MANUAL TRANSMITTAL

9.4.5

Department of the Treasury
Internal Revenue Service

MAY 12, 2020

EFFECTIVE DATE

(05-12-2020)

PURPOSE

(1) This transmits revised IRM 9.4.5, Interviews.

MATERIAL CHANGES

(1) IRM 9.4.5 was reviewed and certified as current instructions to staff by Financial Crimes in July 2015. This revision is being processed to correct procedures for documenting interviews as required by the 2020 IRS Privacy Principles for Personally Identifiable Information (PII).

(2) Subsection 9.4.5.7 paragraph (3)(d) is revised to delete Diary Entries and replace with Memorandum of Interviews

(3) Subsection 9.4.5.7.5 is retitled and paragraph (1) is revised to remove guidance that includes the use of PII in a diary to document details of an interview. PII is a form of Sensitive But Unclassified Information that must be protected to prevent the possibility of identity theft or invasion of privacy.

(4) Exhibit 9.4.5-6 is retitled pursuant to IRS Privacy Principles for PII.

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 9.4.5, dated July 6, 2015.

AUDIENCE

CI

James C. Lee FOR
Don Fort
Chief, Criminal Investigation

9.4.5
Interviews

Table of Contents

9.4.5.1 Overview
9.4.5.2 Definitions
9.4.5.3 Purpose
9.4.5.4 Authority
9.4.5.5 Preparation and Planning
9.4.5.5.1 Preparation
9.4.5.5.1.1 Determine the Interview's Purpose
9.4.5.5.1.2 Prepare Outline
9.4.5.5.1.3 Review Available Information
9.4.5.5.1.4 Organize Interview File
9.4.5.5.1.5 Obtain Original Tax Returns
9.4.5.5.2 Planning
9.4.5.6 Conduct During Interview
9.4.5.6.1 Adaptability and Flexibility
9.4.5.6.2 Follow Up
9.4.5.6.3 Basic Questions
9.4.5.6.4 Maintain Control
9.4.5.6.4.1 Role of Subject
9.4.5.6.4.2 Role of Witness
9.4.5.6.4.3 Role of Special Agent
9.4.5.6.4.4 Role of Cooperating Agent
9.4.5.6.4.5 Role of Accountant Representative
9.4.5.6.4.6 Role of Legal Representative
9.4.5.6.4.7 Role of Recorder
9.4.5.7 Record of Interview
9.4.5.7.1 Affidavit
9.4.5.7.2 Statement
9.4.5.7.3 Question and Answer Statement
9.4.5.7.3.1 Off-Record Discussions
9.4.5.7.4 Memorandum of Interview
9.4.5.7.4.1 Prior to Preparation of Record of Interview
9.4.5.7.4.2 Corrections to Finalized Memorandum
9.4.5.7.4.3 Inspection of Memorandum or Notes
9.4.5.7.5 Informal Notes or Memorandum of Interviews
9.4.5.8 Right to Record Interview

9.4.5.9 Preserving the Record of Interview
9.4.5.9.1 Use of a Stenographer
9.4.5.9.1.1 In Connection with Collateral Investigation
9.4.5.9.2 Use of a Mechanical or Electronic Recording Device
9.4.5.9.3 Handwritten Notes
9.4.5.10 Processing Record of Interview
9.4.5.10.1 Review and Corrections
9.4.5.10.2 Execution of a Statement Under Oath
9.4.5.10.3 Persons Entitled to Copies
9.4.5.10.4 Subsequent Use by Special Agent
9.4.5.11 Rights of Witnesses and Prospective Defendants During Interview
9.4.5.11.1 Right to Advice of Counsel
9.4.5.11.2 Constitutional Rights
9.4.5.11.3 Duty to Inform Individual of Constitutional Rights
9.4.5.11.3.1 Informing of Constitutional Rights in Non-Custodial Interviews
9.4.5.11.3.1.1 Subject of Investigation
9.4.5.11.3.1.2 Subject of Grand Jury Investigation
9.4.5.11.3.1.3 Corporate Officer or Employee
9.4.5.11.3.1.4 Witness
9.4.5.11.3.2 Informing of Constitutional Rights in Custodial Interrogations
9.4.5.11.3.2.1 Interview of Persons in Custody
9.4.5.11.3.2.1.1 Procedures
9.4.5.11.3.2.1.2 Procedural Safeguards to Secure Admissibility of Statements
9.4.5.11.3.2.1.3 Oral Waiver
9.4.5.11.3.2.1.4 Written Statement Obtained After Waiver of Rights
9.4.5.11.3.2.1.5 Spontaneous or Volunteered Statements
9.4.5.11.3.2.2 Waiver of Constitutional Rights
9.4.5.12 Immunity and Compulsion Orders
9.4.5.12.1 Immunity- Authority and Tax Division Policy
9.4.5.12.2 Applicability Of Procedures For The Utilization Of 18 USC §6004
9.4.5.12.3 Summons Procedure Prior To Requesting A Compulsion Order
9.4.5.12.3.1 Compulsion Order Requests When Summons is Issued and a Fifth Amendment Claim Is Offered During an Interview
9.4.5.12.3.2 Compulsion Order Requests When No Summons Was Issued Prior To A Fifth Amendment Claim Offered During an Interview
9.4.5.12.3.3 Procedures When a Witness Reappears In Response To An Adjourned Summons
9.4.5.12.3.4 Summons Enforcement Procedures Prior To Requesting a Compulsion Order
9.4.5.12.4 Requesting Immunity for Acts of Production
9.4.5.12.5 Considerations Relevant To Requesting A Compulsion Order

9.4.5.12.6 Compulsion Order Request Procedures
9.4.5.12.7 Procedures for Potential Perjury/False Statement Referrals after A Compulsion Order
9.4.5.12.8 Report Requirements by Criminal Investigation Relating To Compelled Testimony
9.4.5.12.9 Safeguarding Transcripts and other Immunized Information
9.4.5.12.10 Prosecution of A Compelled Witness For Tax Offenses
9.4.5.12.11 Civil Use of Material Obtained Under A Compulsion Order

Exhibits

9.4.5-1 Suggested Outline for Questioning Person Who Prepared Returns, If Other Than Taxpayer
9.4.5-2 Affidavit
9.4.5-3 Statement
9.4.5-4 Question and Answer Statement
9.4.5-5 RESERVED
9.4.5-6 Informal Notes or Memorandum of Interviews
9.4.5-7 Document 5661, Statement of Rights (Non-Custody) & (In-Custody)
9.4.5-8 Form 5228, Waiver of Right to Remain Silent and of Right to Advice of Counsel

9.4.5.1
(07-06-2015)
Overview

(1) This section covers the definition of, purpose for, and authority to conduct interviews. The section also discusses preparing for and observing the rights of witnesses and prospective defendants during an interview.

9.4.5.2
(02-01-2005)
Definitions

(1) An **interview** is a meeting between two or more persons for the purpose of obtaining information. Interviews usually involve a formal consultation or interrogation for the purpose of resolving or exploring issues.

(2) An **interrogation** is an interview in which a person is questioned to obtain information.

(3) A **conference** is an exchange of views. Often a conference includes an interrogation to obtain details of a person's views and contentions.

9.4.5.3
(05-15-2008)
Purpose

(1) Interviews are used to obtain leads, develop information and secure evidence. The testimony of witnesses and the confessions or admissions of alleged violators are major factors in resolving tax investigations.

(2) During most judicial proceedings evidence is presented through the testimony of witnesses. Therefore, it is the special agent's duty to timely interview the subject and witnesses connected with the investigation and to accurately document their statements.

9.4.5.4
(05-15-2008)
Authority

(1) Title 26 USC §7602-Authorizes the Secretary or his/her delegate to examine books and records and to take testimony under oath.

(2) Delegation Order No 4 (to be renumbered as Delegation Order 25-1) authorizes a special agent to issue and serve summonses, examine books and records, question witnesses and take testimony under oath.

(3) The Special Agent in Charge (SAC), in assigning an investigation originating from a source other than a referral from other operating divisions, may authorize a special agent to interview the subject, the subject's representative, the subject's present employees and/or to inspect the subject's books and records. The SAC may authorize a special agent to make these inquiries independently or request the cooperation of a revenue agent or revenue officer, as appropriate, to assist in making the inquiries. When the services of a cooperating agent are necessary, the SAC will forward a request to the appropriate operating division. The other operating divisions will assign an employee for the purpose requested within 30 days.

(4) A further discussion of a special agent's authority is contained in IRM 25.5.4, Summons - Examination of Books and Witnesses.

9.4.5.5
(02-01-2005)
Preparation and Planning

(1) Since there may only be one opportunity to interview the subject or witness, thorough preparation and planning of the initial interview is necessary to ensure that the maximum amount of information is obtained.

