



## Part 5. Collecting Process

### Chapter 20. Abusive Tax Avoidance Transactions (ATAT)

#### Section 1. Abusive Tax Avoidance Transaction Program

##### 5.20.1 Abusive Tax Avoidance Transaction Program

- 5.20.1.1 [Overview of Abusive Tax Avoidance Transaction \(ATAT\) Program](#)
- 5.20.1.2 [Collection's Role in ATAT](#)
- 5.20.1.3 [Sources of ATAT Casework](#)
- 5.20.1.4 [Casework directed to ATAT](#)
- 5.20.1.5 [Coordinating Early Intervention with Other Functions](#)
- 5.20.1.6 [Assistance on Promoter/Preparer Investigations](#)
- 5.20.1.7 [Collection ATAT Coordinator Responsibilities](#)
- 5.20.1.8 [Assigning ATAT Cases within Collection](#)
- 5.20.1.9 [Finding ATAT Inventory](#)
- 5.20.1.10 [Prioritization of ATAT Work](#)

##### Manual Transmittal

January 12, 2016

##### Purpose

(1) This transmits revised IRM 5.20.1, Abusive Tax Avoidance Transaction Program.

##### Material Changes

- (1) IRM 5.20.1.2(3) updated IRM cite.
- (2) IRM 5.20.1.4(1) updated IRM cites.
- (3) IRM 5.20.1.6 updated to include preparers.
- (4) IRM 5.20.1.7(1) updated ATAT Coordinator responsibilities to include assignment and routing of estate and gift tax cases, review of ATAT hold file and ENTITY queries.
- (5) IRM 5.20.1.7(2) added to include ATAT Coordinator responsibilities in regards to ATAT Automated Inventory Delivery system.
- (6) IRM 5.20.1.8(2) updated to include estate & gift taxes cases to the list of cases that generally should remain assigned within the ATAT program.
- (7) IRM 5.20.1.9(2) added to include guidance on the ATAT Automated Inventory Delivery system.
- (8) IRM 5.20.1.9(3) updated to include new ENTITY queries available to search for ATAT inventory.
- (9) IRM 5.20.1.10 updated information on risk levels of ATAT cases for clarity.
- (10) Editorial corrections and changes made throughout.

##### Effect on Other Documents

This material supersedes IRM 5.20.1, Abusive Tax Avoidance Transaction Program, dated June 20, 2013.

##### Audience

The target audience is SB/SE Collection employees.

##### Effective Date

(01-12-2016)

Kristen E. Bailey  
Director, Collection Policy  
Small Business/Self-Employed

##### 5.20.1.1 (01-12-2016) Overview of Abusive Tax Avoidance Transaction (ATAT) Program

1. This IRM serves as a quick reference guide for collection procedures on Abusive Tax Avoidance Transactions (ATAT) investigations. It provides an overview of the Collection ATAT program and refers the reader to supporting references. Refer to IRM 4.32, *Abusive Transactions*, for additional guidance on Servicewide ATAT programs.

##### Note:

In FY 2010, SB/SE Examination created the office of Abusive Transaction and Technical Issues (ATTI) which includes the program formerly known as ATAT. SB/SE Collection continues to use the acronym ATAT for its abusive transactions program.

2. Definition of ATAT

An abusive tax avoidance transaction includes the organization or sale of any plan or arrangement promoting false or fraudulent tax statements or gross valuation misstatements, aiding or assisting in the preparation or presentation of a return or other document to obtain tax benefits not allowed by law, and actions to impede the proper administration of Internal Revenue laws. This general definition includes both tax shelters as defined in various sections of the IRC and other types of abusive tax promotions. These strategies may be organized and marketed, often through the internet. The definition is not merely limited to activities that reduce tax liability but may also include transactions that conceal assets and/or income from Collection.

3. ATAT promotions include, but are not limited to, programs that rely on:

- False statements about the allowance of tax benefits to participants that are contrary to clearly established law.
- Intentional manipulation or misapplication of IRC sections to improperly claim tax benefits.
- Sham arrangements having no economic significance or business purpose other than the avoidance or evasion of tax.
- Gross valuation misstatements that ascribe a value to an asset or service that is at least twice the correct value and result in a tax reduction.
- Noncompliance with disclosure requirements of IRC 6111, *Disclosure of Reportable Transactions*.
- Noncompliance by material advisors with the list maintenance requirements of IRC 6112, *Material Advisors of Reportable Transactions Must Keep Lists of Advisees, etc.*
- Attempts to impede the proper administration of tax laws.
- Gross overstatement of withholding or refundable credits to obtain false refunds.

4. Issue Management Teams (IMT) are established for some schemes and promotions. These teams are cross-functional - generally between Exam and Counsel. See IRM 4.32.1.4 for additional guidance. The role of the IMT is to:

- Develop strategy and guidance for an issue.
- Provide a focal point for an issue.
- Provide a consistent approach for in-process issues.
- Act as a coordination point with other operating divisions, Counsel and within SB/SE.

A list of current IMTs can be found on the Abusive Transactions website at:<http://mysbse.web.irs.gov/AboutSBSE/Exam/at/imt/default.aspx>

#### **5.20.1.2 (01-12-2016) Collection's Role in ATAT**

1. There is an ATAT program in each Field Collection Area with one or more ATAT Coordinators (group managers) who provide oversight and act as a central point of coordination for the ATAT program in their Area. SB/SE Collection Policy supports Area ATAT programs by providing policy guidance, technical assistance and training.
2. The Collection ATAT program partners with other divisions including SB/SE Examination and LB&I, to assist in the development of abusive scheme promoter/preparer investigations and to ensure effective collection action is taken, when necessary, as early as is allowable by law against promoters, preparers and participants in abusive schemes.
3. In addition to supporting Exam ATTI programs, ATAT revenue officers are in a position to uncover new or similar abusive schemes and possible promoters/preparers in the course of their collection investigations. This information can then be provided to the SB/SE Lead Development Center (LDC) which is the conduit for promoter/preparer leads. Procedures for making referrals to the LDC are listed in IRM 5.20.8.2, *Making a Referral to the SB/SE Lead Development Center (LDC)*.

#### **5.20.1.3 (01-12-2016) Sources of ATAT Casework**

1. Most identified balance due ATAT cases are a direct result of an examination. Organizational priorities have dictated that the Examination function target, classify, and examine these abusive promotion cases. Continued emphasis on abusive schemes by Examination and other operating divisions has resulted in a steady flow of abusive tax promotion cases into revenue officer inventories.
2. The Collection ATAT program provides support for settlement initiatives related to certain abusive transactions. Groups of taxpayers that have participated in a specific abusive transaction are sometimes offered an opportunity to accept a settlement of the examination issues related to that transaction. The terms of the settlement are specific and the time frame for accepting the settlement offer may be firmly established. The settlements are temporary compliance projects with specific conditions related to the payment of the liability. Collection plays a key role in ensuring those conditions are met. For this type of casework, procedures are established and made available to the revenue officers who are assigned collection referrals.
3. Refund schemes based on false withholding claims or refundable credits are another type of abusive scheme. If campus operations fail to stop bogus refunds from issuing, ATAT revenue officers may be contacted to assist with refund recovery. Refund scheme cases are generally identified by the Frivolous Return Program (FRP), which creates an assessment for the falsely claimed credits and contacts SB/SE Collection Policy to coordinate assignment of the resulting ATAT case to the field.

#### **5.20.1.4 (01-12-2016) Casework directed to ATAT**

1. ATAT program support also extends to certain high priority cases that have been identified as casework that is to be assigned to ATAT revenue officers.
  - Taxpayers identified under the Federal Payment Levy Program (FPLP) that meet specific criteria identified in IRM 5.7.9.3.1, *Case Transfer to Abusive Tax Avoidance Transaction (ATAT) Group*, are designated as ATAT casework.
  - Estate and Gift tax casework is assigned to ATAT revenue officers. This includes modules with Master File Tax (MFT) codes of 51, 52, 53, 54, 77, 78 and non-master file accounts.
  - In a wagering case with an excise tax liability of \$75,000 or greater examiners are directed to request the assistance of an ATAT revenue officer to determine collectibility. See IRM 4.24.6.9.3, *Excise Examinations with Wagering Issues*.
  - In highly technical and specialized probation and restitution cases, the Advisor will issue an Other Investigation (OI) to an ATAT Collection group if one or more of the criteria listed in IRM 5.1.5.16.2, *Issuing Other Investigations (OI) to Abusive Tax Avoidance Transaction (ATAT) Collection Groups*, are met.

#### **5.20.1.5 (01-12-2016) Coordinating Early Intervention with Other Functions**

1. Referrals for ATAT revenue officer involvement can come from SB/SE Collection, Examination, LB&I, FRP, Counsel, Criminal Investigation or any other function within the Service. Examination procedures direct revenue agents to consult, coordinate and cooperate with ATAT revenue officers during the examination phase when circumstances warrant. Collection support in the form of early intervention can save time and provide both functions with valuable leads. An early exchange of information assists the revenue officer with preparing a collection strategy and expedites the collection process.
2. Early intervention is a request for the assistance of an ATAT revenue officer, usually originating from the Examination function, in advance of an assessment. The revenue officer assists Examination in one or more of the following ways:
  - To evaluate collection potential
  - To assist in possible jeopardy situation
  - To explain payment options to taxpayers
  - To assist with the development of a promoter/preparer investigation
  - To share leads on income and assets located
  - To research ongoing or prior collection activities that could provide important context to the investigation
3. The ATAT Coordinator is the central Collection contact point for examiners and Examination group managers. Examiners conducting promoter/preparer investigations, requesting early intervention case assignments or needing Collection assistance on any ATAT case should contact the local ATAT Coordinator through their group manager. A list of ATAT Coordinators can be located on MySB/SE at <http://mysbse.web.irs.gov/Collection/toolsprocesses/ColIATAT/contacts/19487.aspx>.
4. The ATAT Coordinator will assign the case based on established work plan priorities to a revenue officer. If a revenue officer is expected to charge over 30 minutes of time working with an examiner, a Compliance Initiative Program (CIP), CIP-Other, will be opened on Integrated Collection System (ICS). A CIP authorizes revenue officers to work cooperatively with examiners, maintain a history of actions taken, and charge time to the case.

#### 5.20.1.6 (01-12-2016)

##### Assistance on Promoter/Preparer Investigations

1. Once a promoter/preparer lead is approved by the SB/SE Lead Development Center and assigned to an examiner, Collection Policy sends the local ATAT Coordinator a copy of the approved IRC Section 6700/6701 investigation and posts the memorandum to the ATAT shared server.
2. Prior to assessment of a promoter/preparer penalty, the ATAT Coordinator is responsible for determining if a promoter/preparer investigation should be assigned to an ATAT revenue officer. The ATAT Coordinator will consult with the local Examination ATTI manager to decide if or how a revenue officer might assist in the investigation. Generally if the promoter/preparer or a related entity has a preexisting liability, assignment to an ATAT revenue officer is warranted.
3. The ATAT Coordinator will ensure assessed promoter/preparer penalties in their Area are assigned to ATAT revenue officers. See IRM 5.20.1.7, *Collection ATAT Coordinator Responsibilities*, for instruction on using the ENTITY system to identify these penalties in the Area queue.
4. See IRM 5.20.8, *Abusive Tax Avoidance Transactions, Promoter/Preparer Investigations*, for more information on promoter/preparer investigations.

#### 5.20.1.7 (01-12-2016)

##### Collection ATAT Coordinator Responsibilities

1. The Collection ATAT Coordinator is responsible for ensuring that ATAT cases are controlled and transitioned properly from Examination to Collection. The ATAT Coordinator will:
  - A. Act as a central Collection point of contact for Area employees for Collection/Examination ATAT issues.
  - B. Coordinate Collection support for examinations involving ATAT taxpayers.
  - C. Ensure appropriate assignment and routing of cases from Examination to Collection. This may include monitoring cases after the closing of an examination and prior to assessment, and securing and delivering appropriate documents from examination files to Collection groups on cases identified for field assignment.
  - D. Ensure appropriate assignment and routing of estate and gift tax cases to revenue officers designated and trained to work this specific inventory.
  - E. Ensure Area ATAT cases are properly sub-coded at the time they are identified and assigned.
  - F. Act as a resource person for Collection employees working ATAT investigations.
  - G. Foster cooperative efforts between Collection, Examination and Criminal Investigation.
  - H. Act as liaison for technical and case related ATAT issues between SB/SE analysts and revenue officers.
    - I. Provide a central Collection point of contact for appropriate assignment and routing of cases from Appeals to Collection.
  - J. Conduct periodic reviews of available ATAT inventory (ATAT hold file, ENTITY queries, Examination Stat 90 listings) to identify ATAT cases for prompt assignment to the field.
  - K. Identify and monitor the status of Special Compliance Program (SCP) designations for Collection employees working ATAT cases. See IRM 5.20.2.2, *Special Compliance Program Designation*, for additional information.
  - L. Serve as a subject matter expert and assist with training within the Area on emerging ATAT issues.
2. The ATAT Automated Inventory Delivery System delivers certain ATAT cases directly to a designated ICS hold file established for each Area's ATAT program. The ICS hold files AOTOXX75, AOTOXX92, and AOTOXX93 are designated for the ATAT Automated Inventory Delivery System and no other cases are to be housed there. The criteria for delivery is a case that has a balance due greater than \$100,000, and at least one module on the account has an ATAT Exam special project code, ATAT civil penalty code or is an estate and gift tax case. These cases are designated as high priority. Each ATAT Coordinator has the responsibility to:
  - A. Review the designated ICS hold file bi-weekly to select applicable work pertaining to their group or geographical area of coverage.
  - B. Monitor cases for assignment to a revenue officer.
  - C. Address any impending ASED/CSED statute issues.
  - D. Ensure that only ATAT work that meets the criteria above is placed in the designated ATAT hold file and not co-mingled with other types of ATAT or general program casework.
  - E. Ensure cases are not residing in the designated hold file for more than 120 days. If a case cannot be assigned within 120 days, it should be returned to the queue.

#### 5.20.1.8 (01-12-2016)

##### Assigning ATAT Cases within Collection

1. The ATAT Coordinator is the central contact point for brokering ATAT cases within Collection. Although all revenue officers may work collection cases involving ATAT schemes, a Collection group manager may initiate a request to their Area's ATAT Coordinator to transfer these cases to an ATAT group. The ATAT Coordinator will determine whether to accept case transfer based on workload priority and case appropriateness. If the case is not accepted for transfer, the ATAT Coordinator may offer the assistance of an ATAT revenue officer in working the case.
2. Cases with an ATAT sub-code may be worked by a general program revenue officer. However, as defined in IRM 5.20.1.10, *Prioritization of ATAT Work*, ATAT promoters/preparers, Compliance Impact – High Profile ATAT cases, Refund Schemes, Exam Referrals on settlement initiatives and estate & gift tax cases generally should remain assigned within the ATAT program. The local ATAT Coordinator will determine whether to keep a case within the ATAT program or work with the general program to assign the case.

**Example:**

When a taxpayer relocates outside the geographic area covered by the ATAT group, the ATAT Coordinator will ensure any investigation of assets in the taxpayer's original location is concluded. The ATAT Coordinator will generally transfer the case to the local ATAT Coordinator where the taxpayer resides. The local ATAT Coordinator will determine whether to assign the case to an ATAT revenue officer or work with a local general program group manager to assign the case to a general program revenue officer. Similarly, the ATAT Coordinator issuing an OI to research a taxpayer's assets may route the OI to the local ATAT Coordinator. The local ATAT Coordinator will either assign the OI to an ATAT revenue officer or work with a local group manager to assign the OI to a general program revenue officer.

**5.20.1.9 (01-12-2016)  
Finding ATAT Inventory**

1. ATAT Coordinators have several resources available to identify and assign the most productive ATAT cases. ATAT Coordinators should regularly check these resources to ensure high priority work is assigned to the field in a timely manner.
2. The **ATAT Automated Inventory Delivery System** delivers certain ATAT cases directly to a single ICS hold file established for each Area's ATAT Program. ATAT Coordinators can directly assign cases from the ICS hold files. Since the Automated Inventory Delivery System has limitations in finding and systemically delivering all appropriate ATAT work, the ATAT Coordinators may need to search the queue for additional ATAT work in order to meet revenue officer inventory needs.
3. ATAT Coordinators can search for balance due ATAT cases using several **ENTITY queries** which are stored under Module Management. The cases can be assigned from the queue through the ENTITY system. The queries enable ATAT Coordinators to search for cases by Exam special project code, ATAT civil penalty code or a combination of the two. Examination uses special project codes to identify examinations from special projects, including those connected with Abusive Transactions. These codes are found on TXMOD for modules with a deficiency resulting from an ATAT examination.

