

Finance and Administration Cabinet STANDARD PROCEDURE	ISSUED BY: Department of Revenue; Executive Management
PROCEDURE #6.1.2	SUBJECT: Confidentiality of State and Federal Information
EFFECTIVE DATE: 8/22/05, Revised 10/28/11, 10/24/15, 5/25/16	
CONTACT: Disclosure Office	LOCATION: State Office Bldg, Station #6 PHONE: 502-564-2551 or 502-564-2552

STATEMENT OF AUTHORITY

1. The Finance and Administration Cabinet's Standard Procedures Manual establishes standard mandatory internal procedures cabinet-wide. These procedures are established in accordance with the Secretary's statutory authority under KRS 42.014 and KRS 12.270 to establish the internal organization and functions of the Cabinet as necessary to perform the duties effectively.
2. The Standard Procedures Manual may only be revised in accordance with the process outlined in Standard Procedure #1.1 entitled: "Finance Standard Procedures and Manual".

I. PURPOSE

To ensure the confidentiality of state and federal tax information in the possession of the Department of Revenue (DOR) as required by [KRS 131.190](#) and [26 U.S. Code § 6103](#) all department employees and all Finance and Administration Cabinet (Cabinet) employees that have signed an Acknowledgement of Confidentiality form shall be familiar with and understand the state and federal laws and regulations concerning confidentiality of taxpayer information.

II. PROCEDURE

Pursuant to this procedure, DOR and Cabinet employees with access to confidential taxpayer information shall:

- A. Complete the Kentucky Department of Revenue Acknowledgement of Confidentiality (Revenue Form 20A001 (2-16)) ([Form SP7.601020](#)) per [103 KAR 3:010](#).
- B. The original signed copy of the Acknowledgement of Confidentiality form shall be retained in the employee's personnel file. A list of employees, who have signed the form, shall be forwarded electronically to the Security and Disclosure Branch, who shall retain the list.
- C. Complete Internal Revenue Service (IRS) Disclosure Awareness Training annually.

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III. DEFINITIONS

A. For the purpose of state tax information, [KRS 131.010\(8\)](#) provides:

“Return” or “Report” means any properly completed and, if required, signed form, statement, certification, claim estimate, declaration, or other document permitted or required to be submitted or filed with the department, including returns and reports or composites thereof which are permitted or required to be electronically transmitted.

B. For the purpose of federal tax information, [26 U.S. Code § 6103\(b\)](#) “Definitions” provides:

1. “Return” means any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.
2. “Return information” means:
 - a. a taxpayer’s identity, the nature, source, or amount of the taxpayer’s income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over assessments, or tax payments, whether the taxpayer’s return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, or liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense;
 - b. any part of any written determination or any background file document relating to such written determination (as such terms are defined in [26 U.S. Code § 6110\(b\)](#)), which is not open to the public inspection under [26 U.S. Code § 6110](#).
3. “Taxpayer return information” means return information as defined in paragraph (2) which is filed with, or furnished to, the Secretary by or on behalf of the taxpayer to whom such return information relates.
4. “Taxpayer identity” means the name of a person with respect to whom a return is filed, a taxpayer’s mailing address, the taxpayer’s identifying number (as described

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in [Section 6109](#)), or a combination thereof.

5. "Inspected" and "inspection" means any examination of a return or return information.
6. "Disclosure" means the making known to any person in any manner whatever a return or return information.

