



**Georgia Department of Revenue
Policy Statement 2007-10-10
Confidentiality of Taxpayer and Return Information,
Disclosure of Confidential Information to Third Parties,
And Taxpayer Authorizations**

1) Purpose:

- a) The purpose of this document is to explain:
 - i) The Georgia laws concerning confidential taxpayer and return information;
 - ii) The circumstances under which Department personnel are permitted to disclose taxpayer and return information to a third party;
 - iii) The procedures for obtaining a taxpayer's express written authorization to disclose taxpayer and return information to a third party;
 - iv) The procedures for revoking a taxpayer's express written authorization to disclose taxpayer and return information to a third party;
 - v) The procedures and guidelines for confirming the identity of a taxpayer or a taxpayer's authorized representative before discussing or disclosing confidential taxpayer and return information;
 - vi) The procedures and guidelines for Department personnel with respect to the handling, retention, and destruction of taxpayer and return information.

2) Scope:

- a) This policy applies to all employees of the Georgia Department of Revenue (hereinafter referred to as "the Department").

3) Applicable Statutory Authority:

- a) The Department's Authority to Administer and Enforce Revenue Laws vs. Its Obligation to Protect Confidential Taxpayer and Return Information.

- i) Generally, the Department has the authority to administer and enforce the revenue laws of Georgia. O.C.G.A. § 48-2-1. However, the Legislature has placed certain restrictions on the actions that the Department may reasonably take in its administration of the revenue laws. One such restriction limits the Department's authority to release information gathered in its administration of the revenue laws to third parties, except under specific circumstances. See O.C.G.A. §§ 48-2-15 (confidentiality of taxpayer information in general) and 48-7-60 (confidentiality of income tax information).
- b) Confidentiality of Taxpayer Information in General: O.C.G.A. § 48-2-15.
 - i) The confidentiality of taxpayer information in general is set forth in Code Section 48-2-15, which provides that “[e]xcept as otherwise provided in this Code section, information secured by the commissioner incident to the administration of any tax shall be confidential and privileged. Neither the commissioner nor any officer or employee of the department shall divulge or disclose any such confidential information obtained from the department's records or from an examination of the business of any taxpayer to any person other than the commissioner, an officer or employee of the department, an officer of the state or local government entitled in his official capacity to have access to such information, or the taxpayer.” O.C.G.A. § 48-2-15(a).
 - ii) The language in Code Section 48-2-15 has been narrowly construed to limit the release of taxpayer information to those circumstances where there is a statutory provision authorizing such release for a specific purpose. *Op. Att’y Gen.* 1954-56 p. 828.
 - iii) Examples
 - (1) The commissioner is authorized by statute to disclose return information to persons authorized to collect delinquent tax liabilities on behalf of the state. O.C.G.A. § 48-2-6.1(b).
 - (2) Code Section 48-5-314(a)(1) allows contract personnel authorized by appropriate tax administrators to access materials otherwise protected as confidential. It is settled that boards of tax assessors have authority to contract for audit services. O.C.G.A. § 48-5-298(a)(3). It follows that

entering into such a contract “authorizes” the contractor access to confidential materials essential to the performance of the contract. However, while Code Section 48-5-314(a)(1) allows authorized personnel access to confidential materials, subsection (b) makes the disclosure of confidential materials to unauthorized persons subject to a civil penalty not to exceed \$1,000.

- iv) See also O.C.G.A. § 48-2-15(b) (for a list of specific instances where commissioner is permitted to disclose certain taxpayer or return information).
- (1) The confidentiality statute does not prevent the 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. O.C.G.A. § 48-2-15(b)(1).
 - (2) The confidentiality statute does not prevent the publication of statistics so arranged as not to reveal information respecting an individual taxpayer. O.C.G.A. § 48-2-15(b)(2).
 - (3) The confidentiality statute does not apply to any official finding of the commissioner with respect to any assessment or any information properly entered upon an assessment roll or other public record. O.C.G.A. § 48-2-15(b)(3). An example would be a writ of *feri facias*, which is a writ ordering a levy on the belongings of a taxpayer to satisfy a debt owed to the Department.
 - (4) The confidentiality statute does not affect 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. O.C.G.A. § 48-2-15(b)(4). An example would be sales tax registrations.
 - (5) The confidentiality statute does not apply to 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. O.C.G.A. § 48-2-15(b)(5).

