

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE INTERNAL REVENUE SERVICE
AND
THE US DEPARTMENT OF LABOR**

1. INTRODUCTION:

This Memorandum of Understanding (MOU) between the Internal Revenue Service (IRS) and the United States Department of Labor (DOL) sets forth the agreement of the parties with respect to a joint initiative to improve compliance with laws and regulations administered by the IRS and DOL. This will be accomplished through enhanced information sharing and other collaboration. A joint IRS-DOL team will lead this initiative.

2. AUTHORITY:

This MOU is entered into between the IRS and the DOL 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.

3. PURPOSE:

A. The sharing of information and collaboration between the parties will help reduce the incidence of misclassification of employees as independent contractors, help reduce the tax gap, and improve compliance with federal labor laws. Increased collaboration will also strengthen the relationship between the IRS and DOL, enable both agencies to leverage existing resources and send a consistent message to employers about their duties to properly pay their employees and to pay employment taxes. This multi-agency approach presents a united compliance front to employers and their representatives.

B. Specific objectives of this initiative include the following:

- Expand the IRS-DOL partnership launched in the Questionable Employment Tax Practices program
- Reduce the employment tax portion of the tax gap
- Increase compliance with federal employment and unemployment tax requirements
- Increase compliance with federal labor laws enforced by the DOL
- Reduce fraudulent filings
- Reduce abusive employment/unemployment tax schemes
- Reduce worker misclassification
- Reduce questionable employment tax practices
- Work together to create educational and outreach materials and guidance for employers and workers

4. CONTACTS:

Contacts for the purpose of this MOU will be the IRS Small Business/Self Employed Division designee, the IRS Governmental Liaison designee, the IRS Disclosure Office Designee, and the DOL designee (see Attachment I).

5. JOINT OUTREACH:

The parties to this agreement will coordinate national 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.

6. DUTIES AND RESPONSIBILITIES OF THE IRS-DOLTEAM:

The team is comprised of representatives from the IRS and DOL.

A. The members of the team will meet on a regular basis to discuss issues of concern, review MOU actions, and make recommendations for improvement in partnership activities. The team will monitor trends and developing issues.

B. The team will create processes with all stakeholders in mind. Recommendations will focus on educating taxpayers/employers, promoting fairness and improved compliance, and creating a level playing field for law-abiding taxpayers and employers.

7. DUTIES AND RESPONSIBILITIES OF THE DOL:

A. The DOL will refer to the IRS, at DOL's discretion and consistent with applicable law, Wage and Hour Division investigation information and other data that DOL believes may raise Internal Revenue employment tax compliance issues related to misclassification.

B. The DOL will share DOL Wage and Hour Division training materials and opportunities with the IRS to the extent possible.

C. The DOL will participate in joint outreach events with the IRS to the extent possible.

8. DUTIES AND RESPONSIBILITIES OF THE IRS:

A. The IRS will evaluate and classify employment tax referrals provided by the DOL and at the IRS's discretion, conduct examinations to determine compliance with employment tax laws.

B. The IRS will, at its discretion and consistent with applicable federal laws, share the employment tax referrals provided by the DOL with the state and municipal taxing agencies that are authorized to receive tax return information under approved agreements with the IRS.

C. The IRS will provide annual reports to the DOL summarizing the results achieved by using DOL referrals. These reports will be provided only if the results can be compiled in a manner that protects return information, including taxpayer identities, in accordance with legal requirements.

D. The IRS will share employment tax training materials and opportunities with the DOL to the extent possible.

E. The IRS will participate in joint outreach events with the DOL to the extent possible.

F. The IRS will annually provide the DOL with aggregate data relating to trends in misclassification. The IRS will not share confidential Federal Tax Information with DOL unless disclosure is authorized by 26 U.S.C. § 6103.

G. The IRS will, at its discretion and pursuant to 26 U.S.C. § 6103(i)(3)(A)(i), provide DOL with information (other than taxpayer return information) which may constitute evidence of a violation of any Federal criminal law (not involving tax administration) that the DOL enforces.

DISCLOSURE, SAFEGUARDS, AND RECORD KEEPING REQUIREMENTS:

9. It is the policy of DOL to cooperate with other government agencies to the fullest extent possible under the law, subject to the general limitations that any such cooperation must be consistent with the DOL's statutory obligations and enforcement efforts. It is the DOL's view that an exchange of information in cases in which both entities are proceeding on related matters is to our mutual benefit. There is a need for the government to provide information to other law enforcement bodies without making a public disclosure.