9.4.5.5.1
(02-01-2005)
Preparation

(1) Prior to the interview of any subject or witness, the interviewer should take the following steps:

a. Determine the purpose for questioning the person.
b. Prepare an outline with sufficient detail to obtain the desired information.
c. Review all available information.
d. Organize the interview file.
e. Obtain the original tax returns if the interview involves the subject, the subject's representative, the preparer of the return, the subject's present employees, or if inspecting the taxpayer's books and records.

Note: The original income tax return may only be shown to the subject, the subject's representative or the preparer of the return (see IRM 9.3.1, Disclosure).

9.4.5.5.1.1
(03-14-2002)
Determine the Interview's Purpose

(1) In planning for an interview, the special agent needs to determine the purpose for questioning the subject or witness. Each interview will have specific goals unique to the subject or witness being interviewed.

9.4.5.5.1.2
(02-01-2005)
Prepare Outline

(1) The amount of detail in the outline will vary depending upon the experience of the special agent and the complexity of the investigation. The outline should contain only information that is relevant and material. Extraneous matter should be excluded because it may be confusing and could adversely affect the end result. Important topics should be highlighted or underscored and related topics should be listed in their proper sequence. A portion of a suggested outline is shown in Exhibit 9.4.5-1, Suggested Outline for Questioning Person Who Prepared Returns, If Other Than Subject. Specific questions should be kept to a minimum, since they tend to reduce the flexibility of the questioner. In addition to the topics to be discussed, the outline should include the following, if applicable:

a. identification of the subject/witness
b. information to be given to the subject/witness about his/her constitutional rights
c. administration of the oath
d. purpose of the interview
e. questions showing that the subject/witness was not threatened or intimidated in any manner, and that statements were made freely and voluntarily without duress or any promises whatsoever

9.4.5.5.1.3
(05-15-2008)
Review Available Information

(1) Prior to any interview, the special agent should review all the information and data gathered relating to the investigation with an eye to those issues that need to be developed through testimony such as admissions made by the subject or documents or objects to be identified by a witness.

9.4.5.5.1.4
(02-01-2005)
Organize Interview File

(1) The interview file should contain only data or information arranged in the order it is to be discussed or covered in the interview. The less data the special agent has to consider during the interview, the easier it is to vary the line of questioning. Delays in questioning caused by searching for a document in a voluminous file can be distracting and cause confusion. While the files should contain sufficient data to cover all the matters under discussion, they should not become unwieldy.

9.4.5.5.1.5
(02-01-2005)
Obtain Original Tax Returns

(1) The special agent must have custody of the original return or returns involved, if any were filed for the pertinent period, as a prerequisite to inspecting the subjects book and records and/or independently interviewing:

a. the subject
b. the subject's representative
c. the subject's present employees if the investigation involves employment tax returns, or
d. the preparer of the return .

(2) Exceptions may be made in situations where an examination is extended to include taxable periods for which the original return is not available and the examination is based on the subject's retained copy, or where such action is approved by the Supervisory Special Agent (SSA).

Note: The original income tax return may only be shown to the subject, the subject's representative or the preparer of the return (see IRM 9.3.1, Disclosure.)

(3) The procedure outlined above is limited to a subject's own tax matters and does not apply to an inquiry where a special agent is merely securing information from another person not under tax investigation, but who has engaged in transactions with the subject or has data relevant to the tax liability under inquiry.

9.4.5.5.2
(02-01-2005)
Planning

(1) The following factors are important considerations when planning for a successful interview. They are:

a. timing - proper timing of the interview is essential to obtain information that is material for the development of an investigation
b. suitable surroundings - make arrangements for suitable surroundings that will facilitate the interview process
c. persons present - the number of persons present during the interview may affect the ability to conduct an effective interview. For example, the interview of the subject and his/her spouse might be more effective if conducted separately.

9.4.5.6
(02-01-2005)
Conduct During Interview

(1) During the course of the interview, be adaptable and flexible, follow through on questions asked, and ensure that the basic questions such as who, what, where, when, how, and why have been addressed. Special agents will refrain from characterizing investigations as " criminal" except for the initial interview of the subject in an administrative investigation or in those instances where this disclosure is necessary to obtain the information sought. Such a disclosure could be necessary if the witness is disinclined to cooperate.

(2) Criminal Investigation (CI) has an interest in conducting its investigations discretely to avoid unnecessary embarrassment to the subject. Adhering to these procedures will help achieve this goal. Routine investigative inquiries often can be made with minimum disclosure of information.

a. For example, if a special agent contacts a neighbor to learn if a witness resides at a particular address, it is often not necessary to disclose that they are a special agent conducting a criminal investigation to obtain the information. The exercise of appropriate discretion when contacting potential witnesses is the hallmark of professionalism.

9.4.5.6.1
(02-01-2005)
Adaptability and Flexibility

(1) The special agent should keep an open mind receptive to all information, and be prepared to develop that information. If the interviewer is not flexible, a great deal of time may be wasted and unnecessary questions may be asked, resulting in a voluminous statement of little or no value. A carefully planned outline will provide enough flexibility to cope with any situation that may occur and permit the development of any leads that may arise. Rigid adherence to notes or an outline will seriously limit flexibility. The outline and data should serve only as aids, rather than substitutes for original and spontaneous questioning.

9.4.5.6.2
(02-01-2005)
Follow Up

(1) The special agent should follow up on every pertinent lead and every incomplete answer. Questioning should continue until all reasonably expected information is obtained from the witness. Incomplete answers have little or no value.

(2) The following suggestions will help the special agent follow up on potential leads and obtain answers that are complete and accurate:

a. use short questions confined to one topic that can be clearly and easily understood
b. ask questions requiring narrative answers; whenever possible avoid asking questions that only require a yes/no answer
c. avoid questions that suggest part of the answer, i.e., leading questions
d. ask witnesses for the factual basis for answers provided
e. be alert to prevent the witness from aimlessly wandering; when possible, require a direct response
f. keep the witness focused on questions asked; do not allow the witness to confuse issues and leave questions unanswered
g. concentrate more on the answers given by the witness than on formulating the next question to be asked
h. have a clear understanding of each answer and eliminate any confusion before proceeding to the next question
i. when all important points have been resolved, terminate the interview; if possible, leave the door open for further meetings with witness

9.4.5.6.3
(02-01-2005)
Basic Questions

(1) The special agent should address the following basic questions:

a. Who? - Complete identification should be made of all persons referred to during the interview. This includes the following identification factors: description, address, any known aliases, doing business as, trading as, also known as, citizenship, reputation, and known associates. If the person cannot be identified by name, a physical description should be requested and should include the following: age, height, weight, color of eyes, hair, skin, description of build, clothing, unusual markings, scars and mental or physical defects. Questions should also cover any aids worn by the individual, such as glasses, hearing aid, dentures, wig or toupee, cane, braces, or other items.
b. What? - Obtain complete details as to what happened. Questions should relate to events, methods, and systems. Trace the event from its inception to its ultimate termination to develop the answer completely. For example, a sale starts with a customer placing an order, either orally or in writing, and terminates when the payment is ultimately placed in some

depository. Every detail concerning what happened to the sale and what happened to every book, record, document, or person connected with it should be determined.

c. Where? - Obtain complete details regarding the location of books, records, assets, bank and brokerage accounts, witnesses, clients, customers, safe deposit boxes, safes, etc. A description of the location should include the general area, as well as the identification of the person who has custody and control of the item. A complete description of the place should include the size, shape, color, and location.

d. When? - The time can be established by direct questioning, by relating the incident to some known event, or by associating the event to some person, place, or thing.

e. How? - Obtain complete details about how the event occurred or how the operation was conducted. How did the subject acquire knowledge? Was it through seeing, hearing, feeling, smelling, or the performance of his/her duties? How were transactions recorded: written, typed, matching entries, other?

f. Why? - Determine the motive for an action by questioning the witness about his/her behavior. Find out what and who caused the witness to act. Ask how he/she was motivated to act. Special consideration should be given to these questions since they may be important in the development of intent items, especially when relating to or reflecting an evil purpose.

9.4.5.6.4
(02-01-2005)
Maintain Control

(1) The special agent will maintain full control of the interview. Each participant will be limited to the rights, duties, and privileges he/she is entitled to at the interview. Any deviation should be corrected immediately by informing the individual of his/her role and preventing him/her from going beyond it. If complete control of the interview cannot be maintained, the special agent should end the interview and arrange to continue when the situation is corrected. The record should show all attempts to correct the individual's improper conduct, as well as the reasons for terminating the interview before completion. The special agent will inform all persons of the reason they are present at the interview. The activities of the participants will be confined to the roles indicated.

9.4.5.6.4.1
(02-01-2005)
Role of Subject

(1) The subject's role is to answer questions and provide any explanations as appropriate. The special agent will encourage the subject to tell his/her side of the investigation. Under the Fifth Amendment to the Constitution the subject has the right to refuse to answer any question that he/she feels may incriminate him/her. This constitutionally protected right can only be invoked by the subject.