**Example:**

424R 09292009 0.00 20094008 19277-272-20000-9 SOURCE-CD>40 SPCL-PROJ>0996

The queries can be run for all ATAT open or queue modules in the Area. ENTITY queries in Module Management do not always display a complete list of all balance due modules for the taxpayer's account. For modules that appear to be low priority in the ENTITY queries below, research IDRS to determine if additional modules not appearing on the report would convert the case into a higher priority. The following is a list of the available queries:

- A. ATAT All Codes (Civ & Spec)
  - Lists ALL ATAT special project codes and civil penalty codes in one query
  - National Public Query
- B. ATAT All Codes (High Risk)
  - Lists ALL ATAT special project codes and civil penalty codes in one query
  - Only includes modules that are high risk (99-108)
  - National Public Query
- C. ATAT All Codes / Case = \$100K+
  - Lists ALL ATAT special project codes and civil penalty codes in one query
  - Only includes modules that have a case balance of \$100,000 or more
  - National Public Query
- D. ATAT CIVIL PENALTY CODES
  - Civil penalty code: 628, 631, 648, 659, 660, 666, 668, 625, 634, 636, 595, 596, 565, 687, 597, 598 or 594
  - National Public Query
- E. ATAT ESTATE & GIFT National
  - MFT: 51, 52, 53, 54, 77 or 78
  - National Public Query
- F. ATAT PROJECT CODES
  - Special Project Codes
  - National Public Query

A complete list of the codes included in the query can be displayed by clicking F10 after the query has been loaded.

4. The **Exam Closed Case Status 90 Report** is a report that is pulled by Exam Planning and Special Programs (PSP) using Exam ATAT project and tracking codes. Collection Policy receives the stat 90 listing quarterly and has the list run against IDRS to facilitate the identification of closed SB/SE Exam and LB&I ATAT cases with collection issues. Contact SB/SE Collection Policy ATAT analysts to receive the report. The ATAT Coordinator may also contact their local PSP office to request an Area stat 90 report.
5. ATAT Coordinators can search for balance due estate & gift non-master file cases using **Automated Non-Master File (ANMF)**. Request access to ANMF via the Online 5081 Application. A query under "Research Open Non-Master File Account" can be performed using MFT 53 and 54.

**5.20.1.10 (01-12-2016)  
Prioritization of ATAT Work**

1. Risk levels have been identified for ATAT casework in order to assist in the assignment of priority cases to revenue officers. However these scores are not always reflected in automated collection systems. Collection will prioritize and work ATAT cases in the following order:

- A. ATAT Promoters/Preparers – A balance due account for taxpayers involved in an abusive tax avoidance transaction, who are the subject of an approved IRC 6700 or 6701 investigation, will be the highest priority cases for revenue officers. The risk level for promoter/preparer penalty (IRC 6700/6701) cases is high priority.

**Note:**

The ATAT Coordinator is responsible for determining if a preassessed promoter/preparer investigation should be assigned to an ATAT revenue officer after consulting with the Examination ATTI manager. See IRM 5.20.8.4, **Coordination with the Examination Function**, for more information.

- B. Compliance Impact – High Profile ATAT Cases – Any case involving promoter associates, promoter trustees, other close involvement with the promoter, and any cases with unpaid balance of assessments in excess of \$1 million are considered of the highest priority work for revenue officers. The risk level for these cases is high priority.
- C. Refund Schemes - If the case requires the use of jeopardy procedures in order to recover fraudulent refunds the case should be designated as high priority.
- D. Examination Referrals connected to a specific settlement initiative - These compliance initiatives have limited time frames and are established to encourage voluntary compliance. It is critical all necessary and appropriate actions be taken timely and coordinated with the referring operating division. These cases are designated as high priority.
- E. Estate & Gift Tax Cases - For revenue officers designated to work estate & gift inventory, any case with an unpaid balance of assessment in excess of \$1 million will be designated as high priority.
- F. Large Dollar ATAT Cases – Large dollar cases, for ATAT purposes, are those with unpaid balance of assessments in excess of \$100,000 (IMF cases). This includes cases delivered to the designated hold files from the ATAT Automated Inventory Delivery system, which may include non-master file accounts. These cases are designated as high priority.
- G. Lower dollar ATAT cases - Lower dollar cases, for ATAT purposes, are those with unpaid balance of assessments less than \$100,000 (IMF case) that are not whipsawed. The risk level for these cases is medium priority.
- H. Estate & gift tax cases are assigned based on the systemic risk score assigned to each case.

[More Internal Revenue Manual](#)



## Part 5. Collecting Process

### Chapter 20. Abusive Tax Avoidance Transactions (ATAT)

#### Section 2. Abusive Tax Avoidance Transactions Time Reporting

##### 5.20.2 Abusive Tax Avoidance Transactions Time Reporting

- 5.20.2.1 [Introduction](#)
- 5.20.2.2 [Abusive Tax Avoidance Transactions Time Reporting](#)
- 5.20.2.3 [Special Compliance Program Designation](#)
- 5.20.2.4 [Aging of ATAT and Suit Development Cases](#)

##### Manual Transmittal

March 11, 2016

##### Purpose

(1) This transmits revised IRM 5.20.2, *Abusive Tax Avoidance Transactions, Abusive Tax Avoidance Transactions Time Reporting*.

##### Material Changes

- (1) IRM 5.20.2.1 updated to include Introduction. The following paragraphs have been renumbered.
- (2) IRM 5.20.2.2.1 updated to include new names and definitions for ATAT subcodes.
- (3) IRM 5.20.2.4(3) removed group secretary from the list of those able to initiate input of TC 971 AC 281 on ICS.
- (4) IRM 5.20.2.4(5)(c) updated to remove duplicate information and to reference IRM 5.20.2.2.1(5)(a) for guidance.
- (5) IRM 5.20.2.4(5)(d) updated to delete information on suit development cases and to reference IRM 25.3.2 for guidance.
- (6) IRM 5.20.2.4(6) added to provide guidance on the automatic input of TC 972 AC 281 when last module closes on a case.
- (7) Editorial corrections made throughout IRM 5.20.2.

##### Effect on Other Documents

This material supersedes IRM 5.20.2, Time Reporting, dated 10-1-2012.

##### Audience

The target audience is SB/SE Collection employees.

##### Effective Date

(03-11-2016)

Kristen E. Bailey  
Director, Collection Policy  
Small Business/Self-Employed

##### 5.20.2.1 (03-11-2016)

###### Introduction

1. This IRM provides guidance on the proper subcodes, timekeeping and maintenance of a case identified as an Abusive Tax Avoidance Transactions (ATAT) case.

##### 5.20.2.2 (03-11-2016)

###### Abusive Tax Avoidance Transactions Time Reporting

1. There are designated Integrated Collection System (ICS) subcodes and non-case direct time codes that are to be used to capture and report time spent on an ATAT case.
2. ATAT cases must be correctly subcoded to accurately capture ATAT time. Per IRM 5.2.1.10(2), *ICS and ENTITY Subcodes (Field Collection Areas only)*, a subcode should be immediately assigned by the revenue officer or group manager before the end of the reporting period in which the case was assigned. Time spent on an assigned ATAT case will be charged to that case.

##### 5.20.2.2.1 (03-11-2016)

###### Abusive Tax Avoidance Transactions Subcodes

1. The following subcodes are available on ICS to identify ATAT cases.
  - A. **Subcode 309 – ATAT.** Use this code with all Collection ATAT work not defined by codes 310 through 323.
  - B. **Subcode 310 – Collection Strategy (Formerly Offshore Voluntary Compliance Initiative (OVCI)).** This subcode is reserved for future use and will be defined for a specific ATAT project or compliance initiative as it is identified. Do not use this subcode until directed by Headquarters. The update to the title of this subcode will not take place in ICS until FY 18.
  - C. **Subcode 311 – Offshore Voluntary Disclosure Initiative/Program (OVDI/OVDP).** Use this code with all collection work related to OVDI/OVDP applicants.

- D. Subcode 312 – Intermediary Transactions.** Use this code for the assignment of Large Business & International (LB&I) examination requests for collection assistance or audit assessments for taxpayer entities participating in an Intermediary Transaction Tax Shelter, including any transferee assessments resulting from audit assessments. This tax shelter is defined in Notice 2001-16 and 2008-111.
- E. Subcode 313 – Promoter/Preparer (Formerly Promoter).** Use this code for all promoter/preparer investigations assigned as Bal Dues, Del Rets, or Compliance Initiative Program (CIP). The update to the title of this subcode will not take place in ICS until FY 18.
- F. Subcode 314 – Notice 2000-44 (Son of BOSS).** Use this code with all Collection ATAT work related to taxpayers identified under Notice 2000-44, *Loss Deductions, Disallowance of Artificial Losses: Abusive Tax Shelters: Partnerships: Basis*. The type of transaction, or series of transactions, referred to as the "Son of BOSS" transaction is a "listed" transaction outlined in Notice 2000-44. It generally refers to certain transactions that are marketed to generate tax losses through the taxpayer's purported creation of artificially high basis in partnership interests. The taxpayer then attempts to recognize deductible losses on the disposition of the partnership interest or assets coming out of the partnership, even though no economic loss is incurred. Several examination project codes are used to identify "Son of BOSS" examinations. All "Son of BOSS" examinations will be identified by tracking code 9767 on the Examination Returns Control System (ERCS).
- G. Subcode 315 - Collection Strategy (Formerly Announcement 2005-80 Global Settlement Initiative).** This subcode is reserved for future use and will be defined for a specific ATAT project or compliance initiative as it is identified. Do not use this subcode until directed by Headquarters. The update to the title of this subcode will not take place in ICS until FY 18.
- H. Subcode 316 - ATAT FPLP Contract Vendor.** Use this code on all Federal Payment Levy Program (FPLP) contract vendor cases assigned to an ATAT group. An FPLP case is identified by a TC 971 AC 060 indicating a match between a delinquent account and a Financial Management Service (FMS) payment. The case will be assigned to an ATAT group when the investigation of the taxpayer reveals one or more of the following characteristics:
- Three or more in-business or out-of-business related entities identified.
  - Any of the responsible parties has outstanding Trust Fund Recovery Penalty assessments from three or more entities.
  - Case has a foreign component.
- I. Subcode 317 - Collection Strategy (Formerly High Dollar Currently Not Collectible (CNC) Project).** This subcode is reserved for future use and will be defined for a specific ATAT project or compliance initiative as it is identified. Do not use this subcode until directed by Headquarters. The update to the title of this subcode will not take place in ICS until FY 18.
- J. Subcode 318 - Collection Strategy (Formerly Easement Settlement Offer).** This subcode is reserved for future use and will be defined for a specific ATAT project or compliance initiative as it is identified. Do not use this subcode until directed by Headquarters. The update to the title of this subcode will not take place in ICS until FY 18.
- K. Subcode 319 — Refund Schemes.** Use this code on cases where the taxpayer(s) claimed false withholding credits (W-2 and Form 1099-OID) or other refundable credits (for example, Form 4136, Credit for Federal Tax Paid on Fuels and Form 2439, Notice to Shareholders of Undistributed Long-Term Capital Gains) which resulted in a fraudulent refund. Subcode 319 should **only** be used when a revenue officer is working in the recovery of a refund. If the refund module is closed due to actions such as a CI referral, suit, offer in compromise, or currently not collectible status and no new refund scheme module is received (e.g. MFT 55 frivolous penalties) then subcode 309 for general ATAT work should be used.
- L. Subcode 320 - LB&I Distressed Asset Trust (DAT).** Use this code on LB&I DAT cases identified under Notice 2008-34.
- M. Subcode 321 - IRC § 6707A Penalty Assessments.** Use this code with all IRC § 6707A penalty assessment cases. IRC § 6707A penalty assessments can be identified by MFT code 55, Transaction Code (TC) 240 reference number 648 for individuals and MFT code 13, TC 240 reference number 648 for all other cases.
- N. Subcode 322 - Offshore Banking (Formerly United Bank of Switzerland (UBS)).** Use this code with all collection work resulting from examinations of taxpayers who did not voluntarily disclose their offshore activity. These cases are referred to as treaty cases by revenue agents involved in the examinations. Do not use subcode 322 for OVDI/OVDP cases. The update to the title of this subcode will not take place in ICS until FY 18.
- O. Subcode 323 - ATAT Estate and Gift.** Use this code on all ATAT Estate and Gift cases.
- P. Subcodes 324 - 339. Collection Strategy.** These subcodes have been reserved for future use and will be defined for specific ATAT projects and compliance initiatives as they are identified. Do not use these subcodes until directed by Headquarters.

2. Cases must reflect one of the ATAT subcodes to accurately capture collection time spent on ATAT cases.

3. Subcode 309 should be used as the default ATAT subcode when none of the other ATAT subcodes apply.

4. The creation of a CIP for ATAT Bal Due, ATAT Del Ret, or ATAT Combo cases is not necessary. It is necessary to create a CIP with one of the ATAT subcodes when there is no Bal Due and/or Del Ret available.

5. A case that has been correctly subcoded as an ATAT case will retain its ATAT subcode throughout the life of the case.

A. Fraud Development cases. Per IRM 25.1.8.8, *Aging of Collection Fraud Cases*, ATAT cases will not be updated to ICS subcode 910 when Fraud Technical Advisor (FTA) assistance is present. In these instances, the ATAT subcode will remain. The group manager or their designee will request upload of TC 971 AC 281 through ICS if it was not previously input. To initiate the TC 971 AC 281, the group manager should access the case in ICS, use the drop down menu "Collection Activities" and select "Generate TC 971/972 AC 281" and input the TC 971 AC 281. With FTA approval documented on Form 11661-A, *Fraud Development Recommendation - Collection*, the revenue officer will input "FRD" for fraud in the location block on ICS. Under Entity Detail select "Name/Address." Select the taxpayer's address and click on view/edit. Enter "FRD" in the location block and save. The TC 971 AC 281 will stop the cycle clock and prevent the taxpayer entity from being included in systemic IDRS/Entity case aging reports. It is important to enter **FRD** in the location block. This is the mechanism for including the case in the Area fraud report. If TC 971 AC 281 and **FRD** are not input, the case will not be counted in the Area fraud report. When the case is no longer in fraud development status or FTA involvement is withdrawn, the revenue officer will delete "FRD" from the location block.

B. Offer in Compromise (OIC). The correct ICS subcode must be maintained on the case when an OIC is submitted. Per IRM 5.1.2.5.5.2, *Processing Offer in Compromise (OIC) Receipts*, when an offer is received on an assigned case by a field revenue officer, Form 657, Offer in Compromise Revenue Officer Report, must be completed and attached to the offer package. Form 657 should include any information known about the nature of the scheme and the taxpayer's income and assets. If return of the OIC is recommended, then the ATAT subcode will remain on the case. If an offer is submitted and collection will be suspended and the offer will be worked by the OIC Specialist, then the ICS subcode should be updated to 106, OIC. The time spent completing Form 657 and forwarding the offer to Centralized Offer In Compromise for processing should not be reported to time code 106. The subcode on ICS should only be updated to 106 by an offer group upon receipt of the offer file for investigation after the processability determination has been made.

C. Collection Due Process (CDP). CDP cases will retain their ATAT subcode.

#### 5.20.2.2.2 (03-11-2016) Non-Case Direct Time Codes

1. Time codes 309 through 339 are available on the ICS pick-list to capture direct case time spent by collection employees on non-assigned ATAT work. For example, these codes should be used when assistance is given to another revenue officer working an ATAT case or a preliminary opinion is provided to Examination and a CIP is not required.

#### 5.20.2.3 (10-01-2012) Special Compliance Program Designation



1. A revenue officer is designated on ICS as Position Type "Special Compliance Program" (SCP) when 65% or more of their monthly total direct time is charged to the ATAT time codes for two consecutive months. The designation should be removed for any employee not meeting the 65% direct time rule for two consecutive months. Managers of employees working ATAT cases should monitor time reporting to ensure revenue officers are properly designated as SCP. Requests to update the designation should be made to the ICS Quality Analyst (IQA). The IQA is responsible for inputting and removing the designation on the ICS employee tables.
2. A revenue officer designated as SCP is excluded from targeted inventory measures allowing adjustments to lower inventories.