- (6) The confidentiality statute does not apply to information, records, and reports required and obtained under certain revenue statutes relating to the road tax on motor carriers. O.C.G.A. § 48-2-15(b)(5).
- v) Code Section 48-2-15 does not apply to the confidentiality of *income* tax information, which is specifically addressed in Code Section 48-7-60. O.C.G.A. § 48-2-15(c).
- vi) In 2006, O.C.G.A. § 48-2-15 was amended to ensure that tax information obtained by third parties contracting with the Department of Revenue will fall under confidentiality requirements. This was necessary to allow electronically filed sales and use tax returns to be processed in a manner similar to that allowed for withholding tax returns as already provided in Chapter 7.
- (1) Code Section 48-2-15 does not “prohibit persons or groups of persons other than employees of the department from having access to tax information when necessary to conduct research commissioned by the department and when necessary for data processing operations and maintenance of data processing equipment, provided the persons or groups of persons have obtained prior written approval from the commissioner and are subject to the direct security control of department personnel during all periods of access. Any person who divulges or makes known any tax information obtained under this subsection shall be subject to the same civil and criminal penalties as those provided for divulgence of information by employees of the department.” O.C.G.A. § 48-2-15(e).
- c) Confidentiality of Income Tax Information
- i) Because the Department uses federal tax information in the administration of Georgia income tax laws, its policy regarding confidential taxpayer and return information, disclosure of such information, and taxpayer authorizations must strictly adhere to both federal and state statutes and regulations.
- ii) The Commissioner has the right to inspect the federal returns of a taxpayer if necessary to properly audit the taxpayer's state returns. “Whenever in the opinion of the commissioner it is necessary to examine any copy of the federal income tax returns of any taxpayer in order to audit properly the state returns

of the taxpayer, the commissioner shall have the right to examine the federal returns and all statements, inventories, and schedules in support of the returns.” O.C.G.A. § 48-7-59.

- iii) The confidentiality of income tax information is addressed in Code Section 48-7-60(a). That section provides in relevant part that “[e]xcept in accordance with proper judicial order or as otherwise provided by law, it is unlawful for the commissioner, other officer, employee, or agent or any former officer, employee, or agent to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under the law of this state 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 as provided by the law of this state.” O.C.G.A. § 48-7-60(a).
- iv) The confidentiality of tax returns or return information is not absolute. Under O.C.G.A. §§ 48-7-60(a) and (b), exemptions are provided for 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. In addition, 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.
- v) Georgia revenue laws broadly define the term “return information” as “any information secured by the commissioner incident to the administration of any tax law.” O.C.G.A. § 48-2-6.1(a).
- vi) Also, for purposes of defining the type of information protected by Code Section 48-7-60, Georgia courts have adopted the definition of “return information” provided by the federal confidentiality statute, 26 U.S.C. 6103. See Bowers v. Shelton, 265 Ga. 247 (1995). Federal courts have consistently held that 26 U.S.C. 6103 must be read broadly and inclusively to protect taxpayer information. See Church of Scientology v. Internal Revenue Service, 484 U.S. 9 (1987).

vii) The federal definition of “return information” includes, in relevant part, “[a] taxpayer’s identity, the nature, source, or amount of his 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.” 26 U.S.C. 6103(2).

d) Penalties for Unlawful Divulging of Confidential Information

- i) Divulging a taxpayer’s confidential income tax information to anyone other than the taxpayer without express written authorization is against the law. “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).
- ii) Department personnel who divulge confidential taxpayer income tax information without express authorization may be charged with a misdemeanor. “Any person who violates Code Section 48-7-60(a) shall be guilty of a misdemeanor.” O.C.G.A. § 48-7-61(b).
- iii) Department personnel who divulge confidential taxpayer income tax information without express authorization may be terminated from employment with the Department. In addition to the penalty provided in Code Section 48-7-61(b), if the offender is an officer or employee of the state, he shall be dismissed from office and shall be incapable of holding any public office in this state for a period of five years after his dismissal. O.C.G.A. § 48-7-61(c).
- iv) The obligation to maintain the confidentiality of taxpayer and return information also extends to former employees of the Department.

