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# ***TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION***



## ***Fiscal Year 2017 Statutory Review of Disclosure of Collection Activities on Joint Returns***

**August 23, 2017**

**Reference Number: 2017-30-058**

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

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## HIGHLIGHTS

### FISCAL YEAR 2017 STATUTORY REVIEW OF DISCLOSURE OF COLLECTION ACTIVITIES ON JOINT RETURNS

## Highlights

**Final Report issued on August 23, 2017**

Highlights of Reference Number: 2017-30-058 to the Internal Revenue Service Commissioner for the Small Business/Self-Employed Division.

### IMPACT ON TAXPAYERS

Internal Revenue Code (I.R.C.) Section (§) 6103(e)(8) gives joint filer taxpayers who are no longer married or no longer reside in the same household the right to request information regarding the IRS's efforts to collect delinquent taxes on their joint tax return liabilities. If the IRS does not provide employees sufficient guidance for handling those requests, taxpayer rights could be violated.

### WHY TIGTA DID THE AUDIT

This audit was initiated because the IRS Restructuring and Reform Act of 1998 added I.R.C. § 7803(d)(1)(B), which requires TIGTA to annually review and certify the IRS's compliance with I.R.C. § 6103(e)(8). The objective of this review was to determine whether the IRS is complying with the provisions of I.R.C. § 6103(e)(8) as related to the disclosure of collection activities with respect to joint filers.

### WHAT TIGTA FOUND

IRS management information systems do not separately record or monitor joint filer requests, and there is no legal requirement for the IRS to do so. While TIGTA does not recommend the creation of a separate tracking system, it determined that improvements can be made when receiving disclosures of collection information requests pursuant to either I.R.C. § 6103(e)(8) or § 6103(e)(7).

In response to TIGTA's recommendation in last year's report, the Internal Revenue Manual was updated to provide the collection activity information that employees may disclose to a

former spouse regarding a jointly filed return. Additionally, updated training for Automated Collection System employees was being provided to employees at the time of our review.

TIGTA interviewed employees from three Automated Collection System call sites and found that at the time of our interviews only one of the three offices had received the training that was initiated as part of the IRS corrective actions to last year's report. The responses from the staff at the office that had already received the updated training were that they could provide some information, but there was uncertainty about what information can be disclosed when a "mirrored account" had been established.

The Internal Revenue Manual provides examples of collection statuses that can be disclosed. However, it does not limit the disclosure to these collection statuses; therefore, there may be confusion about what can be shared with an ex-spouse.

### WHAT TIGTA RECOMMENDED

TIGTA recommended that the IRS update the Internal Revenue Manual to provide Automated Collection System employees with more detail and examples of collection activity and mirrored account information that may be disclosed to a spouse who has been assessed joint tax when the spouse requests information (orally or in writing) under I.R.C. §§ 6103(e)(7) and (e)(8).

The IRS agreed with this recommendation and will revise the Internal Revenue Manual with additional guidance and examples of collection activity and mirrored account information that may be disclosed to a spouse who has been assessed a joint tax when he or she requests information orally or in writing under I.R.C. §§ 6103(e)(7) and (e)(8).



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

**DEPARTMENT OF THE TREASURY**

**WASHINGTON, D.C. 20220**

August 23, 2017

**MEMORANDUM FOR COMMISSIONER, SMALL BUSINESS/SELF-EMPLOYED DIVISION**

**FROM:** Michael E. McKenney  
Deputy Inspector General for Audit

**SUBJECT:** Final Audit Report – Fiscal Year 2017 Statutory Review of Disclosure  
of Collection Activities on Joint Returns (Audit # 201730004)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) is complying with the provisions of Internal Revenue Code Section 6103(e)(8) as related to the disclosure of collection activities with respect to joint filers. The Treasury Inspector General for Tax Administration is required, under I.R.C. § 7803(d)(1)(B), to annually evaluate the IRS's compliance with the joint filer provisions of the law. This audit is included in our Fiscal Year 2017 Annual Audit Plan and addresses the major management challenge area of Taxpayer Protection and Rights.

Management's complete response to the draft report is included as Appendix V. Copies of this report are also being sent to the IRS managers affected by the report recommendation.

If you have any questions, please contact me or Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations).



