



Georgia Department of Revenue
Policy Bulletin ADMIN-2019-03
Confidentiality and Disclosure of Taxpayer and Return Information

Purpose: The Georgia Department of Revenue (referred to as “DOR” or the “Department” throughout) is committed to protecting the confidentiality of taxpayer and return information. The purpose of this Policy Bulletin is to describe the Department’s statutory obligation to maintain the confidentiality of taxpayer and return information, as well as the authority granted to the Department to disclose such information in the performance of its core functions.

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Authority: O.C.G.A. §§ 48-2-1, 48-2-6.1, 48-2-15, 48-2-15.1, 48-7-59, 48-7-60, 48-7-61, 48-7-170, 48-5-314, 48-13-15, 48-15-10; Internal Revenue Service Publication 1075; and 26 U.S.C. § 6103.

Scope: A Policy Bulletin is intended to provide guidance to the public and to Department personnel, which includes all Department employees, contractors, subcontractors, temporary employees, interns, consultants, and vendors (“DOR personnel”). It is a written statement issued to apply principles of law to a specific or general set of facts relating to taxpayers. A Policy Bulletin is the Department’s position and is binding on DOR personnel until superseded or modified by a change in statute, regulation, court decision, or subsequent Policy Bulletin.

Summary: This Policy Bulletin explains the Georgia laws concerning taxpayer and return information, the circumstances under which DOR personnel are permitted to disclose taxpayer and return information to a third party, the procedures for obtaining and revoking a taxpayer’s express written authorization to disclose taxpayer and return information to a third party, and the procedures and guidelines for Department personnel regarding the handling, retention, and destruction of taxpayer and return information.

Discussion:

1. DEFINITION OF “RETURN INFORMATION”

Georgia revenue laws broadly define the term “return information” as any information secured by the commissioner incident to the administration of any tax law.

Georgia has adopted the definition of “return information” provided by the federal confidentiality statute, 26 U.S.C. § 6103.¹ Federal courts have consistently held that 26 U.S.C. § 6103 must be read broadly and

¹ See *Bowers v. Shelton*, 265 Ga. 247 (1995).

inclusively to protect taxpayer information.² The federal definition of “return information” includes: a taxpayer’s identity; the nature, source, or amount of 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 with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense; and any part of any written determination or any background file document relating to such written determination.³

2. CONFIDENTIALITY STATUTES

The Department has the authority to administer and enforce the revenue laws of Georgia.⁴ However, the Legislature has placed certain restrictions on the actions that the Department may reasonably take. One such restriction limits the Department’s authority to release information gathered in the course of administering the revenue laws to third parties.⁵

Confidentiality of Taxpayer Information (O.C.G.A. § 48-2-15):⁶

Information secured by DOR personnel incident to the administration of any tax is confidential and privileged.

Note: O.C.G.A. § 48-2-15 does not apply to the confidentiality of income tax information, which is specifically addressed in O.C.G.A. § 48-7-60.

- a. **Prohibition Against Unauthorized Disclosure.** Subject to the exceptions listed below, DOR personnel must not disclose any such confidential information to anyone other than the commissioner, any DOR personnel, an officer of the state or local government entitled in his or her official capacity to have access to such information, or the taxpayer.⁷ Even this language, however, has been narrowly construed to limit the release of such information to circumstances where there is a statutory provision authorizing such release for a specific purpose, as discussed further below.⁸
- b. **Permissible Disclosures.** O.C.G.A. § 48-2-15 has been narrowly construed to limit the release of taxpayer information to those circumstances where there is explicit statutory authorization for such release.⁹

Some of the exceptions below apply specifically to contract personnel. Generally, disclosures to contract personnel are covered by written agreement and require specific disclosure procedures. DOR personnel should not disclose any confidential information to contract personnel unless explicitly directed or authorized by a supervisor.

² See *Church of Scientology v. Internal Revenue Service*, 484 U.S. 9 (1987).

³ 26 U.S.C. § 6103(b)(2).

