



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

7.28.2

AUGUST 31, 2022

EFFECTIVE DATE

(08-31-2022)

PURPOSE

- (1) This transmits revised IRM 7.28.2, Exempt Organizations Disclosure Procedures, Information Disclosure to State Officials Under IRC 6104(c).

MATERIAL CHANGES

- (1) Made editorial changes throughout.
- (2) Revised for plain language as required by the *Plain Language Act of 2010*.
- (3) Incorporated internal controls as required by IRM 1.11.2.2.5, Address Management and Internal Controls.

EFFECT ON OTHER DOCUMENTS

This supersedes IRM 7.28.2 dated September 22, 2015.

AUDIENCE

Tax Exempt and Government Entities
Exempt Organizations

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7.28.2

Information Disclosure to State Officials Under IRC 6104(c)

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7.28.2.1
(08-31-2022)
Program Scope and Objectives

- (1) **Purpose:** This IRM describes Exempt Organizations disclosure procedures to State officials under IRC 6104(c).
- (2) **Policy Owner:** Director, Exempt Organizations Rulings and Agreements.
- (3) **Program Owner:** Exempt Organizations and Government Entities.
- (4) **Primary Stakeholders:** Exempt Organizations Rulings and Agreements.

7.28.2.1.1
(08-31-2022)
Background

- (1) The Pension Protection Act of 2006 (PPA), Section 1224, amended IRC 6104(c), which governs disclosures concerning IRC 501(c)(3) and certain other organizations to state tax or charity agencies. The PPA significantly:
 - a. Expands the scope of information available to these agencies.
 - b. Permits the IRS to provide this information much earlier in the administrative process.
- (2) The law includes a provision that requires recipients of taxpayer information under IRC 6104(c) to meet comprehensive technical, procedural, and administrative federal safeguard requirements per IRC 6103(p)(4).
- (3) To receive return and return information pursuant to IRC 6104(c), state tax and charity agencies must meet certain requirements. Agencies must:
 - a. Submit a Safeguard Security Report to Privacy, Governmental Liaison, and Disclosure (PGLD).
 - b. Be approved to receive the information.
 - c. Enter into a disclosure agreement with the IRS outlining permitted disclosures and uses of information as well as committing to the statutory safeguard requirements.

Reminder: Prior to the PPA, the IRS provided notifications of final revocations for organizations exempt under IRC 501(c)(3) to both state tax and charity agencies in all 50 states.

7.28.2.1.2
(08-31-2022)
Authority

- (1) Rev. Proc. 2022-5, updated annually, sets forth procedures for issuing determination letters on issues under the jurisdiction of the Director, EO Rulings and Agreements (R&A). It explains the procedures for issuing determination letters on exempt status in response to applications for recognition of exemption from federal income tax under Section 501 or 521 (other than those subject to Rev. Proc. 2022-4, updated annually), private foundation status, and other determinations related to exempt organizations. Rev. Proc. 2022-5 also provides guidance on the exhaustion of administrative remedies for purposes of declaratory judgment under IRC 7428 and guidance on applicable user fees for requesting determination letters.
- (2) The following pertain to record keeping and disclosure of information:
 - Subsection (c) of the Privacy Act of 1975
 - IRC 6104
 - Treasury Regulation 301.6104(a)-1, Public inspection of material relating to tax-exempt organizations.

7.28 Exempt Organizations Disclosure Procedures

7.28.2.1.3 (08-31-2022) Responsibilities

- (1) EO Determinations is primarily responsible for issuing determination letters on matters described in Rev. Proc. 2022-5, updated annually.
- (2) A determination letter is a written statement EO Determinations issues to an organization that applies previously announced principles and precedents to a specific set of facts on matters described in Rev. Proc. 2022-5, updated annually.
- (3) The Director of EO R&A, Tax Exempt and Government Entities, oversees the program.

7.28.2.1.4 (08-31-2022) Program Management and Overview

- (1) Exempt Organizations (EO), Tax Exempt and Government Entities (TE/GE) Division is responsible for disclosures under IRC 6104(c). PGLD Disclosure is responsible for interpreting the requirements of IRC 6104(c). Accordingly, EO coordinates with PGLD to resolve situations not clearly covered by these procedures that require interpretation of IRC 6104(c).
- (2) Government, Disclosure, and Safeguards, under the PGLD Director, is primarily responsible for providing advice and assistance for the disclosure of tax returns and return information. See IRM 11.3.33.4, Disclosure of Information About Exempt Organizations to Appropriate State Officials.
- (3) The TE/GE Liaison consults the Disclosure Technical Advisor for TE/GE on disclosure issues that aren't clear under IRC 6104(c) or the related regulations, or to coordinate program requirements or events.
- (4) EO:
 - a. Advises State officers of the disclosure provisions of IRC 6104(c).
 - b. Maintains a current list of state agencies with approved Disclosure Agreements.
 - c. Makes disclosures authorized by IRC 6104(c).
 - d. Processes requests for the administrative material relating to disclosable determinations.
 - e. Maintains records of disclosures provided under IRC 6104(c).
- (5) At the end of each fiscal year, the:
 - a. IRC 6104(c) Notice Coordinators provide an IRC 6104(c) disclosure report to the TE/GE Liaison.
 - b. TE/GE Liaison provides a summary report on the disclosure program to the Disclosure Technical Advisor for TE/GE, and to the Director, EO.

7.28.2.1.5 (08-31-2022) Program Controls

- (1) Exempt Organizations Determinations Quality Assurance (EODQA) reviews determination cases to ensure:
 - a. Technical accuracy
 - b. Adherence to written procedures
 - c. Uniform and impartial treatment of exempt organizations' interests while protecting the government's interest
 - d. Identification of unfavorable case patterns, trends affecting processing quality, problem areas, unique issues, and new or novel techniques that Exempt Organizations Determinations (EOD) specialists develop

7.28.2.1.6
(08-31-2022)

Terms and Acronyms

- (1) Commonly used abbreviations include:

Abbreviation	Name
ASO	Appropriate State Officer
EO	Exempt Organizations
EOD	Exempt Organizations Determinations
EODQA	Exempt Organizations Determinations Quality Assurance
PGLD	Privacy, Governmental Liaison, and Disclosure
PPA	Pension Protection Act
R&A	Rulings and Agreements
RAR	Revenue Agent Report
SSR	Safeguard Security Report
TE/GE	Tax Exempt and Government Entities

7.28.2.1.7
(08-31-2022)

Related Resources

- (1) The following are related resources:

- IRM 4.75.15, Closing Letters and Examination Reports.
- IRM 11.3.11, Information Available to the Public.
- IRM 11.3.37, Recordkeeping and Accounting for Disclosures.

7.28.2.2
(08-31-2022)

Disclosure Agreements

- (1) The IRS will only make disclosures under IRC 6104(c) to those state agencies that have submitted their Safeguard Security Report (SSR) to PGLD and have entered into a disclosure agreement with the IRS regarding IRC 6104(c).
- (2) See Exhibit 7.28.2-1 for the model Disclosure Agreement for States Attorney General, and see Exhibit 7.28.2-2 for the model Disclosure Agreement for state tax officers. The terms of the Disclosure Agreements can't be varied by individual state agencies. Periodically, state agencies may execute addenda to the Disclosure Agreement or execute entirely new Disclosure Agreements as they make changes to the disclosure program.
- (3) The Disclosure Agreement describes the:
- Responsibilities of the parties
 - The procedures for disclosure
 - Information to be disclosed
- (4) The Disclosure Agreement constitutes the written request for disclosure required by IRC 6104(c)(2)(C)(i) and IRC 6104(c)(3).