(2) The subject of the investigation should be interviewed expeditiously after the initiation of the criminal investigation. The reason for delaying the initial interview of the subject will be documented in the investigative file.

9.4.5.6.4.2
(05-15-2008)
Role of Witness

(1) The witness must comply with every legal and reasonable request made by the special agent. The witness, however, has a right to refuse the request if, by answering the question, the information would tend to incriminate him/her. This right cannot be invoked on the grounds that the information will incriminate someone else (see IRM 9.4.5, Interviews).

9.4.5.6.4.3
(05-15-2008)
Role of Special Agent

(1) The special agent should question the subject about any matters relevant to the investigation, unless the special agent feels that it would be to the government's disadvantage to ask questions that would reveal particular information. The special agent is responsible for the development of evidence and will conduct the interview in any manner deemed appropriate. If the special agent grants permission to a cooperating agent to question the subject, the special agent should instruct the cooperating agent in the method and technique to be used.

(2) The special agent should attempt to expeditiously interview the subject during the course of an investigation to obtain all available information and should give the subject every opportunity to explain participation in the alleged criminal violation. There should be at least two investigating officers, or one officer and an IRS stenographer, at every subject interview.

(3) The special agent must be cautious to avoid making statements of any kind in discussion with the subject or his/her representative that might be construed to compromise any criminal components of the investigation.

(4) The special agent should interview all key witnesses in a timely manner. When possible, there should be at least two investigating officers at every interview. However, if the interview involves a third party recordkeeper with no personal knowledge regarding the subject, then the interview may be conducted by one special agent.

(5) When interviewing witnesses, the special agent must remain objective and refrain from making comments regarding the subject that could be construed as derogatory.

(6) When a special agent determines that an interview with a juvenile is necessary, the special agent should seek the advice of Criminal Tax (CT) Counsel.

9.4.5.6.4.4
(02-01-2005)
Role of Cooperating Agent

(1) The revenue agent or revenue officer may assist the special agent whenever any tax or technical accounting issues arise during an interview. The cooperating agent should not question the witness until he/she has discussed the matter with the special agent.

9.4.5.6.4.5
(06-30-1998)
Role of Accountant Representative

(1) The accountant's duty is to assist the client in all bookkeeping and accounting matters.

9.4.5.6.4.6
(02-01-2005)
Role of Legal Representative

(1) The attorney has a duty to furnish legal advice to the client relating to any matter discussed. This is the attorney's principal function at an interview.

9.4.5.6.4.7
(02-01-2005)
Role of Recorder

(1) The recorder's function is to prepare a permanent record of the interview. A mechanical or electronic recording device may be used in conjunction with the recorder or in lieu of a recorder, provided all parties to the proceeding have consented to the device's use.

9.4.5.7
(05-12-2020)
Record of Interview

(1) The principal purpose of an interview is to obtain all the facts necessary to develop the investigation and resolve questions. It is necessary to prepare a permanent record of every interview and contact. The record should memorialize facts pertinent to an investigation to be preserved for future use. The record will also contain the manner in which the special agent identified himself/herself and should indicate that the subject was advised of his/her constitutional rights, if appropriate.

(2) Further, when the special agent believes it is necessary to make a more explicit disclosure of the criminal nature of the investigation, the reasons for making this additional disclosure will also be documented.

(3) The record of interview will usually take one of the following forms:

a. Affidavit (see Exhibit 9.4.5-2)
b. Statement (see Exhibit 9.4.5-3)
c. Question and Answer Statement (see Exhibit 9.4.5-4)
d. Informal Notes or Memorandum of Interviews (see Exhibit 9.4.5-6)

9.4.5.7.1
(02-01-2005)
Affidavit

(1) An affidavit is a written or printed declaration or statement of facts voluntarily made and confirmed by the oath or affirmation of the party making it before an officer having authority to administer such oath. No particular form of affidavit is required at common law. It is customary, however, that affidavits contain a caption or title, the judicial district in which given, the signature of the affiant and the jurat, which properly includes authentication. Exhibit 9.4.5-2 is a suggested format containing all these characteristics.

Note: The authority to administer oaths is not delegated to Tax Fraud Investigative Aides (TFIAs). See IRM 1.2.52, Delegation of Authorities for Special Topics Activities (Delegation Order No 4 (to be renumbered as Delegation Order 25-1) and IRM 25.5.1, Introduction.

9.4.5.7.2
(02-01-2005)
Statement

(1) A statement is a declaration of matters of fact. Although the term has come to be used for a variety of formal narratives of facts required by law, it is in a limited sense, a formal, exact, detailed presentation of the facts. The statement may be prepared in any form and should be signed and dated by the person preparing it. If possible, the witness should also sign the statement and signify that they read and understood it or that it was read to them. A statement (Exhibit 9.4.5-3) generally contains the comments and remarks of the witness and is used whenever it is not feasible to place the witness under oath, e.g., an affidavit, without the affiant's oath, is essentially a statement.

9.4.5.7.3
(02-01-2005)
Question and Answer Statement

(1) A question and answer statement:

a. is a complete transcript of the questions, answers, and statements made by each participant at an interview, and
b. may be prepared from the recorder's notes or from a mechanical or electronic recording device

(2) If no stenographer is readily available, mechanical or electronic recording devices may be used to record statements by advising the witness, in advance, of the use of the device (implied consent). The source used to prepare the transcript should be preserved and associated with the investigative file because it may be needed in court to establish what was said. The

transcript (Exhibit 9.4.5-4) should be prepared on letter-sized plain, bond paper with each question consecutively numbered and should contain the following:

a. the time and place where the testimony is obtained
b. the names and titles of all persons present, including any attorneys or accountants present to assist the witness, also the reason for each person being present, if not self-evident
c. name and title of the person asking questions and the person giving answers
d. the name and address of each person giving testimony
e. the matter to which the testimony relates
f. purpose of interview
g. information given to the witness concerning his/her rights relating to self-incrimination and counsel, if appropriate
h. administration of oath (see IRM 1.2.52, Delegation of Authorities for Special Topics Activities (Delegation Order No 4 (to be renumbered as Delegation Order 25-1) and IRM 25.5.1)
i. questions and answers establishing that the statement was made freely and voluntarily, without duress, and that no promises or commitments were made by the special agents
j. an offer to allow witness to make any statement for the record, and, if advisable, an opportunity to examine and to sign the transcript
k. the jurat: the officer who administers the oath should complete the jurat; it is preferable, but not essential, to have the same officer who interviewed the witness complete the jurat
l. signatures of any government witnesses present
m. signature and certificate of person preparing the statement, showing the source of the original information used to prepare it
n. if the statement is mechanically or electronically recorded, include a statement of consent

9.4.5.7.3.1
(02-01-2005)
Off-Record Discussions

(1) Off-record discussions should not be permitted during a recorded interview of a subject. If an off-record discussion takes place during a recorded interview of a witness, it must be kept to a minimum.

9.4.5.7.4
(05-15-2008)
Memorandum of Interview

(1) A memorandum of interview is an informal note or document containing information that the person desires to memorialize. It is a record of what occurred at the interview. A final typed memorandum of interview should be prepared without undue delay and include the following:

a. the interviews date, time, place, and roster of persons present, as well as what transpired
b. manner in which the special agent identified himself/herself
c. whether the witness was advised of his/her constitutional rights during the interview
d. testimony, evidence, and leads obtained during the interview
e. signatures of the special agents who were present at the interview, and the date the memorandum was signed
f. the actual date of the memorandum's preparation placed at the bottom of the memorandum

(2) The memorandum should report the information developed during the interview and be free of opinions, conclusions, and extraneous material.

9.4.5.7.4.1
(02-01-2005)
Prior to Preparation of Record of Interview

(1) Facts pertinent to an investigation developed during an interview, interrogation, or conference should be reduced to writing and memorialized in an affidavit, statement, question and answer statement, or memorandum of interview. Any apparent differences of recollection between the investigating officers as to what was said should be resolved as soon after the interview, interrogation, or conference as possible, before completion of the memorandum.

(2) Copies of key interviews are to be forwarded to the SSA for review and inclusion in the administrative investigative file. Key interviews include contacts with the subject, the subject's representative, and/or the subject's return preparer.

9.4.5.7.4.2
(02-01-2005)
Corrections to Finalized Memorandum

(1) If it becomes necessary to correct or supplement a memorandum after it is finalized (signed and dated), clearly state the date and reason for such action in a supplemental memorandum and attach it to the finalized memorandum.

9.4.5.7.4.3
(05-15-2008)
Inspection of Memorandum or Notes

(1) Since the person interviewed may be a government witness in a criminal trial, remember that 18 USC §3500 provides for defense inspection of any pre-trial statement about whose subject matter the witness has testified on direct examination. Case interpretation of this subsection covers "substantially verbatim recitals" of a witnesses' oral statements that are contemporaneously recorded such as an affidavit or Q & A statement.