⁴ O.C.G.A. § 48-2-1

⁵ See O.C.G.A. §§ 48-2-15 (confidentiality of taxpayer information, generally) and 48-7-60 (confidentiality of income tax information).

⁶ O.C.G.A. § 48-2-15.

⁷ O.C.G.A. §§ 48-2-15(a) and 48-15-10(a).

⁸ *Op. Att’y Gen.* 1954-56, p. 828

⁹ See *Op. Att’y Gen.* 1954-56, p. 828; O.C.G.A. § 48-7-60(e).

- i. The following are permissible disclosures:
 1. The commissioner is permitted to disclose return information to persons authorized to collect delinquent tax liabilities on behalf of the state.¹⁰
 2. Contract personnel authorized by appropriate tax administrators may access materials otherwise protected as confidential.¹¹ For instance, boards of tax assessors have authority to contract for audit services under O.C.G.A. § 48-5-298(a)(3). By entering into such a contract, the contractor is authorized access to confidential materials essential to the performance of the contract.
- ii. Additionally, the law allows the Department to make disclosures in certain circumstances:¹²
 1. Use of a taxpayer's confidential information as evidence before any state or federal court in the event of litigation involving the tax liability of any taxpayer.¹³
 2. The publication of statistics so arranged as not to reveal information respecting an individual taxpayer.¹⁴
 3. Any official finding of the commissioner with respect to any assessment or any information properly entered upon an assessment roll or other public record.¹⁵ An example would be a writ of *fieri facias*, which is a writ ordering a levy on the belongings of a taxpayer to satisfy a debt owed to DOR.
 4. Any information which in the regular course of business is by law made the subject matter of a public document in any federal or state office or in any local office in this state, such as sales tax registration.¹⁶
 5. Information, records, and reports required and obtained under certain revenue statutes that require motor fuel distributors to report the amounts of motor fuels sold and used in each county by the distributor.¹⁷
 6. Information respecting any individual taxpayer requested by the House Committee on Ways and Means or the Senate Finance Committee regarding DOR's administration of any tax.¹⁸

¹⁰ O.C.G.A. § 48-2-6.1(b).

¹¹ O.C.G.A. § 48-5-314(a)(1).

¹² O.C.G.A. § 48-2-15(b).

¹³ O.C.G.A. § 48-2-15(b)(1).

¹⁴ O.C.G.A. § 48-2-15(b)(2).

¹⁵ O.C.G.A. § 48-2-15(b)(3).

¹⁶ O.C.G.A. § 48-2-15(b)(4).

¹⁷ O.C.G.A. § 48-2-15(b)(5).

¹⁸ O.C.G.A. § 48-2-15(b)(6).

7. Information, records, and reports required and obtained under certain revenue statutes relating to the road tax on motor carriers.¹⁹
- c. **Commissioned Research.** Third parties are permitted to access confidential tax information when necessary to conduct research commissioned by the Department or for data processing operations and maintenance of data processing equipment.
 - i. Contracting third parties must abide by the same confidentiality requirements expected of DOR personnel, and any person who divulges or makes known any tax information will be subject to the same civil and criminal penalties as those provided for divulgence of information by DOR personnel.²⁰
 - ii. As noted above, disclosures to contract personnel are generally covered by written agreement and require specific disclosure procedures. DOR personnel must not disclose any confidential information to contract personnel unless explicitly directed or authorized by a supervisor.
 - iii. Contracting third parties must have express written authorization from the commissioner and be subject to the Department's security controls. Additionally, pursuant to IRS Publication 1075 and O.C.G.A. § 48-2-6, contracting third parties must undergo thorough criminal history checks through the Federal Bureau of Investigation and Georgia Bureau of Investigation's fingerprint databases.
- d. **Penalties for Unlawful Divulgence of Confidential Information.** Unlawful divulgence of the confidentiality provisions is punishable as a misdemeanor.²¹

Confidentiality of Income Tax Information (O.C.G.A. § 48-7-60):

Income information or any other information in any report or return is confidential when the information was received by the Internal Revenue Service or submitted by the taxpayer.²² The Department uses both state tax information (STI) and federal tax information (FTI) in the administration of Georgia income tax laws. The Department's policies regarding confidential taxpayer and return information, disclosure of such information, and taxpayer authorizations must strictly adhere to both federal and state statutes, policies, and regulations.