#### 5.20.2.4 (03-11-2016)

#### Aging of ATAT and Suit Development Cases

1. In addition to potential fraud development cases, TC 971 AC 281 can be input on ATAT and suit development cases to suspend the overage calculation.
2. The following cases qualify for suspension of the overage calculation with group manager approval:
  - All cases with an ICS subcode of 309 through 339
  - Complex or fact-intensive cases where additional time is needed to analyze and gather the facts necessary for developing a suit recommendation
3. The TC 971 AC 281 is input by selecting "Generate TC 971/972 AC 281" from the Collection Activities menu to initiate the upload of TC 971 AC 281 or TC 972 AC 281. This option is only available to group managers, acting group managers, and IQAs. Group managers must document approval to input the TC 971 AC 281 in the ICS case history.
4. "Generate TC 971/972 AC 281" has two sub choices. The first will generate a TC 971 AC 281 to suspend the overage clock. The second will generate a TC 972 AC 281 which turns the overage clock back on. ICS cannot upload these transactions to IDRS unless there is open IDRS Bal Due or Del Ret module, therefore option "Generate TC 971/972 AC 281" is blocked unless an open IDRS Bal Due or Del Ret module is present. Prepare a manual Form 4844 if there are no open modules on ICS.
5. Fraud, ATAT, and suit development cases will be marked with a TC 971 AC 281 and distinguished as follows:
  - A. Fraud – Revenue officers will follow the guidance in IRM 25.1.8.8, *Aging of Collection Fraud Cases*. After approval of Form 11661-A by the FTA, the group manager or their designee will input ICS subcode 910 to the case. The ICS subcode 910 will automatically trigger input of IDRS TC 971 AC 281 on the entity.
  - B. ATAT – ATAT cases will retain the appropriate ICS subcode of 309 through 339. Once group manager approval is documented in the ICS case history, the group manager or their designee will request upload of TC 971 AC 281 through the ICS application "Generate TC 971/972 AC 281". The TC 971 AC 281 can be input at the time of case assignment or at a later point in the case.
  - C. ATAT Fraud – ATAT cases in fraud development status will retain their ATAT ICS subcode. See IRM 5.20.2.2.1(5)(a) for guidance on inputting TC 971 AC 281 and notating "FRD" for fraud in the location block on ICS.
  - D. Suit Development – See IRM 25.3.2.6.1, **Aging Suit Development Cases**, for information on suspending the overage calculation on general program suit development cases.
6. TC 972 AC 281 will be automatically generated when the last IDRS module is closed. There is no need to manually request input of TC 972 AC 281 at the time of closing a case. If a case will remain open but the overage clock needs to be started, manually request input of TC 972 AC 281 through the ICS application "Generate TC 971/972 AC 281". To check for an unreversed TC 971 AC 281 take the following steps:
  - From the case summary screen, select "Entity Detail Menu"
  - Select item "View Entity Transactions"
  - A listing of the Entity transactions on the case will appear; scroll through to check for any unreversed TC 971 AC 281.

[More Internal Revenue Manual](#)





## Part 5. Collecting Process

### Chapter 20. Abusive Tax Avoidance Transactions (ATAT)

#### Section 3. Third Party Contacts

##### 5.20.3 Third Party Contacts

- 5.20.3.1 [Third Party Contacts](#)

##### Manual Transmittal

March 10, 2016

##### Purpose

(1) This transmits revised IRM 5.20.3, *Abusive Tax Avoidance Transactions, Third Party Contacts*.

##### Material Changes

- (1) IRM 5.20.3.1 updated IRM citations.
- (2) IRM 5.20.3.1.2 updated title to "Promoter/Preparer Investigations". Updated section to reference preparer investigations.
- (3) Editorial corrections made throughout the IRM.

##### Effect on Other Documents

This material supersedes IRM 5.20.3, Third Party Contact, dated 7-20-2010.

##### Audience

The target audience is SB/SE Collection employees.

##### Effective Date

(03-10-2016)

Kristen E. Bailey  
Director, Collection Policy  
Small Business/Self-Employed

##### 5.20.3.1 (03-10-2016) Third Party Contacts

1. Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98) created IRC 7602(c), *Notice of Contact of Third Parties*, to require that before Service employees initiate contact with third parties for the determination or collection of a taxpayer's tax liability, the taxpayer must be given reasonable notice in advance that third parties may be contacted. IRC 7602(c) also requires the Service to make a record of persons contacted and provide that record to the taxpayer upon the taxpayer's request.
2. The provisions of IRC 7602(c) must be followed prior to making a third party contact on an Abusive Tax Avoidance Transaction (ATAT) case. Refer to IRM 25.27.1, *Third Party Contact Program*, for general service wide guidance and IRM 5.1.1.12, *Third Party Contacts*, for guidance specific to Collection casework.
3. Effective May 16, 2005, advance notification of potential third party contact is incorporated into Publication 1 (Pub 1), *Your Rights as a Taxpayer*. This means that under most circumstances, Field Collection taxpayers will be notified of potential third party contacts with letters that include Pub 1 received through the IRS notice stream. See IRM 25.27.1.3.1, *TPC Notification Procedures*, for further information.
4. There is no exception to IRC 7602(c) third party contact requirements for ATAT cases. The only exceptions to IRC 7602(c) third party contact requirements are those referred to in IRM 25.27.1.3.2, *Exceptions to IRC 7602(c) Notification Requirements*. A pending criminal investigation is one of the exceptions under IRC 7602(c)(3). If a criminal investigation is pending, the revenue officer should contact Criminal Investigation (CI) prior to sending out a third party notice if the taxpayer has not received this notification through the IRS notice stream. Consult with Counsel to determine if the collection investigation is also excluded from third party notification requirements because of the pending criminal investigation.
5. Revenue officers may conduct third party contacts that require special consideration while working ATAT cases in conjunction with an Examination investigation. These can include:
  - Pre-assessment investigations where Examination has requested collection assistance during the audit process.
  - When the revenue officer is assisting with the development of a promoter/preparer investigation.

##### 5.20.3.1.1 (09-21-2005)

##### Pre-assessment Investigations

1. When working a pre-assessment investigation where Examination has requested revenue officer assistance during the audit process, the revenue officer is generally working under a notification of potential third party contacts issued by the examiner. In cases where a revenue officer is working concurrently with an examiner and there is no assessed liability against the taxpayer, the revenue officer should verify that the examiner has issued the required notification of potential third party contacts.
2. An ATAT pre-assessment investigation is subject to the same third party contact regulations as any other case where a liability has not yet been assessed.

##### 5.20.3.1.2 (03-10-2016)

##### Promoter/Preparer Investigations

1. Prior to the assessment of any penalties, Examination may request revenue officer assistance during promoter/preparer investigations. IRC 7602(c) requires that a promoter/preparer receive notification before any third party contacts are made. When conducting a promoter/preparer investigation, the examiner provides Letter 3164P, *Third Party Notification for IRC 6700/6701 Investigations*, at the initial interview. While Examination may have issued a Letter 3164E or Letter 3164P at the onset of the investigation, revenue officers must recognize the limited scope of those letters. When a revenue officer is operating under the third party notification issued by the examiner, he or she is only authorized to make contacts for the purpose identified in that notice. Once the purpose of the contact changes, for example promoter/preparer penalties are assessed and assigned, the revenue officer must ensure the taxpayer receives notice of third party contacts specific to a collection investigation.
2. It is especially important for revenue officers to coordinate actions with Examination on promoter/preparer investigation cases. Promoter/preparer investigations may involve ongoing criminal investigations. IRC 7602(c)(3)(C) provides an exception to the third party notification requirements with respect to a pending criminal investigation. This exception does not apply to any parallel civil investigation third party contacts that CI has authorized regarding a promoter/preparer under investigation. See IRM 4.32.2.7.3.2, *Third Party Contacts*, and IRM 4.32.2.7.3(5), *Promoter Interviews*, for additional information.

#### 5.20.3.1.3 (03-10-2016)

##### Trust Cases

1. When the taxpayer is a trust, special consideration must be given to determine who is the taxpayer and who is a third party. If a determination has not yet been made, initial correspondence should be sent directly to the trust.
2. Any contact made with the grantor must be treated as a third party contact unless the grantor is the trustee. The grantor is the person by whom a grant or gift is made. The creator of a trust is generally referred to as the grantor of the trust. Other common titles are settler, creator, and trustor.
3. Contacts made with trustees are not third party contacts. The trustee is a person who is charged with the fiduciary duty of management and control of the trust property for the benefit of the beneficiaries. Review Form 1041, *U.S. Income Tax Return for Estates & Trusts*, to determine who is designated as the trustee. Form 56, *Notice Concerning Fiduciary Relationship*, may also be reviewed.
4. Treas. Reg. 601.503(d)(5) imposes requirements on trustees and authorizes Service officials to request certain information that establishes the trustee's authority to act on behalf of the trust. The regulation states:

*In the case of a taxpayer who has appointed a trustee, a Form 56, "Notice Concerning Fiduciary Relationship", should be filed by the trustee. If there is more than one trustee appointed, all should join unless it is shown that fewer than all have authority to act. Internal Revenue Service officials may require the submission of documentary evidence of the authority of the trustee to act. Such evidence may be either a copy of a properly executed trust instrument or a certified copy of extracts from the trust instruments, showing:*

- A. *The date of the instrument;*
- B. *That it is or is not of record in any court;*
- C. *The names of the beneficiaries;*
- D. *The appointment of the trustee, the authority granted, and other information as may be necessary to show that such authority extends to Federal tax matters; and*
- E. *That the trust has not been terminated and the trustee appointed therein is still legally acting as such.*

*In the event that the trustee appointed in the original trust instrument has been replaced by another trustee, documentary evidence of the appointment of the new trustee must be submitted.*

[More Internal Revenue Manual](#)



## Part 5. Collecting Process

### Chapter 20. Abusive Tax Avoidance Transactions (ATAT)

#### Section 4. Summons Procedures

##### 5.20.4 Summons Procedures

- 5.20.4.1 [Summons Procedures Related to ATAT Collection Work](#)

##### Manual Transmittal

December 30, 2013

##### Purpose

(1) This transmits revised IRM 5.20.4, Summons Procedures.

##### Material Changes

- (1) IRM 5.20.4.1(4) updated link.
- (2) IRM 5.20.4.1(7) updated cite from "Technical Services Advisory" to "Advisory".
- (3) IRM 5.20.4.1(9) updated IRM cite.

##### Effect on Other Documents

This material supersedes IRM 5.20.4, Summons Procedures, dated 9-3-2010.

##### Audience

The target audience is SB/SE Collection employees.

##### Effective Date

(12-30-2013)

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

##### 5.20.4.1 (12-30-2013) Summons Procedures Related to ATAT Collection Work

1. The purpose of this section is to address summons issues that are commonly found in Abusive Tax Avoidance Transactions (ATAT) case work. ATAT case work often requires the use of third party summonses in order to investigate and establish ownership of assets and income streams.
2. When serving a summons on a taxpayer or third party in collection cases involving ATAT issues, follow procedural guidance outlined in IRM 25.5, *Summons Handbook*, and IRM 5.17.6, *Summonses*, for basic legal concepts regarding the use and enforcement of administrative summonses. Managerial approval is required on all third party summonses. See IRM 25.5.1.3.3(2), *Authority to Issue Summons Requiring Approval (except "John Doe" Summonses)*, for additional information.
3. The requirements of IRC 7602(c), *Notice of contact of third parties*, must have been met prior to issuing a summons to a third party. See IRM 5.1.17, *Third Party Contacts*, for procedural requirements and exceptions.
4. A third-party summons can be served to obtain information from any person deemed proper including, but not limited to, banks and other financial institutions, real estate and escrow companies, internet access and service providers (to the extent allowed by the Electronic Communications Privacy Act of 1986), e-commerce entities, utility or other service organizations, and to obtain the testimony of trustees and other fiduciaries. IRM 25.5.2 Exhibits 2 through 14 provide specific wording to include on the body of Form 2039, depending on the information needed for the investigation. Additional information which may be helpful in preparing Form 2039 can be accessed on the Collection E-Business Corner website at <http://mysbse.web.irs.gov/Collection/toolsprocesses/EBusiness/default.aspx>.
5. Coordination with examination -
  1. In cases where a revenue officer is working concurrently with an examiner on an investigation and no assessment has been made, the revenue officer must ensure a proper Letter 3164, *Third Party Contact Letter*, has been issued by the examiner prior to issuing a third party summons. Refer to IRM 5.20.3, *Third Party Contacts*.
  2. When the revenue officer is assigned a balance due account and there is a concurrent Examination assignment, coordinate summonses to avoid summoning records that are already in the possession of IRS employees.
  3. **Summoned records can be shared between Collection and Examination in most cases.** However, any summons issued for collection purposes should be limited in focus to materials or testimony related to collecting the tax. For instance, when a collection summons seeks information regarding a taxpayer's customers, the focus should be on types of customer records and time periods for these records that may reflect a current levy source for payment of the taxpayer's assessed, but unpaid, taxes.
6. If there are existing unpaid assessments, a summons for information can be issued as long as the requested information is to aid in the collection of the assessment. IRC 7602(d) limits the authority of the IRS to issue summonses when there is a Department of Justice referral so coordination with Examination and Criminal Investigation (CI) is critical. The resulting information can be shared and used by other divisions of the IRS in most cases but there are exceptions. See IRM 25.5.6.5.2, *Sharing Information Obtained by a Collection Summons With IRS Personnel Conducting Examinations or Criminal Investigations*, for a more detailed explanation.

7. ATAT taxpayers may raise a defense against an issued summons citing their rights against self incrimination under the Fifth Amendment to the Constitution. This defense is not necessarily applicable in every case and when raised, the revenue officer should contact Area Counsel through Advisory for guidance on the application of the constitutional argument to a specific situation. See IRM 5.17.6.11, *Constitutional Defenses*, for additional discussion of constitutional defenses.
8. Taxpayers may raise other privilege defenses against an issued summons. Contact Area Counsel through Advisory on the application of such privilege claims. See IRM 5.17.6.13 through IRM 5.17.6.17.
9. A taxpayer or its representative may request to make a recording of the proceeding. Advance notice must be given at least 10 days prior to the proceeding and is restricted to an audio recording. The revenue officer must also record the meeting. See IRM 5.1.12.4 , *Taxpayer Recording of Interviews*, for procedure.
10. The exception to notice requirements for a third party summons issued to aid in collection of an assessed liability generally includes summonses issued to investigate a fraudulent conveyance or nominee/alter ego situation. Summonses issued to determine if transferee liability should be asserted are not exempt from third party summons notice requirements. See IRM 25.5.6.5.1, *Scope of the Exception For Summonses Issued in Aid of Collection*, for additional information.

The revenue officer should document the case file with the facts that support his/her position that a nominee or alter ego situation exists. The documentation should clearly state the nexus relationship that exists between the taxpayer and the information summoned. If there is a question regarding nexus, contact Area Counsel through Advisory.

[More Internal Revenue Manual](#)



## Part 5. Collecting Process

### Chapter 20. Abusive Tax Avoidance Transactions (ATAT)

#### Section 6. Whipsaw Assessments

##### 5.20.6 Whipsaw Assessments

- 5.20.6.1 [Whipsaw Assessments](#)

##### Manual Transmittal

February 18, 2014

##### Purpose

(1) This transmits revised IRM 5.20.6, Abusive Tax Avoidance Transactions, Whipsaw Assessments.

##### Material Changes

- (1) IRM 5.20.6.1(2) removed outdated IRM cite.
- (2) IRM 5.20.6.1.4(5) deleted outdated address and included link to locate CCP addresses.
- (3) IRM 5.20.6.1.4(6) remove outdated address.

##### Effect on Other Documents

This material supersedes IRM 5.20.6, Whipsaw Assessments, dated 7-23-2010.

##### Audience

The target audience is SB/SE Collection employees.

##### Effective Date

(02-18-2014)

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

##### 5.20.6.1 (02-18-2014) Whipsaw Assessments

1. Whipsaw statutory notices of deficiency assessments are a technique utilized by examination when auditing an abusive trust situation where a taxpayer has attempted to reduce or eliminate their tax liability through the use of one or more layers of trust entities.
2. A whipsaw assessment is used when the subjects of the examination refuse to cooperate with the Service and the Service is unable to accurately determine the correct and agreed tax owed by each entity. The Service will issue notices of deficiency (one to the individuals, one to the business trust, and one to the family trust), taxing the same income to each entity.

##### 5.20.6.1.1 (09-21-2005) Background

1. Prior to the current use of whipsaw notices, examination would issue notices of deficiency to the individuals only, collapsing the trust income to their individual return. This would result in an assessment against individuals who had no apparent sources of income and no legal title to property. No assessment would be made against the business trust (which had the income stream) or the family trust (which had legal title to the property).

