

Memorandum of Agreement Pertaining to Abusive Tax Avoidance Transactions

Introduction

This Memorandum of Agreement (MOA) is entered into by and among the participating agencies through their duly authorized representatives pursuant to their respective statutes to facilitate tax administration in conjunction with abusive tax avoidance transactions (ATAT).

Purpose

The purpose of this MOA is to implement an information-sharing arrangement among the participating agencies. By coordinating audit programs and enforcement activities, participating agencies will be better equipped to mitigate the impact of abusive tax avoidance transactions on states' tax revenues. This coordinated effort will help identify those taxpayers, promoters, organizers and accommodators who participate in and promote ATAT.

Authority

This MOA incorporates the Federation of Tax Administrators Uniform Exchange of Information Agreement of January 1, 1993, pursuant to the respective authorities of the states and jurisdictions executing this agreement, as further described in Paragraph 6, under the Confidentiality section of this MOA below. In the event of a conflict between this MOA and the Uniform Exchange of Information Agreement, this MOA controls.

Information not subject to exchange

This MOA does not include, nor contemplate, the parties exchanging among themselves, information received from the Internal Revenue Service pursuant to Section 6103(d) of the Internal Revenue Code, unless the Internal Revenue Service explicitly authorizes the exchange. Unauthorized inspection or disclosure of Federal returns and other confidential federal return data is a felony (Sections 7213(a)(1) and 7213A(a)(1)(B) Internal Revenue Code).

Any information the disclosure of which would be in violation of, or detrimental to, the administration of the tax laws of any participating state is not subject to exchange. Each participating agency reserves the right to make the determination whether or not information is subject to exchange under the terms of this agreement.

Duties and Responsibilities

1. The participating agencies will provide to each other, upon request, a list of participants in identified ATAT schemes that are being investigated by the providing agency, together with such other information in the possession of the providing party, which could reasonably be considered useful to other parties to the investigation and identification of potential ATAT schemes. The lists and related information will be updated at least semiannually.
2. The participating agencies may request and exchange information concerning ATAT schemes at any stage of audit, administrative process, or any other form of inquiry or enforcement. The participating agencies intend that this MOA will promote timely sharing of information and efficient use of resources.
3. The participating agencies will exchange information regarding the types of ATAT schemes identified at the state level, including any promoter information and marketing strategies associated with those schemes.
4. The participating agencies will share audit techniques, strategies, procedures and guides developed for addressing ATAT schemes.
5. The participating agencies will conduct joint compliance activities where appropriate to avoid duplication of efforts and optimize use of resources.
6. The participating agencies will seek to develop a common information-sharing format and repository for ATAT information, to be maintained by one of the participating states. The submission of information for inclusion in the

repository shall constitute explicit consent to the disclosure of that information to the participating agencies, to remain in effect until the providing state indicates that the information shall be removed from the repository.

7. The participating agencies will assist each other in educational and promotional activities and make every effort to provide joint assistance in the ATAT endeavors, including compliance activities where appropriate.

General Provisions

1. INCORPORATION: This MOA incorporates the provisions, terms and definitions of the Federation of Tax Administrators Uniform Exchange of Information Agreement effective January 1, 1993, and as it may be amended.
2. CONTACT INFORMATION: Each participating state will designate a primary contact person who will be responsible for coordinating the requests for information between the states. Individual employees authorized to request and receive ATAT-related tax information pursuant to this MOA will be designated in accordance with the provisions of Article VI.2. of the FTA Uniform Exchange of Information Agreement, effective January 1, 1993, and as it may be amended.
3. TERM: This MOA is effective on the date it is executed by two or more states, and to additional states on the respective date(s) of execution. Duplicate signature pages and faxed signature copies are permitted. This MOA is not limited to a specific period of time and will be considered in effect until terminated.
4. AMENDMENTS: This MOA may not be amended other than by a writing duly executed by all the participating states.
5. SEVERABILITY: The terms and conditions of this MOA are intended to be valid and binding. In the event that any portion or portions of this MOA should, for any reason, be determined to be invalid or unenforceable, the remaining portions of the MOA shall continue to be valid and enforceable.

Confidentiality

1. Each participating state and its respective tax agency agrees that the taxpayer return information obtained under this MOA will be kept in the strictest confidence and shall make such information available to its own employees only on a "need to know" basis. Authorized employees and agents who have a need to know are those who need the information to perform their official duties. The parties recognize their mutual responsibilities to protect the confidentiality of taxpayer return information and hereby warrant that such information shall be disclosed only to those individuals and for such purposes as provided for in this agreement.
2. All records and documents constituting taxpayer return information collected, maintained or generated by the agencies or disclosed under this MOA and any other taxpayer return information collected as a result of joint correspondence, or joint interviews will be subject to the confidentiality requirements of the state receiving the information in question.
3. All information obtained under this MOA must be safeguarded in accordance with the requirements of the recipient agency.
4. Nothing in this MOA will permit the participating states 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.
5. The participating states are prohibited from disclosing information provided pursuant this MOA that would identify a confidential informant or seriously impair any civil or criminal tax investigation.
6. The current applicable statutory provisions of the state of each Signatory agency as they apply to the exchange of taxpayer return information, and the penalties for unlawful disclosure are maintained under Article V of the Uniform Exchange of Information Agreement by the primary clearinghouse (the Federation of Tax Administrators) and are incorporated into this agreement by reference.
7. Each participating state agrees to protect the confidentiality of all taxpayer return information obtained pursuant to this agreement in accordance with the laws of its state. No party shall disclose any information obtained pursuant to this MOA to any other agency, department or unit within the recipient state or to any local government unit,

except as otherwise provided in Article V of the Uniform Exchange of Information Agreement.

Safeguard and Record Keeping Requirements

1. **INFORMATION SECURITY:** Information security is defined as the preservation of the confidentiality, integrity, availability, authenticity and utility of information. A secure environment is required to protect the confidential information obtained pursuant to this agreement. All unauthorized disclosures of taxpayer return information obtained under the terms of this agreement will be reported immediately upon discovery to the contact person of the providing state. Appropriate tracking of access to information in the repository discussed above will be implemented.
2. **TRANSMISSION OF INFORMATION:** All information exchanged under this MOA will be transferred between the participating states in the most expedient and secure manner possible as determined by the providing participating state. Informal telephone inquiries regarding the availability of information for exchange are encouraged. Formal requests for information shall be in writing, or by verifiable electronic means, and must indicate the tax administration reason for the exchange if the reason is not apparent from the context of the request.
3. **DESTRUCTION OF RECORDS:** All records received by the participating states will be destroyed or returned to the providing state agency when they are no longer needed for the business purpose for which they were obtained. The records shall be destroyed in a manner reasonably calculated to ensure that the data is no longer usable, readable, or otherwise capable of being ascertained.

Definitions

ABUSIVE TAX AVOIDANCE TRANSACTIONS. The term "abusive tax avoidance transactions" means transactions promoted for the promise of tax benefits with no meaningful change in the taxpayer's economic position. These transactions typically have no economic purpose other than reducing taxes. Abusive tax avoidance transactions generally involve multiple ownership tiers and "cobwebs" of complex ownership structures.

TAXPAYER RETURN INFORMATION. The term "taxpayer return information" has the meaning ascribed to it in the Uniform Exchange of Information Agreement.

Ratification

See Attachment A.