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## ***Fiscal Year 2017 Statutory Review of Disclosure of Collection Activities on Joint Returns***

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### ***Abbreviations***

ACS	Automated Collection System
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
TIGTA	Treasury Inspector General for Tax Administration



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## ***Fiscal Year 2017 Statutory Review of Disclosure of Collection Activities on Joint Returns***

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### ***Background***

The Taxpayer Bill of Rights 2<sup>1</sup> added Internal Revenue Code (I.R.C.) Section (§) 6103(e)(8), which provides that if any deficiency of tax with respect to a joint return is assessed and the individuals filing the return are no longer married or no longer reside in the same household, upon request in writing by either of the individuals, the Internal Revenue Service (IRS) shall disclose in writing to the individual making the request whether the IRS has attempted to collect the deficiency from the other individual, the general nature of the collection activities, and the amount collected. I.R.C. § 6103(e)(7) allows authorized representatives of the joint filers to also receive the same collection information requested under I.R.C. § 6103(e)(8). After passage of the Taxpayer Bill of Rights 2, the IRS Disclosure Office issued procedures for all IRS employees to follow regarding written requests, including those for joint filer tax return information. These procedures allow IRS employees to provide both oral and written responses to taxpayers. This is more permissive than the statutory requirements of I.R.C. § 6103(e)(8), which requires the IRS to provide written responses to written requests.

***The Treasury Inspector General  
for Tax Administration is  
required to annually evaluate  
the IRS's compliance with  
I.R.C. § 6103(e)(8).***

The IRS Legislative Affairs Division contacted the staff of the Joint Committee on Taxation to determine whether the IRS is in compliance with the statutory requirements when it allows oral responses to written joint filer requests. In August 2000, the Legislative Affairs Division stated that the Joint Committee on Taxation staff was aware of the IRS's practice of providing oral responses to taxpayers and advised Legislative Affairs that this practice was permissible even though I.R.C. § 6103(e)(8) requires that the disclosure be in writing.

The IRS Restructuring and Reform Act of 1998 requires the Treasury Inspector General for Tax Administration (TIGTA) to review and certify annually whether or not the IRS is complying with the requirements of I.R.C. § 6103(e)(8) to disclose collection information to joint filers when they send in a written request.<sup>2</sup> We cannot readily identify cases in which joint filers made such requests. To identify these requests, the IRS would have to conduct a manual review of every taxpayer case in the collection process with a jointly filed tax return, looking for a notation in the case file or a copy of the taxpayer's letter. During last year's review, we interviewed Automated Collection System (ACS) employees and determined there was some misunderstanding about the information that can be shared

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<sup>1</sup> Pub. L. No. 104-168, 110 Stat. 1452 (1996) (codified as amended in scattered sections of 26 U.S.C.).

<sup>2</sup> Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).



## ***Fiscal Year 2017 Statutory Review of Disclosure of Collection Activities on Joint Returns***

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under I.R.C. § 6103(e)(8). We recommended that the Internal Revenue Manual (IRM) be updated with detailed instructions and that existing training incorporate how to handle these requests when received by ACS employees.<sup>3</sup>

This review was performed with information obtained from the offices of the IRS Commissioner; the National Taxpayer Advocate; and the Privacy, Governmental Liaison, and Disclosure Office located in Washington, D.C., and the Small Business/Self-Employed Division Headquarters located in Lanham, Maryland; and at Field Collection offices in Kansas City, Missouri; Cheektowaga, New York; and Seattle, Washington, during the period March 2017 through June 2017. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

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<sup>3</sup> TIGTA, Ref. No. 2016-30-060, *Fiscal Year 2016 Statutory Review of Disclosure of Collection Activities on Joint Returns* (Aug. 2016).





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## ***Fiscal Year 2017 Statutory Review of Disclosure of Collection Activities on Joint Returns***

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### ***Results of Review***

#### ***Compliance With Statutory Requirements for the Disclosure of Collection Activity With Respect to Jointly Filed Tax Returns Cannot Be Determined***

IRS management information systems do not record or monitor joint filer requests for information on collection activities. As such, we could not determine whether the IRS fully complied with I.R.C. § 6103(e)(8) requirements when responding to written requests from joint filers because IRS systems do not allow the identification of these requests. During this review, management from the Small Business/Self-Employed Division; the National Taxpayer Advocate; and the Privacy, Governmental Liaison, and the Disclosure Office commented that the IRS's position has not changed from the last fiscal year and that the IRS does not plan to implement a system to identify or track joint filer requests for collection activity. In addition, there is no legal requirement for the IRS to record or monitor cases involving these requests.

