



Part 5. Collecting Process

Chapter 1. Field Collecting Procedures

Section 2. Remittances, Form 809 and Designated Payments

5.1.2 Remittances, Form 809 and Designated Payments

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Manual Transmittal

November 26, 2014

Purpose

(1) This transmits a topic based revision to IRM 5.1.2, *Field Collection Procedures, Remittances, Form 809, and Designated Payments* to incorporate procedural changes based on ACA provision 1501.

Material Changes

(1) This IRM has only been updated for the Affordable Care Act (ACA) Provision 1501: Requirement to Maintain Minimum Essential Coverage (Individual Shared Responsibility) (IRC §5000A) as identified below. Content unrelated to the ACA provisions was not reviewed for currency or accuracy.

- IRM 5.1.2.8.1.4 was revised to include DPC 36, Voluntary Shared Responsibility Payment (SRP) for use by Field Collection.
- IRM 5.1.2.8.1.8 was added, *DPCs for a Shared Responsibility Payment (SRP) Module*, to describe the DPCs allowed and not allowed for posting payments to SRP modules.

Effect on Other Documents

This IRM supersedes IRM 5.1.2, *Remittances, Form 809, and Designated Payments*, published September 26, 2014.

Audience

The target audience is revenue officers in SB/SE Field Collection (FC).

Effective Date

(01-01-2015)

Related Resources

Field Office Payment Processing page on the Submission Processing website at:http://win.web.irs.gov/SP/Programs_Information/Standard_Proce_Webpages/Field_Office_Pymt_Proc.htm

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5.1.2.1 (06-20-2013) Remittance Processing Overview

1. This IRM provides procedures for Field Collection (FC) remittance processing. All remittances secured by Field Collection (FC) employees (whether in the field or in the office, whether in person or by mail) must be transmitted promptly to meet Service goals for timely deposit. See Title 31, U.S. Code § 3302.
2. These procedures apply primarily to revenue officers (ROs). Procedures for managers and clerical staff are incorporated under the applicable subsection.
3. Submission Processing is responsible for processing the remittances. See the Field Office Payment Processing page website at:http://win.web.irs.gov/SP/Programs_Information/Standard_Proce_Webpages/Field_Office_Pymt_Proc.htm. This site provides a list of the key remittance processing contacts and additional information.

Note:

Much of the information contained on the web site is designated "Official Use Only (OUO)" and the information is primarily for FC employees.

4. Form 795/795A, *Daily Report of Collection Activity*, is used to transmit remittances. Remittances must be sent to the appropriate designated Submission Processing Center on the day they were collected or as soon as possible the next business day to meet Service goals for timely deposit and avoid unnecessary delays in processing. See *IRM 5.1.2.4, Daily Report of Collection Activity — Form 795/795A* for further information on report procedures.

Note:

Local management is responsible for establishing a procedure to handle the processing of remittances and returns that are directed to employees who are away from the office per IRM 5.1.2.4(3).

5.1.2.2 (01-24-2012)

Physical Security Controls

1. All employees and managers are required to adhere to the minimum protection standards for remittances, set forth in the following three IRM sections:
 - A. IRM 10.2, *Physical Security Program* — specifies physical security controls.
 - B. IRM 1.4.6, *Managers Security Handbook* — provides guidelines for management when performing their role to ensure established security standards are followed.
 - C. IRM 3.0.167, *Losses and Shortages* — provides procedures for losses and shortages of tax collections, disbursement losses, deposit discrepancies, and transfer of accountability.
2. The following items must be safeguarded at all times:
 - Remittances, in whatever form
 - Form 809, *Receipt for Payment of Taxes*
 - The official "Received" date stamp
 - Personally Identifiable Information (PII)

5.1.2.2.1 (09-26-2014)

Remittances

1. Ensure money and securities, etc., are safeguarded at all times, while in the office, on Telework, and/or making field calls. Follow the procedures displayed in the table below for safeguarding remittances.

SAFEGUARDING REMITTANCES

In the Office	Each office is responsible for developing procedures to address physical security controls over remittances while they are in the custody of Field Collection (FC) employees because physical security facilities vary. In general, to safeguard remittances, place the remittances in a safe or a designated locking desk drawer or file cabinet.
Telework	Under the National Agreement, "At a minimum, this will require that all records and data be kept under lock and key when not in the possession of the employee." Provide and use some type of locking desk drawer or file cabinet to safeguard remittances. See Article 50 Section 5 B of the National Agreement.
Field Calls by Car	Place remittances in a locked compartment of the vehicle.
Field Calls by Public Transportation	Place remittances in a locked brief case or other secure place.

2. Date-stamp remittances for the business day they are received.
3. Use traceable overnight service or other approved method for shipment of remittances, returns, and posting documents to ensure the security of tax receipts during transit.
4. Follow up when the Submission Processing Teller Unit doesn't acknowledge receipt within 14 workdays per *IRM 5.1.2.4.5.1, Form 3210 and Form 795/795A Follow Up*.

5.1.2.2.2 (09-26-2014)

Form 809

1. Form 809, *Receipt for Payment of Taxes*, is a receipt book that contains receipts to issue to taxpayers (customers) who request a receipt for cash (or check) payment of their taxes. Safeguard Form 809 at all times.
2. Form 809 receipt books are required to be returned to the issuing Submission Processing Center when the employee is no longer eligible for an 809 receipt book.

Example:

Revenue officer changes position, moves to a field office in another Area, or separates from the Service.

Note:

Managers must include the return of the Form 809 receipt book as part of the clearance process upon an employee's separation from the Service.

Note:

A revenue officer selected to perform On-the-Job-Instructor (OJI) duties is not considered a change in position that would require the issuance or return of the Form 809 receipt book.

5.1.2.2.3 (06-20-2013)

Official Received Date Stamp

1. The official Received date stamp is used to record received dates for remittances and secured returns.
2. Safeguard the official Received date stamp at all times. Keep it in a secure office location when not in use to protect assigned stamps against unauthorized or indiscriminate use.

Caution:

Provide the stamp with high security.

3. The official Received date stamp should contain the following elements:

Internal Revenue Service

Received

Month, Day, Year

Note:

Received date stamps which have the "office location" rather than the Area Director location are acceptable.

Note:

Handwritten (legible) recordation of the received date information is also acceptable as long as it contains all of the elements listed above, employee signature, and employee title. A date stamp in addition to the handwritten recordation is not needed.

4. When you use the date stamp:
 - A. Place the date stamp in the middle of the front page of a secured return (or other document that requires a date stamp).
 - B. Make sure the stamp placement will not obscure any information that the taxpayer wrote/printed/entered on the return/document.
5. If a document is date-stamped in error, cross-out the incorrect date and initial the correction. This is a necessary step because the Data Conversion employees (who are on production by document) are not required to turn documents over, and the Service must maintain received date integrity.

5.1.2.2.4 (09-26-2014)

Personally Identifiable Information

1. Personally Identifiable Information (PII) is a specific type of sensitive information that includes the personal data of taxpayers, IRS employees, contractors, job applicants, and visitors to IRS offices. Safeguard PII at all times.
2. Take care to protect personally identifiable information (PII) at all times. Any loss of PII could result in information being compromised to commit identity theft. To learn more about protecting PII and deterring identity theft access the Privacy, Governmental Liaison, and Disclosure website at: <http://irweb.irs.gov/AboutIRS/bu/pipds/default.aspx>. Also see IRM 5.1.12.2, *Identity Theft*, and IRM 10.5.3.1.3.1, *Identity Protection Program Servicewide Identity Theft Guidance*.
3. Report immediately if you suspect or know of a potential PII loss (including the loss of a deposit package).

Example:

A check was mailed to the Submission Processing Center but it was never received. This would be a reportable PII incident.

4. Report a PII loss, in the following order to:
 - A. Your manager.
 - B. Computer Security Incident Response Center (CSIRC) at 1-866-216-4809.
 - C. Treasury Inspector General for Tax Administration (TIGTA) hotline per IRM 5.1.2.2.6.1, *Report to TIGTA*.

5.1.2.2.5 (09-26-2014)

Payment Loss Procedures

1. Report any loss to your manager immediately if you:
 - experience a cash shortage.
 - receive counterfeit funds.
 - are missing negotiable checks or other instruments.
 - are missing seized property.
2. For additional information relating to payment loss, refer to:
 - IRM 5.1.3.7.3, *Property and Records Protection*.
 - IRM 3.0.167, *Losses and Shortages*.
 - IRM 5.1.2.2, *Physical Security Controls*.
3. Report any potential theft or embezzlement to:
 - A. Treasury Inspector General for Tax Administration (TIGTA) hotline, per IRM 5.1.2.2.6.1, *Report to TIGTA* and
 - B. Remittance Security Coordinator (RSC) at the designated Submission Processing Center.
4. Prepare a brief narrative report.
5. Send the report (and attachment(s)) to TIGTA per IRM 5.1.2.2.6.1, *Report to TIGTA*.

Note:

TIGTA will conduct an investigation and report the results of the investigation.

6. Send a copy of the report (and attachments) to the RSC.

Note:

The RSC will monitor the loss and take steps to ensure relief is granted to the taxpayer expeditiously. The RSC will control the case and protect the taxpayer from incorrect notices while TIGTA conducts its investigation. The RSC will ensure that incorrect penalties and/or interest are abated.

5.1.2.2.5.1 (06-20-2013)

Replacement Check

1. Request a replacement check from the taxpayer, if applicable.

2. Prepare Form 795/795A, *Daily Report of Collection Activity*, to submit the replacement check (with the current date).
3. Complete Form 3465, *Adjustment Request*.
4. Attach Form 3465 to the replacement check to request that the interest and penalty be abated.
5. Send the replacement check and Form 3465 with Form 795/795A, to Submission Processing.

Note:

The remittance perfection technician will post the check with the current date. Form 5919, *Teller's Error Advice*, will not be issued for the replacement check unless other error conditions exist.

6. For lost remittances that are subsequently discovered a replacement is not necessary. Follow the same procedures above as if the remittance was a replacement.

Exception:

If the remittance has an expiration date and the current date is beyond it, then follow the procedures above to request and process a replacement remittance.

**5.1.2.2.6 (09-26-2014)
Stolen and/or Altered Remittance**

1. Sometimes a taxpayer will provide evidence that a remittance that he/she gave or sent to the IRS has been stolen and/or altered.
2. Identify a stolen or altered remittance by the characteristics displayed in the table below:

IDENTIFYING A STOLEN OR ALTERED REMITTANCE	
Type of Remittance	Characteristics
Altered Remittance	<ul style="list-style-type: none"> • Endorsed or made payable to someone else (other than Treasury or IRS) • May include changes to money amount
Stolen Remittance	<ul style="list-style-type: none"> • May or may not be cashed • May have been stolen to steal the taxpayer's identity

3. Report any potential theft or embezzlement to:
 - A. Treasury Inspector General for Tax Administration (TIGTA) hotline, per IRM 5.1.2.2.6.1 , *Report to TIGTA* and
 - B. Remittance Security Coordinator (RSC) at the designated Submission Processing Center.

Note:

A list of Remittance Security Coordinators (RSC) can be found at http://win.web.irs.gov/SP/Security_Info_&_Internal_Control/Remittance_Security_Coordinators.htm

4. If a taxpayer provides evidence that a remittance has been stolen and/or altered.
 - A. Obtain a written statement from the taxpayer that the original negotiable instrument was made payable to the United States Treasury (or Internal Revenue Service (IRS)) and sent to IRS.
 - B. Input Transaction Code (TC) 470 on the impacted module(s).
 - C. Prepare a brief narrative report.
 - D. Photocopy both sides of the original negotiable instrument made payable to someone other than the IRS and retain a copy of the evidence in the case file with the report.

Note:

Retain the original negotiable instrument in your case file unless TIGTA instructs you to send it to them by mail.

- E. Obtain a photocopy of the customer's receipt if the stolen or altered remittance was a money order, cashier check, etc.

**5.1.2.2.6.1 (07-13-2010)
Report to TIGTA**

1. Send the report (and attachment(s)) to Treasury Inspector General for Tax Administration (TIGTA) and TIGTA will conduct an investigation and report the results of the investigation.
2. Make a report to the TIGTA hotline by one of the following methods:
 - Online — complete and submit the online form on TIGTA's web page at: http://www.treas.gov/tigta/contact_report.shtml
 - E-mail — send a secure E-mail message to the TIGTA Hotline Complaints Unit at: Complaints@tigta.treas.gov
 - Telephone — 1-800-366-4484
 - Fax — 202-927-7018
 - Mail — Treasury Inspector General for Tax Administration
Hotline
P.O. Box 589
Ben Franklin Station
Washington, DC 20044-0589

**5.1.2.2.6.2 (09-26-2014)
Report to the RSC**

1. Send a copy of the report (and attachments) to the Remittance Security Coordinator (RSC). The RSC will control the case and protect the taxpayer from incorrect notices while TIGTA conducts its investigation. The RSC will ensure that incorrect penalties and/or interest are abated.

2. Obtain the name and telephone number of the RSC contact by checking the Submission Processing Remittance Security website at: http://win.web.irs.gov/SP/Security_Info_&_Internal_Control/Remittance_Security_Coordinators.htm.

5.1.2.3 (08-15-2008)

Timeliness of Remittances

1. Remittances are due at the Submission Processing Center within **3** business days from the date the IRS received the funds. The timeliness criteria are based on Title 31, U.S. Code § 3302. In general, any employee receiving a remittance from a taxpayer must transmit the remittance the same day as received or as soon as possible the next business day to ensure receipt in the designated Submission Processing Center within 48 hours of receipt from the taxpayer. One additional day is allowed for cash conversion.
2. An overnight traceable method of shipping remittances to Submission Processing is required to ensure the earliest deposit to the Treasury.
3. The Service recognizes that an overnight traceable method is not always available to revenue officers in the field or outside of the continental United States, so remittances may need to be transmitted using regular mail or overseas mail, as applicable. In those instances additional mailing time is allowed.
 - A. **Five** business days are allowed (from the date the revenue officer collected the funds) for transmitting remittances to the designated Submission Processing Center via regular mail.
 - B. **Seven** business days are allowed (from the date the revenue officer collected the funds) for transmitting remittances to the designated Submission Processing Center from overseas (all locations outside the continental United States, including Alaska and Hawaii).
4. Annotate the Form 795/795A, *Daily Report of Collection Activity*, to alert the remittance processor at the Submission Processing Center to apply the extended timeliness criteria, as displayed in the following table.

A.

EXTENDED PROCESSING TIME ANNOTATIONS

Criteria	Annotation
5-day	NOT SENT VIA OVERNIGHT MAIL
7-day	SENT VIA OVERSEAS MAIL

5. Follow the procedures below to prepare and submit Form 795/795A, *Daily Report of Collection Activity*.

Reminder:

Maintain an adequate supply of overnight envelopes while on field calls to facilitate timeliness of remittances.

5.1.2.4 (09-26-2014)

Daily Report of Collection Activity - Form 795/795A

1. A Form 795/795A, Daily Report of Collection Activity, is prepared each day that payments and/or returns are secured, or as soon as possible the next business day.
2. You must make alternate arrangements for processing remittances and/or returns received by mail while you are on leave or otherwise away from the office.
3. Local management is responsible and must ensure a procedure exists to handle the timely processing of remittances and returns for those employees who are away from the office. Local management may designate an employee to handle the processing of remittances and returns for those employees who are away from the office; for example designating a Revenue Officer of the Day.

Note:

If, during a revenue officer's absence, a remittance was not processed timely per local management's established procedure, the employee transmitting the remittance(s) may annotate "IRM 5.1.2.4(3)" on the Form 795/795A or posting voucher when submitting such remittance(s). When this occurs a Form 5919, *Teller's Error Advice*, may be issued despite the annotation on the posting voucher or Form 795/795A. The notation can help in routing and resolving the Form 5919.

4. To ensure segregation of duties, when practical, two employees must be involved in remittance processing. The two employees will normally be a poster and a mailer. Ensure the poster, the employee who prepares the payment posting vouchers and Form 795/795A, is not the same employee as the mailer, who prepares and mails the transmittal package, including preparing the Form 3210, *Document Transmittal*, when there are multiple envelopes in the transmittal package.

Exception:

If only one employee is in the office on a day payments are received then process according to IRM 5.1.2.4.3(4)b. The poster and the mailer may then be the same employee.

Reminder:

Form 3210 **must** be completed and two copies included when sending more than one sealed envelope to Submission Processing.

5. If the poster is the same as the mailer, then the GM or management designee must review the document transmittal (Form 3210, or in the case of one envelope, Form 795/795A) and the transmittal package for accuracy and completeness then initial and date the top of the document transmittal (Form 3210, or in the case of one envelope, Form 795/795A).

Exception:

If the GM or management designee is not co-located in the same POD, the GM or management designee review is not required.

6. The Integrated Collection System (ICS) records time and activity data and produces electronically generated reports. ICS electronically gathers much of the information required to complete these reports and the rest of the information is input by the user through the ICS workstation.
7. The two ICS generated reports are (both are printable):
 - Form 795A (CG), *Remittance and Return Report* — use to transmit remittances and returns.
 - Form 795B (CG), *Closure/Document Transmittal* — use to transmit closed cases.

5.1.2.4.1 (06-20-2013)

Paper Form 795

1. Use paper Form 795 only when unable to print Form 795A (CG).

Example:

You are working out of the office and will not be able to connect to the local area network (LAN) on the next business day so you must complete a paper Form 795.

- A. Print your name, Standard Employee Identification Number (SEID), address, contact telephone, and all other entries accurately and legibly in ink.
 - B. Submit the paper Form 795 at the close of business each day or as soon as possible the next business day.
2. Update the cases that were listed on the paper Form 795 on ICS as soon as you have access to the LAN.

Note:

Failure to update the cases will generate an error on the Submission Processing Center unconfirmed transactions report and the Submission Processing Center will issue a Form 5919, *Teller's Error Advice*.

**5.1.2.4.2 (06-20-2013)
Supplemental Form 795**

- 1. Prepare a supplemental Form 795/795A if submission of returns and remittances is delayed for any reason, including discovered remittances.
- 2. Enter a brief explanation for the delay on both the remittance processor's and manager's copies of Form 795/795A:
 - A. Write an explanation for the delay on the reverse of the original copy of the supplemental Form 795 if preparing a paper form.
 - B. Enter an explanation into ICS if preparing Form 795A (CG), *Remittance and Return Report*.

Note:

You may input up to 30 characters under the Taxpayer's Name which allows the information to be retained with the Form 795A record on ICS. For example, RECEIVED AFTER UPS PICKUP

- 3. Ensure the supplemental Form 795/795A has the date the transmitted item was received.
- 4. Secure your manager's initials on the supplemental Form 795/795A.
- 5. Submit the supplemental Form 795/795A as soon as possible.

Note:

A supplemental Form 795 is considered a late remittance error. This error will be included in the Late Remittances and Trends and Patterns reports, but Form 5919, *Teller's Error Advice*, will not be issued if no other errors exist with the remittance.

**5.1.2.4.3 (09-26-2014)
Procedures for Preparing and Processing Form 795/795A**

- 1. A "poster" is the employee who prepares the payment posting vouchers and Form 795 /795A, *Daily Report of Collection Activity*. Revenue Officers will perform poster duties each day that payments and/or returns are secured.

Note:

To ensure segregation of duties, when practicable, ensure the poster, the employee who prepares the payment posting vouchers and Form 795/795A, is not the same employee as the mailer, who prepares the Form 3210, *Document Transmittal*, and the transmittal package.

- 2. A poster will prepare and process a Form 795/795A, *Daily Report of Collection Activity*, each day that payments and/or returns are secured as follows:
 - A. List all secured payments and returns.
 - B. Prepare the appropriate posting document for all secured remittances per *IRM 5.1.2.5*.
 - C. Enclose each completed Form 795/795A, *Daily Report of Collection Activity* along with the secured remittances in a sealed envelope.

Note:

At the discretion of the group manager, the envelope may be unsealed until mailed to Submission Processing.

- 3. The poster will label the envelope with the following information:
 - A. Name of the poster.
 - B. Date of Form 795/795A.
 - C. The poster's SEID number.
 - D. Total dollar amount of remittances.
 - E. Annotate the envelope with the term LARGE when Form 795/795A includes a single remittance or aggregate remittance(s) of \$100,000 or more, to ensure the earliest deposit to the Treasury per *IRM 5.1.2.6.1, Large Dollar Remittances*.
- 4. Submit the envelope as follows:

IF	THEN send the sealed envelope to the
a. Working in a multiple revenue officer post of duty (POD),	Employee designated to perform the mailing duties in <i>IRM 5.1.2.4.4</i>
b. Working in a single revenue officer POD,	Submission Processing via overnight traceable mail with carrier packaging
c. Working away from the POD on extended field calls,	Submission Processing via overnight traceable mail with carrier packaging provided by the POD
d. Unable to send via overnight traceable mail,	Submission Processing via regular mail or overseas mail

Overnight traceable carrier labels can be generated from the laptop computer using the UPS internet site at:
<http://www.ups.com/content/us/en/shipping/index.html?WT.svl=PrINav>.
 Further information regarding shipping can be found on the intranet at: <http://publish.no.irs.gov/mailtran/ChSmPKG.html>.

- 5. Retain a control copy of the Form 795/795A until the receipted copy is returned from Submission Processing.
- 6. Store the receipted copy of the Form 795/795A in accordance with the minimum protection standards found in *IRM 10.2.13.4.3, Storage*.
- 7. Retain the copies in accordance with item number 31, Records Control Schedule (RCS) 28, Tax Administration - Collection, in Document 12990, *IRS Records Control Schedules (RCS)*. As of the published date of this *IRM 5.1.2*, the Records Control Schedule requires retaining the current year plus two years.

5.1.2.4.4 (01-24-2012)

Procedures for Mailing Form 795/795A to Submission Processing

1. The "mailer" is the designated clerical contact or employee designated to prepare and mail the transmittal packages per the procedures that follow.

Note:

To ensure segregation of duties, when practicable, ensure the poster, the employee who prepares the payment posting vouchers and Form 795/795A is not the same employee as the mailer, who prepares and mails the transmittal package per the procedures that follow.

2. The mailer is responsible for submitting the completed envelopes to Submission Processing as follows:

- A. Bundle the sealed envelopes, containing the Form 795/795A and remittances, into a single package for overnight mail to Submission Processing.

Reminder:

Form 3210 **must** be completed and two copies included when sending more than one sealed envelope to Submission Processing.

- B. Prepare the Form 3210, *Document Transmittal*, with the name of the poster, their SEID number and date from each sealed envelope.
- C. Send the prepared package (including a copy of the Form 3210) to Submission Processing via overnight mail.
- D. Retain a control copy of the overnight mail transmittal until the acknowledged copy of the document transmittal (Form 3210, or in the case of one envelope, Form 795/795A) is returned from Submission Processing.
- E. Retain the acknowledged copy of the document transmittal (Form 3210, or in the case of one envelope, Form 795/795A)
- F. Reconcile all control copies of document transmittals (Form 3210, or in the case of one envelope, Form 795/795A) and the acknowledgements on a bi-weekly basis. Make sure that Submission Processing returned the acknowledgements and that all listed items have a check mark.
- G. Follow up with the destination site if document transmittals (Form 3210, or in the case of one envelope, Form 795/795A) are not returned within 14 days per procedures in *IRM 5.1.2.4.5.1, Form 3210 and Form 795 Follow Up*.

Note:

All pages of the document transmittal (Form 3210, or in the case of one envelope, Form 795/795A) must be returned. If documental transmittal pages are lost or missing, this is a loss of personally identifiable information (PII) and must be reported to CSIRC.

3. Double-wrap the package (i.e., multiple sealed envelopes or just one sealed envelope) in an opaque paper envelope or box.

Note:

The double wrapping of the package is done to ensure that if the outside envelope or box is damaged or destroyed, the internal package containing the document transmittal (Form 3210, or in the case of one envelope, Form 795/795A) and envelopes may be delivered intact, thus protecting SBU and PII information.

4. Write the following on the inside envelope or box:

- A. Name of the person who is authorized to open the package: (i.e., the Submission Processing Operations Manager with responsibility for deposits).
- B. Address of the receiving office. The location of the receiving office is determined by state alignment.

To determine the correct receiving office for a specific state refer to the Submission Processing site link titled "Collection State Alignment" at: http://win.web.irs.gov/SP/Programs_Information/Standard_Proce_Webpages/Collection.htm

After determining the correct receiving office, to determine the receiving office's address, including the stop number and the person authorized to open the package, refer to the Submission Processing site link titled "SP Center Field Office Payment Processing Key Contacts and Liaisons" at: http://win.web.irs.gov/SP/Programs_Information/Standard_Proce_Webpages/Field_Office_Pymt_Proc.htm

- C. Return address of the office mailing the remittance package.
- D. "Limited Official Use" is required to be clearly marked or stamped on the front and back of the inside envelope or box

Note:

If control of Form 795/795A is centralized, include the specific address where they are maintained, on the package.

- E. When the envelope or box contains a single remittance of \$100,000 or more or the aggregate total of remittances is \$100,000 or more (i.e., whether a single remittance or multiple remittances) annotate LARGE on the envelope or box to ensure the earliest deposit to the Treasury.

5. Write the following on the outside envelope or box:

- A. Address of the receiving office. The address should include only "IRS" (or Internal Revenue Service), the stop number, and address. The location of the receiving office is determined by state alignment.

To determine the correct receiving office for a specific state refer to the Submission Processing site link titled "Collection State Alignment" at: http://win.web.irs.gov/SP/Programs_Information/Standard_Proce_Webpages/Collection.htm

After determining the correct receiving office, to determine the receiving office's address, including the stop number refer to the Submission Processing site link titled "SP Center Field Office Payment Processing Key Contacts and Liaisons" at: http://win.web.irs.gov/SP/Programs_Information/Standard_Proce_Webpages/Field_Office_Pymt_Proc.htm

Caution:

Do not include the name or title of the intended recipient (person) on the outside envelope or box. Do not write "cashier", "teller", or "remittance" on the outside envelope or box as this may serve as an alert to a potential thief.

- B. Return address of the office mailing the remittance package

5.1.2.4.5 (01-24-2012)

Remittance/Document Transmittal Controls (Form 3210 and Form 795/795A)

1. Establish and monitor controls to ensure delivery and acknowledgment of the remittance package.
2. The controls must enable the identification of the amounts of taxpayer receipts by taxpayer identification number (TIN), correlated to the package tracer information.

Example:

If the transit provider informs IRS that package number 12345-67-89 was destroyed, controls are needed to enable proper identification of the impacted taxpayer(s) if it is necessary to grant relief.

3. The primary control is the document transmittal, Form 3210. However, when sending only one Form 795/795A, Form 3210 is not required; therefore, when sending only one Form 795/795A, the Form 795/795A is the primary control for the contents of that sealed envelope.

Reminder:

Form 3210 **must** be completed and two copies included when sending more than one sealed envelope to Submission Processing. Each Form 795/795A is required to be in a sealed envelope.

4. In the event of loss, if the control was Form 3210, the employee responsible for following up must gather a copy of each Form 795/795A that was included in the package from each revenue officer.

5.1.2.4.5.1 (09-26-2014)**Form 3210 and Form 795/795A Follow Up**

1. Follow up on a timely basis with the destination Submission Processing Center regarding delayed acknowledgment of a deposit package.

Note:

Submission processing will acknowledge the document transmittal (Form 3210, or in the case of one envelope, Form 795/795A.) The remittance processor in the teller unit is required to return an initialed copy of Form 795/795A, *Daily Report of Collection Activity*, to the originating employee as acknowledgment of receipt for the remittances, returns, and posting documents. The remittance processor must acknowledge receipt of each remittance with a distinctive check mark on the transmittal and return an acknowledgement copy of the transmittal to the originator at the specific address listed on the transmittal within 5 workdays.

2. Establish a reminder to check if:

- A. an acknowledgement copy of the document transmittal (Form 3210, or in the case of one envelope, Form 795/795A) has been received from the Submission Processing Teller Unit, and
- B. all the remittances have been acknowledged.

Note:

The reminder may be established on a paper calendar or an electronic calendar such as an Outlook calendar.

3. Reconcile all document transmittals (Form 3210, or in the case of one envelope, Form 795/795A) and the related acknowledgements on a bi-weekly basis (at a minimum) to ensure that all remittances have been received by the Submission Processing Teller Unit.

4. A follow up action in IRM 5.1.2.4.5.1(5) is required when:

- A. an acknowledgement copy of the document transmittal (Form 3210, or in the case of one envelope, Form 795/795A) is not received within 14 days of mailing, or

Exception:

If the acknowledgement copy of all Form 795/795As controlled by a Form 3210 transmittal are received, and the acknowledgement copy of the Form 3210 is not received, and all payments on the Form 795/795A have been checked off by Submission Processing, notate the control copy of the unacknowledged Form 3210 that all Form 795/795As have been returned and all payments were noted as received. Retain the noted control copy of the Form 3210 with the file copies of previously acknowledged Form 3210s. When this is done no additional follow-up is necessary.

- B. the acknowledgement copy of a Form 3210 document transmittal indicates a Form 795/795A was not acknowledged, or

Exception:

If all unacknowledged payments (no check mark) on the Form 795/795A are verified as posted or pending on IDRS (or "PN" on ICS) then notate the control copy of the Form 795/795A with the unacknowledged payment(s) posting (or pending posting) date(s) on IDRS. Retain a copy of the notated Form 795/795A with the acknowledgement copy of the Form 3210. Retain both with the file copies of previously acknowledged Form 3210s. When this is done no additional follow-up is necessary.

- C. any remittance is not acknowledged (i.e., marked with a distinctive check mark on the Form 795/795A.)

Exception:

If the unacknowledged remittance is verified as posted or pending on IDRS (or "PN" on ICS), then notate the control copy or acknowledgement copy of the Form 795/795A with the unacknowledged payment's posting (or pending posting) date on IDRS. Retain a copy of the notated Form 795/795A with the acknowledgement copy of the Form 3210. Retain both with the file copies of previously acknowledged Form 3210s. When this is done no additional follow-up is necessary.

5. When a follow-up action is required per IRM 5.1.2.4.5.1(4) take one of the following actions:

- Request follow up from the campus teller unit by faxing a copy of the document transmittal (Form 3210, or in the case of one envelope, Form 795 /795A) to the Field Office Payment Processing designated liaison. The appropriate fax numbers are: Cincinnati (859) 669-3792, Ogden (801) 620-3962
- Request follow up from the campus teller unit by mailing a copy of the document transmittal (Form 3210, or in the case of one envelope, Form 795 /795A) to the teller unit.

6. Place the receipted copy of the document transmittal form in the file.

7. Retain the copies in accordance with item number 31, Records Control Schedule (RCS) 28, Tax Administration - Collection, in Document 12990, *IRS Records Control Schedules (RCS)*. As of the published date of this IRM 5.1.2 the Records Control Schedule requires retaining the current year plus two years.

5.1.2.4.5.2 (09-26-2014)**Form 795 Loss Report**

1. Report a lost remittance package (i.e., the loss of personally identifiable information (PII)) immediately to:

- A. your manager,
- B. the Computer Security Incident Response Center (CSIRC) at 1-866-216-4809, and
- C. the Treasury Inspector General for Tax Administration (TIGTA) hotline.

Refer to *IRM 5.1.2.2.4, Personally Identifiable Information*, for information about how to contact the TIGTA hotline.

2. Describe the contents of the remittance package in the report:

- A. Number of sealed envelopes (containing Form 795/795A, remittances (i.e., checks, money orders, cashier's checks, or cash), and secured returns).
- B. Form 3210, if applicable.
- C. Overnight mail transmittal, if applicable.

**5.1.2.4.6 (09-26-2014)
Responding to Form 5919**

1. Submission Processing will send Form 5919, *Teller's Error Advice*, electronically to your manager when a remittance processor receives one of the following:

- Form 795/795A, *Daily Report of Collection Activity*, with an error(s) or submitted late.
- Late remittance.
- Late return.
- Form 809, *Receipt for Payment of Taxes*, with an error(s) or submitted late.

Note:

Refer to *IRM 3.8.47.7, Form 5919, Teller's Error Advice*, for further information.

2. There are procedures specific to responding to a Form 5919 involving Form 809 in *IRM 5.1.2.7.6*.

**5.1.2.4.6.1 (07-13-2010)
Processing Form 5919**

1. The manager will forward an electronic copy of the Form 5919 to the originating employee for corrective action.

2. Take corrective action upon receipt of Form 5919 from your manager.

- A. Prepare a supplemental Form 795/795A, *Daily Report of Collection Activity*, as the transmittal to return the Form 5919 to the Submission Processing Field Office Payment Processing Unit.
- B. Include copy of Form 5919 with Form 795/795A.
- C. Annotate "Response to Form 5919" on Form 795/795A to identify Form 5919 as the basis for submitting a supplemental Form 795/795A.
- D. Send the correction, together with copy of Form 5919, to the remittance processor via the supplemental Form 795/795A, generally within 15 workdays of issuance.

**5.1.2.5 (09-26-2014)
Payment Documents and Posting Procedures**

1. Use suitable posting documents containing all of the information needed for deposit and input into the Integrated Collection System (ICS) whenever possible. Acceptable payment documents include, but are not limited to the following:

- Form 3244, *Payment Posting Voucher*.
- Form 809, *Receipt for Payment of Taxes*.
- Turnaround notices (MF and IDRS notices to taxpayer).
- Form 1040-ES, *Estimated Tax for Individuals*.
- Correspondence.

Note:

Some documents may be brought up to acceptable standards by adding information and coding and editing. Integrated Collection System (ICS) users may refer to the ICS user guide for properly generating Form 3244. Submission Processing *IRM 3.8.46.1 (4)*, *Discovered Remittances*, provides instructions for manually completing Form 3244.

2. To be acceptable for input, the posting document must identify the originator and contain:

- Taxpayer name, last known address (including zip code), and Taxpayer Identification Number (TIN).
- MFT and period.
- Payment received date.
- Payment amount(s) and transaction codes(s).

Reminder:

Do not use pen and ink changes on ICS or template of the payment processing vouchers. Pen and ink changes are never acceptable.

3. For the payment received date, use the date the payment is actually received by the IRS. Prior to submitting remittances for transmittal to Submission Processing, check that the transaction date on the Form 3244, *Payment Posting Voucher* matches the received date of the remittance.

Note:

If some other designated official/agency initially receives the remittance, e.g., the U.S. Attorney in foreclosure actions, use the date of receipt by that agency and enter a brief statement in the remarks section of the posting document to explain why the earlier date was used.

Exception:

A check dated in the future is referred to as a post-dated check. If a check is dated in the future follow the procedures in *IRM 5.1.2.6.3.5, Post-Dated Checks*.

4. If the received date is unknown and there is no IRS received date (stamped) or handwritten received date on the remittance or documents received with the remittance, determine the received date using the following priority list:

- A. Latest postmark or private delivery service date on the envelope.
- B. Date the document/correspondence was prepared or signed.

Exception:

If the only available date is from a copy of a previously filed return, do not use the copied signature's date. Continue to (c) or (d) below.

- C. Julian Date of the Document Locator Number (DLN) minus 10 days.

Note:

The Julian Date is the 6-8 digits of a DLN. For example, in the DLN 28210-105-60025-4, the Julian Date is 105. Refer to DLN Composition in Document 6209, IRS Processing Codes and Information, for additional information.

- D. Today's date minus 10 days.

- 5. If you have closed out your Form 795/795A for the day and discover you have made an error in the received date, request a change in payment dates on a Form 2424, *Account Adjustment Voucher*. Ensure you explain the reason for the change in date on the "Explanation" line. See IRM 5.1.15.15(5), *Credit Transfers*, for further information.
- 6. Prepare Form 3244 to process a payment if:
 - A. Form 809 receipt is either not required or can not be used as a posting voucher, or
 - B. Other suitable posting document is not available.
- 7. Prepare payment documents (other than receipts) in original only.
- 8. Prepare Form 3244 (or other posting document) carefully and correctly to avoid posting delays. Only one debit transaction and two credit transactions are allowed per posting voucher. Additionally the dollar amounts must be in balance to the credit side.

Note:

Submission Processing identified problem areas including the lack of designated payment codes, lack of employee numbers to identify the preparer, incorrect name controls, and incorrect TINS.

- 9. Pay close attention to the amount of money collected and ensure the posting voucher reflects the actual amount of money collected.

Example:

If a balance of \$1,200 is due on a notice, and the taxpayer remits \$600, ensure the amount collected is accurately reflected as \$600. If using a pre-printed payment posting voucher, fill in the actual amount collected.

- 10. Payments remitted with a posting voucher for the wrong taxpayer or incorrect money amount will be issued Form 5919, "Teller's Error Advice". Crediting a payment to a wrong taxpayer may cause an erroneous refund.
- 11. Refer to IRM 5.1.2.8, *Designated Payments*, for the proper use of Designated Payment Codes with certain transaction codes.

5.1.2.5.1 (09-26-2014)

Mutual Collection Assistance Request (MCAR) Payments

- 1. Field Collection employees receive payments from five mutual collection income tax treaty partners. These partners are Canada, Denmark, France, The Netherlands, and Sweden. The corresponding treaties have a collection assistance provision that requires the IRS to credit the payments as of the date the partner received the payment (partner received date) rather than the date the IRS receives the payment (IRS received date.) On the posting voucher, use the partner received date rather than the IRS received date for the date to credit the payment.
- 2. Additionally, when processing these payments notate the payment voucher with the IRS received date as follows: "MCAR payment IRS received date: MM/DD/YYYY." Submission Processing will use the IRS received date as noted to determine if the requirements of IRM 5.1.2.3, *Timeliness of Remittances* have been met. In the absence of the notation, Submission Processing will use the received date of the posting voucher to determine if the requirements of IRM 5.1.2.3, *Timeliness of Remittances* have been met. Therefore in the absence of the notation Submission Processing may issue a Form 5919, *Teller's Error Advice*, based on the received date on the posting voucher.

5.1.2.5.2 (09-26-2014)

Transaction Codes

- 1. A transaction code is a three digit numeric code used to identify a transaction being processed and to maintain a history of actions posted to a taxpayer's account on the Master File.
- 2. Use Transaction Code (TC) 670 when preparing a payment posting document for:
 - A. All assessed amounts, all accrued failure to pay (FTP) penalties, and accrued interest, except in those instances described in (3) below.
 - B. All federal tax deposits (FTDs) secured by an employee in an area office. These FTDs are not routed through the FTD system and are, therefore, treated as subsequent payments.

Note:

A taxpayer attempting to make an FTD payment to an employee in an area office should be advised to make the payment through the Electronic Federal Tax Payment System (EFTPS). There is a 10% avoidance penalty for not using EFTPS when required. If the taxpayer insists on making the payment to an employee in an area office advise the taxpayer the payment will be processed as a regular payment. Process the payment as a subsequent payment.

- C. All BMF estimated payments (ES) for the Form 1120 series of returns.
- D. Payment of lien filing fees. If the lien fees have not yet been assessed, use TC 360 simultaneously with TC 670.
- E. Payment received resulting from service center actions e.g., a substitute for return (SFR) or an additional tax assessment.

Reminder:

Per IRM 5.1.2.8.1(3), Field Collection is required to use Designated Payment Codes (DPC) for certain transaction codes.

- 3. Use the appropriate transaction code in the following special cases:

TRANSACTION CODES

Special Cases

Case	Type of Payment	Transaction Code	Additional Transaction Code
1	IMF module — payment designated as an estimated payment (ES)	TC 430	
2	IMF or BMF module — with a restricted interest indicator (TC 340 or TC 341)	TC 680 — to post the amount of accrued yet unassessed interest, which will generate CP 86/186 for a manual update of the restricted interest charge.	
3	IMF or BMF module — with a restricted FTP penalty indicator (TC 270 or TC 271)	TC 670 — to post the remittance amount TC 694	TC 270 — to post the amount of accrued penalty
4	IMF, BMF, or civil penalty module — payment of sale and/or administrative costs	Note: Use TC 360 to post the amount of the collection costs simultaneously with TC 694 if the collection costs have not yet been assessed. TC 640 (Advance Payment of Determined Deficiency or Underreporter Proposal) Take the following action to create a module to post the pre-assessed payment to a civil penalty module:	TC 670 — to post any funds received in excess of the collection costs
5	IMF, BMF, or civil penalty module — pre-assessed payment secured as an advanced payment of a deficiency	<ul style="list-style-type: none"> • Establish a name line . • See IRM 4.4.11.7, <i>Civil Penalty Name Lines</i>. 	
6	IMF, BMF, or civil penalty module — payment designated for application to interest or penalty	TC 680 — to post the amount of designated interest	TC 690 — to post the amount of designated penalty
7	IMF, BMF, and civil penalty module — payment secured on a 6020(b) return which is not yet processed	TC 640 — to post the remittance amount	TC 570 ("Additional Liability Pending ")
	IMF, BMF, or civil penalty module — payment received:		Note:
	<ul style="list-style-type: none"> • prior to Bal Due issuance 		
8	<ul style="list-style-type: none"> • before the posting of TC 671 (Subsequent Payment Check Dishonored) (i.e., a pending TC 671 is reflected on IDRS) 	TC 670	Take the following action to ensure that the credit will not be refunded as an overpayment: <ul style="list-style-type: none"> • Request input of TC 570 as the secondary TC.
	BMF or NMF module — payment designated as an estimated payment (ES) for :		
9	<ul style="list-style-type: none"> • Estate Taxes — Form 706 • Gift Taxes — Form 709 	TC 660	
10	NMF module — Payments designated for application to interest or penalty	TC 680 — to post the amount of designated interest	TC 270 — for any unassessed amounts of FTP penalty included in the payment
11	NMF module — payment of accrued interest	TC 670 — to post the remittance amount	TC 340 — for the amount of accrued interest
12	NMF module — payment of accrued FTP penalty	TC 670 — to post the remittance amount	TC 270 — for the amount of accrued FTP penalty
		TC 670 — to post the remittance amount or other applicable TC per above Take the following action in addition to posting the payment:	
		<ul style="list-style-type: none"> • request input of command code STAUP 12, • use a separate input document from the one used to input the transaction codes. 	
13	NMF module — full payment		Other TC, if applicable, per above
		Note: Use TC 670 to apply the excess to the earliest period if the NMF payment exceeds the total of assessed tax, interest, and penalty for all periods.	

**5.1.2.5.3 (09-26-2014)
Unassigned Account or Module**

- When accepting a tax payment for an account or module that is not on ICS use the Form 3244 in the ICS templates.

Note:

If the payment was routed or mailed to the Field Collection address incorrectly, the address the sender should have send the payment to can be identified, and future payments may be received, then, after processing the payment, consider sending Letter 5152, *Misdirected Payment* , to the sender. Sending the Letter 5152 may prevent future payments going to the incorrect address.

- When preparing the Form 3244 template select the "Enter Date Grid" button in the template process. This will allow you to manually enter all the applicable data on the form.

Note:

If a payment is received from an unidentified taxpayer, add the payment on Form 795/795A on the day of receipt. Note the payment as "UNIDENTIFIED." The payment will be researched as well as processed at the destination SP center.

5.1.2.5.4 (09-26-2014)

Manual Federal Tax Lien Release

1. There are certain conditions when a manual lien release is necessary after a liability is fully satisfied. Refer to paragraph (5) in IRM 5.12.3.3.1, *Liability is Satisfied—IRC § 6325(a)(1)*, for these conditions.
2. To request a timely manual lien release, contact the Centralized Lien Operation (CLO). The CLO contacts are posted on the IRWeb at: <http://serp.enterprise.irs.gov/databases/who-where.dr/als.dr/case-processing-lien-units.htm>.

Note:

An internal use only telephone number is provided along with the contact information on the CLO web site. Do not give this number to a taxpayer. Ensure all E-mail communications regarding liens are sent via secure E-mail.

3. Request the CLO contact prepare and process the manual lien release after you have posted the payment. See *IRM 5.1.2.5.3.1* for specific posting procedures.

Note:

Employees of functions with access to the Automated Lien System (ALS) may input lien release requests in the situations described in *IRM 5.12.3.2.1, Liability is Satisfied—IRC § 6325(a)(1)*.

5.1.2.5.4.1 (09-26-2014)

Manual Lien Release Consideration - Timely Posting of Payments

1. Payments must be posted timely in order to ensure lien releases are systemically issued in a timely manner. You must post the remittances on the day received.
2. Determine if the payment is sufficient to cover the tax liability of the tax period specified on the payment. See *IRM 5.1.2.8, Designated Payments*, for procedures to follow if the payment is voluntary and the taxpayer designates how it is to be applied.
3. Ensure interest and penalty calculations are computed as of the day of posting. This is particularly important for split payments.
 - A. Provide the exact amount to post to each module on the posting document.
 - B. Ensure that full payment also includes all appropriate accruals of penalty and interest since the date of any restricted assessments if there is restricted penalty or interest.
4. Perform additional research and resolve any outstanding issues on the account, including determining if there are any freeze codes that will delay credit posting. If a condition exists that will delay posting, request a manual release of the notice of lien.
5. Determine whether the taxpayer has outstanding balances in other tax periods.
6. If a payment was received based on a levy, and all balances due (Bal Due) on the levy are fully paid, see *IRM 5.11.2.2, Releasing Levies*, to determine appropriate action.
7. Apply available credits created by involuntary payments or by undesignated voluntary payments to satisfy the outstanding balances in other tax periods in the order that best serves the interests of the government, considering the Collection Statute Expiration Date (CSED) for all outstanding liabilities. This will generally require application to the oldest tax, oldest penalty, and oldest interest, in that order until fully used. See *IRM 5.16.1.2.2.1(4)*.

Note:

This order of payment application is based on Rev. Proc. 2002-26, which provides the Service's position regarding payment application by the Service of a partial payment of tax, penalty, and interest for one or more taxable periods. This can be viewed on page 11 of the IRB 2002-15 at <http://core.publish.no.irs.gov/irb/pdf/wb200215.pdf>.

8. Do not apply a payment to an assessment for which the collection statute expiration date (CSED) has expired (i.e., when IDRS includes a Bal Due(s) with an expired CSED), unless permission is provided by the taxpayer or provided in the IRM. For example, the IRM allows for applying payments to assessments for which the CSED has expired without the permission of the taxpayer when proceeds are received as a result of a levy/seizure which was served prior to the CSED. IRM references include but are not limited to *IRM 5.11.2, Serving Levies, Releasing Levies and Returning Property*, *IRM 5.11.5, Notice of Levy - Levy on Wages, Salary, and Other Income*, and *IRM 5.10.4, Seizure and Sale - Actions Prior to Sale*. Also see *IRM 5.16.1.2.2.1, Imminent Statute Expiration* and *IRM 5.16.1.2.2.5, Report of Statute Expiration*, regarding reporting accounts uncollectible when CSEDs expire.
9. Check for multiple assessments and CSEDs:
 - A. Determine if a situation exists where a release of lien needs to be issued because the assessment for which the notice of lien was filed is fully paid but there remains a Bal Due on the tax period based on a later assessment not on the notice of lien.
 - B. Ensure penalty and interest based on the assessment shown on the notice of lien is fully paid prior to requesting releases in these situations.
10. Refer to paragraph (5) in *IRM 5.12.3.3.1, Liability is Satisfied—IRC § 6325(a)(1)*, for conditions requiring a manual lien release. Refer to *IRM 5.1.2.5.3* above for additional information.

5.1.2.5.5 (09-26-2014)

Inactive Account

1. An inactive account is an account that is currently not collectible (CNC) or is not on the Master File, i.e. NMF. Follow these procedures to process a payment on an inactive account.
 - A. Forward any payment received for an account previously reported currently not collectible (CNC) by TC 530 (i.e., "53'd") or NMF account for input on Form 795/795A, *Daily Report of Collection Activity*.
 - B. Annotate the posting document as shown in the table.

Type Annotate Posting Document

- | | |
|-------------------|---|
| | A. Payment pertains to a "53'd" module |
| • CNC | B. "53'd account" |
| | C. "Not on IDRS" if a "53'd" account is not on IDRS |
| • NMF Not on IDRS | |

5.1.2.5.6 (09-26-2014)

Application of Proceeds in Certain Situations

1. There are certain situations where you may receive funds that are not directly from a taxpayer or another source. In addition, certain types of accounts may require special payment application or types of processing. These situations include:

- Levies
- Offer in Compromise
- State Court Ordered Restitution
- Federal Court Ordered Restitution
- Restitution-Based Assessments

5.1.2.5.6.1 (09-26-2014)

Application of Proceeds from a Levy

1. If the funds were the result of a levy and the levy has now been satisfied, a levy release must be prepared and issued to the applicable third party. See IRM 5.11.2.5, *Disposing of Surplus Proceeds*.
2. Also see IRM 5.10.6.1, *Application of Proceeds of Levy* and IRM 5.10.7.2, *Income from Acquired Property*.

5.1.2.5.6.2 (09-26-2014)

Processing Offer in Compromise (OIC) Receipts

1. Field Collection (FC) (RO) employees should never process payments related to an offer. Ship all offers, secured by a FC (RO) employee to the appropriate Centralized Offer in Compromise (COIC) site within 24 hours of receipt, which should include a completed Form 656, a completed Form 657, and payments submitted with the offer (e.g., partial payment required by IRC § 7122(c)(1)). See IRM 5.8.2, *Centralized Offer in Compromise Initial Processing and Processability*, for further information.

5.1.2.5.6.3 (09-26-2014)

Processing State Court Ordered Restitution Receipts

1. In connection with prosecutions for identity theft, refund schemes and tax evasion, state courts sometimes order defendants to pay restitution to the Internal Revenue Service.
2. Restitution is a legal remedy that can be ordered by the court, in a criminal case. A restitution order requires the criminal defendant to pay money or render services to victims in order to redress the loss the defendant has inflicted. Normally imposed during sentencing, it can be agreed to by the parties in a plea agreement or imposed as a condition of probation or supervised release.
3. The IRS has communicated to the states the proper address to send restitution payments, however, some payments may be received by Field Collection employees.
4. State court ordered restitution payments made to the Internal Revenue Service (IRS), should be mailed to the address below.
The OUTSIDE envelope must be addressed as follows:
IRS-RACS
Attn: Mail Stop 6261, Special Services Team
333 W Pershing Ave
Kansas City MO 64108

The INSIDE envelope should clearly indicate "state restitution." This will ensure it is properly directed to the correct group for application.

IRS-RACS
Attn: Mail Stop 6261, State Restitution/Special Services Team
333 W Pershing Ave
Kansas City MO 64108
5. A Field Collection employee receiving a state ordered restitution payment will transmit the payment using Form 3210, *Document Transmittal*, through overnight traceable method, to the address listed above. If necessary, Collection personnel may refer questions to the Kansas City group responsible for application of these payments via the secure mailbox at *W&I Criminal Restitution.
6. Additional information regarding criminal case processing may be found in IRM 5.1.5, *Balancing Civil and Criminal Cases*.

5.1.2.5.6.4 (09-26-2014)

Processing Federal Court Ordered Restitution Receipts

1. In connection with prosecutions for identity theft, refund schemes and tax evasion, federal courts sometimes order defendants to pay restitution to the Internal Revenue Service.
2. Restitution is a legal remedy that can be ordered by the court, in a criminal case. A restitution order requires the criminal defendant to pay money or render services to victims in order to redress the loss the defendant has inflicted. Normally imposed during sentencing, it can be agreed to by the parties in a plea agreement or imposed as a condition of probation or supervised release.
3. The Department of Justice and the Federal Courts transmit funds resulting from these types of cases to the IRS. These payments are coordinated by the Kansas City Submission Processing Center (KCSPC), however some payments may be received by Field Collection employees.
4. In compliance with Submission Processing guidance, per IRM 3.8.45.6.26 *Department of Justice/Criminal Restitution Program Payments (KCSPC Only)*, a Field Collection employee receiving a court ordered restitution payment will transmit the payment using Form 3210, *Document Transmittal*, through overnight traceable method to the following address:

Internal Revenue Service
ATTN: RACS, Stop 6261
333 West Pershing Rd
Kansas City MO 64108

Note:

Field Collection employees should not process or post payments received from Criminal Investigation (CI) employees. Criminal Investigation may send payments or converted cash through the Department of Justice to the Federal Court, for distribution to the IRS, or CI may send to the address above.

5. Additional information regarding criminal case processing may be found in IRM 5.1.5, *Balancing Civil and Criminal Cases*.

5.1.2.5.6.5 (09-26-2014)

Processing Restitution-Based Assessment Receipts

1. The Firearms Excise Tax Improvement Act of 2010 ("the FETI Act"), Public Law No. 111-237, amended IRC § 6201 to provide that the IRS shall assess and collect the amount of restitution ordered in a criminal case for failure to pay any tax imposed by the IRC in the same manner as if it were a tax. Prior to the enactment of this law, the amount of restitution ordered payable to the IRS in a criminal case could not be assessed as a tax. The law applies to restitution orders entered after August 16, 2010.
2. Payments received by Field Collection employees collecting restitution-based **assessments** will be posted using the DPCs listed in IRM 5.1.2.8.1.4.

Note:

Kansas City Submission Processing Campus (KCSPC) employees may receive payments from the Clerk of the Court. KCSPC employees will use DPC 26 to post federal court ordered restitution payments for restitution orders entered after August 16, 2010. (DPC 08 is used for restitution ordered prior to August 17, 2010.)

3. Refer questions regarding posting of payments to restitution-based assessments to Advisory.
4. Additional information regarding criminal case processing may be found in IRM 5.1.5, *Balancing Civil and Criminal Cases*.

5.1.2.5.7 (09-26-2014)

Estate Tax Return Remittances

1. Refer to IRM 5.5.7, *Collecting Estate and Gift Tax Accounts* for processing remittances associated with Form 706 returns.

5.1.2.6 (08-15-2008)

Forms of Remittances

1. Certain forms of remittances require special handling. These include payments in the form of:
 - Large Dollar Remittances
 - Cash Payments
 - Payments by Check

5.1.2.6.1 (09-26-2014)

Large Dollar Remittances

1. A large-dollar remittance requires special handling to ensure the earliest deposit to the Treasury so the government will enjoy the maximum availability of funds and earn interest at the earliest opportunity. Special handling is required for:
 - a single remittance or aggregate remittances of \$100,000 or more
 - a single remittance of \$1 million or more

Note:

"Aggregate remittances of \$100,000 or more" refers to the aggregate remittances for a daily Form 795/795A.

2. Write LARGE on the inside envelope when preparing Form 795/795A including a remittance or remittances of \$100,000 or more, (i.e., whether a single remittance or multiple remittances).

Caution:

Never write LARGE on the outside envelope. Refer to IRM 5.1.2.4.4 for procedures on preparing envelopes for mailing to Submission Processing.

3. Obtain the liaison's telephone number or E-mail address provided in the "Phone" column. Alert the liaison that you will be sending a large remittance of \$100,000 or more from [name of state] and provide the tracking number for the overnight package containing the remittance(s).
4. Locate the large-dollar remittances mail stop on the Submission Processing Field Office Payment Processing page website at: http://win.web.irs.gov/SP/Programs_Information/Standard_Proce_Webpages/Field_Office_Pymt_Proc.htm. The large-dollar remittances mail stops are listed in the "Designated Addresses for Field Office Collected Remittances Only" column.
5. Send the envelope containing a remittance(s) of \$100,000 or more to the large-dollar remittances mail stop, if applicable.

5.1.2.6.1.1 (01-24-2012)

Remittance Over \$1M

1. The following additional actions are required upon receipt of a single remittance of \$1 million or more.
 - A. Locate the designated remittance liaison on the Submission Processing Field Office Payment Processing page website at: http://win.web.irs.gov/SP/Programs_Information/Standard_Proce_Webpages/Field_Office_Pymt_Proc.htm. Obtain the liaison's E-mail address provided in the "Phone" column.
 - B. Alert the liaison that you will be sending a single remittance of \$1 million or more. E-mail the designated liaison upon receipt of a single remittance of \$1 million or more and provide the tracking number for the overnight package containing the remittance. Contact the acting designated liaison (or their manager) if the designated liaison is unavailable when you call.

5.1.2.6.2 (06-20-2013)

Cash Payments

1. Ensure that the money you accept is *not* counterfeit. Be aware of the techniques for detecting counterfeit money. For further information, obtain literature from the Secret Service field office or online.

Note:

Management can request the Secret Service field office to provide a lecture to a group of employees who receive cash payments, however, management must not request the Secret Service to instruct personnel on an individual basis.

2. Issue Form 809, *Receipt for Payment of Taxes*, in every instance when cash is received per IRM 5.1.2.7.5.
3. Convert a cash payment:
 - A. to a check/bank draft or money order within 24 hours of receipt from the taxpayer before sending for processing.
 - B. by the close of the business day on which it was collected, or as soon as possible on the next business day, to minimize the risk of loss and to ensure employee safety.

Note:

Use GovTrip to apply for reimbursement of cash conversion expenses.

Caution:

Do not use personal bank accounts to convert cash received as payment on delinquent accounts.

4. Make the check/bank draft or money order payable to United States Treasury.
5. Identify the bank draft or money order on Part 3 of Form 809 and record the following in the block provided:
 - A. the name of the issuing financial institution or money order vendor,
 - B. the serial number, and
 - C. the date of conversion.
6. Annotate Part 1 of Form 809, if applicable, that the payment relates to a Form 2209, *Courtesy Investigation*. See IRM 5.1.8, *Courtesy Investigations*.
7. Per IRM 5.1.2.7.5.1(3), prepare a separate Form 809 receipt for each tax period, type of tax, or user fee covered by the payment. Use Form 809 as the posting document to apply the payment to the Bal Due and/or return.

Exception:

When Form 809 is prepared for a payment with a return, the return serves as the posting document.

8. Follow the procedures for preparing a currency transaction report shown below.

5.1.2.6.2.1 (09-26-2014)**Currency Transaction Report (CTR)**

1. The Currency Transaction Report (CTR) came into existence with the passage of the Currency and Foreign Transactions Reporting Act, better known as the Bank Secrecy Act (BSA), in 1970.
2. Form Other Gov FINCEN FORM 104, *Currency Transaction Report*, is required to be filed for each deposit, withdrawal, exchange of currency, or other payment or transfer, by, through, or to the financial institution which involves a transaction in currency of more than \$10,000. However, the Treasury Regulations provide an exemption for filing a CTR: Treasury Regulation [31 CFR 1020.315(a)&(b)(2)] provides, in pertinent part that:

"No bank is required to file a report ... with respect to any transaction in currency between an exempt person and such bank" and "an exempt person is" ... "a department or agency of the United States."

3. Point out the Treasury Regulation exemption if a financial institution asks you to complete a CTR when you need to convert more than \$10,000.

Note:

Furnish your credentials to the financial institution upon request. (The procedures apply even if you use a pseudonym.)

4. Complete a CTR when the financial institution insists that one be completed for a cash transaction of more than \$10,000 if there is no other readily available depository.
5. Do not use your social security number to complete the form. Use the consolidated EIN ≡ ≡ ≡ ≡ ≡ when completing a CTR.
6. Alternative cash payment arrangements may be made by Field Collection managers by following these steps:
 - A. Contact the financial institution operations manager to request a blanket exemption for all revenue officers if a financial institution will not allow the exemption.

Note:

A revenue officer would have to present his/her commission to verify his/her identity to the financial institution if such a blanket exception was arranged.

- B. Make alternate cash conversion arrangements with another financial institution if the financial institution still does not allow the exemption.

Note:

Inform the revenue officers once the arrangement has been arranged.

- C. Determine whether to pursue the matter with the headquarters of the financial institution which refused to allow the exemption.
- D. Take any further appropriate action to attempt to make an arrangement with the financial institution.

5.1.2.6.2.2 (01-24-2012)**Property Appraisal and Liquidation Specialist Cash Procedures**

1. These additional procedures apply to Property Appraisal and Liquidation Specialist (PALS) employees.
 - A. Use counterfeit detection pens on currency at the time it is received, when possible.
 - B. Use a Standard Form 215-A (SF 215-A), *Deposit Ticket* per IRM 5.10.5.18(4), *Securing and Depositing Sale Proceeds*.

Exception:

Circumstances may prevent the use of SF 215-A, such as a sale held in a small rural community and access to a Treasury General Account Bank is not readily available.

2. When access to a Treasury General Account Bank is not readily available, make arrangements to convert the cash at a local bank. See IRM 5.10.4.16, *Arrangements to Convert or Deposit Cash*.

5.1.2.6.3 (01-24-2012)**Check or Money Order Payments**

1. Instruct taxpayers to make a check or money order payable to: **United States Treasury**.

2. Accept a check or money order made payable to any of the following "acceptable" forms of payee (or some other form of payee clearly intended to conform to any of the following):
 - US Treasury
 - U.S. Treasury
 - Department of Treasury
 - Dept. of Treasury
 - Department of the Treasury
 - Dept. of the Treasury
 - Internal Revenue Service/IRS

IRM 3.8.44.4.2, *Remittance Not Payable to United States Treasury* outlines all acceptable payee names and those that require overstepping.

3. Prepare posting documents to apply the correct portion of the payment to each Bal Due and/or return if one payment is received for several Bal Dues and/or returns.
4. The canceled check or money order is the taxpayer's proof of payment. If a taxpayer insists on getting a receipt, issue Form 809, Receipt for Payment of Taxes. Form 809 is the ONLY official receipt. When Form 809 is issued, it serves as the posting document unless the payment is received with a return.
5. A taxpayer that does not require a receipt may want proof that their non-cash payment has been delivered to the office. Each office may obtain a date stamp that reads "PROOF OF DELIVERY ONLY — THIS IS NOT AN OFFICIAL RECEIPT." You may stamp a photocopy of the taxpayer's check or money order with this stamp as proof of delivery.

5.1.2.6.3.1 (01-24-2012) Overstepping or Endorsing

1. Accept a check or money order made payable to an "unacceptable" payee (i.e., other than to one of the payees listed in (2) above) or if the payee line is left blank and overstamp the payee with the words **United States Treasury**.

Note:

Local offices should procure a **United States Treasury** stamp if they do not already have one. The letters should be in a font that will produce a very legible stamp impression (e.g., 16-pitch Arial font and should be in one-color, pre-inked and standard office supply size 1/2" X 1 5/8".)

2. IRM 3.8.44.4.2, *Remittance Not Payable to United States Treasury*, outlines acceptable payee names and payee names that require overstepping.

5.1.2.6.3.1.1 (06-20-2013) Payee is a Collection Employee

1. If a check is made payable to a Field Collection employee, endorse the check or money order as follows:
 - A. Write **Pay to the order of the United States Treasury** in the space provided for endorsement on the back of the check.
 - B. Write your signature below the endorsement.
 - C. Write **Signature of Collection Employee** below your signature.

5.1.2.6.3.1.2 (09-26-2014) Payee is the Taxpayer (Levy Payment Payable to the Taxpayer)

1. Treat a levy check made payable to the taxpayer as a seized check.
2. Endorse the check as follows:
 - A. Type or stamp this endorsement on the back of the check: *This check (money order) and the proceeds thereof have been seized under authority of Title 26, United States Code, Section 6331, for application on the unpaid tax liability of (name of the taxpayer), and is herewith deposited to the credit of the Treasurer of the United States, (name of the area director), Area Director of Internal Revenue Service (Area Number).*

Note:

Place the endorsement within the 1.5-inch area beginning at the leading edge of the check.

3. For further information on seized checks see IRM 5.10.3.12.1, *Checks and Money Orders*.
- B. Write your signature below the endorsement.
 - C. Write **Signature of Collection employee** below your signature.

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Part 5. Collecting Process

Chapter 1. Field Collecting Procedures

Section 3. Safety, Security, and Control

5.1.3 Safety, Security, and Control

- 5.1.3.1 [Overview — Safety, Security, and Control](#)
- 5.1.3.2 [Employee Safety and Security](#)
- 5.1.3.3 [Taxpayer in the Employee Protection System Database](#)
- 5.1.3.4 [Assault, Threat, or Intimidation](#)

Manual Transmittal

November 06, 2014

Purpose

(1) This transmits revised IRM 5.1.3, *Safety, Security, and Control*.

Material Changes

- (1) IRM 5.1.3.2.3.2 is updated to add a reference for guidance about "No Trespassing" signs encountered in the field.
- (2) IRM 5.1.3.3.2 is updated to provide references to guidance about utilizing IDRS to determine if a power of attorney (POA) has been designated as a Potentially Dangerous Taxpayer (PDT) or Caution Upon Contact (CAU).
- (3) IRM 5.1.3.7.2.1 clarifies that Personally Identifiable Information (PII) must be protected in any form including information on mobile computing devices.
- (4) IRM 5.1.3.7.2.1.1.2 updates information about reporting losses and/or disclosures.
- (5) IRM 5.1.3.7.5.1.1 is updated with a note to remind users to use Form 11377-E, Taxpayer Data Access, for electronic completion/submissions.
- (6) Editorial changes are incorporated throughout, including updated citations and hyperlink references where appropriate.

Effect on Other Documents

This material supersedes IRM 5.1.3 dated February 23, 2012.

Audience

The target audience is revenue officers in SB/SE Collection.

Effective Date

(11-06-2014)

Rocco A. Steco
Acting Director, Collection Policy
SE:S:ECS:CP

5.1.3.1 (06-01-2010)

Overview — Safety, Security, and Control

1. This IRM provides safety, security, and control instructions and guidelines. The procedures are written specifically for revenue officers due to the complex nature of the collection cases assigned to them. Other employees in SB/SE and employees in other functions may also refer to these procedures. This IRM covers the following:
 - Employee Safety and Security
 - Taxpayer in the Employee Protection System Database
 - Assault, Threat, or Intimidation
 - Armed Escort to Contact a Taxpayer
 - Taxpayer in the Witness Security Program
 - Information Security
 - Internal Control

5.1.3.2 (06-01-2010)

Employee Safety and Security

1. The Service takes security very seriously and the safety and welfare of every employee is very important. At the IRS, we are under the protection of the Federal Protective Service (FPS). Additionally, Criminal Investigation (CI) and the Treasury Inspector General for Tax Administration (TIGTA) offer protection in locations where they are located. However, employees must know what to do to ensure their own safety.
2. Use common sense to recognize situations which threaten your physical well-being and avoid these situations when possible.

- A. Avoid subjecting yourself, the taxpayer, or any third-party to a potentially dangerous situation.
 - B. Be aware of potential safety and health risks in entering premises where there is a possible risk of exposure to hazardous substances.
3. Follow the procedures below:
- A. *IRM 5.1.3.2.1.*
 - B. *IRM 5.1.3.2.2.*
 - C. *IRM 5.1.3.2.3.*
 - D. *IRM 5.1.3.2.4.*

**5.1.3.2.1 (06-01-2010)
Weapons Restriction**

1. A revenue officer (RO) is prohibited from carrying a weapon. Even though the RO position involves some potential for risk when contacting a taxpayer (or a third-party), an RO is not authorized to carry and/or use a firearm(s) in the performance of official duties. This restriction includes pepper spray, "Halt!" Dog Repellent, or any other "intermediate" weapon. *IRM 9.2.3.4, Intermediate Weapon Control*, defines intermediate weapons as weapons other than firearms or lethal weapons with non-lethal munitions, designed to supplement weaponless control techniques.
2. Any time you think it will be necessary to ensure your safety, request (through your manager) that an armed escort from TIGTA be assigned to accompany you when contacting a taxpayer in person. See *IRM 5.1.3.5.*

**5.1.3.2.2 (02-23-2012)
Use of a Pseudonym**

1. An RO may be authorized to use a pseudonym if he/she can provide adequate justification for using a pseudonym. An RO is not entitled to use a pseudonym without adequate justification. Additionally, the group manager (GM) must approve the RO's use of a pseudonym. Adequate justification includes "protection of personal safety."
2. Refer to *IRM 10.5.7, Use of Pseudonyms by Internal Revenue Service Employees*, for further information.

**5.1.3.2.3 (11-06-2014)
Safety Do's and Don'ts**

1. Follow the guidance displayed in the table below:

SAFETY Do's and Don'ts	
Do	Do Not
Research the case prior to contact.	Keep calling the taxpayer for additional information.
Prepare interview questions in advance.	Lose focus.
Rehearse how you would react to a situation and have a backup plan.	Personalize collection efforts.
Bring another RO to accompany you, if necessary.	Threaten or patronize the taxpayer.
Arrange for an armed escort, if necessary.	Be overzealous or try any heroics.
Secure maps of assigned area.	Try to be funny or witty.
Dress appropriately for the environment.	Use a threatening tone of voice or body language.
Store valuables in the trunk of your car.	Mislead the taxpayer.
Observe your surroundings.	Be afraid to seek assistance.
Be alert for no trespassing or warning signs.	Lose composure.
Park your vehicle so you can leave quickly.	Look like a victim.
Maintain at least an arm's length distance from the taxpayer.	Turn your back on the taxpayer.
Stay alert.	Enter areas with unleashed animals.
Act professionally.	Try to prevent rescue of seized property.
Stay in control of the interview.	

**5.1.3.2.3.1 (06-01-2010)
Safety Issues in the Workplace**

1. Follow this guidance to ensure your safety in the workplace:
 - A. Wear your identification (ID) badge.
 - B. Safeguard your keys, keycard, ID badge, and any combinations to work locks and promptly report the theft or loss of any of these items.
 - C. Consider using the "buddy system" when leaving the workplace, especially after dark, and either leave in a group of people or have someone watch you from inside the building as you walk to your car.
 - D. Be vigilant at all times.
 - E. Be familiar with your surroundings.
 - F. Notice when something is not right and report it to your manager or local authority.
2. Do not ignore it if something seems "out of the ordinary."
 - A. Tell your supervisor when you notice anything suspicious, such as an emergency exit or window left open.
 - B. Confront any unidentified stranger if you encounter a person in the workplace who is not wearing an ID badge.

Note:

RO Jones sees a stranger in her office area and the person is not wearing a visible ID badge. RO Jones should ask to see the person's ID badge. If RO Jones is not comfortable confronting the person directly, she should report the person to her manager or another nearby supervisor.

**5.1.3.2.3.2 (11-06-2014)
Safety Issues in the Field**

1. Follow this guidance to ensure your safety in the field:
 - A. Be vigilant at all times.

B. Notice when something is not right and consider reporting it to a local authority.

2. If you encounter "No Trespassing" signs, follow guidance in IRM 5.1.10.6.2, *No Trespassing Signs*.

3. Follow the guidance displayed in the table below:

If...	Safety Issues in the Field And...	Then...
The taxpayer appears highly upset	does not want you to enter the premises.	<ul style="list-style-type: none">• Try to set an office appointment, or• Suggest that the taxpayer assign a power of attorney to handle the matter.
There is/are a third-party/ies in the taxpayer's house	he/she is (they are) siding with the taxpayer and getting hostile.	<ul style="list-style-type: none">• Terminate the interview.• Ask the taxpayer to remove the animal, and
The taxpayer has an intimidating animal	the interview is not going well.	<ul style="list-style-type: none">• Conclude the interview as quickly as possible, or• Terminate the interview and leave, if necessary.• Terminate the interview and leave.
There is a gun near the taxpayer.		<ul style="list-style-type: none">• Follow-up with a telephone call, or• Ask the taxpayer to come into the office.

5.1.3.2.3.3 (06-01-2010)

Minimize Risk of Exposure to Hazardous Substances

1. The nature of a business can be an indicator that further investigation is required before entering the premises. Federal, state and some local regulations require business owners to maintain a list of all hazardous chemicals in the workplace on a material safety data sheet (MSDS).

2. The following are examples of a certain type of business which might require extreme caution:

- A. Chemical storage company
- B. Asbestos abatement company
- C. Environmental mitigation company

Note:

This list is not all-inclusive.

3. Follow this guidance to ensure your safety in the field:

- A. Use extreme caution when you can not determine the potential risk before a field call or if the potential risk does not become known until after entering the premises.
- B. Consider contacting the Environmental Protection Agency (EPA) or appropriate state agency for assistance if it is suspected that the taxpayer sells or maintains industrial or commercial chemicals.
- C. Request the taxpayer to provide a copy of the material safety data sheet (MSDS) before making a field call or at the start of a field call.

5.1.3.2.4 (06-01-2010)

Employee Assistance and Work-life Referral Services Program

1. The Employee Assistance and Work-life Referral Services Program (EAP) is available to help IRS employees and their families overcome stressful life issues and personal concerns.

- All services are provided by a vendor.
- All services are completely confidential and cost-free to employees.
- All IRS employees and their immediate family members can use the program.

2. The program has two components:

A. **Employee Assistance Plan Services** — provides telephonic and in-person clinical services to help address stressful life issues and personal concerns.

Note:

Managers who have concerns about a specific employee whose conduct or personal problems are affecting his/her performance and the performance of the work group can call the EAP to request a management consultation. EAP specialists will help managers refer an employee experiencing problems to the EAP. Managers may also contact EAP to arrange for critical / traumatic incident services when a critical / traumatic incident involves or directly impacts the workplace. EAP specialists will help managers develop an action plan to respond to a specific incident.

B. **Work-life Referral Services** — information and referral to assist with life events of all kinds and to help manage unexpected disruptions of work or study.

3. Contact EAP anytime via these links:

- EAP — <http://erc.web.irs.gov/Displayanswers/AnswerType.asp?QuestionID=1949&=214&=129&=5>
- Employee Assistance Plan Services — <http://erc.web.irs.gov/Displayanswers/AnswerType.asp?QuestionID=1950&=214&=129&=5>
- Work-life Referral Services — <http://erc.web.irs.gov/Displayanswers/AnswerType.asp?QuestionID=1951&=214&=129&=5>
- Contacting the EAP — <http://erc.web.irs.gov/Displayanswers/AnswerType.asp?QuestionID=1952&=214&=129&=5>
- Additional Resources on EAP — <http://erc.web.irs.gov/Displayanswers/AnswerType.asp?QuestionID=1953&=214&=129&=5>

5.1.3.3 (06-01-2010)

Taxpayer in the Employee Protection System Database

1. The Service has developed the Employee Protection System (EPS) to protect IRS public contact employees. There are two Servicewide employee safety programs under the EPS:
 - A. the Potentially Dangerous Taxpayer (PDT) Program
 - B. the "Caution Upon Contact" (CAU) Taxpayer Program

These two programs help identify:

- A. taxpayers who represent a potential danger to IRS public contact employees, that is, a Potentially Dangerous Taxpayer (PDT), and
- B. a taxpayer who should be approached with caution, that is, a "Caution Upon Contact" (CAU) Taxpayer.

5.1.3.3.1 (02-23-2012)

Office of Employee Protection

1. The Office of Employee Protection (OEP) has sole responsibility for administering the two Servicewide employee safety programs. OEP enhances the safety of IRS public contact employees by:
 - maintaining IRM 25.4, *Employee Protection*
 - maintaining the OEP web site
 - maintaining the PDT and CAU indicators on IDRS
2. OEP maintains two IRMs that provide guidance and information:
 - A. IRM 25.4.1, *Potentially Dangerous Taxpayer*, provides procedures and guidelines for referring and designating taxpayers under the Potentially Dangerous Taxpayer (PDT) program. Exhibit 25.4.1-1, *List of "PDT" Coded IDRS/Master File Documents* provides a list of documents that display the PDT indicator.
 - B. IRM 25.4.2, *Caution Upon Contact Taxpayer*, provides procedures and guidelines for referring and designating taxpayers under the "Caution Upon Contact" (CAU) Taxpayer program. Exhibit 25.4.2-1, *List of CAU Coded IDRS/Master File Documents* provides a list of documents that display the CAU indicator.
3. OEP maintains the Office of Employee Protection web site at: <http://irweb.irs.gov/AboutIRS/bu/pipds/ep/OEP/default.aspx> to provide additional guidance and information.
4. Any of the following types of cases may be coded PDT or CAU:
 - Balance Due (BAL DUE) Account
 - Delinquent Return (DEL RET) Account
 - Other Investigation (OI), etc.

5.1.3.3.2 (11-06-2014)

Guidelines for PDT / CAU Coded-Cases

1. Field Collection (FC) employees must become aware of the IRM procedures and IRWeb guidelines for dealing with PDT-coded cases and CAU-coded cases. As needed, FC employees should:
 - A. review the OEP IRMs.
 - B. access the OEP web site.
 - C. feel free to contact OEP to discuss a taxpayer's case to resolve any PDT or CAU questions.
2. Be alert for PDT-coded cases and/or CAU-coded cases in your case inventory

Note:

See IRM 25.4.1.8, *Power of Attorney (POA) Information*, and/or IRM 25.4.2.7, *Power of Attorney (POA) Information* for guidance about utilizing IDRS to ascertain whether a POA has been designated as PDT or CAU.

3. Review each case (ICS screens, IDRS printouts, etc.) for a PDT-coded or CAU-coded

5.1.3.3.2.1 (06-01-2010)

Disclosure Guidelines

1. Occasionally, a taxpayer will question if the IRS has placed a PDT or CAU designation on his/her tax account.
2. Take the following action if a taxpayer makes an inquiry about his/her PDT / CAU designation status:
 - A. Do not confirm or deny that his/her case is coded PDT or CAU.
 - B. Forward the taxpayer's request to Disclosure.

Note:

Disclosure will respond to the taxpayer's inquiry.

5.1.3.3.2.2 (06-01-2010)

PDT Case Procedures

1. TIGTA is responsible for providing an armed escort when a taxpayer is coded PDT. See *IRM 5.1.3.5*.
2. Consider alternatives to contacting a taxpayer in the field when:
 - the case is designated "PDT," or
 - a "potentially dangerous" designation is under investigation.

3. Avoid in-person contact, if possible, when a taxpayer's case is coded "PDT."
4. Determine if field contact is necessary to handle the case and follow the appropriate procedures below:
 - A. *IRM 5.1.3.3.2.2.1.*
 - B. *IRM 5.1.3.3.2.2.2.*

5.1.3.3.2.2.1 (06-01-2010) **Field Contact is Necessary**

1. Consider armed escort in all PDT-coded cases.
2. Notify TIGTA for advice when you anticipate making a field call on a PDT-coded case.
3. Follow TIGTA's advice when you make field contact on a PDT-coded case.
4. Take appropriate collection action.

5.1.3.3.2.2.2 (06-01-2010) **Field Contact is Not Necessary**

1. Avoid in-person contact with the taxpayer coded PDT.
2. Take appropriate collection action over the phone and/or through the mail.

5.1.3.3.2.3 (06-01-2010) **CAU Case Procedures**

1. Approach a taxpayer coded "CAU" with caution.
2. Consider armed escorts in a CAU-coded cases. See *IRM 5.1.3.5.*
3. Take appropriate collection action in-person and/or over the phone and/or through the mail.

5.1.3.3.2.4 (06-01-2010) **PDT / CAU — Referral Procedures**

1. Occasionally, an IRS public contact employee might question if a taxpayer's tax account should be designated "PDT" or "CAU."
2. Take some or all of the following actions when you believe you should refer a TP for a "PDT" or "CAU" indicator:
 - A. Access the OEP web site
 - B. Consult with OEP
 - C. Refer to one or both of the OEP IRMs

For guidance about making a referral for a designation to be added to a taxpayer's account:

- A. See *IRM 25.4.1.2, Reporting to TIGTA*, if you believe a taxpayer's account should be coded "PDT."
- B. See *IRM 25.4.2.2, Reporting to the Office of Employee Protection (OEP)*, if you believe a taxpayer's account should be coded "CAU."

3. Make a referral for an appropriate "PDT" or "CAU" when you believe it is necessary.

5.1.3.4 (02-23-2012) **Assault, Threat, or Intimidation**

1. While the overwhelming majority of Americans respect Service employees and the IRS mission, employee safety is critical. The actual number of threats and assaults is low given the number of contacts that we make in a given year. While the majority of us go through our careers without incident, one incident would be too many when it comes to employee safety. Unfortunately, a taxpayer (or a third-party) experiencing financial difficulties, such as multiple debts, may feel increased pressure and act out aggressively. Occasionally, a taxpayer (or a third-party) will assault, threaten, or intimidate an IRS public contact employee; a taxpayer might make an assault upon an IRS employee for various reasons.
2. TIGTA handles threats of suicide by a taxpayer as well as taxpayer threats against IRS personnel. TIGTA takes its responsibility to protect IRS employees extremely seriously. TIGTA will:
 - Take swift action and will maintain continuous, open communication during a case.
 - Make a decision regarding any necessary protective measures, including initiating PDT cases. See *IRM 25.4.1.3, TIGTA's Role*.
3. As an IRS public contact employee, you must:
 - A. Remain on alert to act quickly in a dangerous situation.
 - B. Continue to be aware of your surroundings when knocking on the door of a taxpayer or third-party.
 - C. Trust and rely on your instincts.
 - D. Report incidents of assault, threat, intimidation, or forcible interference to the Treasury Inspector General for Tax Administration (TIGTA).
4. The Employee Assistance and Work-life Referral Services Program (EAP) is available to help IRS employees and their families overcome stressful life issues and personal concerns. See *IRM 5.1.3.2.4.*

5.1.3.4.1 (06-01-2010) **Definition of Terms**

1. Three terms are applicable to this discussion: assault, threat, and intimidate. These terms are defined below, but these definitions are not intended as the legal definitions of the terms; they are provided to clarify the terms.
 - A. Assault — Direct physical contact, with the intent to cause physical harm, including striking or attempting to strike with objects, such as rocks or bottles, or brandishing a weapon.

B. Threat — Verbal or written expression of intent to cause harm to an IRS employee or contractor or to an IRS employee's or contractor's immediate family member. It also includes preventing an IRS employee or contractor from leaving a taxpayer's business or residence, even if no physical contact actually occurs.

C. Intimidate — Action intended to cause an IRS employee or contractor to become timid, or to force or deter an IRS employee or contractor from taking an action.

5.1.3.4.2 (06-01-2010)

Assault Procedures

1. With any type of assault situation, the safety of our workforce is paramount and our first concern.
2. Continue to be vigilant and aware; remain alert in your surroundings. A taxpayer may make a threat to express anger or try to intimidate you to impede your behavior.
3. Take the following action immediately if you are assaulted while performing official duties during a personal interview or in connection with the performance of official duties:
 - A. Defend or protect yourself from further assault.
 - B. Terminate collection activities.
 - C. Leave the site of the incident, if safe to do so.
 - D. Obtain medical treatment, if necessary.
4. Report the incident to TIGTA as soon as possible.

5.1.3.4.3 (06-01-2010)

Threat / Intimidation Procedures

1. With any type of threat situation, the safety of the workforce is of paramount concern. A taxpayer may make a verbal threat of harm, force, or suicide either during personal interview or a telephone conversation to express anger, emotion, or try to intimidate you to impede your behavior.

Reminder:

TIGTA handles threats of suicide by a taxpayer as well as taxpayer threats against IRS personnel; contact TIGTA if you receive a suicide threat.

2. Continue to be vigilant and aware; remain alert in your surroundings.
3. Always take the threat seriously and act quickly.
4. Take the following applicable action, depending upon the situation:
 - A. *IRM 5.1.3.4.3.1.*
 - B. *IRM 5.1.3.4.3.2.*

5.1.3.4.3.1 (06-01-2010)

Threat of Bodily Harm or Force

1. Take the following action if you receive a verbal (or other) threat of bodily harm or force:
 - A. Leave the taxpayer's premises immediately if threatened or assaulted.
 - B. Do not let a confrontation escalate.
 - C. Do not induce perpetrators to clarify or repeat threatening statements.
 - D. Avoid questions such as "Is that a threat?" or "Are you threatening me?"
 - E. Tactfully end the conversation, if possible.
 - F. Document as much detail about the threat as possible, e.g., date, time, place, type, and nature.
2. Report the incident to TIGTA as soon as possible. See *IRM 5.1.3.4.4.1.*
3. Do not make further contact with the taxpayer until:
 - You have referred the threat to TIGTA, and
 - TIGTA has made a decision and notified you regarding protective measures.

5.1.3.4.3.2 (06-01-2010)

Threat of Suicide

1. Pre-reading the suicide threat guidance may prepare you to take a suicide threat seriously and to act quickly when a suicide threat occurs.
2. Always take a suicide threat seriously and act quickly if you encounter a taxpayer who threatens suicide.
3. Follow the procedures below if you receive a suicide threat:
 - A. *IRM 5.1.3.4.3.2.1.*
 - B. *IRM 5.1.3.4.3.2.2.*

5.1.3.4.3.2.1 (06-01-2010)

Suicide Threat Resources

1. Refer to *IRM 11.3.28.8.1, Suicide Threats*, for information about handling a suicide threat.
2. Consult Document 12441, *Suicide Threat Quick Reference Guide*, for information. Document 12441 is a quick reference guide to keep handy in case of a suicide threat from a taxpayer.
3. See *IRM 5.1.3.4.3.2.2.*

5.1.3.4.3.2.2 (06-01-2010)

Suicide Threat Procedures

1. No one ever wants to be on the receiving end of a call from a taxpayer who threatens suicide, but it could happen, so employees must become familiar with the procedures for dealing with a suicide threat in order to take quick action and provide the correct response when a suicide threat happens.

Reminder:

TIGTA handles threats of suicide by a taxpayer as well as taxpayer threats against IRS personnel.

2. Take the following action if you receive a suicide threat:
 - A. Take the threat seriously regardless of whether you think it may be serious or not, as you have no way to make that determination.
 - B. Act quickly. Be ready and willing to get help. Consider getting another employee's attention as soon as you receive the threat. Possibly eliciting assistance from an employee(s) around you may help you take the appropriate action.
 - C. Stay calm and remain with the individual, whether in-person or on the phone. A calm demeanor and a caring voice may help to defuse the situation.
 - D. Determine the information you need to notify the authorities who can help the individual.
3. Take the following action to obtain the necessary information if you are not with the individual:
 - A. Ask the individual for his/her address or location.
 - B. Check public sources of address information; look in the telephone book, Internet, or other public sources.
4. Take the following applicable action depending upon the situation:
 - A. *IRM 5.1.3.4.3.2.2.1.*
 - B. *IRM 5.1.3.4.3.2.2.2.*

5.1.3.4.3.2.2.1 (06-01-2010)

Suicide Threat — Situation 1 — Does Not Require Access to Tax Information

1. Situation 1 applies when you are with the individual or the individual's location comes from the individual or a public source, and does **not** require you to access tax information. By itself, a threat of suicide is not considered tax information and is not covered by the rules limiting tax disclosures.
 - Immediately call 911 for assistance, if available. Otherwise contact the appropriate state or federal law enforcement authorities.
 - Report that an individual has threatened suicide.

Caution:

Only disclose the information necessary to help 911 (or other law enforcement authorities) to locate the individual. State that the threat was made during a contact involving "official business." Do not mention the underlying reason for the contact or that it is related to a tax issue.

- Provide the name and location of the individual.
- Contact TIGTA or ask your group manager (GM) or a co-worker to notify TIGTA as soon as possible. *IRM 5.1.3.4.4.1.*

5.1.3.4.3.2.2.2 (06-01-2010)

Suicide Threat — Situation 2 — Requires Access to Tax Information

1. Situation 2 applies when you cannot obtain the individual's location from a public source requiring you to access tax information (e.g., check IDRS) to obtain the individual's address. The procedures for a disclosure under IRC § 6103(i)(3)(B)(i) apply when the possibility of death or physical injury exists. Delegation Order 11-2, *Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*, provides delegated authority to an IRS supervisory employee or Criminal Investigation (CI) special agent to make disclosure to state or federal law enforcement authorities.
2. Check IDRS or other tax sources, e.g., a copy of the individual's tax return or other document in the case file, to ascertain the individual's address.

Caution:

A revenue officer is not authorized to make the disclosure.

3. Do not make the disclosure yourself, instead, follow these procedures:
 - A. Contact your group manager (GM).

Contact another authorized employee to make the disclosure if your GM is not available:

- A. supervisory level employee, e.g., another GM, a manager in your local Disclosure Office, etc.
- B. CI special agent

- B. Apprise your GM, the IRS supervisory level employee, or CI special agent, as applicable, of the suicide threat and provide him/her with the individual's address.

Note:

The authorized employee must follow the procedures displayed in the following table.

Procedures for an Authorized Employee to Report the Suicide Threat

- A. Immediately call 911 for assistance, if available. Otherwise contact the appropriate state or federal law enforcement authorities.
- B. Report that an individual has threatened suicide.
- C. Provide the name and location of the individual.

Caution:

Only disclose the information necessary to help law enforcement authorities locate the individual. State that the threat was made during a contact involving "official business." Do not mention the underlying reason for the contact or that it is related to a tax issue.

- D. Contact TIGTA as soon as possible.

E. See *IRM 5.1.3.4.4.1*.

F. Report the disclosure to the local Disclosure Office for accounting purposes after you make the disclosure.

G. See *IRM 11.3.28.8.1, Suicide Threats*.

5.1.3.4.3.3 (06-01-2010)

Written or other Non-Verbal Threat

1. A non-verbal threat has the same purpose as a verbal threat, that is, to intimidate or impede behavior. Non-verbal threats include gestures, motions, or a display of weapons. A non-verbal threat may also be made in a document, such as, disturbing pictures or illustrations.
 - A. Treat a non-verbal threat with the same caution as a verbal threat
 - B. Follow the same pattern of avoidance as directed above. See *IRM 5.1.3.4.3.1*.
 - C. Retreat from continued contact if you receive a non-verbal threat.
 - D. Report the incident to TIGTA as soon as possible. See *IRM 5.1.3.4.4.1*.

5.1.3.4.4 (06-01-2010)

Assault / Threat / Intimidation — Reporting Procedures

1. Report assaults or threats as soon as possible to your group manager (GM) and TIGTA. See *IRM 5.1.3.4.4.1*.
2. Consider contacting the Employee Assistance and Work-life Referral Services Program (EAP) to seek assistance to overcome any stress caused by an assault or threat. See *IRM 5.1.3.2.4*.

Note:

GMs should consider contacting EAP to arrange for critical / traumatic incident services when a critical / traumatic incident involves or directly impacts the workplace.

5.1.3.4.4.1 (02-23-2012)

Preferred Reporting Method to Contact TIGTA

1. Report to TIGTA by one of the following methods:
 - Make personal contact with a local TIGTA special agent
 - Phone — call the local TIGTA office
 - Phone — call the TIGTA National Hotline at 1-800-366-4484.

Note:

After regular business hours, call 1-800-589-3718. This number reaches an answering service which answers all calls from all locations in the United States 24 hours a day 7 days a week. The answering service will send a page to the on-call TIGTA agent.

Note:

After regular business hours, 1-800-366-4484 routes callers to the IRS at 1-800-829-1040.

- Email — send a **secure** email message to the TIGTA Hotline Complaints Unit at: Complaints@tigta.treas.gov
- Online — complete and submit the online form on TIGTA's web page at: http://www.treasury.gov/tigta/contact_report.shtml
- Fax — 202 927-7018

5.1.3.4.4.1.1 (06-01-2010)

Alternate Reporting Method to Contact TIGTA

1. Reporting by mail is an alternate reporting method.
2. Locate TIGTA's mailing address to report by mail by one of the following methods:

Reporting to TIGTA by Mail

- Access the "Reporting Fraud, Waste, & Abuse" page on the Intranet at: <http://irweb.irs.gov/AboutIRS/hotline/default.aspx>
- Access TIGTA's Home Page at: <http://www.treas.gov/tigta/>
- Click on "Report Fraud, Waste, & Abuse"

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Part 5. Collecting Process

Chapter 1. Field Collecting Procedures

Section 4. Jeopardy, Termination, Quick and Prompt Assessments

5.1.4 Jeopardy, Termination, Quick and Prompt Assessments

- 5.1.4.1 [Overview](#)
- 5.1.4.2 [Jeopardy and Termination Assessment Overview](#)
- 5.1.4.3 [Jeopardy Assessments, Pre-Assessments](#)
- 5.1.4.4 [Quick Assessment](#)
- 5.1.4.5 [Prompt Assessments](#)
- 5.1.4.6 [Quick and Prompt Assessments on Trust Fund Recovery Penalty](#)
- 5.1.4.7 [Processing Quick and Prompt Assessments](#)
- 5.1.4.8 [Form 3552, Prompt Assessment Billing Assembly](#)
- 5.1.4.9 [Mathematical Errors](#)
- Exhibit 5.1.4-1 [Pattern Letter P-513 \(Rev. 9-2008\) \(Reference: IRM 5.1.4.2.4\)](#)

Manual Transmittal

July 31, 2014

Purpose

(1) This transmits revised IRM 5.1.4, Jeopardy, Termination, Quick and Prompt Assessments.

Material Changes

(1) Reviewed and updated the IRM where necessary for editorial changes including IRM references and organizational titles.

Effect on Other Documents

This material supersedes IRM 5.1.4, dated May 20, 2011.

Audience

Small Business/Self-Employed Collection Employees

Effective Date

(07-31-2014)

Rocco A. Steco
Acting Director, Collection Policy

5.1.4.1 (07-31-2014)

Overview

1. This section provides direction to personnel in Field Collection and Advisory for the identification and processing of accelerated assessments.
2. Accelerated assessments are collection actions that expedite the normal assessment process. Collection personnel should be alert for situations where the use of accelerated assessments is appropriate. These tools are employed when:
 - A. The collection of the tax is at risk, or
 - B. The assessment statute expiration date (ASED) is imminent.
3. There are four types of accelerated assessments:
 - Jeopardy assessments - initiated when collection of the tax is in danger and the tax is due, but there is not a voluntarily filed return or an IRC 6020(b) return has been prepared by the Service.
 - Termination assessments - initiated by Examination and used to assess income tax immediately because waiting until the end of the tax year would jeopardize collection.
 - Quick assessments - initiated when the collection of the tax is not in danger but the assessment statute expiration date (ASED) is within 90 days.
 - Prompt assessments - initiated when there is a secured or processable return or a trust fund recovery penalty and the tax should be assessed immediately.
4. These four types of assessments accelerate the assessment of the tax only. They do not eliminate or accelerate the due process or other legal requirements that collection personnel must follow. By accelerating the assessment, IRS can proceed with due process sooner.

5.1.4.2 (05-20-2011)

Jeopardy and Termination Assessment Overview

1. Jeopardy assessments are initiated when it is determined that collection of taxes will be endangered if regular assessment and collection procedures are followed and there is neither a voluntarily filed return nor an IRC 6020(b) return prepared by the Service.
2. Relevant Internal Revenue Code (IRC) sections concerning jeopardy assessments are:

- IRC 6861 authorizes assessment where the due date for filing of a return has expired and applies to jeopardy assessments of income, estate, gift and certain excise taxes.
 - IRC 6862 applies to taxes other than income, estate, gift and certain excise taxes, that is, employment and other excise taxes whether or not the due date for filing and paying such tax has expired.
 - IRC 6867 authorizes a jeopardy assessment in situations where an individual is in possession of cash, in excess of \$10,000, and does not claim ownership or who claims the cash belongs to another individual, whose identity can be determined, and who claims ownership of the cash.
3. All jeopardy assessments must be in full compliance with Policy Statement 4-88 found in IRM 1.2.13.1.27 which provides:
 - A. That jeopardy assessments are to be used sparingly,
 - B. Criteria under which jeopardy assessments will be made,
 - C. Criteria when National office approval is required,
 - D. A process to comply with a taxpayer request for administrative review, and
 - E. That jeopardy assessments involving alcohol, tobacco and firearms be closely coordinated with, and initiated at the request of, the Bureau of Alcohol, Tobacco and Firearms.
 4. Jeopardy assessments should be used prudently and care taken to avoid excess and unreasonable assessments. The amount of the assessment should be limited to an amount that can reasonably be expected to equal the liability due.
 5. Termination assessments are very similar to jeopardy assessments except that, under the provisions of IRC 6851, they are made only for the current or immediately preceding taxable year and can be made at any time prior to the due date for filing those years' returns.
 - A termination assessment is initiated by Examination.
 - It is used to assess income taxes immediately because waiting until the end of the tax year would jeopardize collection.
 - Termination assessment of income tax, IRC 6851, including terminations under the conditions described in IRC 6867, applies when the taxable year of a taxpayer has not ended or when the taxable year has ended but the due date, determined with respect to extensions, for filing the return has not arrived.
 6. All termination assessments must be in full compliance with Policy Statement 4-89, found in IRM 1.2.13.1.28, which provides:
 - A. That termination assessments are to be used sparingly and be a reasonable amount,
 - B. Criteria under which termination assessments will be made,
 - C. Criteria when National office approval is required, and
 - D. A process to comply with a taxpayer request for administrative review.
 7. A potential jeopardy or termination assessment may develop as the result of information received from a confidential informant. The source of the information must not be divulged to the taxpayer or other unauthorized personnel.
 8. For a more thorough discussion of jeopardy and termination assessments and criteria to consider before taking jeopardy collection actions, see IRM 5.17.15, *Termination and Jeopardy Assessments and Jeopardy Collection* and IRM 5.11.3, *Jeopardy Levy without a Jeopardy Assessment*.

5.1.4.3 (05-20-2011)

Jeopardy Assessments, Pre-Assessments

1. Jeopardy assessments initiated by Collection personnel are limited to:
 - A. Trust Fund Recovery Penalty (TFRP) assessments, see IRM 5.7.6.3, *Quick and Prompt Assessment Action*,
 - B. Employment and excise tax assessments, whether or not the return due date has passed,
 - C. Partnership penalty assessments,
 - D. Income tax assessments when there is no question as to the amount of the liability.
2. A jeopardy assessment is requested when:
 - A. A determination is made that collection is in jeopardy.
 - B. One or more of the four conditions outlined in Policy Statement 4-88 are present.
 - C. TFRP assessments and IRC 6020(b) assessments for which appropriate appeal/protest periods have not expired.
 - D. Assessment/collection action is being proposed prior to the return due date for a signed return for income tax liabilities.
3. Refer to Examination information that could lead to a jeopardy assessment of a proposed transferee liability, disputed additional income taxes, or any other tax liability.
4. Prepare Form 2644, *Recommendation for Jeopardy/Termination Assessment*, for all jeopardy assessments and Form 2859, *Request for Quick or Prompt Assessment*, for quick or prompt assessments. Form 2859 includes a chart of all required items to be completed for each type of return.
5. Attach a report setting forth the conditions and factors in support of the recommendation including:
 - Name, address, and taxpayer identification number (TIN),
 - Tax, penalty and interest to be assessed by period,
 - Nature of the taxpayer's business or activity,
 - Taxpayer's present financial condition,
 - Information regarding the taxpayer's activity giving rise to the recommendation, such as transfer of assets without consideration,
 - Records or statements with respect to continuing business or personal losses,
 - Filing record of taxpayer,
 - Taxpayer's record of delayed payment of taxes in the past (collection delays and unpaid taxes),

- Nature and location of the taxpayer's assets and the source(s) of income,
- Statement as to the factual basis for the determination of taxable income and a schedule showing how the tax was computed,
- Other information having a bearing upon the taxpayer's financial condition, future anticipation of losses, etc.

5.1.4.3.1 (07-31-2014)

Approval Prior to Jeopardy Assessment

1. Due to the urgency involved in jeopardy assessments, the file will be given the highest priority of handling within and between the responsible functions.
2. Refer to Delegation Order 4-21 (Rev. 1) (formerly DO 219, Rev. 4) for delegated authority to make jeopardy assessments, see IRM 1.2.43.19.
3. Per IRC 7429(a)(1)(A), Chief Counsel, or his or her delegate, must approve all jeopardy assessments and all jeopardy levies. This authority can be re-delegated no lower than Associate Area Counsel.

Note:

For SB/SE International Operations, the authority is delegated to the Deputy Associate Chief Counsel (Strategic International Programs) or his or her delegate

4. Obtain Counsel's signature on Form 2644, *Recommendation for Jeopardy/Termination Assessment*. Approval via fax is acceptable.

5.1.4.3.2 (04-07-2009)

Termination Pre-Assessment Recommendations

1. Collection personnel will not initiate termination assessment recommendations.
2. Refer information that could lead to a termination assessment to Examination for appropriate action.

5.1.4.3.3 (04-07-2009)

Responsibility of Territory Manager

1. Prior to approval by the Area Director, the Collection Territory Manager will:
 - A. Review all termination and jeopardy assessment recommendations, including those initiated by Examination and Criminal Investigation,
 - B. Discuss disputed cases with the originating division,
 - C. Document and report unresolved issues to the Area Director, who has final responsibility for determining that collection of the proposed tax liability is in jeopardy.

5.1.4.3.4 (07-31-2014)

Assessment and Post Assessment Procedures

1. Immediately after the Area Director has approved the jeopardy or termination assessment, the tax will be assessed by faxing Forms 2644 and 2859 to the Campus Accounting Function. See SERP, Who/Where, Prompt, Quick, Jeopardy and Termination Assessments for the fax number at http://serp.enterprise.irs.gov/databases/who-where.dr/prompt_asses.htm. Fax the forms to the campus where the return would normally be filed. Accounting and Tax Payment Branch in Submission Processing will ensure the fax numbers on SERP are correct.

Reminder:

Input TC 570 as a secondary transaction when posting payments to avoid the possibility of erroneously refunding credits.

Note:

The assessment will take approximately six weeks to post to the Masterfile.

2. Form 3552, *Prompt Assessment Billing Assembly* (Parts 3 and 4), may be completed and used to provide Notice and Demand. On Parts 3 and 4 of Form 3552:
 - A. Change the statement in the second sentence from "when you receive this notice" to "immediately. "
 - B. Delete the last portion of the third sentence which states, "and send it with a copy of this notice to the address shown above."
 - C. Delete the statement, "Please return this copy with your payment to the address shown above" from the bottom of this form.
3. In accordance with IRC 7429(a)(1)(B), after the tax is assessed, a taxpayer must be provided, within 5 calendar days of assessment, the following:
 - A. Notice and Demand to pay the tax (Form 3552),
 - B. Notice of Jeopardy or Termination Assessment, including notification of right of appeal and right of review under IRC 7429 and, in the case of levy, IRC 6330 (See Exhibit 5.1.4-1, Pattern Letter P-513, *Notice of Jeopardy Assessment Right of Appeal* and Letter 2439 (CG) or Letter 2439-A (CG), *Notice of Jeopardy Levy and Right of Appeal*),
 - C. Computation of income and tax,

Note:

For jeopardy and termination assessments under the circumstances described in IRC 6867, individuals found in possession of cash or cash equivalent in excess of \$10,000, who do not claim ownership, will be notified that they are **not** entitled to judicial review under IRC 7429 and no notice of right of appeal is provided (see IRC 6867(b)(3)); however, a termination or jeopardy assessment under IRC 6867 is appealable to Appeals.

- D. Personally deliver notices when possible.

If the taxpayer ...

Cannot be located
No longer resides at the address on the assessment

Then ...

Send the notices by certified mail to the last known address of the taxpayer.
Check IDRS for a new address.
Review the jeopardy or termination file for the taxpayer's current residence.

4. Determine whether to file a Notice of Federal Tax Lien (NFTL).

If ...

The taxpayer does not full pay the amount of the assessment upon issuance of the Notice and Demand

Then ...

File a Notice of Federal Tax Lien through the Automated Lien System (ALS).

Reminder:

The taxpayer has the right to appeal the lien filing under the Collection Appeals Program or Collection Due Process.

It is determined that the filing of the lien will not ensure that the taxpayer will not dispose of, dissipate, or hide personal property

Take immediate action to levy on cash or other liquid assets of the taxpayer in the possession of third parties. See IRM 5.11.3.4 for the forms and letters to be used for the jeopardy levy.

Note:

IRC 6863 provides conditions for the stay of collection of jeopardy or termination assessments.

5. IRC 6851 and IRC 6867 provide for the assessment (termination) and collection of tax associated with cash amounts in excess of \$10,000 when the cash or cash equivalent has been seized by law enforcement authorities and the owner cannot be identified. Collection of these assessments comes from the cash itself not from the personal assets of the person in possession of the cash.

5.1.4.3.5 (05-20-2011)

Liaison

1. Effective administration of jeopardy and termination assessment procedures requires the close cooperation of all involved Service personnel.
2. Advisory has overall responsibility for liaison between Collection and:
 - Examination
 - Criminal Investigation
 - Appeals
 - SB/SE Area Counsel
3. Advisory will open the appropriate NFOI 186 in ICS no later than 7 calendar days of receipt of the triggering request or documents for any necessary actions related to accelerated assessments. Due to the time sensitive nature of the jeopardy/termination assessment and/or administrative/judicial review process, control and recordation of the case actions in ICS will necessitate loading the case well within the outside timeframe of 7 calendar days.

5.1.4.3.6 (05-20-2011)

Administrative/Judicial Review of Jeopardy/Termination Assessments

1. IRC 7429 provides that the taxpayer is entitled to administrative and judicial review of jeopardy and termination assessments.

Exception:

Administrative and judicial review provisions do not apply to jeopardy or termination assessments made under IRC 6867 (large cash possession). See *IRM 5.1.4.3.4*.

2. Within 1 workday of receipt of the written request, Advisory will advise the appropriate Service personnel and provide the entire case file, including the written request, to:
 - A. Appeals, in the case of a request for an administrative review, or
 - B. SB/SE Area Counsel, in the case of a request for judicial review.
3. Responsible Service employees should keep Advisory informed of the status of the case.

If ... The taxpayer files a civil suit at any time prior to conclusion of the administrative appeals	Then Advisory will... Request the entire Collection and/or Examination file for transmission to SB/SE Area Counsel.
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An individual comes forward and claims ownership of cash (or cash equivalent) previously assessed under IRC 6867

Advise the individual to submit a written request, signed under the penalties of perjury, to the Area Director marked to the attention of the Advisory manager. The written request will include the following:

- a. The name, address, and social security number of the person submitting the request,
- b. A detailed description of the property levied upon, if other than cash; if cash, state the exact amount seized,
- c. A description of the claimant's basis for claiming the property levied upon as belonging to the claimant,
- d. The name and address of the "Possessor" of the cash or cash equivalent (the person who was originally found to be in possession of the cash and who denied its ownership and did not properly identify the true owner),
- e. The originating Internal Revenue area, the date of lien or levy as shown on the Notice of Tax Lien (Form 668(Y) (C)), Notice of Levy (Form 668-A) or Levy (Form 668-B) or, in lieu thereof, a statement of the reasons why such information cannot be furnished.

If... The ownership claim is submitted under conditions above and is disallowed Advisory determines that the ownership claim is valid There is any litigation filed against the government because of a jeopardy assessment made under IRC 6867,	Then... Advisory should notify the claimant as soon as possible of the right to bring suit against the government under provisions of IRC 7426 or for an administrative appeal with the Appeals Office. Refer the claim to Examination for consideration. Examination is responsible for abating any over-assessment and refunding the over-assessment to the claimant if applicable. Examination will notify Collection of their determination so that Advisory can arrange for disposition of any non-cash items seized. Advisory will notify Examination and furnish a copy of the third party's claim unless previously furnished.
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4. The responsibility to keep Advisory informed of the status of the case should not violate any ex parte prohibitions. Specifically, Appeals should communicate with the Advisory regarding the anticipated return of the case. See Rev. Proc. 2000-43 for a more thorough discussion of ex parte communications and prohibitions.
5. See IRM 4.15.4, *Administrative and Judicial Review*, for a more thorough discussion of the administrative and judicial review process.

5.1.4.3.7 (07-31-2014)

Processing Abatements

1. Under the administrative/judicial review process, a determination may be made that the assessment was improperly made or the tax was excessive in amount. When this occurs, Advisory is responsible for coordinating the abatement of jeopardy/termination assessments.
2. Collection personnel will prepare Form 3870, *Request for Adjustment*, to decrease tax, penalty and interest as determined by Appeals or District Court.
3. Final District Court orders to abate all, or a part, of the tax should be provided to Advisory by SB/SE Area Counsel. Within 14 calendar days of receipt of such orders, Advisory will return any files to the initiating office for immediate processing of the abatement. See IRM 4.8.8.7.1.4, *Abating Jeopardy/Termination Assessments*, for instructions on processing the abatement request.

4. When the District Court order is based on a determination that the collection of the tax was not in jeopardy, Examination will reestablish the taxpayer's filing requirement and ensure examination of the taxpayer's current year return.

5.1.4.4 (05-20-2011) Quick Assessment

1. Quick assessment procedures are required when the tax is not at risk, but the assessment statute will expire within 90 days and is limited to the following situations:
 - A. Additional taxes and agreed deficiencies when the statutory period for assessment will expire before assessment action can be completed under regular procedures.
 - B. Deficiencies or current additional and delinquent taxes where receivership/probate proceedings are involved or imminent (per IRC 6871).
2. A quick assessment:
 - A. Does **not** provide authority to make immediate demand for payment of the tax liability assessed.
 - B. Does allow the taxpayer the statutory 10-day period in which to pay and the 30-day notice of intent to levy period under IRC 6331(d) and notice of a right to a hearing under IRC 6330(a).

Note:

If the taxpayer is in a receivership or probate proceeding, an immediate proof of claim may be filed.
 - C. Does **not** change/update the existing Master File entity information.

Note:

Use Form 2363, *Master File Entity Change*, to change the Master File entity to agree with the information on that return.
3. To eliminate unpostable conditions, research a transcript of the module involved, if practical, to determine if:
 - A. Module is established on Masterfile,
 - B. TIN and name line agree with the Form 2859, *Request for Quick or Prompt Assessment*, information,
 - C. Tax period was not previously assessed,
 - D. No freeze codes exist,
 - E. Proper transaction codes are being input and are not duplications,
 - F. Taxpayer is in bankruptcy.

5.1.4.5 (05-20-2011) Prompt Assessments

1. A prompt assessment is a manually processed assessment of a secured and processable return when collection of the resulting tax appears to be at risk and the intention is to proceed with collection action immediately following the 10 day period for Notice and Demand.
2. A prompt assessment of employment, excise, and partnership tax returns prepared and signed under authority of IRC 6020(b) may be requested provided that Letter 1085(DO), *30 Day Letter, Proposed IRC 6020(b) Assessment*, or Letter 1616(DO), *30 Day Letter, Proposed IRC 6020(b) Assessment Partnership Return*, has been sent to the taxpayer and the appeal period has lapsed.
3. The initiator must always determine prior to the recommendation:

If the taxpayer is . . .	Then . . .
In bankruptcy	Contact Insolvency prior to initiating a prompt assessment.
Quickly placing property beyond the reach of the government	Collection action may be pursued although the 10-day notice and demand period and the 30-day notice of intent to levy has not expired. Refer to IRM 5.11.3, <i>Jeopardy Levy Without a Jeopardy Assessment</i> .
An in-business taxpayer	Do not do a prompt assessment where the proposed plan of action is to enter into an installment agreement.
4. The initiator will establish, and document in the case history, a plan of action for ultimate resolution of the balance due. A prompt assessment will not be recommended in the following instances:
 - A. Taxpayer will be granted or already has an existing installment agreement,
 - B. Assessment will be reported as currently not collectible,
 - C. No distrainable assets,
 - D. Pyramiding tax liabilities and **no** enforcement action is pending.
5. All applicable penalties must be computed by the revenue officer.

5.1.4.6 (05-20-2011) Quick and Prompt Assessments on Trust Fund Recovery Penalty

1. See IRM 5.7.6.3, *Quick and Prompt Assessment Actions*, for the procedures to follow for quick or prompt assessments on Trust Fund Recovery Penalty cases.

5.1.4.7 (04-07-2009) Processing Quick and Prompt Assessments

1. In order for Accounting Control/Services to receive a legible copy of transmitted documents, all forms must be transmitted as original documents. Do not use photocopies of Form 2859T, *Prompt or Quick Assessment Transmittal*, or Form 2859, *Request for Quick or Prompt Assessment*.
2. For a quick or prompt assessment fax request,
 - A. Prepare Form 2859, *Request for Quick or Prompt Assessment*. Form 2859 includes a chart of all required items to be completed for each type of return.
 - B. Prepare one Form 2859T, *Prompt or Quick Assessment Transmittal Request*.
 - C. Send a photocopy of Form 2859 to Advisory if receivership proceedings are involved.

D. Forward Form 2363, *Master File Entity Change*, if needed to change the Masterfile entity to agree with the information on the tax return, to the appropriate area office function for input.

3. Fax the assessment package in the following order:

- A. Form 2859T, *Prompt or Quick Assessment Transmittal Request*,
- B. Form 2859, *Request for Quick or Prompt Assessment*,
- C. Tax returns (with attachments).

4. Fax the forms and returns to the Accounting Control/Service. See SERP, Who/Where, Prompt, Quick, Jeopardy and Termination Assessments for the fax number at http://serp.enterprise.irs.gov/databases/who-where.dr/prompt_asses.htm. Fax the forms to the campus where the return would normally be filed. Accounting and Tax Payment Branch in Submission Processing will ensure the fax numbers on SERP are correct.

Reminder:

Input TC 570 as a secondary transaction when posting payments to avoid the possibility of erroneously refunding credits.

Note:

The assessment will take approximately six weeks to post to the Masterfile.

- 5. Upon receipt, Accounting Control/Services will process the request and either fax the appropriate form, or will telephone acknowledgment of receipt along with the 23–date and the Document Locator Number (DLN), with corrections to the computation if necessary, to the initiator immediately.
- 6. Once the acknowledgment of receipt, the summary date of assessment and a DLN have been received, the original returns can be destroyed.

5.1.4.8 (04-07-2009)

Form 3552, Prompt Assessment Billing Assembly

1. Processing Form 3552:

If the initiator...

Requested the preparation of the Form 3552

Did not request the preparation of Form 3552

Then...

The Campus will prepare the Form 3552 and will forward Parts 3 and 4. See below.

The initiator will:

- a. Prepare Form 3552.
- b. Immediately deliver or mail certified, Parts 3 and 4, along with Publication 1 to the taxpayer.
- c. Match the manually prepared Form 3552 with IDRS when the assessment has posted to Master File for verification of amounts and other information.
- d. Take appropriate corrective actions if errors are discovered.

5.1.4.9 (04-01-2005)

Mathematical Errors

- 1. When the Campus discovers a math error on a return submitted for a prompt assessment, they will:
 - A. Prepare the Form 3552 and indicate the math error amount.
 - B. Isolate the math error and show in (28.) Reference "Additional Assessment (M.E.)" and in (29.) TC "290."
- 2. When the taxpayer is given notice of the liability:
 - A. Explain parts 3 and 4 of the Form 3552, i.e., the math error assessment.
 - B. Advise them of their appeal rights.
 - C. Advise them collection action will not be pursued on the math error amount on a contested assessment.
 - D. Advise them to address a request for abatement to the campus.

Exhibit 5.1.4-1

Pattern Letter P–513 (Rev. 9–2008)

(Reference: IRM 5.1.4.2.4)

Taxpayer Identification Number:
Contact Person:
Contact Telephone Number:
Employee Identification Number:

(Type on Appropriate Letterhead)
NOTICE OF JEOPARDY ASSESSMENT AND RIGHT OF APPEAL

Dear Taxpayer,

Under section (insert 6861, 6862, or 6867) of the Internal Revenue Code (the Code), you are notified that I have found (insert reason for asserting the jeopardy assessment) thereby tending to prejudice or render ineffectual collection of (insert type of tax) for the period ending (insert tax period). Accordingly, based on information available at this time, I have approved assessment of tax and additional amounts determined to be due as reflected in the attached computation:

Taxable Period Tax Penalty Interest

For a joint income tax assessment include the following. To ensure that you and your spouse receive this notice, we are sending a copy to each of you. Each copy contains the same information related to your joint account. Any amount you owe should be paid only once.

Under section 7429 of the Code, you are entitled to request administrative and judicial reviews of this assessment action.

For an administrative review, you must file a written proposal with the Area Director within 30 days from the date of this letter, requesting redetermination of whether or not: (1) the making of the assessment is reasonable under the circumstances, and/or (2) the amount so assessed or demanded as a result of the action is appropriate under the circumstances. A conference will be held on an expedite basis to consider your protest. Your protest will be forwarded to the area Appeals Office where a conference will be held. If you submit new information or documentation for the first time at an Appeals conference, the Appeals Office may request comment from the Area Director on such evidence or documents. Enforced collection action may proceed during any administrative appeal process unless arrangements are made regarding collection of the amount assessed. To make such arrangements, please contact (name of appropriate area official) at (appropriate telephone number).

You may pursue a judicial review of this assessment by bringing a civil suit against the United States in the U.S. District Court in the judicial district in which you reside, or in which

your principal office is located. However, in order to have this action reviewed by the District Court, you must request administrative review within 30 days of the date of this letter. Such suit must be filed within 90 days after the earlier of : (1) the day the Service notifies you of its decision on your protest, or (2) the 16th day after your protest. The Court will make a determination of whether the making of the assessment is reasonable under the circumstances, and whether the amount assessed or demanded is appropriate under the circumstances. The Court's determination regarding the jeopardy assessment is final and not reviewable by any other court.

Appeal to Courts in Case of Income, Estate, Gift, and Certain Excise Taxes

If an agreement is not reached with the Internal Revenue Service, a notice of deficiency is required by law to be issued within 60 days from the date of the jeopardy assessment made under section 6861 of the Code. You will then have 90 days (150 days if outside the United States) from the date the notice is mailed to file a petition with the United States Tax Court.

Appeal to Courts in Case of Other Taxes Assessed Under IRC 6862

Claim for credit of refund of taxes assessed under section 6862 of the Code may be filed in accordance with section 6511(a) of the Code for administrative and judicial review of the merits of the liability assessed. An administrative decision on the claim may be appealed to the courts under the provisions of section 7422(a) of the Code.

If you have questions about this letter, you may contact the contact person identified on the front of this letter.

Sincerely,

Area Director

Enclosure
Computation

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 1. Field Collecting Procedures

Section 5. Balancing Civil and Criminal Cases

5.1.5 Balancing Civil and Criminal Cases

- 5.1.5.1 [Parallel Investigations](#)
- 5.1.5.2 [IRS Policy Concerning Parallel Investigations](#)
- 5.1.5.3 [Resolving Conflicts Regarding Parallel Investigations](#)
- 5.1.5.4 [Commencement of Parallel Investigation](#)
- 5.1.5.5 [Coordination Meetings](#)
- 5.1.5.6 [Interviews](#)
- 5.1.5.7 [Witnesses](#)
- 5.1.5.8 [Information Sharing](#)
- 5.1.5.9 [Undercover Operations and Search Warrants](#)
- 5.1.5.10 [Administrative Summons](#)
- 5.1.5.11 [Cases Under Jurisdiction of the Department of Justice](#)
- 5.1.5.12 [Advisory Processing - CI Notification of Cases Under TC 914](#)
- 5.1.5.13 [Transferring Cases to Centralized Case Processing \(CCP\)](#)
- 5.1.5.14 [Probation and Restitution](#)
- 5.1.5.15 [Restitution](#)
- 5.1.5.16 [Advisory Responsibilities - Probation and Restitution Cases](#)

Manual Transmittal

December 16, 2014

Purpose

(1) This transmits revised IRM 5.1.5, Field Collecting Procedures, Balancing Civil and Criminal Cases.

Material Changes

- (1) 5.1.5.1 was updated to add a reference to Employee Protection Program indicators and criteria.
- (2) 5.1.5.13.3 was updated to clarify field responsibilities and procedures for criminal investigation cases monitored by Centralized Case Processing. These procedures were previously published as interim guidance.
- (3) 5.1.5.14 through 5.1.5.27 were completely rewritten and renumbered to incorporate new collection procedures for assessed restitution. These procedures were previously published as interim guidance.
- (4) 5.1.5.19.4 was rewritten to incorporate new procedures for handling state court ordered restitution payments. These procedures were previously published as interim guidance.
- (5) 5.1.5.28 was added to incorporate new procedures for acknowledging IRS as a victim in order to seek restitution. These procedures were previously published as interim guidance.
- (6) Editorial changes were made throughout.

Effect on Other Documents

IRM 5.1.5, dated April 15, 2011, is superseded. Interim Guidance Memoranda SBSE-05-0614-0049, SBSE-05-0614-0052, SBSE-05-0814-0059, and SBSE-05-0314-0019, have been incorporated into this revision.

Audience

Collection Field Area and Advisory employees.

Effective Date

(12-16-2014)

Signed by Dretha Barham,
Director, Collection Policy
Small Business/Self-Employed

5.1.5.1 (12-16-2014) Parallel Investigations

1. The Internal Revenue Code (IRC) contains both civil and criminal provisions to address fraud. Revenue officers may conduct civil investigations before, during or after criminal investigations of the same taxpayer. If the investigation is conducted simultaneously with the criminal investigation, the process is referred to as a parallel investigation.
2. Collection employees should be alert to the presence of a TC 914, Active Criminal Investigation, on related tax modules in pre-contact analysis. The TC 914 is not an entity code but the code's presence on any module in the case may indicate the need to apply parallel investigation procedures.

Caution:

See IRM 25.4.1, *Employee Protection - Potentially Dangerous Taxpayer* and IRM 25.4.2, *Employee Protection - Caution Upon Contact Taxpayer* for criteria and complete information on these employee protection programs.

3. Parallel proceedings involve simultaneous investigations or litigations of separate civil and criminal aspects of a case involving a common individual or entity. Some potential civil remedies that could occur in a parallel proceeding are IRC § 6672 Trust Fund Recovery Penalty investigations, injunctions for pyramiding taxpayers, Notice of Federal Tax Lien filings, issuance of levies, jeopardy levies, service of summons, and pursuit of erroneous refunds.
4. Civil and criminal parallel investigations are conducted as separate investigations. They are not joint investigations but do require significant coordination between the operating divisions throughout the civil investigation and litigation processes. While regularly scheduled coordination meetings are required (see IRM 5.1.5.5), Criminal Investigation must not direct the revenue officer's actions in the civil investigation.

Note:

The local Collection Fraud Technical Advisor (FTA) can be a valuable resource in the coordination process.

**5.1.5.2 (08-31-2010)
IRS Policy Concerning Parallel Investigations**

1. Policy Statement 4-26 (P-4-26), Criminal and Civil Aspects in Enforcement (formerly Policy Statement 4-84), provides guidance on taking civil enforcement action when the taxpayer is under criminal investigation. See IRM 1.2.13.1.11.
2. IRS policy concerning parallel investigations and the procedures in this IRM are intended to provide guidance in identifying the best alternative from the civil and criminal sanctions available, prevent additional loss of tax revenue, and foster voluntary compliance.
3. Civil enforcement actions with respect to taxable periods of the same and other types of taxes **not included** in the criminal investigation generally do not imperil successful criminal investigation or subsequent prosecution. Therefore, civil enforcement action for such taxable periods or other types of tax will proceed concurrently unless there is agreement between the responsible functions to withhold civil action in whole or in part during the criminal investigation. See P-4-26, IRM 1.2.13.1.11(4).
4. =====
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5. =====
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6. =====
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7. =====
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8. Any proposed civil enforcement action *must be coordinated* to minimize adverse consequences on the criminal investigation. For example, a revenue officer should not take the following actions without first obtaining the approval of the Special Agent in Charge:
 - contacting the taxpayer
 - taking enforced collection action against the taxpayer
 - entering into an agreement with the taxpayer to resolve civil tax liabilities
9. Because civil enforcement actions with respect to the same taxable periods and same types of taxes for those periods included in the criminal investigation may imperil the criminal investigation or subsequent prosecution, the consequences of civil enforcement action must be carefully weighed. However, there generally should be no suspension of collection action on assessed amounts of tax liabilities reported on filed returns. See P-4-26, IRM 1.2.13.1.11(8).

**5.1.5.3 (08-03-2009)
Resolving Conflicts Regarding Parallel Investigations**

1. If a conflict exists when a criminal investigation and collection action are ongoing at the same time, the affected operating divisions must resolve the conflict and determine how and when the civil and criminal actions should proceed.
2. A six way meeting will be held with the revenue officer, the revenue officer group manager, the special agent, the supervisory special agent (SSA), SB/SE Area Counsel, and Criminal Tax Counsel. The local Fraud Technical Advisor should also be consulted and attend the meeting, if possible. If a case is open in the U.S. Attorney's Office or the Department of Justice, representatives from those offices should also be invited to the meeting.
3. A decision will be made as to whether to conduct parallel investigations, to proceed solely criminally, or to proceed solely civilly. In some instances, civil action may be suspended temporarily (for no more than 90 calendar days), for example, to permit CI to complete an undercover investigation or execute a search warrant. In such cases, a date should be set for a follow up meeting to revisit the issue of going forward with civil actions. See IRM 5.1.5.3.1, *Temporary Suspension of Civil Action*. If the case requires suspension of civil action for more than 90 calendar days, the procedures in IRM 5.1.5.3.2, *Case Monitoring When Civil Action is Suspended*, should be followed.
4. Any disagreements on how to proceed should be elevated and resolved in accordance with the guidelines in P-4-26. See IRM 1.2.13.1.11. Any disagreements with the U.S. Attorney and/or Department of Justice should be brought to the attention of the Special Counsel for Civil/Criminal Coordination, Tax Division, Department of Justice.

**5.1.5.3.1 (08-03-2009)
Temporary Suspension of Civil Action**

1. In cases where civil action is to be temporarily suspended, the following actions will occur:
 - A. CI will control all modules in which civil action is to be suspended by requesting input of TC 914.
 - B. Collection will document the ICS history.
 - C. Cases in which civil action is to be temporarily suspended will be retained in inventory.
 - D. A date will be established for a follow-up meeting to revisit the issue of going forward with civil actions and reversing the CI controls. The follow-up meeting date should be no more than 90 days from the date civil action is suspended.

Note:

Collection Statute Expiration Dates (CSEDs), and Trust Fund Recovery Expiration Dates (ASEDs), for these cases will continue to be monitored by the assigned revenue officer.

**5.1.5.3.2 (08-03-2009)
Case Monitoring When Civil Action is Suspended**

1. Centralized Case Processing (CCP) will monitor cases in status 26 (assigned to a revenue officer) if the following two conditions are met:
 - A. a TC 914 appears on all of the modules, and
 - B. a decision has been made to suspend civil action due to the criminal investigation other than the temporary suspension discussed in IRM 5.1.5.3.1, *Temporary Suspension of Civil Action*, above.
2. See IRM 5.1.5.13, *Transferring Cases to CCP*, below, for further information regarding the monitoring of TC 914 cases by CCP.

5.1.5.3.3 (08-03-2009)

Requests to Suspend Collection Action on Non-Tax Criminal Cases

1. For purposes of this section, a non-tax criminal case is one where the investigation or prosecution is not being made on behalf of the IRS.
2. The Director, Field Area Collection, can suspend collection activity at the request of the Department of Justice on a taxpayer who is the subject of a non-tax criminal case.
3. However, the IRS may not inform the Department of Justice whether there is any ongoing collection activity with respect to a particular taxpayer, or whether the IRS has suspended, or will suspend, such activity unless the Department of Justice submits a written request meeting the requirements of IRC § 6103(i)(2). See IRM 11.3.28, *Disclosure to Federal Agencies for Administration of Nontax Criminal Laws*.
4. Telephone requests by a U.S. Attorney to suspend collection activity can be honored in emergency situations (such as when court action is imminent) provided a delay in collection activity would not be detrimental to the IRS. In such cases:
 - Disclosure of information — No information may be disclosed to the Department of Justice until the telephone request is followed up with a proper IRC § 6103(i)(2) request.
 - Suspension action — If suspended, review after 72 hours to determine if the suspension should be continued. In all cases, the decision to suspend civil activity should come only from the Director, Field Area Collection.
 - If contacted by the U.S. Attorney, revenue officers and advisors will make no comment on the case in question and refer the request, through proper channels, to the Director, Field Area Collection.

5.1.5.4 (08-03-2009)

Commencement of Parallel Investigation

1. Once agreement is reached that a parallel investigation will take place, criminal investigators and revenue officers should coordinate the development of the evidence that will support both the criminal and civil actions while being mindful of the legal requirements and constraints.
2. Revenue officers should consult their local Fraud Technical Advisor (FTA). FTAs can provide guidance to revenue officers during parallel investigations due to their knowledge of both Collection and Criminal Investigation procedures.
3. Ongoing communication is essential for a successful parallel investigation.

5.1.5.5 (08-03-2009)

Coordination Meetings

1. A coordination meeting must take place within 30 calendar days of the decision approving the parallel investigation. The participants must include the revenue officer, special agent, their respective managers and SB/SE Area Counsel and Criminal Tax attorneys. The local Fraud Technical Advisor (FTA) should also attend the meeting, if possible. If a matter has been referred to the Department of Justice (DOJ) and/or U.S. Attorney's Office (USAO), the DOJ/USAO attorneys should be included in coordination activities.
2. Civil and criminal investigators and IRS attorneys should regularly coordinate their efforts through case status meetings held at least quarterly until the collection actions are complete. These coordination meetings will facilitate sharing important case developments.
3. The purpose of the case status meeting is to communicate the case developments and facilitate information sharing between Collection and CI. In grand jury cases, CI will not be able to share information subject to grand jury secrecy rules and IRC disclosure provisions. With the assistance of the FTA, the revenue officer should be prepared to discuss the collection plan of action and the impact of these actions on the criminal proceeding. CI will not direct the actions in the collection investigation.
4. Use of special investigative techniques, such as undercover operations, or instances where there is the active pursuit of a search warrant should be communicated to Collection when practical. The timing of collection actions may affect special agent or revenue officer safety during a special investigative technique or the execution of a search warrant. Therefore, close coordination and communication is necessary when CI utilizes these techniques. Any decisions on how and when to proceed should be weighed in favor of employee safety concerns.
5. If concerns are raised about the criminal investigation or the collection investigation, those concerns or objections should be resolved by consultation among the collection and criminal personnel and their supervisors, Counsel attorneys and their managers. When the matter has been referred, the DOJ and/or USAO attorneys should also be included in the decision making process.

5.1.5.6 (08-03-2009)

Interviews

1. The revenue officer will advise the special agent assigned to the parallel investigation of all meetings with the taxpayer(s) prior to such meeting.
2. If the special agent has informed the taxpayer under investigation of his or her Fifth Amendment rights, the revenue officer must explain to the taxpayer or his or her representative at each meeting that the revenue officer is conducting a civil investigation and the information provided will be shared with Criminal Investigation (CI).
3. If a taxpayer under investigation inquires about criminal implications or whether the taxpayer is the subject of a criminal investigation before CI has contacted the taxpayer, the revenue officer must be careful to provide accurate information and not mislead the taxpayer. The revenue officer should inform the taxpayer that they are conducting a civil investigation, and that the information obtained can be shared with CI. Under no circumstances should the revenue officer inform the taxpayer that the case has been referred to CI. This is CI's responsibility. The revenue officer should immediately notify the special agent of the contact with the taxpayer.
4. There is no specific prohibition on conducting joint revenue officer and special agent interviews of taxpayers. However, revenue officers and special agents must clearly identify themselves and their roles at these meetings and prepare a joint Memorandum of Interview (MOI). The MOI should be prepared by the special agent and signed by both interviewers. The revenue officer should receive a copy of the MOI, while the special agent retains the original. All interview notes must be provided to the special agent.
5. CI may in some cases request that the revenue officer not contact the taxpayer or representative. In such cases, the revenue officer should refrain from issuing Letter 3164P or any appointment letters to the taxpayer or representative. SB/SE Area Counsel should be involved in any decision to conduct an investigation without contacting the taxpayer or representative.

5.1.5.7 (01-01-2007)

Witnesses

1. Revenue officers and special agents should attempt to use different witnesses to prevent the possibility of inconsistent testimony and potential discovery issues raised during the civil or criminal judicial process.

2. If the decision is made to use the same witness, the SB/SE Counsel Attorney, Criminal Tax Attorney and DOJ or Assistant U.S. Attorney assigned to the case should be consulted and coordinate any selection of these witnesses.

Note:

The term "witness" in the context of this section refers to any third party interviewed by revenue officers in the conduct of a civil collection investigation.

5.1.5.8 (08-03-2009)

Information Sharing

1. Sharing information between revenue officers and government attorneys assigned to the case is a key ingredient in developing civil and criminal cases simultaneously and efficiently.
2. Unless prohibited under grand jury secrecy Rule 6(e) of the Federal Rules of Criminal Procedure and disclosure provisions of IRC § 6103, *Confidentiality and Disclosure of Returns and Return Information*, information sharing between civil and criminal functions is appropriate. Judicial districts and appellate courts have diverse rulings on what constitutes grand jury information; therefore, the determination about what information can be shared will be made on a case by case basis.
3. Special agents can develop evidence administratively through summonses, search warrants, witness interviews, and undercover operations. Evidence developed administratively before using the grand jury process may be shared by CI with Collection. Information obtained from CI should be included in civil investigation files as the information may be useful in future civil actions at the conclusion of the criminal case, including probation cases involving civil liability resolution.
4. In the coordination meeting noted above, Collection should request CI to separate non-grand jury information from grand jury material for civil investigation purposes. The non-grand jury information should be dated and initialed to document that the information was obtained prior to the grand jury.
5. Revenue officers must inform CI that civil files are available. Access to all available information in the civil file must be provided to CI. Prosecutors have a duty to disclose certain information to criminal defendants; therefore, it is absolutely necessary for the special agents and Assistant U.S. Attorneys to be made aware of and provided with all the information in the collection file, including documents, interview notes and any other information that Collection gathers. The sharing of information should be done so that there are no unnecessary delays.

5.1.5.9 (08-03-2009)

Undercover Operations and Search Warrants

1. Collection actions generally will be temporarily suspended if CI is conducting an undercover operation or developing probable cause to execute a search warrant. Nevertheless, the benefits of an undercover operation or search warrant should be weighed against the need to prevent additional tax revenue loss.
2. Information obtained through a search warrant is generally not grand jury information. Search warrant information obtained during the grand jury process can be made available to revenue officers if no grand jury information was included in the affidavit for the search warrant. Criminal Investigation should consult with the Assistant U.S. Attorney assigned the case prior to turning over any information or documents obtained through the grand jury process.
3. Use of search warrant or undercover evidence should be coordinated with Area Counsel, CI and their respective Counsel, and the Assistant U.S. Attorney.

5.1.5.10 (08-03-2009)

Administrative Summonses

1. IRC § 7602(d) does not allow a summons to be issued or enforced concerning any person if a Department of Justice (DOJ) referral has been made by the IRS for such person. IRC § 7602(d)(2) defines a "referral" as either an IRS recommendation to DOJ for tax related grand jury investigation or criminal prosecution of the taxpayer or a request from DOJ made to the IRS pursuant to IRC § 6103(h)(3)(B) relating to the taxpayer. Coordination between SB/SE and CI is critical because pursuing a grand jury investigation or making a prosecution recommendation precludes using summonses in collection investigations.
2. IRC § 7602(d)(3) states, for purposes of what constitutes a referral, that each taxable period and each type of tax is treated separately.
3. If a taxpayer has been referred to DOJ for criminal prosecution and the revenue officer wants to issue an administrative summons to the taxpayer, the revenue officer and approving manager should speak with Area Counsel, the special agent, and Criminal Tax Counsel along with any DOJ attorney or Assistant U.S. Attorney assigned to the case prior to issuing the summons. During this conference, the parties will determine whether an administrative summons would be permissible under IRC § 7602(d)(1) and whether the issuance of a summons would adversely affect the criminal investigation or prosecution.

5.1.5.11 (08-03-2009)

Cases Under Jurisdiction of the Department of Justice

1. Criminal Investigation refers cases to the Department of Justice (DOJ) Tax Division for prosecution. When DOJ has accepted the referral of the case, it is considered under the jurisdiction of DOJ.
2. IRC § 6103(h)(2) & (3) allows DOJ attorneys from both the civil and criminal sections to contact either civil or criminal investigators to solicit case information that may help perfect the matter referred to DOJ. Requests should be in writing and coordinated with CI and Disclosure. Grand jury information can be disclosed only to those parties on the grand jury list. Revenue officers will generally not possess grand jury information, but should be aware that any such information in their possession cannot be disclosed except in these very limited circumstances. Contact Area Counsel in the event there is any question about the information requested.
3. Advisory is often the default point of contact for these cases. When Advisory receives requests for information from CI or DOJ on these cases, an employee will determine whether the case is being actively investigated or in an inactive status such as queue assignment or CNC.
 - For active cases, determine the case assignment, provide CI/DOJ with the group manager contact and note the ICS history. If information is provided directly to DOJ, CI should be informed of the actions taken.
 - For inactive cases, determine the CI contact that will receive the Advisory report noted in (6) below and open an ICS control no later than five (5) business days of receipt of the CI/DOJ request.
4. For cases under active collection investigation, the Director, Field Area Collection is responsible for coordinating collection activities with CI. In cases under DOJ jurisdiction, active cases will also be coordinated with DOJ through CI. A transmittal memorandum from the Director, Field Area Collection will be addressed to CI and will include:
 - Pending civil matters
 - Dates of assessment for all periods for which collection action is proposed
 - All outstanding liabilities of the taxpayer and related entities and modules
 - Balance owing on the assessed amounts
 - Civil action already taken on any outstanding liabilities
 - Assets owned by the taxpayer
 - Value of the taxpayer's assets

- Other claims, if any, against the taxpayer's assets
 - Conclusion as to whether personal contact with the taxpayer would be necessary
 - Advice as to whether collection activity other than levy, such as filing a notice of lien, would be sufficient to protect the interest of the United States
 - Actions the Field Collection Area Director plans to take on these accounts in the event CI and DOJ (when the case has been referred to DOJ) concur with the Field Collection Area Director's determination that the proposed civil action will not prejudice the pending criminal case
 - Conclusion as to whether even the passive-type collection activity would tie up the taxpayer's assets to the extent that the taxpayer would be unable to finance a defense of the potential criminal prosecution
5. Criminal Investigation will be responsible for:
- Reviewing the proposed civil actions
 - Notifying the Field Collection Area Director of any proposed actions they feel might imperil the criminal case
6. Advisory will report to CI on the inactive cases noted above, including the following information:
- a description of the inactive status of the case (queue, CNC, etc.)
 - the taxpayer's compliance with any installment agreement for assessed liabilities
 - contact information in the event further case information is required

5.1.5.12 (08-03-2009)

Advisory Processing - CI Notification of Cases Under TC 914

1. Criminal Investigation (CI) will notify the Advisory Territory Manager of each new case where a criminal investigation has been opened by issuing a Notification Memorandum to the Advisory Territory Manager.
2. Advisory will forward the Notification Memorandum to the appropriate Field Collection Territory Manager no later than 10 business days of receipt for cases under active collection investigation (status 26) or Compliance Initiative Program (CIP) cases, including any related entities. Receipt and transmittal of the Notification Memorandum will be documented in ICS history.
3. For cases that are in notice stream or queue status, no further action is required.
4. For NF 181 Other Investigations ("OIs") currently open and new TC 914 cases, take the following actions:
 - For cases in status 26, advise the assigned revenue officer that Advisory is closing its monitoring activities and document the ICS history.
 - For inactive cases, close the OI.

5.1.5.13 (08-03-2009)

Transferring Cases to Centralized Case Processing (CCP)

1. When the decision is made to suspend all civil action due to the criminal investigation, cases in status 26 will be transferred to Centralized Case Processing (CCP) for monitoring if all IRM requirements are met. Before transferring a case to CCP, a decision must be made as to whether civil enforcement actions will imperil a successful criminal investigation or subsequent prosecution. If a decision is made to take civil action, follow the parallel investigation procedures set forth in IRM 5.1.5.4, above.
2. During CCP monitoring, Field Collection must ensure that transferred cases continue to meet CCP monitoring requirements. CCP will issue Other Investigations (OIs) whenever actions are needed to ensure these requirements are met.
3. The following cases should **not** be transferred to CCP for monitoring:
 - Cases in the queue (status 24)
 - Currently Not Collectible (status 53)
 - Cases in litigation (e.g., litigation, bankruptcy (status 72 in any module))
 - Cases where the Assessment Statute Expiration Date (ASED) or Collection Statute Expiration Date (CSED) will expire within one year
 - Cases in OIC (status 71 in any module)
 - Cases in status 12

Note:

If the situation arises where modules have mixed statuses, determine whether the status for certain modules needs to be reactivated due to open activity on the account (i.e., criminal investigation). Refer mixed status cases to CCP if restrictive conditions prevent modules that are in status 24 or 53 from being reactivated. Do not refer cases to CCP if any module is in status 72 (litigation) or status 71 (OIC). Also, cases where there is an imminent statute for any period should not be referred to CCP until the issue is addressed. See IRM 5.1.5.13.1, *Cases with Imminent Statutes*, below.

4. CCP will monitor balance due and delinquent return cases. A TC 914 should appear on all modules showing a delinquency *before* the case is transferred.
 - A. If a case is transferred to CCP and subsequent balance due modules open on the account and have no TC 914 controls, CCP will issue an OI to the last revenue officer assigned to the account.
 - B. The revenue officer will contact the CI special agent to advise him/her that the modules are not protected by the TC 914 controls.
 - C. The special agent should request CI to place TC 914 controls on the new modules unless civil action is to take place.

Note:

Responsibility for inputting the TC 914 remains with CI.

5.1.5.13.1 (01-11-2010)

Cases with Imminent Statutes

1. Cases where the ASED or CSED will expire within one year will not be transferred to CCP without first obtaining approval from the revenue officer's group manager and managerial approval from CCP. Managerial approval from CCP can be obtained by the revenue officer's group manager either calling or emailing the FORT group manager.

Note:

Any actions to address an imminent statute must be coordinated with CI. See IRM provisions relating to parallel investigations, above.

2. Before a case is transferred to CCP, the ICS history must reflect the actions taken regarding any imminent ASEDs or CSEDs.
3. If the ASED for assessing the Trust Fund Recovery Penalty (TFRP) against a potentially responsible officer will expire within one year and either the employer or the potentially responsible officer is under criminal investigation, use Form 10498-C, *Intent to Commence Civil Action - Statute Protection for Assessment of TFRP*, to document agreement between Collection and CI regarding what, if any, actions should be taken to protect the ASED, or to acknowledge agreement that the ASED should be allowed to expire.

Note:

If a Letter 1153 (DO) has already been issued to the potentially responsible office prior to the commencement of the criminal investigation, Collection must notify CI that a Letter 1153 (DO) has been issued, explain the appeal rights that the taxpayer has as a result of such notification (see IRM 5.7.6.1.3), and determine the best course of action.

4. If the CSED will expire within one year and the taxpayer is under criminal investigation, use Form 10498-D, *Intent to Commence or Continue Civil Action - Collection Statute Protection*, to document agreement between Collection and CI regarding what, if any, civil collection actions should be taken to protect the CSED, or to acknowledge agreement that the CSED should be allowed to expire.
5. In order for either Form 10498-C or Form 10498-D to be effective, joint approval must be indicated by the signatures of the appropriate Collection Field Territory Manager and the CI Special Agent in Charge. Follow the procedures in IRM 5.1.5.3, above, to resolve any disagreements between Collection and CI regarding the commencement or continuation of civil collection actions to protect the applicable statute of limitations.
6. Retain a copy of the Form 10498-C or 10498-D, as applicable, in the case file and document the case history accordingly. In limited circumstances it may be possible to extend the CSED. See IRM 5.17.4.5, *Administrative Procedures for Extending Period of Limitations for Collection by Waiver*.

**5.1.5.13.2 (04-15-2011)
Procedures for Transferring Cases to CCP**

1. If a determination is made that civil action should be suspended on all modules while the criminal case is active, use the following procedures to close out the case and transfer it to CCP:

- A. Verify that all modules have a TC 914 input (for cases with delinquent return only periods, follow the procedure in IRM 5.1.11.6.2.1(3)).

Note:

If TC 914 is present in some tax periods, but not in others, Field Collection employees should contact CI to determine whether or not collection should be suspended and input of additional TC 914s should be initiated by CI. If needed, the local Fraud Technical Advisor (FTA) can assist with requesting CI to input TC 914s.

- B. Once TC 914 is on all balance due modules, notify the group manager to remove the ICS sub code 910; if there is no sub code 910, ensure that the entity 971/281 is reversed via input of a 972/281. Use ICS options: "Collection Activities," "FTA Involvement," "Generate 972/281)."

- C. Create an incoming OI on the ICS case; this incoming OI will be included in the case transfer to CCP and will be used by CCP for monitoring and control procedures. From the ICS Summary Screen, select the following:
 - i) "Collection Activities"
 - ii) "Create Modules"
 - iii) "Create OI"
 - iv) "Create Incoming OI"
 - v) For the initial assignment, use the originator's (primary RO) assignment number
 - vi) In the "Action Requested" field, select "Other"
 - vii) In the "Remarks" field, insert "181 CID Control"
 - viii) Select "Save"

- D. Once you have created the OI, transfer the entire ICS case to CCP. From the ICS Summary Screen, select the following:
 - i) "Collection Activities"
 - ii) "Transfer"
 - iii) "Transferee Office Requests Transfer"
 - iv) At "Enter Receiving Assignment Number" insert **35796979**
 - v) At the ICS prompt, "Open CIP/OI/FTD Assigned to originator # (which is primary). Include these items in Transfer Action?" "Y/N?" select "Y"
 - vi) When prompted, "do you want a Form 3210 to print for this transfer?" select "Yes"
 - vii) Insert a note in the remarks section of the Form 3210: **TC 914 Monitoring**
 - viii) The case will show approval pending until the Group Manager approves the transfer

- E. Once approved, send your closed case file, marked "914" with the Form 3210 to the following address:
Internal Revenue Service,
2970 Market Street
Philadelphia, PA 19104
Mail Stop 5-E04.116
Attn: TC 914 Monitoring

- F. Upon case receipt, CCP will ensure the input of the STAUP 91 on all modules in status 26 which have a TC 914.

- G. CCP will monitor the case, including any CSED or TFRP ASED statute issues, while the criminal investigation is pending and issue any necessary OIs to the field.

Note:

If the above outlined procedures are not followed, the case transfer will be rejected back to the originator for corrective action.

**5.1.5.13.3 (12-16-2014)
Other Investigations (OI) Issued by Centralized Case Processing (CCP)**

1. CCP will issue OIs to the field group for issues requiring field assistance or investigation, including the following:
 - two-year collection risk analysis (e.g., collectibility determination, continued noncompliance, status of CI investigation)
 - CSED protection
 - ASED protection for potential Trust Fund Recovery Penalty (TFRP) assessments
 - Notice of Federal Tax Lien refiling determinations

- new balance due modules that need TC 914 input or parallel investigation

Note:

Revenue officers should not close new balance modules with TC 530 cc 12 (unable to contact) or TC 530 cc 03 (unable to locate).

2. CCP will issue an OI to the field group every two years for purposes of determining whether administrative collection should remain suspended. The OI will request that the revenue officer conduct a risk analysis to determine:
 - the status of the criminal investigation
 - whether the taxpayer's noncompliance continues for tax periods subsequent to the periods under criminal investigation
 - whether there is any indication that the taxpayer is fraudulently transferring property or otherwise taking actions to avoid future collection.

Caution:

No collection action should be taken without the concurrence of CI. Do not contact the taxpayer without the prior approval of the Special Agent assigned to the case. If contact with the taxpayer is prohibited, the risk analysis will be based on the revenue officer's contact with the Special Agent, an analysis of internal IRS records, and other sources of information for which access will not jeopardize the criminal investigation.

3. If it is determined, after coordination with CI, that collection action should remain suspended, the revenue officer will document the basis for that determination in the case history. If it is determined that collection action no longer needs to be suspended for all or some of the modules, then the procedures above for parallel investigation should be followed.
4. The time period for completing the OI is set forth in IRM 5.1.8.2(3), *Courtesy Investigations*, which is 45 days after issuance. If additional time is needed, the revenue officer should work with the issuing employee to prevent the case from reissuing to the field.

5.1.5.13.4 (08-03-2009)

Closing Cases Monitored by CCP

1. When the criminal investigation is completed, CI prepares a Form 13308, *Criminal Investigation Closing Report*, and forwards the form and other documents, as appropriate, to the Territory Managers, Technical Services (Exam) and Advisory (Collection).
2. If the closing report relates to a case that has been referred to CCP for monitoring, Advisory will, within 10 business days of receipt of the Form 13308, either
 - A. route a copy of the Form 13308 to CCP, or
 - B. make an ICS history entry noting that CI has closed the case and the method of closure.
3. CCP will return cases to the assigned field group if further collection action is needed.

5.1.5.14 (12-16-2014)

Probation and Restitution

1. Following the conviction of a defendant for a criminal tax violation or tax-related offense, the court may order the defendant to comply with certain tax-related conditions of probation or supervised release, and/or order the payment of restitution to the IRS. Through a restitution order, a court can require a defendant in a criminal tax case to pay money to the IRS in order to redress the losses he or she inflicted on the Federal Treasury.
2. Public confidence in the tax system requires that the IRS exercise due diligence to ensure taxpayer compliance with conditions of probation relating to the IRS. To ensure that any noncompliance with IRS-related conditions of probation is detected and appropriate parties are timely notified, coordination by Advisory with Field Collection, Criminal Investigation, Examination, and the Department of Justice is required.
3. When the defendant is required to pay restitution to the IRS, coordination with the W&I Kansas City Submission Processing Center and SB/SE Ogden Campus Compliance Services may also be necessary to determine whether such payments are being received and cross-referenced to the correct account(s). See IRM 25.26.1, *Criminal Restitution And Restitution-Based Assessments*.

5.1.5.15 (12-16-2014)

Restitution

1. In a criminal tax case, the offense generally results in the loss of government property, i.e., the money to which the government was entitled under the tax laws but which was not paid by the defendant.
2. A court can impose restitution as an independent element of a sentence or as a condition of probation or supervised release.
3. Restitution is generally limited to losses caused by the offense(s) of conviction. The major exception to this general rule is in cases involving plea agreements. The parties to a plea agreement in any criminal tax case may agree to restitution in an amount greater than the loss attributable to the offense(s).
4. The district court must determine the amount of restitution and must state that the defendant is required to pay a sum certain.

5.1.5.15.1 (12-16-2014)

Court Ordered Restitution

1. One goal of resolving criminal tax cases is to require the defendants convicted (either by plea or by trial) to pay money to the IRS to redress the losses he or she inflicted on the Federal Treasury which resulted from their criminal conduct. Courts can award criminal restitution in tax cases when:
 - A. a defendant is convicted of a Title 18 offense involving a tax violation;
 - B. a defendant who pleads guilty to an IRC (Title 26) violation agrees, in the plea agreement, to pay restitution in connection with that violation; or
 - C. the court orders a defendant to pay restitution as a condition of supervised release or probation after a conviction on a Title 26 charge, whether or not the defendant agrees to the restitution.
2. In most criminal tax cases involving restitution, the amount of the tax loss is calculated from evidence admitted at trial or from information contained in the plea agreement and presented to the district court at sentencing.
3. The court may order the defendant to make payments to the court through a court ordered payment plan. These court ordered payments are sent by the Clerk of the Court to the W&I Submission Processing Center Restitution Unit in Kansas City.
4. Payment of restitution for taxes owed must be credited against the civil liability for unpaid taxes as provided in a plea agreement or court order.
5. Interest accrues as provided in 18 USC § 3612(f) on the restitution judgment if the restitution obligation exceeds \$2,500 and the defendant has not paid such obligation in full before the 15th day after the date of judgment. The court has discretion to waive Title 18 interest or limit the amount of interest the defendant is required to pay. Restitution generally does not include civil tax penalties.

Note:

If the court waives all interest and penalties during sentencing, the interest and penalties being waived are those that may be imposed under Title 18 of the United States Code. In a criminal tax case, the court does not have jurisdiction to waive civil interest and penalties that may be imposed under Title 26, the Internal Revenue Code.

5.1.5.15.2 (12-16-2014)**Enforcement of Restitution Orders**

1. The United States may enforce a *judgment* imposing restitution in accordance with the practices and procedures for the enforcement of a civil judgment under federal law or state law.
2. Each U.S. Attorney's Office has a Financial Litigation Unit (FLU), which has responsibility for the collection and enforcement of all civil and criminal judgments on behalf of the United States. Accordingly, the FLU is responsible for enforcing restitution orders and other orders relating to monetary penalties.
3. While the IRS cannot take administrative enforcement action to collect court ordered restitution, it still has responsibility for monitoring compliance if the payment of restitution to the IRS is a condition of probation. See IRM 5.1.5.16.