- a. **DOR's Authority to Access Federal Information.** DOR personnel have the right to inspect a taxpayer's federal returns when necessary to properly audit the taxpayer's state returns.²³
- b. **Prohibition Against Unauthorized Disclosure.** Unless there is a judicial order or an applicable statutory provision, the commissioner, or any DOR personnel may not divulge or make known in any manner the amount of income or any other details set forth or disclosed in any report or return required by Georgia law or any return or return information required by the Internal Revenue Code when the information or return is received from the Internal Revenue Service or submitted by the taxpayer.

¹⁹ O.C.G.A. § 48-2-15(b)(5).

²⁰ O.C.G.A. § 48-2-15(e).

²¹ O.C.G.A. §§ 48-2-15, 48-2-35, 48-13-15.

²² O.C.G.A. § 48-7-60.

²³ O.C.G.A. § 48-7-59

- c. **Permissible Disclosures.** The confidentiality of income tax return information of tax returns or return information is not absolute, however, and the law provides for the following exceptions:
- i. Information provided to the Attorney General, the Internal Revenue Service, or the proper officer of other states, for inspection or as evidence in the event of an action involving the tax liability of the taxpayer.²⁴
 - ii. Tax returns or return information may be available for public inspection where the documents are contained in a court record, which is not otherwise under seal.²⁵
 - iii. Tax returns or return information may be presented in response to a subpoena only when such returns are directly in issue.²⁶
- d. **Penalties for Unlawful Divulgence of Confidential Information.** Divulging a taxpayer's confidential income tax information to anyone other than the taxpayer without express written authorization is against the law.²⁷ DOR personnel who divulge confidential taxpayer income tax information without express authorization may be charged with a misdemeanor.²⁸ This obligation to maintain the confidentiality of taxpayer and return information also extends to former employees of DOR.²⁹

3. TAXPAYER AUTHORIZATIONS FOR DISCLOSURE

Requirement of Express Written Authorization:

- a. Confidential taxpayer information or other related records may be disclosed to or discussed with another party if the taxpayer has granted express written authorization to the commissioner or DOR personnel.³⁰
- b. Subject to the statutory exceptions detailed above, DOR personnel who receive a request to disclose taxpayer or return information from anyone other than the commissioner, DOR personnel, an officer of the state or local government entitled in his or her official capacity to have access to such information, or the taxpayer must obtain express written authorization from the taxpayer before disclosing the information. This has been narrowly construed to limit the release of such information to circumstances where there is a statutory provision authorizing such release for a specific purpose.³¹

²⁴ O.C.G.A. § 48-7-60(a) and (b).

²⁵ O.C.G.A. § 48-7-60(c).

²⁶ *Garrett v. State*, 243 Ga. 322, 327 (1979).

²⁷ "It is unlawful for any person to violate any provision of Code Section 48-7-60 when the violation involves the divulging of information concerning income taxes." O.C.G.A. § 48-7-61(a).

²⁸ O.C.G.A. § 48-7-61(b).

²⁹ O.C.G.A. § 48-7-60(a).

³⁰ O.C.G.A. § 48-2-15.1.

³¹ *Op. Att'y Gen.* 1954-56, p. 828

- c. Statutory provisions do not require a specific written format for taxpayer authorization.³² However, the statutory provision is clear that the authorization must be provided to DOR in writing before any confidential taxpayer or return information can be shared with a taxpayer's representative. Unless specifically authorized by policy, statute, or regulation, oral authorizations are not to be accepted by any DOR personnel.