##### 5.20.6.1.2 (09-21-2005) Use of Whipsaw

1. With the present use of whipsaw notices, examination issues notices of deficiency to each of the related entities. If none of the entities appeal, then the assessments are made separately against each of the related entities. This allows collection directly against each entity, rather than through the use of nominee liens, alter ego, etc.
2. Alternatively, if the related cases are petitioned to the Tax Court they will be consolidated for trial and the Service will have a federal court opinion stating that the arrangement is a sham.
3. If it is later found that the trusts are valid, the whipsaw assessments will be reduced to the appropriate amounts.

##### 5.20.6.1.3 (09-21-2005) Identification of Key and Related Cases on IDRS

1. Generally, the use of whipsaw assessments means that the tax may be assessed multiple times against separate trust entities, but the liability will only be collected once. The key case and related case(s) should be controlled by a single revenue officer to monitor payments and prevent over-collection of the liability. If more than one revenue officer is assigned the key and related cases due to the locality of the separate entities, close coordination should take place between the revenue officers, and include the group manager(s), collection ATAT coordinator(s), and ATAT territory manager(s) when needed.

2. When a revenue officer is assigned an ATAT case, especially on a trust (Form 1041) assessment, research should be done to ensure any and all related assessments are found. Other related assessments may be pending in appeals, in the Tax Court, in the queue, in the notice process, or in the hands of another revenue officer. The revenue officer will coordinate with the other function(s) or collection employees and ensure all related entities are addressed appropriately. When possible, it is recommended that the key and related entities all be worked by the same revenue officer.
3. Research should be conducted to find the related entities. Request TXMODA on the open module and look for TC 971 with an action code of 266 (key case – usually IMF) or 267 (related entity). Immediately following will be a related entity TIN, TX-PRD, and MFT.
4. IDRS command code AMDISA should also be researched. The most common project code that will indicate a possible whipsaw assessment is SPCL-PROJ>0233 for Abusive Trust Arrangements. Generally, if the disposal code (DISP-CD>) shown on AMIDSA is other than 07 – Appealed, 10 – Defaulted, 11 – Petitioned, or 13 – Undeliverable, there will not be related whipsaw assessments.
5. It is important to request the Revenue Agent Report (RAR) when working an ATAT case. Pertinent asset and other identifying information is provided in the RAR and related case document. A flowchart or list of the names and TINs of all the related whipsaw entities may also be provided in the RAR.

#### 5.20.6.1.4 (02-18-2014)

#### Collecting Against Whipsaw Assessments

1. As discussed in IRM 5.20.6.1.3, with whipsaw assessments the same income is the basis for assessments against multiple entities. This results in several Bal Due accounts being generated, all with a tax based on the same income. The revenue officer assigned the case needs to coordinate collection actions to prevent over collection of the liability. The liability that has been assessed against multiple entities may be collected only once, either entirely from one entity, or in part from the different entities assessed.
2. The amount assessed against each entity may differ depending on the approach used by Examination. In some instances all income will be assigned to each entity and each assessment will be identical. See Example 1 below. In other circumstances only the actual income attributed to each trust will be used as the basis for the trust's income. See Example 2 below. In both situations, all income will be assigned to the taxpayer's individual income tax return.

#### Example:

1 - **All income assigned to each trust entity.** The audit investigation established the following for the various trusts created by the taxpayer:

Residence Trust - \$50,000 income/receivables  
 Business Trust - \$150,000 income/receivables  
 Rental Trust - \$75,000 income/receivables  
 Taxpayer - \$25,000 income/receivables

In this example, income of \$300,000 will be assigned to all four entities resulting in identical assessments for all four entities.

#### Example:

2  
 Residence Trust - \$50,000 income/receivables  
 Business Trust - \$150,000 income/receivables  
 Rental Trust - \$75,000 income/receivables  
 Taxpayer - \$25,000 income/receivables

In this example each trust would be assessed only the income directly attributed to that specific trust, e.g. Residence Trust \$50,000, but the taxpayer would still be assessed based on the income from all the trusts; \$300,000.

3. If the taxpayer becomes cooperative during the collection process, the taxpayer should be encouraged to collapse the sham trusts, return all assets back into the taxpayer's name, and file corrected returns properly capturing all income on their individual income tax return. If this is done, the revenue officer should work with the revenue agent so that the duplicate trust assessments are abated and the proper tax is reflected on the corrected return.
4. When the taxpayer is uncooperative, the revenue officer will need to take additional steps to abate the duplicate assessments once the liability has been collected in full. Because whipsaw assessments are based on the Service's inability to accurately determine the correct tax owed by each entity, the revenue officer should not abate any liabilities until the expiration of the two year period during which the taxpayer can file a claim for refund of any monies applied to the accounts.
5. After collecting the full liability, the revenue officer will prepare but not process, Form 3870, *Request for Adjustment*, which will abate the duplicate liabilities once the refund period has expired. If needed, the revenue officer will secure the approval to abate the tax from Exam. The revenue officer will report the remaining entities Currently Not Collectible (CNC) with a mandatory follow-up two years from the final payment received to full pay the account. The completed and unprocessed Form 3870 will be included in the case file the revenue officer sends to Centralized Case Processing (CCP). The CCP address can be found at this link <http://mysbse.web.irs.gov/AboutSBSE/aboutccs/ccsprog/casepro/ccpcoll/maillingprocedures/default.aspx>. See IRM 5.16.1.6, *Mandatory Follow Up*, for complete information on processing mandatory follow-ups.
6. The CNC closing code should be 12, Unable to Contact. When a CNC case is closed through ICS with a mandatory follow-up request, after managerial approval, ICS systemically creates a Non-Field OI and assigns it to CCP. The revenue officer then sends the paper file to CCP. CCP will monitor the follow-up. The specific follow-up action should request the case file be returned to the Group Manager so the case can be assigned and a determination made on whether or not it is appropriate to abate the remaining liabilities.
7. When the case is returned the revenue officer will review IDRS transcripts for all whipsaw related entities. This will include closed entities, especially any entities closed based on full payment. The purpose of this review will be to determine if there have been any claims for refund filed by the taxpayer. This can be determined by reviewing the TXMODs for any TC 520s. If any TC 520s are present, the revenue officer should research the closing code and contact Advisory for closing codes 70 through 80 except for closing codes 76 and 77 (Collection Due Process). Contact Insolvency for closing codes 60 - 69 and 81 - 89 and contact Appeals for closing codes 76 and 77 to determine the nature of the litigation and if the abatement request should be processed. If there are no TC 520s on any of the modules then the Forms 3870 should be processed and the case closed.

[More Internal Revenue Manual](#)



## Part 5. Collecting Process

### Chapter 20. Abusive Tax Avoidance Transactions (ATAT)

#### Section 7. Monitoring of IRC 7407 and 7408 Injunctions

##### 5.20.7 Monitoring of IRC 7407 and 7408 Injunctions

- 5.20.7.1 [Introduction](#)
- 5.20.7.2 [Collection Involvement and Monitoring of IRC 7407 and 7408 Injunctions](#)
- 5.20.7.3 [Working an Enjoined Promoter/Preparer Case](#)
- 5.20.7.4 [Making a Contempt Referral](#)

##### Manual Transmittal

September 03, 2014

##### Purpose

(1) This transmits revised IRM 5.20.7, Abusive Tax Avoidance Transactions, Monitoring of IRC 7407 and 7408 Injunctions.

##### Material Changes

- (1) IRM 5.20.7.1 added Introduction.
- (2) IRM 5.20.7.2(1) updated IRM cite.
- (3) IRM 5.20.7.2(4) updated link and IRM cite.
- (4) IRM 5.20.7.3(2) updated link to Department of Justice website and provided additional guidance on obtaining injunction orders.
- (5) IRM 5.20.7.3(7) added additional guidance to contact the Fraud Technical Advisor in egregious cases where the promoter/preparer is causing significant intentional harm to the tax system.
- (6) IRM 5.20.7.3(3) added to provide guidance on obtaining the promoter/preparer penalty case file.
- (7) IRM 5.20.7.4(1) updated from LMSB to LB&I.
- (8) IRM 5.20.7.4(3) updated link.
- (9) This revision will make minor grammatical corrections, update organization terms and/or titles, and correct cross references.

##### Effect on Other Documents

This material supersedes IRM 5.20.7, Monitoring of IRC 7407 & 7408 Injunctions, dated 7-23-2010.

##### Audience

The target audience is SB/SE Collection employees.

##### Effective Date

(09-03-2014)

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

##### 5.20.7.1 (09-03-2014)

###### Introduction

1. This section provides guidance to field Collection employees on all aspects of working injunction cases from referral to monitoring.

##### 5.20.7.2 (09-03-2014)

###### Collection Involvement and Monitoring of IRC 7407 and 7408 Injunctions

1. IRC 7407, *Action to Enjoin Tax Return Preparers*, allows the government to seek an injunction against a preparer to prevent the preparer from engaging in certain practices. IRC 7408, *Actions to Enjoin Specified Conduct Related to Tax Shelters and Reportable Transactions*, allows the government to seek an injunction against a promoter of an abusive tax avoidance transaction to prevent the promoter from furthering a tax scheme promotion. (See IRM 20.1.6.3, *Overview - Preparer, Promoter, Material Advisor, and Failure to Disclose Reportable Transaction Penalties*). These Code sections allow the Service to bring civil action in district court against the promoters and preparers of an abusive tax avoidance transaction to enjoin them from further engaging in this conduct or behavior. Examiners must submit a statement of the facts and circumstances to the SB/SE Lead Development Center (LDC) requesting a review of the case and a determination whether an injunction investigation under IRC 7407 or 7408 is appropriate.
2. Although no assessments are made for collection enforcement, revenue officers should be aware that these types of injunctions may also be referred in conjunction with an IRC 6700, *Promoting Abusive Tax Shelters, etc.*, promoter penalty, or an IRC 6701, *Penalties for Aiding and Abetting Understatement of Tax Liability*, preparer penalty. (See IRM 5.20.8, *Promoter/Preparer Investigations*).
3. Any IRC 6700 or IRC 6701 penalty assessment received in collection will be treated as a priority risk level 100 case and worked expeditiously. (See IRM 5.20.1.10, *Prioritization of ATAT Work*).



4. If during the course of a revenue officer's investigation, it is discovered that the balance due or delinquent return investigation assigned may be subject to IRC 7407/7408 injunction procedures, a referral to the SB/SE LDC is warranted. See IRM 4.32.2.3.2, *SB/SE Lead Development Center (SB/SE LDC)*; or submit a referral online. Procedures for making a promoter/preparer referral can be found on the Abusive Transactions and Technical Issues website at <http://mysbse.web.irs.gov/AboutSBSE/Exam/at/lcdc/default.aspx>.

### 5.20.7.3 (09-03-2014)

#### Working an Enjoined Promoter/Preparer Case

1. Any time a revenue officer is assigned a case where the promoter/preparer has been enjoined, the revenue officer should be alert to violations of the injunction order.
2. In all cases, the revenue officer should secure a copy of the injunction order. The order will list specific actions the promoter/preparer is prohibited from doing. Most injunction orders and related press releases can be found at the Department of Justice (DOJ) Tax Division's website at <http://www.justice.gov/tax/injunctions.htm>, or on PACER. For injunctions not posted on DOJ's website, revenue officers can contact the Return Preparer Coordinators (RPC) who can obtain a copy of the injunction via the Return Preparer Database. Revenue officers should contact the designated coordinator in the revenue officer's Area using the following link: <http://mysbse.web.irs.gov/exam/tip/rp/contacts/12293.aspx>.
3. Revenue officers should conduct an Internet search to verify the promoter/preparer's website is no longer operational. For promoter injunctions, the revenue officer should obtain the promoter penalty case file. For preparer injunctions, the revenue officer should consider contacting the RPC to obtain the return preparer penalty case file and client list. The client list can provide collection leads as to whether or not the preparer/promoter is still doing business.
4. A court order enjoining a promoter/preparer from certain activities has the effect of law and monitoring this compliance is important. Violations of a court order can result in civil or criminal contempt sanctions.
5. A civil contempt sanction is designed to compel the promoter/preparer to comply with the injunction's terms. A criminal contempt sanction is designed to punish the promoter/preparer for a past violation of the injunction.
6. The court's injunction order outlines required actions and any prohibited acts by the promoter/preparer. Subject to the specific requirements of the court order, examples of potential violations include:
  - A. Failing to shut down a website or starting a new website,
  - B. Failing to inform participants of the court action,
  - C. Failing to terminate preparing tax returns,
  - D. Continuing to conduct seminars or advertisements that promote any abusive promotion,
  - E. Failing to provide a participant list to the IRS,
  - F. Continuing to advise participants of the mechanics of an abusive tax promotion,
  - G. Failing to comply with any portion of the court order,
  - H. Any conduct or activity subject to penalties under IRC 6700, Promoting Abusive Tax Shelters, etc., IRC 6701, Penalties for Aiding and Abetting Understatement of Tax Liability, IRC 6694, Understatement of Taxpayer's Liability by Tax Return Preparer, or IRC 6695, Other Assessable Penalties with Respect to the Preparation of Tax Returns for Other Persons, and IRC 6707, Failure to Furnish Information Regarding Reportable Transactions, and IRC 6708, Failure to Maintain Lists of Advisees with Respect to Reportable Transactions,
  - I. Any acts resulting in the impairment or impeding the administration of the Internal Revenue Laws.
7. If the promoter/preparer is found to be in violation of the injunction order, the revenue officer should prepare a contempt referral. In egregious cases where the promoter/preparer is causing significant intentional harm to the tax system, a referral to Criminal Investigation should be considered. Contact the local Fraud Technical Advisor (FTA) for assistance.

### 5.20.7.4 (09-03-2014)

#### Making a Contempt Referral

1. The SB/SE LDC is responsible for monitoring compliance with injunction orders granted against SB/SE promoters and preparers. Office of Tax Shelter Analysis (OTSA) is responsible for monitoring compliance with injunction orders granted against Large Business and International (LB&I) promoters and preparers.
2. IRS employees who learn of any new or continuing unlawful activity by an enjoined promoter/preparer must make a referral to the SB/SE LDC.
3. The investigating revenue officer should complete the SB/SE LDC contempt referral form and email to \*LDC. The referral form can be found on the Abusive Transactions and Technical Issues website at <http://mysbse.web.irs.gov/AboutSBSE/Exam/at/lcdc/referral/default.aspx>. The SB/SE LDC is responsible for following up on contempt referrals and ensuring they are pursued in appropriate cases. If the contempt referral is on an LB&I promoter/preparer, the LDC will forward the referral to OTSA if appropriate.

[More Internal Revenue Manual](#)



## Part 5. Collecting Process

### Chapter 20. Abusive Tax Avoidance Transactions (ATAT)

#### Section 8. Promoter/Preparer Investigations

##### 5.20.8 Promoter/Preparer Investigations

- 5.20.8.1 [Introduction](#)
- 5.20.8.2 [Making a Referral to the SB/SE Lead Development Center \(LDC\)](#)
- 5.20.8.3 [Authorized IRC 6700 and 6701 Investigations, Revenue Officer Assignment](#)
- 5.20.8.4 [Coordination with the Examination Function](#)
- 5.20.8.5 [Parallel Investigations](#)
- 5.20.8.6 [IRC 6700 and IRC 6701 Penalty Assessment](#)
- 5.20.8.7 [Jeopardy Assessments](#)
- 5.20.8.8 [Appealing IRC 6700 and IRC 6701 Penalty Assessments](#)
- 5.20.8.9 [Collection Action Considerations During a Special Claim for Refund Appeal](#)
- 5.20.8.10 [Collecting the Promoter/Preparer Penalty Assessment](#)
- Exhibit 5.20.8-1 [List of questions that can be used as a guide when interviewing an informant or participant in an abusive promotion.](#)

##### Manual Transmittal

September 10, 2014

##### Purpose

(1) This transmits revised IRM 5.20.8, Abusive Tax Avoidance Transactions, Promoter/Preparer Investigations.