5.1.5.15.3 (12-16-2014)**Restitution-Based Assessments**

1. The Firearms Excise Tax Improvement (FETI) Act of 2010, Public Law No. 111-237, amended IRC § 6201(a) to provide that the IRS shall assess and collect the amount of restitution ordered in a criminal case for failure to pay any tax imposed by the IRC in the same manner as if such amount were a tax. The law applies to restitution orders entered after August 16, 2010.
2. Prior to the enactment of Public Law 111-237, the amount of restitution ordered payable to the IRS in a criminal case could not be assessed as a tax. This precluded the IRS from taking administrative collection action to collect the restitution amount unless the tax was assessed in a separate civil proceeding.
3. The FETI Act of 2010 also provides that:
 - The assessment cannot be made until any appeals from the restitution order are concluded or the time for appealing has expired.
 - The assessed amount may not be challenged by the assessed party based on the existence or amount of the underlying tax liability in any proceeding under the IRC including refund suits.
 - The restitution amount may be assessed at any time. There is no statute of limitations for making the restitution assessment.
4. The IRS may assess civil tax and penalties irrespective of the restitution ordered as long as notice and deficiency procedures are followed.
5. While a taxpayer may not challenge the amount of a restitution assessment under the IRC, the taxpayer may seek a review of collection actions being taken to collect the restitution-based assessment through the Collection Due Process provisions of IRC § 6320 and § 6330.

5.1.5.15.4 (12-16-2014)**Identifying Restitution-Based Assessments (RBA)**

1. RBAs will be established by Examination. An MFT 31 module will be present for each tax year and/or tax period for which criminal restitution was ordered by the court.
2. The assessment will be made using a TC 290 or TC 298 with adjustment reason codes 141 through 148. The reason codes explain the type of restitution assessment.
3. The module will contain a TC 971 with action code 102 and TC 971 with action codes 180 through 189. These action codes reflect the type of tax and tax periods for which restitution was ordered. The 18X action codes are indicators that there may be a potential duplication of assessment on another taxpayer account, for example, a spouse or a business. For an explanation of reason codes and action codes associated with RBAs, see IRM 5.19.23, *Liability Collection, Restitution-Based Assessments Processing*.

5.1.5.15.5 (12-16-2014)**Interest on Restitution-Based Assessments (RBA)**

1. Interest on the RBA will accrue from the due date of the return on which the RBA was based until the account is paid in full. Normal interest rates under IRC § 6621 and normal interest rules per IRM 20.2, *Interest*, will apply.
2. Comments reflected on the Judgment and Commitment Order referring to Title 18 do not have any bearing on the RBA or the Title 26 interest owed. The Service does not have jurisdiction over Title 18 interest. The defendant is required to pay this interest directly to the court, when applicable. The court can waive the Title 18 interest on the restitution ordered, but the court cannot waive the Title 26 interest on the RBA. If the defendant pays Title 18 interest to the sentencing court and the court forwards such payments to the Service, the Service applies the payments against the assessed amount, which includes interest owed under Title 26, using the normal application of involuntary payment rules established by the Service.
3. Payments made within a notice grace period (21 days for assessments under \$100,000, and 10 business days for assessments over \$100,000) are considered paid as of the notice date. TC 971 with action code 804 or 806 will indicate when the notice was mailed to the taxpayer.
4. Interest on RBAs may need to be computed manually only if multiple period assessments are combined on one MFT 31 account. See IRM 20.2.8, *Restricted Interest*, for reasons interest may need to be manually computed.

5.1.5.15.6 (12-16-2014)**Failure to Pay Penalties on Restitution-Based Assessments (RBA)**

1. For the purpose of the failure to pay (FTP) penalty, the RBA represents tax required to be shown on a return that was not shown. Thus, this FTP penalty is imposed under IRC § 6651(a)(3). The FTP penalty begins to accrue on any amount that is not paid within 21 days following notice & demand (10 business days if the amount in the notice is \$100,000 or more).
2. Although rare, the court may include FTP penalty and failure to file penalty in the Judgment & Commitment Order. If that is the case, FTP penalties ordered as restitution must initially be assessed as shown in the order. If additional FTP penalty accrues after the date of the order, that amount can be assessed via input of TC 270 in a separate adjustment. Penalties and interest included in the restitution order are assessed as such, and not included with the same transaction code as tax.
3. The FTP penalty will not be imposed if the taxpayer can show that the failure to pay restitution is due to reasonable cause and not due to willful neglect. Compliance with a court ordered payment plan does not, in and of itself, mean that the taxpayer has reasonable cause for failure to pay the full amount of the ordered restitution upon notice and demand for payment.
4. If reasonable cause for failure to pay is determined at the time of the restitution assessment, a TC 270 for zero amount will be input as a secondary transaction with the assessment, and the assessment will contain reason code 147. If it is determined that failure is no longer due to reasonable cause, the TC 270 should be reversed, thereby allowing the FTP penalty to be computed systemically. See IRM 20.1.2.2.8.9, *Failure to Pay Penalty for Restitution-Based Assessments*, for additional penalty guidance.

5.1.5.15.7 (12-16-2014)**Restitution Debt**

1. The amount of restitution ordered payable to the Service creates two separate debts for the same liability. These two separate debts provide two different means for collection, but the liability cannot be collected twice.
 - A. The first debt is the restitution judgment which the Department of Justice Financial Litigation Unit (DOJ FLU) is responsible for collecting. This debt may be collected in accordance with the practices and procedures for the enforcement of a civil judgment. See IRM 25.3, *Litigation and Judgments*.
 - B. The second debt is the restitution-based assessment (RBA) which will be assessed and collected by the Service in the same manner as if it was a tax. This means that administrative collection actions under the IRC may be used to collect the RBA.
2. Although the IRS can assess and collect restitution under IRC § 6201(a)(4), the restitution judgment under Title 18 does not cease to exist following the assessment. The DOJ FLU can still rely on the collection procedures provided in Title 18 to collect the restitution judgment. The DOJ's efforts to collect the restitution judgment and the Service's ability to collect the RBA administratively, are parallel, non-exclusive means of collection.
3. In order to ensure the full amount is only collected once, there must be close coordination between IRS Collection and the DOJ FLU. Advisory has responsibility for this coordination.
4. Revenue officers must contact Advisory before proceeding with administrative collection to ensure coordination is taking place. Each case will present a set of unique facts and circumstances. Determining the appropriate actions to take must be made on a case-by-case basis.
5. IRS may conduct a civil examination of the same tax liability on which restitution was based. Such an examination may result in the assessment of a deficiency based on that examination. Also, a taxpayer may file a delinquent return showing tax for which criminal restitution was ordered. In either case the RBA and the other assessment will duplicate each other in whole or in part; however, they may be collected only once.

5.1.5.16 (12-16-2014)

Advisory Responsibilities - Probation and Restitution Cases

1. Advisory is responsible for monitoring and coordinating actions on probation and restitution cases. Advisory's responsibilities include:
 - monitoring all cases with IRS-related conditions of probation and following up on any Other Investigations issued to the field
 - coordinating civil actions on collection of restitution cases and providing advice and guidance
 - coordinating civil enforcement actions with Exam Technical Services (TS) and revenue agents assigned to the case
 - exchanging information with Criminal Investigation (CI) and Exam TS to reconcile the status and actions pending in all probation cases on a semi-annual basis.
 - maintaining case files and inventory for post-probation and non-probation restitution cases and providing guidance regarding collection of restitution-based assessments (RBAs) and restitution judgments.
2. The conditions of probation and restitution ordered are set forth in a document signed by the judge called a Judgment and Commitment Order. CI will use Form 13308, *Criminal Investigation Closing Report*, to transmit the criminal case judgment and to notify the civil functions that the criminal case has concluded. CI will provide Form 14104, *Notification of Court Ordered Criminal Restitution Payable to IRS*, to indicate the amounts and periods for restitution ordered.
3. Examination will notify Advisory when an RBA has been made. During case research and analysis, advisors may also become aware of a new assessment by identifying the RBA on IDRS, the ICS case history, or when contacted for assistance.
4. Upon notification of a new probation or restitution case the advisor will take the following actions no later than ten (10) business days of receipt of the notification:
 - Record the date on which the closing package is received from CI and ensure that all necessary documents are included in the package.
 - Complete Form 13308, page 5, Item 13a, and forward a copy via fax or secure e-mail to the CI Field Office Coordinator. Forward a copy to the local Fraud Technical Advisor.
 - If additional information is required, request it from CI.
 - If the TC 914 has not been released, coordinate with CI to have it released. For all cases involving conditions of probation, the posting of TC 910 by CI will be verified using CC ENMOD, and any necessary coordination with CI will be completed.
 - Create a new Non-Field Other Investigation (NF OI) using action code 182 (Probation), then close the existing NF OI for criminal investigation (action code 181) if one is open. The case file opened under action code 181, if one exists, will be used for the probation case.
 - Create a new NF OI for restitution using action code 180 if there is restitution ordered and/or assessed.
 - Determine the Conditional Probation Expiration Date as provided in IRM 5.1.5.16.3, below.
 - Review the conditions of probation and determine what civil actions need to be taken and the timing of those actions.
5. The civil actions to be taken on probation and restitution cases and the timing of those actions will depend upon the facts and circumstances of the case. The following table provides some of the more common scenarios and corresponding actions that should be taken:

If ...	Then ...
There are RBAs, other tax assessments, or delinquent returns	An OI will be issued to the field requesting assignment and a revenue officer investigation.
If civil tax assessments, including RBAs, are subsequently made by Exam	An OI will be issued to the field requesting assignment and a revenue officer investigation.
There are no conditions of probation relating to the IRS except for the payment of court ordered restitution	Determine when restitution payments are to commence. If the defendant is incarcerated and making nominal restitution payments, monitor the projected release date.
There are no outstanding civil tax assessments against the defendant	Continue to monitor the case for compliance with any IRS-related terms of probation, such as the requirement to timely file and pay taxes.
6. While administrative collection action may not be taken to collect court ordered restitution payments, information about administrative action to collect RBAs and information regarding the defendant's compliance with a court order to pay restitution to the IRS must be provided to the U.S. Probation office, and the collectibility of such amounts must be provided to the Financial Litigation Unit of the U.S. Attorney's Office. See IRM 5.1.5.22, below, regarding the disclosure of information to U.S. Probation.
7. For cases where there is no revenue officer assignment, the advisor will conduct a yearly compliance check (e.g. determine the need for an OI to the field to request assignment to a revenue officer to collect an RBA, address a new liability that has been assessed, or secure a delinquent return) on or before the date of the defendant's projected release date or the tentative date on which the defendant's term of probation ends.

[Next](#)



Part 5. Collecting Process

Chapter 1. Field Collecting Procedures

Section 7. Government Agencies, Federal Employees/Retirees, Military Personnel and Department of Defense Employees

5.1.7 Government Agencies, Federal Employees/Retirees, Military Personnel and Department of Defense Employees

- 5.1.7.1 [Overview](#)
- 5.1.7.2 [Small Business Administration \(SBA\) and Small Business Investment Companies \(SBICs\)](#)
- 5.1.7.3 [U.S. Secret Service Guidelines](#)
- 5.1.7.4 [U.S. Citizenship and Immigration Services \(USCIS\)](#)
- 5.1.7.5 [Information Compelled From A Witness Under Grant of Immunity](#)
- 5.1.7.6 [Federal, State and Local Government Agencies](#)
- 5.1.7.7 [Federal Employee/Retiree Delinquency Initiative](#)
- 5.1.7.8 [IRS Employee Cases](#)
- 5.1.7.9 [Accounts of Taxpayers Who Serve in a Combat Zone](#)
- 5.1.7.10 [Military Personnel and Civilian Employees of Department of Defense Residing Overseas](#)
- 5.1.7.11 [Securing Addresses of Military Personnel](#)
- 5.1.7.12 [Military Deferments](#)

Manual Transmittal

August 25, 2014

Purpose

(1) This transmits revised IRM 5.1.7, Field Collection Procedures, Government Agencies, Federal Employees/Retirees, Military Personnel and Department of Defense Employees.

Material Changes

- (1) IRM 5.1.7.6 (1) - Revised to indicate federal, state and local governments are exempt from income tax.
- (2) IRM 5.1.7.6 (2) - Added note that revenue officers do not work federal agency delinquency cases.
- (3) IRM 5.1.7.6 (3) - Corrected definition of government entity and added quasi government entity to list. Clarified date mandatory Social Security coverage was effective.
- (4) IRM 5.1.7.6.2 - Deleted repetitive information and provided IRM reference. Added all content from IRM 5.1.7.6.2.1.
- (5) IRM 5.1.7.6.2.1 - Moved all content to IRM 5.1.7.6.2.
- (6) IRM 5.1.7.6.2.1 (1) - Added note to clarify collection procedures on federal agency accounts.
- (7) IRM 5.1.7.6.2.2 - Deleted and renumbered as IRM 5.1.7.6.2.1.
- (8) IRM 5.1.7.6.3 (1) - Added language to clarify government entities include federal, state, and local agencies.
- (9) IRM 5.1.7.7.1 (8) - Revised to include information on the systemic removal of the FERDI indicator.
- (10) IRM 5.1.7.7.2 - Revised to clarify FERDI case processing criteria.
- (11) IRM 5.1.7.7.3 (4) - Revised to clarify federal agencies processing of payroll deduction agreements.
- (12) IRM 5.1.7.7.3.3 - Added new subsection to provide information on CNC unable to contact closures.
- (13) IRM 5.1.7.8 - Revised to provide the mailing address for routing IRS Employee Tax Compliance cases to the Atlanta Appeals office.
- (14) IRM 5.1.7.8 (3) - Added IRS employee code designations.
- (15) IRM 5.1.7.8.1 - Added new subsection to provide information on removing the IRS employee indicator.
- (16) IRM 5.1.7.9 - Revised to provide additional detail on the Combat Zone -C Freeze and how to research command code IMFOLE to determine the Combat indicator.
- (17) IRM 5.1.7.9 (8) - Deleted repetitive information and provided IRM reference.
- (18) IRM 5.1.7.12 - Deleted bullet requiring filing compliance and revised to provide additional detail on military deferments.
- (19) IRM 5.1.7.12.1 - Revised to provide additional detail on military deferment procedures.
- (20) IRM 5.1.12.2 - Revised to provide additional detail on limitations on interest during military deferment.
- (21) Minor editorial changes made throughout IRM.

Effect on Other Documents

This IRM supersedes IRM 5.1.7, dated October 21, 2011.

Audience

The intended audience is Small Business and Self Employed Collection and Compliance.

Effective Date

Dretha Barham
Director, Collection Policy
Small Business/Self Employed

5.1.7.1 (10-09-2008)

Overview

1. This IRM provides instruction and guidelines for working cases involving government entities, federal employees and retirees, IRS employees, military personnel, and civilian employees of the Department of Defense residing overseas. Additionally, it provides guidance for accounts of taxpayers who serve in a combat zone, contacting the U.S. Secret Service and U.S. Citizenship and Immigration Service, and obtaining and maintaining compelled information. The procedures are written specifically for revenue officers. Other employees in SBSE and employees in other functions may refer to these procedures.

5.1.7.2 (10-09-2008)

Small Business Administration (SBA) and Small Business Investment Companies (SBICs)

1. Revenue officers will use procedures found in IRM 5.1, *Field Collecting Procedures*, when working business cases involving Small Business Administration (SBA) and Small Business Investment Companies (SBICs) loans.
2. Financial and loan balance due information will be obtained from the bank that funded the loan. Should revenue officers need other information from the SBA, their requests should be submitted on IRS letterhead to: SBA, Portfolio Management Division, Mail Code 7024, 409 3rd Street SW, 8th Floor, Washington, D.C. 20416.

5.1.7.2.1 (10-09-2008)

Disclosure to SBA

1. Collection employees are authorized by IRC 6103(k)(6) and Treasury Regulation 301.6103(k)(6)-1 to disclose return information to the extent necessary to obtain information which may be related to a Collection investigation and which is not otherwise reasonably available. No special permission or authorization is needed to make investigative disclosures under the circumstances and conditions described in Treasury Regulation 301.6103(k)(6)-1, so long as the Collection employee is performing official duties for Collection activity. It is important to note that IRC 6103(k)(6) and Treasury Regulation 301.6103(k)(6)-1 permit the disclosure of return information in the investigatory process, but do not authorize the disclosure of the taxpayer's return. See IRM 11.3.21 for more detail on investigative disclosures.

Note:

Authorization to disclose the taxpayer's return information under IRC 6103 should not be confused with authorization to contact third parties under IRC 7602(c). If the IRS contacts a third party to obtain information about the taxpayer, then the advance notice and record keeping requirements of IRC 7602(c) must be met unless the taxpayer authorizes the contact.

5.1.7.3 (07-01-2005)

U.S. Secret Service Guidelines

1. During the course of an investigation, Collection may learn of situations which should be reported to the U.S. Secret Service. These situations would involve the Secret Service's duties regarding protective services, forgery or counterfeiting.
2. Report emergency information, especially regarding threats against the President, Vice President, etc., immediately by telephone to the nearest U.S. Secret Service office or the U.S. Secret Service Intelligence Division, Washington, DC 202-406-8000.
3. In any case where an employee is concerned that the disclosure may involve a return, return information, or taxpayer return information as defined in IRC 6103(b), contact the Disclosure Officer for guidance as to the proposed disclosure.
4. Send routine reports to the office of the Director, Collection Policy (SE:S:ECS:CP), who will forward them through liaison channels to the U.S. Secret Service Headquarters.

5.1.7.3.1 (07-01-2005)

Protective Responsibilities

1. Under Title 18, U.S. Code, Section 3056, the U.S. Secret Service is charged with protecting:
 - The President, the Vice President, (or other individuals next in order of succession to the Office of the President), the President-elect and Vice President-elect.
 - The immediate families of the above individuals.
 - Former Presidents and their spouses for their lifetimes, except when the spouse remarries. In 1997, Congressional legislation became effective limiting Secret Service protection to former Presidents for a period of not more than 10 years from the date the former President leaves office.
 - Children of a former President get protection for 10 years or until they turn 16, whichever occurs first.
 - Visiting heads of foreign states or governments and their spouses traveling with them, other distinguished foreign visitors to the United States, and official representatives of the United States performing special missions abroad.
 - Major Presidential and Vice Presidential candidates, and within 120 days of a general Presidential election, their spouses.

5.1.7.3.2 (01-24-2001)

Protective Information

1. To carry out its protective duties the U.S. Secret Service has requested that the Service provide information (follow *IRM 5.1.7.3(4)* above to transmit the information):
 - A. That pertains to a threat, plan, or attempt by an individual, a group, or an organization to physically harm or embarrass the persons protected by the U.S. Secret Service, or any other high U.S. Government official at home or abroad.
 - B. That pertains to individuals, groups, or organizations who have plotted, attempted or carried out assassinations of senior officials of domestic or foreign Governments.
 - C. That concerns the use of bodily harm or assassination as a political weapon. This should include training and techniques used to carry out the act.
 - D. On persons who insist upon personally contacting high Government officials for the purpose of redress of imaginary grievances, etc.
 - E. On any person who makes oral or written statements about high Government officials in the following categories: (1) Threatening statements, (2) Irrational statements and (3) Abusive statements.
 - F. On professional gate crashers.
 - G. That pertains to "Terrorist" bombings.
 - H. That pertains to the ownership or concealment by individuals or groups of caches of firearms, explosives, or other implements of war.

I. In regards to anti-American or anti-U.S. Government demonstrations in the United States or overseas.

J. In regards to civil disturbances.

5.1.7.3.3 (07-01-2005)

Counterfeiting and Forgery Information

1. To carry out its duties regarding investigations of counterfeiting and forgery, the U.S. Secret Service has requested that the Service supply information (follow *IRM 5.1.7.3* (4) above to transmit the information):
 - A. That regards the counterfeiting of U.S. or foreign obligations, i.e., currency, coins, stamps, bonds, U.S. Treasury checks, Treasury securities, Department of Agriculture food coupons, debit cards and postage stamps.
 - B. That relate to the forgery, alteration and fraudulent negotiation of U.S. Treasury checks and U.S. Government bonds.

5.1.7.4 (01-24-2001)

U.S. Citizenship and Immigration Services (USCIS)

1. There is ongoing contact between U.S. Citizenship and Immigration Services (USCIS) and the Service. Programs cover two areas:
 - A. Aliens legally admitted to the U.S.
 - B. Aliens who entered the U.S. illegally
2. Returns and return information are confidential pursuant to IRC 6103. Disclosure of returns or return information to USCIS is statutorily authorized only in very unusual circumstances; if such disclosure is contemplated, contact the Disclosure Office. See *IRM 11.3, Disclosure of Official Information*, for information on the disclosure of returns and return information.
3. Certain programs ensure that nonresident aliens who are authorized by USCIS to enter the U.S., are aware of federal tax requirements and are meeting their obligations.
4. Other efforts are geared to aliens who have entered the country illegally and are apprehended by USCIS. Many of the illegal aliens are paid low wages and have limited tax potential. However, those illegal aliens apprehended with the potential for significant tax liabilities are referred to IRS.

5.1.7.5 (01-24-2001)

Information Compelled From A Witness Under Grant of Immunity

1. Occasionally, revenue officers may need information that an immunized witness was compelled to supply under a grant of immunity from prosecution. This immunity can be granted by:
 - Congressional Committees
 - Certain federal and state agencies
 - Courts
 - Grand juries
2. Information that is directly or indirectly derived from evidence or testimony which an immunized witness was compelled to supply cannot be used against that witness in a criminal tax case now or in the future.

Caution:

To ensure that any criminal tax case against an immunized witness is not inadvertently jeopardized, revenue officers must exercise caution when they:

- A. Obtain compelled information.
- B. Maintain compelled information in Collection case files.

5.1.7.5.1 (07-01-2005)

Revenue Officer Procedures for Obtaining Compelled Information

1. Prepare a memorandum to the Criminal Investigation (CI), Director, Field Operations and forward it through the Field Territory Manager. The memorandum will state:
 - A. What information is needed,
 - B. Who has the information, and
 - C. Why it is needed for a case.
2. With the advice of Criminal Tax Counsel, the CI Director, Field Operations will respond to the request by:
 - A. Approving,
 - B. Disapproving, or
 - C. Placing limitations on the request.
3. Compelled testimony and other information may not be used in any other civil action during the pendency of the criminal aspects of the investigation without express written consent of the Director, Field Operations.
4. If a prosecution referral to the Department of Justice is in effect, the concurrence of the Tax Division must be obtained prior to the non-injunctive civil use of the testimony or information.

5.1.7.5.2 (01-24-2001)

Revenue Officer Procedures for Maintaining Compelled Information

1. Maintain any Collection case file containing compelled information so that:
 - A. The compelled information and any additional information derived from it is identifiable as such.
 - B. All information developed through unrelated, independent investigation is also identifiable and segregated from the compelled information.
 - C. This compelled information should not be entered into an ICS case history but retained in paper form.
2. Do not give C I personnel access to compelled information without a request in writing from the CI Director Field Operations to the Territory Manager.

3. Maintain a chronological record of all Service personnel who had access to compelled information in any open case file.
4. Revenue officers who have access to compelled information should not be subsequently assigned to any joint criminal investigation on the witness who furnished it.

5.1.7.6 (08-25-2014)

Federal, State and Local Government Agencies

1. Federal, state and local governments are exempt from income tax, but are required to comply with other tax laws except where the Internal Revenue Code provides specific exemptions. Your objective is to bring delinquent government taxpayers into full compliance.
2. Prior to contacting the federal, state, or local government entity, the revenue officer and/or their manager should contact the Federal, State and Local Government (FSLG) division of the Tax Exempt Government Entities (TE/GE) business operating division. See *IRM 5.1.7.6.3* for contact procedures.

Note:

Federal agency entities with compliance issues are assigned to the Federal Agency Delinquency program (FAD), which is centralized in the Brookhaven Campus. Revenue officers do not work federal government agency cases except in special circumstances when a referral is received from FAD. See *IRM 5.1.7.6.2.1* for further guidance.

3. Federal, state, and local government entities are identified on IDRS by Business Operating Division (BOD) Code **TE** and the following Employment Codes:
 - A. Code A: government entity for government fiscal agents
 - B. Code F: federal government agency
 - C. Code G: state or local government subject to income tax and Medicare withholding for employees hired after March 31, 1986
 - D. Code Q: quasi-government entity
 - E. Code T: state or local government entered into a Section 218 Agreement in accordance with the Social Security Act (Form 941 filing requirements)

Note:

Employment code "I" indicates the entity is an Indian tribal government. See *IRM 5.1.12.24* for procedures for these types of cases.

Note:

After July 1, 1991, mandatory Social Security coverage was extended to all state and local government employees who were not covered by a Section 218 Agreement and were not covered by a qualifying public retirement system.

4. The Master File Employment Codes appear in the following:
 - A. Master File History Section of a Bal. Due
 - B. Del. Ret Information section of a Del. Ret
 - C. IDRS command codes ENMOD, TDINQ, and TXMOD
5. Group managers and revenue officers will identify government accounts under their control and manage them to ensure prompt resolution, which may require them to:
 - A. Remove inappropriately coded accounts.
 - B. Add the correct code to those cases which are not coded.
 - C. Prepare Form 4844, *Request for Terminal Action*, and obtain managerial approval to correct the Employment Code. Form 4844 changing the Employment Code must be sent to FSLG for processing.
6. Final Notice is suppressed on accounts of all federal, state, and local government taxpayers coded with Employment Codes F, G, and T.

5.1.7.6.1 (10-09-2008)

State and Local Government Agencies

1. Since July 1, 1975, penalties and interest have been assessed and collected from state and local governments.
2. Work with the state or local government agency to obtain voluntary compliance.
3. Consider reasonable cause for penalties if the agency has taken action that will assure compliance in the near future, generally within the next six months.
4. Notify a state or local government official who has the authority to resolve the tax delinquencies.
5. Prior to taking enforcement action, provide the responsible official with a Final Notice.
6. Notify the Territory Manager prior to taking enforcement action on state or local government agency cases.
7. Do not make referrals to Headquarters regarding the assertion or collection of penalties and interest against state and local government agencies.

Exception:

If the issue involved is significant to tax administration, a referral can be made.

5.1.7.6.2 (08-25-2014)

Federal Government Agencies

1. The Federal Agency Delinquency program (FAD) is centralized in the SB/SE Brookhaven Campus- CSCO Operation. The role of FAD is to assist federal agencies with all compliance related issues, including resolving delinquencies, monitoring compliance, reconciling accounts as well as education to prevent future compliance issues. The CFO office and Federal, State and Local Governments (FSLG) support the program by assisting with case resolution when appropriate. Federal agency delinquency cases should not be worked in Field Collection, except in special circumstances. See *IRM 5.1.7.6.2.1* for further guidance.
2. Federal agency delinquency cases (Balances Due and/or Delinquent Returns) can be identified by reviewing either IDRS or ICS. Federal agencies will have an "Employment Code - F." To confirm the entity is a federal agency, review the following:
 - ICS "Other entity information" screen for BMF taxpayers.
 - IDRS "ENMOD" screen.

3. If you receive a federal agency delinquency case in your inventory, inform your group manager as soon as possible. **Do not contact the federal agency.**
4. Detailed information regarding federal agencies filing, paying and reporting requirements is in IRM 5.19.15.

5.1.7.6.2.1 (08-25-2014)

Federal Government Agency Cases and Special Circumstances

1. Federal agency delinquency cases in status 26 are assigned to FAD using assignment code 21008300 on the Integrated Collection System (ICS). National Headquarters may request, through the Area Director's office, that an Other Investigation (OI) be issued on ICS for a revenue officer to take specific actions regarding a federal agency's delinquency. See IRM 5.19.15.6.1 *Revenue Officer Assistance Referral* for additional information.

Note:

IRS internal policies limit collection actions on delinquent accounts for federal agencies. Federal agencies do not receive final Balance Due Notices, CP504, LT11 or LT1058(C). IRS policy also prohibits enforcement actions (such as lien, levy, or Federal Payment Levy Program (FPLP), assertion of Trust Fund Recovery Penalty and seizure). Policy Statement 20-2 (Formerly P-2-4), provides for nonassertion of penalties and interest against instrumentalities of the United States.

2. Perform the requested actions within the specified time frame indicated on the OI. If the actions cannot be completed within the time frame, inform your group manager as soon as possible.
3. When all specified actions have been completed, document a brief closing summary in the case history. The summary should include:
 - All contact information, i.e., person contacted, their telephone number, position or rank within the agency, where the contact occurred (if different from the OI address)
 - The specific documents received or actions taken
4. After completing the summary statement, submit the closed OI for approval by the group manager.
5. Once approved, inform the Headquarters analyst who issued the original request of the actions taken on the case.

Note:

You may contact the Headquarters analyst directly if you have questions regarding the requested actions or any difficulties involving the OI.

5.1.7.6.3 (08-25-2014)

Contact Procedures for the Federal, State and Local Government (FSLG) Analyst

1. Prior to contacting a federal, state, or local government entity, the revenue officer and/or manager should contact FSLG. An **encrypted** e-mail will be sent to *TE/GE-FSLG-Ask Us; Subject-Assignment of FSLG Collection Case. Provide the EIN and entity name in the body of the e-mail.
2. Upon receipt of the e-mail, the FSLG analyst will provide the following information:
 - Whether or not FSLG has had any prior contact with the Government Entity (GE), or
 - Whether or not FSLG currently has an open case with the GE, and
 - The FSLG field group to which the case is assigned and FSLG field manager's name and phone number

5.1.7.7 (08-25-2014)

Federal Employee/Retiree Delinquency Initiative

1. The Federal Employee/Retiree Delinquency Initiative (FERDI) program was developed in 1993 by the Internal Revenue Service to promote federal tax compliance among current and retired federal employees. The program incorporates the purpose and intent of Office of Government Ethics regulation 5 C.F.R. 2635.809 which addresses the responsibility of federal employees to "satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as federal, state, or local taxes that are imposed by law." The following section contains instructions for handling federal employee and retiree delinquencies.
2. The procedures in this section apply to all taxpayers currently receiving a salary or pension from the federal government. This includes the following:
 - Civilian employees, including U.S. Postal Service
 - Civil Service or Federal Employee Retirement System retirees
 - Active duty military
 - Military retirees
 - National Guard/Reservists

Note:

These procedures do not apply to survivors of federal retirees.

3. Interview procedures for these taxpayers are the same as for any other taxpayer: use the tiered interview to obtain full payment and filing of delinquent returns **today**, or the best arrangement you can get.
4. However, other procedures are different for federal employees and retirees, and are outlined in this section.

5.1.7.7.1 (08-25-2014)

Identification of FERDI Cases

1. FERDI taxpayers are identified by matching the primary Social Security Number (SSN) and secondary SSN (if joint liability) of balance due and/or return delinquency accounts against:
 - U.S. Office of Personnel Management (OPM) Central Personnel Data File (CPDF)
 - Department of Defense military and civilian personnel records maintained by Defense Manpower Data Center (DMDC)
 - U.S. Postal Service (USPS) employment file
 - Selected internal Form W-2, *Wage and Tax Statement*, records
2. Systemic Master File processing of the matched records generates a transaction code (TC) 016 with Document Locator Number (DLN) 38263-996-00100-y, (where "y" is the last year digit of the year the DLN was assigned). This transaction will cause a FERDI indicator to be set on the Individual Master File (IMF). The FERDI indicator may also be manually set by input of TC 971 AC 51.

Note:

The FERDI indicator is an entity indicator. On joint accounts, the FERDI indicator posts to the primary SSN, regardless of whether the primary, the secondary, or both taxpayers are federal employees or retirees.

3. Our computer systems display the indicator by the following literals:

- IDRS IMF ENMOD screen: **FED-EMP>F**
- ICS Case Summary Screen: **FED**
- IDRS TDINQ: **SELECTION CODE 12**
- IDRS LEVYS: **FR** (federal retiree); **FE** (federal employee); **DM** (current military/reserve/national guard), **PS** (US Postal Service)
- Accounts Management System (AMS) summary screen: "Federal Employee" in "Alerts" section
- Automated Collection System (ACS) Case Overview screen: **FE** and status message 139 FERDI ACCOUNT
- ACS levy screen: **FR** (federal retiree), **FE** (federal employee), **PS** US Postal Service, **DMDC** (Department of Defense civilian and military)
- ACS TDI screen: **SELECTION CODE 12**
- CFOL CC IRPOL and CC SUPOL: **federal agency name** (payer); CC SUPOL also indicates **SELECTION CODE 12**
- Del. Ret **SELECTION CODE 12**
- CP 515 through 518, after the notice number: **F**
- W-2, 1099R: **federal agency payor**

4. FERDI Del. Ret cases are further identified by SELECTION CODES 12 or 93. Cases for Tax Years 2000 and prior are identified by SELECTION CODE 93. Tax Years 2001, 2002 and 2003 cases are identified by SELECTION CODE 12 where the BOD is WI and SELECTION CODE 93 where the BOD is SB/SE. Starting with Tax Year 2004, SELECTION CODE 12 will be used to identify all FERDI Del. Ret cases.

Note:

In some instances, a FERDI case may be assigned a different selection code during IMF Return Delinquency case creation. Look for the federal indicator code to confirm that it is a FERDI case.

- 5. If a code is not present and contact with the taxpayer reveals that he/she or his/her spouse is a federal employee or retiree, input the federal indicator code to IDRS with TC 971, Action Code 51. On joint balance due assessments, input the federal indicator code on the primary SSN.
- 6. If taxpayer contact on a case with a federal indicator reveals the taxpayer receives no federal salary or retirement benefit, confirm this by checking IDRS cc IRPOL, IRPTR, and/or SUPOL.

Note:

If the federal indicator was set after the Information Returns Processing (IRP) tax year you are researching, the taxpayer is, in all likelihood, a current federal employee or retiree. Research ENMOD to see when the indicator posted to the account. See (2) above for instructions on identifying the indicator.

- 7. If this research is inconclusive, contact as needed:
 - A. Defense Finance and Accounting Service, Cleveland, OH
 - B. OPM, Washington, D. C., for retiree cases, or
 - C. Former federal employer
- 8. Once a year, FERDI indicators are systemically removed from accounts of taxpayers who are no longer federal employees or retirees. This is accomplished by matching FERDI taxpayer records (both the primary and secondary SSN for joint entities) against federal sources to identify those individuals no longer employed, or in the case of retirees, deceased. In order to systemically remove the indicator, **both** the primary and secondary SSN must not match the federal sources. Master File processing generates a TC 016 with DLN 38263-995-00100-y, (where "y" is the last year digit of the year the DLN was assigned) which removes the FERDI indicator.
- 9. If you are sure the taxpayer is not receiving a federal salary or pension, reverse the federal indicator code with TC 972, Action Code 51. After three cycles, the system will no longer block case closures listed below in IRM 5.1.7.7.2 (2)..

Reminder:

On joint liabilities, either the primary or secondary spouse or both, may be federal employees or retirees.

**5.1.7.7.2 (08-25-2014)
FERDI Case Processing Criteria**

1. In most instances, FERDI cases, with the exception of IRS employee cases and cases with an aggregate assessed balance of \$1,000,000 or more will be worked in ACS. Assignment to the field will be based on the current inventory prioritization guidelines applied to all cases.

Note:

FERDI cases with a balance due below \$1,000,000 may be appropriately assigned and worked in Field Collection in a variety of circumstances.

- 2. The following balance due module dispositions are blocked:
 - Unable to Locate, TC 530 closing code (CC) 03
 - TC 530 CC 39 (if the 23C date is more than six months from the latest Collection Statute Expiration Date (CSED) or the total module balance is greater than \$25)

Note:

In addition to the above types of disposition, ICS blocks the reassignment of FERDI cases to the Queue.

- 3. The following delinquent return module dispositions are blocked:
 - Unable to Locate, TC 593

- Surveyed, TC 597
- Shelved, TC 598

4. Attempts to close cases in these ways will cause an unpostable condition and result in an error message or re-issuance of the case.

5.1.7.7.3 (08-25-2014)

Procedures on FERDI Cases

1. Follow normal collection and taxpayer interview procedures with the exceptions listed below. The objective of FERDI cases is the full payment and filing of returns as soon as possible, as with any other case. Because of the sensitivity of FERDI cases and the requirements of the Office of Government Ethics regulation 5 C.F.R. 2635.809, which addresses the responsibility of federal employees to satisfy their financial obligations, take extra care when granting FERDI taxpayers additional time to pay.
2. You **MUST** determine the cause for the delinquency and take corrective actions to prevent future delinquencies. Refer the taxpayer to the Withholding Compliance program for lock-in letter issuance if the taxpayer meets the criteria in IRM 5.19.11.6.1.1.
3. Secure all required returns. For delinquent return modules previously closed with TC 593, TC 595 (unless the assessment is pending or the case is assigned), TC 597, or TC 598, reverse the transactions with a TC 592 with no closing code.
4. When entering into installment agreements with federal employees, use of payroll deduction agreements (PDIA) is encouraged, but not required.

A. The U.S. Department of Agriculture, National Finance Center (NFC), the U.S. Department of Interior, Interior Business Center (IBC), the Defense Finance and Accounting Service (DFAS), the General Services Administration (GSA), and the U.S. Postal Service (USPS) provide payroll services for most federal employees.

B. See IRM Exhibit 5.11.7-1, *FPLP - Federal Employee Salary Paying Agencies: NFC, NBC, GSA, and DFAS*, to determine which payroll provider services the taxpayer's employing federal agency.

Note:

DFAS accepts payroll deduction agreements for civilian employees only.

C. IFC, NBC and GSA accept Form 2159, *Payroll Deduction Agreement*. PDIA's with USPS and DFAS can be established by using Letter 3676, *Payroll Deduction Installment Agreement Letter*, in lieu of Form 2159.

5. A FERDI case may be closed Currently Not Collectible (CNC) (hardship), if the taxpayer is unable to pay reasonable basic living expenses. Generally, these cases involve insufficient income and insufficient equity in assets to make any payment without causing hardship. See 5.16.1.2.9. Conduct a full financial analysis in order to determine the correct resolution of the case.
6. To resolve accounts when the taxpayer meets the criteria for CNC (hardship) but has unfiled returns, ACS employees will follow the guidance in IRM 5.19.18, *Liability Collection, Federal Employee/Retiree Delinquency Initiative* and Field Collection employees will follow the guidance in IRM 5.16.1.2.9, *Hardship*.
Reminder: Levies cannot be issued or left in place if the taxpayer meets the criteria for CNC (hardship).
7. Open delinquent return modules maybe resolved by closing as little or no tax due, refund due or income below filing requirement (P-5-133), if warranted by the facts of the case. See the provisions in IRM 5.1.11 that explain the various methods of "resolving" open modules. If the taxpayer is required to file and refuses, a referral to Examination or summons may be appropriate. See IRM 25.5.5, *Summons Handbook* for summons procedure.
8. Refer taxpayers to the Taxpayer Advocate Service (TAS) (see IRM Part 13, *Taxpayer Advocate Service*) when the contact meets TAS criteria (see IRM 13.1.7, *TAS Case Criteria*) and you cannot resolve the taxpayer's issue the same day. The definition of "same day" is within 24 hours. "Same day" cases include cases you can completely resolve in 24 hours, as well as cases in which you have taken steps within 24 hours to *begin* resolving the taxpayer's issue. Do not refer "same day" cases to TAS unless the taxpayer asks to be transferred to TAS and the case meets TAS criteria. See IRM 13.1.7.4, *Same-Day Resolution by Operations*. When you refer cases to TAS, use Form 911, *Request for Taxpayer Advocate Service Assistance and Request and Application for Taxpayer Assistance Order* and forward to TAS.

5.1.7.7.3.1 (10-09-2008)

Offers In Compromise

1. Offers in Compromise from **employees of the IRS** will be considered. However, due to the sensitivity of issues related to the tax delinquencies of federal employees, public policy implications must be considered in all cases. The authority to reject offers in compromise for public policy reasons, or on the basis that the offer is not in the best interest of the government is delegated to SB/SE Director, Collection Policy; SB/SE National Program Manager (OIC); SB/SE Director; SB/SE Compliance Services Operations Manager (COIC); SBSE Collection, Territory Managers (2nd Level); Appeals Director. See Delegation Order No. 5-1 (Rev. 3) in IRM 1.2.44.2 for delegated acceptance, rejection, return, terminate or acknowledge withdrawals of Offer in Compromise.

5.1.7.7.3.2 (06-21-2011)

Federal Employee Levy Procedures

1. Form 668-W, *Notice of Levy on Wages, Salary, and Other Income*, may be issued or taxpayers may be subject to the Federal Payment Levy Program (FPLP):
 - A. Use Form 668-W, *Notice of Levy on Wages, Salary, and Other Income*, to attach pension income and the Retirement and Disability Survivors insurance portion of Social Security benefits. Delegation of approval authority for these levies to call site unit managers and GS-9 revenue officers is suggested. See IRM 5.11, *Notice of Levy*, for levy procedures for federal employees.

Note:

IRC 6343(e) requires the immediate release of a levy on salary or wages due a taxpayer upon agreement with the taxpayer that the tax is not collectible. See IRM 5.11.2.2, *Releasing Levies*. Case histories must be reviewed to ensure that wage levies are released prior to declaring an account uncollectible under hardship closing codes. The case history must be documented.

B. Form 668-W, *Notice of Levy on Wages, Salary, and Other Income*, has a continuing effect on the salary of National Guard/Reservists. Defense Finance and Accounting Service offices should not return these levies without remittance when the taxpayer is an active member of the National Guard/Reserves, unless the taxpayer's allowance exemptions from levy equal or exceed his or her pay.

Note:

Take no enforcement action if the case shows that the taxpayer is serving in a qualified combat zone. See *IRM 5.1.7.9* for more information on accounts of taxpayers who serve in a qualified combat zone.

C. The FPLP systemically matches and levies up to 15% (100% with respect to payments due a vendor for goods or services sold or leased to the federal Government) of certain federal payments disbursed by the Department of Treasury, Financial Management Service (FMS). In most instances FERDI taxpayers may already be subject to the FPLP levy. Revenue officers must decide whether to utilize the FPLP levy in their case resolution strategy. See IRM 5.11.7.2 for guidance in recognizing and handling FPLP cases.

Note:

IRS policy prohibits the FPLP levy on active duty and retired military pay. See IRM 5.19.18.5 *FERDI Inventory Processing*.

D. **DO NOT** serve Form 668-A, *Notice of Levy*, or Form 668-W, *Notice of Levy, on Wages, Salary, and Other Income*, to the federal agency source, when the FPLP is simultaneously levying the same payment from FMS. In such instances the federal agency will return the Notice of Levy to the originator.

E. If a Notice of Levy is the preferred method of collection, the FPLP levy must be blocked or electronically released before service. See IRM 5.11.7.2.6 for instructions on blocking or releasing the FPLP levy.

5.1.7.7.3.3 (08-25-2014)

CNC Unable to Contact

1. Close FERDI cases using TC 530, CC 12 when the taxpayer's ability to pay cannot be determined because they cannot be contacted and income and assets cannot be identified.
2. In addition to research and actions required by IRM 5.16.1.2.1, you must address all ICS levy sources. Issue levies or confirm that the taxpayer is not owed any funds from the levy sources.

5.1.7.8 (08-25-2014)

IRS Employee Cases

1. IRS employees have both a federal employee indicator and an IRS employee indicator on their accounts. Our computer systems identify IRS employee cases by the following literals:

- Bal. Due — **IRS EMPLOYEE**
- ENMOD — **IRS- EMP**
- TXMOD — **IRS- EMP**
- IMFOL — **IRS EMPL**
- Del. Ret — **SELECTION CODE 02**
- ICP — **ALERT INDICATOR on primary screen**

Note:

.Del. Ret cases for Tax Years 2000 and prior are identified by SELECTION CODE 92. Tax Years 2001, 2002 and 2003 cases are identified by SELECTION CODE 02 where the BOD is WI and SELECTION CODE 92 where the BOD is SB/SE. Starting with Tax Year 2004, SELECTION CODE 02 will be used to identify all IRS employee Del. Ret cases.

2. Also, IRS may be shown as an employer on IDRS cc LEVYS and IRPOLE.
3. IRS employee coded cases are designated as:
 - 1- Primary taxpayer is an IRS employee
 - 2- Secondary taxpayer is an IRS employee
 - 3- Both taxpayers are IRS employees
4. Area offices will designate an experienced revenue officer and back-up to work IRS employee cases.
 - A. Bal. Due and Del. Ret cases with IRS employee indicators are systemically assigned to the Area ICS/Entity Quality Analyst (IQA) via the Integrated Collection System (ICS).
 - B. The IQA is responsible for receipt, control and assignment of these cases. The IQA will notify the Area Director (AD), or a designated member of the AD's staff, by secure E-mail of all IRS employee cases within their area. These cases will be identified by Taxpayer Identification Number, name, and address as shown on the tax return.
 - C. The AD is ultimately responsible for identifying any conflict of interest in assignment of IRS employee cases.
5. Due to the sensitive nature of IRS employee cases, revenue officers designated to work them are advised to protect themselves against inappropriate disclosures.
6. See IRM 5.1.11.4.7 for additional guidance in working return delinquency cases on IRS employees.
7. Revenue officers making installment agreements with IRS employees should do so by Payroll Deduction Agreement on Form 2159, *Payroll Deduction Agreement*. Forward the agreement to the National Finance Center for payment.
8. Due to the sensitive nature of IRS employee cases, all IRS Employee Tax Compliance cases sent to Appeals must be routed using "Form 3210" , *Documental Transmittal*, to the Atlanta Appeals Office, 401 W. Peachtree Street NW, Suite 1455, Mail Stop 1100-D, Atlanta, GA 30308-3539 . In the remarks section of Form 3210 , enter "Employee Tax Compliance Case."

5.1.7.8.1 (08-25-2014)

Removal of the IRS Employee Indicator

1. Remove the IRS employee indicator using TC972 AC 191 if, after investigation, you determine that:
 - A. The employee no longer works for the IRS, or
 - B. The secondary coded case is now an ex-spouse and there are no outstanding liabilities with the ex-spouse.
2. If the above conditions are met and you determine the taxpayer is not a federal employee or retiree, also remove the FERDI indicator using TC971 AC 51. See IRM 5.1.77.1 (9).

Note:

On joint liabilities, do not remove the FERDI indicator if either the primary or secondary spouse is a federal employee or retiree.

5.1.7.9 (08-25-2014)

Accounts of Taxpayers Who Serve in a Combat Zone

1. Combat Zone accounts, identified by a -C freeze, indicate a taxpayer who is or was serving in a designated combat zone area.

Note:

The -C freeze stays on the account even after the taxpayer is no longer in the combat zone. When working an account that contains a -C freeze, additional research is required to determine the taxpayer's combat zone status. Research CC IMFOL for the Combat indicator on Line 11.

2. See IRM 5.19.10.6.3 , *Combat Zone Freeze Code*, for evaluating the status of -C Freeze accounts.
3. If Combat indicator is "1" , then the taxpayer is still serving in a combat zone. Any compliance activity such as assessing or collecting tax is prohibited. However, if the taxpayer has other issues or requests information, you may work these other issues and contact the taxpayer if needed.
4. If Combat indicator is "2" , then the taxpayer is no longer a combat zone participant. Follow normal IRM procedures to work the case.
5. Individual taxpayers who have been identified as Combat Zone personnel receive certain allowances under IRC 7508. Section 7508 postpones the time for taxpayers to perform certain time sensitive acts. These time sensitive acts include:
 - Filing tax returns
 - Paying taxes
 - Filing claims for refunds
 - Taking other actions with the Internal Revenue Service (IRS)

The postponement period is for the period of service in the combat zone and any period of continuous hospitalization (if any) outside of the United States as a result of injury received while serving in the combat zone plus 180 days following such service. The IRS will also cease **all enforcement** actions during the postponement period. The postponement under IRC 7508 is in effect while the individual is serving the United States in the following circumstances:

- A. Serving in the United States Armed Forces (Armed Forces) or in support of the Armed Forces in an area designated as a "combat zone" by the President of the United States (President) in an Executive Order.
 - B. Serving in the Armed Forces or in support of the Armed Forces when deployed outside the United States away from the individual's permanent duty station while participating in an operation designated as a "contingency operation" by the Secretary of Defense.
 - C. Serving in the Armed Forces in an area designated by Congress as a "qualified hazardous duty area."
 - D. The spouses of combat zone personnel listed under (a) (b), and (c) above. This does not apply if the individual considered as combat zone personnel is hospitalized inside the United States.
6. Individuals who serve in support of the Armed Forces in a combat zone also receive the postponement period under IRC 7508. These individuals include the following:
 - Merchant Marines serving aboard vessels under the operation and control of the Department of Defense
 - Red Cross personnel
 - Accredited Correspondents
 - Civilian personnel acting under the direction of the Armed Forces in support of those Forces
 7. Military Service performed outside a combat zone but within a "qualified hazardous duty area" is treated in the same manner as if the area was a combat zone if:
 - A. The service is in direct support of the military operations in a combat zone, and
 - B. The service qualifies the individual for special military pay for duty subject to hostile fire or imminent danger
 8. See IRM 5.19.10.6.2, *Combat Zone Qualified Individuals and Areas*, for additional information and a listing of combat zones and qualified hazardous duty areas.

Note:

See Pub. 3, *Armed Forces' Tax Guide*, for additional information and qualified hazardous duty areas that may qualify for similar relief.

9. IRC 692(a) provides that any individual who dies while in active service as a member of the Armed Forces of the United States (if such death occurred while serving in a combat zone or as a result of wounds, disease or injury incurred while serving) is not liable for any income tax for the taxable year in which the date of death falls or with respect to any prior taxable year ending on or after the first day of the period in a combat zone as well as any income tax which is unpaid for any prior years at the date of death (including interest, additions to the tax and additional amounts). Such tax shall not be assessed and if assessed shall be abated, and if collected shall be credited or refunded as an overpayment.
10. For military personnel reported as Missing-In-Action (MIA) and later determined to have died at an earlier date, IRC 692(b) provides for forgiveness of income taxes through the taxable year in which the missing status is changed rather than just through the year of actual death. However, such taxes will not be forgiven for any year beginning more than two years after termination of combatant activities (in the case of Vietnam, no later than January 2, 1978).
11. Suspend all payment and collection activity when it is determined that the taxpayer is entitled to a postponement under IRC 7508. Information documenting when service in the combat zone began (combat zone entry date), is sufficient to suspend collection activity. If a joint assessment is involved, suspend collection activity from both spouses during the period provided by IRC 7508. The case file should be annotated accordingly. Examples of collection activity which are to be *suspended* are:
 - Conducting investigations to pursue a Trust Fund Recovery Penalty (TFRP) assessment(s) against the taxpayer deployed to the combat zone (TFRP interview, summoning bank records, etc.).
 - Conducting investigations to locate assets and sources of funds for potential levy and/or seizure action.
 - Conducting investigations to determine the value of assets for potential levy and/or seizure action.

5.1.7.9.1 (08-21-2006)

Business Masterfile (BMF) Accounts of Taxpayers Deployed to a Combat Zone.

1. Although IRC 7508 applies to individual taxpayers the Service allows business taxpayer accounts to be postponed if the account meets the criteria in (3) below. The postponement includes the suspension of all collection activity (including the assessment of the Trust Fund Recovery Penalty) during the period of time in which the criteria of (3) below applies plus 180 days.
2. Collection personnel (revenue officers) will use the following procedures to suspend BMF Del. Ret. and Bal. Due accounts of taxpayers deployed to a Combat Zone.
3. To suspend BMF accounts of taxpayers deployed to a Combat Zone, the taxpayer must meet all of the following criteria:
 - The business entity is a sole proprietorship, a partnership, or a personal service corporation (e.g., doctor, dentist, certified public accountant) where the key individual/partner is in the combat zone, and
 - The business ceased operations from the time the key individual/partner entered the combat zone.

Note:

Business operations are considered to have ceased even if some business activity has occurred after the **key individual** has been deployed to the combat zone (i.e., an office manager billing customers, preparing final tax returns, or making final payroll).

4. Document the case history to indicate that the taxpayer meets all of the criteria to qualify for combat zone status.

5.1.7.9.2 (07-01-2005)

Substantiation Procedures for Section 7508 (Combat Zone) Postponement

1. When it is common knowledge or apparent that the taxpayer is Combat Zone personnel, oral testimony is acceptable proof that the taxpayer is entitled to the Combat Zone special tax treatment.
2. When it is not common knowledge or apparent that the taxpayer is Combat Zone personnel, written substantiation, such as a copy of the military or civilian orders or a statement issued by the Department of Defense (DOD) attesting that the Combat Zone qualifications are met, is acceptable.
3. A signed statement secured by the taxpayer or a contact, such as a spouse or attorney, may be accepted as substantiation when a copy of the military or civilian orders or a DOD statement is not easily accessible. (Note: Falsely claiming special treatment for Combat Zone relief can be used as evidence of willfulness should the issue arise later.)
4. In addition, the Internal Revenue Service may have previously identified the taxpayer as Combat Zone personnel by entering a "C" freeze on Masterfile.

5.1.7.9.3 (06-21-2011)

Combat Zone Freeze Codes

1. The Combat Zone freeze code suspends:
 - A. Accrual of interest and penalties for all tax periods.
 - B. Assessment Statute Expiration Date (ASED).
 - C. Refund Statute Expiration Date (RSED).
 - D. Collection Statute Expiration Date (CSED).
 - E. Any collection activity (levy, liens, seizures, assessment of the trust fund recovery penalty).
2. Request input of TC 500 (-C Freeze) with the appropriate closing code(CC) to **initiate** the combat zone freeze, complete Form 4844, *Request for Terminal Action*, and include the combat zone entry date:
 - TC 500, CC 52 (Desert Storm Combat Zone)
 - TC 500, CC 54 (Bosnia/Former Yugoslavia or Allied Force)
 - TC 500, CC 56 (Afghanistan or Iraqi Freedom)

Note:

If the combat zone entry date is not known, use the date of contact on the Form 4844, *Request for Terminal Action*.

3. As of January 2008, TC 598 cc 70 will systemically be input on delinquent return modules upon the input of TC 500 with the above closing codes. The TC 598 cc 70 closes the module during the administrative relief period. The module will be identified on IDRS with a -C freeze code.
4. When it is determined that the TC 500 (-C Freeze) is no longer appropriate, complete Form 4844, *Request for Terminal Action*, and include the combat zone exit date. Use the following transaction and closing codes to **reverse** the combat zone freeze code:
 - TC 500, CC 53 (Desert Storm Combat Zone)
 - TC 500, CC 55 (Bosnia/Former Yugoslavia or Allied Force)
 - TC 500, CC 57 (Afghanistan or Iraqi Freedom)

5.1.7.9.3.1 (10-09-2008)

Procedures to Suspend BMF Balance Due Accounts

1. The following steps are to be adhered to when suspending collection of BMF balance due accounts, when the **key individual** is deployed to a Combat Zone.
 - A. Prepare Form 53, *Report of Currently Not Collectible (CNC) Taxes*. Use closing code (CC) 14 with a mandatory follow-up. Complete item 7b of Form 53 by checking the "Yes" box.

Note:

Prepare and send a paper Form 53 to CCP for input since CC 14 is currently not an available closing code on ICS.

- B. If the Combat Zone exit date is known, add 180 days to the combat zone exit date as the mandatory follow-up date.
 - C. If the Combat Zone exit date is unknown, use 6 months from the date the Form 53 is prepared as the mandatory follow-up date.
 - D. Annotate Form 53, item 22 with the following: "Determine the taxpayer's combat zone status."
2. When conducting follow-up procedures on these cases, follow procedures in IRM 5.16.1.6. During the follow-up investigation, determine the taxpayer's combat status. If they:
 - A. Continue to be Combat Zone personnel, then revise the mandatory follow-up date to the combat zone exit date plus 180 days. If the combat zone exit date is unknown, use 6 months from the date the investigation is completed as the new mandatory follow-up date.
 - B. No longer are Combat Zone personnel, then revise the mandatory follow-up date to the actual combat zone exit date plus 180 days.

5.1.7.9.3.2 (10-09-2008)

Procedures to Suspend BMF Delinquent Return Accounts with related BMF Balance Due Accounts

1. When the **key individual** is deployed to a Combat Zone select Transaction Code (TC) 590, CC 50 - Not Liable for Return "Option C" from the "F6-Close Del. Ret." menu on the Integrated Collection System to close the Del. Ret. tax periods.
2. Use TC 590 for the first tax period that includes the date the taxpayer will enter the Combat Zone. For subsequent tax periods, use TC 590 for the next three tax periods.
3. Document the case history that the taxpayer has been deployed to the Combat Zone. If the taxpayer has provided an entry date for deployment to the Combat Zone, annotate the case history accordingly.

5.1.7.9.3.3 (10-09-2008)

Procedures to Suspend Stand Alone BMF Delinquent Return Accounts

1. Use TC 598 CC 70 to close stand-alone BMF Delinquent Return Accounts when the taxpayer is on active duty in a Combat Zone. Do not work the account until the taxpayer exits the combat zone. When the taxpayer exits the combat zone, the TC 598 will be reversed.

5.1.7.9.3.4 (06-21-2011)

Combat Zone Computation of Suspense Period

1. The start date of the combat zone suspense period begins on the transaction date of the TC 500 Closing Code 52, 54, or 56.
2. The ending date of the suspense period is calculated 180 days from the date of the TC 500 Closing Code 53, 55, or 57 (combat zone exit date). The 180 days begin on the day following the combat zone exit date. The suspense period is extended by an additional 105 days (106 in a leap year) if the taxpayer was in the combat zone the entire filing season.

Example:

For a taxpayer in the combat zone at any time between January 1 and April 15 of the year in which the return was due, the suspense period is extended by the number of filing season days the taxpayer was in the combat zone. The suspense period is calculated systemically. If the taxpayer was in the combat zone more than one filing season, the suspense period is calculated for each tax year.

3. Send Letter 2761(C), *Request for Combat Zone Service Dates*, to the taxpayer requesting the combat zone exit and/or entry date if TC 500 Closing Code 53, 55, or 57 is not present.
4. Balance due accounts systemically return to normal processing when the suspense period expires.

Note:

The entry and exit dates must be present for the system to determine when to reactivate these accounts.

5.1.7.9.3.5 (10-21-2011)

Military Power of Attorney (POA) for Representation of Deployed Military Personnel

1. A military POA is sufficient authorization to permit an individual to represent a deployed member of the military before the IRS.
2. An individual holding a military POA is often the spouse of the deployed military member. Since the military POA is broader and cannot be input into the CAF, it is acceptable for the IRS to require the non-deployed spouse (or other military POA holder) to complete a Form 2848, *Power of Attorney and Declaration of Representative*. The spouse (or other military POA holder) should be permitted to sign the Form 2848 for the military member and as the deployed military member's authorized representative.
3. Attach a copy of the military POA to the completed Form 2848 before submission to the IRS.

Note:

A Form 2848 signed by the military member and his or her authorized representative, including a spouse or other family member, is sufficient for representation before the IRS.

5.1.7.10 (07-01-2005)

Military Personnel and Civilian Employees of Department of Defense Residing Overseas

1. The Department of Defense (DOD) has issued instructions to their payroll officers to transfer a Notice of Levy to the proper payroll officer when military personnel change their duty station anywhere in the world. As a result, it is not necessary to have the Bal. Due follow the taxpayer who is transferred to a new duty station.
2. In an agreement with DOD on processing accounts of military personnel having APO or FPO addresses, the Service also agreed to a similar understanding on processing accounts of DOD civilian employees residing overseas. Both agreements provide for the acceptance of service of levies by mail in the United States and forwarding to the payroll officer overseas. This includes all military personnel and DOD civilian employees residing overseas with the exception of those in Hawaii, Alaska, and Puerto Rico where the local payroll offices continue to accept service of the levy.
3. All Bal. Dues on military personnel stationed outside the area in which the Bal. Due is located and those Bal. Dues on civilian employees of DOD residing overseas require a waiting period of 40 days after the date of the Final Notice. The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) requires the Final Notice to be sent by certified or registered mail to the last known address as one of the alternative methods in IRC 6331(d)(2)(C). See IRC 6331(d)(2)(C) and IRC 6330(a)(2)(C) with respect to the collection due process(CDP) levy notice. It has been the Service's practice to send the Final Notice to a foreign address only by registered mail since there is no provision in the International Postal Manual for sending certified mail to a foreign address. However, mail addressed to APO (Army Post Office) and FPO (Fleet Post Office) boxes for military personnel and DOD civilians residing overseas can be sent by either certified or registered mail since these addresses are considered domestic rather than foreign. Bal. Dues on military personnel stationed within the area/territory where the Bal. Due is located also require a waiting period of 40 days.

Note:

The CDP levy notice is sent like the final notice but includes return receipt requested.

5.1.7.11 (07-01-2005)

Securing Addresses of Military Personnel

1. Form 2223, *Request for Information from Military*, is used to obtain a current or prior address of a taxpayer who is in, or was recently separated or discharged from, the Armed Forces. Military personnel will only respond to a completed Form 2223 with an accurate social security number. Send inquiries for all Military Service Branches to the pre-printed address provided on the Form 2223.
2. Care must be taken to ensure that the Service's return address appears on each Form 2223. The Form 2223 must be completed accurately, failure to do so will result in a non-response.
3. Because the Military Branches receive numerous requests for addresses, allow 90 days before considering a follow-up request. If after 90 days a follow-up is necessary, a second Form 2223 should be mailed to the proper Military Service Branch. The second Form 2223 should not be identified as a second request, and no reference should be made to the original form.
4. To find the address of a retired or active member of the Military, inquiries should be sent to the specific Military Service including the United States Coast Guard. Addresses may be found on the IRS SERP web-site at <http://serp.enterprise.irs.gov>.

5.1.7.12 (08-25-2014)

Military Deferrals

1. Under the Servicemembers Civil Relief Act 50 U.S.C. app. Section 501 (referred to below as SCRA), the collection of any income tax due from any person in the military service, whether falling due before or during military service, may be deferred if ability to pay the tax is "materially affected" because of that person's military service. Collection may be deferred during the taxpayer's period of military service and up to 180 days afterward. A "Servicemember" is a member of the uniformed services, as the

term is defined in section 101(a)(5) of title 10, of the United States Code. These are individuals who are members of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, the commissioned corps of the National Oceanic and Atmospheric Administration, and the commissioned corps of the Public Health Service.

2. "Materially affected" means, if the taxpayer's current monthly income (military income) is less than the monthly income immediately prior to active duty, their ability to pay the balance due has been "materially affected" by reason of active military status.

Note:

Current monthly expenses incurred by the taxpayer as a result of military service should be deducted if current monthly earned income is more than monthly earned income immediately prior to military service.

3. The spouse of a servicemember is also granted military deferment for the same term as the servicemember for jointly filed returns, when his/her request has been approved.
4. A deferment of collection of income tax under SCRA will be granted if:
 - A. The taxpayer submits a written request for deferment to either the IRS office making demand for payment or the office with which the taxpayer has a payment agreement in effect
 - B. The taxpayer establishes that he or she is serving a period of military service, and
 - C. The taxpayer submits satisfactory proof that their ability to pay the tax has been materially affected because of the taxpayer's military service.
 - D. The taxpayer's written request must be made within the period of military service plus 180 days
 - E. The request for deferment includes the following information:
 - Name
 - SSN
 - Monthly income and source of income before military service
 - Current monthly income
 - Description and amount of expenses incurred because of military service if current monthly income is greater than monthly income before military service
 - Military rank
 - Date entered into military service
 - Date they are eligible for discharge

Note:

Inform the taxpayer it is also helpful if they submit a copy of their orders.

5. As described in (1) above the deferment will be equal to the service member's period of military service and not more than 180 days after termination of or release from military service, if the servicemember's ability to pay the income tax liability is materially affected by the military service. The term "military service" means the period beginning on the date on which a servicemember enters military service and ending on the date on which the servicemember is released from military service or dies while in military service. The period of military service differs between servicemembers and is described below:
 - A. In the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, (1) active duty, as defined in section 101(d)(1) of title 10, United States Code, and (2) in the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by federal funds;
 - B. In the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; and
 - C. Any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.
6. The taxpayer is eligible for military deferment only for the following periods of military service. See Rev. Proc. 57-25, 1957-2 C.B. 1092:
 - A.) The period of active duty for which the taxpayer is inducted into the military service under any selective service act.
 - B. The period of active duty under the first enlistment of a taxpayer in the armed service.
 - C. The first period of reenlistment, for a taxpayer who has been out of the service for one year or more.
 - D. The period of service, prior to any reenlistment, following recall of the taxpayer to active duty from an inactive reserve or National Guard unit, for a taxpayer who has been out of military service for one year or more.

5.1.7.12.1 (08-25-2014)

Military Deferment Procedures

1. If a taxpayer requests a military deferment, send the taxpayer Letter 1175 (DO), *Form Letter and Request for Deferment of Collection of Income Tax*, and request any delinquent returns be filed All delinquent returns should be filed through the revenue officer to ensure expedited processing.
2. Suspend collection action for 60 days to allow the taxpayer to respond to Letter 1175 (DO). If the completed Letter 1175 (DO) is not received after 60 days, resume collection action with the group manager's approval. You should document the case file indicating approval by the group manager and the date the approval was received. If information becomes available indicating that the taxpayer is not in military service or is merely seeking unjustifiably to delay payment, resume collection action after receiving the approval of the Territory Manager.
3. If received, review the completed Letter 1175 (DO) to determine the taxpayer's eligibility for a deferment. The letter should include the taxpayer's name, social security number, affected tax periods, monthly income and source of income before military service, current monthly income, description and amount of expenses incurred because of military service if current monthly income is greater than monthly income before military service, military rank, date entered into military service, and date they are eligible for discharge. A copy of the taxpayer's orders is helpful but not required. Review the taxpayer correspondence for the following information:
 - Prior and current income (current military income is less than earned income immediately prior to their military status); check CC RTVUE for AGI
 - If the current earned income is more than earned income prior to military status, review the taxpayer correspondence to determine if the taxpayer's expenses incurred as a result of military service reduces current income to below earned income immediately before military status.

Example:

After reviewing the taxpayer's prior and current income, the taxpayer is earning \$200 more a month, but if storage costs for storing furniture (\$60 per month) and dog boarding costs (\$200 per month) incurred as a result of military service are deducted, then the taxpayer is effectively making less income by \$60 and is thus materially affected.

Base your decision on whether their ability to pay the tax is "materially affected" because of the taxpayer's military service. See IRM 5.1.7.12(2) for the definition of "materially affected." Resolve "borderline" cases in favor of the taxpayer.

4. If the taxpayer is entitled to a deferment:

- A. Prepare Letter 289, *Approval of Military Deferment*, granting the deferment for signature of the group manager. Advise taxpayers that overpayments may still be offset. Include the following paragraph when preparing Letter 289:

- If you have overpaid your taxes for one tax period, but owe taxes for another, the law allows us to apply your refund to reduce the unpaid tax. If you are a non-liable spouse and we offset a federal income tax refund belonging to you and your liable spouse, you may request return of your share of the refund by filing Form 8379, *Injured Spouse Allocation*. See Pub. 4183, *Injured Spouse Claims*, for more information.

B. Retain a copy of the letter in the case file.

C. Prepare Form 4844, *Request for Terminal Action*, requesting the input of TC 500, CC 51. Write the date that the deferment ends on the front of the Form 4844. (This is the length of military service plus 180 days after the discharge date. For officers, the deferment period is limited to the first two (2) years of military service plus 180 days). Any paper documents sent to Centralized Case Processing (CCP) for input will be sent via Form 3210, *Document Transmittal*. The preferred method by CCP is to submit Form 4844 electronically by e-mail.

D. Ensure that the interests of the Government are protected during the period of deferment, including the filing or refiling of a Notice of Lien, if necessary. Submit the Bal. Due case file, along with the input form and a routing slip addressed to Centralized Case Processing Operation - Field Office Resource Team (FORT), 2970 Market Street, Mail Stop: 5-E04.114, Philadelphia, PA. 19104, marked "MILITARY DEFERMENT", with Form 795 B, *Closure / Document Transmittal*, for closed case transmitting.

Note:

When forwarding the case for processing ensure that Letter 1175, Letter 289, and a copy of the taxpayer's orders are included with any additional case documentation.

5. Territory manager approval is required to deny the taxpayer's request for military deferment. If the taxpayer is not entitled to a deferment, prepare Letter 3079C, *Denial of Military Deferment*, for the signature by the Territory Manager. If the taxpayer provided a copy of his or her military orders or reporting instructions no later than 180 days after the date of termination or release from military service, include the optional sentence in Letter 3079C that the taxpayer is eligible for the reduced interest rate. Follow the procedure in IRM 5.1.7.12.2(3) to provide the taxpayer with the reduced interest rate. Enclose a copy of Pub. 1, *Your Rights As a Taxpayer* and Pub. 594, *Understanding the Collection Process*. Place a copy of the letter in the case file and resume collection action.

5.1.7.12.2 (08-25-2014)

Interest and Limitations on Collection

1. If a deferment on collection is granted under SCRA, the statutory collection period is suspended during the taxpayer's military service plus an additional 270 days after the day following military service. For officers, the suspension period is limited to the first two (2) years of military service plus 270 days.
2. Interest does not accrue during the deferment on any tax for which collection is deferred under SCRA. However, the taxpayer remains liable for any interest which accrued before the beginning date of military service. Interest will also accrue while the tax remains unpaid after deferment ends.

Note:

Interest deferment does not apply to the service member's share of Social Security and Medicare taxes they may owe; for additional information see Publication 3.

3. If the deferment is denied, appendix S of SCRA provides that no more than 6% interest (unless the applicable interest rate is below 6%) per year will be charged while the taxpayer is in active military service. However, the liability must have been incurred before the taxpayer entered active military duty. The reduced rate applies regardless of whether the military service materially affects the taxpayer's ability to pay. To substantiate the claim for reduced interest rate, the service member must furnish the IRS a copy of their orders or reporting instructions detailing the call to military service. They must do so no later than 180 days after the date of their termination or release from military service.
 - A. If the taxpayer is eligible for the reduced interest rate, include the optional sentence in Letter 3079C, Denial of Military Deferment, that the taxpayer is eligible for the reduced interest rate.
 - B. If the taxpayer provided a copy of his or her military orders or reporting instructions no later than 180 days after the date of their termination or release from military service, he or she qualifies for the reduced interest rate. Input TC 340 using a zero amount with activity code "Military (appropriate %)" using command code REQ54.

5.1.7.12.3 (07-01-2005)

Processing Notice Responses

1. Direct all responses from the taxpayer as a result of notices sent out, to the campus.
2. Military accounts where the taxpayer makes a specific inquiry about a military deferment in response to a notice request for payment of individual income tax, the campus will accelerate the account to Bal. Due status, place the correspondence in the suspense file for attachment to the Bal. Due when assigned to Field Collection and process in accordance with procedures in IRM 5.1.7.12.1.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 1. Field Collecting Procedures

Section 8. Courtesy Investigations

5.1.8 Courtesy Investigations

- 5.1.8.1 [Overview](#)
- 5.1.8.2 [Originating Office Procedure](#)
- 5.1.8.3 [Receiving Office — Action and Report](#)
- 5.1.8.4 [Status Reporting by Originator](#)
- 5.1.8.5 [Mandatory Assignments](#)
- 5.1.8.6 [Discretionary Assignments](#)
- 5.1.8.7 [Courtesy Investigations Requiring Special Handling](#)
- 5.1.8.8 [Treasury Enforcement Communications System](#)
- 5.1.8.9 [Courtesy Investigations to International](#)
- Exhibit 5.1.8-1 [Unassessable Erroneous Refund Waiver](#)
- Exhibit 5.1.8-2 [Unassessable Erroneous Refund Voluntary Payment Agreement](#)

Manual Transmittal

August 06, 2013

Purpose

(1) This transmits revised IRM 5.1.8, Courtesy Investigations.

Material Changes

- (1) *IRM 5.1.8.1* added Overview and Audience information for this IRM.
- (2) *IRM 5.1.8.1.1* updated to clarify case addresses can only be changed if they meet criteria in Rev. Proc. 2010-16.
- (3) *IRM 5.1.8.1.1(6)* added to instruct employees to document why case is being transferred.
- (4) *IRM 5.1.8.1.1(7)* added how to transfer a case when the case address is not being changed.
- (5) *IRM 5.1.8.1.1(8)* is renumbered.
- (6) *IRM 5.1.8.1.2(1)4* added reminder of proper procedures before changing case address.
- (7) *IRM 5.1.8.1.5.1(3)* added administrative details for transferring a case.
- (8) *IRM 5.1.8.1.6(1) 1* and 3) added to document case history how it was determined taxpayer moved and preparing Form 2363, *Master File Entity Change*, if Rev. Proc. 2010-16 standards were met.
- (9) *IRM 5.1.8.1.6(2)* updated Currently Not Collectible procedures on Courtesy Investigation closures.
- (10) *IRM 5.1.8.1.7*, Preparation of Form 2650, *TDA-TDI Transfer*, was deleted since transfer process is now automated.
- (11) *IRM 5.1.8.2 (9)* updated to include instructions to send OI to group manager's hold file for assignment.
- (12) *IRM 5.1.8.5.1* updated to include currently not collectible mandatory follow-ups, recovery of unassessable erroneous refunds and Centralized Case Process OIs on 914 cases are mandatory OIs.
- (13) *IRM 5.1.8.6.1* updated to remove currently not collectible mandatory follow-ups from discretionary OIs.
- (14) *IRM 5.1.8.7.1.2 (1) c* added an additional example of an unassessable erroneous refund.
- (15) *IRM 5.1.8.7.1.3 (1)* updated to include unassessable erroneous refunds to mandatory assignment.
- (16) *IRM 5.1.8.7.1.3.3* added to provide instructions for sending payments on erroneous refund voluntary repayment agreements to the Campus.
- (17) *IRM 5.1.8.7.1.3.3(3)* added to give instructions on sending voluntary repayment agreements to originator of the OI.
- (18) *IRM 5.1.8.7.1.3.3(4)* added additional scenario if taxpayer enters into a voluntary repayment agreement. Also added when a new Form 2209, *Courtesy Investigations*, will be issued.
- (19) *IRM 5.1.8.7.2.6* updated with current Rev. Proc. 2010-16.
- (20) *IRM 5.1.8.8.3* is updated how to contact the TECS Coordinator.
- (21) The revision to this IRM section includes editorial changes throughout.

Effect on Other Documents

This material supersedes IRM 5.1.8, dated November 4, 2011. Interim Guidance Memoranda SBSE-05-1212-103 dated December 28, 2012, "Reissuance of Interim Guidance for Subordinations to Factors" and Interim Guidance Memoranda SBSE-05-0612-037 dated June 21, 2012, "Issuance of Courtesy Investigations for Erroneous Refunds" has been incorporated into this revision.

Audience

Effective Date

(08-06-2013)

Scott D. Reisher,
Director, Collection Policy

5.1.8.1 (08-06-2013)

Overview

1. **Purpose.** This IRM section describes the process and procedures for issuing and working investigations from one area of assignment and/or operating unit to another assignment area. The assignments are made requesting assistance in completing an investigation to resolve various case issues.
2. **Audience.** This IRM is designed for use by all personnel responsible for issuing and working Courtesy Investigations or Other Investigations (OI).
3. Other Investigations (OIs) may be assigned on Form 2209 , *Courtesy Investigation*. Form 2209 is used to:
 - Request case assistance from another Area office
 - Issue certain Intra-Area and Campus investigations
 - Conduct a full compliance check when there are no other open assignments
 - Control assignments and actions on Integrated Collection System (ICS) - usually used by Property Appraisal & Liquidation Specialists (PALS) for seizure related information, Advisory for Trust Fund Recovery Penalty (TFRP) and Centralized Case Processing (CCP) for In-Business Trust Fund Installment Agreement (IBTF-IA)
4. OIs can be assigned by one ICS user to another ICS user. This is accomplished by creating an outgoing OI on ICS. The originator and the recipient share all detail and history information available on ICS.

5.1.8.1.1 (08-06-2013)

Case Transfer without Courtesy Investigation

1. A Courtesy Investigation is not required prior to transferring a case to a new location if the new address is verified on Form 4759, *Postal Tracer*, Letter 4156, *Letter to Verify Address*, is sent to the new address, and any of the following conditions are met:
 - A. The taxpayer does not acknowledge receipt of the letter,
 - B. The letter is not returned undeliverable by the post office,
 - C. The post office does not provide an address change within 30 days, or
 - D. The taxpayer acknowledges receipt of the letter but does not respond sufficiently to dispose of the investigation.

Note:

Do not update the Master File address (the case or ICS Mailing or Location address) unless the taxpayer provides clear and explicit written or oral notification as provided by Rev. Proc. 2010-16 . Updating a taxpayer's address with a new address received from a third party, even when verified by a postal tracer, is not permitted without the taxpayer's explicit notification. See IRM 5.11.1.2.1.1, *Last Known Address*. Erroneously changing the case address without adhering to Rev Proc 2010-16 could result in invalid notices.

2. Before transferring the case, the revenue officer will:
 - A. thoroughly investigate all known assets in the transferor area (this may require search of local records) and ensure all appropriate enforcement action is taken, and
 - B. obtain group manager approval.
3. Automated Collection Systems (ACS) accounts with domestic addresses may also be transferred without prior courtesy investigations.
4. Non-ACS accounts with domestic addresses may be transferred without prior Courtesy Investigations if:
 - A. =====
=====
 - B. all known assets of the taxpayer within the transferor area have been investigated and the Bal Due history documented with the results of the investigation.
5. Make a levy or seizure determination prior to transfer if the investigation reveals any assets within the jurisdiction of the transferor.
6. Thoroughly document why the case is being transferred.
7. If the Master File (MF) address is not being changed per the "Note" in (1) above, add an ICS contact address. Transfer the case using ICS Transfer Option A, "Transferee Office Requests Transfer" and input the group manager's hold file assignment number that controls the zip code of the new contact address, i.e. AOTOXX00. This action allows transfer of a case without requiring a Master File address change.
8. See *IRM 5.1.8.1.4, Account Transfers to International*, for accounts with foreign addresses.

5.1.8.1.2 (08-06-2013)

Additional Criteria for Transfer of Domestic Accounts

1. The following applies to non-ACS accounts that meet the conditions of Section 5.1.8.1.1 of this IRM:

<p>If . . .</p> <ol style="list-style-type: none"> 1. The receiving office requests or agrees to the transfer of specific accounts 2. The Bal Due was initially issued with an address outside the Area's jurisdiction and the new address is not a P.O. Box number or in care of a hotel or motel 3. New address information appears on IDRS (usually as notified by the Daily Transaction Register); e.g., CFOL cc INOLE <p>4. Letter 4156 is sent certified mail with return receipt requested to the new address and the taxpayer acknowledges the letter (by signed return receipt or other response) but fails to send full payment</p>	<p>Then . . .</p> <p>Transfer without a courtesy investigation</p> <p>Transfer without a courtesy investigation</p> <p>Transfer without a courtesy investigation</p> <p>Transfer without a courtesy investigation. Allow 45 days for a reply to ensure adequate time for delivery of the letter and for the taxpayer's response.</p> <p>Caution:</p>
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2. Transfer the Bal Due without a Courtesy Investigation if new address information is from correspondence with, or personal contact from, the taxpayer and:
 - A. The statute of limitations for collection or assessment (trust fund recovery accounts) will not expire within eight months from the date of transfer.
 - B. The accounts are **not** in one of the following categories: awaiting adjustment or payment tracer action, deferred, military deferment, withheld collection action status, or those on which recommendations for legal action have been made.

Note:

Accounts in these categories will **not** be transferred until these actions are concluded.

 - C. There are no indications in the address or case file that the taxpayer is incarcerated.
 - D. A Courtesy Investigation is not outstanding or completed based on the same new address.
 - E. For partnership or joint liabilities, all of the taxpayers involved reside in the transferee Area or the accounts are currently not collectible with respect to the taxpayers that reside in the transferor Area.
 - F. For corporate liabilities, the new address must be that of the corporation.
3. Field Collection (FC) may transfer a case to ACS without an OI when a new address in another Area has been verified and requirements in (1) and (2) above have been met.

5.1.8.1.3 (04-22-2008)
Intra Area Transfers

1. Intra Area transfers can be made when:
 - A. The Bal Due was received in error as indicated by the Bal Due address, or
 - B. Territory procedures permit the transfer.

5.1.8.1.4 (11-04-2011)
Account Transfers to International

1. Transfer accounts having current addresses outside the United States to SB/SE International only when they meet *all* of the following conditions:
 - A. The revenue officer has confirmed that the taxpayer resides outside the United States. Document in the case history how you determined that the taxpayer resides outside the United States. If the address cannot be confirmed, send a Courtesy Investigation to verify the address instead of transferring the case.
 - B. =====
 - C. The collection statute expiration date (CSED) for each case has one year or more remaining before expiration. If the CSED is due to expire within one year of the transfer, secure approval from an International group manager before transferring the case.
 - D. The accounts are not in the following status: offer in compromise, withhold collection, awaiting adjustment action, military deferment, those on which recommendations for legal action have been made.
 - E. Document in the case history your finding of any U.S. assets or levy sources. A levy or seizure determination is not necessary.
 - F. Copies of related returns and revenue agent's reports are attached, if available.
 - G. In trust fund recovery penalty cases, attach a copy of the trust fund recovery penalty file.
2. Addresses outside the United States include:
 - APO or FPO addresses
 - Puerto Rico
 - Guam
 - American Samoa
 - the Virgin Islands
 - the Northern Mariana Islands
3. To transfer the case use the following for ICS:
 - A. Area 15 (AO 35)
 - B. Assignment code 3597-6900
 - C. The taxpayer's new address (including foreign addresses) as the address change.
4. Use Form 3210, *Document Transmittal*, to transmit the paper files to International. The address is:
Internal Revenue Service
Attention: International Coordinator
77 K Street NE, 5th Floor
Washington, DC 20002
Do **not** use this address as the taxpayer's address when transferring an account to International.

5.1.8.1.5 (05-01-2007)
Transfer Following Courtesy Investigation

1. The transferring office will send a Courtesy Investigation prior to transfer of an account that does not meet the conditions listed above.

5.1.8.1.5.1 (08-06-2013)
Transferor Office Instructions

1. When a Courtesy Investigation proposing transfer has been sent, transfer the account only when one of the following conditions has been met:
 - A. Receiving office completes Courtesy Investigation and indicates willingness to accept transfer.
 - B. Receiving office completes Courtesy Investigation indicating that the taxpayer is located within its jurisdiction but fails to furnish sufficient information to permit proper disposition of the account, or
 - C. Receiving office fails to reply to a request for Courtesy Investigation within 45 days [six months for transfers to International] from the date of the request, or fails to request an extension of time for completion of the investigation.
2. Prior to transferring a Bal Due, document the case history that all known assets of the taxpayer located within the transferor Area have been investigated. If the investigation reveals any asset within the transferor Area, make a levy or seizure determination prior to transferring the accounts.
3. Upon receipt of the Form 2209 accepting transfer, the originating revenue officer will:
 1. Send the case file directly to the Group Manager hold file (AOTO XX00) of the revenue officer who worked the Form 2209.
 2. Use Form 3210, *Document Transmittal*, as a transmittal document for transfer of the paper files. This form can be printed with the case transfer options on ICS when requested.
4. In all cases, transfer of accounts is prohibited where the statutory period for collection or assessment (trust fund accounts) will expire within eight months from the date of transfer, unless the approval of the receiving manager is secured prior to transfer.
5. The originating office should **expedite** Form 3210 to effect transfer. If the statutory period for assessment (trust fund accounts) will expire in less than six months, attempt to secure a waiver from those potentially responsible for trust fund taxes prior to transfer.
6. Transfer Bal Dues on resident taxpayers having current addresses in Puerto Rico or the Virgin Islands to:

Use this address:
 City View Plaza
 48 Carr 165, Suite 2000
 Guaynabo, Puerto Rico 00968-8000
 Attn: Field Territory Manager

7. Request a Courtesy Investigation before transfer when one the of the situations in *IRM 5.1.8.1.5.1, Transferor Office Instructions*, exists (unless prohibited by IRM 5.1.8).

5.1.8.1.5.1.1 (05-01-2007)

Transferee Office Instructions

1. Accept accounts transferred as a result of any of the situations stated in *IRM 5.1.8.1.6, Transfer of Accounts Reported Currently Not Collectible*, of this IRM.
2. A group manager who approves a Form 2209, *Courtesy Investigation*, accepting transfer of an account, will open a substitute assignment on the taxpayer pending receipt of the new Bal Dues.

Note:

In ICS Areas, close the incoming OI but do not close the ICS-only case. See ICS Area Office Procedures.

5.1.8.1.6 (08-06-2013)

Transfer of Accounts Reported Currently Not Collectible

1. When a Courtesy Investigation establishes that the taxpayer has moved out of the originating Area's jurisdiction, but the account should be declared currently not collectible, the originating Area will:
 1. Document the case history how it was determined the taxpayer moved out of the originating Area's jurisdiction.
 2. Prepare and input Form 53, *Report of Currently Not Collectible Taxes*, and
 3. Prepare Form 2363, *Master File Entity Change*, if the criteria in Rev Proc 2010-16 has been met to change the MF address.
 4. Document the new address and the AOTO location on Form 2363.

Caution:

Ensure that both the new address and the AOTO location code are entered correctly on Form 2363 if an address change was appropriate.

2. After input of the TC 530:

If **Then**

There is no mandatory follow-up Send file to closed case files at Centralized Case Processing (CCP).

There is a mandatory follow-up ICS systemically creates a non-field OI and assigns it to CCP. The RO sends the paper file to CCP to monitor for follow-up action.

5.1.8.2 (08-06-2013)

Originating Office Procedure

1. When using Form 2209 (non-ICS) procedures the employee initiating the Form 2209 will complete the face of the assembly, stating fully the nature of the investigation and any specific information which will be needed or helpful in the investigation. Use the "Remarks" section for supplementary information or attach a separate statement in duplicate. If the originator has a case on ICS and is issuing a Form 2209 to a non-ICS recipient, attach appropriate portions of the account transcript, including module detail and case history transcript.
2. When using ICS OI procedures, the ICS originator will create an outgoing OI using the Create Modules option of the Collection Activities menu. The originator may choose to have ICS assign the outgoing OI based on the zip code of the action address, or the originator may specify a recipient by assignment number.
3. Completion periods for Courtesy Investigations:

If the action address is within:	Then the OI must be completed by:
the United States, Puerto Rico or the Virgin Islands	45 days after issuance
any foreign country or any other U.S. possession or territory	6 months after issuance
4. Contact the proposed recipient Area and verify that the address for the requested action is located in that Area if the Area of jurisdiction is not obvious.
5. Use the telephone number listed on IRS intranet: <http://serp.enterprise.irs.gov>, to make contact.

6. Mail Form 2209 to the Area having jurisdiction if using a paper Form 2209.
7. Find Area office addresses for administrative mail on IRS intranet at: <http://serp.enterprise.irs.gov>. If the address is in the U.S. Territories and
 - A. The mailing address is located in Puerto Rico or the Virgin Islands, mail Form 2209 and case file to:
Internal Revenue Service
City View Plaza
48 Carr 165, Suite 2000
Guaynabo, Puerto Rico 00968-8000
 - B. For cases involving a taxpayer having a current address located in Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, and other territories of the United States, mail Form 2209 and case file to:
Internal Revenue Service
Attention: International Coordinator
77 K Street NE, 5th Floor
Washington, D.C. 20002
8. Send any relevant paper documents that the recipient of the ICS OI will need to conduct the investigation to the group manager of the receiving group. The group manager of the receiving group is responsible for assigning the incoming ICS OI and for forwarding any paper documents that come in from the originator for the recipient. The mailing address of the receiving group can be found in the ICS Parameter Tables under the Employee Tables option. If the originator chooses to have ICS assign the OI, the originator may not know the receiving group number. In this case, the originator may access the module summary screen for the created OI to find the assignment number that ICS has assigned. An assignment number of 00000000 indicates ICS has not yet assigned the OI.

- If the receiving Area fails to timely complete the investigation and/or submit a timely request for extension, transfer the case to the Field Collection (FC) of the investigating Area, bypassing ACS.
- Transfer options available on ICS are:

- A. Transferee office - Request transfer
- B. Taxpayer contact - Requests transfer
- C. No TP contact - Assign to Queue (Out of Area) - Verification through correspondence
- D. Reassign to Area Queue - New address information appears on IDRS after transfer
- E. Transfer Non Bal Due/Del Ret Inventory, examples would be OI or TFRP.

9. The OI should be sent directly to the group manager's hold file (AOTO XXOO) for revenue officer assignment, even if the revenue officer requests the transfer. Assigning to the group manager's hold file will assist the group manager in controlling the inventory.

5.1.8.3 (01-01-2006)

Receiving Office — Action and Report

1. Take the following action upon receipt of an OI:
 - A. Report the action taken to the originator within the period stated on Form 2209 or before the due date of the ICS OI.
 - B. Submit a status report if the complete report will not be timely. Enter the report date in the ICS history and extend the OI due date. Submit the report on Form 2209-A, *Status Report*, if the investigation was initiated on Form 2209.
 - C. If it is determined the taxpayer is in another jurisdiction and the investigation should be transferred, document the taxpayer's correct location and close the ICS OI. The originator will issue another OI to the correct location. If the investigation was initiated on Form 2209, compute the normal 45-day period for completion of the investigation from the date of the Form 2209-A used to transmit the investigation to the new jurisdiction.
 - D. If Forms 2209 are prepared to request extensions to secure Form 900, *Tax Collection Waiver*, include: the taxpayer's business name; employer identification number; name and social security number of the individual required to sign the waiver.
2. The receiving office will deposit any collection made as a result of the investigation.
3. Take the following action when cash is converted:
 - A. Complete the applicable item on Part 3 of the Form 809, *Receipt for Payment of Taxes*, entering sufficient information to identify the bank draft or money order.
 - B. Annotate Part 1 of Form 809 to indicate that the collection relates to a Courtesy Investigation, and
 - C. Annotate the case history with the conversion information.
4. Send all pertinent documents to the originator to be associated with the Bal Due/Del Ret case file when closing the Courtesy Investigation.

5.1.8.4 (01-01-2006)

Status Reporting by Originator

1. The originator of the investigation should document the ICS history to request additional information or actions that were not requested when the OI was created. The originator should also contact the recipient to advise them of the additional request in the history.

5.1.8.5 (04-22-2008)

Mandatory Assignments

1. Group managers will assign mandatory OIs listed in IRM 5.1.8.5.1 (below) to the next available revenue officer.

5.1.8.5.1 (08-06-2013)

Types of Mandatory OIs

1. Case work from Advisory that cannot be resolved without field actions (such as redemption investigations, TFRP investigations, applications to subordinate to a factor on trust fund accounts).
2. Service of U.S. Tax Court subpoenas
3. Counsel Collection referrals
4. Federal Contractors

5. Form 4442, *Inquiry Referral*
6. Taxpayer Advocate referrals
7. Appeals Referral Investigation (ARI)
8. Corporate Trust Fund Offers in Compromise
9. =====

10. The following Insolvency-generated investigations:

- A. =====
 - B. =====
 - C. Insolvency requests to address collection on businesses in reorganization bankruptcy (Chapters 11 and 13) when the taxpayer is not in compliance with filing, paying, and depositing requirements.
 - D. Other key Insolvency processes. These include: Courtesy Investigations requiring court appearance in a remote area; records check or asset valuation that cannot be accomplished using in-house locator services; immediate lien filing.
11. Lien discharge, subordination, and non-attachment applications will be worked in Advisory. Revenue officers will prepare Form 3033, *Investigation of Request for Certification of Discharge or Subordination*, on assigned cases for submission to Advisory. Courtesy Investigations will only be issued if Advisory cannot obtain the necessary information through informal contact with the submitting revenue officer, ICS, or other sources.
 12. Suit recommendations will be reviewed and processed in Advisory upon receipt of the recommendation from the revenue officer. Courtesy Investigations will be issued only if Advisory cannot obtain the necessary information through informal contact with the submitting revenue officer, ICS, or other sources.
 13. Advisory-initiated requests for a collection determination and resolution in probation and restitution cases where payment of a civil liability is a condition of criminal probation. Courtesy Investigations may also be issued for follow-up on court ordered restitution where no tax has been assessed when field contact is required to address specific issues raised by the Department of Justice.
 14. Judgment follow-up.
 15. Defaulted bankruptcy plan where indicators of fraud are present.
 16. Requests for trust fund recovery penalty determination for cases in bankruptcy. (These include supplemental Form 4180, *Report of Interview with Individual Relative to Trust Fund Recovery Penalty or Personal Liability for Excise Taxes*, interviews and investigations for subsequent delinquent accounts where a trust fund recovery penalty investigation was completed.)
 17. Request for a collection determination and resolution in cases involving taxpayers who are defense contractors with a Federal Payment Levy Program levy or levy attaching 100% of a contract payment where issues of national security or financial loss to the government exist.
 18. Currently not collectible mandatory follow-ups.
 19. Recovery of unassessable erroneous refunds. (See *IRM 5.1.8.7.1.3, Unassessable Erroneous Refunds Recovery Procedures*.)

20. CCP OIs sent to the field on Transaction Code (TC) 914 cases requiring field assistance or investigations, including:

- CSED protection (when Form 10498-D, *Intent to Commence or Continue Civil Action – Collection Statute Protection*, is needed to document agreement between Collection and CI regarding what, if any, civil collection actions should be taken to protect the CSED, or to acknowledge agreement that the CSED should be allowed to expire).
- Assessment Statute Expiration Date (ASED) protection for potential TFRP assessments (when a Form 10498-C, *Intent to Commence Civil Action – Statute Protection for Assessment of TFRP*, is needed to document agreement between Collection and CI regarding what, if any, actions should be taken to protect the ASED, or to acknowledge agreement that the ASED should be allowed to expire).
- Lien notice or NFTL refiling determination (when Notices of Federal Tax Lien need to be refiled to maintain the Government's lien priority; consult with CI before refiling).
- New balance due or delinquent return modules that need TC 914 input or parallel investigation (when a determination is needed as to whether taking collection actions for the new modules will adversely affect the criminal investigation). See *IRM 5.1.5.2, IRS Policy Concerning Parallel Investigations*.
- Collection risk analysis to determine whether administrative collection action should remain suspended. CCP will issue an OI to the field every two years for a collection risk analysis. The revenue officer should determine the status of the criminal investigation; whether the taxpayer's noncompliance (failure to file, failure to pay) continues for tax periods arising subsequent to the periods under criminal investigation; and whether there is any indication that the taxpayer is fraudulently transferring property or otherwise taking actions to avoid future collection. If it is determined, after coordination with Criminal Investigation (CI), that collection action should remain suspended; the revenue officer will document the basis for that determination in the case history. If it is determined that collection action no longer needs to be suspended for all or some of the modules, the procedures for parallel investigations should be followed. See *IRM 5.1.5.4, Commencement of Parallel Investigation*.

Note:

No collection action should be taken without the concurrence of CI. Do not contact the taxpayer without the prior approval of the Special Agent assigned to the case. If contact with the taxpayer is prohibited, then the collection risk analysis must be based on the revenue officer's contact with the Special Agent, an analysis of Internal Revenue Service records and other sources of information for which access will not jeopardize the criminal investigation.

**5.1.8.5.2 (04-22-2008)
Tax Checks on Political Appointees and Government Employees**

1. This mandatory OI requires tax checks on individuals requested by the White House, the Executive Office of the President, or the Department of Justice.
2. Collection Policy will forward a memorandum to the Area Director where the taxpayer resides. The memorandum will include the following information:
 - A. Taxpayer's name
 - B. Address
 - C. Social Security number
 - D. Contact phone numbers
 - E. Unfiled/unpaid tax period and
 - F. The name of the Tax Check Unit and Collection Policy contacts

3. The Area will initiate a nondiscretionary Courtesy Investigation and assign it to a revenue officer.
4. Attempt contact with the taxpayer within 48 hours of the notification to the Area.

Note:

Review IRM 5.19.1.1.1, *Disclosure Overview: Verifying Identity of Contact Party*, for purposes of taxpayer identification and to prevent unauthorized disclosure of tax information.

If the taxpayer indicates a return was filed, proof of filing, e.g., a copy of the cancelled check for the balance due on the return, will be secured. If such proof is not available or if the return was a refund return, a copy of the return will be secured and processed as a possible duplicate return.

5. Send an e-mail message to the Tax Check Unit and advise them of the results of the contact **immediately** after contact with the taxpayer.

Example:

The e-mail message to the Tax Check Unit could include the following:

- A. Proof of filing secured
 - B. Return secured
 - C. Commitment to file/pay by agreed date, etc.
6. Do **not** take enforcement action against the taxpayer during this time.
 7. Send an e-mail message to the Tax Check Unit and other appropriate Collection Policy contacts and advise how the investigation was resolved when the taxpayer complies and the investigation is closed.
 8. Make two additional contact attempts to resolve the delinquency if no contact is made or the taxpayer fails to meet the initial commitment.
 - A. If a field call was not already made, one of the additional contact attempts must be a field call.
 - B. If the delinquency remains unresolved, the Tax Check Unit and Collection Policy contact will be so advised by e-mail.

**5.1.8.6 (06-01-2010)
Discretionary Assignments**

1. Managers will assign discretionary OIs listed in *IRM 5.1.8.6.1* to the next available revenue officer based on risk level.
2. See *IRM 5.1.8.6.1, Types of Discretionary OIs*.
3. The risk level, if known, should be entered manually by the initiator in the remarks section of the OI. If the risk level is not known, the receiving manager will determine the presumptive risk level of the underlying account based on established risk factors and enter it in the remarks section. If the manager is not currently assigning like-risk level cases and cannot assign the OI to a revenue officer, the case may be returned to the originator by the due date of the OI. The manager will include an explanation in the remarks section explaining the reason the OI cannot be assigned.

Note:

If the receiving manager is assigning like-risk level cases, the OI must be assigned to the next available revenue officer and worked timely. A Form 2209, *Status Report*, will be sent to the originator to request additional time if the Courtesy Investigation cannot be completed by the due date.

**5.1.8.6.1 (08-06-2013)
Types of Discretionary OIs**

1. Courtesy Investigations generated by a revenue officer for investigation in another Area or territory.
2. Collection against a non-petitioning spouse
3. Request to secure tax returns
4. Return Preparer penalty
5. Telephone calls
6. Unpostable conditions
7. Other Insolvency processes
8. Courtesy Investigations requiring special handling (described in *IRM 5.1.8.7, Courtesy Investigations Requiring Special Handling*)

**5.1.8.7 (08-06-2013)
Courtesy Investigations Requiring Special Handling**

1. Some Courtesy Investigations are issued for particular purposes and require specific procedures.
2. Courtesy Investigations described in this section are discretionary assignments except for unassessable erroneous refunds.
3. The following Courtesy Investigations require special handling:
 - Recovery of unassessable erroneous refunds
 - Failure of employer to furnish withholding statement
 - Social Security Administration preferential investigations
 - Exemption from self-employment tax
 - Form 1120S, *U.S. Income Tax Return for an S Corporation* (incorrect tax period or return filed)
 - Form 990, *Return of Organization Exempt From Income Tax*, filed without list for "compensation of officers"
 - Mutual Collection Assistance Requests (MCARs)

- Investigations related to the Treasury Enforcement Communication System (TECS)

5.1.8.7.1 (04-22-2008)

Recovery of Unassessable Erroneous Refunds

1. This subsection discusses erroneous refunds in general, and unassessable erroneous refunds in particular, and provides procedures for the recovery of unassessable erroneous refunds.

5.1.8.7.1.1 (04-22-2008)

Erroneous Refunds in General

1. An erroneous refund is any receipt of money from the Service to which the recipient is not entitled.
2. Erroneous refunds fall into one of two general categories for purposes of how the Service attempts recovery:
 - Assessable erroneous refunds, and
 - Unassessable erroneous refunds.

5.1.8.7.1.1.1 (04-22-2008)

Assessable Erroneous Refunds

1. Assessable erroneous refunds can be placed in three categories:
 - A. **Substantive redetermination of tax** — A substantive redetermination of tax involves a decision, no matter how cursory, that the taxpayer's tax liability is less than the amount previously assessed from that reported by the taxpayer on the return or from that determined in an examination. The Service abates down the redetermined tax liability, but the decision turns out to be incorrect and the tax must be assessed as tax under the Internal Revenue Code within the period of limitations on assessment. The Service may have to follow the deficiency procedures, after which the tax may be collected by administrative lien or levy action.
 - B. **Other assessable liabilities** — These include negative amounts of tax constituting a deficiency involving the Earned Income Credit (IRC 6211(b)(4)), amounts under math error procedures (IRC 6213(b)), and overstated income tax pre-payment credits (IRC 6201(a)(3)).
 - C. **Prejudicial clerical error** — If the refund results from a clerical error that abates tax and the taxpayer is prejudiced by the error, that tax must be reassessed.

5.1.8.7.1.1.2 (08-06-2013)

Unassessable Erroneous Refunds

1. Unassessable erroneous refunds are refunds that cannot be recovered by tax assessment procedures. They include the following:
 - A. Refunds resulting from actions such as the misreading of an input document or a keypunch error that cause misapplied payments, misdirected direct deposits, or duplicate refunds.
 - B. A payment that satisfies an assessment, but then is erroneously refunded to the taxpayer. The assessment is considered extinguished. As the tax has been paid, the Service cannot reassess in order to recover the refund. *Bilzerian v. United States*, 86 F.3d 1067 (11th Cir. Fla. 1996), acquiescence in result only, 1998 AOD LEXIS 8.
 - C. A refund provided to partners before an amended partnership return is accepted. In this example the partners file for refunds based upon amended Schedule K-1s received from the partnership as the partnership files an amended return. On occasion the changes requested on the amended partnership return are not allowed by the Service (thereby negating the amended Schedule K-1s). If the amended partnership returns is disallowed, and the assessment statute of the partners has expired, then an unassessable erroneous refund results.
 - D. Otherwise assessable amounts which became unassessable by expiration of the Assessment Statute Expiration Date (ASED).

Note:

The running of the period of limitations on assessments is not related to the Service's error. In some cases the Service may have no real opportunity to make the assessment described in *IRM 5.1.8.7.1.1.1, Assessable Erroneous Refunds*.

2. The Service **cannot** take administrative lien or levy action to recover an unassessable erroneous refund.

Note:

Use of administrative lien or levy action to collect these debts is **not** permissible.

Note:

Use of a summons to secure records of any type is **not** permissible.

3. The remedies generally available to the Service to recover unassessable erroneous refunds are:

- A. Request that the taxpayer voluntarily repay the amount due (Letter 510-C, *Refund In Error; Return Check*),
- B. File a civil suit as authorized by IRC 7405, *Action for recovery of erroneous refunds*, or
- C. Use the common law right of offset. The government has the same common law rights as any other creditor to apply funds owed to its debtor against the debt owed. See *United States v. Munsey Trust Co.*, 332 U.S. 234 (1947). See also 31 U.S.C. § 3711, which provides a statutory remedy for non-tax debts due the Government. (The statutory right of offset for tax debts provided by IRC 6402 does not permit an offset of a tax overpayment against a non-tax debt except in specific circumstances.)

4. Unassessable erroneous refunds are subject to the Erroneous Refund Statute Expiration Date (ERSED).

- A. The IRC 7405, *Action for recovery of erroneous refunds*, civil suit is generally subject to a two-year statute of limitations for instituting a suit provided in IRC 6532(b), *Suits by United States for recovery of erroneous refunds*.

Exception:

Common law offset exception — If the error can be related to the claim for credit or refund of an overpayment because the error and claim are for the same year on the same tax account (i.e., the same taxpayer and type of tax) there may be no limitations period to contend with. The application of this exception is unlikely in regard to unassessable erroneous refunds, but contact Chief Counsel, Procedure and Administration, if your case involves an erroneous refund of overpayment interest.

Note:

See Chief Counsel's nonacquiescence to *Pacific Gas and Electric Company v. United States*, 417 F.3d 1375 (Fed. Cir. 2005). See AOD 2006-02; 2006-26 IRB 1.

Exception:

The statute of limitations is five years if the erroneous refund was induced by fraud or misrepresentation of a material fact.

B. Compute the ERSED from the day after issuing the refund check. This is the most conservative approach. Contact Chief Counsel, Procedure and Administration, if your case has a potential statute problem.

5. Any amount recoverable by civil suit under IRC 7405, *Action for recovery of erroneous refunds*, accrues interest under IRC 6602, *Interest on erroneous refund recoverable by suit*, at the rate established by IRC 6621, *Determination of rate of interest*, from the date of the payment of the refund. The interest is collectible for voluntary payments or common law offsets, as well. If the erroneous refund is \$50,000 or less, the Service must abate the interest accrued from the refund date to the date of the demand for repayment, unless the taxpayer (or a related party) in any way caused the erroneous refund under IRC 6404(e), *Abatement of interest attributable to unreasonable errors and delays by Internal Revenue Service*. If the refund is more than \$50,000, interest abatement is not required, but may be allowed on a case by case basis. See IRM 20.2.7.5, *Erroneous Refunds IRC Section 6404(e)(2)*.

**5.1.8.7.1.2 (06-01-2010)
Campus Erroneous Refund Procedures**

1. The Campus has different sets of procedures depending on whether or not IRC 6404(e)(2) interest abatement applies and on whether the case is identified as a potential fraud case.
2. **IRC 6404(e)(2) interest abatement applies** — An initial Letter 510-C, *Refund in Error, Return Check*, requests return of the refund amount by a certain "Due Date" ; i.e., within 21 calendar days from the date of the letter. It provides an explanation that interest will be charged from the date of the letter if the erroneous refund is not repaid by the "Due Date." A second Letter 510-C, is issued when the taxpayer does not pay the refund amount back to the IRS. This letter includes interest from the date of the initial letter; i.e., the date of the notice and demand for payment.
3. **IRC 6404(e)(2) interest abatement does not apply** — An initial Letter 510-C requests return of the refund amount and interest due on the refund from the date of the payment of the refund.
 - A. **Regular case** — A second Letter 510-C is issued when the taxpayer does not pay the refund amount back to the IRS if the case is not identified as a potential refund fraud case.
 - B. **Potential fraud case** — The second Letter 510-C will not be sent in cases where CI becomes involved with the case because of potential refund fraud.
4. The Campus will issue Form 2209, *Courtesy Investigation*, to Collection management to assign to attempt recovery of an erroneous refund.

**5.1.8.7.1.3 (08-06-2013)
Unassessable Erroneous Refunds Recovery Procedures**

1. Collection management will receive a Form 2209, *Courtesy Investigation*, for recovery of an erroneous refund ===== and will assign it according to procedures in *IRM 5.1.8.5, Mandatory Assignments*.=====
2. Contact the taxpayer and request voluntary repayment of the amount due, including applicable interest under IRC 6602 upon receipt of Form 2209, *Courtesy Investigation*.

Note:

You may attempt to contact the taxpayer by mail if you are unable to contact the taxpayer in person. To assist you in composing a letter to the taxpayer, you may use the language included in Letter 510-C. Letter 510-C is a correspondex letter with various suggested paragraphs; use the appropriate paragraphs. Letter 510-C is available on the IRWeb in the Servicewide Electronic Research Program (SERP).

Caution:

Do **not** use administrative lien or levy action to collect these debts.

Caution:

Do **not** use a summons to secure records of any type.

3. Do **not** assess or attempt to collect the applicable interest for the period between issuance of the erroneous refund and the date repayment is demanded if the taxpayer remits the amount of the refund without the applicable interest and you determine that interest is to be abated under IRC 6404(e)(2) for the period between issuance of the erroneous refund and the date repayment is demanded) because the taxpayer did not cause the erroneous refund, **and** the amount of the erroneous refund is \$50,000 or less.

Note:

If the taxpayer did not cause the erroneous refund, and the amount of the erroneous refund is more than \$50,000, the Service may abate the interest in its discretion.

4. Abatement of the post-demand interest (charged from the date of the notice and demand for repayment to the repayment date) is not allowed. See IRM 20.2.7.5(3), *Erroneous Refunds IRC Section 6404(e)(2)*. Paragraph (3) provides "Abatement of the post-demand interest (charged from the date of demand for repayment to repayment date) is not allowed."
5. Take the following action, as applicable:
 - Secure full payment if possible.
 - Determine the taxpayer's ability to pay over time if immediate full payment is not possible.
 - Attempt to secure a voluntary repayment agreement from the taxpayer if the taxpayer cannot make immediate full repayment.
 - Consider recommending a suit if the taxpayer cannot or will not pay in full or enter into a voluntary repayment agreement.
6. See the appropriate specific procedures below for each of these actions, as applicable.

**5.1.8.7.1.3.1 (04-22-2008)
Secure Full Payment**

1. Secure full payment if possible.
2. Process the payment if the taxpayer pays in full.
 - A. List the payment on your Form 795, *Daily Report of Collection Activity*.
3. Convert cash to a bank draft or money order if the taxpayer pays in cash.

- A. Give Part 2 of Form 809, *Receipt for Payment of Taxes*, to the taxpayer.
 - B. Staple Part 1 of Form 809 to the reverse of Part 3 of Form 809.
4. Close the Form 2209, *Courtesy Investigation*, when the full amount due is received.
- A. Forward the remittance, the Parts 1 and 2 of Form 2209, and the related collection case file to the Campus on your Form 795, *Daily Report of Collection Activity*.
 - B. Forward Parts 1 and 3 of Form 809 to the teller unit for retention if you issued a receipt.

5.1.8.7.1.3.2 (04-22-2008)

Determine the Taxpayer's Ability to Pay

1. Determine the taxpayer's ability to pay over time if immediate full payment is not possible.
 - A. Secure Form 433–A, *Collection Information Statement for Individuals*, and/or Form 433–B, *Collection Information Statement for Businesses*, if the taxpayer voluntarily discloses the information to complete the form(s).

Caution:

 - Do **not** use a summons to secure records of any type.
 - B. Analyze the 433-A and/or the 433-B.
 - C. Decide whether or not the taxpayer will be able to repay the erroneous refund.
 - D. Follow the procedures in IRM 5.15.1, *Financial Analysis Handbook*, and IRM 5.16.11, *Currently Not Collectible*, to help you make your decision.
2. Follow the procedures below in IRM 5.1.8.7.1.3.3, *Secure a Voluntary Repayment Agreement*, if the taxpayer agrees to repay the erroneous refund.
3. Follow the procedures below in IRM 5.1.8.7.1.3.4, *Recommend a Civil Suit*, if the taxpayer will **not** agree to repay the erroneous refund.

5.1.8.7.1.3.3 (08-06-2013)

Secure a Voluntary Repayment Agreement

1. The Service may solicit a voluntary repayment of the erroneous refund within two (or five) years from issuance of the erroneous refund in accordance with IRC 6532(b). The Service has long used consensual dispute resolution in lieu of litigation.
2. Attempt to secure a voluntary repayment agreement from the taxpayer if the taxpayer cannot make immediate full repayment.

Caution:

Do **not** file a Notice of Federal Tax Lien (NFTL).

Caution:

Do **not** serve a levy to collect.

- A. Request the taxpayer submit a signed voluntary repayment agreement that provides for full payment of the erroneous refund and specifies the repayment terms as IRC 6159, *Agreements for payment of tax liability in installments*, only authorizes installment agreements for the payment of "tax."

Caution:

Do **not** use Form 433–D, *Installment Agreement*.

- B. Use the language suggested in Exhibit 5.1.8-2, *Unassessable Erroneous Refund Voluntary Payment Agreement*, when a repayment agreement is required.
- C. Attach Form 433–A and/or Form 433–B (if you secured one or both of them) to the signed voluntary repayment agreement.
- D. Provide instructions to the taxpayer to send the payments to the Campus address annotated on the Form 2209 and to include the taxpayer's identification number, the tax period, and the tax class.
- E. Grant an appropriate amount of time for the voluntary repayment agreement based on circumstances of the individual case.
- F. Ensure the voluntary repayment agreement provides for full payment at least six months before the two-year statute for instituting suit expires.

Exception:

The taxpayer may waive the two-year period of limitations established by IRC 6532(b) on the institution of suits to recover erroneous refunds. If the taxpayer executes a waiver of the limitations period as part of his or her agreement, such voluntary repayment agreements are acceptable.

- G. =====

- H. Follow the waiver procedures in IRM 5.1.8.7.1.3.3.1, *Waiver Procedures*, below if you need to secure a waiver.

3. Return the voluntary repayment agreement with attachments to the originator of the OI (Form 2209). Annotate the amount and date payments are expected in the ICS history. Include a printed copy of the ICS history with the closed OI file being sent back to the Campus.
4. Resolve the Form 2209, *Courtesy Investigation*, as follows:

If	Then
The taxpayer enters into a voluntary repayment agreement	<ul style="list-style-type: none"> • Close Form 2209 to the Campus annotating amount and date payments are to be received.
The taxpayer pays in full	<ul style="list-style-type: none"> • Close the Form 2209 when the full amount due is received. • Follow the closing procedures in IRM 5.1.8.7.1.3.1, <i>Secure Full Payment</i>, noted above.
The taxpayer defaults	<ul style="list-style-type: none"> • Campus will issue a new Form 2209 .

- Take the action described below in *IRM 5.1.8.7.1.3.4, Recommend a Civil Suit*.
- Do **not** file a Notice of Federal Tax Lien (NFTL).
- Do **not** serve a levy to collect.

5.1.8.7.1.3.3.1 (06-01-2010)
Waiver Procedures

1. Waivers should be requested only in **limited** circumstances, such as where a taxpayer agrees to repay the erroneous refund but needs additional time. These waivers should be short and have a specific end date (i.e. no open-ended extensions). Waivers under IRC 6532(b) should **always** contain an expiration date that accommodates the full payment plus an additional six months.
2. Secure a waiver **only** when the taxpayer:
 - A. Agrees the refund was erroneous **and** is willing to repay the erroneous refund but needs time beyond the Erroneous Refund Statute Expiration Date (ERSED), or
 - B. Disputes that the refund is erroneous **and** the amount at issue is significant enough so the Service will file an erroneous refund civil suit if the taxpayer does not repay the erroneous refund.
3. =====
 =====
4. Follow these steps to prepare the waiver.
 - A. Use the waiver language in *Exhibit 5.1.8-1* when a waiver is required. See *Exhibit 5.1.8-1, Unassessable Erroneous Refund Waiver*.
 - B. Prepare the waiver by printing the waiver language on a blank piece of IRS letterhead paper.
 - C. Establish the waiver with an expiration date that accommodates the full payment plus an additional six months.

5. Attach the signed waiver to the signed voluntary repayment agreement.

Note:

The agreement and waiver are subject to contract principals. Therefore, every effort should be made to ensure the information is clear. In particular, proper identification of the parties is critical. This is a factor where corporate reorganizations or dissolutions have occurred since the refund. A parent of a consolidated entity would have no authority through its role under the IRC to bind a member who received the erroneous refund. The Tax Matters Partner (TMP) of a partnership would have no authority through its role under the IRC to bind the partners on this matter.

Note:

If the taxpayer makes alterations on a document, it is preferred that a new document be prepared for the taxpayer's signature. However, if the alterations on the document are acceptable to the Service, the taxpayer has initialed each alteration, and there is not sufficient time to perfect the document, the person signing for the Service could initial the alterations and sign the document.

Note:

If a Power of Attorney (POA) is going to execute a document for a taxpayer, the Form 2848, *Power of Attorney and Declaration of Representative*, must specifically authorize the POA to bind the taxpayer.

5.1.8.7.1.3.4 (06-01-2010)
Recommend a Civil Suit

1. The Service may recover any erroneous refund by instituting an erroneous refund suit in accordance with IRC 7405. In order to be timely, an erroneous refund suit must be filed within two (or five) years from the date of payment of the erroneous refund.
2. Consider the usual requirements for recommending a suit and also consider other action if the taxpayer:
 - Refuses to pay on request,
 - Refuses to make a voluntary repayment agreement, or
 - Defaults on a voluntary repayment agreement.
3. Refer to the following IRM sources for information on litigation:
 - IRM 25.3.2, *Litigation and Judgements -- Suits by the United States*.
 - IRM 5.17.4, *Legal Reference Guide for Revenue Officers - Suits by the United States*. See IRM 5.17.4.14, *Suits to Recover Erroneous Refunds*. This IRM provides recovery by suit should be considered only if administrative recovery is barred by the statute of limitations or the erroneous refund is unassessable, and criteria in IRM 25.3.2 for filing a suit are met.
 - IRM 21.4.5, *Refund Inquiries - Erroneous Refunds*. See IRM 21.4.5.14, *Collection Methods for Category D Erroneous Refunds*. This IRM provides that suits to recover erroneous refunds are limited to those exceeding the litigating threshold established by Department of Justice (DOJ).
4. Make a decision as to whether or not it would be in the government's best interest to pursue a suit to recover the erroneous refund.
5. Prepare a recommendation report to Advisory in the memorandum format.
6. Recommend whether or not a suit or other action to recover the erroneous refund should be instituted. Contact Area Counsel to determine if any other actions may be appropriate in the case you are working.
7. Include the following in your recommendation report (if available):
 - A. Name and address of the taxpayer,
 - B. Type of taxpayer (individual, partnership, corporation, etc.),
 - C. Tax class,
 - D. Amount of the erroneous refund listed by tax period (include accrued interest due on the erroneous refund as a separate item),
 - E. A statement indicating that the taxpayer refused or neglected to make payment upon request (include any reasons known for the taxpayer's action),

- F. Schedule number and date refund was made,
- G. Reason(s) refund arose, and
- H. Premise upon which recovery is based.

Exception:

If you are **not** recommending a civil suit or other action, you may limit your report to the first five items above (i.e., items a through e).

8. Annotate Parts 1 and 2 of Form 2209 "Suit Recommended" or "Suit not Recommended" as applicable.
9. Close Form 2209.
 - A. Forward Part 2 of Form 2209 on Form 795, *Daily Report of Collection Activity*.
 - B. Forward Part 1 of Form 2209 along with your recommendation report and all the other attachments to Advisory.
 - C. Include a copy of the letter (based on Letter 510-C, *Refund in Error; Return Check*), if you sent it to the taxpayer pursuant to *IRM 5.1.8.7.1.3(2), Unassessable Erroneous Refunds Recovery Procedures*, above.
10. Refer to *IRM 25.6.1, Statute of Limitations -- Statute of Limitations Processes and Procedures*, for further information on potential statute cases. See *IRM 25.6.1.10.2.3, Remedies for Recovering an Erroneous Refund*.

Note:

Upon receipt of Form 2209 in Advisory, the Advisory manager will make the final determination as follows:

- | | |
|--------------------------|--|
| If the RO: | Then the Advisory manager will: |
| Recommended a suit | <ul style="list-style-type: none"> • Annotate Part 1 of Form 2209 "Suit will be initiated." • Send Part 1 of Form 2209 to the Campus. |
| Did not recommend a suit | <ul style="list-style-type: none"> • Annotate Part 1 of Form 2209 "Suit will not be initiated." • Send Part 1 of Form 2209 to the Campus along with the related case file. |

5.1.8.7.2 (04-22-2008)

Failure of Employer To Furnish Withholding Statement

1. Whenever a taxpayer corresponds with a Campus and indicates inability to secure a correct Form W-2, from his/her employer, the Campus Correspondence Section attempts to resolve the discrepancy. If this does not resolve the situation a Form 2209 is prepared and issued to Field Collection (FC).
2. If the employer has no records or the records are inadequate to accurately determine the employee earnings, secure an estimated Form W-2 from the employer.
3. If the employer cannot be located, note this fact with a statement in the "Remarks" section of the Form 2209.
4. Willful failure to furnish an employee with the required statement on Form W-2 may make an employer liable for a civil penalty imposed by IRC 6674, *Fraudulent statement or failure to furnish statement to employee*, and/or a criminal liability provided by IRC 7204, *Fraudulent statement or failure to make statement to employees*. Consider the assertion of these IRC 6674 penalties whenever an employer refuses to submit the required Form W-2. Only CI may investigate and consider whether to assert IRC 7204.
5. Failure to furnish or the furnishing of a false or fraudulent Form W-2 suggests the possibility that the employer may have omitted reporting the tax withheld on Form 941. Therefore, include in any field Courtesy Investigation an examination of the employer's records to determine if all tax withheld has been accounted for and reported on the employer's returns. If indications of fraud are discovered, apply the procedures in *IRM 25.1, Fraud Handbook*.

5.1.8.7.3 (04-22-2008)

Social Security Administration Preferential Investigations

1. When certain conditions are met, the Social Security Administration (SSA) may ask the Internal Revenue Service to give preferential treatment to earnings discrepancy cases. These cases are originated on Form SSA 1273, *Request for Preferential Investigation*.
2. The SSA will forward Form SSA 1273 to the appropriate Campus. If there is no record of the return involved, the Campus will:
 1. Prepare Form 2209
 2. Attach Form SSA 1273 to Form 2209 and forward both to Field Collection (FC).
3. When FC receives an earnings discrepancy case, it will:
 1. Accord them priority over any other SSA investigations.
 2. Close them within 40 days of receipt, if possible.
 3. Complete the reverse side of Form SSA 1273 before closing the investigation.
 4. Attach all parts of Form SSA 1273 to Form 2209.

5.1.8.7.4 (06-01-2010)

Exemption From Self-Employment Taxes

1. Members of certain recognized religious groups that are opposed to public insurance have been exempted from paying social security and medicare tax on self-employment income. In order to establish this exemption, a taxpayer must file with the Internal Revenue Service a Form 4029, *Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits*, with the Internal Revenue Service. See *IRM 5.1.12.12, Taxpayer Exempt From Taxation for Religious Reasons*. If the Campus cannot verify the applicant's membership, the case will be forwarded to Field Collection on Form 2209.

Note:

Form 2209 will have the following notation in the *Remarks* block: A Form 4029, *Application for Exemption From Social Security and Medicare Taxes and Wavier of Benefits*, has been filed by the taxpayer named above. Upon contact, request the taxpayer to furnish the appropriate statement relative to his/her membership in the religious group indicated on the application. The IRS does not collect or maintain lists of members of religious sects that may be checked instead of making such a request.

2. Contact the individual requesting exemption and advise him/her that the application cannot be processed because his/her name is not on the list supplied by the religious organization. The taxpayer should be requested to secure a statement signed by an authorized individual of the religious sect. This statement should include:
 - Name, address and area of the religious group
 - Title of the authorized individual
 - Name of the applicant
 - Statement that the applicant is a member of the religious group
3. Attach this statement to Part 1 of Form 2209 before submitting the closed case on Form 795.

**5.1.8.7.5 (06-01-2010)
Incorrect Tax Period or Return Filed — Form 1120S**

1. Compliance Services Collection Operations (CSCO) will electronically prepare Form 2209, *Courtesy Investigation*, and forward it to the appropriate Collection function when a TC 610 posts to a Form 1120 or 1120S module in an unpostable status. The investigation will:
 - A. Indicate that the taxpayer has either filed a return for an incorrect tax period or an incorrect return (e.g., a Form 1120S in lieu of a Form 1120.)
 - B. State the correct tax period or type of return, and
 - C. Have a photocopy of the first page of the return, as filed, attached.
2. Secure a correct tax return to close the Form 2209.

**5.1.8.7.6 (06-01-2010)
Form 990 Filed Without List for "Compensation of Officers"**

1. To meet the requirements of IRC 6033, *Returns by exempt organizations*, an exempt organization must complete the return to provide all data asked for, if applicable.

Note:

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=====
"Compensation of Officers"
=====

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2. Occasionally an annual return is received by the Service without the list for "Compensation of Officers." In this instance, the Campus corresponds with the organization and requests the missing list. If no satisfactory response is received within 60 days, the Campus will issue a Form 2209, *Courtesy Investigation*.
3. Management will assign this type of investigation to a revenue officer.
4. Take the following action upon receipt of an OI to secure the "Compensation of Officers" list:
 - A. Encourage the organization to file (and to do so expeditiously).
 - B. Recommend assessment of the late filing penalty or indicate that reasonable cause for failure to submit the list was established.

If	Then
You recommend assertion of the penalty	<ul style="list-style-type: none"> • Prepare a computation of the amount of penalty to be assessed • Attach it to the reverse of Part 1 of the Form 2209
You recommend non-assertion of the penalty	<ul style="list-style-type: none"> • Document the reasonable cause exception, if applicable, for not assessing the penalty and attach it to the reverse side of Part 1 of the Form 2209.

5. Close the Form 2209 if the exempt organization fails to submit the list within the required time after being advised of its responsibility to do so.
6. Record the actions you took to attempt to get the organization to comply with the requirements in the "Remarks" section on the reverse side of Form 2209.

**5.1.8.7.7 (04-22-2008)
Incoming Mutual Collection Assistance Requests**

1. The U.S. treaties with Canada, Denmark, France, Netherlands and Sweden provide for collection assistance whereby a treaty partner may send a Mutual Collection Assistance Request (MCAR) to the U.S. Competent Authority for tax treaties, Office of the Deputy Commissioner (International), LB&I.

Note:

This IRM section concerns incoming MCAR cases. See IRM 5.1.12.25, *Outgoing Mutual Collection Assistance Requests*, for procedures on outgoing MCAR cases.

2. Generally, the Service will not pursue collection if an individual is a citizen of the United States. However, for MCAR cases received from Canada and Denmark, this exception only applies to individuals who were U.S. citizens at the time the tax liability accrued.
3. Our treaty partners will, on request, collect U.S. taxes from U.S. taxpayers or taxpayer assets located in their countries.
4. The types of U.S. taxes that can be collected by these five treaty partners on behalf of the U.S. under MCAR differ depending on the applicable treaty.
 - A. The U.S. treaties with Denmark, Netherlands and Sweden provide for collection of income tax and other specified taxes.
 - B. The U.S. treaty with France provides for collection of income tax, estate & gift tax, wealth tax and other specified taxes.
 - C. The U.S. treaty with Canada provides for collection of all taxes.
5. All MCARs from the treaty partners are received and processed by the Office of the Deputy Commissioner (International) LB&I.
6. MCAR assessments do not involve any Campus and are not recorded on Master File because these monies are collected and sent to foreign governments rather than to the United States Treasury. The assessments will not appear as accounts receivable on Service records.

5.1.8.7.7.1 (06-01-2010)

Processing of MCARs by International

1. The foreign tax liability is treated as a assessment upon receipt and denominated in U.S. dollars by means of an assessment certificate, which is signed by the SB/SE MCAR Coordinator who creates the certificate as a delegated officer for International. The assessment certificate is necessary in establishing an audit trail.
2. The foreign tax liability is converted into U.S. dollars using the exchange rate as of the date the certificate is prepared using the dollar figure provided by the treaty partner.
3. The date on which the assessment officer signs the certificate is the date of assessment.
4. The SB/SE MCAR Coordinator uses a taxpayer control number (TCN) as a taxpayer identifying number for MCARs. The format for the TCN is 98–MCA–NNNNN and is maintained by International. Use the TCN as a taxpayer identifying number on such documents as liens and levies if a taxpayer’s TIN is not known. The MCAR Coordinator will open a MCAR CIP on ICS to control the case.
5. The statute expiration date for each MCAR is provided by the treaty country on its tax documents. The statute date is shown on the U.S. dollar assessments certificates. No action is required by the Service to protect MCAR collection statutes.
6. Standardized notices are sent to International taxpayers after U.S. dollar assessments are made. Each taxpayer is sent a 10-day first notice. If the MCAR liability is not resolved after the first notice, a final 30-day notice is sent to advise the taxpayer about possible distraint action pertaining to the MCAR. Taxpayers on incoming MCAR cases are not entitled to Collection Due Process (CDP) rights, but are entitled to Collection Appeals Program (CAP) rights.
7. In no response, insufficient response or undelivered mail situations, the MCAR Coordinator will, if possible, utilize internal and external locator sources to find levy sources and/or locate taxpayers.
8. A Courtesy Investigation may be sent to the appropriate Area office for taxpayer contact if:
 - =====
 - =====
9. Taxpayers have the option to make payments by check or money order, made payable to the government of the treaty partner in either the currency of the treaty partner or in U.S. dollars. Payments in the foreign currency are preferable.

Note:

All MCAR payments, whether voluntary or involuntary, will be processed by the MCAR Coordinator who will forward them to the treaty partner.

10. If payments are made over time, the MCAR Coordinator will secure, if necessary, an updated balance from the treaty partner and apply the current exchange rate.

5.1.8.7.7.2 (06-01-2010)

Procedures for Area Offices Receiving MCAR Investigations

1. Managers will assign the Courtesy Investigation according to the procedures in *IRM 5.1.8.6, Discretionary Assignments*, upon receipt. When the investigation is assigned, contact the SB/SE MCAR Coordinator and provide the investigating revenue officer's name and telephone number. See *IRM 5.1.8.7.2.6, Undelivered Mail Cases*, for procedures if a Courtesy Investigation is issued for an undelivered mail case.
- Note:**
- Due to the sensitive nature and possible international implications of these cases, they should normally be assigned to an experienced revenue officer at the GS-12 level.
2. Contact the taxpayer and request payment of the amount due.
 - A. All checks or money orders submitted voluntarily by taxpayers may be in either U.S. dollars or the foreign currency of the particular treaty partner, but the foreign currency is preferred.
 - B. The check or money order should be made payable to the treaty partner rather than to the Service, as directed by International.
 3. Do not accept payment in cash because Form 809 cannot be issued for MCAR liabilities.
 4. Provide the taxpayer with a date-stamped photocopy of the check or money order in lieu of Form 809.
 5. Conduct a full compliance check for all U.S. tax liabilities upon contact with the taxpayer.
 6. Request the assignment of any related accounts on the taxpayer to be worked in conjunction with the MCAR. However, any U.S. tax liability takes precedence over any MCAR liability and should be addressed and collected before any foreign tax.
 7. Cease all actions to collect the MCAR liability if it is determined that the taxpayer is a U.S. citizen.
 - A. Secure evidence of U.S. citizenship.
 - B. Contact the SB/SE MCAR Coordinator.

Exception:

IRM 5.1.8.7.7(2) Incoming Mutual Collection Requests, for exception regarding MCARs on Canadian and Danish liabilities. See *IRM 5.1.8.7.7, Incoming Mutual Collection Assistance Requests*.

If	Then
The taxpayer is a U.S. citizen by birth	Secure a copy of the taxpayer's birth certificate or U.S. passport
The taxpayer is a naturalized U.S. citizen	Secure the number, date and place of issuance of the taxpayer's Certificate of Naturalization or copy of U.S. Passport.

8. Do **not** collect the MCAR liability if the MCAR is from Denmark, and it is determined that the taxpayer filed Form 1040, *U.S. Individual Income Tax Return*, on which the taxpayer reported worldwide income and paid U.S. taxes for the years for which Danish tax is outstanding.
 - A. Verify the filing of each return with an IDRS transcript.
 - B. Attempt to secure a copy of each return from the taxpayer.
 - C. Close the Courtesy Investigation.
 - D. Return the OI to the originator with the supporting documents.

9. Secure a financial statement and a proposed plan for payment if the taxpayer cannot fully pay the MCAR liability.

10. Verify all financial information in accordance with IRM 5.15, *Financial Analysis*.

Note:

All payment plans will be approved and manually monitored by the SB/SE MCAR Coordinator to which taxpayers will be instructed to send payments.

11. Because the Service does not have the authority to compromise a treaty partner's foreign tax assessment, offers in compromise are not considered for MCARs.
12. Contact the originator to determine whether the investigation should be closed if a taxpayer claims to have made arrangements directly with the treaty partner to satisfy the foreign tax liability. Secure some kind of documentation as verification of arrangements.
13. Enforce collection against the taxpayer if the taxpayer has the ability to pay but refuses to do so.
14. Use the same actions as would be taken against a Bal Due taxpayer, although the processing for certain distraint actions will differ from that for domestic Bal Dues.
15. Conduct a complete public records check securing copies of all deeds, mortgages, encumbrances, etc.:
 - A. Contact the MCAR Coordinator if the taxpayer disputes the MCAR assessment.
 - B. Discuss the situation prior to taking any distraint action against the taxpayer.
 - C. Allow the taxpayer reasonable time to contact the treaty partner to resolve the liability if the taxpayer's argument is reasonable.
 - D. Do not close the courtesy investigation without concurrence of the MCAR Coordinator.

Note:

The MCAR Coordinator will determine whether the Courtesy Investigation will remain open while the taxpayer corresponds with the treaty partner.

**5.1.8.7.7.2.1 (04-22-2008)
Notice of Levy on MCARs**

1. Prepare all notice of levy forms as shown on samples provided by International. Follow routine guidelines with respect to MCAR levy activity with the following exceptions.

Form 668-A exceptions:

- A. Secure the levy payment, if any.
- B. Forward the payment to the MCAR Coordinator.
- C. Close the investigation only if the levy payment fully pays the MCAR liability; otherwise, continue investigating other levy sources.

Form 668-W exceptions:

- A. Wait for two consecutive levy payments.
- B. Forward each payment to the MCAR Coordinator.
- C. Exhaust all other collection sources before closing the Courtesy Investigation even if the Form 668-W will fully pay the MCAR liability before the statute.
- D. Take no action to protect the MCAR collection statute.

Collection Due Process (CDP) exception:

- A. Do **not** generate a Collection Due Process (CDP) notice (to give a right to a CDP hearing) for a MCAR levy.

**5.1.8.7.7.2.2 (04-22-2008)
Filing Notices of Federal Tax Liens on MCARs**

1. Follow routine guidelines with respect to MCAR lien activity with the following exceptions:

- A. No lien notice determination is required for MCARs.
- B. File a notice of lien prior to a seizure action taken by the revenue officer against any of the taxpayer's assets, real or personal.
- C. File a notice of tax lien, if the taxpayer has the ability to pay, but refuses to do so, and the taxpayer owns real property to which the lien will attach, and no seizure action is being taken against it.
- D. File a notice of tax lien if the revenue officer determines that the MCAR is currently not collectible and the taxpayer owns real property to which the lien will attach.
- E. Do **not** utilize the Automated Lien System (ALS) to file lien notices for MCAR liabilities. See IRM 5.12, *Federal Tax Liens*, for the procedures for filing lien notices on MCARs.

Note:

Although Area offices may file liens for MCARs, International will be responsible for the refiling and release of these liens.

- F. Do **not** generate a Collection Due Process (CDP) notice (giving a right to a CDP hearing) for a MCAR lien notice.

**5.1.8.7.7.2.3 (04-22-2008)
Seizure and Sale on MCARs**

1. Procedures for the seizure and sale of personal and real property as found in IRM 5.10, *Seizure and Sale*, apply to MCARs with the following exceptions:

Prior to taking seizure action:

- A. Contact both the Property Appraisal and Liquidation Specialist (PALS) and MCAR Coordinator to
- B. Discuss the facts of the case, including the actions taken prior to the proposed seizure, the type and value of the property to be seized, and the expected revenue.

If the SB/SE MCAR Coordinator concurs with the proposed seizure:

- A. Submit the case for approval through your group manager (according to the current IRM provisions for managerial review).
- B. Coordinate the seizure with SB/SE MCAR Coordinator and with the PALS. The PALS will also coordinate the sale with the SB/SE MCAR Coordinator.
- C. Contact the OI originator if any questions or problems arise.

Preparing Form 668-B, Levy,:

- A. Contact the SB/SE MCAR Coordinator to secure a sample of Form 668-B to assist in your seizure and sale preparation because all seizure and sale forms that are prepared must refer to the MCAR liability in a similar manner and contain no reference to U.S. taxes.
- B. Do **not** bid in or purchase seized property on behalf of the U.S. government or its treaty partners in the event that the minimum bid is not received. If appropriate, the sale may be adjourned and rescheduled within the allowable 30 day time period.
- C. Process the seizure and sale documents in coordination with PALS, including expense vouchers found in IRM 5.10, *Seizure and Sale*.
- D. Do not request input of TC 360 for seizure and sale expenses because expenses of seizures and sales will not be assessed against MCAR taxpayers.
- E. Forward monies collected immediately to the SB/SE MCAR Coordinator.

2. In the instance of separate liabilities owed by a taxpayer to both the U.S. government and a mutual collection treaty partner, apply the proceeds of sale first to the U.S. liability.

- A. Prepare the seizure forms showing the liability due and the TIN assigned by the U.S. government.
- B. Prepare Form 668-A, *Notice of Levy*, for the MCAR liability to attach any surplus proceeds of the sale.
- C. Assess the expenses of sale against the taxpayer's liability.

**5.1.8.7.7.2.4 (04-22-2008)
Distraint Action Not Taken**

1. Identify any assets and document why enforcement action was not taken against a particular asset if the taxpayer has any U.S. assets against which distraint action is not taken. This documentation will assure the treaty partner that all possible efforts were made to collect the foreign tax liability.

**5.1.8.7.7.2.5 (04-22-2008)
MCAR Taxpayer in Bankruptcy**

1. Secure all information necessary for filing a proof of claim and forward the information to the originator if the investigation reveals that the taxpayer has entered into a bankruptcy proceeding.
 - A. The SB/SE MCAR Coordinator will coordinate the filing of a proof of claim where appropriate, and will advise the treaty partner of developments in the proceedings through the U.S. competent authority.
 - B. A decedent estate or insolvency proceeding will be handled in a similar manner.

**5.1.8.7.7.2.6 (08-06-2013)
Undelivered Mail Cases**

1. International will request a Courtesy Investigation for MCARs where:
 - =====
 - At least one notice sent by International was returned undeliverable, and
 - International failed to find a new address for the taxpayer.
2. Make an attempt to locate the taxpayer using all available locator sources, including a field visit to the taxpayer's last known address.
3. Do **not** make contact if you are successful in locating the taxpayer.
 - A. Advise the OI originator of the new address information for notice processing.

Note:

The OI originator should not change the taxpayer's address in the Master File unless the taxpayer complies with the requirements for changing his/her last known address as set forth in Rev. Proc. 2010-16. Rather, the contact originator should send notices to the taxpayer at his/her last known address as well as to the new address. The contact notices must be sent to the taxpayer before any distraint action can be taken if the taxpayer refuses to pay.

- B. Conduct a preliminary asset check to determine real and personal property before returning the Courtesy Investigation to the SB/SE MCAR Coordinator if the taxpayer is located within the jurisdiction of your post of duty.

**5.1.8.7.7.2.7 (04-22-2008)
Closing MCAR Courtesy Investigations**

1. Contact the originator for concurrence prior to closing a MCAR Courtesy Investigation.
2. Locate contact information for the SB/SE MCAR coordinators on the SB/SE Collection Homepage:

A. Click on "Collection Programs"

B. Click on "MCAR Program."

5.1.8.8 (08-06-2013)

Treasury Enforcement Communications System

1. The Treasury Enforcement Communications System (TECS) is a database owned by the Department of Homeland Security. TECS is discussed in IRM 5.1.18.14, *Treasury Enforcement Communications System*, concerning how certain balance due taxpayers who reside or travel extensively abroad may be entered into this system. Customs and Border Protection (CBP) will notify IRS' TECS Coordinator when taxpayers placed on TECS travel into the U.S. The TECS Coordinator is responsible for informing SB/SE field group managers of these taxpayer travel situations so that any necessary actions can be taken in a timely manner.
2. SB/SE International group managers will, when they are informed by the TECS Coordinator concerning a foreign resident TECS taxpayer coming into the U.S., issue a Courtesy Investigation for any taxpayer contact and/or other actions that may be needed by domestic group managers who supervise the locations where the taxpayer will be present during the stateside travel interval. A phone call or secure message e-mail from the International group manager to the group manager receiving the Courtesy Investigation is also recommended to ensure expeditious assignment. In instances where the TECS taxpayer is a U.S. resident, the TECS Coordinator will directly notify the domestic group manager who would be responsible for the taxpayer as part of his/her group assignment jurisdiction.

5.1.8.8.1 (04-22-2008)

TECS Coordinator's Involvement With Managers

1. Visits to the United States by TECS taxpayers are often brief and require timely and effective coordination activities. Requests for contact with taxpayers and possible lien, levy and seizure requests via Courtesy Investigation need to be worked on a high priority basis when practical.
2. When the TECS Coordinator is informed by CBP that a taxpayer in the TECS system is arriving in the U.S., he/she will inform the International group manager of the location where the taxpayer is staying and any other pertinent facts.
 - A. For situations involving non-U.S. residents, the TECS Coordinator will communicate the information to the International group manager who is responsible for cases in the taxpayer's foreign country of permanent residence. The International group manager will then contact the domestic group manager responsible for the stateside location where the taxpayer will be staying and will request that a Courtesy Investigation be assigned to an RO as a priority.
 - B. In instances where CBP informs the TECS Coordinator about the arrival into the U.S. of a TECS taxpayer whose permanent address of record is actually within the U.S., the TECS Coordinator will call the domestic group manager responsible for cases in the taxpayer's U.S. residence location.
 - C. The domestic group manager will arrange for any necessary Courtesy Investigations to an RO in his/her group or to another domestic group manager responsible for the location where the taxpayer is staying

Note:

Any debate regarding the relative priority of the Courtesy Investigation and whether it can or should be worked expeditiously will be resolved by the Territory Manager responsible for the taxpayer case and the Territory Manager supervising the location where the Courtesy Investigation needs to be worked.

5.1.8.8.2 (08-06-2013)

Role of a Revenue Officer Working a TECS-related Courtesy Investigation

1. Upon being assigned a Courtesy Investigation concerning a TECS taxpayer, attempt to conduct a personal meeting with the taxpayer if appropriate. It will be necessary to determine that the time and date the taxpayer plans to depart the U.S., as well as the carrier on which the taxpayer will travel, have remained the same as were stated to CBP when he/she arrived.

Note:

When you speak to a taxpayer as a result of a TECS Courtesy Investigation, do not discuss or refer to the TECS system itself. Refer to IRM 5.1.18.14, *Treasury Enforcement Communications System*, for further guidance on this.

2. Prior to conducting a full compliance check, it is recommended that you research the International filing requirements, if pertinent, and the specific tax forms that may be dictated by residency and other matters.
3. It will be essential in making contact to determine the taxpayer's present and future rights to income, property and other assets located in the U.S. While many interviewed taxpayers will be interested in exploring realistic methods of discharging their tax liabilities, it may be necessary to issue a Summons to obtain financial information.
4. If it is established that a taxpayer can pay all or a substantial part of the liability but refuses to do so, Area Counsel should be consulted immediately to determine whether it may be appropriate to reduce the tax claim to judgment in conjunction with other judicial remedies.
5. When you determine that there are unfiled delinquent returns with balances due and/or that collection of the tax may be imperilled, consider whether it is a jeopardy situation. A referral to Criminal Investigation for violations of IRC § 7203 (willful failure to file and/or pay tax) may need to be considered.
6. In instances where the taxpayer may be evading your efforts or appears to be leaving the U.S. with assets, an expeditious order of Writ of Ne Exeat should also be considered. Refer to IRM 34.6.1.2.4, *Use Of Writ of Ne Exeat*, for information on this procedure, and contact Area Counsel for advice and coordination.

5.1.8.8.3 (08-06-2013)

Actions to Consider While Closing a TECS-related Courtesy Investigation

1. Request that the taxpayer be removed from the TECS database **immediately** in instances where the taxpayer pays all NFTL-covered balances due in certified funds.
2. Contact the SB/SE TECS Coordinator and advise him/her of the need for prompt deletion.
3. Contact the TECS coordinator via e-mail at: *SBSE International TECS Coordinator.
4. Determine if any follow-up action needs to occur if a Notice of Federal Tax Lien needs to be refiled if the taxpayer is going to remain on TECS.

5.1.8.9 (04-22-2008)

Courtesy Investigations to International

1. Issue a Courtesy Investigation to International if an investigation reveals an address outside the United States may be the address of the taxpayer.

Exception:

A Courtesy Investigation is **not** required when an address outside the United States has been confirmed. The case should be transferred to International.

2. Follow these procedures to use ICS to issue a Courtesy Investigation to International:
 - A. Select option F Create Module
 - B. Select option D Create OI

- C. Select option B Create Outgoing OI
- D. Select SB/SE Area 15 - International from the Area list for the assignment number
- E. Select AC International 3502 from the choice list.

3. The OI will be systemically assigned to 35976900.

**Exhibit 5.1.8-1
Unassessable Erroneous Refund Waiver**

WAIVER

Full Name(s): _____
 and _____
 Street Address: _____
 City: _____
 State: _____
 Zip Code: _____

Social Security Number(s): _____
 and _____
 Other Taxpayer Identification Number: _____

I (we) hereby voluntarily waive the two year period of limitations established by IRC 6532(b) on the institution of suits by the United States to recover the erroneous refund(s) I (we) received on _____ (refund date), until _____ (expiration date) as a condition of being considered for a voluntary repayment agreement. I (we) understand that by signing this waiver, the time for the United States to file a suit to recover the erroneous refund is extended through the date set forth above.

Date: _____

 Taxpayer's Signature

Date: _____

 Spouse's Signature (if applicable)

Date: _____

 Representative's Signature (if applicable)

 Area Director
 By Delegated Representative:

Date: _____

 Revenue Officer's Signature

**Exhibit 5.1.8-2
Unassessable Erroneous Refund Voluntary Payment Agreement**

VOLUNTARY REPAYMENT AGREEMENT

Full Name(s): _____
 and _____
 Street Address: _____
 City: _____
 State: _____
 Zip Code: _____

Social Security Number(s): _____
 and _____
 Other Taxpayer Identification Number: _____

I (We) hereby voluntarily agree to repay the erroneous refund that I (we) received on _____ [refund date], plus interest provided by law, as follows:
 \$ _____ on _____ [date] and
 \$ _____ on the _____ [day 1st through 28th] of each month thereafter.

Payments are to be directed to: [insert address]

 Taxpayer's Signature:

Date: _____

 Spouse's Signature (if applicable):

Date: _____

 Representative's Signature (if applicable):

Date: _____

Agreement examined or approved by:

Name:

Title:

Signature:

Date:

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 1. Field Collecting Procedures

Section 9. Collection Appeal Rights

5.1.9 Collection Appeal Rights

- 5.1.9.1 [Overview of Collection Appeal Rights](#)
- 5.1.9.2 [Informing Taxpayers of Their Appeal Rights](#)
- 5.1.9.3 [Collection Due Process](#)
- 5.1.9.4 [Collection Appeals Program \(CAP\)](#)
- 5.1.9.5 [Communications with Appeals](#)

Manual Transmittal

November 12, 2014

Purpose

(1) This transmits revised IRM 5.1.9, *Field Collecting Procedures, Collection Appeal Rights*.

Material Changes

- (1) IRM 5.1.9.3.3.1, *Processing Withdrawal of Request for CDP Hearing*, is revised to update the Appeals phone number.
- (2) IRM 5.1.9.3.15, *Disqualified Employment Tax Levy*, is revised to update the Appeals phone number.
- (3) IRM 5.1.9.5.1, *Permitted Ex Parte Communications*, is revised to update the Appeals phone number.
- (4) IRM 5.1.9.5.2, *Prohibited Ex Parte Communications*, is revised to move information in former (3) to new IRM 5.1.9.5.2.1.
- (5) IRM 5.1.9.5.2.1, *Opportunity to Participate*, is a new section that provides procedures for sending supplemental information to Appeals.

Effect on Other Documents

This IRM supersedes IRM 5.1.9 dated June 24, 2014. This IRM incorporates Collection Interim Guidance Memorandum 05-1014-0077, *Interim Guidance for Communications with Appeals* issued October 8, 2014.

Audience

Revenue Officers and Advisor Reviewers

Effective Date

(11-12-2014)

Rocco Steco
Acting Director, Collection Policy
Small Business/Self-Employed

5.1.9.1 (06-24-2014)

Overview of Collection Appeal Rights

1. This section discusses the rights taxpayers have to appeal collection actions, proposed or taken, and the related appeal procedures.
2. It includes the Collection Due Process (CDP) appeal rights:
 - IRC § 6320 gives the taxpayer the right to appeal the filing of a Notice of Federal Tax Lien (NFTL);
 - IRC § 6330 gives the taxpayer the right to appeal before the proposed levy action and after a jeopardy levy, a disqualified employment tax levy, a levy on state tax refunds, and a federal contractor levy.
3. It also includes appeal rights under the Collection Appeals Program (CAP):
 - IRC § 7122(e) gives the taxpayer the right to appeal the Service's rejection of installment agreement (IA) requests. Under CAP, the taxpayer has the right to appeal proposed terminations of IAs and actual terminations of IAs.
 - Under CAP, the taxpayer also has the right to appeal proposed or actual filing of a NFTL, denials of lien related certificates and NFTL withdrawals, proposed or actual levy, or seizure actions and rejected, modified or terminated IAs, and 6343(d) and 6343(b) claims. A third party subject to a special condition NFTL (e.g., nominee, alter ego) has the right to appeal the filing under CAP.
4. Taxpayers have additional appeal rights, including those related to assessment of the trust fund recovery penalty (IRM 5.7.6.1.3, *Appealing the Proposed Assessment*), offers in compromise (IRM 5.8.7.7.5, *Rejection Appealed*), abatement of penalty assessments due to reasonable cause (IRM 20.1, *Penalty Handbook*), and jeopardy levies (IRM 5.11.3.6, *Appealing the Jeopardy Levy*).

5.1.9.2 (02-07-2014)

Informing Taxpayers of Their Appeal Rights

1. Taxpayers need to be informed of their right to appeal collection actions. The following publications and forms explaining appeal rights and provisions should be readily available in Collection offices to provide to taxpayers:
 - A. Publication 594, *The IRS Collection Process*, explains the steps the Service may take to collect overdue taxes and addresses general appeal provisions.
 - B. Publication 1660, *Collection Appeal Rights*, provides detailed information regarding the collection appeal rights and procedures under Collection Due Process and the Collection Appeals Program.
 - C. Form 9423, *Collection Appeal Request*.
 - D. Form 12153, *Request for a Collection Due Process or Equivalent Hearing*.
2. Revenue Officers need to clearly explain the appeal provisions to taxpayers throughout the collection process and thoroughly answer questions taxpayers may have regarding their right to appeal.
3. Statutory provisions under IRC § 6320 and IRC § 6330 require the Service to provide taxpayers with written notification of their appeal rights. Refer to IRM 5.1.9.3, *Collection Due Process*.
4. Collection personnel are required to advise taxpayers of their right to appeal under CAP when an installment agreement (IA) is rejected, modified or proposed to be modified, or about to be terminated. Collection personnel should also advise taxpayers of their right to appeal under CAP prior to and after levy or seizure or the filing of an NFTL, when the taxpayer disagrees with NFTL filing or levy or seizure action. Refer to IRM 5.1.9.4, *Collection Appeals Program*.
5. Collection personnel need to provide taxpayers with Publication 1660 with the Notice of Seizure (Form 2433). Refer to IRM 5.10.3.20(6), *Notice of Seizure Form 2433 - Delivery*.

5.1.9.3 (02-07-2014)

Collection Due Process

1. The IRS Restructuring and Reform Act (RRA) of 1998 established the Collection Due Process hearing rights under IRC § 6320 and IRC § 6330. These provisions apply to levy and NFTL filing actions taken after January 18, 1999.

