



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
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PRIVACY,  
GOVERNMENTAL LIAISON  
AND DISCLOSURE

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11.3.13, 11.3.35

MEMORANDUM FOR ALL DISCLOSURE EMPLOYEES

FROM: Phyllis T. Grimes /s/ Phyllis T. Grimes  
Director, Governmental Liaison, Disclosure and Safeguards

SUBJECT: Interim Guidance on application of 26 U.S.C. §6103(e)(10)  
for TEFRA and BBA Partnerships

Until parts 11.3.2, 11.3.3, 11.3.13 and 11.3.35 of the IRM are revised, this memorandum serves as 26 United States Code (U.S.C.) §6103(e)(10) guidance on requests for records for returns and return information of Tax Equity and Fiscal Responsibility (TEFRA) partnerships and Bipartisan Budget Act (BBA) partnerships. Please ensure this information is distributed to all affected employees within your organization.

**Purpose:** Guidance regarding 26 U.S.C. §6103(e)(10) considerations on requests for returns and return information of TEFRA and BBA partnerships.

**Background/Source(s) of Authority:** 26 U.S.C. §§6103(c) and (e), 26 Code of Federal Regulations (C.F.R.) §301.6103(c)-1, 5 U.S.C. §552, 26 C.F.R. §601.702, Treasury Regulations §§301.9000-1 through 301.9000-7.

The Internal Revenue Code (IRC) at 26 U.S.C. §6103 establishes the disclosure rules for federal tax returns and return information. Persons described in IRC §6103(e) always have access to the appropriate return as specified in IRC 6103(e)(1) through IRC 6103(e)(6), subject to the limitations in IRC 6103(e)(10) for partnership, estates, trust or Subchapter S returns. Generally, these persons authorized under IRC 6103(e)(1) through (e)(6) may also have access to return information.

The disclosure conditions for a partnership are found in IRC §6103(e)(1)(C) which states:

“(e) Disclosure to persons having material interest

(1) In general - The return of a person shall, upon written request, be open to inspection by or disclosure to-

(C) in the case of the return of a partnership, any person who was a member of such partnership during any part of the period covered by the return”

Disclosure of partnership returns are limited by the provisions of IRC 6103(e)(10) which states:

“(10) Limitation on certain disclosures under this subsection

In the case of an inspection or disclosure under this subsection relating to the return of a partnership, S corporation, trust, or an estate, the information inspected or disclosed shall not include any supporting schedule, attachment, or list which includes the taxpayer identity information of a person other than the entity making the return or the person conducting the inspection or to whom the disclosure is made”

Disclosures of returns and return information subject to IRC 6103(e) are also made under the Freedom of Information Act (FOIA) 5 U.S.C. §552 and Treasury Regulations §§301.9000-1 through 301.9000-7.

The Tax Equity and Fiscal Responsibility Act of 1982 created procedures which require that an examination be handled in one partnership-level proceeding and not at the partner level. The TEFRA process generally applies to tax years prior to 2018. TEFRA created the Tax Matters Partner (TMP) who is the primary contact during a TEFRA examination. The TMP is designated based on section 6231(a)(7).

Section 1101 of the Bipartisan Budget Act of 2015 repealed the TEFRA partnership procedures. Although some partnerships elected to have BBA apply to them earlier, BBA is generally effective for tax years after December 31, 2017. After that date, the partnership is required to designate a “partnership representative”, unless the eligible partnership has elected out of the centralized partnership audit regime. The partnership representative (as defined in 6223(a)) has the sole authority to act on behalf of the partnership. If the partnership representative is not designated, the Secretary may select any person as the partnership representative. The partnership representative does not have to be a partner; however, his actions will bind the partnership and all partners of such partnership in dealings with the IRS.

**Procedural Change:**

26 U.S.C. §6103(e)(10) extends to a request made for a partnership return, Form 1065; and does not extend to a request made under IRC 6103(e), FOIA or Treasury Regulations 301.9000 for access to IRS administrative file record(s), pertaining to a TEFRA or BBA partnership, made by any partner or partnership representative.

Therefore, partner(s) or a partnership representative, for a TEFRA or BBA partnership, are entitled to request and receive administrative file record(s) containing partnership returns and return information without application of 26 U.S.C. §6103(e)(10).

**Effect on Other Documents:** This guidance will be incorporated into IRM 11.3.2, *Disclosure to Persons with a Material Interest*, IRM 11.3.3, *Disclosure to Designees and Practitioners*, IRM 11.3.13, *Freedom of Information Act* and IRM 11.3.35, *Requests and Demands for Testimony and Production of Documents* by September 30, 2022.

**Effective Date: April 14, 2021**

**Contact:** If you have any questions, please contact me or a member of your staff may contact Debra Middleton, Senior Disclosure Analyst, at 801-620-2147.

**Distribution:**

Disclosure Employees  
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