



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 DELAWARE-MARYLAND DISTRICT COUNSEL
CC:SER:DEM:BAL
Attn:

FROM: Chief, Branch 4 (Disclosure Litigation) CC:EL:D

SUBJECT: Memorandum of Understanding (MOU) with Maryland
Comptroller of the Treasury

This is in response to your request dated December 30, 1998. This document is not to be cited as precedent.

We have reviewed a copy of the MOU between the Service and the Maryland Comptroller of the Treasury (Comptroller) to perform joint site visits of Electronic Return Originators (EROs).

We assume the provisions of the MOU are consistent with the basic and implementing agreements with Maryland. The MOU should state the disclosure authority for this program is section 6103(d). We suggest including the following provision in the MOU:

The basic agreement previously entered into between the parties and/or this memorandum constitute the written request for the disclosure of any Federal tax returns and return information to the State of Maryland Comptroller of the Treasury pursuant to Internal Revenue Code section 6103(d).

Because the term "joint site visit" has no standard meaning, it is important for the MOU to explicitly indicate what the joint activity entails throughout the process. For example, the MOU does not indicate if the Service and Comptroller will contact the

EROs together and visit them together or whether the Service will conduct the visit and then provide the information to the Comptroller. The letter from the Comptroller seems to indicate that the visits will be joint. We would modify the language in paragraph 2 to read as follows, which is a modification of what we have suggested in other joint examination MOUs.

All records and documents maintained or collected by the Service and disclosed to the Comptroller under this agreement, including information developed during the site visits and Return Preparer Meetings [add any other **joint activities that will result in the collection of information such as joint notification letters, joint information document requests, joint interviews or resulting joint criminal investigations**] will be subject to the confidentiality requirements of Internal Revenue Code section 6103, except that which the State separately develops and is clearly maintained as State tax information. When a disclosure is made to the Comptroller under the provisions of this MOU, a Form 5466B (Multiple Record of Disclosure) will be prepared as required. The forms will be forwarded to the District Disclosure Officer no less frequently than monthly. The parties will have access to all information and documentation * * * *.

We note that because of the lack of detail, we are not certain what information will be considered "that which the State develops and is clearly maintained as State tax information." We have assumed that it is information collected solely by state personnel (not jointly), and have added the modifier "separately" to make this clear.

Paragraph 5 indicates "Site visits will not be conducted solely to secure records for state tax issues." We would delete "solely." IRS personnel collect information for the purpose of administering Federal, not state, tax laws. In addition, in paragraph 5 we would change "shared with the State" to "disclosed to the State."

Paragraph 7 indicates a courtesy notification will be given to the other agency prior to the use of information by an agency developed by the team in any criminal action. We note that the basic agreement requires notification by the state prior to any disclosure in a judicial tax proceeding, which would include disclosure in the state criminal tax proceeding.

If you have any further questions, please call (202)622-4570.