##### Material Changes

- (1) IRM 5.20.8.1 added Introduction.
- (2) IRM 5.20.8.2(3) updated with link to Form 14242 and corrected link.
- (3) IRM 5.20.8.4(1) updated IRM cite and link.
- (4) IRM 5.20.8.4(2) updated IRM cite.
- (5) IRM 5.20.8.4(3) added to provide additional guidance on actions revenue officers can take during promoter/preparer investigation.
- (6) IRM 5.20.8.4(4) added to provide guidance on when to close CIP.
- (7) IRM 5.20.8.4(5) updated from LMSB to Large Business and International.
- (8) IRM 5.20.8.5(2) added IRM cite.
- (9) IRM 5.20.8.5.1(3) updated IRM cite from IRM 4.32.2.6.3.4.4 to IRM 4.32.2.6.3.3.3.
- (10) IRM 5.20.8.5.2(1) updated IRM cite from IRM 4.32.3.3 to IRM 4.32.3.4.
- (11) IRM 5.20.8.6(1) updated IRM cite from IRM 4.32.3.3 to IRM 4.32.3.4 and updated link.
- (12) IRM 5.20.8.6.1 renumbered from IRM 5.20.8.6.
- (13) IRM 5.20.8.6.2 added new section to provide guidance on case actions on IRC 6700 and IRC 6701 penalty assessments.
- (14) IRM 5.20.8.7(1) added IRM cite.
- (15) IRM 5.20.8.8(1) updated IRM cite from IRM 20.1.6.1.4 to IRM 4.32.2.11.7.1.
- (16) IRM 5.20.8.8(4) added to provide guidance on collection due process hearings.
- (17) IRM 5.20.8.9(1) updated to correct terminology to special condition NFTL and included IRM cite.
- (18) Exhibit 5.20.8-1 updated with additional questions.
- (19) This revision will make minor grammatical corrections, update organization terms and/or titles, and correct cross references.

##### Effect on Other Documents

This material supersedes IRM 5.20.8, Promoter/Preparer Penalties, dated 7-1-2010.

##### Audience

The target audience is SB/SE Collection employees.

##### Effective Date

(09-10-2014)

#### 5.20.8.1 (09-10-2014)

##### Introduction

1. Promoter/preparer investigations are some of the highest priority cases for Collection Abusive Tax Avoidance Transactions (ATAT). Revenue officers may be involved in one or all stages of a promoter/preparer investigation.
  - A. A revenue officer may be assigned at the start or anytime during the promoter/preparer investigation. The revenue officer will work cooperatively with the revenue agent on the investigation. Any existing balances due or delinquent returns will be assigned to the revenue officer or if there are none, the case will be assigned as a Compliance Initiative Project (CIP).
  - B. At the close of the promoter/preparer investigation by the revenue agent, the revenue officer may be assigned collection of the IRC 6700 or IRC 6701 penalty assessment and/or will monitor for compliance with the injunction.
2. While working a case, a revenue officer may identify a previously unknown promoter of an abusive scheme or abusive preparer. See IRM 5.20.8.2 for guidance on making a referral to the SB/SE Lead Development Center (LDC).

#### 5.20.8.2 (09-10-2014)

##### Making a Referral to the SB/SE Lead Development Center (LDC)

1. SB/SE Delegation Order 4.60, *Functions Related to Potential Promoter/Tax Shelter Cases*, delegates authority to approve and refer all SB/SE ATAT promoter/preparer investigations to the SB/SE LDC Program Manager, in consultation with the Director, Abusive Transactions and Technical Issues, Counsel and Criminal Investigation (CI).
2. The SB/SE LDC was established to centralize receipt and development of SB/SE ATAT promoter/preparer leads, conduct research, build promoter/preparer cases, and authorize the initiation of promoter/preparer investigations in coordination with Counsel, CI, and other Operating Divisions.
3. Leads to the SB/SE LDC are submitted using Form 14242, *Report Suspected Abusive Tax Promotions or Preparers*. Additional information on making a referral to the SB/SE LDC as well as an electronic copy of Form 14242 can be found on the Abusive Transactions and Technical Issues website at <http://mysbse.web.irs.gov/AboutSBSE/Exam/atldc/default.aspx>.
4. A referral to the SB/SE LDC should be made once the revenue officer has gathered sufficient information to identify the possibility that the promotion of an abusive transaction or frivolous argument may exist. If the name of the promoter/preparer is known, it should be provided in the referral. However, that information is not always available and is not required when making a referral. If the referral is based on informant information or information secured from a participant who was affiliated with the promotion, the revenue officer should try to gather as much information as possible during the interview. Secure information such as links to the promoter/preparer's web site and copies of promotional information. IRM Exhibit 5.20.8-1 lists questions that can be used as a guide when conducting informant or participant interviews.
5. Once the SB/SE LDC has received a referral and after completing the research and case development, each promoter/preparer lead is evaluated for promoter/preparer investigation potential. Multiple factors are considered when determining whether the SB/SE LDC authorizes an IRC 6700 or IRC 6701 investigation and issues the lead to the field. Some of the factors that are considered are:
  - Type of scheme being promoted,
  - Past activity of the promoter,
  - The size of the promotion,
  - Tax impact of the promotion,
  - Possible tax law violations,
  - Favorable public impact or compliance impact.

#### 5.20.8.3 (09-10-2014)

##### Authorized IRC 6700 and 6701 Investigations, Revenue Officer Assignment

1. Authorized investigations will be issued to the Field Collection or Field Examination Area Director.
2. A copy of the approval memorandum will be emailed to the Field Collection or Field Examination Area Director and to the Area's Planning & Special Program office for assignment to a revenue officer or examiner. If the memorandum is issued to Field Examination, the memorandum will include a request for the examiner to contact the local Collection ATAT Coordinator and provide a link to the website with a current list of coordinator names.
3. Once an investigation referral is authorized, the administrative investigation case file is sent to the field for investigation and suit development for potential ATAT promoter penalties and/or injunctions. The promoter/preparer investigation is generally initiated by the examination function to determine whether an individual aided in the promotion of an abusive tax avoidance transaction. See IRC 6700, *Promoting Abusive Tax Shelters, etc.* and IRC 6701, *Penalties for Aiding and Abetting Understatement of Tax Liability*. The investigation is not an income tax examination. The investigation is carried out to decide if the promoter/preparer is subject to penalties and injunctive action as a result of his involvement in an illegal promotion. The case file includes:
  - Investigation Authorization Memorandum;
  - Recommendation Memorandum describing the promoter/preparer's background and history, description of the promotion, potential First Amendment concerns, summary of products or services, any criminal investigation information, the scope of the promotion and recommendation for investigation;
  - Any background information and documentation obtained that may assist in the investigation.

#### 5.20.8.4 (09-10-2014)

##### Coordination with the Examination Function

1. IRM 4.32.3.4, *Collection*, requires examiners conducting promoter/preparer investigations to contact the Area Collection ATAT Coordinator through their group manager once the lead is approved for an IRC 6700 /IRC 6701 investigation. A list of Collection ATAT Coordinators can be found on the SB/SE Collection ATAT website at <http://mysbse.web.irs.gov/Collection/toolsprocesses/CollATAT/contacts/default.aspx>.
2. Area Collection ATAT Coordinators will in turn determine if an ATAT revenue officer should be assigned to assist in the investigation. If the ATAT revenue officer needing to be assigned the investigation is not under the direct supervisory authority of the Area Collection ATAT Coordinator, the Area Collection ATAT Coordinator will coordinate with the revenue officer's direct supervisor to ensure inventory guideline concerns, etc. are addressed. See IRM 5.20.2, *ATAT Time Reporting*, for revenue officer time charging to an unassigned case.

Factors to consider when determining if a revenue officer should be assigned to assist in the investigation can include:

- The promoter/preparer has existing balance due liabilities.
- The examiner is having difficulty locating the promoter/preparer and is requesting assistance.
- The examiner has knowledge the promoter/preparer is liquidating assets or otherwise attempting to put them beyond the reach of the government.

**Note:**

All IRC 6700/IRC 6701 promoter investigation and penalty cases have been prioritized as risk level 100 cases and will be considered top priority case work for revenue officers. See IRM 5.20.1.10, *Prioritization of ATAT Work*.

3. A cooperative investigation conducted jointly by Examination and Collection can save time and provide both functions valuable leads. Actions the revenue officer can take during the promoter/preparer investigation include, but are not limited, to:
  - A. participating in initial conference at commencement of promoter/preparer investigation,
  - B. interviewing promoters/participants,
  - C. sharing leads on income and assets identified,
  - D. assisting in possible jeopardy situation,
  - E. researching of ongoing or prior collection activities that could provide important context to the investigation.
4. If there is no further action that the revenue officer can take, the CIP will be closed.
5. The Office of Tax Shelter Analysis (OTSA) oversees promoter investigations for Large Business and International (LB&I). Area Collection ATAT Coordinators may be contacted by OTSA, or an LB&I or Tax Exempt and Government Entities (TE/GE) examiner, prior to the assessment of an IRC 6700 or IRC 6701 penalty.

**5.20.8.5 (09-10-2014)  
Parallel Investigations**

1. The IRC contains both civil and criminal provisions to address ATAT promotions. Examiners may conduct civil investigations before, during, or after criminal investigations of a promoter/preparer.
2. Parallel investigations are simultaneous civil and criminal investigations of a common individual or entity. See IRM 5.1.5, *Balancing Civil and Criminal Cases*.
3. Parallel investigations are not joint investigations. Each Operating Division conducts a separate investigation. Significant coordination is required throughout the investigation and litigation processes. While regularly scheduled coordination meetings are required, CI must not direct the examiner's actions in the civil investigation.

**5.20.8.5.1 (09-10-2014)  
Policy Statement**

1. Policy Statement P-4-26, *Criminal and Civil Aspects in Enforcement*, (formerly P-4-84) provides guidance on taking civil enforcement action when the subject is also involved in a criminal investigation. See IRM 1.2.13.1.11, *Policy Statement 4-26 (Formerly P-4-84)*. This statement encourages civil enforcement action in all investigations where the promotion is ongoing and harm to the government is significant. This compliance strategy is intended to quickly stop the promotion, prevent additional loss of tax revenue, and foster voluntary compliance by the participants.
2. Most parallel investigations will not result in a penalty assertion recommendation from the investigating examiner or revenue officer assigned the case until after the cessation of the criminal case.
3. If criminal and civil Operating Divisions cannot agree on an approach, P-4-26 describes the procedures for resolving the matter. Refer to IRM 4.32.2.6.3.3.3, *Resolving Conflicts* and IRM 5.1.5.3, *Resolving Conflicts Regarding Parallel Investigations*.

**5.20.8.5.2 (09-10-2014)  
Collection Involvement During a Parallel Investigation**

1. IRM 4.32.2.6, *Parallel Investigations*, addresses Examination procedures for conducting a promoter/preparer investigation during a pending criminal investigation. IRM 4.32.3.4, *Collection*, requires examiners to notify Collection when a promoter/preparer investigation is assigned. If the promoter/preparer investigation is a parallel investigation, the Collection ATAT Coordinator should determine if there are existing balance due liabilities or other issues associated with the investigation that require Collection involvement. If so, a revenue officer should be assigned.

**5.20.8.6 (09-10-2014)  
IRC 6700 and IRC 6701 Penalty Assessment**

1. When the examiner has completed the promoter/preparer investigation and is considering assertion of penalties under IRC 6700 or IRC 6701, IRM 4.32.3.4, *Collection*, requires the examiner to notify the local Collection ATAT Coordinator, who will assign a revenue officer if one has not already been assigned. A list of Collection ATAT Coordinators can be found by accessing the Abusive Transactions website at <http://mysbse.web.irs.gov/Collection/toolsprocesses/ColIATAT/contacts/default.aspx>.

**5.20.8.6.1 (09-10-2014)  
Nonassertion of Penalties under IRC 6700 and IRC 6701 Based on Collectibility**

1. The examiner may indicate that it appears the promoter/preparer case does not have immediate collection potential and the revenue officer analysis may determine that there is little current collection potential based on known assets. However, experience has shown that promoters/preparers frequently conceal assets and cloud their financial picture, often making it difficult to determine the true collection potential of these accounts. Assets currently concealed or placed beyond reach may well surface during subsequent investigations.
2. Therefore current collectibility should not be a consideration when determining whether to assert a penalty under IRC 6700 or IRC 6701. There may be rare situations when it is appropriate to consider collectibility, such as when the promoter/preparer is deceased and there are no assets in the promoter's/preparer's estate. Unless such a rare situation exists, when Collection is contacted in accordance with IRM 4.32.3.4, *Collection*, the examiner should be advised that the penalty should be assessed regardless of current collectibility.
3. All recommendations for nonassertion of the penalty must be approved by the Examination group manager. Once the manager has approved the nonassertion, the examiner will forward a written notification to the LDC of their decision to not assert prior to closing the lead. The notification will include a brief explanation of the basis for not asserting the penalty. The LDC will forward a copy of the notification to Collection Policy.

**5.20.8.6.2 (09-10-2014)  
Case Actions on IRC 6700 and IRC 6701 Penalty Assessments**

1. The revenue officer will document the type of promotion in the case history at the time of assignment.

2. The revenue officer will request and review the Examination file and/or contact the revenue agent who pursued the penalty assessment upon case assignment. The file may include information that will eliminate the need for the revenue officer to issue a summons at an additional cost to the government.
3. The revenue officer will determine if the promoter/preparer has been enjoined. The revenue officer should secure a copy of the injunction and monitor for compliance with the injunction. See IRM 5.20.7.3, *Working an Enjoined Promoter/Preparer Case*, for additional guidance.
4. If the revenue officer has taken all collection actions and is closing the penalty balances due as currently not collectible, the revenue officer will input a mandatory two-year follow-up in certain cases. Follow the procedures for mandatory follow-up in IRM 5.16.1.6, *Mandatory Follow-Up*. The follow-up will provide an opportunity to determine if there is any change in collection potential or if the promoter/preparer is in violation of the injunction order. A mandatory follow up will be input in the following cases:
  - =====
  - =====

**5.20.8.7 (09-10-2014)  
Jeopardy Assessments**

1. In cases where a promoter/preparer investigation is being conducted by an examiner and collection of the assessment could be jeopardized if delayed, the examiner will contact the Collection ATAT coordinator and a revenue officer will be immediately assigned to assist in the jeopardy assessment. The Area Director and the local Area Counsel will approve all jeopardy assessments. Follow jeopardy assessment procedures outlined in IRM 5.1.4, *Jeopardy, Termination, Quick and Prompt Assessments*, and IRM 5.17.15, *Termination and Jeopardy Assessments and Jeopardy Collection*. If the jeopardy situation is not discovered until after the assessment, see IRM 5.11.3, *Jeopardy Levy without a Jeopardy Assessment*.

**5.20.8.8 (09-10-2014)  
Appealing IRC 6700 and IRC 6701 Penalty Assessments**

1. There are no pre-assessment appeal rights for IRC 6700 and IRC 6701 penalties. IRC 6700 and IRC 6701 penalties may be challenged by following the special claim for refund procedures of IRC 6703, *Rules Applicable to Penalties under Sections 6700, 6701, and 6702*. When an IRC 6700/6701 penalty is assessed, the promoter/preparer is billed for the amount(s) due. The billing notice advises the promoter/preparer that if 15% of the penalty is paid within 30 days, a claim for refund may be filed on Form 6118, *Claim for Refund of Tax Return Preparer and Promoter Penalties*, or Form 843, *Claim for Refund and Request for Abatement*. Under IRC 6703(c), collection action and the running of the statute of limitations on collection are suspended until the claim is resolved. Refer to IRC 6703, as well as IRM 4.32.2.11.7.1, *Promoter Rights for IRC 6700 and IRC 6701*, for a full explanation of appeal rights for promoter/preparer penalties.
2. The SB/SE LDC will verify that the Campus has input transaction code (TC) 470 closing code (CC) 95 on the applicable modules. If a TC 470 CC 95 has not been input on an applicable module, SB/SE LDC will request input.
3. When a promoter/preparer indicates that a claim has been filed appealing assessment of a penalty, the revenue officer should notify the SB/SE LDC of the filing.
4. A taxpayer may challenge the existence or amount of an IRC 6700 or IRC 6701 penalty in Collection Due Process (CDP) but only if the taxpayer did not receive a "prior opportunity" to contest the assessment. See IRC 6330(c)(2)(B). The taxpayer's receipt of notice and demand, providing specific procedures for requesting an abatement and obtaining judicial review under IRC 6703(c), constitutes a "prior opportunity" and would preclude the taxpayer from raising an issue challenging the liability in CDP. If a taxpayer requests a CDP hearing, forward any available documents establishing the taxpayer received notice and demand to Appeals. The taxpayer may raise other relevant issues in CDP when a challenge to the liability is precluded.

**5.20.8.9 (09-10-2014)  
Collection Action Considerations During a Special Claim for Refund Appeal**

1. A Notice of Federal Tax Lien (NFTL) may be filed in accordance with IRM 5.12, *Federal Tax Liens*. Even when the taxpayer has paid 15% of the penalty and submitted a timely claim for refund, IRC 6703 does not prohibit filing an NFTL. The revenue officer can also proceed with a special condition (i.e. nominee/alter ego/transferee) NFTL investigation but other collection actions should be suspended during the course of the appeal. This includes levying on property of the promoter/preparer or a nominee. The Service can not bring any type of collection suit until after the final resolution of the claim for refund in district court. (See IRM 5.12.7.6, *Special Condition NFTLs (Nominee, Alter Ego, Transferee)*).