7.28 Exempt Organizations Disclosure Procedures

7.28.2.3 (08-31-2022) EO Responsibilities

- (1) The Directors of EO Rulings and Agreements (R&A) and EO Examinations (Exam) are responsible for making disclosures under IRC 6104(c) for certain determinations and notices issued by their offices.
- (2) EO R&A:
 - a. Notifies appropriate state officers when the IRS makes a proposed or final determination that an organization is denied recognition of exemption under IRC 501(c)(3) and provides a copy of the proposed or final letter.
 - b. Provides names, addresses, and employer identification numbers of organizations that have withdrawn their IRC 501(c)(3) applications.
 - c. Provides names, addresses, and employer identification numbers of organizations that have failed to establish IRC 501(c)(3) status.
- (3) EO Exam notifies appropriate state officials when the IRS issues:
 - a. A proposed or final notice of revocation of recognition of exemption under IRC 501(c)(3) or a proposed or final statutory notice of deficiency for tax imposed by IRC 507 and Chapters 41 and 42.

Note: See the list of applicable Code sections under Chapters 41 and 42 at IRM 7.28.2.6.2.
 - b. A letter of termination of an IRC 501(c)(3) organization's exempt status.
- (4) EO Exam is responsible for overall strategic direction and monitoring compliance with the requirements of IRC 6104(c).
- (5) EO Exam designates a TE/GE Liaison to:
 - a. Advise state officers of the materials they may receive under IRC 6104(c), how they can request specific materials, and how other state officers may apply to be designated as an appropriate state officer within the meaning of IRC 6104(c)(2).
 - b. Coordinate with PGLD Headquarters Governmental Liaison Policy regarding states that want to be approved to receive information under IRC 6104(c) and collaborate with PGLD Headquarters Governmental Liaison Policy to get the Disclosure Agreement executed.
 - c. Coordinate with PGLD Safeguards to ensure that the states that want to participate in the program under IRC 6104(c) have submitted their SSR.
 - d. Provide copies of all the executed Disclosure Agreements to PGLD, Headquarters Governmental Liaison Policy.
 - e. Maintain copies of all executed Disclosure Agreements.
 - f. Identify training needs and develop needed training materials.
 - g. Monitor the IRC 6104(c) activities of the component offices that make IRC 6104(c) disclosures, provide assistance and support, evaluate the effectiveness of procedures, and recommend improvements.
 - h. Provide periodic reports on IRC 6104(c) activities to the Director, EO and the Disclosure Technical Advisor for TE/GE.

Note: The Director, EO Examinations, in consultation with the Director, Exempt Organizations, will determine the specific content and frequency of the periodic reports. Reporting allows EO to maintain consistent records for each fiscal year.
 - i. Advise the Director, Office of Safeguards and Headquarters Governmental Liaison Policy, when a Disclosure Agreement has been terminated.

- (6) EO R&A designates an employee to coordinate IRC 6104(c) EO determination related notifications. The employee:
 - a. Identifies the cases in which notice may be provided.
 - b. Identifies the appropriate state officers for each particular case.
 - c. Prepares and issues the required notice.
 - d. Maintains records on the notices issued.
 - e. Coordinates with the TE/GE Liaison responsible for overall direction and monitoring.
 - f. Provides information needed for preparing the periodic reports on IRC 6104(c) activities in EO.
 - g. Responds to requests for documents from State officers.

7.28.2.4
(08-31-2022)
Appropriate State Officer

- (1) The IRS may disclose returns and return information under IRC 6104(c) to an appropriate state officer (ASO), as defined below, or to another person, but only if that person is a state officer or employee the ASO designates to receive information under IRC 6104(c) on his or her behalf.
- (2) An ASO may designate state officers or employees to receive information under IRC 6104(c) on his or her behalf by specifying in writing each person's name and job title and the name and address of the person's office.
- (3) "Appropriate state officer" (under IRC 6104(c)(6)(B)) means:
 - a. The state attorney general
 - b. The state tax officer
 - c. Any other state official charged with overseeing charitable organizations (IRC 501(c)(3) organizations or applicants for recognition under IRC 501(c)(3))
 - d. The head of an agency designated by the state attorney general as having primary responsibility for overseeing the solicitation of funds for charitable purposes (for IRC 501(c) organizations other than IRC 501(c)(1) or IRC 501(c)(3))
- (4) Only the state attorney general can apply on behalf of their own state officers for a determination that they will be regarded as ASOs for IRC 6104(c)(1) notifications. They apply by furnishing a letter with supporting facts and information to the TE/GE Liaison. The TE/GE Liaison coordinates with EO R&A. The letter or sample application must describe the state officer's functions and authority under state law and contain sufficient facts for the IRS to determine that the officer is an ASO per IRC 6104(c).
- (5) Information that is disclosable under IRC 6104(c) is disclosed or made available to an ASO or designee for:
 - a. An organization formed under the laws of the ASO's state
 - b. An organization, the principal office of which is located in the ASO's state
 - c. An organization that, as determined by the IRS, is or might be subject to the laws of the ASO's state regulating charitable organizations or the solicitation or administration of charitable funds or charitable assets
 - d. A private foundation required by Treas. Reg. 1.6033-2(a)(2)(iv) to list the states, which includes the state of the ASO

7.28 Exempt Organizations Disclosure Procedures

7.28.2.5
(08-31-2022)

Procedures for EO R&A

- (1) EO R&A notifies ASOs (who have entered into a disclosure agreement with the IRS) monthly of certain adverse determinations and about organizations that have applied for recognition of exemption under IRC 501(c)(3). EO R&A also identifies state officials who are entitled to be notified and may inspect various returns and other documents.
- (2) The designated employee prepares a cover letter, which states that the contents are provided for the information of the state official in accordance with IRC 6104(c). The letter and enclosures:
 - a. Include names of all cases transmitted.
 - b. List the names of the cases under identifiable headings (for example, Approvals, Applications Received, Proposed and Final Adverse Determinations, Failure to Establish, and Withdrawals).

7.28.2.6
(08-31-2022)

Procedures for EO Exam

- (1) EO Exam notifies state agencies of proposed and final revocations of exempt status. The TE/GE Liaison sends proposed revocation packages to the state agencies and notifies them of final disposition of the revocation.

Note: The TE/GE Liaison will notify their manager if they are unavailable to timely process state notifications.

7.28.2.6.1
(08-31-2022)

Proposed Revocation Notification Procedures for Examiners

- (1) Send the 30-day proposed revocation letter and revenue agent report (RAR) to the taxpayer unless the case is part of a project that requires Mandatory Review pre-issuance approval. Hold the case during the 30-day suspense period per IRM 4.75.15.10, Formal Reports of Examination.

Note: If case requires pre-issuance approval, send the letter to the taxpayer after Mandatory Review approval.

- (2) Prepare the below items to send to the TE/GE Liaison at the same time you send the 30-day letter and RAR to the taxpayer.
 - a. 30-day letter
 - b. Form 6018 , Consent to Proposed Adverse Action
 - c. RAR
 - d. Forms 990 for all applicable tax periods
- (3) Send the items to the TE/GE Liaison by secure email or mail to:

TE/GE Liaison Internal Revenue Service
1616 Capitol Avenue, Stop 4730OMA
Omaha, NE 68102
- (4) Notate in the case chronology that you sent the IRC 6104(c) package for [state(s)] to the TE/GE Liaison on mm/dd/yyyy.
- (5) Attach Form 3198-A, TE/GE Special Handling Notice, to the front of the case file alerting Mandatory Review the case is subject to IRC 6104(c) disclosure.
- (6) Notify the TE/GE Liaison immediately if Mandatory Review returns the case or if for any reason you rescind or correct a previously issued 30-day letter and RAR.
- (7) For terminating IRC 501(c)(3) organizations: while examiners don't issue letters terminating exempt status (issued only by reviewers):

1. Notate in the case chronology that IRC 6104(c) notice for [state(s)] was given to the TE/GE Liaison on mm/dd/yyyy.
2. Attach Form 3198-A to the case file alerting Mandatory Review the case is subject to IRC 6104(c) disclosure.