4) Taxpayer Authorizations:

- a) Express Written Authorization to Disclose: Code Section 48-2-15.1 provides that “[n]otwithstanding any other provision of law to the contrary, confidential taxpayer information or records with respect to which the taxpayer has granted express written authorization to the commissioner or an officer or employee of the department may be disclosed to or discussed with another party.” O.C.G.A. § 48-2-15.1.
- b) When Express Written Authorization is Required: Georgia law prohibits disclosure of confidential taxpayer or return information to any person other than the commissioner, an officer or employee of the department, an officer of the state or local government entitled in his official capacity to have access to such information, or the taxpayer. O.C.G.A. § 48-2-15(a). Department employees who receive a request to disclose taxpayer or return information from anyone other than those parties listed in Code Section 48-2-15(a) must obtain express written authorization from the taxpayer before disclosing the information.

5) Acceptable Forms of Taxpayer Authorizations:

- a) Statute Does Not Require Specific Format
 - i) Code Section 48-2-15.1 does not specify the format of the express written authorization that must be provided to the Department before confidential information will be discussed with a taxpayer’s representative, and the Department has not issued a regulation addressing the issue. O.C.G.A. § 48-2-15.1.
 - ii) Code Section 48-2-15.1 does require that the authorization must be provided to the Department in writing before any confidential taxpayer or return information can be shared with a taxpayer’s representative. O.C.G.A. § 48-2-15.1. Oral authorizations are not to be accepted by any employee of the Department for any purpose.
- b) Power of Attorney – Georgia Form RD-1061
 - i) The Power of Attorney (Form RD-1061) is one of two Department-created forms that taxpayers may use to authorize the Department to share confidential taxpayer and return information with third parties.

- (1) A power of attorney is the taxpayer's written authorization for an individual third party to act on the taxpayer's behalf in tax matters. This form confers broad powers to the taxpayer's representative. It allows the representative of the taxpayer to do much more than *receive* confidential taxpayer or return information.
- (2) The taxpayer can elect to limit the powers granted to his representative by striking out any of the specific powers listed on a Power of Attorney (Form RD-1061). If the authorization is not limited, the individual can generally perform all acts that the taxpayer can perform.
- (3) Unless a certain power is specifically crossed out on the form, a representative can perform the following acts (as listed on the Power of Attorney (Form RD-1061) with respect to a specific tax matter:
 - (a) Receive, but not endorse or collect, checks in payment of any refund of tax, penalty or interest;
 - (b) Execute waivers (and related documents) of restrictions on assessment or collection of tax deficiencies and waivers of any other rights of the taxpayer;
 - (c) Execute consents extending the statutory period for assessment, collection or refund of taxes;
 - (d) Receive all notices pertaining to the specified tax matter;
 - (e) Represent the taxpayer in conferences and hearings, file appeals from notices of assessment, and execute claims for refund;
 - (f) Receive confidential information pertaining to the specified tax matter;
 - (g) Delegate authority or substitute another representative (see paragraph (4) below); or
 - (h) Do all the lawful acts and things whatsoever concerning the specified tax matter in every respect as the taxpayer could do were the taxpayer personally present at the doing thereof.
- (4) Under the power of attorney, a recognized representative can substitute or delegate authority to another representative, but only if that power is specifically authorized under the power of attorney (not lined out on the

list of powers on the Power of Attorney (Form RD-1061). If a *substitution of power* is made, only the new representative will be recognized as the taxpayer's authorized representative. If a *delegation* of power is made, both the original and the delegated representative will be recognized by the Department as authorized representatives of the taxpayer. In order to accomplish a delegation or substitution, the original representative must submit a written authorization to the Department with the original Power of Attorney (signed by the taxpayer) attached. This written authorization may be in the form of a second Power of Attorney (Form RD-1061), a Disclosure Authorization Form (Form RD-1062), or a written letter containing all of the required information.