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 his MOU. Further:

- Exchange of such information pursuant to this Agreement is not a public disclosure under the Freedom of Information Act, 5 U.S.C. § 552.
- When confidential information is exchanged, the receiving party shall use and access it only for the limited purposes of carrying out activities pursuant to this Agreement as described herein. The receiving party shall also comply with the requirements of the Trade Secrets Act, 18 U.S.C. § 1905, the Privacy Act, 5 U.S.C. § 552a, and the Right to Financial Privacy Act, 12 U.S.C. § 3401 *et seq.*, or any other laws and regulations to the extent that they apply to confidential information.
- Confidential information means information that may be exempt from disclosure to the public or other unauthorized persons under state and federal statutes. Confidential information includes: the identities of persons who have given information to the parties in confidence or under circumstances in which confidentiality can be implied; any employee statements in DOL enforcement files that were obtained under such conditions; internal opinions and recommendations of federal or state personnel, including (but not limited to) investigators and supervisors; information or records covered by, but not limited to, the attorney-client privilege and the protections against disclosure of attorney-work-product product and the deliberative process, investigative files, confidential informants, and confidentiality agreements and orders that may apply to shared information; personal information on living persons; individually identifiable health information, confidential business information and trade secrets, and any other information so labeled by the parties. Such information will remain confidential and subject to the privileges and protections of this MOU notwithstanding its termination.

- In the event that there is a judicial proceeding brought by the employer after an IRS examination based on information from a DOL referral, the IRS will, when possible, provide DOL with a copy of the filed complaint or petition. If records in DOL's possession are relevant and necessary for use in the proceeding, the IRS will follow DOL's *Touhy* regulations, 29 CFR Part 2, Subpart C, if the IRS seeks DOL records, or testimony from DOL's employees.

10. TRANSMITTAL PROCEDURES:

A. Transmissions from DOL to IRS:

- At its discretion, the DOL will send any information, data, and materials subject to this MOU to the IRS at the following address:
IRS
Employment /Excise Tax
Stop 5702A
Covington, KY 41011
- All information exchanged will include a Document Transmittal (IRS Form 3210 or equivalent) or other means of verifying receipt, with a count of documents by type and a brief description of the information being provided.
- The Document Transmittal and documents will be inserted in an envelope marked "TO BE OPENED BY ADDRESSEE ONLY" and inscribed with the name of the official designated to receive the information. The package will be hand delivered to the designated official or mailed via the United States Postal Service, Federal Express, United Parcel Service, or a federally accredited expedited mail delivery service, in a second envelope inscribed with the address of the designated official.

B. Transmissions from IRS to DOL:

- At its discretion, IRS will send any information, data, and materials subject to this MOU to the DOL designees (See Attachment I).

11. LIABILITY:

The liability of IRS and the DOL is governed by the Federal Tort Claims Act [28 U.S.C. § 1346(b), 2672, et seq.], or other applicable federal statutory authority.

12. THIRD PARTY RIGHTS:

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

13. PRIVACY:

The IRS and DOL will assure the integrity and accuracy of personal and financial data as required by the relevant section of the Privacy Act of 1974, 5 U.S.C. § 552a and the Right to Financial Privacy Act, 12 U.S.C. § 3401, *et seq.* The IRS and DOL 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 applicable laws, regulations, and sound administrative practices and procedures.

14. EFFECTIVE DATE:

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

15. AMENDMENT OF MOU:

This MOU may be amended by deletion or modification of any provisions, provided that such amendment is in writing and is signed by authorized representatives of the IRS and DOL.

16. TERMINATION OF MOU:

This MOU may be cancelled upon thirty days written notice by either the IRS or the DOL or immediately by signed agreement of the IRS and the DOL.

17. LIMITATIONS:

The terms of this MOU are not intended to alter, amend, or rescind any current agreement or provision of federal law now in effect. Any provision of this MOU which conflicts with federal law will be null and void.

This agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or be binding upon the parties.

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

Nothing in this agreement will be interpreted as limiting, superseding, or otherwise affecting the parties' normal operations or decisions in carrying out its statutory and regulatory duties, or other current or future agreements between DOL or its component agencies and the IRS. This agreement also does not limit or restrict the parties from participating in similar activities or arrangement with other entities.

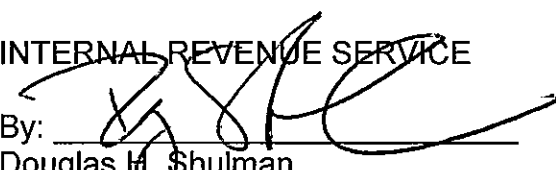
Nothing in this agreement is intended to diminish or otherwise affect the authority of either agency to implement its respective statutory or regulatory functions.

18. EVALUATION OF DATA EXCHANGE:

The IRS and DOL will review this MOU annually (or more frequently as necessary) to evaluate the existing data exchange, examine the continuing needs for a data exchange, to discuss the utility of categories of data heretofore 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, Business Operating Division, and the DOL designees.


APPROVALS:

INTERNAL REVENUE SERVICE

By: 
Douglas H. Shulman
Commissioner of Internal Revenue

September 19, 2011

UNITED STATES DEPARTMENT OF LABOR

By: 
Hilda L. Solis
Secretary of Labor

September 19, 2011