Acceptable Forms of Taxpayer Authorizations:

- a. **Power of Attorney (Form RD-1061).** Form RD-1061, titled "Power of Attorney and Declaration of Representative," is one of three DOR-created forms that taxpayers may use to authorize DOR personnel to share confidential taxpayer and return information with third parties. This form confers broad powers to the taxpayer's representative.
 - i. Authorized Representative: Attorneys, certified public accountants, enrolled agents/actuaries, and any other individuals authorized by the taxpayer.
 - ii. Level of Authority: The taxpayer may elect to limit the powers granted to his or her representative by checking specific powers on Form RD-1061. Form RD-1061 only authorizes representatives to perform the acts indicated on the form. Specifically, Form RD-1061 enables a representative to perform the following acts with respect to a certain tax type and period:
 - 1. Make payments on behalf of the taxpayer;
 - 2. Receive, but not endorse and collect, checks in payment of any refund or tax, penalty, or interest;
 - 3. Execute waivers (and related documents) of restrictions on assessment or collection of tax deficiencies and waivers of any other rights of taxpayer;
 - 4. Execute consents extending the statutory period for assessment, collection, or refund of taxes;
 - 5. File protests and appeals from notices of assessment and represent taxpayer in conferences and hearings;
 - 6. Execute claims for refund;
 - 7. Receive confidential information pertaining to these tax matters; and/or
 - 8. Perform all other lawful acts on behalf of the taxpayer concerning the tax matters listed on the form.

³² O.C.G.A. § 48-2-15.1.

- iii. Revocation of Authority: The filing of a new Form RD-1061 revokes the authority of the prior authorized representative for the same matters and periods covered by the new Form RD-1061, unless DOR has received the taxpayer's express authorization. If the new Form RD-1061 covers periods and matters not covered by the previous Form RD-1061 on file with DOR, the prior representative will retain any previously granted authority for those non-covered matters and periods, unless specifically revoked. If the taxpayer or representative wants to revoke an existing authorization, he or she must revoke through the Georgia Tax Center (GTC).
- b. **Disclosure Authorization Form (Form RD-1062)**. Form RD-1062, titled "Disclosure Authorization Form," is the second of the three DOR-created forms that taxpayers may use to authorize DOR to share confidential taxpayer and return information with third parties. Execution of Form RD-1062 permits DOR to disclose certain confidential taxpayer or return information to a taxpayer's designated representative.
 - i. Authorized Representative: Any individuals or appointees authorized by the taxpayer
 - ii. Level of Authorization: This form allows the taxpayer to specify the tax type(s) and period(s) for which confidential information may be disclosed to the designated representative. The representative is not authorized to act on behalf of the taxpayer and is only authorized to a one-time disclosure of information.
 - iii. Expiration: Form RD-1062 may only be used for a one-time disclosure of certain tax information and will expire upon disclosure to the representative.
- c. **Reporting Agent Authorization Form (Form RD-1063)**. Form RD-1063, titled "Reporting Agent Authorization Form," is the last of the three DOR-created forms. This form allows a taxpayer to designate a business entity as the taxpayer's reporting agent.
 - i. Authorized Representative: Business entities
 - ii. Level of Authorization: Form RD-1063 authorizes the reporting agent (and any employee of such reporting agent) to:
 - 1. Sign and file certain returns;
 - 2. Make deposits and payments for certain returns; and/or
 - 3. Discuss confidential taxpayer information as well as notices and communications from DOR related to the authorization granted to the reporting agent. Notices and communications will be sent to the taxpayer, not the reporting agent. The reporting agent may access copies of taxpayer notices and communications via third party access to the taxpayer's account through GTC.
 - iii. Revocation: The filing of a new Form RD-1063 revokes the authority of the prior reporting agent beginning with the period indicated on the new Form RD-1063. The prior reporting

agent is still an authorized reporting agent and retains any previously granted disclosure authority for the periods prior to the beginning period of the new reporting agent's authorization unless specifically revoked. If the taxpayer or reporting agent wants to revoke an existing authorization, he or she must revoke through GTC.