7.28.2.6.1.1
(08-31-2022)
**Procedures for the
TE/GE Liaison**

- (1) Send the proposed revocation package to the appropriate state agency. Keep the appropriate records and notify the Disclosure Office to account for the disclosure under IRC 6103(p)(3).
- (2) Coordinate with Mandatory Review and track the progress of the proposed revocation case (agreed or disagreed).
- (3) For an agreed case, if Mandatory Review prepares and sends a 90-day letter (final revocation) to the taxpayer, secure a copy and send it to the appropriate state agency.
- (4) For an disagreed case (forwarded to the Appeals Office by Mandatory Review), track the progress of the case and coordinate with the Appeals Office.

Note: Have Mandatory Review keep Form 3198-A attached to the case file to alert the Appeals Office the case involves an disagreed proposed revocation in a state which is eligible to receive disclosures under IRC 6104(c).

- (5) Ensure the appropriate state agency is notified as to whether or not the proposed revocation is upheld.
- (6) For an IRC 501(c)(3) termination, secure a copy of the termination letter from Mandatory Review.

7.28.2.6.2
(09-22-2015)
**Chapter 41 and 42
Assessments**

- (1) In addition to the disclosure of proposed and final revocations of IRC 501(c)(3) organizations, approved state tax and charity agencies are also eligible to receive notices of proposed and final deficiencies of tax imposed under IRC 507 or Chapter 41 or 42 against an organization or a disqualified person. These assessments include:
 - Initial and second tier taxes on private foundations and self-dealers under IRC 4940 through IRC 4945 for net investment income, self-dealing, failure to distribute income, excess business holdings, investments that jeopardize charitable purpose, and taxable expenditures
 - Initial tax on certain supporting organizations and donor advised funds for excess business holdings under IRC 4943
 - IRC 4911 tax on excess lobbying expenditures by public charities that have elected to be subject to IRC 501(h) regarding expenditures to influence legislation
 - IRC 4912 tax on excess lobbying expenditures that result in loss of IRC 501(c)(3) tax-exempt status
 - IRC 4955 tax imposed on any amount paid or incurred by a IRC 501(c)(3) organization that participates or intervenes in any political campaign on behalf of, or in opposition to, any candidate for public office

7.28 Exempt Organizations Disclosure Procedures

- IRC 4958 initial taxes on disqualified persons and organization managers of IRC 501(c)(3) organizations that engage in excess benefit transactions
- IRC 4959 tax on hospital organizations failing to meet the requirements of IRC 501(r)(3)
- IRC 4965 taxes related to prohibited shelter transactions
- IRC 4966 taxes on taxable distributions by sponsoring organizations maintaining donor advised funds
- IRC 4967 taxes on distribution of prohibited benefits from donor advised funds

7.28.2.6.2.1
(08-31-2022)

Proposed Deficiency Notification Procedures for Examiners

- (1) Send the 30-day notice of proposed deficiency and RAR to the taxpayer unless the case is part of a project that requires Mandatory Review pre-issuance approval. Hold the case during the 30-day suspense period per IRM 4.75.15.10, Formal Reports of Examination.

Note: If case requires pre-issuance approval, send the letter to the taxpayer after Mandatory Review approval.

- (2) Prepare the below items to send to the TE/GE Liaison at the time you send the 30-day letter and RAR on a case involving an assessment under IRC 507 or Chapter 41 or 42 to the taxpayer.
 - a. 30-day letter
 - b. Form 870-E, Waiver of Restriction on Assessments and Collection of Deficiency and Acceptance of Overassessment
 - c. Form 4621, Report of Examination Exempt Organization (Proposed Tax Changes)
 - d. Form 4883, Exempt Organizations Excise Tax Audit Changes
 - e. RAR
 - f. Copies of applicable Form 990, Form 990-PF, and Form 4720 (for assessments on organizations only)

Note: You may include copies of the publicly available version of Form 990 or Form 990-PF for assessments on disqualified persons, but **not** Form 4720.

- (3) Send the package to the TE/GE Liaison by secure email or mail to:

TE/GE Liaison Internal Revenue Service
1616 Capitol Avenue, Stop 4730
Omaha, NE 68102
- (4) Notify the TE/GE Liaison if the tax case is agreed or unagreed.
- (5) Notate in the case chronology that you sent the IRC 6104(c) package for [state(s)] to the TE/GE Liaison on mm/dd/yyyy.
- (6) Attach Form 3198-A to the case file if the tax case is unagreed or otherwise subject to mandatory review alerting Mandatory Review the case is subject to IRC 6104(c) disclosure.

7.28.2.6.2.2
(08-31-2022)

Procedures for the TE/GE Liaison

- (1) Send the IRC 507 or Chapter 41 or 42 deficiency package to the appropriate state agency. Keep the appropriate records and notify the Disclosure Office to account for the disclosure under IRC 6103(p)(3).

- (2) Coordinate with Mandatory Review and track the progress of the proposed deficiency case (agreed or disagreed).
- (3) For an agreed case, if Mandatory Review prepares and sends a 90-day letter (final deficiency) to the taxpayer, secure a copy and send it to the appropriate state agency.
- (4) For an disagreed case (forwarded to the Appeals Office by Mandatory Review), track the progress of the case and coordinate with the Appeals Office.

Note: Mandatory Review will keep Form 3198-A attached to the case file to alert the Appeals Office the case involves an disagreed tax deficiency in a state which is eligible to receive disclosures under IRC 6104(c).

- (5) Ensure that the appropriate state agency is notified as to whether or not the proposed assessment is upheld.

7.28.2.7 (08-31-2022) **Procedures for the Disclosure of Return Information of Organizations Described in IRC 501(c) Other than IRC 501(c)(3)**

- (1) Upon an ASO's written request, the IRS may disclose return and return information of IRC 501(c) organizations that are not IRC 501(c)(3) organizations for the purpose of, and only to the extent necessary for, the administration of state laws regulating the solicitation or administration of charitable funds or charitable assets.
- (2) The Disclosure Agreement constitutes the written request required by this provision. The TE/GE Liaison may make disclosures in individual instances based on an ASO's or their designee's oral requests.
- (3) The TE/GE Liaison keeps the appropriate records of these disclosures.

7.28.2.8 (08-31-2022) **Disclosures to State Agencies Other than by Request Pursuant to IRC 6104(c)(2)(D)**

- (1) The IRS may disclose to an ASO on its own initiative, and without written request, the returns and return information of charitable organizations or applicants for charitable status if the IRS determines that the information might constitute evidence of noncompliance with the laws under the ASO's jurisdiction (IRC 6104(c)(2)(D)).
- (2) The possible noncompliance acts must relate to state laws regulating charitable organizations or applicants, with the IRS determining whether the noncompliance comes under the ASO's jurisdiction. All disclosures must:
 - a. Comply with the accounting and safeguard procedures of IRC 6103(p).
 - b. Be made to an ASO that has entered into a Disclosure Agreement.
- (3) The IRS may disclose returns and return information before making a determination (denial of recognition, revocation, or notice of deficiency) or taking any other administrative or enforcement action.
 - a. The IRS is authorized to disclose the proposed revocations of organizations that have elected not to apply for recognition of their tax exemption, such as churches (IRC 6104(c)(2)(D)).
 - b. This authority is in addition to the other disclosure authority provided under IRC 6104(c)(1) and IRC 6104(c)(2).
 - c. The authority to authorize disclosures under IRC 6104(c)(2)(D) is delegated to the Director, EO Examinations and the Director, EO R&A.

7.28 Exempt Organizations Disclosure Procedures

- (4) IRS disclosures of returns and return information under IRC 6104(c)(2)(D) are made in writing to the ASO:
 - a. Prepare a referral package including returns and return information to the extent necessary to apprise the ASO of the possible noncompliance with state law.
 - b. Prepare a narrative description of the facts and, if possible, reference the particular state law provision that may have been violated for the referral package.
 - c. Seek your manager's and Area Manager's concurrence (as appropriate) with the referral.
 - d. Send the package to the TE/GE Liaison (EO Exam) or Director, EO R&A.

