



OFFICE OF
CHIEF COUNSEL

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

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INTERNAL REVENUE SERVICE NATIONAL OFFICE CHIEF COUNSEL ADVICE

MEMORANDUM FOR CHRISTOPHER B. STERNER
ASSISTANT DISTRICT COUNSEL
VIRGINIA-WEST VIRGINIA DISTRICT COUNSEL

FROM: David L. Fish
Chief, Branch 4 (Disclosure Litigation) CC:EL:D

SUBJECT: Request for Deviation From Approved National Template for
the Federal Employee Identification Numbers (FEINS)
Initiative

This Chief Counsel Advice responds to your correspondence dated January 13, 1999. This document is not to be cited as precedent.

We have reviewed the model FEIN MOU and amendments which the Virginia-West Virginia District proposes to use for the MOU between the Service and the Virginia-West Virginia District and the West Virginia Tax Authority (WVTC). For the most part, the proposed MOU and amendments correctly carry out the important concept that the state is acting on behalf of the taxpayer, not on behalf of the IRS. However, we have three main areas of concern that should be addressed to accurately reflect the roles of the agencies.

To correctly demonstrate the relationship between the parties, it is best if certain terminology is used consistently. We recognize that this language was taken verbatim from a National Office model. However, we recommended, in a prior correspondence, suggested language to be used in the MOU. Please consult that correspondence for guidance on the proper terminology.

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The next issue concerns the WVTA's "dual" status under the proposed MOU (i.e., first assigning EINs and then receiving tax data from the Service under section 6103(d)). In order to properly reflect WVTA's "dual" status, proposed section 2, Application and Assignment Procedures, paragraph E should contain the following text

The Cincinnati Service Center will provide the WVTC with rejected SS-4 information by striking through the incorrect EIN and replacing it with the taxpayers correct EIN. The SS-4 will be faxed to the WVTC at (304) 558- XXXX. The authority for this disclosure is I.R.C. § 6103(d). The basic and/or implementing agreement between the IRS and WVTC constitute the written request required pursuant to that section.

We also recommend making the MOU itself a valid section 6103(d) request by having it signed by the head of the state tax agency, and having the MOU designate the individuals who are going to receive the return information. In this way, the MOU can also be referenced in paragraph E.

Additionally, paragraph 4, Disclosure of Information– General, should read as follows

The Form SS-4 collected by the state, each item of information on that form, and the conditional FEIN issued by the state, are not tax return information as that term is defined in 26 U.S.C. Section 6103(b). _____ will receive return information from the IRS pursuant to Paragraph E and I.R.C. § 6103(d). Such EIN return information may only be used by the WTVC for state tax administration purposes.

If you have any further questions, please call (202)622-4570.