5.1.9.3.1 (06-24-2014)

Notice of Collection Due Process (CDP) Hearing Rights

1. The Collection Due Process hearing provisions give taxpayers an opportunity for an independent review to ensure that the levy action that has been proposed or the NFTL that has been filed is warranted and appropriate. In Field Collection, attempted contact with the taxpayer and alternative methods for resolving the case, such as installment agreements (IAs) and offer in compromise (OIC), should be considered before proposing levy or filing an NFTL. Refer to IRM 5.11.1.2.2.2, *Issuing Notice of Intent to Levy/Notice of a Right to a Hearing in CFF* and IRM 5.12.2.3, *Notice of Federal Tax Lien Filing Determination (Pre-filing Considerations)*.
2. IRC § 6320 gives taxpayers the right to request a hearing during the 30-day period that begins on the day after the five-business-day period after the filing of a NFTL. Refer to IRM 5.12.6, *Appeals Processes Involving Liens* and IRM 5.1.9.3.2.1, *Timeliness of the CDP Hearing Request*.
 - A. Letter 3172, *Notice of Federal Tax Lien Filing and Your Right to a Hearing under IRC § 6320*, will be given in person, left at the dwelling or usual place of business, or sent by certified or registered mail to the last known address not more than five business days after the day of the filing of the NFTL.
 - B. This notice is required only once for the taxable period and unpaid tax which is the subject of the NFTL filing. A second notice is not required if a NFTL for the same tax liability is filed in other jurisdictions. An additional CDP notice is not required for new assessments of interest and penalty accruals for the tax previously included on a CDP notice. Refer to IRM 5.12.6.3.6.1, *Issuing L3172 on Additional Assessment*.
 - C. For a joint income tax liability, each spouse will individually be sent to his or her last known address a Letter 3172 explaining the right to a hearing. Two separately addressed notices are sent in separate envelopes even if both spouses are at the same address.
 - D. If Automated Lien System (ALS) is not used to generate the Letter 3172, it is the responsibility of the employee making the NFTL filing determination to ensure that the CDP notice is issued timely. Information regarding how the notice was issued should be documented in the case history. Refer to IRM 5.12.6.3.7, *Preparation and Delivery of Manual CDP Notices*.
3. IRC § 6330 gives taxpayers the right to request a hearing during the 30-day period that begins the day after the date of the Notice of Intent to Levy and Notice of Your Right to a Hearing. Refer to IRM 5.11, *Notice of Levy*.
 - A. This *Notice of Intent to Levy and Notice of Your Right to a Hearing* will be given in person, left at the dwelling or usual place of business, or sent by certified or registered mail, return receipt requested, to the taxpayer's last known address not less than 30 days before the day of the first levy.
 - B. Information regarding how the notice was sent, delivered, or left at the dwelling or business must be documented in the case history. In addition, request input of appropriate TC 971 action codes (AC).
 - C. This notice is required only once for the taxable period and unpaid tax which is the subject of the pre-levy notice. A second notice is required if levy action is planned to collect additional taxes that were assessed for the taxable period after the original notice was issued. An additional CDP notice is not required for new assessments of interest and penalty accruals for the tax previously included on a CDP notice. Refer to IRM 5.11.1.2.1, *Required Notices*.
 - D. For a joint income tax liability, when a Letter 1058, *Notice of Intent to Levy and Notice of Your Right to a Hearing*, is issued in the field, each spouse will individually be given or sent, to his and her last known address, the letter explaining the right to a hearing. Two separately addressed notices are sent in separate envelopes even if both spouses are at the same address.
 - E. For a partnership employment or excise tax liability, the Letter 1058 is issued to the partnership when partnership assets are to be levied. If the Service intends to levy on the property of the individual general partners to collect the employment or excise taxes, then the Letter 1058 needs to be issued to the individual general partners.

Note:

USPS certified or registered mail service is available in all U.S. territories, including American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands. USPS certified or registered mail is also available in certain U.S. protectorates: including the Federated States of Micronesia, Republic of the Marshall Islands, Republic of Palau, Johnson Atoll, Midway Islands, Marshall Islands, and Wake Island. USPS certified or registered mail service may not be available in other U.S. protectorates. In those jurisdictions, a private delivery service (UPS, FedEx, DHL, etc.) may be used to provide delivery in person or to the taxpayer's residence or usual place of business, in accordance with IRC § 6330(a)(2)(A) and (B). You must retain a copy of the signed receipt or the signature of the private delivery service employee affirming that he/she left the notice at the taxpayer's residence or usual place of business. Where use of a private delivery service may be prohibitively expensive in relation to the amount of tax expected to be collected, please contact Counsel for guidance.

4. There are exceptions to the pre-levy notice requirements of IRC § 6330. They are:
 - A. When the collection of tax is in jeopardy under IRC § 6331(a), or
 - B. A levy is served on a State to collect a Federal tax liability from a State tax refund, or
 - C. A disqualified employment tax levy is served, or

D. A Federal contractor levy is served.

In each of the above situations, the taxpayer will be given the opportunity for a CDP hearing within a reasonable period of time after the levy. Refer to IRM 5.1.9.3.14, *Jeopardy Levy, State Income Tax Levy Program (SITLP) and Federal Payment Levy Program (FPLP)*, and IRM 5.1.9.3.15, *Disqualified Employment Tax Levy*.

5. There is no right to a hearing when child support obligations are being collected. Refer to IRM 5.11.1.2.2.11, *Issuing Notice of Intent to Levy for Child Support Obligations, Balances Due*.

5.1.9.3.2 (06-24-2014)

Request for CDP Hearing Rights

1. If contact is made with the taxpayer after the issuance of the CDP notice, attempt to resolve the account or issue with the taxpayer. In some situations it may be useful to have the group manager intercede in discussions with the taxpayer in an effort to resolve the case. Advise taxpayers entitled to request an appeal under the CDP provisions of the requirements and time frames for filing an appeal. Be sure to let taxpayers know that discussions with Collection do not suspend the running of (or otherwise extend) the 30-day period during which taxpayers may request a CDP hearing. When applicable, consider Fast Track Mediation as an option for resolving the issue with the taxpayer. Refer to IRM 5.1.9.3.8, *CDP and Equivalent Hearing Fast Track Mediation (FTM)*.
2. If the taxpayer wants to file a request for a hearing,
 - A. It must be in writing;
 - B. It must be filed on or before the date that is 30 days after the date of the Notice of Intent to Levy and Notice of Your Right to a Hearing or on or before 30 days after the five-business-day period following the filing of the NFTL; and
 - C. If the hearing request is filed late, the taxpayer may be entitled to an Equivalent Hearing (EH) but only if specifically requested. Refer to IRM 5.1.9.3.2.1, *Timeliness of the CDP Hearing Request*, and IRM 5.1.9.3.2.2, *Equivalent Hearing (EH) and Timeliness of Equivalent Hearing Requests*.
3. Taxpayers generally use Form 12153, *Request for Collection Due Process or Equivalent Hearing*, to request the hearing. This form is included with the CDP notice. If this form is not used, the taxpayer may submit a written request for a CDP hearing signed by the taxpayer or authorized taxpayer representative.
4. The written request for a hearing must be dated and must include the following information:
 - A. The taxpayer's name, address, daytime telephone number (if any), and taxpayer identification number (SSN, ITIN, or EIN).
 - B. The type of tax involved.
 - C. The tax period(s) at issue.
 - D. A statement that the taxpayer requests a hearing concerning the proposed levy or in the case of post levy CDP requests, the actual levy action, or the filing of the NFTL.
 - E. The reason(s) why the taxpayer disagrees with the action.

Note:

The Service can disregard any portion of a hearing request that is based on a position identified as frivolous by the Service in a published list or reflects a "desire to delay" or impede the administration of federal tax laws. If the entire hearing request meets one or both of these criteria, the taxpayer may be denied a hearing entirely. Refer to IRM 5.1.9.3.16, *Hearing Request with Frivolous, Delaying, or Impeding Issues* for procedures for disregarding portions of hearing requests or denying hearing requests altogether. For a list of positions identified by the Service as frivolous, see Notice 2010-33 or any successor guidance.

- F. The signature of the taxpayer or the taxpayer's authorized representative.
5. For a tax liability involving a partnership:
- If the CDP notice is issued to a partnership, then a partner with authority to represent the partnership could request a hearing for the partnership.
 - If a CDP NFTL notice is issued to an individual partner listed on the NFTL, then that partner could request a hearing as an individual partner.
 - If a CDP levy notice is issued to a general partner because the Service intends to levy the individual property of the general partner, then that partner could request a hearing as an individual partner.
6. The CDP hearing request includes all applicable periods listed on the CDP notice even if not listed on the hearing request. The taxpayer can exclude a specific tax period on the CDP notice if he or she is not disputing the collection action for a specified tax period.
- If the taxpayer includes periods that are not subject to the CDP hearing, the taxpayer may be requesting an EH for the other periods. Refer to IRM 5.1.9.3.2.2, *Equivalent Hearing (EH) and Timeliness of Equivalent Hearing Request*. If the taxpayer is not entitled to a CDP hearing or an EH, i.e., has not been issued a CDP hearing notice, previously received a CDP hearing or the time frame has expired for requesting an EH, notify the taxpayer and advise the taxpayer of his or her available rights such as those available through CAP or retained jurisdiction. If the time frame for requesting an EH has expired, send the hearing request to Appeals for a separate timeliness determination. If Appeals agrees the request is late, notify the taxpayer of his or her available rights such as CAP or requesting assistance from TAS. Refer to IRM 5.1.9.3.2.5, *Separate Timeliness Determinations*.
7. If the taxpayer received a CDP notice for both lien filing and proposed levy action, the taxpayer may appeal both notices. Appeals should consolidate the requests for the CDP hearing.
8. The taxpayer must send or deliver the CDP hearing request to the IRS office and address as directed on the CDP notice. If the address of that office does not appear on the CDP notice, the taxpayer should obtain the address of the office to which the written request must be sent or delivered by calling the toll-free number on the notice or by calling toll-free, 1-800-829-1040 and providing the taxpayer's identification number (SSN, ITIN, or EIN). If the taxpayer wishes to fax the CDP hearing requests, the taxpayer may request the fax number of the appropriate office from one of these toll-free numbers. The taxpayer may also hand-deliver the request to the local taxpayer assistance center within the 30-day period.

Note:

If the CDP notice does not include the address of the office that sent the notice, and the taxpayer sends the hearing request to the wrong IRS office, timeliness should be determined by the postmark, meter or fax date of the request, not the date actually received by the office listed on the CDP hearing notice.

Note:

If the taxpayer states he submitted a hearing request to another office, check IRS systems such as AMS history, ICS or IDRS. If no record, ask the taxpayer to provide a copy of the request.

5.1.9.3.2.1 (02-07-2014)

Timeliness of the CDP Hearing Request

1. Collection makes the initial determination about the timeliness of a request for hearing from a CDP levy notice or CDP NFTL notice, but Appeals must make the final timeliness determination. See (9) below.
2. For a CDP levy hearing request to be timely, the taxpayer must submit a written request for a CDP levy hearing within the 30-day period commencing the day after the date of the CDP levy notice. If the CDP levy notice is not available for purposes of identifying the date of the CDP levy notice, a TC 971 AC 069 on the tax module identifies the date the CDP levy notice was issued. If the request for the hearing is made after this 30-day period, the taxpayer may be entitled to an EH. Refer to IRM 5.1.9.3.2.2, *Equivalent Hearing (EH) and Timeliness of Equivalent Hearing Requests*.
3. The time frame for filing a timely CDP NFTL hearing request is different than for a CDP levy request. For a CDP NFTL hearing request to be timely, a taxpayer must submit a written request for a CDP hearing within the 30-day period that commences the day after the end of the five-business-day period following the filing of the NFTL. Any request filed during the five-business-day period (before the beginning of the 30-day period) will be deemed to be filed on the first day of the 30-day period. The Letter 3172, provides the date for the taxpayer to file a timely CDP NFTL hearing request. If the taxpayer did not include a copy of the Letter 3172, obtain a copy of the Letter from the Automated Lien System to determine the "file-by" date. If a request is filed within that time period it is considered timely. If the request for the hearing is late (determined under the rules in (6) below), the taxpayer may be entitled to request an EH. Refer to IRM 5.1.9.3.2.2, *Equivalent Hearing (EH) and Timeliness of Equivalent Hearing Request*.

Note:

Because the NFTL is filed by the local jurisdiction's recording office and not the IRS, the Service uses an estimated filing date on the Letter 3172 to provide the taxpayer with a "must file" by date, the date by which the IRC § 6320 hearing request must be submitted. The estimated filing date is calculated by adding three business days to the date the NFTL is mailed to the recording office. The "must file" by date on the letter is then determined by adding five business days plus 30 calendar days to the estimated filing date.

4. A timely filed request for a hearing suspends the statutory period of limitations on collection, criminal prosecutions, and certain suits for the period that is being appealed. The suspension begins on the receipt date of the CDP hearing request.
5. The request for a CDP hearing should be stamped with the received date.
6. Except as provided by IRM 5.1.9.3.2(8), Note, use the date received in the office listed on the CDP hearing notice to determine the timeliness of the CDP hearing request. If the received date is after the time frame for filing a timely CDP hearing request but the request was postmarked, metered, or faxed timely, use the postmark, meter date, or fax transmission date as the receipt date. Keep the envelope in which the hearing request was mailed and associate it with the hearing request.

Note:

When the RO instructs the taxpayer to submit the CDP or equivalent hearing request to the RO's address rather than the address on the CDP notice, timeliness is measured from the postmark of the request mailed to the RO, or the date received by the RO if the request is delivered to the RO by hand.

Example: The taxpayer receives a systemic CDP notice, such as a FPLP notice, while the case is assigned to an RO and the taxpayer submits the hearing request to the RO as instructed by the RO. The RO determines timeliness by either the postmark date or date received at the RO address even if it is not the address in the notice.

- The rules and regulations under IRC § 7502 and IRC § 7503 apply, so timely mailing is treated as timely filing/submitting and if the CDP hearing request due date falls on a Saturday, Sunday or legal holiday, the CDP hearing request will be considered timely if mailed, faxed or hand-delivered to the correct IRS office on the next business day.
- When the postmark is illegible or the envelope is missing, ascertain a reasonable period for mail delivery from the origin of the request to the receiving office and deduct that amount of time from the received date. In general, use three days for regular mail and seven days for overseas mail.
- Notice 2004-83, *Designated Private Delivery Services*, lists the designated Private Delivery Service (PDS) providers for purposes of the timely mailing treated as timely filing/paying rule of IRC § 7502. The current designated PDSs are DHL Express (DHL), Federal Express (FedEx), and United Parcel Service (UPS).
- If the postmark is made by a non-U.S. Postal Service (USPS) system, such as a private postage meter stamp or a designated PDS, Treas. Reg. 301.7502-1(c) requires both of the following to be considered timely:
 - a) Legible postmark must be dated on or before the due date.
 - b) The appeal must be received by the required IRS office not later than the time that a letter sent by the same class of mail would ordinarily have been received if it were sent from the same point of origin via the U.S. Post Office on the last day for timely mailing the appeal.
- IRC § 7508 and IRC § 7508A postpone certain time-sensitive acts when a person is serving in the Armed Forces in a combat zone or serving in support of such Armed Forces, or there is a presidentially declared disaster. Rev. Proc. 2007-56 includes the time period for requesting a CDP NFTL or CDP levy hearing as acts that may be postponed. Though not specifically listed in Rev. Proc. 2007-56, IRC § 7508/7508A apply to EH requests as well.
- For additional information regarding guidelines used by Appeals to determine timeliness, refer to IRM 8.22.5.3.1, *Determining Timeliness - General Procedures*.

7. A request for CDP hearing is untimely if:
 - A. The request was not received within the required time period.
 - B. The timely but nonprocessable request is made processable by the taxpayer after the reasonable time period given for perfection. For a description of the perfection process and processability criteria, refer to IRM 5.1.9.3.2.3, *Perfection of Hearing Requests*.
8. IRC § 7508 suspends the period for requesting a hearing while the taxpayer is:
 - In a combat zone,
 - Part of a contingency operation away from the taxpayers permanent duty station, or
 - Recuperating during a qualified hospitalization,

plus 180 days. Check IDRS for any Transaction Code (TC) 500 that may extend the 30-day period for requesting a hearing. Refer to IRM 5.1.7.9, *Accounts of Taxpayers Who Serve in a Combat Zone*. The time period for requesting a hearing resumes when the IRC § 7508 status ends (e.g. combat zone exit date plus 180 days). CDP requests that appear untimely may in fact be timely if made by taxpayers who were in IRC § 7508 status at the time of the original notice issuance or during the time period for requesting a hearing. Look for prior TC 500s and their reversals on all untimely requests and compare those dates to the CDP notice dates. The TC 500 indicates the date the taxpayer entered IRC § 7508 status and its reversal the date of exit from a combat zone, contingency operation, or qualified hospitalization. All requests received in that time-frame or during the following 180 days should be honored as timely, with an explanation on the case when sent to Appeals.

9. When a hearing request is untimely, the request must be sent to Appeals for a separate timeliness determination. Refer to IRM 5.1.9.3.2.5, *Separate Timeliness Determination*.

Note:

A separate timeliness determination is not needed if the request is a timely CDP or EH request.

**5.1.9.3.2.2 (02-07-2014)
Equivalent Hearing (EH) and Timeliness of EH Requests**

1. If the taxpayer requests a CDP hearing after expiration of the time period for requesting a timely hearing (refer to IRM 5.1.9.3.2.1, *Timeliness of CDP Hearing Request*), the taxpayer may request an administrative hearing with Appeals, which is referred to as an EH. Appeals will hold the EH, generally following the same procedures for a timely CDP hearing. Appeals will not, however, issue a Notice of Determination. Instead, Appeals will issue a Decision Letter, and the taxpayer is not entitled to judicial review. CSED's are not suspended during an EH.
2. The time frame for requesting an EH is as follows:
 - A. Levy notice - Within the one-year period commencing the day after the date of the CDP levy notice.
 - B. NFTL notice - Within the one-year period commencing the day after the end of the five-business-day period following the filing of the NFTL.

If the request is received or if mailed, postmarked after the one-year period, send the hearing request to Appeals for a separate timeliness determination. If Appeals agrees the request is late, notify the taxpayer of his or her available rights such as CAP or requesting assistance from TAS. Refer to IRM 5.1.9.3.2.5, *Separate Timeliness Determinations*.
3. Late CDP hearing requests are not automatically treated as EH requests. The taxpayer can request an EH either by:
 - A. Checking the Equivalent Hearing box on Form 12153,
 - B. Verbally confirming that he/she wants an untimely CDP hearing request to be treated as an EH when notified by Collection of an untimely CDP hearing request, or
 - C. Indicating in writing that the taxpayer wishes an EH, if the CDP hearing request is untimely.
4. For late filed CDP hearing requests where the taxpayer has not checked the box on Form 12153 or otherwise indicated in writing that the request is to be treated as a request for an EH, notify the taxpayer either verbally or in writing of the late filed request and advise the taxpayer of the right to request an EH (unless the CDP hearing request is postmarked after the expiration of the one-year period for requesting an EH). The taxpayer can request an EH either orally or in writing. There is no need for the taxpayer to file a separate request for an EH. Explain to the taxpayer:
 - A. That a CDP hearing and an EH are substantially the same, but there is no judicial review of an EH.
 - B. The taxpayer is entitled to challenge in the hearing the determination that the request is untimely.
5. If the taxpayer has checked the Equivalent Hearing box on Form 12153 or submitted any other written request for an EH, stamp the request with a received date.
 - A. Use the date received in the office listed on the CDP hearing notice to determine the timeliness of the EH request.
 - B. If the received date is after the one-year time frame for filing a timely EH but the request was postmarked timely, use the postmark date as the receipt date. Timely mailing constitutes timely filing if the taxpayer's request for an EH is correctly addressed to the IRS office listed in the CDP hearing notice.
 - C. When the postmark is illegible or the envelope is missing, ascertain a reasonable period for mail delivery from the origin of the request to the receiving office and deduct that amount of time from the received date.
 - D. If the day on which the one-year period expires is a Saturday, Sunday, or federal holiday, and the postmark is for the next business day, it is timely. Keep the envelope in which the hearing request was mailed and associate it with the hearing request.
6. If a taxpayer has elected to treat the CDP hearing request as an EH request, use the postmark date of the CDP hearing request as the date the EH request was submitted. If the taxpayer submitted a CDP hearing request within the one-year period and the taxpayer responded within the specified time period that the taxpayer wanted an EH but the taxpayer's response was later than the one-year period, the request for EH is timely.
7. A taxpayer's request for an EH can be submitted via fax. The transmission date will be the received date. The transmittal sheet should be retained along with the hearing request.
8. Following an EH, the appeals officer sends the taxpayer a letter explaining the results of the hearing. In an EH, the decision by Appeals is final. The taxpayer cannot appeal the decision to Tax Court.

Exceptions: If spousal defenses under IRC § 6015 or abatement under IRC § 6404 is raised during the EH, the taxpayer may seek judicial review of those issues. The taxpayer has 90 days to file a petition for review of a denial of innocent spouse relief and 180 days to file a petition for review of denial of interest abatement. There is also the potential for litigation over whether or not the CDP request is timely.

9. An EH request is untimely:
 - A. When an EH request is not received within the one-year period or
 - B. When a timely but nonprocessable EH is made processable **after** the reasonable time period for perfection specified by Collection **and after** the one-year period for requesting an EH has expired. For a description of the perfection process and processability criteria, refer to IRM 5.1.9.3.2.3, *Perfection of Hearing Requests*.
10. Send an untimely EH request to Appeals for a separate timeliness determination. Refer to IRM 5.1.9.3.2.5, *Separate Timeliness Determination*.

5.1.9.3.2.3 (02-07-2014) Perfection of Hearing Requests

1. In some cases, Forms 12153 or other written hearing request are timely filed, but incomplete. The hearing request may be missing required information. If possible, missing information should be obtained from IRS systems, such as IDRS. If this information is not available through a search of IRS systems, then the taxpayer will need to furnish it. If an authorized signature is missing, the taxpayer will need to provide it. The taxpayer must provide the following:
 - A. Signature of taxpayer(s) or authorized representative. Both spouses' signatures are required on joint tax periods if both spouses are requesting a hearing.
 - B. SSN, ITIN, or EIN. This information should be listed on the Form 12153 but may also be found on the CDP notice, if attached. If there is no SSN, ITIN or EIN on the Form 12153 or other written hearing request and the CDP notice is not attached, then attempt to identify the SSN, ITIN or EIN on IRS systems using the taxpayer's name and address if available.
 - C. Taxpayer's name. If the taxpayer supplies the SSN, ITIN, or EIN, the name can be obtained from IRS systems. The request should not be treated as an imperfect request if this information can be obtained from IRS systems.
 - D. Type of tax/tax period(s). This information should be listed on the Form 12153, but may also be found on the CDP notice, if attached. If the taxpayer supplies the SSN, ITIN, or EIN, the tax/tax period(s) can be obtained from IRS systems. The request should not be treated as an imperfect request if this information can be obtained from IRS systems.
 - E. Statement that the taxpayer requests a hearing. If the taxpayer did not submit Form 12153, but it is evident that the taxpayer is requesting a hearing, then the taxpayer has met this requirement. For example, if the taxpayer provides the taxpayer's name, address, SSN, and the tax and period at issue, and the IRS records show that a CDP notice was recently sent to the taxpayer, then the taxpayer has met this requirement. Similarly, if the taxpayer attached the CDP notice, the taxpayer has met this requirement.

F. Reasons for disagreement with the filing of the NFTL or the levy. Form 12153 lists common reasons for disagreement. If the taxpayer checks a reason on Form 12153 that is sufficient. If the taxpayer checks "other", the taxpayer still needs to provide a reason in the remarks section or in an attachment to the Form 12153.

Note:

A request is not imperfect if the request does not have a daytime telephone number or address. If the taxpayer submits an SSN, ITIN or EIN, then the taxpayer's last known address should be available on IDRS.

Note:

The Service can disregard any portion of a hearing request that is based on a position identified as frivolous by the Service in a published list or reflects a "desire to delay" or impede the administration of federal tax laws. If the entire hearing request meets one or both of these criteria the taxpayer may be denied a hearing entirely. Refer to IRM 5.1.9.3.16, *Hearing Request with Frivolous, Delaying, or Impeding Issues*, for procedures for disregarding portions of hearing requests or denying hearing requests altogether. For a list of positions identified by the Service as frivolous, see Notice 2010-33 or any successor guidance.

2. If the hearing request is filed timely, but needs to be perfected, make a reasonable attempt to contact the taxpayer and allow a reasonable time (generally 15 calendar days) for the taxpayer to perfect the request. If taxpayer forgot to sign the request or failed to furnish required information, the taxpayer may perfect the request by supplying the missing signature or by providing the missing information. If the request is signed on the taxpayer's behalf by the taxpayer's spouse or other unauthorized representative, the taxpayer may perfect the request by affirming in writing that the request was submitted on the taxpayer's behalf.

Note:

The taxpayer can provide the missing information, including a valid reason for requesting the hearing, by telephone to the RO. Signatures must be in writing.

Note:

A Form 12153 is considered valid and processable if the taxpayer or the authorized representative signed correspondence attached to the Form 12153 but failed to sign the Form 12153 itself.

Note:

The regulations do not authorize a digital or electronic signature with a CDP hearing request. If a request includes a digital or electronic signature, contact the taxpayer to secure the taxpayer's signature.

3. If the timely but incomplete hearing request is processable when received, then it is timely even if the taxpayer perfects the request late or only perfects the request partially or does not respond. A hearing request is processable unless the request is:
 - A. Not signed.
 - B. Signed but the signer is not authorized to sign on behalf of the taxpayer (example: an unenrolled return preparer or spouse).
 - C. Signed but the signer does not have proper authorization (no Power of Attorney on file).
 - D. Does not have a valid SSN, ITIN or EIN and one could not be identified. See 1(b) above.
 - E. Does not include a reason for the request.
4. If the EH request is timely but not processable when received and, within the reasonable time period specified, the taxpayer makes the request processable, then the hearing request is considered timely filed. Such request is timely even if the perfection occurs after the end of the time frame for requesting a timely hearing.
5. If the taxpayer makes the request processable after the reasonable perfection period, treat the request as a new request.

Note:

If the taxpayer demonstrates that the late response was due to extenuating circumstances, such as being in the hospital or out of the country during that period, then process the request.

6. If after the perfection process the timely but incomplete request is not processable, the taxpayer is not entitled to the hearing.
 - Notify the taxpayer either orally or in writing that the taxpayer's request for a hearing cannot be processed.
 - In the case of an unprocessable CDP hearing request, explain that the taxpayer may be eligible to make a request for an EH on or before the expiration of the one-year period applicable to IRC § 6320 or 6330. In the case of an unprocessable EH request, explain that the taxpayer may make another request for an EH on or before the expiration of the one-year period applicable to IRC § 6320 or 6330.
 - If the one-year period for requesting an EH has expired, explain that the taxpayer can pursue resolution with Collection, request a CAP appeal, or request assistance from TAS.
 - If the taxpayer expresses an interest in CAP or in requesting TAS assistance, explain the process.
 - Document the ICS case history with the reason why the request could not be processed. Include a copy of the hearing request and any written correspondence to and from the taxpayer in the case file.

5.1.9.3.2.4 (02-07-2014)

Invalid CDP Notices and Rescinding a Valid CDP Notice

1. If a CDP NFTL or levy notice is invalid, a substitute notice must be issued in order for the taxpayer to be entitled to a hearing. Situations warranting the issuance of a substitute CDP notice because the CDP notice was invalid include when the taxpayer:
 - A. Did not receive the CDP notice or makes an untimely request because the notice was not sent to the taxpayer's last known address (in which case the notice is invalid).
 - B. Is in bankruptcy and the automatic stay prohibits the issuance of collection notices and collection by levy (in which case the CDP levy notice is treated as void and is invalid). The substitute CDP levy notice can be issued when the automatic stay is no longer in effect.
 - C. Did not receive a CDP notice because it was not sent individually to each joint filer. A notice may be valid as to one or both of the joint filer(s) if there is proof that person actually received the notice or that person timely requested a CDP hearing. If the taxpayer makes a timely hearing request from the invalid notice, a substitute notice need not be issued.
2. If a taxpayer makes a timely hearing request from a CDP NFTL or levy notice that is invalid because it was not sent to the last known address or not sent individually to a joint filer, treat the request as timely. By making a timely hearing request, the taxpayer is deemed to have waived any defect in the issuance of the CDP notice.
3. A valid CDP levy notice issued in error can be rescinded but only if:

- A. The rescission is accomplished before the expiration of the time period in which the taxpayer may request a CDP hearing; and
 - B. The taxpayer has not requested a CDP hearing.
4. You should rescind a valid CDP levy notice during the 30-day period for requesting a hearing before you receive a taxpayer's hearing request, if you learn that the notice was issued when the case is in a status in which levy action is prohibited.
- A. Situations where levy action is prohibited include a pending installment agreement request, pending OIC, pending innocent spouse claim and while an installment agreement is in effect.

Note:

Refer to IRM 5.11.1.2.2.8, *Invalid CDP Levy Notice and Rescinding a Valid CDP Levy Notice*, for procedures to rescind a CDP levy notice.

5. IRC § 7508 suspends the period for requesting a hearing while the taxpayer is:
- In a combat zone,
 - Part of a contingency operation away from the taxpayer's permanent duty station, or
 - Recuperating during a qualified hospitalization,

plus 180 days. The time period for requesting a hearing resumes when the IRC § 7508 status ends (e.g. combat zone exit date plus 180 days). Because the time period for requesting a hearing is extended when the taxpayer is in IRC § 7508 status, the time period for rescinding the notice is also extended. Check IDRS for any TC 500 that may extend the 30-day period for requesting a hearing. (Refer to IRM 5.1.7.9, *Accounts of Taxpayers Who Serve in a Combat Zone*.)

6. If the taxpayer submits a hearing request in response to a valid CDP levy notice issued when levy is prohibited and the CDP levy notice has not been previously rescinded, the taxpayer is still entitled to a CDP hearing. Explain the error to the taxpayer. If the taxpayer no longer wants a hearing, the taxpayer must withdraw the request for a hearing. Refer to IRM 5.1.9.3.3.1, *Processing Withdrawal Request for CDP Hearing*. Explain to the taxpayer that if the hearing request is withdrawn, the proposed offer, installment agreement request or innocent spouse claim will not be decided by Appeals and he will not get another opportunity for a CDP hearing.
7. A valid CDP NFTL notice can be rescinded only if:

- A. Within the time period for requesting a CDP hearing the Service agrees either to withdraw the Notice of Federal Tax Lien (NFTL) or release the federal tax lien;

Note:

The Notice of NFTL Withdrawal or Certificate of Release of the lien need not be filed within the time period for requesting a hearing.

- B. The rescission is accomplished before the expiration of the time period for requesting a hearing; and
- C. The taxpayer has not requested a CDP hearing.

Note:

The CDP NFTL notice is valid and the taxpayer is entitled to a hearing if requested even though the NFTL is ineffective, for example, because a recording office never receives the NFTL or because the NFTL was filed in violation of the bankruptcy automatic stay. Appeals will suspend the hearing while the bankruptcy proceeding is pending. Upon resumption of the hearing, the taxpayer would still be entitled to a hearing. Refer to IRM 8.22.5.4.2.4.2, *Corrective Actions on Improperly Issued CDP Notices and Notices Issued in Error*. If a NFTL filing violated the automatic stay, contact Insolvency to have the NFTL withdrawn. See IRM 5.9.3.5.1, *Violations of the Automatic Stay*.

8. Insolvency Groups are responsible for deciding if a CDP NFTL notice may be rescinded when a NFTL filed in violation of the automatic stay is withdrawn. Advisory Groups are responsible for deciding if a CDP NFTL notice may be rescinded when a NFTL is withdrawn for any other reason, including because the taxpayer is in a combat zone. Insolvency or Advisory Group employees may contact you to find out if and when a taxpayer requested a hearing from a CDP NFTL notice.
9. Once the time period for requesting a CDP hearing has expired after the issuance of a valid CDP notice, the taxpayer has been afforded an opportunity for a hearing, and the notice may not be rescinded.
10. In situations where a valid CDP levy notice was previously issued, and a subsequent CDP levy notice is issued in error, the notice issued in error does not afford the taxpayer an additional opportunity to request a hearing. Timeliness of any hearing request is based on the date of the original CDP levy notice.

**5.1.9.3.2.5 (06-24-2014)
Separate Timeliness Determination**

1. Send the hearing request to Appeals for a separate timeliness determination in the following situations:

If	And
The CDP hearing request was not timely received	The taxpayer did not request an EH by either "checking" the Equivalent Hearing box on Form 12153 or verbally indicating they want an EH. Refer to IRM 5.1.9.3.2.1, <i>Timeliness of the CDP Hearing Request</i> .
The CDP hearing request was timely received yet unprocessable	The taxpayer perfects or partially perfects after the reasonable time frame allowed so the request is processable and the taxpayer does not want an EH.
An EH request was requested	It was received after the year allowed for filing a request. Refer to IRM 5.1.9.3.2.2, <i>Equivalent Hearing (EH) and Timeliness of EH Requests</i> .
An EH request that was timely received (with the one-year period) but unprocessable	The taxpayer perfects or partially perfects the request after the reasonable time frame and after the one year period for requesting an EH.

2. Document the ICS history with the reason the request was determined to be untimely received.
3. Fax the following documents to Appeals for a separate timeliness determination:
- A. Form 12153 or other hearing request,
 - B. The envelope it was mailed in,
 - C. A copy of the CDP notice (L3172 or L1058),
 - D. Any written correspondence to and from the taxpayer, including any documents submitted by the taxpayer.

Note:

Appeals has access to the ICS history.

4. Use a Form 3210, *Document Transmittal*, clearly noting **Request for Separate Timeliness Determination**. Appeals will expedite timeliness determinations.

5. Fax requests for CDP Separate Timeliness Determinations (CDPTD) to the Appeals office listed on the Appeals intranet site, Case Routing, CDPTDs Case Routing by state.
6. Appeals will either:
 - Agree with Collection's timeliness determination.
 - Disagree with Collection's timeliness determination.
 - Partially agree with Collection's timeliness determination because there are multiple modules. If Appeals partially disagrees, Appeals will identify which periods should be returned to Appeals as a regular CDP or EH hearing request.
7. If Appeals agrees that the request was filed late, inform the taxpayer orally or in writing that the request is not timely. Determine and explain what appeal options are available to the taxpayer:
 - CAP appeal
 - Assistance from TAS
8. If Appeals determines that the request is timely, process the hearing request under standard procedures. Refer to IRM 5.1.9.3.3.2, *Preparing Case for Transmittal to Appeals*.

Note:

If a hearing request includes periods that are timely and periods that are late, do not send the timely periods to Appeals until after receiving Appeals response to the separate timeliness determination. If Appeals determines that the separate timeliness determination periods are timely, all the timely periods can be included on one referral to Appeals.

5.1.9.3.3 (06-24-2014) Processing CDP and EH Requests

1. Upon receipt of a hearing request:
 - A. Determine if the hearing request is complete and can be processed. If the request is missing information, try to perfect the hearing request with the taxpayer. See IRM 5.1.9.3.2.3, *Perfection of Hearing Requests*.
 - B. Determine if the hearing request is timely. See IRM 5.1.9.3.2.1, *Timeliness of the CDP Hearing Request* and IRM 5.1.9.3.2.2, *Equivalent Hearing (EH) and Timeliness of EH Requests*. A late filed request requires a Separate Timeliness Determination. See IRM 5.1.9.3.2.5, *Separate Timeliness Determination*.
 - C. If the hearing request is timely and can be processed, document receipt on the ICS CDP application.

Note:

Do not add nonprocessable hearing requests or separate timeliness determinations to the ICS CDP application.

Note:

Hearing requests received and processed by Insolvency and COIC are not added to the ICS CDP application.

 - D. When the module is added to the ICS CDP application, a TC 971 can be systemically generated with AC 275 (timely CDP) and AC 630 if CDP levy, or AC 278 (EH).

Note:

If the module is not added to the ICS CDP application or if the applicable TC 971 with action code cannot be systemically generated using ICS, use Form 4844 to request input of the TC 971 with applicable action codes. Forward requests for input to CCP via e-mail using secure messaging to PHI.CS.GCP@irs.gov or under the global listing as *CTR PHI CS GCP.
2. Taxpayers are encouraged to continue to work with Collection to resolve the tax issue after a hearing request is submitted. Review the hearing request to determine the issues raised and collection alternatives proposed. If information needed by Appeals to consider the issue can be secured or if the case can be resolved prior to Appeals consideration, it expedites the process for the taxpayer.
3. If the taxpayer raises a collection alternative,
 - A. Contact the taxpayer within ten calendar days of receipt to secure information needed to resolve the issue. Letter 5139, *CDP Contact Letter*, can be used to request delinquent returns, financial statement information, or both, as needed to address the collection alternative raised by the taxpayer.

Note:

A taxpayer can be placed in currently not collectible (CNC) hardship, even if the taxpayer has not filed all required returns. Refer to IRM 5.16.1.2.9, *Hardship*.

 - B. If the taxpayer responds to the request, the RO should continue to work with the taxpayer towards resolution. If resolution is reached, ask the taxpayer if he wants to voluntarily withdraw the hearing request. Refer to IRM 5.1.9.3.3.1, *Processing Withdrawal of Request for Collection Due Process Hearing*.

Note:

If resolution is reached, e.g. full pay, IA secured, CNC determination reached, and the taxpayer does not withdraw, send the hearing request to Appeals.

 - C. If the taxpayer responds to the request but resolution cannot be reached, offer the taxpayer the opportunity to discuss the issue with the group manager in an effort to reach resolution prior to sending the request to Appeals. The group manager should try to hold the conference with the taxpayer within five business days. If the taxpayer does not wish to have the conference with the group manager, send the request to Appeals.

Note:

If discussions are at an impasse because an appropriate collection resolution, e.g., IA, could not be reached, the sole appeal rights will be through the CDP or EH already requested by the taxpayer.

 - D. If the taxpayer does not respond to the request for information needed, the RO should, within 15 calendar days of the deadline established, send the request to Appeals.
4. If a CIS is secured, conduct the necessary financial verification (Refer to IRM 5.15.1.3, *Verifying Financial Information*) before transferring the case to Appeals. Appeals relies on Collection to conduct the appropriate review and verifications of a CIS secured prior to referral to Appeals. Appeals will accept the CIS information as accurate unless corrections/revisions to the form are noted in the case history.

Note:

If the CIS is not secured and Appeals secures a CIS during the hearing, Appeals may refer the CIS to Collection for verification. See IRM 5.1.9.3.9, *Appeal Process*.

5. If not previously done, make a Notice of Federal Tax Lien (NFTL) filing determination. Refer to IRM 5.12.2.3, *Notice of Federal Tax Lien Filing Determination (Pre-filing Considerations)*. The authority to file an NFTL is not suspended during the hearing. If the determination is to file a NFTL and the taxpayer disagrees, explain the CAP procedures to the taxpayer.
6. If the taxpayer raises a non-frivolous issue relating to the unpaid tax, such as missing or misapplied payments, determine whether additional research or a payment tracer is necessary to resolve the issue.
7. If the taxpayer raises doubt as to liability issues take the necessary steps to address the issue with the taxpayer. Allow the taxpayer the opportunity to file an amended or corrected return, or determine whether an adjustment is necessary. Appeals will determine if the taxpayer can raise liability issues during the hearing. A taxpayer may challenge the underlying liability in a CDP hearing if the taxpayer did not
 - Receive a notice of deficiency or
 - Sign a consent to assessment or otherwise
 - Have a prior opportunity to dispute the tax liability

Note:

Request the tax return and include it with the hearing file sent to Appeals. This does not apply when the doubt as to liability is based solely on frivolous arguments.

8. If the taxpayer raises innocent spouse issues, secure Form 8857, if the taxpayer did not include with the hearing request. Forward the claim to the Cincinnati Centralized Innocent Spouse Operation (CCISO) for consideration. Include a copy with the hearing request sent to Appeals.
9. If it has been 45 days since receipt of the hearing request, secure group manager concurrence to continue working with the taxpayer for an additional 45 days. The taxpayer's willingness to address the hearing issues with Collection beyond a 45-day period should be documented in the file. If resolution is not expected or withdrawal not secured within the next 45 days, send the request to Appeals. Even after the request is sent to Appeals, action to resolve the collection issues may continue. Refer to IRM 5.1.9.3.5, *Collection Action during the Period of the CDP or EH*.
10. In some instances it may be appropriate to refer the hearing request immediately to Appeals because resolution is unlikely. In these instances, promptly, within 15 days, send the hearing request to Appeals.
 - Collection alternatives have already been explored and discussions are at an impasse when the taxpayer requests a CDP hearing; or
 - The taxpayer raises frivolous issues (Refer to IRM 5.1.9.3.16, *Hearing Requests with Frivolous, Delaying or Impeding Issues*); or
 - The taxpayer is not seeking to resolve the issue but using the CDP process as a method for delay, e.g., pyramiding in-business trust fund taxpayer; (Refer to IRM 5.1.9.3.3.2.1, *Rapid Response Appeals Process (RRAP)*) or
 - The taxpayer has other recently filed hearing requests pending in Appeals, or
 - The taxpayer files bankruptcy after the hearing request has been filed. Appeals will suspend the hearing until after the bankruptcy. Refer to IRM 8.22.6.8, *Bankruptcy Filing Effect on CDP Cases*.
 - The taxpayer does not want to work with Collection after making the request for a CDP hearing.

Note:

Document the reason for the immediate transfer to Appeals on the Form 14461.

11. In situations where the taxpayer contests the TFRP liability, Appeals will first review the ICS history to determine if Letter 1153 was hand-delivered or mailed. If the Letter 1153 was hand-delivered, the ICS history entry would serve as a contemporaneous recording and prima-facie evidence and, therefore, the taxpayer will not be able to challenge the liability at the CDP hearing. If the Letter 1153 was mailed, Appeals will request a copy of the Letter 1153 and certified mailing listing from Advisory. Appeals must verify that the taxpayer received the Letter 1153.
12. CDP notices issued by automated levy programs (FPLP, SITLP, and Alaska Permanent Fund Program) direct the taxpayer to file the CDP request with the ACS campus CDP units. If a request is received on a case assigned to a RO, the CDP units will document the ICS system notifying the RO of the request. If the RO has had contact with the TP, the RO should contact the CDP unit and they will forward the request to the RO for processing to Appeals, otherwise the CDP unit will process the request. The same procedure applies if ACS issues a CDP levy notice or CDP NFTL notice and the case is assigned to a RO by the time the CDP request has been received.
13. If there are indicators of fraud, a revenue officer may hold a hearing request for 90 days while the fraud referral is being developed. After 90 days, if additional time is needed to develop the fraud referral, secure Fraud Technical Advisor (FTA) concurrence, documented in the ICS history, to hold the hearing request for an additional 90 days, after which, the request must be sent to Appeals.
14. If the taxpayer full pays the liability after the hearing request has been filed, see if the taxpayer wants to withdraw the request since the NFTL will be released and levy action is no longer applicable. If the taxpayer does not withdraw the request, process the request to Appeals.
15. If the taxpayer files bankruptcy after the hearing request has been filed, the hearing request is still valid and needs to be processed to Appeals. Appeals will suspend the hearing until after the bankruptcy. Refer to IRM 8.22.6.8, *Bankruptcy Filing Effect on CDP Cases*.

5.1.9.3.3.1 (11-12-2014)

Processing Withdrawal of Request for CDP Hearing

1. A taxpayer that reaches a satisfactory resolution with Collection after filing a request for a CDP hearing can withdraw the request for a CDP hearing. When resolution is reached, explain to the taxpayer the option to withdraw the request for a CDP hearing and the effect of doing so, i.e., the taxpayer will lose CDP rights with respect to the CDP tax periods and proposed collection action, including the right to judicial review. The decision to withdraw belongs to the taxpayer. A taxpayer can also withdraw the request for hearing with Appeals.
2. Form 12256, *Withdrawal of Request for Collection Due Process or Equivalent Hearing*, under IRC § 6320 and/or 6330 is available to taxpayers to use for withdrawing the CDP hearing request. A written request not on Form 12256 will also be honored.

Note:

If a withdrawal is not secured, the timely CDP hearing request must be sent to Appeals even if the account is otherwise resolved.

Note:

A withdrawal form is not needed when the taxpayer wants to withdraw a request for an EH. If the matter is resolved and the taxpayer does not want to go to Appeals, document the case history and take the necessary closing actions. If the taxpayer later disputes the withdrawal of the hearing request, the taxpayer will be given an EH.

3. If both spouses signed the CDP hearing request, both spouses need to sign the withdrawal. If only one spouse signs the withdrawal, the CDP hearing request applies to the spouse that did not sign the withdrawal.

4. Date stamp the receipt of Form 12256 and maintain with the case file.

5. Upon receipt of the withdrawal request:

- Document receipt of the withdrawal on the ICS CDP application. This will generate a TC 971 with AC 276 if it is a CDP request or AC 279 if it is an EH.

Note:

If the module was not added to the ICS CDP application, use Form 4844 to request input of the TC 971 with action code 276. Forward requests for input to CCP via e-mail using secure messaging to PHI.CS.GCP@irs.gov or under the global listing as *CTR PHI CS GCP.

- The suspension of the statute of limitations on the period of collection under the provisions of IRC § 6320 and 6330 is no longer in effect.

6. If the withdrawal is received after the hearing request was sent to Appeals, notify the Appeals office assigned the case and forward the withdrawal, Form 12256, to Appeals so Appeals can input the TC 521 and close the case.

Note:

To determine where and to whom a case is assigned, call Appeals at 559-233-1267 between the hours of 7:00 a.m. and 3:00 p.m. PST.

5.1.9.3.3.2 (06-24-2014)

Sending Hearing Request to Appeals

1. To send the request to Appeals, complete Form 14461, *Transmittal of CDP/Equivalent Hearing Request*. The transmittal sheet is used by Appeals in their initial processing and screening of the request. The transmittal should not include any statements or information intended to advocate for a particular position or otherwise influence Appeals.

Note:

Transmittals that include prohibited ex parte communications need to be shared with the taxpayer at the time the case is sent to Appeals. Refer to IRM 5.1.9.5.3, *Administrative File*.

2. The transmittal lists:

- The date the hearing request was received. For timely hearing requests, this is also the TC 520 date.
- The type of hearing request and tax and tax periods.
- The documents transmitted, and
- A summary of the issues. The summary needs to be limited to neutral statements without any discussion regarding the strengths or weakness of the taxpayer's appeal. Examples of neutral statements include but are not limited to: Collection Information Statement (CIS) transmitted, Taxpayer requesting Installment Agreement, Taxpayer has unfiled returns, etc.

Note:

If the case involves a Son of Boss Non-Participant, when forwarding a case to Appeals, clearly mark "Son of Boss Non-Participant" on the transmittal.

3. The case file transmitted to Appeals will include, at a minimum, the following:

- Transmittal Sheet (Form 14461, *Transmittal of CDP/Equivalent Hearing Request*)
- Form 12153, *Request for a Collection Due Process or Equivalent Hearing*, or substitute written request
- Copy of the CDP Notice (Letter 1058, Letter 3172, or both)
- Copy of Notice of Federal Tax Lien, if applicable
- Copy of the envelope
- CIS (Form 433-A, Form 433-B) or other financial documentation, if available
- If doubt as to liability is raised, original or amended return, if available
- Copy of the Form 2848, *Power of Attorney and Declaration of Representative*, secured in the field unless it is present on IDRS via command code CFINK
- Additional documentation/correspondence sent by the taxpayer with the Form 12153
- Any additional documentation/information in the case file pertinent to the issue(s) raised by the taxpayer

Note:

A printout of the ICS history is not required to be included with the referral. Appeals is permitted to access ICS to view and print the case history.

4. The group manager approves the hearing request file prior to transmittal to Appeals. The group manager will review the referral for accuracy and completeness. In addition, the manager must ensure no prohibited ex parte communications are included before approving the transmittal of the case to Appeals.

Example: The RO notes on the transmittal sheet, "Do not give the taxpayer an installment agreement. Request is solely to delay collection." This statement is directed to Appeals and is intended to advocate for a particular outcome. As such, it is a prohibited ex parte communication. The group manager returns the file and instructs the RO to prepare a revised transmittal.

5. After the manager signs the transmittal sheet to approve the transfer to Appeals, transmit the file to Appeals. Use the Appeals Case Routing Guide available on the Appeals Intranet site to determine the office where the case is to be sent. Transmit the file using Form 3210, *Document Transmittal*. Include sufficient information on the Form 3210 to identify the hearing request being transmitted. For example, the Name control, last 4 digits of TIN, MFT and tax periods, hearing type and hearing received date. Suspend the control copy of the Form 3210 until the Appeals acknowledgement copy is received. Follow-up with Appeals if acknowledgement of receipt is not received within 30 days.

6. If the taxpayer is an in-business trust fund taxpayer (IBTF) that is not current with employment tax deposits, determine if it qualifies for the Rapid Response Appeals Process (RRAP) and process accordingly. Refer to IRM 5.1.9.3.3.2.1, *Rapid Response Appeals Process (RRAP)*.

5.1.9.3.3.2.1 (06-24-2014)

Rapid Response Appeals Process (RRAP)

1. Appeals gives priority consideration to pyramiding in-business trust fund cases that qualify for RRAP processing. A case meeting all of the following criteria qualifies for RRAP:

- A. The taxpayer is in-business and owes employment taxes.

- B. The taxpayer is not making Federal Tax Deposits (FTD) in the current quarter.
- C. The unpaid tax due, including accruals, is \$10,000 or more.
- D. Receipt of a timely request for a CDP hearing regarding a levy or a levy and a Notice of Federal Tax Lien
- E. There are no existing modules against which levy action can be taken, such as those subject to an equivalent hearing, those for which a CDP levy has already been held, or the one year period to request an equivalent hearing has already expired. If levy action can be taken against other modules, the CDP levy hearing does not qualify for RRAP.
Exception: If the other tax modules for which levy action may be taken has/have a combined assessed balance of less than \$25,000 and if this combined assessed balance is less than 20 percent of the assessed total balance owed on all outstanding tax periods, the case will qualify for RRAP. See examples below:
 Example 1: The taxpayer owes an assessed total balance of \$100,000 in employment taxes. \$82,000 is part of the CDP levy and \$18,000 is part of an EH request for which levy action can be taken. In this case, the CDP levy would qualify for RRAP since the EH period is both less than \$25,000 and 20 percent of the total balance due.
 Example 2: The taxpayer owes \$24,000 in employment taxes. \$19,000 is part of the CDP levy and \$5,000 is part of an EH request on which levy action can be taken. In this case, the CDP levy would not qualify for RRAP because the balance of the EH periods is more than 20 percent of the total balance due.
- F. In those extremely rare and unique cases where Collection believes action is needed to quickly enforce against more of the liability than is available under the criteria mentioned, the Collection group manager should contact the Appeals RRAP Technical Coordinator for the area prior to forwarding the case to Appeals. Only with prior approval from the Technical Coordinator can the case be submitted under RRAP contrary to the criteria listed above.

2. The following cases do not qualify for RRAP:

- A. Equivalent hearings (EH).
- B. Request solely for a CDP NFTL hearing.
- C. Taxpayer qualifies for Disqualified Employment Tax Levy (DETL) processing.
- D. Levy action can be taken against other tax periods and either the total assessed balance on the non-RRAP tax periods is \$25,000 or greater or exceeds 20 percent of the total assessed balance owed on all outstanding tax periods.
- E. Case is not forwarded to Appeals within 45 calendar days of Collection's receipt of the taxpayer's request for a CDP hearing.
- F. Case would otherwise qualify for RRAP but was not submitted by Collection electronically via encrypted email.

3. Appeals will not identify a case as a pyramiding "PY" case or for RRAP processing once it is received in Appeals through the routine CDP referral process. For a case to be considered and worked as a RRAP case, it must be identified by the RO prior to the case transmittal to Appeals. It must be forwarded to Appeals using the RRAP procedures below.

4. After approval by the RO's group manager, the digitized case documents should be forwarded via encrypted email to the appropriate Appeals technical coordinator (RRAP ATM) with a cc to the appropriate Appeals RRAP APS coordinator (RRAP PTM) within 45 days of the date of receipt of the Form 12153 in Collection.

5. Use ICS Sub Code 919 for IBTF RRAP CDP.

6. The case file emailed to Appeals by Collection will include, at a minimum, the following digitized documents:

- Form 12153, *Request for a Collection Due Process or Equivalent Hearing*, or substitute written request
- Form 14461, *Transmittal of CDP/Equivalent Hearing Request*
- Copy of the CDP Notice (Letter 1058 and, if applicable, Letter 3172 and Notice of Federal Tax Lien)
- Copy of the envelope
- Form 433-B, *Collection Information Statement for Businesses*, or other financial documentation, if available
- Additional documentation/correspondence sent by the taxpayer with the Form 12153
- Any additional documentation/information in the case file pertinent to the issue(s) raised by the taxpayer

7. Collection will send RRAP cases via encrypted email to the RRAP PTM and RRAP ATM as listed on the Appeals Intranet site, Case Routing, RRAP Case Routing.

8. The email subject line should contain "CDP IBTF RRAP Case - XXXX" where XXXX reflects the case name control.

9. Once the case is assigned in Appeals, the settlement officer (SO), after completing the initial case review, will:

- Make a substantive contact with the taxpayer via either telephone or letter within 10 business days of assignment .
- Hold a hearing within 14 calendar days of the date of the substantive contact letter or the telephone contact.

Note:

When warranted, the conference can be scheduled for after the 14 calendar day period.

10. After the decision is final, Appeals will fax copies of the Appeals closing documents to the originating RO. At a minimum, this should include:

- The fax cover sheet prepared by the SO
- Form 5402, *Appeals Transmittal and Case Memo*
- Letter 3193, *Notice of Determination Concerning Collection Actions Under Sections 6320 and 6330*, with enclosure
- Appeals Case Memorandum (ACM)
- Other documents obtained by Appeals during the CDP hearing process.

Note:

If the "other documents" exceed 15 pages, they may be mailed to the RO; however, the first four items should always be faxed to the RO.

5.1.9.3.4 (06-24-2014)

Controlling and Monitoring Cases While in Appeals

1. The ICS CDP application will generate a CDP/EH Other Investigation (OI) when the GM approves transfer of the request to Appeals on ICS unless there is already a CDP OI open. The CDP/EH OI serves as a control while the case is pending in Appeals and ensures the case stays on ICS. When Appeals has closed all the hearing requests in Appeals, the RO should alert his or her manager to close the CDP OI using one of the three options.
 - Resolved in Appeals
 - Returned to the Field
 - Erroneously created CDPs.
2. When the group manager (GM) approves the transfer of the CDP to Appeals on ICS, a CDP OI is systemically opened. The CDP OI is automatically assigned to the RO that has the Bal Due case assignment. Once receipt of the CDP in Appeals is confirmed and there is no open Bal Due or Del Ret and no further collection actions are warranted, the CDP OI should be assigned to the CDP Appeals Hold File, AOTO XX91 for monitoring at the group level. Before requesting transfer of the CDP OI to the CDP Appeals Hold File (AOTO XX91), the RO will update the CDP OI Closure Due Date for 270 days from the date Appeals received the CDP.
 - Review AOTO XX91 ICS Notifications periodically for Appeals closures and/or reassignment to an RO.
 - If a new assignment, i.e., Bal Due or Del Ret, is received, the GM will transfer the CDP OI back to the RO.
 - If the new Bal Dues / Del Ret are resolved and Appeals still has an open CDP case, the RO will request transfer of the CDP OI back to the CDP OI hold file, AOTO XX91.
 - If the Bal Due or Del Ret is transferred to another group, the CDP OI also transfers.
3. The CDP case is sent to Appeals using a Form 3210, *Document Transmittal*. Appeals will return the acknowledgment copy to the originating office. If you do not receive an acknowledgement within 30 days, follow-up with Appeals to determine if the case was received. When following up with Appeals, the RO group manager should e-mail the settlement officer team manager for an update to minimize the possibility of ex parte discussions.
4. ICS will generate systemic histories and update the ICS CDP application based on information received from Appeals. Appeals will send data to ICS weekly when:
 - The case is assigned in Appeals for the first time,
 - The case is updated in Appeals, such as a change in hearing type or tax periods added or removed, or
 - The case is closed in Appeals.

The history generates if the case originated in the field and if the case is open on ICS allowing the history to post.

Note:

If Appeals changes the hearing type, i.e., from EH to DP or adds or removes periods to a hearing request, this may effect collection action. The ICS CDP application needs to reflect the hearing conducted by Appeals. If the request is listed as an equivalent hearing on ICS and Appeals determines the request was timely, the RO needs to update ICS CDP to reflect the correct hearing type when notified.

5.1.9.3.5 (02-07-2014)

Collection Action during the Period of the CDP or EH

1. The RO can continue to work with the taxpayer after the request is sent to Appeals, especially if there are other assigned modules that are not part of the hearing request. If a resolution is reached, such as a full pay, CNC determination or an IA and it involves modules in Appeals, the RO should solicit a withdrawal of the hearing request.
 - If a withdrawal is secured, notify Appeals and forward the withdrawal, Form 12256, to Appeals so Appeals can input the TC 521 and close the case. The Settlement Officer will close the CDP case within 10 business days of receipt of a copy of Form 12256.
 - If a withdrawal is secured and the taxpayer has an appeal pending in Tax Court, notify the Counsel attorney assigned the CDP case regarding the proposed collection alternative or if full payment is received.
 - If a resolution is reached but the taxpayer does not withdraw, notify Appeals of the resolution reached.
2. If the RO secures additional information from the taxpayer while the case is pending in Appeals, such as a financial statement or delinquent tax returns, notify Appeals. The notification is a permitted ex parte communication as long as there is no discussion of the merits of the case. This way Appeals will not have to request information already secured. The RO should advise the taxpayer that the information will be provided to Appeals.
3. If an in-business trust fund taxpayer is assessed additional tax periods while other tax periods are pending in Appeals, the RO assigned the case should determine whether levy action, such as a disqualified employment tax levy, is appropriate.
4. The Collection Statute Expiration Date (CSED) is not suspended during equivalent hearing, collection action can continue as appropriate.
5. The authority to file a NFTL is not suspended during the hearing. If the determination is to file a NFTL and the taxpayer disagrees, the taxpayer can request a CAP appeal.
6. While a CDP NFTL hearing is pending, if the RO determines that an additional NFTL needs to be filed on the same type of tax and tax periods that are the subject of the hearing, the collection group manager or designee needs to contact the Appeals Team Manager (ATM) of the assigned hearing officer, preferably via e-mail, to advise them that filing of the NFTL is planned. Determine whether Appeals has new information that may affect the decision. For example, the taxpayer may have provided Appeals with information raising doubt as to the validity of the liability.
7. Monitor the case to ensure that the NFTL is refiled during the refiling period. Refer to IRM 5.12.8, *Notice of Lien Refiling*.

5.1.9.3.5.1 (06-24-2014)

Levy Action during the Period of the CDP or EH

1. If the taxpayer files a timely request for a CDP hearing during the IRC § 6330 notice period, levy actions on the periods that are the subject of the CDP notice must be suspended during the appeal period and while any court proceedings are pending with the following exceptions:
 - Jeopardy levy situations,
 - Levies on state income tax refunds,
 - Levies served on Federal contractors,
 - Disqualified employment tax levies
2. Levy action is generally suspended:
 - On tax periods not subject to the CDP levy hearing, unless all pre-levy notifications have been met,
 - On tax periods subject to an equivalent hearing,

- On periods subject to a CDP NFTL hearing.

unless Collection determines it to be appropriate in the situation. Levy action may be appropriate if:

- Collection is at risk, e.g., dissipating assets, pyramiding additional liabilities;
- Taxpayer raises only frivolous issues;
- Taxpayer is requesting an installment agreement or offer in compromise solely to delay the collection process.

Prior to initiating levy action, check IDRS for actions that may prohibit levy action, i.e., TC 480 (OIC) or TC 971 AC 043 (IA). If there is no evidence on TXMODs of actions in Appeals that would be grounds to delay or prohibit enforcement, then contact the ATM of the assigned hearing officer, preferably via e-mail, to advise them that levy action is planned. Determine whether Appeals has new information that may affect the decision to levy. For example, if Appeals has determined economic hardship within the meaning of IRC § 6343 or secured an IA or OIC, levy action may not be appropriate.

Note:

If levy action is planned during an appeal to the Tax Court or appellate court, contact the Counsel attorney assigned the case to advise him or her of the planned levy action and to determine if there is any new information that may affect the decision to levy.

Note:

Contacting Appeals to determine if Appeals has information that might affect the decision to levy is a permitted ex parte communication. See IRM 5.1.9.5.1, *Permitted Ex Parte Communications*.

3. During an appeal to the Tax Court or appellate court, where the underlying tax is not at issue, levy action may continue if the court determines that the Service has shown good cause not to suspend the levy. Counsel will contact Collection if they are considering a motion to permit levy. In addition, if Collection is aware of situations that warrant levying during the judicial appeal, i.e., pyramiding cases where there are leviable assets, Collection should prepare a memo requesting Associate Area Counsel to file a motion with the court to allow the Service to take levy action. If the court grants the motion, Counsel will contact the assigned RO so that levy action can proceed immediately.

Note:

Levy action is generally suspended on EH modules and non-CDP tax periods that are not part of the CDP case, but are included in a collection alternative that is being reviewed by the Court. The Counsel attorney assigned the CDP case will contact the collection office assigned the case if special circumstances (e.g. jeopardy levy) require levy action on non-CDP modules.

4. In joint liability situations, where only one spouse has requested a CDP hearing, levy action can continue with respect to the spouse who has not requested a CDP hearing. This may occur in situations where the spouses are separated or divorced. Otherwise, levy action will generally be suspended for both spouses. If the hearing request was intended to cover both taxpayers, the CDP hearing request can be amended to list both spouses. The spouse whose name is added should also sign the request for a CDP hearing.
5. In a situation where a levy has been issued, and then the taxpayer files an appeal, either a timely CDP hearing under IRC § 6320 or an EH under IRC § 6320 or 6330, determine if the levy should be released.

Example:

The taxpayer does not respond to the pre-levy notice. A continuous wage levy is issued. The RO then files a NFTL. The taxpayer receives the IRC § 6320 CDP hearing notice and files a timely request for a CDP hearing. A decision needs to be made whether or not to release the levy. Refer to IRM 5.11.2.2.1, *Legal Basis for Releasing Levies*.

6. Actions under automated levy programs, such as the State Income Tax Levy Program (SITLP) and the Federal Payment Levy Program (FPLP), are not suspended during an EH. If appropriate, the automated levy block, TC 971 AC 061, can be placed on each appropriate module. Refer to IRM 5.11.7, *Automated Levy Programs*.
7. If the taxpayer alleges economic hardship under IRC § 6343, consider whether return of levied property is appropriate. Refer to IRM 5.11.2.3, *Returning Levied Property to the Taxpayer*. In a situation where a levy is pending when the taxpayer files a request for an EH, determine if the levy should be released. IRC § 6343 requires the full or partial release of certain levies.

5.1.9.3.6 (02-07-2014)

Suspension of Collection Statute of Limitations

1. The statute of limitations is suspended from the date the Service receives a timely request for a CDP hearing to the date the taxpayer withdraws his or her request for a CDP hearing or the date the determination from Appeals becomes final, including any litigation. The Collection Statute Expiration Date (CSED) is suspended even if the account is full paid as long as the taxpayer does not agree with the offset/payment that full paid the account.
 - A. The date the determination from Appeals becomes final is the date the 30-day period within which the taxpayer could appeal to the Tax Court expires, if the taxpayer does not exercise his/her right to seek judicial review (or 90 days, if the CDP petition includes innocent spouse relief, or 180 days, if CDP petition includes interest abatement).
 - B. If the taxpayer timely petitions the Tax Court, the statute of limitations is suspended and the determination is not final until the court determination becomes final including any appellate court decision.
 - C. If 90 days is not remaining on the statute of limitations when the determination becomes final, the statute of limitations is extended to equal 90 days.
2. Upon receipt of a hearing request, determine if the collection statute needs to be suspended. The collection statute is suspended only when a taxpayer files a **timely** request for a CDP hearing. The collection statute is not suspended on EH cases unless the request includes another basis for suspending the collection statute, such as an innocent spouse request under IRC § 6015.

Example: On March 15, 2012, a taxpayer is issued an IRC § 6330 notice for 941 taxes for the quarter ended December 31, 2011 while the account is in ACS. No request for a CDP hearing is filed. The account is transferred to Field Collection. A 941 tax return for the quarter ending March 31, 2012 is received. The RO issues a CDP levy notice on June 11, 2012 for the quarter ending March 31, 2012. The taxpayer files a Request for a Collection Due Process Hearing on July 2, 2012 that lists both quarters and includes a copy of the notice sent by the RO. The taxpayer would be entitled to receive the following:

- 941 for December 31, 2011 - an EH, no suspension of the collection statute.
- 941 for March 31, 2012 - a CDP hearing, collection statute is suspended.

3. When the CDP collection statute suspension occurs at the same time but differs with other applicable collection statute suspensions, e.g., those under the innocent spouse provisions of IRC § 6015 or bankruptcy, the latest suspension period controls.

5.1.9.3.6.1 (06-24-2014)

Transaction Code TC 520 and TC 521 CC 76/77

1. A TC 520 identifies the beginning date of the collection statute suspension.
2. When the collection statute expiration date (CSED) is to be suspended, Appeals will request input of the TC 520 with the appropriate closing code (CC) for each module subject to the CSED suspension. Appeals will generally use the date the RO lists on the Form 14461 as the date the hearing request was received as the TC 520 date. For CDP hearing requests that are received after the 30-day time period for making a timely request but are postmarked as timely, use the postmark date as the receipt date.
3. TC 520 CC 76 is used if the CDP hearing request is made in response to a CDP NFTL notice (IRC § 6320). TC 520 CC 77 is used if the CDP hearing request is made in response to a CDP levy notice (IRC § 6330). If both IRC § 6320 and IRC § 6330 are applicable, use TC 520 CC 76. Prior to January 2000, TC 520 CC 70 was used for CDP hearing requests.
4. For TC 520s and TC 521s posted as of January 2001, the CSED is systemically calculated and updated. If the recomputed CSED is less than 90 days from the TC 521, the CSED is extended to equal 90 days. The exception to the systemic update of the CSED is IMF accounts involving joint income tax liabilities where only one spouse has requested the hearing. For MFT 30 accounts, input the appropriate IMF CSED TIN indicator with the TC 520. The indicators are as follows:
 - "P" - CSED suspended only for the primary TIN spouse.
 - "S" - CSED suspended only for the secondary TIN spouse.
 - "B" - CSED suspended on both primary and secondary TINs. The CSED is systemically updated when the CSED indicator is "B" .

The CSED is still suspended for the particular spouse when the CSED indicator is "P" or "S" . However, the module will reflect the earliest CSED. When needed, the CSED reflected on the module can be manually updated by the input of a TC 550 with AC 10.
5. A TC 521 is needed to identify the ending period of the CSED suspension. This would be the date the hearing determination is final or the hearing request is withdrawn. If TC 520 with CC 76 or 77 posted in cycle 200101 or later, it must be reversed using TC 521 with CC 76 or 77. If the TC 520 CC 76 or 77 posted BEFORE cycle 200101, then it must be reversed using TC 521 WITHOUT a closing code.

5.1.9.3.7 (01-01-2007)

Conducting the Trust Fund Recovery Penalty (TFRP) Investigation while Case in Appeals

1. When a corporation/partnership owing trust fund taxes requests a CDP hearing or EH, the TFRP needs to be addressed. There is no prohibition against asserting the TFRP against responsible officers while the CDP/EH is pending. Since the statutory period of limitations for assessing the TFRP is **not** suspended while the CDP/EH hearing is pending, the TFRP investigation should continue unless the RO has a reasonable expectation of the account being fully satisfied.
2. The RO should note in the case history whether or not the TFRP investigation is continuing. The investigation can proceed as far as the assertion of the penalty against each responsible person. This includes providing each responsible person with his or her TFRP appeal rights. Before proceeding with assessment of the TFRP, the RO needs to contact Appeals to determine if there is any new information that would affect the decision to assess. In some instances, it may be appropriate to withhold assessment of the TFRP pending the outcome of the hearing.

5.1.9.3.8 (01-01-2007)

CDP and Equivalent Hearing Fast Track Mediation (FTM)

1. FTM is available to taxpayers that qualify for a CDP or EH. A taxpayer can request FTM after a CDP notice is issued. Advise taxpayers considering FTM, that a request for FTM does not extend the time for filing a request for a CDP hearing. Taxpayers requesting FTM during the time period for filing a CDP hearing request must also submit a hearing request to preserve their right to a hearing.
2. After a request for a hearing is filed, taxpayers can request FTM before the case is transferred to Appeals.
3. For a CDP case to qualify for FTM, the taxpayer must have filed all required returns and must be current with employment tax deposits (i.e., are not pyramiding additional employment tax liabilities). In addition, the taxpayer must present complete information regarding the proposed resolution, such as complete financial information. If the taxpayer meets the requirements, the RO may offer the taxpayer the option of using FTM to expedite resolution of the case. This can be done by explaining the FTM option to the taxpayer and providing the taxpayer with Publication 3605, *Fast Track Mediation*.
4. Prior to FTM the taxpayer may first request a conference with the manager. If resolution is not reached, the taxpayer can submit a request for FTM. Both the taxpayer and the RO must sign an agreement to mediate prior to mediation being scheduled. Collection does not have to agree to mediation. However, denial of a mediation request requires approval of the group manager and concurrence by the second level manager. The basis for the denial will be communicated to the taxpayer and documented in the case history.
5. If FTM is recommended, Collection employees will be responsible for completing Form 13369, *Agreement to Mediate*, and a brief summary of issues. The summary is done in a memorandum form. Forward both documents to Appeals. Mediators (Appeals employees) will conduct the session; however, they will not have settlement authority. The taxpayer does not have the option of using a non-Service employee as a mediator. Both parties must agree in order to reach a resolution. Taxpayers need to be advised that if mediation results in an agreement between the taxpayer and Collection, the taxpayer must withdraw the hearing request as part of the final agreement or no agreement will be reached and the case will be forwarded to Appeals for the CDP hearing.
6. The signed Agreement to Mediate and Summary of Issues should be forwarded to the local Appeals Office within three business days of obtaining the taxpayer's signature. Jurisdiction and statute of limitation responsibility remains with Collection and, therefore, the case file is not forwarded to Appeals. Local Appeals and Collection offices will work out their own procedures for prompt transmittal of cases to the local Appeals office.
7. Collection will send a copy of the Agreement to Mediate to the taxpayer or representative. The mediator will attempt to schedule the mediation session with the taxpayer and Collection within five business days after the case is assigned in Appeals. Generally, the mediation begins with an initial joint discussion at which all parties are present. Both the taxpayer and Collection will be given time to present their position. After the initial joint discussion, the mediator may hold individual discussions with the parties. At any time, either party may withdraw from the process prior to reaching a resolution by notifying the other party and the mediator in writing. The entire process normally takes an average of 30-40 days to complete. If the mediation session cannot be held within a reasonable amount of time, the mediator may consider returning the request. The mediator will attempt to bring the parties to a mutual resolution of the issues during the mediation session. If, after a reasonable time, it is apparent that the parties will not reach resolution, the mediator may terminate the mediation session and the case will be referred to Appeals for the CDP hearing. If resolution is reached, the taxpayer needs to withdraw the hearing request to finalize the agreement. If the taxpayer does not withdraw the request for a hearing, the case goes forward to Appeals.
8. Refer to Rev. Proc. 2003-41, 2003-1 C.B 1047, SB/SE - *Appeals Fast Track Mediation Procedures*, for additional information.

5.1.9.3.9 (02-07-2014)

Appeal Process

1. Appeals makes the final determination about timeliness of a CDP or EH request.
 - A. If the CDP hearing request is timely, the taxpayer will receive a CDP hearing.
 - B. If the CDP hearing request is untimely, the taxpayer will receive an EH if the taxpayer timely requests one.
2. In both instances, the hearing is held in the Office of Appeals. It is conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax. However, the taxpayer may waive this requirement.
3. To the extent practicable, a hearing under IRC § 6320 (NFTL) and a hearing under IRC § 6330 (levy) will be held simultaneously.

4. The appeals officer is required to verify that the requirements of the Internal Revenue Code or administrative procedure with respect to the proposed collection action have been met. Appeals will verify:

- A. That the taxpayer has a valid tax liability for the period and its amount and
- B. That procedures for filing the NFTL or issuing the L-1058 have been met.

Clearly and completely document preliminary actions as Appeals will rely on the information in the case file or will seek clarification of items that appear to be incomplete within the case file.

5. Appeals may request and Collection will secure information pertaining to the taxpayer's appeal, such as verification of financial information and courthouse checks. Appeals will request this information via an Appeals Referral Investigation (ARI) or Form 2209, *Courtesy Investigation*. The request will state the specific information requested. If additional contact with the taxpayer is needed, Collection will make the contact on behalf of Appeals.

Note:

ARIs are mandatory. See IRM 5.1.8.5.1, *Types of Mandatory OIs*.

6. During the appeal process, the taxpayer or his or her representative may raise at the hearing any relevant issue relating to the unpaid tax or the proposed levy, including:

- Appropriate spousal defenses,
- Challenges to the appropriateness of collection actions,
- Offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an IA, or an offer-in-compromise,
- Issues related to an economic hardship determination, and
- Challenges to the existence or amount of the underlying tax liability including a liability reported on a self-filed return for any tax period specified on the CDP notice if he or she did not receive a statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability.

7. A non-liability issue may not be raised at the hearing if:

- A. The issue was raised and considered at a previous hearing under IRC § 6320 or in any other previous administrative hearing before appeals or judicial proceeding; and
- B. The person seeking to raise the issue participated meaningfully in such hearing or proceeding.
- C. This prohibition does not apply to consideration of collection alternatives when there has been a significant change in the taxpayer's financial condition. In that situation, a taxpayer may continue to make new proposals for an OIC or IA, or other collection alternative, even if one was raised and rejected at a previous hearing or administrative proceeding.

5.1.9.3.9.1 (02-23-2012)

CDP and Offer in Compromise (OIC) Cases

1. During a CDP or an EH assigned to Appeals, an OIC may be submitted by the taxpayer as a collection alternative resolution. Refer to IRM 8.22.7.10, *Offers in Compromise (OIC)*, for procedures on offers submitted during CDP or EH hearings.
2. In some instances the determination of an acceptable OIC amount may require input from Collection. Appeals will generally work the offer investigation internally using electronic research sources and taxpayer documentation, particularly when the offer is not complex or does not require any field verification. If complex financial analysis issues surface, either regarding particular asset(s) or the offer as a whole, Appeals may send an ARI to Collection for assistance. Appeals will retain jurisdiction of the offer in these instances.
3. An Appeals Referral Investigation (ARI) on Form 2209, *Courtesy Investigation*, or Form 10467, *Appeals Division Feedback Report and Transmittal Memorandum*, requesting Collection Information Statement (CIS) investigation and analysis will be assigned to a RO in the field office covering the taxpayer's location.
4. Completed CIS investigations are returned to Appeals via Form 3210, *Document Transmittal*.

5.1.9.3.10 (02-07-2014)

Appeals Determination

1. The Appeals determination will take into consideration the following:
 - A. The verification that the requirements of the Internal Revenue Code and administrative procedure have been met;
 - B. The issues being raised; and,
 - C. Whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary.
2. For a timely filed due process hearing, the taxpayer will receive a Notice of Determination letter that explains the taxpayer's right to petition Tax Court within 30 days of the date of the letter. Appeals Processing (APS) will suspend the case for 60 days after issuing the Notice of Determination to the taxpayer. The suspension period will be longer if the CDP hearing included a spousal defense determination under IRC § 6015 or an interest abatement determination under IRC § 6404. If no further appeals are filed, the Notice of Determination is final. If the taxpayer contacts you during the Notice of Determination suspension period, you can assist the taxpayer in carrying out the determination of Appeals, (i.e., Installment Agreement) or otherwise assist in resolving the liability.

Note:

The CDP levy suspension remains in effect until the determination is final. Refer to IRM 5.1.9.3.5.1, *Levy Action during the Period of the CDP or EH*.

3. For an EH, the taxpayer will receive a decision letter. In an EH, the decision by Appeals is final, and there is no appeal to court, except as it relates to certain spousal defenses under IRC § 6015 (if a petition is filed within 90 days after denial is issued), denial of a request for interest abatement (if a petition is filed within 180 days after denial), or if the taxpayer disagrees with Appeals' decision that the taxpayer's CDP hearing request was not timely.
4. In both the Notice of Determination letter and decision letter, Appeals will provide clear information regarding any agreement reached with the taxpayer, any relief given, and any necessary actions required by Collection. If the tax liability is upheld or the enforcement action is appropriate, the letter will so state, even if the appeals officer decides to provide the taxpayer a different collection alternative. The letter will also set forth specific ramifications should the taxpayer not comply with the terms of the agreement.
5. Appeals will generally follow the Service guidelines for collection set forth in the Internal Revenue Manual (IRM). Appeals, however, also considers the impact of the hazards of litigation, which may be applicable especially if tax liability is the issue. In addition, Appeals is required to balance tax collection needs with the legitimate concerns of the taxpayer that any collection action be no more intrusive than necessary and renders its determination accordingly.

5.1.9.3.11 (06-24-2014)

Tax Court Appeal

1. After Appeals makes its determination in a CDP hearing, the taxpayer may, within 30 days of the date of the determination letter, petition the Tax Court.
2. To allow time to be notified of any court petitions, Appeals will hold cases subject to Tax Court review for an additional 30 days (60 days after issuance of the Notice of Determination). If the taxpayer reaches an agreement with Appeals and does not wish to go to court, Appeals employees may use Form 12257, which serves as a summary Notice of Determination, and waives the right to go to court and the suspension of levy action. If the taxpayer waives the right to judicial review, the determination is final and the case can be returned to collection.
3. Once Appeals issues the notice of determination, the taxpayer may raise collection alternatives with Collection. If the taxpayer has an appeal pending in Tax Court, notify the Counsel attorney assigned the CDP case regarding the proposed collection alternative or if full payment is received.
4. In an EH, the decision is final when Appeals issues its decision letter, except as it relates to certain spousal defenses under IRC § 6015 and denials of interest abatement under IRC § 6404.

5.1.9.3.11.1 (02-07-2014) Post Petition Investigation

1. While the Tax Court case is pending, the Counsel attorney may determine that an issue should be reviewed by Collection. This may occur, for example, when there is a substantial change in the taxpayer's circumstances since the CDP hearing or the taxpayer did not respond to Appeals during the CDP hearing due to illness or travel and the taxpayer is now offering a viable collection alternative which would resolve the case.
2. The assistance requested by Counsel may include review and investigation of an OIC or consideration of a proposed IA or possible currently not collectible determination. Counsel will inform Collection of any deadlines imposed by the court on the Service's consideration of the collection alternative, and for seeking any continuances necessary for adequate investigation and review.
3. If the issue involves an OIC, Counsel will forward the OIC to the appropriate COIC site to complete a processability determination and transfer to an OIC drop point group, if appropriate. Refer to IRM 5.8.10.11.2, *Docketed Collection Due Process (CDP) Cases*. For other collection alternatives, Counsel will contact Advisory to determine the appropriate collection office to provide the assistance. If the CDP case originated in a field group, there will be a Non Field Other Investigation (NF OI) opened using AC 123 (Appeals/Counsel Liaison) as a control. An Other Investigation (OI) will be forwarded to the original Field Collection group unless there is already an open control in the originating group. In rare instances, a CDP case that originated in ACS, may require field consideration. The request will be referred to the group assigned that zip code. Advisory will refer the request via OI.

Note:

Counsel requests are mandatory OIs. Refer to IRM 5.1.8.5.1(3), *Types of Mandatory OIs*. Extensions to the OIs issued will not be granted without Counsel concurrence.

Note:

If the CDP appeal originated from an ACS case and does not need field consideration, it will be referred back to the ACS CDP coordinators for action.

4. Upon completion of the investigation, if a collection alternative is reached, provide sufficient information back to Counsel to document that resolution or if a resolution could not be reached, document the reasons why. For example, if an IA is secured, provide the payment terms (amount and due date). If a determination is made that the account is not collectible, provide a copy of the Form 53, *Report of Currently Not Collectible Taxes*, for Counsel. If full payment is available, notify Counsel of the collectibility of the account. The NF OI and the OI will be closed upon completion of the investigation.
5. If the Tax Court case is settled based on the collection alternative reached, Counsel will return the closed docketed CDP case to Appeals. If Counsel obtains a Stipulated Decision with a waiver of the 90-day appeal period, Counsel will return the case immediately to Appeals. If the Stipulated Decision has no waiver language, Counsel will hold the case for 100 days. Counsel will provide information regarding the collection alternative to allow Appeals to complete the back end process.

5.1.9.3.12 (06-24-2014) After the Appeals Determination is Final

1. Once the hearing determination is final, the clerical unit of Appeals, Appeals Processing Service (APS), completes back end processing. APS will
 - Input the TC 521, when applicable,
 - Input IAs (only exception are manually monitored IAs which Appeals cannot input to IDRS. If Appeals has accepted an IBTF IA, see (4) below),
 - Input CNC determinations,
 - Input adjustments,
 - Input TC 971 AC 277 (CDP request) or AC 280 (EH). These AC's identify when Appeals closes the hearing request.
2. APS will return the case file to the referring Collection group with copies of all correspondence generated during the hearing along with the applicable Appeals closing letter:
 - A. Notice of Determination (CDP),
 - B. Decision letter (EH),
 - C. Form 12257 *Summary Notice of Determination* and cover letter, or
 - D. Form 12256 Withdrawal and acknowledgement letter.
3. When you receive the case back from Appeals, sign and return Form 3210 to APS.
4. Review the determination and document a plan of action with respect to the determination.
 - If the request was closed as a premature referral because it was not processable, follow procedures in IRM 5.1.9.3.2.3, *Perfection of Hearing Requests*.
 - If the request was closed as a premature referral because the taxpayer is not entitled to a hearing, for example, no CDP notice issued, notify the taxpayer and explain what appeal options are available.
 - If the request was closed as a disregarded hearing request, refer to IRM 5.1.9.3.16, *Hearing Requests with Frivolous, Delaying or Impeding Issues*.
 - If Appeals determines a request or periods included on a request were processed to Appeals as timely but are not timely, Appeals will conduct a separate CDP timeliness determination (CDPTD). Refer to IRM 5.1.9.3.2.5, *Separate Timeliness Determination*.
 - If Appeals has accepted an IBTF IA, Collection is responsible to address the TFRP prior to forwarding the IBTF to CCP. If needed, secure Form 2750 waivers from all responsible parties, recommend assertion of the TFRP or when applicable, create a Trust Fund Recovery Investigation Other Investigation (OI) on ICS to control completion of the TFRP assessment. Refer to IRM 5.14.7.4.1, *Trust Fund Recovery Penalties and Installment Agreements*.
 - If Appeals determines trust fund liabilities are CNC, Collection is responsible to address the TFRP. When applicable, create a Trust Fund Recovery Investigation OI on ICS to control completion of the TFRP assessment.

- If not previously done, make a Notice of Federal Tax Lien (NFTL) filing determination. Refer to IRM 5.12.2.3, *Notice of Federal Tax Lien Filing Determination (Pre-filing Considerations)*. If the determination is to file a NFTL and the taxpayer disagrees, explain the CAP procedures to the taxpayer.
5. When Appeals has closed all the hearing requests in Appeals, the RO should alert his or her manager to close the CDP OI using one of the three options.
 - Resolved in Appeals
 - Returned to the Field
 - Erroneously created CDPs.
 6. Upon receipt of a closed case, if the TC 521 to reverse the Status 72 has not been input, contact the Appeals Account Resolution Specialist (AARS) via email at *AP Account Resolution for corrective action.

5.1.9.3.13 (02-07-2014)

Jurisdiction Retained by Appeals

1. The Office of Appeals retains jurisdiction with respect to any Notice of Determination issued under IRC § 6320 or IRC § 6330, including subsequent appeals requested by the taxpayer who requested the original Collection Due Process hearing on issues regarding:
 - A. Whether the taxpayer believes Collection did not carry out Appeals' determination as it was stated.
 - B. Whether there is a change in the taxpayer's circumstances which affects Appeals' determination.
2. Taxpayers, who request subsequent review of their case by Appeals under the changed circumstance provision under retained jurisdiction, must first exhaust all administrative remedies, such as having a conference with the Collection manager.
3. If there has been a change in circumstances with respect to the taxpayer affecting the IRC § 6320 or IRC § 6330 determination, Appeals, under the retained jurisdiction provision, may consider only those issues that were raised and considered at the previous hearing.
4. The statutory period for collection is not suspended during the retained jurisdiction proceeding.
5. NFTL filing and levy actions are not required by statute to be suspended during the retained jurisdiction proceeding. However, even when not required by statute, levy action is generally suspended unless collection is at risk. When it is identified that collection is at risk, Collection personnel should initiate the appropriate actions to protect the government's interest. Evidence that the taxpayer is dissipating assets is an example where collection is at risk. Also, pyramiding of additional tax liabilities, including unpaid employment tax deposits and unfiled tax returns while in Appeals, are indicators that collection may be at risk. Refer to IRM 5.7.8, *In-Business Repeater or Pyramiding Taxpayers*, for additional information regarding in-business trust fund taxpayers. The group manager must concur with the planned levy action during the appeal. Appeals must be advised immediately of any decision to take levy action.
6. Actions under automated levy programs, such as the SITLP and the FPLP, are not suspended during a retained jurisdiction hearing. Appeals can address the lien or levy action during the retained jurisdiction hearing.
7. Similar to a Collection Appeal Program (CAP) appeal (Refer to IRM 5.1.9.4, *Collection Appeals Program (CAP)*), the taxpayer will receive a letter upon completion of the review under the retained jurisdiction provision. The decision by Appeals is final with no judicial review.

5.1.9.3.14 (02-07-2014)

Jeopardy Levy, State Income Tax Levy Program (SITLP), and Federal Payment Levy Program (FPLP)

1. There are exceptions to the pre-levy notice requirements of IRC § 6330. They are:
 - A. When the collection of tax is in jeopardy under IRC § 6331(a), or
 - B. A levy is served on a State to collect a Federal tax liability from a State tax refund, referred to as the SITLP, or
 - C. A disqualified employment tax levy is served, or
 - D. A Federal contractor levy is served.
2. In the above situations, when the taxpayer has not previously received an IRC § 6330 *Notice of Intent to Levy and Notice of Your Right to a Hearing*, the taxpayer will be given the opportunity for a hearing within a reasonable period of time after the levy. In a jeopardy levy situation, the taxpayer receives Letter 2439 which advises the taxpayer of the right to request a hearing under IRC § 6330. Under SITLP, the taxpayer receives CP 92 or CP 242, *Notice of Levy on Your State Tax Refund, Notice of Your Right to a Hearing*. Refer to IRM 5.11.3, *Jeopardy Levy Without a Jeopardy Assessment* and IRM 5.19.9, *Automated Levy Programs*.

5.1.9.3.15 (11-12-2014)

Disqualified Employment Tax Levy

1. A disqualified employment tax levy (DETL) is comprised of these three components:
 - A. A levy served to collect an employment tax liability;
 - B. The levy is for taxes owed by a taxpayer who previously requested a CDP levy hearing;
 - C. The prior CDP hearing involved unpaid employment taxes that arose in the two-year period before the period for which the levy is served.

Even if a taxpayer's employment tax liabilities meet the criteria for a DETL, this action is discretionary and determined on a case by case basis. The Service has the option to issue a pre-levy CDP notice for DETL periods, if the situation warrants. For example, if there has been no contact with the taxpayer within the last 180 days, the issuance of a pre-levy CDP notice might be advisable to resolve the issue. Also, if no IRC § 6331(d) notice (CP 504 notice or "Status 58" notice) has been issued, then issuing the L-1058 meets both the requirements of IRC § 6331(d) and IRC § 6330.

2. The prior request refers to a timely, processable CDP hearing request. Refer to IRM 5.1.9.3.2.1, *Timeliness of the CDP Hearing Request*, for information regarding the timeliness and processability of CDP hearing requests. Even if the request is subsequently withdrawn, it qualifies as a prior hearing request.

Note:

Requests for an equivalent hearing (EH) or untimely requests for CDP hearings do not satisfy the requirement of having had a prior hearing request. Thus, if the taxpayer requests an EH or submits an untimely request for a CDP hearing, that request cannot be used as a basis for a DETL.

Note:

A post-levy request for a CDP hearing made in response to a Letter 1058-D, Notice of Levy and Notice of Your Right to Hearing, regarding a post-levy CDP notice, a state refund levy, a levy served on a Federal contractor or a jeopardy levy also can constitute a prior CDP levy hearing request as a basis for a DETL.

3. The following can be helpful in determining if the taxpayer requested a prior CDP levy hearing involving unpaid employment taxes.

- A. First hand knowledge of a prior CDP levy hearing. In most instances involving pyramiding trust fund taxpayers, the RO assigned the case will be aware of previously requested hearings.
 - B. Case history.
 - C. A TC 971 AC 630 on prior modules indicates a prior timely levy hearing request.
 - D. By contacting Appeals at 559-233-1267 to see if they have record of a prior hearing request received in Appeals.
4. If the taxpayer requested a prior CDP levy hearing involving employment taxes, determine if the CDP levy tax periods occurred in the two-year "look back" period. The two-year look back period is measured from the beginning of the period for which the DETL is served. If the CDP levy hearing periods fall within this two-year period, the new period meets the criteria for a DETL. See examples below.

Prior CDP Levy Hearing for 941 Quarter Ending	New 941 Tax Assessed for Quarter Ended	Beginning Date for New 941 Tax Quarter	Look Back Period		Did the Quarter for the Prior CDP Levy Hearing Fall within Look Back Period?	Does New 941 Tax Quarter Qualify for DETL?
			Start with Beginning Date for New 941 Tax Quarter	Then "Look Back" (subtract) 2 years		
12/31/2012	06/30/2013	04/01/2013	04/01/2013	04/01/2011	Yes	Yes
12/31/2012	03/31/2012	01/01/2012	01/01/2012	01/01/2010	No	No
03/31/2011	06/30/2013	04/01/2013	04/01/2013	04/01/2011	No	No

5. If a DETL is served, the post-levy CDP notice is sent with the taxpayer's copy of the levy. This should be done as soon as possible but no more than 10 days after the levy. Letter 1058-D, *Notice of Levy and Notice of Your Right to a Hearing* is used to provide post levy CDP rights. If using the mail to deliver the post-levy CDP notice, it should be sent to the taxpayer's last known address by certified or registered mail. Include a copy of the levy, Form 12153, *Request for a Collection Due Process or Equivalent Hearing*, Pub 594, *The IRS Collection Process*, and Pub 1660, *Collection Appeal Rights*, with the letter.

Note:

If the taxpayer received a pre-levy CDP notice for the period being levied, do not issue a post-levy CDP notice.

6. Process the post-levy DETL hearing request in the same way as other hearing requests. If a timely filed post-levy CDP hearing request is filed, the CSED is suspended.
7. A DETL levy may be served during a timely requested pre- or post-levy CDP hearing or judicial review of such hearing to collect employment tax liabilities (DETL tax periods) subject to the hearing. For example, a DETL levy may be served during a hearing or judicial review if collection is at risk (e.g., taxpayer's business is deteriorating or taxpayer is pyramiding).
- If the DETL levy is to take place during the hearing, check IDRS for actions that may prohibit levy action, i.e., TC 480 or TC 971 AC 043. If there are no apparent TC codes, then contact the Appeals Team Manager of the assigned hearing officer, preferably via e-mail, to inform Appeals that levy action will be taken. Determine whether Appeals has information that prohibits levy or may affect the decision to levy.
 - If the DETL levy is to be issued during the judicial review, contact the Counsel attorney assigned the case to advise him or her of the planned levy action and to determine if there is any new information that may affect the decision to levy.

**5.1.9.3.16 (02-07-2014)
Hearing Requests with Frivolous, Delaying or Impeding Issues**

1. If the taxpayer provides a frivolous basis for requesting a hearing, then that portion of the hearing request is to be treated as if the hearing request was not submitted. In addition, IRC § 6702(b) provides for a penalty of \$5,000 if any portion of a request for a hearing is based on a "specified frivolous position," or reflects a "desire to delay" or impede the administration of federal tax laws.

Note:

The penalty under IRC § 6702(b) does not apply if the hearing request is a request for an Equivalent Hearing (EH). Where the taxpayer makes a hearing request on Form 12153 (or a successor form) and checks the box that states "I would like a hearing equivalent to a CDP hearing if my CDP hearing request is too late," and the Service receives the form outside the 30-day period the request should be treated as a request for an EH and the penalty does not apply.

If	Then
A timely CDP Hearing request is made under IRC § 6320 or 6330	Treat the request as a CDP request and the IRC § 6702(b) penalty applies.
The request is untimely and (i) it contains no request for an EH if late or (ii) Form 12153 is used and the EH box is not checked	Treat the request as an untimely CDP request and the IRC § 6702(b) penalty applies.
The request is untimely and (i) it contains a request for an EH if late or (ii) Form 12153 is used and the EH box is checked	Treat the request as a request for an EH and the IRC § 6702(b) penalty does not apply.

2. If a taxpayer files a hearing request that includes a reason that appears to be frivolous or reflects a "desire to delay" or impede the administration of federal tax laws, forward the request to Appeals. Note "Frivolous Issue Raised" on the Form 3210, *Document Transmittal*. Appeals will make the determination regarding whether the hearing request or any part of the hearing request is based on a "specified frivolous position," or reflects a "desire to delay" or impede the administration of federal tax laws.
- A. A request is deemed frivolous if the sole reason for the request is based on a specified frivolous position identified by the Service in Notice 2010-33 or its successor notice and any revenue rulings issued since the publication of the notice that identifies frivolous argument.
 - B. A request is deemed to reflect a "desire to delay" or impede the administration of federal tax laws if it only lists a reason that, while not one of the published specified frivolous positions, is a position which on its face has no basis for validity in existing law, or which has been deemed frivolous in a published opinion of the United States Tax Court or other court of competent jurisdiction.
3. In cases in which the IRC § 6702(b) penalty might apply, if a frivolous or "desire to delay" reason is the only issue raised, Appeals will issue a letter to the taxpayer that will give them 30 days from the date of the letter to amend the request, directing the taxpayer to either
- A. Withdraw the reason and provide a valid reason based on existing law; or
 - B. Withdraw the entire hearing request.

The taxpayer must amend or withdraw the request in writing to avoid the \$5,000 IRC § 6702(b) penalty. If the taxpayer does not take corrective action, Appeals will disregard the hearing request and return the case to the originating Collection office.

4. If, in addition to a frivolous or "desire to delay" reason, the taxpayer provides a non-frivolous issue, such as hardship or innocent spouse claims, Appeals will disregard the frivolous/"desire to delay" portion of the hearing request and conduct the hearing only on the legitimate issue. In cases in which the IRC § 6702(b) penalty might apply, Appeals will issue a letter giving the taxpayer 30 days from the date of the letter to withdraw the frivolous or "desire to delay" position to avoid the \$5,000 IRC § 6702(b) penalty as well as to schedule a conference for the legitimate issue. After the hearing, Appeals will issue a Notice of Determination or Decision Letter addressing the legitimate issues and will include a statement that the taxpayer also raised a frivolous or "desire to delay" position if such position or "desire to delay" reason is not withdrawn.

5. Appeals will not make a determination regarding the assessment of the IRC § 6702(b) penalty. However, it will identify when the request meets the criteria for penalty assessment. The hearing request containing a frivolous or "desire to delay" position will be returned to Collection when an entire hearing is disregarded or when the hearing is concluded if a legitimate issue is raised in addition to a frivolous or "desire to delay" position. Appeals will return the case with the following:
 - A. Form 5402, *Appeals Transmittal and Case Memo* - It will include a statement that Appeals has determined that the issues raised in the CDP/EH request were either a "specified frivolous position", identified by the Service in Notice 2010-33, or intended to delay or impede the hearing process,
 - B. A copy of the taxpayer's frivolous CDP/EH hearing request (Form 12153),
 - C. A copy of the letter or letters Appeals issued soliciting a withdrawal of taxpayer's "specified frivolous position" or "desire to delay" position,
 - D. A copy of Appeals case history notes documenting any discussion it had with the taxpayer regarding the withdrawal request,
 - E. A copy of any written communication received from the taxpayer in response to the withdrawal solicitation, and
 - F. A copy of the notice of determination or decision letter (for cases where the taxpayer raises a legitimate issue and an un-withdrawn frivolous or desire-to-delay issue).
6. Upon receipt of the information from Appeals that the request meets the criteria for assessment of the \$5,000 IRC § 6702(b) penalty, review the documentation to verify that the hearing request includes a frivolous "desire to delay" position that was not withdrawn. Once criteria for penalty assessment has been verified, the collection employee will take the necessary steps to have the penalty assessed.
7. To recommend assessment of the penalty, prepare Form 3210, *Document Transmittal* addressed to Ogden Compliance Services, Attn: FRP, M/S 4390, Sr. Technical Advisor, 1973 N. Rulon White Blvd, Ogden, Utah, 84404. List the following on the Form 3210.
 - TIN and Name Control
 - MFT 55 for IMF or MFT 13 for BMF and Period (if multiple periods, use the latest period on the hearing request)
 - Penalty Reference Code 543 which is used for IRC § 6702(b) penalties

Attach the following to the Form 3210:

- A copy of the taxpayer's CDP/EH hearing request,
- A copy of the letter or letters Appeals issued soliciting a withdrawal of the taxpayer's "specified frivolous position" or desire-to-delay position,
- A copy of Appeals case history notes documenting any discussion the Appeals Officer had with the taxpayer regarding the withdrawal request,
- A copy of any written communication received from the taxpayer in response to the withdrawal solicitation, and
- Form 5402, *Appeals Transmittal and Case Memo*. It will include a statement that Appeals has determined that the issues raised in the CDP/EH request were either a specified frivolous position identified by the Service in Notice 2010-33 or intended to delay or impede the hearing process.

The group manager will document approval of the penalty assessment by writing Determination to assess penalty pursuant to IRC § 6702(b) approved on the Form 3210 and sign the Form 3210. The request for penalty assessment can be sent to or faxed to Ogden at 801-620-2422. The Frivolous Return Program at the Ogden Compliance Services Campus will review the documents and process the request for penalty assessment. Follow-up with Ogden if Ogden does not acknowledge receipt of the Form 3210 within 15 days.

8. IRC § 6702(d) authorizes the reduction of the frivolous tax submission penalties assessed under IRC § 6702 if it is determined that a reduction would promote compliance with and administration of the federal tax laws. Rev. Proc. 2012-43 provides eligibility requirements for reduction. For additional information, refer to IRM 20.1.10.3, IRC § 6702(d) *Reduction of Frivolous Submission* IRC § 6702 *Penalties* and IRM 4.10.12, *Frivolous Return Program*.

5.1.9.4 (02-07-2014)

Collection Appeals Program (CAP)

1. A taxpayer, or a third party whose property is subject to a collection action, may appeal the following actions under CAP:
 - A. Levy or seizure action that has been or will be taken
 - B. NFTL that will be or has been filed
 - C. A filed special condition NFTL attaching taxpayer property held in the name of a third party (i.e. a nominee, alter ego, transferee, etc. NFTL)
 - D. Denials of requests to issue lien certificates, such as subordination, discharge or non-attachment as well as denials of requests to withdraw an NFTL
 - E. Rejected, proposed for modification, modified, proposed for termination or terminated installment agreements
 - F. Disallowance of taxpayer's request to return levied property under IRC § 6343(d)
 - G. Disallowance of third-party property owner's claim for return of wrongfully levied property under IRC § 6343(b)
2. A taxpayer may appeal in CAP:
 - A. Levy or seizure on each asset or even the same asset previously levied if a newly discovered legal defect is the issue, or the taxpayer's circumstances have changed, or new issues have arisen. The reason for this is that each levied or to be levied asset may have different issues. For example, a different account than previously levied on may actually be the asset of the child of the taxpayer but the taxpayer's SSN is on the account. However, subsequent levies on the same asset, e.g., the same bank account within a reasonable amount of time, are not entitled to another CAP appeal unless there is a legal issue on the subsequent levy, the taxpayer's circumstances have changed, or new issues have arisen.
 - B. NFTL filed in each subsequent location
 - C. Each rejection or termination of an installment agreement
3. Third parties claiming property was wrongfully levied are entitled to CAP before the levy proceeds are turned over to the Service. Once the levy proceeds are turned over, the third party must submit an administrative claim to Advisory under the procedures described in Pub. 4528, *Making an Administrative Wrongful Levy Claim Under Internal Revenue Code (IRC) Section 6343(b)*. If the administrative claim is denied, the third party can request a CAP hearing about the denial.
4. A taxpayer who claims that the levy is "erroneous" (Refer to IRM 5.11.2.2.2(4), *Wrongful and Erroneous Levies*) is entitled to a CAP before the levy proceeds are turned over to the Service. Once the levy proceeds are turned over, the taxpayer must make an administrative claim under Treasury Reg. 301.6343-3(h). If the administrative claim is denied, the taxpayer can request a CAP appeal about the denial.
5. If a taxpayer seeking to file a CAP appeal is also entitled to a CDP hearing, tell the taxpayer that there is a strict time frame for requesting a CDP hearing. Explain the differences between a CAP appeal and a request for a CDP hearing so the taxpayer can make an informed decision. Document the discussion in the case history. The decision to request a CDP hearing or a CAP appeal belongs to the taxpayer. A taxpayer may request both a CAP and a CDP on the same event, i.e. proposed levy. If an issue is raised and decided in a CAP appeal that concluded before the taxpayer requests a CDP hearing and the taxpayer participated meaningfully in the CAP appeal, the

issue may not be raised in a CDP hearing, unless new information is presented. The determination about whether an issue raised in a CAP appeal can be raised in a CDP hearing will be made by Appeals. A CAP appeal can provide an expedited review of a specific collection action that may satisfactorily address the taxpayer's concern. The CDP hearing provides for the submission of collection alternatives, further judicial review, and retained jurisdiction.

5.1.9.4.1 (06-24-2014)

Exclusions from CAP

1. Several collection issues have separate appeal procedures in place. When a taxpayer requests an appeal under CAP in error, advise the taxpayer of the correct appeal procedures. Examples of such requests are:
 - Pre or post assessment of Trust Fund Recovery Penalties
 - Rejection of Offer in Compromise
 - Penalty appeals
 - Jeopardy levies: unless the time to appeal under IRC § 7429 has expired or the jeopardy levy is not subject to IRC § 7429 review and the taxpayer will not be given a CDP hearing (i.e., no hearing request was submitted within 30 days of the notice granting CDP rights or a prior CDP hearing was held for the liability at issue) For example, CAP may be available for a jeopardy levy issued during an IA, OIC, or on the date of a summons. Refer to IRM 5.11.3, *Jeopardy Levy without a Jeopardy Assessment*.
 - Audit reconsideration
 - Claims for refund or abatement
 - Original requests for return of levied property
 - Actions under the control of a court of competent jurisdiction.
2. CAP cannot be used to determine a taxpayer's liability including reopening examinations or claims for refund. Examination reconsiderations and claims are appealable under their own appeals procedures. Refer to IRM 5.1.15.4.4.4, *Appeal Rights on Reconsiderations*.
3. Cases that have been referred to the Department of Justice are excluded from CAP.
4. Cases on taxpayers under the control of Criminal Investigation (CI) where CI concurs with collection activity may be reviewed under a CAP. Follow CAP procedures. Appeals will generally delay a CAP hearing during the pendency of criminal investigation and proceedings, unless the determination is made consistent with Policy Statement P-4-26 that the CAP hearing will not imperil prosecution.
5. CAP cannot be used to address issues not within the scope of Internal Revenue laws, i.e., moral, religious, solely frivolous requests, or requests that reflect a "desire to delay" or impede the administration of federal tax laws.
6. CAP cannot be used to address NFTL filing determinations made by Appeals employees in CDP resolutions, such as NFTL filing in connection with payment agreement, CNC and deferred payment OIC.
7. CAP cannot be used to address Collection's decision not to "release" a lien. Refer to Treas. Reg. 301.6326-1(f) and IRM 5.12.3.9, *Erroneously Filed NFTL*.
8. Refer taxpayers to the Taxpayer Advocate Service (TAS) (Refer to IRM Part 13, *Taxpayer Advocate Service*) when the contact meets TAS criteria (Refer to IRM 13.1.7, *TAS Case Criteria*) and you can't resolve the taxpayer's issue the same day. The definition of "same day" is within 24 hours. "Same day" cases include cases you can completely resolve within 24 hours as well as cases in which you have taken steps within 24 hours to begin resolving the taxpayer's issue. Do not refer "same day" cases to TAS unless the taxpayer asks to be transferred to TAS and the case meets TAS criteria. Refer to IRM 13.1.7.4, *Same-Day Resolution by Operations*. When you refer cases to TAS, use Form 911, *Request for Taxpayer Advocate Service Assistance (and Application for Taxpayer Assistance Order)*, and forward to TAS. While TAS is attempting to work with the taxpayer to resolve the tax problem, action to collect the tax, such as filing of NFTL or levy, while not prohibited, will generally be suspended. If the RO believes such action is necessary, e.g., the taxpayer is dissipating assets; TAS should be contacted and advised of Collection's plans in advance.

5.1.9.4.2 (02-07-2014)

Request for a CAP Appeal

1. If the taxpayer or third-party requests a CAP appeal, the taxpayer or third-party must first discuss the case with the Collection manager. The Collection manager or designee must reply to the request for a CAP appeal conference in a timely manner not to exceed two workdays.

Note:

The discussion with the group manager on proposed termination, proposed modification, modified, terminated or rejected IAs is not mandatory due to the statutory right to appeal these actions. These appeal requests can be forwarded directly to Appeals without prior group manager conference. However, holding a group manager conference for these types of cases is encouraged.
2. Once a seizure action is taken, the taxpayer has 10 business days to appeal under CAP from the date the Notice of Seizure is provided to the taxpayer, or left at his or her usual abode or place of business. Publication 1660, *Collection Appeal Rights*, must be included with the Notice of Seizure. The 10 business day limitation does not apply to other actions appealable under CAP.
3. Other than appeals relating to seizures which must be made in 10 business days as discussed above and installment agreement appeals discussed in paragraph (5) below, there is no deadline for requesting a CAP appeal. However, a delay in requesting an appeal may in certain circumstances result in the taxpayer not being able to appeal the issue. For example, if the taxpayer does not appeal a levy until after the Service receives the levy payments, the taxpayer cannot appeal the levy, but instead would need to file an administrative claim seeking return of the levied proceeds. If the Service denies the claim, the taxpayer could appeal the claim denial.
4. If agreement is not reached at the manager conference, advise the taxpayer or third-party that he or she can have the issue addressed by the Office of Appeals by filing a request in writing. Advise the taxpayer to use Form 9423, *Collection Appeal Request*. If the taxpayer intends to submit a Form 9423, the taxpayer needs to let the manager or RO know within two business days of the conference with the manager or collection action may resume (except for appeals related to IAs). If the taxpayer mails the Form 9423, it must be postmarked within three business days after the date of the conference with the Collection manager to avoid collection action.

Note:

When the taxpayer is appealing a levy action, it may be appropriate to contact the levy source to ask them to hold the funds until after the decision regarding the levy is made in Appeals.

Due to the short time frame, taxpayers may want to submit the Form 9423 at the conference or via fax and should be advised accordingly.
5. While the stay of collection is no longer required if the taxpayer does not submit a Form 9423 postmarked within three business days after the conference, taxpayers are still entitled to a CAP appeal if their Form 9423 (or other written request) is received in a reasonable time after the manager conference, e.g., ten business days. Requests that come in after the time frame may be the result of continuing collection action and may qualify as a new CAP request if new issues are raised.
6. For IA appeals, the taxpayer has 30 days to appeal. During that time and during a timely requested appeal, levy action is prohibited by statute.

- A. For rejected IAs — The taxpayer has 30 days from the date of the letter rejecting the proposed IA to appeal. Levy is prohibited during this time and is systemically stayed 15 additional days to allow for mailing and receipt of the request. If the taxpayer timely appeals, levy continues to be prohibited until the appeal is closed.
- B. For modified/proposed modification of an installment agreement - The taxpayer has 30 days from the date of the proposed modification of the installment agreement to submit an appeal. The taxpayer may also appeal prior to the expiration of the 30-day period commencing the day after the modification is to take effect.
- C. For defaulted/proposed termination of an IA — The taxpayer has 30 days to request an appeal after termination of an IA is proposed. Levy is prohibited during this time and is systemically stayed 15 additional days to allow for mailing and receipt of the request. If the taxpayer timely appeals, levy continues to be prohibited until the appeal is closed. Unless the taxpayer appeals within the 30 day period or cures the default, the IA will automatically terminate on the 46th day after the notice of proposed default is sent.
- D. For terminated IAs — The taxpayer has 30 days to request an appeal after an IA is terminated. Thus, the taxpayer has 76 days from the date of notice of proposed default to request an appeal. Levy is prohibited during this time and is systemically stayed 15 additional days to allow for mailing and receipt of the request. If the taxpayer timely appeals, levy continues to be prohibited until the appeal is closed. If a taxpayer appeals prior to termination under (b) above, he or she may not appeal the decision again once the termination takes effect.

5.1.9.4.3 (02-07-2014)

Sending CAP Request to Appeals

1. The information needed for a CAP appeal will be either emailed or faxed to the Appeals Office. Cases should be emailed or faxed to the correct Appeals office location using the Appeals web site CAP Case Routing link.

Note:

When efaxed to Memphis Appeals, the request is converted to a pdf. file. If the request is received via Enterprise Electronic FAX (EEF) and is in a pdf. format, send via encrypted email to *AP Collection Appeals Program.

2. Generally, a copy of the entire case file is not necessary and is burdensome. Collection and Appeals, on a case by case basis, will determine together what portion of the file needs to be transmitted to Appeals to adequately consider the appeal. At a minimum, the Appeals file should include:

- A. Form 9423, *Collection Appeal Request*, and any taxpayer correspondence which accompanied the CAP request.
- B. Copies of the relevant levy, lien, and/or seizure documents.
- C. Form 433A or Form 433B.
- D. Any other relevant documents, such as copies of deeds, mortgages, counsel opinions, copies of appropriate financial documentation, and/or taxpayer correspondence.
- E. In the fax transmittal or email include your name, email address, telephone number, and fax number, include the taxpayer's name and telephone number, and, if applicable, the POA's name and telephone number. Also, indicate the date of the group manager conference.
- F. In addition, any narrative statement included with the fax transmittal or e-mail must be limited to a neutral list of documents and neutral statements regarding actions taken and documented in the case history without any further discussion regarding the strengths and weaknesses of the taxpayer's appeal. The manager must ensure this requirement is met and that no prohibited ex parte communications are included before approving the transmittal of the case to Appeals. Refer to IRM 5.1.9.5, *Communications with Appeals*.

Note:

Transmittals that include prohibited ex parte communications need to be shared with the taxpayer at the time the case is sent to Appeals.

Note:

Remember, Appeals can more quickly resolve the CAP case when you provide all of the necessary information to resolve the case with the initial transmittal of the case to Appeals. A good guideline is to be sure to provide all of the information you would want to have for review if you were making the Appeals decision on the CAP.

3. All Appeals offices have access to the Integrated Data Retrieval System (IDRS) and Integrated Collection System (ICS). The Appeals technical employee can access the ICS case file that includes case history, information on account transactions and the manager's comments regarding the conference. Collection no longer needs to provide paper copies of the following:

- A. ICS history,
- B. TXMODs,
- C. Power of attorney information (IDRS cc CFINK) Note: If the current information is not on IDRS, provide a copy of the Form 2848,
- D. Installment agreement details (IDRS cc IADIS) unless the current IA information is not on IDRS.

4. Appeals may contact the revenue officer or group manager to seek clarification of an illegible or unclear statement in the file, to question them about procedural matters, or to obtain additional information available to the collection employee which is needed by Appeals to adequately consider the issues raised by the taxpayer.

Note:

Communications between Appeals and originating function employees are limited to administrative, ministerial, and procedural matters and the merits of the case cannot be discussed. Refer to IRM 5.1.9.5, *Communication with Appeals*.

5. Send to Appeals only those cases that meet CAP criteria. Appeals will return CAP cases as a premature referral, if:

- A. Taxpayer appealed before entitlement to a CAP hearing,
- B. Taxpayer or representative did not have the mandatory meeting with the manager (exception is installment agreement CAP requests),
- C. Request is for an excluded issue. Refer to IRM 5.1.9.4.1, *Exclusions from CAP*,
- D. CAP appeal is not timely.

5.1.9.4.4 (06-24-2014)

CAP Process

1. The Appeals organization tries to resolve CAP cases within five business days of the receipt of the case by the Settlement Officer unless there are case complexities that require more time for quality case consideration. The more complex cases should normally be resolved within 15 business days. Appeals will attempt to hold a conference with the taxpayer within two days of receipt of the case. However, if the taxpayer requests a conference delay, and it is warranted, then a reasonable delay will be allowed. Usually, such a delay will not exceed five business days. If the taxpayer does not elect a conference within the time limits given, Appeals will return the case to Collection as a premature referral.

2. The short time frames have been set to give taxpayers an almost immediate decision on lien issues, levies, seizures, and rejection or termination of IAs. It also helps to ensure that taxpayers do not appeal solely to delay collection.
3. If a taxpayer presents new information to Appeals that the revenue officer has not considered, Appeals may ask the revenue officer to review and comment on the information, in accordance with the ex parte requirements. To the extent the revenue officer is expected to orally comment on the accuracy of the new information or the relative importance of the information to Appeals' decision, the taxpayer/representative must be given an opportunity to participate in any discussions with the revenue officer. If comments on the information are in writing, the comments should be sent simultaneously to Appeals and the taxpayer.
4. When levy action is being appealed, further levy action is generally suspended. However, levy action can be taken if it is determined to be appropriate in the situation. Levy action may be appropriate if:
 - Collection is at risk, e.g., dissipating assets, pyramiding additional liabilities;
 - Taxpayer raises only frivolous issues;
 - Taxpayer is seeking solely to delay the collection process.

The group manager must concur with the planned action during the appeal. Prior to initiating levy action, check with Appeals to determine whether they have new information that may prohibit levy or may affect the decision.

5. Levy action during a CAP appeal will be suspended when required by law, for example, when the 30-day time period for rejection or termination of an IA is running or during the appeal.
6. When the filing of the NFTL is the subject of the appeal, further NFTL action is generally withheld unless appropriate to protect the government's interests. The group manager must concur with the planned action during the appeal. Prior to taking further NFTL action, check with Appeals to determine if they have any new information from the taxpayer that may affect the decision.
7. Appeals will review the case based on law, regulations, policy, and procedures (National and local), considering all the facts and circumstances. Local procedures will only be considered if they are written and in accordance with the IRM.
8. Judgment is likely to be an issue on these types of cases, although they can also involve legal or procedural issues. Appeals may reverse Collection's action if evaluation of the taxpayer's history and current facts and circumstances indicate that the proposed or taken action is inappropriate.
9. Appeals will inform both Collection and the taxpayer of their decision as soon as possible within the five business day time frame. Appeals will contact Collection immediately upon making a decision. A copy of the closing letter together with the Form 5402, *Appeals Case Memo* (if prepared) will be sent via encrypted email or fax to the revenue officer.
10. If Appeals has sustained the collection action, enforcement action may resume upon receipt of the decision, unless otherwise prohibited. For example, if the 30-day time period after rejection of an IA is still running, levy action is prohibited during that time. Otherwise, the decision made by Appeals will be implemented. Appeals will give the closing letter to the taxpayer with a copy to Collection. The closing letter should clearly outline any agreement reached with the taxpayer. In cases where a Form 911, *Request for Taxpayer Advocate Service Assistance (and Application for Taxpayer Assistance Order)*, has been filed by the taxpayer, Appeals will give a copy of the closing letter to the controlling Taxpayer Advocate Office.
11. Decisions by Appeals are binding on the taxpayer and Collection. Collection will take the actions directed by the Appeals decision. However, if the taxpayer defaults on the decision directed by Appeals, Collection is released from the terms of the agreement. The taxpayer may not appeal the same issue under CAP once Appeals has decided the issue on the same factual basis, e.g., a subsequent levy on the same asset.
12. Should taxpayers withhold pertinent information or frame a false representation, any agreement made on behalf of the Service by Appeals will be voidable. Before Collection declares an agreement void under this provision, the Collection group manager will confer with Appeals. Only if Appeals concurs with Collection's determination, may enforcement action resume immediately.
13. If there is concern or disagreement with respect to a decision reached by Appeals, refer to IRM 5.1.9.5.4, *Disagreement with Appeals Decisions*.

5.1.9.5 (02-07-2014) Communications with Appeals

1. To ensure an independent Appeals function within the Internal Revenue Service, communications between Appeals employees and originating function employees are generally prohibited to avoid the appearance of compromising the independence of Appeals officers and other Appeals employees. See Revenue Procedure 2012-18, 2012-1 C.B. 455, *Ex Parte Communications between Appeals Officers and Other Internal Revenue Service Employees*.
2. Ex parte is a term used in legal proceedings to describe a one-sided or partisan point of view received on behalf of or from one side or party only. In this context ex parte communications are communications which take place between Appeals employees and originating function employees, including ROs, without giving the taxpayers/representatives an opportunity to participate in the communications.
3. Communications between Appeals officers and other Internal Revenue Service employees are generally prohibited ex parte communications except as provided in Revenue Procedure 2012-18. The prohibition applies to any form of communication, oral or written.
4. This prohibition does not apply to database inquiries if they involve neither dialogue nor interaction with Appeals. For example, there is no prohibition for a collection employee to check the status of a case in Appeals on the Appeals ACDS system.

Note:

Not all database inquiries are exempt because some databases, such as ICS, are used to maintain a record of case activities. See IRM 5.1.9.5.3, *Administrative File*.

5. The prohibition does not apply to Fast Track Mediation because Appeals serves as a mediator but does not assume jurisdiction of the case.
6. It is the responsibility of all Service employees to ensure compliance with the ex parte communication rules. Collection employees need to make every effort to promptly terminate communications with Appeals if the communication is not permitted by the ex parte communication rules. When contact with Appeals is needed, clearly document the purpose and results of the contact. Consider using email when appropriate to limit discussion.

5.1.9.5.1 (11-12-2014) Permitted Ex Parte Communications

1. Not all ex parte communications are prohibited. Appeals or the originating function may ask questions or provide information that involve ministerial, administrative, or procedural matters and do not address the substance of the issues.
2. Communications regarding ministerial, administrative, or procedural matters include, but are not limited to, the following:
 - Communications about whether certain information was requested and whether it was received.
 - Providing information received from the taxpayer.
Example: The taxpayer files a refund return with the RO. The RO provides a copy of the return to the SO working the CDP case.
 - Communications to clarify the content of illegible documents or writings.

- Communications about case controls and transactions on the IRS management information systems.
- Communications regarding receipt of a case or the status of the case that Appeals is reviewing, such as whether the case or an issue in the case has been resolved or when a case is expected to be closed.

Note:

This does not include any discussion of the terms of the resolution prior to the case being closed. Permitted communications concerning the status of the case should be limited to a direct, narrow exchange of information without any surrounding discussion.

Note:

If you have questions regarding the status of a case submitted to Appeals, contact the Appeals Account Resolution Specialists (AARS) Unit at *AP Account Resolution or call 559-233-1267

- Providing information regarding planned collection actions.
Example: An RO contacts the settlement officer and advises him the next planned collection action on this case is levy action of tax years that were previously heard and sustained in Appeals and inquires if the taxpayer has a pending IA or OIC with respect to the current years under Appeals jurisdiction. In this situation, Collection is providing information regarding planned collection actions and seeking to verify compliance with legal and administrative requirements. Communications seeking to verify compliance with legal and administrative requirements in this situation would be considered ministerial, administrative or procedural inquiries. The settlement officer's response to the RO is not a prohibited ex parte communication,
 - Communications in connection with a CDP hearing to verify compliance with legal or administrative requirements and communications with respect to verification of assets/liabilities involving a collection alternative during a CDP hearing;
3. See section 2.03(2)(a) of Revenue Procedure 2012-18 for examples of permissible communications that are considered ministerial, administrative, or procedural.

5.1.9.5.2 (11-12-2014)

Prohibited Communications

1. A general discussion of the strengths and weaknesses of issues and positions should not be held, unless the taxpayer/representative is provided with an opportunity to participate in the discussion.
2. Prohibited ex parte communications include:
 - Discussions about the accuracy of the facts presented by the taxpayer/representative and the relative importance of the facts to the determination.
 - Discussions of the originating function's perception of the demeanor or credibility of the taxpayer/representative.
 - Discussions of the originating function's views concerning the level of cooperation (or lack thereof) of the taxpayer/representative during the originating function's consideration of the case.
 - Discussions regarding the originating function's views concerning the strengths and weaknesses of the case or the parties' positions in the case.
 - Communications from the originating function to advocate for a particular result or to object to a potential resolution of the case or an issue in the case.
3. If a questionable communication is encountered, notify your immediate manager. The manager will review the issue and, if appropriate, will contact the Appeals manager regarding the potential ex parte violation. When contacting the Appeals manager, only the specific details of the questionable communication will be addressed. Both Appeals and Collection are responsible to ensure they do not initiate a prohibited ex parte communication. Appeals is responsible for taking the necessary steps to cure a prohibited ex parte communication. Refer to Revenue Procedure 2012-18, Section 2.10, Remedies Available to Taxpayers, and IRM 8.1.10.5, *Curing Ex Parte Communication Breaches*.

5.1.9.5.2.1 (11-12-2014)

Opportunity to Participate

1. Communications between Collection and Appeals involving a discussion of substantive issues are not considered ex parte communications IF the taxpayer/representative is given an opportunity to participate in the communications.
 - A. Oral Communication – The phrase “opportunity to participate” means that the taxpayer/representative will be given a reasonable opportunity to attend a meeting or be a participant in a conference call between Appeals and the originating function when the strengths and weaknesses of the facts, issues, or positions in the taxpayer's case are discussed. If Appeals needs or agrees to an oral conference with the originating function, Appeals will invite the taxpayer/representative to participate. If the taxpayer/representative is not able to participate at the scheduled time, reasonable accommodations will be made to reschedule the discussion. This does not mean that Appeals will delay scheduling a meeting for a protracted period of time to accommodate the taxpayer/representative. Facts and circumstances will govern what constitutes a reasonable delay. If the taxpayer/representative declines to participate or seeks to delay the meeting/conference call beyond a reasonable time, Appeals can proceed with the meeting or discussion. Refer to Revenue Procedure 2012-18, Section 2.01(3), Opportunity to Participate and IRM 8.1.10.4, Opportunity to Participate.
 - B. Written communications – A taxpayer/representative is considered to have been given an “opportunity to participate” with respect to a written communication that is received by Appeals if the taxpayer/representative is furnished a copy of the written communication and given a chance to respond to it either orally or in writing. Refer to Revenue Procedure 2012-18, Section 2.01(3)(b), Written communications. If Collection submits a written communication addressing substantive issues to Appeals, Collection must concurrently provide the same to the taxpayer/representative. See below for further discussion and examples.
2. The administrative appeals file transmitted to Appeals should be complete and sufficient for Appeals to consider the issue. However, after a case has been sent to Appeals, there may be rare instances where Collection will secure significant new information that needs to be provided to Appeals to allow Appeals to fully evaluate an issue. In these rare instances, supplemental information can be provided to Appeals in writing as long as Collection concurrently provides the same information to the taxpayer/representative. Appeals will give the taxpayer/representative the chance to respond to the supplemental information.
3. When supplemental information is provided to Appeals, the group manager will prepare a letter to the taxpayer/representative that identifies the new information and explains that the information is being provided to Appeals. Include a copy of the written communication to Appeals and any documents being sent to Appeals. Document issuance of the letter in the ICS history (AOIC remarks if additional information is being transmitted by a Centralized Offer in Compromise (COIC) offer examiner) and include a copy of the letter with the supplemental information and any documentation sent to Appeals.
Example: After transmitting a CDP to Appeals, the revenue officer obtains approval and files a special condition Notice of Federal Tax Lien (NFTL). The revenue officer seeks group manager concurrence that this is significant new information needed by Appeals. The group manager concurs. The manager issues a letter to the taxpayer/representative explaining what information will be shared with Appeals regarding the special condition. This letter is sent along with the taxpayer's Letter 3886, "Notice to Taxpayer of [special condition] Federal Tax Lien Filing" a copy of the special condition NFTL and a copy of the transmittal memo to Appeals. The manager includes a copy of the letter sent to the taxpayer/representative with the supplemental information sent to Appeals.

5.1.9.5.3 (02-07-2014)

Administrative File

1. The administrative file transmitted to Appeals is not an ex parte communication since it sets forth the boundaries of the dispute between the taxpayer and the Service and forms the basis for Appeals to assume jurisdiction.

2. Any transmittal memorandum or any similar document used to transmit the administrative file (transmittal) should not include statements or comments intended to influence Appeals' decision-making process.
 - Summary statements included on a transmittal must be limited to a neutral list of documents and neutral statements regarding actions taken and documented in the case history without any further discussion regarding the strengths and weaknesses of the taxpayer's appeal.
 - The manager needs to ensure this requirement is met and that no prohibited ex parte communications are included before approving the transmittal of the case to Appeals. This eliminates the need to send a copy of the transmittal to the taxpayer.
 - A transmittal that includes prohibited ex parte communications needs to be shared with the taxpayer at the time the case is sent to Appeals.
3. If a rebuttal to the taxpayer's protest is prepared by the originating function, it must be shared with the taxpayer/representative by the originating function at the time that it is sent to Appeals.
4. Employees are required to maintain and document the administrative file according to established procedures. Statements or documents that are pertinent to the consideration of the issues and included in the administrative file according to procedure are permitted even if the substance of those comments, statements, or documents would be prohibited if they were communicated to Appeals separate and apart from the administrative file. Notes, memoranda, or other documents not in accordance with procedures should not be included in the administrative file if the reason for including this material is to attempt to influence Appeals' decision-making process.
5. When a taxpayer submits a request for a CDP, EH or CAP appeal, the request for Appeals' consideration does not mean collection actions need to stop with respect to the tax periods in Appeals, other tax periods not in Appeals, or both. As such, statements or documents contemporaneously added to the administrative file by Collection after the taxpayer requests Appeals' review do not violate the ex parte communication rules if they are made to resolve the tax debt(s) or further evaluate the taxpayer's financial condition and are in accordance with established procedures. It is permissible to contemporaneously include statements or documents that are pertinent to Collection's consideration of the case in the administrative file even if the substance of those comments, statements, or documents would be prohibited if they were communicated to Appeals separate and apart from the administrative file.

Example: A revenue officer received a Form 12153 requesting a CDP hearing under IRC § 6330. The taxpayer attached a letter requesting an installment payment agreement for \$101/month. The revenue officer continued to work with the taxpayer by securing and evaluating financial information and contemporaneously documenting his case history. The revenue officer and the taxpayer were not able to agree on a monthly payment amount, so the CDP hearing request was sent to Appeals. There were no ex parte communication violations in this example because the revenue officer's case history entries, even the entries made after receipt of the Form 12153 regarding his evaluation of the taxpayer's financial information and installment payment agreement proposal, were made contemporaneously and were pertinent to Collection's consideration of the case, so they were properly included as part of the administrative file.

5.1.9.5.4 (06-24-2014)

Disagreement with Appeals Decisions

1. If there is concern or disagreement with respect to an Appeals decision in a particular CAP or CDP case, the group manager may contact the ATM to address the concern and resolve the disagreement.
2. The Appeals decision will be implemented even as the decision is elevated for review. Elevating the issue can help ensure similar concerns do not arise with future decisions.
3. If resolution cannot be reached informally at the local level, then a formal process is available to elevate concerns and issues to Appeals. Prepare a written dissent within 90 days of receiving the Appeals decision.
4. A written dissent needs to:
 - A. Clearly outline the nature of the dissent and the supporting rationale,
 - B. Include specific facts that should have been considered or given more weight, if Collection believes Appeals did not properly consider the facts.
 - C. Provide the applicable law, policy, or procedure, e.g., Code Section, Regulation, Revenue Ruling, IRM policy or procedure that should have been considered or accorded different weight.

Note:

Formal dissents by Collection will generally not be appropriate in an Appeals case where hazards of litigation were considered in the settlement of the case.

5. Field Collection will forward written dissents through the SB/SE Territory Manager and Collection Area Director or AI Area Manager to the appropriate Appeals Field Operations Director via the "**AP Formal Dissents" centralized mailbox. The Appeals Area Director will provide a written response to the Collection Area Director or the AI Area Manager generally within 90 days of receipt of the written dissent.

Note:

If Collection asks Appeals to consider reopening a CAP appeal, the objection and dissenting memorandum are ex parte communications and a copy needs to be provided to the taxpayer if it is determined that the case will be reopened. If Collection is not asking Appeals to reopen the CAP appeal or if Collection asks Appeals to consider reopening the CAP appeal but it is not reopened, the objection and dissenting memorandum are not ex parte communications since they cannot result in a change in the Appeals decision.

6. Once Collection receives the response, they may request a post-Appeals conference by contacting the Appeals Area Director within 15 days.
7. In certain unique situations a delay in implementing the CAP appeals decision may be warranted to allow Appeals an opportunity to consider whether Appeals will reopen its decision. If implementation of the appeals decision is being delayed, alert the ATM via e-mail within two business days of the date the decision was sent by Appeals via fax and received in Collection. Within five business days of receiving the decision, secure approval of the Area Director and submit a written dissent to Appeals and provide a copy to the taxpayer.

Note:

This process is not applicable to CDP hearings.

8. Appeals will reopen a CAP decision ONLY if the decision involved:
 - A. Fraud,
 - B. Malfeasance,
 - C. Concealment,
 - D. Misrepresentation of material fact,
 - E. An important mistake in mathematical calculation, or
 - F. Such other circumstances that indicates that failure to take such action would be a serious administrative omission.
9. If Collection requests Appeals to reopen the CAP decision, Appeals will notify Collection of its decision within five business days of the receipt of their request in Appeals. If Appeals does not agree to reopen the CAP decision, Collection will immediately implement Appeals decision.

10. Concerns regarding Appeals decisions not satisfactorily addressed through this process need to be brought to Headquarters attention. They should be forwarded to the Program Manager, Employment Tax. These procedures do not preclude any activities already in place involving Advisory Boards or the exchange of information between Collection analysts and Appeals analysts.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 1. Field Collecting Procedures

Section 10. Taxpayer Contacts

5.1.10 Taxpayer Contacts

- 5.1.10.1 [Overview](#)
- 5.1.10.2 [Pre-Contact](#)
- 5.1.10.3 [Initial Contact](#)
- 5.1.10.4 [Responding to Taxpayers](#)
- 5.1.10.5 [Contact Letters](#)
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- 5.1.10.7 [Taxpayer Rights](#)
- 5.1.10.8 [Case Histories](#)
- 5.1.10.9 [Timely Follow-ups](#)
- 5.1.10.10 [Collection Case File Check Sheet](#)
- 5.1.10.11 [Timely Case Closing Actions](#)
- Exhibit 5.1.10-1 [Sample Language to Request Entry to Gated Property](#)

Manual Transmittal

April 24, 2015

Purpose

(1) This transmits IRM 5.1.10, Field Collection Procedures, *Taxpayer Contacts*.

Material Changes

(1) This IRM updates the broken link in IRM 5.1.10.2 (3) and in IRM 5.1.10.6.4 (3) regarding third party contacts (TPCs). IRM 5.1.17, Third Party Contacts, is now obsolete, replaced by the general Third Party Contact Program IRM 25.27.1, and the Collection-specific IRM 5.1.1.10, Third Party Contacts.

Effect on Other Documents

IRM 5.1.10 dated November 26, 2014 is superseded.

Audience

SB/SE Revenue Officers

Effective Date

(04-24-2015)

Kristen Bailey
Acting Director, Collection Policy
Small Business/Self-Employed Division

5.1.10.1 (06-07-2013) Overview

1. This IRM provides guidance to Collection employees related to all aspects of taxpayer contact, including actions required prior to, during and following such contact. It defines and establishes initial contact criteria and includes relevant references to fair tax collection practices and taxpayer rights.

5.1.10.2 (04-24-2015) Pre-Contact

1. Upon receipt of a new case, conduct an initial analysis by
 - Reviewing IDRS and the Integrated Collection System (ICS), as appropriate.
 - Reviewing case history including Account Management Services (AMS) account information, noting actions already taken on cases worked in the Automated Collection System (ACS) call sites .
 - Creating ICS modules for balance due periods in notice status and inputting a STAUP via IDRS, as appropriate. Only create ICS modules for delinquent returns if you know a return should be filed. This filing requirement may not be apparent until after initial contact.
 - Determining if the taxpayer has an authorized representative. *IRM 5.1.10.7.2, Right to Representation.*
 - Determining if a TC 914 (Active Criminal Investigation) is present on any module. In some active cases, Criminal Investigation (CI) may request that no contact be made with the taxpayer or the taxpayer's representative. Also, a closed CI case (TC 912) or an open probation case indicator (non-field other investigation 182) may have an associated criminal restitution-based assessment requiring special handling. (See IRM 5.1.5. Balancing Civil and Criminal Cases, for procedures on handling cases with CI investigations and restitution-based assessments.)
 - Determining if the case requires special handling. See IRM 5.1.12, *Cases Requiring Special Handling.*
 - Deciding what issues to address during initial contact with the taxpayer.

- Scheduling field contact within contact time frames. See IRM 5.1.10.3.1, *Initial Contact Time Frames*.

2. Be alert for the potentially dangerous taxpayer (PDT) or caution upon contact (CAU) codes (IRM 5.1.3.3.2).
3. Verify that the taxpayer has been advised of potential third party contacts. Advance notification of potential third party contact is included in Publication 1, *Your Rights as a Taxpayer*. Mail or hand deliver the appropriate Letter 3164 if you cannot verify that the taxpayer has received Publication 1 (rev. 5/2005) or Notice 1219 A or B. Letter 3164 does not need to be provided to a taxpayer for third party contacts of which advance notice has otherwise been provided.

Note:

See IRM 25.27.1, *Third Party Contact Program*, for general IRC§ 7602 (c) procedures to follow when contacting anyone other than the taxpayer regarding the determination or collection of the taxpayer's tax liability, and IRM 5.1.1.10, Third Party Contacts, for Collection -specific procedures related to third party contacts.

4. For a single member limited liability company (LLC) with employment tax liabilities that accrued prior to January 1, 2009, attempt to determine whether the LLC or its owner is the liable taxpayer. (See IRM 5.1.21.6.2, *Employer Identification Number Requirements for an LLC*, and IRM 5.1.21.6.3, *EIN Requirements for the Owner of a Disregarded Entity*, for guidance on how to make this determination.) Update LLC addresses on ICS as appropriate.
5. If you identify officers or potentially responsible persons during initial analysis of corporate trust fund accounts, be alert for prior unpaid TFRP or other employment tax delinquencies.
6. If the liability includes unpaid corporate trust fund taxes, calculate the trust fund portion of the liability. The Automated Trust Fund Recovery (ATFR) program may be used for this purpose. Print calculation page 4 for presentation during initial contact.
7. The unique factors of each case will determine the amount of research needed prior to initial contact and the depth of the financial investigation required for locating and verifying asset information. Refer to IRM 5.1.30, *Resolution-directed Approach to Case Work*, and IRM 5.1.31, *Workload Management*, for guidance in effectively planning and carrying out case actions. Refer to IRM 5.1.11, *Delinquent Return Accounts*, for detailed pre-contact and contact guidelines for delinquent return investigations.

5.1.10.3 (06-07-2013)

Initial Contact

1. Make prompt contact on all taxpayer cases.
2. Make actual contact with the taxpayer or taxpayer's representative or document the actions taken to verify the taxpayer's current address if field contact is attempted but contact not made, both within the initial contact time period. (See IRM 5.1.10.3.1.)
3. Determine how best to ensure an effective initial contact on each case consistent with guidelines contained in IRM 5.1.10.3.2. In most cases, you should try to make initial contact with taxpayers in the field.

Note:

Per IGM SBSE 05-0612-056, dated June 27, 2012, Tax Examiners (TEs) are not required to make field contacts.

4. You may attempt scheduling a field visit with a taxpayer or representative by sending an appointment letter, such as Letter 725. A completed Form 9297 should also be included, letting the taxpayer or representative know which items will be needed at the time of the appointment.

Caution:

Except where extenuating circumstances exist, such as when an assigned inventory covers a large geographical area or in certain ATAT cases (See IRM 5.20.12.(1)), issuing an appointment letter does not represent taking a timely initial contact action unless it results in actual contact with the taxpayer or the representative within initial contact time frames as provided in IRM 5.1.10.3.1. In situations where you determine the use of an appointment letter is the appropriate method for initiating contact with the taxpayer, document the case history outlining the circumstances for your determination. If you make contact as a result of an appointment letter, follow effective initial contact procedures contained in IRM 5.1.10.3.2. As with any initial contact, consider that this may be your only contact with the TP or POA.

Note:

If your taxpayers reside in a foreign country or in one of the U.S. Possessions or Territories, you may have limited ability to make telephone or field contact. Therefore, in such cases make initial contact via registered mail whenever U.S. Postal regulations permit such use. (See Note in IRM 5.1.9.3.1(3)(e) for details concerning situations where U.S. Postal Service is not available.

5. If the initial contact with a taxpayer is not in the field and such field contact is required (see the table below), the reason why it is not must be documented in the case history. The following table contains the criteria for valid initial contact:

If	Then the following will be considered a valid initial contact
Taxpayer has no representative on record	Field visit to taxpayer's address of record, regardless of whether actual contact is made.
	A. Telephone contact with representative.
Taxpayer has a representative	B. Field visit to representative's address of record, regardless of whether actual contact is made.
Telephone message left for representative to call back	A second telephone call within initial contact time frame. (See IRM 5.1.10.3.1.)
Representative's telephone number of record out of service, incorrect or does not pick up	Field visit to taxpayer address of record, regardless of whether actual contact is made.
Other	Taxpayer or representative contacts the revenue officer prior to initial contact attempt.

The above actions will be considered reasonable efforts to contact the taxpayer directly. If actual contact is not made through these efforts, take locator, enforcement and/or other actions as appropriate to resolve the case.

6. All contacts and contact attempts should be documented in the ICS history, including efforts to verify taxpayer's address.
7. If the taxpayer has a representative with a valid power of attorney, then contact will be made with the representative. When contacting the POA, follow guidelines for effective initial contact (IRM 5.1.10.3.2). For BMF taxpayers, if initial contact is not at the taxpayer's place of business, a field visit to the taxpayer's place of business must still take place, when practical. Visiting the taxpayer's business, assessing the operation, and viewing the assets will contribute to an informed collectibility determination. For IMF taxpayers with a representative, the initial contact does not have to be at the individual's residence; however, a field call to view the property or other assets may be necessary at a later date. (Refer to IRM 5.1.30.2(2), *Resolution-directed Approach to Casework*, for guidance on how to prepare for and conduct an initial contact.)

Reminder:

During initial contact with a taxpayer, provide your title, last name, and employee identification number. Do not refer to your employee identification number as a "badge number".

8. Form 2246, *Field Contact Card*, is used to advise taxpayers or third parties on how to contact the assigned revenue officer regarding an official IRS matter. It can be left at the taxpayers' business establishment, residence, or with other persons if the taxpayers are not in when called upon. To avoid unauthorized disclosure, confidential tax information must not be written on Form 2246. As a general rule, the time frame for taxpayers to respond should be two business days. You may use other reasonable time frames as warranted by the circumstances of the case. The time frame you provide will serve to establish a deadline for follow-up action should the taxpayer fail to respond.
9. If the taxpayer is unable or unwilling to provide all the necessary information upon initial contact, attempt to secure as much preliminary information as possible, e.g. verify receipt of Publication 1, returns due, number of employees, payroll, asset and income information, levy sources, etc. Document the case history accordingly. If the taxpayer is unable to provide the information, an appointment will be scheduled to meet in person, preferably at the taxpayer's residence or business, and complete the interview. If the taxpayer is unwilling to meet in person, warn the taxpayer of enforcement action that may take place for failure to comply with the requests for information and proceed with appropriate enforcement and/or administrative actions if the taxpayer is still unwilling to comply.

5.1.10.3.1 (01-01-2015)

Initial Contact Time Frames

1. Make initial taxpayer contact (See the table in *IRM 5.1.10.3* for what constitutes a valid initial contact.) within 45 calendar days from the date of case receipt, except for the following types of cases:
 - A. On FTD Alerts, within 15 calendar days from date of receipt
 - B. On CIP Leads, within 60 calendar days from date of receipt.

Note:

The date of case receipt is the "Employee Assign Date" on ICS. ICS begins the calculation for initial contact due date on the first workday after assignment. If the assignment is on a Saturday (IDRS initial case assignments), the calculation begins on Monday, or Tuesday if Monday is a Holiday. It ends the calculation on a workday. If the initial contact due date falls on a non-workday, ICS sets the initial contact due date to the next workday. This is the date that will appear in the systemic history reflecting the initial contact due date (ICDD). Notifications of when the ICDD expires are issued two weeks before the date expires and also on the day of expiration if no action is taken.

2. These suggested time frames were established as guidance for revenue officers throughout the Service. Document the case history with the reason for any delay.

Note:

The initial contact time frames in (1) above are the **maximum** time frames for field contact. However, try to make initial contact as soon as possible after case receipt, ideally within the first week of assignment.

3. Refer to *Targeted Inventory Levels*, IRM 5.1.20.2.4.2, for instances in which time frames for timely initial and follow-up contacts may be waived.
4. To ensure that ICS registers the contact, choose one of the following items from the ICS Taxpayer Contact pick list (See *IRM 5.1.10.8* regarding mandatory use of the ICS pick list.) to document the contact :
 - Attempted Contact (Contact Type F, if field contact was attempted).
 - TP or POA Contact, if actual contact was made.

Note:

When working an Offer in Compromise, see IRM 5.8.4.7, *Initial Offer Actions*.

5.1.10.3.2 (01-01-2015)

Effective Initial Contact

1. An effective initial contact is the cornerstone to timely and effective case resolution.
2. While actual contact with the taxpayers or representatives is the objective of the initial contact attempt, information gathered from neighbors and other third parties can also result in an effective contact. See IRM 5.1.18, *Locating Taxpayers and Their Assets* for further guidance.
3. As part of the initial contact do the following:
 - Determine whether the taxpayer received Publication 1, *Your Rights as a Taxpayer*.
 - Explain the collection process to the taxpayer and the taxpayer's rights under that process.

If

The taxpayer did not receive Publication 1

The taxpayer has any questions about the provisions covered in Publication 1

During the initial contact, or during subsequent contacts, the taxpayer requests to have the case reviewed by a supervisor

Then

The revenue officer will provide the taxpayer with a copy and allow the taxpayer time to review it

The revenue officer will take the time to answer the questions

The revenue officer will give the taxpayer the name, telephone number and address of his/her supervisor

4. On initial contact, document that you asked taxpayers **if they received Publication 1 and if they had any questions**. Checking the appropriate items on the ICS History pick list will satisfy the documentation requirements for Publication 1. This documentation is necessary only **once** in a continuing case investigation.

Note:

Investigation of an Offer in Compromise is not considered a continuation of the Bal Due investigation

5. During initial contact with a taxpayer,
 - A. Request immediate full/part payment of all delinquent accounts (including accounts in notice status) and explain the various forms of payment such as check, money order, electronic payment, credit card, and Electronic Federal Tax Payment System (EFTPS) for future Federal Tax Deposits as well as balance due payments.
 - B. Request immediate filing of all delinquent returns.
 - C. Secure verification of filing and payment, including copies of the EFTPS acknowledgement numbers or FTD receipts (prior to January 1, 2011) to confirm taxpayer is current with FTD's, when the taxpayer indicates that the tax was paid, the returns were filed, or both.
 - D. If the liability is incorrect, allow the taxpayer the opportunity to file an amended or corrected return, or determine whether an adjustment or payment tracer is necessary.
 - E. Determine and document the taxpayer's compliance with current filing, payment, and deposit requirements, including type of depositor. The ICS Full Compliance Check screen can be used to document compliance. See *IRM 5.1.10.8* for instances when use of the pick list is mandatory.

- F. Determine the reason for the delinquency and advise the taxpayer how to avoid future delinquencies. The ICS pick list Cause and Cure can be used to document this information.

Reminder:

Advise taxpayers that they remain responsible for the deposit and payment of employment taxes even though they may have entered into a third-party payer arrangement with a payroll service provider or professional employer organization.

- G. Request that the taxpayer file current returns and make estimated tax payments through you and provide you with copies of Federal Tax Deposit receipts or with EFTPS acknowledgment numbers. Advise the taxpayer that doing so will allow you to monitor their compliance with current filing, paying, and deposit requirements until the case is resolved.

Note:

Consider securing payroll summary sheets from the taxpayer to verify the correct amount is being deposited.

- H. Determine whether the taxpayer is a federal contractor. If the taxpayer is a federal contractor, obtain the name of the federal contracting agency and the contract number.

Exception:

If you detect fraud indicators, see IRM 5.1.11.6.2 , *Referral to Criminal Investigation*, for how to proceed.

6. If the taxpayer is unable to comply with the above, proceed as follows:

If	Then
Tax is due	Request the maximum amount payable that day to avoid additional penalty and interest.
Returns are due or the taxpayer is unable to provide proof of filing	Attempt to secure sufficient information so that an accurate return can be prepared if the taxpayer fails to file by the specified date. Such information might include the following: <ul style="list-style-type: none">• income amounts• income sources• filing status• gross wages paid• withholding amounts• bank accounts• merchant accounts (If the taxpayer accepts card payments, see IRM 5.11.6.15.2, Determining the location of the Merchant Account.)• contract identifying the third-party payer arrangement, such as use of a payroll service provider or employee leasing (professional employer organization)
Tax is due and the taxpayer is unable to pay in full or provide proof of full payment	If the taxpayer does not qualify for a guaranteed, streamlined, or in-business trust fund express installment agreement, or such an agreement cannot be established on initial contact. (See IRM 5.14, <i>Installment Agreements</i> .), attempt to secure a complete Collection Information Statement (CIS) and discuss other collection alternatives. If a complete CIS cannot be secured, establish a deadline for providing required information. At a minimum, secure basic asset information, e.g., bank accounts, credit card processor and the location of the merchant account, primary accounts receivable, employer and wage information, real and personal property owned. See IRM 5.12.2, <i>Federal Tax Liens</i> , regarding lien notice determinations to ensure coordination with any response dates and deadlines.
Other action is required (i.e., payment tracer, adjustment)	Secure sufficient information to take the necessary action.

7. If the case is not resolved during the initial contact, discuss a realistic plan for case resolution with the taxpayer, establish and document a plan for resolving the case, e.g., full pay (FP) by a specified date, installment agreement (IA), etc. This plan may be updated when it changes. For example, a plan to resolve a case as CNC (hardship) may change to FP when significant assets and/or income are discovered.
8. Routinely keep taxpayers informed of the status and resolution of their cases, and advise them that they will receive annual notices of taxes still owing until all taxes are paid in full, even if they are currently working with a Service employee.
9. When the taxpayer is required to take action such as file returns, provide information, pay the balance, explain and document the following:
- A. What action is expected and the deadline for completing the action. Form 9297, *Summary of Taxpayer Contact*, will be used in face-to-face meetings to list the information/documents required and the deadline date for receipt. The taxpayer will receive the original and you will retain a copy in the case file. The case history will be documented with a brief summary statement referencing the Form 9297. The ICS pick list item "Form 9297 Provided" can be used to document this information. (*IRM 5.1.10.8* for instances when use of the pick list is mandatory.) There may be some instances when the Form 9297 will not be used, for example, in potential fraud cases. If the Form 9297 is not used, briefly state why Form 9297 was not used in the history. The Form 9297 will be used for any subsequent deadlines set in face-to-face meetings. (Form 9297 is not mandatory during telephone contacts.)
 - B. What specific type of enforcement action may result for failure to comply (not necessarily the particular asset, bank account, etc.) Document the ICS history with the specific consequences for failure to comply. The ICS pick list item Deadline Communicated can be used to document this information. (See *IRM 5.1.10.8* for instances when use of the pick list is mandatory.)
 - C. What forms of payment, such as check, money order, electronic payment, credit card, EFTPS for future Federal Tax Deposits, etc., are available and acceptable.

Note:

Do not use "Warned of Enforcement Action" or "WEOA" or any similar abbreviation when documenting the case history unless you include the specific type of enforcement action(s) you advised the taxpayer or representative you would take if the taxpayer did not comply.

10. When appropriate, issue Letter 1058, *Notice of Intent to Levy and Notice of Your Right to a Hearing*, and all required enclosures. Typically, the letter is delivered when a deadline is set for the taxpayer to take a specific action. (See IRM 5.11.1.1 through IRM 5.11.1.2.2.11 for other factors related to delivering L-1058.) Use discretion when issuing the L-1058 on initial contact with an IMF-only balance due taxpayer.

Caution:

Only individual Shared Responsibility Payment (SRP) assessments are not subject to levy or the filing of Notices of Federal Tax Liens. See IRM 5.11.1.4.14, *Affordable Care Act's (ACA) Shared Responsibility Payment (SRP)*, for information regarding treatment of Notices of Levy where there are SRP assessments. See IRM 5.12.2.3.1.1, *Affordable Care Act's (ACA) Shared Responsibility Payment (SRP) Exception*, for information regarding treatment of Notices of Federal Tax liens (NFTL) where there are SRP assessments.

11. Take the following additional actions when contacting a corporation for unpaid trust fund taxes:
- A. Identify individuals who are potentially responsible for depositing and paying over trust fund taxes.
 - B. Explain the Trust Fund Recovery Penalty (TFRP) provisions to the responsible or potentially responsible person(s) and present a copy of the TFRP calculation to them along with Notice 784, *Could You Be Personally Liable for Certain Unpaid Federal Taxes?* (See *IRM 5.1.10.2 (6)*) Advise them that the IRS can assess the

TFRP personally against those it determines liable for the penalty in that amount and collect it against their personal income and assets.

Note:

At this point, do not state that the Service has decided who is liable for the TFRP, only that whoever is liable is subject to it.

- C. Begin the TFRP investigation if full payment is not secured. Attempt to conduct interviews with all potentially responsible persons using Form 4180, *Report of Interview with Individual Relative to Trust Fund Recovery Penalty or Personal Liability for Excise Tax*. See IRM 5.7.4, *Investigation and Recommendation of TFRP*.

Note:

The decision to conduct an IMF compliance check when investigating a corporate liability should be made on a case by case basis. Do not routinely conduct cross compliance checks of employees who may be handling the tax matters of a corporation solely on the basis of the individual's employment with the business.

- 12. Take the following additional actions when contacting a sole proprietor or partnership:

- A. Verify compliance with IMF filing and paying requirements.
- B. Explain that sole proprietors and general partners are personally liable for employment and excise taxes incurred in the operations of the business.
- C. Attempt to secure the personal asset information of the proprietor or partner(s). If a complete CIS cannot be secured, establish a deadline for providing required information. At a minimum, secure basic asset information.
- D. In the event TFRP provisions are applicable, follow procedures for corporations described in (7) above.

- 13. Take the following additional actions when contacting a limited liability company (LLC). (See IRM 5.1.21, *Collecting from Limited Liability Companies*, for a comprehensive discussion of the treatment of LLCs with respect to Collection.)

- A. Verify the owner(s) of the LLC during the period(s) of delinquency.
- B. Determine the classification of the LLC to identify whether the entity or its owner(s) are liable for the type of federal tax to be collected. See IRM 5.1.21.7, *Federal Taxation of the LLC*, for more details concerning treatment of different entities, for example, sole proprietorships, partnerships, corporations and associations.
- C. When the LLC is disregarded and not treated as an entity separate from its single member/owner, refer to IRM 5.1.21.6.3, *Employer Identification Number Requirements for the Owner of a Disregarded Entity*.

- Explain that the owner is directly liable for the taxes arising from the operation of the LLC.
- Verify compliance with the owner's filing and paying requirements.
- Attempt to secure asset information of the owner. If a complete CIS cannot be secured, establish a deadline for providing required information. At a minimum, secure basic asset information.
- In the event TFRP provisions are applicable for a non-owner, follow procedures for corporations described in (7) above.

- D. When the LLC is identified as the liable taxpayer, follow procedures for corporations described in (7) above. (Also refer to IRM 5.1.21.6.2, *Employer Identification Number Requirements for an LLC*.)

**5.1.10.4 (04-20-2010)
Responding to Taxpayers**

- 1. You are required to respond promptly to customer requests or concerns. Return calls as soon as practicable after receiving a voice message. Check messages at least daily (more than once when able) to ensure taxpayers receive a timely response.
- 2. When out of the office for extended periods of time, leave a message on the telephone (and email for Service personnel only) to direct the caller to an alternate person for assistance.
- 3. When leaving a calling card or phone message for a taxpayer to return a call, provide a specific date and time for the call to be returned.

