

INTERIM IRM PROCEDURAL UPDATE

DATE: 07/19/2013

NUMBER: WI-05-0713-1258

SUBJECT: Criminal Restitution Assessments and Other Changes

AFFECTED IRM(s)/SUBSECTION(s): 5.19.1

CHANGE(s):

IRM 5.19.1.2.4 - For All Call Site Employees, changed title to For all ACS Employees. Added table to paragraph (9) which includes reformatted guidance from paragraphs (9)-(15). Deleted paragraphs (10)-(15).

- 9. Use the transfer table to determine the correct transfer number.

NOTE: Inform the taxpayer they are being transferred.

NOTE: All Compliance issues should be addressed before transferring. The assistor should inform the taxpayer they are being transferred and advise caller of what topic to request after the transfer. The assistor should document AMS history with the reason for the transfer.

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When Issue is ...	Function ...	Use the Following to Resolve the Call ...
<p>Tax Law Issues (Default Screener) - Inform taxpayer of the topic/issue they need to have addressed when transferred,</p>	<p>Accounts Management Toll-Free lines (AM)</p> <p>Hours of Operation are:</p> <ul style="list-style-type: none"> o 8:00 am to 8:00 pm (local time). <p>EXCEPTION: If outside of the hours of</p>	<p>Transfer to extension # [REDACTED].</p> <p>NOTE: Extension # [REDACTED] directs the caller to a screening line. Advise the taxpayer that they will be transferred again. This will help direct the caller's inquiry expeditiously and to minimize the number of times they are subsequently transferred.</p>

	operation, advise taxpayer of the hours of operation and to call the appropriate AM toll-free number 1-800-829-1040.	
Account Issues (Refunds and any account issues that do not pertain to the ACS case),	<p>AM Toll-Free lines (AM)</p> <p>Hours of Operation are:</p> <ul style="list-style-type: none"> ○ 8:00 am to 8:00 pm (local time). <p>EXCEPTION: If outside of the hours of operation, advise taxpayer of the hours of operation and to call the appropriate AM toll-free number 1-800-829-1040.</p>	<ul style="list-style-type: none"> ○ English - Transfer to extension #-----. ○ Spanish - Transfer to extension #-----.
<p>Examination Issues Call transfer functionality to Exam is available as an alternative for routing Form 4442, <i>Inquiry Referral</i>, or e4442. Those accounts meeting the transfer criteria outlined below can be transferred:</p> <ul style="list-style-type: none"> ○ Open audit identified by an Exam Freeze Code (-L), information available on CC 	<p>Examination</p> <p>Hours of Operation are</p> <ul style="list-style-type: none"> ○ W&I - 8:00 am to 8:00 pm (local time). ○ SB/SE - 7:00 am to 7:00 pm (local 	Follow procedures in Exhibit 21.5.10-2 , <i>AIMS STATUS CODE GUIDE CORRESPONDENCE EXAM.</i>

<p>AMDIS , AIMS status code is between 00 and 57 AND a unreversed TC 420 or TC 424,</p> <ul style="list-style-type: none"> ○ Closed audit with an open Exam control base on IDRS, indicating there is an open Audit Reconsideration case, or ○ Closed audit with no Exam control base on IDRS, but meeting the criteria in IRM 4.13.2.1, <i>Research/Initial Case Screening</i>, 	<p>time).</p>	
<p>AUR Issues - Accounts with an open AUR case,</p>	<p>AUR</p>	<p>Follow procedures in IRM 21.3.1.4.58, <i>Status of Underreporter Cases</i>.</p>
<p>ACS FERDI Issues - Employees can identify FERDI accounts by the following codes:</p> <ul style="list-style-type: none"> ○ AMS – "Federal Employee" in the Alerts box of the Account Summary screen, ○ ACSWEB – "FE" in the Alerts section, ○ ACS Green Screen – "FE" in the Alerts section, ○ IDRS CC ENMOD screen – "FED-EMP>F", ○ CFOL CC IMFOL E screen – "FED 	<p>FERDI - IRM 5.19.18.2, <i>Identifying FERDI Cases</i>.</p>	<ul style="list-style-type: none"> ○ English/Spanish calls - Transfer to # [REDACTED]. <p>NOTE: All FERDI calls needing Spanish translators should be transferred to the Jacksonville CallSite - # [REDACTED]. They will utilize OPI Service instead of a Spanish assistor.</p> <ul style="list-style-type: none"> ○

EMPLOY/RETIRE E",		
BMF Taxpayers	SB/SE	○ Transfer to extension # [REDACTED]
Z Freeze	Criminal Investigation (CI)	Follow procedures in IRM 5.19.1.2.5(3), <i>For Other Account Issues.</i>

IRM 5.19.1.4.15 - Criminal Restitution Assessments, inserted new section showing procedures for handling Criminal Restitution Assessments.