**5.20.8.10 (07-01-2010)  
Collecting the Promoter/Preparer Penalty Assessment**

1. A promoter or preparer penalty may be assessed for the same conduct against more than one entity or individual. The collection of the penalty amounts against all entities or individuals assessed should be collected in full. Unlike the trust fund recovery penalty, it is not necessary to coordinate the funds collected from one entity and reduce the penalty amount of the corresponding entity or individual.
2. Although it is not necessary to coordinate the collection of the funds from the separate, yet somewhat related entities, it is important to coordinate with examination to ensure all promoter/preparer penalties that were assessed on an investigation are addressed as a whole when assigned for collection.

**Exhibit 5.20.8-1  
List of questions that can be used as a guide when interviewing an informant or participant in an abusive promotion.**

Questions for Collection Taxpayers:

Taxpayer Name:
Taxpayer Address:
Taxpayer Telephone Number:

- A. When and how did you first become aware that you were not required to pay or file taxes?
- B. From whom did you receive the information?
  - A. Were you at a meeting or was it by telephone?
  - B. If you attended a meeting, how many others were there?
  - C. When and where did the meeting occur?
  - D. Do you have any literature from these meetings or that was mailed to you?
  - E. How did you learn of the meeting? (radio, book, magazine, another person, etc.)

- C. What did they tell you about paying and/or filing taxes?
- D. Were you ever told that your tax liability could be reduced or eliminated?
- E. How much did the information cost you? What was the method of payment - cash, check, wire, money order, or some other method? Can you provide a copy of the method of payment?
- F. Did the person(s) only provide **you** with the information or did they have other clients? Do you know how many? Do you believe they work with others nationwide or only locally?
- G. Are you still in contact with the individual(s) or organization that provided the information to you? Was it by telephone or meeting? If no, why not?
- H. If you are still in contact with them, are they providing any additional advice or information to help you? Do you have their current address, telephone number, email address and/or website address?
- I. How has the information helped you take care of the tax liability?
- J. Did you seek legal opinions from tax attorney's or CPAs regarding the issues in the materials provided?
- K. Have you ever been involved in promotions of any other tax shelter or tax related activity?
- L. Have you ever been charged criminally for any illegal conduct? If yes, what was the nature of those charges.

[More Internal Revenue Manual](#)



## Part 5. Collecting Process

### Chapter 20. Abusive Tax Avoidance Transactions (ATAT)

#### Section 10. Identification and Processing of Frivolous Documents

##### 5.20.10 Identification and Processing of Frivolous Documents

- 5.20.10.1 [Introduction](#)
- 5.20.10.2 [Frivolous Submissions Subject to IRC § 6702](#)
- 5.20.10.3 [IRC 6702 Penalty Assessments](#)
- 5.20.10.4 [Responding to Frivolous Submissions](#)
- 5.20.10.5 [Responding to Frivolous Correspondence Not Subject to IRC 6702](#)

##### Manual Transmittal

May 20, 2014

##### Purpose

(1) This transmits revised IRM 5.20.10, Abusive Tax Avoidance Transactions, Identification and Processing of Frivolous Documents.

##### Material Changes

- (1) Updated title of IRM 5.20.10 to "Identification and Processing of Frivolous Documents" .
- (2) Added IRM 5.20.10.1, Introduction.
- (3) Updated all references from Notice 2010-14 to Notice 2010-33.
- (4) IRM 5.20.10.2(1) removed outdated link.
- (5) IRM 5.20.10.3(2) added Note that section 6702 penalty should not be assessed based solely on the fact that the taxpayer enclosed a letter with the return explaining why the taxpayer is not paying the self-assessed tax due.
- (6) IRM 5.20.10.3(4) added cite to IRM 5.8.10.12 for guidance on penalty assertion under section 6702 related to an Offer in Compromise.
- (7) IRM 5.20.10.3(2), IRM 5.20.10.3(3) and IRM 5.20.10.3(4) updated to include language "reflect a desire to delay or impede administration of Federal tax laws."
- (8) IRM 5.20.10.4.1(1) added additional examples for clarity.
- (9) IRM 5.20.10.4.3 removed option for revenue officer to issue L 3176. Included guidance for revenue officer to maintain original return in limited circumstances and send copy to Frivolous Return Program.
- (10) IRM 5.20.10.4.4 updated IRM cite.
- (11) IRM 5.20.10.3.5 moved to IRM 5.20.10.5.
- (12) IRM 5.20.10.5(4) updated links.
- (13) Added IRM 5.20.10.5(5) to include instructions for updating IDRS with history entry via CC ACTON when sending Letter 3175.
- (14) IRM 5.20.10.5(6) included address for Frivolous Return Program.
- (15) Editorial corrections made throughout the IRM.

##### Effect on Other Documents

This material supersedes IRM 5.20.10, , dated August 10, 2010.

##### Audience

The target audience is SB/SE Collection employees.

##### Effective Date

(05-20-2014)

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

##### 5.20.10.1 (05-20-2014)

###### Introduction

1. This section provides guidance to field Collection employees on the appropriate processing of frivolous returns and other specified frivolous submissions subject to penalty under IRC 6702 as well as frivolous correspondence not subject to IRC 6702.
2. Potential fraud indicators may be present in frivolous submissions. Contact your local Fraud Technical Advisor, if appropriate.



#### 5.20.10.2 (05-20-2014)

##### Frivolous Submissions Subject to IRC § 6702

1. Notice 2010-33, *Frivolous Positions*, as prepared by the Office of Chief Counsel, lists arguments identified as frivolous for purposes of the IRC 6702 penalty. This listing may be updated if new frivolous positions are identified. It can be accessed on the Internal Revenue Service website at [http://www.irs.gov/irb/2010-17\\_IRB/ar13.html](http://www.irs.gov/irb/2010-17_IRB/ar13.html). For additional information and the most up-to-date list of frivolous arguments access the Internal Revenue Service website at <http://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Section-I>.
2. The Tax Relief and Health Care Act of 2006, section 407, amended IRC 6702 not only to increase the amount of the penalty from \$500 to \$5,000, but also broadened it to include an imposition of the IRC 6702 penalty for filers of all types of purported returns of tax and certain "specified frivolous submissions".
3. These specified submissions include **frivolous requests** for:
  - installment agreements,
  - offers in compromise (OIC),
  - taxpayer assistance orders (generally such written requests are made on Form 911),
  - and collection due process (CDP) hearings.
4. The penalty is intended to address those situations where a taxpayer continues to assert a frivolous argument or who demonstrates intent to delay or impede the administration of the tax law. See IRM 4.10.12, *Frivolous Return Program*.

#### 5.20.10.3 (05-20-2014)

##### IRC 6702 Penalty Assessments

1. A filing subject to IRC 6702 penalty assessment is either a purported return covered by section 6702(a) frivolous return or section 6702(b) specified submission. A frivolous filing not meeting the definitions described below will not be subject to penalty assessment.
2. IRC 6702(a) provides that a person who files a **purported tax return**, including an original or amended return, is subject to a penalty of \$5,000 if: (i) the return does not contain information on which the substantial correctness of the return can be judged, or (ii) the return contains information that on its face indicates that the self-assessment is substantially incorrect and the return is based on a position listed in Notice 2010-33 (or subsequent guidance) or reflects a desire to delay or impede the administration of Federal tax laws.

##### Note:

When the taxpayer timely files a correct and complete return, the section 6702 penalty should not be assessed based solely on the fact that the taxpayer enclosed a letter with the return explaining why the taxpayer is not paying the self-assessed tax due. If a penalty has been assessed, it should be abated.

3. IRC 6702(b) provides that a person who submits a **specified frivolous submission** based on one or more of the frivolous arguments listed in Notice 2010-33 (or subsequent guidance) or that reflects a desire to impede the administration of Federal tax laws is subject to a penalty of \$5,000. Specified submissions include:
  - A. Request for a CDP hearing,
  - B. An application for an installment agreement,
  - C. An OIC, or
  - D. A taxpayer assistance order.
4. See IRM 5.8.10.12, *Offer in Compromise Submission with Frivolous, Delaying, or Impeding Issues*, for guidance on penalty assertion under section 6702 related to an Offer in Compromise.
5. Close coordination with Counsel is needed when recommending a penalty under section 6702 that is based on a reflection of a desire to impede the administration of Federal tax laws but is not based on one or more of the frivolous arguments listed in Notice 2010-33 (or subsequent guidance).
6. IRC 6702 penalties are assessed by the Frivolous Return Program (FRP) at the Ogden Compliance Services Campus.

#### 5.20.10.4 (05-20-2014)

##### Responding to Frivolous Submissions

1. The following section provides guidance on how to respond to frivolous submissions.

#### 5.20.10.4.1 (05-20-2014)

##### Reviewing Frivolous Submissions

1. Review all frivolous submissions to see if the document contains a valid request such as but not limited to:
  - A. Freedom of Information Act requests (FOIA),
  - B. Request for a transcript of record of account,
  - C. Taxpayer Advocate Service issues,
  - D. CDP requests,
  - E. Collection Appeal Program (CAP) requests,
  - F. Installment agreement requests.
2. If the filing includes a valid request that requires a response, such as a request for a record of account, it should be forwarded to the appropriate function (i.e. Disclosure, Taxpayer Advocate Service, or Appeals).

#### 5.20.10.4.2 (05-20-2014)

##### Frivolous Return Program Unit

1. After reviewing and responding to the taxpayer(s) non-frivolous request(s), mail frivolous package via Form 3210, *Document Transmittal*, to the Ogden Compliance Services Campus Frivolous Return Program unit at:

Internal Revenue Service

Attn: Frivolous Return Program

1973 N. Rulon White Blvd.

M/S 4450

Ogden, Utah 84404

#### 5.20.10.4.3 (05-20-2014)

##### Responding to Frivolous Filings Subject to Penalty Under IRC 6702(a)

1. If it is determined that a taxpayer has submitted a tax return, including an original or amended return taking a frivolous position, stamp the return with the date received. Do not send the return through the Submission Processing Center. Send the complete original return with all attachments, including the envelope, to the FRP and maintain a copy of the return in the case file.

**Note:**

These procedures apply to both IMF and BMF tax returns.

2. In very limited situations, it may be necessary for the revenue officer to maintain control of the original return. In this situation, the revenue officer will maintain control of the original return and will mail a complete copy of the return with all attachments, including the envelope, to the FRP.

**Example:**

If Counsel or Criminal Investigation requests the original return due to pending court action, the revenue officer will maintain the original return and will mail FRP a copy of the return.

3. FRP will mail Letter 3176 along with Publication 2105, *Why do I have to Pay Taxes?*, to the taxpayer informing them of the frivolous argument and requesting they withdraw their position and submit any non-filed returns. FRP will monitor for the response from the taxpayer.

A. If, within 30 days of the notice, the taxpayer files a valid return withdrawing the frivolous argument, or withdraws the frivolous argument without filing a valid return, FRP will not assess the IRC 6702 penalty.

B. If the taxpayer fails to respond or responds with additional frivolous submissions or correspondence, FRP will assess the IRC 6702 penalty.

**Note:**

Issuance of the Letter 3176 is limited to FRP. Revenue officers will not issue Letter 3176.

4. The revenue officer will monitor IDRS for assessment of the IRC 6702 penalty. If there is no assessment after ten weeks, the revenue officer may contact the Ogden Compliance Service Center FRP Coordinator to determine the status. The Coordinator can be located on the Frivolous Return Program website at <http://mysbse.web.irs.gov/AboutSBSE/aboutccs/ccsprog/frp/contacts/17538.aspx>.

#### 5.20.10.4.4 (05-20-2014)

##### IRC 6702(b) Specified Frivolous Submissions with Request for Hearing Under IRC 6320 or IRC 6330

1. Revenue officers will review CDP hearing requests for frivolous arguments to determine if they fall within the meaning of frivolous submission as outlined in Notice 2010-33 (or subsequent guidance). The revenue officer should forward the hearing request to Appeals. See IRM 5.1.9, *Collection Appeal Rights*, and specifically IRM 5.1.9.3.16, *Hearing Requests with Frivolous, Delaying or Impeding Issues*, when they believe they have received a frivolous submission(s) subject to IRC 6702.

#### 5.20.10.5 (05-20-2014)

##### Responding to Frivolous Correspondence Not Subject to IRC 6702

1. For purposes of this IRM, the term "correspondence" refers only to frivolous correspondence not attached to a return or document purporting to be a return; or to an installment agreement request, OIC or CDP request; or documents purporting to be any of the above.
2. When the Service receives frivolous correspondence not subject to IRC 6702 (e.g., correspondence indicating an unwillingness to file or pay taxes based on frivolous arguments), Letter 3175, *Response to Frivolous Documents>Returns Received from Taxpayers*, is sent to inform the taxpayer(s) that the position is frivolous and that further correspondence regarding frivolous issues will not receive responses.

**Note:**

Letter 3175 constitutes an outreach education and therefore subsequent frivolous filings will not require an additional Letter 3175.

**Note:**

Review CC ENMOD to determine if the taxpayer has been issued Letter 3175. Do not issue another Letter 3175 if the taxpayer was previously issued the letter.

3. Revenue officers will review all taxpayer correspondence to determine appropriate handling, including referrals to the SB/SE Lead Development Center. Consideration should be given to legitimate issues needing a response. If the document contains valid inquiries, such as FOIA requests or requests that meet Taxpayer Advocate Service criteria, the document should be forwarded to the appropriate function.
4. Once legitimate issues have been appropriately addressed, the revenue officer will determine if the frivolous position(s) asserted by the filer are contained in either Notice 2010-33 (or subsequent guidance), IRM 4.10.12.1.1, *Frivolous Arguments*, or *The Truth About Frivolous Arguments*, which can be found on the Internal Revenue Service website at <http://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Introduction>.

If	Then	Follow Up Actions
Argument is included in either Notice 2010-33 (or subsequent guidance), IRM 4.10.12.1.1, or <i>The Truth About Frivolous Arguments</i>	Assigned revenue officer will issue a Letter 3175, then document action on ICS case history, and update IDRS via CC ACTON with history entry indicating Letter 3175 has been sent.  <b>Note:</b>	Mail a copy of the Letter 3175 and page one and two of the correspondence to the FRP. Copies must contain the name, address and SSN of the filer. They must include a stamp indicating the date the correspondence was received, a clear notation that the Letter 3175 was sent and the date the Letter 3175 was sent. Send the copies to the FRP via Transmittal Form 3210 at the following address: Internal Revenue Service Frivolous Return Program

	Do not issue another Letter 3175 if the taxpayer was previously issued the letter.	1973 N. Rulon White Blvd. M/S 4450 Ogden, UT 84404
New frivolous argument is identified	When a potentially new frivolous argument is identified, an opinion from the Office of Chief Counsel deeming it frivolous must be obtained prior to the issuance of Letter 3175. Requests for Counsel opinion will be secured through the FRP.	<p>A revenue officer request for Counsel opinion will include:</p> <ul style="list-style-type: none"> <li>• a description of the argument</li> <li>• a copy of the alleged frivolous correspondence in its entirety</li> <li>• a clear request for Counsel opinion notated on Form 3210</li> </ul> <p>Send the request to the attention of the Sr. Technical Advisor for the FRP via Transmittal Form 3210 (address listed above.)</p>

5. If the revenue officer issues the Letter 3175, the revenue officer will take the following steps to update IDRS via CC ACTON with a history entry.

- A. Bring up CC ENMOD, then overlay ENMOD with ACTON.
- B. Hit the backspace to clear line.
- C. Input the following history:  
ACTON  
H,3175SENT
- D. Go back to ENMOD and overlay with ACTON. Follow the same steps to input the date that Letter 3175 was sent.  
ACTON  
H,MMDDYYYY
- E. There are ten characters available to input a history after the "H" .

**Note:**

If the revenue officer issues Letter 3175, the revenue officer must update IDRS via CC ACTON. If FRP issues the Letter 3175, a correspondex letter is sent and IDRS is systemically updated.