(5) A power of attorney is not required when the taxpayer merely wants to authorize the Department to discuss and disclose specific confidential taxpayer and return information to a designated representative. Taxpayers should use a Disclosure Authorization Form (Form RD-1062) for that purpose (see below).

c) Disclosure Authorization Form - Form RD-1062

- i) The Disclosure Authorization Form (Form RD-1062) is the second of two Department-created forms that taxpayers may use to authorize the Department to share confidential taxpayer and return information with third parties.
- ii) The taxpayer's execution of this form permits the Department to disclose certain confidential taxpayer or return information to a taxpayer's designated representative.
- iii) This form allows the taxpayer to specify the tax type and periods for which confidential information may be disclosed to the designated representative.
- iv) This form confers limited powers to the designated representative compared to the Power of Attorney (Form RD-1061). Pursuant to a Disclosure Authorization Form (Form RD-1062), the designated representative is not authorized to act on behalf of the taxpayer – he may only receive certain confidential information and discuss it with Department personnel.

d) Federal Authorization Forms

- i) Georgia does not have a specific statute, regulation, or policy statement that authorizes the Department to recognize any federal authorization form in lieu of any Georgia form. However, although the Department *prefers* that a Georgia authorization form be executed, it will accept a federal Power of Attorney (Internal Revenue Service Form 2848) and a Taxpayer Information Authorization (Internal Revenue Service Form 8821) in lieu of a Georgia form.
 - ii) Internal Revenue Service Form 2848 allows a taxpayer to authorize an individual to represent him before the Internal Revenue Service. A taxpayer's authorization of a qualifying representative also allows the representative to receive and inspect the taxpayer's confidential tax information. This form authorizes the representative to 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. Also, the taxpayer may authorize the representative to substitute another representative or delegate authority to another representative by adding this authority to the form. Additionally, the power to sign tax returns can be granted in limited situations.
 - iii) The scope of Internal Revenue Service Form 8821 is more limited. It 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) Taxpayer's Written Letter of Authorization
- i) In lieu of submitting one of the aforementioned state or federal forms, the taxpayer may also authorize the disclosure of confidential taxpayer or return information by submitting a signed letter of authorization via the United States Postal Service, facsimile, or e-mail attachment. This letter of authorization must contain the same information required by a Power of Attorney (Form RD-1061) or a Disclosure Authorization Form (Form RD-1062). The required information includes:
 - (1) Taxpayer name, address, and telephone number;

- (2) Taxpayer's federal employer identification number (FEIN) or Social Security number (SSN) and/or other registration numbers (such as a Georgia state tax identification number (STI), Georgia sales tax number (STN), or Georgia withholding number (WHN), etc.);
 - (3) Name, address, and telephone number of authorized representative;
 - (4) Specific tax type(s) and tax period(s) for which power is being granted;
 - (5) Specific powers being granted;
 - (6) Signature of taxpayer; and
 - (7) Signature of notary, if applicable (when representative is not a Certified Public Accountant or attorney).
- f) Checkbox Authorization on Certain Georgia Income Tax Forms
- i) Certain Georgia tax forms (Georgia Forms 500, 500EZ, and 600) contain a checkbox which, when checked by the taxpayer, allows the Department to share certain confidential taxpayer and return information with the preparer named on the return.
 - ii) The checkbox must be visibly marked on the form signed by the taxpayer.
 - iii) The name of the preparer must be an individual.
 - iv) A checked box on a return authorizes the Department to contact the preparer named on the return to discuss the contents of that return only.
 - v) A checked box also allows the named preparer to:
 - (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.
 - vi) Before sharing confidential information with the named preparer, Department personnel must first confirm that the box was checked. This confirmation can

be achieved by reviewing the original paper return in the Department's Document Management System or the e-filed return in the Department's Individual Income Tax System.

g) Disclosure of Confidential Taxpayer and Return Information Relating to Deceased Taxpayers

- i) 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 estate.
- ii) 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.
- iii) 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.

6) Authorized Representatives:

a) Individual

- i) Only an individual (or a list of individuals) may be named as a taxpayer's authorized representative(s). Department personnel may disclose confidential taxpayer or return information only to the individual(s) specifically listed on the written authorization provided by the taxpayer.
- ii) If a taxpayer wants to name more than four representatives on a Power of Attorney (Form RD-1061), he may submit the additional names on an attached page that has been signed and dated by the taxpayer.

b) Firms, Companies, or Other Business Entities

- i) No firm, company, or other business entity shall be recognized by the Department as a valid representative authorized to receive or discuss confidential taxpayer and return information.
- ii) When the Department receives a taxpayer's written authorization that attempts to designate a firm, company, or other business entity as a taxpayer's

representative, the Department will advise the taxpayer that it cannot discuss any confidential taxpayer and return information until a correctly prepared authorization has been received by the Department.

iii) Example: If a taxpayer names one individual from an accounting firm as his authorized representative, employees of the Department are not authorized to discuss confidential taxpayer or return information with anyone other than the taxpayer or that specific representative, including other members of the representative's accounting firm. In this situation, the Department would require either: 1) a revised authorization from the taxpayer adding another individual representative; or 2) a second authorization from the representative that substitutes or delegates authority to someone else.