1. **Background** - Following the conviction of a defendant for a criminal tax violation or tax-related offense, the court may order the defendant to pay restitution to the Internal Revenue Service. The requirement that the defendant pay restitution will be contained in a document signed by the judge called a Judgment and Commitment Order (J&C).

In 2010, Congress amended IRC 6201 to provide that the IRS shall assess and collect tax-related restitution in the same manner as if such amount were tax. This change in IRC 6201 applies to restitution in all J&Cs entered after August 16, 2010.

2. **Identification of Assessments** - Restitution assessments will be made on MFT 31 and can be identified by TC 971 AC 102. When restitution is ordered, an individual will be assessed with one of the following:
 - TC 290 with RC 141 to 150.
 - TC 300 with RC 141 to 150.
 - TC 298 with RC 141 to 150.

Restitution assessments on BMF will be on MFT 02, 06, 05, etc. It is expected that restitution assessments on a BMF will be rare. When a restitution assessment is made against an officer of a corporation, the assessment will be made on the MFT 31 of the defendant/officer. A TC 470 CC 93 will be input to the restitution module at the time of assessment, placing the module in a ST 53 hold for six months.

3. **Campus Case Actions** - Restitution cases will **not** be worked by Campus employees, except as follows:

If there is a module in ST 26 and an RO assignment is present and there are other modules in Notice Status, input CC STAUP to accelerate the modules according

to current procedures.

If the MFT 31 module does not contain a TC 470 cc 93, is in another status, or the transaction will expire in the near future, contact your local Advisory Probation Liaison (APL) for further guidance. A current listing of APLs may be found at: <http://mysbse.web.irs.gov/AboutSBSE/Collection/fieldcoll/aiq/aiqorg/contacts/19176.aspx>

- The APL may advise the contacting employee to input a TC 470 CC 93 on all modules, placing the account in a ST 53 hold or advise the contacting campus employee to CC ASGNI the account to a designated RO group.
- Otherwise, the APL receiving contact from Campus Collection employees about restitution modules or related assessments, may issue an Other Investigation (OI) to the appropriate Field Area group with instruction to assign all modules for the taxpayer if the case is not already assigned to the Field Area.

IRM 5.19.1.6.2.6 - Other Necessary Expenses, updated table in paragraph (5) to include Wyoming as a state that does not have state income tax.

5. The following are examples of some expenses that may be determined other necessary expenses:

Expense	Necessary	Notes/Tips
Accounting and legal fees	<ul style="list-style-type: none"> a. Representation before the Service or they meet the necessary expense tests b. The amount should not be excessive and must be reasonable 	<ul style="list-style-type: none"> a. Disallow any other accounting or legal fees b. Disallow costs not related to remaining current or solving current liability
Charitable contributions EXAMPLE: Donations to tax exempt organizations	Meets the necessary expense test or is a condition of employment EXAMPLE: A minister is required to tithe according to his employment contract	<ul style="list-style-type: none"> a. Disallow any other charitable contributions not considered necessary b. Review the employment contract
Child Care	<ul style="list-style-type: none"> a. Meets the necessary expense test; only 	Ask how old the child is

<p>NOTE: Babysitting, day care, nursery, and pre-school</p>	<p>reasonable amounts are allowed</p> <p>b. Costs of child care can vary greatly; do not allow unusually large child care expenses if more reasonable alternatives are available</p>	<p>NOTE: Find out if the taxpayer's spouse is employed</p>
<p>Court-ordered Payments</p> <p>EXAMPLE:</p> <p>Alimony, child support, state, and other court ordered payments</p>	<p>a. If court-ordered payments are being paid, they are allowable</p> <p>b. If payments are not being made, do not allow the expense.</p> <p>c. Child support payments for natural children or legally adopted dependents may be allowed</p>	<p>a. Review the agreement or court order</p> <p>b. Verify payments are being made</p>
<p>Dependent Care</p> <p>EXAMPLE:</p> <p>For the care of the elderly, invalid or handicapped</p>	<p>Considered necessary if there is no alternative to the taxpayer paying the expense</p>	<p>Intentionally left blank</p>
<p>Education</p>	<p>a. Required for a physically or mentally challenged child and no public education providing similar services is available</p> <p>b. Allowed only for the taxpayer and only if required as a condition of employment</p>	<p>EXAMPLE: A teacher whose employment is conditional upon completion of a graduate program</p>
<p>Involuntary Deductions</p>	<p>Union dues, uniforms, work shoes, etc. that are a condition of employment</p>	<p>Verify it is a requirement of the job</p>