7.28.2.9 (08-31-2022) Reporting

- (1) At the end of each fiscal year:
 - a. IRC 6104(c) Notice Coordinators provide an IRC 6104(c) disclosure report to the TE/GE Liaison.
 - b. TE/GE Liaison provides a summary report on the disclosure program to the Disclosure Technical Advisor for TE/GE, and to the Director, EO R&A.
- (2) The TE/GE Liaison provides an accounting report to PGLD by January 31, after the end of the preceding calendar year.
- (3) The TE/GE Liaison completes the accounting report per accounting for disclosure procedures outlined in IRM 11.3.37, Record keeping and Accounting for Disclosures, using Form 5466-B, Multiple Records of Disclosure, to record disclosures under IRC 6104(c). See IRM Exhibit 11.3.37-6, Multiple Record of Disclosure, for help in completing the form. Use the following codes for the form:

Column	Code	Code Description
Nature of Disclosure Code	3	Inspection of document or file – no copies furnished
Nature of Disclosure Code	4	Photocopy furnished with or without prior inspection (For computer printouts See "1")
Agency Code	260	All other entities (Agency/Attorney General) to be used only if not otherwise indicated in IRM Exhibit 11.3.37-4 and IRM Exhibit 11.3.37-5
Purpose Code	15	Pursuant to 6104(c) for disclosures to State agencies responsible for regulating charitable organizations
ADP Source Code	621	TE/GE Correspondence Control Record 50.001
ADP Source Code	622	Report of Matters in Technical 50.003

7.28.2.10
(09-22-2015)

Training

- (1) The Office of Disclosure helps with disclosure training to designated persons in EO R&A and Exam.
- (2) EO R&A instructs EO Determinations and Exam on IRC 6104(c) disclosure procedures.

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Exhibit 7.28.2-1 (08-31-2022)**Sample Disclosure Agreement Under IRC Section 6104(c) for Attorney General's Office****Disclosure Agreement Under IRC Section 6104(c)****SECTION 1. Introduction**

1.1 This Agreement outlines the terms and conditions under which returns and return information will be disclosed to the Attorney General's office of the State of [insert State name] pursuant to IRC 6104(c). This Agreement constitutes the written request for inspection or disclosure required by paragraphs (c)(2)(C) and (c)(3) of IRC 6104.

SECTION 2. Definitions

For purposes of this Agreement, the following definitions apply:

2.1 Attorney General. The term **Attorney General** means the Attorney General of the State of [insert State name].

2.2 IRS. The term **IRS** means the Internal Revenue Service, U.S. Department of Treasury.

2.3 State. The term **State** means [insert State name].

2.4 Return. The term **return** is defined in the same manner as provided in IRC 6103(b)(1).

2.5 Return Information. The term **return information** is defined in the same manner as provided in IRC 6103(b)(2). "Return information" does not include information in the hands of the Attorney General that is obtained wholly from sources independent of the IRS, even though identical to return information (including information that independently verifies return information).

2.6 Inspection. The term **inspection** is defined in the same manner as provided in IRC 6103(b)(7) and means any examination of a return or return information.

2.7 Disclosure. The term **disclosure** is defined in the same manner as provided in IRC 6103(b)(8) and means the making known to any person in any manner whatever a return or return information.

2.8 Code. The terms **Code** and **IRC** mean the Internal Revenue Code of 1986, as amended.

2.9 Taxable Person. The term **taxable person** means any person who is liable or potentially liable for excise taxes under IRC chapter 41 or 42. Such a person includes:

- a disqualified person described in IRC 4946(a)(1), 4951(e)(4), or IRC 4958(f);
- a foundation manager described in IRC 4946(b);
- an organization manager described in IRC 4955(f)(2) or IRC 4958(f)(2);
- a person described in IRC 4958(c)(3)(B);
- an entity manager described in IRC 4965(d); and
- a fund manager described in IRC 4966(d)(3).

SECTION 3. Disclosure of Returns and Return Information Relating to IRC Section 501(c)(3) Organizations

3.1 Pursuant to the laws of [insert State name], the Attorney General is charged with the administration of State laws regulating organizations of the type described in IRC 501(c)(3). Returns and return information (whether originals, paper copy, photocopy, microfilm, electronic transmission, magnetic media, or any other form) received from the IRS will be used for the purpose of, and only to the extent necessary in, the administration of such laws.

Exhibit 7.28.2-1 (Cont. 1) (08-31-2022)**Sample Disclosure Agreement Under IRC Section 6104(c) for Attorney General's Office**

3.2 Pursuant to IRC 6104(c), the Attorney General requests, and the IRS will disclose, with respect to any organization that is described in IRC 501(c)(3) and exempt from taxation under IRC 501(a), or has applied under IRC 508(a) for recognition as an organization described in IRC 501(c)(3), the following items of return information:

- a. A refusal or proposed refusal to recognize an organization's exemption as a charitable organization (a final or proposed denial letter);
- b. Information regarding the granting of exemption following a proposed denial;
- c. A revocation of exemption as a charitable organization (a final revocation letter);
- d. A proposed revocation of recognition of exemption as a charitable organization (a proposed revocation letter);
- e. Information regarding the final disposition of a proposed revocation of recognition other than by final revocation;
- f. A notice of deficiency or proposed notice of deficiency of tax imposed under IRC 507 or IRC chapter 41 or 42 on the organization or a taxable person;
- g. Information regarding the final disposition of a proposed notice of deficiency of tax imposed under IRC 507 or IRC chapter 41 or 42 on the organization other than by issuance of a final notice of deficiency;
- h. On a quarterly or other periodic basis, the names, addresses, and taxpayer identification numbers of organizations that have applied for recognition as organizations described in IRC 501(c)(3). In addition, the IRS may make available to the Attorney General the ability to verify, for any particular organization, whether such organization has applied for recognition as an IRC 501(c)(3) organization; and
- i. Information regarding the final disposition of an application for recognition of exemption where no proposed denial letter is issued, including whether the application was withdrawn or whether the applicant failed to establish its exemption.

3.3 Additional Disclosures Related to IRC 501(c)(3) Organizations. The IRS may make available for inspection or disclosure returns and return information of an organization described in IRC 501(c)(3), or that has applied for recognition under IRC 508(a) as an organization described in IRC 501(c)(3), if the IRS determines that such returns or return information may constitute evidence of noncompliance under the laws within the jurisdiction of the Attorney General regulating charitable organizations and applicants.

3.4 Except for returns and return information relating to proposed notices of deficiency with respect to taxable persons, additional returns and return information of organizations or taxable persons with respect to which information is or may be disclosed under Section 3.2 may be made available for inspection by or disclosed to the Attorney General or their designee (see Section 5.1).

3.5 The IRS will disclose or make available for inspection to the Attorney General under this Agreement such information only with respect to:

1. an organization formed under the laws of [insert State name];
2. an organization, the principal office of which is located in [insert State name];
3. an organization that, as determined by the IRS, is or might be subject to the laws of [insert State name] regulating charitable organizations or the solicitation or administration of charitable funds or charitable assets; or
4. a private foundation required by Treas. Reg. 1.6033-2(a)(iv) to list [insert State name] on any of the foundation's returns filed for its last five years.

SECTION 4. Disclosure of Returns and Return Information Relating to Organizations other than IRC Section 501(c)(1) and IRC Section 501(c)(3) Organizations

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Exhibit 7.28.2-1 (Cont. 2) (08-31-2022)

Sample Disclosure Agreement Under IRC Section 6104(c) for Attorney General's Office

4.1 The IRS may make available for inspection or disclosure returns and return information of any organization described in IRC 501(c) (other than organizations described in paragraph (1) or (3) thereof) for the purpose of, and only to the extent necessary in, the administration of [insert State name] laws regulating the solicitation or administration of the charitable funds or charitable assets of such organizations. The Attorney General or his/her designee will use returns and return information so disclosed only for such purposes. **[insert only if the AG's office does this]** Organizations whose information will be disclosed under this section will be limited to those organizations described in subsections 3.5(1)-(3).