IV. THE LAW - STATE AND FEDERAL

The following state and federal laws shall be followed in accordance with this procedure:

- A. [KRS 131.190](#) prohibits specific individuals, including current, former and contract employees of the Commonwealth of Kentucky, from intentional unauthorized inspection or divulging tax information of any taxpayer or information regarding tax schedules, returns or reports required to be filed with the DOR or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business.
- B. [KRS 131.081\(15\)](#), the Taxpayers' Bill of Rights, ensures taxpayers shall have the right to privacy with regard to the information provided on their Kentucky tax returns and reports, including any attached information or documents.
- C. [26 U.S. Code § 6103\(a\)\(3\)](#) prohibits an officer or employee of any state from disclosing any federal return or federal return information obtained by that individual in any manner in connection with his/her service as an officer or an employee.
- D. [26 U.S. Code § 7213A](#), the Taxpayer Browsing Protection Act, prohibits any person from accessing or inspecting, without proper authorization, any federal return or federal return information (non-computerized taxpayer records, including hard copies of returns, as well as computerized information).

V. SAFEGUARDING STATE AND FEDERAL INFORMATION

DOR and Cabinet employees that have signed an Acknowledgement of Confidentiality form shall be responsible for protecting taxpayer information, both in hard copy and electronic media format. This information includes, but is not limited to state and federal tax information and other confidential taxpayer information created, maintained, used in the normal course of business, or made available as a result of employment with the DOR.

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DOR employees shall ensure that taxpayer information, including data on hardware and media, is not left unsecured on desks or photocopiers, in mailboxes, vehicles, trash cans or rooms in the office or at home, where unauthorized access can occur.

Federal tax information shall be protected in accordance with [IRS Publication 1075](#), "Tax Information Security Guidelines for Federal, State and Local Agencies".

"Need to Know" Test: Employees shall self-assess to determine the necessity of obtaining tax information by asking: "Does the requesting employee need the confidential tax information to perform his/her job duties?" If there is any doubt as to the recipient's right to request tax information, the employee's supervisor shall be contacted.

A. Unauthorized Release of State Tax Information

Confidential state tax information shall be used by DOR personnel and Cabinet employees that have signed an Acknowledgement of Confidentiality form for official use only. For the purpose of this procedure, the term "divulge" in reference to state tax information means to discuss tax information, verbally provide tax information, provide copies of tax information, make tax information known to any other unauthorized person, or to use or access tax information for a reason other than a "need to know".

1. Unauthorized Disclosure of State Returns or Return Information

A violation of confidentiality occurs when an employee uses tax information for his/her own use, accesses or views confidential taxpayer information without an authorized "need to know", or divulges tax information to a third party, unless the third party is an authorized recipient as described in the "Authorized Release of State Tax Information" section below. Examples include, but are not limited to the following:

- a. Visually or verbally providing the filing status, amount of income or any other return information or tax related information to a friend or family member, or any other person, or a DOR employee or a non-DOR Cabinet employee who has no "need to know".
- b. Visually or verbally providing the address or amount of income of an ex-spouse to assist with the collection of child support.
- c. Make a fellow employee, who has no "need to know", aware of tax information or show him/her the tax return of a famous person or any other person.

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2. Unauthorized Inspection of State Returns or State Return Information

A violation of confidentiality occurs when an employee accesses, views or obtains state tax information (either in hard copy or electronic form), which is not required to perform his/her job duties. Examples include, but are not limited to the following:

- a. Browsing information on a computer database out of curiosity to determine if a fellow employee or friend has filed a return or paid his/her taxes.
- b. Using addresses obtained from a DOR database or directly from a tax return for use in updating personal address lists.
- c. Viewing the tax return or tax information of a famous person or other person in which the employee has no "need to know".

B. Authorized Release of State Tax Information

1. The confidentiality statute does not prohibit a DOR employee from exchanging information within the department in order to perform his/her job or to seek advice about legal, technical or procedural issues. Also, the confidentiality requirement does not apply to information required by law to be made publicly available. For example, property tax information required to be placed on public tax rolls is public information.
2. Exchanges of tax information are also authorized pursuant to [KRS 131.190\(2\)](#), which allows for Information Exchange Agreements. These disclosures are permitted under supervision of the Disclosure Officer only, unless otherwise specified.
3. A taxpayer or the authorized representative may obtain a copy or receive his/her own tax information when requested by either the taxpayer or the authorized representative.
 - a. Request for state tax information shall be submitted in written or email form. Phone requests shall not be recognized. All email requests that DOR responds to shall be submitted to the requestor through encrypted email.
 - b. Request shall provide the following information:
 1. Name