**5.1.10.5 (04-20-2010)
Contact Letters**

- 1. Some of the pre-printed letters available to correspond with taxpayers include the following:

Letter	Purpose of Letter
Letter 725 (DO)	To set up an appointment with a taxpayer.
Letter 729	To address unfiled returns.
Letter 728	To provide the current balance due.
Letter 3220	To provide the balance due after receipt of payment.
Letter 3221	To respond to an inquiry regarding the balance due.
Letter 3586 (CG)	To schedule an appointment to conduct a Trust Fund Recovery Penalty interview.
Letter 4222	To notify taxpayer of case resolution.
Letter 4223	To notify taxpayer of case closed as currently uncollectible.

- 2. **Any letter required by statute (Letters 1058, 2975, 3164, 3172, 2439(P), etc.) relating to a joint return under IRC 6013 must be sent separately to each individual who filed the joint return.**
- 3. This requirement also extends to letters not required by statute that contain the elements of a notice and demand (amount of tax due stated and payment of tax due demanded) such as Letters 728, 3220, and 3221.
- 4. When the owner of a limited liability company (LLC) is the liable taxpayer, Letters 1058, 2975, 3172, and 2439(P) must be issued to the owner, not to the LLC. For example, see IRM 5.1.21.9.1, *Collection Due Process Notice*.

Reminder:

All correspondence to taxpayers must include your title, last name, employee identification number, and telephone number.

Reminder:

If the taxpayer is represented by a POA, with a valid POA on file, copies of all correspondence must be sent to the POA.

Reminder:

An appointment letter to initiate contact with a taxpayer will be used only under extenuating circumstances.

5.1.10.6 (10-28-2011)

Fair Tax Collection Practices

1. IRC 6304 imposes certain restrictions with respect to IRS communications with taxpayers regarding unpaid tax. This provision specifically prohibits the IRS from harassing or abusing taxpayers.
2. This law applies to communications with all taxpayers, including business entities.
3. Violations of IRC 6304 could subject the United States to civil action (IRC 7433) by the taxpayer. Violations of IRC 6304 could also subject Service employees to termination for misconduct.

5.1.10.6.1 (03-20-2009)

Contacting Taxpayers

1. Some contacts cannot be made without the prior consent of the taxpayer or the permission of a court of competent jurisdiction. These include the following:
 - A. Contacting the taxpayer at any unusual time or place, or at a time or place an employee knows, or should know, is inconvenient to the taxpayer.
 - B. Contacting the taxpayer at work if there is reason to believe the employer does not allow such contact.
 - C. Directly contacting a taxpayer if the Service knows the taxpayer has an authorized representative and knows or can readily ascertain the representative's name and address.

Exception:

- The representative consents to the employee directly contacting the taxpayer.
 - The representative does not respond in a reasonable time. (See IRM 5.1.23.5, *Bypassing Taxpayer's Representative*.)
2. Employees can generally assume that it is convenient to contact the taxpayer after 8:00 a.m. and before 9:00 p.m. local time Monday through Friday at the taxpayer's location, unless there is reason to know otherwise.
 3. Take any necessary precautions to protect your safety and security when in the field. (See IRM 5.1.3, *Safety, Security, and Control*.)

5.1.10.6.2 (06-07-2013)

No Trespassing Signs

1. The following guidance for entering areas with posted "No Trespassing" signs addresses what is legally permissible in terms of federal, state and local laws. However, Collection field work by its very nature demands the exercise of common sense and good judgment. Beyond what is legally permitted, your safety and the safety of taxpayers must be the highest priority in deciding how to approach the following situations. If the circumstances you encounter make you significantly concerned for your safety, leave and request the assistance of a TIGTA agent to accompany you on a second attempt to contact the taxpayer. (See IRM 5.1.3.5.1.) Document your history accordingly.

Note:

A "No Trespassing" sign includes any sign that advises or commands others not to enter a property, and may use several different expressions, for example, "Keep out," "Do Not Enter," "Private Property," etc.

5.1.10.6.2.1 (06-07-2013)

Private Residences

1. You can approach a front door to make contact or deliver a summons or other document requiring personal service even if there is a "No Trespassing" sign posted. **If the taxpayer or third party then tells you to leave, you should leave.**
2. Always use caution and only enter areas of a private residence that are commonly understood to be open to the public, such as the area of the front door, porch, or a driveway. Secure permission from the taxpayer if you wish to access non-public areas of the premises.
3. Approach premises with "No Trespassing" signs in rural areas more cautiously than in urban or suburban residences with posted "No Trespassing" signs. If you see "No Trespassing" signs in rural -- possibly fenced -- residential premises, you may wish to leave and request the assistance of a TIGTA agent to accompany them on a second attempt to contact the taxpayer. (See IRM 5.1.3.5.1.) Document your history accordingly.

5.1.10.6.2.2 (06-07-2013)

Businesses

1. If you encounter a "No Trespassing" sign in a public shopping area, you can treat the sign as a warning to someone who has no legitimate business being there, such as a loiterer or a shoplifter. **If the taxpayer tells you to leave, you should leave.**

5.1.10.6.3 (06-07-2013)

Gated and Restricted Access Properties

1. For gated multi-residence properties with security personnel on site, request access to the taxpayer's residence from the security guard. If the security guard denies access, ask to speak to the guard's supervisor and request access through the supervisor. If unable to speak to the guard's supervisor or if the supervisor also denies access, secure the telephone number of the management office or officer of the multi-residence property, for example a condominium association officer, and request access through this source.
2. For gated multi-residence properties without security personnel on site, attempt to locate information about the management of the multi-residence property, for example, a condominium association officer, and request access through this source.

Note:

Do not attempt to trail another car or another person authorized to enter.

3. For gated single dwellings with or without security personnel, summonses and other letters and documents may be delivered to the security guard on site or taped to the entry gate, door or fence.
4. *Exhibit 5.1.10-1* provides sample language that may be used in a letter provided to security personnel in the event that they want a documented explanation of the Service's purpose in wishing to contact the taxpayer.

5.1.10.6.4 (04-24-2015)

Promoting Public Confidence

1. It is IRS policy not to use methods which are threatening or harassing to the public. See Policy Statement P-1-1, (IRM 1.2.10.1.1(4)). IRC 6304 prohibits employees from harassing, oppressing, or abusing any person in connection with the collection of any unpaid tax.
 2. The following actions are considered violations:
 - A. Using or threatening to use violence or other criminal means to harm the physical person, reputation, or property of any person.
 - B. Using obscene, profane, or abusive language.
 - C. Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with the intent to annoy, abuse, or harass any person at the called number.
 - D. Placing telephone calls without meaningful disclosure to the taxpayer of the caller's identity.
 3. If you place telephone calls to third parties **only** to acquire location information (taxpayer's place of abode and phone number at such place, or place of employment) in connection with the collection of unpaid tax, you should identify yourself by name only. Do not identify yourself by title or as a Service employee unless the third party expressly requests that information.
 4. At times, third party contact by telephone may result in obtaining information with respect to the determination or collection of the taxpayer's liability, i.e., a levy source. In such instances, you should identify yourself as a Service employee and follow third party contact procedures, including the reprisal determination. (See IRM 25.27.1, *Third Party Contact Program*, for general IRC § 7602 (c) procedures to follow when contacting anyone other than the taxpayer regarding the determination or collection of the taxpayer's tax liability, and IRM 5.1.1.10, *Third Party Contacts*, for Collection-specific procedures related to third party contacts.)
 5. When you attempt to contact a taxpayer by telephone and someone other than the taxpayer answers the phone, do not identify yourself as a Service employee or state the reason for the attempted contact. However, if you seek information about the taxpayer from the person who answered the phone that may help in determining or collecting the liability, follow third party contact procedures and make a reprisal determination. Follow the guidelines in IRM 11.3.2.6.1 for leaving messages involving confidential information on answering machines/voice mail when trying to contact taxpayers or their representatives.
- Note:**
- If unable to verify that the taxpayer has been provided with advance notice that third party contacts may be made, do **not** seek information about the taxpayer from the third party and do **not** identify yourself as an IRS employee unless expressly asked.
6. The use of cellular and cordless devices carries certain inherent security vulnerabilities. Precautions must be taken when discussing sensitive taxpayer information using these devices. Refer to IRM 11.3.2.6.2 for guidelines on the use of cellular phones and cordless devices for communications of sensitive but unclassified information. Classified information should never be discussed using a cellular or cordless phone.
 7. When a taxpayer states he or she has been the victim of identity theft, follow the guidelines in IRM 5.1.12.2, *Identity Theft*, for standard documentation requirements and detailed procedures for resolving the case. Also, see IRM 21.9.2, *Accounts Management Identify Theft*.

5.1.10.7 (10-28-2011) Taxpayer Rights

1. Awareness of taxpayer rights is vitally important. Taxpayer rights, in addition to the ones listed below and in Publication 1, are addressed in IRM 5.1.9, *Collection Appeal Rights*, and throughout IRM Part 5.

5.1.10.7.1 (06-07-2013) Rights During Interviews

1. Generally, if a taxpayer states during any interview that he or she wishes to consult with an authorized representative, the employee will suspend the interview to permit such consultation. If the interview is suspended, allow up to 10 business days for the consultation with an authorized representative. The employee should inform the taxpayer of the consequences if the representative fails to contact the employee within ten business days. Form 9297 should be prepared and delivered to the taxpayer. (See IRM 5.1.10.3.2(5).) However, while an interview may be suspended, there are situations where collection should not be delayed, such as where delay might result in the disappearance or dissipation of the asset or if the seizure is being made pursuant to a writ issued by a court.

Exception:

If the interview is being conducted because of a summons, it should not be suspended by the Service. (See IRM 25.5.4.7, *Noncompliance by the Witness or a Representative*.) If a summoned taxpayer appears and wishes to suspend the interview to consult with an authorized representative, do not agree to suspend the interview. Inform the taxpayer(s) that an interview may usually be suspended for that purpose, but not when it is required by a summons. IRC §7521(b)(2). However, if the summoned person refuses to submit to questioning and to the request for documents, that person cannot be compelled to remain and continue the interview.

2. The taxpayer has the right to make an audio recording of an in-person interview, when the interview relates to the determination or collection of tax.
3. The right to make an audio recording does not extend to telephone interviews. If you become aware that a taxpayer or representative is recording or attempts to record a telephone conversation, advise the taxpayer or representative that the recording must be stopped. If the recording is not stopped, politely terminate the call, and document the case file accordingly. (For additional guidance see IRM 5.1.12.4, *Taxpayer Recording of Interviews*.)

5.1.10.7.2 (06-07-2013) Right to Representation

1. Taxpayers have the right to be represented in their tax matters by the following:
 - An attorney
 - A certified public accountant
 - An individual enrolled to practice before the Service
 - An officer or full time employee of the taxpayer organization (e.g., corporation)
 - A fiduciary for the taxpayer
 - A member of the taxpayer's immediate family
 - A student attorney or CPA with permission to practice before the IRS from the Office of Professional Responsibility

Note:

Students working in a Low Income Taxpayer Clinic (LITC) or Student Tax Clinic Program (STCP) may represent taxpayers under a special order by the Director, Office of Professional Responsibility. They should be viewed the same as any other taxpayer's representative for which a Form 2848 was submitted. The instructions to Form 2848 require that such students attach a copy of the letter from the Office of Professional Responsibility authorizing practice before the Internal Revenue Service.

2. If the taxpayer has a representative, secure a written power of attorney (Form 2848, *Power of Attorney and Declaration of Representative*, may be used.) A taxpayer may authorize the Service to provide confidential tax return information to a third party designated on Form 8821, *Tax Information Authorization*, but this form does not authorize the third party to represent the taxpayer. For detailed information on taxpayer representation and disclosure to a designee, see IRM 5.1.23.4, *Processing a Third Party Authorization*, and IRM 11.3.3, *Disclosure to Designees and Practitioners*.
3. If all open periods are not reflected on Form 2848 or Form 8821, contact the taxpayer to secure an up-to-date form.

Note:

Unenrolled return preparers are not permitted and should not be allowed to act as a taxpayer representative before Collection.

5.1.10.7.3 (03-20-2009)

Other Taxpayer Rights

1. Taxpayers generally have the right to designate the application of voluntary payments to their accounts.
2. Taxpayers are entitled to request and receive receipts for any payments made on their accounts, whether in current or delinquent status.

Note:

If a cash payment is received, issue Form 809, *Receipt for Payment of Taxes* (see IRM 5.1.2.6.2). Usually, the taxpayer's canceled checks, copies of bank checks, or money orders serve as receipts for non-cash payments. However, a receipt will be issued if requested by the taxpayer.

3. Taxpayers have the right to submit an offer to compromise a tax liability. See IRM 5.8, *Offer in Compromise*.
4. A taxpayer may have a right to an installment agreement. See IRM 5.14, *Installment Agreements*.
5. Taxpayers may request that their case be transferred to another IRS office. Generally, such requests will be honored if the taxpayer has a valid reason.
6. Taxpayers have the right to contact TAS at any time during the collection process, especially if they are experiencing, or will experience, a financial hardship as a result of the Service's actions. Revenue Officers must provide Form 911 and explain a taxpayer's right to seek help from TAS.

5.1.10.7.4 (03-20-2009)

Privacy Act of 1974

1. The Privacy Act of 1974 (5 U.S.C. § 552a) creates a series of requirements governing the record-keeping practices of federal agencies, as they relate to the collection, maintenance, and disclosure of information pertaining to individuals. The statute also provides individuals with certain rights of access to agency records pertaining to them. For a more detailed discussion of IRS implementation of the Privacy Act, and Service employee responsibilities under the statute, see IRM 11.3.14, *Privacy Act General Provisions*, and IRM 11.3.19, *Privacy Act Accounting for Disclosures*.
2. Taxpayers seeking access to records pertaining to an open case should, to the extent possible, be given access to their records as part of the normal administrative process without having to resort to a formal Privacy Act or Freedom of Information Act (5 U.S.C. § 552) request. However, where a taxpayer insists upon the more formalized procedures of the Privacy Act or the Freedom of Information Act, the taxpayer should be directed to the disclosure office having responsibility for the records. Any written request received by Collection personnel which cites the Privacy Act or Freedom of Information Act should be forwarded to the appropriate disclosure office for handling in accordance with the provisions of IRM 11.3, *Disclosure of Official Information*.
3. Although taxpayers have certain rights of access to agency records under the Privacy Act, as well as the Freedom of Information Act, returns and return information are confidential in accordance with IRC § 6103(a). Returns and return information shall be disclosed only as authorized by IRC § 6103 and the underlying Treasury Regulations.
4. Collection employees are authorized by IRC 6103(k)(6) and Treasury Regulation 301.6103(k)(6)-1 to disclose return information to the extent necessary to obtain information which may be related to a Collection investigation and which is not otherwise reasonably available. No special permission or authorization is needed to make investigative disclosures under the circumstances and conditions described in Treasury Regulation 301.6103(k)(6)-1, so long as the Collection employee is performing official duties for collection activity.

Note:

IRC § 6103(k)(6) and Treasury Regulation 301.6103(k)(6)-1 permit the disclosure of return information in the investigatory process, but do not authorize the disclosure of the taxpayer's return. See IRM 11.3.21 for more detail on investigative disclosures.

Note:

Authorization to disclose the taxpayer's return information under IRC § 6103 should not be confused with authorization to contact third parties under IRC § 7602(c). If the IRS contacts a third party to obtain information about the taxpayer, then the advance notice and record keeping requirements of IRC § 7602(c) must be met unless the taxpayer authorizes the contact.

5.1.10.8 (10-28-2011)

Case Histories

1. Collection will use the Integrated Collection System (ICS) history functionality to record actions and decisions taken on cases. It is extremely important that case history entries be clear, accurate, concise, complete, and timely. Entries should be made in chronological order and should be recorded the day the action occurs or as soon as practical thereafter.
2. Certain actions taken by ICS users generate systemic history entries. Management may determine the type and degree of additional documentation required. However, items such as resolution plan, action expected of taxpayers, target dates established, taxpayer compliance, plan for next actions, enforcement actions, financial analysis, etc., should be included as part of the case history. ICS pick lists are available to record many of these actions. ICS pick lists must be used when documenting the following actions: taxpayer contact, taxpayer or asset location activity, FTD verification, and closing narrative (for BMF accounts.) Not all items in the Taxpayer Contact and the Taxpayer Asset Location pick list "submenus" will be applicable in every case. Pick list items in these submenus are mandatory only when applicable to the contact or action. For example, if Publication 594 is not discussed, no entry is required. However if discussed, the pick list must be used to document the action.

Note:

Numerous other sections of IRM Part 5 require that other specific actions be documented in the case history.

3. A history entry should be made to reference an action even though a form or document relative to the action is in the case file.
4. When related IMF and BMF accounts are present, the cases should be cross-referenced; separate histories are maintained by ICS.
5. When a Non-Master File account is present with a related Master File account sharing a TIN, ICS maintains separate histories and permits narrative history to be written to both history files with one posting.
6. When Forms 2747 exist for the older part of the case history, they should remain associated with the case file when the case is closed.
7. ICS users accessing a non-assigned case are encouraged to write a brief narrative history explaining the access.

8. All requests for deletion of ICS history must be in writing. The request should state exactly which history entry is to be deleted and explain why the request is being made, e.g., history documented in the wrong case. The concurrence of the Territory Manager must be noted on the request prior to the deletion. The ICS/Entity Quality Analyst or the Territory Manager performing the deletion should maintain the request with a print of the history before and after the deletion until the case records are deleted from the ICS archives. Entries in the wrong case may present disclosure issues. See IRM 11.3.38.6, *Reporting Unauthorized Access or Disclosures*, for further guidance for on how to report inadvertent disclosures.
9. The Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98), Section 3707, prohibits the use of any tax protester designation to describe the taxpayer. Terms such as "frivolous argument" or "tax avoidance argument" are acceptable terms to use. You may document the taxpayer's behavior by using such terms as "frivolous filer," "frivolous arguments" or "tax avoidance". Refer to [The Truth About Frivolous Tax Arguments](#) for information about common frivolous "legal" arguments made by individuals and groups who oppose compliance with federal tax laws. The document also responds to some of the more common frivolous arguments made in collection due process cases brought pursuant to Internal Revenue Code 6320 or 6330.
10. Taxpayer records of any kind, including copies of checks, cannot be maintained by Collection personnel after disposition of the account. All records must be disposed of in accordance with approved records control schedules.

5.1.10.9 (06-07-2013)

Timely Follow-ups

1. The deadline given to a taxpayer or representative to comply with a request for information or action should be reasonable with respect to the information or action requested. When setting a deadline, ensure that sufficient time is calendared to carry out follow-up actions if the deadline is not met.
2. When a taxpayer or representative misses a specific deadline, initiate follow-up action within fifteen (15) calendar days unless special circumstances warrant a delay, such as in some international cases. Such circumstances should be clearly documented.

Note:

The ICS calendar system is the preferred method for scheduling and documenting follow-up actions.

3. If the TP requests an extension, use your discretion in granting it. Document your decision and its basis. Issue Form 9297 when a new deadline is set in face-to-face meetings with the taxpayer or representative.
4. Follow-up action should move the case toward resolution. Follow-up actions include, but are not limited to, the following:
 - Filing Notice of Federal Tax Lien (IRM 5.12)
 - Issuing Notice of Levy (IRM 5.11)
 - Issuing a summons (IRM 25.5)
 - Taking seizure action (IRM 5.10)
 - Taking suit action (IRM 5.17.4)
 - Issuing Letter 903 (IRM 5.7.2.1)
 - Completing the TFRP process (IRM 5.7)

Caution:

Only individual Shared Responsibility Payment (SRP) assessments are not subject to levy or the filing of Notice of Federal Tax Liens. See IRM 5.11.1.4.14, *Affordable Care Act's (ACA) Shared Responsibility Payment (SRP)*, for information regarding treatment of Notices of Levy where there are SRP assessments. See IRM 5.12.2.3.1.1, *Affordable Care Act's (ACA) Shared Responsibility Payment (SRP) Exception*, for information regarding treatment of Notices of Federal Tax liens (NFTL) where there are SRP assessments.

Note:

A phone call or letter to a taxpayer or representative to inquire about a missed deadline is not considered an appropriate follow-up action.

5. Take follow-up actions simultaneously, as appropriate. (See IRM 5.1.30, *Resolution-directed Approach to Casework*.)

5.1.10.10 (06-07-2013)

Collection Case File Check Sheet

1. Ensure the quality and completeness of all closed and transferred files. A *Collection Case File Check Sheet*, Form 13353, is available as a reference tool. The form lists critical items that must be included in the closed or transferred case file before it is shipped for processing and/or records retention.
2. You are responsible for verifying that forms reflecting action taken to close the case (Form 433-D, Form 53, etc.) are included in the closed or transferred file along with supporting documentation such as Form 433-A/B, *Collection Information Statement*, Form 2848, *Power of Attorney and Declaration of Representative*, and so on.
3. Form 13353 may be used to identify the type of case and documents attached. If Form 13353 is not used, include the ICS Case Summary Screen or a similar document to identify the case closure, indicating in writing the type of disposition (IA, CNC, ADJ, etc.). If a case file folder is used, it is suggested that the identifying document be attached to the left side of the case file folder, and that all other closing, processing, and supporting documents be attached to the inside right side of the file folder. All related documents should be grouped together (i.e., documents supporting the Collection Information Statement with the 433-A, etc.).
4. Remove dated and/or extraneous material that is not needed to support the case closure or that does not reflect actions taken in the course of the case, including ICS histories, old IDRS prints, maps, blank pages, duplicate documents, etc.
5. Refer to the ICS User's Guide for detailed instructions on processing and routing closed cases to the Centralized Case Processing (CCP) Unit. Specific guidance associated with each type of case closure can also be found throughout Part V of the IRM.

5.1.10.11 (04-20-2010)

Timely Case Closing Actions

1. At the point in a case when all necessary action has been taken, all required documentation has been secured, and case disposition action can be taken, close the case promptly, normally within 15 days. Groups should ship cases to CCP as soon as they are closed so that review samples can be readily available for selection.
2. If the taxpayer's case is fully resolved and no issues remain, send Letter 4222 prior to closing case on ICS. If the taxpayer's case is closed as Currently Not Collectible -- Hardship, send Letter 4223 prior to closing on ICS in accordance with the guidance in IRM 5.1.1.4, *Case Closing Letters*. (Also, see IRM 5.16.1.2.9, Hardship.)

Exhibit 5.1.10-1

Sample Language to Request Entry to Gated Property

In connection with their duties, Internal Revenue Service Officers are, at times, required by law to make direct contact with individual citizens. Accordingly, it becomes necessary for a Revenue Officer employed by the Internal Revenue Service in the performance of his or her official duties to attempt contact with a taxpayer at his or her personal residence. We hereby request that you permit entry to Internal Revenue Service personnel who present the appropriate credentials.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 1. Field Collecting Procedures

Section 11. Delinquent Return Investigations

5.1.11 Delinquent Return Investigations

- 5.1.11.1 [Return Delinquency Program](#)
- 5.1.11.2 [Taxpayer Contact](#)
- 5.1.11.3 [Unable to Locate](#)
- 5.1.11.4 [Cases Requiring Special Handling](#)
- 5.1.11.5 [Secured Returns](#)
- 5.1.11.6 [No Return Secured](#)

Manual Transmittal

August 01, 2014

Purpose

(1) This transmits revised IRM 5.1.11, Field Collecting Procedures, Delinquent Return Investigations.

Material Changes

- (1) IRM 5.1.11.6.3(3) is updated to reflect the current HINF income threshold
- (2) IRM 5.1.11.6.3.3 is updated to reflect the current high income criterion.

Effect on Other Documents

This material supersedes IRM 5.1.11, dated April 23, 2014.

Audience

SB/SE Collection

Effective Date

(08-01-2014)

Rocco A. Steco
Acting Director, Collection Policy
Small Business/Self-Employed

5.1.11.1 (06-02-2004) Return Delinquency Program

1. Achieving full compliance is the goal of the Return Delinquency Program, including securing full payment of the tax liability with the delinquent return. Cases created by the Return Delinquency Program are worked in most functions of the Service. Delinquent return cases are created when a return is not filed by the program completion date (PCD) for Campus processing of timely filed returns. Delinquency checks are run against the Master File shortly after the PCD to identify individual and business taxpayers who have not filed their returns.

5.1.11.1.1 (01-15-2010) Case Creation and Notice Issuance

1. There are two types of delinquency checks for individuals. Case creation uses information obtained from both delinquency checks in the Case Creation Nonfiler Identification Program (CCNIP).
2. The CCNIP identifies individual taxpayers from:
 - Those who filed an individual income tax return the previous year, but failed to file a current return.
 - Taxpayers for whom IRS received third party Information Returns Program (IRP) documents such as Form W-2 and Form 1099. The IMF delinquency checks using IRP are generally run 10 months after the due date of the return.
3. The BMF case creation program identifies business taxpayers who have an open filing requirement for a return that is not filed. BMF delinquency checks are made 16 weeks after the due date of each return and tax period.
4. The BMF delinquency check assimilates third party information (CAWR data, 1099 IRP, and Payer Master File Processing) in the case creation program to identify productive BMF nonfiler cases. This process is known as the Business Masterfile Case Creation Nonfiler Identification Process (BMF CCNIP).

5.1.11.1.2 (06-02-2004) Taxpayer Delinquency Investigations (TDI/Del Ret)

1. Nonfilers generally receive one or two notices about their delinquent return. When the taxpayer fails to resolve the delinquency during the notice process, a delinquent return (Del Ret) module is generated and assigned an Inventory Delivery System (IDS) case prioritization code that determines where it will be assigned.
2. You must investigate all unresolved previous and subsequent tax periods when a Del Ret module is issued on a taxpayer for a specific tax period. The goal of your investigation is to bring the taxpayer into full filing and paying compliance.

3. Del Ret cases are worked as a standalone investigation or in combination with a balance due (Bal Due) account or other investigation (OI). The latter is referred to as a "combo case."

5.1.11.1.3 (11-29-2011)

Initial Analysis

1. Review the complete case history when a Del Ret case is first assigned to you. In addition to the case history, several research tools are available on IDRS and CFOL to help in the initial analysis of your case. The Initial Analysis Tool (IAT) is also a useful tool for verifying compliance. Document the following during your initial analysis:
 - All filing requirements
 - All filing and payment compliance issues
 - A plan of action to resolve the case

Note:

For a Form 1120 series filing requirement, check ICS Entity Detail to determine which form the taxpayer is liable to file.

5.1.11.1.3.1 (06-02-2004)

IDRS/CFOL Command Codes (CC)

1. Use IDRS/CFOL command codes to determine the types of tax and the periods for which the taxpayer may be liable. CFOL command codes are available even when IDRS is unavailable. See the IDRS Command Codes Job Aid for command code display screens and field definitions at http://serp.enterprise.irs.gov/databases/irm-sup.dr/job_aid.dr/command-code.dr/idrs_command_codes_job_aid.htm
2. Refer to IRM 2.3, *IDRS Terminal Responses*, for a complete command code list with definitions.
3. Consider researching the following IDRS command codes:
 - ENMOD
 - NAMES
 - NAMEE
 - SUMRY
 - TXMOD
 - TDINQ
4. Helpful CFOL command codes are as follows:
 - INOLE
 - BMFOL
 - IMFOL
 - RTVUE
 - BRTVU
 - IRPTR

5.1.11.1.3.1.1 (04-23-2014)

Command Code IRPTR

1. Command Code (CC) IRPTR (Information Returns Processing Transcript Requests) allows IDRS users to request either on-line or hardcopy Information Returns Processing (IRP) transcripts from the Information Returns Master File (IRMF).
2. CC IRPTR can be used to request data, either online or hardcopy transcripts, for a particular Payee (online or Hardcopy) or Payer (Hardcopy only) using Taxpayer Identification Number (TIN) along with one or more Tax Years (TY).
3. Use IRPTR to request a particular Payee or Payer Taxpayer Identification Number (TIN) for up to six prior tax years.
4. Valid IRPTR definers are shown below:
 - "E" Payee hardcopy (paper) transcript request
 - "H" Initial help screen
 - "J" Payee nonfiler summary request
 - "L" Summary request IRPOL
 - "O" Payee online transcript request
 - "R" Payer hardcopy transcript request
 - "W" Payee online sanitized transcript request
5. Hardcopy transcripts have a scheduled shipping date and requests are processed every Wednesday at noon EST. Allow up to 1 to 2 weeks from shipping date for receipt. Contact your distribution center for the status of your transcripts.
6. Beginning with tax year 2013, "FRAUDULENT EIN" appearing on BMF income documents on IRPTR indicates the EIN was obtained using fabricated business information. Do not use these documents to verify information reported on tax returns. If a current year income document is marked, then consider all previous year income documents to be fraudulent.
7. For further details on CC IRPTR, see IRM 2.3.35, *Command Code IRPTR*.

5.1.11.1.3.1.2 (04-23-2014)

IRP Selection Criteria Codes

1. The Selection Code is a two-digit code indicating the criteria for creation of the Del Ret.

- A. IRP Selection Criteria Codes are defined in Document 6209, Section 11. 7.
- B. The IMF Del Ret Selection Code is found on the ICS Del Ret Module Summary screen.
- C. The BMF CCNIP Selection Code is found in the TXMOD "MASTER FILE HISTORY SECTION" (CCNIP-SELECT-CD); it identifies the specific third party source data used to determine whether the taxpayer may be liable to file. The criteria for BMF Selection Codes are in Document 6209, Section 11.7.8.

5.1.11.1.3.1.3 (04-23-2014)

State Reverse File Matching Initiative (SRFMI)

1. SRFMI data on IRPTR is provided by participating state agencies for taxpayers who,
 - A. Filed a state tax return, but have not filed a federal tax return
 - B. Reported higher amounts on a state return than on the federal return
2. SRFMI documents are identified as such on IRPTR at the top and bottom of the screen.
3. The SRFMI Document code fields on IRPTR are as follows:
 - A. Doc code 30 - wages, taxable interest, business income, capital gain/loss., etc., reported on the state individual income tax return
 - B. Doc code 33 - gross receipts, compensation of officers, salary and wages paid, etc., reported on the state corporate tax return
 - C. Doc code 34 - state wages and state income tax withheld reported on the state withholding tax return
 - D. Doc code 35 - gross sales and services, taxable sales and services, etc., reported on the state sales, service or transaction information return

5.1.11.2 (04-23-2014)

Taxpayer Contact

1. Attempt initial contact with the taxpayer at the taxpayer's residence or place of business in accordance with guidelines and procedures set forth in IRM 5.1.10, *Taxpayer Contacts*. Observe the following during a field contact:
 - Taxpayer's standard of living
 - Filing requirements
 - Assets
 - Number of employees
 - Type of business, e.g., construction, sales, consulting
 - Potential income sources and amounts
 - Potential expenses and exemptions, and
 - Other pertinent information that will help determine potential liability and collection potential

Note:

IRC 7602(e) prohibits the Service from using financial status or economic reality techniques to determine if the taxpayer received unreported income, absent a "reasonable indication" that there is a likelihood of such unreported income.

2. Contact third parties if the Del Ret is not resolved during initial contact. The field investigation should include contacts with third parties (e.g., neighbors, business associates, employers, financial institutions) as necessary to resolve the Del Ret through other means. Always follow the Service's third party contact procedures for advising the taxpayer that third parties may be contacted and for keeping a record of such contacts. See IRM 5.1.1.10, *Third Party Contacts*, for further guidance.
3. Document your case history with all contacts and appropriate cross-reference information. Local management may provide additional tools for ensuring proper documentation of these actions. Provide a cross-reference in the case history so that the information can be readily located.
4. Tax Examiners working Field Collection corporate inventory are not required to make contact in the field with the taxpayer or representative. If a liability determination cannot be made using internal or external data, then the Del Ret can be returned to the Queue. Internal and external data includes data obtained:
 - Online
 - By phone
 - Through the mail, or
 - By interviewing the taxpayer in the office
5. When the taxpayer states he or she is the victim of identity theft, follow the guidelines in IRM 5.1.12.2, *Identity Theft*, for standard documentation requirements and case resolution procedures.

5.1.11.2.1 (06-02-2004)

Taxpayer Rights

1. Observe taxpayer rights when conducting delinquency investigations.
2. Verify at first contact that the taxpayer has received Publication 1, *Your Rights as a Taxpayer*. If first contact is by telephone and the taxpayer has not received a copy of the publication, the interview may continue; however, Publication 1 should be sent to the taxpayer.
3. Document the case history that the taxpayer has been provided Publication 1 and any questions the taxpayer had were answered.

5.1.11.2.2 (03-13-2013)

Taxpayer Interviews

1. Give taxpayers who reach an impasse during an interview an opportunity to meet with the supervisory official. Advise taxpayers of their appeal rights even if they do not request a higher level of review.
2. The taxpayer may be represented during a taxpayer interview by any of the following who is not disbarred or suspended from practice before the Service, and has a properly executed power of attorney from the taxpayer:

1. ===== "===== "=====
2. ===== "===== "=====

**5.1.11.4.3 (04-23-2014)
Frivolous Nonfilers**

1. Frivolous nonfilers are taxpayers who refuse to file or who file non-processable returns based on arguments not supported by tax law. Review Policy Statement 5-133, at IRM 1.2.14.1.18, and follow the appropriate actions specified in *IRM 5.1.11.6*, to secure a delinquent return when working frivolous nonfiler cases.
2. If you determine that a taxpayer has submitted a tax return (original or amended) taking a frivolous position, stamp the return with the date received. Do not send the return to Submission Processing. Instead, send the complete original or amended return with all attachments, including the envelope, to the Frivolous Return Program (FRP) unit address below. Maintain a copy of the return in the case file.

Internal Revenue Service

Frivolous Return Program

1973 N. Rulon White Blvd.

M/S 4450

Ogden, Utah 84404

Note:

For frivolous returns received on ATAT cases, refer to IRM 5.20.10, *Abusive Tax Avoidance Transactions, Identification and Processing of Frivolous Documents*.

3. IRC 6702(a) provides that a person who files a purported tax return (original or amended) based on one or more positions the IRS has identified as frivolous under IRC 6702(c) will be subject to a penalty of \$5,000, if the return,
 - A. Does not contain information on which the substantial correctness of the return can be judged, or
 - B. Contains information that on its face indicates that the self-assessment is substantially incorrect

See Notice 2010-33, 2010-17 I.R.B. 609 for positions the IRS has identified as frivolous.

4. The penalty may also be assessed if the purported return is not based on a position listed in Notice 2010-33, but it meets either a) or b) immediately above and reflects a desire to delay or impede tax administration.
5. The IRC 6702 penalty is assessed by the FRP unit at the Ogden Compliance Services Campus.
6. The FRP unit mails a Letter 3176, Response to Frivolous Documents>Returns Received from Taxpayers, along with Publication 2105, Why do I have to Pay Taxes? to the taxpayer informing them of the frivolous argument and requesting they rescind their position and submit any non-filed returns. The FRP unit will monitor for a response from the taxpayer.
7. Monitor IDRS for assessment of the IRC 6702(a) penalty (TC 240, PRN 666). If there is no assessment after ten weeks, contact the Ogden Compliance Service Center FRP Coordinator to determine the status. Locate the coordinator on the FRP website at <http://mysbse.web.irs.gov/AboutSBSE/aboutccs/ccsprog/frp/contacts/17538.aspx>

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- A. =====
- B. =====
- C. =====
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- D. =====
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- E. =====
- F. =====
- G. =====
- H. =====
- I. =====
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**5.1.11.4.4 (11-29-2011)
Exempt Organizations**

1. Refer a case to Examination on Form 5666, TE/GE Referral Information Report, if the following occurs:

- A. The organization claims to be a church, religious order, or affiliate of a church and no ruling or determination letter is available. Secure a written statement from a responsible officer that the organization is exempt from filing information returns under IRC 6033(a).
 - B. The organization has a ruling or determination letter that it is a Private Foundation, but fails to file Form 990–PF or it claims not to be a private foundation.
 - C. The organization claims it is only subject to file Form 990-N or otherwise not required to file Form 990, but gross receipts are normally greater than the amount on this page [http://www.irs.gov/Charities-&Non-Profits/Annual-Electronic-Filing-Requirement-for-Small-Exempt-Organizations-Form-990-N-\(e-Postcard\)](http://www.irs.gov/Charities-&Non-Profits/Annual-Electronic-Filing-Requirement-for-Small-Exempt-Organizations-Form-990-N-(e-Postcard))
 - D. The organization claims it is no longer in existence, and there is either,
 - No articles of dissolution or resolution of dissolution
 - No final return, or
 - No record of final disposition of assets
 - E. If a person or entity claims the Del Ret organization has merged with another organization, then note the name and EIN of the surviving organization as well as the merger details. There should be Articles of Merger or a similar document.
 - F. The organization claims to be an instrumentality or governmental unit, its status is questionable, and there is no ruling or determination letter about its governmental status or the exclusion of income under IRC 115.
 - G. The organization claims to be a subordinate in a group exemption ruling (e.g., local post or chapter) and fails to file returns.
 - H. A tax-exempt *charitable* organization described under IRC 501(c)(3) is supporting or opposing candidates for public office.
2. Contact TE/GE Customer Account Services at 877–829–5500 in Cincinnati and notify them of any changes that would affect their Exempt Organization Master File.

5.1.11.4.4.1 (11-29-2011)

Revocation of Tax Exempt Status

1. If an organization fails to file the following returns for three consecutive years, it will automatically lose its tax exempt status:
 - A. Form 990, *Return of Organization Exempt from Income Tax*
 - B. Form 990–EZ, *Short Form Return of Organization Exempt from Income Tax*
 - C. Form 990–PF, *Return of Private Foundation*
 - D. Form 990–N, *e-Postcard*
2. The tax-exempt status is revoked as of the filing due date of the third year. The Form 990 filing requirement will convert to a Form 1120 or Form 1041 filing requirement effective beginning with the tax year after the revocation.
3. Review the taxpayer's Form 990 filing history, filing requirements, delinquent periods, and the due date of the delinquent return(s). See this link for Form 990 series filing requirements, [http://www.irs.gov/Charities-&Non-Profits/Form-990-Series-Which-Forms-Do-Exempt-Organizations-File%3F-\(Filing-Phase-In\)](http://www.irs.gov/Charities-&Non-Profits/Form-990-Series-Which-Forms-Do-Exempt-Organizations-File%3F-(Filing-Phase-In))
4. Determine whether the tax-exempt status has been or will be revoked for failure to file Form 990 series return for three consecutive years, and the due date (or extended due date) of the third year's filing has passed.
 - A. The tax-exempt status has been systemically recognized as revoked if Exempt Organization status code 97 appears on the following:
 - CC ENMOD (EO-STAT)
 - CC INOLES (STS-CD)
 - CC BMFOLO (Current Status CD)
 - B. If the taxpayer has not filed the required Form 990 series for three consecutive years, and if the due date (or extended due date) of the third year's filing has passed, the tax-exempt status will be revoked, even though status code 97 has not been generated.

Reminder:

A prior year closed Del Ret filing requirement does not mean a return was filed.

5. If the tax exempt status has been or will be revoked, no further action is required to secure a return or initiate a referral. Select "**Shelved**" from the "Close Del Ret" menu. ICS generates a TC 598 cc 057 to IDRS.
6. If a Form 990 series return has been filed for one or two of the three previous years, then the tax exempt status is retained and a Form 990 is due for the unfiled year(s). Contact the taxpayer to secure the unfiled return(s). See *IRM 5.1.11.6.5, Referrals to Tax Exempt and Government Entities (TE/GE)*, for referral procedures if the taxpayer refuses to file.

Exception:

If the taxpayer is a Form 990–N filer, **do not** secure a return.

For a current year Form 990–N, ask the taxpayer to submit the electronic Form 990–N, or "e-Postcard," on the IRS website at [http://www.irs.gov/Charities-&Non-Profits/Annual-Electronic-Filing-Requirement-for-Small-Exempt-Organizations-Form-990-N-\(e-Postcard\)](http://www.irs.gov/Charities-&Non-Profits/Annual-Electronic-Filing-Requirement-for-Small-Exempt-Organizations-Form-990-N-(e-Postcard)).

5.1.11.4.5 (11-29-2011)

Wagering Taxes

1. Field Collection is responsible for securing delinquent wagering, occupational, and/or excise tax returns, except when:
 - A. Evidence of criminal activity or fraud is discovered.
 - B. Notification is received advising that the taxpayer is the subject of a criminal investigation.
 - C. Extensive scrutiny of records requires Examination involvement.
 - D. The taxpayer is a tribal entity or tribal casino. Contact the assigned Indian Tribal Government field manager for the state where the tribe is located to coordinate securing the return. Locate the name of the manager on this link <https://organization.ds.irsnet.gov/sites/tege-cl/ITG/itg-org.pdf>

5.1.11.4.6 (04-23-2014)

Bankruptcy Cases

1. **Stop** all balance due enforcement actions upon learning that the taxpayer has filed a petition under any chapter in bankruptcy.
 - A. Secure and process all delinquent returns in accordance with *IRM 5.1.11.5*.
 - B. Determine the petition date and docket number.

C. Do not demand payment for pre-bankruptcy periods.

2. See IRM 5.9.3.9, *Revenue Officers and Insolvency*, for additional information and necessary actions.

5.1.11.4.7 (04-23-2014)

IRS Employee Return Delinquency

1. IRS employee Del Rets are identified by specific Selection Codes. Refer to Document 6209, Section 11.7, for the Selection Code assignment by Delinquent Tax Year and Business Operating Division (BOD).
2. Area offices will designate an experienced revenue officer and back-up to work IRS employee cases.
3. IRS employee cases bypass ACS and are systemically assigned to the Area ICS/Entity Quality Analyst (IQA) via the Integrated Collection System (ICS).
 - A. The IQA is responsible for receipt, control, and assignment of these cases.
 - B. The IQA will notify the Area Director (AD) or a designated member of the AD's staff by secure email of all IRS employee cases within their area.
 - C. These cases are identified by Taxpayer Identification Number, name, and address as shown on the latest tax return.
 - D. The AD will ultimately be responsible for identifying any conflict of interest in assignment of IRS employee cases.
4. Potential violations under RRA '98 §1203 (b)(8), "willful failure to file a federal tax return," or (b)(9), "willful understatement of federal tax liability" are generally identified through the Employee Tax Compliance (ETC) program. Do **not** refer these cases to TIGTA.

Note:

Refer the taxpayer to Criminal Investigation (CI) if elements of potential fraud are identified. See *IRM 5.1.11.6.2*, for guidance in preparing and processing CI referrals.

5. IRS employee cases are worked like any other taxpayer delinquent return investigation.

Exception:

IRS employee cases are systemically blocked from closure:

- Under the provisions of Policy Statement 5-133
- As Unable to Locate, TC 593
- As Surveyed, TC 597
- As Shelved, TC 598

Exception:

IRS employee cases cannot be transferred to Automated Substitute for Return (ASFR). For IRS employee enforcement referral, see *IRM 5.1.11.6.3.2.1*

6. Follow the procedures in *IRM 5.1.11.5*, when a delinquent return is secured. Record the following information in the ICS history:
 - A. Date the return was secured
 - B. Amount of tax, penalty, and interest due identified by "T P I DUE"
 - C. Amount of refund due identified as "REFUND"
 - D. Amount due "AMT. DUE"
 - E. Date paid "DATE PD"
 - F. "EMPLOYEE DECEASED" when applicable
7. Always protect against inappropriate disclosures due to the sensitive nature of IRS employee cases.
8. If the taxpayer is no longer an employee of the IRS or the secondary coded case is on an ex-spouse and there are no outstanding joint liabilities with the IRS employee, request input of TC 972, AC 191 on Form 4844 to turn off the IRS Employee Indicator. Note in the Remarks section of the form "Reversing IRS employee Indicator." Allow two cycles for removal of the indicator.
9. Remove the FED Indicator by requesting TC 972, AC 51 only if the taxpayer is **not** a federal employee or retiree.

5.1.11.4.8 (05-27-1999)

Delinquent Return Transfers

1. Intra-Area Del Ret transfers are input using ICS and require managerial approval.
2. Initiate a Courtesy Investigation (see also *IRM 5.1.8.2, Originating Office Procedure*) to propose a transfer if:
 - A. The taxpayer fails to acknowledge receipt of Letter 729, Requesting Delinquent Return, sent to the new address, or
 - B. You are unable to confirm a change of address.
3. Indicate the potential taxpayer address in the "**Action Information**" portion, and specify the action required in the "**Action Requested**" portion of the request for a Courtesy Investigation.

5.1.11.4.8.1 (05-27-1999)

Transfer Without Prior Courtesy Investigation

1. Del Rets may be transferred without first requesting a Courtesy Investigation if:
 - A. They accompany Bal Dues on the same taxpayer that are being transferred
 - B. The Del Rets, as issued, show an address in another area, and
 - C. Terminal research does not show a more current address within your area, the taxpayer is not incarcerated, and the address is not a P.O. Box or in care of a motel or hotel, or employer, or
 - D. The transferee office requests or agrees to the transfer, or
 - E. Correspondence received from the taxpayer or personal contact with the taxpayer provides a new address.

Change the taxpayer's address on ICS before the transfer. Select the reason for the transfer and secure managerial approval

2. Transfer corporate Del Ret only if the corporation itself, not merely one or more officers, is located in the transferee area's territory.
3. Transfer joint or partnership Del Ret only if all the taxpayers reside in the transferee area's territory.
4. Transfer a Del Ret if the taxpayer acknowledges receipt of Letter 729 or a similar letter, but does not respond sufficiently to close the Del Ret.

5.1.11.4.8.2 (03-13-2013)

Military Personnel

1. If a military taxpayer is stationed within the United States and correspondence does not resolve the case, initiate a Courtesy Investigation proposing transfer.
2. If a military taxpayer requests personal contact and is stationed outside the United States, initiate a Courtesy Investigation requesting assignment to A/C International, Area 35.

Reminder:

Transfer of the Del Ret to Area 35 is not permitted

5.1.11.4.8.3 (04-23-2014)

Other International Delinquent Returns

1. Initiate a request for a Courtesy Investigation for possible transfer by choosing on ICS "Puerto Rico" or "A/C International" if the:
 - A. Taxpayer has moved to an unconfirmed address outside the United States,
 - B. Del Ret cannot be resolved through correspondence,
 - C. Del Ret meets the following criteria:

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Note:

For combo cases, see IRM 5.1.8.1.4, *Account Transfer to International*.

2. Give specific instructions in the "Action Requested" box on the Courtesy Investigation request for each return to be secured or action to be taken.
3. If the address is confirmed and the Del Ret cannot be resolved through correspondence, then transfer the Del Ret per the procedures in IRM 5.1.8.1.4.

5.1.11.4.9 (01-15-2010)

Delinquent Return Refund Hold Program

1. Refer to Delinquent Return Refund Hold procedures found in IRM 25.12.1, *Processing Refund Hold Program Inventory*. This IRM section contains the criteria for holding a taxpayer's refund while investigating the delinquent return(s) and the functional procedures for screening, working, and monitoring cases.
2. The Service holds individual income tax refunds, debtor Master File offsets, and credit elects when a current or prior year return is filed with a refund $\equiv \equiv \equiv \equiv \equiv \equiv \equiv \equiv$ that is not barred by statute **and** the taxpayer has a return delinquency in the five years prior to the current filing year. Refund hold modules can be identified by the following:
 - A. Freeze code "-R" on the IDRS module for the year of the refund being held
 - B. TC 570 with 999 in the Julian date of the document locator number
3. The Delinquent Return Refund Hold program delays issuing an income tax refund up to six months while the Service investigates a return delinquency. The refund is released to the taxpayer after it is used to offset any balance due on the delinquent return(s).
4. If you are unsuccessful in securing the return(s), refer any select code standalone Del Ret module with a Refund Hold indicator to the Automated Substitute for Return (ASFR) or the appropriate Examination process using the applicable ICS closure. See *IRM 5.1.11.6.3*.

5.1.11.4.10 (04-23-2014)

Taxpayers Who Are Federal Contractors

1. See IRM 5.7.9.2, *Identifying Federal Contractor Cases*, for information on the Masterfile that identifies the taxpayer as a federal contractor.
2. Per IRM 5.7.9.3.2, *Secured Delinquent Returns*, prompt assess unpaid delinquent returns secured from a federal contractor or vendor. See IRM 5.1.4.5, *Prompt Assessment*.

Exception:

Follow normal return processing procedures if prompt assessing will not facilitate collection, i.e., balance due nominal or will be included in an installment agreement or reported currently not collectible.

5.1.11.5 (03-13-2013)

Secured Returns

1. Advise the taxpayer that all tax, penalty, and interest is immediately due when a delinquent return is secured.

Exception:

The taxpayer is in bankruptcy and the secured returns are for pre-petition periods.

2. If a taxpayer advises you he/she is in bankruptcy, check IDRS prior to submitting the return(s) to make sure a TC 520 cc XXX has been input. If a delinquent balance due return(s) is secured and there is no TC 520 cc XXX, contact Centralized Insolvency by telephone so they can determine if a freeze code is necessary before sending the return to the campus for processing. Close the Del Ret module on ICS using the appropriate submenu option for Bankruptcy. Send a copy of all balance due returns to Insolvency. See IRM 5.9.3.9, *Revenue Officers and Insolvency*.
3. Date-stamp all delinquent returns secured in Collection with an official "Received" date stamp.

Note:

If an official "received" date stamp is not available, then write the following on the face of the tax return in the upper margin on the left side: "Received," the date received, your signature and title.

4. Write TC 599 and the applicable closing code (cc) on the upper left margin of the return and close the Del Ret module on ICS using the "Return Secured" closing option and appropriate submenu option. See *IRM 5.1.11.7.1*.
5. Refer a return to Criminal Investigation (as described in *IRM 5.1.11.6.2*) if a delinquent return appears to have fraud potential related to a questionable refund.
6. If balance due and refund returns are secured,
 - A. Complete the contact information on Form 13133, Expedite Processing Cycle, and
 - B. Attach Form 13133 to the balance due returns to expedite processing.

The refund returns will subsequently post and offset to the balance due module.

7. Acceptance of faxes and signature stamps on secured delinquent returns and to resolve post-filing issues is allowed in the following instances:
 - Filing of original tax return via fax is allowed as part of a return perfection process (e.g., securing missing schedule or missing signature) initiated by the IRS or in post-filing/nonfiling activities where contact with the taxpayer has been made and documented.

Note:

Label the top of IMF return(s) with the faxed signature "Process as original."

- Return preparers may sign original returns, amended returns, or requests for filing extensions using a signature stamp, mechanical device, or computer software program; however, taxpayers must continue to sign their returns with an original signature or other authorized alternative (e.g., PIN).
- Corporate officers or duly authorized agents may sign Form 94X series, Form 1042, Form 8027, Form CT-1 or any variant of such designated forms by rubber stamp, mechanical device, or computer software program.
- Preparer/taxpayer signature stamps will not be permitted when signing other documents such as powers of attorney or inquiry/resolution related documents.

5.1.11.5.1 (01-15-2010)

Returns With Payment

1. Compute and include all penalties and interest in the full amount due.
2. Apply partial payments secured on multiple returns first to the oldest return in order of tax, penalty, and interest, unless the taxpayer specifically designates otherwise.
3. See *IRM 5.1.11.7.1*, for ICS module closure instructions.

5.1.11.5.2 (03-13-2013)

Returns Without Full Payment

1. Contact the taxpayer and demand full payment (see *IRM 5.1.10, Taxpayer Contacts*) when a return is received without full payment of tax, penalty, and interest. If full payment is not secured, make all reasonable efforts to collect full payment. If the taxpayer is unable to pay the liability in full, resolve the liability in one of the following ways:
 - A. Grant an installment agreement (see *IRM 5.14, Installment Agreements*)
 - B. Report the account currently not collectible (see *IRM 5.16, Currently not Collectible*)
 - C. Continue the investigation
2. Write "TC 599 cc 069" on the upper left margin of the secured return and close the ICS Del Ret module per *IRM 5.1.11.7.1*.
3. If a Collection Information Statement (CIS) is secured, verify the information contained on the CIS without delaying the processing of the return.
4. Open an "ICS Only Pre-Assessed" module to complete the investigation if the liability is not resolved by full payment.
5. If the subsequent investigation reveals assets that can be used to collect the liability, then request the issuance of the Bal Due through your group manager via CC STAUP.
6. If enforced collection action will be taken, then request a prompt assessment per *IRM 5.1.4, Jeopardy, Termination, Quick and Prompt Assessments*.
7. If the taxpayer is in bankruptcy, then write TC 599 and the appropriate taxable or nontaxable cc on the return. Assessments can be made on returns where the bankruptcy was filed on or after October 22, 1994. See *IRM 5.9.4.2.1(2), BRA94 and BAPCPA's Effect on Assessments*.
8. See *IRM 5.1.11.6.7*, and *IRM 5.1.11.7.1*, for the appropriate case and ICS closing actions for returns prepared and filed under IRC 6020(b).
 - A. Write TC 599 cc 063 on the upper left margin of the return if unagreed or no response.
 - B. Write TC 599 cc 064 on the upper left margin of the return if agreed or signed by the taxpayer.
9. BMF or IMF Del Rets closed with closing codes 063 or 064 with TC 599 receive a first notice from the Master File with Publication 1 and are then accelerated to Bal Due status 26 the following week.
10. Initiate a Trust Fund Recovery Penalty investigation on any secured trust fund returns, if required.

5.1.11.5.3 (01-15-2010)

Referrals of Underreported Tax

1. You may periodically encounter tax returns with potential underreported tax. This may happen when you are:
 - Working an assigned Del Ret and the taxpayer files an original return
 - Working an SFR Bal Due and the taxpayer files an original return for reconsideration of the SFR assessment
 - Comparing financial documents with a previously filed return
2. If this occurs, do not attempt to audit, examine, or verify the correctness of the return secured. If omitted taxable income appears to be at least $\equiv \equiv \equiv$ or overstatement of credits exceeds $\equiv \equiv \equiv$, consider a referral to Examination. Do ensure the secured return is valid (signed and complete) and attempt to resolve with the taxpayer any discrepancies or omissions.
3. Upon receipt of an original return filed for reconsideration of an SFR assessment do the following:
 - A. Compare the income reported on the return with the information on IRPTR and attempt to resolve obvious omissions and discrepancies
 - B. Ensure that the proper schedules are filed according to the types of income shown on IRPTR

- C. Determine if any income that has not been subject to withholding or reported on Form 1099 or other such IRP documents has been reported on the return
- D. Compare withholding reported to the IRS to that stated on the return

Note:

Follow the procedures in IRM 5.1.15.4.3, *Substitute for Return (SFR) and Automated Substitute for Return (ASFR) Reconsiderations*, or IRM 5.1.15.6, *Business Master File (BMF) IRC 6020(b) Adjustments*, to process an original return filed to request reconsideration of an SFR assessment. Unresolved discrepancies or omissions may result in rejection by the campus of the reconsideration request.

- 4. In all investigations, be alert to discrepancies that may indicate underreporting on a tax return.

Example:

Bank statements used to verify income reported on Form 433–A show deposits far in excess of the income claimed on the tax return.

Example:

Bank statements do not show payments for expenses claimed such as alimony, medical or Schedule C expenses.

5.1.11.5.3.1 (11-29-2011)

Audit Referral Preparation and Processing

- 1. A referral of underreported tax can be made to Correspondence Examination or Field Examination depending on the type of tax and complexity of the issues involved.

Note:

Correspondence Examination works Form 1040 and Schedules A and C only and is the most efficient audit option for Form 1040.

- 2. A return is eligible for referral to Correspondence Examination when the following conditions exist,
 - A. Form 1040 and/or related Schedule A and/or C
 - B. At least 18 months remains on the Assessment Statute Expiration Date (ASED)
 - For timely filed returns, the ASED is three years from the return due date
 - For late filed returns, the ASED is three years from the date the return was filed
 - For all returns, if the amount of unreported income exceeds 25 percent of the gross income on the return, then the ASED is six yearsSee IRM 25.6.1, *Statute of Limitations Processes and Procedures*, for more information on determining ASEDs.
 - C. Potential underreported tax is sufficient to warrant the cost of an audit
 - D. Documentation supports the referral
 - E. Collection potential exists
- 3. For a referral to Correspondence Examination, mail Form 3449, Referral Report, with documentation to:
Internal Revenue Service
201 West Rivercenter Blvd.
Covington, KY 41017
Mail Stop 8201G
- 4. For IMF and BMF (Form 1065, 1120, 1120S) referrals to Field Examination, do the following:
 - A. Consider the ASED, see (2) b. above
 - B. Consider collectibility
 - C. Complete Form 3449, Referral Report
 - D. Attach all documentation to Form 3449
 - E. Secure group manager approval
 - F. Forward Form 3449 and documentation to the local Planning and Special Programs (PSP) coordinator for screening and subsequent classification in the Brookhaven campus. Locate the PSP mailing address for your area at the intranet link: <http://mysbse.web.irs.gov/AboutSBSE/Exam/epd/psp/10485.aspx>
- 5. Refer underreported tax on employment tax returns (Form 940, 941, 943, 944, and 945) to the Employment Tax Examination Program electronically using this intranet link: <https://srs.web.irs.gov/>.

Exception:

Refer underreported tax on employment tax returns for Indian Tribal Government (ITG) entities to the ITG Classification Office electronically via this intranet through the Manager, Compliance Program Management (CPM) on Form 3449, Referral Report. Locate the Manager, CPM on this link <https://organization.ds.irsnet.gov/sites/tege-cl/ITG/itg-org.pdf>.

- 6. To refer an Estate or Gift tax underreporting issue (filed or unfiled return) do the following:
 - A. Prepare a memorandum to the Estate and Gift Tax Examination Unit and include: taxpayer name and address; a detailed description of the potential non-compliance; sources of the lead and/or information; your name and phone number; your group manager's approval.
 - B. Forward the memorandum with copies of all documentation supporting the potential non-compliance attached on Form 3210, Document Transmittal, to the following address:
Internal Revenue Service
Attention E&G Team 105
STOP 824-G
201 West Rivercenter Blvd.
Covington, KY 41011–1430

5.1.11.6 (03-13-2013)

No Return Secured

- 1. Do not solicit delinquent returns when information is discovered that a taxpayer's failure to file a required return is willful or there is any indication of fraud. Suspend compliance activities, promptly report the findings to the Area Fraud Coordinator and process a referral to Criminal Investigation if warranted. See IRM 25.1, *Fraud Handbook*, and IRM 5.1.11.6.2.

2. If during initial contact the return is not secured, no willful failure to file is established, and no indications of fraud exist, then set a specific date for the taxpayer to file the return(s).
3. Inform the taxpayer that failure to file the delinquent return(s) by the specific date is considered a refusal to file under the provisions of the Internal Revenue Code and that enforcement action may be taken.
4. Determine the extent of enforcement activity when a taxpayer is advised to file all required delinquent returns but neglects, refuses, or states an inability to file within the established time frame. See *IRM 5.1.11.6.1*, to make an enforcement determination.

Note:

If necessary, assist taxpayers who state an inability to file by providing them with any income information reported to IRS for the delinquent year and directing them to IRS.gov to obtain tax forms.

5. Enforcement actions pursued by Collection employees include:
 - A. Summons to appear on a given date to give testimony or produce existing books, papers and records or both, see *IRM 5.17.6, Summonses*
 - B. IRC 6020(b) authority to prepare and process employment, excise tax and partnership returns, see *IRM 5.1.11.6.7*
 - C. Referral
6. A referral decision to enforce filing requirements is based on the type of return, characteristics, and the complexity of the unfiled return. Depending on the type of return, characteristics and complexity of the case, non-fraud referrals are appropriate to one of the following functions or processes:
 - A. Automated Substitute for Return (ASFR) unit, (IMF only); see *IRM 5.1.11.6.3.1*
 - B. Examination Referral to Memphis Campus (IMF only); see *IRM 5.1.11.6.3.2*
 - C. Examination Referral IMF (F3449); see *IRM 5.1.11.6.3.3*
 - D. Examination Referral BMF (F3449); see *IRM 5.1.11.6.4, IRM 5.1.11.6.5, IRM 5.1.11.6.6*

**5.1.11.6.1 (01-15-2010)
Enforcement Determination**

1. The determination to pursue or not pursue a return will depend upon the facts of each case. Review Policy Statement 5-133 (P-5-133) (see *IRM 1.2.14.1.18*) for general guidelines and factors to consider when determining whether to pursue enforcement of filing requirements and secure a return.
2. The specific factors that must be considered when making an enforcement determination are as follows:
 - A. Degree of flagrancy
 - B. History of noncompliance
 - C. Impact on future voluntary compliance
 - D. Whether the delinquency involves trust fund monies collected
 - E. Special circumstances peculiar to a specific taxpayer, class, industry or type of tax
 - F. Existence of income from illegal sources
 - G. Minimal or no Tax due
 - H. Cost to the service to secure a return with respect to anticipated tax revenue
 - I. Bankruptcy (contact Insolvency)

3. =====
 - A. =====
 - B. =====
 - C. =====

4. Enforcement of filing requirements will normally be pursued for a six year period. Always request all (non-fraudulent) unfiled returns. The taxpayer may file for all open periods regardless of the age of the delinquency.
5. Document the case history with the facts and reasons supporting your decision. If after consideration of the factors above, a determination is made that more or less than six years of filing requirements will be enforced, then managerial approval is required.
6. Calculate the six year period for enforcement by starting with the tax year that is currently due and go back six years.

Example:

If making a field call on October 1, 2013, the enforcement period will cover tax years 2007 through 2012.

7. P-5-133 allows an investigating employee to close a Del Ret without enforcement because the non-filing is not willful, and:
 - A. There would be no tax due on the delinquent return; or
 - B. There would be minimal net tax due on the return (see *IRM 5.1.11.6.1(3)* above); or
 - C. The cost to the Service to secure a return would exceed anticipated revenue.

Note:

Examine and calculate anticipated revenue on a case-by-case basis over the length of the Collection Statute for both the potential Bal Due and all other Bal Dues already on the entity.

Note:

Consider the impact of not filing a Notice of Federal Tax Lien for assessments not pursued based on a P-5-133 determination.

8. Generally, when closing a Del Ret under (7) c. above, the nonfiler's current ability to pay will not be the primary factor in determining whether or not to secure less than six years of returns. On a case-by-case basis, apply prudence when it is clear from information available that the nonfiler does not have or will not have the ability to pay some if not all of the potential tax liability over the 10 year statutory collection period (CSED).
9. The following are examples of situations where we would not pursue returns because the cost to secure the return would exceed anticipated revenue:
 - A. A defunct corporation where no assets exist to satisfy any part of a tax liability and there is no possibility of a transferee or trust fund recovery penalty assessment.
 - B. A deceased taxpayer where no estate exists to satisfy any part of a tax liability and there is no possibility of a transferee assessment.
 - C. A foreign national taxpayer who has departed the United States with no expectation of return and no identifiable assets exist in the United States to satisfy any part of the tax liability, or collection cannot be pursued abroad through terms of a tax treaty or lack of a tax treaty.
 - D. A taxpayer whose minimum incarceration is a period equal to or exceeding the normal collection period and no identifiable assets exist to satisfy any part of the tax liability.
 - E. A taxpayer who has minimal assets and earning potential due to advanced age, illness, or debilitating condition which will permanently diminish income producing potential.
 - F. A taxpayer with minimal assets and earning potential who has substantial assessments with established CSEDs that will not allow for collection of any more than minimal amounts of the potential balance due arising from a new assessment.
10. The following returns must be secured and should not be closed under the provisions of P-5-133:
 - A. Nontaxable returns such as those in Form 990 series
 - B. Form 1065, U.S. Return of Partnership Income
 - C. IRS employee returns
11. "Net tax due" on employment tax returns is determined before the application of credits. See *IRM 5.1.11.6.1(3)*, above for P-5-133 thresholds.
12. Inform taxpayers personally contacted on a potential refund return that a refund will only be issued if a return is filed within three years of the due date of the return.

5.1.11.6.1.1 (05-07-2002)

Enforcement Not Pursued: Policy Statement 5–133 Closures

1. Take the following actions for each Del Ret closed under the provisions of Policy Statement 5–133:
 - A. Document the result of the field contact or, if applicable, the reasons why a field call was not made, along with the reason for closure under the provisions of P-5–133 (see 6.1(7) above)
 - B. Compute the anticipated tax due for each period and include in the ICS closing narrative history
 - C. Select **No Return Secured**, and the P-5-133 submenu closing action (see *IRM 5.1.11.7.3*)
 - D. Secure managerial approval

5.1.11.6.1.2 (03-01-2007)

Pursue Enforcement: A Return Must Be Secured

1. Enforcement actions pursued by Collection employees include:
 - A. Summons (*IRM 5.17.6, Summonses*)
 - B. IRC 6020(b) authority (*IRM 5.1.11.6.7*)
 - C. Referral (*IRM 5.1.11.6.2 through IRM 5.1.11.6.6.*)

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Part 5. Collecting Process

Chapter 1. Field Collecting Procedures

Section 12. Cases Requiring Special Handling

5.1.12 Cases Requiring Special Handling

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- 5.1.12.2 [Disaster Assistance and Emergency Relief](#)
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- 5.1.12.4 [Authorized IRS e-file Provider — Monitoring and Suitability](#)
- 5.1.12.5 [Affordable Care Act \(ACA\) Shared Responsibility Payment \(SRP\)](#)
- 5.1.12.6 [Income Tax Assessed Against a Child](#)
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- 5.1.12.16 [Math or Clerical Error](#)

Manual Transmittal

December 03, 2014

Purpose

(1) This transmits a topic-based revision to IRM 5.1.12, *Field Collection Procedures, Field Collecting Procedures, Cases Requiring Special Handling*, to incorporate procedural changes based on ACA IRC § 5000A, provision 1501.

Material Changes

(1) This IRM has only been updated for the Affordable Care Act (ACA) Provision 1501: Requirement to Maintain Minimum Essential Coverage (Individual Shared Responsibility) (IRC §5000A) as identified below. Content unrelated to the ACA provisions was not reviewed for currency or accuracy.

- New subsection IRM 5.1.12.5, *Affordable Care Act (ACA) Shared Responsibility Payment (SRP)*, added to provide references to relevant ACA IRM provisions.
- Added reference in IRM 5.1.12.20.1(6) to new ACA provisions in IRM 21.6.3.4.2.16.8 , *Shared Responsibility Payment (SRP)*.

Effect on Other Documents

This IRM supersedes IRM 5.1.12, dated August 5, 2014.

Audience

The target audience is revenue officers and other collection caseworkers in SB/SE Collection.

Effective Date

(01-01-2015)

Dretha Barham
Director, Collection Policy
Small Business/Self Employed

5.1.12.1 (08-05-2014)

Overview — Cases Requiring Special Handling

1. This IRM provides instructions and guidelines for working cases which require special handling. The procedures are written specifically for revenue officers; however, employees in other organizations and functions may also refer to these procedures if appropriate.
2. Follow the appropriate procedures when you are working the specific type of case shown below:
 - Disaster/Emergency Relief
 - Taxpayer Request to Record an In-Person Interview
 - Authorized IRS e-file Provider
 - Income Tax Assessed Against a Child
 - Household or Agricultural Employee
 - Taxpayer in High Assault Risk Area
 - Innocent Spouse

- Non-Petitioning Spouse
 - Child Support Obligation (CSO)
 - Taxpayer Exempt from Taxation for Religious Reasons
 - Insolvent Financial Institutions — Provisions of the IRS-RTC/FDIC Agreement
 - Foreign Insurance Company
 - Political Activity
 - Criminal Probation
 - Math or Clerical Error
 - Non-Receipt of Refund Check
 - False Refund Claim
 - Manual Refund
 - Refund Offset
 - U.S. Tax Court Subpoena
 - Backup Withholding (BWH)
 - Indian Tribal Governments
 - Mutual Collection Assistance Requests (MCARs)
3. Refer to IRM 5.1.8.7, *Courtesy Investigations Requiring Special Handling*, for guidance on Courtesy Investigations which require special handling.
 4. Elevate any questions or concerns regarding these IRM procedures through your group manager (GM).

Note:

GMs must direct any procedural questions or concerns to the appropriate area contact for possible referral to Headquarters.

5.1.12.2 (08-05-2014)

Disaster Assistance and Emergency Relief

1. This section contains disaster assistance and emergency relief operating guidance for Field Collection (FC) employees.
2. Many taxpayers and tax practitioners in a covered disaster area may be unable to meet filing deadlines or make timely federal tax payments that become due shortly after the event.
3. See IRM 25.16.1, *Disaster Assistance and Emergency Relief, Program Guidelines*, for administrative and policy procedures for the Disaster Assistance and Emergency Relief Program.
4. See <http://mysbse.web.irs.gov/supportingsbse/outcomact/outreach/disaster/default.aspx> for additional disaster program information.
5. See <http://www.tris.irs.gov/fema/> for a listing of IRS assistance determinations by year.

5.1.12.2.1 (05-20-2008)

Disaster Freeze Codes

1. There are two types of disaster freeze codes, the –O freeze and the –S freeze. Both freezes are established systemically for a specific period of time and for location(s) identified by postal zip code(s).
 - A. The –O freeze provides systemic penalty, interest, and compliance relief and stops most compliance notices.
 - B. The –S freeze will perform the same functions as the –O freeze but does not provide automatic compliance relief and will not stop generation of notices.

5.1.12.2.2 (05-20-2008)

Case Activity

1. Cases remain in status 26 when the -O freeze is input. Group managers (GMs) may move cases out of revenue officer (RO) inventory into hold files pending the release of the -O freeze.
2. Taxpayer contact is restricted on all –O freeze cases during the specified freeze period unless exigent circumstances apply, e.g., jeopardy condition, statute expiration, etc.

Note:

If the taxpayer initiates contact during the freeze period, interaction is permissible but agreements are voluntary and not enforceable for the period the -O freeze remains in effect.

5.1.12.2.3 (08-05-2014)

Field Collection (FC) Management Guidelines for Response to Disasters

1. Within 24–48 hours following a major disaster, the Field Collection Territory Manager (TM) has the following options involving taxpayers residing in the general disaster area (by county or by zip code) pending receipt of the Disaster Relief Guidelines memorandum:
 - A. Initiate Soft Contact Procedures per IRM 5.1.12.2.7 with the taxpayer to determine impact status prior to resumption of collection activity.
 - B. Initiate an initial suspension of ALL collection activity (including soft contact) pending the initial determination of the exact disaster zip code areas and magnitude - no contact whatsoever.
2. Based on the Disaster Relief Memorandum, the TM may be required to suspend compliance actions in each of the covered disaster zip code areas.

Note:

The -O freeze may cause drops in revenue officer case loads due to lack of assigned work when freeze is maintained in excess of 4–6 weeks.

5.1.12.2.4 (08-05-2014)

General Field Collection Operation Procedures

1. If the taxpayer is affected in some way by the disaster, document the case history with information provided by the taxpayer and determine if a taxpayer needs any of the following:
 - Additional time to assess their impact of the disaster
 - An opportunity to provide a new financial statement to update their ability to pay
 - Information about filing a claim for a loss on his/her preceding year's income tax return.
2. When collection activity is suspended because of a disaster:
 - A. Do not initiate contact with taxpayers; however, taxpayers may wish to contact us to resolve their accounts.
 - B. If a taxpayer-initiated contact occurs at any time after a disaster, use Soft Contact procedures per IRM 5.1.12.2.7 and ascertain the damage and hardship, if any, sustained by the taxpayer.
 - C. If contacted by a taxpayer who states that they are not affected by the disaster, resume normal collection activity with managerial approval. Document the case history explaining the reason for the resumption of collection activity.
3. At the end of the suspension period, resume taxpayer contacts within the covered disaster area, using Soft Contact procedures.
4. When collection activity is not suspended during a disaster period:
 - A. Commence taxpayer contact by using Soft Contact procedures and assessing the impact of the disaster event upon the taxpayer.
 - B. Provide an opportunity, if appropriate, to defer action for a reasonable period of time.
 - C. Resume normal collection activities if the taxpayer was not impacted.
 - D. Review any outstanding letters/levies including those that were mailed immediately before the disaster since these are the most stressful to impacted taxpayers.

Letters/levies issued just prior to the disaster may be rescinded immediately by the initiator to prevent any additional economic hardships to taxpayers unless it is known that the taxpayer has not been affected by the disaster event. Even when compliance activity has not been suspended, it may be appropriate to rescind certain letters or levies. Levies may be put on hold, as an interim measure, while determining whether to rescind or retain.

Example:

RO secured a Collection Information Statement (CIS) that indicates the case is Currently Not Collectible (CNC) but the taxpayer did not send in the verification of income and expenses by the deadline set by the RO and the levy was sent a few days prior to the disaster event. In this instance, since the CIS indicates this case is probably a CNC, the levy may potentially cause an additional hardship to the taxpayer if not released.

5. Collection activities requiring action:
 - A. Seizures in place during a disaster must be evaluated to ascertain possible seized property damage, security issues and, if applicable, disaster-related hardship conditions indicating that a release would be appropriate.
 - B. For taxpayers whose addresses are not within a covered disaster area (and are not otherwise considered to be affected taxpayers), but who self-identify as being impacted and request disaster relief, input a disaster freeze code -S using the disaster relief dates as published in the Disaster Relief Memorandum. (See IRM 21.5.6.4.30(1) for information regarding the -S Freeze code.) The -O freeze may be input by Compliance employees if suspension of collection activities is warranted in accordance with the Disaster Relief Memorandum. (See IRM 21.5.6.4.37(7) for information regarding the -O Freeze code.) See disaster freeze input procedures at IRM 25.16.1.6 , *Disaster Systemic Account Indicators*.

5.1.12.2.5 (08-05-2014)

Revenue Officer Inventory with “-O Freeze”

1. Upon expiration of the suspension of field collection contacts, implement Soft Contact procedures.
2. If the contact results in information indicating that the taxpayer is not affected by the disaster and an -O freeze was placed on the entity:
 - Resume normal collection activity immediately with managerial approval. Do not remove the -O freeze as doing so will reinstate the penalty and interest that were previously waived.
 - Document the case history with the taxpayer's status regarding the disaster.
3. Conversely, the taxpayer may provide information indicating that they have been impacted by the disaster event. If so:
 - Retain the -O freeze, do not take collection actions until after the predetermined release date has passed.
 - After the release date, ensure that the impact is not continuing prior to further collection action.
 - Document the case history with the taxpayer's status regarding the disaster.
4. If an -O freeze is not present on the entity, but the taxpayer self-identifies as a disaster victim:
 - Establish a reasonable follow-up date with the taxpayer.
 - Submit Form 4844, *Request for Terminal Action*, to have a TC 971, Action Code 087 input on the tax account.
 - Document the case history with the taxpayer's status regarding the disaster.

5.1.12.2.6 (08-05-2014)

Revenue Officer Inventory with “-S Freeze”

1. The -S freeze code provides filing and payment relief (interest and penalty relief) without systemically suspending collection activity.
2. The -S freeze applies to returns and payments that are due during the disaster relief window. The -S freeze is not applicable to late filing and payment situations established prior to the filing and payment relief period that occurred in the Disaster Relief Memorandum.

5.1.12.2.7 (08-05-2014)

Soft Contact Procedures

1. A soft contact entails approaching the taxpayer with caution and extreme sensitivity to their personal circumstances. Stress and fatigue are factors to consider even in instances where the taxpayer did not experience any personal, monetary, or physical damage from the disaster.
2. Soft contact must be used when initiating a taxpayer contact to determine whether collection activity is appropriate. Soft contact is required in the following situations:
 - A. Taxpayer is still affected by the disaster after the implementation of an -S freeze.
 - B. Taxpayer is situated in an area where a disaster event has occurred, but collection activity has not been suspended.
 - C. Taxpayer is situated in an area where collection activity was suspended, and the suspended end date has now passed.
 - D. As a follow-up to a prior soft contact where it was determined that the taxpayer was affected by the disaster event at that point in time.
 - E. Taxpayer initiated contact where the -O freeze is present.
 - F. Voluntary commitments have not been made upon conclusion of the freeze.
3. Any enforcement-related contact with a taxpayer in a covered disaster area must begin with an assessment of impact of the disaster on the taxpayer. The soft contact provides the opportunity to make that assessment on a case-by-case basis, enabling either:
 - A. Resumption/initiation of collection activity because the disaster-related impact upon the taxpayer is no longer applicable.
 - B. Postponement of collection activity to avert further hardship upon the taxpayer temporarily suffering the effects of a disaster event, or
 - C. Identification of long-term disaster-related hardship that may indicate a currently not collectible case closure.

5.1.12.2.8 (08-05-2014)

Summons Enforcement

1. If a summons was issued prior to the enforcement suspension period:

- A. Do not contact the taxpayer if located within the -O freeze area.

Note:

In the case of designated summons under IRC 6503(j), the statute of limitations on assessments is suspended for the period beginning when a lawsuit is filed in a court of law to either enforce or quash the summons. Discuss the proper enforcement action with your manager, Counsel, or other appropriate personnel

- B. Do not enforce the summons.
- C. If the taxpayer initiates contact to comply with the summons, this is acceptable.
- D. If the taxpayer initiates contact to express inability to comply with the summons, attempt to reach agreement on a new enforcement date that falls after the suspension period. Reissue the summons after the suspension period for the agreed upon date, allowing for normal time lapse between service date after the suspension period ends and the summons appearance date. Confirm the taxpayer's future location for service of that summons.
- E. Once the suspension period has ended, a summons that was not complied with (other than designated under IRC 6503(j)) must be reissued.

5.1.12.3 (08-05-2014)

Taxpayer Recording of Interviews

1. The taxpayer has the right under IRC 7521, *Procedures Involving Taxpayer Interviews*, to make an audio recording of an **in-person** interview. Under Notice 89-51, 1989-17 I.R.B. 21, ten calendar days advance written notice from the taxpayer is required.
2. If the taxpayer does not provide ten calendar days advance written notice, then you have the option to either proceed with the interview as scheduled or to set a new date for the interview. The taxpayer must supply his/her own means of recording. The recording can be by tape, stenography, or other means at the taxpayer's own expense. Taxpayers have no specific right to make video recordings of taxpayer interviews.
3. The taxpayer or representative does not have the right to record a **telephone interview**, with or without the Service's knowledge. If a taxpayer begins to record a conversation during a telephone call, and you are aware of it, advise the taxpayer or representative that the recording must be stopped. If the recording is not stopped, politely terminate the call, and document your case history accordingly.

5.1.12.3.1 (08-05-2014)

Agree with the Request

1. Agree to the request to record an interview after receiving GM approval. Upon receiving a proper written request, notify the GM, and ensure that the interview is scheduled for an IRS location and that working recording equipment will be available for the IRS to use to record the interview.
2. When the recording equipment and/or a suitable location are not available, postpone and reschedule the meeting until the necessary equipment and a suitable location are available.

5.1.12.3.2 (09-20-2012)

Deny Requests for Video or Film Interviews

1. Deny any request to videotape or film an interview.
2. Attach a copy of the taxpayer's written request to film or videotape the interview to the case file.

5.1.12.3.3 (09-20-2012)

When to Interrupt the Recording

1. The GM may stop an audio recording when the taxpayer's behavior is clearly disruptive of the normal collection process.
2. Attach a copy of the taxpayer's written request to make an audio recording of the interview to the case file.
3. Note in your case history that your GM stopped the recording.
4. Attach a copy of the recording to the case file.

5.1.12.3.4 (09-20-2012)

Audio Recording Procedures

1. Arrange for your GM to be present at all times when a recording is being made.

Exception:

Arrange for another Service employee to be present if your GM is not available.

2. Identify yourself, the date, time, place, and purpose of the meeting at the outset of the recording.
3. Ask each participant in the meeting to do the following:
 - A. identify themselves
 - B. state their role in the proceeding
 - C. acknowledge and consent to the making of an audio recording.
4. Announce and identify additional participants when they arrive or when they leave during the meeting.
5. Describe any written records presented during the proceeding in sufficient detail to make the verbatim recording a meaningful record when matched with the other documentation contained in the case file.
6. State that the proceeding is completed and the recording is ended at the conclusion of the meeting.
7. Turn the recording equipment off at the conclusion of the meeting.
8. Attach a copy of the written request and the recording to the case file.

5.1.12.3.5 (05-20-2008)

Transcript of Recording

1. Transcribe all or part of the recording when necessary to make the verbatim recording a meaningful record which can be matched with the documentation contained in the case file.
2. The taxpayer may obtain a duplicate of the recording or a copy of our transcript of the interview provided the taxpayer pays for the cost of the reproduction or transcript in advance.

5.1.12.4 (05-20-2008)

Authorized IRS e-file Provider — Monitoring and Suitability

1. The IRS performs monitoring and suitability checks on Authorized IRS e-file Providers. Monitoring may include reviewing IRS e-file submissions, investigating complaints, scrutinizing advertising material, checking adherence to electronic filing signature requirements, examining files, observing office procedures, and conducting suitability checks. Suitability checks are performed continuously regarding compliance issues.
2. See IRM 3.42.10, *Authorized IRS e-file Providers*.
3. See IRM 4.21.1, *Monitoring the IRS e-file Program*.
4. Make a referral to the Andover Campus when you believe there are suitability issues regarding a Provider that need to be addressed:
 - A. Send a suitability referral via email to "IRS E~Helpmail" .
 - B. Use **secure** email, as appropriate.
5. Make a referral when you believe an e-file Provider requires monitoring.
 - A. See IRM 4.21.1.4, *Referrals* .
 - B. Exhibit 4.21.1-15, *IRS e-File Monitoring Referral and Follow Up*, contains the referral form template.

5.1.12.5 (01-01-2015)

Affordable Care Act (ACA) Shared Responsibility Payment (SRP)

1. SRP assessments are not subject to levy or the filing of Notices of Federal Tax Lien.
2. See IRM 5.12.2.3.1.1, *Affordable Care Act's (ACA) Shared Responsibility Payment (SRP) Exception*, for information regarding treatment of Notices of Federal Tax Lien (NFTL) where there are SRP assessments.
3. See IRM 5.11.1.4.14, *Affordable Care Act's (ACA) Shared Responsibility Payment (SRP)*, for information regarding treatment of Notices of Levy where there are SRP assessments.

5.1.12.6 (09-20-2012)

Income Tax Assessed Against a Child

1. IRC 6201(c), *Compensation of Child*, permits IRS to treat certain income tax assessed against a child, to the extent of the amount attributable to income included in the gross income of the child solely by reason of IRC 73(a), *Treatment of amounts received* , if not paid by the child, as having also been properly assessed against the parent.
2. Refer to IRC 6201(c) and the related regulations for the authority to assess against a child and to treat such assessment as having been properly made against the parent.
3. Attempt to collect income tax assessed against a minor child from the minor child. Use good judgment when collecting from the income/assets of a minor child.
4. Attempt to collect income tax assessed against a minor child from the parent only if you are unable to directly collect it from the minor child.
5. Do not assess any amount of unpaid estimated tax required to be paid under IRC 6654, *Failure by individual to pay estimated income tax*, or IRC 6655, *Failure by corporation to pay estimated income tax*.

Note:

Area Directors and Campus Directors are not allowed to assess any amount of unpaid estimated tax required to be paid under IRC 6654 or IRC 6655.

6. Base any assessments on tax returns of the minor child rather than estimates.

5.1.12.7 (09-20-2012)

Household or Agricultural Employee

1. Follow normal BAL DUE processing to collect tax on the wages of household or agricultural employees.
2. To help prevent future delinquencies, ensure that taxpayers know about voluntary withholding of income tax from the wages of household and agricultural employees. .
3. Follow these procedures if taxpayers' employees want their employers to withhold tax from their wages:
 - A. assist the taxpayer in preparing Form W-4 , *Employee's Withholding Allowance Certificate* , and
 - B. furnish the taxpayer with a copy of Circular E, *Employer's Tax Guide*, for the taxpayer to deliver with Form W-4 to the employer.

5.1.12.8 (08-05-2014)

Taxpayer in High Assault Risk Area

1. IRM 5.1.3, *Safety, Security, and Control*, describes measures which may help ensure your safety in a HARA. The determination as to whether a particular area (i.e., a building(s) or zip code(s)) is a HARA will be made locally.
2. Review IRM 5.1.3 and become aware of the measures which may help ensure your safety in a High Assault Risk Area (HARA).
3. Use appropriate measures to ensure your safety when you attempt to collect on a case in a HARA.
4. Develop awareness of the instructions in IRM 5.1.3 for reporting assaults or threats of force when you attempt to collect on cases in a HARA.
5. Report any assault or threat of force which occurs during attempts to collect on cases in a HARA.
6. Refer to IRM 1.4.50.10.4, *Case/Load Rotation*, for further information regarding the periodic rotation of assignments located in a HARA.

5.1.12.8.1 (08-05-2014)

Coordinating with Examination on HARA Cases

1. Follow these procedures when an Examination employee requests you to coordinate on an examination case on a taxpayer living in a High Assault Risk Area (HARA).
2. Cooperate with any Examination employee who requests your assistance on an in-person taxpayer audit in the office.
 - In general, Examination is supposed to try to reduce the need for field Collection contacts by coordinating with revenue officers during the audit process when processing assessments on a taxpayer who lives in a HARA.
 - If Collection and Examination are in the same office, and the Examination employee is conducting an in-person taxpayer audit in the office, but the Examination employee cannot collect the balance due at the time of the audit, the Examination employee may request a Collection employee to meet with the taxpayer to attempt to secure levy sources and a payment agreement.
3. Request that your manager create an ICS only case with pre-assessed balance due module(s) so levy sources will be available for cases which become BAL DUE.
 - A. Use Form 4844 for levy source input to the IDRS Account Number File (ANF). These levy sources may come from an Audit Report, Form 9440, *Taxpayer Levy Source and Contact Information* , or current collection information obtained during such interviews described above.
 - B. Be alert for HARA cases in which the proposed deficiency, including accruals, is less than BAL DUE deferral.
 - C. Do not input any levy sources if the deficiency is below the routine BAL DUE issuance criteria included in paragraph (5). Even though the campus will generate a notice to the taxpayer, no BAL DUE will be issued in such cases.
4. =====
 - =====
 - =====
 - =====

Exception:

=====

 - =====
5. Process payments received prior to receipt of the BAL DUE on Form 3244, *Payment Posting Voucher*.
 - A. Request input of TC 640, and
 - B. Use DPC 99 to denote advance payment of determined deficiency.

5.1.12.9 (08-05-2014)

Innocent Spouse Cases

1. IRM 25.15, *Relief from Joint and Several Liability*, contains procedures for innocent spouse cases.
2. Follow the procedures in IRM 25.15.8, *Procedures for Working Innocent Spouse Relief Cases*, and in the other IRMs, as applicable, to resolve cases with requests for relief from joint and several liability.

5.1.12.10 (05-20-2008)

Non-Petitioning Spouse Cases

1. When one spouse files a U.S. Tax Court petition on a joint return deficiency and the other spouse agrees to the deficiency or takes no appeal action, two separate IMF MFT 31 BAL DUE cases will be issued. When the campuses prepare separate accounts, the BAL DUE and DEL RET separate accounts will be annotated as follows:
 - A. One separate account will be annotated "Non-Petitioning Spouse" and the other separate account will be annotated "Petitioning Spouse" .
 - B. Additionally, if two Areas are involved, both separate accounts will be annotated "two Areas" .

5.1.12.10.1 (08-05-2014)

Non-Petitioning Spouse Procedures

1. There is no legal basis to abate the liability under IRC 6404. Instead, the payment by one spouse should be cross-referenced to the other, just as TFRP payments made by one responsible person are cross-reference to the other as provided in IRM 5.7.7.3, *Cross-Referencing of Payments Made on Employer Balance Due and TFRP Accounts*.
2. Contact any other Area involved to determine if any collections have been made on the other spouse when these types of cases are in your inventory.

5.1.12.10.2 (05-20-2008)

Abatement of a Petitioning or Non-Petitioning Spouse's Liability

1. Request a cross-reference of the payment to the other spouse's account when you collect some or all of the liability from either spouse.
2. See IRM 5.7.7.3, *Cross-Referencing of Payments Made on Employer Balance Due and TFRP Accounts*.

5.1.12.10.3 (05-20-2008)

Additional Assessments to a Non-Petitioning Spouse's Account

1. Do not add additional assessments made as a result of a Tax Court decision to the non-petitioning spouse's account.
2. Consult Counsel if you have questions regarding the correct amount you should attempt to collect if a split-payment situation occurs.
3. Prepare Form 3870, *Request for Adjustment*, to request any necessary adjustment.
4. Attach a copy of the Tax Court decision to Form 3870.

5.1.12.11 (07-02-2010)

Child Support Obligation

1. IRC 6305, *Collection of Certain Liability*, provides for the assessment and collection of certified Child Support Obligations (CSO) in the same manner and with the same powers and limits (such as CSED) as if the amount was a tax imposed by Subtitle C (Employment Taxes). Certain exceptions apply.
2. To meet Code requirements, Cincinnati Submission Processing will hold an account in Notice Status for 60 days after issuing notice and demand in the case of a first assessment against an individual.
3. As new CSO certifications are received, but prior to assessing the liability, Cincinnati Submission Processing will send them to Campus Compliance Services (CCS) for review by a revenue officer.
4. After assessing the liability, CSO BAL DUE cases will be assigned directly to Field Collection (FC).
5. Upon issuance, CSO BAL DUE accounts are subject to immediate collection action by Field Collection (FC).
6. BAL DUE accounts under this program will:
 - A. reflect MFT 59, Tax Class 6
 - B. bear the legend CSO, and
 - C. include a copy of the certification sent to the revenue officer on a Form 3210, *Document Transmittal*, so that the pertinent information secured by the state agency will be available for revenue officer use.
7. Since the CSO liability has been determined by a state court, the Service does not have abatement or compromise authority.
8. In cases where a FC employee determines that there is an obvious error in the CSO assessment or the taxpayer produces evidence that he/she paid the respective state after the CSO assessment was made, any required changes to the amount of liability must be initiated by the state of jurisdiction. To modify or cancel a previous application, the state must submit a Form OCSE 20, *Application for the Collection of Delinquent Support Payments by the Internal Revenue Service*, to the Area Office of Child Support Enforcement (OCSE). In turn, the Area OCSE office will send the amended Form OCSE 20 to the Internal Revenue Service.

5.1.12.11.1 (07-02-2010)

Field Collection Review Prior to CSO Assessment

1. Review any new CSO certifications you receive from Cincinnati Submission Processing.

Reminder:

Cincinnati Submission Processing may send new CSO certifications to Field Collection (FC) prior to assessing the liability as discussed above.

2. Take the following action, as applicable:

Field Collection Review Prior to CSO Assessment	
If	Then
The certification appears to be in order	Return it to Cincinnati Submission Processing for assessment. <ol style="list-style-type: none"> A. Attach a copy of this IRM sub-section (IRM 5.1.12.10).
The certification is not in order	Return it to the approving Area official of the Office of Child Support Enforcement (OCSE), Department of Health and Human Services: <ol style="list-style-type: none"> A. Attach a cover memorandum explaining the reason for rejection. B. Send copies of the memorandum to Cincinnati Submission Processing and to the Campus Disclosure Officer for information purposes.

5.1.12.11.2 (09-20-2012)

Child Support Obligation Procedures

1. Ensure the assignment of this type of case is appropriate for your grade level as these BAL DUE cases will not be generated with a predicted grade level.

Note:

Group managers will review the cases for level of difficulty and will assign the cases accordingly.

2. Input TC 130, if it has not already been input, to put a freeze on any refund(s).
3. Review all the state information forwarded with the certification.
4. Follow normal field collection procedures in the collection of CSO BAL DUE cases subject to these five exceptions:

A. Do not charge interest or penalties. See Treasury Regulation 301.6305-1(a).

Exception:

The penalty under IRC 6657, *Bad checks*, for bad checks and the penalty under IRC 6332(d)(2), *Penalty for violation*, for failure to surrender property subject to levy, may be imposed.

B. Do not request waiver of a CSED. Instead, the child support agency must recertify the liability, which begins a new ten year period for collection.

C. Do not levy upon salary, wages or other income being withheld pursuant to a judgment for the support of minor children.

D. Do not apply IRC 6334(a), *Property Exempt from Levy*, with respect to unemployment benefits and certain annuity and pension payments to CSO liabilities.

Note:

See IRM 5.11.1.2.2.11, *Issuing Notice of Intent to Levy for Child Support Obligation BAL DUEs*, for further guidance.

E. Do not abate or compromise a CSO liability. However, you may agree to an installment agreement with the taxpayer.

5. Become familiar with the guidance in this subsection prior to making taxpayer contact.

5.1.12.11.2.1 (07-02-2010)

Contact with the Taxpayer

1. Make contact with the taxpayer.

2. Demand full payment.

3. Make a collection determination:

A. determine the maximum collection potential, as states are only to certify cases with good collection potential, and

B. contact the state in cases where there does not appear to be good collection potential.

4. Attempt to collect full payment.

5. Take the following action, as applicable, if you do not collect full payment:

A. Schedule a mandatory review when reporting a CSO BAL DUE currently not collectible for follow-up at intervals of no less than two years (unless the circumstances of a particular case indicate that such a review is unwarranted).

B. Handle the account as a NMF installment agreement if you establish an installment agreement for regular payments. See IRM 5.14, *Installment Agreements*.

6. Follow the procedures below if you need to make contact with the OCSE Area representative or the state representative listed on the certification.

5.1.12.11.2.2 (07-02-2010)

Contact with the State on a Child Support Obligation

1. Contact the OCSE Area representative whose name and telephone number are shown on the certification when it is necessary to discuss the case because:

A. a CSO case has been in your inventory for 90 days,

B. there is an obvious error in the assessment or the taxpayer produces evidence that he/she paid the respective state after the assessment was made,

C. the case does not appear to have good collection potential,

D. the state intervenes after the case has been certified to Collection (i.e., subsequent state court action, etc.), or

E. you need to transfer a CSO account.

2. Do not make inappropriate disclosures of taxpayer information.

5.1.12.11.2.2.1 (08-05-2014)

Appropriate Disclosure

1. Refer to IRM 11.3.33, *Other Disclosures to State and Local Governments*, for guidance.

2. Exercise care so that you disclose nothing more than the necessary CSO information, i.e., restrict disclosure to information specific to the CSO case including phone numbers, addresses, levy sources, etc.

3. Disclose only activities relative to the collection of the CSO obligation to the state.

4. Do not disclose information relative to the taxpayer's other tax obligations.

Note:

A good rule of thumb is, if in doubt about what information should be disclosed, forward the issue to the local Disclosure Office for review and approval prior to making the disclosure. The key is that any information to be disclosed will be limited to information about the investigation and collection of the CSO.

Example:

If the child support agency asked if the person owing the obligation owed any other federal taxes, that question would not relate to the CSO so no information in that regard should be disclosed.

5.1.12.11.2.2.2 (09-20-2012)

Contacting the State

1. Contact the state child support agency by phone and/or mail to attempt to resolve a CSO issue.

2. Prepare a brief narrative report in memorandum format if a phone call and/or letter with the state child support agency does not resolve the issue:

A. outline the present status of the case, and

B. define any issues.

3. Route the memorandum as follows, via **secure** email:
 - A. original — to the state — through the Area Disclosure Officer for review and mailing, and
 - B. copy — to the Area Director's office — through your group manager and territory manager.

Note:

Your Area office will retain a copy of this report for possible review by Headquarters.

4. Prepare Form 5482, *Record of Disclosure*, the first time you send a report to the state child support agency.

Note:

You do not need to complete a record of disclosure every time you contact a state child support agency. See paragraph (5) of IRM 11.3.19.3, *Form 5482 Procedure*, to clarify when a record of disclosure might not be required.

5. See IRM 11.3.19.3, *Form 5482 Procedure*, for further guidance.

5.1.12.11.2.2.3 (09-20-2012)
CSO Case in Inventory over 90 Days

1. Prepare a brief narrative report in memorandum format outlining the present status of the case after a CSO case has been in your inventory for 90 days.
2. Follow the steps listed above in *IRM 5.1.12.11.2.2.2* regarding preparing and routing your report and preparing Form 5482 when you need to make a written report.

5.1.12.11.2.2.4 (09-20-2012)
Obvious Error in CSO Assessment or Paid CSO Assessment

1. Follow these procedures after you make contact with the taxpayer if you determine that there is an obvious error in the CSO assessment or the taxpayer produces evidence that he/she paid the respective state after the CSO assessment was made:
 - A. cease further collection action
 - B. contact the Area OCSE representative whose name and telephone number are listed on the certification.
2. Contact the state representative whose name and telephone number also appear on the certification if you were not able to resolve the problem with the Area OCSE representative.
3. Follow the steps listed above in *IRM 5.1.12.10.2.2.2* regarding preparing and routing your report and preparing Form 5482 when you need to make a written report.

5.1.12.11.2.2.5 (09-20-2012)
Case without Good Collection Potential

1. Follow these procedures after you make contact with the taxpayer if you determine that the case does not appear to have good collection potential:
 - A. contact the Area OCSE representative whose name and telephone number are listed on the certification, and
 - B. determine if they can provide additional asset or income information.
2. Follow the steps listed above in *IRM 5.1.12.11.2.2.2* regarding preparing and routing your report and preparing Form 5482 when you need to make a written report.

5.1.12.11.2.2.6 (09-20-2012)
State Intervention after CSO Certification

1. Follow these procedures if the state intervenes after the case has been certified to Collection (i.e., subsequent state court action, etc.):
 - A. handle any request for state contact on a CSO BAL DUE assigned to you,
 - B. contact the Area OCSE representative whose name and telephone number are listed on the certification
 - C. determine what the issue is, and
 - D. try to resolve the problem.
2. Follow the steps listed above in *IRM 5.1.12.11.2.2.2* regarding preparing and routing your report and preparing Form 5482 when you need to make a written report.

5.1.12.11.2.2.7 (09-20-2012)
Transferring a CSO Account

1. Follow these procedures to transfer a CSO account:
 - A. follow procedures for the transfer of NMF cases, and
 - B. prepare a memorandum notifying the Area OCSE official of the transfer of the case.
2. Follow the steps listed in *IRM 5.1.12.11.2.2.2* above regarding preparing and routing your report and preparing Form 5482 when you need to make a written report.

5.1.12.12 (09-20-2012)
Taxpayer Exempt from Taxation for Religious Reasons

1. Taxpayers can request exemption from social security and Medicare taxes for religious reasons. A taxpayer can request exemption from taxation by filing one of either of the two following forms:
 - Form 4361, *Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders and Christian Science Practitioners*, or
 - Form 4029, *Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits*.
2. Refer to IRM 4.19.6, *SSA Correspondence, Minister Waivers, and Application for Exemption from Social Security and Medicare*. Sections 3 and 4 provide the actions the IRS takes to process these requests for exemption.
3. Refer to Publication 517, *Social Security and Other Information for Members of the Clergy and Religious Workers*, for more detailed information about Form 4361 and Form 4029 exemptions.
4. See IRM 5.1.8.7.4, *Exemption from Self-Employment Taxes*, for procedures to follow when you receive a courtesy investigation on a religious exemption case.

5.1.12.12.1 (08-05-2014)

Form 4361 Exemption from Self-Employment Tax

1. Form 4361 is submitted to apply for an exemption from self-employment tax by the following:
 - a duly ordained, commissioned, or licensed minister of a church
 - a member of a religious order (other than a member of a religious order who has taken a vow of poverty as a member of such order)
 - a Christian Science practitioner..
2. An applicant must certify that he or she, for reasons of either conscience or religious principles, is opposed to the acceptance (with respect to services performed in his or her capacity as a minister, member of a religious order not under a vow of poverty, or Christian Science practitioner) of any public insurance which makes payments in the event of death, disability, old age, or retirement, or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act)

5.1.12.12.2 (09-20-2012)

Form 4029 Exemption from Social Security and Medicare Taxes

1. Form 4029 is submitted by members of recognized religious groups to apply for an exemption from Social Security and Medicare taxes. Form 4029 is first filed with the Social Security Administration (SSA), which determines whether the religious sect or division meets requirements for exemption. SSA then forwards Form 4029 to the Philadelphia Campus (the centralized Internal Revenue Service processing site for these forms) which is responsible for ensuring that:
 - the taxpayer is a member of the sect or division, and
 - the taxpayer waived all benefits and other payments under Titles II and XVIII of the Social Security Act.

Note:

While the IRS does keep track of whether a particular sect or a particular individual is exempt, it does not collect or maintain lists of members by religious sects or divisions.

Note:

The exemption does not apply to federal income tax.

5.1.12.12.3 (08-05-2014)

IDRS Religious Exemption Indicators

1. Taxpayers are exempt from self-employment tax if the IRS approved their requests on Form 4361. These taxpayers are either:
 - ministers,
 - members of a religious order, or
 - Christian Science practitioners.
2. Taxpayers are exempt from Social Security and Medicare taxes if they have an approved Form 4029 on file. These taxpayers are members of a sect or division that waived all benefits and other payments under Titles II and XVIII of the Social Security Act.
3. IDRS should reflect an indicator if the taxpayer applied for an exemption from the following:
 - Social Security and Medicare taxes, or
 - self-employment tax.
4. The indicator should reflect if the application was approved or denied.
5. CC IMFOLE displays the "Ministerial SE Code." The display will show whether or not the taxpayer has filed for an exemption. It shows the "output code" as the "MINISTER SE CD." IMFOLE will display one of the following possible values:
 - 1 = Form 4361 Approved
 - 2 = Form 4361 Denied
 - 3 = Form 2031 Processed
 - 4 = Form 4029 Approved
 - 8 = Form 4029 Denied

Note:

The Form 2031, *Waiver Certificate For Use By Ministers, Certain Members of Religious Orders, and Christian Science*, indicator will remain on IDRS even though the form is now obsolete. This form will be reactivated for use if Congress passes a law for a to allow taxpayers to opt out of the exemption. Congress has done this twice: The Tax Relief Extension Act of 1999, Public Law 106-170 provided a limited period, during which ministers, certain members of religious orders, and Christian Science practitioners, who had an approved Form 4361 in place for tax year 1999, could file Form 2031. This was an irrevocable election back into Social Security coverage for their ministerial earnings. This opportunity did not apply to Form 4029 filers. Congress provided a similar limited time waiver for ministers as a part of the Tax Reform Act of 1986 for tax years 1986 and 1987. Form 2031 was also used for this period.

5.1.12.12.4 (08-05-2014)

Religious Exemption Procedures

1. Check for an indicator on IDRS to confirm that the taxpayer has received approval for exemption if a taxpayer states he/she is:
 - A. exempt from Social Security and Medicare taxes, or
 - B. exempt from self-employment tax.
2. Find the "Ministerial SE Code" using CC IMFOLE to determine whether or not the taxpayer has filed for an exemption. It shows the "output code" as the "MINISTER SE CD." Check the value displayed on IMFOLE:
 - 1 = Form 4361 Approved
 - 2 = Form 4361 Denied

- 4 = Form 4029 Approved
- 8 = Form 4029 Denied

Reminder:

The Form 2031 indicator will remain on IDRS even though the form is now obsolete.

**5.1.12.12.4.1 (05-20-2008)
Indicator is on IDRS**

1. Remember the following if an indicator is present:
 - An approved exemption only applies to earnings received for qualified services; it does not apply to any other income.
 - The exemption does not apply to federal income tax.
2. Proceed with collection if the taxpayer owes federal taxes or federal tax returns for which he/she is not exempt.

**5.1.12.12.4.2 (09-20-2012)
Indicator is not on IDRS**

1. Check IDRS for an indicator.
2. Request that taxpayer provide an approved copy of his/her application if the indicator is not present or the taxpayer claims they received an exemption. Taxpayers must keep an approved copy of Form 4361 and 4029 in their permanent records.
3. Request the taxpayer to prepare either Form 4361 or Form 4029 to request the appropriate exemption if the taxpayer does not provide an approved copy of his/her application.
4. Obtain a completed Form 4361 or Form 4029, as applicable. Obtain the appropriate form in triplicate (an original and two copies).

**5.1.12.12.4.2.1 (05-20-2008)
Form 4361**

1. Send the original and two copies of Form 4361 to the Philadelphia Campus Minister Waiver Unit. Philadelphia Campus P.O. Box 16325 Philadelphia, PA 19114-0425 Attn: BLN 4-G08-151 Minister Waiver Processing.
2. Inform the taxpayer that after the IRS has reviewed Form 4361 and has made a determination, the IRS will return a copy of the Form 4361 to the taxpayer to inform him/her whether or not his/her exemption has been approved.
3. If the copy of Form 4361 was not approved, the taxpayer is not exempt and is liable for all applicable taxes.

Note:

If the application was denied due to the lack of specific information, consider allowing the taxpayer to resubmit Form 4361. Be sure the taxpayer includes all required information that was lacking from the original submission.

4. Proceed with collection if the taxpayer is not exempt.

**5.1.12.12.4.2.2 (09-20-2012)
Form 4029**

1. See *Exhibit 5.1.12-1* for suggested text to use for taxpayers seeking this exemption.
2. Send Form 4029, the original and two copies, by mail to the SSA address in the Form 4029 instructions.
3. Inform the taxpayer that before he/she will be notified by the IRS whether or not exempt status has been accepted:
 - SSA has to process Form 4029, and
 - IRS has to review Form 4029.
4. The Commissioner of Social Security must determine that:
 - the sect or division has established teachings meeting exemption requirements,
 - it is the practice, and has been for a substantial period of time, for members of the sect or division to provide for their dependent members in a manner that is reasonable in view of the members' general level of living, and
 - the sect or division has existed at all times since December 31, 1950.
5. If the copy of Form 4029 was not approved, the taxpayer is not exempt and is liable for all applicable taxes.

Note:

If the application was denied due to the lack of specific information, consider allowing the taxpayer to resubmit Form 4029. Be sure the taxpayer includes all required information that was lacking from the original submission.

6. Proceed with collection if the taxpayer is not exempt.

**5.1.12.12.5 (05-20-2008)
Enforced Collection Action in Religious Exemption Cases**

1. Attempt to secure voluntary payment if the taxpayer:
 - A. does not have an approved form, and/or
 - B. does not file the appropriate form with you when requested to do so.
2. Take any necessary enforced collection action within the limitations of IRM 5.11, *Notice of Levy*, if you do not secure voluntary payment.

**5.1.12.13 (08-05-2014)
Foreign Insurance Company**

1. In accordance with Rev. Proc. 2003-78 and Rev. Proc. 2003-45 I.R.B. 1029, the Internal Revenue Service occasionally enters into agreements with foreign insurance companies (also known as captive insurance companies). One of the conditions of these agreements is that the insurance company provide a clean, irrevocable letter of credit to be held by the Area Director.
2. Determine if a letter of credit is being held when you receive a BAL DUE on Form 720, *Quarterly Federal Excise Tax Return*, for a foreign insurance company with abstract number 30.
3. Contact an Advisory and Insolvency (AI) Foreign Insurance Company advisor to help you make the determination and assist in the resolution of any BAL DUE/DEL RET issues.
 - A. Advisory and Insolvency Foreign Insurance Company advisors are located in the Plantation, FL, post of duty.
 - B. Click on the link below to take you directly to the *Advisory and Insolvency* web site: <http://mysbse.web.irs.gov/AboutSBSE/Collection/fieldcoll/aiq/default.aspx>.

5.1.12.14 (09-20-2012) **Political Organizations**

1. IRC 527 discusses political organizations . Public Law 93–625 established filing requirements for political organizations, such as committees, parties, associations, or funds, for tax years beginning after December 31, 1974.
2. A political organization, whether or not it is tax-exempt, must file Form 1120-POL, *U.S. Income Tax Return for Certain Political Organizations*, if it has any political organization taxable income.

Note:

An exempt organization that is not a political organization must file Form 1120-POL if it is treated as having political organization taxable income under IRC 527(f)(1).

3. IRC 527(c) defines political organization taxable income as the excess of the following:
 - A. gross income for the tax year (excluding exempt function income, defined below) over
 - B. deductions directly connected with the earning of gross income (excluding exempt function income).
4. Taxable income is figured with the following adjustments:
 - A. A specific deduction of \$100 is allowed (but not for newsletter funds),
 - B. The net operating loss deduction is not allowed, and
 - C. The dividends-received deduction and other special deductions for corporations are not allowed.
5. Frequently, political organizations establish temporary entities during political campaigns. MFT 02 with a filing requirement 09 and a Computer Condition Code "G" identifies entities that are political organizations.

5.1.12.14.1 (09-20-2012) **Procedures for "G" Coded Political Activity Taxpayers**

1. Conduct a full compliance check on all "G" coded taxpayers.
2. Recognize a "G" coded BMF taxpayer by TC 976.

Note:

The "G" code is placed on a return (by a campus employee during return processing) to indicate that the return is an amended, corrected, supplemental, tentative, or revised return. TC 976 is generated to replace a "G" coded TC 150 on the BMF. The "G" code applies to all BMF returns except setting of a freeze on Form 1065. The "G" code also applies to EPMF and IRAF. See Doc 6209 for more information.

3. Review "G" coded accounts carefully for transferee situations, and pay particular attention to any periods not reflected on the "G" coded account.
4. Process "G" coded accounts routinely in the absence of transferee situations.

5.1.12.15 (07-02-2010) **Criminal Probation**

1. Following conviction for a criminal tax violation, the taxpayer will be sentenced. The sentence may include probation with specific conditions to be met by the taxpayer during a specified time period.
2. For procedures relating to probation cases, see IRM 5.1.5, *Balancing Civil and Criminal Cases*.

5.1.12.16 (05-20-2008) **Math or Clerical Error**

1. Returns filed with math or clerical errors are usually corrected at the campus before notice and BAL DUE issuance, but sometimes a BAL DUE is issued before the error is resolved.
2. The campus will input Freeze Code "G," on returns filed with math or clerical errors.
3. Freeze Code "G" :
 - allows first notice issuance, and
 - suspends the account for 12 cycles.
4. The 12-cycle suspense period is known as the "appeal period " .
5. The campus will issue notices and a BAL DUE after the appeal period if:
 - the taxpayer responds within the appeal period and agrees with the assessment, or
 - the taxpayer does not respond within the appeal period.
6. The campus will input TC 470 CC 94 "Claim Pending" if the taxpayer responds within the appeal period and does not agree with the assessment.

Note:

TC 470 CC 94 extends the appeal period with Freeze Code "J" .

7. The campus will input TC 470 CC 94 "Claim Pending" if the taxpayer responds after the appeal period and does not agree with the assessment.
8. The campus will abate the tax with TC 291:
 - if the taxpayer's claim is justified, the campus will issue a notice(s) and a BAL DUE(s) for that(those) module(s).
 - if the taxpayer's claim is not justified, the campus will refer the case to Examination.
9. The campus will freeze any existing credit while Examination works the case.

Exception:

Exempt organization returns are an exception, so any existing credit is not frozen.

Note:

The campus will issue notices and a BAL DUE for any module not affected by the claim.

10. Refer to IRM 5.1.15, *Abatements, Reconsiderations and Adjustments*.
11. TC 470 CC 90 is used for abatements, adjustments, and complicated payment tracers. TC 470 CC 90:
 - prevents the automatic offset of a credit balance on one module to a BAL DUE on another module,
 - changes a module to Status 53 on IDRS, and
 - is reversed by TC 472.
12. The campus will input TC 470 CC 90 to restrict offset-in.

Note:

A credit may offset-in to a BAL DUE module when a credit or payment posts to a BAL DUE module that is full paid and the taxpayer has another open BAL DUE module(s); the computer offset process will offset the credit into the other BAL DUE(s). Offset-in happens when a taxpayer is due a refund on a module but has not paid another module(s). All or part of a refund may be used to pay all or part of a past-due amount. This includes past-due federal income tax, other federal debts (such as student loans), state income tax, and child and spousal support payments. The taxpayer will be notified if the refund he/she claimed is used to offset against a debt(s). See IRM 21.4.6, *Refund Offset*.

13. Unless reversed sooner by TC 472, a module that was previously in:
 - Bal Due status will stay in Status 53 until resolved.
 - Notice status will remain in Status 53 until resolved, even after the restriction on offset-in expires.
14. The restriction on offset-in caused by TC 470 CC 90 automatically expires after 26 cycles (weeks) for modules in notice status.
15. There is no automatic reversal of the offset-in restriction for modules in BAL DUE status.

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Part 5. Collecting Process

Chapter 1. Field Collecting Procedures

Section 14. Field Collection Techniques and Other Assignments

5.1.14 Field Collection Techniques and Other Assignments

- 5.1.14.1 [Overview](#)
- 5.1.14.2 [Transferee Liability and Fraudulent Conveyances](#)
- 5.1.14.3 [Liability for Third Party Paying Wages or Supplying Funds for Payment of Taxes](#)

5.1.14.1 (07-21-2005)

Overview

1. This section contains procedures on:
 - Collection of Taxes from Public Works Projects
 - Transferee Liability and Fraudulent Conveyances
 - Liability for Third Party Wages or Supplying Funds for Payment of Taxes

5.1.14.1.1 (07-21-2005)

Performance Bond Provisions of the Miller Act

1. Before a contract exceeding \$100,000 is awarded for construction, alteration, or repair of any public building or public work of the United States, the **prime contractor** must furnish a performance bond for contracts guaranteeing that the work will be performed to completion. Refer to Section 3131 of Title 40 of the United States Code (Miller Act).
2. The provisions of the Miller Act apply only to taxes collected, deducted, or withheld from wages paid by the **prime contractor** and are not applicable to subcontractors.

5.1.14.1.2 (03-08-2011)

Procedures for Holding Surety Liable for Unpaid Withholding Taxes

1. The Revenue Officer will take the following actions for taxes owed:

If the prime contractor...

did work on a number of projects during the taxable period and there's no breakdown by contract

is still due funds under the contract

Has failed to pay and collection action against the contractor has not produced full payment of the tax liability

Then ...

- a. Estimate taxes by determining the percentage of payroll for each contract in relation to the total payroll or based on available records and affidavits from officers or responsible persons having knowledge of the facts.
 - b. Limit the liability of the surety to the amount collected, deducted, or withheld (or required to be) from wages paid by the contractor and interest, penalty or other additions thereto as may be applicable.
 - c. Include the employee's portion of social security taxes as well as income tax.
 - a. Levy on the contract
 - b. Consider giving notice to the surety for the purpose of holding the surety liable under the Miller Act because of:
 - Limited time in which notice can be given to the surety (within 90 days after the return is filed).
 - Results of the levy action will usually not be known within the period for giving notice to the surety.
- To hold the surety liable the surety must receive notice within 90 days after the return is filed (or 180 days from the due date of return, whichever is sooner) identifying each period of liability.

2. When it is determined the surety is liable for unpaid withholding taxes:

- A. Prepare a recommendation and include the following information:

- Name, address, and TIN of taxpayer who is principal on the performance bond
- Tax identification data (tax period, type, assessment date, amount, etc.)
- Brief description of the project and location
- Contract data (contract number, date, price, amount outstanding, contracting government agency, name and address of the contracting officer, etc.);
- Name and address of surety or sureties, penal sum of bond and date bond executed
- Proposed liability of surety (show each period separately);
- Basis of computation, such as taxpayer's records, taxpayer's statement, etc.
- Date and status of levy when levy has been initiated by the revenue officer.
- Summary of actions taken to collect the liability from the taxpayer.

- B. Forward recommendation through the group manager to Advisory.

- C. Continue collection action against the taxpayer.

D. Take the following actions when payment(s) are received after submission of the recommendation:

1. Apply first to the portion of the tax liabilities to which the Miller Act provisions are not applicable and to non-trust fund taxes, then to trust fund taxes subject to the Miller Act.
2. Promptly notify Advisory since this may affect the surety's liability.

3. Advisory will open an NFOI on ICS no later than 7 calendar days and complete the review of the revenue officer's recommendations no later than 14 calendar days of receipt in the group.
4. Advisory will expedite review of the revenue officer's recommendations.

If recommendation is... Then Advisory will...

- | | |
|--------------|---|
| Not approved | Advise the revenue officer of the reason. |
| Approved | Prepare the notice to the surety in quadruplicate and: <ul style="list-style-type: none">• Mail original by certified mail or deliver if necessary• Forward a copy to the taxpayer• Forward a copy to the revenue officer for notification of the action taken. |

5. The revenue officer will take the following actions when the surety period to comply has expired:
 - A. Determine whether to recommend suit for failure to comply with the terms of the performance bond at least 4 months before the end of the one-year period from the date notice was given to the surety.
 - B. Include the basic data with the suit recommendation, together with copies (in triplicate) of the performance bond, the notice to the surety requesting payment and any other related documents.
 - C. Notify area counsel promptly of any credit or abatement to the tax that may affect the surety's liability after the recommendation has been referred for suit.

Note:

Do not take summary enforcement action against the surety.

5.1.14.2 (07-21-2005)

Transferee Liability and Fraudulent Conveyances

1. This Section deals with the ability of the United States to reach assets which may be or may have been disposed of by the taxpayer prior to assessment and which are or were not subject to the Federal tax lien.
2. Section 14 of IRM 5.17, Legal Reference Guide for Revenue Officers, contains detailed information on recognizing whether a fraudulent conveyance and transferee liability may exist and the recourse available to the United States in such situations.
3. There are three principal methods by which the United States may proceed where assets have been transferred in fraud of creditors.
 - A. Setting aside fraudulent conveyances.
 - B. Transferee liability by civil law suit.
 - C. Transferee liability by notice of deficiency.
4. Of the above methods, assessments which can be obtained through notice of deficiency should be looked to first.

5.1.14.2.1 (07-21-2005)

Report of Investigation of Transferee Liability

1. The government's case will be based primarily on the facts developed and reported by the revenue officer. It is essential that the investigation be carefully and thoroughly conducted and the revenue officer's report be as complete and detailed as possible.
2. The revenue officer will prepare Form 3031, Report of Investigation of Transferee Liability, in triplicate and complete the following:
 - A. Attach schedules and explanatory and descriptive statements necessary for a clear and complete presentation of the facts.
 - B. Attach documentary evidence, beginning with the year of transferor's liability, of any nature which the revenue officer is able to secure in support of the determination of transferee liability.
 - C. Forward Form 3031 with attachments to the Group Manager.
3. The Group Manager will examine the report of investigation to ensure that it is complete and that a proper basis exists for assertion of the transferee liability.
4. Upon agreement with the recommendation, the Group Manager will:
 - A. Sign and forward original, with attachments, by memorandum to Planning and Special Programs in the Examination function.
 - B. Retain a copy.
 - C. Associate a copy with the transferor Bal Due case file.

5.1.14.2.2 (09-01-2009)

Revenue Officer as Coordinator of the Collection Activity

1. The revenue officer who initiated the assertion of the transferee assessment, or is assigned multiple transferee assessments initiated by Examination or sustained by Appeals, will act as coordinator of the collection activity.
2. Multiple transferee assessments initiated by Examination or sustained by Appeals will be identified by the coordinating Revenue Officer with the notation "Transferee assessments exceed transferor liability" in the Bal Due case history.
3. The revenue officer acting as coordinator (transferor revenue officer) will:
 - A. Effect any required Bal Due account transfer.
 - B. Work with Counsel on the application of payments between the transferee and transferor.

Note:

The concept is similar to the cross referencing done with Trust Fund Recovery penalty collections. However, there are no cross-reference transactions codes to cross apply funds, so even though these accounts are handled by non-masterfile, payment applications are not correctly reflected. When receiving payments on an IRC 6901 assessment case, work with Advisory and Counsel on application and cross-referencing of those payments.

- C. Notify the holders of other related Bal Due accounts of credits to be considered in further collection of the assessed liability upon receipt of the information.
- D. Suspend collection in the event the total of payments received from all related Bal Due accounts equals the total assessed liability.
- E. Work with Counsel to ensure that NFTL are released appropriately.

5.1.14.2.3 (09-01-2009)

Revenue Officer Transferee Procedures

- 1. The revenue officer receiving a transferee assessment Bal Due account will proceed with all normal collection procedures.

Note:

IRM 5.12.2.6.4 provides information on preparation and approval of special condition NFTL. IRM 5.12.2.6.8 provides information on transferee liens. IRM 5.12.1.2.12 provides information on IRC 6901 Transferee CDP notification

- 2. Notify the coordinating (transferor) revenue officer of the following:
 - A. Receipt of full payment of the assessed liability by memorandum, stating the date paid and the amount paid.
 - B. Summary of installment payments received, stating the dates and amounts paid.

Note:

A transcript of the account may be sent in lieu of a memorandum. This information will be furnished at 3-month intervals.

- C. Copy of Form 53, Report of Currently Not Collectible Taxes, when a module(s) is put into currently not collectible status.
- D. Claim for Refund or Refund Litigation.

5.1.14.2.4 (07-21-2005)

Abatements and Refunds

- 1. When the total amount collected exceeds the amount of the transferor's liability, the excess amount may be refunded provided a claim for refund is filed within the applicable statutory period.

Note:

If payment is made by personal check, the abatement of any balance(s) of assessments will be held in abeyance until such check has cleared the bank on which drawn.

- 2. No abatement will be administratively made in those cases which are not involved in court proceedings unless the statutory period in which a refund claim may be brought has expired as to the transferee.

5.1.14.2.5 (03-08-2011)

Disposition of Bal Due Accounts Awaiting Abatement

- 1. Transferee Bal Due accounts which are not full paid may be abated because of full payment of a related Bal Due account.

Note:

The application of payments between the transferee and transferor is similar in concept to the cross referencing done with Trust Fund Recovery penalty collections. However, there are no cross-reference transactions codes to cross apply funds, so even though these accounts are handled by non-masterfile, payment applications are not correctly reflected. When receiving payments on an IRC 6901 assessment case, work with Advisory and Counsel on application and cross-referencing of those payments.

- 2. The Revenue Officer will:
 - A. Prepare Form 3870 to request the abatement
 - B. Input a TC 470 CC 90 to close the Revenue Officer's inventory control
 - C. Notate the ICS case history with a description of the Bal Due accounts that have been paid, including date(s) of payment as well as including the expiration date of the statutory period for filing claim for refund by the person who has paid the liability.
 - D. Transmit the closed physical file with the original approved Form 3870 to the Advisory Group Manager for the location where the controlling case is located

Caution:

The file awaiting abatement is **not** transmitted with the Form 795 to closed files

- 3. Advisory will:
 - A. Establish an NFOI on ICS, using Action Code 175, Transferee Assessment, no later than 7 calendar days of group receipt of the recommendation for abatement, to monitor the account

Caution:

TC 470 CC 90 will reverse systemically after a period of time. The Advisor must monitor for this occurrence and take steps to prevent re-issuance of a Bal Due module(s). The systemic reversal time period can be found in Document 6209 with the Section 11 TC 470 chart. IRM 5.1.15 contains additional information on adjustments.

- B. Establish a follow-up on the module to review the account for a No Activity indicator until the two-year limitation expires and the accounts are abated or otherwise settled.

If...
claims for refund or abatement are filed by the transferee(s) within the two year statutory period

Then...
suspend the liability on the transferor until the transferee's claim has been resolved, and the two year period for filing a refund suit has expired.

a claim has not been filed and the period for filing one has expired request abatement of the related Bal Due accounts by forwarding the Form 3870 (which should have been prepared, approved, and provided with the Bal Due case file) to Case Processing.

Note:

Do not file a Notice of Federal Tax Lien when the accounts are awaiting abatement. When accounts are resolved take appropriate action on any existing NFTL.

5.1.14.3 (09-01-2009)

Liability for Third Party Paying Wages or Supplying Funds for Payment of Taxes

1. IRC 3505(a) provides that:
 - Third parties who directly pay another's payrolls can be held liable for the full amount of taxes required to be withheld but not paid over to the Government.
 - Employers are not relieved of their responsibility to file required returns and related documents (such as Forms W-2). See IRM 5.17 LRG for a discussion of this subject.
2. IRC 3505(b) deals only with persons who supply funds to an employer for the purpose of paying wages when two conditions exist.
 - The person must know that the funds advanced are to be used specifically for the payment of wages and,
 - The supplier of funds must have "actual notice or knowledge" at the time such funds are advanced that the employer does not intend to, or will not be able to make timely payment or deposit of the taxes required to be withheld.
3. Under IRC 3505(b) the liability of the third party may not exceed 25% of the amount supplied the employer for the specific purpose of paying wages. However, a supplier of funds is liable (subject to the 25% limitation) the same as a third party who pays wages directly. The 25% limitation includes any interest accrued on the unpaid taxes, therefore the Government cannot recover 25% and then recover interest on that 25%, but it can recover interest within the 25% limitation.
4. IRC 3505(c) provides that any amount paid to the United States pursuant to IRC 3505(a) and (b) shall be credited against the unpaid tax liability of the employer with respect to whose employees' wages such amounts are due.

However, employers are not relieved of their responsibility to file required returns and related documents (such as Forms W-2).

5. In order to collect from a third party under Section 3505 the United States must bring suit against the third party within ten years after the assessment of the tax against the employer.

5.1.14.3.1 (07-21-2005)

Establishing Liability and Applying Payments

1. In certain instances, revenue officers will be notified or otherwise informed that a third party is paying or supplying wages or has paid or supplied wages for an employer. Notification will usually be made by means of Form 4219, Statement of Liability of Lender, Surety, or Other Person for Withholding Taxes. Form 4219 may be received from the taxpayer or the third party. In other cases, Form 4219 will be sent directly to the service center. In such cases, Form 4219 will be received from the service center or from Advisory.
2. Take the appropriate action below to secure Form 4219 or Form 941.

IF... another type of notice or information is received instead of Form 4219	Then... a. Send three copies of Form 4219 to the third party with a pre-addressed return envelope. b. Upon receipt of Form 4219 (in duplicate) from the third party with voluntary payment: <ul style="list-style-type: none">• Prepare Form 3244, Payment Posting Voucher and credit to the employer's account.• Retain the duplicate copy of Form 4219, until the tax liability for the period(s) involved is fully paid or otherwise disposed of.• Secure them from the employer of record.• Attach the original Form 4219 to the 941 return.• prepare returns under authority of IRC 6020(b).
applicable Form(s) 941 have not been filed	• Consider jeopardy assessment (if the criteria for jeopardy are met) prior to forwarding the returns for assessment.
the employer of record will not file the applicable Form(s) 941	
3. If the third party is accepting responsibility under IRC 3505(a) or IRC 3505(b), voluntary payments should equal the amount of withheld income tax and FICA required to be paid with Form 941. See Section 14.3(3) for the extent of the liability under IRC 3505(b).

Note:

The employer of record should be looked to for balances outstanding after the third party has voluntarily satisfied his/her responsibilities under 3505. This would only apply to section 3505(b) liability where the amount due by the taxpayer exceeds the 25% limitation.

4. When returns are filed without full payment, take the following actions:
 - Consider a jeopardy assessment if it meets the criteria for jeopardy.
 - If not, request a prompt assessment and upon receipt of the assessment notice, demand payment from the employer of record.

If payment... is received is not received of the balance cannot be collected from the taxpayer/employer	Then... close the "Section 3505" file. first determine the collectibility of the account from the taxpayer/employer. ascertain the liability of the third party.
---	--
5. Where the facts indicate a third party is liable for all or a portion of the withheld employment taxes, but the third party neglects or refuses to voluntarily pay the amount of the liability under IRC 3505, the revenue officer must develop the facts to support a recommendation for civil suit and forward this recommendation to Advisory.
6. Facts which may support the liability of a third party under IRC 3505(a) include the following:
 - A. A written agreement between the employer of record and a third party which states that wages are to be paid directly by the third party.
 - B. Net wages paid by a third party as evidenced by:

- Canceled checks of the third party
- Bank records of the third party
- Cash disbursements recorded in payroll records of the third party

C. Payroll records of the employer involved are maintained or controlled by the third party.

D. Forms 941, W-2 and W-3 have been prepared, signed, or filed by the third party.

7. Facts which support the liability of a third party under IRC 3505(b) include the following:

A. A written agreement between the employer of record and the third party that net wages will be supplied by the third party.

B. Records of the third party showing disbursements by cash or check to the employer of record in amounts approximate to the wages subsequently paid to employees.

C. Statements made by the employer and the third party indicate that the third party was aware of the amount of wages paid each payroll period.

D. Statements indicate that the parties understood that the third party would be supplying funds to the taxpayer to pay wages.

E. Payroll records of the employer involved are maintained or controlled by the third party.

F. Forms 941, W-2 and W-3 have been prepared, signed, or filed by the third party.

5.1.14.3.2 (07-21-2005)

Advisory

1. Advisory will review and process suits to establish the liability under IRC 3505 of third parties paying or supplying funds for wages as provided for in the Litigation and Judgement Handbook.
2. Periodically Advisory will receive from Compliance Services Collection Operations, Forms 4219, Statement of Liability of Lender, Surety or Other Person for Withholding Taxes, that were mailed directly to the Service Center.

If there is...

a case assigned to a revenue officer
no open case

Then...

Advisory will forward the form to that revenue officer.
Advisory may, at their discretion, forward Form 4219 to the Territory Manager to be used as a CIP lead.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 1. Field Collecting Procedures

Section 15. Abatements, Reconsiderations and Adjustments

5.1.15 Abatements, Reconsiderations and Adjustments

- 5.1.15.1 [Tax Abatements - Internal Revenue Code and Regulations](#)
- 5.1.15.2 [Types of Assessments](#)
- 5.1.15.3 [Types of Reconsiderations - Audit, Automated Underreporter \(AUR\), Substitute For Return \(SFR\) and Automated Substitute For Return \(ASFR\)](#)
- 5.1.15.4 [Audit, Automated Underreporter \(AUR\), Substitute For Return \(SFR\) and Automated Substitute For Return \(ASFR\) Reconsideration](#)
- 5.1.15.5 [Adjustments - General Procedures](#)
- 5.1.15.6 [Business Master File \(BMF\) IRC 6020\(b\) Adjustments](#)
- 5.1.15.7 [Combined Annual Wage Reconciliation \(CAWR\) Adjustments](#)
- 5.1.15.8 [Federal Unemployment Tax Act \(FUTA\) Tax Adjustments](#)
- 5.1.15.9 [Tax Exempt and Government Entities \(TE/GE\) Adjustments](#)
- 5.1.15.10 [Adjusting Assessments of Personal Liability for Excise Tax](#)
- 5.1.15.11 [Tax Assessed on Incorrect Entity or Tax Period](#)
- 5.1.15.12 [Multiple Taxpayer Identification Numbers \(TINS\) - Same Taxpayer](#)
- 5.1.15.13 [Identity Theft](#)
- 5.1.15.14 [Tracing Payments](#)
- 5.1.15.15 [Credit Transfers](#)
- 5.1.15.16 [Penalty and Interest Abatements](#)
- Exhibit 5.1.15-1 [FUTA Worksheet](#)
- Exhibit 5.1.15-2 [Identifying Reasonable Cause Categories](#)
- Exhibit 5.1.15-3 [State Mapping for IRS-CAWR and SSA-CAWR](#)

Manual Transmittal

October 09, 2012

Purpose

(1) This transmits revised IRM 5.1.15, Abatements, Reconsiderations and Adjustments.

Material Changes

- (1) IRM 5.1.15.3 Provided definition of the three distinct types of reconsiderations and added new paragraph listing forms that can be assessed under IRC 6020(b).
- (2) IRM 5.1.15.3.1 Restructured this subsection by utilizing two paragraphs for procedures for better clarity and added example of suggested wording for Form 3870.
- (3) IRM 5.1.15.3.2 Added If/Then table and restructured information into the table.
- (4) IRM 5.1.15.3.4 Changed the title of this subsection for clarification. Clarified statute information.
- (5) IRM 5.1.15.4.1 Restructured the information in this subsection into a table, added one additional exhibit for routing purposes, and added an example of suggested wording to be used on Form 3870.
- (6) IRM 5.1.15.4.2 Restructured the information in this subsection into a table and added an example of suggested wording to be used on Form 3870.
- (7) IRM 5.1.15.4.2.1 Removed tables providing information on correct envelope procedures. Added link for new PII mailing procedures.
- (8) IRM 5.1.15.4.3 Restructured the information in this subsection into a table for clarity. Added information on determining the correct BOD code and correct ICS template to use for routing purposes. Added an example of suggested wording to use on Form 3870.
- (9) IRM 5.1.15.4.4.1 Added information on date stamping a secured return.
- (10) IRM 5.1.15.4.4.3 Revised timeframes for processing SFR/ASFR Reconsideration requests.
- (11) IRM 5.1.15.4.5.1 Added information to clarify discrepancies and consider Identity Theft.
- (12) IRM 5.1.15.5 Clarified procedures on sending case closing letter.
- (13) IRM 5.1.15.5.1 Added example of suggested wording to be used on Form 3870.
- (14) IRM 5.1.15.5.2 Added toll free number for Collection FORT.
- (15) IRM 5.1.15.5.3 Added toll free number for Collection FORT.
- (16) IRM 5.1.15.5.6 Added example of case study.
- (17) IRM 5.1.15.6 Added new paragraph on how to identify and process ETNF Exam program adjustments. clarified procedures on sending case closing letter. Added two examples of suggested wording to be used on Form 3870 of full and partial adjustments.
- (18) IRM 5.1.15.7 Removed tables that are no longer applicable for routing of CAWR adjustment cases. Added new routing procedures and link for routing SSA-CAWR and IRS-CAWR adjustment cases. Added note with information on misrouted cases being forwarded by CAWR campus.
- (19) IRM 5.1.15.7.1 Added information on reasonable cause for Information Return Penalties. Added example of suggested wording for Form 3870 when making a SSA-CAWR adjustments.
- (20) IRM 5.1.15.7.2 Added example of suggested wording for Form 3870 when making IRS-CAWR adjustments.

- (21) IRM 5.1.15.7.3 added new paragraph on adjusting IRC 6721 Civil Penalty reference code 502 based on reasonable cause. Added example of suggested wording for Form 3870 when abating a TIN Penalty.
- (22) IRM 5.1.15.8 Added a caution when an assessment is not a FUTA assessment. Added new paragraph on forwarding all FUTA adjustments to Cincinnati campus for processing. Added link for state mapping.
- (23) IRM 5.1.15.9 Added new paragraph on procedures for requesting an abatement on Form 5500 MFT 74/76.
- (24) IRM 5.1.15.11 Corrected information on stopping a refund. Added example of suggested wording for Item 11 Form 3870 when adjusting tax assessed on the incorrect entity.
- (25) IRM 5.1.15.12 Corrected information on stopping a refund.
- (26) IRM 5.1.15.13 Updated information on Identity Theft.
- (27) IRM 5.1.15.14 Added information on misapplied payments and asking taxpayer to provide proof of payment.
- (28) IRM 5.1.15.14.1 Added If/Then table for determining correct action request on payment tracer based on CSED information. Restructured information in this subsection for better flow of guidelines. Added information on EFTPS.
- (29) IRM 5.1.15.15 Added information on RSED. Added paragraph on transferring overpayment.
- (30) IRM 5.1.15.15.1 Added information on transferring credits of \$100,000. or more to excess collection.
- (31) IRM 5.1.15.16 Updated information on case closing letters.
- (32) IRM 5.1.15.16.1 Added two MFTs that RCA can now process for penalty relief. Added caution when RCA cannot be used. Added information on three new FTA letters which will generate after the adjustment posts.
- (33) IRM 5.1.15.16.2 Added information on an Appeals case when the penalty was sustained and how to recognize this. Added example of suggested wording for Item 11 of Form 3870 when RCA cannot be used.
- (34) IRM 5.1.15.16.3 Added two new paragraphs on referrals to IAC and which cases the IAC does not work. Added reminder on calculating payoff amount and how to calculate the correct amount for payoff.
- (35) IRM 5.1.15.16.4 Changed the subsection title for more clarity. Added information on preparing a penalty appeal request for transmittal to Appeals. Added link for determining correct routing of case to Appeals.
- (36) Exhibit 5.1.15-3 Added new exhibit showing the state mapping for IRS-CAWR and SSA-CAWR adjustment routing.
- (37) Various grammatical and editorial changes were made throughout the IRM.
- (38) Corrected various links to web sites throughout the IRM.

Effect on Other Documents

This IRM supersedes IRM 5.1.15, dated April 16, 2010. Interim Guidance Memoranda SBSE-05-0812-062 dated August 20, 2012, Ex Parte Communications with Appeals has been incorporated into this revision.

Audience

The target audience is revenue officers in SB/SE Field Collection.

Effective Date

(10-09-2012)

Scott D. Reisher
Director, Collection Policy
Small Business/Self Employed

5.1.15.1 (10-09-2012)

Tax Abatements - Internal Revenue Code and Regulations

1. According to the Code and Regulations, the Service has the authority to abate tax.
2. **Code** - The Service's general abatement authority is found in IRC 6404(a). It provides :
 - A. The Secretary is authorized to abate the unpaid portion of the assessment of any tax or any liability in respect thereof, which is excessive in amount, or is assessed after the expiration of the period of limitation properly applicable thereto, or is erroneously or illegally assessed.
3. **Regulations** - Treasury Regulation 301.6404-1 provides (in part):
 - A. The district [area] director or the director of the regional service center [servicing campus] may abate any assessment, or unpaid portion thereof, if the assessment is in excess of the correct tax liability, if the assessment is made subsequent to the expiration of the period of limitations applicable thereto, or if the assessment has been erroneously or illegally made.
 - B. No claim for abatement may be filed with respect to income, estate, or gift tax.
 - C. Except in case of income, estate, or gift tax, if more than the correct amount of tax, interest, additional amount, addition to the tax, or assessable penalty is assessed but not paid to the district [area] director, the person against whom the assessment is made may file a claim for abatement of such overassessment. Each claim for abatement under this section shall be made on Form 843, *Claim for Refund and Request for Abatement*.
 - D. The Commissioner may issue uniform instructions to district [area] directors authorizing them, to the extent permitted in such instructions, to abate amounts the collection of which is not warranted because of the administration and collection costs.

5.1.15.2 (04-16-2010)

Types of Assessments

1. The IRS determines the correct amount of assessments:
 - A. By conducting an audit based on the original return filed by the taxpayer, i.e., an examination of the taxpayer's books and records pertinent to the return, in a field or campus location,

- B. By matching documents to resolve discrepancies based on the original return filed by the taxpayer, i.e., matching Information Return Program (IRP) documents to the income/deductions reported by the taxpayer on the return, in the campus Automated Underreporter (AUR) Units, Combined Annual Wage Reconciliation (CAWR) document matching and Federal Unemployment Tax Act (FUTA) state certification program, or
- C. Pursuant to the Individual Master File (IMF) Substitute for Return (SFR), Automated Substitute for Return (ASFR) or Business Master File (BMF) assessment procedures under IRC 6020(b), *Execution of Return by Secretary*, when a taxpayer fails to make any return required by any Internal Revenue law or regulation.

5.1.15.3 (10-09-2012)

Types of Reconsiderations - Audit, Automated Underreporter (AUR), Substitute For Return (SFR) and Automated Substitute For Return (ASFR)

1. A reconsideration is when the taxpayer submits information not previously considered after the issuance of a final determination. The information must be different than what was previously considered.
2. There are three distinct types of reconsiderations based on the type of assessment:
 - A. **Audit Reconsideration** An Audit Reconsideration is the process the IRS uses to reevaluate the results of a prior audit where additional tax was assessed and remains unpaid, or a tax credit was reversed. If the taxpayer disagrees with the original determination he/she must provide information that was not previously considered during the original examination.
 - B. **AUR Reconsideration** is a claim for a credit or refund not previously reported or allowed, or a request for abatement of tax, penalty, and/or interest. An underreported (UR) condition exists when there is income reported to IRS by payors that was not reported by the taxpayer on Form 1040, Form 1040A, or Form 1040EZ. Proposed tax adjustments are based on these UR amounts, as well as on reported income amounts for which the taxpayer failed to include the required additional taxes (e.g., Self-Employment tax (SET)).
 - C. **SFR/ASFR Reconsideration** The ASFR is a non-filer or return delinquency program for individual and individual business non-filers who are identified via matching programs. The IRS computes tax, penalty and interest using the Information Reporting Program (IRP) data and other internally available information and assesses under IRC 6020(b). A reconsideration of SFR/ASFR is an original filing of a tax return by the taxpayer requesting a decrease or increase of tax, penalty, and interest. (.
3. The forms assessed under IRC 6020(b) are:
 - Individual - Form 1040
 - Business - Forms 940, 941, 943, 944, 720, 2290, CT-1, and 1065.

5.1.15.3.1 (10-09-2012)

Reconsiderations - General Procedures - Audit, Automated Underreporter (AUR), Substitute For Return (SFR) and Automated Substitute For Return (ASFR)

1. For Audit, AUR, and SFR/ASFR reconsiderations **always** :
 - A. Consider cross-compliance and, if necessary, attempt to bring any noncompliant taxpayer into compliance.
 - B. Secure levy sources for future collection.
 - C. Suspend collection only on the amount being considered for an adjustment.
 - D. Advise the taxpayer that failure to respond or cooperate with the examiner working the adjustment case will result in the case being returned to Collection to resume collection action. No further consideration will then be given to the reconsideration request until the tax is paid in full.
 - E. Document case history and proceed with appropriate collection actions to resolve the remaining balance if the adjustment will not result in Status 12.
 - F. If the adjustment results in Status 12, and there are no open Del Ret modules, and the collection investigation on the taxpayer entity is concluded, then the RO is required to send case closing Letter 4222, *Notice of Case Resolution*, to the taxpayer and/or Power of Attorney. If there is a POA record in good standing on the module, a POA copy of the letter along with Letter 937 will print. Letter 4222 will generate systemically on ICS. When generated systemically, a systemic history will be written. If managerial approval is required, when the manager selects the approval button, the Print Manager will open which includes the option on ICS to allow the manager to print the Case Closing letter or email it to the initiator of the request for them to print and mail.
2. Form 3870 processing items required for reconsideration requests:
 - A. Indicate if a Notice of Federal Tax Lien (NFTL) has been filed in Item 11 "Reason for Adjustment" of Form 3870, *Request for Adjustment*. The determination to abate the TC 360 NFTL fee should be made on a case by case basis considering the situation surrounding the adjustment and utilizing the best judgment of the employee assigned the account. See IRM 5.12.3.5.
 - B. Attempt to resolve any obvious errors or discrepancies with the taxpayer and annotate your efforts in Item 11 of Form 3870.
 - C. Complete a separate Form 3870 for each year for which the taxpayer is requesting an adjustment. Include the taxpayer's full address and daytime phone number in Item 2. Include your name, email address, work telephone number, fax number, and date in Item 13, to facilitate contact by campus employees. Sign in Item 13 "Signature of Preparer".

Note:

Taxpayers need to sign the Form 3870 **only** when they have not already provided a signed **written** request for reconsideration. An original tax return or an amended tax return will satisfy this requirement. For non-resident aliens, an adjustment request can be submitted without an original return if warranted by circumstances.

- D. Insert your group manager's email address in Item 14 to facilitate contact by campus employees. Manager's approval signature is not required. For non-resident aliens, managerial approval is required on Form 3870 when an original return is not secured.
- E. Include a copy of Form 2848, *Power of Attorney*, or Form 8821, *Tax Information Authorization*, if applicable. If Form 2848 or Form 8821 is not available, attach IDRS print of command code (CC) CFINK.
- F. If the adjustment will fully satisfy the module, close the Bal Due module by selecting "Abatement" on ICS to suspend further collection notices. This will upload "TC 470 CC 90". See example below of wording to write in Item 11 of Form 3870 for Audit Reconsideration request.

Caution:

Select the proper collection suspension code when processing a taxpayer claim to adjust taxes and/or locate payments on a balance due account. Do not use TC 470 cc 90 if the account will not update to Collection Status 12. See Document 6209, *IRS Processing codes and Information*, Section 11 (Collection) for further information on TC 470 and other Closing Codes Chart.

Example:

Audit Reconsideration

Requested Action: Taxpayer requests reconsideration of Audit/Examination assessment. Adjust tax, penalty, and interest (if restricted) based on tax return attached.

Justification: Provide the reason for the reconsideration, i.e. Taxpayer moved and notices were not sent to new address.

Attach signed tax return, POA information and substantiation.

Annotate your efforts to resolve any discrepancies with taxpayer.

5.1.15.3.2 (10-09-2012)

Criteria for Reconsideration Request

1. Taxpayers may request a reconsideration to provide correct or additional information to dispute assessments.

If the taxpayer	Then	Forward for processing
did not receive any notification of the assessment/adjustment prior to Collection contact	the correct information must be provided to dispute the assessment for reconsideration	<ul style="list-style-type: none">• to Examination for Audit Reconsideration• to AUR for underreported income reconsideration• to ASFR/SFR for reconsideration
has moved since filing the return in question and did not receive any correspondence from IRS such as the notice of the examination results	the taxpayer will be provided an opportunity to produce the information necessary for a reconsideration request	<ul style="list-style-type: none">• to Examination for Audit Reconsideration• to AUR for underreported income reconsideration• to ASFR/SFR for reconsideration
failed to appear for the audit	the taxpayer will be provided an opportunity to produce the information necessary for a reconsideration request	to Examination for Audit Reconsideration
never had an opportunity to submit required substantiation and now has the necessary documentation and/or submitted a document that was not considered	the taxpayer will be provided an opportunity to produce the information necessary for a reconsideration request	<ul style="list-style-type: none">• to Examination for Audit Reconsideration• to AUR for underreported income reconsideration• to ASFR/SFR for reconsideration
disagrees with an audit determination due to additional information not available at the time of the audit	the taxpayer will be provided an opportunity to produce the information necessary for a reconsideration request	to Examination for Audit Reconsideration to ASFR/SFR for reconsideration
disagrees with a Notice of Deficiency assessment created by either Automated Substitute for Return (ASFR) or SFR processing under the authority of IRC 6020(b) and wants to submit an original return to correct the assessment	the taxpayer will be provided an opportunity to produce the information necessary for a reconsideration request	Reminder: Forward to the ASFR campus based on the BOD code determined by the schedules attached to the tax return.
wants to claim tax credits, e.g. Earned Income Tax Credit (EITC), which were denied during a prior audit and/or submitted a document that was not considered	the taxpayer will be provided an opportunity to produce the information necessary for a reconsideration request	to Examination for Audit Reconsideration

5.1.15.3.3 (04-16-2010)

Exclusions from Reconsideration Processing

1. Reconsideration procedures do **not** apply in the following situations:
 - A. The taxpayer paid the liability in full and submitted a claim for refund. Claims are submitted by the taxpayer on Form 843, *Claim For Refund and Request for Abatement*, and are worked by the appropriate campus.
 - B. Requests for abatement of interest for ministerial or managerial delay under IRC section 6404(e)(1), *Abatement of Interest Attributable to Unreasonable Errors and Delays by Internal Revenue Service* are processed according to procedures found in IRM 20.2.7, *Interest - Abatements and Suspension of Interest: IRC 6404 and 7508*.

5.1.15.3.4 (10-09-2012)

Rejecting a Request for Reconsideration

1. Revenue officers (RO) have discretionary authority to reject a taxpayer's request for reconsideration.
2. There are three basic reasons you can reject the taxpayer's request for reconsideration. Rejection is appropriate when the request includes returns that are:
 - A. Unsigned,
 - B. Frivolous, or
 - C. Filed after the assessment or refund statute expiration date.

Note:

The IRS can consider a reconsideration request that will result in an adjustment of the tax due, even after the ASER and RSED have expired. See IRM 25.6.1.9, *Assessments* and IRC 6501 for Assessment Statute Expiration Date (ASER). See IRM 25.6.1.10, *Claims, Abatements, and Refunds* and IRC 6511 for Refund Statute Expiration Date (RSED).

Note:

For taxpayers who are absent from the United States for a continuous period of at least six months, see IRC 6503(c). This may be applicable regarding the extension of the collection statute.

3. The taxpayers' request for reconsideration can also be rejected if they do not provide any new, pertinent information.

A. This reason does not apply to an **original return** filed to correct an SFR/ASFR assessment.

Note:

The Service will accept a signed Form 1040X, *Amended U.S. Individual Tax Return*, to amend the Form 1040, *U.S. Individual Income Tax Return*, filed by the Service during SFR/ASFR processing as the taxpayer's original return if it is complete, with all required schedules attached.

B. The taxpayer **must** refute the rationale for a tax assessment based on an audit assessment or AUR adjustment by providing **new information** for the examiner to consider. The amended return (or other written statement requesting reconsideration) **must** address the audit determination or the income/deduction issue(s) that generated the AUR adjustment. If new information is not provided, you can reject the reconsideration request and proceed with collection action.

C. If it is unclear whether the return or other written statement provides new information for the examiner to consider, then annotate that fact on Form 3870 and forward for processing.

4. Forward frivolous returns to the Frivolous Return Program (FRP). Frivolous filers are taxpayers that file non-processable returns based on arguments not supported by tax law. See IRM 5.1.11.4.3, *Frivolous Non-filers* or refer to the FRP web page at <http://mysbse.web.irs.gov/AboutSBSE/aboutccs/ccsprog/frp/default.aspx>.

5. Check applicable assessment and refund statutes of limitations before accepting signed, non-frivolous returns. See IRM 25.6.1, *Statute of Limitations - Processes and Procedures*, and IRC 6503(c), *Suspension of running of period of limitation*.

A. The "filing" of a SFR/ASFR return by the Service does not start the running of the period of limitations for assessment or collection (ASED/CSED). The "assessment" based on such a return does start the running of the statute of limitations for collection purposes. See IRM 25.6.1.9.4.5, *Substitute for Return (SFR)*, for the applicable period of limitations for assessment and collection.

B. If the Service has prepared SFR/ASFRs for both spouses, the three-year time limit in IRC 6013(b)(2), *Joint returns of income tax by husband and wife*, is not applicable and the taxpayers can file a joint return at any time. If, however, one of the spouses filed a MFS return, the joint return must be filed within three years from the due date of the return for that year (excluding extensions).

Note:

Married taxpayers who have filed previously and reported their income for any particular year on separate returns, can nonetheless file a joint return for that year so long as they do so within the time limits specified in IRC section 6013(b)(2). Under section 6013(b)(2)(A), taxpayers cannot switch from separate to joint more than three years after the due date of the return for that year (excluding extensions).

C. Accept an amended return (or other written statement requesting reconsideration) for Audit or AUR reconsideration processing **only** if it provides new, pertinent information for the examiner to consider. Generally, to claim a refund, a Form 1040X must be received within three years after the date the taxpayer filed the original return or within two years after the date the taxpayer paid the tax, whichever is later. See IRC 6511, *Limitations on Credit or Refunds*, for additional information.

6. Notify the taxpayer of your decision to reject the request. If the taxpayer requested reconsideration orally, you can reply orally but should follow-up with a written communication. If the request was in writing, reply in writing. In either case, document the history.

7. Document case history on ICS and proceed with normal collection actions to resolve any remaining balance.

5.1.15.4 (04-16-2010)

Audit, Automated Underreporter (AUR), Substitute For Return (SFR) and Automated Substitute For Return (ASFR) Reconsideration

1. This section provides guidelines for each distinct type of reconsideration based on the type of assessment.

5.1.15.4.1 (10-09-2012)

Audit Reconsiderations

1. Audit reconsiderations refer to requests to reevaluate the results of an audit assessment when a taxpayer disagrees with the original audit determination.

2. An audit assessment is identified on IDRS command code (cc) TXMOD by Transaction Code (TC) 420, indicating an audit assignment, followed by a TC 300 amount.

