

Memorandum of Understanding

**Memorandum of Understanding
Between
Internal Revenue Service
Small Business/Self-Employed Division (SB/SE)
and
[State tax agency]
Concerning Abusive Tax Avoidance Transactions**

1. INTRODUCTION:

This Memorandum of Understanding (MOU) between the Internal Revenue Service (IRS) Small Business/Self-Employed Division (SB/SE) and the **[state tax agency name (state tax agency abbreviation)]** sets forth the agreement of the parties with respect to an initiative to facilitate information sharing for tax administration purposes in conjunction with Abusive Tax Avoidance Transactions (ATAT).

2. AUTHORITY:

A. Under the terms of this MOU, federal tax returns and return information related to ATAT will be disclosed by the IRS to **[state tax agency]** pursuant to Internal Revenue Code (IRC) section 6103(d). This MOU is intended to facilitate information sharing between the IRS and **[state tax agency]** pursuant to the existing Agreement on Coordination of Tax Administration between the IRS and **[state tax agency]** (herewith "Basic Agreement") executed by IRS on **[date]**, and the Amended Implementing Agreement on Coordination of Tax Administration between the IRS and **[state tax agency]** (herewith "Amended Implementing Agreement") executed by the IRS on **[date]**. The Basic Agreement, the Amended Implementing Agreement, and this MOU constitute the written request required under IRC 6103(d) for the disclosure of federal returns and return information related to ATAT from the IRS to the **[state tax agency]**. The **[state tax agency]** will use the information to be disclosed to identify, examine, and bring participants in ATAT into compliance with **[state]** tax laws. The **[state tax agency]** agrees that it will only use the information for purposes of state tax administration pursuant to IRC 6103(d) and the Basic Agreement, the Amended Implementing Agreement, and this MOU. In any situation where a conflict arises between the provisions of this MOU and the Basic and Implementing Agreements, the Agreements shall govern.

B. State returns and return information will be disclosed to IRS pursuant to **[state statute]**. The information will be used by the IRS to identify, examine, and bring ATAT participants into compliance with federal tax laws and regulations.

3. PURPOSE:

A. This sharing of ATAT-related information will present a united compliance front to taxpayers and their representatives, increase audit coverage, and leverage federal and state resources in the ATAT area.

B. This MOU also serves to facilitate communication between IRS and **[state tax agency]** and the disclosure of returns and return information between IRS and **[state tax agency]** employees who deal with ATAT leads, cases, and audits.

4. PARTIES TO AGREEMENT:

A. Parties that will share tax returns and return information include IRS and **[state tax agency]**. IRS and **[state tax agency]** employees authorized to request and receive tax information will be designated in writing pursuant to Article **[number]** of the Amended Implementing Agreement.

B. The SB/SE Compliance Area Director (working with the Headquarters, ATAT Program Office) and the **[head of state tax agency]**, will designate, in writing, the names of IRS and state employees who will be authorized to request and receive ATAT-related tax information pursuant to this MOU. The names, telephone numbers, and addresses of these IRS and **[state agency]** employees will be attached to this MOU as an addendum within 30 calendar days of execution of this agreement. A copy of this list will be provided to the IRS Disclosure Officer. This list will be updated annually, or as needed, by the SB/SE Compliance Area Director, and headquarters, ATAT Program Office, and by the **[head of state tax agency]**. A copy of the amended list will be provided to the IRS Disclosure Officer. Amendments to the list of IRS employees authorized to request and receive tax information may be made at any time by written notification from the IRS SB/SE Compliance Area Director (working with headquarters, ATAT Program Office) to the **[head of the state agency]**. Amendments to the list of **[state agency]** employees may be made at any time by written notification from the **[head of the state agency]** to the IRS SB/SE Compliance Area Director.

C. IRS and **[state agency]** employees who are named on the list described above will be authorized to request and receive tax information pursuant to the Basic Agreement, the Amended Implementing Agreement, and this MOU for the duration of their designation on the list, their participation in this cooperative effort related to ATAT, and based on their "need to know" the information as best serves effective tax administration.

5. CONTACTS:

Contacts for the purpose of this MOU will be the IRS SB/SE designee, the IRS Governmental Liaison for **[state]**, the IRS Disclosure Officer, and the **[state tax agency]** Disclosure Officer designee (see attached contact list).

6. JOINT OUTREACH:

The IRS and **[state tax agency]** will coordinate outreach activities relating to ATAT issues as appropriate. This may include, but is not limited to, joint press releases, joint dissemination of counter-marketing messages, joint publicity of ATAT initiatives, and other outreach materials.

7. DUTIES AND RESPONSIBILITIES OF THE IRS:

A. To avoid duplication of efforts, the IRS SB/SE Headquarters, ATAT Program Office will provide to **[state tax agency]** a list of participants in a particular ATAT scheme that may be investigated by the State. The list will be provided after the participants in a particular scheme are identified and the IRS determines a compliance strategy for the promotion. This list will be updated semi-annually on or about July 31 and January 31 and provided to **[state tax agency]**.

B. The IRS will provide to **[state tax agency]** all audit results from ATAT participant cases conducted by the IRS.

C. The IRS will exchange information on types of ATAT schemes identified at the federal level with **[state tax agency]**.

D. The IRS will provide audit technique guides, when available, for ATAT schemes to **[state tax agency]**.

E. IRS employees who request state returns or return information should complete Form 8796, "Request for Return/Information."