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2. Social Security Number and Business Account Number (if applicable)
 3. Mailing Address
 4. Copy of Photo Identification (for individual income tax return requests)
 5. Tax Year(s) of the returns requested
 6. Signature
 7. For Business Tax Types, request shall be from a Company officer.
- c. Confidential state tax information shall be transmitted to the taxpayer or his/her representative via the medium requested. If a medium is not specified in the request, the employee shall mail the requested information.
 - d. Federal tax information shall not be disclosed.
 - e. The written or email request shall be retained, either in hard copy or electronically, as a record of the request.
4. The following notice shall be included at the bottom of all emails:

“This message may contain sensitive or confidential information and is for the exclusive use of the intended recipient(s). If you are not the intended recipient(s), please note that any form of distribution, copying, forwarding or use of this communication or the information attached to it, is strictly prohibited and may be unlawful. If you have received this communication in error, please return it to the sender indicating that you received it by mistake, delete the email and destroy any copies of it. It should be expressly understood that the Finance and Administration Cabinet cannot guarantee the security of the transmission and assumes no responsibility for intentional or accidental receipt by a third party.”
 5. Before an employee discloses confidential tax information to another Cabinet employee, the employee shall confirm that the recipient has passed the “Need to Know” Test.

C. Unauthorized Release of Federal Tax Information

Federal tax information shall be used by authorized DOR personnel only. Prior

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approval for the use of federal tax information shall be obtained from and authorized by the DOR's Disclosure Officer. Federal tax information shall not be released to any unauthorized employee, any other government agency or any other person, except directly to the taxpayer or the taxpayer's properly authorized representative. Federal tax information shall not be combined with DOR tax information so that the federal tax information cannot be identified as such.

For the purpose of this procedure, the term "divulge" in reference to federal tax information shall mean to discuss tax information, verbally provide tax information, provide copies of tax information or make tax information known to any other unauthorized person.

The transmission of federal tax information via the Internet is prohibited by the IRS in all circumstances.

1. Unauthorized Disclosure of Federal Returns or Return Information

A violation of confidentiality occurs when an employee uses tax information for his/her own use or divulges tax information to a third party. Examples include, but are not limited to the following:

- a. Visually or verbally providing the filing status, amount of income, address or any other return or tax information to a department employee, who is not an authorized user of federal information, a friend or family member or any other person.
- b. Providing federal information to any other government agency or anyone who is not a DOR employee authorized to receive federal information.
- c. Making a fellow employee, who has no "need to know", aware of tax information or the tax return of a famous person or any other person.

2. Unauthorized Inspection of Federal Returns or Return Information

A violation of confidentiality occurs when an employee accesses, views or obtains federal tax information (whether hard copy or electronic), which is not required to perform his/her job duties. Examples include, but are not limited to the following:

- a. Browsing information on federal programs such as STAX, KRCIIT, FBUSTER, etc. out of curiosity to determine if a fellow employee or friend has filed a federal return or has paid his/her taxes.

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- b. Using addresses obtained from federal programs or directly from hard copy federal information for use in updating a personal address list.
- c. Viewing the tax return or tax information of a famous person or other person in which the employee has no “need to know”.

VI. CONFIDENTIALITY AFTER LEAVING THE CABINET

The confidentiality requirement shall remain in effect after an employee leaves the Cabinet. Any tax information that was confidential during the employee’s tenure shall remain confidential after the employee terminates his/her employment relationship with the Cabinet. This confidentiality shall apply to all employees who are leaving or are terminated from the Cabinet, including the DOR or who initiate termination of that employment relationship.

The ethics provision of [KRS Chapter 11A](#) governs an employee’s conduct after termination of employment with the Cabinet.