Life insurance	<p>a. Is limited to term policies</p> <p>b. Life insurance used as an investment is not a necessary expense</p>	Check on whole life policy; whole life policies should be reviewed as an asset for borrowing against
Secured or legally perfected debts	Meets necessary expense test and is filed, executed and superior to the federal tax lien	The taxpayer must substantiate the payments are being made
Current Year Taxes	<p>a. Current federal, FICA, Medicare, state* and local taxes are allowed regardless of whether the taxpayer made them in the past or not.</p> <p>NOTE: Place withholding amounts on the AMS Income screen in the appropriate box.</p> <p>NOTE: *The following states do not have a state income tax:</p> <ul style="list-style-type: none"> • Alaska (AK) • Florida (FL) • Nevada (NV) • New Hampshire (NH) • South Dakota (SD) • Tennessee (TN) • Texas (TX) • Washington (WA) • Wyoming (WY) 	Federal taxes do not need to be verified if the amounts are within 20% of the amounts on CC IRPTR , CC RTVUE , CC BRTVU or CC TRDBV
Delinquent State or Local Taxes	<p>Payments for delinquent state and local (county or municipal) tax liabilities may be allowed in certain circumstances:</p> <ul style="list-style-type: none"> ○ When a taxpayer does not have the ability to full pay the tax liability. ○ When a taxpayer provides complete financial information. 	See IRM 5.19.1.6.2.6(6), <i>Other Necessary Expenses</i> , for determining allowable amount.

	<ul style="list-style-type: none"> o When a taxpayer provides verification of the state or local tax liability and agreement (if applicable). 	
Unsecured debts	<ul style="list-style-type: none"> a. Minimum payments may be allowed if the taxpayer substantiates and justifies the expense b. The necessary expense test of health and welfare and/or production of income must be met c. Except for payments required for the production of income on unsecured debts, including credit cards, are not allowed if the tax liability, including projected accruals, can be paid in full within 90 days 	<p>Examples of unsecured debts which may be necessary expenses include:</p> <p>EXAMPLE: Payments required for the production of income such as payments to suppliers or on lines of credit needed for business.</p> <p>EXAMPLE: Payment of debts incurred in order to pay a federal tax liability.</p>
Optional telephones and telephone services	Must meet the necessary expense test and pay within five years	Intentionally left blank
EXAMPLE: Pager, call waiting, caller identification, or long distance		
Student loans	<ul style="list-style-type: none"> a. Repayment allowed if guaranteed by the federal government and only for the taxpayer's education b. The taxpayer must substantiate the payments are being 	Taxpayers with student loan debt, who have not yet made arrangements to repay the loan, should be allowed 10 days to set up a payment plan for the student loan and provide verification so the loan

	<p>made</p> <p>Taxpayers who have student loan debt, but are unable to make payments on the debt because they are suffering an economic hardship or have medical problems, should be advised to request a deferment or forbearance of the student loan payments. The installment agreement amount will be established without allowing for a student loan payment. Taxpayers must be advised that if they later make arrangements to pay the student loan, they can request the installment agreement be revised.</p>	<p>payment can be allowed. Additional time may be allowed if a taxpayer has extenuating circumstances. Taxpayers must be advised that if they do not respond by the due date, the installment agreement amount will be established without allowing for a student loan payment. Taxpayers must also be advised that if they later make arrangements to pay the student loan, they can request the installment agreement be revised.</p> <p>REMINDER: If the taxpayer requested an IA for a specific amount and financial analysis supports a higher IA payment amount if the student loan payment is not allowed, the case is subject to Independent Review before informing the taxpayer of the IA rejection. See IRM 5.19.1.5.5.8, <i>Installment Agreement Rejection Criteria</i></p>
Internet Service Provider/E-mail	Must meet the necessary expense test, generally for production of income	Intentionally left blank
Repayment of loans for payment of federal taxes	If the loan is secured by the taxpayer's assets when those assets are of reasonable value and are necessary to provide for the health and welfare of the family	Determine if this meets the necessary expense test

IRM 5.19.1.9.2.1 - Identity Theft Documentation Processing, updated table in paragraph (2) to advise employees to use the Letter 5064C rather than the Letter 239C.