(2) Title 18 USC §3500 does not apply to memoranda of interviews or handwritten notes used to prepare them or other reports. However, memoranda of interview are routinely disclosed during discovery. Special agents, therefore, should confine memoranda to facts discovered in their interviews, and should avoid opinions, conclusions, and other extraneous matters. Handwritten notes made by a special agent during an interview and used as the basis for a more detailed memorandum or report may be subject to inspection by a court and should be preserved and retained in the investigative file.

9.4.5.7.5
(05-12-2020)
Informal Notes or Memorandum of Interviews

(1) Informal notes should contain sufficient details to permit the special agent to refresh his/her memory as to what transpired at the interview. Any method of recording the entries is sufficient, provided it documents the time, place, persons present, and what occurred. Details of interviews containing Personally Identifiable Information (PII) should not be entered in the diary, but rather a memorandum should be made and kept in the investigative file (see Exhibit 9.4.5-6).

9.4.5.8
(05-15-2008)
Right to Record Interview

(1) An interrogation or conference may be recorded only by a stenographer who is an employee of the IRS. This rule may be waived by the special agent's SSA. At the request of the IRS or witness, which includes a subject, the SSA may authorize the use of a stenographer employed by a US Attorney, a court reporter of the US district court, a reporter licensed or certified by any state as a court reporter or to take depositions for use in a US district court. The use of this procedure may be permitted under 26 USC §6103(c), subject waiver, or under 26 USC §6103(k)(6) where a disclosure is necessary for investigative purposes. If no stenographer is readily available, mechanical or electronic recording devices may be used to record statements by advising the witness, in advance, of the use of the device (implied consent). If the witness objects, the interrogator will refrain from mechanically or electronically recording the

statement. If the witness elects to mechanically or electronically record the conversation, the IRS will make its own recording.

(2) A witness or subject will be permitted to hire a qualified reporter as described above to be present at his/her expense to transcribe testimony, provided that the IRS can secure a copy of the transcript at its expense or record the testimony using a mechanical or electronic recording device or its own stenographer or reporter. However, the IRS retains the right to refuse to permit verbatim recording by a non-IRS reporter or stenographer on the grounds that disclosure would seriously impair Federal tax administration. See IRM 11.3, Disclosure of Official Information and IRM 1.2.49, Delegation of Authority for Communications, Liaison, and Disclosure Activities and (see Delegation Order No. 11-2 (Formerly 156 (Rev.17).

9.4.5.9
(06-30-1998)
Preserving the Record of Interview

(1) All records of interview should be preserved whether the interview was recorded by use of a stenographer, a mechanical or electronic recording device, or handwritten notes.

9.4.5.9.1
(05-15-2008)
Use of a Stenographer

(1) The stenographer's original shorthand notes of a statement of a subject or a witness should be filed and considered part of the workpapers relating to the investigation. Remove the pages containing such notes from the notebook, number, staple in order, and seal in an envelope. If the stenographer uses computer media to prepare their shorthand notes, the special agent should consult with a Computer Investigative Specialist (CIS) agent to secure a copy of the electronic file to be placed in the envelope. Label the envelope with the following information:

a. investigation number
b. name of the person whose statements are recorded
c. date the statements were made
d. number of pages of notes
e. name of the stenographer

9.4.5.9.1.1
(02-01-2005)
In Connection with Collateral Investigation

(1) The special agent will package and identify the stenographer's notes and other verbatim recordings of statements made in connection with a collateral investigation in accordance with the procedure prescribed above and send it, along with the collateral report, to the field office that requested the investigation.

9.4.5.9.2
(02-01-2005)
Use of a Mechanical or Electronic Recording Device

(1) The special agent will label recordings of statements by a subject or a witness made through the use of stenotype machines or sound recording devices and file in a manner similar to that prescribed in 9.4.5.9.1.

9.4.5.9.3
(02-01-2005)
Handwritten Notes

(1) The special agent will preserve notes made substantially contemporaneous to interviews of the subject or prospective witnesses and which are used in the preparation of a memorandum of interview, affidavit, or other similar reports. The original notes will be retained in the investigative file. The notes should contain the date of the interview and the initials of their maker in the right corner.

9.4.5.10
(02-01-2005)
Processing Record of Interview

(1) Once the details of an interview have been recorded in the desired format, the special agent will take the following steps to ensure proper processing of the record of interview.

9.4.5.10.1
(02-01-2005)
Review and Corrections

(1) The special agent will review every record of interview for typographical errors and for accuracy. If the statement is examined by the witness, permit the witness to correct typographical errors and to make minor modifications to his/her testimony. While major changes in the original interview are not permitted to be made, the witness may, however, submit an affidavit or give testimony to modify his/her original statements.

9.4.5.10.2
(02-01-2005)
Execution of a Statement Under Oath

(1) Every document made under oath should have a simple certificate evidencing the fact that it was properly executed before a duly authorized officer. The usual and proper form, called the " jurat," contains the statement "subscribed and sworn to before me at (address)," followed by the date, signature, and title of the officer. If the jurat shows an affirmation, the word " affirmed" will be sufficient. The special agent administers the oath by having the witness stand, raise his/her right hand, and make a declaration that the document is true and correct. See IRM 1.2.52, Delegation of Authorities for Special Topics Activities (Delegation Order No 4 (to be renumbered as Delegation Order 25-1) and IRM 25.5.1.

9.4.5.10.3
(05-15-2008)
Persons Entitled to Copies

(1) Upon request, a copy of an affidavit or transcript of a question and answer statement will be promptly furnished to a witness except when it is determined by the SAC that its release should be delayed until such time as it will not interfere with the development or successful prosecution of an investigation (see 26 CFR 601.107 (b)(1)). A memorandum of interview does not have to be provided to the witness. For purposes of this section the subject of the investigation is considered a witness.

9.4.5.10.4
(05-15-2008)
Subsequent Use by Special Agent

(1) The record of interview is generally not admissible as evidence at the trial, but may be used to refresh the memory of a witness or to discourage a witness from changing his/her testimony. It may also be used to impeach a witness on the stand when his/her previous statements are inconsistent with his/her testimony, or to furnish a basis for prosecution of a witness who testifies falsely at the trial. If the statement constitutes a confession or an admission against interest, the pertinent parts may be used as such in evidence at the trial. The record may also serve as a valuable source of information for subsequent interviews.

9.4.5.11
(05-15-2008)
Rights of Witnesses and Prospective Defendants During Interview

(1) All persons called as witnesses, whether prospective defendants or otherwise, whether natural persons or corporate entities, and whether they appear as witnesses in response to subpoenas, Commissioner's summonses, or simple requests to appear for interview, have rights and obligations defined by the US Constitution, statutes, and court decisions.

(2) A potential conflict of interest situation may arise where there is dual representation; that is, where a summoned third-party witness is represented by an attorney, certified public accountant, or other person who also represents the subject or another interested party.

9.4.5.11.1
(02-01-2005)
Right to Advice of Counsel

(1) A witness in a criminal investigation has the right to be accompanied, represented, and advised by counsel (see CFR 601.107(b)(1)). The witness should be informed of this right if an inquiry is made regarding it. Subject's counsel, however, should not be permitted to control or censor the replies of the witnesses nor attempt to interfere with the examination or impede or delay the progress of the interview, interrogation, or conference.

9.4.5.11.2
(02-01-2005)
Constitutional Rights

(1) Principles relating to constitutional rights shall be adhered to during the interview, interrogation, or conference with a person who may be a possible defendant in a criminal trial.

(2) Constitutional protections are provided by the Fourth, Fifth, and Sixth Amendments.

a. Fourth Amendment - The Fourth Amendment provides that " The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be searched."
b. Fifth Amendment - The Fifth Amendment provides, in part, that " No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law."
c. Sixth Amendment - The Sixth Amendment provides, in part that " In all criminal prosecutions, the accused shall enjoy the right to have the assistance of counsel for his defense."

(3) Violations of Rights - The courts have long held that if an officer of the United States obtains evidence, a statement, or a confession of a crime from a natural person in violation of the above constitutional rights, such evidence, statement, or confession shall not be admitted as evidence against such person.

9.4.5.11.3
(02-01-2005)
Duty to Inform Individual of Constitutional Rights

(1) Special agents must abide by any related memoranda directives that apply to advising individuals of their constitutional rights during non-custodial and custodial interviews.

9.4.5.11.3.1
(05-15-2008)
Informing of Constitutional Rights in Non-Custodial Interviews

(1) The special agent will advise the individual of his/her constitutional rights during non-custodial interviews when the individual is a subject of an investigation, a corporate officer or employee who appears to be implicated in an alleged wrongdoing involving a corporation under investigation, or when a witness' statement would incriminate the witness.