As part of this year's review, we queried IRS system history files in an attempt to independently identify the population of joint filer disclosure contacts made during Calendar Year 2016. We performed queries on the history files using specific key words associated with separated or divorced joint filer disclosures to determine whether these words would exclusively identify joint filer disclosure contacts. We could not identify the population of I.R.C. § 6103(e)(8) disclosure contacts based on key word searches.

This is the nineteenth year in which we have reported our inability to provide an opinion on the IRS's compliance with the provisions of I.R.C. § 6103(e)(8). While TIGTA does not recommend the creation of a separate tracking system, we determined that additional improvements can be made to IRM sections and training materials used by IRS call sites with respect to instructions regarding what the law requires and allows when receiving requests for disclosure of collection information pursuant to either I.R.C. § 6103(e)(7) or § 6103(e)(8).

#### ***More Specific Guidance Would Clarify What Information Automated Collection System Employees May Disclose***

Contact representatives at ACS call sites are responsible for answering incoming taxpayer calls to resolve delinquent taxpayer accounts. In response to our recommendation in last year's report, the IRM was updated to provide the collection activity information that employees may disclose



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## ***Fiscal Year 2017 Statutory Review of Disclosure of Collection Activities on Joint Returns***

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to a former spouse regarding a jointly filed return.<sup>4</sup> Additionally, the updated training for ACS employees was being provided to employees at the time of our review.

The updated IRM provides that upon receipt of a proper request from a spouse who has been assessed a joint tax, the information that contact representatives shall disclose includes:

- Whether the IRS has attempted to collect the deficiency from the other spouse.
- The amount collected, if any, and the current collection status (*e.g.*, notice, taxpayer delinquent account, installment agreement, suspended).
- If suspended, the reason for suspension (*e.g.*, unable to locate, hardship).<sup>5</sup>

For this year's audit, we interviewed a judgmental sample of 15 contact representatives and six supervisors working in three ACS call sites.<sup>6</sup> At the time of our interviews, only one of the three offices had received the training regarding disclosure of collection activities on joint returns that was initiated as part of the IRS corrective actions to last year's report. In general, the responses from the staff at the two offices that had not received training was that they could not provide any information to a jointly liable person who called the IRS for information on the collection of the joint tax from the other individual. The responses from the staff at the office that had already received the updated training were that they could provide some information, such as the existence of a current installment agreement and the total amount received. Also, some contact representatives told us that even though they cannot provide all of the details about the account, the ex-spouse can obtain the details by accessing his or her account on the Internet or by requesting a transcript printout.

In addition, there was some uncertainty about what information can be disclosed when a "mirrored account" had been established. The purpose of a mirrored account is to separate a joint account into two accounts so that the accounts of the jointly liable taxpayers can reflect differences that may be unique to one of the spouses. For example, collection activity could continue for one spouse who the IRS determines is able to pay while the other spouse is designated as currently not collectible because the IRS determined he or she is unable to pay. Some of the contact representatives interviewed incorrectly told us that they could not share information about the other joint filer's mirrored account since it is a separate account.

The IRM provides examples of collection activity that can be disclosed, but it does not limit the disclosure to this collection activity; therefore, there may be confusion about what collection activities can be shared with an ex-spouse. For example, the IRM does not provide employees with instructions about whether they may disclose:

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<sup>4</sup> TIGTA, Ref. No. 2016-30-060, *Fiscal Year 2016 Statutory Review of Disclosure of Collection Activities on Joint Returns* (Aug. 2016).

<sup>5</sup> IRM 11.3.2.4.1.1 (Jan. 26, 2017).

<sup>6</sup> A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.



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## ***Fiscal Year 2017 Statutory Review of Disclosure of Collection Activities on Joint Returns***

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- The receipt of an offer in compromise, the status of the offer, and the amount of the offer.
- If a seizure occurred, if the property was sold, and the sale amount.
- Whether a refund would offset any portion of the liability.
- The existence of a continuous levy.