3. Follow the criteria for reconsideration requests in IRM 5.1.15.3.1 & 2 prior to the steps shown in the table below:

If the assessment is the result of an audit of a previously filed return

a) Inform the taxpayer that he or she can **only** request a reconsideration when new information is now available that was absent in the original audit. If they have new information, inform the taxpayer to submit the information with a written request for audit reconsideration.

b) Provide the taxpayer with Publication 3598, *What You Should Know About the Audit Reconsideration Process*.

c) Advise the taxpayer that, if possible, the reconsideration will be worked by the area which previously performed the audit. If that is no longer possible, the audit reconsideration will be processed by the campus currently working the type of program the original audit was based on.

d) Try to secure a copy of the examination report, Form 4549, *Income Tax Examination Changes*, from the taxpayer. If you secure a copy of the report from the taxpayer, attach it to the Form 3870. If unable to secure a copy of the examination report from the taxpayer, **do not** attempt to secure the original return and audit papers by using CC ESTAB. Annotate your efforts to secure the report from the taxpayer on Form 3870, item 11, *Reason for Adjustment*, and submit the reconsideration package with the original return and audit papers.

e) Stamp a copy of the written request for reconsideration on the front and signature pages of the return with the "COPY" stamp or write "COPY" on it for retention in the collection case file along with your copy of the Form 3870.

f) Provide the reason and justification for the request on Form 3870, Item 11. If the adjustment results in a credit balance, indicate on Form 3870, Item 11 where the credit should be applied or if it should be refunded. See *IRM 5.1.15.3* for information regarding lien fees.

g) Attach the pertinent supporting documentation to Form 3870 and forward to the campus that created the TC 300. For routing see IRM 4.13.7-2 Exhibit, *Routing of Campus Reconsideration Requests*, IRM 4.13.7-3, Exhibit *Routing of Area Office Reconsideration Requests*, and IRM 4.13.7-4 Exhibit *Central Reconsideration Unit (CRU) Addresses* for processing.

h) Expedite processing of Form 3870 only for an imminent statute. Annotate on Form 3870 **Statute Imminent (with date) MM/DD/YYYY**.

i) Do not attach IDRS CC TXMOD prints to Form 3870. IDRS prints are no longer necessary.

j) Document the case history with actions taken and proceed with normal collection actions to resolve any remaining balance. See example below for suggested wording to write in Item 11 of Form 3870 for Audit Reconsideration.

Note:

Select ICS template titled **Form 3870- OTHER (Manual Processing)** for Audit reconsideration requests.

Example:

Audit Reconsideration

Requested Action: Taxpayer requests reconsideration of Audit/Examination assessment. Abate tax, penalty, and interest (if restricted) according to the secured return attached.

Justification: Provide the reason for the reconsideration, i.e. Taxpayer moved and notices were not sent to new address. Attach signed tax return, POA information and substantiation. Annotate efforts to secure the Exam report from the taxpayer.

5.1.15.4.2 (10-09-2012)

Automated Underreporter (AUR) Reconsiderations

1. Automated Underreporter (AUR) is an automated analysis and processing of potential underreported (UR) and/or over-reported (O/R) discrepancies identified through information return (IR) matching. AUR matches information returns against individual income tax returns to verify that income is reported and deductions are taken correctly.
2. The two primary sources of AUR cases are:
 - Individual Master file (IMF) which contains the information reported to the IRS by taxpayers and
 - Information Returns Master File (IRMF) which is information that is matched with the IMF information to verify all income is reported.

AUR reconsiderations refer to requests to reevaluate the results of a prior AUR assessment when a taxpayer disagrees with the original AUR determination. See IRM 4.19.3, *IMF Automated Underreporter*, for additional information.

3. An AUR reconsideration is identified on IDRS CC TXMOD by a TC 922, indicating an AUR adjustment, followed by a TC 29X amount.

Note:

Although the vast majority of AUR assessments are TC 29Xs, AUR also processes tax decrease issues. It is possible that a taxpayer would want a reconsideration of a refund case that AUR processed.

4. Follow the criteria for reconsideration requests in IRM 5.1.15.3.1 & 2 prior to the steps provided in the table below:

If the assessment is the result of an AUR of a previously filed return

- a) Inform the taxpayer that he or she **must** either submit a written request for reconsideration and/or file an amended return which identifies the specific income/deduction issues that resulted in the AUR adjustment and the reason for the change, i.e., what new information is available that was absent during the AUR adjustment.
- b) Advise the taxpayer the reconsideration will be worked by the campus currently working the AUR program where the original assessment was based.
- c) Secure a copy of the AUR report CP 2000 Notice from the taxpayer, if available, and attach to Form 3870. If the taxpayer cannot provide the AUR report, annotate your efforts to secure the report from the taxpayer in Item 11 of Form 3870 "Reason for Adjustment" , and send the reconsideration package without the documents from files. *Do not attempt to secure the original return and adjustment documents from files using CC ESTAB.* CP 2000 is available to ROs through the AMS.

Note:

If a copy of the CP 2000 is not available, you may contact an AUR Coordinator to provide a copy. AUR Coordinators should be able to obtain an electronic version of the CP 2000 Notice through the Accounts Maintenance System (AMS). A listing of AUR Coordinators is provided on Servicewide Electronic Research Program (SERP) under the "Who/Where" tab or click on the following link <http://serp.enterprise.irs.gov/databases/who-where.dr/aur-coordinators.htm> .

- d) Stamp a copy of the written request for reconsideration on the front and signature pages of the amended return with the "COPY" stamp or write "COPY" on it for retention in the collection case file along with your copy of Form 3870.
- e) Provide the reason and justification for the request on Form 3870 Item 11. If the adjustment results in a credit balance, indicate on Form 3870 Item 11 where the credit should be applied or if it should be refunded. The determination to abate the TC 360 NFTL fee should be made on a case by case basis considering the situation surrounding the adjustment and utilizing the best judgment of the employee assigned the account. See IRM 5.12.3.5.
- f) Attach the pertinent supporting documentation to Form 3870 and refer to IRM 4.13.7-6, *Addresses for AUR Reconsideration Requests* , for address of AUR reconsideration campus. Do **not** attach IDRS CC TXMOD print to Form 3870. IDRS prints are no longer necessary.
- g) Expedite processing of Form 3870 **only** for an imminent statute. See IRM 25.6.1.9.9.1, *Procedures for Expeditious Assessments*.
- h) Document case history with actions taken and proceed with normal collection actions to resolve any remaining balance.

Note:

Select ICS template titled **Form 3870 -OTHER (Manual Processing)** for AUR reconsideration requests.

Example:

AUR Reconsideration

Requested Action: Taxpayer requests reconsideration of AUR assessment. Adjust tax, penalty, and interest (if restricted) according to the secured return.

Justification: Provide the reason for the reconsideration, (i.e. taxpayer disputes income information). Taxpayer must provide pay stubs or documentation to show all income.

Attach date stamped, signed tax return, POA information and substantiation.

Annotate efforts to secure the AUR information from the taxpayer.

When there are too many documents then write on 3870 "RO reviewed supporting documents. Taxpayer is holding supporting documents for review by the examiner" .

5.1.15.4.2.1 (10-09-2012)

Audit and Automated Underreporter (AUR) Reconsideration Supporting Documentation

1. Attach supporting documents relating to:
 - A. Specific issue(s) identified in an audit that caused the tax increase, or
 - B. Reported income/deduction that caused the AUR adjustment.

Example:

If the original audit adjusted a specific Schedule A deduction, and the taxpayer disputes the tax increase, then the only documentation that needs to be attached is the documentation relevant to that Schedule A deduction.

Example:

If the AUR adjustment was for additional wages, and the taxpayer disputes the amount of additional wages shown on the CP 2000 Notice, then the only documentation that needs to be attached is the documentation relevant to the taxpayer's wages, such as pay-stubs or other documentation to support his/her claim.

Caution:

If the supporting documentation does not appear to be authentic refer to the frivolous submissions area of IRM 5.20.10, *Frivolous Tax Submissions Subject to a § 6702 Penalty*, for additional information.

2. Effective July 1, 2012, an Interim Guidance Memorandum was issued for all employees to follow when shipping hardcopy documents containing personally identifiable information (PII) by a carrier other than the United States Postal Service. Additional information about shipping PII can be accessed on the IRS intranet at the publishing web site using the link provided. <http://publish.no.irs.gov/mailtran/PIIHardcopy.html>.

5.1.15.4.3 (10-09-2012)

Substitute For Return (SFR) and Automated Substitute for Return (ASFR) Reconsiderations

- 1. SFR/ASFR Reconsiderations refer to reconsiderations of SFR/ASFR assessments created by either ASFR (Compliance) or SFR (Examination) processing which includes but is not limited to High Income Non-Filer (HINF) processing.
2. A taxpayer must request reconsideration of an SFR/ASFR assessment by filing an original return.

Note:

The Service will accept a signed Form 1040X, Amended U. S. Income Tax Return, filed by the taxpayer as the taxpayer's original return if it appears to be complete, with all required schedules attached.

Caution:

Brookhaven Service Center (BSC) will not process original returns that were not subject to an SFR/ASFR assessment.

- 3. An SFR/ASFR assessment is identified on IDRS CC TXMOD by the following:
A. A TC 150 followed by "0.00" and the literal "SFR" to the right of the TC 150 assessment Document Locator Number (DLN),
B. Tax class 2 with Document Code 10 in the DLN,
C. Blocking Series 000-299,
D. The tax amount assessed will appear as a TC 290 (Collection ASFR Assessment) or TC 300 (Examination SFR Assessment) with blocking series 540-549 or 640-649,
E. Transaction Code (TC) 599 with Closing Code (CC) 88, no response to SFR notifications, and/or
F. TC 599 with CC 89, taxpayer agreed to the SFR assessment.

Reminder:

If the TXMOD shows a TC 599 CC 89, the taxpayer agreed to the ASFR/SFR assessment and the tax return will be forwarded to CCP for processing. ASFR will not process these requests.

Caution:

If the IDRS CC TXMOD shows that an assessment was originally created by SFR processing, ensure that no subsequent TC 599 CC XX with an audit assessment or AUR adjustment appears on the module. If it does, you will need to secure an amended return or other written request for reconsideration if it is an AUR assessment, and a written request for reconsideration if it was an Examination assessment, other than the SFR.

- 4. If the Service has prepared SFR/ASFRs for both spouses, the three-year time limit in IRC 6013(b)(2), Joint returns of income tax by husband and wife., is not applicable and the taxpayers can file a joint return at any time. If, however, one of the spouses filed a Married Filing Separate (MFS) return, the joint return must be filed within three years from the due date of the return for that year (excluding extensions). See the Note in IRM 5.1.15.3.4(5)(b) for additional information. See IRM 25.6.1.9.4.4, Joint Return After Separate Return, for the applicable period of limitations for assessment and collection when taxpayers switch from separate to joint after the service has prepared an SFR/ASFR for at least one of the spouses.
5. Follow the criteria for SFR/ASFR reconsideration requests in IRM 5.1.15.3.1 & 2 prior to the steps provided in the table below:

If the assessment is the result of an Individual Master File (IMF) SFR/ASFR assessment under IRC 6020(b)

- a) Secure a signed original tax return. The taxpayer must file a signed original return to request reconsideration of an SFR assessment. All secured original tax returns must be date stamped with the date received, using the IRS official date stamp, prior to processing the return reconsideration. Immediately process all return reconsideration requests.
b) Check the return to ensure there are no obvious problems.
c) Attempt to resolve errors or discrepancies between income reported on the return and the information located on IRS records using CC IRPTR and/or SUPOL. Document the errors or discrepancies on Form 3870 and annotate your efforts to have them corrected. ASFR should not reject your request for reconsideration if these steps are taken.
d) =====
e) ROs are not required to request the SFR assessment documents from files using CC ESTAB. Do not attach IDRS CC TXMOD print to Form 3870.
f) Indicate "SFR RECONSIDERATION REQUEST—TAXPAYER RETURN ATTACHED" on Form 3870, Item 11, "Reason for Adjustment" .
g) If the adjustment results in a credit balance, indicate on Form 3870, Item 11 where the credit should be applied or if it should be refunded.

Caution:

Annotate "Pending SFR Assessment" on Form 3870, Item 11 if the TC 290/300 SFR assessment is pending on IDRS (shows as PN on IDRS) and there is no TC 290/300 posted on the module. The campus will reject a Form 3870 if no TC 290/300 is present on a module when they receive a request for reconsideration.

- h) Retain a copy of Form 3870 and the return, i.e. either the actual return marked "DUPLICATE" or the photocopy of the actual return marked "COPY", in the collection case file. Document the case history with actions taken and continue with normal collection actions to resolve any remaining balance.
i) Determine the correct Business Operating Division (BOD) code of the secured tax return based on the schedules and forms attached. The BOD code must be identified in order to determine the correct campus for processing your SFR/ASFR reconsideration. The BOD code found on TXMOD is not always accurate.
• SB/SE - Schedules C, E, F, J, SE and Forms 1116, 2106, and 2555
• W&I - Schedules A and/or D or tax return with no schedules

Note:

All IMF international tax returns are processed at BSC, even those with only wages.

See example below for suggested wording to use in Item 11 of Form 3870.

Note:

Select ICS template titled Form 3870 - ASFR Reconsideration to BSC for SB/SE ASFR reconsideration requests. Select ICS template titled Other (Manual Processing) for W&I ASFR reconsideration requests.

Example:

ASFR/SFR Reconsideration

Requested Action: SFR reconsideration request - taxpayer return attached for reconsideration of ASFR/SFR assessment. Adjust tax, penalty, and interest (if restricted) according to the secured return.

Justification: Provide the reason for the reconsideration, (i.e. taxpayers are electing to file joint and meet the criteria to do so).

Attach date stamped, signed tax return, POA information and substantiation.

Document any errors and annotate efforts to secure the correct information.

Indicate where credit should be applied or refunded.

- 6. Send the reconsideration request by email, fax or mail to the Brookhaven or Fresno campus for processing according to the procedures in the table below. Requests to BSC should be sent by email unless it is not practical (e.g., the attachment is too large or a scanner is not available).

Note:

Select ICS template titled **Form 3870 - ASFR Reconsideration to BSC** for all SB/SE reconsideration requests.

Scan and E-mail

Fax or Mail

- Stamp the actual return with the "DUPLICATE" stamp or write "DUPLICATE" on the return.
- Scan the return and save it as a PDF file.
- Attach the PDF file to an email message along with the completed Form 3870.
- Send the message and attachments via **secure** email to the address shown in the table below.
- Indicate "**SFR Recon**" in the subject line of your email message.
- Stamp the copy of the return with the "COPY" stamp or write "COPY" on the return for retention in the collection case file.
- Retain a copy of the return in the case file.
- Attach the actual return and **all** supporting documentation to Form 3870.
- Fax or mail the complete Form 3870 package to the Brookhaven campus at either the fax number or the mailing address shown below.

- 7. Forward **only** IMF returns (Form 1040 with Schedule C, E, F, J or Form 1116, 2106, or 2555) and IMF international returns (even those with only wages) to the Brookhaven campus as shown below. **(SB/SE only)**:

E-Mail Address	Fax Number	Mailing Address
*SBSE ASFR-RECONS (631) 447-4017	1040 Waverly Avenue	Internal Revenue Service ASFR Operation Stop 654 Holtsville, NY 11742-9013

- 8. Forward IMF returns with Schedules A and/or D and returns with no schedules that are **Wage and Investment (W&I) cases to the Fresno Campus**. There is no email option for the W&I ASFR Reconsiderations.

Note:

Select ICS template **Form 3870 - OTHER (Manual Processing)** for all FSC W&I reconsideration requests.

Mailing Address	Private Delivery Service (PDS) Overnight Mailing
Internal Revenue Service ASFR Operation Stop 81304 PO Box 24015 Fresno, CA 93779	Internal Revenue Service ASFR Operation Stop 81304 5045 E Butler Fresno, CA 93888

Note:

Follow guidelines for PII shipping procedures. PDS mailings should only be used for urgent shipping.

5.1.15.4.4 (04-16-2010)

Return Processing Guidelines for Audit, Automated Underreporter (AUR), Substitute For Return (SFR) and Automated Substitute For Return (ASFR) Reconsiderations

- 1. This sub-section provides guidelines for processing returns secured in conjunction with a request for reconsideration.

5.1.15.4.4.1 (10-09-2012)

Accepting a Return for Reconsideration Processing

- 1. For secured returns:

If	Then
The return is received by mail...	<ol style="list-style-type: none"> Date-stamp the return with the date received using the official IRS date stamp. <p>Note: Always date-stamp a return received by mail.</p> <ol style="list-style-type: none"> Review the return. Attempt to secure the taxpayer's signature if missing.
The return is received in person from the taxpayer...	<ol style="list-style-type: none"> Review the return. Request that the taxpayer sign the return if unsigned. Date-stamp a signed return with the date received using the official IRS date stamp. <p>Note: BSC will not process an unsigned tax return.</p>

- Do **not** process a return filed by the taxpayer unless it is **signed**. If the return is for married filing joint taxpayers, both taxpayers must sign the return or the return is not processable. Once a signed return is secured and date-stamped, it should be forwarded for reconsideration processing as soon as possible. Do not hold a signed and date stamped return for any period of time. The statute begins to run on the date the return is stamped for a return that will be treated as the taxpayer's original return (e.g. following an SFR/ASFR).

Note:

The fact that a return has been date-stamped does not mean it must be accepted for reconsideration processing.

Unsigned Returns with Missing Information

- Attempt to secure the taxpayer's signature(s).
- Do **not** send an unsigned return to the campus for processing.
- Send an unsigned return back to the taxpayer requesting original signature and any other missing information. See *IRM 5.1.15.4.4.2 Rejecting a Secured Return*.
- Continue with appropriate collection action.

Signed Returns with Missing Information

- Attempt to have the taxpayer perfect the return, i.e. supply the missing SSN, schedule(s), etc.
- Annotate Form 3870 regarding the obvious errors and your attempt(s) to contact the taxpayer for missing information.
- Forward the return to the campus for processing.

Note:

The campus will adjust the taxpayer's account.

**5.1.15.4.4.2 (04-16-2010)
Rejecting a Secured Return**

- After contact is made with the taxpayer and a return is secured for reconsideration, review the return at the point of contact to determine if the secured return includes new information. Return a rejected secured return back to the taxpayer even if it has been signed by the taxpayer and date-stamped by the IRS instead of forwarding it for audit or AUR processing **if it doesn't include new information**. Document the case history to reflect action taken and explain the reason(s) for rejecting the return.

Caution:

Do not reject a **signed** return filed by the taxpayer to replace an SFR/ASFR return filed by the Service.

Caution:

If the return appears to include frivolous information refer to the frivolous submissions area of IRM 5.20.10, *Frivolous Tax Submissions Subject to a § 6702 Penalty*, for additional information.

- When returning a rejected return to the taxpayer, include an explanatory note along with the rejected return. It should state the following:
 - Taxpayer identifying information,
 - Identify missing or incomplete information,
 - Your contact information, and
 - The statement "I have attempted to contact you about correcting this return but have not received a reply. I am returning your tax return and cannot continue processing the adjustment to your tax account for this tax period until you provide the information needed."
- Proceed with appropriate collection actions to resolve the module balance after rejection of a return.

**5.1.15.4.4.3 (10-09-2012)
Processing Time Frames for Reconsideration Requests**

- Do **not** contact a campus employee to follow up on a request for reconsideration before the expiration of the applicable time frame. Unnecessary status update requests will delay processing.
- The specific processing time frames are displayed in the table below:

Type of Reconsideration	Average Time Frame	Delays Beyond the Average Time Frame
Audit Reconsideration	60 - 90 days	<ol style="list-style-type: none"> Check IDRS for an indication that Audit Recon is working the case. IDRS case assignment is located on TXMOD. Campus employees will send Letter 2645-C, <i>Interim Letter</i>, or Letter 2644-C, <i>Second Interim Response</i>, to advise the taxpayer that additional time is needed when an Audit reconsideration is not worked within 30 days. The additional time can range from 120 - 180 days.
AUR Reconsideration (Form 1040 individual return only)	45 days	<ol style="list-style-type: none"> Check IDRS for an indication that AUR RECON is working the case. IDRS case assignment is located on TXMOD. Campus employees will send interim letter, Letter 2645-C or a second interim letter, Letter 2644-C, to advise the taxpayer that additional time is needed when an AUR reconsideration is not worked within 45 days. The additional time can range up to 60 days.
SFR /ASFR Reconsideration	60 - 90 days	<ol style="list-style-type: none"> Check IDRS for an indication that ASFR RECON is working the case. IDRS case assignment is located on TXMOD. Request a status update via secure email to *SBSE ASFR-Recons if the case-control has not changed and there is no indication that ASFR RECON received the case. Do not close the BAL DUE module on ICS if the reconsideration does not resolve the Bal Due.

**5.1.15.4.4.4 (04-16-2010)
Appeal Rights on Reconsiderations**

- The taxpayer will qualify for an appeal when the return is accepted for reconsideration and the result of the reconsideration is that the taxpayer's request is disallowed in full or in part.
- The taxpayer will **not** qualify for an appeal if:

- Reconsideration request is denied
 - Taxpayer does not respond to the appointment letter or
 - Taxpayer does not appear for the appointment
3. If the taxpayer wishes to dispute an Audit reconsideration determination that the taxpayer chose not to appeal or for which the taxpayer did not qualify for an appeal, the taxpayer may file a refund claim with the Service after paying the full amount due. Claims are processed upon the taxpayer submitting Form 843, *Claim For Refund and Request for Abatement*. Generally, to claim a refund, Form 843 must be filed within three years from the time the original return was filed or within two years from the time the tax was paid, whichever is later. See IRC 6511, *Limitations on Credit or Refund*. See IRM 4.13.6.1, *Appeal Rights*.

5.1.15.4.5 (04-16-2010)

Comparison of Reported Income on Secured Return

1. Check the income displayed on IDRS/CFOL and compare it to the income reported on the taxpayer's return. Verify that all income is included or accounted for on the return.

A. **Example:** Comparison of reported income to the income on the taxpayer's return:

IDRS / CFOL	Income Source	Return		Difference
		Amount	Amount	
Div & Int		\$37	\$37	0
Non EE Comp		\$145,233	\$118,227	\$27,006
Other		\$1,418	\$1,418	0

There is a significant income discrepancy (\$27,006) on this return which you need to resolve with the taxpayer prior to forwarding the request for reconsideration.

2. Request CC IRPTR, SUPOL or other IDRS or CFOL command code to obtain information from documents such as Form W-2, Form 1099, Form 5498, if necessary.

Note:

Command code SUPOL is the basis for the ASFR 30/90-day letters and is available for longer periods than IRPTR.

3. Proceed with processing the request for reconsideration if there are no significant income discrepancies.

5.1.15.4.5.1 (10-09-2012)

Resolving Income Discrepancies on Audit, Substitute For Return (SFR) and Automated Substitute For Return (ASFR) Reconsiderations

1. When discrepancies are identified, inform the taxpayer that he or she needs to include the additional income shown on IRS records, i.e. IDRS/CFOL, to correct their return. If the taxpayer agrees, secure the corrected return.

2. If a taxpayer claims to be a victim of Identity (ID) theft, due to the income discrepancy see IRM 5.1.12, *Cases Requiring Special Handling*. An ASFR/SFR/AUR assessment may have been made against the victim, as a result of income reported on Form W-2's associated with the stolen SSN provided by the ID thief. An ID thief may have used a taxpayer's SSN for employment purposes. Employment fraud occurs if someone works using a stolen social security number causing the victim to have unreported income.

3. Follow the steps below if the taxpayer disagrees with the income displayed on IDRS or CFOL :

- A. Request CC IRPTR with definer "W" , to receive the IRP information from Form(s) W-2 and /or 1099 for the taxpayer or print a "Wage and Income Document" transcript through the Transcript Delivery System,
- B. Provide the Form W-2/1099 information to the taxpayer for review and
- C. Secure a corrected return if the taxpayer agrees with the IDRS/CFOL income.

Note:

Up to 10 tax years can be referenced in IRPTR.

4. Follow the steps below if the taxpayer still disagrees with the income displayed on IDRS or CFOL:

- A. Secure a written explanation from the taxpayer regarding the information that is incorrect. Attach the statement and any supporting documentation to the reconsideration request.
- B. Forward the request for processing.

5. =====

5.1.15.4.5.2 (09-01-2007)

Resolving Income Discrepancies on Automated Underreporter (AUR) Reconsiderations

1. Compare the issues raised in the taxpayer's request for reconsideration against the AUR Report (CP 2000 Notice) or against CC IRPTR and/or SUPOL information.

Note:

AUR Coordinators should be able to obtain an electronic version of the CP 2000 Notice through AMS if the taxpayer does not provide it. A listing of AUR Coordinators is provided on SERP or click on this link <http://serp.enterprise.irs.gov/databases/who-where.dr/aur-coordinators.htm> .

2. Ensure that the taxpayer provides an explanation and any applicable documentation to support his/her claim for income/deduction issues raised on the CP 2000 Notice.

Note:

IRS operations have an effect on victims of identity (ID) theft, such as resolving duplicate returns or engaging in various compliance activities that target unreported income. When these situations occur, the innocent taxpayer must provide the IRS documentation to establish that he or she is a victim of ID theft. Click on this link for general information about ID theft: <http://irweb.irs.gov/AboutIRS/bu/pipds/pip/itim/idthef/default.aspx> . See also 5.1.15.13 for ID Theft abatement procedures.

3. If the taxpayer includes additional deductions not addressed on the CP 2000 Notice, e.g. additional IRA deduction or Early Withdrawal Penalty, review CC IRPTR to determine if there is payer information to support the additional deductions.

4. Request that the taxpayer provide documentation to support any issue not claimed on the original return, (e. g. additional exemptions, corrected Schedule A, or credits). If there is any issue for which the taxpayer has no supporting documentation, a written explanation must be attached.

5. Forward the request for processing.

5.1.15.4.5.3 (04-16-2010)

Appropriate Forms and Schedules

1. Check to ensure all appropriate forms and schedules are included with the return and appear to be complete. Inform the taxpayer that he or she needs to submit any missing or incomplete forms or schedules.
2. Note line items on the return that require an attachment, (e.g. Form W-2, Schedule D *Capital Gains and Losses*, Form 2441 , *Child and Dependent Care Expenses*), and verify that they are attached.
3. Proceed with processing the request if there are no obvious missing or incomplete forms or schedules.
4. Document ICS case history.

5.1.15.5 (10-09-2012)

Adjustments - General Procedures

1. Use Form 3870, *Request for Adjustment*, for all requests of full or partial tax adjustments and/or penalty or restricted interest abatements when use of RCA is not applicable. Requests should be sent by email unless it is not practical (e.g. the attachment is too large or a scanner is not available). Select the applicable 3870 ICS template. Use Form 3870 - Penalty Adjustments (Form 3870 E) ICS template for penalty abatements only when use of RCA is not applicable.
2. If the adjustment fully satisfies the amount owed, prepare Form 3870 and:
 - A. Complete Items 1–11 and 13 and Items 12 & 14 as appropriate.
 - B. Write TC 470 CC 90 in Item 3 for master file tax.

Reminder:

Request TC 470 and a STAUP 89 if the tax module is Non Master File (NMF). This will remove the NMF account from collection status.

- C. Have the taxpayer sign the form or attach taxpayer's letter explaining reason for the adjustment.

Note:

If there is adequate evidence that an adjustment is needed because of an error made by the Service, (e.g., taxpayer was out of business during the period of an IRC 6020(b) assessment), the above is not necessary.

3. If the adjustment results in Status 12, and the collection investigation on the taxpayer entity is concluded, then the RO is required to send case closing Letter 4222, *Notice of Case Resolution*, to the taxpayer and/or Power of Attorney. Document the case closing summary sheet statement that a closing letter for Status 12 will be issued. There is no requirement to hold the case open on ICS until the closing action posts to IDRS and the account goes to Status 12. If the case and modules are closed on ICS, module information must be manually entered in the ICS template. If the Form 3870 requires group manager (GM) approval, when the GM selects the approval button, the Print Manager will open which includes the option to allow the GM to print the Case Closing Letter or email it to the initiator of the request for him/her to print.
4. If the adjustment does not fully satisfy the balance due, process the request for adjustment and continue to pursue collection. Do not close the Bal Due module on ICS.
5. If the balance that is not to be abated, is full paid before the adjustment posts, close the remaining Bal Due module on ICS selecting "abatement" option. This will upload TC 470 CC 90.
6. If the Collection Statute Expiration Date (CSED) is less than one year from the date the adjustment or payment tracer is being requested, special handling is required.
 - A. If between six and twelve months remain before the CSED expires, write "Statute Expiration Date MM-DD-YYYY" in **BOLD or RED** on the request for adjustment or payment tracer. For payment tracers, close the Bal Due module on ICS by selecting Payment Tracer. This will upload TC 470 CC 93. For abatements, if the adjustment fully satisfies the module, close the Bal Due module on ICS by selecting "abatement" . This will upload the TC 470 CC 90.
 - B. If less than six months remain before the CSED expires, mark the request as in (a) above, but do not close the Bal Due module. Hold it in inventory, and monitor it at least every 30 days until the adjustment or payment tracer has been completed.

Note:

IRC 6503 (c) provides circumstances under which the CSED may be extended, for example, where the taxpayer is outside the United States.

7. If a Notice of Federal Tax Lien (NFTL) has been filed on an IMF or BMF liability that is expected to be satisfied by an adjustment or payment tracer, be sure that the lien file indicator TC 582 has been input. This is necessary for timely release of the lien. See IRM 5.1.15.3.1(2).
8. If a TC 150 is on the tax module and a return is secured to increase or decrease the tax, forward the return with Form 3870 to Centralized Case Processing (CCP) for processing.

Caution:

If the return is sent for processing without Form 3870 it creates a duplicate return freeze code "-A" . Installment agreements cannot be input if a "-A " freeze is on the account.

5.1.15.5.1 (10-09-2012)

Form 1040X Adjustments

1. There are two types of Form 1040X , *Amended U.S. Individual Tax Return*, processes.
 - A. A Form 1040X adjustment that is amending an item on the original Form 1040.
 - B. A Form 1040X that is being accepted as an original return for an SFR reconsideration.

Each of these is processed using different methods. Scan and attach Form 1040X, that is amending an item on the original Form 1040, to Form 3870 before forwarding for processing, in all cases where the account to be adjusted is assigned to a revenue officer. See the example below for suggested wording to use in Item 11 of Form 3870.

Reminder:

Do not use this process for a Form 1040X being submitted for abatement of an SFR/ASFR or Examination Audit assessment reconsideration.

2. Check the validity of the amended return and determine whether or not the claimed adjustment will fully satisfy the tax. If it will, request input of TC 470 CC 90 to remove your account from collection status if applicable.

Caution:

If the taxpayer has submitted a tax return with frivolous information do not forward the return for processing. Forward the return to the Frivolous Return Processing (FRP) unit.

3. If Form 1040X pertains to a carry-back, interest is computed to the credit availability date, which is the due date of the loss year tax return without extensions. Carryback claims require expedited handling due to the 45-day interest free period if receiving a refund. See IRM 20.2.9, *Interest on Carryback of Net Operating Loss*.
4. Computer generated penalties will be automatically recomputed based on the adjustment of tax. Generally, there is no need to include them on Form 3870. The exception to this is TC 176, *Failure to Make Estimated Tax Payment Penalty*.
5. Estimated tax penalty is computed on the original tax and is not increased or decreased with subsequent changes (after the due date including extensions) to the tax. The exceptions to this rule are:
 - An amended return received before the due date (called a superseding return),
 - Internal or processing error (such as misapplied credits),
 - Withholding taxes allowable as a credit, and
 - Separate filing status to joint filing status (the penalty must be recomputed on the joint liability).
6. An estimated tax penalty cannot be adjusted because of the change in tax unless the amended return was filed before the due date of the original return or the original return was a result of a SFR assessment.
7. Identify potential statute cases. Use prompt assessment procedures when within 4 months of the ASSED. See IRM 25.6.1.9.9.1, *Procedures for Expeditious Assessments*, for procedures.

Example:

Form 1040X Adjustment

Requested Action: Process attached Form 1040X. Adjust tax, penalty, and interest (if restricted) according to the amended return.

Justification: Taxpayer filed corrected return. (i.e. taxpayers are amending Schedule A Itemized Deductions to include Real Estate Tax).

Attach date stamped, signed 1040X tax return, POA information and substantiation.

Attached all schedules and forms to substantiate the tax changes.

Indicate where credit should be applied or refunded.

5.1.15.5.2 (10-09-2012)

Form 1040X Processing Issues

1. When Accounts Management (AM) Campus Operations receives a Form 1040X on a status 26 account that is assigned to a Revenue Officer, IRM 21.3.3.4.10.2.1, *Amended Returns/Claims - Compliance Criteria*, requires them to send the return to the revenue officer. **Do not return these to the AM campus operation as misdirected mail.** The return must be attached to a Form 3870 and state in Item 11 of Form 3870 "Please process" then forward to CCP using ICS procedures.
2. If you sent Form 1040X to the campus for processing, and the campus rejects the adjustment for any reason, that information will be posted to TXMOD on that module, and the return sent back to the Revenue Officer. If the adjustment has not been processed within a reasonable amount of time (3 cycles) check CC TXMOD to see if your request has been rejected. If you are checking on the status of your case, contact CCP Collection FORT at GCP Internal Line (For Internal Use Only) at 1-800-831-0284.

Note:

CCP has implemented a 72 hour response time on electronic rejections for the RO to provide a correction or the information requested. If the information requested is not received within 72 hours, the item will be rejected back to the field.

5.1.15.5.3 (10-09-2012)

Amended Return/Claims - Carryback

1. Carryback claims require expedited handling due to the 45-day interest free period. Carryback claims can be IMF or BMF. Claims for carryback adjustments may be filed on Form 1045, *Application for Tentative Refund* and Form 1139, *Corporation Application for Tentative Refund*. Claims may also be filed on Form 1040X, *Amended U.S. Individual Income Tax Return*, Form 1120X, *Amended U.S. Corporation Income Tax Return*, an amended Form 1041, *U.S. Income Tax Return for Estates and Trusts*, Form 1120-C, *U.S. Income Tax Return for Cooperative Associations*, and Form 990-T, *Exempt Organization Business Income Tax Return*.
2. Scan and attach to Form 3870 the carryback claim and supporting documentation with date stamped and signed amended return. Write in "remarks" section on Form 3870 **NOL Carryback** and route to CCP for processing to Accounts Management (AM).
3. Do not contact Accounts Management (AM) campus personnel on Net Operating Loss (NOL) issues. Inquiries should be directed to the CCP Collection FORT for assistance at 1-866-897-4289.

5.1.15.5.4 (04-16-2010)

Employment Tax Adjustments

1. This section only applies to situations where the taxpayer had originally filed a valid employment tax return, but while working with the revenue officer it is determined the return was inaccurate and a corrected return is necessary. This section does **not** apply to situations where the taxpayer has been audited or the RO created the assessment under IRC 6020(b). See IRM 21.7.2.4.6, *Adjusted Employer's Federal Tax Returns or Claim for Refund*, for additional information.
2. Scan and attach the appropriate "X" form (e.g. Form 941-X, *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund*) that corresponds to the return you are correcting, to Form 3870 before electronically transmitting to CCP in all cases where the account to be adjusted is assigned to a revenue officer. RO's should review IDRS to compare with the original filed return.
3. If you send an "X" form to the campus for processing, and the campus rejects the adjustment for any reason, that information will be posted to IDRS CC TXMOD on that module, and you will be notified by email of the rejection. If tax returns with original signatures were sent to CCP they will be returned to the originator. If the adjustment has not been processed within a reasonable amount of time (3 cycles) check CC TXMOD to see if your request has been rejected and contact CCP if necessary. Rejected adjustments received electronically by CCP will be destroyed and will need to be resubmitted with the complete information.
4. There is no "X" form for Form 940, *Employer's Annual Federal Unemployment(FUTA)Tax Return*. Use Form 940 and check the box in the upper right hand corner of Form 940 marked "Amended" to correct a previously filed Form 940.

5.1.15.5.5 (04-16-2010)

Decrease Tax

1. If the change involves a decrease in Federal Insurance Contributions Act (FICA) tax, a certification is required on the "X" form. The taxpayer must complete the certification area in Part 2 of the "X" form. Part 5 of the "X" form must be signed by the taxpayer or an authorized representative. Taxpayers are required to certify on the "X" form that they have filed or will file Form W-2 or Form W-2c, as required. If the taxpayer is unable to contact employees, or if the employees will not comply, the taxpayer can still receive a refund or credit of the employer share only, by certifying that an attempt was made to locate the employees but was unsuccessful or that the employees will not comply.

2. Decrease to withheld income tax may only be allowed if the error is identified during the calendar year in which the error occurred and if the employer repays or reimburses the employee the amount of the overwithheld income tax before the end of the calendar year in which the wages were paid. Decreases identified after the end of the year may only be allowed to correct an administrative error or if section 3509 rates apply. The adjustment is made to each affected period.
3. Indicate on the Form 3870 the amount of Federal Tax Deposit (FTD) penalty, if any, to be adjusted. If the reduction in tax is zero, a TC 181 is not necessary unless there's a TC 180 or 181 on the module. See IRM 20.1.4.23(11)(a).
4. If the taxpayer reports that the correction is due to an administrative or typographical error, we accept the taxpayer's figures without the certification.

5.1.15.5.6 (10-09-2012)

Increase Tax

1. If tax was understated on the original return, the taxpayer can file an "X" form to correct the amount of tax. For errors on Form 941, in the case of a FICA error, the increase in tax will be assessed on the latest quarter of the year involved. For errors on Form 941, in the case of a withholding error, the increase in tax will be assessed on the last quarter of the year. If the taxpayer files the "X" form by the due date of the return for the period in which the error was discovered and pays the tax increase in full with the "X" form, IDRS will create an interest free period from the due date of the period which reflected the error until the due date of the period in which the error was ascertained, reported, and paid. An interest computation date will be reflected on CC TXMOD or CC BMFOLT immediately following a TC 298. In this instance the taxpayer will **not** receive an FTD penalty increase.

Example:

On August 12, 2011, an employer discovers an error with the Form 941 they filed for the 201103 tax period. They must file a Form 941-X reporting the correction by October 31, 2011 in order to qualify for an interest free tax adjustment.

2. If the taxpayer does not file the "X" form by the due date of the return for the period in which the error was ascertained, the tax will be increased on the applicable period(s) and interest will be charged from the due dates of that period(s). The taxpayer must submit a new Record of Federal Tax Liability (ROFTL) to determine the increased FTD penalty on each period. If the taxpayer files the "X" form timely, but does not pay when the "X" form is filed, the FTD penalty is 10% of the unpaid tax increase. See IRM 20.1.4.21.5,

5.1.15.6 (10-09-2012)

Business Master File (BMF) IRC 6020(b) Adjustments

1. BMF IRC 6020(b) adjustments refer to an adjustment of a return prepared and assessed under IRC 6020(b). The Service has the authority to prepare returns for any person who fails to submit a return required by Internal Revenue law or regulation at the time prescribed, or makes (willfully or otherwise), a false or fraudulent return. The following returns may be prepared, signed and executed by revenue officers under the authority of IRC 6020(b):
 - A. Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*;
 - B. Form 941, *Employer's Quarterly Federal Tax Return*;
 - C. Form 943, *Employer's Annual Tax Return for Agricultural Employees*;
 - D. Form 944, *Employer's Annual Federal Tax Return*;
 - E. Form 720, *Quarterly Federal Excise Tax Return*;
 - F. Form 2290, *Heavy Highway Vehicle Use Tax Return*;
 - G. Form CT-1, *Employer's Annual Railroad Retirement Tax Return*; and
 - H. Form 1065, *U. S. Return of Partnership Income*.
2. A BMF 6020(b) assessment is identified on TXMOD by the literal "6020B" to the right of the TC 150 assessment DLN. See Document 6209, *IRS Processing Codes and Information*, for TDI 599XX closing codes.
3. If you identify Form 941 and 940 returns that were assessed under SFR instead of 6020(b), they are part of a special project being conducted by Examination on employment tax at the Cincinnati Exam campus. The project is titled Employment Tax Non Filer (ETNF). The employment tax returns (Forms 941 and 940) assessed under this program can be identified on TXMOD by a TC 300 assessment with Project Code 0453 and Source Code 20. When you secure the original returns from the taxpayer you need to date stamp the returns, attach them to Form 3870 and forward to Cincinnati campus Examination for classification. The assessments can be adjusted. Because Examination assessed these returns, they need to be classified by Examination prior to any adjustment of tax. The mailing address for the ETNF project is located on the MySB/SE web page at <http://mysbse.web.irs.gov/Collection/toolsprocesses/CaseRes/adj/send/ETAdj/JobAids/18170.aspx>.
4. A taxpayer **must** request adjustment of a BMF 6020(b) assessment by filing a signed **original return**.

Reminder:

If the Trust Fund Recovery Penalty (TFRP) assessment was completed on the 6020(b) assessment then the RO must also request an adjustment on the TFRP account(s). See IRM 5.7.7.5 *Abatements and Adjustments of a TFRP*.

5. If the adjustment results in full abatement, input TC 470 CC 90. Any manually assessed penalty and restricted interest, lien fees, and all Failure to Deposit (FTD) penalties (manually and computer generated) must be included on Form 3870 for adjustment or abatement at the time of the adjustment request. See IRM 5.1.15.3.1(2)f. for information on abatement of lien fees.

Caution:

Do not use TC 470 CC 90 if the abatement does not fully satisfy the module or the account will not update to Collection Status 12. See Document 6209, *IRS Processing Codes and Information*, Section 11 (Collection) for further information on TC 470 and other Closing Codes Chart. Effective July 1, 2011, CCP began reversing TC 470 CC 90 requests when the adjustment/abatement did not result in the module being resolved in full. The initiating RO now receives an email, with a copy to the GM, about input of the TC 472 so that the remaining balance can be addressed. CCP assigns the module back to the RO that requested the TC 470 CC 90. When the case is closed on ICS, CCP assigns the module back to the group hold file.

6. For completion of Form 3870 for BMF IRC 6020(b) adjustment requests see below:
 - A. Indicate **BMF IRC 6020(b) Adjustment Request--Taxpayer Return Attached** on Form 3870 Item 11 "Reason for Adjustment."
 - B. If the adjustment results in a credit balance, indicate on Form 3870 Item 11 where the credit is to be applied or if it should be refunded.
 - C. If the taxpayer was out of business provide the date (MM-DD-YYYY) the business closed. Final out all filing requirements.

See the example below for suggested wording for Item 11 of Form 3870 for a full abatement of a IRC 6020(b) assessment:

Example:

BMF IRC 6020(b) Adjustment in full - Taxpayer not liable

Requested action: Abate tax (TC 150) dated (MM-DD-YYYY) in amount of (provide the amount of the TC 150); Abate FTD Penalty (TC 186) dated (MM-DD-YYYY) in amount of (provide amount of FTD penalty); Full abatement.

Justification: This was a 6020(b) assessment. Taxpayer was out of business (provide the date the business closed) (MM-DD-YYYY). No employees.

7. If the adjustment results in Status 12, and the collection investigation on the taxpayer entity is concluded, then the RO is required to send case closing Letter 4222, *Notice of Case Resolution*, to the taxpayer and/or Power of Attorney. A systemic history will be written when Letter 4222 is generated. There is no requirement to hold the case open on ICS until the closing action posts to IDRS and the account goes to Status 12. The letter will be systemically generated for the RO to send to the taxpayer once the case is closed on ICS. If the case and modules are closed on ICS prior to the closing letter being generated, module information must be manually entered in the ICS template. If the Form 3870 requires GM approval, when the manager selects the approval button, the Print Manager will open which includes the option to allow the manager to print the Case Closing letter or email it to the initiator of the request for them to print.
8. If the adjustment is a partial abatement or an additional assessment, add the statement: "Input TC 971 AC 012 to establish ASED" in Item 11 of Form 3870. The TC 599 and appropriate closing code must be written on the middle left margin of each tax return secured by the RO.
9. Scan the original return **signed** by the taxpayer. Forward electronically to CCP in Philadelphia. See the example below for suggested wording to use in Item 11 of Form 3870 for a partial IRC 6020(b) adjustment.

Note:

If the return is a Form 940 adjustment also scan a copy of the state certification if the adjustment is not a full abatement.

Caution:

The Failure to Pay (FTP) penalty will need to be addressed on partial adjustments whether it is IMF or BMF. FTP penalty on 6020(b) assessments comes under the authority of IRC 6651(a)(2) and (a)(3). See Treas. Reg. 301.6020-1(b)(3). FTP begins to accrue 10 business days following the date of the notice and demand for payment if the total assessment equals or exceeds \$100,000. If the total assessment is less than \$100,000, FTP begins to accrue 21 business days following the date of the notice and demand. The return made under IRC 6020(b) is treated as the return filed by the taxpayer for purposes of determining the amount of the addition to tax under IRC 6651(a)(2) and (a)(3). Failure to File (FTF) penalty under IRC 6651(a)(1) will usually have been assessed at the full 25% rate and will systemically be adjusted by the concurrent FTP penalty under IRC 6651(a)(2) to 22.5%. When full payment is secured, you must manually assess the remaining FTP (TC 270). The accrued FTP may be assessed as a debit entry using Form 3244, *Payment Posting Voucher*.

Note:

Maximum FTP penalty is 25%. Maximum FTF penalty is 22.5% when FTP under IRC 6651(a)(2) is also assessed.

Example:

BMF IRC 6020(b) Assessment Partial Adjustment

Requested action: Abate tax (TC 150) dated (MM-DD-YYYY) in amount of (provide the amount of the TC 150); Abate FTD Penalty (TC 186) dated (MM-DD-YYYY) in amount of (provide amount of FTD penalty); Abate FTF Penalty (TC 166) dated (MM-DD-YYYY) in amount of (provide amount of FTF penalty); Assess FTP Penalty (TC 270) in the amount of (provide amount of FTP assessment if not already assessed under 6020(b)); Partial abatement of tax, penalty, and interest.

Justification: This was a 6020(b) assessment. Taxpayer filed correct return.

Attach original, signed, date stamped return and POA information.

10. Retain a copy of Form 3870 and the return, (i.e. either the actual return marked "DUPLICATE" or the photocopy of the actual return marked "COPY"), in the collection case file. Document the case history on ICS and proceed with normal collection action to resolve any remaining balance.

5.1.15.6.1 (04-16-2010)

Limited Liability Company (LLC) IRC 6020(b) Adjustments

1. When a disregarded entity Limited Liability Company (LLC) fails to file employment tax returns for tax periods ending before January 1, 2009, prepare an IRC 6020(b) return. Although the single member owner (SMO) may file employment tax returns for these tax periods in the name and EIN of the SMO or the name and EIN of the LLC, the IRC 6020(b) return must be prepared in the name and EIN of the liable party, the SMO. If the SMO has previously filed an employment tax return for another business under the SMO EIN for the same tax period, then the return prepared under IRC 6020(b) should not be submitted to submission processing as a secured return. The return prepared under IRC 6020(b) will be processed on Form 3870 as a supplemental tax assessment. Ensure that an additional assessment is not prohibited by an ASED. Consult with Area Counsel, if necessary.
 - A. Prepare Form 3870 using the name and Employer's Identification Number (EIN) of the SMO.
 - B. In the Reason for Adjustment section of Form 3870 include the following statement: "This liability resulted from the operation of (Name and EIN of LLC), for which (Name of Single Member Owner) was liable as the employer, it should be added to the original assessment as a supplemental assessment. When the adjustment is processed, CCP should note the name and EIN of the LLC in the IDRS history on the module."
 - C. Attach the entire 6020(b) package (Tax return, Form 5604, *Section 6020(b) Action Sheet* and any supporting documentation) to the Form 3870, and
 - D. Forward by secure email to CCP.

5.1.15.7 (10-09-2012)

Combined Annual Wage Reconciliation (CAWR) Adjustments

1. A CAWR assessment may be identified as shown below:
 - A. SSA-CAWR - MFT 13 TC 240 Penalty reference number (PRN) 549 for failure to file (this is a penalty assessment),
 - B. SSA-CAWR - MFT 13 TC 240 Penalty reference number (PRN) 550 for late filing (this is a penalty assessment),
 - C. IRS-CAWR - MFT 01, 11, 16 (941, 943, 944 or 945) TC 290 DLN blocking series (digits 9, 10, 11) of 500-559 (this is a tax assessment), or
 - D. TIN Penalty - MFT 13 (BMF) or MFT 55 (IMF) with TC 240 Penalty reference number of (PRN) 500-514 (this is a penalty assessment). See IRM 5.1.15.7.3 for additional information on this type of penalty.

See IRM 4.19.4.1, *CAWR Overview*, for additional information.

2. The TC 290 DLN has a source document, which provides information on the assessment was based. It shows the totals reported on Forms 941, Forms W-2, and Forms W-3 for the year. It may be necessary to get copies of the taxpayer's filed Forms W-2. Any research request for Form W-2/W-3/Form 1099 information for the most current 10 years can be requested using IDRS CFOL cc IRPTR with definer "R". Lines 6 and 8 of Form 3870 should reflect the assessment date and DLN of the TC 290.
3. Research the cause of the CAWR adjustment and include this information with the Form 3870. CFOL command codes PMFOL, BMFOLA, (BMFOLU when an MFT 88 is present), or TXMOD may be used for this research. CC BMFOLU contains CAWR modules for the current CAWR and two other processing years. Tax years are available until December, four years after the tax year. See IRM 2.3.53, *Command Code PMFOL*, for complete information on the use of PMFOL.
4. Adjustments for a CAWR assessment must include enough documentation to permit necessary adjustments to employees' IMF accounts. The circumstances will dictate the necessary forms. The following are examples of situations and the supporting documents needed:

- A. For FICA tax adjustments, if there is a balancing error by SSA, attach corrected Forms W-2/W-3, the employers copy of Forms W-2/W-3 or a list of the employees' names, SSNs, and wage information.
 - B. For withheld income tax adjustments, attach a copy of Form 1040X for each affected employee or other verification that the affected IMF accounts have been adjusted.
 - C. For cases involving EINs, attach copies of all applicable returns or a list of tax liabilities with the FICA tax breakdown for each EIN.
5. Employers who do not comply with a request to file correct Forms W-2, are assessed a penalty (PRN 549) for intentional disregard of the filing requirements under IRC 6721(e), *Failure to file correct information returns*. A CP 215 generates advising the employer of the actual penalty assessment. The penalty is the greater of \$100 per Form W-2 or 10% of the aggregate amount of the items required to be reported correctly. The penalty rate of \$100 applies to Forms W-2 required to be filed on or before December 31, 2010. The penalty rate is \$250 for Forms W-2 filed on or after January 1, 2011. There is no maximum to the intentional disregard penalty.
 6. Adjustments to the 549 Penalty assessment must include the original Form W-3 and Forms W-2 attached to Form 3870. State on Form 3870 why the Form W-3 and Forms W-2 were not filed timely. The reason for late filing should be addressed using the reasonable cause criteria.
 7. SSA-CAWR and IRS-CAWR should be routed to either the Memphis or Philadelphia campus according to the state in the address of the taxpayer. Selection of the correct ICS template should route your adjustment to the correct campus. All international CAWR adjustments should be routed to Philadelphia. Refer to Exhibit 5.1.15-3, *State Mapping of CAWR*, adjustments or click on this link. http://serp.enterprise.irs.gov/databases/who-where.dr/transshipment.dr/campus_locator_guide/27_cawr_futa.htm
 8. SSA-CAWR and IRS-CAWR adjustments will only be worked at MSC and PSC. These adjustments are routed based on the location of the taxpayer. Timeframes for processing CAWR/FUTA/TIN Penalty Forms 3870 are generally 45 days; however, due to inventory workloads at the campuses, the timeframe for responding to the CAWR/FUTA Form 3870s from the revenue officers is 60 days. Please allow at least a full 60 days for this type of adjustment before contacting the campus or liaison. If there is a pending taxpayer burden on a specific taxpayer, for example a levy, the CAWR liaison will be able to provide assistance to the revenue officer. For additional information click on this link for the CAWR/FUTA web site. <http://wc.web.irs.gov/CAWR-SSA/Revenue%20Officer%20Contacts.htm>

Note:

If an electronic Form 3870 was misrouted, the campus will forward the email to the correct campus and cc the RO. If the misroute is paper, the campus will forward to the correct location and alert the RO by email. Note that CAWR adjustments are not to be sent to CCP or processed using RCA. Penalties assessed with the CAWR assessment should be included on Form 3870 with the adjustment of the CAWR assessment.

5.1.15.7.1 (10-09-2012)

Social Security Administration-Combined Annual Wage Reconciliation (SSA-CAWR)

1. Social Security Administration-CAWR (SSA-CAWR) is a document matching process initiated by the SSA to ensure that all employers are correctly reporting wages paid on Forms W-2 they provide to their employees and that employees receive proper credit from the SSA for their earnings. They match all the Forms W-2 received in a calendar year against information provided by the IRS on wages reported on Form 941, Schedule H (attached to a Form 1040), 943, 944, and 945 returns. If the total of the Forms W-2 is less than the return amount, the SSA sends the taxpayer up to two notices.
2. The SSA refers the case to the IRS, which can propose and assess either a Failure to File (FTF) penalty with intentional disregard (549 reference number) or a Late Filing Penalty for late filed Forms W-2 (550 reference number).
3. The employer will be assessed a FTF penalty (the greater of \$100 per missing return or 10% of the total wages that were required to be reported for returns required to be filed prior to January 1, 2011) if the failure was due to intentional disregard. The penalty rate is \$250 for returns required to be filed after December 31, 2010. See IRC 6721(e). This will appear as a MFT 13, Reference Number 549, and a CP 215 is sent to the employer.
4. The employer will be assessed the late filing penalty (\$50 per form for returns required to be filed before January 1, 2011) applicable under IRC 6721(a), for failure to file or timely file a Form W-2, for failure to include all of the required information, or for including incorrect information. The penalty rate is \$100 for returns required to be filed after December 31, 2010 with a maximum of \$1.5 million. It will appear as a MFT 13, with Reference number 550, and a CP 215 is sent to the employer. A Late Filing Penalty will be assessed for Forms W-2 secured by CAWR in response to the initial CAWR correspondence. This assessment is a penalty.
5. The RO should attempt to secure the missing Forms W-2 and abate the FTF with Intentional Disregard Penalty (549 Penalty). The taxpayer would still be liable for the Late Filing Penalty (550 Penalty). The RO **must** address whether there was reasonable cause for the delay in proper filing of the Forms W-2. Taxpayer must request relief of the Late Filing Penalty and provide documentation regarding reasonable cause. Reasonable cause for the information return penalties exists when:
 - The filer acted in a responsible manner, both before and after the failure occurred, and
 - There were significant mitigating factors, or
 - The failure was the result of circumstances beyond the filer's control.

Note:

Secure managerial approval if the penalty is abated based on reasonable cause.

6. Prepare Form 3870 and state in Item 11 of Form 3870 the type of penalty involved (549 FTF or 550 late filing) and whether the adjustment is based on missing or amended Forms W-2 or missing or amended payroll tax returns. If reasonable cause is established attach the taxpayer's documents and forward to the group manager for approval. Scan and attach all necessary documents to Form 3870 and forward to the appropriate campus for processing. See example below of suggested wording for Item 11 Form 3870.

Example:

SSA-CAWR adjustment of 549 penalty

Requested Action: Abate SSA-CAWR 549 penalty dated (MM-DD-YYYY) in full [or in part and state amount] due to [state reasonable cause and RC codes]. Do not assert penalty code 550 (Late Filing) [in the amount of (provide the amount to be assessed)] due to [state reasonable cause and RC codes]. Missing W-2s and W-3 attached. [Or "Amended W-2s attached, etc."]

Abate penalties assessed with CAWR assessment (state penalty TC XXX dated (MM-DD-YYYY) in amount of (provide amount of each penalty to be abated).

Justification: Attach a copy of the taxpayer's letter requesting reasonable cause. Attach W-3 and W-2's or other documents as appropriate.

5.1.15.7.2 (10-09-2012)

IRS-Combined Annual Wage Reconciliation (IRS-CAWR)

1. IRS-CAWR compares Forms W-2, W-3, W-3c, W-2c, 1099-R and W-2G withholding amounts to the amounts reported on the Forms 94X (Forms 941, 943, 945), and Schedule H (Forms 1040, 1041) employment tax returns.
2. If the wages on the returns for a given year total less than the sum of the W-2 wages for that year and the taxpayer does not respond to notices, an increase in tax is made on the last available quarter of the year for that return. A TC 290 is assessed increasing the amount of tax due.
3. If Forms W-2 were not filed, secure them. If Forms W-2 were filed with incorrect amounts, then secure corrected Forms W-2. If the employment tax returns were prepared incorrectly or not filed, then secure the corrected or original returns.

4. Prepare Form 3870 and state what type of assessment (IRS-CAWR assessment) and what is attached (Amended W-2c, W-3c, or 94X-X attached) on the form. Scan and attach the secured documents and forward to the appropriate campus for processing using the state mapping guide in Exhibit 5.1.15-3. See example below of suggested wording for Item 11 Form 3870.

Example:

IRS-CAWR adjustment of tax.

Requested Action: Abate TC 290 dated (MM-DD-YYYY) in amount of (provide amount of adjustment)

Justification: Taxpayer's 941's were correct as filed, but the original W-2s were prepared incorrectly.

Attach: Copies of W-2's and W-3C to correct the W-2's with SSA.

Reminder:

The IRS-CAWR assessment is a tax assessment and reasonable cause is not applicable.

5.1.15.7.3 (10-09-2012)

Taxpayer Identification Number (TIN) Penalty

1. IRS receives various Information Return Reporting (IRP) documents each year that are either incorrect (wrong TIN or name, not on magnetic medium, etc.) or late. These errors result in various penalty assessments.
2. Use IDRS cc PMFOL to determine which of the various penalties were asserted on this type of case. See IRM Exhibit 20.1.1-4 *Penalty Reference Numbers (500 series)* and IRM Exhibit 20.1.1-5 *Penalty Reference Numbers (600 Series)* for a listing of the penalties by reference code number.
3. Penalties may be imposed when information returns are filed:
 - A. After the due date,
 - B. Without all required or correct information, (including missing, incorrect and/or not currently issued TINs),
 - C. On paper when required to be filed on magnetic media,
 - D. When filed on magnetic media, in a manner that does not allow them to be processed or be read by machine (not processable) or,
 - E. In an improper format, (using the wrong year Form 1096).
4. The penalty for information returns is \$50 per return with a maximum of \$250,000 per calendar year thru December 31, 2010. Effective January 1, 2011, the penalty amount is \$100 per return with a maximum of \$1.5 million. The penalty amounts were increased by the Creating Small Business Jobs Act of 2010. This amount is subject to reductions and limitations. These penalties can be either MFT 13 (BMF) or MFT 55 (IMF) with a DLN blocking (digits 9,10,11) of 500-514.
5. IRC 6721 Civil Penalty reference code 502 assessment, more commonly known as a TIN Penalty, is a result of TIN errors on various informational documents such as Form 1099. The TP/payor can request a penalty abatement by documenting that a solicitation was made to the payee for an accurate number within 30 days of notification from the campus. Additionally, the taxpayer may qualify for reasonable cause relief of this penalty, according to Pub 1586, *Reasonable Cause Regulations and Requirements for Missing and Incorrect Name/TINs (including instructions for reading CD/DVDs and Magnetic Media)*. This penalty can be waived by showing that the failure was due to reasonable cause and not to willful neglect. The taxpayer must establish that they acted in a responsible manner both before and after the failure occurred, and that:
 - A. There were either significant mitigating factors (for example, an established history of filing information returns with correct TINs), or
 - B. The failure was due to events beyond the filer's control (for example, a payee did not provide a correct name/TIN in response to a request for the corrected information).

Acting in a responsible manner includes making an initial solicitation (request) for the payee's name and TIN, if required, an annual solicitation. Upon receipt of this information, it must be used on any future information returns filed.

6. Prepare Form 3870 and state on the form the specific penalty in question (code 500-514) and whether the taxpayer has been advised of the proper submission in the future. Explain whether reasonable cause exists (if so, provide the appropriate RC codes). If reasonable cause exists explain the reason and whether or not corrected documents were secured. Use the correct template for TIN penalty relief requests. See example below of suggested wording to write in Item 11 of Form 3870.

Example:

TIN Penalty adjustment [penalty code 500-514]

Requested Action: Abate [or adjust] civil penalty dated (MM-DD-YYYY) [in full or partial (state amount)] due to [state reasonable cause and RC codes].

Justification: The cause of penalty was [state specific cause]. Taxpayer has been advised as to how to file in the future.

Attach supporting documentation. Copies of solicitations sent to the payees.

Scan and attach the secured documents and forward to the appropriate campus for processing. All TIN Penalty requests are processed at PSC. Provide an explanation on Form 3870 why the documents are being forwarded for abatement. Secure managerial approval if penalty is abated for reasonable cause.

Note:

These requests are **not** processed by CCP.

5.1.15.8 (10-09-2012)

Federal Unemployment Tax Act (FUTA) Tax Adjustments

1. The Federal Unemployment Tax Act (FUTA) Certification Program is the method IRS uses to verify with the states if the credit claimed on Form 940 and/or Schedule H (Form 1040) was actually paid into the states' unemployment funds. Employers whose payments are received by the state after the due date are allowed 90% of the credit that would have been allowed had the payments been made on time.
2. State FUTA certification must be attached to **all** 940 adjustment requests including IRC 6020(b) adjustments. The taxpayer should provide you with both the certification of state payments and a copy of their return. There are two exceptions to this rule:
 - Full abatement of a IRC 6020(b) assessment where it was determined the taxpayer was out of business the entire year and not liable for taxes reported on Form 940.
 - No credit is claimed for state contributions.
3. The FUTA assessment is assessed as additional tax with a TC 290 on either MFT 10 (Form 940) or MFT 30 (Schedule H, Form 1040) with numbers 50 or 51 in digits 9 and 10 of the DLN.

Caution:

If there is no TC 290 assessment on the TXMOD then it is not a FUTA assessment. For example, if a RO secures an amended Form 940 from the taxpayer adjusting the current tax year this is **not** a FUTA adjustment. An amended Form 940 is worked by CCP at PSC.

4. If wages and taxes are being decreased, bracket "()" the line item adjustment amounts in Item 11 of Form 3870. Identify the amount of wages to be decreased.
5. Any FTD penalties requiring adjustment must be corrected manually. Do not address any computer generated penalties or interest. See IRM 20.1.4.21.6.1, *Computation of the FTD Penalty (CAWR and FUTA notices)*.
6. When requesting State Certification, use Form 940–B, *Request for Verification of Credit Information Shown on Form 940*. Attach State Certification from each state in which the taxpayer paid wages.
7. Complete the FUTA Worksheet in the Form 940 instructions or use the worksheet in Exhibit 5.1.15–1, in order to compute the correct amount.
8. All FUTA adjustments are now processed at the Cincinnati campus, including the international adjustments. Use the correct ICS template for FUTA adjustments. Forward FUTA adjustments to the Cincinnati campus electronically or by mail or fax. If the FUTA adjustment is misrouted the campus FUTA unit should be forwarding on to Cincinnati for processing. The forwarding campus will notify the RO by email. Click on this link for the state mapping guide for FUTA adjustments http://serp.enterprise.irs.gov/databases/who-where.dr/transshipment.dr/campus_locator_guide/28_futa.htm. State on Form 3870 the cause of the problem and whether the 940 was incorrect or whether the taxpayer has subsequently paid all the contributions to the state. Attach any state certification, if required. See example of suggested wording for item 11 of Form 3870.

Example:

FUTA adjustment of tax

Requested Action: Abate (or adjust) tax (in full or partially) dated (MM-DD-YYYY) in amount of (state amount) due to (state cause of mistake).

Abate FTD penalty dated (MM-DD-YYYY) in amount of (state amount of FTD penalty).

Justification: Provide reason (i.e. taxpayer erroneously included wages paid to his 16 year old son).

Attach: Corrected return, signed and date stamped, and State Certification.

Attach POA information.

5.1.15.9 (10-09-2012)

Tax Exempt and Government Entities (TE/GE) Adjustments

1. TE/GE is comprised of three major business units; Exempt Organizations (EOs), Employee Plans (EPs), and Government Entities (GEs). Click on the TE/GE web site listed here for additional information <http://tege.web.irs.gov/templates/TEGEHome.asp>
2. EO customers consist of religious, charitable, social, educational, political and other not-for-profit organizations. EO ensures that these organizations maintain compliance with the complex requirements for tax-exempt status, including an annual return filing requirement. Churches and some other organizations are not required to file an annual return. In addition, organizations other than private foundations and most supporting organizations are not required to file an annual return if they have gross receipts that are not normally in excess of \$25,000.
3. EP services customers with qualified employee benefit plans (such as pension, profit-sharing, 401(k), employee stock ownership (ESOP), and stock bonus plans) that are required to file an annual return. Simplified Employee Pensions (SEPs), SIMPLE plans, 403(b) tax-sheltered annuities, and IRC 457 governmental deferred compensation plans generally are not required to file returns, but they may be required to file an income tax return if they engage in an unrelated business or receive unrelated debt-financed income. Under the Pension Protection Act of 2006, most small tax-exempt organizations whose gross receipts are normally \$50,000 or less must file Form 990-N, Electronic Notice (e-Postcard) for Tax-Exempt Organizations not Required To File Form 990 or 990-EZ. Before this law was enacted, these small organizations were not required to file annually with the IRS. The first filings were due in 2008 for tax years ending on or after December 31, 2007.
4. GE customers consist of three distinct types of customers:
 - A. Federal State and Local Governments (FSLG),
 - B. Indian Tribal Governments (ITG), and
 - C. Tax Exempt Bonds (TEB).

These customers are not subject to Federal income tax, however, they are responsible for income tax withholding and paying employment taxes.
5. IRM 20.1.8, *Employee Plans and Exempt Organizations Miscellaneous Civil Penalties* section in the penalty handbook covers the miscellaneous civil penalty provisions of the IRC that apply to EP and EO. Decisions on penalty issues are to be guided by the applicable statutes, regulations, and procedural instructions issued by the Service. See IRM 20.1.8.2, *Exempt Organizations and Certain Trusts*, for the applicable IRC sections regarding penalties assessed on EO and Certain Trusts. See IRM 20.1.8.3, *Employee Plans (EP)*, for the applicable IRC sections regarding penalties assessed on EP.
6. A Daily Delinquency Penalty (DDP) for failure to file a timely return (unless there is reasonable cause) is assessed on EO. The most commonly worked TE/GE cases by ROs are:

MFT Form	Title of Form
67 990/990EZ	Return of Organization Exempt from Income Tax
37 5227	Split-Interest Trust Information Return
02 1120-POL	U.S. Income Tax Return of Political Organization
34 990-T	Exempt Organization Business Income Tax Return
36 1041-A	U.S. Information Return- Trust Accumulation of Charitable Amounts
50 4720	Return of Certain Excise Taxes on Charities and Other Persons Under Chap.41 and 42 of IRC
44 990-PF	Return of Private Foundation

See IRM 21.7.7.2, *Exempt Organizations Overview*, for a list of all EO forms.

7. The Daily Delinquency Penalty (DDP) on Form 990, Form 990-EZ, Form 990-PF, Form 1041-A and Form 5227 may be abated only in the following situations:
 - A reasonable cause explanation for late filing is provided.
 - The missing/incomplete information is submitted, along with a reasonable cause explanation as to why the information was not provided with the initial return.
 - A reasonable cause explanation is provided as to why the missing information cannot be provided.

The penalty may be decreased if the return was filed late and incomplete and the removal of the "incomplete" condition allows for a lowered late filing DDP. The penalty should be adjusted to reflect only the late filing portion. See IRM 21.7.7.4.23.1, *Daily Delinquency Penalty*, for additional information on penalties.

Note:

Certain penalties on EO cannot be abated for reasonable cause. See IRM 20.1.8-3, *EO Reasonable Cause Guidelines*, for additional information.

8. Use ICS template Form 3870 -OTHER Manual Processing for penalty abatement requests that are worked in EO or EP Accounts. A signed reasonable cause statement provided by the organization must be included with the Form 3870, along with any missing or incomplete information (if applicable). If the missing or incomplete information cannot be provided, a detailed explanation stating why the information cannot be provided must be included as well. The Form 3870 itself is not sufficient documentation for abating a penalty. Submit to group manager for approval. Form 3870 should be either mailed or faxed to OSC for processing. The mailing address is:

OR

Internal Revenue Service
MS: 6710 P.O. Box 9941
Ogden, UT 84409 The FAX number for OSC is (801) 620-5555.

9. The following procedures should be followed when requesting an abatement of a Form 5500, *Annual Return/Report of Employee Benefit Plan*, MFT 74/76 tax module. The taxpayer may provide the requested information. This includes any of the following:

- A. A copy of an approved extension.
- B. A copy of, or a statement that, an automatic extension was used (4868, 5558, 7004 or 2758).
- C. A reasonable cause statement that is valid according to IRM 20.1.1.3.2.
- D. The requested missing or incomplete information.

Prepare Form 3870, *Request for Adjustment*, attach the valid supporting documentation and forward to OSC at the address provided above.

5.1.15.10 (04-16-2010)

Adjusting Assessments of Personal Liability for Excise Tax

1. Advisory has sole authority for abatements or adjustments to an assessment of personal liability for excise taxes.
 - A. Advisory may abate the assessment when the liability is conceded by Appeals or when a Federal Court judgment is entered in favor of the taxpayer. Form 3870 and a revised Form 9494, *Request For Assessment of Personal Liability For Excise Tax*, page 3 computation will be forwarded to CCP for association with the case file.
 - B. Advisory will prepare Form 3870 and a memorandum of authority to request reversal of a prior adjustment made on the assessment and forward to CCP. The memorandum will request reversal of the previous adjustment and will refer to a specific related Form 3870. The memorandum must be approved by the preparer's group manager. Once the adjustment has been made, a new NMF Bal Due will be issued which will be assigned to FC or, if in litigation, to Technical Services Advisory.
2. See IRM 5.7.3.1.2, *Personal Liability for Excise Taxable Fuel Taxes*, for additional information.

5.1.15.11 (10-09-2012)

Tax Assessed on Incorrect Entity or Tax Period

1. If a return is processed to an incorrect tax period or TIN and needs to be corrected, the return will need to be reprocessed to the correct tax period or TIN. The Service cannot assess additional tax on a return if the statute of limitations on assessment with respect to that return has already expired. The adjustment can still be made, but it requires a manual process. Indicate on the Form 3870, "Request criteria transfer per ASED expiration." The tax period will be reassessed on NMF.
2. There are two options:
 - A. Request an abatement of all assessments under the incorrect entity or tax period and request that CCP reprocess the return to the correct entity or tax period. This will assure the correct received date on the return so the correct amount of penalty and interest is assessed. Secure a statement from the taxpayer that the return was filed incorrectly or have the taxpayer sign the Form 3870.
 - B. Secure a correct, signed return under the correct entity and process. Then abate all assessments under the incorrect assessment. This option will be particularly useful if you need to do an immediate prompt assessment to correct the accounts or if for some reason it is important to have the correct return signed by the taxpayer. Under this option the FTF penalty will be assessed if the return is a balance due even though the incorrect return may have been assessed timely and no FTF penalty was assessed.
3. Do not address any of the computer-generated penalties or interest except FTD penalty, TC 186, when you are eliminating the tax completely. FTD penalty must be addressed, as it does not automatically re-compute. See IRM 20.1.4.23(11)a, *Manual Adjustments*.
4. If there are credits on the module you are abating that you want transferred, add this statement to ensure they do not refund prior to transfer: **"Please Input TC 570 .00 to hold credits."** Check IDRS CC IMFOLT for IMF and/or CC BMFOLT for BMF to see if there is a current TC 846 on the module. If a TC 846 has posted on the module the refund can no longer be stopped. Command code NOREF should be used to stop a refund.
5. When using Form 3870 template available through ICS, you will be asked the question, "Do you want TC 570 .00 to be input to hold credits?" If the answer is yes, the following statement will be added in Item 11 "Input TC 570 .00 to hold credits."
6. Request the original return from files using cc ESTAB and attach the original return and documents received from files for both entities, if available, to Form 3870. If the ESTAB document is not available, note on Form 3870. See example of suggested wording for Item 11 of Form 3870, *Reason for Adjustment*, below:

Example:

Return Assessed Under Wrong Entity

Requested Action: Abate tax (TC 150) dated (MM-DD-YYYY) in the amount of (state amount),
Abate FTD penalty dated (MM-DD-YYYY) in amount of (state amount)
Transfer: the following FTD payments from the EIN, MFT, and Tax Period listed on Form 3870 to EIN (XX-XXXXXXX), MFT (XX) Tax Period (XXXXXX): TC 650 dated (MM-DD-YYYY) in amount of (state amount). List all credits here that need to be transferred to the correct EIN.
Reprocess: Return from the above entity to (provide name of correct entity and EIN XX-XXXXXXX, MFT (XX), and Tax period (XXXXXX)).
Justification: (i.e., tax return erroneously filed using the old Sole Proprietorship EIN). TP incorporated on (provide date of incorporation) MM-DD-YYYY. Delete all filing requirements under (provide the old Sole Prop EIN) XX-XXXXXXX.
Request input of TC 570 .00 to hold all credits till transfers are completed.
Attach statement from the taxpayer that the return was filed under the incorrect TIN or have the taxpayer sign Form 3870.

5.1.15.12 (10-09-2012)

Multiple Taxpayer Identification Numbers (TINS) - Same Taxpayer

1. If a taxpayer has multiple TINs and the tax modules under the TINs reflect different amounts, the accounts may be merged using Form 2363, *Master File Entity Change*. If multiple TINs exist and returns have been filed for different amounts for the same period, prepare Form 3870 abating tax under the wrong number and requesting assessment of additional tax under the correct TIN. Request that any credits be transferred to the correct TIN. Indicate on Form 3870 that refunds should be held until the account is corrected.

Note:

Advise the taxpayer to file corrected state reporting information and Forms W-2 as appropriate to avoid a future CAWR adjustment.

2. When requesting an abatement of tax under an incorrect TIN and an assessment under the correct TIN, consider ASERD problems, if applicable. The Service cannot assess additional tax on a return if the period of limitations on assessment with respect to that return has already expired. The adjustment can still be made, but it requires a manual process. Indicate on Form 3870, "Request criteria transfer per ASERD expiration."
3. Use IDRS and Corporate Files On Line (CFOL) command codes (BMFOL for BMF and IMFOL for IMF) to research entity and account records for both entities to determine if the accounts can be merged. If there are no identical tax periods with assessments (TC 150s) under both numbers, you can merge the accounts. Use Form 2363 requesting that the incorrect TIN be merged to the correct TIN. Form 2363 can be emailed to CCP.
4. If you cannot merge the accounts, then take the following steps:
 - A. If the TP filed two separate returns (each with a different TIN) prepare Form 3870 under the incorrect number, abating the tax and requesting that an additional assessment be made under the correct number. Prepare a separate Form 3870 for each tax period involved. For a BMF case the Form 3870 for the latest tax period involved should include a statement "Delete all filing requirements on this EIN" . Request that refunds be held and all credits be transferred to the correct TIN, if applicable.
 - B. If the TP filed duplicate returns (one under each TIN) prepare a Form 3870 to abate the duplicate assessment under the incorrect TIN. Request that refunds be held and all credits be transferred to the correct number, if applicable. For a BMF case where both EINs have open 941 filing requirements but only one EIN is needed, retain the oldest EIN. For the newer EIN, include a statement on the Form 3870 "Delete all filing requirements on this EIN" .

Note:

Advise the taxpayer to file corrected state reporting information and Forms W-2 as appropriate to avoid a future CAWR adjustment.

5. If there are credits on the module you are abating which you want transferred, add this statement to ensure they do not refund prior to transfer, "**Please Input TC 570 .00 to hold credits.**" If a TC 846 has posted on the module, the refund can no longer be stopped. Command code NOREF should be used to stop a refund.
6. When using Form 3870 template available through ICS, you will be asked the question, "Do you want TC 570 .00 to be input to hold credits?" If the answer is yes, the following statement will be added in Item 11, "Input TC 570 0.00 to hold credits" . Email Form 3870 to CCP in Philadelphia.

5.1.15.13 (10-09-2012)**Identity Theft**

1. Identity (ID) Theft occurs when someone uses an individual's personal information, such as name, Social Security Number (SSN), or other identifying information without permission, to commit fraud or other crimes. Instances of identity theft can either be alleged by the taxpayer or can be identified by a Service employee.
2. If it is determined that the taxpayer is a victim of identity theft, Form 3870 is prepared to correct the victim's account. See IRM 10.5.3, *Identity Protection Program* and IRM 5.1.12, *Cases Requiring Special Handling*, for information on specific processing guidelines.
3. If the taxpayer presents proof that he/she does not owe the tax due to identity theft, have the taxpayer provide substantiating documentation. Substantiating documentation includes a copy of the police report or Form 14039, *Identity Theft Affidavit*, and a copy of a valid United States federal or state government issued form of identification. Substantiating documentation is not required in instances of IRS identified ID theft. See IRM 5.1.12.2.2.1.2 for more information on procedures for IRS identified ID theft.
4. Conduct research to determine if identity theft occurred. If after investigation it is determined that the taxpayer is a victim of identity theft, Form 3870 is prepared to correct the victim's account. Prepare Form 3870 for partial or full abatement and write **Identity Theft** in Item 11 Reason for Adjustment in bold letters. State on 3870, "Abate TC 290 in amount of XXXX" . Include an explanation for the adjustment on Form 3870 and provide appropriate substantiation. Notate on Form 3870 to input TC 971 AC 501 or AC 506. The completed Form 3870 and all attachments are routed based on the type of assessment that needs adjusting. See complete instructions for guidelines and processing of Form 3870 in IRM 5.1.12, *Cases Requiring Special Handling*.
5. Request input of the Identity Theft action code using Form 4844, *Request for Terminal Action* to flag the account according to the procedures in IRM 5.1.12.2.2.1.6, *ID Theft Action Code Input Procedures*.
6. Review the MySB/SE Collection Identity Theft website at: <http://mysbse.web.irs.gov/Collection/identitytheft/default.aspx> for more information about Identity Theft. Review the Privacy, Information Protection & Data Security (PIPDS) website at: <http://irweb.irs.gov/AboutIRS/bu/pipds/pip/itim/idthef/default.aspx> for general information about Identity Theft.
7. Refer a taxpayer to the Identity Theft Toll-free number 1-800-908-4490 when the taxpayer needs assistance regarding non tax-related identity theft with no known tax administration impact.

5.1.15.14 (10-09-2012)**Tracing Payments**

1. A payment tracer is the process used to locate a missing or misapplied payment made by a taxpayer. A payment tracer case is not resolved until the missing or misapplied payment is correctly applied to the taxpayer's account. Payments can be misapplied when the payment:
 - Is separated from the return during processing.
 - Posts to another account or tax period.
 - Posts before the return is assessed and taxpayer fails to properly identify the payment.
2. Use IDRS to access the module where the taxpayer intended the payment to be applied. Ask the taxpayer for proof of payment such as the front and back of a cancelled check. The back of most cancelled checks contains endorsement data that allows you to determine where a payment posted. A cancelled check with the endorsement data will provide the information to locate the payment using IDRS or CFOL command codes. If the taxpayer cannot provide the cancelled check, see IRM 5.1.15.14.1(6).
3. Check CC IMFOLP or BMFOLP on IDRS using an appropriate date range that includes dates before and after the date the TP indicated the payment was made. IRS uses the date we received the payment as the payment date, not the date mailed. Be alert to payments that might have been split by the remittance unit when the payment was not intended to be split by the taxpayer. Add payments with the same date to see if they total the overall payment amount secured from the taxpayer.
4. Use CC URINQ to research the Unidentified Remittance File. This file can be researched by the amount of the payment, the name control, or the DLN. If the DLN is not known, adding the Area Office code to one of the items used for the search will narrow the search to one Area, instead of all Areas covered by the campus. This can be useful when the amount of the payment is a common one, (e.g. \$100, \$500, or \$1000).
5. For BMF cases, check the FTD credit module. If there is at least one balance due module on IDRS, the credit module is available using CC SUMRY. The FTD credit module is indicated on IDRS by the presence of MFT 01 and tax period 000000. If there are no balance due modules on IDRS, use CC BMFOLI or BMFOLT to research the FTD credit module.
6. Use CC IMFOL/BMFOL to research other modules for the taxpayer that are not on IDRS.
7. Use CC UPTIN to check the Generalized Unpostable Framework (GUF) for a condition that might have made the payment go unpostable. Document information on Form 4159, *Payment Tracer Request*. Send your request electronically to CCP for processing.

8. Check the excess collection file using CC XSINQ. The excess collection file can be researched in three different ways:

- By amount of remittance,
- Name control, or
- DLN.

If the DLN is not known, adding the Area Office to one of the other data elements will narrow the search down from region wide to that area.

9. Document all these steps in the case file before forwarding to the campus for payment tracing. See *IRM 5.1.15.5* for information on issuing a case closing letter when the credit transfer will result in Status 12 on the account.

5.1.15.14.1 (10-09-2012) Requesting Campus Tracing

1. Use Form 4159 to request the campus to trace payments.

- A. If the tracer will fully satisfy the amount owed, close the Bal Due module on ICS by selecting, "Payment Tracer" as closure type. This will upload TC 470 CC 93.
- B. If the tracer will not fully satisfy the amount owed, process the Payment Tracer Request, but **DO NOT** request input of TC 470 CC 93.
- C. If the payment tracer will not fully satisfy the amount owed and the remaining balance due is later full paid before the credit posts, then close the payment tracer BAL DUE module on ICS by selecting, "Payment Tracer " as closure type. This will upload TC 470 CC 93.

2. Actions required on payment tracer requests based on the Collection Statute Expiration Date (CSED) are shown in the table below.

If	Then
more than 12 months remain until the CSED expires,	close the Bal Due as Payment Tracer on ICS. This will upload TC 470 CC 93.
between 6 and 12 months remain until the CSED expires,	<ul style="list-style-type: none">• Write "Statute Expiration Date _MM-DD-YYYY" in red or bold on the payment tracer in the "Other Details" section.• Close the Bal Due as Payment Tracer on ICS. This will upload TC 470 CC 93.
less than 6 months remain until the CSED expires,	<ul style="list-style-type: none">• Write "Statute Expiration Date MM-DD-YYYY" _ in caps on the payment tracer in the "Other Details" section,• Do not close the Bal Due, and• Set a follow-up and monitor it every 30 days until the action is completed.

3. When preparing a payment tracer, include the following information, as applicable:

- A. Taxpayer's name and address,
- B. Taxpayer's identification number,
- C. Type of tax (MFT code),
- D. Tax period,
- E. Amount of payment,
- F. Type of payment,
- G. Endorsing IRS office,
- H. Issue date of check, money order, etc.,
 - I. Date of receipt, receipt number, and type of receipt,
 - J. Date of IRS endorsement and information to identify the voucher or document used to process the payment, and
- K. DLN from back of check.

If the payment was processed. . .	Then. . .
through IDRS	a 13-digit Remittance Sequence Number is stamped on the front of the remittance (canceled check, money order, etc). See Document 6209 under chapter entitled "IDRS Sequence Number" for an explanation of the 13-digit number. the endorsement information is on the back of the canceled check or money order.
<ul style="list-style-type: none">• Manually by the campus,• Through the Remittance Processing System, or• Through the Optical Character Recognition Remittance Processing System,	

4. If possible, attach a clear photocopy of both sides of the canceled check or money order used to make the payment that needs to be traced.

5. If the payment was made by cashier's check or money order, and a copy of the canceled document is not readily available, get the serial number of the payment, the date it was bought, and the name and address of the business that issued it to the taxpayer.

6. If the taxpayer cannot provide the cancelled check, you may be able to locate the missing payment from available information. Gather basic information from the taxpayer, including:

- Amount of the payment.
- Approximate date of the payment.
- Where the payment was mailed.

- Type of payment made, such as, cash, cashier's check, money order, levy, direct debit, Electronic Funds Tax Payment System (EFTPS), and payroll deduction.
 - Whether the taxpayer received any refunds since the date of payment.
 - Whether the taxpayer has multiple EINs for BMF cases.
7. When preparing a request for a payment tracer, be sure the complete 14 digit DLN on the back of the check or money order is included rather than other numbers that are stamped on the payment.
8. Beginning January 1, 2011, businesses must use electronic funds transfer (EFT) to make all federal tax deposits (such as deposits of employment tax, excise tax, and corporate tax). Prior to January 1, 2011, many employers were permitted to make their federal tax deposits at an authorized financial institution accompanied by an FTD coupon. The EFTPS is a system designed to use EFT to pay Federal taxes. The EFT number is shown on IDRS for the given module. Prior to submitting a payment tracer on a deposit made electronically, research the payment using CC EFTPS by:
- EIN, EFT amount, and payment date,
 - Taxpayer supplied EFT number, or
 - Taxpayer supplied reference number (confirmation number of credit card payments).

Forward to CCP for processing. See IRM 5.1.2.6.4.1 , *The Electronic Federal Tax Payment System (EFTPS)* or IRM 21.5.7.3.3 , *IDRS Research for Federal Tax Deposits(FTDs)*.

Note:

If it is necessary to submit a payment tracer for an FTD, furnish a photocopy of both sides of the cancelled check or money order. The campus will request a photocopy of the bank's transmittal sheet for the payment in question, if necessary. A FTD can be electronic or paper-based (except after 2010). If the FTD is electronic (via EFTPS), there would be no cancelled check or money order.

9. If the payment tracer case involves numerous other actions, (e.g. claims, amended returns, offsets of overpayments, returns filed later, etc.), no initial research is needed. Instead, prepare Form 4159 with TC 470 CC 90 rather than 93, and close the Bal Due module on ICS after securing managerial approval.

Caution:

Select the proper collection suspension code when processing a taxpayer claim to adjust taxes and/or locate payments on a balance due account. Do not use TC 470 CC 90 if the account will not be fully satisfied or if the account will not update to Collection Status 12. See Document 6209, IRS Processing Codes and Information, Section 11 (Collection) for further information on TC 470 and other Closing Codes Chart.

10. Attach supporting documents to the request for a payment tracer. Requests should be sent by email to CCP unless it is not practical (e.g. the attachment is too large or a scanner is not available). Attach Form 3210 if sent by mail.
11. See IRM 5.4.10.3, *Payment Tracers*, for additional information regarding payment tracers.

5.1.15.15 (10-09-2012)

Credit Transfers

1. A credit transfer moves a payment or credit from one account to another or reverses a credit previously applied. They can also be transferred from one TIN to another if a valid relationship exists, such as:
 - The same taxpayer with more than one business,
 - Two businesses with the same bookkeeper,
 - A parent company and subsidiary company, or
 - Transfers between spouses depending on the facts and circumstances.
2. Identify the two modules affected by the credit transfer:
 - A. The debit module - where the credit is moved from, and
 - B. The credit module - where the credit is moved to.
3. Determine the correct Refund Statute Expiration Date (RSED), document on ICS and on Form 3870 the actual RSED date when requesting an adjustment for the following:
 - Penalty Adjustments, other than those processed using RCA (this is a multiple period form for penalties only).
 - 6020(b) Adjustments.
 - 941X Adjustments.
 - 1040X Adjustments.
 - Other Adjustment Request.
 - Other (Manual Processing).

The RSED is generally three years from the Return Due Date or Extended Due Date for prepaid credits if a return was filed, or two years from the payment date for other payments, whichever is later. See IRC 6511, if the module credit created by the posting of an adjustment exceeds the amount of the credit that can be refunded or offset due to the recomputation of tax, penalties or interest. The revenue officer must transfer the barred portion of the overpayment to Excess Collection via Form 8758, and forward to CCP. See *IRM 5.1.15.15, Transferring Credits to Excess Collection*. A manual refund may be needed to allow the correct refund.

4. Use Form 2424, *Account Adjustment Voucher*, to transfer credits:
 - A. Between two modules on the same Master File, or
 - B. Between Master Files.

Note:

Form 2424 is available as an ICS template, paper (cutsheet pad) or fillable Portable Document Format (PDF) file.

5. Changes in payment dates are also requested on Form 2424. To change a payment date:
 - Debit module out with TC 672 (if payment is a TC 670), same credit date, same credit amount, same DPC, and

- Credit module in with TC 670 with correct credit date, same credit amount, and same DPC.

Explain the reason for the change in date on the "Explanation" line of Form 2424.

6. To change an existing Designated Payment Code (DPC) code:

- Debit module out with TC 672 (if payment was a TC 670) , same credit date, same credit amount, same DPC, and
- Credit module in with TC 670 with same credit date, same credit amount, and **new** DPC.

7. When transferring an overpayment using Form 2424, use the codes shown below for transferring this credit:

- Debit module out with TC 820 using the date the overpayment became available (use the later of the return due date; received date on delinquent filed returns; or date on which the credit was available).
- Credit with RC 700 using same transaction date as debit.

8. See Document 6209, *IRS Processing codes and Information*, Section 11 Collection for DPCs and their definitions. See IRM 3.17.21-4, *Reversal Transaction Codes*, for additional information.

5.1.15.15.1 (10-09-2012)

Transferring Credits to Excess Collection

1. Internet research should be used in an attempt to locate a phone number or address for taxpayers with large dollar modules of \$100,000 or more, if one cannot be obtained through IDRS or Directory Assistance. All research actions must be documented on Form 8758, *Excess Collections File Additions*. Whenever a taxpayer contact is unsuccessful, a TC 971 AC 296 must be requested on the module to indicate that the account has been thoroughly researched prior to transferring to excess collection. Request TC 971 AC 296 using Form 8758, Item 30.
2. Funds are only to be moved to Excess Collection (XSF) after completing all research to establish that the funds could not be applied to a specific account or could not be refunded to the taxpayer. All large dollar credit modules of \$100,000 or more, require managerial approval (originator's manager) on Form 8758 prior to the transfer of credit to XSF or URF. Any large dollar case sent to XSF not signed by the manager will be rejected back to the originator for a manager's signature. You must attach documentation providing existence of the credit (current TXMODA print or print of the transcript showing the credit) as well as the research performed prior to transferring to XSF. Prepare Form 8758 and transmit to CCP. For guidance in preparation of Form 8758 refer to IRM 3.17.220.2.1.1, *Preparation of Form 8758* . Form 8758 can be transmitted electronically to the Area CCP mailbox. CCP will route Form 8758 to the appropriate accounting function for processing.

5.1.15.15.2 (04-16-2010)

Transferring Credits from Excess Collection

1. Credits previously sent to XSF need to be returned to the taxpayer's account before the processing of a return is completed. This will prevent any balance due notices from being sent in error. Use Form 8765, *IDRS Control File Credit Application* , to transfer credits from XSF. Consult IRM 3.17.220.2.11 , *Applying Amounts From the XSF - General* for instructions on preparation of the form. Further guidance on completing Form 8765 is contained in IRM 21.5.7.4.4.2, *Form 8765, IDRS Control File Credit Application*.
2. CCP will forward Form 8765 to the statute unit for clearance, if necessary. If the request is not approved by the statute function, Form 8765 will be rejected back to the originator (RO). If the Statute Unit clears the request, CCP will forward Form 8765 to the appropriate accounting function for processing.

5.1.15.16 (10-09-2012)

Penalty and Interest Abatements

1. Review IRM 20.1, *Penalty Handbook* and the Penalty Policy Statement in IRM 1.2.20.1.1, *Policy Statement 20-1 (Formerly P-1-18)*, when processing reasonable cause penalty relief requests. Review IRM 20.2.7, *Abatement and Suspension of Interest* for procedures and guidelines in processing requests for relief of interest.
2. The IRC contains numerous civil penalty provisions. Some penalties are assessed with a specific Transaction Code (TC), while others are assessed with a TC 240 and a 3-digit Penalty Reference Number (PRN) (5XX, 6XX, or 7XX). Miscellaneous penalties assessed with a TC 240 and 3-digit PRN , (e.g. MFT 55 and MFT 13), are referred to as "Civil Penalty Modules" . The various penalties are identified with reference numbers as indicated in Document 6209, *IRS Processing Codes and Information*, and IRM Exhibits 20.1.1-4 (500 series) and 20.1.1-5 (600 series). Not all of these penalties are subject to reasonable cause abatement.
3. Computer generated penalties will automatically recompute. If payments/deposits are transferred in or out of a module, the TC 186 will systemically recompute. If tax is reduced to zero, the TC 186 will reverse systemically. When penalties are abated or reduced, interest will systemically adjust.
4. If the adjustment will fully satisfy the module and the collection investigation on the taxpayer entity is concluded, then the RO is required to send case closing Letter 4222, *Notice of Case Resolution* to the taxpayer and/or Power of Attorney. A systemic history will be written when Letter 4222 is generated. There is no requirement to hold the case open on ICS until the closing action posts to IDRS and the account goes to Status 12. The letter will be systemically generated for the RO to send to the taxpayer once the case is closed on ICS. If the case and modules are closed on ICS prior to the closing letter being generated, module information must be manually entered in the ICS template. After the Form 3870 is approved by the GM, when the manager selects the approval button, the Print Manager will open which includes the option to allow the manager to print the Case Closing letter or email it to the initiator of the request for them to print.

5.1.15.16.1 (10-09-2012)

Reasonable Cause Assistant (RCA)

1. ROs are required to use RCA when the taxpayer requests relief of certain penalties due to reasonable cause. All adjustments, credit transfers, etc. should be resolved prior to processing a penalty relief case using RCA . RCA should be used for the following penalties:
 - A. IMF Failure to File (FTF) and Failure to Pay (FTP)(RCA can be used for MFT 31 - Innocent Spouse/Mirrored Assessment Modules), and
 - B. BMF Failure to Deposit (FTD). (BMF FTD penalty relief using RCA is currently limited to MFTs 01, 10, 11, 14 and 16.)

Refer to IRM 20.1.1, *Penalty Handbook - Introduction and Penalty Relief*, for additional information.

Caution:

RCA cannot be used for ASFR, CAWR, or EXAM penalty abatement.

2. If the taxpayer has not previously been required to file a return or if no prior penalties (except the Estimated Tax Penalty, TC 17X) have been assessed on the same MFT in the prior 3 years, RCA provides an option for First Time Abate (FTA).FTA is provided to the taxpayer under an Administrative Waiver and does not require managerial approval. If RCA reaches an FTA conclusion, RCA will generate one of three letters after CCP inputs the adjustment. The letters are as follows:
 - Letter 4722, *First Time Abate Letter (IMF)*, used to notify taxpayers that relief of certain penalties (FTF and FTP) on IMF was granted.
 - Letter 4723, *First Time Abate Deposit Frequency Letter (BMF)* , used to notify taxpayers that relief was granted for the FTD penalty.
 - Letter 4724, *First Time Abate FTD Penalty Letter (BMF)*, used to notify taxpayers that the FTD penalties were abated.

See IRM 20.1.1.3.6.1, *First Time Abate (FTA)*, for additional information.

Caution:

FTA can only apply to a single tax period on a given MFT. Subsequent periods will be based on reasonable cause.

3. The reasonable cause explanation provided by the taxpayer will be considered after RCA performs the First-time Abate/Clean Compliance History analysis. If FTA criteria does not apply then the taxpayer's explanation will be used to determine if reasonable cause penalty relief criteria is met. The taxpayer is required to provide documentation to support their claim before a penalty relief determination can be reached.
4. Prior to processing a request for penalty relief using RCA, the RO must check TXMOD on IDRS and verify that the action was not previously taken on the module. Otherwise, an unpostable action will occur.
5. Reasonable cause penalty abatements must be approved by the group manager when RCA reaches the "Abate conclusion". When the RCA conclusion is to "Sustain" the penalty and the RO decides to override the RCA conclusion, managerial approval is also required. The RO will provide the group manager a written reason and any documentation for the abatement request.
6. Forward the approved penalty abatement to CCP by email and retain the taxpayer's letter and any other supporting documentation with the case file.

5.1.15.16.2 (10-09-2012)

Reasonable Cause Penalty Abatements

1. Use Form 3870 - Penalty Adjustments (Form 3870 E) ICS template for processing penalty abatements only when RCA cannot consider. Multiple tax periods, for penalty abatement only, can be included on a single Form 3870 (E) ICS template.
2. Submit the Form 3870 - Penalty Adjustments (Form 3870 E), including a complete explanation to justify the reason for the abatement to the group manager for approval. Group managers will review the taxpayer's letter with supporting documentation and IDRS prints verifying the amount of the proposed abatement when approving penalty abatements.

Note:

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Exception:

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3. If you are abating Failure to Pay (FTP) penalty now accrued and wish to have the penalty continue to be waived in the future, request input of TC 270 in the amount of ".00". This will remove and stop the accruals.
4. Adjust any manual assessment for Failure to File (FTF) penalty (TC 160) as it will not automatically recompute.
5. Computer generated penalties will automatically recompute. The exception to this is TC 186, FTD penalty. Request adjustment of the FTD penalty as it will not automatically recompute regardless of whether it is a manual assessment or a computer generated assessment.
6. When a manual computation is used for FTD computation, if there is a penalty code 11 on IDRS located below the Failure to Deposit (TC 186) amount, the penalty was imposed because the original return contained an inaccurate (or missing) FTD breakdown. Attach a Failure to Deposit Penalty Computation, or an accurate Form 941 with a completed liability section to support your adjustment.
7. Revenue Procedure 84-35 may allow some partnership entities reasonable cause abatements if the individual partners have reported their shares of the partnership income on their timely filed income tax returns. See IRM 20.1.2.3.3, *Penalty Relief*.
8. Penalties asserted by Examination may not be abated by Collection and require a request for Audit reconsideration. Forward the request for abatement to Examination for approval.
9. Penalties or interest sustained by Appeals may only be abated by Appeals. A TXMOD will show a TC 290 for zero using Blocking Series 96, with a Penalty Reason Code (PRC) 062 (reasonable cause) in the first position and PRC 041 (sustained by Appeals) in the 4th position. This indicates that the penalty was appealed at one time and the penalty was sustained by Appeals. If Appeals partially abates a penalty using PRC 042 in the 4th position, that generally indicates they sustained the rest of the penalty and the case should be treated the same as those that Appeals sustained the entire penalty. The taxpayer should have received a letter from Appeals advising the next steps in the Appeals process. Forward to Appeals for the appropriate determination.
10. See *Exhibit 5.1.15-2, Identifying Reasonable Cause Categories*.
11. Forward the approved Form 3870 - Penalty Adjustments (Form 3870 E) to CCP by email and retain the taxpayer's letter and all other supporting documentation with the case file. See example below for suggested wording in Item 11 of Form 3870 (use this only when RCA cannot be used):

Example:

Abatement of FTF Penalty for Reasonable Cause
 Requested Action: Abate FTF penalty (TC 166) dated (MM-DD-YYYY) in amount of (provide amount to be abated)
 Justification: Taxpayer has established reasonable cause. Provide reason for delay in filing timely and timeframes which should be in line with the filing date. State when the return was filed and provide verification where available.

5.1.15.16.3 (10-09-2012)

Interest Abatement

1. The Service does **not** abate interest for reasonable cause. IRC 6404(e)(1), *Abatement of interest attributable to unreasonable errors and delays by Internal Revenue Service* provides that the Commissioner may in his/her discretion abate interest on certain tax deficiencies, i.e. income, estate, gift, certain excise taxes (employment taxes are specifically excluded) assessed as a result of unreasonable errors or delays in the performance of a ministerial or managerial act by the Service. These requests must be routed to the Interest Abatement Coordinator in the Area where the alleged error or delay occurred. See SERP IRM tab then select "Penalty and Interest" for the Interest Abatement Coordinator in your Area or click on this link <http://sbaseservicewide.web.irs.gov/interest/iac/212.aspx>
2. An Interest Abatement referral to the IAC or Advisory should have the following critical items attached:
 - A detailed description as to when, how and to what length of time the Service caused a delay or how an unreasonable error caused increase interest,
 - Supporting documentation letters, payoff letters and date specific information. This information is of the utmost importance, as it provides the IAC with the points in time in which the interest will be determined, should their request prevail.
 - The Form 843 *Claim for Refund and Request for Abatement* requires the following words across the top of the form, "**IRC 6404(e) Interest Abatement Request**".
3. AI-Advisory works claims under **IRC 6404(e)(1) ONLY**. AI-Advisory **DOES NOT** work:
 - Interest Abatement Claims due to Exam/SFR assessments or Appeals requests.

- Penalty **and** Interest abatement claims.
 - Form 1120 complex restricted interest cases.
 - Frivolous Claims.
4. An extension of time to file does not extend the time to pay. Therefore, interest is due from the due date of the return without regard to any extension of time to file. However, the Commissioner in his/her discretion may abate the interest on any payment of tax to the extent that an officer's or an employee's erroneous or dilatory actions in performing a ministerial or managerial act in his/her official capacity caused an unreasonable error or delay in the payment of the tax. See IRC 6404(e)(1)(B).
 5. When calculating a payoff for interest that is systemically assessed, do not use ICS for calculating the payoff amount. Calculation of accruals must be verified with IDRS. The taxpayer will receive a notice for additional accruals if the payoff amount is not accurate. A request for abatement of the remaining interest "due to service error" is not appropriate. A manual calculation of the full pay amount and comparison with CC INTST calculated on IDRS should be completed.
 6. Restricted Interest refers to any interest that is computed from other than the normal interest start and stop dates. Transaction Codes 340 and 341 or a Master File -I freeze code will indicate restricted interest was computed on a tax module. Restricted interest requires manual computation of the adjustment to compute the correct amount of interest. ROs should forward their request for restricted interest computations to the FORT unit at CCP. ROs should refer interest computations on Exam related assessments to Exam.

5.1.15.16.4 (10-09-2012) Penalty Denial and Appeals

1. The RO will inform the taxpayer of the determination to not abate a penalty for reasonable cause. The RO must provide written notification to the taxpayer of the denial and of the taxpayer's appeal rights, regardless of whether the request was received in person, over the phone, or in writing.
2. If the taxpayer disagrees with the determination and maintains that the penalty should be abated, provide written notification to the taxpayer using Pattern Letter 2413(P), available as an ICS template.
3. If the taxpayer submits a written appeal, the revenue officer who rejected the abatement request will review the appeal to determine if the taxpayer has raised new information. New information is information that was not previously discussed with or raised by the taxpayer, or not previously investigated and documented by the revenue officer. If the appeal contains new information that changes the abatement decision, the revenue officer will take the following actions:
 - Document receipt of the appeal in the ICS case history, and include details of the new information and basis for penalty abatement.
 - Secure managerial approval of the penalty appeal and follow abatement procedures.
4. If the taxpayer submits a written appeal, the revenue officer who rejected the abatement request will review the appeal for additional information which may change the original determination to sustain the penalty. If there is no change in the penalty determination, document the receipt of the appeal request in the ICS case history with the statement that the taxpayer appeal was received on (date), did not contain new information and the case is being forwarded to the group manager for review prior to transmission to Appeals. Prepare the appeal request for transmittal to Appeals and attach the following:
 - A. The taxpayer's written request for appeal and other pertinent documents,
 - B. A copy of the ICS history,
 - C. Penalty appeals check sheet,
 - D. A copy of the disallowance letter, Letter 2413 (P), and
 - E. Prepare Form 3210, *Document Transmittal*.

Forward the request to the group manager for review and concurrence. Refer to the Appeals Case Routing Guide available on the Appeals intranet site or click on this link <http://appeals.web.irs.gov/APS/caseroouting.htm>, then click on "Case Routing and Instructions" on the left hand side on the page, and finally, click on "Case Routing by State and Zip Code" for Field Collection cases going to Appeals.

Caution:

The revenue officer should not make any commentary in the ICS history regarding the merits of the penalty appeal. The ICS case history made at the time of the original penalty denial determination should have sufficient documentation regarding the determination to sustain the penalty. No separate memorandum should be prepared for Appeals discussing the basis for the original penalty abatement denial. The Form 3210 transmittal must be limited to the list of attached documents shown above.

The manager must ensure this requirement is met and that no prohibited ex parte communications are included before approving the transmittal of the case to Appeals. Refer to IRM 5.1.9.5, *Communications with Appeals*, for additional information.

5. If the appeal contains new information that requires additional investigation or ICS documentation, the revenue officer will take the following actions:
 - Document the receipt of the appeal request in ICS with a statement that the appeal was received on (date) and only the facts concerning the new information requiring additional investigation or consideration.
 - Conduct any additional consideration or investigation of the new information as appropriate and document the results in the ICS history.
 - Secure managerial concurrence of decision to sustain penalty abatement denial.
 - Attempt to make telephone contact with the taxpayer to explain the results of the additional investigation. The revenue officer will document the ICS history, noting if contact was made with the taxpayer.
 - If the revenue officer is unable to make contact with the taxpayer within a reasonable time period, the revenue officer will forward the case file to the group manager.
6. The group manager will take the following actions:
 - Prepare a letter to the taxpayer that identifies the new information and a brief summary of the results of the additional investigation.
 - Document issuance of the letter to the taxpayer in the ICS history and attach a copy of the letter to the taxpayer appeal.
 - The manager must ensure that the ICS history is attached to the appeal request and that no prohibited ex parte communications are included before approving the transmittal of the case to Appeals.
7. The revenue officer will then prepare the request for transmittal to Appeals and attach the following:
 - The taxpayer's written request for appeal and other pertinent documents
 - Copy of the ICS history
 - Penalty Appeals Checksheet
 - Copy of the disallowance letter, Letter 2413 (P)

- Copy of letter issued by the group manager
- Form 3210, *Document Transmittal*

The revenue officer may then forward the request to the appropriate Appeals office. Incomplete packages will be returned to the originating RO. Refer to the Appeals Case Routing Guide available on the Appeals intranet site.

- Encourage the taxpayer to full pay the liability prior to submitting an appeal to avoid further interest and penalties on the tax amount and interest on the penalty amount. If the taxpayer has submitted an appeal, continue collection activity on the unpaid tax and interest.
- Suspend collection activity only on the unpaid penalty portion of the assessment during the 15-day period granted to the taxpayer to file an appeal. Continue to suspend collection activity on the unpaid penalty portion during the period the penalty abatement is under consideration by Appeals unless collection of the tax liability is in jeopardy or the taxpayer is attempting to delay collection.
- A jeopardy situation may be characterized by the appearance that the taxpayer is placing assets beyond the reach of the Service by concealment or transferring assets to other individuals or entities. See IRM 5.1.1.3, *Jeopardy Levy without a Jeopardy Assessment*.
- If it is determined that collection of the tax liability is in jeopardy or that the taxpayer has submitted an appeal solely to delay collection, secure group manager approval to pursue collection of the penalty while the penalty abatement is under consideration by Appeals. See IRM 5.1.9.4, *Collection Appeals Program (CAP)*. Also see IRC 6330(f), *Jeopardy and State refund collection*.
- Document the ICS case history with the factors used to conclude that the abatement appeal was submitted primarily to delay collection.
- If the remaining balance on the account is the penalty portion of the assessment, close the Bal Due module on ICS selecting "Abatement". This will upload TC 470 CC 90.

**Exhibit 5.1.15-1
FUTA Worksheet**

FUTA Worksheet

STATE CREDIT	
.054 X Certified State Wages	_____
Minus	
Cert. Exp. Rate X Cert. State Wages	_____
Equals	
A) Additional Credit	_____
Plus	
B) Timely Contributions	_____
Plus	
C) Late Contribution x .90	_____
Equals	
D) Total Tentative State Credit	_____
 ADJUSTED FUTA TAX	
E) Certified State Wages	_____
F) Taxable Wages Reported on F940	_____
G) Adjusted Taxable Wages (greater of E or F)	_____
H) G x .062 (gross tax)	_____
Minus	
I) Lesser of D or .054 x G	_____
J) Adjusted FUTA Tax	_____

**Exhibit 5.1.15-2
Identifying Reasonable Cause Categories**

These are only guidelines and are not to be used independently for determining reasonable cause.

Category	Failure to File and Failure to Pay Penalties	Category Issues/Possible Questions
<u>Absence</u> Taxpayer claims he or she was unable to comply because of absence, either his or her own or the absence of another person. IRM 20.1.1.3.2.2.1	Who was absent? Date(s) of the absence Reason for Absence How did the absence prevent compliance? Is documentation provided?	
<u>Assessment-Error</u> The penalty(s) should not have been assessed in the first place, or the taxpayer disagrees with the amount of the penalty(s)	What type of assessment error? TP disagrees with penalty computation A payment was missing Payment was refunded in error Not given credit for extension TP mailed return timely	
<u>Bankruptcy</u> The taxpayer claims to be in bankruptcy	What documentation is provided to confirm the bankruptcy?	
<u>Casualty</u> The taxpayer claims he or she was unable to comply because of a casualty. IRM 20.1.1.3.2.2.2	Date(s) of casualty Type of casualty, i.e. Fire Theft Accident In a FEMA declared area? What was destroyed? Is documentation provided?	
<u>Death</u> The taxpayer, a relative, or someone affecting the taxpayer's business died. IRM 20.1.1.3.2.2.1	Date of death? Who died? Is documentation provided?	
<u>Divorce</u> A divorce prevented the taxpayer from complying	Who got divorced? How did the divorce prevent the taxpayer from meeting their obligation?	
<u>Elderly Taxpayer</u>	Has someone taken responsibility for the affairs of the taxpayer?	

The taxpayer did not comply because he or she is elderly or incapacitated.

Extension

Any problems associated with an extension

Ignorance

The taxpayer did not know about, or was unfamiliar with filing requirements, withholding, etc.; the taxpayer was unaware of income or did not know it was taxable.

IRM 20.1.1.3.2.2.6

Illness

An illness of the Taxpayer or an illness of someone else caused the failure to comply.

IRM 20.1.1.3.2.2.1

Impairment

The taxpayer is physically or mentally impaired.

IRS Error

Taxpayer claims that an IRS error caused the non-compliance

IRM 20.1.1.3.4

Lack of Forms

The taxpayer did not have the form or schedule required to file the return.

Mail Problem

Taxpayer claims that return or payment was late due to a problem with the mail.

IRM 20.1.1.3.2.1

Mitigating Circumstance

A mitigating circumstance does not refer to an event beyond the control of the taxpayer, but it is an issue mentioned by the taxpayer. Identifying mitigating circumstances helps to produce a better penalty disallowance letter.

Other

Select this category only if the case does not fit into another category. An abatement in the Other category requires concurrence by manager.

IRM 20.1.1.3.2

Records Unobtainable

The taxpayer was unable to obtain or reconstruct records.

IRM 20.1.1.3.2.2.3

Reliance

The taxpayer relied on someone else to file or pay, or relied on the advice of someone else.

IRM 20.1.1.3.2.2.5

Relocation

A move or relocation resulted in the taxpayer's inability to comply.

Signature

One or more required signatures were missing from the taxpayer's return.

Tax Law Change

The taxpayer's failure to comply was directly related to a change in the tax law. An abatement in the Tax Law Change category requires the concurrence of a manager.

Unable to Pay

The taxpayer lacked the funds to pay or payment would have been a hardship.

IRM 20.1.1.3.3.3

A legal guardian appointed

A child or relative

Is there documentation?

TP forgot to file an extension

Extension and/or payment lost in mail

Third party did not file extension

TP claims ignorance of:

Didn't understand filing requirements

First time under-withholding of tax

First time self-employment

First time unanticipated income

Believed too little income to file

Didn't know the due date

Not aware of income

Not aware income taxable

Involves a foreign language or custom

Did illness stop the TP from taking care of normal financial activities?

Who was ill?

Has someone taken responsibility for the affairs of the TP?

What is the extent of TP's impairment?

What was the nature of the IRS error?

Error in an IRS or SSA Publication

IRS employee gave incorrect technical advice

IRS incorrectly processed TP's return

IRS incorrectly processed TP's payment

IRS failed to send promised forms

What documentation is provided?

Did the TP request an extension of time to file?

What was the nature of the mail problem?

Return/payment sent to another taxing agency

Return/payment sent to another creditor

Return/payment lost in mail

Insufficient postage

Delayed in mail TP claims error by postal service.

Sent timely to Lock Box

What kind of circumstance does the TP describe?

Lack of willful intent

TP called IRS for advice, but phones were busy

Filing requirements are too complex

TP's situation is special or unique

First time TP received unanticipated income, self-employment income, etc.

TP changed jobs, moved, having marital difficulties

TP took corrective action

TP detected error in first place

TP corrected the error

What does the TP Claim?

When did the event preventing compliance begin and end?

What is the basis for the TP's claim?

What impact did this have on the TP?

What documentation is provided?

Does the manager agree to the abatement?

What type of records were unobtainable?

From whom was the TP unable to obtain records?

Why was the TP unable to obtain the records?

Who did the TP rely on?

What was the nature of the reliance?

Person said the TP did not need to file or pay

Person handled everything

Person failed to send in return or payment

Person failed to file extension

What documentation is available?

A relocation will not meet reasonable cause penalty relief criteria. Therefore, no questions are asked in this category.

The penalty will automatically be sustained.

What is the nature of the signature problem?

Joint return unsigned by husband or wife

Not signed, but otherwise complete

Spouse unwilling to sign return or check

Did the TP cite a specific change in the tax law?

Would a return and/or payment have been due if no tax law change occurred?

When did the TP become aware of the need to file or pay?

Does the manager agree this case should be abated?

An undue hardship must be more than an inconvenience to the taxpayer. Each request must be considered on a case-by-case basis. The mere inability to pay does not ordinarily provide the basis for granting penalty relief. The taxpayer must show that they exercised ordinary business care and prudence in providing for the payment of the tax liability.

Information to consider when evaluating a request for penalty relief includes, but is not limited to the following:

When did the taxpayer know they could not pay?

Why was the taxpayer unable to pay?

Did the taxpayer explore other means to secure the necessary funds?

What did the taxpayer supply in the way of supporting documentation, such as copies of bank statements?

Did the taxpayer pay when the funds became available?

See Treas. Reg. 1.6161-1(b) and Treas. Reg. 301.6651-1(e)

Failure to Deposit

Absence

The taxpayer claims he or she was unable to comply because of an absence, either his or her own absence or the absence of another person

Avoidance

The taxpayer did not make the required deposit at an Authorized Depository or through EFTPS.

Bank Error

The taxpayer claims the late deposit(s) was caused by an error by the bank.

Bankruptcy

The taxpayer claims to be in bankruptcy

Bookkeeping Error

The taxpayer specifically claims some type of bookkeeping error.

Casualty

The taxpayer claims he or she was unable to comply because of casualty.

IRM 20.1.1.3.2.2.2

Computer Failure

Either the taxpayer's or someone else's computer failed.

Coupon Rejected

A bank would not accept the taxpayer's deposit coupon.

Death

The taxpayer, a relative, or someone affecting the taxpayer's business died.

IRM 20.1.1.3.2.2.1

Depository Date Discrepancy

The taxpayer claims he or she did not get credit for making a timely deposit.

EFT Avoidance

The taxpayer failed to make a required electronic deposit.

Embezzlement

An embezzler took funds that should have been deposited or took actions to conceal the non-filing of returns.

Ignorance

The taxpayer did not know, or was unfamiliar with deposit requirements in general.

IRM 20.1.1.3.2.2.6

Illness

An illness of the taxpayer or an illness of someone else caused the failure to comply.

IRM 20.1.1.3.2.2.1

Impairment

The taxpayer is physically or mentally impaired.

IRS Error

Taxpayer claims that an IRS error caused the non-compliance.

IRM 20.1.1.3.4

Lack of Coupons

The taxpayer did not have the required deposit coupon.

Lack of Funds

Taxpayer did not have sufficient funds to make deposit.

Mail Problem

Taxpayer claims deposit was late due to a problem with the mail.

IRM 20.1.1.3.2.1

Mitigating Circumstance

A mitigating circumstance does not refer to an event beyond the control of the taxpayer, but it is an issue mentioned by the taxpayer. Identifying mitigating circumstances helps to produce a better penalty disallowance letter.

Who was absent?

Date(s) of Absence

Reason for absence

Could someone else make the deposit?

Is documentation provided?

Payment was sent to a Service Center or unauthorized depository

No attempt to make the deposit

Is documentation provided?

Bank would not accept the deposit

Bank closed during business hours

Bank did not give credit for immediate credit item

What documentation is provided to confirm the bankruptcy?

A bookkeeping error will not meet reasonable cause criteria. Therefore, no questions are asked in this category. The penalty will automatically be sustained.

Date(s) of casualty

Type of casualty (Fire, Theft, Accident)

In a FEMA declared area

What was destroyed?

Is documentation provided?

Who's computer failed?

Date of computer failure.

What caused the computer to fail?

Why was the coupon rejected?

Coupon altered?

Bank not an authorized depository

Bank no longer accepts deposits

Is documentation provided?

Date of death

Who died?

Why couldn't someone else make the deposit?

Business shut down because of death

No one else was authorized

Did not trust anyone else

Is documentation provided?

This category does not fall under reasonable cause criteria. Research will be required to consider other procedures, such as possible waivers, to substantiate the taxpayer's claim.

Data analysis will be performed to determine if the non-EFT deposit was made during the waiver period(s).

Why was the TP unable to make the mandated deposit?

What steps were taken against the embezzler?

What documentation is available?

Date(s) of embezzlement

TP claims ignorance of:

A change in deposit frequency

The deposit requirements

Same day Fed Wire EFT payment

Need for immediate credit item

Bank's cut-off time

EFTPS cut-off time

The lookback period

Did illness stop the TP from taking care of normal financial activities?

Who was ill?

Why couldn't someone else make the deposit?

Has someone taken responsibility for the affairs of the TP?

What is the extent of TP's impairment?

What was the nature of the IRS error?

Error in IRS publication

IRS employee gave incorrect technical advice

IRS incorrectly processed or coded TP's account

Deposit frequency notice (CP 136) was incorrect

What documentation is provided?

Why wasn't the taxpayer able to obtain the needed coupon?

Coupon registered, but not received in time

Could not get coupons

Lost coupons

Assumed IRS could automatically send coupons

Why didn't the taxpayer have funds for the tax deposit?

Used funds to pay other business expenses

Funds were frozen by Court

Another government agency failed to pay taxpayer

What was the nature of the mail problem?

Deposit was delayed in mail

Deposit was lost in mail

Deposit mailed/delivered to wrong place

Insufficient postage

What kind of circumstance does the TP describe?

Lack of willful intent

Deposit requirements are too complex

TP called, but IRS phones were busy

Made some kind of data entry or phone entry error

TP's situation is special or unique

Overlooked making the deposit

Some other inadvertent error
 TP took corrective action
 TP detected error in first place
 TP Corrected the error

Records Unobtainable

The taxpayer was unable to obtain or reconstruct records.
 IRM 20.1.1.3.2.2.3

Why was the TP unable to obtain the records?
 Records lost, unable to recreate

Reliance

The taxpayer relied on someone else to make deposit, or relied on the advice of someone else.
 IRM 20.1.1.3.2.2.5

Who did the TP rely on?
 What was the nature of the reliance?
 Person handled everything
 Person failed to make or initiate deposit
 Person gave bad advice about timing of deposit
 Person erred about due date or amount

Reporting Agent

A failure on the part of the agent (payroll service) or a problem encountered by the agent caused the deposit to be late.

The agent failed to make the deposit on time
 Agent provided incorrect information to the TP
 Agent used incorrect figures
 Used an incorrect deposit method
 Unaware of the client's deposit requirements
 Did the TP cite a specific change in the tax law?
 Is the TP eligible for a waiver?
 Would the deposit have been correct if not tax change had occurred?
 Does the manager agree this case should be abated?

Tax Law Change

The taxpayer's failure to comply was directly related to a change in the tax law. An abatement in the Tax Law Change category requires the concurrence of a manager.

What was the nature of the transition?
 The business was growing too fast
 A change in accountant/bookkeeper
 Change in personnel
 A business move or relocation

Transition

A transition or change to the business caused the deposit to be late or incorrect.

Note: Consult Document 6209, IRS Processing Codes and Information, for reason codes required with TC18x.

Exhibit 5.1.15-3

State Mapping for IRS-CAWR and SSA-CAWR

All IRS CAWR and SSA-CAWR are now worked at Memphis or Philadelphia campus based on the state listed in the address of the taxpayer. All International, including Puerto Rico CAWR adjustments are worked at Philadelphia.

Note:

All Forms 941 Schedule D should be forwarded to the PSC CAWR/FUTA Operation.

State	Campus	State	Campus	State	Campus
Alabama	MSC	Maryland/DC	PSC	Rhode Island	PSC
Alaska	MSC	Massachusetts	PSC	South Carolina	PSC
Arizona	MSC	Michigan	PSC	South Dakota	PSC
Arkansas	MSC	Minnesota	PSC	Tennessee	MSC
California	MSC	Mississippi	MSC	Texas	MSC
Colorado	MSC	Missouri	MSC	Utah	MSC
Connecticut	PSC	Montana	PSC	Vermont	PSC
Delaware	PSC	Nebraska	PSC	Virginia	PSC
Florida	MSC	Nevada	MSC	Washington	MSC
Georgia	MSC	New Hampshire	PSC	West Virginia	PSC
Hawaii	MSC	New Jersey	PSC	Wisconsin	PSC
Idaho	PSC	New Mexico	MSC	Wyoming	PSC
Illinois	PSC	New York	PSC		
Indiana	PSC	North Carolina	PSC		
Iowa	PSC	North Dakota	PSC		
Kansas	MSC	Ohio	PSC		
Kentucky	PSC	Oklahoma	MSC		
Louisiana	MSC	Oregon	MSC		
Maine	PSC	Pennsylvania	PSC		

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 1. Field Collecting Procedures

Section 18. Locating Taxpayers and their Assets

5.1.18 Locating Taxpayers and their Assets

- 5.1.18.1 [Overview — Locating Taxpayers and their Assets](#)
- 5.1.18.2 [Locator Services Program](#)
- 5.1.18.3 [Performing Research on the Internet / Intranet](#)
- 5.1.18.4 [Real Property Records](#)
- 5.1.18.5 [Department of Motor Vehicles](#)
- 5.1.18.6 [Uniform Commercial Code](#)
- 5.1.18.7 [Corporate Information — Secretary of State](#)
- 5.1.18.8 [State and Local Locator Contracts](#)
- 5.1.18.9 [State Employment Commission Program — Tape Exchange Agreements](#)
- 5.1.18.10 [Utility Companies](#)
- 5.1.18.11 [Social Security Administration](#)
- 5.1.18.12 [United States Postal Service](#)

Manual Transmittal

August 15, 2013

Purpose

(1) This transmits revised IRM 5.1.18, *Locating Taxpayers and their Assets*.

Material Changes

- (1) IRM 5.1.18.15, *Suspicious Activity Report (SAR)*, added and subsequent sections renumbered.
- (2) IRM 5.1.18.18.2.5 (2) specifies the IDRS printouts required when requesting a consumer credit report.
- (3) Editorial updates made throughout, including updated IRM references and hyperlinks.

Effect on Other Documents

This IRM supersedes IRM 5.1.18 dated March 27, 2012..

Audience

The target audience is revenue officers in SB/SE Collection.

Effective Date

(08-15-2013)

Related Resources

ReferenceNet <http://rnet.web.irs.gov/> is a research portal that provides employees access to core IRS policies, procedures, legal and tax research services, and other instructions to staff.

Scott Reisher
Director, Collection Policy

5.1.18.1 (08-15-2013)

Overview — Locating Taxpayers and their Assets

1. This IRM section describes tools and sources Field Collection (FC) employees can use to locate taxpayers and/or their assets. It also provides procedures to help protect taxpayer privacy when using these sources.
2. The procedures in this IRM are specifically intended for use by revenue officers, although other employees in SB/SE and employees in other functions may find them useful.
3. These procedures explain how to research public records in person or online to locate taxpayers and/or their assets. In general, this IRM does not provide specific case dollar criteria for using the locator sources. Some of the locator sources do include Official Use Only (OUO) specific criteria, which are embedded within applicable IRM content.
4. The value and applicability of these taxpayer and asset locator procedures, services and sources depend upon the nature, complexity and the stage of each Collection investigation. See IRM 5.1.30, *Resolution-directed Approach to Casework*, for strategies on how to efficiently employ these locator resources. .

5.1.18.2 (03-27-2012)

Locator Services Program

1. Locator services assist employees in locating taxpayers and/or their assets. These services include (but are not limited to) the following:
 - the national asset locator tool (Accurant at the time of publication of this IRM)

- the credit bureau web browser (Smart.Alx at the time of publication of this IRM)
 - the tax research portal (LexisNexis® at the time of publication of this IRM)
 - Department of Motor Vehicles (DMV) data bases
 - real property title reports
 - Uniform Commercial Code (UCC) filings
 - corporate information — Secretary of State
2. Headquarters is responsible for providing leadership, support, assistance, technical expertise, funding, and oversight for all FC locator service activity nationwide, which includes allocation of resources to the area offices for maintaining current local locator services.
 3. Elevate any concerns about the administration of the Locator Services Program to Headquarters via your local management.

5.1.18.2.1 (03-27-2012)

Locator Services Security Considerations

1. Security guidelines providing for the maintenance, protection, and confidentiality of information are set forth in IRM 1.2.1, *Policies of the Internal Revenue Service*. IRS locator services may **only** be used in connection with conducting official IRS business.
2. You must comply with existing security and legal regulations regarding access to taxpayer data/information when you access taxpayer data, including locator services information. Relevant disclosure (*IRM 5.1.18.2.1.1*), privacy (*IRM 5.1.18.2.1.2*, and third-party contact procedures (*IRM 5.1.18.2.1.3*) apply when using these locator sources.

5.1.18.2.1.1 (09-17-2010)

Disclosure

1. All information obtained by the IRS in order to collect a tax liability is protected by IRC § 6103, *Confidentiality and Disclosure of Returns and Return Information*. Any disclosure made to obtain information must meet IRC § 6103 standards.
2. Analyze each such potential disclosure in advance to ensure the disclosure is necessary to obtain the information contained in the desired report (e.g., a report from the national asset locator tool or a consumer credit report).
3. Before making a disclosure to obtain information, ensure that the information in the desired report is not otherwise reasonably available from internal sources and that the return information disclosed
 - A. is the minimum necessary to obtain the report
 - B. originated from our BAL DUE or lien files.
4. Follow the disclosure procedures contained in the following IRMs when you use various locator sources:
 - A. IRM 5.1.22, *Disclosure*.
 - B. IRM 11.3.21, *Investigative Disclosure*, including IRM 11.3.21.8, *Internet Research*, for guidance on conducting research on the internet.

5.1.18.2.1.2 (08-15-2013)

Privacy

1. The Privacy and Information Protection (PIP) Office is responsible for ensuring the privacy and protection of taxpayer and employee information. PIP manages the Service's process for responding to the loss of Personally Identifiable Information (PII) and the potential for identity theft. There are three offices under PIP:
 1. Office of Privacy
 2. Identity Protection
 3. Incident Management
2. Follow the applicable privacy procedures when you use the IRWeb Intranet search engine and the various locator services and sources .
3. Also see IRM Part 10, *Security, Privacy and Assurance*, including:
 - A. IRM 10.2.13, *Information Protection*, for guidance on protecting tax information.
 - B. IRM 10.8.1, *Information Technology (IT) Security, Policy and Guidance*, for a discussion of Sensitive But Unclassified (SBU) Information in IRM 10.8.1.3.2.1.1 , *Sensitive But Unclassified (SBU) Information*, and Personally Identifiable Information (PII) in IRM 10.8.1.3.2.1.3, *Personally Identifiable Information (PII)*.

5.1.18.2.1.3 (03-27-2012)

Third-Party Contacts

1. Follow the procedures in IRM 5.1.17, *Third-Party Contacts*, as they pertain to respecting taxpayer rights in accordance with IRC § 7602(c), *Notice of contact of third parties*, when you use the various locator sources.

5.1.18.2.2 (03-27-2012)

Asset Locator Research

1. The national asset locator tool is an important resource for locating taxpayers or their assets. This tool provides the capability of searching several asset/locator services, credit bureau services, and tax law research services, including the following public records:
 - real property
 - real estate transactions
 - corporate officers
 - vehicles and aircraft
 - information on people and businesses

2. Servicewide Policy, Directives and Electronic Research (SPDER) (<http://spder.web.irs.gov>) manages the national asset locator tool and contracts with various subscription search services.

Note:

At the time of publication of this IRM revision, the current contract vendor is LexisNexis®, and the national asset locator tool is Accurint.

5.1.18.2.2.1 (08-15-2013)

Using the Online National Asset Locator Tool

1. To gain access to Accurint, initiate an OL5081 "add user" request to the following application: Accurint - SBSE Collection.
2. Once access is approved, you will be assigned an Accurint user name and password.
3. You can access Accurint directly through <https://secure.accurint.com/app/bps/main> or through the Accurint web site at <http://rnet.web.irs.gov/Accurint/>.
4. The information on the Internet can also assist you in locating taxpayers and/or their assets and should be considered as a supplement to the national asset locator tool. See *IRM 5.1.18.3*.

5.1.18.2.2.2 (03-27-2012)

Use of Asset Locator Research Results

1. *IRM 5.1.18.12* provides information on verifying a taxpayer address, the appropriate use of postal tracers, and an example about sending an appropriate contact letter.

Caution:

Information from the national asset locator tool is not considered adequate to verify a taxpayer's ownership interest when the IRM requires a complete public records search. See paragraph (4) of *IRM 5.10.1.3.3, Equity Determination*. A search of the actual courthouse records or other official governmental records (official, legal recordation sites such as Department of Motor Vehicles (DMV), Federal Aviation Administration (FAA), etc.) is required to verify the accuracy of the information obtained from the national asset locator tool prior to taking seizure action.

5.1.18.2.2.3 (03-27-2012)

Training on the Use of Locator Services

1. Managers are responsible for ensuring that employees have access to the tools needed to perform the job effectively and receive the training required to use the tools effectively.

Note:

Collection management will work with Learning & Education (L&E) personnel to ensure that appropriate locator services related topics are adequately covered in Collection CPE sessions.

2. Members of the Functional Automation Support (FAS) groups in Collection Information Technology and Security (CITS) provide training to Field Collection (FC) employees on how to use software programs that facilitate effective use of the various locator services..

5.1.18.2.2.4 (08-15-2013)

Locator Services Support

1. FAS also provides technical support and system issues troubleshooting related to automated locator service programs and processes.
2. The primary programs supported by FAS include:
 - Case Diagnostic Tools
 - Locator Services
3. **Collection Automation Coordinators (CACs)** are professional employees who are subject matter experts (SMEs) for the case diagnostic tools and locator services. The CACs responsibilities include the following:
 - ensure automation programs and management applications are compatible with all technical, legal, and administrative provisions
 - complete analytical reviews
 - develop reports, memoranda, and decision packages
 - coordinate and conduct training
 - act as liaison with other functions at Headquarters, the Areas, and IT.
4. **Functional Automation Coordinators (FACs)** are technical employees who provide administrative support to the Area CACs. The FACs responsibilities include the following:
 - overseeing OL 5081 applications
 - supporting commercial off-the-shelf (COTS) software
5. Contact the appropriate Collection Automation Coordinator (CAC) or Functional Automation Coordinator (FAC) in FAS if you require assistance, support, or training.
6. You can locate the appropriate contact using the Functional Automation Support (CACs, FASS, & FACs) link http://serp.enterprise.irs.gov/databases/who-where.dr/iqa.dr/iqa_contact_cff.htm.

5.1.18.2.2.5 (08-15-2013)

Procurement of Locator Services

1. Functional Automation Support (FAS) provides procurement support for locator services. Generally, the FAC or the CAC is responsible for requisitioning specific locator services and related equipment. The responsible procurement office will provide any necessary procurement assistance. "Local" contracts may still be required for data that is unavailable from the national contract vehicles.
2. FAS supports local locator service contracts such as contracts with the state for employment and DMV information as well as title report contracts. FAS inputs the annual contract renewals and completes the monthly, quarterly, or annual "Receipt and Acceptance." Some contracts require automation support to connect the IRS network to the vendor network. In these cases, FAS facilitates communication between IT, Mission Assurance, and the end users to ensure the setup, installation, and testing of software when necessary. In some cases, based on requests from the Area, FAS will locate new vendors, secure contracts for services, etc. FAS supports end users on their use of national locator services contracts as well as use of the local contracts.

3. Refer to IRM 1.4.5, *Corporate Tax Administration Tools*, when considering any procurements. It provides helpful information regarding the background on the corporate delivery of electronic research services, an overview of each corporate tax administration tool, how to access them, and the related training products that are available.
4. Your FAS contact can provide information about available locator services and access procedures. You can locate the appropriate contact using the Functional Automation Support (CACs, FASS, & FACs) link http://serp.enterprise.irs.gov/databases/who-where.dr/iqa.dr/iqa_contact_cff.htm.

5.1.18.2.5.1 (03-27-2012)

Enforcement Purchase Card

1. As a revenue officer directly involved with enforcement activity, you are authorized to receive a Purchase Card (Enforcement Purchase Card) that is restricted to enforcement related purchases.
2. See IRM 1.32.6, *Purchase Card Program Handbook*.
3. See IRM 1.32.6.6.2, *Enforcement Purchase Card (SBSE Revenue Officers)*.

5.1.18.3 (08-15-2013)

Performing Research on the Internet / Intranet

1. The decision to use the Internet to locate taxpayers and/or their assets must be based on the particular aspects of the case. In reaching this decision, apply a strategic approach to casework and consider the different aspects of each case, such as the size of the liability, complexity of the case, compliance history, and the cooperation level of the taxpayer to determine the applicable extent of locator research.
2. The Internet is a powerful tool for gathering information about individuals and businesses. It can access a vast amount of information, usually free of charge, although many web sites charge a usage fee or provide information on a subscription basis.
3. The Service has current corporate contracts for locator services, credit bureau services, and tax law research services. Whenever possible, IRS employees who work tax-related matters should use the contracted subscription search services to obtain information about a tax case or taxpayer. At the time of publication of this IRM, these services include the following:
 - the national asset locator tool — Accurint
 - the credit bureau web browser — Smart.AIx (at the time of publication of this IRM)
 - the tax research portal — LexisNexis® (at the time of publication of this IRM)
4. Additional information on these services can be found on the Reference Net home page at <http://rnet.web.irs.gov> and on the SPDER at <http://spder.web.irs.gov>.
5. Access the IRS Intranet Home Page at this link: <http://irweb.irs.gov/>
6. You can use the Internet / Intranet to help you do the following:
 - A. locate taxpayers or their assets
 - B. understand various types of businesses
 - C. understand various types of property ownership
 - D. confirm/validate the information taxpayers have provided to you
7. Consider the following factors when deciding to use the Internet:
 - A. Cooperation level of taxpayer
 - B. Type of liability and entity
 - C. Size of liability
 - D. Case Complexity
 - E. Results of financial analysis

Note:

This list is not all-inclusive.

Caution:

With the exception of approved IRS communicators handling official IRS media initiatives, IRS employees are not authorized to use social media in an official capacity. Social media encompasses Internet forums, blogs, wikis, podcasts and picture- and video-sharing. Examples of social applications include Google Groups, Wikipedia, MySpace, Facebook, YouTube, Second Life, Flickr and Twitter.

8. Follow the steps below if the information you seek is not reasonably available through the contracted subscription search services.
 1. Use discretion and consider on a case-by-case basis what return information or PII needs to be entered when using public Internet search engines (for example, name, address, telephone number, or Taxpayer Identification Number (TIN)).
 2. A search on a TIN is allowable if necessary, but you must secure managerial approval before conducting an Internet search on a TIN.

Note:

You can perform a search using a TIN, but a search on an EIN or an SSN rarely results in any useful information. A telephone number search will probably provide more useful information than a TIN search. IRM 11.3.21.8, *Internet Research*, provides that the disclosure of a TIN is sensitive and should be carefully considered.

9. Refer to the following IRMs for further guidance:

- A. IRM 10.8.1, *Information Technology (IT) Security, Policy and Guidance*, which provides security policies to be followed by all IRS organizations and discusses Sensitive But Unclassified (SBU) Information and Personally Identifiable Information (PII).
- B. IRM 11.3.21.8, *Internet Research*, which allows the disclosure of return information with respect to Internet searches when you reasonably believe, based on the facts and circumstances at the time of the disclosure, such disclosure is necessary to obtain information to properly perform your official duties.

5.1.18.3.1 (03-27-2012)

Collecting Taxes Web Page

1. The Collecting Taxes web page <http://mysbse.web.irs.gov/Collection/default.aspx> includes several intranet and internet links that can help you locate taxpayers and/or their assets.
2. The Collecting Taxes web page is divided into a number of separate sections, including the following, which include many links to helpful information:
 - Newsletters
 - Identity Theft
 - Collection Systems
 - Tools and Processes
 - Insolvency/Bankruptcy
 - International Collection
 - Technology, Services & Equipment
 - Projects and Initiatives
 - Training and Resources
 - Ask Collection Policy
 - A-Z Research Index
3. Consider adding the Collecting Taxes web page to your list of "Favorites."

5.1.18.3.1.1 (09-17-2010) **Interim Guidance Directives**

1. Sometimes Headquarters will issue an Interim Guidance (IG) Memorandum (memo) to provide the most up-to-date guidance about a particular subject.
2. Access the Small Business/Self Employed Cross-Functional Program Management Interim Guidance Directives at <http://mysbse.web.irs.gov/RefLibrary/imd/intrmguid/cp/default.aspx>.
3. Determine if an IG Memo provides more up-to-date guidance about a particular subject when you search the IRM.
4. Consider adding the Interim Guidance Directives page to your list of "Favorites."

5.1.18.3.2 (03-27-2012) **Collection E-Business Corner Web Page**

1. The Collection E-Business Corner web page at <http://mysbse.web.irs.gov/Collection/toolsprocesses/EBusiness/default.aspx> contains helpful information such as a training link to e-commerce related courses and information on how to discover the owner of web sites and domain names. Electronic business (E-Business) encompasses a wide range of emerging and evolving concepts and technologies. Generally, e-business consists of business transactions conducted over open computer networks such as the internet.
2. The blue menu box on the left side of the page provides options for accessing information regarding the following:
 - E-Business Summons
 - E-Business Levies
 - Internet Activities
 - PayPal & eBay
 - E-Business Research Tools
 - E-Business Trends
3. Consider adding the Collection E-Business Corner to your list of "Favorites."

5.1.18.3.3 (03-27-2012) **Corporate Tax Law Research Tools**

1. The Service has current corporate contracts for tax and legal research services. These services are managed by SPDER and provide the following:
 - A. an up-to-date, searchable web-based version of the Internal Revenue Manual (IRM)
 - B. primary and secondary Federal tax resources, news, business, and legal sources.
2. These electronic research services are fully linked to cited references which allow access to all tax law research material from one place.

Reminder:

Although you could perform tax and legal research using a search engine (such as Google, MSN, Yahoo, or AOL), you should use the commercial electronic research services provided by the Service. The trustworthy sources provided by the Service (such as CCH, LexisNexis®, or Westlaw at the time of publication of this IRM) yield more credible results upon which you can base your tax administration decision. The vendors stake their livelihood on accuracy and timeliness of their material and their editors, researchers, and attorneys ensure the authenticity of the content so you can be confident you can rely upon the information they provide.

3. Follow the steps below if the information you seek is not reasonably available through the contracted subscription search services.
 1. Use discretion and consider on a case-by-case basis what return information or PII (i.e., name, address or Employer Identification Number) needs to be entered when using public Internet search engines.
 2. See IRM 11.3.21.8, *Internet Research*.

5.1.18.4 (08-15-2013) **Real Property Records**

1. Real property records are a critical source for locating taxpayers and their major assets. Real property records are currently available for all the states and the District of Columbia through the national asset locator tool. However, the national asset locator tool does not provide an index of transactions or copies of the actual documents.

Exception:

Due to contractual restrictions, real property records are not currently available for Maine through the national asset locator tool.

2. In some states, and especially in large metropolitan areas, the real property records are available electronically from the courthouse without going through a third-party vendor
3. Although many real property records are available online, real property records are not completely automated. Furthermore, electronic real property research may only provide limited coverage and is subject to the following limitations:
 - A. The locator vendor may not provide electronic coverage for every county in that state.
 - B. The electronic grantee/grantor indexes may not be sufficient to determine how ownership in a piece of property occurred or was conveyed.
 - C. The public records data in third-party vendor electronic systems may contain errors due to erroneous data entry or incorrect processing. The data may also be out-dated or be otherwise defective.
4. Some Collection areas have direct data base access where courthouse records are automated and the index as well as copies of the actual documents are available. Check with your local FAS to see if your area has this capability. See *IRM 5.1.18.2.2.5*.
5. Search real property records as provided in your area, either in-person or online, according to the following procedures.

5.1.18.4.1 (03-27-2012)

Courthouse Records Check

1. Local courthouse records often contain the most recent and accurate information regarding real and personal property, as well as other types of documents and information that merit or require official recordation.
2. Courthouse records checks can be conducted online if you have access to the index of transactions and copies of the actual documents. If the IRM requires a courthouse records check and you do not have the ability to research both the index and the actual documents online, make a field visit to perform a courthouse records check..
3. Make a field visit to perform a courthouse records check in-person prior to a seizure. See IRM 5.10.1.3.3, *Equity Determination*.
4. Treat all data secured from locator services as sensitive but unclassified (SBU) data.

5.1.18.4.1.1 (09-17-2010)

Electronic Access to Actual Courthouse Records

1. Complete a real property records search electronically if you have the ability to research both the index and the actual documents online.

Note:

Researching actual property tax records online is not considered a courthouse real property records search, so an online property tax records search would not be sufficient prior to a seizure of real property. The property tax appraisal office maintains the tax records, not the office of the county clerk. The property tax records only show who owned the property when the property tax statements were sent out.

2. Make a field visit and perform a courthouse records check in-person prior to a seizure of real property.

5.1.18.4.1.2 (09-17-2010)

Electronic Access to Third-Party Vendor Records

1. Complete a real property records search electronically if you have access to the records via a third-party vendor.

Note:

Researching third-party vendor property tax records online is not considered a courthouse real property records search so an online property search of third-party tax records would not be sufficient prior to a seizure of real property.

2. Do not rely upon third-party vendor electronic sources as definitively accurate; be wary of their limitations.
3. Make a field visit and perform a courthouse records check in-person prior to a seizure of real property.

5.1.18.4.2 (03-27-2012)

Title Reports

1. Title reports provide the following information:
 - Liens and Judgments — Listing of recorded property liens, tax certificates, and claims against the property.
 - Legal — Full real estate legal description.
 - Current Owner — Identification of the actual owner of the subject property and ownership structure (i.e., joint, individual, trust, etc.).
 - Purchase Price / Date — Reveals what the current owners paid, seller information, and deed document details.
 - Mortgage Amount — Mortgage details for open loans against the property with lender name, amounts, and dates. Copy of current deed showing conveyance with abstract of all current liens, mortgages, and recorded documents.
2. Secure a title report as provided in your area.

Note:

The Area office establishes procedures for obtaining title reports. Functional Automation Support (FAS) provides administrative support for title report service contracts; however, FAS does not provide interpretation of title reports.

5.1.18.5 (03-27-2012)

Department of Motor Vehicles

1. All states and the District of Columbia have a department or office of motor vehicles (DMV). DMVs require state residents who own a motor vehicle to register their motor vehicle and require state residents who drive a motor vehicle to hold a valid driver license.

2. In addition to driver licenses, motor vehicle departments issue identification (ID) cards to persons who require an ID card. The ID card looks like a driver license, but is used for identification purposes only.
3. Information maintained by the various DMVs varies from state to state. Most states provide driver information, lien holders, and vehicle information on cars, trucks, etc. ID card information is also provided.
4. Information from 25 DMVs is currently available through the national asset locator tool at the time of publication of this IRM. Due to contractual and regulatory restrictions, some states are not available, and it is illegal to make this information public in some other states.
5. Some Collection areas have been able to arrange for direct data base access to DMV records. Check your local procedures.

5.1.18.6 (09-17-2010)

Uniform Commercial Code

1. National Uniform Commercial Code (UCC) filing records contain information from commercial lien filings. These records can help you find assets used by businesses to secure commercial loans or to learn about financial relationships between businesses and individuals. The results include:
 - debtor name and address
 - date and state of filing
 - document number
 - legal type
 - secured parties name and address
 - number of secured parties
 - number of debtor parties
 - number of filings
 - list of collateral
2. Uniform Commercial Code (UCC) information is currently available for all the states and the District of Columbia through the national asset locator tool.

Note:

The national locator tool may not have the latest information; at times, the information is weeks or months old. For purposes of conducting an adequate UCC search prior to a seizure of personal property, a search of the national asset locator tool is not considered an adequate UCC search.

3. Use the "UCC Filings" tab in the national asset locator tool to conduct your search.
4. Use any of the search criteria provided in the "UCC Filings" template.
5. Conduct a search of the UCC records held by the official governmental record keeper prior to a seizure of personal property.
 - A. Go to the governmental recording office and search the official UCC records.
 - B. Contact the governmental recording office by mail (or by phone, if permitted by the governmental recording office) to obtain the official UCC records.

5.1.18.7 (09-17-2010)

Corporate Information — Secretary of State

1. Corporate information refers to each individual state's Secretary of State, State Corporation Commission, or equivalent. These organizations provide information regarding the date of incorporation and the officers of the corporation.
2. All states and the District of Columbia require that corporations register at the time of their incorporation, and the registration information is usually maintained in each state's capital. Secretary of State information is one of the most effective sources available for corporate accounts. It provides third party information, corporate officers, and registered agents, and it is also fairly effective for verifying the existence of assets. However, the effectiveness of Secretary of State information varies from one state to another based on the method used to access the information.
3. Secretary of State information is currently available for all the states and the District of Columbia through the national asset locator tool at the time of publication of this IRM with the exception of Delaware.

Exception:

Due to contractual restrictions, Secretary of State information is not currently available for Delaware through the national asset locator tool. Revenue officers in the Dover, Delaware, commuting area can make a field visit to the state office where visitors are permitted free access to the on-site computers provided and are allowed to write the information down free of charge. Revenue officers outside of the Dover, Delaware commuting area can access the Secretary of State of Delaware at: <http://www.corp.delaware.gov/> to secure corporate information online for a fee charged to the employee's Enforcement Purchase Card. At the time of publication of this IRM, the fee is \$10.00 per entity for status or \$20.00 per entity for more detailed information including current franchise tax assessment, current filing history, and more. See IRM 1.32.6, *Purchase Card Program Handbook*.

4. Use the corporate information received from the Secretary of State to investigate individuals who may be responsible for the Trust Fund Recovery Penalty (TFRP), if applicable. See IRM 5.7.4.1, *Determination to Pursue and Recommend Assessment of the TFRP*.

5.1.18.7.1 (05-20-2008)

Limited Liability Company Information — Secretary of State

1. Limited Liability Company (LLC) Information is maintained by each individual state's Secretary of State, or equivalent, often in the same database as corporation records. These organizations provide information regarding the date of organization and the members and/or managers of the LLC.
2. Information available from state records may assist you in identifying if a taxpayer is liable for certain employment taxes. See IRM 5.1.21, *Collecting from Limited Liability Companies*, for additional information.

5.1.18.8 (05-20-2008)

State and Local Locator Contracts

1. Access to additional information found in state and local databases, including employment data, varies greatly. Any questions regarding state or local locator contracts should be directed to your local Functional Automation Support Group.
2. Additional information may also be secured from your local Government Liaison.

5.1.18.9 (05-20-2008)

State Employment Commission Program — Tape Exchange Agreements

1. The State Employment Commission Program involves tape exchange agreements between the IRS and the states. Every two weeks, a tape containing a file of all IMF taxpayers in fourth notice status is mailed to participating states by the responsible service center campuses. The controlling location code of the taxpayer determines to which state the taxpayer's record is sent.
2. This tape contains records for both primary and secondary Social Security Numbers (SSN). The state matches the SSN on the tape with those on its employment commission (EC) data base. For each SSN on the tape, the state will return at least one record, but, in many instances, multiple records may be returned, depending on how many quarters of information the state's database contains.

IF	THEN	NOTES
a. No records exist for the SSN,	a "no-match" record will be returned.	No levy source record is created on IDRS for a no-match record.
b. A record exists for the SSN,	a matched record will be returned including the names and addresses of the taxpayer's employers.	For each matched record returned, a levy source record is created on IDRS.
c. IDRS shows that this levy source, as identified by the Employer's Identification Number (EIN) or state identification number, duplicates one previously sent,	it will be dropped.	The levy source record will identify whether the levy source belongs to the primary or secondary SSN.

3. When a balance due account (BAL DUE) is passed to ACS, all levy source records on IDRS are forwarded automatically. If for any reason the return tape is processed after the case goes to ACS, the EC levy source will be forwarded to ACS at the next update.
4. Use CC LEVYS to obtain EC information already received from participating states. See IRM 5.11, *Notice of Levy*.
5. Use any new address or new asset information received from researching CC LEVYS as discussed above.

5.1.18.10 (05-20-2008)

Utility Companies

1. Utility company information can help to locate a taxpayer.
2. Often, taxpayers attempting to hide from the IRS and other creditors do not notify the post office of a new address. However, taxpayers generally will transfer their utility service from an old address to their new one, so when a taxpayer moves within an area served by the same utility company, the taxpayer will provide an updated address to the utility company. See IRM 5.1.18.12.2, *Postal Tracer — Form 4759*, for information on the use of postal tracers to verify these addresses.
3. Utility information can help determine who occupies a certain building when there is an indication that the taxpayer resides at an address, but the post office and other locator sources do not provide confirmation. The utility company can provide the name of a person billed for the utility services.

Note:

If you provide a name and address to the utility company in person, by mail, or by phone, the utility company will probably be able to confirm the name of the person billed for the utility services in response to your request for confirmation without a summons.

Caution:

Contacts with utility companies should be treated as third party contacts, unless you access the utility company data base directly without personal assistance. (See IRM 5.1.17.2(3).)

4. If necessary, summons the utility company to obtain the taxpayer's new address. Provide the taxpayer's name and last address in the summons.
5. Use any new address or new asset information from the utility company as discussed above.

5.1.18.11 (09-17-2010)

Social Security Administration

1. Sole proprietors, corporations, partnerships, estates, trusts, and other entities use Form SS-4, *Application for Employer Identification Number*, to apply for an employer identification number (EIN).
2. In the past, the IRS sent Forms SS-4 to the Social Security Administration (SSA). SSA maintained the records, and IRS employees could request a copy of a specific form. However, with the advent of weekly electronic transmissions of Form SS-4 data to SSA, the IRS no longer sends the forms to SSA.
3. Contact SSA to obtain a copy Form SS-4 for years 1998 and prior, as needed. See IRM 21.7.13.3.2.12, *Form SS-4 Retention (Past and Present) and Requests for Copies of Form SS-4*.
4. Do not contact SSA regarding any Form SS-4 processed after 1998.
5. Use any new address or new asset information from SSA research as discussed above.

5.1.18.12 (09-17-2010)

United States Postal Service

1. The United States Postal Service (USPS) provides an address update product — the National Change of Address Linkage (NCOA^{Link}).
2. The IRS is a licensee of NCOA^{Link}, and receives a consolidated data file with change-of-address information from the USPS on a regular basis to help deliver tax related mail in a timely fashion and reduce undeliverable mail. The Service benefits from the NCOA^{Link} address update process by using the new addresses to attempt contact and/or maintain contact with taxpayers.
3. When the USPS receives a change of address form from a taxpayer with a new address, the IRS will receive that new address. The process works as follows:
 1. NCOA^{Link} obtains change of address information when a taxpayer submits a change of address to the USPS.
 2. The IRS receives a weekly NCOA^{Link} file from USPS. The file contains all of the reported changes of address in the United States for the week.
 3. NCOA^{Link} will attempt to match the NCOA^{Link} file to the Master File address for any change of address form filed in the past 48 months.
 4. The "name" and "from" address must match what is on IDRS for the "to" address to be updated as the new address for a taxpayer.
 5. The Master File is updated for all matched addresses.

Note:

The only time the address of a taxpayer updates through NCOA^{Link} is when the taxpayer submits a change of address form to USPS. Then, and only then, will NCOA^{Link} update the taxpayer's address from one location to another.

4. NCOA^{Link} substantially reduces the need for using a postal tracer — Form 4759, *Address Information Request - Postal Tracer*, to obtain new addresses for most taxpayers.

Note:

NCOA^{Link} does not eliminate the need for using Form 4759.

5.1.18.12.1 (09-17-2010)

How to Identify an NCOA Address Change

1. An address change resulting from the NCOA^{Link} update generates a unique Transaction Code (TC) 014 (Address Change) and document locator number (DLN):

All DLNs created by NCOA^{Link} have a common DLN format:

- IMF — XX 2 63 995 999 99 Y
- BMF — XX 9 63 995 777 66 Y
- EPMF — XX 0 63 995 777 66 Y

Note:

"XX" represents the File Location Code (Internal Revenue Service Campus (IRSC) Code). "Y" represents the year of the NCOA^{Link} update.