(2) The special agent will not use language that could be interpreted as a promise of immunity or settlement of the subject's investigation, or that might be viewed as intimidation or a threat in order to secure the subject's confession.

(3) To defend against an attack on the admissibility of any statement or documentary evidence furnished by a subject under investigation, the special agent will always inform the subject of his/her constitutional rights at the beginning of a formal question and answer interview, even if the subject had previously been advised.

(4) Failure to give subjects the constitutional warnings prescribed by Internal Revenue Service procedures has resulted in the exclusion of evidence obtained from the subjects. See *US v. Leahey* and *US v. Heffner*.

9.4.5.11.3.1.1
(02-01-2005)
Subject of Investigation

(1) At the start of the initial interview with the subject of an investigation, a special agent(s) should do the following:

a. Identify himself/herself as a special agent of the IRS, CI and provide his/her last name along with an introduction by title and last name of any other officials present.
b. Display authorized credentials and badge of authority to the subject for visual examination, (always maintain physical control of the badge and credentials and never allow anyone to duplicate, photograph or make an impression of your identification).
c. Provide the subject of the investigation with the special agent(s) unique Identification Number (see IRM 10.5.7, Use of Pseudonyms by Internal Revenue Service Employees) and phone number, either verbally or in writing as required by RRA 98, Section 3705 (a).

Note: Special agents are required to provide the subject and the subject's representative with his/her unique Identification Number and phone number at the initial contact.

d. The special agent will advise the subject, "As a special agent, one of my functions is to investigate the possibility of criminal violations of the Internal Revenue laws and related offenses. "

(2) Advise the subject of the investigation as follows: "In connection with my investigation of your tax liability (or other matter), I would like to ask you some questions. However, first I advise you that under the Fifth Amendment to the Constitution of the United States, I cannot compel you to answer any questions or to submit any information if such answers or information might tend to incriminate you in any way. I also advise you that anything which you say and any documents which you submit may be used against you in any criminal proceeding which may be undertaken. I advise you further that you may, if you wish, seek the assistance of an attorney before responding. Do you understand these rights?"

(3) If the subject requests clarification, either as to his/her rights or the purpose of the investigation, the special agent will give such explanation as is necessary to clarify the matter for the subject.

(4) The special agent will immediately terminate the interview if at any stage of an interview the subject indicates the wish to exercise rights to either withhold testimony or records, or to consult with an attorney.

(5) The special agent will write a contemporaneous memorandum stating the following:

a. the manner in which the special agent identified himself/herself, including providing the subject with the special agent'(s) unique Identification Number and phone number
b. when and where the subject was advised of constitutional rights
c. what additional explanation, if any, was made
d. how the subject responded
e. who was present at the time

(6) During subsequent contacts with the subject, the subject should be advised of his/her constitutional rights before questioning.

(7) All contacts with the subject and/or their representative are to be documented in accordance with established policy and procedures.

9.4.5.11.3.1.2
(02-01-2005)
Subject of Grand Jury Investigation

(1) IRS procedures for non-custodial advice of rights does not apply to grand jury investigations. The attorney for the government will provide instructions for advising subjects of their rights. Further, though IRS employees may use their credentials for identification purposes, they should advise those contacted that they are acting as assistants to the attorney for the government in conjunction with an investigation.

9.4.5.11.3.1.3
(02-01-2005)
Corporate Officer or Employee

(1) In dealing with a corporate officer or employee who appears to be implicated in an alleged wrongdoing involving a corporation under investigation, the special agent will advise the person of his/her identity and duties as a special agent of the IRS, CI as required above.

(2) Also, the special agent will advise the person that under the Fifth Amendment, he/she cannot be compelled to answer any questions or to submit any personal information that might tend to incriminate him/her in any way. The special agent will advise the person that anything he/she says and any personal documents submitted may be used in any criminal investigation. The person may, if desired, seek the assistance of counsel before responding. If the person is the custodian of corporate records that are needed for the investigation, advise that he/she is required to produce such records since rights under the Fifth Amendment do not apply to a corporation and its records.

9.4.5.11.3.1.4
(05-15-2008)
Witness

(1) Special agents are authorized to display their badges and credentials, make an affirmative statement that they are special agents with the IRS, CI and identify the person under investigation. Below is a sample introduction.

Mr. or Ms. XXXXXX, my name is John Doe, I am a special agent with IRS, CI (display credentials for examination and introduce any other officials present). I am conducting an investigation of Mr. or Ms. XXXXX and I would like to ask you some questions regarding this matter.

Note: In the above example the special agent made no affirmative statement characterizing the investigation as being “criminal” in nature. Special agents will refrain from characterizing investigations as “ criminal” except in those instances where this disclosure is necessary to obtain the information sought. Such a disclosure could be necessary if the witness was disinclined to cooperate.

(2) Advise the witness of his/her constitutional rights if at any time the witness makes statements that tend to incriminate him/her. Exhibit 9.4.5-7 is a copy of Document 5661-A, Statement of Rights (Non-Custody) & (In-Custody), which sets forth the warning that is required at the first official meeting with the subject of an investigation, and the warning that must be given to a person in custody prior to any interview.

9.4.5.11.3.2
(02-01-2005)
Informing of Constitutional Rights in Custodial Interrogations

(1) The Supreme Court has held that when an individual is taken into custody or otherwise deprived of freedom by the authorities, the individual must be advised of the following rights prior to any questioning:

a. the right to remain silent
b. that anything the individual says can and will be used against him/her in a court of law
c. the right to consult an attorney, and if they cannot afford an attorney, one will be appointed prior to any questioning, if desired

(2) Opportunities to exercise the above rights must be afforded throughout the interrogation. After such warnings have been given and such opportunity afforded to him/her, the individual may knowingly and intelligently waive these rights and agree to make a statement. But unless such warnings and waiver are shown by the prosecution at trial, no evidence obtained as a result of an interrogation may be used against the individual.

9.4.5.11.3.2.1
(05-15-2008)
Interview of Persons in Custody

(1) The special agent will not delay, for the purpose of obtaining an extensive interview or statement, an arrested person's appearance before a US magistrate. However, if a statement can be obtained without unnecessary, delay and if the arrested person is willing to make a statement, the special agent will record it subject to the safeguards outlined in subsection 9.4.5.11.3.2.1.1.

(2) The Supreme Court held in *Mahis v. US* that statements given by a person who is in custody or otherwise deprived of freedom to a revenue agent conducting a tax examination, are inadmissible unless the person has been advised of his/her constitutional rights. This decision applies although there is no relationship between the tax examination and the reason for custody.

9.4.5.11.3.2.1.1
(05-15-2008)
Procedures

(1) Prior to questioning, the special agent will warn the subject in clear and unequivocal terms of his/her right to remain silent, that any statements made can and will be used as evidence against him/her, and of his/her right to the presence of an attorney, either retained or appointed. These rights are commonly referred to as the subject's Miranda rights following *Miranda v. Arizona*.

(2) The special agent will not question the subject if the following situations apply:

a. the subject indicates that he/she does not want to be interviewed
b. at any time during the interview, the subject indicates that he/she does not want to answer any more questions
c. at any time prior to or during the interview, the subject requests the presence of an attorney; the interview can continue only after the attorney is present and the subject has had an opportunity to consult with the attorney

(3) While it is mandatory that enforcement personnel comply with the safeguards listed above, these safeguards do not apply to the normal administrative processing of an accused person after being taken into custody, such as:

a. taking photographs
b. taking fingerprints
c. asking questions necessary to complete administrative forms and agency records

(4) The safeguards also do not apply to the following situations:

a. interviews to secure information for the timely protection of life, property, or national security
b. volunteered statements of any kind

9.4.5.11.3.2.1.2
(05-15-2008)
Procedural Safeguards to Secure Admissibility of Statements

(1) To secure the admissibility of statements made during custodial interrogations, the special agent will observe the following procedural safeguards:

a. The person in custody must be advised of their Miranda rights as outlined in IRM 9.4.5.11.3.2.1.1 prior to an interrogation. Exhibit 9.4.5-8 is a copy of Form 5228, Waiver of Right to Remain Silent and of Right to Advice of Counsel. The statement of Miranda rights is contained within this form. This statement in card form also appears in Document 5661 (Rev. 3-2001).
b. If practicable, Form 5228 should be reviewed and signed by the person to be interrogated before the interrogation is initiated.
c. If signed, attach the original Form 5228 and make it a part of the case report that is given to the attorney for the government.
d. Give a copy to the person signing the form.
e. The SAC receives a second copy.
f. The special agent who conducted the interrogation retains a third copy.
g. The Miranda rights can also be administered by reading verbatim from Document 5661 (Rev. 3-2001).