6. Frivolous documents not related to an open collection case should be routed to the FRP via Form 3210.

Internal Revenue Service
Frivolous Return Program
1973 N. Rulon White Blvd. M/S 4450
Ogden, UT 84404

[More Internal Revenue Manual](#)



## Part 5. Collecting Process

### Chapter 20. Abusive Tax Avoidance Transactions (ATAT)

#### Section 11. Examination Reconsiderations and Referrals

##### 5.20.11 Examination Reconsiderations and Referrals

- 5.20.11.1 [Examination Referrals](#)
- 5.20.11.2 [Audit Reconsiderations](#)
- 5.20.11.3 [Substitute for Return Reconsiderations](#)
- Exhibit 5.20.11-1 [SPECIAL HANDLING ALERT COLLECTION ATAT CASE](#)

##### Manual Transmittal

August 19, 2011

##### Purpose

(1) This transmits revised IRM 5.20.11, Abusive Tax Avoidance Transactions, Examination Reconsiderations and Referrals.

##### Material Changes

- (1) Updated IRM citation in IRM 5.20.11.1(2).
- (2) Updated IRM citation in IRM 5.20.11.2(1).
- (3) Added 5.20.11.3 to incorporate Interim Guidance Memorandum titled, Substitute for Return Reconsiderations, control number SB/SE-05-0211-007, dated February 8, 2011.
- (4) Added Exhibit 5.20.11-1, Special Handling Alert.

##### Effect on Other Documents

This material supersedes IRM 5.20.11, Abusive Tax Avoidance Transactions, Examination Reconsiderations and Referrals, dated 8-10-20. Incorporated Interim Guidance Memorandum titled, Substitute for Return Reconsiderations, control number SB/SE-05-0211-007, dated February 8, 2011.

##### Audience

Distribution of this chapter is being made to all Collection employees including supervisory and management personnel in all Area offices. Additionally, distribution is being made to all Appeals offices, all Criminal Investigation offices, and all Counsel offices to enhance cooperation and coordination.

##### Effective Date

(08-19-2011)

Scott D. Reisher  
Director, Collection Policy  
Small Business/Self-Employed

##### 5.20.11.1 (08-10-2010) Examination Referrals

1. IRM 5.1.11, *Delinquent Return Accounts*, provides guidance on conducting delinquent account investigations.
2. If a revenue officer determines that an Examination referral is the next appropriate case action on an ATAT taxpayer, the revenue officer will follow the guidance in IRM 5.1.11.6.3.3, *Del Ret with Income But without IRP*. In addition, the revenue officer will write "ATAT" in red on the Form 3449. If known, the revenue officer will also write the promoter's name or tracking number in red on the Form 3449. If Form 3449 is processed through Integrated Collection System (ICS), this information should be in bold print. This information will ensure that the request will receive priority consideration when Planning and Special Programs (PSP) assigns the referral to an Examination group.

##### 5.20.11.2 (08-10-2010) 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. An audit assessment is identified on a TXMOD by TC 420 followed by a TC 300 amount. If an audit reconsideration is received from an ATAT taxpayer, the revenue officer will write "ATAT" in red on the Form 3870, *Request for Adjustment*. If known, the revenue officer will also write the promoter's name or tracking number in red on the Form 3870. Process the Form 3870 following the guidance in IRM 5.1.15.4.1, *Audit Reconsiderations*. This will ensure that the request will receive priority consideration when PSP assigns the reconsideration to an Examination group.

##### 5.20.11.3 (08-19-2011) Substitute for Return Reconsiderations

1. Per IRM 5.1.15.4.3, *Substitute For Return (SFR) and Automated Substitute for Return (ASFR) Reconsiderations*, all SB/SE SFR reconsiderations are centralized and processed in the Brookhaven ASFR Operation, Centralized Reconsideration Unit. This includes Area Office SFR reconsiderations supported by the SB/SE campuses and Frivolous Return Program (FRP) SFR reconsiderations. The following procedures ensure that ATAT SFR reconsiderations secured either by the revenue officer or at the campus are designated when appropriate for classification by Field ATAT Classifiers.
2. As part of the initial case analysis, revenue officers must review TXMOD for Exam ATAT project codes on all SFR balance due tax periods. The project code is listed adjacent to transaction code (TC) 424. A list of Exam ATAT project codes can be found on the ATAT website at:  
<http://mysbse.web.irs.gov/AboutSBSE/Exam/at/ExamAids/default.aspx>

3. If the revenue officer locates a SFR assessment with an Exam ATAT project code, the revenue officer must take the following case actions to ensure returns submitted as a SFR reconsideration on ATAT cases are carefully reviewed. The action will be warranted in cases with SFR assessments where the taxpayer continues to raise frivolous arguments not supported by law or when proceeding with enforcement actions such as seizure or suits.

1. Complete Form 4844 and request input of an IDRS history item of "OPENATAT" on TXMOD.
2. Forward Form 4844 to Centralized Case Processing (CCP) for input.

4. By inputting the identifier "OPENATAT" on TXMOD, any returns subsequently filed by the taxpayer either directly with the campus or with the revenue officer will be designated for classification at the Ogden Campus. A return classified as "OPENATAT" will be reviewed by a Field Exam Agent and will be either selected for audit or accepted as filed.

5. If a return is secured, the revenue officer must determine whether or not the ATAT issue causing the SFR assessment has been resolved.

A. If the ATAT issue has been resolved, the revenue officer must take the following actions:

- 1) Complete Form 4844 to input "CLSDATAT" on TXMOD and route Form 4844 to CCP.
- 2) Prepare Form 3870 and send the return to the Brookhaven ASFR Operation, Centralized Reconsideration Unit per IRM 5.1.15.4.3, *Substitute For Return (SFR) and Automated Substitute for Return (ASFR) Reconsiderations*.

B. If the taxpayer files a questionable return which appears to include either (a) substantially understated income or overstated expenses, or (b) bogus credits, or (c) other significant disputable item(s), the revenue officer must take the following actions:

- 1) Complete Form 4844 to request input of IDRS History Item "OSCCF&S" on TXMOD for the tax period at issue.
- 2) Complete Form 4844 to request input of History Item "OPENATAT" on TXMOD, if the History Item has not already been input.
- 3) Request the administrative file for the underlying assessment by command code (CC) ESTAB.
- 4) Complete Exhibit 5.20.11-1, ATAT Special Handling Alert, and attach to the front of the return.
- 5) Route the return, administrative file and pertinent documents, to Ogden Centralized Files & Scheduling (CF&S) on Form 3870 to be held for review by a Field ATAT Classifier. Indicate on the transmittal if the revenue officer has been unable to secure the administrative file. The return and attachments must be sent to the address below:  
Internal Revenue Service  
Classification Team 101  
Mailstop 4705  
1973 N. Rulon White Blvd.  
Ogden, UT 84404

6. When a return with a History Item "OPENATAT" is received directly by Brookhaven Centralized Reconsideration Unit, Brookhaven must contact the ATAT Coordinator where the taxpayer is located to verify that the "OPENATAT" identifier is correct.

A. If the ATAT identifier is not correct, the following actions must be taken:

- 1) The revenue officer must request input of History Item "CLSDATAT" on Form 4844 and forward to CCP for input.
- 2) The revenue officer or ATAT Coordinator must notify Brookhaven Centralized Reconsideration Unit that the ATAT issue is closed and the delinquent return can be processed.

B. If the ATAT identifier is correct, the following actions must be taken:

- 1) Brookhaven Centralized Reconsideration Unit employee must contact the ATAT Coordinator who will provide the name, phone number, and fax number of the revenue officer assigned to the account.
- 2) Brookhaven Centralized Reconsideration Unit must provide a copy of the return to the revenue officer by facsimile.
- 3) The revenue officer must overnight mail any pertinent information relating to the return to Brookhaven by the end of 15 business days from the date of contact. Pertinent information must be routed to the following Brookhaven Centralized Reconsideration address:  
Brookhaven Service Center  
1040 Waverly Avenue, Stop 654  
Holtsville, NY 11742  
Attn: Centralized Reconsideration Manager – Open ATAT Case
- 4) If pertinent information is not received by the Brookhaven Centralized Reconsideration Unit within 15 business days, the return must be sent to Ogden without the information with a notation at the bottom of the ATAT Special Handling Alert "Pertinent information available but not received." The name and telephone number for the assigned revenue officer must be included. The return must be sent to:  
Internal Revenue Service  
Classification Team 101  
Mailstop 4705  
1973 N. Rulon Blvd.  
Ogden, UT 84404
- 5) If the ATAT Special Handling Alert indicates a "pertinent information available but not received" notation, the classifier must contact the listed revenue officer and attempt to secure the information. ATAT SFR reconsideration returns will be classified in the same manner as other ATAT returns.

7. After classification has been completed, CF&S will process returns as follows:

1. Accepted SFR ATAT reconsiderations will be routed to the Brookhaven Service Center Centralized Reconsideration Unit for expedite processing of the taxpayer's SFR recon return.
2. Selected SFR ATAT reconsiderations will be routed to the appropriate Area Office PSP for field or office audit.

**Exhibit 5.20.11-1  
SPECIAL HANDLING ALERT  
COLLECTION ATAT CASE**

Taxpayer Name:	
TIN:	
DIRECTIONS: Attach Special Handling Alert to all "OPENATAT" cases that are forwarded to Ogden Centralized Files & Scheduling. "OPENATAT" cases are those cases with ATAT SFR assessments and open ATAT issues in field Collection. The Special Handling Alert will alert Field ATAT Classifiers that an open ATAT issue exists on the case in field Collection. Field ATAT Classifier will contact the assigned Revenue Officer or ATAT Coordinator as needed to discuss issues in order to classify the return.	
Revenue Officer:	
Phone Number:	
Provide the following information if the Revenue Officer is unknown:	
ATAT Coordinator:	
Phone Number:	
A current list of Collection ATAT Coordinators can be found at: <a href="http://mysbse.web.irs.gov/Collection/toolsprocesses/ColIATAT/contacts/19487.aspx">http://mysbse.web.irs.gov/Collection/toolsprocesses/ColIATAT/contacts/19487.aspx</a>	





## Part 5. Collecting Process

### Chapter 20. Abusive Tax Avoidance Transactions (ATAT)

#### Section 12. Initial Contact and Research Actions Related to Abusive Tax Avoidance Transactions cases

##### 5.20.12 Initial Contact and Research Actions Related to Abusive Tax Avoidance Transactions cases

- 5.20.12.1 [Overview](#)
- 5.20.12.2 [Initial Contact](#)
- 5.20.12.3 [TXMODA Research](#)
- 5.20.12.4 [Use of TC 971 AC 266 and TC 971 AC 267 on Unagreed Whipsaw Assessments](#)
- 5.20.12.5 [Project Codes](#)
- 5.20.12.6 [Frivolous Filer Indicators](#)
- 5.20.12.7 [yK-1 Research](#)
- 5.20.12.8 [Financial Crimes Enforcement Network Query \(FCQ\) System](#)
- 5.20.12.9 [Suspicious Activity Reports \(SAR\)](#)
- 5.20.12.10 [Foreign Bank and Financial Accounts](#)
- 5.20.12.11 [Foreign Account Tax Compliance Act \(FATCA\)](#)
- 5.20.12.12 [Electronic Research](#)

##### Manual Transmittal

March 05, 2015

##### Purpose

(1) This transmits revised IRM 5.20.12, *Abusive Tax Avoidance Transactions, Initial Contact and Research Actions Related to Abusive Tax Avoidance Transactions cases*.

##### Material Changes

- (1) IRM 5.20.12.1(6) added to include guidance on awareness of taxpayer rights.
- (2) IRM 5.20.12.2(2) added guidance for using ICS pick list when initial contact is by ATAT appointment letter.
- (3) IRM 5.20.12.2(4) added guidance on verifying taxpayer has been advised of potential third party contacts.
- (4) IRM 5.20.12.6(2) updated to clarify guidance on issuance of L 3175 and IRM 5.20.12.6(3) added to provide guidance on L 3176.
- (5) IRM 5.20.12.7(3) updated to provide link to yK-1 web application.
- (6) IRM 5.20.12.8 changed title of section from "Currency and Banking Retrieval System (CBRS)" to "Financial Crimes Enforcement Network Query (FCQ) System" and added guidance on how to access and use FCQ.
- (7) IRM 5.20.12.8.1 added to provide guidance to managers on conducting online reviews of the FinCEN audit trails.
- (8) IRM 5.20.12.9 updated references from "WebCBRS" to "FCQ" and added guidance on how to access and handle SARs.
- (9) IRM 5.20.12.10 updated references from "CBRS" to "FCQ".
- (10) IRM 5.20.12.10(1) updated to reflect that FinCEN Report 114 is now filed electronically through the FinCEN e-filing system rather than with the Enterprise Computing Center in Detroit.
- (11) IRM 5.20.12.11 added to provide guidance on Foreign Account Tax Compliance Act (FATCA).
- (12) IRM 5.20.12.12, Electronic Research, renumbered from IRM 5.20.12.10.
- (13) Editorial corrections made throughout IRM 5.20.12.

##### Effect on Other Documents

This material supersedes IRM 5.20.12, dated 4-16-2013. Incorporated Interim Guidance Memorandum titled, *Transition from Web-based Currency and Banking Retrieval System (CBRS) to Financial Crimes Enforcement Network Query (FCQ) System*, control number SBSE-05-0714-0055, dated July 24, 2014.

##### Audience

The target audience is SB/SE.

##### Effective Date

(03-05-2015)

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

##### 5.20.12.1 (03-05-2015)

##### Overview



1. Some Abusive Tax Avoidance Transactions (ATAT) encountered by revenue officers are designed to appear, and often are, quite complex and involve various transactions as well as numerous entities including trusts, partnerships, corporations, limited liability companies and offshore entities. These transactions and multiple or layered entities are often used by a taxpayer to make it difficult to track and follow title to assets or locate income sources.
2. Research and investigation of ATAT cases does not entail techniques or tools unique to ATAT casework; however, some techniques are more commonly applied, such as use of the collection summons to follow income flow or to determine nominees, and nominee/alter ego/transferee relationships regarding title to assets.
3. Potential fraud indicators may be present in ATAT cases. Contact your local Fraud Technical Advisor, when appropriate.
4. Research to identify the nature of the promotion or transaction used by a taxpayer is important in developing an effective case strategy for resolution of ATAT cases.
5. Research prior to contact is essential in ATAT cases. Guidance on conducting an initial analysis is located in IRM 5.1.30, *Resolution-directed Approach to Casework*. Additional research may be necessary due to the complexity of an ATAT case. The focus of the investigation in an ATAT case is often to locate assets or create an accurate financial picture of a taxpayer that is participating in an abusive scheme. It is important to have a full understanding of the scheme and the transactions the taxpayer was involved with in order to maximize the effectiveness of any contacts.
6. Awareness of taxpayer rights is vitally important even in ATAT case work. Taxpayer rights, as identified in Pub 1, *Your Rights as a Taxpayer*, are addressed in IRM 5.1.9, *Collection Appeal Rights*, and throughout IRM Part 5.

#### 5.20.12.2 (03-05-2015)

##### Initial Contact

1. The initial contact time frames outlined in IRM 5.1.10.3.1, *Initial Contact Time Frames*, apply to all Field Collection cases, including ATAT cases. However, the use of an appointment letter to initiate contact is common in ATAT work due to the complexity and other factors found more often in ATAT inventories. Issuing an appointment letter requesting the taxpayer provide the needed information may provide for a more effective initial contact and allow the revenue officer to determine the level of cooperation to expect from the taxpayer.

##### Note:

If a contact letter is used to initiate contact, a field call to observe assets and the lifestyle of the taxpayer is recommended.

2. In situations where the revenue officer determines the use of an appointment letter as the appropriate method for initiating contact with the taxpayer, the revenue officer will document the case history outlining the circumstances for the determination. When creating the Integrated Collection System (ICS) history entry for the appointment letter contact, the revenue officer will select "Create History", use Contact Type of "Correspondence", select "Taxpayer Contact" and then "ATAT Appointment Letter."
3. When an appointment letter is used, the revenue officer will include Form 9297, *Summary of Taxpayer Contact*, listing the information and documents the taxpayer should bring to the scheduled appointment so that a complete financial statement can be secured. Revenue officers should refrain from summons action until after it is determined that the taxpayer will not voluntarily provide the information being sought.

##### Note:

In ATAT cases, the use of an appointment letter, along with the case history documenting why that approach is being used, within the time frames outlined in IRM 5.1.10.3.1, *Initial Contact Time Frames*, will meet the requirement for timely contact.