F. Form 8796, "Request for Return/Information" to request state information or Form 10475, "State Tax Information Request" will be signed and approved by the SB/SE Compliance Territory Manager.

G. All requests from authorized IRS employees for state information should be forwarded to the **[state title & address]** for response.

H. The IRS will partner with **[state tax agency]** on training and other educational activities. The IRS will provide **[state tax agency]** with opportunities to attend ATAT training classes or use IRS instructors.

I. The IRS may initiate communications on an as needed basis to facilitate the purposes of

this MOU.

8. DUTIES AND RESPONSIBILITIES OF [STATE TAX AGENCY]:

- A. After receipt of a participant list from the IRS, **[state tax agency]** will provide IRS a list of those participants, **[state tax agency]** intends to examine.
- B. States will assist IRS in utilizing State databases to further refine participant lists.
- C. Upon completion of state examinations and state assessments of ATAT cases, the **[state tax agency]** will forward the results to the IRS SB/SE Chief, Planning and Special Programs.
- D. **[State tax agency]** will provide information on types of ATAT schemes identified at the state level to the IRS.
- E. **[State tax agency]** will exchange state audit strategies and procedures regarding ATAT with the IRS.
- F. **[State tax agency]** employees who request federal returns or return information should normally complete Form 8796, "Request for Return/Information."
- G. Requests from **[state tax agency]** employees for federal ATAT information should be forwarded to the IRS Disclosure Officer.
- H. **[State tax agency]** will partner with IRS on training and other educational activities. **[State tax agency]** will provide IRS with opportunities to attend ATAT training classes or use **[state tax agency]** instructors.
- I. Where appropriate, **[state tax agency]** will have members on the IRS cross-functional ATAT council.
- J. **[State tax agency]** may initiate communications on an as needed basis to facilitate the purposes of this MOU.

9. DISCLOSURE, SAFEGUARDS, AND RECORD KEEPING REQUIREMENTS:

- A. The IRS Disclosure Officer will ensure that all requirements for recordkeeping and accounting for disclosures are met in accordance with IRC section 6103 and its implementing regulations.
- B. In order to comply with the federal safeguards required by IRC section 6103(p)(4), **[state tax agency]** employees will maintain federal tax returns and return information separately, in addition to abiding by the procedures implementing IRC section 6103(p)(4).
- C. IRS employees will maintain state information separately. All records and documents collected, maintained, or generated by the IRS and/or disclosed to **[state tax agency]** under this MOU, and any information collected as a result of joint correspondence, joint interviews, or IRS administrative summonses, will be subject to the confidentiality requirements of IRC section 6103(a).
- D. All information obtained under this Agreement must be safeguarded in accordance with the **[date]** Agreement on Coordination of Tax Administration (herewith "Basic Agreement"), any revisions, and the Amended Implementing Agreement as well as the safeguards described in IRS Publication 1075, *Tax Information Security Guidelines for Federal, State, and Local Agencies*.
- E. Nothing in this Agreement will cause IRS or **[state tax agency]** to disclose information that is normally protected by governmental, attorney/client, or attorney work product privileges consistent with applicable laws, or any other information that is prohibited from disclosure. See IRM Section 11.3.32.17, Restrictions on disclosure of returns and return information.
- F. Neither the IRS nor **[state tax agency]** will disclose return information that would identify a confidential informant or seriously impair any civil or criminal tax investigation. Voluntary disclosures to the IRS under the guidance of Internal Revenue Code (IRC) 6011 will not be included in the participants lists provided to the states. States will receive final assessments related to IRC 6011 voluntary disclosures through established channels.

10. LIABILITY:

- A. Each party to this Agreement shall be liable for the acts and omissions of its own

employees.

B. The IRS shall not be liable for any injury to another party's personnel or damage to another party's property unless such injury or damage is compensable under the Federal Tort Claims Act, 28 U.S.C. § 1346(b), or pursuant to other federal statutory authority.

C. **[State tax agency]** shall not be liable for any injury to another party's personnel or damage to another party's property unless such injury or damage is compensable under the law of the state of **[state]**.

11. THIRD PARTY RIGHTS:

This MOU does not confer any rights or benefits on any third party.

12. AMENDMENT OR TERMINATION OF MOU:

This MOU will become effective on the date of the last signature written below and will remain in force until terminated by either IRS or **[state tax agency]**. If the IRS or **[state tax agency]** wishes to terminate this MOU, a written notice must be mailed to, or otherwise delivered to, the other party. The MOU will terminate 30 calendar days after the receipt of such notice. This MOU may only be amended upon the mutual consent of the IRS and **[state tax agency]**. A written notice of the terms of the amendment must be mailed to, or otherwise delivered to, the other party.

13. LIMITATIONS:

The terms of this MOU are not intended to alter, amend, or rescind any provisions of Federal law. Any provision of this MOU, which conflicts with Federal law will be null and void. Nor are the terms of this MOU intended to alter, amend, or rescind any provisions of the Basic Agreement or the Amended Implementing Agreement now in effect. In the case of conflict, the provisions of the Basic Agreement and/or the Amended Implementing Agreement will govern.

APPROVALS:

[Name], Commissioner
[Name of State Tax Agency]
Signed at _____, this _____ day of _____, 2003.

[Name], Area Manager
Governmental Liaison and Disclosure
Internal Revenue Service
Signed at _____, this _____ day of _____, 2003.

[Name & title]
SB/SE Director of Compliance
Internal Revenue Service
Signed at _____ this _____ day of _____, 2003.