9.4.5.11.3.2.1.3
(02-01-2005)
Oral Waiver

(1) An oral waiver may be acceptable when it is impossible or impracticable to obtain a signed waiver. In such instances, the warning given by the special agent and the defendant's waiver should be witnessed by another agent or other credible person, or recorded by mechanical or electronic means.

9.4.5.11.3.2.1.4
(02-01-2005)
Written Statement Obtained After Waiver of Rights

(1) If a written statement is obtained from a person who is interrogated after waiving the right to remain silent, either by execution of the waiver agreement or otherwise, the special agent will include in the statement an introductory paragraph that indicates the person was advised of his/her right to remain silent and of the right to counsel, and that those rights were waived and the statement was made voluntarily.

9.4.5.11.3.2.1.5
(02-01-2005)
Spontaneous or Volunteered Statements

(1) Spontaneous or volunteered statements of any kind are not barred by the Fifth Amendment and are not affected by the Supreme Court's decision in *Miranda v. Arizona*.

9.4.5.11.3.2.2
(05-15-2008)
Waiver of Constitutional Rights

(1) The privilege against self-incrimination must be specifically claimed, or it will be considered to have been waived, see *Lisansky v. US*. In *Nicola v. US*, a taxpayer permitted a revenue agent to examine his books and records. The taxpayer was indicted for income tax evasion and invoked his Fifth Amendment rights for the first time at the trial by objecting to the revenue agent's testimony concerning his findings. The court considered the issue whether the taxpayer had waived his Fifth Amendment privilege since he had not refused to supply the requested information. The court first noted that the Fifth Amendment privilege is for the benefit of the witness and unless specifically invoked is deemed to be waived. The court ruled that it was necessary for him to claim immunity before the government agent and refuse to produce his books. After

the government had possession of the information with his consent, it was too late for him to then claim constitutional immunity.

(2) Subjects who make verbal statements or give testimony to special agents during an investigation or at a US Tax Court trial, may still rely upon their constitutional protections and refuse to testify at trial of their indictment for tax evasion. However, any statements made by the subject to anyone may be used against them if acquired legally and not subject to privilege.

(3) If a witness has testified at a trial and voluntarily revealed incriminating facts, he/she cannot in the same proceeding avoid disclosure of the details. However, waiver of constitutional rights will not be assumed lightly, and no specific language is required in asserting them. In the language of the *Quinn* decision, a claim of privilege does not require any special combination of words; a witness need not have the skill of a lawyer to invoke the protection of the Fifth Amendment. Consequently, no ritualistic formula is necessary to invoke the privilege. See *Quinn v. US*.

9.4.5.12
(02-01-2005)
Immunity and Compulsion Orders

(1) This section deals with a witness being granted immunity from criminal prosecution and compelling witnesses to testify. The topics discussed are as follows;

- Immunity-Authority and Tax Division Policy
- Applicability of Procedures for the Utilization of 18 USC §6004
- Summons Procedure Prior to Requesting a Compulsion Order
- Requesting Immunity for Acts of Production
- Considerations Relevant to Requesting a Compulsion Order
- Compulsion Order Request Procedures
- Procedures for Potential Perjury/False Statement Referrals after a Compulsion Order
- Report Requirements by CI Relating to Compelled Testimony
- Safeguarding Transcripts and Other Immunized Information
- Prosecution of a Compelled Witness for Tax Offenses
- Civil Use of Material Obtained Under a Compulsion Order

9.4.5.12.1
(02-01-2005)
Immunity- Authority and Tax Division Policy

(1) With the approval of the Attorney General or delegate, the Secretary of the Treasury is authorized to issue orders compelling testimony in agency proceedings pursuant to 18 United States Code (USC) §6002 and 18 USC §6004. By Treasury Department Order No. 150-19, the Secretary of the Treasury delegated this authority to the Commissioner of Internal Revenue who re-delegated the authority to the Deputy Commissioner, the Chief, CI, and the Treasury Inspector General Tax Administration (TIGTA) (see Delegation Order 9-3, Formerly No. 169 (Rev.1)).

(2) An agency proceeding, as defined by 18 USC §6001, is a proceeding before an agency authorized to issue subpoenas and to take testimony or receive other information from witnesses under oath.

(3) In a proceeding where the IRS is authorized to issue a summons, the designated officials of the IRS may issue, with the approval of the Attorney General or delegate, an order compelling individuals to give testimony or to produce information which they had refused to give or produce on the basis of the right against self-incrimination. An order may be issued if in the judgment of the designated officials:

a. the testimony or other information from such individual may be necessary for the public interest, and
b. such individual has refused to testify or provide other information on the basis of the right against self-incrimination

(4) The Assistant Attorney General, Tax Division, has set forth the policies of the Department of Justice (DOJ) regarding the review and approval of requests under 18 USC §6004 for authorization to issue orders compelling testimony and the production of other information in IRS proceedings.

(5) Testimony or other information compelled under the order and information directly or indirectly derived from such testimony or other information, may not be used against the witness in any criminal investigation, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

9.4.5.12.2
(02-01-2005)
Applicability Of Procedures For The Utilization Of 18 USC §6004

(1) These procedures will be employed only in investigations conducted by CI. Orders to compel testimony will not be requested for matters initiated in other operating divisions of the IRS unless and until the case has been referred to and accepted by CI. For example, to obtain an order to compel the testimony of a person employed as a bookkeeper of a large corporation, either the principal corporation or some related entity or individual must first be selected for investigation by CI.

(2) Requests for authorization to compel testimony will be submitted only for testimony, books, papers, records, or other data to be given or produced in IRS proceedings which have been initiated by a summons issued under 26 USC §7602. Procedures for the utilization of 18 USC §6004 will not be employed in connection with grand jury investigations that fall within the purview of 18 USC §6003.

(3) Requests for approval to compel testimony will be limited to investigations and situations which, in the judgment of the requester and reviewers, are significant and in which an order compelling testimony is the only viable administrative tool for obtaining necessary information. Employees of CI should consult CT Counsel for pre-referral advice prior to initiating such a request.

(4) A request for approval to compel testimony will be submitted only after a witness has been summoned pursuant to 26 USC §7602, and has actually appeared and invoked his/her Fifth Amendment privilege in response to significant or essential questions posed by the special agent.

9.4.5.12.3
(02-01-2005)
Summons Procedure Prior To Requesting A Compulsion Order

(1) During an investigation, any party interviewed who believes that his/her testimony would be incriminating may invoke his/her rights under the Fifth Amendment.

(2) If the witness is a subject of the investigation, or if during the course of an interview the special agent determines that the witness may be a potential subject of the investigation, the special agent should advise the witness of his/her constitutional rights. The special agent should ask the witness if he/she understand his/her rights. However, the special agent should not ask the witness if he/she wishes to assert his/her Fifth Amendment privilege. This claim should be initiated by the witness.

(3) Each witness for whom a compulsion order is to be requested must be served with a summons issued by a special agent under 26 USC §7602, and in accord with current case law governing the use of these summonses. Where applicable, the provisions of 26 USC §7609 will be followed.

9.4.5.12.3.1
(02-01-2005)
Compulsion Order Requests When Summons is Issued and a Fifth Amendment Claim Is Offered During an Interview

(1) Once a witness has been summoned, has appeared and invoked the Fifth Amendment right against self-incrimination in response to specific questions posed by the special agent, then;

a. The return date of the summons may be continued until authorization to issue a compulsion order has been sought and granted.
b. The witness should be advised that the proceedings under the " initial" summons have been adjourned and the witness' reappearance will be scheduled. In this regard, the special agent should keep in mind that, in addition to the time needed to consider such application within the IRS, a minimum of one month from the date of receipt of the request by DOJ will be needed to obtain an authorization from the Tax Division.
c. When the issuance of the compulsion order has been approved, the witness can be directed to reappear and compliance with the summons will then be directed by issuance of an order pursuant to 18 USC §6004.
d. Except in unusual circumstances, a new summons is not necessary to request the witness' reappearance after a compulsion order has been authorized. However, if the special agent does not properly adjourn the hearing, a new summons may need to be issued.
e. In the event a witness fails to appear or otherwise comply once the order is approved, compliance should be sought pursuant to a summons enforcement action.

9.4.5.12.3.2
(05-15-2008)
Compulsion Order Requests When No Summons Was Issued Prior To A Fifth Amendment Claim Offered During an Interview

(1) When a Fifth Amendment claim is advanced during an interview or conference not initiated by use of a summons:

a. Substantive questions shall be asked to ascertain all relevant areas where the right will be claimed so that an accurate assessment of the need to request authorization to issue a compulsion order may be made. Such authorization will not be requested if it is apparent that the Fifth Amendment right is only being claimed in response to nonessential questions. This information will also enable the IRS to decide whether to issue a summons.
b. Questioning shall proceed until the witness expressly refuses to answer further questions on the basis of a right against self-incrimination and until the scope of the claim can be determined.

