

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE INTERNAL REVENUE SERVICE
Small Business/Self Employed Specialty
Employment Tax
AND
THE US DEPARTMENT OF LABOR
Wage and Hour Division
FOR
EMPLOYMENT TAX REFERRALS**

1. INTRODUCTION:

This Memorandum of Understanding (MOU) between the United States Department of Labor (DOL) and the Internal Revenue Service (IRS) sets forth the agreement of the parties with respect to a joint initiative to improve compliance with laws and regulations administered by DOL-Wage and Hour Division (WHD) and the IRS-Small Business/Self Employed Specialty Employment Tax (SB/SE), together collectively referred to as the "the agencies" or "the parties". This will be accomplished through enhanced information sharing and other collaboration. A joint WHD-SB/SE team will lead this initiative. This Employment Tax Referral MOU supersedes, at the time of its execution, any and all other Employment Tax Referral MOUs between the parties that predate this agreement.

2. AUTHORITY:

This MOU is between the WHD and the SB/SE pursuant to Internal Revenue Code Section 7602(a)(1), 29 U.S.C. § 551, 29 U.S.C. § 1136(a), and 44 U.S.C. § 3510.

Section 6103 of the Internal Revenue Code (IRC) imposes restrictions on disclosure by IRS of tax information obtained under the authority of the IRC. The terms of the [MOA/MOU] do not provide for the exchange of federal tax information.

3. PURPOSE:

The sharing of information and collaboration, as authorized by law, between the parties will enhance compliance by helping to better identify where to prioritize outreach, education, compliance, and enforcement resources. Included collaboration will enable both agencies to leverage existing resources and promote employer compliance with obligations to properly pay employees and to pay employment taxes. This multi-agency approach presents a united compliance front to employers and their representatives. Specific objectives of this initiative include the following:

A. Referrals from WHD will provide agreed upon elements and key information, as authorized by law, necessary for SB/SE (Employment Tax) to assess the viability of the information and determine appropriate compliance actions, if any.

B. To share information between the SB/SE and WHD to assist in the identification of emerging and ongoing employment tax compliance issues related to misclassification to the extent that it does not conflict with 26 U.S.C. 6103.

4. CONTACTS:

A. Contacts for this MOU will be the IRS Business Operating Division designee, the IRS Governmental Liaison designee, and the Agency Division designee (see Appendix A, include name, title, email address and phone number)

B. Succession of Authority- The IRS and Agency anticipate that there may be changes to the titles and or responsibilities of officers and employees designated within this agreement. In the event of such changes, any actions that may be taken under this agreement by said officers or employees, may be taken by any officer(s) or employee(s) the IRS and Agency determine to have succeeded to the relevant portions of said officers or employees' authorities or responsibilities.

5. DUTIES AND RESPONSIBILITIES OF THE IRS SB/SE and DOL WHD TEAM:

The team is comprised of representatives from the IRS SB/SE and DOL WHD. The members of the team will meet on an as needed basis and no less than one time annually to discuss issues of concern to the extent that they do not conflict with 26 U.S.C. 6103, review MOU actions, review Appendix A to verify current designees, and review the standardized referral criteria (see Appendix B). The meetings will allow the team to make recommendations for improvement in partnership activities in a more current and consistent manner. The team will monitor emerging and developing issues.

A. DUTIES AND RESPONSIBILITIES OF THE DOL WHD:

1. The DOL WHD will refer to the IRS SB/SE, at WHD's discretion and consistent with applicable law, WHD investigation information and other data that WHD believes may raise Internal Revenue employment tax compliance issues related to misclassification.
2. The WHD will share WHD training materials and opportunities with the IRS SB/SE to the extent possible. Shared materials will clearly identify the agency providing the exchanged material under this agreement.

B. DUTIES AND RESPONSIBILITIES OF THE IRS SB/SE:

1. The IRS SB/SE will evaluate employment tax referrals provided by the DOL WHD that meet the standardized criteria and at SB/SE's discretion, conduct examinations to determine compliance with employment tax laws.
2. The IRS SB/SE will provide annual reports to the WHD summarizing the results achieved by using WHD referrals. This report will be provided in a manner that protects return information, including taxpayer identities in accordance with legal requirements.
3. When requested by WHD, the SB/SE will inform WHD of any new or revised employment tax training materials.

6. JOINT OUTREACH:

The parties to this agreement may coordinate outreach activities relating to worker classification and other issues of mutual interest. These include, but are not limited to, joint national press releases, joint messages to national stakeholder organizations, and other education/outreach efforts. These outreach activities are subject to resource availability, participation approval, and guidance set forth by the Federal, State, and Local Governments (FSLG) function. Coordinated activities and materials will clearly identify product owners and the agencies providing the information exchanged under this agreement.

