Office of Chief Counsel
Internal Revenue Service
memorandum

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to: Executive Technical Advisor,
Office of Governmental Liaison and Disclosure

from: Charles B. Christopher
Chief, Branch 7
Procedure & Administration

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subject: Regional Income Tax Agencies

The Tax Relief and Health Care Act of 2006, Pub. Law 109-432, effective December 20, 2006, amended section 6103(b)(5)(A)(iii) of the Internal Revenue Code, to include regional income tax agencies within the definition of "state" for the purposes of receiving federal tax information. Two entities in Ohio have begun negotiations with the Internal Revenue Service to enter into agreements to receive federal tax information with respect to taxpayers in their member municipalities. You have requested our views as to whether the Regional Income Tax Agency (RITA) of Ohio and the Central Collection Agency, also of Ohio, meet the requirements of the amended section 6103 in order to receive federal tax information.

Issues

1. Whether the Regional Income Tax Agency (RITA) of Ohio and the Central Collection Agency are regional income tax agencies within the definition of "state" in section 6103(b)(5)(A)(iii).

2. Whether the State Auditor of Ohio is the state auditing agency for purposes of section 6103(d)(2).

3. Whether these agencies are prohibited from redisclosing federal tax information to member municipalities.

Conclusions

1. Both the RITA of Ohio and the Central Collection Agency are regional income tax agencies as defined by section 6103(b)(5)(A)(iii) because they consist of qualified groups of municipalities.

2. The State Auditor of Ohio is the state auditing agency for both the RITA of Ohio and the Central Collection Agency for purposes of section 6103(d)(2).

3. Both the RITA of Ohio and the Central Collection Agency are prohibited from redisclosing federal tax information to the municipalities for which they administer municipal income taxes.

Applicable Law

In general, the amendments to section 6103 broadened the definition of "state" to include a regional income tax agency administering the tax laws of municipalities that have a combined population of over 250,000. Specifically, section 6103(b)(5) now includes within the definition of the term "state" any governmental entity (1) that is formed and operated by a qualified group of municipalities, and (2) with which the Secretary (in his sole discretion) has entered into an agreement regarding disclosure. Under the amendments, the regional income tax agency is treated as a state for purposes of applying the confidentiality and disclosure provisions for state tax officials, determining the scope of tax administration, applying the rules governing disclosures in judicial and administrative tax proceedings, and applying the safeguard procedures. *See* I.R.C. § 6103(d).[1]

The requirements for recognition as a "qualified group of municipalities," is that two or more municipalities must (1) each impose a tax on wages or income; (2) each, under the authority of state statute, administers the tax through the governmental entity; and, (3) have a collective population of over 250,000 (as determined under the most recent decennial U.S. census data available). Each of these requirements must be met in order for the qualified group to be considered a regional income tax agency. I.R.C. § 6103(b)(5)(B).

Because the statute requires that the entity administer for a group of municipalities recognized by state law, we look to see if the State of Ohio has such a statute. Ohio R.C. § 167.01 authorizes the creation of a regional council of governments by a group of political subdivisions established with the approval of all members.[2] The Ohio statute contains provisions regarding membership and representation on the council and

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[1] The statute also requires that a regional income tax agency conduct on-site reviews of all of its contractors or other agents receiving Federal returns and return information every 3 years. The statute requires that the regional income tax agency submit a report of its findings to the Secretary and certify annually that its contractors and other agents are in compliance with the requirements to safeguard the confidentiality of Federal tax information. I.R.C. § 6103(b)(5)(B)(iii). Nonetheless, the IRS maintains its right to conduct safeguard reviews of regional income tax agency contractors or other agents. I.R.C. § 6103(p)(4).

[2] That statute states in pertinent part:

> governing bodies of any two or more counties, municipal corporations, townships, special districts, school districts, or other political subdivisions may enter into an agreement with each other, or with the governing bodies of any counties, municipal corporations, townships, special districts, school districts or other political subdivisions of any other state to the extent that laws of such other state permit, for establishment of a regional council consisting of such political subdivisions.

permits withdrawal from the council. Ohio R.C. § 167.02. The statute has provisions for the creation of a governing body and the establishment of by-laws setting forth the method for the selection of officers and the conduct of business. Ohio R.C. § 167.04(A). The council may perform the functions of the various members upon approval of all members. Ohio R.C. § 167.03(C). We believe that an entity created pursuant to Ohio R.C. § 167.01 would satisfy the state law requirement for a qualified group of municipalities.

Analysis

I. Recognition of Entities as Regional Income Tax Agencies For Section 6103(d)

A. *The Regional Income Tax Agency of Ohio (RITA)*

The Regional Income Tax Agency (RITA) of Ohio was formed around 1971 under the aegis of the Regional Council of Governments (RCOG), which was established under Ohio R.C. § 167.01. The RCOG is comprised of one delegate from each of the member municipalities, appointed by the municipality. Each delegate has one vote. Therefore, each municipality has equal voice in the operations of RITA.

The RITA is more than a revenue agency. It can perform a number of services for municipalities including payroll services, financial services (accounts payable and receivable), utility bill accounting (water, sewage and garbage) and permits and licenses accounting. Use of the services is not limited to member municipalities.