7) Confirmation of Representative's Identity:

- a) Department personnel must adhere to the following guidelines in order to verify the identity of any person claiming to be a taxpayer's authorized representative. These guidelines must be followed whether the encounter takes place in person, over the telephone, via e-mail, or through any other means of communication.
- b) Face to Face Meeting: Department personnel should ask the representative to provide identification (preferably a form of photo identification, such as a driver's license) that confirms his or her identity.
- c) Other Contact: Department personnel should ask the representative to answer a series of questions to verify the representative's identity, which depending upon the facts and circumstances of the taxpayer, could include questions concerning the following information:
 - i) Representative's name;
 - ii) Taxpayer's name;
 - iii) Taxpayer's identification or registration number;
 - iv) Tax type and periods authorized by taxpayer;
 - v) Taxpayer's Adjusted Gross Income on the specific return in question;
 - vi) Taxpayer's Georgia taxable income on the specific return in question; or
 - vii) Taxpayer's itemized deductions.

8) Examples of the Type of Confidential Taxpayer and Return Information That Employees Are Permitted to Share with Third Parties Pursuant to the Taxpayer's Express Written Authorization:

- a) Authority to Divulge Whether Taxpayer's Account is Under Audit or Investigation. Department personnel can disclose this type of information if the representative is granted power under a Power of Attorney (Form RD-1061) or Letter of Authorization (if this power is not lined out on the Power of Attorney or is specifically listed in the letter). Further, Department personnel can disclose this type of information if the representative is granted power under a Disclosure Authorization Form (Form RD-1062) or via a checked box (but only if the audit or investigation relates to the specific tax type and period authorized).
- b) Authority to Divulge Whether Notices Have Been Issued and to Discuss Content of Such Notices. Department personnel can disclose this type of information if the representative is granted power under a Power of Attorney (Form RD-1061) or Letter of Authorization (if this power is not lined out or is specifically listed in the letter). Further, Department personnel can disclose this type of information if the representative is granted power under a Disclosure Authorization Form (Form RD-1062) or via a checked box (but only if the audit or investigation relates to the specific tax type and period authorized).
- c) Authority to Make Certain Changes Pursuant to Representative's Request
 - i) Department personnel may make certain changes pursuant to a request from a representative with a Power of Attorney (Form RD-1061). Pursuant to Division policies, personnel may be required to seek a manager's approval before making such changes at the request of a designated representative.
 - ii) Department personnel may not make changes pursuant to a request from a representative who holds a valid Disclosure Authorization Form (Form RD-1062). That form only authorizes the representative to *receive* information about the taxpayer and discuss it with Department personnel. The representative does not have the *authority* to request that changes be made on behalf of the taxpayer.
 - iii) Changes requested under any other circumstances are prohibited.

9) Procedures and Guidelines for the Handling, Retention, and Destruction of Confidential Taxpayer and Return Information:

- a) Department personnel are not authorized to access and review confidential taxpayer or return information unless a specific job-related purpose exists.
- b) Department personnel who access and review confidential taxpayer and return information must use reasonable caution to prevent disclosure of such information to unauthorized persons (i.e., other personnel without a reason to access and review the information, or visiting taxpayers). Personnel should exercise reasonable caution with respect to confidential information in printed format, as well as information on visible computer screens.
- c) Department personnel should dispose of confidential taxpayer or return information that is no longer required to be maintained by placing it in a secure document destruct bin.

10) Disclosure Requests Pursuant to the Georgia Open Records Act:

- a) Requests for disclosure of information pursuant to the Georgia Open Records Act should be referred to Charles Willey, Director of Public Information, at 404-417-2106.

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