(2) If the SAC decides that an effort will be made toward obtaining an order compelling testimony, the following procedures will be followed:

a. The witness will be summoned.
b. The witness will be sworn.
c. A verbatim transcript will be made of the interview.
d. Substantive questions will be asked to determine the scope of the Fifth Amendment claim.

(3) When the witness has been summoned, has appeared and again invokes his/her Fifth Amendment privilege in response to specific questions posed by the special agent, then procedures in subsection 9.4.5.12.3.1 will be followed.

9.4.5.12.3.3
(05-15-2008)
Procedures When a Witness Reappears In Response To An Adjourned Summons

(1) When a witness reappears in response to the adjourned summons, the following procedures must be observed:

a. A verbatim transcript of the proceedings will be recorded only by a court reporter of a US district court or a reporter licensed or certified by a state or Federal court.
b. The person conducting the proceeding must notify the stenographer or reporter that all original notes must be retained until notified that they may be destroyed.
c. The witness will be sworn.
d. The proceeding in which the witness is compelled to testify should commence with the special agent making reference, on the record and in the presence of the witness, to the date of the witness' prior appearance and the invoking of the Fifth Amendment at that time.
e. The order and the authorization letter from the Assistant Attorney General, Tax Division, shall be marked as exhibits and the order shall be read aloud by the special agent into the record in the presence of the witness.
f. The witness will be shown the originals and given a copy of both documents and asked to examine the documents and verify the copies. The witness shall be permitted to retain a copy of both documents. The special agent will retain the originals with the record in the field office for use as an exhibit in any future proceeding (including submission of a copy as an exhibit in transmitting the investigative report).
g. When books, records, or other documents are produced pursuant to a compulsion order, it is vital that complete, accurate copies be retained and authenticated as conforming to the originals of any books, records, or other documents provided by the witness.

9.4.5.12.3.4
(05-15-2008)
Summons Enforcement Procedures Prior To Requesting a Compulsion Order

(1) A summons enforcement action is needed to direct a witness to appear and respond to specific questions posed by the special agent, before requesting an order pursuant to 18 USC §6004, when one of the following situations occur:

a. The witness fails to appear pursuant to the initial summons.
b. The witness challenges the initial summons on grounds other than the Fifth Amendment.
c. The witness is a third-party record-keeper, and the subject files a petition to quash the summons pursuant to 26 USC §7609.
d. The witness otherwise refuses to comply with the initial summons.

(2) The summoned party, who has either simply refused to appear or who has refused to comply on grounds other than the Fifth Amendment right against self-incrimination, may later invoke the Fifth Amendment in response to specific questions during the hearing in court on the summons enforcement action. In that event, if it is determined by the government that a request for authorization to issue a Section 6004 compulsion order should be made, the attorney for the government will request a continuance until a decision on the request can be made. If the request is made and approved, the court (upon finding that any other non-Fifth Amendment claims are resolved in the government's favor) at the request of the attorney for the government will order the witness to appear before the IRS.

(3) In the event a summons enforcement action results from challenges made by a witness on grounds other than the Fifth Amendment, and no Fifth Amendment claim is raised during the course of the summons enforcement

proceedings, but the witness, after being directed to reappear before the IRS by the court, then invokes the Fifth Amendment for the first time before the IRS, the proceedings may be adjourned until a request for authorization to compel testimony is considered and made. The special agent should advise the attorney for the government who handled the summons enforcement action of the need for the adjournment and of any other significant development occurring in the course of the proceedings before the IRS. The attorney for the government will inform the court of these developments.

(4) If, after being served with the order, the witness still refuses to answer questions or furnish information:

- The interview will be terminated.
- An expedited transcript will be requested from the reporter.
- A request for civil enforcement of the summons will be prepared by the special agent.
- Upon receipt of the transcript, the special agent will immediately transmit,
  1. the original and four copies of the request
  2. together with the original of the summons (Form 2039, Summons) and related documents
  3. the transcript
  4. the original order compelling testimony
  5. the authorization from the DOJ, Tax Division, to the Director, Field Operations.
- The special agent will forward the package to CT Counsel.

(5) Requests approved by CT Counsel will be forwarded to Chief Counsel, Attention: Assistant Chief Counsel (Collection, Bankruptcy and Summonses). Chief Counsel, in turn, will forward approved requests to the appropriate Civil Trial Section of the Tax Division with a copy to DOJ, Criminal Section, Tax Division.

9.4.5.12.4
(05-15-2008)
Requesting Immunity for Acts of Production

(1) The contents of subpoenaed business records of a sole proprietorship are not subject to a claim of right against self-incrimination since such records are created voluntarily prior to the issuance of the subpoena or summons. However, a witness' act of production in response to a subpoena or summons may have incriminating testimonial aspects for which statutory immunity must be granted before production may be compelled.

(2) Generally, the testimonial aspects of the act of production go to the existence, possession, and authenticity of the records being sought. That is, merely by producing subpoenaed or summoned records, the witness admits that:

a. The records called for in the subpoena or summons exist.
b. Such records are in the possession and control of the witness.
c. The records being produced are the records described in the subpoena or summons.

(3) A compulsion order under 18 USC §6004 may be used to immunize only those aspects of the act of production that are testimonial in nature. When a witness receives such immunity, the government is precluded from the use and derivative use of the witness' act of production to establish the existence, possession, or authenticity of the records that are produced. If the government can establish independently from the act of production that the records do exist

and are in the possession of the witness, and there is an independent means by which the records can be authenticated (e.g., third party testimony, handwriting analysis, etc.), the contents of the records may be used in evidence against the witness in a criminal proceeding.

(4) A request for immunity under 18 USC §6004 solely for a witness' act of production will be considered only in factual situations which satisfy all of the following conditions:

a. The investigation is a criminal investigation.
b. The witness must invoke a valid Fifth Amendment claim to the production of such records.
c. The records sought to be compelled are clearly business records.
d. The summons being issued does not seek testimony from the witness.
e. The records sought to be compelled are described with sufficient particularity so as to be easily identified.
f. If the party summoned is a subject of the investigation, the records sought to be compelled are not otherwise obtainable from third parties (e.g., bank, bookkeeper, accountant).
g. The witness to be immunized is not being required, as a result of the summons, to create any records.
h. There is evidence available to establish that the records being sought presently exist in the possession of the party to be summoned, and there is an independent means to authenticate the records once they are produced.

Note: Procedures for the utilization of 18 USC §6004 will not be employed in connection with grand jury investigations which fall within the purview of 18 USC §6003.

(5) When a special agent determines that a summons should be issued for business records from a witness or subject for whom act of production immunity will be required, the concurrence, and the assistance of CT Counsel in drafting the summons, should be sought. The summons must be narrowly drafted to seek only production of business records that are known to be in the possession of the summoned party.

(6) If the summoned party refuses to comply based on a valid Fifth Amendment claim in a recorded "Question and Answer" statement, CI will prepare and process a compulsion order request. The compulsion order request should also contain a section which covers the independent authentication of the requested records and specifies which records can be identified by each witness.

(7) After approval of the compulsion order by DOJ and the Chief, CI, the procedures set forth in subsection 9.4.5.12.3.3 of this section entitled "Procedures When A Witness Reappears in Response to an Adjourned Summons " will be followed except that:

a. Criminal Tax Counsel will be requested to attend the proceeding.
b. The summoned party will be directed to turn over the requested documents to CT Counsel who will immediately inspect the records to determine whether any documents produced are not covered by the summons.

c. If any documents outside the summons are produced, CT Counsel will advise the summoned party that the immunity order does not cover the witness' act of producing those documents.
d. Documents not covered by the summons will be immediately returned to the witness unless the witness expressly waives any Fifth Amendment rights in regard to the documents.
e. If the volume of documents makes it impractical to perform an inspection at the time of production, the witness will be advised that the documents will remain under the control of CT Counsel until such inspection can be performed.
f. Criminal Tax Counsel will perform an inspection of the documents as soon as possible. Until such an inspection is completed, none of the documents produced will be made available to the special agent.
g. After inspection, all documents covered by the summons will be released to the special agent.
h. All documents outside the scope of the summons will be retained by CT Counsel. Criminal Tax Counsel will immediately advise the witness or the witness' attorney by certified mail return receipt requested, of the documents found to be outside the scope of the summons and immunity order. The witness will be requested to reclaim the documents or provide an express waiver of any Fifth Amendment rights in regard to such documents.
i. If an express waiver is not received within 30 calendar days of the date of CT Counsel's letter, the documents will be sealed and returned to the witness by certified mail, return receipt requested, or by hand delivery by a special agent not assigned to the investigation.

(8) As soon as possible after receipt of documents obtained pursuant to an act of production immunity order, the special agent should obtain and document independent authentication of the records. Although independent authentication may not legally be required until an attempt is made to introduce the records in a criminal proceeding against the witness, the means to obtain such authentication may be unavailable by that time.