5.1.18.12.2 (08-15-2013)

Postal Tracer — Form 4759

1. The only appropriate use of Form 4759 is to request information from USPS. Form 4759 may be used to:
 - Obtain the physical address of a Post Office (PO) Box holder

Caution:

Form 4759 applies only to a PO Box rented from USPS; it does not apply to a mailbox rented from any of the various other places that rent private mailboxes.

 - Verify possible non-Master File addresses
 - Request directions to an address
 - Confirm the Master File address of record when a field call verifies that the taxpayer is UTL or UTC at that address.

2. NCOA^{Link} substantially reduces the need for using Form 4759 but does not eliminate the need for using Form 4759. You may obtain valuable information in response to Form 4759, which may not be included on returned mail:
 - A. Change of address date
 - B. Forwarding order expiration date
 - C. Expired forwarding address(es).
3. Form 4759 is helpful as USPS will:
 - Provide the forwarding address on returned mail for 12 months
 - Confirm whether mail is delivered to the taxpayer at that address
 - Provide the new address if the address was changed within the past 48 months.
4. USPS mail carriers may provide additional useful information. The carrier may annotate the returned correspondence with an extra note, such as "moved two years ago," "gone for over five years," or other information that will assist you in establishing the "timeline" of various addresses. USPS will:
 - Provide the forwarding address on returned mail for 12 months.
 - Provide the forwarding address for 48 months in response to Form 4759.
5. USPS will take one of the following actions when you send correspondence to one or several alternate addresses:
 - A. Forward the correspondence to the taxpayer but not send you notification of a new address.

Note:

Form 4759 may be helpful since it may provide new address information (if mail was forwarded) or confirm whether mail is delivered to the taxpayer at that address.

 - B. Return the correspondence to you with the annotation "Forwarding order expired," if it has been more than 12 months since the forwarding order was filed.

Note:

Form 4759 may be helpful because it may provide the new address if the address was changed within the past 48 months.

 - C. Return the correspondence to you with the annotation "Moved, left no forwarding."

- 6. Do not use Form 4759 to verify a taxpayer's Master File address. This will add more processing time and postal costs to our cases without providing value. The taxpayer's Master File address will be updated by NCOA^{Link} if the taxpayer has submitted a change of address form to USPS within the previous 48 months.
- 7. Confirm the Master File address in accordance with paragraph (3) of IRM 5.16.1.2.1, *Unable to Locate and Unable to Contact*, before you close the case with TC 530 when you have made a field call and verified the taxpayer is UTL or UTC at the Master File address of record.
- 8. Follow the procedures below when it is necessary to send Form 4759 to the USPS.

9. Use Form 4759 to obtain the physical address of a Post Office (PO) Box holder from USPS.

10. Refer to the following IRM sections to appropriately use Form 4759 in other situations:

A. *IRM 5.1.18.12.2.3*

B. *IRM 5.1.18.12.2.4*.

5.1.18.12.2.1 (09-17-2010)

Properly Preparing Form 4759

1. When it is necessary to send Form 4759 to the USPS, always:

- Use the most recent version of Form 4759
- Include the appropriate return address.

2. The most common error with Form 4759 is neglecting to include the complete return IRS address. Be sure to use your STOP number and/or organization symbol in your return address. Other common errors include:

- Using an outdated form
- Including an envelope for return.

3. Do not include any envelope. It is unnecessary and a waste of our postage resources to include an IRS Business Reply Mail envelope since the USPS has agreed to return Form 4759 to the IRS in a USPS envelope. The authority for this is in a USPS document; it is in Exhibit 5-2 under Section 5, *Requests for Special Categories of Records*, of the *USPS Handbook AS353*.

5.1.18.12.2.2 (03-27-2012)

Undeliverable Mail

1. Mail may be rejected as undeliverable because of various reasons, including the following:

- An inappropriate rural route address, or
- An error in processing a two-line address.

5.1.18.12.2.2.1 (09-17-2010)

Rural Route Addresses

1. Print rural route addresses on a piece of mail as follows:

- "RR N BOX NN"

2. Do not use the words "RURAL," "NUMBER," "NO.," or the pound sign (#).

5.1.18.12.2.2.2 (09-17-2010)

Two-Line Addresses

1. Form 4759 is pre-printed with the words "To: Postmaster" in the upper left-hand corner and provides space for insertion of the city, state, and ZIP Code of a particular post office, resulting in a two-line address (like those used by our service centers).

2. Two-line addresses are completely acceptable, but sometimes, we encounter a problem with Form 4759 being returned as "not deliverable as addressed" or "undeliverable." This problem is encountered because USPS has automated high speed equipment (optical character readers) which start reading a piece of mail from the bottom. The intent of the automated processing is to process a piece of mail to its "final sort" (practically to the carrier's mail bag) without it ever being touched by human hands. The processing equipment also looks for a "match" in the address database. This match depends on a street address or PO Box to continue on its way. Since we only insert the city, state, and ZIP Code of a particular post office on Form 4759, the Form 4759 is ejected from the automated system and reviewed manually.

3. Sometimes, instead of recognizing that Form 4759 with a two-line address should be delivered to the "Postmaster" at the post office identified by the ZIP Code, a postal worker who sees that Form 4759 does not have a street address or PO Box number may stamp Form 4759 "not deliverable as addressed" or "undeliverable" and return it.

4. Contact the Delivery Services Operations Manager at the specific post office that returned Form 4759 if you encounter this problem.

5.1.18.12.2.3 (09-17-2010)

Verify Possible Non-Master File Addresses

1. The national asset locator tool or other locator research may provide possible new addresses for a taxpayer from diverse sources such as credit applications, mortgage companies, etc.

2. Follow these procedures to verify possible new address(es) when you have been unable to contact / locate a taxpayer during the initial field contact attempt. See IRM 5.1.10, *Taxpayer Contacts*, for the initial contact requirements.

3. Check IDRS command code NAMES to eliminate new addresses received from asset locator research for individuals with similar names but different SSNs.

Note:

The training for the national asset locator tool emphasizes beginning your research with the taxpayer's Taxpayer Identification Number (TIN) to better target locator information on that person. Using the TIN will usually eliminate the need to sort stray information by using IDRS Command Code (CC) NAMES.

4. Use any new address received from asset locator research to attempt taxpayer contact, if you have not yet made taxpayer contact:

- A. Make a field call or mail an appropriate contact letter to the taxpayer's possible new address(es) within your local area. An appropriate contact letter is a brief note requesting the recipient to contact the revenue officer (RO).
- B. Send an appropriate contact letter to the taxpayer's possible new address(es) outside of your local area.

Caution:

Be careful not to disclose any more confidential information (SBU or PII) than is necessary to verify the identity of the taxpayer.

Example:

RO Jane Jones is trying to contact Sandra Baker to collect the BAL DUEs on Sandra Baker's sole proprietorship, Sandy's Bakery.

RO Jones found a possible new address for Sandra Baker from using the national asset locator tool.

RO Jones needs to send an appropriate contact letter.

RO Jones is aware that she needs to take care not to disclose confidential information.

RO Jones writes a brief note addressed to Sandra Baker at the new possible address.

The contact letter says, in part:

Dear Ms. Baker, I have been trying to get in touch with you to discuss a federal tax matter regarding your bakery that went out of business. Please contact me at your earliest convenience.

5. Do not routinely verify a non-Master File possible address(es) with Form 4759. Even if the taxpayer has not submitted a change of address form to the United States Postal Service (USPS), mail from the Service will be delivered to an address where other mail is being delivered to the taxpayer. Sending correspondence addressed to the taxpayer at the possible address(es) is more efficient, since it may result in immediate contact.

5.1.18.12.2.4 (05-20-2008)

Verify Possible New Addresses Received from Asset Locator Research

1. Check IDRS command code NAMES to eliminate new addresses received from asset locator research for individuals with similar names but different SSNs.

Note:

The training for the national asset locator tool emphasizes beginning your research with the taxpayer's Taxpayer Identification Number (TIN) to better target locator information on that person. Using the TIN will usually eliminate the need to sort stray information by using IDRS Command Code (CC) NAMES.

2. Use any new address received from asset locator research to attempt taxpayer contact, if you have not yet made taxpayer contact.
3. Take one of the following actions to attempt to contact the taxpayer at the new address. These procedures are generally followed when you have been unable to locate a taxpayer during the initial field contact attempt. See IRM 5.1.10, *Taxpayer Contacts*, for initial contact requirements.
 - A. Make a field call or send a letter to the taxpayer's address regarding addresses within your local area.
 - B. Send a letter to the taxpayer's address regarding addresses outside of your local area.

5.1.18.12.3 (05-20-2008)

Locating a Taxpayer's Address

1. This IRM subsection provides strategies and information for locating a taxpayer.
 - A. Requesting assistance to locate a taxpayer's address
 - B. Private mailbox companies
 - C. Tracking online mail

5.1.18.12.3.1 (09-17-2010)

Requesting Assistance from USPS Personnel to Locate a Taxpayer's Address

1. In the case of a Rural Route address or when a location has new streets not yet reflected on local maps, you may need to request directions to locate the taxpayer's address. Take one of the following actions when you need assistance locating the taxpayer's address.
 - A. Ask the postal carrier for directions to a taxpayer's address.

Note:

It is **always** acceptable to request directions from the postal carrier.

- B. You can also write a note on Form 4759 requesting written directions to the taxpayer's address.

5.1.18.12.3.2 (09-17-2010)

Private Mailbox Companies

1. Some private companies offer private mailbox (PMB) rental services to taxpayers (individuals or businesses). Any contact with any of these PMB sources would be considered a third-party contact. *IRM 5.1.18.2.1.3.*
2. PMB companies include:
 - USPS contract stations (stations or branches operated under contract with USPS by persons who are not postal employees).
 - Other mailing service locations.

5.1.18.12.3.2.1 (09-17-2010)

Private Mailbox Addresses

1. Private mailbox companies may require a box number as part of the address for the "final sort". Instead of using the terms "Post Office Box" or "PO Box" in their addresses, some of these PMB companies use "Suite NNN" or "PMB NNN" or just "#NNN" to identify the "final sort" delivery point.

Note:

The words "Post Office Box" or "PO Box" cannot be used on the delivery address line of a PMB address. According to the USPS web site at: <http://www.usps.com/>, only USPS is entitled to provide delivery to a PO Box, so only USPS can use the terms "Post Office Box" or "PO Box" in the delivery address.

2. Postal regulations require that these companies do the following:
 - secure a completed PS Form 1583, *Application for Delivery of Mail Through Agent*, (a USPS form) from the taxpayer, in duplicate,
 - provide the original to USPS, and
 - maintain a copy at their business location.
3. PS Form 1583 provides contact information for the person who rented the box, including address, phone, corporate officers, and/or names of other individuals whose mail is to be delivered.
4. Request a copy of PS Form 1583 from the PMB company, in person or by mail.

Note:

Some PMB companies may immediately provide a copy of PS Form 1583 completed by the taxpayer upon written or verbal request. Others may require a summons before providing that information.

5. Follow the procedures for a third-party summons, if necessary. See IRM 25.5.6, *Summonses on Third-Party Witnesses*.

5.1.18.12.3.3 (09-17-2010)

Online Mail Tracking

1. Various IRM sections require "return receipt requested" when sending certified mail. The United States Postal Service (USPS) provides an online feature called "Track & Confirm" providing timely assurance of receipt instead of waiting for the return receipt post card to be returned.

- With certified mail, the unique article number allows verification of delivery at no additional cost.
- Delivery confirmation includes information about the date and time of delivery or attempted delivery.
- When the IRM requires "return receipt requested" , an additional fee will apply.

Note:

This does not replace the IRM requirement for "return receipt requested," even though an additional fee will apply.

2. Find additional information about "Track and Confirm" , certified mail, delivery confirmation, and return receipt at: <http://www.usps.com>.

[Next](#)

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 1. Field Collecting Procedures

Section 19. Collection Statute Expiration

5.1.19 Collection Statute Expiration

- 5.1.19.1 [Collection Statute Overview](#)
- 5.1.19.2 [Transaction Codes that Affect the CSED](#)
- 5.1.19.3 [Case Actions That Can Suspend And/Or Extend A CSED](#)
- 5.1.19.4 [CSED Payment Application](#)
- 5.1.19.5 [Imminent CSEDs](#)

Manual Transmittal

November 22, 2013

Purpose

(1) This transmits revised IRM 5.1.19, *Field Collection Procedures, Collection Statute Expiration*.

Material Changes

- (1) New IRM 5.1.19.1.1, Collection Statute Date Update, added
- (2) Chart in IRM 5.1.19.3.4, removed in lieu of link to IRM 5.8.10.7, *Effect of Previous Offers on Collection Statute*
- (3) Reminders added at 5.1.19.4(1).
- (4) (4) added at IRM 5.1.19.5.5 to address statute expiration on an open module in the control of another function.
- (5) **Note** added at IRM 5.1.19.5.6(1) that TC 608 may actually post prior to the date of the statute expiration
- (6) Editorial changes made throughout.

Effect on Other Documents

This supersedes IRM 5.1.19, dated May 23, 2013

Audience

The target audience is SB/SE Field Collection.

Effective Date

(11-22-2013)

Dretha Barham
Director, Collection Policy
Small Business/Self Employed

5.1.19.1 (11-22-2013) Collection Statute Overview

1. This IRM provides the rules and procedures for the collection statute expiration date (CSED). These rules are dictated by statute or the policies in other program areas affected by the CSED.
2. Each tax assessment has a CSED. Internal Revenue Code section 6502 provides that the length of the period for collection after assessment of a tax liability is 10 years. The collection statute expiration ends the government's right to pursue collection of a liability.
3. Prior to its amendment by the Restructuring and Reform Act of 1998 (RRA 98), section 6502(a) of the Internal Revenue Code authorized the Secretary to accept waivers extending the statute of limitations on collection after assessment prior to the expiration of the collection period. The Code did not place any restrictions on the length of the extension, the number of times an extension could be granted, or the circumstances under which an extension could be obtained. The RRA 98 significantly amended IRC section 6502. Extensions in effect on December 31, 1999, are subject to the following,

If	Then
The waiver was secured "in connection with" the granting of an installment agreement	The period for collection expires 90 days after the date specified in the waiver.
The waiver was not obtained at the same time as an installment agreement	The period for collection expires not later than December 31, 2002, or the end of the original collection statute.
4. Waivers of the collection period are secured only when the extension is agreed to:
 - A. At the same time a partial payment installment agreement is made, when appropriate (see IRM 5.14.2.1.3, *Waiver Procedures for Partial Payment Installment Agreements*), or
 - B. Prior to a release of levy under IRC 6343 that occurs after the expiration of the statutory ten-year period for collection.

5.1.19.1.1 (11-22-2013)

Collection Statute Date Update

1. You must be aware of CSEDs on accounts you are responsible for and take appropriate case actions to protect the CSED.
2. Ensuring the CSED is correct is important to collecting the correct amount due and observing taxpayer rights.
3. The CSED reflected on ICS and IDRS may not always be correct because, at times, actions that suspend or extend the CSED occur simultaneously, increasing the complexity of computing the CSED and requiring manual recalculation.
4. If you encounter an erroneous CSED while working your case, manually calculate the correct date and follow procedures to update it on ICS and IDRS.
5. Document the case history with the steps you followed to manually calculate the CSED prior to submitting the update to the group manager for approval. The group manager will review the CSED calculation and, if it is accurate, approve the update.

5.1.19.2 (06-04-2009)

Transaction Codes that Affect the CSED

1. In addition to Transaction Code (TC) 150 - Tax Assessed, there are certain other TC codes that carry their own CSEDs.
2. And other TC codes that suspend or extend the expiration date.

5.1.19.2.1 (06-04-2009)

Transaction Codes that Carry Their Own CSED

1. Certain transaction codes (TC) with specific reference numbers carry their own CSEDs, and display them on the Integrated Data Retrieval System (IDRS).
2. A list of these TC codes follows:

Transaction Definition

Code	Definition
TC 160	Manually Computed Delinquency Penalty
TC 166	Delinquency Penalty
TC 170	Estimated Tax Penalty
TC 176	Estimated Tax Penalty
TC 180	Deposit Penalty
TC 186	FTD Penalty
TC 234	Daily Delinquency Penalty (if it is the only CSED in the module)
TC 238	Daily Delinquency Penalty Miscellaneous Penalty (all except for Reference Codes 697 and 699)
Caution:	
TC 240	Because of a programming error, TC 240 with penalty reference numbers 680, 681, 682, and 686, posted prior to January 2009, may contain an incorrect CSED on BMF accounts. For collection purposes, TC 240 with reference numbers 680, 681, 682, and 686 has the same CSED as the related tax assessment (TC 290 or TC 300) regardless of the CSED computed on Master File as part of the TC 240.
TC 246	Form 8752 or Form 1065 Penalty
TC 290	Additional Tax Assessment
TC 294	Additional Tax Assessment with Interest Computation Date
TC 298	Additional Tax Assessment with Interest Computation Date
TC 300	Additional Tax or Deficiency Assessment by Examination or Collection
TC 304	Additional Tax or Deficiency Assessment by Examination or Collection
TC 308	Additional Tax or Deficiency Assessment by Examination with Interest Computation Date
TC 320	Fraud Penalty
TC 350	Negligence Penalty
TC 340	Restricted Interest (Doc Code 47 and 51 only)

5.1.19.2.2 (05-23-2013)

Integrated Data Retrieval System (IDRS) Transaction Codes (TC) That Suspend Or Extend A CSED

1. Certain actions allow for a suspension or extension of the CSED.
2. IDRS TC codes that suspend or extend CSEDs include but are not limited to:

Transaction Code Description

	Extension of Time to Pay Estate Tax
TC 468	Note: IDRS will allow more than one TC 468 and will recognize the last one posted.
TC 480	Offer in Compromise Pending (suspends CSED)
TC 488	Installment and/or Manual Billing (extends CSED)
TC 500	Military Deferment (suspends CSED)
TC 520 cc 76-81	IRS Litigation Instituted (suspends CSED)
TC 520 cc 60-67, 83, 85-89	Bankruptcy (suspends CSEDs)
TC 520 cc 82	CVPN with appeal rights (suspends CSED)
TC 550	Waiver Extension of Date Collection Statute Expires (extends the CSED to date input) For IMF accounts only, an optional CSED TIN indicator can be used to identify which taxpayer the extension applies to: (P) Primary; (S) Secondary; or, (B) Both .
TC 971 Action Code 043	Pending Installment Agreement

5.1.19.2.3 (06-04-2009)

TC 550 Waiver Extension Definer Codes

1. A TC 550 extends a CSED to the date input with this transaction on an IMF account.
2. To further identify the use of the TC 550, a list of definer codes and their use follows:

Definer Code Description

01	Form 900
02	Assets in Custody of the Court
03	Bankruptcy (incorrect CSED computation)
04	Judgment
05	Taxpayer Assistance Order (TAO)
06	Military Deferment
07	Offer in Compromise (incorrect CSED computation)
08	Wrongful Seizures
09	Taxpayer Living Outside the U.S.
10	Other (Collection Due Process)

5.1.19.3 (01-01-2006)

Case Actions That Can Suspend And/Or Extend A CSED

1. A variety of laws affect CSEDs. A brief summary of some of the various case actions that can suspend and/or extend a CSED follows. This IRM provides a brief overview of some of these case actions; it is not all inclusive. The following sections are included to highlight relevant issues. Details pertaining to the specific subject matter should be further researched in the applicable IRM section, which in most cases will be cross-referenced.
2. If more than one case action suspends the running of the collection statute, and the suspensions overlap, the CSED is viewed as extended only once for the period the suspensions overlap.

EXAMPLE: Taxpayer Smith owes 1040 taxes for the period ending 12/31/1998. The tax assessment date is 06/01/1999 which established the original CSED as 06/01/2009. Smith is in the Army Reserves, he gets called up for combat duty and enters the combat zone on 05/10/2004. He subsequently leaves the combat zone on 03/01/2005. He submits an offer in compromise on 04/20/2005, it is rejected on 10/17/2005, and the rejection is not appealed.

Both case actions, entering the combat zone and submitting the offer in compromise, suspend and extend the CSED. The military deferment suspends the CSED from 05/10/2004 through 03/01/2005 plus 180 days (through 08/28/2005). Consideration of the offer in compromise suspends the CSED from 04/20/2005 through 10/17/2005 plus an additional 30 days for the rejection appeal period to 11/16/2005.

However, because these case actions overlap, the CSED will be suspended only from the date Smith enters the combat zone (TC 500 cc 56 on 05/10/2004) through the date the offer in compromise is rejected and the rejection appeal period ends (TC 481 on 11/16/2005). In this case the overlapping of the two case actions, from 04/20/2005 to 08/28/2005, is considered in the CSED extension only once.

The CSED will be extended 555 days from the original CSED of 06/01/2009. The new CSED will be 12/08/2010.

5.1.19.3.1 (03-01-2006)

Bankruptcy

1. The CSED, in a case under the Bankruptcy Code, is suspended while the Service is prohibited by reason of the case from collecting, and for six months thereafter. For more information see IRC 6503(h)(2). Thus, the CSED is generally suspended while the automatic stay imposed by the bankruptcy is in effect. Even if the suspension of the CSED under IRC 6503(h) no longer applies, the CSED still may be suspended when substantially all the debtor's assets remain in the custody or control of the bankruptcy court under IRC 6503(b). For more information see IRM 5.9.4.2, *ASED/CSED*.

5.1.19.3.1.1 (07-19-2012)

Transaction Codes for Bankruptcy

1. A TC 520/521 suspends a CSED by the amount of time beginning on the TC 520 (posted Cycle 8624 or later) transaction posting date, and ending on the associated TC 521 posting date, plus six months.
2. A TC 520 with a closing code 60 through 67, 83, or 85 through 89 systemically suspends the CSED unless a TC 550 (new CSED) is posted with a later transaction date. For more information see IRM 5.17.8.28, *Effect of Bankruptcy on the Limitation Period for Assessment and Collection*.

5.1.19.3.2 (06-04-2009)

Judgment/Litigation

1. The statute of limitations for collection is found in IRC 6502. In order for a suit to reduce the tax liability to judgment to suspend the collection period, it must be filed prior to the CSED. The filing of a suit to reduce the tax liability to judgment will suspend the collection statute during litigation. For more information see IRM 5.17.4.7, *Suit to Reduce Assessments to Judgment*.

5.1.19.3.2.1 (05-23-2013)

Transaction Codes for Judgment/Litigation

1. TC 520 with closing code 70 through 75 and closing code 84 does not suspend the CSED.
2. TC 520 with closing code 76 through 81 suspends the CSED, unless a TC 550 (new CSED) is posted with a later transaction date. When a judgment is entered in a case where assessments were reduced to judgment, request input of TC 550, definer code 04, using 20 years from the date the judgment was entered as the new CSED.

Reminder:

The TC 550, definer code 04, must be input **before** the TC 520 is reversed. This will prevent the CSED from expiring if it fell during the pendency of the litigation.

5.1.19.3.3 (05-13-2005)

Collection Due Process (CDP) Appeal

1. The CSED is suspended from the date the Service receives a timely filed request for a CDP hearing to the date the taxpayer withdraws their request for a CDP hearing or the date the determination from Appeals becomes final, including any court appeals. If 90 days is not remaining on the statute of limitations when the determination becomes final, the statute of limitations is extended to equal 90 days. The collection statute is not extended for equivalency hearings. For more information see IRM 5.1.9.3.6, *Suspension of Collection Statute of Limitations*, and Treas. Reg. § 301.6330-1(g)(3), ex.1.

5.1.19.3.4 (11-22-2013)

Offer In Compromise

1. For offers pending prior to January 1, 2000, the CSED extension was affected by Treasury Regulation § 301.7122-1(f) (1960). Under this regulation the practice of the Service generally was to obtain from the taxpayer a waiver of the CSED for the period the offer in compromise was pending, while any installment of an accepted offer remained unpaid, and for one additional year thereafter.
2. For offers pending prior to January 1, 2000, a waiver of the CSED cannot extend the CSED beyond either December 31, 2002, or the original CSED, whichever is later, pursuant to section 3461(c)(2) of the IRS Restructuring and Reform Act of 1998 (RRA 98). For offers pending on or made after December 31, 1999, suspensions of the running of the CSED in the offer in compromise context are governed by statute, specifically by IRC 6331(k)(1) and (3).
3. Under these provisions, the Service is prohibited from levying, and the CSED is suspended
 - A. while an offer is pending with the Service,
 - B. for 30 days immediately following rejection of the offer, and
 - C. for the period that a timely filed appeal of a rejection is being considered in Appeals.CSED extensions for the period of time "while any installment remains unpaid" and "for one additional year thereafter" are eliminated.
4. The Community Renewal Tax Relief Act of 2000, effective December 21, 2000, amended IRC 6331(k)(3) and eliminated the suspension of the CSED while offers (and installment agreements) were pending.
5. The Job Creation and Workers Assistance Act of 2002, effective March 9, 2002, amended IRC 6331(k)(3) and reinstated the CSED suspension with respect to both offers and installment agreements. With respect to offers, the CSED is again suspended for
 - A. The number of days the offer remains open from March 9, 2002,
 - B. The number of days the offer is pending,
 - C. Thirty days after rejection of the offer, and
 - D. The period that a timely filed appeal of a rejection is being considered in Appeals.
6. Cases may be encountered where prior rules were in effect. For more information see IRM 5.8.10.7, *Effect of Previous Offers on Collection Statute*.
7. If only one party to a joint assessment files an OIC, then the CSED is suspended just for that person. The appropriate CSED suspension code must be input on IDRS to identify the specific taxpayer for which the offer applies. They are described below.
 - P = Primary
 - S = Secondary
 - B = Both

5.1.19.3.5 (10-16-2012)

Installment Agreements - Partial Payment Installment Agreements With Form 900, Tax Collection Waiver

1. Form 900, Tax Collection Waiver, is **only** executed in connection with the granting a **partial payment installment agreement** and only in certain situations. See IRM 5.14.2.1.3, *Waiver Procedures for Partial Payment Installment Agreements*. IRS policy dictates that a form 900 be limited to **no more than five years, plus up to one year to account for changes in the agreement**.

Note:

Prior to July 2005, IRS policy permitted CSED extensions in conjunction with all installment agreements.

2. Effective March 9, 2002, the CSED is suspended during:
 - the time the proposed installment agreement is pending,
 - thirty days following the rejection of an installment agreement,
 - thirty days following termination of an installment agreement, and,
 - any appeal of the termination or rejection of the installment agreement.

Note:

This change is not retroactive. The suspension of the running of the collection statute is during the time that a levy is prohibited. The CSED is not suspended while an installment agreement is in effect.

For more information see IRC §§6159(a),6331(k), 6502(a),IRM 5.14.2.2(4)b and c.

5.1.19.3.6 (07-19-2012)

Relief From Joint And Several Liability On Joint Returns/Innocent Spouse

1. Collection by levy or a proceeding in court against a spouse is suspended for the requesting spouse when he or she makes an election under IRC 6015(b), and/or IRC 6015(c). Collection is suspended for claims filed under IRC 6015(f) if the liability was unpaid as of December 20, 2006, or the liability did not arise until after December 20, 2006. For more information see IRM 25.15.1.8, *Statute of Limitations on Collection*.
2. The collection period is suspended from the filing of the claim until the earlier of the date a waiver is filed, or until the expiration of the 90 day period for petitioning the Tax Court, or if a Tax Court petition is filed, when the Tax Court decision becomes final, plus, in each instance, 60 days.
3. If a request for relief is made in response to collection due process procedures, there is also suspension of collection activity and the collection period provided for by IRC 6330(e) for the period during which any administrative hearings, and appeals therein, regarding the levy are pending. The rules for suspension under IRC 6330 differ from IRC 6015. In general, the latest suspension of collection and the collection period should control, which may require analyzing the suspension under both IRC 6015 and IRC 6330 where relief from joint and several liability is requested as part of an IRC 6330 hearing.
4. If the requesting spouse signs a waiver of the restrictions on collection, the suspension of the period of limitations on collection against the requesting spouse will terminate 60 days after the waiver is filed with the Service, limiting the CSED extension to the period from when the claim was filed to the time the waiver was signed, plus 60 days.

5.1.19.3.7 (06-04-2009)

Taxpayer Living Outside the U.S.

1. The period of limitations on collection after assessment is suspended while the taxpayer is outside the United States if the absence is for a continuous period of at least six months per IRC 6503(c).
2. To make certain that the Government has an opportunity to collect the tax after the taxpayer's return, the period does not expire (where the taxpayer has been out of the country for six months or more) until six months after the taxpayer's return to the country. As the application of this provision can result in the CSED being suspended for a very long time, policies for the administration of this code section are now established.

5.1.19.3.7.1 (06-04-2009)

Policies For Adjusting the CSED When Internal Revenue Code (IRC) 6503(c) Applies

1. These instructions are designed to promote procedural consistency in working International cases and to make statute suspension procedures, applying to Domestic and International taxpayers, more comparable. They apply to taxpayers who are presently abroad as well as to taxpayers who are currently in the U.S., but who were abroad for at least six consecutive months after the tax assessment date.
2. The period that the CSED is recalculated and updated will be more limited with respect to taxpayers who have cooperated with IRS to resolve their liabilities or with whom we have maximized the IRS's ability to collect.
3. A taxpayer will be considered "cooperative" if the IRS determined that the taxpayer has fully responded to the IRS and has provided full information to the IRS with respect to collection of the assessment. In such instances, the case may be resolved by a taxpayer entering into a formal installment agreement or an offer in compromise or with the case being closed as currently-not-collectible for hardship reasons with closing codes 24 through 32.
4. This policy does not apply to international taxpayers who have not resolved their liabilities and who are not cooperative. In those situations, where a taxpayer has been uncooperative or has not resolved the liability, the CSED will be recalculated and updated for the maximum amount of time allowed by IRC 6503(c) if the IRS determines that there is significant collection potential.
 - A. With respect to taxpayers who are currently outside the United States, and who have systemically loaded or manually monitored installment agreements or periodic payment offers in compromise, for which the payment schedule is greater than 24 months, the maximum length of CSED recalculation is 16 years from the date of assessment.
 - B. Continuous levies for taxpayers with international addresses will be recalculated and updated for however many years the IRC 6503(c) provision allows if the taxpayers involved have not cooperated with IRS to resolve their liabilities. In rare instances where a taxpayer has decided and agreed with the IRS to let the continuous levy be in effect as if it were a formal installment agreement, the statute will only be recalculated to a maximum duration of 16 years.
 - C. Taxpayers currently in the United States who had previously been outside the United States for at least six consecutive months since the date of assessment will generally have a maximum of five years added to their CSED for prior IRC 6503(c) suspensions.

Example:

A taxpayer who was outside the United States for three years after the assessment was made would have a CSED recalculation and update of three years. A taxpayer who had been outside the United States for seven years after the assessment was made would have a CSED recalculation and update of five years. In rare instances where a taxpayer with significant collection potential had been out the United States for decades, recalculate the CSED as necessary for the time anticipated to collect the liability up to the maximum time allowed under the code.

- D. International taxpayers who are being reported as currently-not-collectible with the following closing codes:

- 03 (unable to locate),
- 06 (International), or
- 12 (unable to contact)

may be subject to ongoing recalculations and updates. Again, a determination of significant collection potential should be made when determining how long the collection statute should be recalculated.

- E. The collection statute should not be recalculated and updated for international taxpayers who have been reported as currently-not-collectible for hardship reasons (closing codes 24 through 32), except in rare instances where a mandatory follow-up date was set to determine if an asset had matured for collection potential.

5.1.19.3.7.2 (06-04-2009)

Reasons For Recalculating the CSED For IRC 6503(c)

1. Reasons can be based on the following criterion (applied to the extent that the policies above allow):
 - A. A Form 433A that the taxpayer or power of attorney has signed stating the dates of residence outside the United States and Commonwealth Territories.
 - B. Any other written information from the taxpayer or power of attorney stating the taxpayer was outside the United States and Commonwealth Territories.
 - C. Oral statements by the taxpayer or power of attorney stating the dates the taxpayer was outside the United States and Commonwealth Territories so long as this information is clearly documented in the case history.
 - D. Tax returns consistently filed since the year of tax assessment with a foreign address (with recalculation and update of the CSED up to the date the taxpayer signed the return).
 - E. When you are not able to use one of the methods above to determine and verify the period the CSED is to be suspended, check data sources such as Accurint, SmartAlx, IRP, third party testimony, etc., to determine whether a taxpayer has been outside the United States for a long period of time. Such sources may be used in later taxpayer or POA discussions to confirm the dates foreign travel/residence; however, do not rely solely on these sources to justify updating the CSED.
2. If you are ultimately unable to communicate with the taxpayer or POA, you may be able to confirm that the taxpayer has been outside the United States with a government-based travel or residency source of information such as TECS Historical Travel Records, see IRM 5.1.18.14.7, or Department of State records of registration with a U.S. Consulate in a foreign country. When a case has significant collection potential and the preponderance of information assembled at that point indicates being outside the U.S. for the time period in question, you can update the statute for that period.

5.1.19.3.7.3 (07-19-2012)

CSED Suspension for Partnerships with Addresses Outside the U.S.

1. Per IRC 6503(c), the running of the collection statute is suspended for the period during which a taxpayer is outside the United States for a continuous period of at least six months. Per IRC 7701(a)(1) and (a)(14), the term "taxpayer" includes partnerships.

2. For partnerships with an address outside the U.S. see the If/Then table below,

<p>If</p> <p>there is no other evidence that a taxpayer was in the U.S. for a continuous period of at least six months</p> <p>a partnership has an address outside the U.S.</p>	<p>Then</p> <p>the taxpayer's use of an address outside the U.S. for that time is sufficient to establish they were outside the U.S. for such time.</p> <p>the CSED for partnership balance due accounts is suspended until the partnership returns to the U.S.</p>
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3. Determining that a partnership,

- A. is outside the U.S.,
- B. has remained in the U.S., or
- C. has returned to the U.S.

may be more difficult for a partnership than an individual. Consult with Counsel to be sure you have sufficient evidence before recalculating a partnership's CSED.

4. Be prepared to discuss with Counsel the following,
 - A. Does the partnership own property within the U.S.?
 - B. Was the partnership formed or registered within a state?
 - C. Does the partnership have a resident agent?
 - D. Does the managing partner (general partner) reside in the U.S.?
 - E. Do the majority of partners reside in the U.S.?
 - F. Does the partnership earn a substantial amount of its income from activities within the U.S.?

Note:

It may not be beneficial to recalculate a partnership's CSED if there is no collection potential.

5. Only the partnership outside the U.S. has the CSED suspended under IRC 6503(c).

If	And	Then
the partnership has an address outside the U.S.	one or more of the partners are in the U.S.	the CSED for the partnership taxes is still suspended under IRC 6503(c).
the partners owe individual taxes	the partners live in the U.S.	the CSED for the partner's individual taxes is <u>not</u> suspended under IRC 6503(c)

**5.1.19.3.7.4 (07-19-2012)
Procedures For Adjusting the CSED**

1. Use Form 8620, Statute Recalculation, to request CSED updates based on the criteria established above. Because IRC 6503(c) automatically suspends the statute, there is no reason for the taxpayer to sign Form 8620.
2. Forms 8620 should be sent via secured e-mail to Centralized Case Processing (CCP) the campus address to which input requests are sent.

Note:

Statute recalculations and updates for IRC 6503(c) must have managerial approval on Form 8620 or on ICS.

3. Form 8620 is not required for Bal Due modules active in ICS. IRC 6503(c) CSED updates can be made, with managerial approval, via ICS.

**5.1.19.3.8 (07-19-2012)
Accounts of Taxpayers Who Serve in a Combat Zone or Contingency Operation**

1. The deadline for certain acts performed by taxpayers and the Service is postponed when the taxpayer serves as follows in:
 - A. An area designated as a combat zone;
 - B. A contingency operation designated by the Department of Defense;
 - C. A qualified hazardous duty area as defined by Congress; or
 - D. Direct support of military operations in a combat zone certified by the Department of Defense.
2. The acts specified in IRC 7508 include paying :
 - income tax
 - estate tax
 - gift tax
 - employment tax
 - excise tax
 - and collecting any tax.

Rev. Proc. 2007–56, or its successor, expands the list provided in the statute.

3. A deadline is postponed while the taxpayer serves in the area or operation and for any period of continuous hospitalization from such service (limited to five years of hospitalization in the United States), plus 180 days after the last day of service in the area or operation or period of hospitalization. See IRC 7508(e) for exceptions concerning tax in jeopardy, cases under title 11 of the USC (bankruptcy), and transferred assets. For more information see IRM 5.1.7.9, *Accounts of Taxpayers Who Serve in a Combat Zone*.
4. The combat zone or contingency operation freeze code suspends the CSED and can be set in two ways:
 - Processing of a tax return where the taxpayer has written "Serving in Desert Storm/Shield, Bosnia, former Yugoslavia, Allied Force, Afghanistan, or Enduring Freedom."
 - Manual input of Transaction Code 500 with Closing Code 52 for the Desert Storm Combat Zone, Closing Code 54 for Bosnia/Former Yugoslavia or Allied Force, or Closing Code 56 for Afghanistan or Iraqi/Enduring Freedom. For more information see IRM 5.1.7.9.3, *Combat Zone Freeze Codes*.
5. Once the a taxpayer has been in a Combat Zone the "-C" freeze remains on the account for historical purposes, even with accurate entry and exit dates.
6. Research IMFOLI for the Combat Indicator on line 11.

If	Then
Combat indicator is "1"	the taxpayer is still serving in a combat zone and collecting or assessing tax is prohibited.

Combat indicator is "2" the taxpayer is no longer a combat zone participant, proceed with the collection investigation.

5.1.19.3.9 (02-15-2005)

Military Deferment

1. Under the Servicemembers Civil Relief Act (cited as 50 U.S.C. App. 570) the collection of any income tax due from any person in the military service, whether falling due before or during military service, may be deferred up to 180 days if ability to pay the tax is materially impaired because of that person's military service. The CSED is suspended during the taxpayer's military service and for an additional 270 days afterward.
2. Transaction Code 500 with Closing Code 51 suspends the CSED for a Military Deferment. For more information see IRM 5.1.7.12.1, *Military Deferment Procedures*.

5.1.19.3.10 (02-15-2005)

Wrongful Levy (Seizure)

1. A wrongful levy suspends the running of the period of limitation on collection pursuant to IRC 6503(f)(1). The collection statute is suspended for a period equal to the period from the date property is wrongfully seized or received to the date returned under IRC 6343(b) or the date on which a judgment is secured under IRC 7426, plus an additional 30 days.
2. The suspension is only applicable to an amount equal to the amount of money or the value of the property returned. For more information see IRM 5.10.6.15, *Wrongful Seizure - Payment of Claims After Sale*.

5.1.19.3.11 (02-15-2005)

Wrongful Lien

1. A wrongful lien suspends the running of the period of limitations on collection. Under IRC 6503(f)(2) the collection statute is suspended from the date any person becomes entitled to a certificate of discharge of lien under section IRC 6325(b)(4) until the earlier of the earliest date on which the Service no longer holds any amount as a deposit or bond under section IRC 6325(b)(4) or the date on which a judgment under section IRC 7426(b)(5), concerning the amount deposited or used as bond, becomes final.
2. Where the period of limitations is suspended under this provision, it is suspended only for the value of the interest of the United States in the property plus interest, penalties, additions to tax, and additional amounts attributable thereto.

5.1.19.3.12 (07-19-2012)

Estate Tax Lien

1. Taxes assessed on Form 706 *U.S. Estate (and Generation-Skipping Transfer) Tax Return*, are allowed various special elections under the Internal Revenue Code that allow for deferral of payment of estate taxes due. Under IRM 6503(d), the CSED is suspended for the period of any extension of time for payment that is granted. See also IRM 5.5.7.6, *Collection Statute Expiration Date*.
2. Generally there are two Code sections commonly seen on collection accounts, IRC 6166 and IRC 6161, that allow deferral of payment for estate tax due. Estates must meet specifications outlined in the Code in order to qualify for these payment deferrals.
3. IRC 6166 allows for a 5-year deferral and annual installment payments over a 10-year period. TC 488 (or status 14) is input on IDRS to identify accounts that may have been granted a payment deferral under IRC 6166. Generally the CSED is extended for the period of time between the TC 488 date and TC 489 date (the time period in status 14), which reflects reversal of the allowance of this special election. IRM 5.5.7, *Collecting Estate and Gift Tax Accounts*, provides additional information on collection of estate tax accounts and the CSED.
4. IRC 6161 allows an extension to pay estate taxes for up to 12 month increments for a maximum of 10 years. TC 468 is input on IDRS to identify accounts that may have been granted additional time to pay estate taxes due under IRC 6161. Generally the CSED is extended for the period of time between the TC 468 date and the TC 469 date, which reflects expiration of the extended time to pay. IRM 5.5.5, *Processing Estate and Gift Tax Extensions*, provides additional information on IRC 6161 accounts and the CSED.
5. An extension to pay under IRC section 6161 may be requested on annual installment payments deferred under IRC section 6166. If granted the additional period of time allowed to pay the installment payment should be added into the CSED calculation.
6. CSEDs should always be checked when working estate tax accounts. The Advisory Estate Tax group can provide assistance with proper calculation of the CSED.
7. The tax liens under IRC 6324(a) and IRC 6324(b) expire exactly 10 years from the decedent's death or the date of the gift, respectively, whether or not any action for the collection of such tax has been commenced or the CSED under IRC 6502 remains open.

5.1.19.3.13 (07-19-2012)

Taxpayer Assistance Order (TAO)

1. IRC 7811(d) and the accompanying regulations provide that if a taxpayer submits a Form 911, Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order), the statute of limitations on collection and/or assessment may be extended for a certain period.
2. Due to systemic programming limitations, the Commissioner decided in November 2003, that Taxpayer Advocate Service (TAS) does not have to input the appropriate IDRS codes to reflect the suspension of the statute of limitations under IRC 7811(d). The program limitations are still in effect; therefore, IDRS codes are not input to show the correct suspension periods for IRC 7811(d) at this time. See IRM 13.1.14, *Suspension of the Statutes of Limitation Under IRC§ 7811(d)*.

5.1.19.3.14 (02-15-2005)

Enforcement Of The Two-Tier Tax Scheme

1. IRC 4961(c) also suspends for period of collection for second-tier taxes, if an action for refund on the first-tier tax is commenced not later than 90 days after the day on which the second-tier tax is assessed. See IRM 7.27.15.3.4, *Enforcement of the Two-Tier Tax Scheme*, for complete details.

5.1.19.3.15 (01-01-2006)

Substitute for Return

1. When a taxpayer fails to file a timely income tax return or files a false or fraudulent return, the Service may execute a return under the authority of the IRC 6020(b) deficiency procedures. If the taxpayer fails to respond to the 90 day notice, the Service makes a deficiency assessment. The Service may also make a deficiency assessment if the deficiency is upheld by the Tax Court. Upon that assessment, the 10 year period of limitations on collection, provided for in IRC 6502(a)(1) begins.
2. If the taxpayer later files their own "original" return showing a tax liability smaller than the assessed liability, and that return is accepted by the Service as filed, the tax liability may be reduced to show the amount of tax reflected on the taxpayer's return. The original CSED date remains intact.
3. If the taxpayer's "original" return reflects more tax than that assessed from the statutory notice based on the section 6020(b) return, then an additional assessment is input for the increased amount. In this scenario, the original CSED remains intact and a second CSED will be systemically established based on the additional assessment.

5.1.19.4 (11-22-2013)

CSED Payment Application

1. Apply payments to the bal due module with the most imminent CSED first. This includes proceeds from seizures, levies, installment agreements and other undesignated voluntary payments.

Reminder:

The CSED reflected on IDRS or ICS may not be correct due to simultaneous actions suspending or extending the CSED.

Reminder:

A module for a later period may have a more imminent CSED than the CSED for earlier periods. Apply the payment to the period with the *earliest CSED* on an assessed liability.

2. Do not solicit voluntary payments on accounts barred by statute. If a taxpayer makes a payment on an account barred by statute, inform them that the payment is not required and ask if they wish to make the payment or have it returned to them. The taxpayer must be advised that the payment is purely voluntary and will be treated as a gift to the U.S. Treasury. If the taxpayer's intentions cannot be ascertained, return the payment to the taxpayer.
3. Proceeds from the sale of assets seized prior to the expiration of the statute can be applied after the date of expiration. The affected modules require that Transaction Code (TC) 520 Closing Code (cc) 80 be input. Any outstanding balance will be closed using TC 530 cc 05 after the application of sale proceeds and after the statute expires.
4. Proceeds that are received as a result of a levy which was served prior to the CSED may be applied to the expired module(s).

Note:

In some instances penalties may have a different CSED apart from any other assessment on the module.

5.1.19.5 (01-01-2006)**Imminent CSEDs**

1. An imminent CSED is any CSED with 12 months or less remaining on the collection statute.
2. With guidance from Headquarters, managers may close imminent statute cases or modules *issued* to their hold files with less than six months on the CSED by routing certain cases or modules to an ICS/Entity Quality Analyst (IQA) for CNC closing. This limited use of the Transaction Code 530 with Closing Code 39, requires Headquarters guidance. When such guidance is issued, it will list the case criteria and specific actions required and will be referred to in the ICS case history by the group manager.
3. Field Collection managers and employees are responsible for verifying that imminent CSEDs are correct.
4. Failure to properly identify and appropriately work imminent CSED accounts can result in an unnecessary loss of revenue to the government.
5. Field Collection employees must work imminent CSEDs timely as priority cases.

5.1.19.5.1 (02-15-2005)**Monitoring Imminent CSEDs**

1. You are responsible for monitoring any imminent CSEDs in cases assigned to you. Some of the various ways to do this are:
 - ENTITY queries
 - ICS generated reports
 - ICS Case Summary screens display the earliest CSED for the case
 - ICS generates notifications at pre-set intervals prior to CSED expirations, starting one year prior to expiration

5.1.19.5.2 (02-15-2005)**Working Imminent CSEDs**

1. Imminent CSED accounts should be worked to an appropriate conclusion prior to the statute expiration whenever circumstances permit. Appropriate case actions on imminent CSED accounts depend on the specific facts of the case.
2. Newly received imminent CSED accounts should receive taxpayer contact as soon as possible.
3. Timely follow-ups should be made and there should be no lapses in case activity.
4. Imminent CSED accounts sometimes include modules that do not have imminent CSEDs. It is important that all modules are worked appropriately. However, low dollar imminent CSED accounts should not receive undue or excessive attention simply because the collection statute is imminent.
5. Cases should not be closed with an inappropriate Currently Not Collectible (CNC) closing code merely because an imminent CSED is about to expire on one or more modules. If an investigation has been completed prior to the expiration that shows the account to be truly uncollectible, based on the facts of the case, all modules should be reported as such under the appropriate CNC closing code as directed in IRM 5.16.1, *Currently Not Collectible*.

5.1.19.5.3 (09-07-2007)**Documenting Imminent CSEDs**

1. Upon receipt of an imminent CSED module, or when CSED(s) become imminent, discuss with your group manager the imminent CSED(s) during the first Collection Consultation (CC) following receipt and agree on the most appropriate plan of action based on the facts of the case. During the CC, the group manager will document the initial plan of action in the case history. If the case is received with 120 days or less left on the CSED, immediately make an immediate appointment with your group manager to discuss the case as an ad hoc CC.
2. During subsequent Collection Consultations or as facts warrant, keep the group manager advised of the progress of all imminent CSED modules.
3. When 120 days remain until CSED, the group manager will notify the territory manager via secure e-mail advising of the imminent CSED and to review the case history for documented plan of action to resolve it. The group manager will provide an electronic copy of the e-mail to be printed and included in the case file.

5.1.19.5.4 (02-15-2005)**Expiration Of A Collection Statute**

1. If all appropriate case actions has been taken without resolving the imminent CSED module prior to expiration, it may be permissible to let the collection statute expire in inventory with the group manager's prior concurrence.
2. Document the case history with a summarizing statement that contains the specific MFT, Tax Period, Amount, CSED and facts to support the decision **prior to statute expiration**.
3. The group manager will review the summary and case history. If the group manager does not concur, the group manager and revenue officer will discuss and document a new plan of action.

5.1.19.5.5 (11-22-2013)**Collection Statutes That Expire Without Prior Approval**

1. If a collection statute expired without the group manager's prior concurrence or due to inappropriate case actions, enter a statement in the case history addressing the reasons why the statute expired. The statement should include any unusual or mitigating circumstances.
2. The group manager will review the summary, case history, and any other relevant information to determine if further administrative action is warranted, and whether disciplinary action is appropriate. The group manager will prepare a memo to the territory manager detailing why the CSED expired, why further administrative action is or is not warranted, and to include discipline if appropriate.
3. The territory manager will review the memo and determine if it should be forwarded to the area director for recommended potential disciplinary action.
4. If the collection statute expires on a Bal Due, non-field other investigation (NFOI), or any other open module in the control of another function, e.g., Area Counsel, Appeals, etc., then advise the manager and document the circumstances of the expiration in the case history.

5.1.19.5.6 (11-22-2013)

Removing Expired Statute Modules From Inventory

1. Statute expiration will normally generate a TC 608 credit to zero out a module within several cycles; therefore, in most instances, it is not necessary to prepare a Form 53 to report an expired CSED account.

Note:

The TC 608 can post up to two cycles prior to the actual statute expiration date.

2. In some instances, such as non-master file and filing a suit, it will be necessary to prepare a Form 53 using closing codes 04 or 05. For more information see IRM 5.16.1.2.2, *Statute Expiration*.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 1. Field Collecting Procedures

Section 20. Collection Inventory

5.1.20 Collection Inventory

- 5.1.20.1 [Collection Inventory — Overview](#)
- 5.1.20.2 [Collection Inventory Management](#)

Manual Transmittal

October 27, 2014

Purpose

(1) This transmits a revised version of IRM 5.1.20 Field Collecting Procedures, *Collection Inventory*.

Material Changes

- (1) IRM 5.1.20.2. clarifies information about the Inventory Delivery System (IDS).
- (2) IRM 5.1.20.2.1 clarifies that Risk Code 399 is an exception to the risk level rules.
- (3) IRM 5.1.20.2.2.2 clarifies information about case grading.
- (4) IRM 5.1.20.2.3.1 is updated to reflect that PPIA asset cases are direct assignments.
- (5) IRM 5.1.20.2.3.2 is updated to remove the following items:
 - Effective January 2003: Any W&I BAL DUE with the most recent history record entry of notice type Computer Paragraph (CP) 504 and secondary BAL DUE selection code RP8
 - Any W&I DEL RET where the Repeater Indicator is 4 or 8
 - Any DEL RET or COMBO where the DEL RET Selection Code is 38
- (6) IRM 5.1.20.2.3.3 is updated to reflect that:
 - All FERDI cases are restricted from moving to the queue.
 - Restitution cases (MFT 31 RBA) may not be returned to the queue.
 - ICS no longer restricts defaulted/terminated PPIA Asset cases from being moved to the queue.
 - Private debt collection is removed from the list of restrictive conditions.
- (7) IRM 5.1.20.2.4.1.1 , *Document Routing*, is removed.
- (8) Miscellaneous editorial changes and updated references are incorporated throughout.

Effect on Other Documents

This IRM supersedes IRM 5.1.20, *Collection Inventory*, dated June 1, 2010.

Audience

The target audience is revenue officers in SB/SE Field Collection (FC).

Effective Date

(10-27-2014)

Rocco A. Steco
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Small Business/Self Employed
SE:S:ECS:CP

5.1.20.1 (05-27-2008) Collection Inventory — Overview

1. This IRM provides information, guidance, and procedures for Field Collection (FC) employees regarding collection inventory selection, delivery, and management.
2. The procedures in this IRM are specifically for revenue officers due to the complex nature of the collection cases assigned to them although other employees in SB/SE and employees in other functions may refer to this IRM.

5.1.20.2 (10-27-2014) Collection Inventory Management

1. Collection inventory is selected and delivered by the Inventory Delivery System (IDS). IDS uses analytics, risk-based collection criteria, and established business rules to route cases to:
 - the Automated Collection System (ACS)
 - the ENTITY queue (See IRM 5.3.1, *ENTITY Case Management System*)
 - direct assignment to Field Collection (FC) as noted in *IRM 5.1.20.2.3.1*.
2. IDS uses the Address Research (ADR) application and outside vendors (such as the National Change of Address from the United States Postal Service) to locate good addresses for undelivered mail.
3. IDS also uses the Telephone Number Research (TNR) application to locate current phone numbers for taxpayers.
4. IDS receives cases from the Automated Collection System (ACS), Automated Substitute for Return (ASFR), Automated 6020(b)(A6020b), Taxpayer Delinquent Account (TDA) Analysis, and Taxpayer Delinquency Investigation (TDI) Analysis. IDS requests relevant information from IDRS Taxpayer Information File (TIF) and Corporate Files On-Line (CFOL) which is then used for inventory processing analysis.

5.1.20.2.1 (10-27-2014)

Collection Inventory Management — Prioritization

1. Risk-Based Collection is the way inventory is prioritized in the field; cases are categorized according to their risk level. The Inventory Delivery System (IDS) routes cases according to Risk-Based Collection criteria and analytics. Risk-Based Collection is a program of integrated policy, strategy, and measures that emphasizes long-term compliance solutions through the development and application of risk-based decision support tools. Analytics uses advanced modeling techniques to identify high priority cases. These cases are then accelerated for immediate issuance to front-line collection employees.
2. Both ENTITY and IDS use risk-based Collection criteria defined by their programs. The ENTITY System delivers inventory from the queue to the field. This inventory is prioritized by ENTITY defined risk levels:
 - High Risk = 99 (Accelerated), 101 - 108 (High Risk 100 = direct assignment to GM Hold File (bypass queue))
 - Medium Risk = 201 - 208
 - Low Risk = 301 - 303

Exception:

Risk level 399 is a default risk level for non-IDRS assignments and is not associated with the priority of the case. For example, an OI issued by Centralized Case Processing (CCP) for collection on a pyramiding in-business taxpayer may be assigned risk level 399 but is a high risk case.

5.1.20.2.2 (05-27-2008)

Collection Inventory Management — Tools

1. Several tools are available to field employees to assist with inventory management. The available tools are:
 - the Integrated Collection System (ICS), and
 - the Entity Case Management System (ENTITY).

5.1.20.2.2.1 (05-27-2008)

Integrated Collection System

1. The Integrated Collection System (ICS) provides workload management, case assignment/tracking, inventory control, electronic processing, and case analysis tools to support the SB/SE organization collection fieldwork. ICS is a two-tier system supporting detached/docked laptops.
2. Access the ICS web site for further information including updates about ICS changes: <http://icsweb.web.irs.gov/>.

5.1.20.2.2.2 (10-27-2014)

Resources and Workload Management System (RWMS)

1. The Resources and Workload Management System (RWMS) is used only to determine the case grade when the case is not processed through IDS. IDS is the primary system to grade cases.

5.1.20.2.2.3 (05-27-2008)

ENTITY

1. The ENTITY Case Management System is an automated system used at the group, territory, Area, and National level. The ENTITY system uses data from ICS and IDRS (Delinquent Investigation/Account Listing (DIAL) extracts) for case management, report compilation, and management information.
2. See IRM 5.3.1, *ENTITY Case Management System*.
3. See IRM 5.3.1.2.1, *Case Assignment Procedures*.

5.1.20.2.3 (05-27-2008)

Collection Inventory Management — Rules

1. Existing business rules limit or restrict Balance Due Account (BAL DUE) and Delinquent Return Investigation (DEL RET) movement in several different ways.

5.1.20.2.3.1 (10-27-2014)

Cases that Bypass ACS and the Queue that go Directly to ICS

1. The following BAL DUE or DEL RET cases move directly from notice status to active collection by FC. These cases bypass both ACS and the Queue and are assigned directly to ICS (cases will be sent directly to the manager's hold file):
 - Any Non Master File (NMF) account
 - IRS Employee
 - Transaction Code (TC) 148-9 (Letter 903)
 - Any revenue officer manual (quick or prompt) assessment
 - Wage & Investment (W&I) case transferred to SB/SE campus or case transferred outside of current campus with an imbedded field assignment number or last Master File Status was Status 26

- Possible problem/duplicate case where there is no Service Center (SC) History and the case is NOT being transferred and the last Master File Status 26
- Open BAL DUE or DEL RET already assigned to ICS – new module added
- Current IDRS assignment number to ICS and no open BAL DUE or DEL RET

Example:

CIP, OI, etc.

- Quick Assessments
- Prompt Assessments
- Defaulted IBTF IA's
- Defaulted PPIA asset cases
- NMF Cases
- Cases with Sub Code = 601, 602, 603 (Taxpayer Requested Contact)
- Cases with Sub Code = 604 (Large Dollar Asset Case - IMF)
- Any cases returning from Appeals (Status 72) - the most recent prior assignment was FC
- Any Innocent spouse (MFT 31) assessment - Master File Status = 21 and the most recent prior assignment was FC

5.1.20.2.3.2 (05-27-2008)

Cases that Bypass ACS and Go to the Queue

1. The following BAL DUE and DEL RET cases bypass ACS. They move from notice status directly to the queue where they await assignment for collection:

- TC 148-5, 6, 7 or significant account Intelligence code
- Any DEL RET where the case code is 914 or 3949; Offer in Compromise (OIC) acceptance year is significant; Windfall Profit Tax, MFT 03 with abstract number 50 or 52 and abstract amount (assessment) is significant
- MFT 12, 15, 31, 52, 61, 63, 64, 77, or 78

Note:

For DEL RET, MFT must be 12, 52, 61, 63, or 64

- Left hand freeze code L , or a posted or pending non reversed TC 971 containing action code 65 – Innocent Spouse
- Any installment agreement needing financial review
- W&I case transferred to SB/SE campus or case transferred outside of current campus with an imbedded queue assignment or last Master File Status = Status 24
- Master File Collection Location Code (CLC) housekeeping or possible problem/duplicate case where there is no SC Status history and the case is NOT being transferred and the last Master File Status = Status 24
- Any DEL RET where the MFT is 03 and the delinquent module filing requirement is 6 or 7

5.1.20.2.3.3 (10-27-2014)

Cases that Cannot be Moved to the Queue

1. The following cases (whether when directly assigned or later routed to ICS) are restricted from moving to the queue:

- A. Any Non Master File (NMF) account
- B. IRS Employee

Note:

If other FERDI cases are received in ICS they may not be returned to the queue.

- C. Refund Hold (DEL RET) case
- D. TC 148- 9 (Letter 903), reverse with a TC 149 as appropriate
- E. MFT 31, 46, or 79 and Collection Statute Expiration Date (CSED) expires within six months
- F. Secondary DEL RET Code I
- G. DEL RET notice code T (duplicate request)
- H. Related module in Status 76 (immediate TDA pending) or related module in Status 77 (accelerated notice account)

Note:

You must wait until the related module(s) goes to Status 26 and then put the case in the queue.)

- I. Taxpayer cases, with some or all modules, under Appeals jurisdiction for a CDP or equivalent hearing.

Note:

This restriction from moving to the queue is not systemic.

Exception:

If there is a CDP Appeals OI open on ICS, you may send the case to the queue.

- J. Restrictive Conditions listed in Section 8 of Document 6209

Note:

IDRS balance due processing identifies certain restrictive conditions which prohibit issuance of balance due notice and TDA. If a restrictive condition exists on a tax module eligible for update to notice of TDA status, the module will not update to the next status. It will be analyzed in the next processing cycle for issuance of the appropriate status.

If any of the conditions displayed in the table below (Master File Codes — Restrictive Conditions) are present on a module/account, IDRS will not update the status or resume balance due notice/TDA issuance until all restrictive conditions are removed.

These conditions must be taken into consideration when a command code or transaction code are input to reactivate the balance due notice/TDA routine.

Master File Codes — Restrictive Conditions

1. Unreversed TC 470
2. Pending TC 470 (no CC, CC 94, or cc 98)
3. Left-hand freeze O (O-)
4. Right hand freeze A, J, V, or X
5. Pending unpostable transaction code (UN or NU)
6. Current cycle is earlier than cycle of return due date plus 2 cycles
7. FTP penalty or interest accrual amount is negative
8. Masterfile balance due notice issued within the past 5 vveeks
9. Unreversed TC 914, TC 916, TC 918 present
10. Pinex notice 569T or 569R issued within the past 5 weeks
11. PN TC 150 - 400, 411, 412, 488, 520 (except CC 71, 72, 75, or 84), 530, 534, 535, 611-692 (except TC 6X0), 701-772 (except TC 7X0), 792, 802, 806, 807, 820-843, 850, 890, 971, 976, 977
12. If next notice is 505 (TDA) and -G freeze present
13. Module within 6 months of the latest CSED
14. Unreversed TC 608 present
15. LEFT-HAND-FREEZE-CD contains an L-
- 16.

K. MFT 31 RBA (restitution based assessment) cases

Note:

Most of these cases are currently identifiable by ICS and are blocked up-front. Those cases not blocked will return to ICS or show up on the ICS/ENTITY Quality Analyst (IQA) listing.

Reminder:

Defaulted/terminated PPIA asset/no asset cases may be moved to the queue if appropriate.

**5.1.20.2.3.4 (05-27-2008)
Cases with Restricted Assignment**

1. The following cases (whether directly assigned or later routed to ICS) are restricted from moving from their present assignment. These cases cannot be sent to the queue and they are not transferable, etc., when the following conditions are present:
 - Disaster code 1, 2, or 3
 - Left hand freeze code O
 - Any IMF case with a Killed in Terrorist Action (KITA) indicator 2

**5.1.20.2.4 (05-27-2008)
Collection Inventory Management— Assignments and Inventory Levels**

1. Inventory is delivered to FC in different ways; there are various types of revenue officer assignments. Target Inventory Levels were implemented to establish consistent inventory levels and maximize customer service and productivity for revenue officers nationwide. The ENTITY Case Management system is the primary method by which managers assign cases to the revenue officers. Once cases have been assigned, they may be reassigned using ICS.

**5.1.20.2.4.1 (05-27-2008)
Revenue Officer Assignments**

1. Revenue Officer assignments consist of the following:
 - A. Balance Due Accounts (BAL DUEs)

Note:

The dollar criteria for routine BAL DUE issuance is included in paragraph (2) below..

- B. Delinquent Return Investigations (DEL RETs)
- C. Courtesy Investigations (Ols)
- D. Federal Tax Deposit Alerts (FTD Alerts)
- E. Offers in Compromise (Form 656 , *Offer in Compromise*, and Form 2525 , *Record of Offer in Compromise*)
- F. Compliance Initiative (or Improvement) Projects (CIPs) (formerly known as Returns Compliance Programs)

2. =====

- =====
- =====
- =====

Exception:

=====

- =====

5.1.20.2.4.2 (05-27-2008) Targeted Inventory Levels

1. Targeted Inventory Levels are used in an effort to secure maximum productivity for Field Collection (FC) without a cost to quality and customer service. National inventory ranges are established to provide a measure of uniformity between the various field offices. The national ranges are as follows:
 - Grade 13 — 34 to 50 taxpayer cases
 - Grade 12 — 34 to 50 taxpayer cases
 - Grade 11 — 53 to 79 taxpayer cases
 - Grade 9 — 70 to 95 taxpayer cases
 - Grade 5/7— 59 to 89 taxpayer cases
2. The following factors must be considered to determine the appropriate inventory level:
 - National targeted inventory ranges
 - Level of case difficulty
 - Geographical area covered
 - Collateral duties, e.g., official union duties, Equal Employment Opportunity (EEO) assignments, on-the-job instructor assignments, and quality improvement assignments.
3. Identify and discuss situations such as unmanageable inventory levels and/ or mis-graded cases with your manager.

Note:

Managers utilize ENTITY reports to monitor inventory levels and case grades.

4. When your assigned inventory is in excess of the national maximum level (or other appropriate reduced level) for your grade for more than 10 workdays, the IRM requirements relating to prompt initial and follow-up contacts will be suspended for the time period that you carry the higher inventory level.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 1. Field Collecting Procedures

Section 21. Collecting from Limited Liability Companies

5.1.21 Collecting from Limited Liability Companies

- 5.1.21.1 [Introduction](#)
- 5.1.21.2 [Limited Liability Company \(LLC\)](#)
- 5.1.21.3 [Characteristics of a Limited Liability Company \(LLC\)](#)
- 5.1.21.4 [Classification Available to LLC Entities](#)
- 5.1.21.5 [Initial Analysis to Determine Classification](#)
- 5.1.21.6 [Administrative Collection Actions](#)
- 5.1.21.7 [Case Resolution Actions](#)
- 5.1.21.8 [Bankruptcy Proceedings](#)
- 5.1.21.9 [Other Collection Remedies](#)
- 5.1.21.10 [Rules for Entity Classification Elections](#)
- 5.1.21.11 [Changes in Election or Ownership](#)
- 5.1.21.12 [Correcting or Clarifying Entity Information](#)
- 5.1.21.13 [Federal Taxation of an LLC](#)
- 5.1.21.14 [Identification of Liable Taxpayer](#)
- Exhibit 5.1.21-1 [Election by LLC](#)
- Exhibit 5.1.21-2 [Income Taxation for LLCs](#)
- Exhibit 5.1.21-3 [Employment Taxation for LLCs](#)
- Exhibit 5.1.21-4 [Identification of Taxpayer on Administrative Collection Actions for Employment Taxes](#)

Manual Transmittal

January 12, 2015

Purpose

(1) This transmits revised IRM 5.1.21, *Collecting From Limited Liability Companies (LLCs)*.

Material Changes

(1) Added subsections and reorganized IRM sections to reflect continuity of material, resulting in renumbering throughout. Link provided to ICS User Guide, which provides updated procedures and guidance for selecting name/address records and other menus for administrative collection actions and case resolutions.

(2) Editorial changes made throughout the text.

(3) IRM 5.1.21.1 Refined to clarify purpose of this IRM and move deleted information to appropriate sections throughout the IRM.

(4) IRM 5.1.21.2 Added as a separate section to define Limited Liability Company (LLC).

(5) IRM 5.1.21.3 Updated with additional paragraphs to further clarify characteristics of an LLC.

(6) IRM 5.1.21.3.1 Added to define disregarded entity.

(7) IRM 5.1.21.5 Updated to add Initial Analysis to title and guidance to determine classification prior to initial contact.

(8) IRM 5.1.21.5.1 Updated to include link to ICS User Guide for new selection menu LLC TC 971/972 and transfer of tables to exhibit.

(9) IRM 5.1.21.5.1(12) Deleted paragraph and merged with duplicate and similar language in IRM.

(10) IRM 5.1.21.5.2(10) Deleted and transferred to 5.1.21.5.3 as new section titled Initial Contact.

(11) IRM 5.1.21.5.3 Added as a new section titled Initial Contact.

(12) IRM 5.1.21.6.2 Updated to moving/renumbering of other paragraphs to new (4), (5), and (6) resulting from deletions and included a link to ICS User Guide with the enhanced and updated procedures to select Name/Address records on NFTLs.

(13) IRM 5.1.21.6.3 Updated with link to ICS User Guide to make updates to Name/Address record and deleted the use of edit features of Microsoft Word.

(14) IRM 5.1.21.6.6 Updated to add paragraph to include exception to processing an SMO return under IRC 6020(b) when the disregarded entity LLC fails to file an employment tax return.

(15) IRM 5.1.21.7 through 5.1.21.10.1 Replaced by IRM 5.1.21.9 through 5.1.21.12.1 to create continuity throughout the collection process from initial analysis to administrative collection actions and case resolutions.

(16) IRM 5.1.21.7.1 Updated to add paragraph to provide link to ICS User Guide for processing SMO/LLC In-Business IAs.

(17) IRM 5.1.21.9 Updated to add new information that addresses specific state statutes.

(18) IRM 5.1.21.11 Updated to add clarification that an LLC can change ownership at any time and there is no requirement to notify the IRS.

(19) IRM 5.1.21.12 Updated with procedure to add secondary TIN and address for SMO.

(20) IRM 5.1.21.12.3 Updated to delete requirement for ROs to secure EIN for the SMO and provided link for guidance to add a secondary EIN.

(21) IRM 5.1.21.13.6 Updated with example of certain excise tax for periods prior to January 1, 2008.

(22) IRM 5.1.21.14.2 Updated with link to ICS User Guide for updated guidance to select name/Address records and deleted outdated information.

(23) IRM 5.1.21.14.3 Updated with guidance for systemic input of TC 971 AC 364, 365, and 366 through new ICS menu selection LLC TC 971/972.

Effect on Other Documents

IRM 5.1.21, Collecting from Limited Liability Companies (LLCs), dated September 1, 2009 is superseded.

Audience

SB/SE Collection Employees

Effective Date

(01-12-2015)

Dretha M. Barham
Director, Collection Policy
Small Business/Self-Employed

5.1.21.1 (01-12-2015)

Introduction

1. The purpose of this IRM section is to explain how to properly address various LLC collection issues and pursue administrative collection actions against the correct LLC entity. Because state law governs an LLC's property rights, which may be different from that of a corporation or a partnership, the administrative collection actions taken may also differ. Collection employees must keep this concept in mind. It is important to determine how the LLC is classified, whether the LLC made a check-the-box election, and whether the liable taxpayer is the single member owner (SMO) or the LLC.
2. An LLC's classification for federal tax purposes is governed by the provisions of Treas. Reg. 301.7701-2 and -3. Liability for income, employment, and excise taxation is determined by the classification of the entity under applicable regulations. To properly address various collection questions, you must first understand how an LLC is classified.

Note:

Revised regulations changing the treatment of certain LLCs for employment and excise tax liabilities were issued on August 16, 2007. The changes are not retroactive and they do not change the tax treatment of employment and excise taxes that accrued prior to their effective dates. The applicability of these regulations must be considered when determining liability for employment and excise taxes incurred both before and after the effective dates of these regulations. See *IRM 5.1.21.13.6.1* for information about the effective dates.

5.1.21.2 (01-12-2015)

Limited Liability Company (LLC)

1. A limited liability company (LLC) is an entity created under state law that has characteristics of both a partnership and a corporation. It is similar to a:
 - Corporation in that the owners have limited personal liability for negligent acts and LLC debts.
 - Partnership in that it provides management flexibility and may provide the benefit of pass-through taxation of income.
2. An LLC may own property, enter into contracts and otherwise conduct business in its own name. Property ownership is governed by state law.

5.1.21.3 (01-12-2015)

Characteristics of a Limited Liability Company (LLC)

1. State LLC statutes include a number of common elements and characteristics, many of which are different from other types of business organizations.
2. The following are some of the characteristics of an LLC:
 - Owners are called members.
 - There are no restrictions on ownership.
 - There are no restrictions on the number of members.
 - Single member LLCs are permitted.
3. An LLC with one owner is a single member entity.
4. An LLC with more than one owner is a multi-member entity.
5. The treatment of an LLC for tax purposes may depend in part on whether the LLC is a single member entity or a multi-member entity.
6. Classification of the LLC for federal tax purposes does not negate state law provisions concerning the legal status of the LLC. For example:
 - An LLC classified as a partnership for federal tax purposes does not mean the member/owners have liability for LLC debts as would be the case in a partnership under state law.
 - An LLC that is a disregarded entity is treated as a sole proprietorship if it is owned by an individual. If the disregarded entity is owned by any other entity, it is treated as a branch or division of its owner.

5.1.21.3.1 (01-12-2015)

Disregarded Entity

1. For state purposes, an LLC is a business separate from its owner in which the owner is protected from the LLC's acts and debts, such as bankruptcy and lawsuits. For federal tax purposes, it is not regarded as separate from its owner, therefore, the owner is liable for the tax liability of the LLC. It is considered the same entity as the owner for tax purposes, but not liability purposes.

Note:

A single member LLC that is otherwise disregarded is treated as a corporation for certain excise taxes that accrued on or after January 1, 2008 and for employment taxes on wages paid on or after January 1, 2009.

2. The following are characteristics of a disregarded entity:
 - The member/owner, not the LLC, is the taxpayer when the LLC is a disregarded entity.

- As noted above, if the disregarded entity is owned by an individual, it is **treated** as a sole proprietorship.

Reminder:

The LLC's income and expenses are reported on the individual's Form 1040, Schedule C, Schedule D, Schedule E or Schedule F, depending on the type of income.

- As noted above, if the disregarded entity is owned by any other entity, it is **treated** as a branch or division of its owner.

Example:

If the division of its owner is a corporation, the income or loss is reported on Form 1120, *U.S. Corporation Income Tax Return*.

5.1.21.3.2 (09-01-2009)

Member/Owner

1. A member/owner is a person with an ownership interest in the LLC. The term "person" includes legal entities. Thus, a member/owner may be:

- An individual
- A corporation
- A partnership
- An association
- An estate
- A trust
- Another LLC

2. The terms "member," "owner" and "member/owner" may be used interchangeably.

5.1.21.4 (02-19-2008)

Classification Available to LLC Entities

1. Treas. Reg. § 301.7701-3 specifies the classifications available to foreign and domestic eligible entities by election or default.

5.1.21.4.1 (09-01-2009)

Classifications Available for Entities Filing an Election

1. Domestic and foreign eligible entities, including LLCs, may elect its classification for federal tax purposes by filing Form 8832, *Entity Classification Election*.
2. A multi-member LLC may elect to be classified as
 - A partnership, or
 - An association taxable as a corporation.

Reminder:

A multi-member entity cannot elect disregarded entity status.

3. A single member LLC may elect to be classified as

- An association taxable as a corporation, or
- An entity disregarded as separate from its owner.

Reminder:

A single member entity cannot elect partnership status.

4. An association taxable as a corporation may further elect to be classified as an S corporation by filing Form 2553, *Election by a Small Business Corporation*.
5. An LLC that meets all other requirements to qualify as an S corporation and timely files a Form 2553 is treated as having made an election to be classified as an association, without having to file a Form 8832, per Treas. Reg. 301.7701-3(c)(1)(v)(C). An entity that filed an S election late, and intended to be treated as an association, may be eligible for relief pursuant to Rev. Proc. 2013-30, 2013-36 I.R.B 173.

5.1.21.5 (01-12-2015)

Initial Analysis to Determine Classification

1. Conduct a thorough initial analysis to determine the classification of an LLC prior to initial contact to identify the liable taxpayer before pursuing administrative collection actions by conducting the following:
 - Research "internal and external sources" to determine whether the liable taxpayer is the single member owner (SMO) or the LLC.
 - Research to determine if the LLC is a single member or multi-member LLC.
 - Determine if the LLC made an election to be classified as a corporation, partnership, disregarded entity, or the LLC is classified by default.
 - Identify each tax module as SMO or LLC with TC 971 AC 364, 365 or 366.
 - Make prompt decision of the applicability of a trust fund recovery penalty investigation after classification and identity of LLC has been made.
2. For employment taxes on wages paid on or after January 1, 2009, the liable taxpayer is the LLC for administrative collection actions and trust fund recovery penalty investigation.

5.1.21.5.1 (01-12-2015)

Internal Sources

1. Check IDRS command codes (CC) BMFOLE and TXMODA for Transaction Code 971 Action Codes 076 and 090 to determine whether or not the LLC made an election.

2. Action Code 076 will include alphabetic indicators "A" through "F," showing after PARA-CD, which correspond to the box checked on Form 8832, *Entity Classification Election*. The alphabetic indicator "Z" will appear if Form 2553, *Election by a Small Business Corporation* is filed to make simultaneous elections.
3. See table in *Exhibit 5.1.21-1* for further explanation of transaction codes and alphabetic indicators.
4. If Transaction Codes 076 or 090 are not present, then no election has been made and the LLC is **subject to the default classifications in the regulations**. See IRM 5.1.21.10.1 for information on default classification of entities not filing an election.
5. An LLC indicator is input systemically for LLCs established on the master file on or after January 1, 2009. This indicator displays on CC BMFOLE as "LLC-IND" as follows:
 - "S" for a single member LLC
 - "M" for a multi-member LLC
 - A blank indicates entity was not identified as an LLC, or it was established prior to January 1, 2009.
6. An indicator displays on the "Other Entity Information" screen under Entity Detail on ICS as "Single Member " or "Multi Member " .

Caution:

An LLC is not required to notify the Service if membership changes from multi-member to single member or from single member to multi-member. If the ownership of an LLC has changed, this indicator will not identify the number of members of the LLC for each delinquent period. Further verification is necessary to determine the number of owners for each tax period.

7. Check CC TXMOD for Transaction Code 971 Action Codes 364, 365 and 366, which are input to ICS and systemically uploaded to IDRS to specific tax modules to identify the liable taxpayer after a Service employee has made the determination. A new menu selection titled "LLC TC 971/972" is available in the ICS Collection Activities Menu to provide guidance for inputting these codes. For further instructions refer to [ICS User Guide, Chapter 9, Entity Detail](#). See IRM 5.1.21.14.3 for more information on these action codes.

Note:

The TC 971 AC 364 or 365 are not necessary on wages paid on or after January 1, 2009, as the LLC is the liable taxpayer.

8. When the liable taxpayer cannot be determined by any of the above methods, useful information regarding the ownership and classification of an LLC may be obtained by accessing various Integrated Data Retrieval System (IDRS) command codes or by retrieving copies of forms filed by the taxpayer. For example:
 - IDRS command code ENMOD may include a name line indicating membership.
 - IDRS command code BMFOLE may reveal the name and or cross-reference TIN of owner(s), filing requirements, and will confirm any elections made, including effective date and classification elected.
 - Form 8832, *Entity Classification Election*, may indicate the number of owners and requires the signature of each member or the authorized representative. Request ESTAB using DLN of form to secure. .
 - Form 2553, *Election by a Small Business Corporation*, requires the signature and taxpayer identification number (TIN) for each member. Request ESTAB using DLN of form to secure.
 - Form 1065, *U.S. Return of Partnership Income*, or Form 1120S, *U.S. Income Tax Return for an S Corporation*, includes Schedule(s) K-1 with the name, address and TIN for each owner.
9. For entities established prior to July 2007, if the campus could not determine the number of members/owners of the LLC, a Form 1065 filing requirement was opened on IDRS.
 - The default to Form 1065 filing requirement on BMFOLE does not necessarily indicate the taxpayer is a multi-member LLC classified as a partnership
 - Additional research of internal and external sources and taxpayer contact is required to determine if the LLC entity established before July 2007 should be classified as a partnership.

**5.1.21.5.2 (01-12-2015)
External Sources**

1. Information to determine the number of member/owners of an LLC may be secured from external sources including:
 - Records required by state statutes governing LLCs
 - Records from the Secretary of State (or equivalent official)
 - Records from state licensing or taxing agencies
 - Direct contact with the taxpayer
2. Basic familiarity with state LLC statutes is required to help determine:
 - Information available from the Articles of Organization or similar documents
 - Requirements imposed on the LLC to maintain ownership information
 - Other record-keeping requirements for the LLC
 - Provisions for dissolution and reinstatement of the LLC

Note: For further information on state LLC statutes, refer to [State by State LLC Code](#).

3. Available information from the Secretary of State or equivalent includes
 - Articles of Organization or similar documents
 - Initial and annual reports
4. Information from state licensing or taxing agencies may include the names of members or managers.
5. Articles of Organization or similar documents must be filed with the Secretary of State or other designated official. In some states, the Articles of Organization are known as a Certificate of Formation or Certificate of Organization. A copy of the organizing document may provide:
 - An address for the LLC

- The name, TIN, signature, telephone number, or address of each organizer or of one or more of the member/owners
 - Bank of the LLC
 - Type of business activity
6. State statutes specify requirements for the formation of an LLC. In some states, the LLC is officially formed at the time the organizing documents are signed and delivered to the state official designated as the receiving official (Secretary of State or equivalent). Other state statutes allow for a delayed effective date (generally no more than 90 days after filing) or include additional provisions when organizing documents are filed before the LLC has at least one member. Check your state statute to determine when an LLC is officially formed.
7. Many states require an LLC to file an annual report with the designated state official. Reports may include:
- Name and address of the registered agent for the LLC
 - Principal business address of the company
 - Name of the manager of the LLC
 - Names of one or more of the members
- Note:**
- Many state statutes do not require the LLC to provide complete ownership information to the Secretary of State or equivalent.
8. Provisions for Operating Agreements vary widely according to state law. They may be known as Limited Liability Company Agreements or By-laws and are optional in some states. These documents are not generally required to be filed with the Secretary of State's office. Many states allow them to be written or oral.
9. The Operating Agreement may provide some or all of the following information:
- Responsibilities of the members within the LLC
 - Name and address of one or more of the members
 - Signature of the members that adopted the Operating Agreement
 - Name of the attorney that drafted the Operating Agreement
 - Indication as to whether members share in management of the LLC, or if there is a designated manager
 - Name and address of one or more of the managers
 - Initial capital contributions
 - Initial shares
 - Allocation of distribution of profits amongst members (which may differ from their ownership interest)
 - Powers of the manager as signatory on bank accounts

5.1.21.5.3 (01-12-2015)

Initial Contact

1. Since the LLC is often the most useful source of information, secure as much information as possible on initial contact. Most state statutes require the LLC to maintain complete ownership records and other information at the place of business. This includes some or all of the following:
- Number of members of the LLC.
 - Name(s), address(es), and TIN(s) of all members, along with dates of ownership and amount of their interest in the LLC.
 - Information regarding the designation of a manager of the LLC, if applicable, along with the dates of service and a record of the manager's responsibilities.
 - Copy of the Operating Agreement.
 - Articles of Organization or similar documents.
 - Minutes of meetings of members of the LLC

Note:

If supporting documentation is not readily available to determine the number of members of an LLC that made no elections, consider issuing a summons for original documents or for testimony, or secure an affidavit from the member(s), signed under penalties of perjury.

5.1.21.6 (01-12-2015)

Administrative Collection Actions

1. Determine whether the **LLC or SMO** is the liable taxpayer for each tax period prior to taking any administrative collection actions.
2. Administrative collection actions should **not** include both the name of the LLC and the name of the SMO. Only the name of the liable taxpayer should be included.

Exception:

Under certain circumstances, both the name of the LLC and the name of the SMO may be included on a single Form 433-D, *Installment Agreement*, when the installment agreement is combined. See *IRM 5.1.21.7.1* for additional information.

3. If the liable taxpayer changes from one period to the next or within a tax period due to changes in ownership or election, or as a result of regulation changes, take separate administrative collection actions for each liable taxpayer.
4. If the liable taxpayer changes **during** a tax period and different taxpayers are liable for a portion of the Bal Due, manually compute the module balance attributable to each liable taxpayer and prepare separate documents. The same tax period may appear on separate administrative collection actions against the LLC and the SMO.
5. See *Exhibit 5.1.21-4* to determine which name, address and taxpayer identification number(s) to include on administrative collection actions.

5.1.21.6.1 (01-12-2015)

Collection Due Process Notice

1. Identify the liable taxpayer **before issuing Letter 1058, Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing**, so the correct entity is notified of their right to a Collection Due Process (CDP) hearing. Document your history with the basis for your determination of the liable taxpayer.
 - When the LLC is the taxpayer, the CDP notice is issued in the name of the LLC and the LLC has the right to a CDP hearing.
 - When the SMO is the taxpayer, the CDP notice must be issued in the name of the SMO and the SMO has the right to a CDP hearing.
2. If the Notice of Intent to Levy and Notice of a Right to a CDP Hearing was issued by ACS, ensure it included the name of the liable taxpayer and was given at the proper address.
3. When the SMO is the liable taxpayer, notice to the SMO is required even when the CDP notice was previously issued in the name of the disregarded LLC. To be valid, the notice must include the name of the SMO and be given at the last known address of the SMO, if different from the address of the LLC. The CDP notice is an exception to the Service's position that notice to the disregarded LLC is equivalent to notice to the owner when the owner of the LLC is the taxpayer.
4. When the SMO is the liable taxpayer and the CDP notice includes both the name of the LLC and the name of the SMO (even when the SMO is listed on the second name line), the fact that such notice also includes the LLC's name will not invalidate it. However, the notice must be given at the proper address for the SMO according to IRC 6320(a)(2) and IRC 6330(a)(2).
5. A Notice of Intent to Levy and Notice of a Right to a CDP Hearing must be issued to the taxpayer prior to levy. Generate Letter 1058 through ICS, selecting the correct Name/Address record created for the SMO. Include the EIN of the taxpayer assessed the liability so proper transaction codes are generated.
6. If the original CDP notice was not properly issued to the liable taxpayer, request input of a TC 972 AC 069 to reverse the original notice and request a new CDP notice through ICS, selecting the correct Name/Address record. Document ICS history to explain this action. For additional information, see IRM 5.12.6.3.16, *Invalid CDP Notices and Rescinding the Collection Due Process Notice*.
7. If the identity of the taxpayer changes due to a change in classification or regulations, issue one CDP notice to the LLC for tax period(s) when the LLC is liable and a separate CDP notice to the SMO for tax period(s) when the SMO is liable. If the liable taxpayer changed **during** a tax period, the same tax period would appear on each CDP notice, with the appropriately allocated amounts of liability for each entity.
8. Letter 3172, *Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320*, is issued post lien filing to the taxpayer to notify the taxpayer of their right to a CDP hearing. It is systemically generated to the name and address listed on the Notice of Federal Tax Lien (NFTL), using the EIN of the taxpayer assessed the liability. Selecting the correct Name/Address record when requesting the NFTL will ensure proper issuance of the notice and protection of the taxpayer's rights of appeal concerning the filing of the lien.
9. See *Exhibit 5.1.21-4* to determine which name, address and taxpayer identification number(s) to include on CDP Notices.

5.1.21.6.2 (01-12-2015) Notice of Federal Tax Lien

1. The taxpayer must be properly identified on the NFTL to give proper public notice of the debt. To ensure the NFTL is properly recorded, determine whether the LLC or the SMO is the liable taxpayer before filing.
2. The Automated Lien System (ALS) is interfaced with the master file to facilitate timely systemic release of NFTLs when the tax liability has been satisfied. Because ALS requires a TIN for this process, the NFTL always contains the EIN of the taxpayer assessed the liability, even if it does not match the name of the taxpayer.
3. Request the NFTL through ICS by selecting or adding the correct Name/Address record and the appropriate tax periods for each liable taxpayer. Refer to [ICS User Guide, Chapter 6, Notice of Federal Tax Lien](#), for guidance on requesting NFTLs and [Chapter 9, Entity Detail](#), for updated guidance on selection of entity type, "LLC-Owner is Liable Address" or "LLC-LLC is Liable Taxpayer".
4. File separate NFTLs for each liable taxpayer if the identity of the taxpayer changed from one period to the next resulting in a change of the taxpayer of record.
5. Calculate the portion of the liability attributable to each liable taxpayer if the identity of the taxpayer changed during a tax period. Complete Form 12636, *Request for Filing or Refiling Notice of Federal Tax Lien*, then send by secure email to Centralized Lien Operation (CLO) for preparation of NFTL. See IRM 5.12.7.3.2, *Requesting NFTLs Using Form 12636*, for further instructions on preparation of form.
6. For more information on filing NFTLs on LLC cases, see IRM 5.12.7.5.3, *Limited Liability Company (LLC)*, IRM 5.12.7.5.3.1, *Creating New LLC Name Line Using ICS* and IRM 5.12.7.5.4, *Name Change*.

5.1.21.6.2.1 (01-12-2015) Location for Filing NFTL

1. State law determines where the NFTL should be filed to compete against other lien interests. Refer to Exhibit 5.12.7-2 or your state statute for filing locations for various entity types. For U.S. Possessions and Territories (also known as insular areas), NFTL filing locations are determined by local law.
2. The NFTL should be filed in the location specified for partnerships and corporations when
 - The SMO is the taxpayer, and the SMO is a partnership or a corporation; or
 - The LLC is the taxpayer, classified as a partnership or a corporation
 - The otherwise disregarded LLC is treated as a corporation for excise tax periods beginning on or after January 1, 2008, and for employment tax periods beginning on or after January 1, 2009.
3. The NFTL should be filed in the location specified for individuals when the liable SMO is an individual.

5.1.21.6.2.2 (01-12-2015) Incorrect Taxpayer Name on NFTL

1. When a NFTL has been filed using **only** the name of an entity that is not the liable taxpayer, request a withdrawal of the NFTL through AIQ, Advisory. **Do not request a release**, as that action would extinguish the underlying statutory lien. File a new NFTL with the name of the taxpayer and the EIN of the taxpayer assessed the liability. The new NFTL does **not** retain the priority of the original NFTL.

Exception:

Depending on the facts of each case, a NFTL identifying the disregarded LLC as the taxpayer may be a valid notice against the SMO. The Government's position is that a NFTL need not precisely identify the taxpayer; rather, the NFTL is valid if it substantially complies with the filing requirement so that constructive notice of the government's claim is provided to third parties. Because the Service will lose its priority by withdrawing the NFTL, consult Area Counsel in certain cases in which the name of the LLC is very close to the name of the SMO. Counsel will make a determination based on the particular facts.

2. If the NFTL includes the names of both the LLC and the SMO, and was not filed in the correct location for the liable taxpayer, follow the procedures in (1) above.
3. When the NFTL includes the names of both the LLC and the SMO, and was filed in the correct location for the liable taxpayer, request an amended NFTL, deleting the name of the entity that was not liable. This will preserve the priority of the original NFTL as to the liable taxpayer. If you do not have access to the amend function on ALS, request the amended NFTL by e-mailing Form 13809, *Request for Amendment to a Recorded Notice of Federal Tax Lien*, by secure e-mail to Centralized Lien Operation

(CLO) for input.

4. See *Exhibit 5.1.21-4* to determine which name, address and taxpayer identification number(s) to include on NFTLs.

5.1.21.6.3 (01-12-2015)

Notice of Levy

1. The notice of levy must properly identify whether the **LLC or SMO is the liable taxpayer** so the third party who receives it can identify which assets to attach.
 - When the LLC is the taxpayer, include the name, trade name (if applicable), and the EIN of the LLC on the notice of levy. Do not include the name(s) or TIN(s) of the owner(s).
 - When the single member owner (SMO) is the taxpayer, include only the name and TIN(s) of the SMO on the notice of levy.

Note:

The TIN is frequently used by third parties for account identification purposes, so no TIN other than that of the liable party should appear in the "identifying number(s)" field on the levy, despite the resulting mismatch between the assessment and the notice of levy. See IRM 5.1.21.6.3.1 for additional information

2. The levy will only attach to the assets of the taxpayer identified.
3. Generate the notice of levy through ICS so a third party contact is recorded, a history entry of the levy is made and a systemic follow up is generated for the levy.
4. Issue separate notices of levy for each liable taxpayer when the identity of the taxpayer has changed from one period to the next or during a tax period resulting in a change of the taxpayer of record.
5. Refer to [ICS User Guide, Chapter 10, Levy](#), and [Chapter 9, Entity Detail](#), for updated guidance on selection of entity type and Name/Address record to make changes and corrections on Notices of Levy.
6. See *Exhibit 5.1.21-4* to determine which name, address and taxpayer identification number(s) to include on Notice of Levy.

5.1.21.6.3.1 (01-12-2015)

Preparation of Notice of Levy when the Single member Owner (SMO) is Taxpayer

1. When the SMO is the taxpayer and the liabilities are assessed in the name and EIN of the SMO, generate the notice of levy through ICS, selecting the appropriate Name/Address record and tax periods.
2. When the SMO is the taxpayer for liabilities assessed in the name and EIN of the LLC, special care is needed when preparing a notice of levy. Generate the notice of levy through ICS, selecting the appropriate Name/Address record and tax periods. Refer to [ICS User Guide, Chapter 9, Entity Detail](#), and [Chapter 10, Levy](#), for additional guidance.
3. Include the EIN of the liable SMO on the notice of levy. The levy may also include the Social Security Number if the SMO is an individual.
4. To avoid accounts being incorrectly attached and to facilitate the posting of levy proceeds received, the following disclaimer is systemically generated by ICS when the SMO is the liable taxpayer and "LLC-Owner is Liable Address" is selected on the Notice of Levy: "This notice attaches to all accounts in the name of SMO name, EIN and SSN, if applicable as owner of (LLC name and EIN) but does not attach accounts established in the name of (LLC name and EIN)."

5.1.21.6.3.2 (09-01-2009)

Levy on LLC for Flow-Through Income of a Member

1. When a member of an LLC is liable for federal taxes, a Notice of Levy may be served on the LLC to attach distributions payable to the member when the right to receive income from the LLC is "property" or a "right to property" under state law.
2. Under most state laws, a member of an LLC has a right to receive a share of the LLC's profits and losses, unless otherwise provided in the LLC's operating agreement. Consult with Area Counsel, if necessary, to determine the member's property rights under state law.
3. A levy will attach property possessed and obligations existing at the time of the levy. Obligations exist when the liability of the obligor is fixed and determinable, although the right to receive payment may be deferred until a later date. Courts have held that the "fixed and determinable" requirement in Treas. Reg. 301.6331-1(a)(1) is satisfied when the events which give rise to the obligation have occurred and the amount of the obligation is capable of being determined in the future. Under this rationale, a levy could be served upon the LLC to attach income to which the member is entitled for services rendered prior to the service of the notice of levy, after the LLC sets aside a reserve for overhead expenses.
4. Generally, a levy extends only to property possessed and obligations which exist at the time of levy. An exception to this rule, IRC 6331(e), authorizes a continuous levy on salary or wages, but does not specify the types of remuneration that are covered by the terms "salary or wages."
5. Courts have held that, under certain circumstances, recurring payments that are made as draws or advances on future income **may** be subject to the continuous wage levy provision of IRC 6331(e). Consider using the Service's summons authority to determine the frequency with which the owner takes draws of profits from the LLC.
6. Consult with Area Counsel to determine whether the facts are sufficient to support a continuous wage levy, using Form 668-W, *Notice of Levy on Wages, Salary and Other Income*, or if successive levies, using Form 668-A, *Notice of Levy*, should be served to attach to the property of or obligations owed to the owner at the time of levy.

5.1.21.6.4 (01-12-2015)

Seizure

1. The Form 668-B, *Levy*, Form 2433, *Notice of Seizure*, and other seizure documents must include only the Name/Address record and tax periods of the entity identified as the liable taxpayer. Do not include the name of the entity that is not the liable taxpayer.
2. Use the TIN of the taxpayer assessed the liability for the preparation of seizure documents, even if it does not match the name of the taxpayer. The TIN is considered a convenience for internal record keeping. Use of the TIN of the taxpayer assessed the liability will ensure proper posting of payments received.
3. When LLC assets are seized, include only those tax periods where the LLC is identified as the liable taxpayer.
4. When the SMO's assets are seized, include only those tax periods where the SMO is identified as the liable taxpayer.

5.1.21.6.5 (01-12-2015)

Trust Fund Recovery Penalty

1. Identify the liable taxpayer to determine the applicability of a Trust Fund Recovery Penalty (TFRP) investigation. See IRM 5.7, *Trust Fund Compliance*.
2. A TFRP investigation and determination is not required to establish liability when the SMO is the taxpayer on tax periods prior to January 1, 2009, as the SMO is directly liable for all taxes. However, TFRP may be applicable against other persons who meet the definition of a responsible person under IRC 6672. Possibilities include:

- A designated employee/manager
 - Other employees within the disregarded entity
 - An employee or official within the owner organization (such as a corporation, partnership, trust, or other LLC) with responsibility for employment tax matters of the disregarded entity.
3. A TFRP investigation and determination is required on the LLC for employment taxes on wages paid on or after January 1, 2009 because the LLC is always the liable taxpayer. See IRM 5.7.4.1.1, *Factors When Considering Trust Fund Balance Owed Amounts*, for additional information.
 4. When the LLC is the taxpayer, a member/owner is protected from direct liability for the debts of the LLC. The TFRP may be applicable to collect from individuals who meet the definition of a responsible person under IRC 6672. Possibilities include:
 - Member/owner(s)
 - Manager designated in the operating agreement
 - Other employees determined liable
 5. The TFRP on excise taxes is limited to the types of collected excise taxes specified in IRM 5.7.3.1.1, *TFRP for Collected Excise Taxes*. Personal liability for other collected excise taxes under IRC 4103 may be asserted when facts and circumstances warrant.
 6. When the SMO is the taxpayer for some tax periods and the LLC is the taxpayer for other periods, contact the Area Automated Trust Fund Recovery (ATFR) Coordinator to create two separate cases on ATFR.
 7. Take the following actions when there are separate cases on ATFR:

If the . . .	And there are . . .	Then . . .
LLC is liable	any individuals subject to the TFRP	complete TFRP using normal processing
SMO is liable	other individuals subject to the TFRP	complete TFRP using normal processing for assessment against responsible parties
SMO is liable	no other individuals subject to the TFRP	close the case on ATFR using the "Closed - LLC" disposition

5.1.21.6.6 (01-12-2015) IRC 6020(b) Actions

1. IRC 6020(b) authorizes the Secretary to make and file a tax return on behalf of a taxpayer that fails to do so under any internal revenue law or regulation. Prior to proposing an IRC 6020(b) action identify whether the LLC or the SMO is the taxpayer.
2. When the SMO is the taxpayer, an IRC 6020(b) action for employment taxes is proposed in the **name and EIN of the SMO** without regard to alternate filing options allowed under Notice 99-6 to account for, report, and pay employment taxes in the name of the disregarded entity.

Caution:

If there is an existing assessment for the same tax period in the name and EIN of the SMO for liability resulting from a separate business operated by the owner, ensure that an additional assessment is not prohibited by an ASED. Consult with Area Counsel, if necessary.

3. Under Notice 99-6, a disregarded entity was given two options for filing and payment compliance:
 - Under the name and EIN of the owner, and
 - Under the name and EIN of the disregarded entity

The notice also provided that if a disregarded entity chose the second option, the owner was still the liable taxpayer.

4. When the LLC is the taxpayer, an IRC 6020(b) action for employment taxes is proposed in the **name and EIN of the LLC**.

Note:

For employment taxes for wages paid on or after January 1, 2009, the LLC is the taxpayer. Accordingly, an IRC 6020(b) action for such employment taxes will be proposed in the name and EIN of the LLC, even if the LLC is disregarded for income tax purposes.

5. If a SMO of a disregarded LLC has unfiled employment tax returns for periods both before and after January 1, 2009, ensure that IRC 6020(b) action is proposed against the correct entity:
 - Because the SMO is the taxpayer for wages paid prior to January 1, 2009, the IRC 6020(b) action for tax periods ended prior to January 1, 2009 would be proposed in the name and EIN of the SMO.
 - Because the LLC is the taxpayer for wages paid on or after January 1, 2009, the IRC 6020(b) action for tax periods beginning on or after January 1, 2009 would be proposed in the name and EIN of the LLC.

Note:

Similarly, for employment taxes that accrue before January 1, 2009, ensure that the IRC 6020(b) action is proposed against the correct entity if the identity of the taxpayer changed with an elective change or a change in ownership of the LLC.

6. When a disregarded entity LLC fails to file an employment tax return for tax periods prior to January 1, 2009, and the SMO has previously filed a tax return for the same period, do not submit the return prepared under IRC 6020(b) to Submission Processing as a secured return. Process the return under IRC 6020(b) on Form 3870. See IRM 5.1.11.6.7.4(6), *Preparing Returns for Assessment*, for further guidance.

5.1.21.6.7 (01-12-2015) Summons Procedures

1. The taxpayer under investigation must be properly identified by name on a summons issued for the liability resulting from the operation of an LLC:
 - When the LLC is the taxpayer, include the name of the LLC in the "statement of liability" section of the summons. The name of the member/owner(s) should **not** be included even though the individual may be the summoned party.
 - When the single member owner (SMO) is the taxpayer, include the owner's name, **not** the name of the LLC, in the "statement of liability" section of the summons.
 - If a summons is being issued to establish the Trust Fund Recovery Penalty (TFRP) against an individual, use the procedure for issuing a summons to establish the TFRP against an officer or other individual in a corporation. See IRM 25.5.6.4.1, *Procedures for Summonses Issued to Investigate Liabilities for the Trust Fund Recover Penalty*.

Example:

John Whatcom, as member/owner of *Whatcom Electric LLC*.

- Include the full name, title and address of the summoned party in the description of the summoned party, on the "To" and "At" lines of the appropriate summons form, even if it duplicates the name in the "statement of liability" section. Include the title or official status of the summoned party on the "To" line of the appropriate summons form.

Example:

Margie King, as managing member of *King's Corners LLC*

- Because a member/owner of an LLC may be an individual, corporation, partnership, trust or another LLC, the summoned party may be an employee or owner of the LLC itself, or an employee of an entity that owns the LLC.

Example:

Margie King, as controller of Kings, Inc., member/owner of *King's Corners LLC*

- The information summoned should be clearly described. If summoning the bank records for the LLC, describe the summoned materials with the LLC's name. If summoning the owner's bank records, describe the summoned materials with the owner's name.
- Notice to any person identified in the summons is required for certain third-party summonses, including a summons served on a third-party witness for the production of records or testimony relating to the liability resulting from the operation of an LLC. When "notice" is required, the taxpayer is always a noticee, even though the taxpayer's name may not appear in the description of the summoned records. Both the LLC and member/owner(s) may be entitled to a notice, depending on the description of summoned records.

Note:

Refer to IRM 25.5, *Summons Handbook*, for additional information regarding issuance of a summons, IRM 5.17.6.6(2), *Third-Party Summonses Subject to IRC § 7609* and IRM 5.17.6.6.2, *Notice and Waiting Period Requirements*, for a discussion of the exceptions to third party notice and waiting requirements in connection with a summons issued in the aid of the collection of an assessment made or judgment rendered against the person with respect to whose liability the summons is issued.

2. Issue a separate summons for each taxpayer if the identity of the taxpayer changed during the period of time for which records are summoned. This may occur if you are conducting a TFRP investigation for some periods when the SMO was the taxpayer and other periods when the LLC was the taxpayer.

5.1.21.7 (01-12-2015)

Case Resolution Actions

1. The liable taxpayer must be "identified" as the SMO or LLC prior to case resolution actions. If there are different liable taxpayers identified for separate tax periods, separate case resolution actions may be required.

5.1.21.7.1 (01-12-2015)

Installment Agreement

1. The identity of the taxpayer determines the party subject to an installment agreement. Ensure that a Name/Address record, identifying only the liable taxpayer, is created on ICS where **only** the SMO or the LLC is the liable taxpayer for all open tax periods.

Note:

See paragraphs (5) thru (7) below for situations where the SMO is liable for some tax periods and the LLC is liable for others.

2. Voluntary payments may be accepted from the LLC, regardless of the identity of the taxpayer. Payments are applied to the entity identified in the assessment.
3. When **only** the LLC is the taxpayer, the installment agreement is with the LLC.
 - The installment agreement is based on the LLC's ability to pay.
 - Any default notifications and actions are directed against the LLC and LLC assets.
4. When **only** the SMO is the taxpayer, the installment agreement is with the SMO, even when the tax liabilities are assessed in the name and EIN of the LLC.
 - The installment agreement will include the EIN of the assessed liability to facilitate input of proper codes, posting of payments and monitoring of the agreement.
 - The following statement may be included on an installment agreement when the member/owner is liable for the employment taxes: "This agreement is between the Service and (SMO name). Payments will be accepted from (SMO name) or (LLC name), and will be applied to the liability assessed against (LLC name and EIN). In the event of default, enforcement action will be taken against (SMO name)."
 - Any default notifications and actions are directed against the SMO and its assets.
 - Special care must be taken in the monitoring process to ensure levy action is not taken against assets of the LLC, in the event of default.

Reminder:

This paragraph applies only to employment taxes on wages paid *before* January 1, 2009. The LLC is the taxpayer for employment taxes on wages paid *on or after* January 1, 2009.

5. If the identity of the taxpayer changed from one period to the next resulting in a change of the taxpayer of record, determine whether an installment agreement is the appropriate resolution for each liable taxpayer.
6. If an installment agreement is the appropriate case resolution for only one liable taxpayer, complete the action for the other liable taxpayer before submitting the installment agreement for processing.
7. If an installment agreement is the appropriate case resolution for **both** the SMO and LLC, a combined installment agreement may be secured.
8. Refer to IRM 5.14.7.3, *Installment Agreements Involving Limited Liability Companies*, for additional procedures relating to combined installment agreements and processing SMO/LLC IAs.

Note:

The names of **both** the LLC and SMO will appear on a combined installment agreement. This is an exception to the general rule that collection actions should not include both the name of the LLC and the SMO.

9. For an SMO/LLC IA, ensure the appropriate Name/Address record and TC 971/972 AC 364, 365 or 366 are input. Refer to [ICS User Guide, Chapter 12, Installment Agreement](#), for procedures on processing SMO/LLC In-Business IAs and SMO/LLC IBTF-IA

5.1.21.7.2 (01-12-2015)

Offers In Compromise

1. The taxpayer must be properly identified as SMO or LLC in an Offer in Compromise (OIC) submitted for the liability resulting from the operation of an LLC.
2. If the LLC is the taxpayer,
 - The OIC should reflect the LLC name as the taxpayer's name in Section 1 of Form 656, *Offer in Compromise*, with the signature, name and title of any individual authorized to sign for the LLC in Section 9.
 - A Form 433-B for the LLC is required.
3. If the single member/owner (SMO) is the taxpayer,
 - The OIC should reflect the SMO's name as the taxpayer's name in Section 1 of Form 656;
 - The signature in Section 9 should be that of the individual owner or an official authorized to sign on behalf of a corporate, partnership, trust or LLC owner.
 - A Form 433-A or Form 433-B for the owner of the LLC, and a Form 433-B for the LLC is required if it is still operating.
4. When the SMO is the taxpayer, the following factors must be considered to determine the adequacy of the offer:
 - The assets of the LLC are not owned directly by the owner as offer proponent.
 - The owner/proponent's assets include the ownership interest in the disregarded LLC.
 - As a general rule, the owner's interest is the right to a distribution of money or property from the LLC and is governed by state statutes. For example, most states require the satisfaction of unsecured creditors of the LLC before a distribution can be made to the owner. Such limitations will have an effect upon the value assigned the owner's interest.
 - The SMO must provide information on the disposition of LLC assets if the LLC is no longer operating.
5. An OIC submitted for trust fund taxes arising from the operation of the LLC has the same requirements as for other in-business taxpayers. See IRM 5.8.4.24, *Offers From Operating Businesses* and IRM 5.8.4.22.1, *Trust Fund Liabilities*, regarding trust fund liabilities.
6. Separate actions and separate OICs are required for each liable taxpayer when the LLC is the taxpayer for some tax periods and the SMO is the taxpayer for other tax periods assessed under the same EIN. An accepted OIC for one liable taxpayer will not be defaulted by subsequent liabilities owed by a different liable taxpayer assessed under the same EIN.

5.1.21.7.3 (01-12-2015)

Currently Not Collectible

1. Identify the liable taxpayer as the SMO or LLC prior to reporting accounts currently not collectible (CNC). The collectibility determination must be made based on the assets and payment abilities of the liable taxpayer.
2. Use the EIN of the assessed liability to report accounts currently not collectible.
3. Request TC 130 for refund offset as appropriate when the SMO is liable for an assessment made in the name and EIN of the LLC.
4. Separate collectibility determinations are required for each taxpayer if the identity of the taxpayer changed from one period to the next resulting in a change of the taxpayer of record.
5. When closing modules on one or both liable taxpayers (LLC and SMO) as currently not collectible, case resolution actions must be taken in a specific order. See IRM 5.16.1.3.4, *Limited Liability Companies*, for additional information on the specific order of case resolutions.

5.1.21.8 (01-12-2015)

Bankruptcy Proceedings

1. When the Service receives notice that an LLC has filed bankruptcy, **Insolvency must determine** if the "LLC or the SMO" is the taxpayer before proceeding with a proof of claim.
 - If the bankrupt LLC is the taxpayer, normal proof of claim procedures are used. Liability for TFRP can be pursued against responsible persons, without regard for the automatic stay imposed by the bankruptcy.
 - If the SMO is the taxpayer, the LLC has no liability for Bal Due modules, even though assessments may exist in the LLC name resulting from the SMO using the option of reporting employment taxes under the LLC name and EIN. The liability is that of the owner and the Service may not have the status of a creditor of the bankrupt entity. The automatic stay imposed by the bankruptcy does not bar collection against the SMO for the entire employment, excise or income tax liability arising from the operation of the LLC.

Caution:

For situations where the SMO has also filed for bankruptcy, follow the procedures in (2) below.

Note:

The LLC is the taxpayer for employment taxes for wages paid on or after January 1, 2009, or excise taxes incurred on or after January 1, 2008.

2. When the SMO files bankruptcy, Insolvency may not be aware of a liability arising from the activities of the disregarded LLC because of the limitations of IDRS and CFOL. When Insolvency has indications that the debtor is the SMO of an LLC, determine whether the SMO is the liable taxpayer for employment tax liabilities on wages paid prior to January 1, 2009 by:
 - Checking CC TXMOD to determine whether TC 971 AC 364, 365 or 366 has been input to identify the liable taxpayer;
 - Reviewing the ICS Name/Address records, and/or case history to determine whether a revenue officer has identified the liable taxpayer;
 - Examining the schedules of the debtor for evidence of ownership of a disregarded LLC;
 - Questioning the taxpayer and/or the power of attorney at the 341 hearing;
 - Issuing a courtesy investigation to a revenue officer field group to make the determination; or
 - Contacting Area Counsel to obtain the information from the debtor through a Bankruptcy Rule 2004 examination.
3. Employees who learn of a bankruptcy proceeding where an LLC or owner of a disregarded LLC is the debtor should notify Insolvency of the tax status of the debtor.

- If the LLC is the debtor, notify Insolvency of any tax liability owed by the LLC.
 - If the SMO is the debtor, notify Insolvency of any tax liability owed by the member/owner.
4. If threshold for filing claims are met per Exhibit 5.9.13-1, a proof of claim will be filed for the tax liability of
- An LLC classified as a partnership or an association taxable as a corporation when the LLC files bankruptcy,
 - The single member/owner of a disregarded entity when the SMO files bankruptcy
 - An LLC treated as an entity separate from its owner for employment taxes on wages paid on or after January 1, 2009, or excise taxes incurred on or after January 1, 2008, when the LLC files bankruptcy.
5. A protective proof of claim should be filed if the liable taxpayer cannot be determined prior to the bar date or under certain other conditions described in IRM 5.9.13.14, *Limited Liability Companies*.

5.1.21.9 (01-12-2015)

Other Collection Remedies

1. Other collection remedies may be available to collect from LLCs. These include:
 - Alter Ego
 - Nominee Liability
 - Transferee Liability
 - Specific State Statutes
2. An example of collection based on a specific state statute relates to forfeiture of a corporate charter under Texas Tax Code § 171.255. The officers and directors of a corporation that has its corporate charter forfeited are personally liable for all debts incurred or created in Texas from the due date of the report, and tax or penalty on which the forfeiture is based until the revival of the corporate charter.
3. For assistance, refer to IRM 5.17.14, *Legal Reference Guide for Revenue Officers, Fraudulent Transfers and Transferee and Other Third Party Liability*.
4. Because these options are highly dependent upon case fact patterns, they should be pursued only with the agreement and guidance of Area Counsel.

5.1.21.9.1 (09-01-2009)

Charging The Member's Interest

1. When an owner is subject to a federal tax lien, the ownership interest in the LLC is, in theory, subject to lien attachment. Administrative action may not be productive for the following reasons:
 - The value of the interest to a prospective purchaser is usually the right to receive a distribution of money or property from the LLC. The prospective purchaser does not acquire a direct ownership interest in the LLC's assets.
 - State law generally requires payment of creditors' claims, both recorded liens and general unsecured claims, before a distribution may be declared to the owner(s).
 - These factors combine to make the value of the ownership interest difficult to determine and of very limited value to prospective purchasers.
2. Furthermore, most state laws protect the LLC from "forced distributions" to member/owner(s).
3. However, a three step process may be used to charge the member's interest. This process may be useful when the single member/owner is liable for taxes incurred in the operation of a disregarded LLC.
 - A. A suit to reduce a tax claim to judgment and to foreclose the federal tax lien establishes a judgment against the owner.
 - B. The judgment is then used as the basis for action in state court to charge the member's interest and obtain an order for distribution of money or property to satisfy the judgment.
 - C. The United States steps into the shoes of the member/owner and is paid any distributions made from the LLC pursuant to the order.

Note:

As pending actions do not preclude distributions from the LLC prior to the order of the court, the LLC could be reduced to an empty shell by other distributions during the pendency of suit. In appropriate cases, pre-judgment relief to prevent such distributions may be sought as a part of the suit.

5.1.21.10 (09-01-2009)

Rules for Entity Classification Elections

1. An election made on Form 8832, *Entity Classification Election*, cannot take effect more than 75 days prior to the date the election is filed, nor can it take effect later than 12 months after the election is filed unless the entity is eligible for late election relief under Rev. Proc. 2009-41, 2009-39 I.R.B. 439, or by requesting a private letter ruling.
2. Once an eligible entity makes an election on Form 8832, the entity generally cannot change that classification during the 60 months following the effective date of the election. See Form 8832 instructions for exceptions.
3. There are numerous restrictions on which entities can elect to be treated as an S corporation. See instructions for Form 2553, *Election by a Small Business Corporation*.

5.1.21.10.1 (01-12-2015)

Default Classification of Entities Not Filing an Election

1. A "domestic multi-member LLC" that has **not** filed an election is **classified by default as a partnership** for federal tax purposes.

Exception:

See *IRM 5.1.21.10.2* for special provisions regarding an LLC wholly owned as community property by a husband and wife.

Caution:

An LLC that is owned and operated by spouses as co-owners is a valid entity under state law. Therefore, it may **not** be considered a "qualified joint venture" under the provisions of the Small Business Work and Opportunity Tax Act of 2007, which allow spouses to elect not to be treated as a partnership by separately reporting a share of all of a business's items of income, loss, etc.

2. A "domestic single member LLC" that has **not** filed an election is by "default disregarded as an entity separate from its owner" for federal income tax purposes, employment taxes that accrue prior to January 1, 2009, and certain excise taxes that accrue before January 1, 2008.

3. A foreign eligible entity that has **not** made an election on Form 8832, is with respect to the debts and obligations of the entity classified as:
 - A partnership if it has two or more members and at least one member does not have limited liability
 - An association taxable as a corporation if all members have limited liability, or
 - A disregarded entity separate from its owner if it has a single owner that does not have limited liability.
4. A single member LLC that has **not** filed an election will be treated as an "entity separate from its owner" for excise tax liabilities imposed and actions first required or permitted in periods beginning on or after January 1, 2008, and for employment tax liabilities on wages paid on or after January 1, 2009.

5.1.21.10.2 (01-12-2015)

Community Property Considerations

1. Rev. Proc. 2002-69, 2002-45 IRB 831, provides guidance on the classification for federal tax purposes of an entity that
 - Is owned solely by a husband and wife as community property under the laws of a state, foreign country or a possession of the United States; and
 - The entity is not treated as a corporation under Treas. Reg. § 301.7701-2.
2. The revenue procedure provides that the Service will respect a taxpayer's treatment of these entities.
 - If the husband and wife treat the wholly owned LLC as a partnership for federal tax purposes and file the appropriate partnership returns, the Service will accept the position that the entity is a partnership for federal tax purposes.
 - If they treat the LLC as a disregarded entity for federal tax purposes, the Service will accept the position that the entity is a disregarded entity for federal tax purposes.

Note:

The legal position of the Service is that for calendar years that the husband and wife did not file an income tax return, the wholly owned LLC is considered a multi-member LLC classified as a partnership.

3. A change in reporting position is treated as a conversion of the entity for federal income tax purposes. There is no restriction on the timing or frequency of changing reporting position and the resulting conversion from disregarded entity to partnership or from partnership to disregarded entity.
4. The identity of the taxpayer liable for certain excise taxes that accrue prior to January 1, 2008, and for employment taxes that accrue prior to January 1, 2009, changes concurrently with this change in classification.
5. Limitations on the filing of amended returns resulting in classification changes are no different from limitations on other amended returns. This may present unique challenges for determining the taxpayer liable for employment and excise taxes. For example, the filing of the partnership return may occur after the employment tax liability is incurred. Should questions of liability arise in these circumstances, seek the assistance of Area Counsel.
6. The provisions of Rev. Rul. 99-5, 1999-6 IRB 8, (regarding conversion from a disregarded entity to a partnership) and Rev. Rul. 99-6, 1999-6 IRB 6, (regarding conversion from a partnership to a disregarded entity) provide guidance on the income tax consequences of conversions.

5.1.21.10.3 (02-19-2008)

Examples of LLC Ownership and Classification

1. As noted above, state law allows for a very broad range of ownership possibilities for an LLC. The following examples are not all-inclusive but indicate the complexities that may be encountered in determining ownership. For example:
 - The Stanford Corporation formed *Stanford Getaways LLC*. Stanford Corporation is the single member/owner of the LLC.
 - Donald Drake is the sole owner of *Drake's Restaurant LLC*. The LLC is a single member entity.
 - *Forsyth LLC* is the sole owner of ten separate LLC entities, *Forsyth Ventures 1 LLC*; *Forsyth Ventures 2 LLC*; etc. Each LLC is a single member entity that has never filed an election and is a disregarded entity of *Forsyth LLC*. Investigation reveals that *Forsyth LLC* itself is owned by another single member LLC, *Grand Forsyth LLC*, that is itself a disregarded entity of the Forsyth Corporation. Each of these LLCs is a single member disregarded entity with Forsyth Corporation being the ultimate owner.
 - Macon Family Trust and Randolph Macon are the member/owners of *Macon LLC*. The LLC has two owners and is therefore a multi-member LLC.
 - Michael Cornell and Patricia Harvard own the state law partnership, M & P. The partnership owns 100% of *Cornell Harvard LLC*. The LLC is owned by one legal entity, M & P, and is therefore a single member LLC.
 - Andrew Bucknell and Howard Clemson are partners in Georgetown Partnership. The partnership purchases a 25% interest in the *Cornell Harvard LLC* in the previous example. The LLC now has two owners, Georgetown Partnership and M & P, making it a multi-member LLC. (See Rev. Rul. 99-5 for the consequences of this conversion.)

Note:

Employees should be alert to the possibility that layers of LLC ownership may not indicate a legitimate business purpose. In some of the examples above, additional facts would need to be examined to determine if alter ego and/or nominee issues might be raised.

5.1.21.11 (01-12-2015)

Changes in Election or Ownership

1. An LLC can elect to change its classification, but generally cannot make a subsequent election for a period of sixty months after the effective date of a prior election. Exceptions to the general rule include:
 - A request for a private letter ruling that allows a change in classification within the period of the sixty-month limitation.
 - The previous election was made by a newly formed entity and was effective on the date of formation.
2. Changes in the number of owners of a domestic LLC may affect its classification as follows:
 - An LLC classified as a partnership becomes classified as a disregarded entity when the LLC's ownership is reduced to one member.
 - An LLC classified as a disregarded entity becomes classified as a partnership when membership increases to more than one member.
 - See Rev. Rul. 99-5 (regarding conversion from a disregarded entity to a partnership) and Rev. Rul. 99-6 (regarding conversion from a partnership to a disregarded entity) for income tax ramifications of these conversions involving domestic entities.

3. For a domestic LLC, the default classification and filing requirements may change at the same time as a change in ownership from multi-member to single member or from single member to multi-member at any time.
4. A domestic LLC classified as an association taxable as a corporation retains its same classification regardless of any change in the number of members.
5. For foreign eligible entities, the default classification may change if the number of members without limited liability changes.
6. A change in ownership that affects the LLC's classification is not an elective change, so there is no sixty-month limitation on the frequency of such changes.

Note:

The taxpayer is not required to notify the Service of ownership changes.

5.1.21.11.1 (09-01-2009)

Examples of Classification Changes by Ownership or Election

1. For employment taxes on wages paid prior to January 1, 2009, the identity of the liable taxpayer may change under a variety of circumstances. For example:
 - Emma Eagle was the sole owner of *Eagle Enterprises LLC*, which made no election. On January 1, 2008, Timothy Hawk acquired a partial ownership interest in the LLC. The employment tax liabilities were reported on Forms 941 in the name of *Eagle Enterprises LLC* for all quarters of 2007 and 2008. For the 2007 Forms 941, *Eagle Enterprises LLC* was a single member LLC, classified as a disregarded entity; Emma Eagle was the employer and liable taxpayer. When Timothy Hawk became a member on January 1, 2008, *Eagle Enterprises LLC* became a multi-member LLC, classified as a partnership. *Eagle Enterprises LLC* was the employer and the liable taxpayer for 2008 Forms 941.
 - Perry Parrot and Robert Raven owned *Birdfeeders LLC*, which made no election. *Birdfeeders LLC* was classified as a partnership, and the LLC was the employer and liable taxpayer. On January 1, 2008, Mr. Raven sold his interest in the LLC to Mr. Parrot, and it became a single member LLC, classified as a disregarded entity. Employment taxes were reported in the name and EIN of *Birdfeeders LLC* for all quarters of 2007 and 2008. *Birdfeeders LLC* was the employer and the liable taxpayer for Forms 941 for 2007 liabilities. Perry Parrot was the employer and liable taxpayer for Forms 941 for 2008.
 - Judy Goldfinch was the sole owner of *Goldie's Garage LLC*, which made no election and was classified as a disregarded entity for 2006 and 2007. The LLC filed a Form 8832, *Entity Classification Election*, electing to be treated as an association taxable as a corporation, effective January 1, 2008. Employment taxes were reported in the name and EIN of *Goldie's Garage LLC* for all quarters in 2006, 2007 and 2008. Ms. Goldfinch is the employer and liable taxpayer for Forms 941 for 2006 and 2007. *Goldie's Garage LLC* is the employer and liable taxpayer for 2008 Forms 941.
 - Margie Mockingbird and Thomas Osprey formed *Mockingbird LLC* on January 1, 2006, and made no election. On January 15, 2007, the LLC filed a Form 8832, electing to be classified as an association taxable as a corporation, effective January 1, 2007. On October 1, 2007, Ms. Mockingbird purchased Mr. Osprey's interest in the LLC. Employment taxes were reported in the name and EIN of *Mockingbird LLC* for all quarters in 2006, 2007 and 2008. *Mockingbird LLC* was classified as a partnership for 2006 and was classified as an association taxable as a corporation beginning January 1, 2007. *Mockingbird LLC* is the employer and liable taxpayer for Forms 941 for all quarters of 2006, 2007 and 2008. Because the LLC is classified as an association taxable as a corporation beginning January 1, 2007, the change in ownership on October 1, 2007 did not affect its classification.
 - Warren Wren was the sole owner of *Wren's Automotive LLC*, which filed a Form 8832, effective January 1, 2001, electing to be classified as an association taxable as a corporation. The LLC filed another Form 8832, effective January 1, 2007, electing to change its classification to a disregarded entity. Employment taxes were reported in the name and EIN of *Wren's Automotive LLC* for all quarters in 2006, 2007 and 2008. *Wren's Automotive LLC* was the employer and the liable taxpayer for Forms 941 for 2006. Warren Wren is the employer and the liable taxpayer for Forms 941 for 2007 and 2008.
 - *Robin's Roost LLC* is wholly owned as community property by Nancy and Rudy Robin in a community property state, and made no election. Employment taxes were reported in the name and EIN of *Robin's Roost LLC* for all quarters in 2006 and 2007. Mr. and Mrs. Robin treated the LLC as a partnership for federal tax purposes by filing a Form 1065, *U.S. Return of Partnership Income*, for 2006, so the LLC is classified as a partnership for 2006. Mr. and Mrs. Robin treated the LLC as a disregarded entity for 2007 by reporting LLC activity on their jointly filed Form 1040, Schedule C. For 2006 employment taxes, *Robin's Roost LLC* is the employer and liable taxpayer. For 2007 employment taxes, the employer and liable taxpayer is the community of Nancy and Rudy Robin.
 - Tom Toucan was the sole owner of *Feathers LLC*, which was organized July 1, 2007. *Feathers LLC* made no election. On January 1, 2008, Toucan sold his interest in the LLC to Chris Cardinal. Employment taxes were reported in the name and EIN of *Feathers LLC* for 2007 and 2008. Tom Toucan is the employer and liable taxpayer for Forms 941 for 2007 and Chris Cardinal is the employer and liable taxpayer for Forms 941 for 2008.
2. For a single member LLC that made no elections, the identity of the liable taxpayer changed for employment tax periods beginning on or after January 1, 2009. For example:
 - Barbara Sparrow is the sole owner of *Sparrow LLC*, which made no election. Employment taxes were reported in the name and EIN of *Sparrow LLC* for all quarters in 2007, 2008 and 2009. *Sparrow LLC* is a disregarded entity, so Barbara Sparrow is the employer and liable taxpayer for 2007 and 2008 employment taxes. For employment tax periods beginning on or after January 1, 2009, the LLC is treated as an entity separate from its owner; *Sparrow LLC* is the employer and the liable taxpayer. *Sparrow LLC* continues to be disregarded as an entity separate from its owner for Federal income tax purposes.
 - Bridgette Bluebird is the sole owner of *Bluebird LLC*, which has made no election. She reports employment taxes in her own name and EIN for all quarters in calendar year 2007. Under Notice 99-6, as modified by T.D. 9356, 2007-39 IRB 675, she does not have to seek permission from the Commissioner to switch her method of reporting employment taxes. She begins reporting employment taxes in the name and EIN of *Bluebird LLC* for all quarters in calendar year 2008. Because *Bluebird LLC* is a disregarded entity, Bridgette Bluebird is directly liable for employment taxes on wages paid prior to January 1, 2009. Even though the 2007 liability was reported in the name and EIN of Bridgette Bluebird, and the 2008 liability was reported in the name and EIN of *Bluebird LLC*, Bridgette Bluebird is the liable taxpayer for 2007 and 2008 employment tax periods. *Bluebird LLC* is the liable taxpayer for employment tax periods beginning on or after January 1, 2009. *Bluebird LLC* continues to be disregarded as an entity separate from its owner for Federal income tax purposes.
3. For excise tax periods beginning on or after January 1, 2008 and employment tax periods beginning on or after January 1, 2009, the LLC is the liable taxpayer, regardless of changes in election or ownership.
4. See *IRM 5.1.21.13.6.1* for additional information on impact of regulation changes.

5.1.21.12 (01-12-2015)

Correcting or Clarifying Entity Information

1. When you determine that the SMO is the liable taxpayer for any open modules, correct or clarify entity information as appropriate:
 - Select "J" Address Type in ICS, which allows entering the SMO's name and secondary TIN, an SSN or EIN.

Note:

See [ICS User Guide, Chapter 9, Entity Detail](#), for additional information and guidance.

 - Correct the filing requirements for the entity, as appropriate
 - Verify that the SMO has its own Employer identification Number (EIN), if not, advise taxpayer to secure an EIN for the SMO.
 - Request TC 130 cross-reference for those periods where an individual owner is identified as the liable taxpayer for liabilities assessed in the name and EIN of the LLC. For additional information, see *IRM 5.1.12.20.1.4.1, Limited Liability Company Offset*.

Note:

When a secondary TIN is added or updated in the "LLC- LLC Owner is Liable Address", it is systemically added to the ICS Cross reference on the case.

2. Document your case history with the basis for requested corrections and clarifications.
3. Requests to add or delete the name and/or EIN of the owner or delete erroneously created filing requirements should be forwarded by secure e-mail to Centralized Case Processing (CCP) using Form 2363, *Master File Entity Change*.
4. Requests to close out filing requirements should be forwarded by secure e-mail to CCP using Form 4844, *Request for Terminal Action*, to request TC 591, Closing Code 50 for the appropriate period.
5. Requests to create new filing requirements must be forwarded to the Entity Unit at the appropriate campus.

5.1.21.12.1 (01-12-2015)

Addition of Owner Name to Assessment

1. Adding the name of the SMO to the name line of a disregarded entity does **not** constitute a supplemental assessment. The legal position of the Service is that given the close relationship between the disregarded entity and its SMO, any reference in an assessment to the LLC is a valid assessment against the member/owner.
2. Notices issued in the name and EIN of the LLC are generally legally sufficient for
 - Assessment
 - Notice and demand
 - Third-Party contact notification

Note:

See *IRM 5.1.21.6.1* for special requirements for a Collection Due Process (CDP) Notice. A CDP notice given to the LLC is **not** sufficient notice to the SMO.

5.1.21.12.2 (01-12-2015)

Employer Identification Number Requirements for an LLC

1. A multi-member LLC must have its own EIN, regardless of its classification.
2. A single member LLC classified as an association taxable as a corporation must have its own EIN.
3. For wages paid before January 1, 2009, an LLC classified as a disregarded entity was not required to have an EIN. The disregarded entity could request an EIN for banking purposes or if it chose to report and pay employment taxes incurred in its business operations using the name and EIN of the LLC. See *IRM 5.1.21.13.6.2, Disregarded Entities and Notice 99-6*.
4. A single member LLC that is otherwise disregarded is treated as a corporation for employment taxes on wages paid on or after January 1, 2009 and the LLC must have its own EIN. Employment taxes on wages paid on or after January 1, 2009, must be reported and paid using the name and EIN of the LLC.
5. A single member LLC that is otherwise disregarded is treated as a corporation for certain excise taxes that accrued on or after January 1, 2008, and the LLC must have an EIN.

5.1.21.12.3 (01-12-2015)

Employer Identification Number Requirements for the Owner of a Disregarded Entity

1. Treasury Regulation § 301.6109-1 requires every employer to have an EIN. With respect to wages paid prior to January 1, 2009, if the LLC is a disregarded entity, the single member/owner (SMO), not the LLC, was the employer and must have its own EIN. This is required even if the SMO reported and paid employment taxes in the name and EIN of the LLC.
2. When a disregarded entity LLC was established on the business master file, the campus assigned an EIN to the SMO if the LLC identified itself as having one owner and having employees during tax periods ended prior to January 1, 2009. See *IRM 21.7.13.5.4.3, Why Two EINs are Assigned to a Single Member LLC for Certain Tax Periods*, for additional explanation.
3. If the campus could not establish that the LLC was a disregarded entity, an EIN was assigned to the LLC, but no EIN was assigned to the SMO.
4. When the SMO is identified as the employer for any open modules, ensure that the owner has its own EIN by completing the following:
 - Research IDRS command code NAMEB AND NAMEE to determine if the member/owner of the disregarded entity has its own assigned EIN.
 - If the SMO is an individual, research command code INOLES for the SSN to check for a cross-reference EIN.
5. If no EIN has been assigned, advise the SMO to secure an EIN through internet EIN at www.irs.gov and complete the following:
 - Document the case history why an EIN is necessary
 - Request the addition of the SMO's EIN as a cross-reference EIN on the LLC entity and enter it in the ICS case history for use on a levy, if required.
6. ICS programming updates allow for the addition of a secondary TIN, SSN or EIN, by editing "LLC-LLC is Liable Address". See [ICS User Guide, Chapter 9, Entity Detail](#), for details on adding or updating secondary TINs.

Note:

Updates to ICS allow the issuance of a levy using the "LLC-Owner is Liable Address" without requiring input of an EIN.

7. For tax periods beginning on or after January 1, 2009, the SMO is **not** the employer and is no longer required to have an EIN.

5.1.21.13 (01-12-2015)

Federal Taxation of an LLC

1. For purposes of this section, income taxation is discussed in separate sections from employment and excise taxation. See *Exhibit 5.1.21-2* for income tax rules. See *Exhibit 5.1.21-3* for employment tax rules.
2. Income taxation of an LLC depends upon the elections made for the entity or, in the absence of election, the default classification of the entity provided in the regulations.
3. With respect to excise tax liabilities imposed and actions first required or permitted in periods beginning on or after January 1, 2008, or employment taxes on wages paid on or after January 1, 2009, the LLC is treated as a corporation and is the liable taxpayer, regardless of its classification for income tax purposes.

5.1.21.13.1 (01-12-2015)

Income Taxation for Association Classification

1. An LLC classified as an association taxable as a corporation, whether owned by one or more members, files Form 1120, *U.S. Corporation Income Tax Return* or Form 1120-F, *U.S. Income Tax Return of a Foreign Corporation*, and is liable for payment of any tax due.
2. When an LLC is classified as a subchapter S corporation, the LLC
 - Files Form 1120S, *U.S. Income Tax Return for an S Corporation*
 - Provides Schedule K-1, *Shareholder's Share of Income, Credits, Deductions, etc.*, to each member/owner

Note:

Each member/owner reports its share of the income and deductions from the LLC on its own income tax return and is liable for any tax due on that return.

- Is liable for certain taxes due on Form 1120S tax return in limited circumstances provided in the Internal Revenue Code and its governing regulations.

5.1.21.13.2 (09-01-2009)

Income Taxation for Partnership Classification

1. An LLC classified as a partnership files Form 1065, *U.S. Partnership Tax Return*, and provides Schedule K-1, *Partner's Share of Income, Credits, Deductions, etc.*, to each member/owner.
2. Each member/owner reports its share of the income and deductions from the LLC on its own income tax return and is liable for any tax due on that return.

5.1.21.13.3 (09-01-2009)

Income Taxation for Disregarded Entity Classification

1. When a single member LLC is classified as a disregarded entity, the single member owner (SMO) reports the income and expenses of the LLC on the appropriate schedules of its own income tax return.
2. If the member/owner is
 - An individual, the individual files Form 1040, *U.S. Individual Income Tax Return*, or Form 1040-NR, *U.S. Nonresident Alien Income Tax Return*, with the schedules appropriate to the income source.
 - A partnership, the SMO files Form 1065, *U.S. Return of Partnership Income*.
 - A corporation, the SMO files Form 1120, *U.S. Corporation Income Tax Return*, Form 1120-F, *U.S. Income Tax Return of a Foreign Corporation*, or Form 1120S, *U.S. Income Tax Return for an S Corporation*, if the SMO is classified as an S corporation.
 - A trust, estate or another LLC, the SMO files the appropriate income tax return for that entity type.
3. While regulations published August 16, 2007, may affect the tax treatment of an LLC for employment and excise tax purposes, income taxation is unchanged. A single member LLC that has not elected to be treated as an association taxed as a corporation continues to report the income and expenses of the LLC on the appropriate schedules of the SMO's income tax return.

Note:

An individual owner of a disregarded entity continues to be treated as self-employed for purposes of the Self-Employment Contributions Act (SECA) taxes, and not as an employee of the disregarded entity.

5.1.21.13.4 (09-01-2009)

Employment and Excise Taxation for Association Classification

1. When the LLC is classified as an association taxable as a corporation or a subchapter S corporation, regardless of the number of members, the LLC is the employer and is liable for employment taxes.
2. When the LLC is classified as an association taxable as a corporation, the member/owners are the equivalent of shareholders in the corporation. If the LLC owes employment taxes, the trust fund recovery penalty (TFRP) may be asserted against a member/owner who meets the definition of a responsible person under IRC 6672.
3. Excise taxes that result from the operation of the LLC are generally the liability of the LLC and may be subject to TFRP.
4. When the LLC is the taxpayer, the assets of the LLC, *not the owner's assets*, are subject to collection action.

5.1.21.13.5 (01-12-2015)

Employment and Excise Taxation for Partnership Classification

1. When an LLC is classified as a partnership, the LLC is the employer and is liable for employment taxes.
2. A member/owner of an LLC classified as a partnership is not an employee of the LLC and may be subject to self-employment tax.
3. When the LLC is classified as a partnership, the liability of members/owners for employment taxes is not the same as the liability of general partners.
 - Under state law, general partners are liable for the employment tax incurred by the partnership, just as they are liable for other debts of the partnership.
 - Under state law, members/owners of an LLC are not liable for the debts of an LLC. Accordingly, the members/owners of an LLC classified as a partnership are not directly liable for the employment tax liability incurred by the LLC.

Note:

The trust fund recovery penalty (TFRP) may be asserted against a member/owner who meets the definition of a responsible person under IRC 6672.

4. Excise taxes that result from the operation of the LLC are generally the liability of the LLC and may be subject to TFRP.
5. When the LLC is the liable taxpayer, the assets of the LLC, *not the owner's assets*, are subject to collection action.

5.1.21.13.6 (01-12-2015)

Employment and Excise Taxation for the Disregarded Entity

1. For employment taxes on wages paid prior to January 1, 2009 by an LLC that is a disregarded entity, the following apply:
 - A. The SMO is the employer of record for any employees engaged in the business.

- B. The SMO is not an employee of the LLC and is subject to self-employment taxes.
- C. The SMO is liable for all employment taxes.
- D. The assets of the SMO are subject to collection action.
- E. Because the employment taxes are a debt of the SMO, state law limitation of liability shields the assets of the LLC from administrative collection actions.

Note:

State LLC statutes specify that an owner has no direct ownership of LLC assets. Administrative collection actions for debts of the owner cannot, therefore, be directed toward LLC assets.

2. The SMO of a disregarded entity is the taxpayer for certain excise taxes that accrued prior to January 1, 2008. Due to the variety of excise taxes that may be encountered, questions regarding collection of these liabilities should be addressed on a case by case basis.

Example:

The LLC is assessed a civil penalty on periods prior to January 1, 2008 for failure to file correct information returns under IRC 6721 on a Form 2290, *Heavy Highway Use Tax Return*, and the entity is a single member owner (SMO). The SMO is the taxpayer and liable for taxes as described in Treasury Regulation 301.7701-2. The Heavy Highway Use Tax is imposed under Chapter 36 (section 4481) of the Internal Revenue Code.

5.1.21.13.6.1 (01-12-2015)

Impact of Regulations Changes on Employment and Excise Taxation for a Disregarded Entity

1. Revised regulations under Treas. Reg. 301.7701-2 (as amended by T.D. 9356, 2007–39 IRB 675), provide that after the applicability dates of the changes, a single member LLC that is otherwise disregarded as an entity separate from its owner is treated as a corporation for employment and certain excise tax purposes.
2. For employment taxes, the regulations changes apply to wages paid on or after January 1, 2009.
3. For certain excise taxes, the regulations changes apply to liabilities imposed and actions first required or permitted in periods beginning on or after January 1, 2008.
4. These changes are not retroactive. Liabilities for employment and excise taxes incurred by a disregarded entity prior to the effective dates of these regulations are subject to collection procedures for disregarded entities specified above. See *IRM 5.1.21.13.6*

Reminder:

These employment and excise taxes are subject to assertion of a TFRP when the unpaid trust fund tax meets the criteria for a TFRP investigation. See *IRM 5.1.21.6.5* for additional information.

5.1.21.13.6.2 (09-01-2009)

Disregarded Entities and Notice 99-6

1. Notice 99-6, 1999–3 IRB 12, allowed a single member LLC classified as a disregarded entity two options for reporting and paying employment taxes for wages paid prior to January 1, 2009:
 - Using the name and EIN assigned to the LLC; or
 - Using the name and EIN assigned to the SMO, as if there were no LLC

Note:

When this option was used and the SMO is an individual, it may appear that the liability is from a sole proprietorship.

2. For employment taxes on wages paid prior to January 1, 2009, the manner in which the liability is *reported* for a disregarded entity does **not** affect how it is *collected*. Whether the liability was reported using the name and EIN of the LLC or the name and EIN of the SMO, the SMO is the employer and is fully liable for all employment taxes incurred in the business operations of the disregarded LLC. The disregarded LLC is not the employer and is not liable for any Bal Due.
3. Notice 99-6 is obsolete as of January 1, 2009, and employment tax liabilities that accrue on or after that date may no longer be reported in the name and EIN of the SMO. The LLC is the employer for wages paid on or after January 1, 2009, and employment taxes must be reported in the name and EIN of the LLC.

5.1.21.14 (01-12-2015)

Identification of Liable Taxpayer

1. For income tax purposes, the liable taxpayer is named in the assessment.
2. For excise tax purposes, the liable taxpayer is named in the assessment. For liabilities imposed and actions required or permitted in periods beginning on or after January 1, 2008, the LLC is the taxpayer.
3. For employment taxes on wages paid prior to January 1, 2009, the liable taxpayer may be the LLC or its owner, depending on the classification of the LLC for federal tax purposes. See *IRM 5.1.21.4.1* for classification of an LLC after making an election. The classification of the LLC and identification of the taxpayer:
 - If the LLC is classified as an association taxable as a corporation, the LLC is the taxpayer.
 - If the LLC is classified as a partnership, the LLC is the taxpayer.
 - If the LLC is classified as a disregarded entity, the SMO is the taxpayer.
4. For employment taxes on wages paid on or after January 1, 2009, the LLC is the taxpayer, regardless of its classification.

5.1.21.14.1 (01-12-2015)

Identity of the Taxpayer on BMFOLE

1. For employment taxes on wages paid before January 1, 2009, the
 - LLC is the taxpayer if BMFOLE indicates that the LLC elected to be classified as an association taxable as a corporation; or
 - Liable taxpayer is dependent on whether the LLC has one member or more than one member if the LLC did not elect to be classified as an association taxable as a corporation.
2. For an entity established on or after January 1, 2009, an LLC indicator (LLC-IND) is systemically input on the master file and displays on BMFOL and ICS to denote whether the LLC had one member or more than one member when it was established.

3. If the LLC indicator field on BMFOLE is blank or does not reflect the current ownership of the LLC, forward Form 4844, *Request for Terminal Action*, by secure e-mail to Centralized Case Processing (CCP) to request input of CC BNCHG to update the LLC-IND as appropriate:

- "S" for a single member LLC
- "M" for a multi-member LLC

Caution:

Verify the number of members for each open module to determine the liable taxpayer for that module, as the membership of the LLC may have changed since it was established.

4. The phrases "Single Member" or "Multi-member" are displayed on ICS, "Other Entity Information" screen under Entity Detail.

5.1.21.14.2 (01-12-2015)

Identity of the Taxpayer on Integrated Collection System (ICS)

1. ICS generally reflects the entity name as it appeared when it was established on BMF. It may contain the name of the LLC, its trade name and/or the name of a member/owner.
2. When the taxpayer is identified, document the case history with evidence supporting the classification determination.
3. Create a new Name/Address record on ICS to identify the liable taxpayer when requesting administrative collection actions by selecting the correct "LLC Name/Address type" in ICS. See [ICS User Guide, Chapter 9, Entity Detail](#), for updated guidance on selecting Name/Address record for the correct taxpayer entity.
4. If the identity of the taxpayer changes from one period to the next, create a separate Name/Address record for each taxpayer. Clarify the tax periods attributed to each taxpayer in your summarizing history entry.
5. When the liable taxpayer changes **during** a tax period, the liability of both taxpayers may be reported on one tax return under the provision of Notice 99-6. Document your case history with the basis for your determination and the calculation of the portion of the module balance due from each liable taxpayer.

5.1.21.14.2.1 (01-12-2015)

LLC Case Codes in ICS

1. Case codes have been established in ICS for LLC cases as follows:
 - 601- LLC in business
 - 602 - LLC out of business
2. These case codes are not set systemically, and must be updated through ICS when you identify a taxpayer is an LLC.
3. ICS sets the appropriate LLC case code if the LLC indicator field displays an S or M when the case is uploaded to ICS.

5.1.21.14.3 (01-12-2015)

Identity of the Taxpayer on Integrated Data Retrieval System (IDRS)

1. The liable taxpayer can change from one tax period to the next, or within a tax period, when the classification of the LLC changes concurrently with a change in ownership or election, or with the effective date of regulations changes.
2. Assign transaction code 971 and action codes 364, 365 and 366 to each tax period to identify the liable taxpayer. These codes are utilized to streamline requests for administrative collection actions and to facilitate case closing actions.
3. A menu selection "LLC TC 971/972", is available in the Collection Activities Menu on ICS that allows for the systemic uploading of these transactions codes from ICS to IDRS. This option allows input of the TC 971, action codes and date when the applicable taxpayer was first liable.
4. Ensure the appropriate Name/Address records and TC 971/972 AC 364, 365 and 366 are input at the earliest possible time. These records are used in other applications including NFTL, Levy, IA, and CNC. See [ICS User Guide, Chapter 9, Entity Detail](#), for updated guidance to request TC 971 and action codes.
5. Transaction Code (TC) 971 Action Codes (AC) have been assigned to identify the liable taxpayer for each tax period, as follows:

Action Code	Explanation
364	LLC is the liable taxpayer for this tax period.
365	Single member owner (SMO) is the liable taxpayer for this tax period.
366	Liable taxpayer changed during this tax period.

6. Use the following table to determine when the "X-REF TIN" field and the "DATE FIRST LIABLE" field should be included for these inputs:

Action Code	Liable Taxpayer	X-REF TIN field	Date First Liabile
364	LLC	Not required	Optional: Date LLC first liable
365	SMO	Required: EIN of SMO	Optional: Date SMO first liable
366			

Note: Changed during tax period Required: EIN of liable taxpayer Required: Date SMO or LLC first liable

Request a separate TC 971 AC 366 for **each** liable taxpayer.

Note:

The EIN of the liable SMO, not an SSN, should be used for the "X-REF TIN."

7. When the liable taxpayer changes from one tax period to the next, include the date the taxpayer was first liable in the "DATE FIRST LIABLE" field.

Example:

Steve Thornton was the sole member of *Thornton LLC*, EIN: 00-5271987, which was established on January 1, 2008. Steve Thornton's EIN is 00-6171985. *Thornton LLC* made no election. On July 1, 2008, Debbie Thornton acquired a partial interest in *Thornton LLC*. There are open Bal Due modules for Form 941 taxes for tax periods ended June 30, 2008, September 30, 2008 and December 31, 2008. Request the following:

Tax Period	Action Code	X-REF TIN	DATE First Liabile
01/200806	365 (SMO Liable Taxpayer)	00-06171985	01/01/2008
01/200809 01/200812	364 (LLC Liable Taxpayer)	N/A (not required; same as case TIN)	07/01/2008

8. When the liable taxpayer changes during a tax period, enter separate TC 971 AC 366 for each liable taxpayer during a tax period.

Example:

Assume in the example above that *Thornton LLC* has a Bal Due for the Form 940 for 2008. Request the following for Form 940 for tax period ended December 31, 2008:

Action Code	X-REF TIN	DATE First Liable
366	00-6171985	01/01/2008
366	00-5271987	07/01/2008

Example:

Kemper LLC, EIN: 00-1241953, made no election, and had two members, Lisa Kemper and Sue Stokes. On March 1, 2008, Sue Stokes sold her interest in *Kemper LLC* to Lisa Kemper, EIN 00-0081853. *Kemper LLC* has a Bal Due for Form 941 for the tax period ended March 31, 2008. Request the following for that module:

Action Code	X-REF TIN	Date First Liable
366	00-1241953	01/01/2008
366	00-0081853	03/01/2008

Note:

Requesting input of TC 971 AC 365 or 366 will never be applicable for tax periods beginning on or after January 1, 2009. If attempted, ICS will block the request.

9. If TC 971 AC 364/365/366 does not correctly identify the liable taxpayer, request TC 972 with the original action code to reverse it. Request another TC 971 with the correct action code.

**Exhibit 5.1.21-1
Election by LLC**

Check IDRS command code (CC) BMFOLE for the following transaction codes to determine whether or not the LLC has made an election:

Transaction Code	Meaning
076	Indicates the <ul style="list-style-type: none"> date the Form 8832 was accepted by the campus; effective date of the election; and type of entity elected. This code will also be input if Form 2553 is filed to make simultaneous elections.
090	Indicates the <ul style="list-style-type: none"> date the Form 2553 was accepted by the campus; effective date of the election; and fiscal year month for the entity.

Use the following table to identify the classification of the **PARA-CD** indicator A-F and Z:

Indicator	Classification
A	Domestic entity; association taxable as a corporation
B	Domestic entity; partnership
C	Domestic entity; disregarded as a separate entity
D	Foreign entity; association taxable as a corporation
E	Foreign entity; partnership
F	Foreign entity, disregarded as a separate entity
Z	Domestic entity; simultaneous election, association taxable as corporation and an S corporation by filing only Form 2553

**Exhibit 5.1.21-2
Income Taxation for LLCs**

Use the following table to determine how a limited liability company will be treated for federal income tax purposes:

Classification	A	B	C
	Partnership	Corporation	Disregarded Entity
Domestic Entities	Multi-member No election filed (default provision) or filed Form 8832 electing box [b] to be classified as a partnership	Single or Multi-member Filed Form 8832 electing box [a] to be classified as an association taxable as a corporation or per se corporation per Form 8832 instructions	Single member No election filed (default provision) or filed Form 8832 electing box [c] to be disregarded as a separate entity
Foreign Entities	Multi-member At least one member does not have limited liability (default provision) or filed Form 8832 electing box [e] to be classified as a partnership	Single or Multi-member All members have limited liability (default provision) or at least one member does not have limited liability and filed Form 8832 electing box [d] to be classified as an association taxable as a corporation	Single member Member does not have limited liability (default provision) or filed Form 8832 electing box [f] to be disregarded as a separate entity
Filing Requirement	Reported on Form 1065 in name and EIN of LLC, with K-1 to each member	Reported on Form 1120 or 1120F, in name and EIN of LLC, [unless entity files Form 2553 electing to be an S Corporation, then reported on Form 1120S in the name and EIN of LLC, with K-1 to each member]	Reported on the income tax return of the single member, with its TIN [1040/1040-NR if individual member, 1065 if partnership member, 1120 or 1120F if corporate member]
Collectible From	Each member's assets, not from the assets of the LLC	LLC assets, not the assets of the member [unless LLC filed Form 1120S, then from each member, not the assets of the LLC]	Single member's, assets, not the assets of the LLC

For domestic entities, a change in the number of members of an entity classified as association taxable as a corporation (column B) does not affect its classification. However, an eligible entity classified as a partnership, (column A), will be converted to a disregarded entity, (column C), when its membership is reduced to one member; and a disregarded entity, (column C), will be converted to a partnership, (column A), when it adds any more members. See Rev. Rul. 99-5, 1999-6 IRB 8 and Rev. Rul. 99-6, 1999-6 IRB 6, for income tax ramifications of these conversions. For foreign eligible entities, the default classification may change if the number of members change and/or limited liability changes.

**Exhibit 5.1.21-3
Employment Taxation for LLCs**

Use the following table to determine how a limited liability company will be treated for federal employment tax purposes:

Classification of LLC	Partnership OR Corporation	Disregarded Entity	Disregarded Entity for income tax; corporation for employment tax
Tax Periods	ALL	Ended before January 1, 2009	Beginning on or after January 1, 2009
Filing Requirement	Reported in the name and EIN of the LLC	Reported in the name and EIN of the single member owner or in the name and EIN of the LLC	Reported in the name and EIN of the LLC
TC 971 Action Codes	AC 364 for modules where LLC is liable	AC 365 for modules where SMO is liable	AC 364 for modules where LLC is liable
	Request a separate AC 366 for the LLC and the SMO when they are each liable for different portions of the same module. Include the EIN of the liable taxpayer in the X-REF TIN field and the date they were first liable in the SECONDARY DATE field.	SMO entire employment tax liability from member's assets ONLY , not the assets of LLC;	LLC, not the assets of the member;
Collectible From	TFRP applicable to collect the trust fund portion of the tax from responsible, willful persons which may or may not include members	TFRP applicable against responsible, willful bookkeepers or managers. There are various avenues to pursue to reach LLC assets for the liabilities of a disregarded entity, including Alter Ego, Nominee liability, Transferee liability, or two step judgments, depending on state law and the facts of the case. Consult with Area Counsel.	TFRP applicable to collect the trust fund portion of the tax from responsible, willful persons which may or may not include members
TFRP Determination	Required	Required for responsible, willful bookkeepers, managers or other persons; not for SMO	Required

**Exhibit 5.1.21-4
Identification of Taxpayer on Administrative Collection Actions for Employment Taxes**

Use the following table to determine the correct name, address and taxpayer identification number(s) to be used on administrative collection actions for employment taxes assessed in the name and EIN of an LLC.

Reminder:

Include the name, address and taxpayer identification number of the assessment on administrative collection actions for income tax and excise tax liabilities. Notice 99-6 applies only to employment taxes on wages paid before January 1, 2009.