- d. **Federal Authorization Forms.** Georgia does not have a specific statute, regulation, or policy statement authorizing the Department to recognize any federal authorization form. Although DOR prefers that a Georgia authorization form be executed, it will accept a federal Power of Attorney (Internal Revenue Service Form 2848) in lieu of a Georgia form.
 - i. Power of Attorney and Declaration of Representative (IRS Form 2848): Form 2848 allows a taxpayer to authorize an individual to: represent the taxpayer before the Internal Revenue Service; receive and inspect the taxpayer's confidential tax information; perform any and all acts the taxpayer can perform, such as signing consent agreements that extend the time to assess tax, recording the interview, or executing waivers agreeing to a tax adjustment; substitute another representative or delegate authority to another representative by adding this authority to the form; and/or in limited situations, grant the power to sign tax returns.
 - ii. Tax Information Authorization (IRS Form 8821): Form 8821 is more limited and allows a taxpayer to authorize an individual or organization to receive or inspect confidential tax return information. It does not authorize the individual or organization to represent a taxpayer before the Internal Revenue Service.
- e. **Checkbox Authorization on Certain Georgia Income Tax Forms.** Certain Georgia tax forms (Georgia Forms 500, 500EZ, and 600) contain a checkbox which, when checked by the taxpayer, allows DOR to share certain confidential taxpayer and return information with the preparer named on the return. The checkbox must be visibly marked on the form and the form must be signed by the taxpayer. The name of the preparer must be an individual.
 - i. A checked box also allows the named preparer to discuss the contents of that return only. The preparer may also:
 - 1. Exchange information concerning the taxpayer's return with the Department;
 - 2. Call the Department for information concerning processing of the taxpayer's return or the status of the taxpayer's refund or payments;
 - 3. Request and receive written tax return information relating to the taxpayer's return, including copies of notices, correspondence, and account transcripts; and
 - 4. Respond to certain Department notices concerning mathematical errors, offsets, and return preparation.
 - ii. Before sharing confidential information with the named preparer, DOR personnel must first confirm that the box was checked. This confirmation can be achieved by reviewing the original

paper return in the DOR's Document Management System or the e-filed return through the GTC.

- f. **Disclosure of Confidential Taxpayer and Return Information Relating to Deceased Taxpayers.** The return of a deceased taxpayer shall, upon written request, be open to inspection by or disclosure to the administrator, executor, or trustee of his or her estate.
- i. The return of a deceased taxpayer shall, upon written request, be open to inspection by or disclosure to any heir at law, next of kin, or beneficiary under the will of such deceased taxpayer, but only if the commissioner finds that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained in the return.³³
 - ii. Any person seeking disclosure of a deceased taxpayer's return must submit the request in writing to the commissioner along with a copy of the deceased taxpayer's death certificate.
 - iii. If a refund check was issued in the name of a deceased taxpayer, the surviving spouse, court-appointed personal representative, administrator, trustee, or other qualified individual may request reissuance of the refund check by submitting a Form GA-5347 (Deceased Taxpayer Refund Check Claim Form) to the Department.

4. CONFIRMATION OF REPRESENTATIVE'S IDENTITY

DOR personnel must adhere to the requirements in **TSD Policy #001 – Customer Verification Policy** to verify the identity of any person claiming to be a taxpayer's authorized representative. TSD Policy #001 must be followed whether the encounter takes place in person, over the telephone, via e-mail, or through any other means of communication. DOR personnel must verify that the representative has the taxpayer's written consent on file with the Department before discussing any taxpayer account information with the individual.

5. ADDITIONAL QUESTIONS

DOR personnel must be familiar with the disclosure rules and confidentiality requirements set out in this Policy Bulletin. If there is any uncertainty with regard to a request for disclosure or any other request related to the Department's confidentiality obligations, questions should be directed to the Office of the General Counsel at the number or email address listed below.

FOR MORE INFORMATION

For more information, on this subject, please contact the Department at (404) 417-6649 or ogc@dor.ga.gov from 8:00 a.m. to 4:30 p.m. ET, Monday through Friday, excluding holidays.

For forms and other information, visit the Department's website: dor.georgia.gov.

³³ 26 U.S.C § 6103(e)(3).