SECTION 5. Designees of Attorney General Permitted to Receive Returns and Returns Information

5.1 The Attorney General designates the individuals listed in Appendix A to receive returns and return information on the Attorney General's behalf and to request additional returns and return information that have not already been disclosed pursuant to Section 3.2, 3.4, or 4.1. The Attorney General will notify the IRS in writing of any additions, deletions, or other changes to the list of designated persons.

SECTION 6. Use and Redisclosure of Returns and Return Information Disclosed to the Attorney General under this Agreement

6.1 The Attorney General or any designee to whom a return or return information has been disclosed may thereafter disclose such return or return information:

- a. to another employee of [insert State name] for the purpose of and only to the extent necessary in the administration of the laws described above; and
- b. to another employee of [insert State name], personally and directly engaged in, and for use in, preparation for a civil proceeding before a State administrative body or court in a matter involving administration of the [insert State name] laws described above, if the returns and return information satisfy the criteria established in IRC 6104(c)(4) or any regulations promulgated pursuant to IRC 6104(c)(4). Such information may also be disclosed in such civil administrative or judicial proceeding, but only if such information satisfies the criteria in such provisions or regulations, as applicable.

Returns and return information received under IRC 6104(c) and this Agreement may not be redisclosed to agents or contractors.

6.2 If there are questions about whether an administrative or judicial proceeding has been initiated, the Attorney General or the persons listed in Section 5.1 will contact the TE/GE Liaison. The TE/GE Liaison will determine whether a proceeding has been initiated. If no proceeding has yet been initiated, the Attorney General may request written permission to disclose to a taxpayer their own returns or return information under IRC 6103(e) and Treas. Reg. 301.6103(p)(2)(B)-1.

6.3 Notwithstanding any other provision of this Agreement, the IRS will not disclose a return or return information under this Agreement if such disclosure would seriously impair Federal tax administration. The Attorney General further agrees that prior to the disclosure of any return or return information in a State administrative or judicial proceeding or to any party as provided by subsection 6.1(b) of this Agreement, the Attorney General or their designee will notify in writing the TE/GE Liaison from whom the return or return information was received, of the intention to make such disclosure. No officer or employee will disclose a return or return information in such State judicial or administrative proceeding if the TE/GE Liaison or other official designated by the Director, Exempt Organizations, within 30 calendar days following receipt of such written notice, informs the Attorney General that such disclosure would seriously impair Federal tax administration.

SECTION 7. Safeguards and Other Requirements

7.1 The Attorney General's office will maintain all federal tax returns and return information (FTI) sourced from the IRS in accordance with this Agreement and IRC 6103(p)(4) and comply with the safeguards requirements

Exhibit 7.28.2-1 (Cont. 3) (08-31-2022)**Sample Disclosure Agreement Under IRC Section 6104(c) for Attorney General's Office**

set forth in Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies, which is the IRS published guidance for security guidelines and other safeguards for protecting returns and return information pursuant to Treas. Reg. 301.6103(p)(4)-1. IRS safeguarding requirements require:

- a. The Attorney General's office will establish a central point of control for all requests for and receipt of FTI, and maintain a log to account for all subsequent disseminations and products made with/from that information, and movement of the information until destroyed, in accordance with Publication 1075, section 2.0.
- b. The Attorney General's office will establish procedures for secure storage of FTI consistently maintaining two barriers of protection to prevent unauthorized access to the information, including when in transit, in accordance with Publication 1075, section 2.B.2.
- c. The Attorney General's office will consistently label FTI obtained under this Agreement to make it clearly identifiable and to restrict access by unauthorized individuals. Any duplication or transcription of FTI creates new records which must also be properly accounted for and safeguarded. Federal tax returns and return information should not be commingled with other Agency records unless the entire file is safeguarded in the same manner as required for FTI and the FTI within is clearly labeled in accordance with Publication 1075, section 2.B.3.
- d. The Attorney General's office will restrict access to FTI solely to officers and employees of the office whose duties require access for the purposes of carrying out this Agreement. Prior to access, the Attorney General's office must evaluate which employees require such access. Authorized individuals may only access FTI to the extent necessary to perform services related to this Agreement, in accordance with Publication 1075, section 2.C.1.
- e. Prior to initial access to FTI, and annually thereafter, the Attorney General's office will ensure that employees and officers who will have access to FTI receive awareness training regarding the confidentiality restrictions applicable to the FTI and certify acknowledgement, in writing, that they are informed of the criminal penalties and civil liability provided by IRC 7213, 7213A, and 7431 for any willful disclosure or inspection of FTI that is not authorized by the IRC, in accordance with Publication 1075, section 2.C.3.
- f. The Attorney General's office will submit an annual Safeguard Security Report (SSR) to the Office of Safeguards by the submission deadline specified in Publication 1075, section 2.E.4, to provide an update on safeguarding activities during the reporting period and provide Attorney General certification that the SSR addresses all Outstanding Actions identified by the Office of Safeguards from the Attorney General's office's prior year's SSR; that it accurately and completely reflects the Attorney General's office's current environment for the receipt, storage, processing and transmission of FTI; that it accurately reflects the security controls in place to protect the FTI in accordance with Publication 1075; of the Attorney General's office's commitment to assist the Office of Safeguards in the joint effort of protecting the confidentiality of FTI; report all data incidents involving FTI to the Office of Safeguards and the Treasury Inspector General for Tax Administration (TIGTA) timely and that the Attorney General's office will cooperate with TIGTA and Office of Safeguards investigators, providing data and access, as needed, to determine the facts and circumstances of the incident; support the Office of Safeguards on-site review to assess Attorney General's office compliance with Publication 1075 requirements, by means of manual and automated compliance and vulnerability assessment testing, including coordination with information technology (IT) divisions to secure pre-approval, if needed, for automated system scanning and to support timely mitigation of identified risk to FTI in Attorney General's office's Corrective Action Plan (CAP) for as long as the Attorney General's office maintains FTI. Required reports will be transmitted in electronic format and on the template provided by Office of Safeguards, using an IRS-approved encryption method in accordance with Publication 1075, section 3.3.
- g. The Attorney General's office will ensure that FTI is properly destroyed or returned to the IRS when no longer needed, based on established Agency record retention schedules, in accordance with Publication 1075, section 2.D.7.

Exhibit 7.28.2-1 (Cont. 4) (08-31-2022)**Sample Disclosure Agreement Under IRC Section 6104(c) for Attorney General's Office**

- h. The Attorney General's office will conduct periodic internal inspections of facilities where FTI is maintained to ensure IRS safeguarding requirements are met and will permit the IRS access to such facilities, as needed, to review the extent to which the Attorney General's office is complying with the IRC 6103(p)(4) requirements of this section.

7.2 Generally, this Agreement covers secure electronic transmission of FTI to the Attorney General's office, provided the Agency's computer systems are compliant with Section 3544(a)(1)(A)(ii) of the Federal Information Security Management Act of 2002 (FISMA) or National Institute of Standards and Technology (NIST) Special Publication 800-53 standards and guidance for security of data at the moderate impact level. The office's SSR must fully describe the computer system and security controls implemented for the receipt, processing, storage, and transmission of electronic FTI. Required security controls for systems that receive, process, store and transmit electronic FTI are specified in Publication 1075, section 3.0.

Any receipts of FTI in paper format must also be fully disclosed in the Attorney General's office's SSR. Required security controls associated with the receipt, processing and storage of any FTI received in paper format are specified in previously mentioned sections of Publication 1075.

7.3 The Attorney General's office agrees to report suspected unauthorized inspection or disclosure of FTI within 24 hours of discovery to the appropriate Agent-in-Charge, TIGTA, and to the IRS Office of Safeguards, as specified in Publication 1075, section 1.8.2.

7.4 Attorney General's office officers and employees may have access to FTI obtained under this Agreement.

7.5 Attorney General's office officers and employees who inspect or disclose FTI obtained pursuant to this Agreement in a manner or for a purpose not so authorized by the IRC are subject to the criminal sanction provisions of IRC 7213 and 7213A and 18 U.S.C. 1030(a)(2), as may be applicable. In addition, the Attorney General's office could be required to defend a civil damages action under IRC 7431.