Classification of LLC	Partnership OR Association Taxable as a Corporation	Disregarded Entity	Disregarded Entity for income tax; corporation for employment tax
Tax Periods	ALL	Ended before January 1, 2009	Beginning on or after January 1, 2009
Collection Due Process (CDP) Notice to taxpayer	LLC's name, address and EIN	SMO's name and address, EIN of taxpayer assessed the liability	LLC's name, address and EIN
Request for CDP Hearing from taxpayer	LLC's name, address and EIN	SMO's name and TIN (EIN and/or SSN when the SMO is an individual)	LLC's name, address and EIN
Notice of Federal Tax Lien	LLC's name, address and EIN	SMO's name and address, EIN of taxpayer assessed the liability	LLC's name, address and EIN
Notice of Levy	LLC's name, address and EIN	SMO's name, address and EIN; may include SSN when SMO is an individual	LLC's name, address and EIN
Seizure Documents	LLC's name, address and EIN	SMO's name and address, EIN of taxpayer assessed the liability	LLC's name, address and EIN
IRC 6020(b) Actions	LLC's name, address and EIN	SMO's name, address and EIN	LLC's name, address and EIN

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 1. Field Collecting Procedures

Section 22. Disclosure

5.1.22 Disclosure

- 5.1.22.1 [Overview — Disclosure](#)
- 5.1.22.2 [Disclosure of Criteria for Examination Selection](#)
- 5.1.22.3 [Disclosure of Joint Returns — Divorced or Separated Spouses](#)
- 5.1.22.4 [Disclosure of Trust Fund Recovery Penalty Payment Information](#)
- 5.1.22.5 [Disclosure of Informant Claims](#)
- 5.1.22.6 [Disclosure of Case Files](#)
- 5.1.22.7 [Oral Disclosure](#)

Manual Transmittal

October 23, 2014

Purpose

(1) This transmits a revised IRM 5.1.22, *Field Collecting Procedures, Disclosure*.

Material Changes

(1) IRM 5.1.22.7(3)a is updated to reflect the correct title and link to the Treasury Department Circular No. 230.

Effect on Other Documents

This IRM supersedes IRM 5.1.22 dated December 6, 2011.

Audience

The target audience is revenue officers in SB/SE Field Collection.

Effective Date

(10-23-2014)

Rocco A. Steco
Acting Director, Collection Policy
Small Business/Self Employed
SE:S:ECS:CP

5.1.22.1 (10-21-2011)

Overview — Disclosure

1. This IRM provides disclosure procedures specifically for revenue officers due to the complex nature of collection cases.
2. Follow these procedures when you are working collection cases to prevent unauthorized disclosures. The Taxpayer Browsing Protection Act, enacted August 1997, provides that the willful unauthorized access or inspection of any taxpayer records, including hard copies of returns, return information, and taxpayer information maintained on a computer, is a crime. See IRM 5.1.3.7.5, *Taxpayer Browsing Protection Act*.
3. Disclosure is defined in the Internal Revenue Code (IRC) as the making known to any person, in any manner whatever, a return or return information. See IRC § 6103, *Confidentiality and disclosure of returns and return information*.
4. Service policy permits disclosure only by personnel so authorized under the most current revision of Delegation Order 11-2, *Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*.
5. This IRM includes information on the following:
 - Disclosure of Criteria for Examination Selection
 - Disclosure of Joint Returns — Divorced or Separated Spouses
 - Disclosure of Trust Fund Recovery Penalty Payment Information
 - Disclosure Regarding Informant Claims
 - Disclosure of Case Files
 - Oral Disclosure
6. Elevate any questions or concerns regarding these IRM procedures through your group manager (GM). GMs will direct any questions or concerns to the appropriate Area contact for possible referral to Headquarters.

5.1.22.1.1 (12-06-2011)

Resources from the Office of Disclosure

1. The Office of Disclosure helps all IRS employees protect confidential tax and other sensitive information.

2. Contact the Disclosure Help Desk at 866-591-0860 or by email at *SBSE Office of Disclosure if you need assistance when questions arise concerning disclosure.
3. Refer to IRM 11.3, *Disclosure of Official Information*, specifically, IRM 11.3.2, *Disclosure to Persons with a Material Interest*, for additional guidance about disclosure.
4. Access *Disclosure References for Collection Employees* on the Disclosure web page at: <http://discl.web.irs.gov/Function/collection.asp> for additional guidance and contact information.

5.1.22.2 (10-21-2011)

Disclosure of Criteria for Examination Selection

1. It is the practice of the IRS to always respond to questions regarding the source of an audit. However, as Collection personnel do not routinely deal with the source of an audit, taxpayers who ask such questions need to be referred to the organization that performed the audit, e.g., Small Business/Self Employed Examination function or Specialty Programs, or Large Business and International (formerly Large and Mid Size Business).
2. Refer the taxpayer to Publication 556, *Examination of Returns, Appeal Rights, and Claims for Refund*, or Publication 3498, *The Examination Process*.

5.1.22.3 (10-21-2011)

Disclosure of Joint Returns — Divorced or Separated Spouses

1. IRC § 6103(e)(8), *Disclosure of collection activities with respect to joint return*, provides for disclosures pertaining to deficiencies assessed with respect to persons who have filed jointly but are no longer married or no longer reside in the same household.
2. IRC § 6103(e)(8) clarifies that divorced or separated spouses may request information about the collection activities of their former spouse. IRC § 6103(e)(8), unlike IRC § 6103(e)(7), requires a written request for information. The same information may be requested verbally under IRC § 6103(e)(7).
3. IRC § 6103(e)(8):
 - A. Is relative to tax deficiencies with respect to a jointly filed return.
 - B. Provides that certain limited information regarding one spouse shall, upon written request (from the taxpayer or authorized representative), be open to inspection by or disclosure to the other spouse.
 - C. Does not apply to deficiencies that may not be collected by reason of IRC § 6502, *Collection after assessment*, (that is, due to the expiration of the statute for collection).
4. The IRS has the authority to develop procedures controlling the frequency with which any requester can make requests pursuant to IRC § 6103(e)(8). Governmental Liaison and Disclosure (GLD) has determined that only one request per six-month (calendar) period will be allowed. See paragraph (10) of IRM 11.3.2.4.1, *Individuals*.

5.1.22.3.1 (10-21-2011)

IRC § 6103(e)(8) Disclosure Procedures

1. Follow the GLD procedures and only process one request from a requester per six-month (calendar) period pursuant to IRC § 6103(e)(8).
2. See IRM 11.3, *Disclosure of Official Information*, for the general rules for disclosure of joint return information.
3. Require the taxpayer or the taxpayer's authorized representative to submit a written request if the taxpayer desires information pursuant to IRC § 6103(e)(8).
4. Provide a written response upon receipt of a written request from the taxpayer or the taxpayer's authorized representative for IRC § 6103(e)(8) information. The response may include the following:
 - A. whether the Service has attempted to collect the deficiency from the other spouse,
 - B. the amount, if any, collected from the other spouse,
 - C. the current collection status (e.g., BAL DUE, installment agreement, suspended), and/or
 - D. the reason for any suspension, if applicable (e.g., unable to locate, hardship).

Exception:

As noted above, the information provided under IRC § 6103(e)(8) may also be provided under IRC § 6103(e)(1)(B), subject to the provisions in IRC § 6103(e)(7), *Return information*, without a written request.

Caution:

Be aware of the information the requesting spouse is not entitled to under either IRC § 6103(e)(7) and IRC § 6103(e)(8).

5. See IRM 5.1.22.3.1.1, *Prohibited 6103(e)(8) Disclosures*.
6. Contact the Disclosure Help Desk at 866-591-0860 or by email at *SBSE Office of Disclosure if you need assistance when questions arise concerning the disclosure of divorced or separated spouses joint returns.

5.1.22.3.1.1 (10-21-2011)

Prohibited 6103(e)(8) Disclosures

1. Do not disclose the following information regardless of whether a request is made under IRC § 6103(e)(7) or IRC § 6103(e)(8):
 - A. the other spouse's location or telephone number,
 - B. any information about the other spouse's employment, income, or assets, and/or
 - C. the income level at which a suspended account will be reactivated.

5.1.22.3.2 (10-21-2011)

Other Joint Return Disclosure Procedures

1. Contact the Disclosure Help Desk at 866-591-0860 or by email at *SBSE Office of Disclosure if you need assistance when questions arise concerning the disclosure of divorced or separated spouses joint returns.
2. Refer requests for information concerning divorced or separated spouses beyond that provided for in IRC § 6103(e)(8) to the SBSE Office of Disclosure.
3. Advise the taxpayer or the taxpayer's representative to make a Freedom of Information Act (FOIA) request or a Privacy Act request if he/she desires further information. These requirements along with other information can be found at <http://www.irs.gov/foia/index.html>.

5.1.22.3.3 (10-21-2011)

Information Submitted by a Spouse

1. Accept and process any information, as appropriate, received from one spouse regarding unexplored sources of collection from the other spouse.
2. Do **not** inform the other spouse of the results, other than as discussed above.

5.1.22.4 (10-21-2011)

Disclosure of Trust Fund Recovery Penalty Payment Information

1. IRC § 6103(e)(9), *Disclosure of certain information where more than one person subject to penalty under section 6672*, provides for disclosure to one person who has been assessed the trust fund recovery penalty (TFRP) pursuant to IRC 6672, certain limited information regarding other persons assessed the penalty for the same underlying tax. IRC 6103(e)(9) requires:
 - A. Disclosure shall be made in written form upon receipt of a proper written request from a person who has been assessed the penalty or their duly authorized representative.
 - B. Disclosure will be limited to the specific tax period associated with the requestor's TFRP.

5.1.22.4.1 (10-21-2011)

IRC § 6103(e)(9) Disclosure Procedures

1. The Taxpayer Bill of Rights 2 provides the IRS with authority to establish procedures controlling the frequency with which any requester can make requests pursuant to IRC § 6103(e)(9). Until such procedures are developed at a national level, Service personnel should follow locally developed procedures. See paragraph (8) of IRM 11.3.2.4.13, *Disclosure to Persons with a Material Interest, Trust Fund Recovery Penalties*.
2. Follow any locally developed procedures relative to controlling the frequency with which any requester can make requests pursuant to IRC § 6103(e)(9).
3. Do not refer a TFRP disclosure to the SBSE Office of Disclosure when you can process it under IRC § 6103(e)(9) (i.e., the request meets IRC § 6103(e)(9) and the taxpayer is not making a Freedom of Information Act (FOIA) or a Privacy Act request).
4. Refer to the following IRMs, as needed:
 - See IRM 11.3.40, *Disclosures Involving Trust Fund Recovery Penalty Assessments*, for the general rules for disclosure of TFRP information.
 - See IRM 5.7, *Trust Fund Compliance*.

5.1.22.4.2 (10-21-2011)

Guidelines for TFRP Disclosure

1. Make an IRC § 6103(e)(9) disclosure:
 - in writing, and
 - only upon receipt of a proper written request from a person who has been assessed the penalty or their duly authorized representative.
2. Limit any disclosure to the specific tax period(s) associated with the assessed requestor's TFRP.

Reminder:

Not all responsible officers receiving the penalty are assessed for the same periods.

3. Follow these guidelines for determining whether you may make a disclosure pursuant to IRC § 6103(e)(9)

Permissible TFRP Disclosures

The name(s) of any other person(s) determined to be liable for the TFRP.

Whether the Service has attempted to collect the TFRP from any other liable person(s).

The current collection status of any other liable person(s) (e.g., notice, BAL DUE, installment agreement, suspended, and if suspended, the reason).

The amount, if any, collected from each individual assessed the TFRP.

Prohibited TFRP Disclosures

The location or telephone number of the liable person(s).
Information about any individual whom the Service did not assess.

Any employment, income, or asset information about the liable person(s).

The income level at which a currently not collectible account will be reactivated.

4. Contact the Disclosure Help Desk at 866-591-0860 or by email at *SBSE Office of Disclosure for help when questions arise concerning the disclosure of TFRP information under IRC § 6103(e)(9).
5. Advise the taxpayer or the taxpayer's representative to make a FOIA request or a Privacy Act request if he/she desires further information.

5.1.22.4.3 (10-21-2011)

Information Submitted by a Liable Person

1. Accept and process any information, as appropriate, received from one responsible party who reports he/she believes there are unexplored sources of collection from other parties.
2. Do not inform the other liable parties of the results, other than as discussed above.

5.1.22.5 (10-21-2011)

Disclosure of Informant Claims

1. An informant claim is a claim wherein the information that led to the development of the case was supplied by a whistleblower. A whistleblower is an individual who notices a significant Federal tax issue(s) in his/her workplace, while conducting day-to-day personal business, or anywhere else a tax issue(s) may be encountered, and reports the tax issue(s) to the IRS to help the IRS uncover tax cheating.
2. The Service will not disclose the fact that a case is based on an informant claim, nor will the Service disclose the identity of the informant.
3. See IRM 25.2, *Information and Whistleblower Awards*, for further information.
4. Take the following actions when the taxpayer or the authorized representative asks for the source of the information that led to the issuance of the case.
 - A. Do not disclose the identity of an informant under any circumstances.
 - B. Inform the taxpayer you will have to get back to him/her with that information.

5. Contact the Disclosure Help Desk at 866-591-0860 or by email at *SBSE Office of Disclosure immediately to determine how to respond to the taxpayer when a taxpayer (or the taxpayer's representative) requests the source of the case.

Note:

Disclosure will advise you of an appropriate response for you to provide.

6. Respond to the taxpayer or the authorized representative only after consulting with Disclosure.

5.1.22.6 (10-21-2011)

Disclosure of Case Files

1. A taxpayer or taxpayer representative has a right to information used to collect his/her tax liability, which includes a copy of the case file. The legal basis for giving taxpayers copies of their own tax records is contained in IRC § 6103(e). This section says the Service shall give taxpayers access to their returns upon written request. It also says the Service may provide copies of return information unless the Secretary determines release would seriously impair tax administration.
2. IRC § 6103(e)(7) allows the IRS to withhold return information if that release would impair tax administration.
 - A. If you are asked to provide copies of your case file, ensure the person requesting access has a legal right to the information.
 - B. When you are satisfied they can have copies, review the information prior to release to determine that release of the information would not seriously impair tax administration.
3. Impairment determinations should not be so narrowly construed to prevent the release of all information. Approval authority for determinations is delegated to the supervisory level personnel. If you have any concerns about whether to release something in the file, contact Disclosure for assistance.
4. Questions to consider when making an impairment determination:
 - A. Does the file contain any informant information? If so, do not release it.
 - B. Is there any sensitive information that could reveal the nature, scope or direction of your investigation?

Example:

Notes regarding a plan of action to seize taxpayer assets or a possible fraud determination.

- C. Does the file contain third party tax information? If so, do not release it.
5. Many taxpayers and representatives involved in a collection proceeding request copies of their IMF Specific or Complete transcripts. These records are *not* available through the Form 4506–T request process or the Transcript Delivery System (TDS). These records may be released, but take caution to carefully review the entity portion of the document. Watch for changes in marital status; for example, re-marriage, divorce, or separation. Further information can be found at <http://discl.web.irs.gov/HotTopics/irc6103/3008.asp>.
 6. Summoned documents and/or third party contact information is return information. Such information can be withheld if the Service determines that such release would:
 - A. Jeopardize the collection of any tax,
 - B. Involve reprisal against any person, or
 - C. Jeopardize any pending criminal investigation.
 7. Every consideration should be given to releasing the records requested. If you determine that requested information cannot be released, make sure that determination is made so as to withhold only the narrowest range of information possible. The Freedom of Information Act (FOIA) or Privacy Act request process is available when a requester isn't satisfied with a denial of access and no resolution can be reached with managerial involvement. Helpful information to aid the requester in submitting a formal FOIA request and other information about the FOIA process are available at <http://www.irs.gov/foia/index.html>.

5.1.22.7 (10-23-2014)

Oral Disclosure

1. Treasury Regulation § 26 CFR 301.6103(c)-1(c) authorizes the IRS to accept non-written requests or consents authorizing the disclosure of return information to third parties assisting taxpayers in resolving Federal tax related matters. Such a request is an "Oral Disclosure Consent."
 - A. Only the taxpayer or his/her authorized representative (who has been previously given the authority by a Power of Attorney specifically to appoint other designees) can give an "Oral Disclosure Consent."
 - B. An "Oral Disclosure Consent" may be taken from a taxpayer, or his/her authorized representative, who has open account issues or to whom some type of notice has been issued from IRS.
 - C. The "Oral Disclosure Consent" expires when the account issue is closed.
 - D. An "Oral Disclosure Consent" can only be made to a third party helping a taxpayer resolve a Federal tax matter.
2. The "Oral Disclosure Consent" provision applies to an "Oral Disclosure Consent" received by:
 - A. the Internal Revenue Service,
 - B. an agent or contractor of the IRS, or
 - C. a Federal government agency performing a Federal tax administration function in connection with a request for advice or assistance relating to such function.
3. The "Oral Disclosure Consent" provision:
 - A. Does not apply to disclosures to a taxpayer's representative in connection with practice before the Internal Revenue Service

Note:

Disclosures in connection with practice before the IRS are defined in Treasury Department Circular No. 230 (31 CFR Subtitle A, Part 10), *Regulations Governing Practice before the Internal Revenue Service*.

- B. Is significant for hearing impaired or non-English speaking taxpayers who may contact you through a relay operator or other third person.
4. Do not make oral disclosure unless you receive an "Oral Disclosure Consent."
 5. Complete the same disclosure verification as if you were talking directly to the taxpayer.

6. Limit the disclosure of return information to the information covered in the "Oral Disclosure Consent."

7. Record an "Oral Disclosure Consent" as directed in IRM 21.1.3.3.2, *Oral Disclosure Consent/Oral TIA (Paperless F8821)*.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 1. Field Collecting Procedures

Section 23. Taxpayer Representation

5.1.23 Taxpayer Representation

- 5.1.23.1 [Overview of Taxpayer Representation](#)
- 5.1.23.2 [Taxpayer Representation/Authorization](#)
- 5.1.23.3 [Third Party Authorizations](#)
- 5.1.23.4 [Processing a Third Party Authorization](#)
- 5.1.23.5 [By-Passing a Taxpayer's Representative](#)
- 5.1.23.6 [Suspected Practitioner Misconduct](#)
- 5.1.23.7 [Referrals of Suspected Practitioner Misconduct](#)

Manual Transmittal

October 30, 2014

Purpose

(1) This transmits revised IRM 5.1.23, *Field Collecting Procedures, Taxpayer Representation*.

Material Changes

- (1) IRM 5.1.23.3.2.2(3) updated to reflect the correct office name, add delegation order and IRM references.
- (2) IRM 5.1.23.3.2.3(7) updated with reference to new Letter 5427, *Incomplete Power of Attorney*.
- (3) IRM 5.1.23.4.4 updated with procedures for the taxpayer or representative to revoke or withdraw a power of attorney.
- (4) Reviewed and updated the IRM where necessary for the following types of editorial changes: legal citations, published forms and documents, phone numbers and web addresses.

Effect on Other Documents

This IRM supersedes IRM 5.1.23 dated October 30, 2012.

Audience

The target audience is revenue officers in SB/SE Field Collection.

Effective Date

(10-30-2014)

Rocco A. Steco
Acting Director, Collection Policy
Small Business/Self Employed
SE:S:ECS:CP

5.1.23.1 (08-19-2011)

Overview of Taxpayer Representation

1. The purpose of this IRM is to provide procedural guidance and instructions for revenue officers and group managers to handle taxpayer representation issues when working Collection cases. This IRM includes the following taxpayer representation procedures:
 - Taxpayer Representation
 - Third Party Authorizations
 - Change / Cancel a Third Party Authorization
 - By-Passing a Taxpayer's Representative
 - Practitioner Misconduct
2. Elevate any questions or concerns regarding these IRM procedures through your group manager (GM).

5.1.23.2 (12-13-2011)

Taxpayer Representation/Authorization

1. Every taxpayer is entitled to representation. A taxpayer may either represent him/herself or, with proper written authorization, have someone else represent him/her. A taxpayer's representative must be an individual authorized to practice before the IRS, such as an attorney, certified public accountant, or enrolled agent. Ordinarily, it is not required to research the status of a representative. However, you may choose to verify a representative's eligibility. See *IRM 5.1.23.7.1* for research guidance.
2. A taxpayer may also authorize a third party to receive his/her confidential tax information. These designees may be individuals or entities and do not have to be authorized to practice before the IRS. Third party designees do not represent the taxpayer in matters before the IRS.

3. This section provides guidance on the types of third party authorization requests that a taxpayer may file and the extent of authority that each authorization may convey to the third party. See IRM 11.3.3, *Disclosure to Designees and Practitioners*, for additional guidance.
4. Access *Disclosure References for Collection Employees* on the Disclosure Web page at: <http://discl.web.irs.gov/Function/collection.asp> for additional guidance.

**5.1.23.3 (08-19-2011)
Third Party Authorizations**

1. A taxpayer may use the following forms to record an authorization made to a third party:
 - Form 2848, *Power of Attorney and Declaration of Representative*
 - Form 8821, *Tax Information Authorization*
2. Taxpayers are not required to use Form 2848 or Form 8821 to record a third party authorization. An alternate written format may be acceptable if it meets the requirements for authorizations. IRM 11.3.3, *Disclosure to Designees and Practitioners*, provides the requirements for authorizations not on these forms.

**5.1.23.3.1 (10-30-2012)
Centralized Authorization File**

1. Records of all third party authorization documents are generally maintained on the automated Centralized Authorization File (CAF). See IRM 5.1.23.4.3.1 for exceptions for sending a third party authorization to the CAF.
2. The CAF system consists of taxpayer records and representative records.
 - A. Taxpayer records consist of modules for which the taxpayer has given third party authorization and cross-references to the records of the involved representative(s) / appointee(s).
 - B. Representative records contain the name and address of the representative.
 - C. Appointee records contain the name and address of the appointee.
3. The CAF system will send courtesy copies of notices and communications to the representative/appointee only when the appropriate box is checked on either Line 2 of the Form 2848 or Line 5 of Form 8821.
4. Use IDRS Command Code CFINK to research third party authorization files.

**5.1.23.3.1.1 (08-19-2011)
Form 2848**

1. The purpose of Form 2848 is to allow taxpayers to authorize a third party individual to represent them before the IRS. The representative must be a person eligible to practice before the IRS. The authorization also allows that representative to receive and inspect the taxpayer's confidential tax information.

Caution:

A revenue officer may not accept a Form 2848 from an unenrolled, or registered tax return preparer. These individuals cannot represent a taxpayer before Collection.

**5.1.23.3.1.2 (08-19-2011)
Form 8821**

1. Form 8821 authorizes the taxpayer to designate any individual, corporation, firm, organization, or partnership to inspect and/or receive their confidential information in any office of the IRS for the type of tax and the years or periods listed on Form 8821. The taxpayer may file their own tax information authorization without using Form 8821, but it must include all the information that is requested on Form 8821.
2. Form 8821 does not authorize the taxpayer's appointee to advocate any position with respect to the federal tax laws; to execute waivers, consents, or closing agreements; or to otherwise represent the taxpayer before the IRS.

**5.1.23.3.2 (10-30-2014)
Authority Granted to the Representative, Power of Attorney, or Appointee**

1. Interaction with the third party should be governed by the authority granted by the specific document.
 - A. Form 2848 is used to authorize a third party as the representative or power of attorney.
 - B. Form 8821 is used to designate a third party as an appointee to receive confidential tax information.
2. The major distinction between the forms is:
 - A. Form 2848 authorizes an eligible individual to represent the taxpayer before the IRS as well as to receive confidential information. An eligible individual may be an attorney, a Certified Public Accountant (CPA), an enrolled agent, an enrolled actuary, or other designated individual authorized to do so. A complete listing of all eligible individuals can be found in Part II on the Form 2848.
 - B. Form 8821 permits the third party appointee to receive return and return information. It does not authorize the third party to represent the taxpayer before the IRS.

Example:

The appointee cannot negotiate with the IRS on behalf of the taxpayer, advocate the taxpayer's position to IRS officials or employees, or perform the acts enumerated in [26 CFR, §601.504\(a\)\(2\) through \(6\)](#), *Statement of Procedural Rules, Requirements for filing power of attorney*.

3. The following table summarizes a few of the differences between appointees and representatives:

Differences between Appointees and Representatives

A Third Party Appointee (Form 8821):	A Power of Attorney (Form 2848):
May be an individual or a business entity	Must be an individual authorized to represent the taxpayer before the IRS. See items a - r in part II of Form 2848.
May inspect tax information	May inspect tax information
May receive written information	May receive tax information
May not negotiate or advocate on behalf of the taxpayer	May negotiate or advocate on behalf of the taxpayer
May not execute waivers, consents, etc., on behalf of the taxpayer	May execute waivers, consents, etc., on behalf of the taxpayer
May not redelegate the authority to receive the taxpayer's return or return information to another individual or entity	May redelegate his/her authority to represent the taxpayer, but only if specifically authorized by the taxpayer to do so on Line 5 of Form 2848

5.1.23.3.2.1 (12-13-2011)

Authority Granted by Form 2848

1. Form 2848 may authorize an eligible individual, for example, an attorney, a Certified Public Accountant (CPA), an enrolled agent, an enrolled actuary, enrolled retirement plan agent, a student who works in a Low Income Taxpayer Clinic (LITC) or a Student Tax Clinic (STC) Program, or other recognized individual, to:
 - A. represent the taxpayer before the IRS,
 - B. receive confidential information, and
 - C. represent taxpayers before the IRS on collection matters.

Reminder:

"Line 3, Tax Matters" must be properly completed to be valid.

2. Individuals are required to certify their eligibility to practice before the Service on Form 2848. Lawyers, certified public accountants, and enrolled agents (EAs) can represent all taxpayers in all matters before Collection. Enrolled actuaries and enrolled retirement plan agents may only represent on matters specified in Circular 230. In addition, students with a special order from Taxpayer Advocate Service (TAS) may represent taxpayers in collection matter.
3. Anyone who is under suspension or disbarment is not allowed to represent taxpayers.
4. Form 2848 is generally input to the CAF so the authorization will be available to all areas and campuses.

5.1.23.3.2.2 (10-30-2014)

Form 2848 Factors to Consider

1. Consider the following factors when you receive Form 2848 and follow the specific procedures, as applicable.
2. The IRS will not honor a Form 2848 if it designates a representative who is not authorized to practice before the Service:
 - A. Do not treat Form 2848 as a taxpayer information authorization.
 - B. Require an individual who cannot practice before the Service to submit Form 8821 for access to tax information.

Caution:

A revenue officer should never accept a Form 2848 from an unenrolled preparer or registered tax return preparer. The Form 2848 (along with the instructions (beginning on page one)) clearly states that an unenrolled return preparer cannot represent a taxpayer before Collection.

3. A taxpayer may authorize a student who works in a Low Income Taxpayer Clinic (LITC) or Student Tax Clinic Program (STCP) to represent them under a special authorization issued by the Taxpayer Advocate Service (TAS) per Delegation Order 25-18 in IRM 1.2.52.19.
 - A. Secure a copy of the special appearance authorization from Taxpayer Advocate Service (TAS) authorizing practice before the IRS and attach it to Form 2848.
 - B. A lead attorney or CPA must be listed as a representative, with their name listed on Line 2, and the student's name on the next line.
 - C. A lead attorney or CPA who is listed as a representative on Line 2 may replace the student listed on the next line by submitting such change in writing. A new Form 2848 should be submitted to reflect the name of the new student representative on line 3 following the LITC/STCP Director or Supervisory Attorney/CPA.
4. The power to sign the taxpayer's income tax returns can be granted only in limited situations. Refer to Form 2848 instructions to Line 5 and Treasury Regulations 1.6012-1(a)(5)(b)(3) and 1.6061-1(a) for additional information.
5. For IMF joint accounts, each spouse must execute his or her own power of attorney or tax information authorization on a separate Form 2848 or Form 8821, to designate a representative/appointee.
6. The taxpayer must sign and authorize each Power of Attorney. Ensure that page two of Form 2848 contains an original taxpayer signature.

Caution:

The Office of Professional Responsibility (OPR) has found that often, when a practitioner submits a subsequent Form 2848 to include additional / different tax periods / types after the taxpayer has signed the Form 2848, the practitioner will submit a subsequent Form 2848 without the taxpayer's original signature when he /she then learns that his/her client owes a liability for additional years.

It is not acceptable if a practitioner submits a new first page of Form 2848 and simply attaches a photocopy of page two from the original Form 2848 that has the taxpayer's signature.

7. If you choose to check on the eligibility status of a taxpayer's representative you may use OPR's website at <http://irweb.irs.gov/AboutIRS/bu/opr/default.aspx> to determine whether a representative is suspended or disbarred from practice before the Internal Revenue Service. Select the "Search for Disciplined Tax Professional" link. OPR's website also contains links that may assist in determining the active status of state licenses.

5.1.23.3.2.3 (10-30-2014)

Written Communication to a Taxpayer's Representative

1. Generally, a qualified representative is authorized to receive any notice or other written communication required or permitted to be given to the taxpayer in the matter concerning the taxpayer.
2. Furnish copies to the representative as directed on Form 2848.
3. Copies of notices and communications are no longer routinely sent to the taxpayer's representative. Taxpayers can "check the boxes", to have copies of notices and communications sent to up to two representatives.

Note:

IRS employees are not prohibited from providing a copy of a notice or communication to a representative if the box is not checked. If the IRM says that a particular notice should be sent to the POA, then Collection should continue to do so unless/until the IRM is revised to eliminate the requirement. However, representatives should not necessarily expect courtesy copies of notices and communications when the box is not checked.

4. Furnish copies of communications received from the taxpayer if the communications have a direct bearing on the nature of his/her representation.
5. Ensure that the POA is authorized to receive taxpayer data on all modules contained in any communication you plan to send to the POA.

Example:

In a case where you have sent a levy, Letter 937, *Transmittal Letter For Power of Attorney*, generates systemically when Form 668-A (C) (DO), *Notice of Levy*, is issued if POA data exists on the ICS case and the POA is in good standing. Ensure the Form 2848 covers all the periods on the levy and that the POA is authorized to receive taxpayer data on all modules to avoid disclosure problems before mailing a copy of Form 668-A to the POA.

6. Send notices and written communication issued to the taxpayer concerning a offer in compromise and/or trust fund recovery penalty assessments to the taxpayer's representative if the taxpayer has authorized a representative to represent him/her in such matter.
7. Follow these procedures when a POA (Form 2848) does not cover all periods which need to be included on the POA:
 - A. Issue Letter 5427, *Incomplete Power of Attorney*, to the taxpayer to notify that his/her authorized representative has not received a copy of Form 668-A or other correspondence.
 - B. Inform the taxpayer that the existing POA does not cover all of the periods on a levy or other correspondence and it must cover all of the periods in order for the POA to be entitled to receive a copy of Form 668-A or other correspondence.
 - C. State that if the taxpayer wishes his/her representative to receive a copy, he/she needs to resubmit the Form 2848 covering all of the periods.
 - D. Attach Letter 5427 to the taxpayer's copy of Form 668-A or other correspondence.

Note:

When you are not sending the POA a copy of any correspondence sent to the taxpayer you need to clearly document this in the ICS history.

5.1.23.3.3 (10-30-2012)

Authority Granted by Form 8821

1. Form 8821 authorizes the appointee to receive limited confidential information for the tax matters and tax periods specified on line 3.
 - A. Limit any disclosure of information to the appointee to the type of tax, the tax form number, the tax years or periods, or the specific tax matter.
 - B. Provide copies of tax information, notices, and other written communication to the appointee on an ongoing basis if item 5(a) on Form 8821 is checked.
2. Form 8821 does not authorize the appointee to negotiate with the IRS on behalf of the taxpayer, advocate the taxpayer's position to IRS officials or employees, or perform the acts enumerated in section 601.504(a)(2) through (6), Conference and Practice Requirements, Statement of Procedural Rules.
3. Form 8821, "Line 3, Tax Matters" , provides space in column (d) for the taxpayer to enter any specific information he/she wants the IRS to provide to the appointee. Tax Matters must be properly completed to be valid. Examples of information that could be listed in column (d) include lien information, a balance due amount, a specific tax schedule, or a tax liability.
4. Find further information about the differences between the authority conveyed by Form 2848 and Form 8821 on the Disclosure Web page at: <http://discl.web.irs.gov/poatxnfo/pwrsofat/quickguides/7486.asp>.
5. Form 8821 is generally input to CAF so the authorization will be available to all areas and campuses.

5.1.23.3.3.1 (08-19-2011)

Form 8821 Considerations

1. Form 8821 must contain critical information which can only be provided by the taxpayer. Critical information includes:
 - A. the tax year(s) or period(s)
 - B. the type of tax
 - C. the taxpayer's signature
 - D. the date signed
2. Review Form 8821 to ensure it contains the critical information that can only be provided by the taxpayer. The Form 8821 instructions state "Enter "Not applicable," in any of the columns that do not apply." The instructions also state "Do not use a general reference such as "All years," "All periods," or "All taxes." Any tax information authorization with a general reference will be returned."
3. Return any Form 8821 to the taxpayer if it is missing critical information which can only be provided by the taxpayer.

Example:

Line 3, column (d) on a Form 8821 is blank — it does not reference a specific tax matter or say "Not applicable." Because Form 8821 is missing critical information, it should be returned.

4. Return any Form 8821 to the taxpayer if it advocates a position that would indicate a representational role. The appointee is not entitled to respond to any type of correspondence on behalf of the taxpayer if the response advocates a position that would indicate a representational role.

5.1.23.3.4 (10-30-2012)

Authority Granted by Form 8655

1. A reporting agent will often have information needed to resolve an open case since they are involved in the filing of the tax returns and/or the payment of the taxes for the taxpayer.
2. A taxpayer may prepare and sign Form 8655, *Reporting Agent Authorization*, to designate a reporting agent to file certain tax returns electronically or on magnetic tape. Form 8655
 - A. Does not authorize the designated individual to represent the taxpayer before the IRS.
 - B. Does not grant authority that allows disclosure of the details of a case to the reporting agent.
3. Form 8655 authorizes a reporting agent to:
 - A. Sign and file certain federal employment tax returns and make payments through the Electronic Federal Tax Payment System (EFTPS) for the taxpayer.
 - B. Receive copies of notices, correspondence, and/or transcripts relating to the returns filed by the agent.
 - C. File amended returns for any returns the agent filed for the taxpayer.
 - D. Provide IRS with information to aid in penalty relief determinations related to the authority granted on Form 8655.

4. The Reporting Agents File (RAF) is the IRS file of taxpayers and reporting agents who file employment tax returns electronically (e-file). See IRM 21.3.9, *Processing Reporting Agents File Authorizations* for procedures on disclosure to a reporting agent and use of the Form 8655. RAF is governed by the following sections of the Internal Revenue Code (IRC):
 - IRC § 3504
 - IRC § 6011
 - IRC § 6064
 - IRC § 6103
5. See IRM 5.1.24.4, *Types of Third-Party Payer Arrangements*, and IRM 5.1.24.4.3, *Reporting Agent*, for additional information on reporting agents.

5.1.23.3.5 (08-19-2011)

Military Power of Attorney (POA) for Representation of Deployed Military Personnel

1. A military POA is sufficient authorization to permit an individual to represent a deployed member of the military before the IRS.
2. An individual holding a military POA is often the spouse of the deployed military member. Since the military POA is broader and cannot be input into the CAF, it is acceptable for the IRS to require the non-deployed spouse (or other military POA holder) to complete a Form 2848. The spouse (or other military POA holder) should be permitted to sign the Form 2848 for the military member and as the deployed military member's authorized representative.
3. Attach a copy of the military POA to the completed Form 2848 before submission to the IRS.

5.1.23.3.6 (08-19-2011)

Bankruptcy Authority

1. In a bankruptcy proceeding involving the tax liabilities of a debtor-taxpayer, the IRS may disclose to the debtor-taxpayer's attorney of record the debtor-taxpayer's return information relevant to the resolution of those tax matters affected by the proceeding. In this situation, a Form 2848 or Form 8821 is not required.

5.1.23.4 (08-19-2011)

Processing a Third Party Authorization

1. IRM 21.3.7, *Processing Third Party Authorization onto the Centralized Authorization File (CAF)*, provides information on third party authorizations. Paragraph (3) of IRM 21.3.7.1.3, *Processing Sites (CAF Function)*, requires IRS employees to fax valid authorizations to the CAF Function within 24 hours of receipt.

Exception:

Send the authorization by mail if the fax machine is not available.

2. For exceptions to sending a third party authorization to a campus, see *IRM 5.1.23.4.3.1*.

5.1.23.4.1 (08-19-2011)

Case History Recordations

1. Record the receipt of Form 2848 or Form 8821 in the collection case history when a taxpayer submits either of these documents.
2. Document the case history as follows:
 - A. Record the date and the campus to which you faxed or mailed the authorization.
 - B. Annotate whether you faxed or mailed the authorization.
3. Add the Power of Attorney (POA) information in the Integrated Collection System (ICS) "Name and Address" application.

5.1.23.4.2 (10-30-2012)

Authorization Document Perfection

1. To determine if the authorization is valid:
 - A. Ensure all parts of the authorization are complete.
 - B. Ensure the authorization is signed by the representative and the taxpayer.
2. Request the taxpayer (or the taxpayer's representative or appointee) to perfect Form 2848 or Form 8821, if necessary. See IRM 21.3.7, *Processing Third Party Authorizations onto the Centralized Authorization File (CAF)*

5.1.23.4.3 (10-30-2014)

Sending the Authorization to the CAF Function

1. Send a properly executed, valid authorization to the appropriate CAF function by fax or mail within 24 hours of receipt unless an exception applies.

Exception:

A Form 2848 provided by a representative of a whistleblower (an individual who submits a Form 211, *Application for Award for Original Information*) must remain in the case file. See *IRM 5.1.23.4.3.1*.

2. Determine the appropriate campus to direct the authorization to depending on the taxpayer's state of residence. See IRM 21.3.7.1.3, *Processing Sites (CAF Function)*, to determine which campus should receive the third party authorization. The campuses with CAF Units are:
 - Memphis
 - Ogden
 - Philadelphia (International)
3. Campus information is also provided in the following sources:
 - A. On the irs.gov Internet site at: <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/CAF-Unit-Addresses-Fax-Numbers-and-State-Mapping>
 - B. In the "Where To File Chart" on Page 1 of Instructions for Form 2848.
 - C. In the "Where To File Chart" on Page 2 of Form 8821.

5.1.23.4.3.1 (08-19-2011)

Exceptions to Sending a Third Party Authorization to a CAF Unit

1. A Form 2848 and/or Form 8821 is intended for one-time use if the "specific use" box is checked.
2. Retain the original third party authorization in the case file if it is:
 - A. Clearly intended for one-time use
 - B. Submitted with a Freedom of Information Act (FOIA) request
 - C. Related to a Congressional inquiry
 - D. Submitted by a representative of a whistleblower (an individual who submits Form 211, *Application for Award for Original Information*)
3. For information on how to properly process a whistleblower case, see IRM 25.2.1, *Receiving Information*, and IRM 25.2.2, *Whistleblower Awards*.
4. Forward a third party authorization that covers a specific tax period for a specific tax return to the appropriate campus unless it falls into the one-time category.

5.1.23.4.3.2 (08-19-2011)

Authorization Document Retention

1. Retain a copy of the authorization document, as applicable:
 - A. Retain a copy in the case file after mailing the original.
 - B. Retain the original in the case file after faxing the authorization.

5.1.23.4.4 (10-30-2014)

Change or Cancel a Third Party Authorization

1. Request a written statement from the taxpayer, the taxpayer's representative, or the taxpayer's appointee to revoke or withdraw an existing third party authorization when the taxpayer wants to revoke or the representative or the appointee wants to withdraw the authorization.
2. A taxpayer can revoke an existing Power of Attorney (POA) or Tax Information Authorization (TIA) without naming a new representative or authorized person by either:
 - A. Filing a copy of the POA or TIA to be revoked with each office of the IRS where the POA or TIA was filed. The taxpayer must write "REVOKE" across the top of the first page of the Form 2848 or Form 8821 with a current signature and date below this annotation.
 - B. Filing a revocation statement with each office of the IRS where the POA or TIA was filed. The statement of revocation must indicate that the authority of the POA or appointee is revoked and must be signed by the taxpayer(s). Also, the name and address of each recognized representative or appointee whose authority is revoked must be listed.
3. A recognized representative/appointee may withdraw from representation by either:
 - A. Filing a copy of the POA or TIA to be revoked with each office of the IRS where the POA or TIA was filed. The representative/appointee must write "WITHDRAW" across the top of the first page of the original or copy of authorization form with a current signature and date below the annotation.
 - B. Filing a statement of withdrawal with the IRS office where the POA or TIA to be revoked is filed. The statement must be signed and dated by the representative/appointee and must identify the name(s), TIN, address of the taxpayer(s), and the tax matter(s) from which the representative/designee is withdrawing.
4. Upon receipt of a written statement annotate the bottom of the statement requesting revocation or withdrawal with the date of receipt and your area office name or area office. Write across the top of the form the word "REVOKE" or "WITHDRAW."
5. Review the revocation or withdrawal to ensure basic information is correct.
6. Send the statement of revocation or withdrawal to the appropriate CAF Unit.

Note:

The filing of a subsequent Form 2848 for the same period(s) and type(s) of tax as a previous authorization automatically replaces and revokes the previous Form 2848 unless specified otherwise by the taxpayer.

Note:

Similarly, a new Form 8821, automatically replaces and revokes a prior Form 8821 for the same period(s) and tax type(s).

7. Update or delete the POA address in the ICS "Name and Address" application, as appropriate.

5.1.23.5 (10-30-2012)

By-Passing a Taxpayer's Representative

1. Where a recognized representative has **unreasonably delayed or hindered** an examination, collection, or investigation by failing to furnish, after repeated requests, nonprivileged information necessary to the examination, collection or investigation, the Internal Revenue Service employee conducting the examination, collection, or investigation may request permission from his/her immediate supervisor to by-pass the representative and contact the taxpayer directly for such information.

Note:

Unreasonable delay or hindrance of an investigation may constitute a violation of a provision(s) of Circular 230. However, because only the Office of Professional Responsibility (OPR) can determine whether such a violation has occurred, you should refer a suspected violation of Circular 230 to OPR.

Note:

It is important to understand that a referral to OPR, based on a representative's **unreasonable delay or hindrance**, cannot be submitted without having first exercised the by-pass procedure.

2. See *IRM 5.1.23.6.2*, for further information on reporting suspected violations to OPR.
3. It may be necessary to by-pass the representative when the representative has unreasonably delayed or hindered collection by repeatedly:
 - A. failing to provide the taxpayer's records or information upon request,
 - B. failing to return telephone calls or respond to written correspondence,
 - C. canceling scheduled appointments at the last minute without timely notification, or

D. requesting extensions of time beyond established deadlines for submitting requested records or information.

Note:

Employees are encouraged to use appropriate enforcement tools to obtain the information necessary for collection in a timely manner without by-passing the representative even when the representative unreasonably delays or hinders collection.

Example:

Necessary information may be obtained by contacting third parties (without issuing a summons) or by issuing summonses to third parties or to the taxpayer for the necessary information. In such cases, it is not necessary to by-pass the representative.

4. Do not by-pass a representative simply because you wish to interview the taxpayer.
5. Keep in mind that IRC 6304 precludes the IRS from communicating with a represented taxpayer in connection with the collection of any unpaid tax unless the taxpayer or taxpayer's representative has given prior consent to that communication.
6. The IRS may, however, work directly with a taxpayer to resolve an issue on the taxpayers account if:
 - A. The taxpayer initiates the contact to resolve the issue on the account,
 - B. The taxpayer expresses a specific desire to resolve the issue without the involvement of the representative after the IRS employee has advised the taxpayer of the current representation, and
 - C. The taxpayer's desire to have the IRS work directly with the taxpayer instead of the representative is properly documented in the case file.

Note:

If you are employed by the IRS as an attorney, you should not work directly with a represented taxpayer without the permission of the representative; the Model Rules of Professional Conduct prohibit attorneys from discussing a matter with a represented person without the permission of the representative. A taxpayer is not represented in a docketed tax court case, however, until the taxpayer's representative has entered an appearance with the tax court.

7. The process for by-passing a taxpayer's representative is a two-part process. The first part is a warning and the second part is the actual by-pass. The two-part process is discussed below. If you are working directly with a taxpayer to resolve an issue in the situation described in (6)(a) through (c) above, this is not "bypassing a representative" and you do not need to follow the two-part process.

5.1.23.5.1 (08-19-2011)

By-Pass Warning Procedures

1. Notify your group manager (GM) when you first encounter instances of unreasonable delay or hindrance by a representative on a collection case.
2. Document the notification in the case history.
3. Consider using Letter 4016–A, *Bypass Warning Letter (Power of Attorney)*, to advise the representative of his/her responsibilities and of the possible consequences of failing to fulfill them.
4. Take the following actions from that point on:
 - A. Confirm all appointments with the representative in writing.
 - B. Make all requests for documents in writing.
 - C. Document all instances of unreasonable delay or hindrance in the case file.
 - D. Document all your actions in response to the unreasonable delay or hindrance.
5. Prepare Letter 4016–A when you determine that it may be necessary to by pass the representative.
 - A. Complete all the required entries on Letter 4016–A.
 - B. Date Letter 4016–A with the date you prepare it.
 - C. Allow 15 to 30 days for response in the line that reads: "The currently outstanding items must be submitted by __days from the date of this letter."
6. Obtain your GM's approval of Letter 4016–A either in person, over the phone, or via **secure** email.
 - A. Document your GM's approval in the case history.
 - B. Sign Letter 4016–A for your GM.

Note:

Sign Letter 4016–A with your GM's name and title followed by the word "by" followed by your name, your title, and your signature.

Reminder:

Do not sign Letter 4016–A with your signature only.

7. Mail Letter 4016–A to the representative only.
8. Notify the Territory Manager (TM) and the Area Return Preparer Coordinator (RPC) about the potential by-pass according to the following procedures.
 - A. See *IRM 5.1.23.5.1.1*
 - B. See *IRM 5.1.23.5.1.2*
9. Monitor the case for the representative's appropriate response to the by-pass warning letter within the period of time specified in the letter (generally 15 to 30 days).

5.1.23.5.1.1 (08-19-2011)

Notifying the Territory Manager

1. Send a copy of Letter 4016–A to the Territory Manager using the following procedures:
2. Prepare a **secure** email message to the TM:

- A. Open an email message.
- B. Address the message to the TM.
- C. Include your GM's name on the "Cc" line.
- D. Type "Notification of Letter 4016-A sent to Taxpayer's Representative" in the "Subject" line of the message.
- E. Annotate a copy of Letter 4016–A"/s/ (GM's name and title by your name)" to indicate your GM signed the letter.

Reminder:

Obtain your GM's approval of Letter 4016–A before you annotate the letter.

- F. Attach the annotated copy of Letter 4016–A to the email message.
- G. Send the message to the TM via **secure** email.

5.1.23.5.1.2 (08-19-2011)

Notifying the Area Return Preparer Coordinator

1. Send a copy of Letter 4016–A to the Area RPC using the following procedures:
2. Access the list of the RPCs at: <http://mysbse.web.irs.gov/exam/tip/rp/contacts/26507.aspx>

This link opens a table entitled "Return Preparer Coordinators (RPC's)."

- A. The name of the RPC is listed in the column labeled "Coordinator" .
- B. Each coordinator's name is a hyperlink — click on it to open up an email message addressed to the coordinator.

3. Prepare a **secure** email message to the RPC using the following procedures:
 - A. Click on the name of the "Coordinator."
 - B. Type "Notification of Letter 4016-A sent to Taxpayer's Representative" in the "Subject" line of the message.
 - C. Annotate the copy of Letter 4016–A"/s/ (GM's name and title by your name)" to indicate your GM signed the letter.

Reminder:

Obtain your GM's approval of Letter 4016–A before you annotate the letter.

- D. Attach the annotated copy of Letter 4016–A to the email message.
- E. Send the message to the RPC via **secure** email.

5.1.23.5.2 (08-19-2011)

By-Pass Procedures

1. The Letter 4016–B, *Bypass Letter (Power of Attorney)*:
 - A. notifies the representative he/she is being by-passed, and
 - B. outlines the facts and circumstances underlying the decision to by-pass.
2. Prepare Letter 4016–B if the representative does not appropriately respond to Letter 4016–A within the period of time specified in the letter (generally 15 to 30 days).
 - A. Complete all the required entries on Letter 4016–B except for your GM's signature.
 - B. Date Letter 4016–B with the date you prepare it.

Reminder:

Do not sign Letter 4016–B — your GM must sign it for the TM.

3. Prepare an email message to send Letter 4016–B to your GM using the following procedures:
 - A. Type "Request for TM to Approve Sending Letter 4016–B to the Taxpayer's Representative" in the "Subject" line of the message.
 - B. Attach Letter 4016–B as an attachment.
4. Type a request to your GM into the body of the message; request your GM to:
 - A. Obtain the TM's approval of Letter 4016–B, either in person, over the phone, or via secure email.
 - B. Sign Letter 4016-B with the TM's name and title "by" his/her (GM's) name, title, and signature if the TM approves.
 - C. Return the signed Letter 4016–B to you via **secure** email.
5. Document your GM's approval and the TM's approval in the case history.
6. Mail Letter 4016–B to the representative.
7. Notify the taxpayer and the Area RPC about the by-pass.
 - A. Send a copy of Letter 4016–B to the taxpayer.
 - B. Send a copy of Letter 4016–B to the Area RPC.

5.1.23.5.3 (08-19-2011)

Procedures After By-Passing the Representative

1. The Letter 4016–B provides that the representative may respond within ten days to offer evidence of reasonable cause for the delays, however, you may contact the taxpayer directly immediately after mailing Letter 4016–B to the representative.
2. Contact the taxpayer directly after you send Letter 4016–B whenever you need to obtain information or advise the taxpayer of any decision you made on his/her case.

A. Advise the representative in writing of the time and place of all future appointments with the taxpayer.

Note:

The representative may attend such appointments.

B. Send copies of all correspondence with the taxpayer to the representative.

Note:

Permission to contact the taxpayer directly does not disqualify a representative from acting as the recognized representative of the taxpayer.

3. Monitor the case for a possible response from representative within the ten-day period of time specified in the letter.

5.1.23.5.3.1 (08-19-2011)

Representative's Response

1. The taxpayer's representative has ten days to respond and offer evidence of reasonable cause for the delays cited in Letter 4016–B.
2. Carefully consider the representative's response if you receive a response within ten days.
3. Determine if the representative had reasonable cause for the delays.
4. Take the following action depending upon your determination.
 - A. Continue the by-pass, or
 - B. Reverse the by-pass determination.

5.1.23.5.3.2 (10-30-2012)

Reversing the By-Pass Determination

1. Advise the taxpayer and the representative if you change your determination about by-passing the representative.
2. Follow the normal procedures for contacting an authorized representative from that point forward:
 - A. Contact the representative whenever you need to obtain information or advise of any decision you made on the case.
 - B. Send copies of all notices or communications to the taxpayer.
 - C. Send copies of all notices or communications to the representative if requested by the taxpayer on the Form 2848.

5.1.23.6 (10-30-2012)

Suspected Practitioner Misconduct

1. Practitioners may be subject to discipline under Treasury Department Circular 230 ([31 CFR Part 10](#)), *Regulations Governing Practice before the Internal Revenue Service*, for misconduct.
 2. Field Collection employees are required to:
 - A. Become generally familiar with practitioner responsibilities as set forth in Circular 230.
 - B. Know and understand the indicators of practitioner misconduct.
See *IRM 5.1.23.6.1*.
 - C. Be alert to the patterns and/or trends of misconduct.
- Note:**
- Patterns of misconduct may be prevalent in one collection case but a pattern may not become apparent until viewed in the context of several collection cases.
- D. Document the case history appropriately.
 - E. Take appropriate action, depending on the situation and the facts of the case. See *IRM 5.1.23.6.2*.
3. The Office of Professional Responsibility (OPR) is responsible for establishing, communicating and enforcing the standards of professional conduct governing tax professionals who practice before the IRS. OPR's jurisdiction includes all matters connected with a presentation to IRS. This includes all individuals compensated to prepare all or substantially all of a tax return or document for submission to the IRS, those who represent clients before the IRS and anyone who for compensation interacts with the tax administration system. OPR's jurisdiction often includes attorneys, CPAs, Enrolled Agents and others compensated to prepare documents for submission to IRS in tax controversy matters. OPR enforces Circular 230. See *IRM 1.1.20*, *Office of Professional Responsibility (OPR)*, for more information.

5.1.23.6.1 (08-19-2011)

Indicators of Practitioner Misconduct

1. Circular 230, Section 10.23, Prompt Disposition of Pending Matters, states that a practitioner may not unreasonably delay the prompt disposition of any matter before the Internal Revenue Service. OPR investigates and disciplines violations of this section, particularly where a practitioner has demonstrated a pattern of delay. However, before referring a practitioner for a violation of Section 10.23, consult *IRM 5.1.23.5* procedures for guidance concerning authorization to by-pass a recognized representative (POA) and instances when a represented taxpayer may be contacted directly. Three indicators of practitioner misconduct are:
 - A. Pattern of Inappropriately Attempting to Influence Service Employee
 - B. Pattern of Delay
 - C. Pattern of Significant Omissions
2. Clearly document all instances of practitioner misconduct in your case history.
 - A. Document all case actions leading to the request for information, documents, or substantiation.
 - B. Document the practitioner's failure to comply with your request for information or if the practitioner only provides incomplete information.

3. Use Form 8484, *Report of Suspected Practitioner Misconduct*, to make the referral to OPR.
4. Consult with your local Counsel office if a practitioner refuses to provide information on grounds of privilege.

5.1.23.6.1.1 (08-19-2011)

Pattern of Inappropriately Attempting to Influence

1. The first indicator of practitioner misconduct is a pattern of inappropriately attempting to influence a Service employee regarding the disposition of a case to obtain desired results.
2. Practitioners may attempt to influence Service employees in a collection investigation by:
 - Using abusive language.
 - Threatening claims of misconduct.
 - Making false claims of misconduct.
 - Making false accusations.
 - Verbal / Physical threats or assaults.
 - Making a bribe

Example:

offering money, gifts, or other things of value.

5.1.23.6.1.2 (10-30-2014)

Pattern of Delay

1. A second indicator of practitioner misconduct is a pattern of delay by the practitioner in performing one or more of the following actions during the course of a collection case. Refer to Section 10.23, *Prompt disposition of pending matters*, of Circular 230.
 - A. Missing appointments
 - B. Canceling appointments at the last moment with no good cause provided
 - C. Agreeing to provide requested documentation and/or information and then refusing to do so, thereby hindering the Service's efforts to continue its investigation
 - D. Providing incomplete information requiring repeated call backs and correspondence, causing delays

Note:

These facts may also support referrals under Sections 10.20, *Information to be furnished*, or 10.22, *Diligence as to accuracy*, of Circular 230.

5.1.23.6.1.3 (10-30-2014)

Pattern of Significant Omissions

1. A third indicator of practitioner misconduct is a pattern of significant omissions (of assets or significant and unreasonable discounts on a number of assets on financial statements as discussed in Sections 10.21, *Knowledge of client's omission*, 10.22, *Diligence as to accuracy*, and 10.51(a)(4), *Incompetence and disreputable conduct*, of Circular 230) reflecting the practitioner's failure to exercise due diligence. Failure to exercise due diligence is conduct more than a simple error but is less than willful or reckless misconduct; it is generally considered negligence. The information provided by the practitioner, or lack thereof, must be shown to be materially misrepresented, not merely a simple error.
2. The patterns of omissions or material misrepresentations could include, but are not limited, to the following:
 - A. Assets are omitted or undervalued
 - B. Income is understated or expenses are overstated
 - C. Collection Information Statement(s) (CIS) reflect(s) a large number of claimed dependents who would not be allowable as an exemption on the taxpayer's income tax return
 - D. CIS reflects similar dollar amounts in both checking and savings accounts (e.g., \$100 or \$1000) and the taxpayer has not provided bank statements to validate the balances
 - E. CIS reflects no available credit, including no credit cards which is not validated by a comparison with the taxpayer's credit bureau reports which shows available credit
 - F. CIS shows similar listings for monthly income and expenses and the taxpayer has not validated the income or expenses as being legitimate

Example:

same low wages, same child care expenses

Note:

Do not assume that a POA is misrepresenting any facts without validating the information on the CIS, either through property records, credit bureau checks, etc.

3. Clearly document all instances of suspected practitioner misconduct in your case history. Include all of the information about the practitioner's failure to exercise due diligence, as well as an explanation of why you believe that the practitioner's behavior falls below the expected standards.

5.1.23.6.2 (08-19-2011)

Suspected Practitioner Misconduct Procedure

1. Maintain a carefully detailed chronology in the collection case history throughout the course of the collection case when you suspect practitioner misconduct.
 - A. Document any abusive behavior or any threat(s).
 - B. Write a memo immediately after a practitioner misconduct event; include everything that was stated and the names of any witnesses.
 - C. Preserve any threat message(s) left on your voice mail.

Note:

A carefully detailed chronology will go a long way towards supporting the underlying allegations when OPR and/or TIGTA analyzes your report of suspected practitioner misconduct and/or GLS analyzes the facts of your case about a practitioner performing a possible post-employment violation.

2. Make a referral to report suspected practitioner misconduct when you:
 - A. Detect these patterns during a collection investigation.
 - B. Receive a report of misconduct from any person other than an officer or employee of the IRS.
 - C. Become aware that a suspended or disbarred practitioner is practicing or attempting to practice before the IRS.
3. Contact Associate Chief Counsel, Office of General Legal Services (GLS), Ethics and General Government Law Branch when you need to seek legal advice about a practitioner committing a possible post-employment violation.

Note:

When an IRS employee contacts GLS with an inquiry seeking legal advice about a possible post-employment violation, GLS's role is that of a legal advisor. The employee is not considered to be making a report.

4. When reporting misconduct or seeking legal advice from the Office of Chief Counsel:
 - A. Provide as much relevant factual background as possible to fully communicate the reasons why you suspect the practitioner of misconduct.
 - B. Ensure that you include all available documentary evidence in support of your allegation(s).

5.1.23.7 (08-19-2011)

Referrals of Suspected Practitioner Misconduct

1. When situations exist and are fully documented that a duly recognized representative persistently shows a pattern of misconduct, either with respect to a particular client or several clients, employees should make a referral. Depending on the type of referral, you may need to contact:
 - A. OPR
 - B. TIGTA
 - C. Chief Counsel, Office of General Legal Services.
2. Prior to contacting any of these offices, you will need to contact your immediate manager.

5.1.23.7.1 (10-30-2014)

Referrals to the Office of Professional Responsibility

1. IRS employees have an obligation to report suspected practitioner misconduct to OPR under section 10.53(a), *Receipt of information*, of Circular 230.
2. IRS employees may contact the Office of Professional Responsibility at the phone number shown on the OPR-At-A-Glance web page during the course of working a case to discuss any perceived instances of practitioner misconduct or for questions about Circular 230 issues.
3. Prior to making the referral use the search features provided by OPR on its website at <http://nhq.no.irs.gov/OPR/Practice/Disciplined%20Practitioners.asp> to determine whether a practitioner has been suspended or disbarred from practice before the IRS. OPR's website also provides additional resources for the verification of practitioner credentials, links to the state boards of accountancy and state bar associations, and additional information about reporting suspected practitioner misconduct. If a state does not make information available electronically, you may have to contact the State Bar Association or the State Board of Accountancy directly.

Note:

An alternate method to check the status of a taxpayer's representative is by using the national asset locator tool to search for current CPA license information, state bar membership information, etc. Other search sites, such as [CPAVerify](#), may provide similar information. Not all states provide online information so you may need to make a phone call to the appropriate state.

Example:

Current CPA license information is available at: <http://www.aicpa.org/yellow/ypsboa.htm>, however, membership in the American Institute of CPAs (AICPA) trade organization is voluntary. Thus, not all licensed CPAs are members. Not all states make their license information available electronically. Therefore, in some cases, you may have to contact the State Board of Accountancy directly.

Example:

Current bar membership information is available through each state's bar association. If a state does not make information available electronically, you may have to contact the State Bar Association directly.

Note:

Check the status of an enrolled agent with the IRS Enrolled Practitioner Program (EPP) by calling the IRS Enrolled Practitioner Hotline at 1-313-234-1280 or by sending a secure email to EPP@irs.gov or *CC DCC epp. In addition, a search option is available on the Return Preparer Office (RPO) website. Select the Enrolled Agent's link at the bottom of the page and spreadsheet will appear with EA information

4. Complete Form 8484, *Report of Suspected Practitioner Misconduct*, to report suspected practitioner misconduct and to refer the practitioner to OPR for appropriate disciplinary action by following the specific "Instructions to Form 8484" (printed on the reverse side of the form).

Note:

Submission of a referral for misconduct may result in an evidentiary hearing before an administrative law judge. The OPR may request an IRS employee having information supporting the allegations of misconduct to appear as a witness at a hearing or to submit an affidavit under penalties of perjury. Misconduct referrals generally will be disclosed to practitioners under the Freedom of Information Act.

5. Ensure you include all the documentary evidence in support of your allegation(s).

Reminder:

OPR cannot take a case before a judge without sufficient evidence, so you must maintain a carefully detailed chronology throughout the course of the collection case to document the underlying allegation(s).

6. Consider whether you should also make a referral to the Treasury Inspector General for Tax Administration (TIGTA) for potential criminal sanctions.

A. See *IRM 5.1.23.7.2*.

B. Clearly document any decision to refer a practitioner to TIGTA for potential criminal sanctions on any OPR referral. Be sure to include all the documentary evidence in support of your allegation(s).

7. Scan and save any supporting document(s), as applicable, and save the scanned document(s) as a PDF file(s).

8. Compose an email message to your GM as follows:

A. Entitle the message "Report of Suspected Practitioner Misconduct"

B. Include a request in the body of the message to your GM to signify his/her approval by forwarding the message to OPR.

Note:

As noted above, since the Form 8484 may be used in an evidentiary hearing before an administrative law judge your GM should be involved and know the circumstances surrounding the case.

9. Attach Form 8484 and any other supporting documents to the email message.

10. Send the message and attachment(s) to your GM via **secure** email.

Note:

If your GM concurs, he/she should digitally sign and date Form 8484, in the part titled Management Approval.

11. Follow one of the two methods to transmit Form 8484 and/or any supporting document(s).

A. Fax to the phone number shown on the OPR-At-A-Glance web page.

B. Mail to:

Office of Professional Responsibility
1111 Constitution Avenue NW
SE:OPR, Room 7238
Attention: Misconduct Reports Desk
Washington, DC 20224

12. In all but rare situations, OPR investigations begin at the conclusion of enforcement efforts and do not influence ongoing IRS compliance activity.

13. Refer a post-employment violation under section 207 of title 18 of the United States Code to GLS.

14. See IRM Exhibit 1.25.1-1 for detailed information on how to make a referral.

5.1.23.7.2 (08-19-2011)

Referrals to the Treasury Inspector General for Tax Administration

1. Practitioner misconduct may be an indicator of potential fraud, so it may be appropriate to discuss practitioner misconduct with the Fraud Technical Advisor.

A. Review IRM 25.1.8, *Fraud Handbook - Collection Field Function*, for procedures to use when developing a fraud referral.

B. Discuss possible practitioner misconduct with the Fraud Technical Advisor for assistance on whether to refer a practitioner to TIGTA for investigation.

2. Make a report to refer a practitioner for misconduct directly to TIGTA by one of the methods displayed in the following table:

Reporting to TIGTA

A. Access TIGTA's website at http://www.treas.gov/tigta/contact_report.shtml

B. Complete the "ONLINE FORM."

Note:

If you submit your report via the online form, it is possible, though unlikely, that others could read it since the Internet is not secure.

- Send a **secure** email message to TIGTA at [TIGTA Hotline Complaints Unit](#)

Note:

If you submit your report via email, it is possible, though unlikely, that others could read it because the Internet is not secure.

- Contact the local TIGTA office, or
- Call the TIGTA National Hotline at 1-800-366-4484.

Note:

After regular business hours, call 1-800-589-3718. This number reaches an answering service which answers calls from all fifty states (24 hours a day, 7 days a week). The answering service will send a page to the on-call TIGTA agent.

5.1.23.7.3 (08-19-2011)

Contacts with General Legal Services

1. Consult with Counsel under the following circumstances:

A. Consult with Counsel to determine if you should make a referral to the Treasury Inspector General for Tax Administration (TIGTA) for investigation of practitioner misconduct as potential fraud.

B. Consult with the office of the Associate Chief Counsel Office of General Legal Services, Ethics and General Government Law Branch to determine if you should make a referral to the Treasury Inspector General for Tax Administration (TIGTA) for investigation about a post-employment violation under section 207 of title 18 of the United States Code.

2. Refer the matter to TIGTA for investigation if Counsel so advises.

Reminder:

Whether or not you end up referring the matter to TIGTA for potential criminal sanctions, you must report suspected practitioner misconduct to the OPR as discussed above.

Reminder:

Clearly document any decision to refer a practitioner to TIGTA for potential criminal sanctions on any OPR referral.

3. Ensure that you include all the documentary evidence in support of your allegation(s).

Reminder:

TIGTA may not be able to make the case for fraud without sufficient evidence, so you must maintain a carefully detailed chronology throughout the course of the collection case to document the underlying allegation(s).

5.1.23.7.3.1 (08-19-2011)

Contacting General Legal Services for Advice on Potential Post-Employment Violations

1. A post-employment violation under section 207 of title 18 of the United States Code is not reported to OPR. The Ethics and General Government Law Branch in the Office of the Associate Chief Counsel (General Legal Services) (EGG GLS) is responsible for rendering a legal advisory opinion on whether a former employee is violating or has violated the post-employment laws.

Note:

When an IRS employee contacts GLS with an inquiry seeking legal advice about a possible post-employment violation, GLS's role is that of a legal advisor. The employee is not considered to be making a report.

2. A post-employment violation may occur when a former IRS employee works on a specific matter in the private sector that he/she worked on while employed by the IRS.

Example:

A revenue officer (RO) was collecting delinquent taxes and/or returns from a business or an individual and then quit or retired from the IRS. That RO cannot represent that same business or individual on that same tax return or collection matter.

Example:

A revenue agent (RA) was auditing a business or an individual and then quit or retired from the IRS. That RA cannot represent that same business or individual on the same or related tax return as he worked on while employed by the IRS.

Example:

A Territory Manager had official responsibility over a manager and revenue agent who completed the audit of a business three years ago. The Territory Manager retired from the IRS 13 months ago. The Territory Manager did not personally or substantially participate in the audit. The Territory Manager is not barred from representing the business in that same or related matter because the matter was not pending under his official responsibility during his last year of service with the Government. If the matter was pending under his official responsibility during his last year of Government service, the Territory Manager would not be able to represent the business.

3. Access EthicsLink at: http://counsel.web.irs.gov/EthicsLink/leaving_Government/ if you need further information on the post-employment laws.

4. Discuss the potential post-employment violation with your group manager when you have information to suggest that a former IRS employee is violating or has violated the post-employment laws.

A. Do not pursue the issue if your GM does not agree.

B. Follow the procedures below if your GM agrees.

5. Discuss a potential post-employment violation with EGG GLS by telephone if you need further guidance to understand the statutory prohibitions on a former government employee to determine their impact on your case.

6. Take the following action once you have determined you have a potential post-employment violation and your GM has agreed that you can pursue the issue with CC:GLS:EGG.

7. Submit the facts in writing to CC:GLS:EGG:

A. Prepare a memorandum to the Chief, EGG GLS describing the facts of the violation. Address the memorandum to: Chief, Ethics and General Government Law Branch (GLS).

B. Prepare an email message to your GM.

C. Entitle the message "Need a legal advisory opinion on whether a former employee is violating or has violated the post-employment laws."

D. Include a request for your GM in the body of the message — to read, review, and forward the message.

E. Attach the memorandum as an attachment to the message.

F. Send the message to your GM via **secure** email.

Note:

Your GM should forward the message (including the attachment) to the Chief, Ethics and General Government Law Branch (GLS) via **secure** email.

8. In the memo to GLS, provide relevant information which will help CC:GLS:EGG determine if a post-employment violation may have occurred, such as

- the former IRS office of the practitioner.
- extent of prior involvement in the matter.
- facts about the case.
- issues such as how the case is similar to or how the case is different from other such cases, etc.

Reminder:

You must maintain a carefully written, detailed chronology throughout the course of the collection case to be able to provide relevant, useful information.

9. GLS may request you to advise the former IRS employee to cease work on the matter pending completion of their review of the matter.
10. GLS will do the following if they believe that a violation has occurred:
 - A. Issue an advisory opinion that a violation is or has occurred.
 - B. Ask you to refer the matter to TIGTA for investigation. See *IRM 5.1.23.7.2*.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 1. Field Collecting Procedures

Section 24. Third-Party Payer Arrangements for Employment Taxes

5.1.24 Third-Party Payer Arrangements for Employment Taxes

- 5.1.24.1 [Introduction](#)
- 5.1.24.2 [Employment Taxes](#)
- 5.1.24.3 [Employer](#)
- 5.1.24.4 [Types of Third-Party Payer Arrangements](#)
- 5.1.24.5 [Collection Actions in Cases Involving Third-Party Payers](#)
- 5.1.24.6 [Professional Employer Organization \(Employee Leasing Company\)](#)
- Exhibit 5.1.24-1 [Third-Party Arrangement Chart](#)

Manual Transmittal

August 15, 2012

Purpose

(1) New IRM. This transmits new IRM 5.1.24, Field Collecting Procedures, Third-Party Payer Arrangements for Employment Taxes.

Material Changes

- (1) The procedures in this IRM are intended to supplement existing guidance in other Internal Revenue Manual sections. Because there are a number of issues that are unique to employers who choose to enter into an agreement with a third party in which the third party agrees to perform some or all of the employer's federal employment tax obligations, it is helpful to have one source document with references to other IRM documents as needed.
- (2) IRM 5.1.24.2 describes the various types of federal employment taxes.
- (3) IRM 5.1.24.3 defines the term "employer" per Internal Revenue Code section 3401(d).
- (4) IRM 5.1.24.4 describes the various types of third-party payer arrangements for employment taxes that exist and defines the parties responsible for federal employment tax withholding, reporting and payment in each arrangement.
- (5) IRM 5.1.24.5 explains how third-party payer arrangements may affect collection actions.
- (6) IRM 5.1.24.5.8 incorporates content from Interim Guidance Memorandum SBSE-05-0711-044, *Interim Guidance for Conducting Trust Fund Recovery Penalty Investigations in Cases Involving a Third-Party Payer*, dated July 01, 2011.
- (7) IRM 5.1.24.6 describes a professional employer organization (PEO) arrangement with its client.

Effect on Other Documents

This IRM incorporates Interim Guidance Memorandum SBSE-05-0711-044, *Interim Guidance for Conducting Trust Fund Recovery Penalty Investigations in Cases Involving a Third-Party Payer*, dated July 01, 2011.

Audience

Collection Employees

Effective Date

(08-15-2012)

Scott D. Reisher
Director, Collection Policy
Small Business/Self-Employed Division

5.1.24.1 (08-15-2012)

Introduction

1. An employer may choose to enter into an agreement with a third party in which the third party performs some or all of the employer's federal employment tax withholding, reporting and payment obligations. Collection issues arise when the third party fails to file returns, make deposits, or pay on behalf of the employer.
2. The liability of the employer for employment taxes may shift depending on the type of third-party arrangement.
3. Liability is always determined by the provisions of the Internal Revenue Code (IRC or Code) and cannot be altered by a private agreement or contract between an employer (see *IRM 5.1.24.3*) and a third party.

5.1.24.2 (08-15-2012)

Employment Taxes

1. Federal employment taxes are imposed on wages paid to employees and are comprised of the Federal Insurance Contributions Act (FICA) tax, Federal Unemployment Tax Act (FUTA) tax, and income tax withholding (ITW). The Railroad Retirement Tax Act (RRTA) imposes a tax on compensation paid to railroad employees and employee representatives.
2. FICA tax is composed of a tax for Old-Age, Survivors, and Disability Insurance (OASDI) and a tax for Hospital Insurance (HI). The OASDI portion of FICA tax is only imposed on wages up to the wage base for OASDI for that year. There is no dollar limit on the amount of wages subject to the HI portion of FICA tax.

3. FUTA tax is only imposed on the first \$7,000 of wages paid by an employer to an employee in a calendar year.
4. There is no dollar limit on the amount of wages subject to ITW.
5. The RRTA serves as the functional equivalent of FICA for railroad employers, employees, and employee representatives (a group unique to the railroad industry). Tax under the RRTA is divided into tiers and each tier finances different benefits. Tier 1 RRTA tax provides equivalent social security and Medicare benefits. IRC 3201(a) imposes Tier 1 RRTA on employees and IRC 3211(a) imposes Tier 1 RRTA tax on employee representatives.

5.1.24.3 (08-15-2012)

Employer

1. Under IRC 3401(d) an employer is defined as the person for whom an individual performs or performed any services of whatever nature as an employee, except that under IRC 3401(d)(1) if the person for whom the individual performs or performed the services does not have control of the payment of wages for such services, then the term "employer" means the person having control of such wages.

5.1.24.3.1 (08-15-2012)

Common Law Employer

1. A common law employer is any person who has the status of employer under the usual common law rules applicable in determining the employer-employee relationship.
2. The existence of an employer-employee relationship generally is determined using the common law control test and is based on the facts and circumstances of each case.
3. Generally, an employer-employee relationship exists under the common law when the person for whom the services are performed has the right to direct and control the individual who performs the services, not only as to the result to be accomplished by the work, but also as to the details and means by which that result is accomplished. In other words, an employee is subject to the will and control of the employer not only as to what shall be done, but how it shall be done. It is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so.
4. To determine whether the common law control test is satisfied in a particular case, the IRS and Social Security Administration (SSA) compiled a list of 20 factors used in court decisions to determine worker status. These 20 factors were published in Rev. Rul. 87-41, 1987-1 C.B. 296, and are sometimes called the twenty-factor test. The twenty-factor test is an analytical tool and not a legal test for determining worker status. The legal test is whether there is a right to direct and control the means and details of the work. Because of the difficulty in applying the twenty-factor test and because business trends have changed over the years, the Service now uses a modified approach with respect to worker classification. Rather than listing items of evidence under the 20 factors, the approach now is to group the items of evidence into the following three main categories:
 - **Behavioral control** relates to facts that shows whether the business has a right to direct or control how the worker performs the specific tasks for which he or she is engaged, including instructions and training.
 - **Financial control** relates to facts that shows whether the business has a right to direct and control the financial and business aspects of the worker's activities, including the extent to which the worker has a significant investment, unreimbursed business expenses, or may realize a profit or loss, and the extent to which the worker makes his or her services available to the relevant market.
 - **Relationship of the parties** relates to facts that shows how the parties perceive their relationship. These facts may include the intent of the parties in establishing the relationship, written contracts, the permanency of the relationship, and the extent to which services performed by the worker are a key aspect of the regular business of the company.
5. See IRM 4.23.5, *Technical Guidelines for Employment Tax Issues*, and its exhibits for further information.
6. When the common law test outlined in 5.1.24.3.1(4) above is met, the person for whom services are performed is considered the common law employer and the individual who performs the services is considered an employee of the common law employer.

5.1.24.3.1.1 (08-15-2012)

Common Law Employer Obligations and Filing Requirements

1. A common law employer generally is required to deduct and withhold ITW and FICA taxes from wages it pays to its employees under IRC 3402(a) and IRC 3102(a), respectively, and is separately liable for the employer's share of FICA taxes as well as for FUTA taxes under IRC 3111 and IRC 3301, respectively.
2. A common law employer who pays compensation subject to the RRTA is required to deduct and withhold taxes from its employees' compensation under IRC 3202, and is separately liable for the employer's share of RRTA tax under IRC 3221.
3. A common law employer who pays wages subject to FICA and ITW must file Form 941, *Employer's QUARTERLY Federal Tax Return* (or other Form 94X series return as applicable). See IRM 21.7.2, *Employment and Railroad Tax Returns*, for additional information on Form 94X series returns.
4. A common law employer who pays wages subject to FUTA must file Form 940, *Employer's Annual Federal Unemployment Tax Return*. See IRM 21.7.3, *Unemployment Taxes*, for additional information on Form 940.
5. A common law employer who pays compensation subject to RRTA must file Form CT-1, *Employer's Annual Railroad Retirement Tax Return*. See IRM 21.7.2.6, *CT-1, CT-2 Railroad Tax Returns*, for additional information on Form CT-1.
6. A common law employer must file Forms W-2, *Wage and Tax Statement*, and Form W-3, *Transmittal of Wage and Tax Statements*, with the SSA and furnish a Form W-2 to each employee, reporting the amount of wages and taxes withheld.
7. A common law employer must obtain an employer identification number (EIN) using Form SS-4, *Application for Employer Identification Number*, for use in filing employment tax returns, depositing taxes, and filing information returns with the SSA and employees. An EIN is a nine-digit number used by the IRS to identify tax accounts of employers. See IRM 21.7.13, *Assigning Employer Identification Numbers (EINs)*, for further information.
8. The IRS is not bound by any agreement or contract between a common law employer and a third party that purports to transfer the employment tax obligations of the common law employer to the third party.
9. Employment tax obligations to withhold, report, and pay employment taxes are derived with reference to the common law employer.
10. IRC 3401(d)(1) describes one very limited circumstance where a third party who is not the common law employer is treated as the employer for purposes of satisfying the employment tax obligations. See IRM 5.1.24.3.2.

5.1.24.3.2 (08-15-2012)

IRC 3401(d)(1) Employer

1. IRC 3401(d)(1) provides that if the person for whom the individual performs or performed the services does not have control of the payment of wages for such person, the term "employer" means the person having control of the payment of such wages.
2. In those limited circumstances when the common law employer does not have control of the payment of wages, the person having control of the payment of wages will be considered the employer who has the obligation to withhold, report, and pay employment taxes.

3. While IRC 3401(d)(1) is a federal income tax withholding provision, courts have applied the IRC 3401(d)(1) definition of employer to determine the liability for the withholding and payment of FICA and FUTA taxes. See, e.g., *Otte v. United States*, 419 U.S. 43 (1974); *In re Armadillo Corp. v. United States*, 561 F.2d 1382 (10th Cir. 1977). Due to the similarity in the purpose and scope of RRTA to the purpose and scope of the FICA, the same definition also applies to RRTA taxes. Thus, an IRC 3401(d)(1) employer is responsible for withholding, reporting, and paying ITW, FICA, FUTA and RRTA taxes.
4. A person in control of the payment of wages is commonly referred to as the "section 3401(d)(1) employer" or the "statutory employer" .

5.1.24.3.2.1 (08-15-2012)

Control of the Payment of Wages

1. A third party is the section 3401(d)(1) employer only if it has exclusive control over the payment of wages. Treasury Regulation 31.3401(d)-1(f) provides that the term "employer" means the person having legal control of the payment of the wages. If it shares control with the common law employer, then the third party is not a section 3401(d)(1) employer.
2. Whether or not a third party is in control of the payment of wages depends upon the facts and circumstances. Generally, the IRS considers a third party to be in control of the payment of wages if the payment is not contingent upon, or proximately related to, the third party having first received funds from the employer. Conversely, if the payment of wages is contingent on, or proximately related to, the common law employer's transfer of funds to the third party, the Service considers the common law employer to be in control of the payment of wages. Thus, the common law employer remains obligated to withhold, report, and pay employment taxes.
3. The determination of whether a third party is a section 3401(d)(1) employer is based on the facts and circumstances. The third-party payer could be a section 3401(d)(1) employer for some payments and not for others.

5.1.24.3.2.2 (08-15-2012)

IRC 3401(d)(1) Employer Filing Requirements

1. A section 3401(d)(1) employer is obligated to withhold, report, and pay employment taxes, as if it was the common law employer using its own EIN. See *IRM 5.1.24.3.1*.
2. If a third-party payer controls the payment of wages within the meaning of section 3401(d)(1) for more than one common law employer, it must file employment tax returns that include all wages it paid on behalf of all of the common law employers' employees for the year.
3. The section 3401(d)(1) employer is not required to identify any common law employers on its returns.
4. Although a section 3401(d)(1) employer is liable for the payment of employment taxes, the determination of whether an employee has wages as defined by the FICA, FUTA, or ITW provisions of the Internal Revenue Code is made by reference to the common law employer. Thus, if an employee has multiple common law employers during a calendar year, the section 3401(d)(1) employer must apply a separate FICA and FUTA wage base for each common law employer. See *Cencast Services v. United States*, 62 Fed.Cl. 159 (2004).
5. Similarly, the determination of whether an employee is engaged in employment as defined by the FICA or FUTA is made by reference to the common law employer. See *Blue Lake Rancheria v. United States*, 653 F.3d 1112 (9th Cir. 2011).
6. A section 3401(d)(1) employer must file Forms W-2 and W-3 with the SSA and furnish a Form W-2 to each employee, reporting the amount of wages and taxes withheld using its own EIN.

5.1.24.4 (08-15-2012)

Types of Third-Party Payer Arrangements

1. A common law employer or a section 3401(d)(1) employer may use a third party to perform some or all of the employer's federal employment tax withholding, reporting, and payment obligations. Additionally, the common law employer's use of a section 3401(d)(1) employer is itself a type of third-party payer arrangement.
2. There are a variety of third-party payer arrangements. The most common are:
 - IRC 3401(d)(1) Employer (*IRM 5.1.24.3.2*)
 - Temporary Staffing Service
 - Payroll Service Provider
 - Reporting Agent
 - IRC 3504 Agent
 - IRC 3505 Lender, Surety, or Other Person
3. See *Exhibit 5.1.24-1* for a chart illustrating the differences between a payroll service provider, reporting agent, and IRC 3504 agent.

5.1.24.4.1 (08-15-2012)

Temporary Staffing Service

1. A temporary staffing service (TSS) provides workers to supplement a firm's workforce for a short or indefinite period to address conditions such as employee absences, temporary skill shortages, or seasonal workloads. Typically, a TSS recruits and, in some cases, trains workers and assigns them to a firm/client on a non-permanent basis. The TSS also controls the payment of the workers' wages and provides the workers with other benefits.
2. Workers provided by a TSS traditionally make up only a small portion of the TSS client's workforce and usually perform services for the client for a brief period.
3. After a worker completes work for one client, the TSS typically reassigns workers to a different client.

5.1.24.4.1.1 (08-15-2012)

Temporary Staffing Service Filing Requirements

1. A TSS who recruits, trains, and controls the job assignments of the workers and sets the workers' wages is likely to be the common law employer of the workers it provides to a client. When a TSS is the common law employer of workers it provides to a client, the TSS must withhold, report, and pay employment taxes consistent with its status as a common law employer. See *IRM 5.1.24.3.1*.
2. When the TSS is a common law employer of workers provided by the TSS to the client, the client has no employment tax liability related to the workers provided by the TSS.
3. Even though the workers may provide services for multiple clients of the TSS during the year, the TSS as the common law employer uses a single FICA and FUTA wage base when computing taxes.
4. The TSS, who is a common law employer of workers it provides to a client, must file Forms W-2 and W-3 with the SSA and furnish a Form W-2 to each employee, reporting the amount of wages and taxes withheld using its own EIN.

5.1.24.4.2 (08-15-2012)

Payroll Service Provider

1. A payroll service provider (PSP) is a third party that can help an employer administer payroll and employment taxes on behalf of an employer.
2. An employer may enter into an agreement with a PSP under which the employer authorizes the PSP to perform one or more of the following acts on the employer's behalf:
 - Prepare the paychecks for the employees of the employer.
 - Prepare Forms 940 and 941 for the employer using the employer's EIN.
 - File Forms 940 and 941 for the employer, which are signed by the employer.
 - Make federal tax deposits (FTDs) and federal tax payments and submit this information for the taxes reported on the Forms 940 and 941.
 - Prepare Form W-3 and Forms W-2 for the employees of the employer using the employer's EIN.
3. A PSP is not liable for an employer's employment taxes as either an employer or an agent.
4. An employer's use of a PSP does not relieve the employer of its employment tax obligations or liability for employment taxes.

5.1.24.4.3 (08-15-2012) Reporting Agent

1. A reporting agent is a type of PSP. See *IRM 5.1.24.4.2*.
2. An employer may enter into an agreement with a reporting agent under which the employer authorizes the reporting agent to perform one or more of the following acts on the employer's behalf:
 - Sign and file, often electronically, certain tax returns, such as Forms 940 and 941, using the EIN of the employer.
 - Make FTDs and federal tax payments, including using the Electronic Federal Tax Payment System (EFTPS), using the EIN of the employer.
 - Submit FTD and federal tax payment information, including to EFTPS, using the EIN of the employer.
 - Receive duplicate copies of official notices, correspondence, deposit requirements, and transcripts of certain other information.
3. The IRS has prescribed Form 8655, *Reporting Agent Authorization*, as the appropriate authorization form for employers to designate a PSP as a reporting agent. See Rev. Proc. 2007-38 and Pub 1474, *Technical Specifications for Reporting Agent Authorization and Federal Tax Depositors*, for further information.
4. A reporting agent may act for more than one employer, but must submit a separate Form 8655 for each employer.
5. To authorize a reporting agent to sign and file paper Forms 940 and 941 on the employer's behalf, an employer must provide the Service with a completed Form 2848, *Power of Attorney and Declaration of Representative*.

Note:

A reporting agent has the authority to file amended forms on paper for any form it filed electronically for the employer.

6. A reporting agent does not have to complete the paid preparer section of a Form 941 unless it offers legal advice to its client.
7. An employer's use of a reporting agent does not relieve the employer of its employment tax obligations or liability for employment tax.
8. Also see *IRM 5.1.23.3.4, Authority Granted by Form 8655*, for additional information.

5.1.24.4.3.1 (08-15-2012) Reporting Agents File (RAF)

1. Forms 8655 are processed to the Reporting Agents File (RAF) maintained by the Ogden Accounts Management Campus.
2. Form 8655 information can be researched using IDRS command code RFINK.
3. For more information on Form 8655 and RFINK, see *IRM 21.3.9, Processing Reporting Agents File Authorizations*.

5.1.24.4.4 (08-15-2012) IRC 3504 Agent

1. IRC 3504 provides that if a fiduciary, agent, or other person has control, receipt, custody, or disposal of, or pays wages to employees, the Service is authorized to designate the fiduciary, agent, or other person as an agent of the employer.
2. This agent of the employer is commonly referred to as a "section 3504 agent", a "Form 2678 agent", or an "aggregate filer".
3. The IRS has prescribed Form 2678, *Employer/Payer Appointment of Agent*, as the appropriate authorization form for employers to authorize a person as a section 3504 agent. See Rev. Proc. 70-6, 1970-1 C.B. 420, for further information.
4. A section 3504 agent may act as agent for more than one employer, but each employer must submit a separate Form 2678 seeking IRS approval.
5. Once approved, a section 3504 agent may file the following returns on the employer's behalf:
 - Form 941, *Employer's QUARTERLY Federal Tax Return*
 - Form 943, *Employer's Annual Federal Tax Return for Agricultural Employees*
 - Form 944, *Employer's ANNUAL Federal Tax Return*
 - Form 945, *Annual Return of Withheld Federal Income Tax*
 - Form CT-1, *Employer's Annual Railroad Retirement Tax Return*
 - Form CT-2, *Employee Representative's Quarterly Railroad Tax Return*
6. Generally, an employer can not appoint a section 3504 agent to report, deposit, and pay taxes reported on Form 940, unless the employer is a home care service recipient (HCSR). See Proposed Regulation §31.3504-1(b), published in the Federal Register on January 13, 2010 (75 FR 1735-01), for further information.
7. See *IRM 21.7.2.4.11.3(2)* and (3) for more information on home care service recipients and section 3504 agents that act on behalf of HCSR employers.
8. Since January 2007, a TC 971 Action Code 382, 383, 384, or 385 is input to the employer's account to indicate the appointment of a section 3504 agent. This 971 transaction code is displayed on IDRS Command Codes ENMOD and BMFOL"E". It contains a cross reference to the section 3504 agent's EIN.

- Both the section 3504 agent and the employer are liable for the employer's employment taxes while the agent authorization is in effect.

5.1.24.4.4.1 (08-15-2012) **IRC 3504 Agent Filing Requirements**

- A section 3504 agent must file an aggregate return for each tax-return period on behalf of the employers it represents, using the section 3504 agent's own EIN and address.
- Beginning with tax year 2010, a section 3504 agent filing an aggregate Form 941 on behalf of one or more employers must attach a Schedule R (Form 941), *Allocation Schedule for Aggregate Form 941 Filers*, to the Form 941. The Schedule R (Form 941) provides the IRS with client-specific information to support the totals reported by an agent on an aggregate Form 941. The Schedule R (Form 941) includes a list of employers as well as a breakdown of the payroll liability of each employer to support the aggregate totals reported by the agent on the Form 941. The Schedule R (Form 941) may be filed electronically or by paper submission. However, agents filing for 1,000 or more clients must file a paper return. Schedule R (Form 941) information is currently stored in the Servicewide Employment Tax Research System (SWETRS). See IRM 21.7.2.4.7.7, *Schedule R (Form 941): Allocation Schedule for Aggregate Form 941 Filers*, for further information.
- A section 3504 agent approved to file an aggregate Form 940 on behalf of one or more HCSR employers must attach a Schedule R (Form 940), *Allocation Schedule for Aggregate Form 940 Filers*, to the Form 940. The Schedule R (Form 940) includes a list of HCSR employers as well as a breakdown of the payroll liability of each HCSR employer to support the aggregate totals reported by the agent on the Form 940. See IRM 21.7.3.4.7, *Schedule R (Form 940): Allocation Schedule for Aggregate Form 940 Filers*, for further information.

Note:

The Schedule R (Form 941) and Schedule R (Form 940) are not interchangeable.

- Generally, a section 3504 agent must file Forms W-2 and W-3 with the SSA and furnish a Form W-2 to each employee, reporting the amount of wages and taxes withheld using its own EIN. (Special rules apply if the section 3504 agent is acting as an agent for two or more employers and pays social security wages to an employee in excess of the social security wage base).

5.1.24.4.5 (08-15-2012) **IRC 3505 Lender, Surety or Other Person**

- Under IRC 3505, lenders, sureties, or other persons who are not employers may be personally liable for withheld taxes due. This can be an alternative means of collecting the withheld taxes.

5.1.24.4.5.1 (08-15-2012) **IRC 3505(a)**

- Under IRC 3505(a), a third party that pays wages directly to employees of an employer may be personally liable for an amount equal to the full amount of withholding taxes due under the FICA, RRTA, and/or ITW provisions of the Code.
- See also IRM 5.17.7.2.1, *Liability for Direct Payment of Wages - IRC 3505(a)*.

5.1.24.4.5.2 (08-15-2012) **IRC 3505(b)**

- Under IRC 3505(b), a third party that supplies funds to an employer for the specific purpose of paying wages to the employer's employees may be personally liable for the withholding taxes under the FICA, RRTA and/or ITW provisions of the Code. However, the liability will not exceed 25% of the amount supplied for the payment of wages.
- The following two conditions must exist:
 - The third party must know the funds advanced are to be used specifically for the payment of wages, and
 - The third party must have actual notice or knowledge at the time the funds are advanced that the employer does not intend to or will not be able to pay the withheld taxes.
- See also IRM 5.17.7.2.2, *Liability When Funds are Supplied - IRC 3505(b)*.

5.1.24.4.5.3 (08-15-2012) **Collection Under IRC 3505**

- The assertion of liability on a lender, surety, or other person under IRC 3505 does not relieve the employer from liability. However, amounts paid to the United States under IRC 3505 will be credited against the liability of the employer. The employer, and not the third party, remains liable to file related employment tax returns and information reporting returns.
- To collect from a lender, surety, or other third party under IRC 3505, the United States must bring suit against the third party within 10 years after the assessment of the tax against the employer. The 10-year collection period is suspended when the collection period against the taxpayer employer is suspended under IRC 6503.
- See IRM 5.1.14.3, *Liability for Third Party Paying Wages or Supplying Funds for Payment of Taxes*, and IRM 5.17.7.2.3, *Collection of Liabilities under IRC 3505(a) and (b)*, for more information.

5.1.24.5 (08-15-2012) **Collection Actions in Cases Involving Third-Party Payers**

- The common law employer or section 3401(d)(1) employer is ultimately responsible to withhold, report, and pay federal employment taxes. Even though the employer may forward the tax amounts to a third party to make the tax payments, the employer remains liable unless the third party is the section 3401(d)(1) employer. This IRM section assumes the third party is not the employer.
- If the third party fails to make the federal tax payments, the IRS may assess penalties and interest on the employer's account. The employer is liable for all taxes, penalties, and interest due.
- Responsible persons of the employer may also be held personally liable under IRC 6672 for certain unpaid federal taxes. See *IRM 5.1.24.5.8* for more information.
- For assistance on determining liability in third-party payer situations, contact CC:SBSE area counsel.

Note:

CC:SBSE area counsel will coordinate with CC:TEGE area counsel if necessary.

5.1.24.5.1 (08-15-2012) **Assignment of Third-Party Payer Client Cases**

- Each Collection area has designated an individual to act as a liaison between revenue officers and Collection Policy for the sharing of information and the coordination of PSP and other third-party payer issues. A list of area coordinators and their contact information can be found at <http://mysbse.web.irs.gov/Collection/toolsprocesses/EmployTax/tff/contacts/17431.aspx>

2. Employment tax non-compliance by a third-party payer may result in a large number of delinquent client accounts. Assignment of these cases, when identified, should be coordinated through the area's PSP/PEO coordinator. In certain circumstances, the area PSP/PEO coordinator may also be able to assist with the identification of a PSP's client list through internal sources.
3. At the discretion of local management, Letter 4838 , *Payroll Service Provider Client*, may be used to make initial contact with clients of a non-compliant payroll service provider. At this time, Letter 4838 is only available through the Media and Publications IR Web site; it is not on ICS. See IRM 5.1.10.3(4) for procedures regarding the use of appointment letters.
4. ICS sub code 505 is input to designate and track PSP client cases.

5.1.24.5.2 (08-15-2012)

Initial Contact with a Client of a Third-Party Payer

1. In some of these cases, the initial contact by a revenue officer may be the first time the employer is learning of the noncompliance and tax delinquency. Therefore, during initial contact with an employer who may be unaware of nonpayment actions of a third-party payer, the revenue officer should be sensitive to the taxpayer's possible situation.
2. In addition to following the procedures outlined in IRM 5.1.10.3.2, *Effective Initial Contact*, the revenue officer should encourage the employer's future compliance by:
 - A. Advising the employer it remains responsible for the deposit and payment of employment taxes even though it may have entered into a third-party payer arrangement,
 - B. Discussing the use of EFTPS to verify payments made by a third party on the employer's behalf (see *IRM 5.1.24.5.3*),
 - C. Reviewing unauthorized changes of address by third-party payers (see *IRM 5.1.24.5.4*),
 - D. Being alert to information received in discussions with the employer that indicate possible reasons for penalty abatement (see *IRM 5.1.24.5.5*), and
 - E. Discussing an offer in compromise with Exceptional Circumstances (Effective Tax Administration) as part of the collection determination (see *IRM 5.1.24.5.7*).
3. The revenue officer should review copies of the taxpayer's employment tax returns, W-2s and W-3 to determine if these records match the information that has been provided to the IRS and SSA. A tactic used by third-party payers intent on defrauding clients is to provide clients with accurate employment tax returns, W-2s and W-3 while filing employment tax returns with the IRS that understate the amount of wages on which taxes are owed. Checking IDRS Command Code BMFOL"U" will provide this information for prior years as well.

5.1.24.5.3 (08-15-2012)

Use of Electronic Federal Tax Payment System (EFTPS) for Payment Verification

1. An employer should ensure its PSPs are using EFTPS so the employer can confirm payments are being made on its behalf. An employer can register on the EFTPS system to get its own PIN and use this PIN to periodically verify payments. A "red flag" should arise the first time a payroll service provider misses or makes a late payment.
2. When an employer registers on EFTPS, it will have on-line access to its payment history for 16 months. In addition, EFTPS allows an employer to make any additional tax payments its third-party payer is not making on its behalf, such as estimated tax payments.

5.1.24.5.4 (08-15-2012)

Unauthorized Changes of Address by Third-Party Payer

1. When there are issues with a taxpayer's account, the IRS sends correspondence to the employer at the address of record. Generally, the address of record is the master file address that posted from the most recently filed and properly processed return.
2. Rev. Proc. 2010-16 describes the various ways taxpayers can give a new address to the Service.
3. A third-party payer may sometimes improperly change its client's address of record to that of the third-party payer to limit the client's ability to be informed of tax matters involving its business.
4. An employer may grant permission for the third-party payer to receive copies of IRS correspondence by using Form 8821, *Tax Information Authorization*, Form 2848, *Power of Attorney and Declaration of Representative*, or Form 8655, *Reporting Agent Authorization*, as appropriate. See IRM 5.1.23, *Taxpayer Representation*, for additional information. This is not a "change of address" , and the employer should continue to receive correspondence.
5. An unauthorized change of address made by an employer's third-party payer is a potential indicator of fraud. See *IRM 5.1.24.5.9* below for further information on employment tax fraud.
6. See IRM 5.1.18, *Locating Taxpayers and their Assets*, for the various locator tools and sources available to revenue officers for locating taxpayers and the procedures for verifying their addresses.

5.1.24.5.5 (08-15-2012)

Penalty Abatement for Clients of Third-Party Payers

1. Depending on the facts and circumstances, the IRS may abate certain penalties such as failure to pay, failure to file and failure to deposit. When working with an employer, practitioner, or PSP to resolve the employer's account, determine whether the facts and circumstances of each individual case meet reasonable cause criteria as discussed in IRM 20.1.1, *Penalty Handbook, Introduction and Penalty Relief*.
2. Penalty relief may not be appropriate in all cases. Under no circumstances may interest be removed for reasonable cause. Some factors to consider in evaluating penalty abatement requests in these types of cases are:
 - The employer had sufficient funds available to pay the taxes at the time due, and the third-party payer timely received or debited the funds.
 - The period of time during which the employer was unable to comply with the law due to circumstances beyond the employer's control.
 - The timeliness of the employer's corrective actions, once the employer had actual knowledge of the tax problem(s).
 - The source of the financial problem(s) has been removed (such as the third-party payer has been replaced), and recent compliance clearly demonstrates the tax problem(s) was(were) solely the result of the third-party payer's actions.
 - Documentation supports the facts and circumstances presented by the employer.
3. In certain circumstances where the employer has been harmed by its third-party payer, additional factors to consider for meeting reasonable cause include:
 - Whether the employer had knowledge of a pattern of noncompliance by the third-party payer at the time the delinquencies were accruing.
 - Whether the third-party payer used fraud or deception to conceal the noncompliance from detection by the client.
4. For further information on failure to deposit penalties in cases involving third-party payers, see IRM 20.1.4.24.4.1, *Third Party Mishandling*.

5.1.24.5.5.1 (08-15-2012)

Reasonable Cause Assistant

1. Use the *Reporting Agent* category in the Reasonable Cause Assistant (RCA) program for consideration of a penalty relief request from an affected employer whose third-party payer failed to pay employment taxes over to the IRS.

5.1.24.5.6 (08-15-2012)

Case Resolution

1. An interview should be conducted with the employer to determine the appropriate case resolution. Encourage the employer to pay the liability in full to avoid the accrual of penalties and interest and the possibility of filing a Notice of Federal Tax Lien (NFTL). There are also fees associated with entering into an installment agreement or submitting an offer in compromise.
2. If the employer is unable to full pay the liability, analyze the taxpayer's financial condition to make one or more of the following decisions:
 - A. Make a lien filing determination (IRM 5.12.2.4).
 - B. Enter into an Installment Agreement (IRM 5.14.1).
 - C. Explain the Offer in Compromise provisions (IRM 5.8.1 and *IRM 5.1.24.5.7*).
 - D. Report the account Currently Not Collectible (IRM 5.16.1).
 - E. Initiate enforcement action if assets are available to pay the liability and the taxpayer is unwilling to resolve its account (IRM 5.10.1).
3. When appropriate, deviations from the allowable living expense standards used for financial analysis must be thoroughly documented in the case history (IRM 5.15.1.7).
4. If the taxpayer's liability includes trust fund employment taxes, a Trust Fund Recovery Penalty determination must be made. See IRM 5.7.4.1, *Determination to Pursue and Recommend Assessment of the TFRP*, and *IRM 5.1.24.5.8* for further information.

5.1.24.5.7 (08-15-2012)

Offers in Compromise

1. An offer in compromise is a legitimate alternative to declaring a case currently not collectible or to a protracted installment agreement. See IRM 5.8.1, *Offer in Compromise - Overview*, for further information.
2. For an employer whose liability was affected by the actions of a third-party payer, an offer in compromise with Exceptional Circumstances (Effective Tax Administration) may be a viable collection alternative based on the facts and circumstances of the employer's individual case. The specific considerations for an offer in compromise with Exceptional Circumstances (Effective Tax Administration) are outlined in IRM 5.8.11, *Effective Tax Administration*.
3. A revenue officer who secures an offer in compromise from an employer whose liability was affected by the actions of a third-party payer will write across the top of the original Form 656, *Offer in Compromise*, in red "Payroll Service Provider Offer". The employee will also complete Form 657, *Offer in Compromise/Revenue Officer Report*. The original Form 656, the application fee and the appropriate TIPRA payment, collection information statements with attached substantiation, and the Form 657 must be forwarded within 24 hours to the appropriate COIC campus. See IRM 5.8.1.7.1, *Initial Receipts of Offers Received Elsewhere in the Service*, for additional information regarding the documents which should be submitted with the offer package.

5.1.24.5.8 (08-15-2012)

Trust Fund Recovery Penalty (TFRP) Investigations

1. Under IRC 6672, the TFRP may be recommended against any person required to collect, account for, and pay over taxes held in trust (a responsible person) who willfully fails to perform any of these activities. In cases involving third-party payer arrangements, potentially responsible persons may include:
 - Payroll Service Provider
 - Responsible parties within a PSP
 - Professional Employer Organization
 - Responsible parties within a PEO
 - Responsible parties within the common law employer (client of PSP/PEO)
2. Each recommendation for assertion of the TFRP against a third-party payer that is a related responsible person (RRP) must stand on its own merits based on the facts discovered during the TFRP investigation regarding "responsibility" and "willfulness".
3. Factors to be considered when determining the potential "responsibility" and "willfulness" of a third-party payer are:
 - **Responsibility**
Identification of the person(s) within the third-party payer who had significant control over the payment of the client's employment taxes.
 - **Willfulness**
Willful means intentional, deliberate, voluntary, reckless, knowing, as opposed to accidental. No evil intent or bad motive is required.
4. Factors to be considered for establishing "responsibility" and "willfulness" of a responsible person within a common law employer/client where there is a third-party payer arrangement are:
 - **Responsibility**
The use of a third-party payer such as a PSP or a PEO does not relieve the common law employer and employees of the common law employer who are responsible for collecting, accounting for, and paying over the common law employer's employment taxes from the responsibility of ensuring that all of the common law employer's federal tax obligations are met.
 - **Willfulness**
Willfulness means intentional, deliberate, voluntary, reckless, knowing, as opposed to accidental. No evil intent or bad motive is required.
5. Additional factors to be considered when determining "willfulness":
 - Whether the responsible person had knowledge of a pattern of noncompliance by the third-party payer at the time the delinquencies were accruing.
 - Whether the third-party payer used fraud or deception to conceal the noncompliance from detection by the client.
 - Whether the client had received prior IRS notices indicating that employment tax returns had not been filed, or are inaccurate, or that employment taxes had not been paid.

- The actions the client has taken to ensure its federal employment tax obligations have been met after becoming aware of the tax delinquencies, e.g. timely reporting the problem(s) to the IRS and the proper authorities, ensuring current tax debts have been timely reported and paid, and working with the IRS on a reasonable plan to resolve past debts.
6. The same guidance for contacting third parties and for issuing L3164A, as outlined in IRM 5.7.4.2.2, *Third Party Interviews and Third Party Contact Considerations*, applies when working TFRP investigations involving third-party payers.
 7. Consult with local area counsel in any case involving whether a third-party payer is a responsible person(s) under IRC 6672 for the TFRP.
 8. See IRM 5.7.3, *Establishing Responsibility and Willfulness for the Trust Fund Recovery Penalty (TFRP)*, IRM 5.7.4, *Investigation and Recommendation of TFRP*, and IRM 5.17.7, *Liability of Third Parties for Unpaid Employment Taxes*, for further information.

5.1.24.5.9 (08-15-2012)

Employment Tax Fraud

1. When investigating cases involving unpaid payroll taxes and third-party payer arrangements, a revenue officer should look for potential indicators of fraud. See IRM 25.1.2, *Recognizing and Developing Fraud*, and IRM 25.1.8.2, *Trust Fund Violations*, for further information.
2. When initial indicators of fraud are identified, the revenue officer will discuss the case with the group manager. If the group manager concurs with the fraud potential, the revenue officer should contact the local fraud technical advisor (FTA).
3. When there is an indication of multiple clients being harmed by a third-party payer, contact the area PSP/PEO coordinator for assistance in identifying the client list through internal sources. A list of area coordinators and their contact information can be found at <http://mysbse.web.irs.gov/Collection/toolsprocesses/EmployTax/tff/contacts/17431.aspx>
4. In some instances, revenue officers will be assigned cases involving the clients of a fraudulent third-party payer who is under criminal investigation. There may or may not be a TC 914, Active Criminal Investigation, placed on the client accounts. Therefore, it is important to check with Criminal Investigation (CI) and see if they have an open case on the third-party payer. When CI has an open investigation, follow procedures for parallel investigations outlined in IRM 5.1.5, *Balancing Civil and Criminal Cases*. Also advise the area PSP/PEO coordinator of the parallel investigations.

5.1.24.6 (08-15-2012)

Professional Employer Organization (Employee Leasing Company)

1. A professional employer organization (PEO), sometimes referred to as an employee leasing company, enters into an agreement with a client to perform some or all of the federal employment tax withholding, reporting, and payment functions related to workers performing services for the client. A PEO also may manage human resources, employee benefits, workers compensation claims and unemployment insurance claims for the client.
2. A PEO may represent to a client that the PEO is the employer of the workers providing services to the client. In these cases, a PEO may not request authorization from the Service on Form 8655 to be a reporting agent, or on Form 2678 to be a section 3504 agent.
3. The Internal Revenue Code does not define PEO.
4. A majority of states have enacted laws that require licensing of PEOs. Some states may also require each PEO to report its clients to the state. The location for PEO licensing and reporting of information varies by state. State PEO laws have no bearing on the determination of an entity's liability for federal employment tax purposes.
5. The determination of an entity's liability for federal employment tax purposes must be determined under the Code and applicable regulations.
6. For assistance on determining liability in PEO situations, contact CC:SBSE area counsel.

Note:

CC:SBSE area counsel will coordinate with CC:TEGE area counsel if necessary.

5.1.24.6.1 (08-15-2012)

Impact of a PEO Arrangement on Client

1. If the contractual documents provide that the PEO assumes some or all of the employer rights and obligations, in particular with regard to payroll and applicable taxes, a client may believe it is not liable for federal employment tax obligations. However, the rules established in the IRC determine which party is liable for employment taxes, and the Service is not bound by any agreement between an employer and a third party.
2. Use of a PEO does not relieve a client from its employment tax obligations if the client is the employer of the workers who perform services for the client and the PEO is not the section 3401(d)(1) employer. See IRM 5.1.24.3 and IRM 5.1.24.3.2. An employer cannot contract away its responsibility to withhold, report and pay applicable employment taxes. In any employment tax case, a determination of who is the employer must be made to determine employment tax liability.
3. Whether the client is the common law employer depends on the facts and circumstances, such as whether the client directs and controls the day-to-day performance of the workers' duties, retains the authority to hire and fire the workers, and sets the hourly wage or salary. A PEO may not exhibit the degree of direction and control over workers providing services to a client to satisfy the common law standard and thus, may not become liable under the Code as the common law employer.
4. Depending on the facts and circumstances, a PEO may not be in control of the payment of wages within the meaning of section 3401(d)(1). The Service's position is that an entity is in control of the payment of wages within the meaning of section 3401(d)(1) if the entity pays wages to the employees regardless of whether the common law employer advances funds to pay the wages. Conversely, if the payment of the employees is contingent on, or proximately related to, the transfer of funds from the common law employer to the third party, the third party is not in control of the payment of wages.
5. When a PEO files employment tax returns and Forms W-2 using its own name and EIN without identifying its clients or allocating wages to its clients on employment tax returns, the client will not get credit for having paid employment taxes. =====

5.1.24.6.2 (08-15-2012)

Pursuing Collection from PEOs

1. It is important to secure a copy of the contract or agreement for service from the PEO or its client(s) as part of a collection investigation to determine the relationship between the PEO and its client(s). However, a contract is only representative of the parties understanding of the relationship and is not binding on the Service. Even though the contract may attempt to transfer the employment tax obligations to the PEO, the determination of who is the employer is a facts and circumstances analysis.
2. If the facts and circumstances indicate that a PEO is liable for employment taxes, the revenue officer must pursue collection from the PEO. For a discussion of liability as a responsible party under IRC 6672, see IRM 5.1.24.5.8. =====
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- Some PEOs are structured to have one parent company with multiple subsidiaries, each having its own EIN and employment tax filing requirements. Each subsidiary is set up to manage a different group of clients. Clients may be grouped by industry or location. It is important to determine a PEO's structure, and when appropriate, to conduct cross compliance on all related BMF entities.

5.1.24.6.2.1 (08-15-2012)

Pursuing Collection from Successor PEO Entities

- One problem encountered with PEOs is the closing of one PEO entity immediately followed by the opening of another PEO entity under a new EIN. The new entity often performs the same type of work and has the same clients, assets, location, and employees operating the new business.
- Once the assets and income of a liable PEO entity have been transferred, the "successor entity" theory may be used to collect from the new PEO entity. For further information on the use of the successor entity theory to collect against transferred assets or from the income and assets of the new entity, see IRM 5.1.30.8, *Successor Entities*.

5.1.24.6.2.2 (08-15-2012)

Injunctive Relief

- When administrative collection actions fail to bring a PEO into compliance, it may be necessary to initiate injunctive relief measures to stop a PEO from pyramiding. See IRM 5.7.2.5, *Referrals for Civil Enforcement*, and IRM 5.17.4.17, *Civil Injunctions Under IRC 7402(a) to Restrain Pyramiding*, for complete procedures.

5.1.24.6.3 (08-15-2012)

Pursuing Collection from PEO Clients

- When a PEO fails to pay employment taxes on wages attributable to any client employees, if the facts and circumstances indicate that the client remained the employer, the IRS should attempt to identify the client with unpaid liabilities and assess the appropriate amount of employment taxes against the client. =====
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5.1.24.6.4 (08-15-2012)

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**Exhibit 5.1.24-1
Third-Party Arrangement Chart**

Third-Party Arrangement Authority	Payroll Service Provider (PSP)	Reporting Agent Form 8655 (RA)	IRC 3504 Agent Form 2678 Agent Aggregate Filer
Can file certain employment tax returns?	Yes. The PSP prepares a separate return for each client using the client's EIN. After client signs the return, either the client or the PSP may file the return on paper.	Yes. The RA signs and is generally required to file electronically a separate return for each client, using the client's EIN. The RA must e-file returns listed in Rev. Proc. 2007-38 and shown on the Form 8655 authorization request, if the forms are available for electronic filing. Only forms that are not able to be electronically filed can be filed using paper forms.	Yes. The agent files an aggregate return for all clients, using the agent's EIN. Agent can file those returns listed on Form 2678 appointment request.

Can make deposits and payments for employment taxes reported on returns?

Yes. The PSP deposits and pays tax liabilities on behalf of each client, using the client's separate EIN, according to each client's deposit requirements.

Yes. The RA deposits and pays tax liabilities on behalf of each client, using the client's separate EIN, according to each client's deposit requirements.

Yes. The agent deposits and pays for tax liabilities the agent has aggregated and reported using the agent's EIN, according to the agent's deposit requirements. Agent can make deposits and payments for those employment taxes reported on returns listed on Form 2678 appointment request.

Can file Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return?

Yes. After client signs the return, client or PSP files separate returns using client's EIN.

Yes. RA signs and generally files electronically separate returns using client's EIN.

No. Clients must file FUTA tax returns using their own EINs. However, there is an exception for Home Health Care Recipients through a state or local program.

Has employment tax liability?

No. Client/Employer, not the PSP, remains liable for ensuring all tax returns are filed timely and all deposits and payments are made timely.

No. Client/Employer, not RA, remains liable for ensuring all tax returns are filed timely and all deposits and payments are made timely.

Yes. Client/Employer and agent are both liable for paying the client's employment taxes, filing returns, and making deposits and payments for the taxes reported.

Specific guidance in addition to IRC, regulations and Publication 15, Circular E.

Rev. Proc. 2007-38

Rev. Proc. 70-6; Notice 2003-70 (state and local governmental agencies)

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 1. Field Collecting Procedures

Section 25. IDRS and Data Security for Field Collection

5.1.25 IDRS and Data Security for Field Collection

- 5.1.25.1 [Overview](#)
- 5.1.25.2 [Roles and Responsibilities](#)
- 5.1.25.3 [IDRS User Support](#)
- 5.1.25.4 [IDRS Online Reports Services \(IORS\)](#)
- 5.1.25.5 [Monthly IDRS Security Profile Report](#)
- 5.1.25.6 [Security Audit and Analysis System \(SAAS\)](#)
- 5.1.25.7 [Form 11377/11377-E, Taxpayer Data Access](#)
- Exhibit 5.1.25-1 [Acronyms](#)
- Exhibit 5.1.25-2 [Common Command Codes - SB/SE Field Collection](#)

Manual Transmittal

December 11, 2014

Purpose

(1) This transmits new IRM Part 5.1.25, Field Collecting Procedures, IDRS and Data Security for Field Collection.

Background

IRM 5.1.25, *IDRS and Data Security for Field Collection*, further defines requirements found in IRM 10.8.1, *Information Technology (IT) Security, Policy and Guidance* and IRM 10.8.34, *Information Technology (IT) Security, IDRS Security Controls*. In the event of a discrepancy, information in Part 10 takes precedence.

Scope

This functional Internal Revenue Manual (IRM) applies only to Small Business/Self Employed (SB/SE) Field Collection.

Material Changes

(1) This manual provides policies and guidance to SB/SE Field Collection Managers and Data Security Analysts to carry out their respective responsibilities regarding security of the Integrated Data Retrieval System (IDRS) and other applications that contain taxpayer data.

Effect on Other Documents

None

Audience

Small Business/Self-Employed, Field Collection Managers and Data Security Analysts.

Effective Date

(12-11-2014)

Related Resources

A list of acronyms used throughout this IRM can be found in *Exhibit 5.1.25-1*.

IRM References

- IRM 10.8.34, *Information Technology (IT) Security, IDRS Security Controls*
- IRM 10.8.1, *Information Technology (IT) Security, Policy and Guidance*
- IRM 1.4.50, *Collection Group Manager, Territory Manager and Area Director Operational Aid*

Website References:

- Form 11377-E, *Taxpayer Data Access*
- General UNAX Overview and Resources
- IDRS Online Report Services (IORS)
- IDRS Unit and USR Database (IUUD)
- IDRS Command Code Job Aid
- Collection Information Technology & Security (CITS) SharePoint

5.1.25.1 (12-11-2014)

Overview

1. This IRM section provides policies and guidance to SB/SE Field Collection Managers and Data Security Analysts to carry out their respective responsibilities regarding security of the Integrated Data Retrieval System (IDRS) and other applications that contain taxpayer data.
2. This IRM 5.1.25, *IDRS and Data Security for Field Collection*, further defines requirements found in IRM 10.8.1, *Information Technology (IT) Security, Policy and Guidance* and IRM 10.8.34, *Information Technology (IT) Security, IDRS Security Controls*.
3. If there is a conflict with or variance from this IRM and IRM 10.8.X series in regards to IDRS security, IRM 10.8.X series has precedence unless specifically noted otherwise in IRM 10.8.X, and/or unless requirements within this IRM are more stringent.

5.1.25.2 (12-11-2014)

Roles and Responsibilities

1. This section provides supplemental roles and responsibilities for personnel who have IDRS security-related responsibilities. These roles are further defined in IRM 10.8.34.3, *Roles and Responsibilities*.
2. The IRM 10.8.34.3.1.3, *Information Technology (IT) Security IDRS Security Controls*, states the managers of IDRS users are responsible for day-to-day implementation and administration of IDRS security in their group. However, to relieve administrative burden on front line managers, SB/SE Field Collection established dedicated Unit Security Representatives (USRs), known by their organizational title as Data Security Analysts (DSAs).
3. The IDRS Data Security Group is assigned to the Collection Information Technology & Security (CITS) function. DSAs in Collection must perform security duties, which in other functions fall to managers of IDRS users. For purposes of consistency, this IRM uses the term DSA in lieu of USR. See IRM 1.1.16.2.31.1.16.2.3, *Collection Information Technology & Security*, for information on the role and mission of the CITS function.

5.1.25.2.1 (12-11-2014)

Managers of IDRS Users

1. SB/SE Field Collection Managers must:
 - A. Coordinate with the DSA to ensure IDRS security is effectively implemented for the unit/group.
 - B. Advise the DSA when a user is transferred in or out of the workgroup.
 - C. Arrange periodic IDRS and Data Security awareness presentations for the workgroup.
 - D. Ensure the DSA is notified immediately when an IDRS user no longer requires system access.
 - E. Respond within five business days to the DSA with findings related to questionable accesses and/or other security report inquiries.
2. SB/SE Field Collection Managers may:
 - A. Request secondary permissions in IDRS Online Reports Services (IORS) to view, add comments, and/or print their own unit reports.
 - B. Also be designated as an alternate USR or Terminal Security Administrator.

Note:

This designation does not impact the roles and responsibilities of the DSA.

5.1.25.2.2 (12-11-2014)

Annual Assurance Review Process - Federal Managers Financial Integrity Act (FMFIA)

1. The Annual Assurance Review process requires managers to certify their IDRS security-related actions. IRM 10.8.34, *Information Technology (IT) Security, IDRS Security Controls*, provides authority to delegate IDRS security actions to the IDRS and Data Security Group. Therefore, with the exception of the IDRS Data Security Group Manager, Field Collection Managers should respond as Non-applicable to all questions related to:
 - A. Oversight of IDRS user profiles and profile restrictions.
 - B. Oversight of USR profiles, USR training and USR security designations.
 - C. Review and certification of IORS reports, including target certification rates.
 - D. Oversight of contract personnel with IDRS accounts.
2. Field Collection Managers must continue to perform and certify the following actions during the Annual Assurance Review process:
 - A. Ensure user profiles are locked when the employee must not require IDRS for more than 15 calendar days.
 - B. Encourage employees to use command code LOKME and the Password Management Capability as appropriate.
 - C. Ensure IDRS users complete required training.

5.1.25.2.3 (12-11-2014)

Data Security Analyst (DSA)

1. The DSA:
 - A. Is the IORS Primary Reviewer and the Primary USR and must be reflected as such on the IDRS Unit and USR Database (IUUD) for all Field Collection IDRS units.
 - B. Is assigned a range of IDRS unit numbers aligned with the SB/SE Field Collection areas.
 - C. Shall maintain an active IDRS profile on both the Enterprise Computing Center - Martinsburg (ECC-MTB) and Enterprise Computing Center - Memphis (ECC-MEM) to ensure unrestricted backup support.
 - D. Shall be profiled with ALLOW permissions to support users on all SB/SE home campuses.
 - E. Is responsible for the review and certification of IORS and Security Audit and Analysis System (SAAS) reports.
2. The DSA must also perform the following unit and account administration related tasks:
 - A. Support the program goals of IT Cybersecurity by providing assistance, analysis and recommendations for action to SB/SE Field Collection management.
 - B. Process requests to add and/or delete IDRS command codes for unit and/or individual user profiles.

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4. The actions requested below require the IDRS user or manager to submit an OL5081.

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5.1.25.3.1 (12-11-2014)

IDRS Unit Profiles

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5.1.25.3.2 (12-11-2014)

IDRS Command Codes

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5.1.25.3.2.1 (12-11-2014)

Requests for Common Command Codes

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5.1.25.3.2.2 (12-11-2014)

Requests for Uncommon Command Codes

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**5.1.25.4 (12-11-2014)
IDRS Online Reports Services (IORS)**

1. The IDRS Online Reports Services (IORS) is a web based application that makes IDRS security reports available online to IDRS security staffs and authorized business reviewers.
2. The DSA is designated as the IORS Primary Reviewer for all Field Collection IDRS units.
3. Managers of IDRS users may be granted secondary permissions in IORS to view, add comments, and print IORS reports for their assigned unit.

**5.1.25.4.1 (12-11-2014)
Types of IORS Reports**

1. There are four weekly security reports available to authorized users for review and necessary actions.
 - Employee Count by Site/Unit
 - Master Register of Active IDRS Users
 - Security Violations
 - Access to Other Employee and Employee Spouse by Accessing Employee
2. There are three monthly reports available to authorized users for review and necessary actions.
 - Automated IDRS Sign-Offs Due to User Inactivity
 - Monthly IDRS Security Profile Report
 - Password Management Activations

**5.1.25.4.1.1 (12-11-2014)
Weekly Security Reports - Review and Action (No Certification Required)**

1. The Employee Count by Site/Unit report lists the number of active users in each unit. The DSA must review this report and take action as warranted, such as deleting empty units that are no longer required to support the area footprint.
2. The Master Register of Active IDRS Users report lists numerous fields of information for all active users in the unit. The DSA must incorporate the Master Register of Active IDRS Users report in their monthly security review activities.

**5.1.25.4.1.2 (12-11-2014)
Monthly Security Reports - Review and Action (No Certification Required)**

1. The Automated IDRS Sign-Offs Due to User Inactivity report lists those users whose IDRS sessions terminated after 120 minutes of inactivity. The DSA must take the following actions:
 - Identify IDRS users with more than 15 automatic sign-offs in a month.
 - Advise those users to sign-off IDRS when not in use to prevent an unauthorized access.
 - Instruct users how to periodically refresh their IDRS session if IDRS is required on a continuous basis.

Note:

While this report is not certified independently, it is incorporated as an aspect of certifying the Monthly IDRS Security Profile Report.

2. The Password Management Activations report lists the number of users in each unit who have activated this capability. Where a unit fails to reflect a 100% activation rate, the DSA must research IDRS to determine if Password Management has been activated since the report was generated.
 - If it has, no further action is warranted.
 - If it has not, the DSA must send an email to the user with a copy to the group manager requesting the user to activate the Password Management Capability. The DSA must attach the instructions to assist the user with activation.

**5.1.25.4.1.3 (12-11-2014)
Security Reports Requiring Certification**

1. The DSA is required to review and certify the following security reports:
 - Weekly Security Violations Report
 - Weekly Access to Other Employee and Employee Spouse by Accessing Employee
 - Monthly IDRS Security Profile Report

**5.1.25.4.1.3.1 (12-11-2014)
Weekly Security Violations Report**

1. This report lists all security violations recorded by IDRS users, such as:
 - Password Mismatch
 - Name Mismatch

- SINON Error (PWWGT)
- Response Error (PWWGT)
- Command Code Not in Profile
- Locked Profile

2. This report must be certified within 14 calendar days to be considered timely.

3. The DSA is required to complete the research and take appropriate actions as follows:

A. The report reflects a user with SINON violations.

If ... The research shows a user has four or more violations with any combination of:	Then ...
<ul style="list-style-type: none"> • Password Mismatch • Name Mismatch • SINON Error (PWWGT) • Response Error (PWWGT) 	<p>(1) Send an email to the user, with a courtesy copy (cc:) to the manager to confirm the following:</p> <ul style="list-style-type: none"> • The user committed these errors • The violations were not the result of an unauthorized attempt to access IDRS <p>(2) Advise Treasury Inspector General for Tax Administration (TIGTA) of the user's response if the user does not agree they committed the violations.</p>

B. The report reflects a user with four or more Command Code Not in Profile violations. Research the user's profile to determine if the command code(s) were previously added.

If ... Command Codes(s) were previously added	Then ... No further action is required
Command Code(s) were not previously added	<p>(1) Determine if the command code(s) is authorized for SB/SE Field Collection use (Refer to <i>IRM 5.1.25.3.2, IDRS Command Codes</i>).</p> <p>(2) If authorized, email the user with a cc: to the manager stating:</p> <ul style="list-style-type: none"> • The command code(s) accessed resulting in a security violation • If the command code is needed for their position, to obtain managerial approval to have the command code added to their profile. <p>Note:</p> <p>If not needed or it was an input error, no further action is required.</p>

(3) If not authorized, email the user, with a courtesy copy (cc:) to the manager, advising the command code is restricted and/or not allowed in SB/SE Field Collection profiles.

C. The report shows a user with a Locked Profile violation. Research the user's profile to determine the current status.

Example:

System Lock due to inactivity, Security Lock, or the employee initiated a Self-Lock.

If ...	Then ...
The IDRS profile is unlocked	No further action is required.
A System Inactivity Lock exists	Contact the manager to determine if account should be unlocked or remain locked.
A Security Lock exists	Contact the manager to request the current status of the user.
A Self-Lock was initiated	Review the dates the Self Lock was set and date the violation occurred. On a case-by-case basis, the DSA may contact the Manager to determine if the employee is out of the office for the period in question.

4. The DSA must document IORS for every actionable event.

5. In the comments area, the DSA must document all research, contacts made with the user or manager, and their conclusion.

6. For each individual action taken, the DSA must select the appropriate action for the event from the drop down menu:

- Review Completed - No Follow-up Needed
- Review Completed - Follow-up Performed
- Follow-up Action Required
- Other (Comment Required)

7. The DSA must address Report Level Actions, Report Level Comments and Current Certification Status, which apply to all displayed units.

Report Level Items	Actions
Report Level Actions	<ul style="list-style-type: none"> • Reviewed and Validated - No Follow-up Action Needed • Follow-up Action Needed • Follow-up Action Completed • Referred to AWSS or TIGTA • Other (Comment Required)

Report Level Comments

- The DSA must summarize actions taken to review the Weekly report.

Current Certification Status

- Report Certified
- Remove Certification / Not Certifying

5.1.25.4.1.3.2 (12-11-2014)

Weekly Access to Other Employee and Employee Spouse by Accessing Employee Report (Sensitive Access Report)

1. This report lists users that have accessed other employees' and/or their spouses' accounts.
2. The DSA is required to review each unique Social Security Number (SSN) to ensure all accesses to other Internal Revenue Service (IRS) employees' and/or their spouses' accounts are business-related.
3. Each access must be supported by one of the following indicators:
 - A. Direct case assignment in SB/SE Collection inventory databases, such as the Integrated Collection System (ICS) or Automated Insolvency System (AIS-4)
 - B. Related case assignment on SB/SE Collection inventory databases
 - C. Evidence of cross compliance checks
 - D. Department of Justice or other official requests
 - E. Confirmed input error supported by the identification of another assigned case with similar Taxpayer Identification Number (TIN), such as a transposition or formatting error
4. The DSA is required to certify all accesses through collection case assignment by querying the SSN on SB/SE Collection inventory databases. When the accessing user is assigned the case or is another member of the same group the DSA must certify the access.

Note:

The DSA must leave a history on ICS identifying the purpose of the access.

5. This report must be certified within 14 calendar days to be considered timely.
6. The DSA must take the actions shown in the following table if unable to certify the access.

If ...	Then ...
No record is located on the inventory databases	Research Form 11377 or Form 11377-E retention files.
A document exists with sufficient explanation	Certify the access.
No document exists	Research IDRS and/or other applications to locate a cross-reference TIN.
A cross-reference TIN is located	Research inventory databases to determine whether the related TIN controls case assignment.

Note:

The DSA must prepare Form 11377 or Form 11377-E for all IDRS accesses of employee/spouse accounts. Submit both copies of the form to the SB/SE Collection IDRS Data Security Manager.

7. If the research performed above does not confirm or certify the access the DSA must email the manager of the accessing user to validate the access. The DSA must request a response within five business days and include in the email:
 - Specific information to identify the user
 - The date and time stamp of the access
 - The account accessed
 - The command codes accessed
 - The DSA's research

Based on the email response, the DSA must take the actions in the following table:

If ...	Then ...
	The DSA must conduct additional research to confirm a related case assignment.

The manager provides a valid reason for the access

Example:

If the response states the access is a cross compliance check to a business entity or a transposition error, the DSA must independently confirm the actual case assignment.

The DSA must initiate Form 9936, *Request for Audit Trail Extract*, to view what actions were recorded before and after the access in question.

The manager cannot provide a valid reason for the access

Note:

If a manager requires an IDRS audit trail for any reason not associated with a security report, they may request it through the DSA or by direct contact with IT Cybersecurity.

The manager has not replied within five business days

The DSA must send a copy of the initial email to the territory manager with a cc: to the manager.

The DSA does not receive a response within an additional five business days

The DSA must notify the SB/SE Collection IDRS Data Security Manager.

The DSA cannot certify an access through independent research, managerial response and/or reviewing audit trails

The DSA must submit a referral to TIGTA for follow up in accordance with IRM 10.8.34.6.3.1.2.3.

8. In the comments area on IORS, the DSA must clearly and concisely document all research conducted and actions taken in sufficient detail, including research results and any contacts with or information provided by the user or the manager. Comments must provide sufficient detail to enable any reviewer to determine how the DSA certified the access or why the DSA referred the access to TIGTA.

Note:

If a TIGTA referral is required, the DSA must record the Complaint Number as the final entry prior to certifying the report.

9. For each individual action taken, the DSA must select the appropriate action for the event from the dropdown menu:

- Review Completed - No Follow-up Needed
- Review Completed - Follow-up Performed
- Follow-up Action Required
- Other (Comment Required)

10. The DSA must address all Report Level Items, Report Level Comments and Current Certification Status, which apply to all displayed units as shown in *IRM 5.1.25.4.1.3.1(7)*.

**5.1.25.5 (12-11-2014)
Monthly IDRS Security Profile Report**

1. The Monthly Security Profile Report provides a summary of various IDRS security aspects. Every unit must be reviewed for the following categories:

- Locked Profiles
- Automated Command Code Access Control
- Sensitive Command Code Combinations
- Security Command Code Usage
- Master Register of Active IDRS Users
- Command Code Activity

2. This report must be certified within 28 calendar days to be considered timely.

**5.1.25.5.1 (12-11-2014)
Locked Profiles**

1. The DSA must review locked IDRS profiles of 28 days or more due to inactivity.

Research IDRS to determine if the user has been deleted from IDRS or if the profile is still locked.

A. If the user profile has since been unlocked or deleted, no further action is required.

B. If the user profile is still locked, the DSA must send an email to the manager to determine if the user still requires IDRS access.

2. Based on the manager's response, the DSA must perform the following actions:

- A. If the manager confirms the user requires IDRS access, the user must be unlocked upon request.
- B. If the manager determines the user no longer requires IDRS access, the DSA must delete the user from IDRS. OL5081 must update overnight, removing IDRS as an active application.

**5.1.25.5.2 (12-11-2014)
Automated Command Code Access Control**

1. =====
2. =====
 - A. =====
 - B. =====
 - C. =====
 - D. =====
3. =====

Exception:

=====

**5.1.25.5.3 (12-11-2014)
Sensitive Command Code Combinations**

1. SB/SE Field Collection IDRS units may contain sensitive command code combinations, which require increased oversight. See IRM Exhibit 10.8.34-6, *Sensitive Command Code Combinations*, for the list of codes.
2. The DSA must ensure the UCCP does not contain any sensitive command code combinations.
3. The DSA must monitor use of Sensitive Command Code Combinations by position title and contact the user's manager for confirmation as needed.

**5.1.25.5.4 (12-11-2014)
Security Command Code Usage**

1. The DSA must query their units to identify the use of security command codes to ensure they are apprised of all users approved by local management to function as Alternate USRs or TSAs.

2. If security command codes have not been used for over six months, contact the user's manager to confirm the user's security role. Based on the manager's response, perform the following actions:
 - A. If the manager concurs with the user's continued security role, no further action is required.
 - B. If the manager determines the user no longer requires security command codes, direct the manager to initiate an OL5081 Modify User Profile request to delete the user's security command codes.

5.1.25.5.5 (12-11-2014)

Master Register of Active IDRS Users

1. The Master Register lists active IDRS users in the unit.
2. The DSA must forward the Master Register to the manager to determine if any corrective action is necessary.
3. The DSA is responsible for taking any corrective actions necessary, such as: moving the user to another unit, updating the user's phone number in IDRS and confirming approved pseudonym names are reflected in IDRS.

5.1.25.5.6 (12-11-2014)

Command Code Activity

1. The DSA must review Unit and Individual command code usage to determine:
 - A. If the MPAF command codes are appropriate for the work performed by the users in the unit.
 - B. Whether UCCP command codes are used by at least 90 percent of IDRS users in the unit. The UCCP must not contain any sensitive command codes unless 100 percent of the employees in the unit need the command code to do their work.
2. The DSA must review the profile of each IDRS user to identify any unauthorized command codes. See *Exhibit 5.1.25-2* for a list of command MPAF production command codes approved for use by SB/SE Field Collection.
3. Based on results of the Unit and Individual command code review, take the following action, if appropriate:
 - A. Request the IDRS Security Account Administrator modify or delete the command codes that are not authorized, used or no longer needed in the MPAF or UCCP.
 - B. Review users with command code REPTS in their profile, especially users in IORS specific units, to determine if IORS access is still needed.
 - C. Report questionable patterns of command code activities to the group manager.

5.1.25.5.7 (12-11-2014)

IORIS Documentation

1. The DSA must only enter comments at the Report Level Items, as the Monthly Security Profile Report is certified in its entirety.
2. The DSA must summarize actions taken to address each security aspect. The monthly review may include the entire area or a specific unit range.
3. The DSA must address all Report Level Items, Report Level Comments and Current Certification Status which apply to all displayed units as shown in *IRM 5.1.25.4.1.3.1(7)*.

5.1.25.6 (12-11-2014)

Security Audit and Analysis System (SAAS)

1. Audit trails for modernized applications are stored in the SAAS.
2. In compliance with each application's audit plan, business units are responsible for reviewing SAAS audit trails and certifying accesses to taxpayer data.
3. The IDRS Data Security Group currently monitors the audit trail extracts for access to TDS, MeF-RRD and RTR. Security reviews in SAAS may be expanded at any time to include additional applications.
4. For each application there is a General Access and Access to Employee report. The General Access report is subject to a sample review and certification. The business unit determines the sample percentage, which is subject to change. The Access to Employee report is subject to 100% review and certification.
5. The DSA must generally certify sample reports within 14 calendar days of receipt. Management may approve longer certification dates, as appropriate.
6. The DSA must follow the established certification procedures by attempting to confirm case/related case assignment in SB/SE Field Collection databases. If case assignment is not independently confirmed, the DSA must contact the group manager to justify the access.
7. If the DSA is unable to certify an access through independent research or managerial response, the DSA must submit a referral to TIGTA for follow-up in accordance with IRM 10.8.34.6.3.1.2.3.
8. Unlike IORS, SAAS does not have the capability to capture review comments. The review notes documented by the DSA are maintained by the SB/SE Collection IDRS Data Security Manager for 90 days. Certification results are submitted to IT Cybersecurity as directed.

5.1.25.7 (12-11-2014)

Form 11377/11377-E, Taxpayer Data Access

1. The purpose of Form 11377 or Form 11377-E, *Taxpayer Data Access*, is to provide employees with a method to document accesses to taxpayer return information, when the accesses:
 - A. Are not supported by direct case assignments
 - B. Are performed in error
 - C. May raise suspicion
2. Use of Form 11377 or Form 11377-E is voluntary.
3. If the employee completes the Form 11377 or Form 11377-E, the manager must forward the IRS copy to the designated head of office designee by close of business or as soon as possible. In SB/SE Field Collection, the head of office designee is the assigned area DSA.
4. Copies of Form 11377 or Form 11377-E containing taxpayer data, may not be retained by the employee, the manager, or in any location other than with the IDRS Data Security Staff.
5. The DSA maintains Form 11377 or Form 11377-E for six years in access date order. There is no segregation by territory, group, or accessing employee's name.



Part 5. Collecting Process

Chapter 1. Field Collecting Procedures

Section 28. Identity Theft for Collection Employees

5.1.28 Identity Theft for Collection Employees

- 5.1.28.1 [Overview](#)
- 5.1.28.2 [Taxpayer Interaction](#)
- 5.1.28.3 [Identity Theft and Disclosure](#)
- 5.1.28.4 [Collection Activity in Identity Theft Cases](#)
- 5.1.28.5 [Types of IMF Identity Theft](#)
- 5.1.28.6 [Standard IMF Tax Related Identity Theft Documentation Requirements](#)
- 5.1.28.7 [Making an Identity Theft Determination](#)
- 5.1.28.8 [Identity Theft Case Resolution](#)
- 5.1.28.9 [Taxpayer is Not a Victim of Identity Theft](#)
- 5.1.28.10 [Taxpayer Committed Identity Theft for Purposes of Tax Evasion](#)
- 5.1.28.11 [Compliance Against Undocumented Workers](#)
- 5.1.28.12 [Erroneous Identity Theft Refund Issued to Victim](#)
- 5.1.28.13 [BMF Identity Theft](#)
- 5.1.28.14 [BMF Identity Theft Code Input Procedures](#)
- 5.1.28.15 [BMF Taxpayer Identity Theft Documentation](#)
- 5.1.28.16 [BMF Identity Theft Case Actions](#)
- 5.1.28.17 [Manually Reversing TC 971 AC 522 IDTCLM or IDTDOC](#)
- Exhibit 5.1.28-1 [IMF Form 4844 Example Input of TC 971 AC 522 Pending Claim](#)
- Exhibit 5.1.28-2 [IMF Form 4844 Example Input of TC 972 AC 522 No Identity Theft](#)
- Exhibit 5.1.28-3 [BMF Form 4844 Example Input of TC 971 AC 522 Initial Allegation or Suspicion of Identity Theft](#)
- Exhibit 5.1.28-4 [BMF Form 4844 Example Input of TC 971 AC 522 Indicator Case Resolved](#)
- Exhibit 5.1.28-5 [IDRS Research - Taxpayer Never Applied for an EIN](#)
- Exhibit 5.1.28-6 [IDRS Research - Active Business](#)
- Exhibit 5.1.28-7 [IDRS Research - Inactive Business](#)

Manual Transmittal

May 15, 2014

Purpose

(1) This transmits new IRM 5.1.28, *Field Collection Procedures, Identity Theft for Collection Employees*.

Material Changes

(1) This IRM provides procedures to be followed by revenue officers and other collection caseworkers in SB/SE Collection when working cases involving identity theft. The IMF identity theft material previously found in IRM 5.1.12.2 has been moved to this IRM. New BMF identity theft material is now included. Identifying both types of identity theft is covered as well as documentation requirements, relevant transaction and actions codes and case referrals and resolution.

Effect on Other Documents

Identity theft material in IRM 5.1.12.2, dated 9/20/2012 is superseded.

Audience

The target audience is revenue officers and other collection caseworkers in SB/SE Collection.

Effective Date

(05-15-2014)

Dretha Barham
Director, Collection Policy
Small Business/Self-Employed

5.1.28.1 (05-15-2014)

Overview

1. IMF identity theft occurs when someone uses an individual's personal information, such as their name, Social Security Number (SSN) or other identifying information, without permission, to commit fraud or other crimes.
2. BMF identity theft occurs when business identifying information is created, used, or attempted to be used, without authority, to obtain tax benefits.
3. The IRS has established the Identity Protection Program (IPP) within the office of Privacy, Governmental Liaison, and Disclosure (PGLD). The IPP supports servicewide efforts to recognize and resolve identity theft issues while striving to provide a uniform and consistent approach to victim assistance.
4. Refer to IRM 10.5.3, *Identity Protection Program*, for servicewide guidance and information about the Identity Protection Program including the specific policies and procedures aimed at preventing identity theft, protecting taxpayers and providing assistance to victims of identity theft.
5. This IRM provides Field Collection and Field Collection functions with procedures for working IMF and BMF identity theft cases.

5.1.28.2 (05-15-2014)

Taxpayer Interaction

1. Taxpayers who have experienced identity theft are already victims, either emotionally and/or financially. Be aware of that fact and handle the contact with an additional level of sensitivity and understanding.
2. In addition to providing the taxpayer with courteous service, educate the taxpayer about how to protect themselves and where to find additional information. Advise them to do the following:
 - Contact the Federal Trade Commission (FTC) Identity Theft Hotline;
 - Contact the Social Security Administration (SSA);
 - File a report with their local or state police;
 - Contact their state Attorney General's office;
 - Contact one of the three major credit bureaus: Equifax, Experian, or TransUnion;
 - File Form 14039, Identity Theft Affidavit with the IRS;
 - Review Publication 4535, Identity Theft Prevention and Victim Assistance; and
 - Review the IRS website, <http://www.irs.gov>, Keyword "Identity Theft" or "ID Theft."
3. Refer taxpayers claiming financial hardship as a result of a tax-related identity theft issue to the Taxpayer Advocate Service (TAS) when TAS criteria is met, see IRM 13.17.7, *Taxpayer Advocate Case Processing, Taxpayer Advocate Service (TAS) Case Criteria*, and the taxpayer's issues cannot be resolved the same day. The definition of "same day" is within 24 hours. "Same day" cases include cases that can be completely resolved in 24 hours as well as cases in which you have taken steps to begin resolving the taxpayer's issues. Do not refer same day cases to TAS unless the taxpayer asks to be transferred to TAS and the case meets TAS criteria, see IRM 13.1.7.4, *Same Day Resolution by Operations*. Use Form 911/Form e-911, Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order) to refer a cases meeting the criteria to TAS. If the taxpayer requests to contact TAS directly, advise the taxpayer to call 1-877-777-4778 toll-free, or go to <http://www.taxpayeradvocate.irs.gov>.

5.1.28.3 (05-15-2014)

Identity Theft and Disclosure

1. IRC 6103(a) provides that tax returns and tax return information are confidential and are not to be disclosed except as authorized. See IRM 5.1.22, *Field Collecting Procedures, Disclosure*.

5.1.28.3.1 (05-15-2014)

Tax Return Filed

1. Per IRC 6103(b)(1) –"Return" means any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendments or supplemental thereto, including support schedules, attachments, or lists which are supplements to, or part of, the return so filed.
2. An income tax return filed by an identity thief is not a valid return. The return is not signed by the taxpayer in whose name the return is filed and it lacks a valid signature.
3. A Form W-2 fabricated by an identity thief and attached to an invalid income tax return is also invalid.
4. A Form W-2 filed by an employer that reports all the necessary information for the employee with a stolen SSN provided by the employee is a valid return. The valid form reflects an employment relationship and is covered by IRC 6103.

5.1.28.3.2 (05-15-2014)

Tax Return Information - Refund Fraud

1. Per IRC 6103(b)(2) "Return information" is 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, receive by, recorded by, prepared by, furnished to, or collected by the Secretary 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 under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense.
2. The information reported by an identity thief on a return is considered return information under IRC 6103(b)(2)(A).

5.1.28.3.3 (05-15-2014)

Information Return Information - Forms W-2 and 1099

1. The return information on Forms W-2 and 1099 with a stolen SSN is the return information of both the employer who filed it and the employee/individual (undocumented worker) who supplied the stolen SSN.
2. Also see IRM 11.3.2.4.1.1, *Identity Theft and Access to Information Returns*, regarding disclosing information from Form W-2 and Form 1099.

5.1.28.3.4 (05-15-2014)

Victim Disclosure

1. Information used by the Service to determine the victim's tax liability is return information and can be disclosed to the victim. This includes information related to the original assessment that was based on the fictitious Form 1040 or defective Form W-2 and/or Form 1099.

Caution:

Do not disclose the identity or location of the identity thief to the taxpayer.

2. Any other information about the fictitious Form 1040 or defective Form W-2 or 1099 as well as any information about the Service's investigation are not the return information of the victim and may not be disclosed to the victim.

5.1.28.3.5 (05-15-2014)

Employer Disclosure

1. An incorrect SSN on a Form W-2 is employer return information; however, any information about the investigation of the use/theft of the SSN or the undocumented worker cannot be disclosed to the employer.

5.1.28.4 (05-15-2014)

Collection Activity in Identity Theft Cases

1. When the taxpayer contacted claims to be a victim of identity theft and substantiation documentation has **not** been received, a release of any levy in effect is not warranted unless a hardship situation exists.
2. When the taxpayer contacted claims to be a victim of identity theft and substantiation documentation has been received, release any levy in effect only for the tax modules affected by the identity theft.
3. If there is a balance due not attributable to identity theft, then collection activities, including the appropriate use of enforced collection action, are not prohibited when a taxpayer has established that he/she was a victim of identity theft.
However,
 - A. Be sensitive to the adverse impact that being a victim of identity theft may have upon a taxpayer and his or her ability to pay.
 - B. Consider temporarily suspending the account until the identity theft incident is resolved in cases where you determine the identity theft will have an adverse impact on the taxpayer's ability to pay.

Caution:

Ensure collection activities are taken only on balance due modules not attributable to identify theft.

5.1.28.4.1 (05-15-2014)

Assessment is Result of Identity Theft

1. If taxpayer is a victim of identity theft, review the case history for any outstanding enforcement activity that may need to be addressed, e.g., levies, liens, and bankruptcy claims.
2. Cases in inventory will not be systemically blocked from automated levy action. Manually block the case from levy by requesting the appropriate IDRS input if the assessment is a result of identity theft. See IRM 5.11.7.2.6, *Blocking or Releasing FPLP Levy*.
3. See IRM 5.12.2.25, *Identity Theft*, for additional procedures regarding Notices of Federal Tax Lien.
4. See IRM 5.9.5.12, *Identity Theft*, for additional procedures regarding taxpayers in bankruptcy.

5.1.28.4.1.1 (05-15-2014)

Returning Levied Property in Cases of Identity Theft

1. See IRM 5.11.2.2.6(5), *Levy Releases in Cases of Identity Theft*, for guidance on returning levied property to **persons other than the taxpayer**. The levy of an asset belonging to someone other than the person against whom the tax was assessed is called a wrongful levy. The authority to return wrongful levy payments is provided in IRC 6343(b), which limits the return of money to the period of time within nine months of the levy issuance.

Example:

Taxpayer has balance due. An undocumented worker is using the taxpayer's SSN for employment and the undocumented worker's wages are levied. The levy payments must be returned within nine months of the levy issuance.

2. The time frame for returning levied property to **the taxpayer** is different. In this case, we have an assessment against the taxpayer and have levied against the taxpayer. Under our normal operating procedures, when we learn that the return that was filed was not the taxpayer's return, we will remove (back out) the return and the erroneous refund that went to the thief. The taxpayer's account will have a zero liability and a credit balance equal to the amount of levy proceeds. Because the assessment and levy were for the taxpayer/victim, rather than an assessment for a taxpayer and a levy on a third party, the nine month wrongful levy statute does not apply. If the victim is coming in to request the levy proceeds while the Refund Statute Expiration Date (RSED) is open, we can return the funds. If you have cases where the taxpayer comes in more than two years after the payment, counsel would need to consider whether there is another legal theory that would support returning the proceeds to the taxpayer/victim.

Example:

An identity thief has filed a return in the taxpayer's name and the taxpayer did not have a filing obligation. The taxpayer was unaware that they were a victim of identity theft. In the interim, the identity theft return either was audited or reviewed and there is an assessed balance on the victim's account that IRS is attempting to collect (defaulted deficiency or summary assessment of overstated withholding). IRS uses its levy authority to collect against the assessment by levying the taxpayer. Sometime later the victim comes forward and informs IRS of the identity theft. The Service applies the normal period of limitation rules for claiming credits or refunds in determining if the proceeds may be returned to the taxpayer. The nine-month period for a third party to recover property erroneously levied is not applicable.

5.1.28.4.1.2 (05-15-2014)

Returning Accounts to Currently not Collectible Status

1. Accounts previously reported currently not collectible, unable to pay, may be reactivated when the taxpayer is the victim of stolen identity refund fraud.

Example:

Fraudulent refund from a 2012 return offsets to Bal Due for 2011 reported currently not collectible (CNC). The total positive income (TPI) on the 2012 return is above the CNC closing code and the 2011 Bal Due is reactivated. See the If/Then table below,

If ...	Then ...
the taxpayer is not required to file for 2012 or the TPI on the taxpayer's correct 2012 return is below the CNC closing code amount	return the 2011 module to CNC status without securing a new Collection Information Statement (CIS)
the TPI on the taxpayer's correct 2012 return is above the CNC closing code amount	secure a new CIS and make a new collectibility determination
	secure a new CIS and include all Bal Dues in case resolution

Exception:

A new CIS is not required if the conditions of IRM 5.16.1.3.3, *Cases Reported Currently Not Collectible Based on a Prior Form 53*

the taxpayer owes on the correct 2012 return

secure return and follow guidance above as appropriate

the taxpayer has not filed 2012 as required

2. When the fraudulent refund offsets to the module in CNC, but does not full pay it and the TPI on the identity theft return is below the CNC closing code , the CNC module is not reactivated. If the TPI on the taxpayer's correct return is above the CNC closing code, the CNC module will be reactivated when the correct return is assessed.

3. For Bal Dues resulting from the reversal of a fraudulent refund that full paid an account in CNC, follow the procedures in this table:

If	Then
an NFTL was released	revoke the release and file a new NFTL after the erroneous refund is reversed
the taxpayer does not have a filing requirement for	

subsequent tax years or the TPI on subsequent year's returns is below the CNC closing code

do not secure a new CIS and reinstate the module(s) to CNC status

secure a new CIS and include all Bal Dues in the case resolution

the TPI on the taxpayer's correct return is above the CNC closing code and/or the taxpayer owes on the correct return

Exception:

A new CIS is not required if the conditions of IRM 5.16.1.3.3, *Cases Reported Currently Not Collectible Based on a Prior Form 53*

4. For a Bal Due reversed out of CNC status when the taxpayer is a victim of employment related identity theft and the addition of the unreported income increases the TPI to greater than the CNC closing code, verify the taxpayer's income and if the taxpayer's income is,
 - A. Less than the CNC closing code, then do not secure a new CIS and return the module to CNC status.
 - B. Greater than the CNC closing code, then secure a new CIS unless the CIS in the case file is less than 12 months old.

5.1.28.4.1.3 (05-15-2014)

Returning Accounts to Installment Agreement Status

1. Work Bal Due accounts resulting from the reversal of fraudulent refunds that full paid accounts in installment agreement status 60 as described in the table below.

If ... the NFTL was released there is no balance due on the taxpayer's correct return	Then ... revoke the release and file a new NFTL reinstate the installment agreement and waive the user fee. A new Collection Information Statement (CIS) is not required. secure a new CIS and include all Bal Dues in the case resolution
there is an unpaid balance due on the taxpayer's correct return	Exception: A new CIS is not required if the CIS in the case file is less than 12 months old per IRM 5.15.1.1(4).
the taxpayer is required to file a return that has not been filed	secure the return and follow guidance above as appropriate

2. Bal Due accounts could result from an additional assessment based on false withholding and/or credits on an identity theft return that causes the installment agreement to default.

Example:

A fraudulent refund from 2012 offsets to and partially pays a liability for 2011 in installment agreement status. An additional assessment is subsequently made on 2012 for the false withholding that defaults the installment agreement. Apply the procedures in the following table for this example in similar cases.

If ... the taxpayer is not required to file for 2012 or there is no balance due on the 2012 return	Then ... reinstate the 2011 module to installment agreement status and waive the user fee. secure a new CIS and include all Bal Dues in the case resolution
the taxpayer owes for 2012	Exception: A new CIS is not required if the CIS in the case file is less than 12 months old per IRM 5.15.1.1(4).
the taxpayer has not filed 2012 as required	secure the return and follow guidance above as appropriate

3. Follow the procedures in the table below for Bal Due accounts resulting from an installment agreement that defaulted because of an assessment based on income earned by an undocumented worker reported under the taxpayer's SSN.

If ... all of the taxpayer's income was verified and reported with no balance due	Then ... reinstate the installment agreement and waive the user fee secure a new CIS and include all Bal Dues in the case resolution
all of the taxpayer's income is verified, but has not been reported resulting in an additional balance due	Exception: A new CIS is not required if the CIS in the case file is less than 12 months old per IRM 5.15.1.1(4).