Additionally, there are no instructions related to mirrored accounts. More specific instructions and examples would help to ensure that employees disclose information that taxpayers are entitled to receive as well as protect the privacy of taxpayers when information should not be disclosed.

### ***Recommendation***

**Recommendation 1:** The Director, Collection, should update the IRM to provide ACS employees with more detail and examples of collection activity and mirrored account information that may be disclosed to a spouse who has been assessed a joint tax when he or she requests information (orally or in writing) under I.R.C. §§ 6103(e)(7) and (e)(8).

**Management's Response:** Management agreed with this recommendation and will revise IRM 5.19.5 with additional guidance and examples of collection activity and mirrored account information that may be disclosed to a spouse who has been assessed a joint tax when he or she requests information orally or in writing under I.R.C. §§ 6103(e)(7) and (e)(8).



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## ***Fiscal Year 2017 Statutory Review of Disclosure of Collection Activities on Joint Returns***

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### **Appendix I**

#### **Detailed Objective, Scope, and Methodology**

The objective of this review was to determine whether the IRS is complying with the provisions of I.R.C. § 6103(e)(8) as related to the disclosure of collection activities with respect to joint filers. To accomplish our objective, we:

- I. Contacted IRS management personnel in the Small Business/Self-Employed Division to determine whether an IRS system or process has been implemented since our last review that tracks joint filer requests and the IRS's responses for collection information relating to the requirements of I.R.C. § 6103(e)(8).
- II. Contacted the appropriate IRS management personnel to determine whether any systems or processes have been modified since our last review to track taxpayer complaints relating to the requirements of I.R.C. § 6103(e)(8).
  - A. Contacted the appropriate National Taxpayer Advocate management personnel to determine whether the Taxpayer Advocate Management Information System has been modified since our last review to track taxpayer complaints relating to joint filer requests for collection information.
  - B. Contacted the appropriate IRS management personnel responsible for the E-TRAK<sup>1</sup> system to determine whether the E-TRAK system has been modified since our last review to track taxpayer complaints relating to joint filer requests for collection information.
  - C. Contacted the appropriate Privacy, Governmental Liaison, and Disclosure Office management personnel to determine whether the Automated Freedom of Information Act System has been modified since our last review to track taxpayer complaints relating to joint filer requests for collection information.
- III. Determined if the corrective actions for the two TIGTA recommendations from the *Fiscal Year 2016 Statutory Review of Disclosure of Collection Activities on Joint Returns* were completed.
- IV. Reviewed IRS system history files to detect potential joint filer disclosure contacts with taxpayers to determine whether we could identify the population related to separated or divorced taxpayers during Calendar Year 2016.

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<sup>1</sup> The E-TRAK system is a web-based Service-wide document tracking application that assists IRS leadership and business operating divisions with their ability to timely and effectively manage their responses to issues raised by taxpayers and to monitor internal correspondence.



## ***Fiscal Year 2017 Statutory Review of Disclosure of Collection Activities on Joint Returns***

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- V. Selected a judgmental sample of 15 ACS contact representatives and six supervisors to discuss their experiences with I.R.C. § 6103(e)(8) requests.<sup>2</sup>

### **Internal controls methodology**

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: documented procedures pertaining to requests under I.R.C. § 6103(e)(8). To test these controls, we conducted interviews with Collection personnel who receive these requests and reviewed the recent changes made to the IRM.

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<sup>2</sup> A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.



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**Appendix II**

***Major Contributors to This Report***

Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations)  
Carl L. Aley, Director  
Beverly Tamanaha, Audit Manager  
Janis Zuika, Lead Auditor



***Fiscal Year 2017 Statutory Review of  
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**Appendix III**

**Report Distribution List**

Commissioner  
Office of the Commissioner – Attn: Chief of Staff  
Deputy Commissioner, Services and Enforcement  
Deputy Commissioner, Small Business/Self-Employed Division  
Director, Collection, Small Business/Self-Employed Division  
Director, Campus Collection, Small Business/Self-Employed Division  
Director, Field Collection, Small Business/Self-Employed Division  
Director, Headquarters Collection, Small Business/Self-Employed Division  
Director, Office of Audit Coordination



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**Appendix IV**

***Recent Audit Reports Related  
to This Statutory Review<sup>1</sup>***

TIGTA, Ref. No. 2012-30-084, *Fiscal Year 2012 Statutory Review of Disclosure of Collection Activity With Respect to Joint Returns* (July 2012).