7.6 IRS will conduct periodic safeguard reviews of the Attorney General's office to assess whether security and confidentiality of FTI is maintained consistent with the safeguarding protocols described in Publication 1075, the Attorney General's office's SSR, and in accordance with the terms of this Agreement. Periodic safeguard reviews will involve the inspection of Attorney General's office facilities where FTI is maintained; the testing of technical controls for computer systems storing, processing or transmitting FTI; review of Attorney General's office recordkeeping and policies and interviews of Attorney General's office employees and contractor employees, as needed, to verify the use of FTI and assess the adequacy of procedures established to protect FTI.

7.7 The Attorney General's office recognizes and treats all Safeguards documents and related communications as IRS official agency records; that they are property of the IRS; that IRS records are subject to disclosure restrictions under federal law and IRS rules and regulations and may not be released publicly under state Sunshine or Information Sharing/Open Records provisions and that any requestor seeking access to IRS records should be referred to the federal Freedom of Information Act (FOIA) statute. If the Agency determines that it is appropriate to share Safeguard documents and related communications with another governmental function/branch for the purposes of operational accountability or to further facilitate protection of FTI that the recipient governmental function/branch must be made aware, in unambiguous terms, that Safeguard documents and related communications are property of the IRS; that they constitute IRS official agency records; that any request for the release of IRS records is subject to disclosure restrictions under federal law and IRS rules and regulations and that any requestor seeking access to IRS records should be referred to the federal FOIA statute.

The TE/GE Liaison will ensure that all requirements for recordkeeping and accounting for disclosures are met in accordance with IRC 6103(p)(3) and its implementing regulations.

Exhibit 7.28.2-1 (Cont. 5) (08-31-2022)**Sample Disclosure Agreement Under IRC Section 6104(c) for Attorney General's Office**

7.8 As noted in section 1.7.2, the Attorney General's office will not disclose any information it receives from IRS if such disclosure would seriously impair Federal tax administration (including waiving privileges or identifying a confidential informant without IRS approval).

SECTION 8. Transmittal Procedures

8.1 All information exchanged will include a Document Transmittal (Form 3210 or equivalent) or other means of verifying receipt with a count of documents by type and a brief description of the information being provided.

8.2 The Document Transmittal and documents will be inserted in an envelope marked "TO BE OPENED BY ADDRESSEE ONLY" and inscribed with the name of the official designated to receive the information. The package will be hand delivered to the designated official or mailed via the United States Postal Service, Federal Express, United Parcel Service, or a Federally accredited expedited mail delivery service, in a second envelope inscribed with the address of the designated official.

SECTION 9. Limitations

9.1 The terms of this Agreement are not intended to alter, amend, or rescind any current agreement or provision of federal law now in effect. Any provision of this Agreement which conflicts with federal law will be null and void.

SECTION 10. Officials to Contact for Obtaining Information

10.1 Additional requests for information related to matters disclosed pursuant to Section 3 will be made to the TE/GE Official who made the initial disclosure. Additional requests for information related to matters disclosed pursuant to Section 4 are to be made to the TE/GE Liaison.

SECTION 11. Termination or Modification of Agreement

11.1 This Agreement may be cancelled upon [agreed-upon number] days written notice by either the IRS or the Attorney General's office or immediately by signed agreement of the IRS and the Attorney General.

11.2 This Agreement may be amended by deletion or modification of any provisions, provided that such amendment is in writing and is signed by all parties to the Agreement.

SECTION 12. Evaluation of Data Exchange

12.1 The IRS and the Attorney General's office will review this Agreement annually to evaluate the existing data exchange, examine the continuing needs for and uses of the exchanged data, and determine whether the provisions of this Agreement require amendment or revision. The method of review (conference call, meeting, email) will be jointly determined by the IRS Governmental Liaison, Office of Safeguards, Business Operating Division, and the Attorney General's office.

APPROVED:

[INSERT NAME OF STATE]

_____ (signature)

Attorney General

Signed at: _____ this _____ day of _____, 20____.

INTERNAL REVENUE SERVICE

_____ (signature)

Information Disclosure to State Officials Under IRC 6104(c) 7.28.2

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Exhibit 7.28.2-1 (Cont. 6) (08-31-2022)

Sample Disclosure Agreement Under IRC Section 6104(c) for Attorney General's Office

Commissioner, Tax Exempt and Government Entities

Signed at: Washington, DC, this ____ day of _____, 20__.

APPENDIX A

DESIGNEES (INCLUDE NAME, ADDRESS, JOB TITLE, and NAME AND ADDRESS OF OFFICE)

Exhibit 7.28.2-2 (08-31-2022)**Sample Disclosure Agreement Under IRC Section 6104(c) for State Tax Officer****Disclosure Agreement Under IRC Section 6104(c)****SECTION 1. Introduction**

1.1 This Agreement outlines the terms and conditions under which returns and return information will be disclosed to the Tax Office of the State of [insert State name] pursuant to IRC 6104(c). This Agreement constitutes the written request for inspection or disclosure required by paragraphs (c)(2)(C) and (c)(3) of IRC 6104(c).

SECTION 2. Definitions

For purposes of this Agreement, the following definitions apply:

2.1 Tax Office. The term **Tax Office** means the [insert Agency name].

2.2 Tax Officer. The term **Tax Officer** means the head of the [insert State name] Tax Agency.

2.3 IRS. The term **IRS** means the Internal Revenue Service, U.S. Department of Treasury.

2.4 State. The term **State** means [insert State name].

2.5 Return. The term **return** is defined in the same manner as provided in IRC 6103(b)(1).

2.6 Return Information. The term **return information** is defined in the same manner as provided in IRC 6103(b)(2). **Return information** does not include information in the hands of the Tax Officer that is obtained wholly from sources independent of the IRS, even though identical to return information (including information that independently verifies return information).

2.7 Inspection. The term **inspection** is defined in the same manner as provided in IRC 6103(b)(7) and means any examination of a return or return information.

2.8 Disclosure. The term **disclosure** is defined in the same manner as provided in IRC 6103(b)(8) and means the making known to any person in any manner whatever a return or return information.

2.9 Code. The terms **Code** and "IRC" **IRC** mean the Internal Revenue Code of 1986, as amended.

2.10 Taxable person. The term **taxable person** means any person who is liable or potentially liable for excise taxes under IRC chapter 41 or 42. Such a person includes—

- a disqualified person described in IRC 4946(a)(1), 4951(e)(4), or IRC 4958(f);
- a foundation manager described in IRC 4946(b);
- an organization manager described in IRC 4955(f)(2) or IRC 4958(f)(2);
- a person described in IRC 4958(c)(3)(B);
- an entity manager described in IRC 4965(d); and
- a fund manager described in IRC 4966(d)(3).

SECTION 3. Disclosure of Returns and Federal Return Information Relating to IRC Section 501(c)(3) Organizations

3.1 Pursuant to the laws of [insert State name], the Tax Officer is charged with the administration of state laws regulating organizations of the type described in IRC 501(c)(3). Returns and return information (whether originals, paper copy, photocopy, microfilm, electronic transmission, magnetic media, or any other form) received from the IRS will be used for the purpose of, and only to the extent necessary in, the administration of such laws.