VII. PENALTIES FOR CONFIDENTIALITY VIOLATIONS - STATE AND FEDERAL

A. Unauthorized Disclosure of State Tax Information

1. [KRS 131.990\(2\)](#) provides criminal penalties for willful unauthorized disclosure (divulging) of state return information. Upon conviction, Cabinet employees, including a DOR employee may be fined up to \$1,000 and/or imprisoned for not more than one year and disqualified and removed from office or employment.
2. [KRS 131.081\(14\)](#) provides that an employee may be subject to personal civil liability for damages associated with the unauthorized disclosure (divulging) of any confidential tax information.

B. Unauthorized Inspection of State Tax Information

1. [KRS 131.990\(2\)](#) provides criminal penalties for willful unauthorized inspection of state return information. Upon conviction, Cabinet employees, including a DOR employee may be fined up to \$500 and/or imprisoned for not more than six months and disqualified and removed from office or employment.

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2. [KRS 131.081\(14\)](#) provides that an employee may be subject to personal civil liability for damages associated with the unauthorized inspection of any confidential tax information.

C. Unauthorized Disclosure of Federal Tax Information

1. [26 U.S. Code § 7213\(a\)\(2\)](#) provides that it shall be unlawful for state and other employees to willfully disclose federal return or return information. Any violation of this paragraph shall be a felony where by Cabinet employees, including a DOR employee, fined in any amount not exceeding \$5,000, or imprisoned of not more than five years, together with the costs of prosecution.
2. [26 U.S. Code § 7431\(a\)\(1\)](#) provides that an employee may be subject to personal civil liability for damages associated with the unauthorized disclosure of Federal tax information.

D. Unauthorized Inspection of Federal Tax Information

1. [26 U.S. Code § 7213A\(b\)\(1\)](#) provides that it shall be unlawful for state and other employees to willfully inspect federal return or return information. Any violation of subsection (a) shall be punishable upon conviction where by Cabinet employees, including a DOR employee, fined in any amount not exceeding \$1,000, or imprisonment of not more than one year, or both, together with the costs of prosecution.
2. [26 U.S. Code § 7431\(a\)\(1\)](#) provides that an employee may be subject to personal civil liability for damages associated with the unauthorized inspection of a federal return or return information.

VIII. DISCIPLINARY ACTION

Under the provisions of [KRS 18A.095](#), a violation of confidentiality of state or federal tax information may be considered as unsatisfactory performance of job duties or lack of good behavior. The Cabinet or DOR may take disciplinary action(s) against an employee for violation of confidentiality.

Disciplinary action may include any or all of the following: reprimand, suspension, fine and dismissal.

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IX. REFERENCES

1. [KRS 131.190](#): Information acquired in tax administration not to be divulged -- Exceptions.
2. [26 U.S. Code § 6103](#): Confidentiality and disclosure of returns and return information.
3. [103 KAR 3:010](#): General Administrative Forms Manual
4. [KRS 131.010](#): Definitions for chapter.
5. [26 U.S. Code § 6110](#): Public inspection of written determinations.
6. [KRS 131.081](#): Rules applicable to the administration of all taxes under the jurisdiction of DOR.
7. [26 U.S. Code § 7213A](#): Unauthorized inspection of returns or return information.
8. [IRS Publication 1075](#): Tax Information Security Guidelines For Federal, State And Local Agencies
9. [Chapter KRS 11A](#): Executive Branch Code of Ethics.
10. [KRS 131.990](#): Penalties.
11. [26 U.S. Code § 7213](#): Unauthorized disclosure of information.
12. [26 U.S. Code § 7431](#): Civil damages for unauthorized inspection or disclosure of returns and return information.
13. [KRS 18A.095](#): Rights of executive branch employees.

X. FORMS

[Form SP7.601020](#): Kentucky Department of Revenue Acknowledgment of Confidentiality (Revenue Form 20A001 (2-16))