose of carrying out its general oversight responsibilities.
- (2) The Joint Committee is authorized under IRC § 8023 to secure directly from the IRS information for the purpose of making investigations, reports and studies relating to internal revenue taxation, including returns and return information, as to any action taken or proposed to be taken by the Service as a result of any audit of the return. See IRC § 8023(a).
- (3) When the Joint Committee corresponds with the IRS under its general oversight authority, it generally includes a legend on the incoming correspondence that restricts the dissemination and use of both the inquiry and responsive records. The Joint Committee reserves the right to adjust the legend as needed, after coordination with the Service.

**Note:** At this time, the legend reads, “This document is a record of the Joint Committee on Taxation (‘Joint Committee’) and is entrusted to the Department of the Treasury for your use only in handling this matter. Additionally, any documents created by the Department of the Treasury in connection with a response to this Joint Committee document, including (but not limited to) any replies to the Joint Committee, are records of the Joint Committee and shall be segregated from agency records and remain subject to the control of the Joint Committee. Accordingly, the aforementioned documents are not ‘agency records’ for purposes of the Freedom of Information Act. Absent explicit Joint Committee authorization, access to this document and any responsive documents shall be limited to Treasury personnel who need such access for the purposes of providing information or assistance to the Joint Committee.”

- (4) The incoming JCT document, as well as any documents created by the IRS in connection with a response to the JCT document, including (but not limited to) any replies to the Joint Committee, are records of the Joint Committee and shall be segregated from agency records and remain subject to the control of the Joint Committee. Accordingly, the aforementioned documents are not IRS agency records for purposes of the FOIA.
- (5) Whenever the Joint Committee’s inquiry letter includes the restrictive legend, the file that is created for the IRS’s reply, as well as any accompanying documents, may only be accessed by IRS personnel for the purpose of providing information to, or otherwise assisting, the Joint Committee. Copies of the inquiry letter and the IRS response are available through the Office of Legislative Affairs in the Communications and Correspondence Tracking System. Copies of records compiled by the IRS to respond to the Joint Committee inquiry are maintained in the office of the IRS component chiefly responsible for preparing the response.
- (6) Whenever the Joint Committee’s inquiry letter includes the restrictive legend, that letter remains a congressional record and is not an agency record of the IRS. In addition, any records created by the IRS in connection with the agency’s response to the Joint

Committee's inquiry, including (but not limited to) the IRS reply letter, are congressional records and are not IRS agency records. Such documents shall not be considered as responsive to a FOIA request directed to the IRS, and must not be released under the FOIA. Moreover, the IRS file(s) associated with providing records to the Joint Committee need not be searched for responsive records because the records that the files may contain are not agency records.

- (7) The legend is included as a matter of best practice. It identifies the document as a congressional record, not an IRS agency record. The legend is also an indication of the intent of the parties on how the records should be categorized. However, the absence of the legend is not legally determinative. If a JCT document fails to contain a legend, generally, IRS practice is to treat the JCT document and any IRS response thereto as a congressional record.

**Note:** Consider consulting Chief Counsel (Procedure & Administration) on the treatment of JCT-origin documents that do not contain a legend.

- (8) A FOIA request received by an IRS Disclosure Office that seeks access to records involving the Joint Committee should be transferred to PGLD's Office of Disclosure FOIA & Program Operations for processing. Disclosure personnel from the Office of Disclosure FOIA & Program Operations will consult with the Joint Committee, as well as any affected IRS function(s) and Chief Counsel (Procedure & Administration), before determining whether to release or withhold any IRS agency records that are the subject of a Joint Committee oversight inquiry.

**Note:** CCDM 34.9.1.3, entitled, "Requests and Demands for Testimony, Responses to Interrogatories, and Production of Documents," addresses how to respond to a discovery request that includes documents received from or created by the IRS in response to a congressional committee inquiry.

- (9) Depending upon the wording of the FOIA request, copies of records created and maintained by the IRS in the normal course of its operations that are subsequently provided to the Joint Committee in response to a general oversight inquiry may be IRS agency records subject to the provisions of the FOIA, or may be considered congressional records not subject to the FOIA.
  - a. If the FOIA request specifically asks for records reviewed by the Joint Committee, the disclosure of any records or information, or even the acknowledgement that these records exist in the context of a Joint Committee inquiry, may confirm that the Joint Committee had exercised its general oversight responsibilities. These records are congressional records whether or not the Joint Committee inquiry letter bears a legend restricting dissemination of the records, the records are maintained in files specifically pertaining to the Joint Committee oversight inquiry and are segregated from IRS agency files, and/or the records are accessible only by IRS personnel involved in responding or providing assistance to the Joint Committee.

**Note:** When a FOIA requester asks for "all requests by the Joint Committee for [a particular matter]," the IRS will respond that, to the extent such records exist, they are congressional records that are not subject to the FOIA.