Exhibit 7.28.2-2 (Cont. 1) (08-31-2022)**Sample Disclosure Agreement Under IRC Section 6104(c) for State Tax Officer**

3.2 Pursuant to IRC 6104(c), the Tax Officer requests, and the IRS will disclose, with respect to any organization that is described in IRC 501(c)(3) and exempt from taxation under IRC 501(a), or has applied under IRC 508(a) for recognition as an organization described in IRC 501(c)(3), the following items of return information:

- a. A refusal or proposed refusal to recognize an organization's exemption as a charitable organization (a final or proposed denial letter);
- b. Information regarding a grant of exemption following a proposed denial;
- c. A revocation of exemption as a charitable organization (a final revocation letter), including a notice of termination or dissolution;
- d. A proposed revocation of recognition of exemption as a charitable organization (a proposed revocation letter);
- e. Information regarding the final disposition of a proposed revocation of recognition other than by final revocation;
- f. A notice of deficiency or proposed notice of deficiency of tax imposed under IRC 507 or IRC chapter 41 or 42 on the organization or a taxable person;
- g. Information regarding the final disposition of a proposed notice of deficiency of tax imposed under IRC 507 or IRC chapter 41 or 42 on the organization other than by issuance of a final notice of deficiency;
- h. On a quarterly or other periodic basis, the names, addresses, and taxpayer identification numbers of organizations that have applied for recognition as organizations described in IRC 501(c)(3). In addition, the IRS may make available to the Tax Officer the ability to verify, for any particular organization, whether such organization has applied for recognition as an IRC 501(c)(3) organization; and
- i. Information regarding the final disposition of an application for recognition of exemption where no proposed denial letter is issued, including whether the application was withdrawn or whether the applicant failed to establish its exemption.

3.3 Additional Disclosures Related to IRC 501(c)(3) Organizations. The IRS may make available for inspection or disclosure returns and return information of an organization described in IRC 501(c)(3), or that has applied for recognition under IRC 508(a) as an organization described in IRC 501(c)(3), if the IRS determines that such returns or return information may constitute evidence of noncompliance under the laws within the jurisdiction of the Tax Officer regulating charitable organizations and applicants.

3.4 Except for returns and return information relating to proposed notices of deficiency with respect to taxable persons, additional returns and return information of organizations or taxable persons with respect to which information is or may be disclosed under Section 3.2 may be disclosed to or made available for inspection by the Tax Officer or his/her designee (see Section 5.1).

3.5 The IRS will disclose or make available for inspection to the Tax Officer under this Agreement such information only with respect to—

1. an organization formed under the laws of [insert State name];
2. an organization, the principal office of which is located in [insert State name];
3. an organization that, as determined by the IRS, is or might be subject to the laws of [insert State name] regulating charitable organizations or the solicitation or administration of charitable funds or charitable assets; or
4. a private foundation required by Treas. Reg. 1.6033-2(a)(iv) to list [insert State name] on any of the foundation's returns filed for its last five years.

SECTION 4. Disclosure of Returns and Return Information Relating to Organizations other than IRC Section 501(c)(1) and IRC Section 501(c)(3) Organizations

Exhibit 7.28.2-2 (Cont. 2) (08-31-2022)**Sample Disclosure Agreement Under IRC Section 6104(c) for State Tax Officer**

4.1 The IRS may make available for inspection or disclosure returns and return information of any organization described in IRC 501(c) (other than organizations described in paragraph (1) or (3) thereof) for the purpose of, and only to the extent necessary in, the administration of [insert State name] laws regulating the solicitation or administration of the charitable funds or charitable assets of such organizations. The Tax Officer will use returns and return information so disclosed only for such purposes. **[insert only if the Tax Office does this]** Organizations whose information will be disclosed under this section will be limited to those organizations described in subsections 3.5(1)-(3).

SECTION 5. Designees of Tax Officer Permitted to Receive Returns and Return Information

5.1 The Tax Officer designates the individuals listed in Appendix A to receive returns and return information on the Tax Officer's behalf and to request additional returns and return information that have not already been disclosed pursuant to Section 3.2, 3.4, or 4.1. The Tax Officer will notify the IRS in writing of any additions, deletions, or other changes to the list of designated persons.

SECTION 6. Use and Redisclosure of Returns and Return Information Disclosed to the Tax Officer under this Agreement

6.1 The Tax Officer or any designee to whom a return or return information has been disclosed may thereafter disclose such return or return information:

- a. to another employee of [insert State name] for the purpose of and only to the extent necessary in the administration of the laws described above and
- b. to another employee of [insert State name], personally and directly engaged in, and for use in, preparation for a civil proceeding before a State administrative body or court in a matter involving administration of the [insert State name] laws described above, if the returns and return information satisfy the criteria established in IRC 6104(c)(4) or any regulations promulgated pursuant to IRC 6104(c)(4). Such information may also be disclosed in such civil administrative or judicial proceeding, but only if such information satisfies the criteria in such provisions or regulations, as applicable.

Returns and return information received under IRC 6104(c) and this Agreement may not be redisclosed to agents or contractors.

6.2 If there are questions about whether an administrative or judicial proceeding has been initiated, the Tax Officer or the persons listed in Section 5.1 will contact the TE/GE Liaison. The TE/GE Liaison will determine whether a proceeding has been initiated. If no proceeding has yet been initiated, the Tax Officer may request written permission to disclose to a taxpayer their own returns or return information under IRC 6103(e) and Treas. Reg. 301.6103(p)(2)(B)-1.

6.3 Notwithstanding any other provision of this Agreement, the IRS will not disclose a return or return information under this Agreement if such disclosure would seriously impair Federal tax administration. The Tax Officer further agrees that prior to the disclosure of any return or return information in a State administrative or judicial proceeding or to any party as provided by subsection 6.1(b) of this Agreement, the Tax Officer or his/her designee will notify in writing the TE/GE Liaison from whom the return or return information was received, of the intention to make such disclosure. No officer or employee will disclose a return or return information in such State judicial or administrative proceeding if the TE/GE Liaison or other official designated by the Director, Exempt Organizations, within 30 calendar days following receipt of such written notice, informs the Tax Officer that such disclosure would seriously impair Federal tax administration.

SECTION 7. Safeguards and Other Requirements

7.1 The Tax Officer's office will maintain all federal tax returns and return information (FTI) sourced from the IRS in accordance with this Agreement and IRC 6103(p)(4) and comply with the safeguards requirements set forth in Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies, which is the IRS

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Exhibit 7.28.2-2 (Cont. 3) (08-31-2022)

Sample Disclosure Agreement Under IRC Section 6104(c) for State Tax Officer

published guidance for security guidelines and other safeguards for protecting returns and return information pursuant to Treas. Reg. 301.6103(p)(4)-1. IRS safeguarding requirements require:

- a. The Tax Officer's office will establish a central point of control for all requests for and receipt of FTI, and maintain a log to account for all subsequent disseminations and products made with/from that information, and movement of the information until destroyed, in accordance with Publication 1075, section 2.0.
- b. The Tax Officer's office will establish procedures for secure storage of FTI consistently maintaining two barriers of protection to prevent unauthorized access to the information, including when in transit, in accordance with Publication 1075, section 2.B.2.
- c. The Tax Officer's office will consistently label FTI obtained under this Agreement to make it clearly identifiable and to restrict access by unauthorized individuals. Any duplication or transcription of FTI creates new records which must also be properly accounted for and safeguarded. Federal tax returns and return information should not be commingled with other Agency records unless the entire file is safeguarded in the same manner as required for FTI and the FTI within is clearly labeled in accordance with Publication 1075, section 2.B.3.
- d. The Tax Officer's office will restrict access to FTI solely to officers and employees of the office whose duties require access for the purposes of carrying out this Agreement. Prior to access, the Tax Officer's office must evaluate which employees require such access. Authorized individuals may only access FTI to the extent necessary to perform services related to this Agreement, in accordance with Publication 1075, section 2.C.1.
- e. Prior to initial access to FTI, and annually thereafter, the Tax Officer's office will ensure that employees and officers who will have access to FTI receive awareness training regarding the confidentiality restrictions applicable to the FTI and certify acknowledgement, in writing, that they are informed of the criminal penalties and civil liability provided by IRC 7213, 7213A, and 7431 for any willful disclosure or inspection of FTI that is not authorized by the IRC, in accordance with Publication 1075, section 2.C.3.
- f. The Tax Officer's office will submit an annual Safeguard Security Report (SSR) to the Office of Safeguards by the submission deadline specified in Publication 1075, section 2.E.4, to provide an update on safeguarding activities during the reporting period and provide Tax Officer certification that the SSR addresses all Outstanding Actions identified by the Office of Safeguards from the Tax Officer's office's prior year's SSR; that it accurately and completely reflects the Tax Officer's office's current environment for the receipt, storage, processing and transmission of FTI; that it accurately reflects the security controls in place to protect the FTI in accordance with Publication 1075; of the Tax Officer's office's commitment to assist the Office of Safeguards in the joint effort of protecting the confidentiality of FTI; report all data incidents involving FTI to the Office of Safeguards and the Treasury Inspector General for Tax Administration (TIGTA) timely and that the Tax Officer's office will cooperate with TIGTA and Office of Safeguards investigators, providing data and access, as needed, to determine the facts and circumstances of the incident; support the Office of Safeguards on-site review to assess Tax Officer's office compliance with Publication 1075 requirements, by means of manual and automated compliance and vulnerability assessment testing, including coordination with information technology (IT) divisions to secure pre-approval, if needed, for automated system scanning and to support timely mitigation of identified risk to FTI in Tax Officer's office's Corrective Action Plan (CAP) for as long as the Tax Officer's office maintains FTI. Required reports will be transmitted in electronic format and on the template provided by Office of Safeguards, using an IRS-approved encryption method in accordance with Publication 1075, section 3.3.
- g. The Tax Officer's office will ensure that FTI is properly destroyed or returned to the IRS when no longer needed, based on established Agency record retention schedules, in accordance with Publication 1075, section 2.D.7.

