THETAXBOOK News Release Date: 10/28/26

AI Used by IRS to Select Returns for Audit

Cross References

- *Tax Analysts,* US District Court for the District of Columbia, October 14, 2026

Tax Analysts is a nonprofit tax publisher that produces weekly print and digital journals. It filed a Freedom of Information Act (FOIA) request with the IRS to find out how the IRS uses artificial intelligence (AI) to select tax returns for audit. The IRS denied the request, so Tax Analysts filed a lawsuit in the US District Court for the District of Columbia to obtain the requested information.

Tax Analysts seeks copies of the data cards the IRS's AI models use when deciding which complex partnerships to audit. These data cards are structured summaries of facts about aspects of datasets used in an AI model that can explain the context in which the model is intended to be used.

According to the IRS, the requested data cards describe in detail IRS methods, criteria, and analytical approaches used to identify taxpayers for compliance review. Disclosing this information would reveal how the IRS selects cases for audit.

In general, FOIA gives any person the right to request access to federal agency records and information. However, there are certain exemptions that apply. The IRS cites Exemption 7(E), which allows an agency to withhold information compiled for law enforcement purposes if its release would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. The IRS maintains that this exemption protects much of the information contained in the data cards. If such information were made public, taxpayers, practitioners, or other actors could adjust their reporting behavior to evade detection, thereby undermining the IRS's ability to enforce the tax laws.

The court agreed with the IRS that Exemption 7(E) applies. Because disclosure could reasonably be expected to facilitate circumvention of the law (namely tax evasion) the court found that FOIA's foreseeable harm requirement was also met.

The remaining unresolved issue before the court is segregability. The IRS cannot justify withholding an entire document simply by showing that it contains some exempt material.

The IRS claims that sensitive information is intertwined throughout the records and that no isolated sections could be meaningfully extracted without disclosing protected techniques, procedures, or internal decision-making processes. The court stated that may well be true, but the court has no way of verifying that conclusory claim. The court gave the IRS until November 4, 2026, to clarify why no portions of the requested documents may be released.

© 2026 Tax Materials, Inc.