



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

OFFICE OF  
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INTERNAL REVENUE SERVICE NATIONAL OFFICE CHIEF COUNSEL ADVICE

MEMORANDUM FOR EDWARD F. PEDUZZI  
ASSOCIATE DISTRICT COUNSEL CC:NER:PEN:PIT

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

SUBJECT: Migration Study Contract Between Pennsylvania Department of  
Revenue and Third Party

This office has reviewed the proposed migration study contract between Pennsylvania Department of Revenue and a third party. Our comments follow.

Federal tax information protected under I.R.C. 6103(a) may be provided to Pennsylvania Department of Revenue, pursuant to section 6103(d), for purposes of, and only to the extent necessary in, the administration of Pennsylvania tax laws. Under the terms of the proposed migration study contract, Pennsylvania Department of Revenue would redisclose specified items of the federal tax information that it receives under section 6103(d) to its third party contractor pursuant to section 6103(n) and implementing Treasury Regulation § 301.6103(n)-1 for use by the third party contractor in performing the migration study contract.

Pennsylvania Department of Revenue is authorized to redisclose federal tax information obtained under section 6103(d) in connection with the contractual procurement of services for purposes of "tax administration" as defined in section 6103(b)(4). I.R.C. §§ 6103(d),<sup>1</sup> 6103(n) and Treas. Reg. § 301.6103(n)-1(a). Therefore, provided the proposed migration study contract is a contract for procurement of services for

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<sup>1</sup> I.R.C. § 6103(d)(1) explicitly permits a state tax agency to disclose to section 6103(n) contractors. "Such representatives shall **not** include any individual who is the chief executive officer of such State **or** who is **neither** an employee or legal representative of such agency, body, or commission **nor** a person described in subsection (n)." Id. (Emphasis added).

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purposes of Pennsylvania tax administration, Pennsylvania Department of Revenue may, in accordance with Treas. Reg. § 301.6103(n)-1, redisclose section 6103 protected federal tax information to its contractor to the extent necessary in connection with the procurement or performance of such services. Disclosures will be treated as necessary only if the procurement or performance of such services cannot otherwise be reasonably, properly, or economically carried out or performed without such disclosures. Treas. Reg. § 301.6103(n)-1(b).

Disclosures pursuant to section 6103(d) in conjunction with section 6103(n), are conditioned on the intended recipient establishing, maintaining, and complying with such security and safeguard conditions and requirements as the Internal Revenue Service (Service) deems necessary or appropriate to protect the confidentiality of federal tax information and to prevent disclosures in a manner not authorized by section 6103(d) in conjunction with Treas. Reg. § 301.6103(n)-1(a). Treas. Reg. § 301.6103(n)-1(d)(Each such “contract ... shall provide ... that such person, and officers and employees of the person, shall comply with all such applicable conditions and restrictions as may be prescribed by the Service....”) Moreover, each officer and employee of a contractor to whom federal tax information is or may be disclosed under the authority of section 6103(d) in conjunction with Treas. Reg. § 6103(n)-1(a) must be notified in writing of the use they may make of such information, of their obligation to protect such information from unauthorized disclosure or use, and, of the penalties for unauthorized disclosure or use of such information. Treas. Reg. § 301.6103(n)-1(c). Accordingly, it is critical that the proposed contract clearly identify the specific third party(s) with whom a state tax agency intends to contract, which third party will be subject to such notification requirements.

The Service may take such actions as are deemed necessary to ensure that all requirements or conditions (including notification, security, and safeguard requirements) of disclosure pursuant to section 6103(d) in conjunction with section 6103(n) are or will be satisfied, including suspension of further section 6103(d) disclosures to the state tax agency. Treas. Reg. § 301.6103(n)-1(d)(2). Similarly, the Service has authority to preclude disclosures to contractors (or to proposed contractors) where it is not satisfied the required safeguards are being or will be met, or, if the Service is not satisfied that the contractual language meets the regulatory requirements or otherwise considers such language to be deficient as to protection of tax data.