Exhibit 7.28.2-2 (Cont. 4) (08-31-2022)**Sample Disclosure Agreement Under IRC Section 6104(c) for State Tax Officer**

- h. The Tax Officer's office will conduct periodic internal inspections of facilities where FTI is maintained to ensure IRS safeguarding requirements are met and will permit the IRS access to such facilities, as needed, to review the extent to which the Tax Officer's office is complying with the IRC 6103(p)(4) requirements of this section.

7.2 Generally, this Agreement covers secure electronic transmission of FTI to the Tax Officer's office, provided the Agency's computer systems are compliant with Section 3544(a)(1)(A)(ii) of the Federal Information Security Management Act of 2002 (FISMA) or National Institute of Standards and Technology (NIST) Special Publication 800-53 standards and guidance for security of data at the moderate impact level. The office's SSR must fully describe the computer system and security controls implemented for the receipt, processing, storage, and transmission of electronic FTI. Required security controls for systems that receive, process, store and transmit electronic FTI are specified in Publication 1075, section 3.0.

Any receipts of FTI in paper format must also be fully disclosed in the Tax Officer's office's SSR. Required security controls associated with the receipt, processing and storage of any FTI received in paper format are specified in previously mentioned sections of Publication 1075.

7.3 The Tax Officer's office agrees to report suspected unauthorized inspection or disclosure of FTI within 24 hours of discovery to the appropriate Agent-in-Charge, TIGTA, and to the IRS Office of Safeguards, as specified in Publication 1075, section 1.8.2.

7.4 Tax Officer's office officers and employees may have access to FTI obtained under this Agreement.

7.5 Tax Officer's office officers and employees who inspect or disclose FTI obtained pursuant to this Agreement in a manner or for a purpose not so authorized by the IRC are subject to the criminal sanction provisions of IRC 7213 and 7213A and 18 U.S.C. 1030(a)(2), as may be applicable. In addition, the Tax Officer's office could be required to defend a civil damages action under IRC 7431.

7.6 IRS will conduct periodic safeguard reviews of the Tax Officer's office to assess whether security and confidentiality of FTI is maintained consistent with the safeguarding protocols described in Publication 1075, the Tax Officer's office's SSR, and in accordance with the terms of this Agreement. Periodic safeguard reviews will involve the inspection of Tax Officer's office facilities where FTI is maintained; the testing of technical controls for computer systems storing, processing or transmitting FTI; review of Tax Officer's office recordkeeping and policies and interviews of Tax Officer's office employees and contractor employees, as needed, to verify the use of FTI and assess the adequacy of procedures established to protect FTI.

7.7 The Tax Officer's office recognizes and treats all Safeguards documents and related communications as IRS official agency records; that they are property of the IRS; that IRS records are subject to disclosure restrictions under federal law and IRS rules and regulations and may not be released publicly under state Sunshine or Information Sharing/Open Records provisions and that any requestor seeking access to IRS records should be referred to the federal Freedom of Information Act (FOIA) statute. If the Agency determines that it is appropriate to share Safeguard documents and related communications with another governmental function/branch for the purposes of operational accountability or to further facilitate protection of FTI that the recipient governmental function/branch must be made aware, in unambiguous terms, that Safeguard documents and related communications are property of the IRS; that they constitute IRS official agency records; that any request for the release of IRS records is subject to disclosure restrictions under federal law and IRS rules and regulations and that any requestor seeking access to IRS records should be referred to the federal FOIA statute.

The TE/GE Liaison will ensure that all requirements for recordkeeping and accounting for disclosures are met in accordance with IRC 6103(p)(3) and its implementing regulations.

Information Disclosure to State Officials Under IRC 6104(c) 7.28.2

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Exhibit 7.28.2-2 (Cont. 5) (08-31-2022)

Sample Disclosure Agreement Under IRC Section 6104(c) for State Tax Officer

7.8 As noted in section 1.7.2, the Tax Officer's office will not disclose any information it receives from IRS if such disclosure would seriously impair Federal tax administration (including waiving privileges or identifying a confidential informant without IRS approval.)

SECTION 8. Transmittal Procedures

8.1 All information exchanged will include a Document Transmittal (Form 3210 or equivalent) or other means of verifying receipt with a count of documents by type and a brief description of the information being provided.

8.2 The Document Transmittal and documents will be inserted in an envelope marked "TO BE OPENED BY ADDRESSEE ONLY" and inscribed with the name of the official designated to receive the information. The package will be hand delivered to the designated official or mailed via the United States Postal Service, Federal Express, United Parcel Service, or a Federally accredited expedited mail delivery service, in a second envelope inscribed with the address of the designated official.

SECTION 9. Limitations

9.1 The terms of this Agreement are not intended to alter, amend, or rescind any current agreement or provision of federal law now in effect. Any provision of this Agreement which conflicts with federal law will be null and void.

SECTION 10. Officials to Contact for Obtaining Information

10.1 Additional requests for information related to matters disclosed pursuant to Section 3 will be made to the TE/GE Official who made the initial disclosure. Additional requests for information related to matters disclosed pursuant to Section 4 are to be made to the TE/GE Liaison.

SECTION 11. Termination or Modification of Agreement

11.1 This Agreement may be cancelled upon [agreed-upon number] days written notice by either the IRS or the Tax Officer's office or immediately by signed Agreement of the IRS and the Tax Officer.

11.2 This Agreement may be amended by deletion or modification of any provisions, provided that such amendment is in writing and is signed by all parties to the Agreement.

SECTION 12. Evaluation Of Data Exchange:

12.1 The IRS and the Tax Officer's office will review this Agreement annually to evaluate the existing data exchange, examine the continuing needs for and uses of the exchanged data, and determine whether the provisions of this Agreement require amendment or revision. The method of review (conference call, meeting, email) will be jointly determined by the IRS Governmental Liaison, Office of Safeguards, Business Operating Division, and the Tax Officer's office.

APPROVED:

[INSERT NAME OF STATE]

_____ (signature)

Head of Agency

Signed at: _____ this _____ day of _____, 20____.

Exhibit 7.28.2-2 (Cont. 6) (08-31-2022)

Sample Disclosure Agreement Under IRC Section 6104(c) for State Tax Officer

INTERNAL REVENUE SERVICE

_____ (*signature*)

Commissioner, Tax Exempt and Government Entities

Signed at: Washington, DC, this ____ day of _____, 20____.

APPENDIX A

DESIGNEES (INCLUDE NAME, ADDRESS, JOB TITLE, and NAME AND ADDRESS OF OFFICE)