2. Use the following directions when processing ID Theft issues:

If ...	And ...	Then ...
The taxpayer makes a claim of ID Theft,	<p>Has not provided:</p> <ul style="list-style-type: none"> ○ A copy of the U.S. Federal or State issued form of identification (i.e. driver's license, state identification card, social security card and passport). ○ A copy of a police report or IRS Affidavit Form 14039, <i>Identity Theft Affidavit</i>. <p>NOTE: For more information on required documentation see IRM 10.5.3.2.1, <i>Identity Theft and Substantiation Documentation</i>.</p>	<ol style="list-style-type: none"> 1. Input TC 971 AC 522 containing the miscellaneous field "PNDCLM" and input the tax year of the ID Theft incident into the secondary date field. 2. Phone or TAC operations should verbally advise the taxpayer to submit the required documentation and provide the appropriate address. (See IRM 5.19.1.9, <i>Identity Theft - Overview</i>.) 3. Paper operations should send a letter to the taxpayer and request they provide the required documentation. 4. Document AMS.
The taxpayer makes a claim of ID Theft,	Has provided required ID Theft documentation as described in IRM 10.5.3.2.1, <i>Identity Theft and Substantiation Documentation</i> .	<ol style="list-style-type: none"> 1. Input TC 971 AC 522 with miscellaneous field "NOFR", "INCOME", "MULTFL" or "INCMUL". 2. Document AMS. 3. Follow procedures in IRM 5.19.1.9.2, <i>Identity Theft Documentation</i>, for processing the account. <p>W&I Balance Due Accounts: W&I CSCO does not work</p>

		<p>Balance Due ID Theft accounts. They are forwarded to ACSS for processing. Forward/Fax documents to Fresno ACSS IDT Coordinator.</p> <p>SB/SE CSCO Accounts:</p> <ul style="list-style-type: none"> a. In order to prevent any enforcement actions, input a TC 470 only. b. Prepare the Form 4442, <i>Inquiry Referral</i>, and submit to the CSCO ID Theft Coordinator. <p>NOTE: If the case is to be referred to Exam, AUR, etc... notate that on the Form 4442, <i>Inquiry Referral</i>, prior to submitting to the CSCO ID Theft Coordinator.</p> <p>SB/SE CSCO ID Theft Liaison: Follow IRM 5.1.12.2.2, <i>Identity Theft Case Resolution</i>, for processing ID Theft accounts.</p>
<p>The taxpayer makes a claim of ID Theft,</p>	<p>Has provided required documentation as described in IRM 10.5.3.2.1, <i>Identity Theft and Substantiation Documentation</i>, and all corrective action to resolve the ID Theft issue has been taken and you are closing the case in your function.</p>	<ol style="list-style-type: none"> 1. Input TC 971 AC 501 with miscellaneous field "NOFR", "INCOME", "MULTFL" or "INCMUL". 2. Update taxpayer's module(s) with the appropriate closing code. 3. Advise taxpayer in writing the issue has been resolved, use Letter 5064C, <i>Compliance</i>

		<p><i>Letter - ID Theft.</i> If necessary, use an open paragraph to inform the taxpayer their ID Theft issue has been resolved. Include information for any other unresolved balances.</p> <ol style="list-style-type: none"> 4. Complete Form 9409, <i>IRS/SSA Wages Worksheet</i>, as appropriate for wage income only and send to SSA. 5. Update AMS to show invalid income sources and Form 9409, <i>IRS/SSA Wages Worksheet</i>, sent to SSA.
Taxpayer makes a claim of ID Theft,	There is a posted unreversed TC 971 AC 501 or AC 506.	<ol style="list-style-type: none"> 1. Taxpayer is not required to provide substantiation documentation. 2. Input TC 971 AC 522 with miscellaneous field "NODCRQ". 3. Input TC 971 AC 522 with miscellaneous field "PNDCLM" and input the tax year of the new IDT incident into the secondary date field. <p>NOTE: Two TC 971 AC 522 must be input, one for each miscellaneous code described above, if the taxpayer is coming back in due to a new issue that has occurred since the TC 971 AC 501 or AC 506 has been input.</p>

NOTE: Incomplete or illegible documents will be returned to the taxpayer with a request to resubmit clear, complete information. Advise the taxpayer to respond within 30 days to avoid processing delays. IRS will mark taxpayer accounts upon receipt of complete and legible documents. This action marks the account to

reflect the Service received the documents. **Additional research is required to substantiate an ID Theft incident actually occurred.** The assigned function will perform in-depth account research to rule out a mixed entity or scrambled situation as detailed in IRM 21.6.2.4.2.3, *Preliminary Research*.