



Protecting Federal Tax Information for GOVERNMENT EMPLOYEES

When it comes to confidential tax information, remember:

“When In Doubt, Check It Out
Before You Give It Out!”

This guide provides you with basic information about:

- + The provisions of §6103 that protect tax returns and return information
- + The provisions of the Privacy Act and other statutes protect other federal data
- + The civil and criminal penalties for unauthorized accesses or disclosures

Safeguarding federal tax information is critically important. As the employee of a federal, state or local agency who works with federal tax returns and return information, you are responsible for protecting that information.

Internal Revenue Code (the Code) Section (§) 6103 contains requirements for both protecting and disclosing confidential returns and return information. These provisions also apply to state employees who work with federal tax data.

§6103 prohibits employees from disclosing federal returns or return information unless allowed by law. You need to understand and apply the provisions of §6103 that relate to your job performance.

Specific Provisions of §6103

§6103(a) - The general prohibition against disclosure. It specifically names state employees among those who may not disclose returns and return information unless permitted by an exception in the statute.

The General Rule – Tax Information Is Confidential!

§6103(a) provides that all returns and return information are confidential. No current or former employee of the IRS, state or federal agency may access or disclose returns or return information unless specifically authorized under provisions of the Code.

§6103 permits IRS to disclose federal returns and return information:

- + To state tax agencies for tax administration purposes,
- + Under ex parte court orders for use in federal non-tax criminal investigations and proceedings, and
- + As provided in other provisions of the law.

Certain limitations are placed on these disclosures. The provisions of the law also require that agencies protect federal tax data by implementing certain safeguards.

§6103(b) - Defines returns, return information, disclosure, state, tax administration and other terms used in §6103.

Definition of Return

A return means any tax or information return, estimated tax declaration or refund claim (including amendments, supplements, supporting schedules, attachments or lists) required by or permitted under the Code and filed with the IRS by, on behalf of, or with respect to any person. Examples of returns include forms filed on paper or electronically, such as Forms 1040, 941, 1099, 1120 and W-2.

Definition of Return Information

The definition of return information is very broad. It includes, but is not limited to:

- + Any information, besides the return itself, that IRS obtained from any source or developed through any means that relates to the potential liability of any person under the Code for any tax, penalty, interest, fine, forfeiture, or other imposition or offense.
- + Information extracted from a return, including names of dependents, or the location of business.
- + The taxpayer's name, address and identification number.
- + Information collected by the IRS about any person's tax affairs, even if identifiers like name, address and identification number are deleted.
- + Whether a return was filed, is or will be examined or subject to other investigation or processing, including collection activities.
- + Information contained on transcripts of accounts.

§6103(d) - is the statutory authority that allows disclosure of returns and return information to state tax agencies for tax administration purposes. Read more about safeguarding federal tax information and disclosure limitations in Section 2.4 of Pub 1075.

§6103(i) – is the statutory authority that allows disclosure of returns and return information as ordered by federal district courts upon application by the United States Attorney and in other circumstances. Safeguarding responsibilities of federal law enforcement agencies are discussed in Section 5.12 of Pub 1075.

§6103(p) - is the statutory authority that requires certain recordkeeping and safeguarding procedures for federal tax information.

Safeguards

Certain agencies receiving federal tax returns and return information must protect them as explained in IRS Pub 1075. These agencies are identified in §6103(p)(4) as are their recordkeeping, reporting, and safeguarding requirements.

Resources for Safeguarding Tax Information

IRS Publication 1075, *Tax Information Security Guidelines For Federal, State, and Local Agencies*, the book that we commonly call “Pub 1075,” is the definitive source for safeguard standards and procedures required to protect federal tax records.

Pub 1075 provides a convenient resource for the letter of the law. Selected sections of the statute and regulations are reprinted in Exhibits in the .pdf version of the document, available online at www.irs.gov.

Additional resources are available for Governmental Liaisons on IRS.gov. Use the search term “governmental liaison.”

Penalties

Be aware that you cannot access or disclose confidential tax information unless a provision of the Code authorizes the access or disclosure.

Unauthorized disclosure or access could subject you to criminal penalties under §7213 and §7213A (UNAX). A taxpayer may also seek civil damages under §7431.

Criminal Penalties:

§7213 specifies that willful unauthorized disclosure of returns or return information by an employee or former employee is a felony.

The penalty can be a fine of up to \$5,000 or up to five (5) years in jail, or both, plus costs of prosecution.

Under §7213A, willful unauthorized access or inspection (UNAX) of taxpayer records by an employee or former employee is a misdemeanor. This applies to both paper documents and electronic information.

Violators can be subject to a fine of up to \$1,000 and/or sentenced to up to one year in prison.

Civil Penalties:

A taxpayer whose return or return information has been knowingly or negligently inspected or disclosed by an employee in violation of §6103 may seek civil damages.

§7431 allows a taxpayer to institute action in district court for damages where there is unauthorized inspection or disclosure. If the court finds there has been an unauthorized inspection or disclosure, the taxpayer may receive damages of \$1,000 for each unauthorized access or disclosure, or actual damages, whichever is greater, plus punitive damages (in the case of willful or gross negligence), and costs of the action (which may include attorney's fees).

There is no liability under §7431 if the disclosure was the result of a good faith but erroneous interpretation of §6103.

Avoid Unauthorized Disclosure – Follow These Tips:

Protect confidential tax information:

- + Follow appropriate physical and information security guidelines at all times.
- + Dispose of confidential tax information appropriately, whether on paper or digital media.

- + Do not leave confidential tax information on computer screens when you are away from the computer workstation.
- + Protect laptop computers and removable media that contain confidential tax information.
- + Do not commingle data. Keep federal tax information separate from other types of information. Where physical separation is impractical, the file should be clearly labeled to indicate that the file contains federal tax information.
- + Discuss confidential federal tax matters only with those personnel who have a need to know the information for a tax administration purpose. Do not discuss confidential tax matters on coffee breaks, at home or outside the office.
- + Observe the clean desk policy. Do not leave confidential information unattended on your desk.
- + Prepare all correspondence carefully. Be sure to completely over-write the information added to any pattern letters you may be using. Review all correspondence before sending to ensure that the text and all enclosed materials (reports, attachments, schedules, and other inserts) are intended for the recipient.
- + Use a document receipt to verify that confidential material has been properly received when information is mailed or hand carried. Use double sealed envelopes when mailing confidential tax information or take other precautions to prevent viewing of actual content.
- + Sensitive information, regardless of its form (electronic information in any form: e.g., on a hard drive, tape, disk, or other portable storage device, paper records, video or audio recordings of any type and databases must be protected from unauthorized disclosure.
- + Immediately report all unintentional or inadvertent unauthorized disclosures of tax information to the IRS as directed by current procedures.
- + Immediately report willful unauthorized accesses or disclosures by calling the TIGTA Hotline at 1-800-366-4484.

IRS Resources Available

- + IRS Safeguards staff periodically reviews agencies for compliance with these requirements and receives and approves certain reports required by law.
- + IRS Governmental Liaison keeps the lines of communication and cooperation open and active with state tax and other agencies.
- + IRS Disclosure answers disclosure questions and concerns and supports your agency liaison in the delivery of your Disclosure Awareness program.