4. Prior to making contact, the revenue officer will need to
  - A. verify that the taxpayer has been advised of potential third party contacts as stated in IRM 5.1.10.2(3), *Pre-Contact*, and IRM 5.20.3, *Third Party Contacts*. Advance notification of potential third party contact is included in Pub 1, *Your Rights as a Taxpayer*.
  - B. identify the proper person to contact. Because ATAT cases often include multiple entities and whipsaw assessments, care must be given to properly identify the contact person for each entity. Each whipsaw entity should be treated as an individual entity unless the key taxpayer (usually the Individual Master File (IMF) taxpayer) has now reported all income on their tax return.
5. When the entity is a trust, the initial contact letter can be used to also request a copy of Form 56, *Notice Concerning Fiduciary Relationship*. This information is necessary to determine who has the authority to act for the trust.

#### 5.20.12.3 (04-16-2013)

##### TXMODA Research

1. Integrated Data Retrieval System (IDRS) research using command code TXMOD with definer A can provide valuable information regarding ATAT cases in areas such as Whipsaw Assessments, Examination Project Codes and Frivolous filer Indicators, in addition to specific account transactions and control bases.

#### 5.20.12.4 (03-05-2015)

##### Use of TC 971 AC 266 and TC 971 AC 267 on Unagreed Whipsaw Assessments

1. An abusive trust situation occurs when a taxpayer has attempted to reduce or eliminate the tax liability through the use of one or more layers of trust entities. When the subjects of the examination refuse to cooperate and the Service is unable to accurately determine the correct and agreed tax owed by each entity, the Service will issue whipsaw notices of deficiency (for example, one to the individual, one to the business trust, and one to the family trust), taxing the same income for each entity.
2. When the abusive trust case has defaulted after issuance of the whipsaw statutory notice of deficiency due to no agreement received or petition sent to the court, a whipsaw assessment will be made. This means that the tax may be assessed multiple times; for example, assessment is made against the individual and each separate trust entity, but the liability will only be collected once. See IRM 5.20.6, *Whipsaw Assessments*, for additional information.
3. Since the tax is only collected once in whipsaw assessment situations, each entity must be cross-referenced. The use of transaction code (TC) 971 action code (AC) 266/267 provides for identification and linking of the key and related cases. In most instances, the individual Form 1040 taxpayer will be identified as the key case. The key case will have a separate TC 971 AC 266 on each module that references each related entity involved in the whipsaw assessment. Each related case will have a TC 971 AC 267 to cross-reference the key case. TXMODA research for TC 971 AC 266/267 will identify cross references related to whipsaw assessments. Payments are not systemically cross-referenced and should be monitored to prevent over-collection of the liability.

#### 5.20.12.5 (03-05-2015)

##### Project Codes

1. When TC 424 (Examination Request Indicator) is present on TXMODA, research of the Exam project code will provide information regarding the nature of the abusive tax avoidance transaction identified by Examination. The project code can be located on TXMODA as the four digit numerical code following the literal SPCL-PROJ>. Once the project code has been identified, research can be done using the list available on the Abusive Transactions and Technical Issues website at <http://mysbse.web.irs.gov/examination/examorg/hq/at/examinationaids/default.aspx>.

#### 5.20.12.6 (03-05-2015)

##### Frivolous Filer Indicators

1. The Frivolous Return Program (FRP), located at the Ogden Campus, or a Service employee such as a revenue agent or revenue officer may have identified frivolous filings by a taxpayer during original return processing, amended return or claim processing, examinations, or contact with a taxpayer or their representative. In response to frivolous filing, Letter 3175 or Letter 3176, *Response to Frivolous Documents>Returns Received from Taxpayers*, may have been issued by the Service.

2. Issuance of Letter 3175 is reflected on ENMOD. If Letter 3175 is issued by the revenue officer, use command code ACTON to annotate ENMOD with a history entry reflecting that the letter was issued and the date of issuance. If FRP issues the Letter 3175, a correspondex letter is sent and IDRS is systemically updated.
3. Issuance of Letter 3176 is limited to FRP. Documentation of issuance can be located on TXMODA History section.
4. A frivolous tax penalty is typically reflected as a TC 240 with penalty reference number 666 on TXMODA.
5. See IRM 5.20.10, *Identification and Processing of Frivolous Documents*, for guidelines for the appropriate processing of frivolous returns and other specified submissions.

#### 5.20.12.7 (03-05-2015) yK-1 Research

1. yK-1 is an interactive software tool and database developed and maintained by Headquarters Research. yK-1 uses K-1 data from corporations, flow-through returns, Form 851, Schedule K-1, and high income individual returns to visually depict relationships and income/loss flow between payers and payees. yK-1 draws graphs of nodes and links to help visualize complex corporate and flow-through structures.
2. Visualization presented by yK-1 provides a graphic representation of the taxpayer and their investment relationship to other entities. It is not limited to direct investments and can display multiple levels of investment tiering. Where K-1 data is present, yK-1 research may provide a number of benefits on ATAT cases because it does the following:
  - A. Expands knowledge of related entities, including shareholders and partners of entities which may not initially be apparent from other collection activity or research.
  - B. Provides an analysis of relationships which may be useful in planning the scope of the taxpayer's cross compliance.
  - C. Provides useful information in conducting a risk analysis, identifying significant returns of interest and helping to bypass tiers that are not of interest.
  - D. Provides "footprints" which may indicate shelter activity.
  - E. For promoter investigations, yK-1 may identify unknown investors and help in organizing data from other sources.
3. Revenue officers can request access to yK-1 by submitting an electronic Form 5081. After approval, users will receive instructions and a password to the yK-1 web application accessible at <https://arl.enterprise.irs.gov/yk1/>. More information on how to gain access and to use yK-1 can be found on the yK-1 Link Analysis Tool website at <http://k1.soi.irs.gov>.

#### Note:

**yK-1 Disclosure:** The output from the yK-1 Link Analysis Tool (electronic or hardcopy) contains tax return information of multiple taxpayers. Pursuant to IRC 6103, 7213, 7213A, and 7431 this information cannot be disclosed to the taxpayer or his representative.

#### 5.20.12.8 (03-05-2015)

##### Financial Crimes Enforcement Network Query (FCQ) System

1. Financial Crimes Enforcement Network Query (FCQ) is a web-based application which is owned by the Financial Crimes Enforcement Network (FinCEN), a Bureau within the Department of the Treasury. FCQ is a powerful and versatile tool to query and analyze Bank Secrecy Act (BSA) data, which is accessible through the FinCEN Portal. FCQ stores information reported by financial institutions.
2. The FCQ system provides authorized users with access to currency and other BSA reports, such as:
  - Currency Transaction Report
  - Report of Foreign Bank and Financial Accounts (FBAR)
  - Designation of Exempt Person
  - Registration of Money Services Businesses
  - Report of International Transportation of Currency or Monetary Instruments
  - Report of Cash Payments Over \$10,000 Received in a Trade or Business (Form 8300)
  - Suspicious Activity Report (SAR)
3. FCQ information is useful in identifying cash activity that may not be accurately reported on the income tax return or disclosed on financial statements. FCQ information is a "window" on the underground economy, with invaluable information not obtainable elsewhere.
4. ATAT, International and GS 13 field collection revenue officers are authorized online access to FCQ. Access must be in connection with active and assigned cases.
5. Getting online access to FCQ:
  - A. Prior to being authorized access to FCQ, revenue officers and their managers must complete required security briefings. Revenue officers must complete the following briefing on Enterprise Learning Management System (ELMS) before submitting an online 5081 request.
    - ELMS 41166, *Safeguarding Online Access and Using SAR Information*
    - Group managers must complete this same briefing (ELMS 41166) as well as
    - ELMS 41167, *Manager Online SAR Audit Trail Reviews*.
  - B. Once the revenue officer and group manager have completed the briefings, the revenue officer will prepare an online 5081 request.
    - If the revenue officer does not have an active FCQ account, the revenue officer will prepare an online 5081 request and will click the "add" button for the application titled: **SYS USER FINCEN QUERY SYSTEM -IRS COLLECTION FUNCTIONS (FINCEN QUERY -CURRENCY AND BANKING RETRIEVAL SYSTEM)**.
    - Include the following statement in the Special Instruction box: "SBSE ATAT, International or Grade 13 revenue officer authorized online access. Required briefing(s) have been completed."
6. Authorized Users have the ability to select from one of four search options and use enhancements, such as filters, wildcards, operators and import lists, to facilitate search efforts. Revenue officers can refer to the FCQ User Manual for guidance in interpreting FCQ extracts at: [http://msb.irs.gov/international/dir\\_compliance/campus\\_compliance\\_unit/downloads\\_FBAR/FinCEN\\_Query\\_Desk\\_Guide\\_%20Final\\_%202014-0101\\_v2.pdf](http://msb.irs.gov/international/dir_compliance/campus_compliance_unit/downloads_FBAR/FinCEN_Query_Desk_Guide_%20Final_%202014-0101_v2.pdf).
7. For more information on authorized user training, access and review procedures refer to the Collection SAR webpage on MySBSE at: <http://mysbse.web.irs.gov/Collection/toolsprocesses/sar/default.aspx>

#### 5.20.12.8.1 (03-05-2015)

##### Bank Secrecy Act (BSA) Review Procedures

1. Collection managers of employees with electronic access to BSA information must conduct online reviews of the FinCEN audit trails at least annually. The audits must include all FCQ searches within a selected 30 day period within the past year. BSA will provide an audit trail report, which is a history of the query parameters used by the FCQ user. The system will maintain 13 months of user query information.

2. BSA has established a FinCEN Query audit report mailbox to use when requesting audit trail information on specific FCQ system users. The mailbox address is: \*SBSE FCQ AUDIT TRAIL.
3. To obtain an audit trail report for a FCQ user, managers will send the full employee email address and the period of the audit trail request to the above mailbox address. Multiple FCQ user audit trails can be included in each email request.
4. BSA will send the requested audit trail information directly to the requestor through secure email.

**5.20.12.9 (03-05-2015)  
Suspicious Activity Reports (SAR)**

1. SARs are reports made by a financial institution to FinCEN regarding suspicious or potentially suspicious activity. SARs include detailed information about transactions that are or appear to be suspicious which is stored on FCQ.
2. Access to BSA information through FCQ for tax purposes is governed by the Memorandum of Understanding (MOU) between FinCEN and IRS dated September 24, 2010.
3. =====  
=====
4. =====
5. Revenue officers not authorized online access to FCQ can request a search for SARs through their Area SAR Gatekeeper. The link to the Area SAR Gatekeepers can be found on the Collection SAR webpage at <http://mysbse.web.irs.gov/Collection/toolsprocesses/sar/default.aspx>.
6. =====  
=====
  - A. =====  
=====
  - B. ===== "===== "  
=====
  - C. ===== "===== "===== "===== =====
  - D. =====  
=====
  - E. =====
  - F. =====  
=====

7. For more guidance refer to the Collection SAR webpage on MySBSE at: <http://mysbse.web.irs.gov/Collection/toolsprocesses/sar/default.aspx>.

**5.20.12.10 (03-05-2015)  
Foreign Bank and Financial Accounts**

1. Foreign banking information can be valuable in working ATAT cases and can be utilized as a source to trace a taxpayer's assets and income. One resource available to obtain foreign financial information is the Treasury Department's Report of Foreign Bank and Financial Accounts (FBAR), FinCEN Form 114. FBAR reports are filed electronically through the FinCEN e-filing system at <http://www.fincen.gov/>.
2. FBAR reports must be filed by any United States person who has a financial interest in, or signature or other authority over, one or more foreign financial accounts that has an aggregate value greater than \$10,000 at any time during a calendar year. Failure to file FBAR reports when required to do so may result in civil and criminal penalties. United States persons include a U.S. citizen or resident, a domestic partnership, a domestic corporation, and a domestic estate or trust. A "financial account" includes, but is not limited to, a securities, brokerage, savings, demand, checking, deposit, time deposit, or other account maintained with a financial institution (or other person performing the services of a financial institution). A financial account also includes a commodity futures or options account, an insurance policy with a cash value (such as a whole life insurance policy), an annuity policy with a cash value, and shares in a mutual fund or similar pooled fund (i.e., a fund that is available to the general public with a regular net asset value determination and regular redemptions).
3. Information required on FBAR reports includes:
  - Number of accounts.
  - Type of accounts.
  - Names of financial institutions.
  - Last name or organization name of account holder(s).
  - Taxpayer Identification Number.
4. FBAR information may be valuable in working ATAT cases and may be secured through research of IDRS command code IRPTR, and FCQ research. IRPTR research will indicate whether a taxpayer has filed an FBAR report. Once FBAR activity has been noted through command code IRPTR, a revenue officer can access or request FCQ research to obtain transcript data from FBAR filings.
5. FBAR filings can provide indicators of offshore activity by a taxpayer. Foreign banking information can be utilized to "follow the money" to trace a taxpayer's assets and income. FBAR information can also be used to determine if a taxpayer has been forthcoming with financial information.

**Note:**

Administrative collection action cannot be taken against funds held offshore unless the funds are on deposit in countries with which the U.S. has a collection tax treaty, funds are on deposit in an offshore account of a U.S. bank, or the funds are on deposit with an offshore financial institution that has a branch in the U.S. or a U.S. territory. See IRM 5.11.1.4.4, *Property Outside the United States*, for additional information.

**5.20.12.11 (03-05-2015)  
Foreign Account Tax Compliance Act (FATCA)**

1. Foreign Account Tax Compliance Act (FATCA) became law on March 18, 2010 as part of the Hiring Incentives to Restore Employment (HIRE) Act and is intended to improve tax compliance by U.S. taxpayers holding accounts with foreign financial institutions or other foreign assets. FATCA increases transparency of offshore accounts through information reporting by foreign financial institutions and by certain U.S. taxpayers holding assets outside the United States. Certain U.S. taxpayers holding financial assets, including accounts, outside the United States are required to report those assets to the IRS. Foreign financial institutions will report to the IRS certain information about financial accounts held by U.S. taxpayers, or by foreign entities in which U.S. taxpayers hold a substantial ownership interest.
2. FATCA is a statute written subsequent to the FBAR statute. Under FATCA some taxpayers who file FBAR reports have a further requirement to file Form 8938, *Statement of Specified Foreign Financial Assets*, if they have specified foreign financial assets with an aggregate value exceeding \$50,000 on the last day of the tax year or \$75,000 at any time during the tax year, with higher thresholds for married individuals filing jointly and individuals living abroad.
3. The Form 8938 filing requirement does not replace or otherwise affect a taxpayer's obligation to file an FBAR report. Individuals must file each form for which they meet the relevant reporting threshold. See IRM Exhibit 5.21.6-1, *Comparison of Form 8938 and FBAR Requirements*, for a comparison of these two foreign account reporting requirements.
4. IDRS command code RTVUE will indicate that a taxpayer has filed Form 8938. The "CC CD" indicator (or Computer Condition Code) will include an "H" to indicate that Form 8938 was filed. If Form 8938 has been filed, ESTAB the return to view the return information. This may lead to identification of a foreign account or asset.

#### **5.20.12.12 (03-05-2015) Electronic Research**

1. Electronic research can lead to useful information on ATAT cases. The SB/SE Collection ATAT and IRS Abusive Transactions and Technical Issues websites contain a number of resources for conducting electronic research.
2. Information on specific promotions and transactions encountered in ATAT cases can be found on the Issues and Procedures website at <http://mysbse.web.irs.gov/exam/tip/default.aspx>.
3. The Offshore Compliance Initiatives (OCI) Information Database is a web based application that contains financial information on taxpayers that have accounts offshore. It includes data from John Doe summonses issued to offshore credit card companies, third party processor and merchant accounts. Information has also been received from Exchange of Information and through other government agencies such as the Security Exchange Commission. The database is maintained by the Large Business & International OCI group and is a potential source for financial information.
  - Revenue officers can request access to the OCI Application through the online 5081 process. The application is titled, ASTARS - OCI Users (ASTARS). The link to the database is [http://vci.enterprise.irs.gov/OCI\\_PROD/](http://vci.enterprise.irs.gov/OCI_PROD/).
  - Request OCI research by sending an email to "SBSE Area # OCI Research" with the search criteria, e.g. names, addresses, account numbers, telephone numbers, email addresses, and bank information, such as a bank name, or its country. Data is not searchable by taxpayer identification number.
4. The International Collection website contains contact names and useful information on international issues and can be found at: <http://mysbse.web.irs.gov/Collection/international/default.aspx>.
5. The Investigative Techniques home page located at the MySB/SE Collection website contains links to internet resources and other valuable information. The Investigative Techniques home page can be found at: <http://mysbse.web.irs.gov/collection/toolsprocesses/InvestTech/default.aspx>.
6. Additional information and links can be accessed through the Collection E-Business Corner website at: <http://mysbse.web.irs.gov/collection/toolsprocesses/EBusiness/default.aspx>.

[More Internal Revenue Manual](#)