7. DESCRIPTION OF THE RECORDS:

A. Systems of Records

1. Agency will disclose data from the agency's System of Records in accordance with the DOL universal uses of the records (81 FR 25765)
2. IRS will maintain the employment tax data provided by WHD in a Shared Drive secure folder.

B. The information in these systems of records may be updated during the effective period of this agreement as required by the Privacy Act.

8. INFORMATION SECURITY:

IRS and Agency will comply with the requirements of the Federal Information Security Management Act (FISMA), 44 USC Chapter 35, Subchapter II, as amended by the Federal Information Security Modernization Act of 2014 (Pub. L. 113-283); related Office of Management and Budget (OMB) circulars and memoranda, such as Circular A-130, Management of Federal Information as a strategic Resource (July 28, 2016), and Memorandum M-17-12, Preparing for and

Responding to a Breach of Personally Identifiable Information (January 3, 2017); National Institute of Standards and Technology (NIST) directives; and the Federal Acquisition Regulations, including amendments published after the effective date of this agreement. These laws, directives, and regulations include requirements for safeguarding Federal information systems and Personally Identifiable Information (PII) used in Federal agency business processes, as well as related reporting requirements. Both agencies recognize, and will implement, the laws, regulations, NIST standards, and OMB directives, including those published subsequent to the effective date of this agreement.

In the event that the agency receiving the information experiences a security incident or disaster that results in the suspected or confirmed inadvertent disclosure of the data exchanged pursuant to this Agreement, the agency experiencing the incident or disaster will send formal written notification to the donor agency's designated contact person within 3 days after detection of the incident or disaster. The written notification will describe the security incident or disaster in detail including what data exchanged pursuant to this Agreement may have been inadvertently disclosed.

FISMA requirements apply to all Federal contractors, organizations, or entities that possess or use Federal information, or that operate, use, or have access to Federal information systems on behalf of an agency. Both agencies are responsible for oversight and compliance of their contractors and agents.

A. Incident Reporting:

If either Agency or IRS experiences an incident involving the loss or breach of PII provided by IRS under the terms of this agreement, they will follow the incident reporting guidelines issued by OMB. In the event of a reportable incident under OMB guidance involving PII, the agency experiencing the incident is responsible for following its established procedures, including notification to proper organizations (e.g., United States Computer Emergency Readiness Team and the agency's privacy office). Immediately upon discovery of a possible incident involving IRS-provided PII, Agency will contact IRS IT Security Operations: cybersolutions@irs.gov; 844-377-6109.

B. Breach Notification:

Agency and IRS will follow PII breach notification policies and related procedures as required by OMB Memorandum M-17-12 (January 3, 2017). The agency that experienced the breach determines that risk of harm requires notification to affected individuals and/or other remedies, that agency will carry out these remedies without cost to the other agency.

9. EXCHANGE OF INFORMATION:

A. For information security purposes, information (including paper-based documents and electronic information such as emails and CDs) exchanged pursuant to this Agreement remains the responsibility of the donor agency while in transit. The agencies agree to establish a communication protocol for notifying each agency's

designated contact person when information is sent to or received from that agency, including information on the form of the transfer and the media type and quantity (when appropriate). An agency expecting to receive information will notify the donor agency if the information is not received as of the next business date following the agreed upon delivery date. For information security purposes, after an agency receives information from the donor agency, the donor agency retains no responsibility for any security incidents, inadvertent disclosure, or the physical and information technology safeguards in place for protecting that information by the agency that received it.

B. Subject to the foregoing constraints:

1. The agencies agree to exchange information on laws and regulations of common concern to the agencies, to the extent practicable.
2. The agencies will establish a methodology for exchanging investigative leads, complaints, and referrals of possible violations, to the extent allowable by law and policy.
3. Confidential information means information that may be privileged or otherwise exempt from disclosure to the public or other unauthorized persons under state or federal statutes or laws. In the event that any confidential information is shared pursuant to this MOU, it is intended only for use and access by the receiving agency for the limited purpose of carrying out activities pursuant to this MOU as described herein. Except as set forth in this paragraph, such information may not be used or disclosed by the receiving party for other purposes outside of the MOU or any process established to implement the MOU, to other authorities, or any third parties unless the producing party expressly approves such use or disclosure in writing. The information shall not be disclosed externally without a federal court order, a formal request from a federal oversight entity, or the supplying agency's written authorization stating there is no basis for withholding it. When responding to a federal court order or formal request from a federal oversight entity, the receiving agency shall notify and confer with the supplying entity prior to disclosing information. The receiving agency shall also comply with the requirements of the Privacy Act, 5 U.S.C. § 552a, and the Right to Financial Privacy Act, 12 U.S.C. § 3401 *et seq.*, and any other laws and regulations to the extent that they apply to confidential information. Exchange of such information pursuant to this MOU is not a public disclosure under the Freedom of Information Act, 5 U.S.C. § 552.
4. All information received from DOL under this agreement becomes return information as defined in 26 U.S.C. 6103(b)(2) and will not be further disclosed or disseminated except as authorized by 26 U.S.C. §6103.