5.1.28.5 (05-15-2014)

Types of IMF Identity Theft

1. For IRS purposes, the two types of IMF identity theft are:
 - non-tax related, and
 - tax related.
2. In non-tax related identity theft
 - A. A taxpayer's wallet, driver's license, social security number, or credit card may have been lost or stolen. However, if there is no indication that the lost or stolen information has been used inappropriately for tax purposes, then this is a case described as identity theft not related to tax administration.
 - B. Individuals may self report an identity theft incident with no existing tax-related consequence by contacting the Identity Protection Specialized Unit (toll free 800-908-4490), and submitting identity theft substantiation documentation. The IRS will input an indicator on their account, and future incidents related to tax administration will not require substantiation documentation to be submitted again.
 - C. When any taxpayer needs assistance regarding non-tax related identity theft with no known tax administration impact, refer them to the Identity Protection Specialized Unit at 1-800-908-4490
3. The two types of IMF identity theft related to tax administration are as follows:

A. An identity thief has used a taxpayer's SSN and other Personally Identifiable Information (PII) for employment purposes.

Example:

A taxpayer may not be aware that someone in another state has used his SSN for the purposes of getting a job. When IRS records are matched against Social Security records, the IRS shows that the taxpayer has not reported that additional income earned by the identity thief on his tax return. The taxpayer may receive a notice or tax bill related to that additional unknown income or may even receive a notification of an audit to get the issue resolved. If the taxpayer is not required to file a tax return, there may be a Substitute for Return assessment based on the income earned by the identity thief.

B. An identity thief has used a taxpayer's SSN and other PII for fraudulent filing purposes.

Example:

A taxpayer may file her 2011 tax return on April 15, 2012. The IRS may reject the return because an unknown person has already filed a tax return under her SSN. The taxpayer will experience a delay in receiving her refund because the identity thief has already filed a fraudulent return and received a fraudulent refund using the unsuspecting taxpayer's SSN.

C. Continue to work all tax-related identity theft issues in your inventory that have an impact on tax administration and do not refer such a case to the Identity Protection Specialized Unit.

Note:

If you are contacted by a taxpayer who is a victim of identity theft, and there is no open case on the taxpayer, whether it is tax-related identity theft or non tax-related identity theft, refer the taxpayer to the Identity Protection Specialized Unit, 800-908-4490.

**5.1.28.6 (05-15-2014)
Standard IMF Tax Related Identity Theft Documentation Requirements**

1. To reduce the burden on individual taxpayers, the IRS has established standard documentation requirements for cases that involve identity theft.
2. See *IRM 5.1.28.8.2* below to determine if substantiation documentation is required. In addition, *IRM 10.5.3.2.6, Overview - Identity Theft Supporting Documentation*, provides the documentation policy for all operating divisions and functions.
3. If required, request the following documentation when a taxpayer alleges that he or she was a victim of identity theft:
 - Authentication of identity, and
 - Evidence of identity theft
4. Establish a 30-day deadline for the taxpayer to submit substantiation documentation.

Note:

If the taxpayer states they previously provided the documentation, check Document Viewer on the Accounts Management System (AMS) to see if the documentation was scanned into Correspondence Imaging System (CIS).

5. Accept substantiation documentation from the taxpayer or someone who has power of attorney for the taxpayer pursuant to Form 2848, Power of Attorney and Declaration of Representative.

**5.1.28.6.1 (05-15-2014)
Authentication of Identity**

1. Secure a copy of a valid U.S. federal or state government-issued form of identification to authenticate identity.

Example:

Driver's License, State Identification Card, Social Security Card, Passport, etc.

Note:

This following link provides a list of acceptable primary and secondary forms of identification: <http://www.fedidcard.gov/viewdoc.aspx?id=109>

**5.1.28.6.2 (05-15-2014)
Evidence of Identity Theft**

1. Secure a copy of one of the following as evidence of identity theft:
 - Police Report, or
 - Form 14039, *Identity Theft Affidavit*

**5.1.28.6.3 (05-15-2014)
Acknowledging and Handling Substantiation Documentation**

1. Follow the information in this table regarding acknowledging receipt of the taxpayer's substantiation documentation.

If the substantiation documentation is received in person	Then no additional acknowledgement of receipt is needed
the substantiation documentation is not received in person	acknowledge receipt within 30 days be sure it is sent to the right address.

receipt acknowledgement is sent in the mail

Caution:

The address on the Form 14039 may be different then the case address.

2. Substantiation documentation must be legible and accurately associated with the correct taxpayer. See *IRM 10.5.3.2.6.2, Complete and Legible Documents*, for guidance on determining if substantiation documentation is legible and complete.
3. Apply stringent safeguards when storing and retaining substantiation documentation. Store the substantiation documentation along with the case file.
4. Secure and handle substantiation documentation and information in the same manner as other sensitive taxpayer personal information.

5. See IRM 5.1.28.8.2 below for procedures to request input of TC 971, AC 522 PNDCLM.
6. After receipt of the taxpayer's substantiation documentation, conduct research to verify the taxpayer's claim.

5.1.28.7 (05-15-2014)

Making an Identity Theft Determination

1. Employees assigned an identity theft case will treat the identity theft victim's account as a whole, resolving all account issues.
2. Perform research to determine the affect of the identity theft on all tax years. At a minimum, if applicable, review the three prior years and all subsequent tax years when analyzing the taxpayer's account.
3. Rule out the following,
 - A. A mixed entity that occurs when two or more returns post for the same period using the same TIN due to an error by the taxpayer, return preparer, or IRS.
 - B. A scrambled SSN when the Social Security Administration assigns the same SSN to more than one taxpayer.
4. Do not assume that the taxpayer filing the identity theft documentation is the true owner of the SSN. Review the case and consider all information received and available through research to determine the legitimate taxpayer.
5. Use all available research tools to determine the validity of the identity theft claim. Keep in mind that identity theft for employment purposes and identity theft for fraudulent filing purposes will require different research.

5.1.28.7.1 (05-15-2014)

Validating Claim of Identity Theft for Fraudulent Filing Purposes

1. The following is a list of the common research tools available to validate the claim. This list is not all inclusive:
 - A. IDRS for prior and subsequent years for filing status, address, dependents claimed, and Schedules A/B/C/D/E/F information for comparison to the TC 150 return and any subsequent returns submitted
 - B. IRPTR for payer documents that may verify income, deductions, and address information reported
 - C. TRDBV for bank routing and preparer information that may be useful.
 - D. IMFOLE, INOLES, and RTVUE are other research command codes available.
 - E. Available locator sources
2. If additional clarification or information is needed, contact the taxpayer and request the information.

5.1.28.7.2 (05-15-2014)

Validating Claim of Identity Theft for Employment Purposes

1. The following is a list of suggested documents that can be secured from the employer that may help to verify a taxpayer's claim of employment related identity theft. The list is not all inclusive and not all documents will be necessary in every circumstance.
 - A. Application for employment
 - B. Form I-9 (IMMIGRATION), Employment Eligibility Verification
 - C. Form W-4, Employer's Withholding Allowance Certificate
 - D. Internal documents such as insurance forms
 - E. Copies of cancelled pay checks with endorsement
 - F. Copy of work photo badge or other employment photos
 - G. Copy of the driver's license and Social Security card provided to gain employment
 - H. Copy of work history with dates missed, location of actual work

Caution:

Before making a third party contact, confirm that Publication 1 with third party contact notice or a Letter 3164 was sent to the taxpayer. If not, follow the guidance in IRM 5.1.1.10, *Third Party Contacts*.

2. Consider the following when reviewing the documentation:
 - A. Is the taxpayer's address different from the unreported income employer's records?
 - B. Is the handwriting on the documents collected from the taxpayer and the unreported income employer's records distinctly different?
 - C. What is the distance from the taxpayer to employment location for the unreported income?
 - D. Could the taxpayer have worked for both employers on the same dates?
 - E. Do the photo identifications from the unreported income employer match that of the taxpayer?
3. Research available locator sources.
4. If additional clarification or information is needed, contact the taxpayer and request the information.

5.1.28.8 (05-15-2014)

Identity Theft Case Resolution

1. Resolve the case in an appropriate manner according to the following procedures depending on whether the:
 - A. Taxpayer establishes that he/she was a victim of identity theft,
 - B. Service employee determines identity theft occurred,
 - C. Taxpayer does not establish that he/she was a victim of identity theft, or

D. Taxpayer committed identity theft.

5.1.28.8.1 (05-15-2014)

Individual Taxpayer Alleged Identity Theft vs. IRS Identified Identity Theft

1. Identity theft can be alleged by the taxpayer or identified by an IRS employee.
2. If substantiation documentation is secured from the taxpayer, follow *IRM 5.1.28.8.2, Individual Taxpayer Alleges Identity Theft*, for inputting the appropriate TC 971 action codes.
3. If substantiation documentation is not secured from the taxpayer, follow *IRM 5.1.28.8.3 IRS Identified Identity Theft*, for inputting the appropriate TC 971 action codes.

5.1.28.8.2 (05-15-2014)

Individual Taxpayer Alleges Identity Theft

1. Instances of identity theft can either be alleged by the taxpayer, or other third party such as taxpayer representative or bankruptcy trustee.
2. Below are step-by-step instructions for inputting the identity theft transaction codes and preparing Form 3870, *Request for Adjustment*, in instances of IMF taxpayer alleged identity theft.

Note:

For instructions in bankruptcy cases, see *IRM 5.9.5, Opening a Bankruptcy Case*.

Step	TC 971 Action Code	Employee Actions	Notes
1	TC 971 AC 522 PNDCLM	Request input of TC 971 AC 522 with source code PNDCLM using Form 4844 if the taxpayer alleges they did not earn income or did not file the return and has not yet provided supporting documentation and a PNDCLM is not already present on CC ENMOD.	The Secondary Date field will reflect the tax year of the identity theft incident. Use Form 4844 to request input of the TC 971 AC 522 PNDCLM (see example at <i>Exhibit 5.1.28-1</i>) and forward to SB/SE Designated Identity Theft Adjustment (DITA) team. See <i>IRM 5.1.28.8.4</i> for DITA contact information.
2	TC 971 AC 522 with source code	<p>Review CC ENMOD and determine if the following conditions exist:</p> <p>A. There is a posted/unreversed TC 971 AC 501/506 or TC 971 AC 522 Source Code INCOME, MULTFL, INCMUL, NOFR, or OTHER and</p> <p>B. The posted transaction falls within the three year period as described in <i>IRM 10.5.3.2.6(11)</i> and</p> <p>C. The allegation relates to a previously reported incident as described in <i>IRM 10.5.3.2.6(10)</i>.</p> <p>If above criteria is met, input TC 971 AC 522 with source code NODCRQ and skip step 3. Substantiation documentation is not required. If above criteria is not met, give the taxpayer a 30 day deadline to provide substantiation documentation.</p>	The Secondary Date field will reflect the tax year of the identity theft incident. Use Form 4844 to request input of the TC 971 AC 522 NODCRQ and forward to DITA team.
3	<ul style="list-style-type: none"> • INCOME - income reported under taxpayer's SSN without their consent or knowledge • MULTFL - two or more returns filed under the same SSN for the same tax period • INCMUL - both INCOME and MULTL apply • NOFR - taxpayer not required to file • OTHER - no other source code fits 	Request input of TC 971 AC 522 with appropriate source code when complete and legible substantiation documentation is received from taxpayer.	If taxpayer does not provide documentation by deadline provided, then reverse the TC 971 AC 522 with TC 972 AC 522 source code NORPLY . Use Form 4844 to request input and forward to DITA team. Continue with collection action following regular collection procedures.
4		Conduct research to determine if identity theft occurred. See <i>IRM 5.1.28.7.1</i> for fraudulent filing and <i>IRM 5.1.28.7.2</i> for employment related identity theft claims. For example, check Accurant, IRPTR, etc. If a paper tax return was filed, compare the signature on tax return to the signature on Form 14039. To	If after review it is determined that identity theft did not occur, reverse the TC 971 AC 522 with TC 972 AC 522 source code

obtain a copy of the paper refund check, see <http://mysbse.web.irs.gov/Collection/toolsprocesses/CollATAT/TechProc/1099OID/JobAids/27522.aspx>.

NOIDT. Use Form 4844 to request input and forward to DITA team. See example of Form 4844 at *Exhibit 5.1.28-2*.

- 5 Ensure taxpayer's address is updated to correct address. See IRM 10.5.3.2.6.1.4, *When to Update the Victim's Address*.
- 6 TC 971 AC 501 Prepare Form 3870 to correct taxpayer's account. Notate on Form 3870 to input TC 971 AC 501. TC 971 AC 501 is input when account has been corrected.
- 7 TC 470 CC 90 Request input of TC 470 CC 90 if the module will be fully abated creating no remaining balance due.
- 8 If the taxpayer's case is fully resolved and no issues remain, send Letter 4222, Notice of Case Resolution, to victim prior to closing case on ICS.

**5.1.28.8.3 (05-15-2014)
IRS Identified Identity Theft**

1. During the normal course of business, you may determine that identity theft occurred and the case is not yet resolved. In most instances, you will attempt to secure the substantiation documentation from the taxpayer (evidence of identity theft and authentication of identity).
2. If the you are unable to secure the substantiation documentation (for example, the taxpayer is deceased), or the taxpayer is unwilling to provide the substantiation documentation because they are receiving the benefit of the refund from the identity theft return, follow the procedures for IRS identified identity theft.

Example:

The refund due to the identity theft return was issued to the bankruptcy trustee. The trustee negotiated the check and applied it to debts of the taxpayer. Because the taxpayer received the benefit of a debt reduction due to the issuance of the refund on the identity theft return, the taxpayer may not want to provide the substantiation documentation.

Step	TC 971 Action Code	Employee Actions	Notes
		Request input of TC 971 AC 522 with source code IRSID using Form 4844 if an IRS employee determines identity theft occurred.	
1	TC 971 AC 522 IRSID	Exception: =====	The Secondary Date field will reflect the tax year of the identity theft incident. Use Form 4844 to request input of the TC 971 AC 522 with source code IRSID and forward to DITA for input.
2		Ensure taxpayer's address is updated to correct address. See IRM 10.5.3.2.6.4.1, <i>When to Update the Victim's Address</i> .	
3	TC 971 AC 506	Prepare Form 3870 to correct taxpayer's account. Notate on Form 3870 to input TC 971 AC 506.	TC 971 AC 506 is input when account has been corrected.
4	TC 470 CC 90	Request input of TC 470 CC 90 if the module will be fully abated creating no remaining balance due.	
5		If the taxpayer's case is fully resolved and no issues remain, send Letter 4222, Notice of Case Resolution, to victim prior to closing case on ICS.	

3. The function that completes the account adjustment and inputs the TC 971 AC 506 requested on Form 3870 will notify the taxpayer (victim), by letter, that someone may have attempted to use his or her SSN. This victim notification letter will include information about:
 - Identity theft prevention
 - Identity theft related resources
 - The identity theft indicator placed on his or her account

**5.1.28.8.4 (05-15-2014)
Form 3870 Preparation and Routing**

1. If it is determined that the individual taxpayer is a victim of identity theft, Form 3870, Request for Adjustment, is prepared to correct the victim's account. The following guidelines should be followed when preparing Form 3870, Request for Adjustment:
 - A. Enter "Identity Theft" in Item 11.
 - B. A nullity or fraudulent filing is a return that was not filed by the SSN owner. If the assessment is based on a fraudulent return, notate on the Form 3870 that it should be treated as a nullity. For more information on nullity returns see IRM 4.19.24.1.3.6, *Preliminary Research on Fraudulent Filing (Nullity Returns)*.

Note:

Form 1040 returns with Schedule C income can only be treated as a nullity post-refund.

 - C. Include specific instructions on actions needed to correct the account. For example, state that TC 150 in amount of \$XX is the return filed by the identity thief. Indicate if there are any estimated tax payments that were made by the victim-taxpayer that should remain on the account or if a refund generated by the identity theft return was offset to another tax liability.
 - D. If the taxpayer has been assessed a frivolous return penalty under IRC Section 6702 based on the return filed under the taxpayer's social security number by an identity thief, notate on Form 3870 to abate the frivolous return penalty. The penalty can be identified by MFT 55 with penalty reference code 543. The tax period must be the same as the identity theft return. The penalty must be abated by the Frivolous Return Program (FRP).
 - E. Indicate on Form 3870 if contact is needed when the adjustment is completed.

Example:

There is a balance due on the correct return secured from the taxpayer-victim and you will continue with collection actions after assessment. The function completing the adjustment will alert you when the adjustment is completed. A confirmation of account corrections will be sent via email. If email confirmation can not be completed due to an incorrect or missing email address, Form 3870 will be mailed back to the originator as confirmation

- F. Attach the following documentation to Form 3870:
 - Copy of substantiation documentation (evidence of identity theft and authentication of identity). (Keep copies in the case file.)
 - Original return, if secured from victim-taxpayer (Keep copy in case file)
 - NUMIDENT – (optional) CC MFTRAU

G. Do not attach other IDRS prints.

H. Request input of TC 971 AC 501 or AC 506 on Form 3870. The TC 971 will be input when the account is corrected.

I. Forward Form 3870 to appropriate function for adjustment based on type of assessment. See (2) and (3) below.

J. Incomplete referrals will be rejected.

K. To expedite Form 3870 notate "Expedite" at the top of Form 3870 per IRM 4.19.24.1.2.1(3), *Field Referrals to DITA*.

2. The completed Form 3870 is routed based on the type of assessment that needs to be adjusted.

A. Examination assessment - for reconsideration prepare Form 3870 and route based on the exhibits in IRM 4.13.7–3, Routing of Area Office Reconsideration Requests and 4.13.7–4, Central Reconsideration Unit (CRU) Addresses. This includes a return filed under the taxpayer's social security number by an identity thief and a subsequent audit assessment made by Examination.

Note:

The Primary Business Code (PBC) and Employee Group Code (ECG) used to route the case can be found on TXMOD under the TC 420 DLN.

B. Automated Under Reporter (AUR) assessment - for reconsideration prepare Form 3870 and route based on Exhibit 4.13.7–6, Addresses for AUR Reconsideration Requests. This includes a return filed under the taxpayer's social security number by an identity thief and a subsequent AUR assessment.

Note:

AUR assessments have a TC 290 preceded by a TC 922. The originating campus can be determined from the 1st two digits of the TC 922 DLN.

C. SFR/ASFR Assessment (Brookhaven/Fresno) - Prepare Form 3870 and route based on IRM 5.1.15.4.3, *Substitute for Return (SFR) and Automated Substitute for Return (ASFR) Reconsiderations*. See this link for mailing addresses <http://mysbse.web.irs.gov/Collection/toolsprocesses/CaseRes/adj/send/Recons/JobAids/18018.aspx>

D. Identity Theft Return – a return filed under the taxpayer's social security number by an identity thief. Prepare manual Form 3870 (Other template in ICS) and forward to DITA if there is not a subsequent Audit or AUR assessment. If an original return is attached to the Form 3870, then it must be mailed to DITA rather than faxed or sent electronically.

E. Prior to forwarding the Form 3870 to DITA, prepare Form 9409, IRS/SSA Wages Worksheet to correct taxpayer wage records. Form 9409 includes the Social Security mailing address for the form.

F. The contact information for the SB/SE Designated Identity Theft Adjustment (DITA) team is as follows:

Email Address	Efax Number	Mailing Address
		Internal Revenue Service
		DITA Mail Stop 4-G20.500
*SBSE CCS DITA 1-855-786-6575		2970 Market St
		Philadelphia, PA 19104

3. If the taxpayer has been assessed a frivolous return penalty under IRC Section 6702 based on the return filed under the taxpayer's social security number by an identity thief, the civil penalty must be abated by the Frivolous Return Program (FRP). The penalty can be identified by MFT 55 with penalty reference code 543. The tax period must be the same as the identity theft return. A copy of the Form 3870 that was prepared and sent based on the routing instructions in (2) above should be sent to the FRP at the following address:

Ogden Compliance Services
 Attn: FRP, M/S 4450
 1973 N Rulon White Blvd
 Ogden, UT 84404

**5.1.28.8.5 (05-15-2014)
 IMF Identity Theft Indicator Codes**

1. The Identity Protection Program developed and implemented identity theft indicator codes to centrally mark and track identity theft incidents. Each indicator is input as a Transaction Code (TC) with Action Code (AC) and displayed on Integrated Data Retrieval System (IDRS) command codes ENMOD and IMFOL with the definer "E" on the affected taxpayer's account.
2. Request input or reversal of the identity theft transaction code according to the following procedures.

Note:

=====

**5.1.28.8.5.1 (05-15-2014)
 Identity Theft Action Code Input Procedures**

1. Review CC ENMOD or IMFOLE for identity theft action codes.
2. If a previous identity theft incident was substantiated, the taxpayer does not need to send in substantiation documentation in order to re-substantiate. See IRM 10.5.3.2.6.1, *When to Request Identity Theft Supporting Documentation*.
3. Use Form 4844, *Request for Terminal Action*, to request input of the identity theft action code.
4. Forward completed Form 4844 to the SB/SE Designated Identity Theft Adjustment (DITA) team for input.

**5.1.28.8.5.2 (05-15-2014)
 Completion of Form 4844**

1. The IMF Identity Theft Action Code is input on the entity instead of being input to the applicable modules, so ensure that you follow these procedures to accurately complete Form 4844.
2. Complete the applicable blocks of Form 4844 including the following:

- A. "SSN"
- B. "Name control"
- C. "MFT code"

Note:

Put "00" in "MFT" to indicate the entity.

- D. "Periods."

Note:

Put "0000" in "Periods" to indicate the entity.

- E. "Name of taxpayer"
- F. "Remarks"

3. See *IRM 5.1.28.8.5.3* for instructions to complete the miscellaneous fields on the form and *IRM 5.1.28.8.5.5* for completing the "Remarks" block.
4. See *IRM 5.1.28.8.5.4* for instructions for entering the tax period ending date(s) in the Secondary Date (SECONDARY-DT) field.

**5.1.28.8.5.3 (05-15-2014)
Miscellaneous Fields**

1. The miscellaneous field has three parts:
 - BOD / Function (Business Operating Division / Function)
 - Program Name
 - Tax Administration Source (Tax Admin Source)
2. Request input of the required miscellaneous field information in the "Miscellaneous Field Input" block of Form 4844.
3. Use the following codes to complete the first two miscellaneous fields:
 - A. BOD = "SBSE"
 - B. Program Name = as applicable, enter "CFBALDUE" or "CFDELRET"

Note:

Use "CFBALDUE" for a combination Bal Due/Del Ret case.

4. Use the codes displayed in the following table to complete the third miscellaneous field (Tax Admin Source):

TC 971 AC 522 Tax Administration Source Codes

Code	Usage
(1) PNDCLM	The taxpayer makes an allegation of identity theft. The taxpayer has not yet provided supporting documentation as required by <i>IRM 10.5.3.2.6, Overview - Identity Theft Supporting Documentation</i> (Form 14039 or police report and personal identification). No documentation is required from the taxpayer if the taxpayer alleges identity theft and the following conditions exist: <ul style="list-style-type: none"> A. There is a posted/ unreversed TC 971 AC 501/ 506 or TC 971 AC 522 Source Code INCOME, MULTFL, INCMUL, NOFR, or OTHER and
(2) NODCRQ	<ul style="list-style-type: none"> B. The posted transaction falls within the three year period as described in <i>IRM 10.5.3.2.6(11)</i>, and C. The allegation relates to a previously reported incident as described in <i>IRM 10.5.3.2.6(10)</i>
(3) IRSID	During the normal course of business, the IRS suspects identity theft occurred and the case is not yet resolved.
(4) INCOME	Acceptable substantiation documentation received from the taxpayer. Identity theft due to an underreporting of income.
(5) MULTFL	Acceptable substantiation documentation received from the taxpayer. Identity theft due to two or more tax returns filed by multiple individuals using the same number.
(6) INCMUL	Acceptable substantiation documentation received from the taxpayer. Identity theft due to both underreporting of income and multiple filings.
(7) NOFR	Acceptable substantiation documentation received from the taxpayer. Identity theft due to the victim (rightful taxpayer) not having a filing requirement.
(8) OTHER	Acceptable substantiation documentation received from the taxpayer. Identity theft which cannot be identified as related to any existing Tax Administration Source types.

5. If the taxpayer asserts identity theft and provides substantiation documentation at the same time, mark the account with both TC 971 AC 522 "PNDCLM" and a second TC 971 AC 522 with the appropriate Tax Administration Source Code.
6. Enter these codes into the miscellaneous field separated by a space.

Example:

When receiving substantiation documentation for an identity theft incident that has an income related tax administration impact for SB/SE Field Collection (FC) on a Del Ret case, enter the following in the miscellaneous field:

Miscellaneous Field Input
SBSE CFDELRET INCOME

**5.1.28.8.5.4 (05-15-2014)
Secondary Date Field**

1. Request input of the secondary date field information in the "Secondary Date Field" block of Form 4844.
2. The secondary date (SECONDARY-DT) will contain the tax years that are affected by the identity theft. Use MMDDYYYY format of the tax year affected by the identity theft incident.

Example:

If a taxpayer substantiates identity theft and the impacted tax year is TY 2011, the SECONDARY-DT field input would be:

Secondary Date Field Input

1 2 3 1 2 0 1 1

Example:

If a taxpayer substantiates identity theft and the impacted tax years are TY 2011 and TY 2012, the SECONDARY-DT field input would be:

Secondary Date Field Input

1 2 3 1 2 0 1 1

Secondary Date Field Input

1 2 3 1 2 0 1 2

3. Complete Form 4844, Request for Terminal Action, to request input of the identity theft action code and forward to DITA within 48 hours.

5.1.28.8.5.5 (05-15-2014)

Remarks Block

1. Include the following in the "Remarks" block of Form 4844 "Input TC 971 AC XXX under ENMOD."
2. Enter any other key pertinent information about the case in the "Remarks" block.

Example:

"received valid Driver's License and affidavit"

5.1.28.8.6 (05-15-2014)

Identity Theft Code TC 971 AC 522 Reversal Procedures (TC 972 AC 522)

1. TC 972 AC 522 is used to close identity theft allegations when the IRS determines that identity theft has not occurred or in situations where the taxpayer fails to provide identity theft supporting documents as described in *IRM 5.1.28.6*.
2. For effective identity theft case tracking and reporting, include the Administration Source Fields on Form 4844 when appropriate depending upon the facts and circumstances of the case. The following table provides the Source Codes, their descriptions and Secondary Date Fields needed for IDRS input of TC 972 AC 522.

Term/Acronym	Description: Administration Source Code	Secondary Date Field
Identity Theft has NOT occurred (NOIDT)	In the course of resolving an identity theft issue, the employee assigned determines no identity theft occurred.	Will match the tax year of the TC 971 522 PNDCLM or TC 971 AC 522 IRSID as applicable.
The taxpayer did not provide supporting documents (NORPLY)	This code is used to close a suspended case when the taxpayer fails to provide the requested supporting documentation within the time specified by the employee assigned.	Will match the tax year of the TC 971 522 PNDCLM.

5.1.28.8.7 (05-15-2014)

Identity Theft Code TC 971 AC 501 and AC 506 Reversal Procedures

1. In some instances it may be necessary to reverse a TC 971 AC 501 or TC 971 AC 506 Identity Theft action code. Reversal may be necessary because of any of the following reasons:
 - A. The taxpayer requests reversal.
 - B. There was a keying or internal error in the input of the action code.
 - C. The original identity theft claim was fraudulent.
 - D. The action code has an internally identified negative affect on the taxpayer.
 - E. There are other reasonable circumstances not listed above.
2. Use Form 4844, *Request for Terminal Action*, to request the input of TC 972 with the action code 501 or 506.
3. Complete the miscellaneous fields with any applicable, specific information for detailed reporting. The miscellaneous field has three parts:
 - BOD / Function (Business Operating Division / Function)
 - Program Name
 - Reason
4. Request input of the required miscellaneous field information in the Miscellaneous Field Input block of Form 4844.
5. Use the following codes to complete the first two miscellaneous fields:
 - A. BOD = "SBSE"
 - B. Program Name = as applicable, enter "CFBALDUE" or "CFDELRET"

Note:

Insert "CFBALDUE" if you have a combination Bal Due/Del Ret case.

6. Use the codes displayed in the following table to complete the third miscellaneous field (Reason):

Code	Reason Field Codes and Descriptions	Description
(1) TPRQ	Taxpayer Request	The taxpayer requests the 971 to be reversed. The taxpayer may feel that the issue has been resolved or it is no longer needed and is impacting him/her negatively.
(2) IRSERR	Keying Error or Other Internal Mistake	The 971 was due to a typographical mistake or another internal mistake and should be reversed.
(3) IRSADM	Internally Identified Negative Impact	

The 971 is causing a negative impact on another internal process or system, and should be reversed to discontinue any negative impact.

- (4) FALSE Fraudulent Identity Theft Claim
The original identity theft incident claim was determined to be fraudulent.
- (5) OTHER Unclassified

7. Complete the miscellaneous fields for TC 972 in the same format as for TC 971.

5.1.28.8.7.1 (05-15-2014) Secondary Date Field — TC 972

1. The 972 will also use the SECONDARY-DT field to indicate which 971 will be reversed. When the 972 is applied, enter the tax year in the SECONDARY-DT field to designate the 971 that should be reversed.
2. Use MMDDYYYY format of the tax year affected by the identity theft incident.

5.1.28.9 (05-15-2014) Taxpayer is Not a Victim of Identity Theft

1. Do not manually block the case from levy if the assessment is not a result of identity theft.
2. Follow normal collection procedures if the taxpayer does not establish he or she was a victim of identity theft.
3. If a TC 971 transaction code was input, then request reversal using TC 972.
4. Advise the taxpayer that the identity theft claim has not been substantiated.

5.1.28.10 (05-15-2014) Taxpayer Committed Identity Theft for Purposes of Tax Evasion

1. When indicators (badges) of fraud are uncovered, document the potential fraud indicators and initiate a discussion with your group manager.

Note:

Identity theft cases referred to Criminal Investigation (CI) must have a tax or money laundering fraud/violation associated with it. Identity theft violations are not intended to be a stand alone violation (IRM 9.5.5.2.4, *Title 18 USC §1028 and 18 USC §1028A, Identity Theft*).

2. If your manager concurs there are indicators of fraud warranting fraud development, contact the local fraud technical advisor (FTA) to determine if the case should be developed further as a potential fraud case, see IRM 25.1.2.2, *Fraud Development Procedures*.
3. A plan of action should be mutually developed between you, the FTA and the group manager to address the indicators of fraud present, see IRM 25.1.2.3(6), *Indicators of Fraud - Conduct of Taxpayer*.
4. Once firm indicators of fraud have been established and the case meets criminal criteria, refer the case to CI, see IRM 25.1.8.9, *Collection Case Disposition*.
5. If it is determined not to pursue a fraud referral, then correct the account as appropriate and follow normal collection procedures.

5.1.28.11 (05-15-2014) Compliance Against Undocumented Workers

1. If an undocumented worker has unfiled returns and it does not rise to level of fraud, consider making an enforcement referral. See IRM 5.1.11.6.3, *Enforcement Referrals - Individual Master File (IMF) Del Ret*. If the taxpayer does not have an Individual Taxpayer Identification Number (ITIN), then request an IRS Number (IRSN) using Form 9956, Request for Temporary SSN.
2. Consider making a referral to the Social Security Administration through Disclosure for the non-tax crime of misuse of an SSN. Disclosure to other federal agencies is permissible under IRC 6103(i)(3)(A). Only information that comes from a third party source will qualify as information that can be released under this statute. Contact the employers on IRP documents to secure employment related documents such as copies of Social Security cards, state photo identification, and Form W-9, Request for Taxpayer Identification Number and Certification. See the Disclosure Hot Topic Reporting Non-Tax Federal Crime and IRM 11.3.28.8, *Disclosures of Return Information (Other than Taxpayer Return Information) Concerning Nontax Criminal Violations* for more information on these referrals.
3. A Form W-2 filed by an employer that reports all the necessary information for the employee with a stolen SSN that was provided by the employee is considered a valid return. The fact that a Form W-2 contained the SSN of someone other than the employee is the return information of the employer and that fact alone may be disclosed to the employer.

5.1.28.12 (05-15-2014) Erroneous Identity Theft Refund Issued to Victim

1. There are several situations in which the taxpayer-victim, through no fault of their own, may receive the benefit of the refund from the return filed by the identity thief.

Example:

The identity thief filed a return under the taxpayer-victim's SSN and the refund is offset to the taxpayer-victim's child support obligation, student loan, or other type of Treasury Offset Program offset.

Example:

In a bankruptcy case with a refund turnover order, the trustee received the refund check. It has already been applied to the debtor's bankruptcy case and disbursed to creditors in the bankruptcy plan. The check is not available to return.

2. See IRM 21.4.5.11, *How to Repay an Erroneous Refund or Return an Erroneous Refund Check or Direct Deposit*, on returning erroneous refunds.
3. If the taxpayer does not voluntarily return the refund, there are two remedies to recover the refund from the taxpayer-victim:
 - A. Erroneous refund suit as authorized by IRC 7405
 - B. Common law right of offset (Category D erroneous refund) – within two years from the date that refund was sent out
 - C. See IRM 5.1.8.7.1.1.2, *Unassessable Erroneous Refunds*.

Note:

Any refunds offset through the Treasury Offset Program (TOP) will be recovered through the TOP reversal process so no other remedies need be pursued.

5.1.28.13 (05-15-2014)

BMF Identity Theft

1. BMF identity theft is defined as creating, using, or attempting to use business identifying information without authority to obtain tax benefits.
2. In the course of an investigation, the taxpayer may allege they are the victim of identity theft or other factors may point to BMF identity theft, such as,
 - A. fictitious business
 - B. business inactive during the period in question
 - C. a third party established and operated the business using another individual's identifying information
3. The taxpayer may not have been aware of the theft until contacted by the IRS.

5.1.28.13.1 (05-15-2014)

Types of BMF Identity Theft

1. Examples of BMF identity theft include the following,
 - A. =====
=====
 - B. =====
=====
 - C. =====
=====
 - D. =====
=====

5.1.28.13.2 (05-15-2014)

Research to Substantiate BMF Identity Theft

1. Conduct sufficient research to substantiate the identity theft and rule out any other problematic issues, such as a mixed entity. A mixed entity occurs when two or more taxpayers file a tax return for the same period using the same TIN. This may not be identity theft and instead is the result of taxpayer error, return preparer error, or IRS processing error.
2. Research the following on IDRS for the entity as appropriate,
 - NAMEE, INOLES
 - BMFOLE - reflects a cross reference (XREF) TIN/ITIN or SSN of the entity's responsible party
 - Cross reference EINs and SSNs, parent EIN, successor EIN
 - Filing requirements and filing history
 - Entity establishment date
 - Name/address changes
3. Research IRPTR for documents filed by the
 - business
 - payers to the business
4. Review returns filed using CC TRDBV, CC BRTVU, MEF/EUP, AMS

Note:

See *Exhibit 5.1.28-5*, *Exhibit 5.1.28-6*, and *Exhibit 5.1.28-7* for more applicable IDRS research when the taxpayer maintains they never applied for an EIN, or when the entity is active or inactive.

5. Research payment patterns on the Remittance Transaction Register (RTR) for existing payments or the lack of payments
6. Review other sources as appropriate such as AMS history and/or Accurant

5.1.28.14 (05-15-2014)

BMF Identity Theft Code Input Procedures

1. After all preliminary research is completed and it appears that identity theft occurred, request input of the identity theft indicator. There are three Tax Administration Source Codes for BMF accounts.
2. **TC 971 AC 522 IDTCLM** for the initial allegation or suspicion of identity theft prior to the taxpayer providing supporting documents
3. **TC 971 AC 522 IDTDOC** when the taxpayer provides complete and legible documentation
4. **TC 971 AC 522 CLSIDT** for BMF case resolved
5. Complete Form 4844, Request for Terminal Action, to request input of the identity theft codes and forward to DITA per 5.1.28.8.4.

5.1.28.14.1 (05-15-2014)

Completion of Form 4844

1. The BMF identity theft indicator is input to the MFT and Tax Period affected by the identity theft and will post to TXMOD and BMFOLT. See examples of completed Forms 4844 at *Exhibit 5.1.28-3* and *Exhibit 5.1.28-4*.
2. Complete the applicable blocks of Form 4844, including,
 - A. EIN
 - B. Name control

- C. MFT code
- D. Periods
- E. Name of taxpayer

5.1.28.14.1.1 (05-15-2014) **Miscellaneous Field Input**

1. Complete the three parts of the miscellaneous field
 - BOD - "SB"
 - Program Name - "FC"
 - Tax Administration Source Code - either "IDTCLM", "IDTDOC", or "CLSIDT"

Example:

SB FC IDTDOC

5.1.28.14.1.2 (05-15-2014) **Secondary Date Field**

1. Complete the Secondary Date Field as follows

If requesting then the Secondary Date Field is the

IDTCLM	date of the taxpayer's allegation or, if you first recognized the taxpayer was the victim of identity theft, the date of that awareness
IDTDOC	received date of the taxpayer's documents
CLSIDT	date of the taxpayer's allegation or, if you first recognized the taxpayer was the victim of identity theft, the date of that awareness

5.1.28.14.2 (05-15-2014) **Reversing Pending BMF Identity Theft Indicators**

1. If the taxpayer alleged identity theft, but internal research cannot substantiate the claim and the taxpayer has not provided requested documentation, then complete Form 4844 to request TC 972 AC 522 with the Tax Administration Source Code NORPLY in the Miscellaneous Field Input with the BOD and Program Name.

Example:

SB FC NORPLY

2. If you determine identity theft is not a factor in the case, then complete Form 4844 to request TC 972 AC 522 with the Tax Administration Source Code NOIDT in the Miscellaneous Field Input with the BOD and Program Name.

Example:

SB FC NOIDT

3. Enter the Secondary Date of the TC 971 AC 522 being reversed.

5.1.28.15 (05-15-2014) **BMF Taxpayer Identity Theft Documentation**

1. Request supporting documentation from the taxpayer only when you cannot make the identity theft determination with internal research only.
2. Supporting documentation consists of the following,
 - A. Evidence of identity theft - a copy of a police report or Form 14039-B, Business Identity Theft Affidavit.

Note:

Form 14039-B is not available to the general public. It must be printed and mailed or otherwise provided to the taxpayer. **The form must be signed and notarized to be considered complete.**

- B. Authentication of identity:
 - Individual - valid federal or state government issued identification card, e.g., driver's license, state identification card, social security card, passport
 - Business - articles of incorporation, organization, statement from director or officer on business letterhead, trust or estate document
- C. Evidence of business operation - copy of utility bill, invoice, mortgage or rent receipt or other similar documentation.

Exception:

Evidence of business operation is not needed if the taxpayer never requested or has no knowledge of an EIN.

3. Establish a 30-day deadline for the taxpayer to submit substantiation documentation and suspend any collection activity.
4. Supporting documentation can be accepted from the taxpayer or their representation with Power of Attorney.
5. Secure and handle the documentation in the same manner as other sensitive taxpayer information. The documents must be retained with the closed case file.
6. Acknowledge receipt of complete and legible documentation within 30 days unless the documentation is received in person.
7. When the documents have been verified as complete and legible, submit completed Form 4844 to request input of TC 971, AC 522, IDTDOC

5.1.28.16 (05-15-2014) **BMF Identity Theft Case Actions**

1. The following subsections provide procedures for several BMF identity theft scenarios.
2. For referrals made through the area identity theft liaison, see the My SB/SE, Collecting Taxes, Identity Theft page, <http://mysbse.web.irs.gov/Collection/identitytheft/default.aspx> for liaison names and contact information.

5.1.28.17 (05-15-2014)

Manually Reversing TC 971 AC 522 IDTCLM or IDTDOC

1. Manual reversal of the TC 971 AC 522 may be necessary due to error or negative effect on the taxpayer.
2. Request input of TC 972 AC 522 via Form 4844 with the appropriate reversal code,
 - A. IRSERR - keying or internal error when TC 971 AC 522 input
 - B. IRSADM - internally identified negative effect of TC 971 AC 522 on taxpayer
 - C. OTHER - any other reasonable circumstances

Exhibit 5.1.28-1

IMF Form 4844 Example Input of TC 971 AC 522 Pending Claim

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

Exhibit 5.1.28-2

IMF Form 4844 Example Input of TC 972 AC 522 No Identity Theft

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

Exhibit 5.1.28-3

BMF Form 4844 Example Input of TC 971 AC 522 Initial Allegation or Suspicion of Identity Theft

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

Exhibit 5.1.28-4

BMF Form 4844 Example Input of TC 971 AC 522 Indicator Case Resolved

This image is too large to be displayed in the current screen. [Please click the link to view the image.](#)

Exhibit 5.1.28-5

IDRS Research - Taxpayer Never Applied for an EIN

Question	Research
Are there any identity theft indicators already on the account?	CC TXMOD/BMFOLT
Is the business owner a minor, nonfiler, elderly, deceased, an individual with an IMF identity theft indicator, etc.?	CC INOLES, ENMOD
Is there a Form 941 filing requirement?	CC BMFOLE
Were returns filed prior to the entity established date?	CC TXMOD/BMFOLT
Were Forms 1040 refund returns filed using Form W-2?	CC IMFOLI
For a sole proprietor, does the individual file a Schedule C with this EIN?	CC TRDBV
Were payments made under the EIN?	CC BMFOLP
Did other business entities report making payments to the business?	CC IRPTRI

Exhibit 5.1.28-6

IDRS Research - Active Business

Question	Research
Are there any identity theft indicators already on the account?	CC TXMOD/BMFOLT
Any major changes in returns filed, amounts reported, refundable credits claimed from prior years?	CC TXMOD/BMFOLT
Was there more than one submission of Forms W-2?	CC BMFOLU
Recent change in address from previous returns filed?	CC BRTVU/TRDBV
Is there an adjustment on the account, e.g., CAWR, Examination?	CC TXMOD/BMFOLT
Is the preparer on the return in question different from the one used on prior year returns?	CC TRDBV
Do the total payments posted on the IDRS module match those on the return?	CC BRTVU/TRDBV

Exhibit 5.1.28-7

IDRS Research - Inactive Business

Question	Research
Are there any identity theft indicators already on the account?	CC TXMOD/BMFOLT
Was a final return filed?	CC BMFOLE
Are there any open filing requirements?	CC BMFOLE
Any major changes in returns filed, amounts reported, refundable credits claimed from prior years?	CC TXMOD/BMFOLT
Was there a significant amount of inactivity prior to the filing?	CC TXMOD/BMFOLT
Were Forms 1040 refund returns filed using Form W-2?	CC IMFOLI
Were payments made under the EIN?	CC BMFOLP

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 1. Field Collecting Procedures

Section 29. Petition for Remission Program

5.1.29 Petition for Remission Program

- 5.1.29.1 [Overview](#)
- 5.1.29.2 [United States Code and Code of Federal Regulations](#)
- 5.1.29.3 [Civil or Judicial Forfeitures](#)
- 5.1.29.4 [Criminal Forfeitures](#)
- 5.1.29.5 [Providing Notice of Forfeiture](#)
- 5.1.29.6 [Reviewing a Petition for Remission](#)
- 5.1.29.7 [Receiving a Notice of Forfeiture](#)
- 5.1.29.8 [Requesting the Investigation Information](#)
- 5.1.29.9 [Petition for Remission Forfeiture Process](#)
- 5.1.29.10 [Preparing a Petition for Remission](#)
- 5.1.29.11 [Criteria for Remission](#)
- 5.1.29.12 [Granting of a Petition for Remission](#)
- 5.1.29.13 [Denial of a Petition for Remission](#)
- 5.1.29.14 [Request for Reconsideration](#)
- 5.1.29.15 [Case Files and Retention](#)
- Exhibit 5.1.29-1 [Intergovernmental Payment and Collection \(IPAC\) Instructions](#)
- Exhibit 5.1.29-2 [IPAC Form](#)

Manual Transmittal

January 09, 2015

Purpose

(1) This transmits new IRM 5.1.29, Field Collecting Procedures, *Petition for Remission Program*.

Material Changes

(1) This section contains information and instructions for the Petition for Remission process. The purpose of this IRM is to provide instruction to advisors for accurate review and preparation of the petition for remission in order to recover fraudulent refunds that have been seized by federal law enforcement agencies. It is intended for Small Business/Self Employed (SB/SE) employees who process the Petition for Remission requests.

Effect on Other Documents

Incorporated Interim Guidance Memorandum titled, *Petition for Remission*, control number 05-0914-0058 dated September 12, 2014.

Audience

The target audience is SB/SE.

Effective Date

(01-09-2015)

Rocco A. Steco
Acting Director, Collection Policy
Small Business/Self-Employed

5.1.29.1 (01-09-2015)

Overview

1. The Petition for Remission (PFR) is a tool available to the IRS to recover fraudulent refund amounts that have been seized by a federal law enforcement agency and subsequently forfeited using Title 18 seizure/forfeiture authority. This tool ensures that the recovered funds are returned to the General Fund. The PFR process has been transferred from Criminal Investigation (CI) to Collection based on feedback by the Department of Justice (DOJ).
2. This section will discuss:
 - United States Code and Code of Federal Regulations
 - Reviewing a Petition for Remission
 - Requesting the Investigation Information
 - The Content of a Petition for Remission
 - Granting a Petition for Remission
 - Requests for Reconsideration

5.1.29.2 (01-09-2015)

United States Code and Code of Federal Regulations

1. The federal regulations governing PFRs provide that, where an agency of the United States is entitled to remission or mitigation of forfeiture because of an interest that is recognizable under this part or is eligible for such transfer pursuant to 18 USC § 981(e)(6) [providing for restoration of forfeited property to "any victim of the offense giving rise to the forfeiture"], such agency shall request the transfer in writing, in addition to complying with any applicable provisions of 28 CFR §§ 9.3 through 9.5 dealing with PFRs.
2. In 2004, the DOJ issued Directive 128, which allowed CI to use Title 18 forfeiture statutes in certain tax investigations to recover fraudulent refund amounts. Although IRS civil collection methods are the usual means to recover fraudulent refund amounts, these methods may prove inadequate in certain cases. Such cases where civil collection methods may not be adequate include, but are not limited to, refund fraud schemes in which:
 - The identities of fictitious or deceased individuals or
 - The identity of an individual obtained without the knowledge or consent of that individual (Identity Theft); and
 - The individual was not in any way complicit in the filing of the wholly false return for refund.
3. The following sections in Title 18 provide for civil and criminal forfeitures for violations investigated in these types of cases.

5.1.29.3 (01-09-2015) **Civil or Judicial Forfeitures**

1. All civil forfeiture statutes presently in effect are in rem proceedings in which the property itself, not the owner of the property, is accused of wrongdoing. For that reason, only property that was actually used to commit, was derived from, or was involved in an offense, or property traceable to it, is subject to forfeiture. For more information on Title 18 civil forfeitures see IRM 9.7.2, *Civil Seizure and Forfeiture*, and 18 USC § 981.

5.1.29.4 (01-09-2015) **Criminal Forfeitures**

1. Criminal forfeitures are in personam actions that are limited to the property interests of the defendant. They are imposed as part of the defendant's sentence and are distinguished from civil forfeiture that may be pursued as a civil action against the property in rem without regard to whom the owner may be. A criminal forfeiture may only be sought as part of a criminal prosecution, and may not be ordered unless and until the defendant is convicted of the crime(s) for which forfeiture is to be imposed.

5.1.29.5 (01-09-2015) **Providing Notice of Forfeiture**

1. In a Title 18 administrative civil forfeiture action, the seizing agency is required to send notice to interested parties as soon as practicable. Notice is required to be sent no more than 60 days after the date of the seizure unless one of the exceptions listed in 18 USC § 983 applies.
2. If possible, within 60 days after the date of seizure, a notice must be sent by the seizing agency or Assistant U.S. Attorney to all persons whose rights and interests in the seized property will or may be affected by forfeiture and whose identities and addresses are reasonably ascertainable. When the seizing agency determines that IRS may have an interest in the assets, notice of the seizure will be sent to:

Internal Revenue Service

Petition for Remission

Attn: Advisory

801 N. Broadway, MDP-53

Nashville, TN 37203

5.1.29.6 (01-09-2015) **Reviewing a Petition for Remission**

1. Advisory personnel will ensure the notices include the following:
 - A. Description of the property seized;
 - B. Date, time, place, and if known, cause of the seizure;
 - C. Procedure and rights to contest the forfeiture;
 - D. Newspaper in which the notice of seizure is to be published and the dates of the publication;
 - E. Final claim date;
 - F. Forfeiture date, if known;
 - G. Procedure to request relief through the petition process; and
 - H. Right to seek release of seized property based on hardship.

5.1.29.7 (01-09-2015) **Receiving a Notice of Forfeiture**

1. Advisory personnel are responsible for receipt and review of all notices of forfeiture and will be responsible for filing a timely PFR.
 - A. A PFR must be filed by the date specified in the notice, or if an extension is granted by the seizing agency, by the extended due date.
 - B. Advisory will establish a case on Integrated Collection System (ICS) by opening a Non-Field Other Investigation (NFOI) with an action code 139, Petitions for Remission, within three business days prior to initial review.
 - C. All case actions will be documented on ICS.

D. The procedure specified in IRM 5.10.7.1.1(2), *ICS Case Control Identification Numbers*, should be used to set up an artificial taxpayer identification number as needed

E. The advisor will review the notice to ensure that it has the information required, within seven calendar days of receipt.

F. =====
=====

2. =====
=====

3. =====
=====

4. This PFR process will allow the IRS to exercise its claim against these monies if it can be proven the subject was involved in stolen identify refund fraud (SIRF).

5.1.29.8 (01-09-2015)

Requesting the Investigation Information

1. If, after the initial review, the advisor determines that filing a petition may be appropriate based on initial research completed, the advisor contacts the Asset Forfeiture Coordinator (AFC) to request the investigation file. The advisor can contact the AFC via phone or send requests via secure email to *CI-SDC Research. The investigation file will provide the advisor with the needed information to determine if a petition should be filed.
2. In the case of CI forfeiture, in which CI performed the seizure, the Asset Forfeiture Coordinator (AFC) will not send a notice until a Criminal Tax (CT) Attorney has prepared and submitted a Law and Fact Memorandum to the Special Agent in Charge supporting the administrative forfeiture. The AFC will provide a copy of the notice and CT memo to the advisor to place in the administrative file. No CT memo will be provided if grand jury information is present.
3. In the case of forfeitures initiated by other federal agencies, such as the United States Secret Service (USSS), the AFC will be the point of contact when requesting any investigation file regardless of which federal agency conducted the forfeiture. The following actions should be taken by the advisor:
 - A. Contact CI and request the AFC provide the investigation information. The AFC will work with the seizing agency as well as provide any internal CI information that could be useful.
 - B. If the Advisor's request is by email, they will include their contact information and a copy of the notice.
 - C. Follow up with AFC no later than 10 days after contact if the investigation information is not received.

5.1.29.9 (01-09-2015)

Petition for Remission Forfeiture Process

1. When a PFR is filed in an administrative or civil judicial forfeiture action, the forfeiture process, including the publication of the notice of seizure, will continue as scheduled. However, if no claims are filed and the property is forfeited, it will not be placed into official use, sold, or otherwise disposed of according to law until final action is taken on the petition.

5.1.29.10 (01-09-2015)

Preparing a Petition for Remission

1. In most cases, even if the information is not complete, a PFR will be filed based on the research that was conducted that links the assets to a scheme.
2. The advisor will ensure that the assets are tied to a Stolen Identity Refund Fraud scheme. In an administrative forfeiture action, the agency that conducted the forfeiture will be responsible for determining if there is sufficient evidence to grant the PFR.
3. In some cases, the agency may request additional information to support the petition filed. In a civil judicial forfeiture action, the DOJ, Criminal Division, Asset Forfeiture and Money Laundering Section (AFMLS) will determine whether the petition should be granted.
4. There is no prescribed format for a PFR. The written notice sent to interested parties in a civil forfeiture action includes the instructions to request relief through the petition process. The advisor will address the following in preparing the PFR.
 - A. The petition should be addressed to the party listed on the notice.
 - B. The petition must identify the property seized, the date of the seizure, and proof of ownership interest in the property.
 - C. The petition should describe the facts and circumstances that justify the return of the property, the basis for the IRS's claim, and the nexus between the IRS and the property.
 - D. The petition should provide information linking the asset to the crime and the interest of the United States.
 - E. The petition should include copies of documentary evidence where appropriate.
 - F. The petition should be signed under oath subject to penalty of perjury. The authority to sign the petition has been given to the Territory Manager Specialty Collections, Offers, Liens and Advisory. Petitions will be forwarded to the Territory Manager for signature.
 - G. The petition should also include the statement that if granted, the party listed on the notice should contact the advisor for the Intergovernmental Payment and Collection (IPAC) instructions to transmit the funds to the IRS. The IPAC form with specific codes must be utilized so that the funds can be electronically transferred to the general fund. See IRM Exhibit 5.1.29-1.

5.1.29.11 (01-09-2015)

Criteria for Remission

1. If research conducted by the advisor can establish that the Government has been harmed, the petition must establish:
 - A. A valid, good faith, and legally cognizable interest in the seized property as owner or lienholder, and
 - B. The petitioner is an innocent owner within the meaning of 18 USC § 983(d). See IRM 9.7.7.2.1, *Definition of Innocent Owner*.
2. The petitioner has the burden of proof, by preponderance of the evidence, to show that he/she is an innocent owner.
3. If legal advice or assistance is needed in preparing the petition, the advisor should contact Associate Area Counsel, SB/SE.

5.1.29.12 (01-09-2015)

Granting of a Petition for Remission

1. Once the PFR is complete, the advisor will route the PFR through her/his manager to the TM, SBSE Collection Advisory Territory via email, US Postal Service, or hand delivery. See Delegation Order 5-6 signed 4-12-2012.

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Part 5. Collecting Process

Chapter 1. Field Collecting Procedures

Section 30. Resolution-directed Approach to Casework

5.1.30 Resolution-directed Approach to Casework

- 5.1.30.1 [Introduction](#)
- 5.1.30.2 [Overview](#)
- 5.1.30.3 [In-Business Trust Fund Pyramiding Taxpayer](#)
- 5.1.30.4 [Sole Proprietors and Self Employed Taxpayers](#)
- 5.1.30.5 [IMF Non-Filer](#)
- 5.1.30.6 [Balance Due Won't Pay](#)
- 5.1.30.7 [Economic Reality](#)
- 5.1.30.8 [No Equity Situations](#)
- 5.1.30.9 [Successor Entities](#)
- 5.1.30.10 [Unable to Locate, Large Dollar Liability](#)
- Exhibit 5.1.30-1 [Case Resolutions Flowchart](#)
- Exhibit 5.1.30-2 [Time Line for Possible Simultaneous Case Actions](#)

Manual Transmittal

October 28, 2014

Purpose

(1) This transmits a revision of IRM 5.1.30, Field Collecting Procedures, Resolution-directed Approach to Casework

Material Changes

- (1) 5.1.30.1(1), Introduction, text added to clarify purpose of this IRM section.
- (2) 5.1.30.1(1), Introduction, caution added to emphasize that this IRM does not add, remove, replace or otherwise change any existing IRM procedures.
- (3) 5.1.30.1(1), *Introduction*, Research, updated IRM reference 5.1.10.1, *Pre-contact*, to 5.10.1.2.
- (4) 5.1.30.1(1), *Introduction*, Developing Initial Resolution Plans, updated IRM reference 5.1.10.1, *Pre-contact*, to 5.10.1.2.
- (5) 5.1.30.2(1), *In-Business Trust Fund Pyramiding Taxpayers*, Research, updated IRM reference 5.1.10.1, *Pre-contact*, to 5.10.1.2.
- (6) 5.1.30.2(1), *In-Business Trust Fund Pyramiding Taxpayers*, Developing Initial Resolution Plans, updated IRM reference 5.1.10.1, *Pre-contact*, to 5.10.1.2.
- (7) 5.1.30.2(2), *In-Business Trust Fund Pyramiding Taxpayers*, First contact, updated IRM reference 5.1.17.3, *Before Contacting A Third Party*, to 25.27.1, *Notification Requirements*.
- (8) 5.1.30.3(1), *Sole Proprietors and Self Employed Taxpayers*, Research, updated IRM reference 5.1.10.1, *Pre-contact*, to 5.10.1.2.
- (9) 5.1.30.3(1), *Sole Proprietors and Self Employed Taxpayers*, Developing A Resolution Plan, updated IRM reference 5.1.10.1, *Pre-contact*, to 5.10.1.2.
- (10) 5.1.30.4(1), *IMF Non-filer*, Research, updated IRM reference 5.1.10.1, *Pre-contact*, to 5.10.1.2.
- (11) 5.1.30.4(1), *IMF Non-filer*, Initial Contact, updated IRM reference 5.1.17.3, *Before Contacting A Third Party*, to 25.27.1, *Notification Requirements*.
- (12) 5.1.30.5 (3), *Balance Due Won't Pay*, Additional Research and Consideration, updated hyperlink to Exam Project Codes.
- (13) 5.1.30.5 (4), *Balance Due Won't Pay*, Case Approach -- Investigation, updated reference to Exhibits IRM 20.4 -1 through 20.4-8, *Summons Procedures*, to IRM 25.5-2 through 25.5-14.
- (14) 5.1.30.6(9), *Economic Reality*, updated reference to Exhibits IRM 20.4 -1 through 20.4-8, *Summons Procedures*, to IRM 25.5-2 through 25.5-14.
- (15) 5.1.30.7(3), *No Equity Situations*, updated reference to Exhibits IRM 20.4 -1 through 20.4-8, *Summons Procedures*, to IRM 25.5-2 through 25.5-14.
- (16) Editorial corrections made throughout.

Effect on Other Documents

This IRM supersedes IRM 5.1.30 dated July 8, 2011.

Audience

SB/SE Collection Employees

Effective Date

(10-28-2014)

Rocco A. Steco, Acting Director,
Collection Policy

5.1.30.1 (10-28-2014)

Introduction

1. This section addresses the principles of a resolution-directed approach to casework and provides suggestions for how to apply this strategy directly to actions revenue officers take to resolve cases.

Caution:

This section does not add, remove, replace or otherwise change any existing IRM procedures.

5.1.30.2 (10-28-2014)

Overview

1. A resolution-directed approach encompasses looking at the overall case and devising a strategy that will generate compliance and resolve balance due accounts or unfiled returns. A resolution-directed approach is a strategy that focuses upon resolution. Resolution of a case is not the same as disposition. Disposition involves simply closing a case. Resolution is achieved when all case factors are appropriately addressed.
2. The strategy developed will take into account the different aspects of the case. In general, there are three paths that may lead to resolution: cooperation, administration and enforcement. See *Exhibit 5.1.30-1* for a flow chart of possible resolutions. The factors that will influence the strategy developed include the following:
 - Size of the liability
The amount of time and depth of the investigation needs to be in accordance with the compliance impact and the amount of the liability.
 - Complexity of the case
The strategy needs to encompass all aspects of the case and will be more detailed when multiple entities are involved.
 - Type of liability and entity
Trust fund taxes of a corporation may involve different contacts and sources of information than an income tax liability of an individual.
 - Compliance history
Taxpayers who have not been able to stay in compliance for several years or quarters may require a different approach to resolve the case. Different actions may be necessary when working with a taxpayer who is not making current Federal Tax Deposits (FTD).
 - Cooperation level of the taxpayer
Taxpayers who provide full financial disclosure will require different steps to reach resolution than taxpayers that refuse to provide a listing of all assets and liabilities.
 - Results of financial analysis
The steps necessary to resolve the account will be driven by the results of the financial analysis.
 - Type of business activity in which the taxpayer is engaged
The contacts and methods to resolve a case need to be geared to the type of business activity and its sources of income.
3. These factors will influence other aspects of the case investigation. They need to be considered when deciding the amount of research needed before initial contact and the depth of the financial investigation required for locating and verifying asset information.
4. While the strategy developed will be unique for each case, all existing IRM requirements must still be followed. (See IRM 5.1.30.1(1) .) Developing a resolution-directed approach to a case involves more than taking an action: it incorporates a plan that encompasses why that action is the best choice to take at a given time. It involves anticipating potential problems and taking actions that will help avoid those problems. It involves weighing the different options available and selecting the one(s) that will produce the desired results for each individual case.
5. Timing and coordination of actions need to be considered as a part of the overall case strategy. Often the strategy will include taking simultaneous case actions to maximize the benefits of the actions. See *Exhibit 5.1.30-2* for a time line of possible simultaneous case actions. The process of adopting a resolution-directed approach to casework involves not only selecting the proper actions, but includes avoiding actions that can be time consuming or that produce minimal results. Avoid duplicating actions that were unsuccessful in moving a case forward, including actions taken by Automated Collection System (ACS) or a prior revenue officer, unless there are indications they will now be more effective.
6. In order to develop this strategy, there will be times when you will have to place yourself in the shoes of the taxpayer. With a business case, investigate the types of expenses and income sources related to that business activity. Consider how and where assets are used and the expenses associated with them.
7. The balance of this IRM section consists of resolution-directed strategy templates based on the type of case assigned to the revenue officer. While not all inclusive, the templates encompass typical Collection scenarios.

5.1.30.3 (10-28-2014)

In-Business Trust Fund Pyramiding Taxpayer

1. **Initial Analysis** - Initial analysis involves examining the overall case to understand the issues involved and the steps necessary to move the case to resolution. It includes development and refinement of initial case actions necessary to prepare for the initial field call, and it will often suggest a likely case resolution.

Scope:

- Type of case, complexity, and grade of the case determine the amount and depth of initial analysis. An in-business trust fund pyramiding taxpayer will usually require detailed research that should include an assessment of business viability.
- The objective is to conduct only the amount of research and analysis necessary to formulate an initial resolution plan and to discuss the case in a knowledgeable manner with the taxpayer.

Research:

IRM 5.1.10.2, *Pre-Contact*, outlines actions required during initial case analysis. The revenue officer should determine the need for further research before the field call. In making this determination the revenue officer needs to avoid spending too much time securing information that may not be necessary to resolve the case. Additional research can always be performed after the initial contact when the revenue officer will have a better understanding of what is needed to move the case towards resolution.

- Determine potential officers and check for prior Trust Fund Recovery Penalty (TFRP) assessments. Be alert for any indications that the taxpayer is pyramiding under a new Employer Identification Number (EIN) by checking compliance on any cross-referenced EINs. Note situations where the taxpayer's filing requirements have been eliminated but it appears that the taxpayer is continuing to operate.
- Research Integrated Data Retrieval System (IDRS) and determine taxpayer's compliance history. If the taxpayer has unfiled returns, project the amount owed and incorporate the additional liabilities into the resolution plan.
- On the ATFR system, complete and print page 4 of Form 4183 on trust fund cases. Upon contact with the taxpayers, provide them with the potential TFRP amount.
- Review Information Returns Processing (IRP) transcripts and attempt to determine the type of business prior to initial contact and locate potential levy sources.
- If the case warrants more detailed research, use web-based search engines to locate any web sites referencing the taxpayer or used by the taxpayer and research the site(s). For a comprehensive list of search engines and internet search techniques visit the <http://mysbse.web.irs.gov/Collection/toolsprocesses/EBusiness/default.aspx> web site. Determine what, if any, additional internet research is necessary based on the key elements of the case and type of business.
- The objective is to find as much information as possible on how the taxpayer operates, such as the following:

- cash and/or credit card
- potential levy sources (accounts receivable, contracts, etc.)
- other web sites owned by the taxpayer
- products and services offered by the taxpayer
- taxpayer's business relationships
- information on the taxpayer's industry, such as financial data and the legal environment for that type of business
- Consider reviewing the SB/SE web site, <http://mysbse.web.irs.gov/Collection/toolsprocesses/InvestTech/default.aspx>. This web site provides information specific to various professions and industries on sources of income, best techniques to locate assets/income, recommendations for financial analysis and probing interview questions.
- Document research findings and analysis in the Integrated Collection System (ICS) history.

Developing Initial Resolution Plans:

- Follow IRM 5.1.10.2, *Pre-Contact*, to conduct an initial analysis and develop a resolution plan.
- The purpose is to address what was noted during the initial analysis.
- The goal is to anticipate what information will be needed and actions taken to continuously move the case towards resolution. Consider the most efficient order of actions and whether any case actions can be completed simultaneously.

Focus Point: If real property records list the owner of the taxpayer's house or business address as a probable relative (same last name, living at same address, etc.), review the ownership history to determine if the taxpayer transferred the asset to move it out of the government's reach.

2. Initial Contact

A. *Preparing for Initial Contact:*

- A. Read IRM 5.1.10.3.2, *Effective Initial Contact*, for the minimum items that need to be addressed at initial contact.
- B. Know what is owed and what needs to be filed, i.e. Forms 941, 940, 1120, Federal Tax Deposits.
- C. Project the additional liabilities that can be expected from unfiled returns. This can be secured from the taxpayer or determined from internal resources, such as previously filed returns.
- D. Determine if the taxpayer is required to make federal tax deposits and the type of depositor.
- E. Determine the forms that will be needed, such as Forms 433-A and B, Form 4180, and blank tax returns.
- F. Know the questions and issues to address with the taxpayer and consider preparing an outline to ensure that all issues are covered.
- G. Determine the key issues to discuss with the taxpayer, such as the Notice of Federal Tax Lien, levy sources, and major accounts receivable. The key issues should be tailored to the taxpayer's type of business.
- H. Consider the best time to make a field call based on the taxpayer's location and type of business. For example, if the taxpayer operates a restaurant and the purpose is to observe the volume of business, it may be appropriate to make a field call at lunchtime. If the purpose is to conduct an interview, then a non-peak time would be appropriate. With a construction business, it would be best to make a field call early in the morning when the officer/owner along with any assets are at the business location and not at a construction site.

First Contact:

- The goal of the initial contact is to bring the taxpayer into full compliance with all filing, paying, and deposit requirements, and, failing that, to obtain information needed to resolve the case.
- In most cases the initial contact will be a field visit to the business. The revenue officer should allow ample time to complete a thorough and comprehensive contact. If full payment and delinquent returns are not secured immediately, take full advantage of this opportunity to learn as much as possible about the taxpayer, their surroundings, and their business operation. Have the taxpayer give a tour of the business. Take pictures using a cell phone or camera. (This will help PALS later if seizure action is initiated.) Note the type of business and assets, whether taxpayer operates on a cash basis or accepts credit card payments, the type of credit cards accepted, and the number of employees. Make copies of lease, deed, mortgage statement, current balance sheet and other items if available.
- If the taxpayer is not at the place of business, consider asking an employee to telephone the taxpayer. Ask the taxpayer to come to the business. If the taxpayer is unable to come to the place of business, hold an interview with the taxpayer over the telephone and request that an employee provide a tour of the business.
- Complete the Collection Information Statement (CIS), Form 4180, and any other necessary forms. If a complete CIS cannot be secured, gather as much information as possible so that if there is no further contact from the taxpayer, information will be available to take the next actions to resolve the case. Secure levy sources, such as accounts receivable, bank information, brokerage accounts, and income sources from other relevant parties, like spouses or business partners. If a complete Form 4180 cannot be secured, get key information, such as a list of officers and decision makers. Determine where the business banked during the delinquent period and secure copies of bank statements and cancelled checks.
- Ask open-ended questions when interviewing the taxpayer. In particular, for taxpayers who do not resolve paying and filing requirements on initial contact, ask how the taxpayer plans to resolve the issue(s). Always document how the taxpayer responds to requests/demands for payment and/or filing. Listen to the taxpayer's answers and allow ample opportunity to respond and expand on their answers. Make notes of all the facts given by the taxpayer. The questions should be tailored to fit the taxpayer and/or their type of business. For example, if the taxpayer is an attorney, find out the type of practice, any industry specialization, and whether the taxpayer has a regular client base.
- Set a deadline for the taxpayer to perform any action required and calendar the item. Set a specific date and time with the taxpayer to discuss the results of the analysis of the CIS and calendar the item as a follow up action. Provide taxpayer with Form 9297 to ensure expectations are clear
- Prepare for the next actions. This includes preparing for possible enforcement action by:
 - Issuing Letter 1058 at first contact.
 - Gathering effective levy sources concurrently with the issuance of the Letter 1058. If requested information is not provided by the taxpayer, then secure levy sources through third parties. IRM 25.27.1.3, *Notification Requirements*, lists the actions required before making third-party contacts.
 - If necessary, summon bank deposits or other third-party sources to secure the information. Issue summonses early enough so that the information will be available once levy action is possible.

Focus Point:

- Find the asset or income stream that will have the most impact if the taxpayer does not comply. This might be a major business receivable or an asset that is used in the daily operation of the business. A revenue officer's first action after a missed deadline should be the one most likely to get the taxpayer's engagement. If there is some fact or document the taxpayer can provide that will facilitate a levy or seizure, such as a deed copy or landlord's phone number, then secure it during the initial contact.
- When conducting the TFRP investigation, consider all potentially responsible persons including the taxpayer's spouse when appropriate. If the spouse is found to be responsible and willful per IRM 5.7.3.3, *Basis for Liability Under IRC 6672*, and a determination is made to assert the TFRP, having an assessment on the spouse may facilitate a future action, such as seizure of both halves of a jointly owned asset, depending on local law.

3. Financial Analysis

- A. Effective financial analysis involves comparing income and assets to allowable expenses in order to make the proper decisions that will result in case resolution.

Determine where the sources of taxpayer's funds and where and how the funds are being dispersed. Secure the information directly from the taxpayer. If this is not possible, secure and/or verify the information through third parties. Once the information is secured, take the appropriate steps that will lead to case resolution. Analyze the CIS to determine ability to pay shortly after receipt and verification of the CIS.

Communicate the ability to pay determination to the taxpayer within a reasonable amount of time after receipt of the CIS.

Consider the following factors when deciding which items need verification and the best sources to use for verifying the information:

- The size of the liability, the type of business
- How the typical business in that industry operates

If no CIS is secured. There are times when you cannot secure a complete CIS. It may be that the taxpayer can't be located, provides incomplete information, or refuses to meet with you. When you cannot secure a CIS or basic financial information on initial contact, take steps to secure the information from other sources.

Check internal sources

- Effective use of internal information sources, such as IDRS, ICS, and other locator services, can greatly facilitate investigation and case resolution.
- Internal web sites, such as the <http://mysbse.web.irs.gov/Collection/toolsprocesses/EBusiness/default.aspx> web site and <http://mysbse.web.irs.gov/Collection/toolsprocesses/InvestTech/default.aspx> web sites, contain a variety of tools for locating taxpayers and their assets.

Check external sources

Try to locate assets and financial information through third-party records, either through direct interviews or, if necessary, through summonses. Such sources include the following:

- Business contacts of the taxpayer
- Relatives, including spouses
- Neighbors
- Landlords or tenants
- Current and prior employers
- Internet research
- Lien holders on vehicles
- Credit card companies
- Credit reporting agencies
- Public Records, such as the following:
 - Title Companies
 - State Departments of Motor Vehicles
 - Escrow Companies
 - Purchasers or Sellers of real or personal property
 - Civil files, including divorce records
 - Property tax payments
 - Licensing and certification officials

Bank account records can provide not only information about the identity of payees but also depositors. In addition to being a levy source, the bank account(s) show detailed information to help locate additional assets. It also contains information to help construct a detailed picture of the taxpayer's financial situation. When you don't know the taxpayer's bank, summons third-party sources, such as utility companies, landlords and leasing offices for contracts and payment information. Examine bank records showing payments made to the taxpayer as well as payments made by the taxpayer. Use the payments as a starting point for locating assets and identifying links to assets or cash flow. From that starting point, the funds can be traced forward to obtain current information. Though the utility payment may be several months old, a summons to the taxpayer's bank will yield more current financial information.

It is important to analyze these sources and determine which ones will have the most current information that can be traced back to the taxpayer's bank account. Once the bank account has been identified, appropriate actions, including levy or summons, can be initiated. Some sources of information, such as lienholders on vehicles, secured parties on real property, landlords, and escrow files, will not only provide the link to the taxpayer's bank account, but also may lead to loan applications on file. Recent loan applications may be reflected on a credit bureau report and can be summoned.

4. Determining Case Direction/Developing and Implementing Case Strategies

A key factor in forming resolution strategies is whether the taxpayer is continuing a pattern of non-compliance. Identify this situation early in the case by reviewing IDRS and then verify payment and filing compliance with the taxpayer. Communicate to the taxpayer that non-compliance on their part prevents consideration of Installment Agreements (IA) or Offers in Compromise (OIC) and requires enforcement action.

If a business is operating at a deficit, take direct case actions to prevent the continued accruing of taxes, and collect as much of the taxes as possible from the available sources. Seizure and sale of assets might be the appropriate next action, if the requirements for seizure and sale have been met and if voluntary closure of the business and liquidation of business assets are not options.

While securing and verifying the financial situation of the taxpayer, continue to monitor and address ongoing compliance. Calendar the taxpayer's FTD due dates using ICS; then monitor and document the taxpayer's deposit and filing compliance. FTD compliance can be verified and monitored by having the taxpayer fax copies of payroll ledgers and proof of federal tax deposits.

If there are unfiled returns, include in the case strategy specific actions that will enable the returns to be processed under IRC 6020(b). If the taxpayer has not filed employment tax returns, contact state employment agencies or workers' compensation insurance companies for wage and employee records after the initial demand deadline for the returns is not met.

If the taxpayer is uncooperative or continues a pattern of non-compliance, enforcement is an obvious next action. Actions to accomplish this include the following:

- Verifying issuance of Letter 1058.
- Proceeding with enforcement against assets identified through the financial analysis noted above. See IRM 5.1.30.2 (3). Assets include accounts receivable, bank accounts, brokerage accounts, retirement accounts, personal property, and real property.
- Concentrating on key assets that may result in significant payment or result in the taxpayer becoming more cooperative. Examples are levying major receivables, such as credit card processors, or seizing vehicles used in the everyday course of the taxpayer's business.

When developing case strategies, consider using multiple tools to resolve the case. For example, an installment agreement coupled with an equity loan reduces the amount of time required for the installment agreement.

The TFRP is a tool that can be used effectively in conjunction with other collection tools. An in- business installment agreement can be done in tandem with the TFRP. For example, the TFRP can be assessed and collection initiated against the responsible individuals while proceeding with collection against the business entity. Request assignment of the TFRP assessment accounts if geographically possible. Working the accounts in tandem can provide additional leverage.

Analyze the taxpayer's assets and encourage the taxpayer to factor accounts receivable to facilitate immediate full pay of the liability.

Consider issuing Letter 903 in appropriate circumstances.

Often the taxpayer will propose a plan to resolve the liabilities, but don't allow the taxpayer to dictate the case direction. Always verify the details of the plan to ensure that it is plausible. If a cash payment is offered, determine the source of payment. If the source is a loan from property, verify the equity in the property. If the plan offers monthly payments, review the financial statement to verify that there is a sufficient amount of net income available for a monthly payment.

5. Revising Case Strategies

The key elements of the taxpayer case may change.

- Taxpayers may become compliant or non-compliant.
- Businesses may go out of business, file for bankruptcy protection, or change into a different entity.
- Liabilities may be significantly reduced by payment or adjustment.
- Liabilities may be significantly increased when delinquent returns are secured.

Case direction and strategy will change as the case characteristics change. As a result, case strategy requires frequent reviews and revisions.

In addition to adjusting to changes in the taxpayer's situation, continually analyze the effectiveness of the actions taken. If an action has been ineffective in moving the case toward a case resolution, reevaluate the case strategy.

Focus Point:

Anticipate sudden actions such as the taxpayer filing bankruptcy. Take actions needed to protect the government's interest, such as timely filing a Notice of Federal Tax Lien. Coordinate actions with Insolvency. Review bankruptcy schedules filed by the taxpayer for any inconsistencies. Attend the 341 hearing if appropriate. Formulate questions to ask the taxpayer at the 341 hearing.

5.1.30.4 (10-28-2014)

Sole Proprietors and Self Employed Taxpayers

1. **Initial Analysis** - Initial analysis involves examining the overall case to understand the issues involved and the steps necessary to move the case to resolution. It will include development and refinement of initial case actions necessary to prepare for the initial field call.

Scope:

- Consider dollar amount, complexity, grade of the case, and other readily identifiable issues to determine the scope of initial analysis. For example, the presence of a Form 941 filing requirement will increase the level of case research.
- The objective is to conduct the amount of research and analysis necessary to formulate a resolution plan.

Research:

IRM 5.1.10.2, *Pre-Contact*, outlines the actions required during the initial case analysis. Determine if further research should be done before the field call. In making this determination, avoid spending too much time securing and documenting information that may not be necessary to resolve the case. Additional research can always be performed after the initial contact when the revenue officer will have a better understanding of what is needed to move the case towards resolution.

- Research IDRS and determine compliance history for IMF entity and if applicable, Business Master File (BMF) entity. If the taxpayer has unfiled IMF or BMF returns, project the amount owed and incorporate the additional liabilities into the resolution plan.
- Review IRP and attempt to determine the type of business prior to initial contact and locate potential levy sources.
- If the case warrants more detailed information, research a web-based search engine to locate any web sites referencing the taxpayer or used by the taxpayer. For a comprehensive list of search engines and internet search techniques visit the <http://mysbse.web.irs.gov/Collection/toolsprocesses/EBusiness/default.aspx> web site. Determine what, if any, additional internet research to conduct based on the key elements of the case and type of business.
- The objective is to find as much information as possible on how the taxpayer operates, such as the following:

- cash and/or credit card data
- potential levy sources (accounts receivable, contracts, etc.)
- other web sites owned by the taxpayer
- products and services offered by the taxpayer
- taxpayer's business relationships
- information on the taxpayer's industry, such as financial data and the legal environment for that type of business
- If previous history indicates taxpayer's profession, for example, realtor, physician, attorney, restaurant owner, consider reviewing the SB/SE web site <http://mysbse.web.irs.gov/Collection/toolsprocesses/InvestTech/default.aspx>. This web site provides information on sources of income, best techniques to locate assets/income, recommendations for financial analysis and probing interview questions.

- Document research findings and analysis in ICS history.

Developing A Resolution Plan :

- Read IRM 5.1.10.2, *Pre-Contact*, and then develop a resolution plan.
- Consider all relevant issues noted during the initial analysis and determine how they impact your plan.
- The goal is to anticipate what information will be needed and what actions to take to continuously move the case towards resolution. Consider the most efficient order of actions and whether any case actions can be completed simultaneously. See *Exhibit 5.1.30-2* for a time line of possible simultaneous case actions.

Focus Point: Examine business records and IDRS to see if the business entity changed and liabilities exist under a different entity.

2. Initial Contact

Preparing for Initial Contact:

- Read IRM 5.1.10.3.2, *Effective Initial Contact*, for the minimum items that need to be addressed at initial contact.
- Know what taxes are owed and what returns need to be filed—Forms 1040, 941, 940, FTDs, estimated tax payments.
- Project the additional liabilities attributable to unfiled returns. Bring all forms that will be needed, such as Forms 433-A and 433-B, Form 9297, Letter 1058, and blank tax returns.
- Know the key questions and issues to discuss with the taxpayer such as the Notice of Federal Tax Lien, levy sources, and major accounts receivable. The key issues usually relate to the taxpayer's type of business. Consider preparing an outline of case issues to ensure that all issues are covered.
- Consider the best time to make a field call based on the taxpayer's location and type of business. For example, if the taxpayer operates a construction company, it may be appropriate to make a field call in the early morning before the equipment and truck operators move to their work site for the day so that you can better observe the assets. On the other hand, restaurants and retail stores usually don't open early.
- Keep in mind that a sole proprietor's personal assets, as well as business assets, are subject to collection for the tax debt.

First Contact:

- The goal of the initial contact is to bring the taxpayer into full compliance with all filing, paying, and deposit requirements and, failing that, to obtain information needed to resolve the case. Ask the taxpayer for full payment and if no fraud indicators are present, request the taxpayer file delinquent returns.
- In most cases the initial contact will be during a field visit to the business, or residence if the taxpayer operates the business from home. The revenue officer should allow ample time to complete a thorough and comprehensive contact. If full payment and delinquent returns are not secured immediately, take full advantage of this opportunity to learn as much as possible about the taxpayer, the surroundings and the business operation. Have the taxpayer give you a tour of the business. (Take pictures using a cell phone or camera. (This will help PALS later if seizure action is initiated.) Note the type of business and assets, whether taxpayer operates on a cash basis or accepts credit card payments, the type of credit cards accepted, and the number of employees. Make copies of lease, deed, mortgage statement, current balance sheet or other items if available.
- If the taxpayer is not at the place of business, consider asking an employee to telephone the taxpayer. Ask the taxpayer to come to the business. If the taxpayer is unable to come to the place of business, attempt to hold an interview with the taxpayer over the telephone and request that an employee provide a tour of the business.

- Complete CIS and any other necessary forms. If a complete CIS cannot be secured, gather as much information as possible so that if there is no further contact from the taxpayer, information will be available to take the next actions to resolve the case. Secure levy sources, such as accounts receivable, bank information, brokerage accounts, and income sources from other relevant parties, like spouses or business partners.
- Ask open-ended questions when interviewing the taxpayer. Listen to the taxpayer's answers and allow them ample opportunity to respond and expand on their answers. In particular, for taxpayers who do not resolve paying and filing requirements on initial contact, ask how the taxpayer plans to resolve the issue(s). Always document how the taxpayer responds to requests/demands for payment and/or filing. Make notes of all other pertinent facts given by the taxpayer.
- Address further issues with the taxpayer based on the type of business involved. The questions should be tailored to fit the taxpayer and/or their type of business. For example, if the taxpayer is an attorney, find out the type of practice, any industry specialization, and if the taxpayer has a regular client base.
- Set a deadline for the taxpayer to perform any action you require and put the item on your calendar. If you told the taxpayer you will get back to them after you analyze the CIS, set a specific date and time with the taxpayer to discuss the results of your analysis and then place this deadline on your calendar as a follow up action. Provide the taxpayer with Form 9297 to ensure expectations are clear.
- Prepare for the next actions. This would include preparing for possible enforcement action by:

- Issuing Letter 1058 at first contact.
- Gathering effective levy sources concurrently with the issuance of the Letter 1058. If requested information is not provided by the taxpayer, then secure levy sources through third parties.
- If necessary, summons bank deposits or other third-party sources to secure the information. Issue the summonses early enough so that the information will be available once levy action is possible.
- Making copies of lease, deed, mortgage statement, current balance sheet or other items if available.

Focus Point: Even though the TFRP is not an issue for a sole proprietor, the TFRP can be asserted against an employee, surety lender, or spouse if they are found to be responsible and willful per IRM 5.7.3.3, *Basis for Liability Under IRC 6672*. If that appears to be the case, secure all the information on the employee or spouse you would need to complete the penalty investigation. Having an assessment on the spouse could facilitate a future action such as seizure of both halves of a jointly owned asset, depending on local law.

3. Financial Analysis

Effective financial analysis involves comparing income and assets to allowable expenses in order to make the proper decisions that will result in case resolution.

Determine the source of taxpayer's funds and to where the funds are being dispersed. Secure this information directly from the taxpayer, and/or through third parties. Analyze the CIS to determine ability to pay shortly after receipt and verification. Once the information is secured, take the appropriate steps to reach resolution.

Communicate the ability to pay determination to the taxpayer within a reasonable amount of time after receipt of the CIS.

When deciding which items need verification and the best sources to use for verifying the information, there are several factors to consider, such as:

- The size of the liability, the type of business
- How the typical business in that industry operates

There will be times when a complete CIS cannot be secured such as when the taxpayer cannot be located, provides incomplete information, or refuses to furnish the information or meet with the revenue officer. When a CIS or basic financial information cannot be secured on the initial or subsequent contact, take other steps to secure the information. Try to locate assets and financial information through third-party records, interviews and summonses.

Check internal sources

- If necessary, summons records for sources of income identified on IRP, such as Forms 1099 from bank and brokerage houses. Request copies of filed Forms 941 to determine who signed them.
- Internal web sites, such as the <http://mysbse.web.irs.gov/Collection/toolsprocesses/EBusiness/default.aspx> and <http://mysbse.web.irs.gov/Collection/toolsprocesses/InvestTech/default.aspx> web sites contain a variety of tools that can be used to locate taxpayers and their assets.

Check external Sources

Sources to identify assets or third parties to interview include the following:

- Business contacts of the taxpayer
- Neighbors
- Landlords or tenants
- Internet research
- Lien holders on vehicles

- Credit reports
- Credit card companies
- Public records:

- Title companies
- Escrow companies
- Purchasers or sellers of real or personal property
- Civil files, including divorce records
- Property tax payments

Try to locate the taxpayer's bank account(s). In addition to being a levy source, the bank account(s) will provide detailed financial information that may help locate additional assets. This will help you construct a detailed picture of the taxpayer's financial situation. As a starting point for locating assets and identifying links to assets, including bank accounts, examine payments made to the taxpayer or payments made by the taxpayer. For example, consider summoning utility companies for copies of the utility payments. From that starting point, funds can be traced forward to obtain current information. Though the utility payment may be several months old, a summons to the taxpayer's bank will yield more current financial information.

Analyze these sources and determine which ones will have the most current information that can be traced back to the taxpayer's bank account. Once the bank account has been identified, appropriate actions, including levy or summons, can be initiated. Some sources of information, such as lien holders on vehicles, secured parties on real property, landlords, and escrow files will not only provide the link to the taxpayer's bank account but also to loan applications. Recent loan applications may also be reflected on a credit bureau report and can be summoned.

4. Determining Case Direction/Developing and Implementing Case Strategies

An important factor in forming resolution strategies is whether the taxpayer is continuing a pattern of non-compliance. Identify this situation early in the case by reviewing IDRS and then verify payment and filing compliance with the taxpayer. Inform the taxpayer that failure to comply with tax laws prevents consideration of IAs or OICs and may lead to enforcement actions.

If a business is operating at a deficit, case actions should seek to prevent continued accruing of taxes and to collect the greatest amount of taxes from the available sources. A resolution plan for such a case could be full pay through seizure and sale of assets or a CNC after voluntary closure of the business and liquidation of business assets.

While securing and verifying the financial information from the taxpayer, continue to monitor and address current compliance. Calendar the taxpayer's FTD due dates, then monitor and document the taxpayer's deposit and filing compliance. FTD compliance can be verified and monitored by having the taxpayer fax copies of payroll ledgers and proof of federal tax deposits.

If there are unfiled returns, include in the case strategy specific actions that will enable the returns to be processed under IRC 6020(b) if the taxpayer fails to file the returns. If the taxpayer has not filed employment tax returns, contact state employment agencies or workers' compensation insurance companies for wage and employee records after the initial demand deadline for the returns is not met.

If the taxpayer is uncooperative or continues a pattern of non-compliance, enforcement is usually needed to move towards resolution. Actions to accomplish this include the following:

- Verifying issuance of Letter 1058.
- Proceeding with enforcement against assets identified through the financial analysis noted above. See IRM 5.1.30.3 (3)
- Levying of accounts receivable, bank accounts, credit card accounts, brokerage accounts, retirement accounts, tangible and intangible personal property, and real property.
- Concentrating on key assets that may result in full payment, significant payment, or would necessitate the taxpayer's cooperation in order to continue business. Examples would be levying major receivables, such as credit card processors, or seizing vehicles used in the everyday course of the taxpayer's business.

When developing case strategies, consider using multiple tools to resolve the case. For example, an installment agreement can be coupled with an equity loan to expedite resolution. See *Exhibit 5.1.30-2* for a time line of possible simultaneous case actions.

Mixed resolutions cases could combine partial pay, installment agreement, and CNC determinations for specific modules.

Analyze the taxpayer's assets and encourage the taxpayer to factor accounts receivable to facilitate immediate full pay of the liability. Factoring involves selling accounts receivable to a factor for less than their value. This is typically done to raise capital quickly.

If a creditor is advancing credit to the taxpayer, hand deliver a copy of the Notice of Federal Tax Lien to the creditor. If the creditor receives actual knowledge of the filed tax lien before the forty-five days from lien filing have expired, the creditor must immediately stop lending the money if it wants to have priority for the entire amount loaned. (See IRM 5.17.2.6.6.3, *Obligatory Disbursement Agreement*.) Exercise caution in using this technique. Viable businesses often rely on such credit to generate the revenue needed to pay the taxes owed, among other things.

Consider issuing Letter 903 in appropriate circumstances.

Often the taxpayer will propose a plan to resolve the liabilities. Analyze such plans objectively. Don't allow the taxpayer to dictate the case direction, but do try to obtain the taxpayers "buy in" on promising resolutions. Always verify the details of the plan to ensure that it is plausible. If a cash payment is offered, determine the source of payment. If the proposed source is a loan from property, verify the equity in the property. If the plan offers monthly payments, review the financial statement to verify that there is that amount of net income available for a monthly payment. Don't accept such proposals simply to dispose of the case.

5. Revising Case Strategies

Key factors in the taxpayer's case may change requiring revision of case strategies. For example

- The taxpayer may become compliant or non-compliant.
- The business may go out of business, file for bankruptcy protection, or change into a different entity.
- The liabilities may be significantly reduced by payment or adjustment.
- The liabilities may be significantly increased when delinquent returns are secured.

The case direction and strategy will change as the case characteristics change. As a result, case strategy requires frequent reviews and revisions.

In addition to adjusting to changes in the taxpayer's situation, it is important to analyze the effectiveness of the actions taken. If an action has been ineffective in moving the case toward a resolution, reevaluate the case strategy.

Focus Point: Anticipate sudden actions such as the taxpayer filing bankruptcy. Take actions needed to protect the government's interest, such as timely filing of the Notice of Federal Tax lien. Coordinate actions with Insolvency. Review bankruptcy schedules filed by the taxpayer for any inconsistencies. Attend 341 hearing if appropriate. Formulate questions to ask the taxpayer at the 341 hearing.

5.1.30.5 (10-28-2014) IMF Non-Filer

1. **Initial Analysis** - The initial analysis will involve examining the overall case to understand the issues involved and the steps necessary to move the case to resolution. It will include the development and refinement of potential initial case actions necessary to prepare for the initial field call.

Scope:

- Type of case, complexity, and grade of the case will determine the amount and depth of initial analysis.
- The objective is to conduct only the amount of research and analysis necessary to formulate a resolution plan and to discuss the case in a reasonably knowledgeable manner with the taxpayer.

Research:

IRM 5.1.10.2, *Pre-Contact*, outlines the actions required during the initial case analysis. Determine if further research should be done before the field call. In making this determination, avoid spending too much time securing information that may not be necessary to resolve the case. Additional research can always be performed after the initial contact when the revenue officer will have a better understanding of what is needed to move the case towards resolution.

- Research IDRS to determine what returns have not been filed, any credits that may have been applied to the modules, if there is a power of attorney (POA) on file, most current address and verification of notification of potential third-party contact.
- Research IRP information to identify sources of previous year's income and research state employment wage information for most current wages paid.
- If previous history indicates taxpayer's profession, consider reviewing the SB/SE web site <http://mysbse.web.irs.gov/Collection/toolsprocesses/InvestTech/default.aspx>. This web site provides information on sources of income, best techniques to locate assets/income, recommendations for financial analysis and probing interview questions.
- If prior case history indicates the taxpayer failed to meet previous deadlines, consider delivery of a summons to produce existing books, papers and records. See IRM 5.17.6, *Summons*.
- Document research findings and analysis in ICS history.

Developing A Resolution Plan :

- Follow IRM 5.1.10.2, *Pre-Contact*, to conduct and initial analysis and develop a resolution plan.
- The purpose is to address what was noted during the initial analysis.
- The goal is to anticipate what information and actions will be needed to continuously move the case towards resolution. Consider the most efficient order of actions and whether any case actions can be completed simultaneously. See *Exhibit 5.1.30-2* for a time line of possible simultaneous case actions.

2. Initial Contact

Preparing for Initial Contact:

- Refer to IRM 5.1.10.3.2, *Effective Initial Contact*, for the minimum items that need to be addressed at initial contact.
- Know what returns need to be filed, i.e. Forms 1040, whether estimated tax payments are required and approximate amount based on prior year returns and current income.
- For taxpayers residing overseas, identify taxpayer's citizenship and/or type of visa and source of income as taxpayer may not be required to file a return.
- Project the additional liabilities that can be expected from unfiled returns (May be secured from taxpayer or determined from internal resources)
- Determine forms that will be needed such as Forms 433-A and B and blank tax returns.
- Know the questions and issues to address with the taxpayer and consider preparing an outline to ensure that all issues are covered.
- Determine the key issues to discuss with the taxpayer such as employment and income sources, bank accounts, etc.
- Consider the best time to make a field call based on the taxpayer's location and occupation. For example, if you know that the taxpayer is a teacher, then late afternoon might be the best time to make a field visit.

First Contact:

- The goal of initial contact is to bring the taxpayer into full compliance with all filing, paying, and estimated tax payment requirements, or, failing that, to obtain information needed to resolve the case.
- In most cases the initial contact will be a field call to the taxpayer's residence or business. For taxpayers residing overseas, the initial contact may be a phone call or letter to the taxpayer. If the delinquent returns and any money due are not immediately secured, observe the taxpayer's standard of living, assets and other pertinent information for assistance in determining potential liability and collection potential.
- Do not solicit delinquent returns when information is discovered that a taxpayer's failure to file a required return is willful or there is any indication of fraud. Suspend compliance activities and promptly consult with the Group Manager and Area Fraud Technical Advisor. For more information, see IRM 25.1, *Fraud Handbook*.
- Secure sufficient information to prepare an accurate return if the taxpayer fails to file by the specified date. This information would be for the period covered by the delinquent years. Such information might include the following:

- Income amounts
- Income sources
- Filing status
- Withholding amounts
- Bank accounts
- Accounts receivable
- Contracts

- Identify assets that can be used to resolve any liabilities that may become due when the returns are processed. If necessary, complete a CIS and any other necessary forms. If a complete CIS cannot be secured, secure levy sources, such as accounts receivable, bank information, brokerage accounts, and income sources from other relevant parties, such as spouses.
- Ask open-ended questions when interviewing the taxpayer. Question the taxpayer on the reasons for not filing and the income sources during the delinquent years. Listen to the taxpayer's answers and allow ample opportunity for the taxpayer to respond and expand on answers. Note all relevant facts.
- Determine the sources of taxpayer's funds and to where the funds are being dispersed. Do not forget to include income earned by a spouse, or monies contributed by parents, roommates or other parties that might reduce the taxpayer's personal living expenses.
- Advise taxpayer of consequences if deadlines are not met. Provide the taxpayer with Form 9297 to ensure expectations are clear.
- Document a full compliance check, making reference to the following:

- all required returns (individual and business)
- timely payment of estimated tax deposits or withholding
- income sources (W-2, Form 1099, interest, dividends, rent or royalties)
- sales (residence, stocks)

- Set a deadline for the taxpayer to perform any action required, including filing the returns, and calendar the item.
- The field investigation should include contacts with third parties as necessary. Follow the Service's third-party contact procedures for advising the taxpayer that third parties may be contacted IRM 25.27.1. Consider delivery of a summons for third-party information from employers or other income sources based on degree of flagrancy and history of non-compliance. See IRM 5.17.6, *Summonses*.
- Sources to identify income and third parties to interview include the following:

- o IRP
- o Previously filed returns
- o Financial institutions
- o Brokerage accounts
- o Employers, both current and past
- o Business contacts of the taxpayer
- o Neighbors
- o Landlords or tenants
- o Internet research
- o Lien holders on vehicles
- o Credit card companies
- o Credit reports
- o Public records:

- Title companies
- Escrow companies
- Purchasers or sellers of real or personal property
- Civil files, including divorce records

No return secured:

If the taxpayer refuses or neglects to file within the established time frame, consider enforcement options outlined in IRM 5.1.11.6, *No Return Secured*. Enforcement actions may include the following:

- summons enforcement
- referrals to Criminal Investigation
- referral to the Automated Substitute for Return (ASFR) unit. See IRM 5.1.11.6.3.1
- referral to Examination high-income non-filer (HINF)SFR . See IRM 5.1.11.6.3.2
- referrals to Exam. See IRM 5.1.11.6.3.3

3. Financial Analysis

Be prepared to take steps to resolve any tax liabilities that result from the unfiled returns. Planning should begin at the time the delinquency investigation is assigned. Effective financial analysis involves comparing income and assets to allowable expenses in order to make the proper decisions that will result in case resolution. This information will be secured directly from the taxpayer, or, at other times, it will require securing or verifying the information through third parties. Once the information is secured, take the appropriate steps that will lead to case resolution.

- Shortly after receipt and verification of the CIS, analyze it to determine ability to pay. For taxpayers residing overseas, there are no established allowable living expense standards. It is important to take a consistent and fair approach to determine allowable living expenses based on the particular country in which the taxpayer is located.
- If balance due returns have been secured, communicate the ability to pay determination to the taxpayer within a reasonable amount of time after receipt of the CIS.
- If enforcement is necessary, taxpayer's ability to pay is a factor in determining the proper enforcement tools to resolve the case.
- When deciding which items need verification and the best sources to use for verifying the information, consider the following factors:
 - The size of the liability
 - Cooperation level of the taxpayer

4. Determining Case Direction/Developing and Implementing Case Strategies

When developing a case strategy, consider using multiple tools to resolve the case. If the taxpayer refuses or neglects to file, enforcement action is the next step. If a review of IRP indicates that all income has been reported and the criteria for either ASFR or HINF-SFR have been met, then the returns should be referred under the appropriate procedure.

Review the IRP taking the following into consideration:

- The IRP reflects all income if the taxpayer is a wage-earner with no other known sources of income.
- The IRP will not reflect all the taxpayer's income if the taxpayer is self-employed.
- Determine whether the taxpayer's lifestyle matches the income reported on IRP based on field call observations and review of locator source information.
- Determine if all income is reported on IRP based on information secured from contacts with taxpayer and third parties.
- Review the IRP in light of the taxpayer's occupation. Determine if it is the industry standard for payments to be made in cash or whether there is third-party reporting of income.
- Review the IRP for mortgage interest. IRP may not reflect all income if there is mortgage interest paid and there is no other income or minimal income.

If the IRP does not reflect all income, decide whether to summons the taxpayer for the information to complete the returns or third parties and refer the returns to Exam.

Consider summoning the taxpayer for the information to complete the delinquent returns in the following situations:

- The IRP does not include all income earned by the taxpayer
- Income documents cannot be obtained from third parties
- The issuance of a summons may result in delinquent returns being filed by the taxpayer

5. Revising Case Strategies

Key factors in the taxpayer's case may change requiring revision of case strategies. For example

- the taxpayer may become compliant or non-compliant.
- Liabilities may increase significantly when delinquent returns are secured.

The case direction and strategy will change as the case characteristics change. As a result, a resolution-directed approach to case work requires frequent reviews and revisions.

In addition to adjusting to changes in the taxpayer's situation, be sure to analyze the effectiveness of the actions taken. If an action has been ineffective in moving the case toward a case resolution, reevaluate the case strategy.

5.1.30.6 (10-28-2014) Balance Due Won't Pay

1. Introduction

Sometimes taxpayers refuse to cooperate when contacted. The lack of cooperation may be flagrant, such as a taxpayer who raises frivolous tax arguments. It may be more subtle, where the taxpayer refuses to provide information or ignores all contacts initiated by the revenue officer. When the taxpayer is uncooperative, the objective is to formulate a case strategy that does not rely on the taxpayer's cooperation. The plan is to uncover information and assets and then pursue them using the appropriate collection tools.

2. When To Use This Approach

Implement this approach once you determine the taxpayer is not going to provide the information requested. Usually this can be determined after the initial field call to the taxpayer's residence or business with the following results: The taxpayer

- raises frivolous tax arguments
- refuses to provide basic financial information
- refuses to commit to further meetings
- is not present when the field call is made to a verified address and fails to respond by the time requested on the card left at the field call

Sometimes indicators that the taxpayer may be uncooperative arise before the initial field call. For example, there may be correspondence from the taxpayer in the case file that expresses a frivolous position with respect to the requirement to pay taxes. Such correspondence should be processed in accordance with IRM 4.10.12.1.3.1, *Detecting Frivolous Findings*.

If there are indicators in the file before the initial contact that the taxpayer may present frivolous arguments, plan the initial field contact accordingly. At the beginning of a field visit, observe assets and lifestyle information before contact with the taxpayer is initiated. Consider bringing a second revenue officer to observe or assist with the contact. If the taxpayer is uncooperative and attempts to raise frivolous arguments, terminate the interview. Be prepared for a situation where the taxpayer turns out to be cooperative. Be sure to bring all forms that would normally be needed, such as Forms 433-A and 433-B.

3. Additional Research and Consideration

- In many situations uncooperative taxpayers will have unfiled returns or be under audit. Use the IDRS command code AMDISA to determine if there is an open audit in Exam. If there is an open audit assigned to a Revenue Agent, contact the Agent. You will be able to provide assistance to the agent on current case activity, and the agent will have records that may assist you in locating assets for collection. If the taxpayer has filed any returns or been audited, order the returns and Revenue Agent Report (RAR) for additional assistance in locating information and assets. See below for information on how to secure audit files. Review this material carefully. Identify the income source used by the auditor to establish the taxpayer's income. You can use this as an investigative starting point if no additional leads are present.
- Identify the exam project code for any audit assessments. The project code should be listed after the TC 300 as shown on TXMOD. Exam project code definitions can be found on the SB/SE Exam web site at: <http://mysbse.web.irs.gov/exam/mis/data/11947.aspx>. If the project code or RAR indicates that the taxpayer was a promoter or participant of an abusive scheme, contact your Exam Abusive Transactions and Technical Issues (ATTI) Coordinator. The name of your Area's coordinator and additional information on ATTI schemes are located on the ATTI home page <http://mysbse.web.irs.gov/AboutSBSE/Exam/at/default.aspx>.

Note:

The name of the Collection Area ATAT coordinator can be found at [http://mysbse.web.irs.gov/Collection/toolsprocesses/CollATAT contacts/19485.aspx](http://mysbse.web.irs.gov/Collection/toolsprocesses/CollATAT%20contacts/19485.aspx)

Securing audit files can sometimes be difficult. Look for the letter "X" on the TXMOD to identify the correct document locator number (DLN) to use when ordering a RAR. When multiple tax years have been audited, the majority of the work papers will be filed with only one tax year, usually the first or last year audited. When examination papers are extensive, the boxes of material may be stored in a different location and may require a special search to locate.

Verify any POAs on file are valid to represent the taxpayer in Collection matters. If the POA is uncooperative or uses delay tactics, consider using the bypass procedures found in IRM 5.1.23.5, *Bypassing Taxpayer's Representative*. Report suspected practitioner misconduct to the Office of Professional Responsibility using the procedures in IRM 5.1.1.7.6, *Reporting Violations of Rules and the Role of the Office of Professional Responsibility (OPR)*.

Consider the most efficient order of actions and whether any case actions can be completed simultaneously. In these cases it will be especially important to perform actions as early as possible and to coordinate actions because the taxpayer may use delay tactics. While certain actions such as a Collection Due Process (CDP) hearing request may suspend collection action, they do not suspend other aspects of your investigation. If appropriate, file the Notice of Federal Tax Lien at the same time the final Letter 1058 is issued so any resulting CDP can be worked concurrently.

To combat delaying tactics and dissipation of assets, continue collection during the period of the CDP hearing if appropriate. IRM 5.1.9.3.5, *Levy Action during the Period of the CDP or Equivalent Hearing*, outlines jeopardy and other situations when it is appropriate to pursue collection during the period of the CDP hearing. If a taxpayer repeatedly uses the CDP process as a delaying tactic, consider the issuance of a Disqualified Employment Tax Levy. Refer to IRM 5.1.9.3.15 for additional guidance.

4. Case Approach – Investigation

With a taxpayer who refuses to pay the liability, the focus of the investigation shifts to locating assets and taking the appropriate action against the assets. This usually involves levy or seizure of the assets. Be prepared for possible enforcement action by doing the following:

- issuing Letter 1058 at first contact
- gathering effective levy sources concurrently with the issuance of the Letter 1058
- ensuring NFTLs are filed timely in the appropriate location(s) and for all periods.

When an uncooperative taxpayer did not provide a completed CIS, try to locate assets and financial information through third-party records, interviews, summonses, and observation of assets and indicators at the taxpayer's premises. Indicators can include bank-issued calendars and desk items, vehicle license numbers and boat serial numbers.

Sources to identify assets or third parties to interview include the following:

- Employers, both current and past
- Business contacts of the taxpayer
- Neighbors
- Landlords or tenants
- Internet research
- Lien holders on vehicles
- Credit card companies
- Credit reports
- Insurance policies & agents
- IRP
- Previously filed tax returns
- Public records:
 - Title companies
 - Escrow companies
 - Purchasers or sellers of real or personal property
 - Civil files, including divorce records

Take steps to locate the taxpayer's bank account(s). In addition to being a levy source, the bank account(s) may provide detailed financial information you can use to locate additional assets, such as loan payments, purchases, or electronic transfers to other accounts. It will also contain information to construct a detailed picture of the taxpayer's financial situation. To locate the bank account(s) examine payments made to the taxpayer or payments made by the taxpayer to use as a starting point for locating assets and identifying links to assets or cash flow. For example, summons a utility company for a copy of the payment made by the taxpayer to identify the taxpayer's bank account. From that starting point, the funds can be traced forward to obtain current information. Though the utility payment may be several months old, a summons to the taxpayer's bank will yield more current financial information. Some of the sources listed above will not only provide a link to the taxpayer's bank account, but also may have other valuable information, such as loan applications.

To complete the financial analysis of the bank account, a summons should be served requesting the following:

- Copies of deposits made by the taxpayer
- Deposit slips to determine if all money was actually deposited into the account
- Bank statements that will capture several months' activity
- A sampling of checks written by the taxpayer

Examples of suggested summons language appear in Exhibits IRM 25.5.2-2. through 25.5.2 -14, *Summons Procedures*, and on the <http://mysbse.web.irs.gov/Collection/toolsprocesses/Enforcement/Summons/default.aspx> web site.

The number of checks or deposited items needed must be determined by the facts of each individual case. Methods for summoning credit and debit material for a bank analysis include the following:

- Request copies of checks and deposits over a specific dollar amount
- Request all checks and deposits for a one to three month statement period
- Select specific checks and deposits from the bank statements. Follow up with a second summons for these items or include language in the initial summons that indicates you will contact the bank after the statements are received in order to identify the specific checks and deposits.

Conduct a cost/benefit analysis of serving a summons, determining whether the cost is prohibitive relative to the liabilities to be collected or the compliance issues involved.

When reviewing the bank statements and supporting documents, look for the following:

- Deposited items. They could serve to identify sources of income.
- Transfer of funds in either even dollar amounts or in large amounts to or from another financial institution could indicate an undisclosed bank account.
- Transfer of funds in either even dollar amounts or in large amounts to or from other accounts in the same financial institution without disclosing the ownership of the funds.
- Checks made payable to cash in any amounts, but especially ones cashed on a regular basis or in large dollar amounts.
- Large and frequent ATM withdrawals in cash.
- Checks issued in regular amounts on a monthly basis. These could represent payments on a loan and lead to additional financial records or loan applications.

Note:

You can summon information from a bank account that is not held in the name of the taxpayer if you have identified a potential nominee, transferee, or alter-ego connection to the account. This may include income earned by the taxpayer deposited into the account or the taxpayer writing checks from the account. Be specific in your instructions on the summons by listing the account number and be sure to explain in your case history the connection to this account. Like all third-party summonses, managerial approval is required. While the summons only requires managerial approval, levy action under nominee, alter-ego, or transferee doctrine requires written approval by Area or Associate Counsel. See IRM 5.11.1.2.5, *Approval of Alter-Ego and Nominee Notices of Levy*, for more information on levies under nominee, alter-ego, and transferee doctrine.

5. Other Factors to Consider

When reviewing records, examine assets that may not be in the taxpayer's name. If a check of Department of Motor Vehicles (DMV) is negative, you might want to see if your state's DMV can provide a listing of all vehicles registered at the taxpayer's address. This may identify vehicles being held in other names or nominees of the taxpayer.

Review real property records and determine if the taxpayer had an underlying interest in the residence or other real estate. This can be determined by examining loan and transfer records on the property. If assets are located in nominee names, focus on those assets that have the greatest chance of moving the case towards resolution. Usually this will be the assets with the most equity. When determining equity, be aware that sophisticated taxpayers may sometimes use fraudulent deeds of trust to try to conceal equity. These records should be examined closely. If you suspect the recordings are fraudulent, consult with the Fraud Technical Advisor, Advisory Insolvency & Quality (AIQ) Advisor, your manager, and/or Area Counsel. Be aware that electronic real estate records frequently will not tell you the full story of property conveyances. A trip to the courthouse for an in-depth record check is often indispensable.

Indicators of concealed assets include the following:

- Receipt of benefits of an asset held by a third-party, such as, living in a house owned by a business entity or trust they control and not paying any rent, there may be a nominee issue that needs to be developed.
- A beneficiary of an encumbrance on the taxpayer's property is closely related to the taxpayer or controlled by the taxpayer.
- A transaction that occurred outside of normal business practices, for example, a loan against property that did not go through an escrow or title company.
- A transaction at arms length and for less than full consideration

These findings suggest hidden property interests, but they are only suggestions. Further investigation is needed to prove the undisclosed interests of the taxpayer. Consult IRM 5.17, *Legal Reference Guide for Revenue Officers*, and local Area Counsel for assistance with using the legal theories of nominee, alter ego and transferee to move against property held in the name of third parties.

Unreported income and hidden property interests are indications of fraud. If the amount of the liability warrants it, consult with the Fraud Technical Advisor.

If during the investigations taxpayers indicate that they want to cooperate and become compliant, be sure they take steps to demonstrate this position. They should be willing to fully disclose all assets and income. A taxpayer who is no longer pursuing a frivolous position should be willing to provide complete financial disclosure and transfer any assets held in the name of nominees back in to their name.

**5.1.30.7 (10-28-2014)
Economic Reality**

1. In this type of case, the taxpayer has provided a CIS, but the lifestyle of the taxpayer indicates higher available income or equity than indicated on the CIS provided.
2. Such situations might involve the following questionable facts:
 - Individuals reporting limited income with much higher expenses.
 - A historically high income earner reporting greatly reduced income and little or no assets with equity.
3. These situations can be the result of the following:
 - Unreported income
 - Inflated expenses
 - Fraudulent claims against assets

- A recent significant reduction in available income
 - Living beyond current income from credit
4. If your analysis shows spending in excess of earnings (This might be based on such indicators as unusually high credit card balances and late payments.), follow the directions for necessary and allowable expense guidelines found in IRM 5.15, *Financial Analysis*.
 5. If the taxpayer is able to regularly pay monthly obligations in excess of the reported income, additional verification of income is necessary. Cross check income shown on the CIS by comparing it to the income reported on the latest tax return and the income deposited into the taxpayer's bank account. Ask the taxpayer to explain any discrepancies. If no reasonable explanation is offered, ask the taxpayer to pay based on the amount of income identified. Consider an exam or fraud referral if the undisclosed income is also unreported and is significant.
 6. For other cases with no obvious reason for the discrepancy, conduct a more detailed and in-depth verification of the CIS. Factors to consider include the amount of the discrepancy, the tax liability, and compliance impact.
 7. Consider the use of ratios to determine the taxpayer's ability to pay the liability. Ratios can also be used to determine the ability of the taxpayer's business to survive over a long period of time and how well the taxpayer is conducting their business. Additional information on ratios can be found on the <http://mysbse.web.irs.gov/Collection/toolsprocesses/InvestTech/default.aspx> web site by clicking on "Tools to Use" and then clicking "Research Source (Internal)."
 8. If you know the location of the bank account(s), complete an in-depth bank analysis:
 - Request copies or summons bank statements that will capture several months of activity.
 - Request or summons a sampling of deposits and checks.
 - Examine deposit slips to determine if all money actually was deposited into the bank account.
 9. IRM 25.5.2-2, through 25.5.2-14, *Summons Procedures*, contains several examples of suggested summons language.
 10. Determine how many checks or deposited items are needed according to the facts of the individual case. Consider the following methods for summoning credit and debit material :
 - Request copies of checks and deposits over a specific dollar amount
 - Request all checks and deposits for a one to three month statement period
 - Select specific checks and deposits from the bank statements. Follow up with a second summons for these items or include language in the initial summons that indicates you will contact the bank after the statements are received in order to identify the specific checks and deposits.
 11. Conduct a cost/benefit analysis of summoning to determine whether the cost is prohibitive relative to the liabilities to be collected or the compliance issues involved.
 12. When reviewing the bank statements and supporting documents, look for unusual occurrences or patterns, such as the following:
 - Large, unexplained deposits. These may suggest undisclosed income.
 - Transfer of funds in either even dollar amounts or in large amounts to or from another financial institution. This might indicate an undisclosed bank account.
 - Transfer of funds in either even dollar amounts or in large amounts to or from other accounts in the same financial institution without disclosing the ownership of the funds.
 - Unexplained deposits being made on a regular basis. These could indicate an undisclosed income source such as rental income.
 - Checks made payable to cash in any amounts, but especially ones cashed on a regular basis or in large dollar amounts.
 - Large and frequent ATM withdrawals in cash.
 - Checks issued in regular amounts on a monthly basis to an unknown creditor. For example, checks that are written on a business account that may be used to pay a personal home mortgage and/or automobile loan/lease payment.
 - Groups of checks and/or deposits which occur around the same time and are out of the ordinary business pattern.
 - Checks or electronic payments which are not made for ordinary business purposes, for example, a payment from a corporate account to a cable TV provider or to a hair salon. Payments of personal expenses from a corporate account are an indication of a possible alter ego.
 13. These are indications that require further investigation in order to verify the asset and income information included on the CIS. Determine if additional research should be conducted through third parties or if the taxpayer should be asked to provide an explanation. If the taxpayer cannot provide a reasonable explanation, proceed with additional summonses to establish sufficient proof of the taxpayer's interest in the income and/or assets.
 14. Locating the Bank Account(s):

If a CIS cannot be secured or if a bank account is not provided, the revenue officer needs to take steps to locate the bank account. To do this examine payments made to the taxpayer or payments made by the taxpayer to others, for example, utility companies, credit card companies, auto leasing companies, and use those payments as a starting point for locating assets and identifying links to assets or cash flow. From that starting point, the funds can be traced forward to obtain current information. Though the credit card payment may be several months old, a summons to the taxpayer's bank will yield more current financial information.

Other examples of payments made by the taxpayer include the following :

- Mortgage
- Property taxes
- Rent
- Suppliers

Examples of payments made to the taxpayer include the following:

- Wages
- Rental income
- Distributions from brokerage accounts
- Accounts receivable
- Other sources of income identified on IRP

Once a bank account is located, follow the suggested steps above in order to analyze that information.

Note:

You can summon information from a bank account that is not held in the name of the taxpayer if you have identified a potential nominee, transferee, or alter-ego connection to the account. This may include income earned by the taxpayer being deposited into the account or the taxpayer writing checks from the account. Be specific in your instructions on the summons by listing the account number and be sure to explain in your case history the connection to this account. Like all third-party summonses, managerial approval is required. While the summons only requires managerial approval, levy action under nominee, alter-ego, or transferee doctrine requires written approval by Area or Associate Counsel. See IRM 5.11.1.2.5, *Approval of Alter-Ego and Nominee Notices of Levy*, for more information on levies under nominee, alter-ego, and transferee doctrine.

15. Other factors to consider:

- If the taxpayer is receiving the benefits of an asset held by a third-party, such as living in a house owned by a business entity they control and not paying any rent, there may be a nominee issue that needs to be developed.
- If there are encumbrances against property but no payments being made and these significantly reduce or eliminate any equity, verify that something of equal value, such as a loan, was given for the encumbrance.
- If the beneficiary of an encumbrance on the taxpayer's property is closely related to the taxpayer or controlled by the taxpayer, verify that value was given for the encumbrance.

These things are indications of hidden property interest, but are indications only. Further investigation is needed to prove the undisclosed interests of the taxpayers. Consult IRM 5.17, *Legal Reference Guide for Revenue Officers*, and local Area Counsel for assistance with using the legal theories of nominee, alter ego and transferee to move against property held in the name of third parties.

Unreported income and hidden property interests are indications of fraud. If the amount of the liability warrants it, consult with the fraud technical advisor.

**5.1.30.8 (10-28-2014)
No Equity Situations**

1. In-business taxpayer cases involving pyramiding liabilities with no equity in assets pose special challenges. With such cases, make a field call to the business as soon as possible to determine how the taxpayer operates and to get an overall financial picture of the taxpayer's business. If a business is operating at a deficit, case actions need to be directed toward preventing the continued accruing of taxes and collecting the liability. Efforts should be made to have the taxpayer voluntarily close the business and liquidate business assets. If those efforts fail, prompt enforcement action may be necessary, including seizure.
2. When there are limited assets to seize, enforcement actions are most effective when geared to levying the cash flow of the business. Determine how funds (whether cash, credit, accounts receivable, contracts, etc.) are flowing into the business and take prompt enforcement actions against non-compliant taxpayers. If applicable, steps should also be taken to immediately start the process to assert the trust fund recovery penalty and request assignment of the assessment if geographically possible. An important component in identifying key levy sources is to study how a business operates and identify the main points of income, the income stream, and expenses. Often this can be done by analyzing how a business or industry operates and identifying the parties associated with these payments. An example would be that certain industries get their clients through referral services. Identifying the source of referrals would generate a listing of accounts receivable. Other industries are heavily reliant on credit card payments. In that situation identifying the credit card processor would be an effective way of locating and attaching to the operating funds of the business.
3. If a creditor is advancing credit to the taxpayer, hand deliver a copy of the Notice of Federal Tax Lien to the creditor. If the creditor receives actual knowledge of the filed tax lien before the forty-five days from lien filing have expired, the creditor must immediately stop lending the money if it wants to have priority for the entire amount loaned. See IRM 5.17.2.6.6.3, *Obligatory Disbursement Agreement*. This can be an effective method for cutting off credit to the taxpayer, resulting in the closure of the non-compliant taxpayer business. Often taxpayers experiencing cash flow problems open new bank accounts to pay the key bills they need to stay in operation. To locate the new account the revenue officer may need to identify the parties (payees) the taxpayer is paying in order to identify the source of funds used to make the payments. The payees should be interviewed, and if necessary, summoned to obtain the source of the funds used to make the payments. In addition to payment information, additional information regarding the taxpayer's business should be secured. An example of this would be identifying the landlord or a supplier that provides the products the taxpayer sells.

Sources to identify assets/income or third parties to interview include:

- Business contacts of the taxpayer
- Utility companies
- Landlords or tenants
- Insurance policies/agents
- Internet research
- Lien holders on vehicles
- Other creditors
- Credit card companies
- Credit reports
- Neighbors or adjoining businesses
- Business licenses or trade organizations
- IRP
- Previously filed tax returns
- Public records:

- Title companies
- Escrow companies
- Purchasers or sellers of real or personal property
- Civil Files, including divorce records

Some of the sources listed above will not only provide a link to the taxpayer's bank account, but also may have other valuable information, such as loan applications. Once a bank account is located, serve a levy if appropriate. To complete the financial analysis of the bank account, serve a summons requesting the following:

- Copies of deposits made by the taxpayer
- Deposit slips to determine if all money was actually deposited into the account
- Bank statements that will capture several months of activity
- A sampling of checks written by the taxpayer

IRM 25.5.2-2. through 25.5.2 -14, *Summons Procedures*, contain several examples of suggested summons language.

4. Seizure

If seizure of the business assets is the next planned action, but there is no equity in assets, consider the following actions.

Seizure of Individual Assets

Review the assets of the business individually. Although the business may not have demonstrable equity overall as indicated on a financial statement, there may be assets that when viewed individually may have equity. These assets may include:

- Transferable licenses, leases, patents, goodwill, or stock
- Cash registers
- Credit card receipts
- Vehicles, inventory, machinery or equipment
- Entitlement proceeds such as Eminent Domain actions or proceeds from lawsuits

Consider seizure of the business as an on-going concern. A business with limited equity in assets may have potential for seizure as an ongoing concern. For example, a locally popular small pizza shop's assets may be limited in value, but a seizure conducted that includes the phone number, lease interest and the assets has proven successful. Consult with your PALS for guidance.

When reviewing the assets, verify the accuracy of all encumbrances. This includes reviewing financing statements, such as Uniform Commercial Code (UCC) filings, to verify they are properly executed. Assets on the UCC should be matched against assets considered for seizure as a method of verifying the encumbrance. If accounts receivable are being factored, review IRM 5.17.2.6.6.1, *Commercial Transactions Financing Agreements*, to determine if the Service has a lien interest in the accounts receivable.

For Example:

- Seizure of an individual asset such as a liquor license may prompt the taxpayer to become compliant or to voluntarily close the business.
- If a seizure of the cash register is appropriate, determine the best time to conduct the seizure in order to maximize proceeds. Based on field calls and interview questions, determine matters such as:
 - taxpayer's routine for depositing cash receipts to their bank account
 - taxpayer's peak business hours
- If the business accepts credit card payments, a levy on the credit card processor can be very effective. Identifying the VISA / Master Card processor and Merchant Account Number can be accomplished in an effective first contact. If the taxpayer is uncooperative, the information can be secured by summoning the taxpayer's bank.

There may be other types of assets which are part of the business operation that have equity and may be subject to seizure. Investigation of these assets through field calls and thorough research is crucial to working the case strategically.

5. Letter 903

If the taxpayer fails to comply with federal tax deposit requirements and levy action has failed to stop the taxpayer from pyramiding trust fund liabilities, consider issuing Letter 903. Letter 903 alerts taxpayers to the provisions of IRC §7512, *Separate Accounting for Certain Collected Taxes*, and IRC §7215, *Offenses with Respect to Collected Taxes*. Although IRC §7215 remains in the Internal Revenue Code, 941M monthly filing and special deposit procedures are no longer required prior to proceeding to the next collection action. See IRM 5.7.2.1, *Overview of the Letter 903 Process*, for complete procedures for issuing Letter 903.

Although the federal tax deposit compliance of an in business taxpayer should always be monitored and documented, it is especially important after the issuance of Letter 903 for the revenue officer to do the following:

- Calendar the taxpayer's federal tax deposit due dates (monthly, semi-weekly)
- Monitor the taxpayer's deposit and filing compliance
- Document in the case history the taxpayer's deposit and filing compliance

6. Civil Injunction – Suit for Injunctive Relief

An injunction is a court order that requires a party either to refrain from certain actions or to perform certain actions. Federal district courts have jurisdiction to issue injunctions under IRC §7402(a). The government may sue for an injunction to halt employment tax pyramiding when the government has taken all administrative steps possible to stop the pyramiding and there exists a reasonable likelihood of future violation by the taxpayer. A Civil Injunction is normally appropriate for taxpayers with minimal or no equity, or where seizure may not resolve the problem. See IRM 5.7.2.3, *Referrals for Civil Enforcement*, and IRM 5.17.4.17, *Civil Injunctions Under IRC 7402(a) to Restrain Pyramiding*, for complete procedures.

A recommendation for a suit for Injunctive Relief should be considered when administrative collection actions have been unsuccessful, including assertion of the TFRP, and there exists a reasonable likelihood of future violation by the taxpayer. Early consultation with Advisory is a good idea if the resolution plan indicates injunctive relief may be necessary.

5.1.30.9 (12-12-2010) Successor Entities

1. One problem encountered in complex business cases involves entities such as corporations, partnerships, sole proprietorships, and Limited Liability Companies (LLCs), closing one business entity only to turn around and immediately start another business under a new EIN. The new entity often performs the same type of work and has the same assets, location, employees and individuals operating the new business.
2. Once the assets and income of the taxpayer entity have been transferred, the "successor entity" theory may be used to collect from the new entity. The successor entity theory is a legal theory that relies on fraudulent conveyance and/or alter ego theories. Litigation may be required in order to collect against transferred assets or from the income and assets of the new entity.
3. In these cases it is imperative to do the following:
 - Move as quickly as possible to levy against any known assets of the taxpayer entity, such as account receivables and bank accounts, before they are transferred to the successor entity.
 - Determine what if any assets have been transferred to the successor entity.
 - Determine the value of the transferred assets. Verify any claimed payments used to purchase the assets. Property Appraisal and Liquidation Specialists (PALS) or IRS Engineers can assist with any valuation problems.
 - If the assets were transferred in the face of the recorded lien, consult with PALS to determine the value of the assets. If sufficient equity exists, use the pre-seizure analysis to determine if seizure is the next appropriate action.
 - If assets of sufficient value and equity were transferred in the face of the statutory lien for less than full consideration, seizure again should be considered. Secure all documents and facts related to the transfer and consult with Advisory and Area Counsel to confirm the lien position in the property. Determine if the filing of a nominee, alter ego or transferee lien is needed to ensure the lien interest in the assets is protected.
 - If the taxpayer claims that the assets were transferred for adequate consideration, closely examine the records of what consideration actually passed between the parties. Sometimes, when assets are transferred between related entities payments may not actually have been made. This fact is very important in determining lien priority. As mentioned previously, consult with Advisory and Area Counsel. This situation will most likely require the filing of nominee, alter ego or transferee liens to ensure the lien interest in the assets is protected.

- If the property in question was transferred before the assessment lien arose, gather all of the pertinent facts regarding the transfer and consult with Advisory and Area Counsel to discuss alternative collection tools that are available based on the facts and the appropriate federal and state laws. These could include:

- Transferee assessment against successor entity
- Suit to establish transferee liability
- Alter ego or nominee liens and levies
- Suit to foreclose on the federal tax lien
- Suit to set aside a fraudulent transfer

Note:

Transferred property can be discharged from the effects of the lien if the successor party pays the fair market value of the property less any senior encumbrances. This could be done in lieu of any of the above actions.

4. If the amount owed and the estimated collection from the successor entity warrants the use of the successor entity theory, determine what assets have been transferred by:

- Reviewing financial statements previously submitted by the taxpayer.
- Reviewing the most recent balance sheet on the Form 1120 or 1065.
- Summoning any recent loan applications by the taxpayer.
- Questioning current or ex-employees regarding the transfers.
- Questioning principals of the business under oath.
- Searching local locator sources for both entities for such things as vehicle records, real property records, UCC filings.
- Summoning insurance records.
- Summoning the last known bank account and trace the final funds from this account to see if monies were moved into the account of the successor entity.
- Checking with accounts receivable of the taxpayer entity to see who they paid for work done by the taxpayer. Request copies of payments in order to trace where they were deposited.

5. **Proving the "successor entity" theory:**

- Match Secretary of State records for both entities to determine if both are listing the same members or officers.
- Use state employment records to identify common employees of the taxpayer entity and the successor entity.
- Contact accounts receivable and accounts payable to determine if they were advised of the change by either entity. Often the successor entity will send a letter telling the party that they have changed their name or the business reorganized. A copy of this letter is excellent proof of the close relationship between the entities.
- Identify any contracts the taxpayer entity may have had such as lease agreements or contracts for specific jobs. Find out if the contracts were changed to include the successor entity. If not, this may be evidence that the entities are essentially the same.
- Check local business records such as fictitious names filings or business licenses to determine if they have formally registered the new name and applied for licenses under the new name.
- Check for a business web page to see how and if the new entity is identified.
- Secure copies of payments of income earned by the taxpayer to determine if the monies were deposited in to the successor corporate bank account.
- Summon the taxpayer's bank account(s) to determine if expenses of the successor corporation were being paid from the income of the taxpayer.
- Review basic information to see what changed when the new entity was created. This would include common nominee indicators, such as phone and fax numbers, utility providers, such as electricity and gas.
- Examine to see if deposits of the old entity were refunded or if the utilities were actually changed
- Check E-mail addresses and web pages
- Examine service agreements for equipment such as photo copiers.
- Check rental agreements.

6. **Collecting Using Successor Entity Theory**

The income and/or assets of the successor corporation must be carefully evaluated.

- Consider the amount of the liabilities, the equity in any assets, and the amount of income being generated by the successor entity. If the case will require litigation, the amount expected to be collected must equal or exceed the LEM amount for suit recommendations.
- Consider any weaknesses in the case if it were to go forward to litigation.
- Consult with local Counsel. The successor entity theory requires approval from Counsel for any lien or levies against the successor assets or income.

5.1.30.10 (09-21-2007)

Unable to Locate, Large Dollar Liability

1. On large dollar cases, once initial investigation reveals that the taxpayer cannot be easily located, a key strategy to case resolution moves to locating and collecting against taxpayer assets. Hopefully this will lead to finding the taxpayer in the process. It is important that the investigation does not stall when the taxpayer is not located. Instead, attention needs to be refocused on locating the assets so they can be used to collect the liability.
2. It is important to develop a strategy on the sources of information that will be the most effective to identify assets for enforcement. Assets can be traced through a thorough review of some of the following sources of information:

- Internal sources
- Bank account records
- Accurint / DMV
- Credit Report
- Public records:

- Real property records
- Property tax records
- Lawsuits
- Divorce files
- Closed bankruptcy records
- Internet

3. Internal Sources

Tax Return - Review the tax return information using RTVUE/BRTVU or order the return. Assessments are based on taxable income. One of the questions that needs to be answered is what the taxpayer did with the income. If the taxpayer converted the income to real property or personal property, then the status or disposition of the property must be determined. Review returns to identify:

- A. Interest - bank accounts, mortgage interest received.
- B. Dividends - stock.
- C. Schedules:

- C - business income and depreciation
- D - stock sales
- K - passive income/loss (partnership, s-corporation or trust interest)
- A - itemized deductions

Income Documents - Review and analyze all IRP information available. The starting point for identifying assets can be summoning records for sources of income identified on IRP, such as Forms 1099 from bank and brokerage houses. Mortgage interest paid points to real property. If mortgage interest paid stops, then the mortgage is generally either satisfied or the property has been transferred. If IRP documents indicate mortgage interest paid by the taxpayer and there is no real property in the local public records, then the property is either being held in another name or located elsewhere. Compare the IRP and RTVUE for inconsistencies which may indicate a nominee entity is involved. Pay attention to all payee addresses and follow up on them with a public record research.

4. Bank Account Records

Although levy of the bank account(s) may be appropriate, perhaps more valuable is the information that can be obtained by summoning the bank records to locate additional assets.

If the location of the taxpayer's bank account(s) is not known from a review of internal sources, it will need to be traced back by summoning payees of the taxpayer. These can include mortgage payments, rent payments, utility payments, and car payments. Some sources of information will not only provide the link to the taxpayer's bank account(s), but also may have loan applications on file.

When reviewing and analyzing the bank statements and checks look for the following:

- Checks issued in regular amounts on a monthly basis to a creditor. This may indicate the taxpayer is making installment payments on an asset.
- Checks written to a payee that would indicate ownership of an asset. For example, payments to a marina would indicate boat ownership.
- Funds being transferred off shore.
- Wire transfers.
- Funds being transferred into or out of the account from another bank account. Bank records from the new accounts should be summoned.

5. Public Records

The term public record includes many federal, state and local government records. Public records searches are completed with the objective of locating assets and also tracing back to the taxpayer's bank account(s). County records will include property tax payments, personal and real property records, escrow companies, and assets listed in civil divorce files.

- Real property records – Pay particular attention to documentary tax stamps on deeds. Review any transfer of property by the taxpayer to verify that it is an arm's length transaction.
- Property tax records – Will be useful in identifying the taxpayer's bank account and determining the entity making the payments.
- Lawsuits – Lawsuits frequently involve property and rights to property and may be useful to uncover assets.
- Divorce files – Such files may be helpful by identifying asset distribution. The former spouse may also be a source of information about the taxpayer and any assets.
- Closed bankruptcy files – Review the files for the inventory of assets.
- Internet – Conduct a general search of the taxpayer on the internet using a search engine. If the taxpayer owns a web site, the web site should be thoroughly investigated.

6. Accurant / DMV

Conduct a thorough analysis and review of Accurant and DMV research. Secure the title history on a vehicle when appropriate as Accurant will not identify any lien holders.

7. Credit Report

A credit report will provide information relating to an individual's credit transactions, such as mortgages, automobile loans and credit cards. Information is provided giving the status of these accounts, some of which may be satisfied. Pay attention to inquiries. These may appear when a bank account is opened or a credit/loan application is submitted. Consider issuing a summons to:

- All new loans requesting the loan application and recent payment instruments.
- Existing mortgages and automobile loan payments requesting recent payment instruments.
- Credit card accounts requesting statements that will reveal where and on what the taxpayer is spending money.

Exhibit 5.1.30-1 Case Resolutions Flowchart

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Exhibit 5.1.30-2 Time Line for Possible Simultaneous Case Actions

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Part 5. Collecting Process

Chapter 1. Field Collecting Procedures

Section 31. Workload Management

5.1.31 Workload Management

- 5.1.31.1 [Overview](#)
- 5.1.31.2 [Calendar System](#)
- 5.1.31.3 [Scheduling](#)
- 5.1.31.4 [Methods for Filing Physical Inventory](#)
- 5.1.31.5 [Maintaining the Inventory Management System](#)
- 5.1.31.6 [Methods for Managing Electronic Files](#)
- Exhibit 5.1.31-1 [Time Use Analysis Log](#)

Manual Transmittal

October 27, 2014

Purpose

(1) This transmits an update to IRM 5.1.31, Workload Management.

Material Changes

- (1) IRM 5.1.31.1, Overview, text added to clarify purpose of this IRM section.
- (2) IRM 5.1.31.1, Overview, caution added to emphasize that this IRM does not add, remove, replace or otherwise change any existing IRM procedures.
- (3) Editorial changes made throughout.
- (4) IRM references and hyperlinks updated throughout.

Effect on Other Documents

This IRM supersedes IRM 5.1.31 dated July 15, 2011.

Audience

Field Revenue Officers and Group Managers

Effective Date

(10-27-2014)

Rocco A. Steco
Acting Director, Collection Policy
Small Business/Self-Employed

5.1.31.1 (10-27-2014)

Overview

1. This IRM section provides specific suggestions for how revenue officers (ROs) can establish, improve and sustain good workload management techniques and time utilization skills.

Caution:

This section does not add, remove, replace or otherwise change any existing IRM policies or procedural requirements.

2. Effective workload management can be achieved through the use of a basic planning system to calendar, plan, schedule, and complete work assignments in a timely and efficient manner. Managing a Collection inventory entails the following:
 - resolving cases in a timely fashion
 - effectively addressing changing priorities
 - informing the group manager when circumstances may cause delays
 - addressing interruptions in a manner that minimizes negative impact.

5.1.31.1.1 (10-27-2014)

Effective Time Management

1. Managing time effectively requires first awareness of how much time is needed and available to work both business priority and routine cases while meeting standards for timely initial contact and follow-up actions. See IRM 5.1.10.3 and IRM 5.1.10.9 for applicable requirements and guidelines.
2. This requires the use of some kind of calendar system to manage workload. Every case should be scheduled on a calendar for initial contact, follow-up actions and established taxpayer deadlines. These dates should be documented in the Integrated Collection System (ICS) case history.
3. Once activities are scheduled and calendared, stick to the plan in the priority order you have established and maintain your focus throughout on case resolution.

5.1.31.1.2 (10-27-2014)

Time Use Analysis

1. If you discover that you are not meeting scheduled deadlines and completing routine tasks timely, analyze how you use your time. Each day for a least one work week, keep a log of each activity and the amount of time used regardless of how much time.
 - A. Record and label scheduled and non-scheduled work activities. (See *Exhibit 5.1.31-1* for an example of a Time Use Analysis Log.) Scheduled activities consist of those with a definite time, time period, and date. For example, "Scheduled: Case Consultation appointment with GM. , 11:00-11:40 AM, 40 minutes. Unscheduled: TCR from T/P, 2:12-2:23, 10 minutes."
 - B. Record personal use of time, such as telephone calls, internet activities, breaks, lunch, and interactions with co-workers. (Be honest and objective in recording this information. It need not be shared with anyone else.)
 - C. Assess whether the activity was necessary, and whether it needed to take place when it did and take as much time as it did. For example, did you need to EOD first thing in the morning? Did you need to take two hours to complete a Form 3870? Could you perform these tasks more quickly and efficiently? Do you need additional training or guidance to do so?
 - D. Identify time wasters and time savers.
 - E. Determine the impact on effective case resolution of conducting the activity when you did and for the amount of time used.
 - F. Determine whether time could have been better managed by scheduling interruptions for a mutually agreeable time rather than stopping to address the interruption immediately.
2. Examine the log entries for each day and analyze how the time was spent to determine where time could have been used more productively.
3. The following are suggestions for how to manage time more effectively:
 - A. Address interruptions and unscheduled activities in a way that will have little or no impact on timely case actions.
 - B. Allow for unforeseen events by building a cushion of time into the daily schedule.
 - C. Take as many actions as possible on a case to move it forward before setting it aside to work on another. For example, complete all requests for postal tracers and credit bureau checks; complete all summons and levy documents; and update the history before moving to the next case. This keeps you focused and saves time lost when continually restarting work on numerous cases. In some instances identical complex actions required to resolve similar cases may be grouped together to gain efficiency. For instance, actions related to several TFRP investigations or assessments might be taken at the same time or all on the same day. See Exhibit 5.1.30-2 in IRM 5.1.30, *Resolution-directed Case Work*, for a Time Line of Possible Simultaneous Case Actions for each stage of the collection process.
 - D. If the manager has no objection, post a Do Not Disturb sign on your cubicle.
 - E. Only answer expected phone calls or those that do not interfere with your schedule.
 - F. Schedule return calls after assessing the likely extent of the conversation. A request to confirm receipt of a payment or document would only take a couple of minutes. But an initial phone call might require considerably more time. Schedule and allocate time to check voice messages to ensure taxpayers receive a timely response. Avoid checking messages too frequently.
 - G. When out of the office for extended periods of time, leave a message on the telephone and email to direct the caller to an alternate person for assistance. This will save you and the taxpayer time in the long run.
 - H. When leaving a calling card or phone message for a taxpayer to return a call, provide a specific date and time for the call to be returned.
 - I. Always document a plan in the ICS case history for your next actions in support of your case resolution plan. The plan should incorporate dates for specific actions.
 - J. Determine how much time is needed to complete planned actions and update the calendar accordingly.
 - K. Always document action dates on your calendar system.
 - L. Unscheduled visits by co-workers can be disruptive. Let them know they need to limit social visits or schedule work related meetings for another time if not convenient at the moment.
 - M. If a co-worker requests assistance, determine the amount of time involved and whether the co-worker needs assistance immediately. When lengthy assistance is needed, schedule a meeting during an open time on your calendar. When appropriate, direct the co-worker to the applicable technical reference.
 - N. If uncertain about how to proceed on a case and you have spent a reasonable amount of time researching the issue without success, consult with your manager, an OJI, a senior revenue officer and/or Advisory. You may also post questions to the Ask Collection Policy web site at <http://mysbse.web.irs.gov/Collection/askcollectionpolicy/default.aspx> once you have consulted with your manager and advisory.
 - O. **Do not put a case away simply because you do not know how to proceed.** This will only delay resolution further.

5.1.31.2 (07-15-2011)

Calendar System

1. A calendar system should be used to control the use of time and effectively manage a case inventory.
2. An effective calendar system promotes the proper scheduling and planning of time. The initiation of a follow-up action within 15 calendar days of the expiration of a deadline is required per IRM 5.1.10.9. Adhering to this requirement is a core workload management technique.
3. Available calendaring tools include the ICS calendar, the Microsoft Outlook calendar, a paper calendar, the ICS Outlook Calendar or a combination.
4. Document the calendar with all activities in advance and allow for the addition of subsequent activities as they arise. The following key activities should be included into a calendar system:
 - Field calls
 - Case actions (levy, summons, NFTL, etc.)
 - Follow-ups
 - Taxpayer deadlines
 - Scheduled taxpayer interviews
 - Group Meetings
 - Scheduled leave

- Alternate Work Schedule (AWS) days off
- Consultations with management
- Holidays
- Reviews
- Training
- Time sheet submission
- Travel authorizations and vouchers

5. Choose the calendaring method -- electronic, paper or a combination -- best suited to your personal style that achieves the best results.

5.1.31.2.1 (07-15-2011)

ICS Notifications

1. The ICS calendar and notification system can help you maintain control of time and manage your inventory. Detailed instructions on how to use the ICS calendar system are available on the ICS home page. The CALENDAR function can be accessed from anywhere within ICS by pressing the <F4> function key or by clicking the calendar icon or Calendar in My ICS. A follow-up notification can be created by pressing the <F7> function key.
2. The ICS Outlook Calendar is essentially a copy of the existing ICS Calendar, but with all the view and print options that Microsoft Outlook provides. It is encrypted and resides in your computer workstation.
3. All case related activities and follow-ups should be entered on the calendar. When a follow-up is added through the calendar function, it will be listed under current follow-ups (Option H on the Entity Detail menu) in that case. In addition, when that follow-up becomes due, a notification will be generated.
4. The Add Appointment option allows for adding non-case related activities (e.g., workshops, group meetings, classes). Using this function to enter appointments on the calendar will not generate a notification.

5.1.31.2.2 (07-15-2011)

Microsoft Outlook Reminders

1. The Microsoft Outlook Calendar is an automated calendar and scheduling component of Outlook. It is fully integrated with email, contacts, appointments, and other similar features, permitting a view of a day, week, or month at a glance.
2. To schedule appointments and reminders on the Microsoft Outlook Calendar, select a date and time in the calendar and begin typing. A sound or message can act as a reminder of appointments, meetings, and events, and the appointment can be color coded for easy identification.
3. Answers to questions about the Microsoft Outlook Calendar can be found by clicking the Help button in the Microsoft Outlook task bar and then clicking Microsoft Outlook Help.

Note:

Microsoft Outlook is **NOT** a secure program. Taxpayer information must not be entered on this calendar system. Name controls are not considered taxpayer identification and may be used in Outlook.

5.1.31.2.3 (07-15-2011)

Paper Calendars

1. A variety of paper calendar systems are available. Use the system that best meets your needs. The calendar you choose should be handy at all times and available for revision when planning a schedule, including the ability to add personal and work commitments. It should have sufficient space to make notes. Strive to keep the calendar organized and free of loose papers.
2. The benefits of the paper system include the ability to do the following:
 - Review a monthly calendar at a glance.
 - Take notes at interviews, meetings, or training sessions.
 - Combine personal schedule with the work schedule. (Note: Care should be taken to eliminate any disclosure problems if the calendar is used out of the office.)

5.1.31.3 (07-15-2011)

Scheduling

1. For efficiency, similar work activities, such as preparing several postal tracers or actions related to several TFRP investigations, should be grouped together and performed at the same time when possible.
2. Certain tasks might be performed more efficiently in one location (office, field, or flexiplace location) than in another. When possible, schedule a full day of work in the office, the field, or your flexiplace location.

5.1.31.3.1 (07-15-2011)

Office and Flexiplace Days

1. Only a few activities must take place in the office, including the following:
 - meetings with managers, advisors, and co-workers
 - receiving mail, processing payments, returns, and other documents.
2. Generally, you have more control over your environment in your flexiplace location than in the office. Tasks requiring extraordinary focus and the absence of distractions might best be conducted on flexiplace, such as the following:
 - Extended telephone conversations
 - Assembling large or complex files
 - Conducting extensive IRM or on-line locator research
 - Writing lengthy reports or other documents
 - Performing a series of complex calculations.

5.1.31.3.2 (07-15-2011)

Field Days

1. Field activity is any work that requires the RO to be away from the office, such as the following:
 - Making initial contacts as required at the taxpayer's business or residence (See IRM 5.1.10.3)
 - Conducting subsequent meetings with the taxpayer or representative
 - Performing case related research (courthouse searches, third party contacts, etc.)
 - Taking enforcement actions
 - Documenting case histories immediately after the field visit while the information is fresh
 - Viewing assets.
2. Plan and execute case-related travel in a manner which is efficient, timely, and cost effective. When planning field calls, do the following:
 - Group cases by geographical areas (county, location, or ZIP code).
 - Develop a listing of cases in order of contact locations, usually the furthest field call first and closest last.
 - Carry extra work in case some taxpayers are not reachable at home or at their business.
 - Consolidate the number of cases in each area.
 - Review maps of the areas to avoid wasting time locating addresses.
 - overnight travel may be an efficient way to handle multiple calls at distant locations.

5.1.31.3.3 (10-27-2014)

Deadlines

1. Deadlines should be given when appropriate for items and tasks to be completed by the taxpayer, including the following:
 - filing returns
 - making payments
 - providing financial statements and/or supporting documentation
 - submitting verification of attempts to get loans to make full or partial payment
 - providing proof of FTD compliance and estimated tax payments
 - appearing for scheduled appointments.
2. Deadlines should be reasonable with respect to the tasks the taxpayer has been given to complete. Provide adequate time for both completion of the task and for delivery of the requested item when setting deadlines.
3. Follow-up dates for the deadlines should be scheduled on the calendar to meet the requirements of IRM 5.1.10.9 for timely follow-up action.
4. Extensions of deadlines should be rare and only occur when the need for additional time is verified. Consideration should be given to the past performance of the taxpayer or representative.
5. Incremental deadlines that require ongoing performance by the taxpayer may also be considered.
6. Stagger deadlines in consideration of other case activities or enforcement actions that may be necessary if the taxpayer fails to comply in order to complete follow-up actions timely.
7. When taxpayers or representatives miss a deadline, take the next appropriate action required to resolve the case. Except in rare instances, avoid re-contacting the taxpayer to discuss why the deadline was not met.
8. Form 9297, Summary of Taxpayer Contact, must be used during face to face contact where there is no fraud potential to list the information/documents required and the date for receipt. (See IRM 5.1.10.3.2(9)) .

5.1.31.3.4 (10-27-2014)

Follow-up Activities

1. Follow-up activities should be scheduled on the calendar based on taxpayer or third party deadlines. Initiation of a follow-up action within 15 calendar days of the expiration of a deadline is required. Take follow-up actions simultaneously whenever possible. See IRM 5.1.10.9 and Exhibit 5.1.30-2 in IRM 5.1.30

5.1.31.4 (07-15-2011)

Methods for Filing Physical Inventory

1. Maintain case files in secure cabinets.
2. Label case folders with the taxpayer's name for quick visual identification and access in the event the taxpayer calls unexpectedly.
3. Develop a filing system that is simple, easily maintained, and effective in preventing case delays. It should also allow easy location of a file by the manager and/or duty officer if the responsible officer is absent. The Alpha, Modified Alpha, and Numeric systems described below provide proven methods for maintaining physical inventory files.
4. As soon as practicable, remove from your files and dispose of dated and/or extraneous material that is not needed to support or reflect actions taken in the course of the case, including ICS histories, old IDRS prints, maps, blank pages, duplicate documents, etc.

5.1.31.4.1 (07-15-2011)

Alpha System

1. One practical method for filing physical inventory is a simple Alphabetical file.
2. The Alpha System makes it easy to find a case when a taxpayer calls or correspondence is received.

5.1.31.4.2 (01-25-2008)

Modified Alpha System

1. In the Modified Alpha system, physical inventory is filed in alphabetical order within three separate categories:
 - Field Call Files (Cases Needing a Field Call) - These files consist of those cases requiring field action, whether new receipts or cases in progress. Review this inventory for the last action dates when planning the field itinerary to prevent the aging of inventory.
 - Office Files (Cases Needing Office Actions) - Office Files consist of those cases which need some office time to complete case processing. These cases should be scheduled on the calendar and checked periodically to prevent lapses in activity.
 - Suspense Files (Cases Awaiting Deadline Expirations/Information) - Suspense Files are those cases in process which have had contact and which are now awaiting the expiration of a deadline or for which internal research is pending. These cases should be reviewed every 30 - 45 days to ensure that actions are current and to prevent aging of cases.
2. The Modified Alpha System provides a quick visual reference as to how many field calls are necessary and how many cases are pending. Conduct additional research if necessary if a taxpayer calls or comes into the office unexpectedly.

5.1.31.4.3 (10-05-2007)

Numeric System

1. The Numeric System is based on the calendar date for scheduled follow-up activities.
2. Physical inventory is filed in order from 1 to 31 corresponding to the date of the month when the follow-up is scheduled.
3. The case file should be clearly marked with the name of the taxpayer for quick access in the event the taxpayer calls unexpectedly or access is required in the absence of the revenue officer.

5.1.31.5 (10-27-2014)

Maintaining the Inventory Management System

1. Inventory management systems require discipline and maintenance to ensure timely case actions/follow-ups. Cases should be worked on the date that they have been placed on the calendar.
2. If the follow-up action is not completed by the 15th day after the deadline, it should be rescheduled on the calendar as soon as possible. (See IRM 5.1.10.9). The reason(s) for the delay should be clearly documented. However, sound workload management requires that every effort be made to meet the initial follow-up date.
3. Depending on the nature of the correspondence, cases should not be worked solely because mail has been received. Payments and returns should be processed on the day received or as soon as possible on the next business day (IRM 5.1.2). Some types of correspondence require prompt processing, including Collection Due Process (CDP) (IRM 5.1.9.3.3) and Collection Appeal Program (CAP) requests (IRM 5.1.9.4), notice of bankruptcy petitions (IRM 5.9.3.4), requests for assistance by TAS (IRM 5.1.9.4.1(8) and offers in compromises (OICs) (IRM 5.8.1.2). Other mail received should be date stamped and placed into the case file and worked when the case is calendared. The ICS history should also be updated to reflect receipt of the document(s).
4. Complete all appropriate actions on each case when scheduled, including documenting the case history with the case resolution plan and next actions, as well as deadlines and follow-up dates.
5. Case inventories should be reviewed once every thirty days to ensure all cases are on the calendar. Regularly match physical case files to the ICS inventory list and resolve discrepancies as appropriate.
6. Document changes to a schedule due to unexpected leave, priority assignments, details, as well as other reasons, and re-schedule case actions and/or follow-ups accordingly.

5.1.31.6 (07-15-2011)

Methods for Managing Electronic Files

1. Microsoft Outlook provides the ability to organize folders, files and documents in a variety of ways. The objective of any such organization system is to be able to locate what you want the moment you need it.
2. Electronic files have greatly reduced the need for paper documents. To take full advantage of this capability, to the greatest extent possible, limit printing to documents that must be in paper form.

5.1.31.6.1 (07-15-2011)

Organizing Email

1. Email messages can be organized by date, topic and author or a combination of all three.
2. It is a good practice to file an email message in an appropriate folder the moment you read it and to strive to keep the size of your in-box to a minimum.
3. As a general rule, don't save any email message providing newsletters or other documents maintained on separate web sites. Read the relevant material, delete the email, and if you need to refer back to the article, go to the web site. Consider making the web site a favorite or creating a shortcut to it if you refer to it often. Alternatively, you can copy relevant material to a Word file and save it in a document folder.
4. Create a new email folder when you have received or anticipate receiving several email messages on the same topic. For example, you might create a folder for TFRP information if you have received several email messages and technical advisories on this process. Likewise bankruptcy, installment agreements, CI, innocent spouse issues, and other common topics might warrant their own folders. You can also create sub-folders within these folders, for example, within an IA folder, you might have email messages specifically addressing PPIAs to the extent that they warrant their own sub-folder. However, avoid creating unnecessary sub-folders or sub-sub folders. Create a miscellaneous folder for email messages that do not fit into any particular category.
5. One method many find effective is to create email folders according to years and months for general email messages that don't fall into specific categories. See the [Microsoft at Work](http://www.microsoft.com/atwork/productivity/emailtools.aspx), <http://www.microsoft.com/atwork/productivity/emailtools.aspx>, web site for other ideas on how to manage email effectively.

5.1.31.6.2 (10-27-2014)

Organizing Electronic Files

1. Strategies similar to those used to manage email messages can also be employed with electronic documents, such as Word and Excel files.
2. Create folders and sub-folders for common topics and subtopics and a miscellaneous folder for items that do not yet merit their own folders or sub-folders. See the *E-Mail Basics: Managing E-Mail Get Started* <http://www.microsoft.com/en-us/download/confirmation.aspx?id=2757> web site for other ideas for organizing and managing electronic files.

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