TIGTA, Ref. No. 2013-30-079, *Fiscal Year 2013 Statutory Review of Disclosure of Collection Activity With Respect to Joint Returns* (July 2013).

TIGTA, Ref. No. 2014-30-046, *Fiscal Year 2014 Statutory Review of Disclosure of Collection Activity With Respect to Joint Returns* (July 2014).

TIGTA, Ref. No. 2015-30-050, *Fiscal Year 2015 Mandatory Review of Disclosure of Collection Activities on Joint Returns* (May 2015).

TIGTA, Ref. No. 2016-30-060, *Fiscal Year 2016 Statutory Review of Disclosure of Collection Activities on Joint Returns* (Aug. 2016).

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<sup>1</sup> This list provides the most recent five of the 18 previous reports issued by TIGTA.





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**Appendix V**

**Management's Response to the Draft Report**

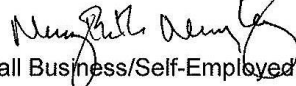


COMMISSIONER  
SMALL BUSINESS/SELF-EMPLOYED DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

JUL 31 2017

MEMORANDUM FOR MICHAEL E. MCKENNEY  
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Mary Beth Murphy   
Commissioner, Small Business/Self-Employed Division

SUBJECT: Draft Audit Report – Fiscal Year 2017 Statutory Review of  
Disclosure of Collection Activities on Joint Returns (Audit  
#201730004)

Thank you for the opportunity to review the subject draft report. TIGTA is required to annually review and certify the IRS's compliance with Internal Revenue Code (IRC) § 6103(e)(8), which gives joint filer taxpayers who are no longer married or no longer reside in the same household the right to request information regarding the IRS's efforts to collect delinquent taxes on their joint tax return liabilities.

We recognize that taxpayers who are divorced or separated but are still jointly liable for a tax debt can be in a difficult position, and we are committed to providing them the information the statute allows in order to help them to resolve their tax liabilities. As a result of last year's TIGTA audit on this subject, we updated instructions to our employees in the Internal Revenue Manual (IRM). We also provided training to our Field Collection and Automated Collection System (ACS) employees, and revised training for Accounts Management employees.

This year TIGTA interviewed a sample of ACS employees and found some were uncertain as to what information can be disclosed when a "mirrored account" has been established. (Mirrored accounts separate a joint account into two accounts so that the accounts of the jointly liable taxpayers can reflect differences that may be unique to one of the spouses.) TIGTA also indicated in the report that it would be helpful to provide more specific instructions and examples in guidance to ACS employees, as to whether information regarding specific collection activities may be shared with an ex-spouse.

TIGTA recommended that the Internal Revenue Manual be updated to provide ACS employees with more detail and examples of collection activity and mirrored account information that may be disclosed to a spouse under I.R.C. §§ 6103(3)(7) and (e)(8). We agree to provide this guidance to our ACS employees.



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We will continue our efforts to provide good customer service and appropriate information when responding to requests made under these sections of the IRC. Attached is a detailed response outlining our planned corrective action. If you have any questions, please contact me, or a member of your staff may contact Scott Prentky, Director, Collection, at (954) 991-4326.

Attachment



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***Fiscal Year 2017 Statutory Review of  
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Attachment

**RECOMMENDATION 1:**

The Director, Collection, should update the IRM to provide ACS employees with more detail and examples of collection activity and mirrored account information that may be disclosed to a spouse who has been assessed a joint tax when he or she requests information (orally or in writing) under I.R.C. §§ 6103(e)(7) and (e)(8).

**CORRECTIVE ACTIONS:**

We agree to revise IRM 5.19.5 with additional guidance and examples of collection activity and mirrored account information that may be disclosed to a spouse who has been assessed a joint tax when he or she requests information orally or in writing under I.R.C. §§ 6103(e)(7) and (e)(8).

**IMPLEMENTATION DATE:**

May 15, 2018

**RESPONSIBLE OFFICIAL:**

Director, Collection Inventory Delivery & Selection, SB/SE

**CORRECTIVE ACTION MONITORING PLAN:**

IRS will monitor this corrective action as part of our internal management system of controls.