The tax department within RITA is the Department of Taxation, headed by the Chief of Tax Operations. The executive officer of RITA appears to be the Executive Director. RITA has nine (9) trustees, which are elected by, and reportable to, the Regional Council of Governments. Currently those trustees are composed of elected officers and government administrators of member municipalities who serve for three (3) staggered year terms. The RITA of Ohio is an entity established under state law through the RCOG process to conduct the business of its members. For this reason, we conclude that it is a "qualified group of municipalities" pursuant to section 6103(b)(5)(B)(i).

Section 6103(d) prohibits the disclosure of federal tax information directly to the chief executive officer of the state. Rather, the IRS is authorized to make disclosures to the governmental body tasked, under State law, with the responsibility of administering the state revenue law. Based on our understanding of Ohio law, the chief executive officer is the Executive Director, while the head of the unit responsible for the administration of the revenue laws is the Chief of Tax Operations. Our conclusion is buttressed by the information we have collected about the RITA, which clearly demonstrates that RITA is set up to perform all the functions of a large city government; *e.g.*, payroll, accounts receivable, billing and collection of utilities, and the collection of licensing fees. Thus, the Chief of Tax Operations is the head of the body or commission with authority to administer the tax laws and would be the appropriate person to enter into any basic or implementing agreements for the sharing of federal tax information.

B. The Central Collection Agency

By virtue of the City of Cleveland's population of over 400,000, the population requirement is met. According to the Agency's website, it has over fifty member municipalities, each of which has passed an ordinance to impose an income tax based on state authority, *i.e.*, the Uniform Municipal Income Tax Law, Ohio R.C. Chap. 718. Therefore, the first requirement is met. The Central Collection Agency must satisfy the second requirement: that the municipalities - under the authority of state law - administer the tax through the entity. Earlier, we reasoned that a group of municipalities that form a regional council of governments under Ohio R.C. § 167.01 would meet the state statute requirement. If the Central Collection Agency administers the income taxes for a regional council of governments, it is a qualified group of municipalities.

The City of Cleveland enacted its income tax through the passage of Ordinance No. 2393-66 in 1966. The ordinance also contained a provision giving the administrator the authority to enter into agreements on behalf of the City with any other municipal corporation for administering the income tax laws of that municipal corporation as its agent and for providing a central collection facility on behalf of that municipality, now known as the Central Collection Agency. When municipalities enter into an agreement with the Central Collection Agency, the agreement is approved by the municipality's legislative arm and executed by the mayor or other governing body. We believe this satisfies the requirement of Ohio R.C. § 167.01 that the agreement be made between the governing bodies of the member municipalities.

The agreement the member municipalities execute is more than a contract for the Central Collection Agency to administer their taxes. There is an Advisory Board consisting of all participating municipal members, which has established an Executive Committee of the Advisory Board. The Executive Committee consists of five members that serve a two-year term of office. The Advisory Board consults with and advises the administrator of the Central Collection Agency and the Executive Committee about problems of mutual interest to the member municipalities. On matters of major policy, a decision of the majority of votes of the Advisory Board governs the Executive Committee's decision. Based on our review of Ohio law, this framework satisfies the statutory requirement creating a governing body for the conduct of its business. R.C. § 167.04.

While the Central Collection Agency is not structured the same as the RITA of Ohio, we believe that it satisfies Ohio law to be recognized as a regional council of governments pursuant to Ohio R.C. § 167.01. Accordingly, the member municipalities form a qualified group of municipalities under state law administering their income taxes through the Central Collection Agency.

As noted above, section 6103(d)(1) prohibits the chief executive officer of the state from being the representative to whom the IRS discloses federal tax information. Rather the disclosure is made to the head of the agency that is responsible for tax administration. Based on the Agency's flowchart, we cannot determine if the Tax Administrator of the Central Collection Agency is the chief executive officer of the Central Collection Agency,

a position that is not authorized to receive return information pursuant to section 6103(d)(1), or if he is the head of the body that is responsible for administering the taxes, a position that is authorized to receive federal tax information pursuant to section 6103(d)(1). This matter must be resolved before any agreement is executed between the IRS and the Central Collection Agency.

II. Section 6103(d)(2) Requires an Audit Agency for the Regional Income Tax Agencies

It is our understanding that the IRS and the RITA of Ohio have entered into a Basic Agreement that lists the Auditor of the State of Ohio as the audit agency. We concur with this determination. Ohio R.C § 117.10 provides in pertinent part:

> 117.10 Auditor of state - duties - federal audits.
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> The auditor of state shall audit all public offices as provided in this chapter. The auditor of state also may audit the accounts of private institutions, associations, boards, and corporations receiving public money for their use and may require of them annual reports in such form as the auditor of state prescribes.