10. TRANSMITTAL PROCEDURES:

A. Transmissions from WHD to SB/SE:

At its discretion, the WHD will send any information, data, and materials subject to this MOU to the SB/SE electronically. WHD referral reports to be shared under the terms of this agreement will be sent by Secure Data Transfer (SDT) using the SDT File Names and Instructions provided by IRS. A count of documents by type will be recorded in a control file,

B. Transmissions from SB/SE to WHD: At its discretion, SB/SE will send any non-federal tax information or non PII data and materials subject to this MOU to the WHD designees (See Appendix A for the contact list).

11. LIABILITY

A. Each party to this MOU shall be liable for the acts and omissions of its own employees as authorized and in accordance with Federal Law (e.g. Federal Tort Claims Act).

B. Accordingly, the parties intend to pursue their common interests by exchanging information pursuant to this MOU without waiving any legal privileges or other legal protections against disclosure to any entities or persons that are not party to this MOU.

12. EFFECT OF MEMORANDUM OF UNDERSTANDING

This MOU is not intended to confer any right upon any private person.

Nothing in this MOU shall be interpreted as limiting, superseding, or otherwise affecting either party's normal operations or decisions in carrying out its statutory or regulatory duties.

This MOU does not limit or restrict the parties from participating in similar activities or arrangements with other entities.

This MOU does not itself authorize the expenditure or reimbursement of any funds. Nothing in this MOU obligates the parties to expend appropriations or enter into any contract or other obligations.

This MOU will be executed in full compliance with federal law such as the Privacy Act of 1974.

13. PRIVACY

The IRS and the Agency will assure the integrity and accuracy of personal and financial data. The IRS and the Agency will perform their duties in a manner that recognizes and enhances individuals' rights of privacy and will make certain that their activities are consistent with law, regulations, and good administrative practices.

14. RESOLUTION OF DISAGREEMENTS:

Disputes arising under this Agreement will be resolved informally by discussions between Agency Points of Contact, or other officials designated by each agency.

15. AMENDMENT, TERMINATION, AND EVALUATION OF AGREEMENT:

A. This MOU 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 MOU.

B. This MOU may be cancelled upon 30 days written notice by either the IRS or the Agency or immediately by signed agreement of the IRS and the Agency. This MOU shall be in effect from the date of execution until December 31, 2028, unless terminated earlier.)

C. The SB/SE and WHD will review this MOU as needed to evaluate the existing information exchange, examine the continuing needs for information exchange, to discuss the utility of categories of information exchanged, 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, Office of Safeguards, SB/SE, and the WHD designees.

16. LIMITATIONS:

Nothing in this MOU shall be construed to impair or affect the authority of the parties. IRS's authority is exercised under the authority of Delegation Order 150-10, 26 U.S.C. §§ 7801 and 7803, which authorize the Commissioner of the IRS to enforce and administer the internal revenue laws.

This MOU is not an obligation or commitment of funds, nor a basis for transfer of funds, but rather is a basic statement of the understanding between the parties. Unless otherwise agreed in writing, each party shall bear its own costs in relation to this MOU. Expenditures by each party will be subject to its budgetary processes and to the availability of funds and resources pursuant to applicable laws, regulations, and policies.

17. EFFECTIVE DATE

The effective date of this MOU is the date it has been signed by all parties to the Agreement.

APPROVALS:

INTERNAL REVENUE SERVICE
SB/SE Specialty Employment Tax

Signature Date

Carol L Madison
Director, Examination Case Selection

US DEPARTMENT OF LABOR
Wage and Hour Division

Signature Date

Jessica Looman
Principal Deputy Administrator

**Appendix A
Employment Tax Referral MOU
Agency Contacts**

DOL Designees:

Name: Jessica Looman
Title: Principal Deputy Administrator
Telephone: 202-693-0051
Email: Jessica.looman@dol.gov

Name: Michael Kravitz
Title: Associate Administrator, Office of Performance and Communication
Telephone: 202-693-0185
Email: Kravitz.michael@dol.gov

Name: Naixa Franquiz
Title: Senior Advisor
Telephone: 214-749-2017
Email: franquiz.naixa@dol.gov

Name: Alexander Cruz
Title: Data Analyst
Telephone: 202-513-6994
Email: cruz.alexander@dol.gov

Name: Brian Johnson
Title: Senior Advisor
Telephone: 267-687-4042
Email: johnson.brian@dol.gov

IRS SB/SE Designees:

Kelley Stephens
Title: Classification Specialist, SBSE, ECS, WSD Employment Tax
Telephone: 859-488-3809
E- mail: Kelley.A.Stephens@irs.gov

Melissa Wuebbels
Title: Program Manager, SBSE, ECS, Employment and Estate & Gift
Telephone: 314-339-1559
E-mail: Melissa.A.Wuebbels@irs.gov

Elizabeth Willoughby
Title: Supervisory Revenue Agent, SBSE, ECS, WSD Employment Tax
Telephone: 484-636-0456
E-mail: Elizabeth.A.Willoughby@irs.gov

Sarah Smith
Title: Policy Analyst, SBSE Specialty Employment Tax
Telephone: 775-683-4858
E-mail: Sarah.S.Smith@irs.gov

IRS Governmental Liaison Designee:

Daisy Yau
Government Information Specialist
Telephone: 510-907-5002
E-mail: Daisy.C.Yau@irs.gov

IRS Disclosure Designee:

Rob Tillman
Government Information Specialist
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E-mail: Robin.R.Tillman@irs.gov

**Appendix B
Employment Tax Referral MOU**

**U.S. DEPARTMENT OF LABOR STANDARDIZED REFERRAL
FORM AND DOL/IRS DECISION TREE**

These standardized tools are for DOL investigations/auditors to assist in making referrals to IRS in accordance to Memorandum of Understanding, Internal Revenue Service/Department of Labor (DOL) Coordination Agreement. The standardized form and decision tree was created to assist in outlining the necessary key information fields needed to standardize the terms, types, and quantities of information provided to establish a viable referral. Improving information available on DOL referrals can improve results of the Joint Worker Misclassification Initiative.

Key referral information fields

The following fields allows the IRS to identify and locate the employer in the IRS information systems.

- **Employer Name**
- **Employer full business Address**
- **Employer Federal Identification Number**
- **Investigation Period**
- **Description of issue (reason for referral)**

The following information allows the IRS classifier to weigh the magnitude of the potential tax assessments.

- **Number of misclassified employees and quarterly wages potentially misclassified.**

Certain conditions when present could lead to the employer qualifying for certain provisions making the case less likely to result in an adjustment during examination. The following information can assist in this determination.

- **Status of the Number of Employees Involved.**
- **Status Regarding Issuance of Form 1099- MISC**
- **Status of the Quarterly Wages Involved**
- **Status Regarding Consistent Treatment**

The following information allows the IRS to request additional information from Department of Labor (DOL) systems.

- **DOL Case Number**

**Please send all referrals to IRS via Secure Data Transfer
Or mail referrals when warranted to:**

**Attn: Employment Tax Stop 5702A,
7940 Kentucky Drive, Florence, KY 41042**

(Note: If additional delivery processes are added and or discussed please follow current guidance.)

The accompanying decision tree was designed to assist the US Department of Labor regarding referrals to the IRS. This document provides narrative background and explains the decision points found in the decision tree.

➤ Determination of Employee Status?

If the answer is No, do not refer to IRS. At this time, the IRS does not want referrals that do not involve a determination of worker status.

➤ Is the Business still in Operation?

If the answer is No, do not refer to IRS. The IRS does not want referrals of businesses that are not going concerns. Given scarce IRS resources, the focus is where there is a likely source of collection.

➤ Does the business have an Average Dollar Volume (ADV) > \$500,000?

If the answer is no, do not refer to the IRS. WHD records investigated employers' Annual Dollar Volume (ADV) for purposes of verifying coverage with WHD laws. Employers that meet the Division's \$500,000 ADV threshold are likely to pay wages of at least \$25,000 a quarter.

➤ Form 1099s issued?

If the answer is No, this is a *Tier 1* IRS referral since a business that does not issue 1099s, cannot claim protection under Section 530 of the Revenue Act of 1978 which provides a safe harbor relating to federal employee status. Since no 1099s were issued, and safe harbor is, therefore, not available, the IRS will not have to devote resources to address the Section 530 issue, lowering the time spent on developing the case. This is considered a "Prime Lead" to IRS and afforded priority status since the likelihood of a Federal Tax adjustment is enhanced.

If the answer is Yes, go to the next question.

➤ Inconsistent Treatment?

If the answer is Yes, this is a Tier 1 IRS referral (see above) – If the business treated some workers in a class of workers as employees and others in that same class as independent contractors, the business cannot claim protection under the section 530 safe harbor rules relating to worker status. This case would be a Prime Lead Tier 1 lead due to potential enhanced noncompliance for the IRS.

If the answer is No and the business treated all workers in the same class as independent contractors and issued Form 1099s, the business may be able to claim protection under the Section 530 safe harbor rules. This case would be of interest to the IRS as a Tier 2 lead. As a practical matter, Tier 1 referrals will be given priority over Tier 2 referrals.