Ohio R.C. § 117.01(D) defines a "public office" as "any state agency, public institution, political subdivision, [or] other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government." Ohio R.C. 117.01(C) defines "public money" as "any money received, collected by, or due a public official under color of office, as well as any money collected by any individual on behalf of a public office or as a purported representative or agent of the public office." Thus, Ohio R.C. § 117.10 creates a mechanism for the oversight of public officials or private entities that perform the operations of state or municipal governmental entities. *E.g., Oriana House, Inc. v. Montgomery*, 108 Ohio St. 3d 419, 844 N.E.2d 323 (2006) (State Auditor has statutory authority to conduct special audits of community-based correctional facilities (CBCF) and of private or nonprofit entities receiving public funds for performing the day-to-day operations of those facilities).

This oversight is required because individuals or entities who control public funds have a duty to account for their handling of those funds. *State ex rel. Linndale v. Masten*, 18 Ohio St.3d 228, 480 N.E.2d 777 (1985); *State ex rel. Smith v. Maharry*, 97 Ohio St. 272, 276, 119 N.E. 822 (1981). The duty is to "prevent frauds against the public, to protect public funds, and to place final responsibility for public funds on the shoulders of the officials charged with the collection and care of such funds." *Masten*, 18 Ohio St.3d at 229, 480 N.E.2d 777.

The RITA was designated by the RCOG to administer the services provided by the municipalities, including the collection of taxes. Therefore, the RITA is engaging in governmental activities with access to public funds as envisioned by the act. Accordingly, we believe it is appropriate that the State Auditor monitor the RITA's financial activities to ensure the public trust is not misplaced.

Likewise, the Central Collection Agency is the tax administrator for a qualified group of municipalities and is engaging in governmental activities for the member municipalities. Indeed, according to the Tax Administrator, the Central Collection Agency is subject to annual audits by the state auditor. Accordingly, we concur that the Office of the State Auditor is the state audit agency within the meaning of section 6103(d)(2) for both of these agencies.

III. Prohibition On Redisclosure in Section 6103(d)(6)

Inspection by, or disclosure to, a regional income tax agency is only for the purpose of, and to the extent necessary in, the administration of the tax laws of the member municipalities in such entity relating to the imposition of a tax on income or wages. The regional income tax agency may not redisclose tax information to its member municipalities. I.R.C. §6103(d)(6).

I.R.C. 6103(d)(6) expressly disallows disclosures by the regional income tax agencies to member municipalities. In order to effectuate tax administration, the agencies may enter into contracts pursuant to I.R.C. § 6103(n) and employ a legal representative. The question becomes whether the two general provisions may be used to make disclosures of federal tax information to member municipality employees. We believe that the legislative intent and specificity of subsection 6103(d)(6) takes precedence over the general (n) and legal representation provisions to deny access by and disclosure to local municipalities. Indeed, permitting the agencies to hire municipal attorneys as contractors to litigate cases would render subsection (d)(6) meaningless. Courts are reluctant to read a statute in a manner that would render one portion superfluous. *Cooper Industries, Inc. v. Aviall Services, Inc.*, 543 U.S. 157, 158 (2004); *Hibbs v. Winn*, 542 U.S. 88, 89 (2004) (both stating "the rule against superfluities instructs courts to interpret a statute to effectuate all its provisions, so that no part is rendered superfluous").

The reason for the prohibition set forth in subsection (d)(6) is two-fold. First, municipalities do not have the means to safeguard federal tax information. Smaller municipalities generally do not have municipal ordinances to create a safeguard system that can be used to secure federal tax information, nor do they have the sophisticated equipment to accept the electronic media by which the IRS usually provides its data. Second, each municipality has a population below the threshold set in section 6103 for those entities authorized to receive federal tax information. Congressional intent, as evidenced by the clear prohibition of the redisclosure of information to municipalities would be overcome by providing indirectly, as contractors, the very information the municipalities are prohibited from receiving directly.

IV. Another Implementation Issue - Limitation To Disclosure of Federal Tax Information For Member Municipalities Only

According to the website for the RITA of Ohio, that agency is able to provide municipal services for non-member municipalities. We believe that section 6103 prohibits the disclosure of federal tax information to RITA for the taxpayers in those non-member

municipalities. In our analysis that the RITA of Ohio is a governmental entity to which 6103(d)(1) applies, we reasoned that a group of municipalities that form a regional council of governments under Ohio R.C. § 167.01 would meet the state statute requirement. *A fortiori*, municipalities that are not members of a regional council of governments are not part of a qualified group of municipalities and the RITA of Ohio would not be a qualified entity under state law when administering the non-member municipalities' income taxes. Our reasoning is buttressed by the language in the statute as well as the legislative history that provides as follows:

> Inspection by or disclosure to an entity described above shall be only for the purpose of and to the extent necessary in the administration of the tax laws of the *member* municipalities in such entity relating to the imposition of a tax on income or wages. (Emphasis added.)

Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in 109th Congress, at 767 (Jan. 17, 2007). Accordingly, the IRS cannot disclose federal tax information to the RITA of Ohio with respect to the taxpayers in non-member municipalities.[3]

If you have any questions, feel free to call A M Gulas at 202-622-4570.

cc:
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[3] The Central Collection Agency does not appear to offer tax administration services to non-member municipalities. However, if it did, it too would be prohibited from receiving federal tax information with respect to taxpayers in non-member municipalities.