(9) If the summoned party does not comply with the summons after receipt of the Compulsion Order, CI will refer the summons to CT Counsel for judicial enforcement under existing procedures. The enforcement letter from CT Counsel will be reviewed by the Assistant Chief Counsel (Collection, Bankruptcy and Summonses) before forwarding to the DOJ, Tax Division. Coordination with the Criminal Tax Division will be sought when appropriate.

9.4.5.12.5
(02-01-2005)
Considerations Relevant To Requesting A Compulsion Order

(1) The following considerations are designed to implement the DOJ, Tax Division's policy regarding the utilization of 18 USC §6001– §6005:

a. that restraint and selectivity be used in authorizing requests to apply for or issue orders compelling testimony under 18 USC §6004; and
b. that the reviewing officials be furnished all available information regarding the extent of the witness' involvement in the matters under investigation, and the nature of the expected testimony in order that an informed and objective assessment of the advantages and risks involved in compelling testimony may be made.

(2) Requests for authorization to compel testimony from close family members of the subject of an investigation will rarely be approved by DOJ, Tax Division, unless:

a. the witness and the relative participated in a common business enterprise and the testimony to be elicited related to that enterprise or its activities;
b. the testimony to be elicited relates to illegal conduct in which both the witness and the relative were active participants; or
c. the testimony to be elicited relates to a crime involving overriding prosecutorial concerns

(3) The government must be careful not to provide witnesses, who may be sympathetic to the subject, with the opportunity to use immunity from prosecution as a means of exculpating the subject of the investigation by falsely accepting responsibility.

(4) The DOJ requires that the compelled testimony of witnesses who have been convicted, but not sentenced on criminal charges, will not be brought to the attention of the sentencing judge without the witness' consent.

9.4.5.12.6
(05-15-2008)
Compulsion Order Request Procedures

(1) A request for a compulsion order will consist of narrative responses, in memorandum form, keyed to the requested information outlined in paragraph (3) of this section as specified by the lettered paragraphs (a through s). Where appropriate, a single memorandum may be prepared even where authorization for a compulsion order is being requested for more than one witness.

(2) Each request for authorization to issue a compulsion order will be transmitted by a memorandum addressed to the Director, Field Operations from the requesting special agent. The last page of the request will contain approval lines for the following officials:

a. Special Agent in Charge
b. Director, Field Operations
c. Chief, CI

(3) In order to provide effective administrative review of the need for a compulsion order, and to comply with the requirements of the DOJ, Tax Division, the following information should be included in each request to compel testimony from a prospective witness. Reference should be made in the memorandum prepared by the special agent to the letters below in order to identify responses.

a. The narrative memorandum should contain, as a caption, the following information: the name, address, taxpayer identification number, subject investigation number and similar data on each related investigation.
b. A brief summary of the background of the investigation including the title and section numbers of the US Code corresponding to the alleged violation(s) under investigation and the method of proving income which is currently being utilized.
c. Indicate whether the witness is related, by blood or marriage, to the subject(s) of the investigation.
d. Summarize witness' role in the matter under investigation.
e. Describe briefly the circumstances surrounding the witness' invocation of the Fifth Amendment, outlining the scope of the assertion, and the legal basis believed to underlie the assertion. Where possible and when appropriate, state whether the right is being invoked by the witness in a capacity as a record-keeper, corporate officer, or in an individual capacity, based on personal knowledge of or involvement in the matters under investigation.

f. Summarize the witness' expected testimony.

g. Indicate whether the witness may be in a position to exculpate the proposed subjects, even if it is not anticipated that the witness would do so if compelled to testify.

h. Outline the basis for concluding that the witness will cooperate and testify truthfully if compelled to do so pursuant to 18 USC §6004. If it cannot be ascertained whether the witness will testify truthfully, so state.

i. Attach witness' Federal Bureau of Investigation (FBI) identification record "criminal history" and summarize any other known criminal activity. If the FBI record is unavailable, explain. List any charges or investigations pending against the witness. If the witness is currently awaiting trial or sentencing, or has a case on appeal, provide information concerning the identity, status, and location of the case including the name of the government attorney assigned to it.

j. Describe the Federal, state, or local offenses which may have been committed by the witness that could be disclosed during the course of his/her compelled testimony. Include an analysis as to whether the witness could be prosecuted for a role in the matter under investigation and, if so, state the reasons why the IRS has determined not to recommend prosecution.

k. If the witness is the subject of any inquiry, civil or criminal, currently being conducted by the IRS, indicate the office handling the matter and the nature of the inquiry.

l. If the witness is represented by counsel, provide the name of the witness' attorney, and indicate whether that attorney or a member of that attorney's law firm is representing one or more of the proposed subjects (including, for example, an employee of a corporation who is represented by the corporation's counsel). If the witness' attorney is also representing one or more of the proposed subjects, state whether the attorney has given any indication that representation will be withdrawn in the event an order to compel testimony is authorized.

m. If the witness may assert the attorney-client privilege or other legal privilege, describe the possible effect of that privilege on the government's attempts to obtain the witness' testimony.

n. State whether any assurances or agreements are known to have been made with the witness by any government representatives that could have the effect of affording the witness immunity from prosecution.

o. List all other witnesses for whom authorization to compel testimony has been requested in this matter, or with whom an agreement not to prosecute may have been made by a government representative. Specify whether such witnesses named are the subject of an authorization or an agreement.

p. List any known electronic surveillance involving this investigation, and attach a summary report of the results of the surveillance.

q. Summarize any information available to refute false statements which the witness may make.

r. Summarize the attempts made to secure from other sources the information the witness is expected to provide or, if appropriate, summarize the reasons why this information cannot be obtained from other sources.

s. List the names and addresses of Federal, state, and local law enforcement officers other than IRS personnel notified of this request, if any, and report their views regarding the application. If it is anticipated that other law enforcement agencies would have a substantial interest in the authorization under consideration, then indicate the efforts made to clear the proposed

order with such agencies. Clearance with other agencies shall be effected in accordance with the provisions of 26 USC §6103.

(4) The request will be comprised of the witness identification sheet(s); the memorandum setting forth the responses to the above items; a verbatim transcript or a detailed memorandum of the proceeding (a memorandum will be accepted only when the witness refuses to allow the interview to be recorded) wherein the witness asserts the Fifth Amendment right against self-incrimination or otherwise refuses to answer questions; and a copy of the original summons.

(5) The SAC will submit each request for authorization to issue a compulsion order to the Director, Field Operations for consideration of approval. The Director, Field Operations will indicate approval or disapproval within three workdays of receipt. If the Director, Field Operations agrees that it is appropriate to request authorization, the original and three copies of the request will be forwarded to the Chief, CI, Attn: Financial Crimes Section.

(6) The Chief, CI, will approve or disapprove the request within three working days of receipt. If the Chief, CI, agrees that a request for authorization to compel testimony is appropriate, the original and two copies of the request will be forwarded to Division Counsel/Associate Chief Counsel (Criminal Tax), to review the legal sufficiency of the request and for preparation of the compulsion order.

(7) The Division Counsel/Associate Chief Counsel (Criminal Tax) shall determine the propriety and legal sufficiency of the request. If the request is determined proper and legally sufficient, the Division Counsel/Associate Chief Counsel (Criminal Tax) shall prepare a proposed compulsion order for each witness and transmit them, along with an original and one copy of the request, to the Chief, CI. The original request, along with all supporting exhibits and copies of all proposed compulsion orders, will then be transmitted to the Assistant Attorney General, Tax Division, Attention: Chief, (Region) Criminal Enforcement Section. If the request is determined not proper or not legally sufficient, the Division Counsel/Associate Chief Counsel (Criminal Tax) will advise the Chief, CI.

(8) Upon forwarding the request to the DOJ, Tax Division, the Chief, CI will orally advise the Director, Field Operations and the SAC of the requesting field office that it has been forwarded.

(9) Upon receipt of approval by the Assistant Attorney General, Tax Division, the Chief, CI will sign the order. The order, with the authorization letter (signed by the Assistant Attorney General, Tax Division) attached, will then be transmitted directly to the requesting field office, with copies to the Director, Field Operations, Division Counsel/Associate Chief Counsel (Criminal Tax), and Area Counsel (Criminal Tax). At the same time, the Chief, CI will orally advise the Director, Field Operations and the SAC of the requesting field office that the order has been signed.

9.4.5.12.7
(02-01-2005)
Procedures for Potential Perjury/False Statement Referrals after A Compulsion Order

(1) In the event the witness appears and testifies, and there exists evidence that proves the witness testified falsely, the special agent should submit to CT Counsel the following:

a. the summons and related documents
b. the verbatim transcript and documents provided by the witness
c. the order compelling testimony signed and issued by the Chief, CI
d. the authorization letter from the Assistant Attorney General, Tax Division

e. a report by the special agent setting forth in detail the reasons why the witness's testimony is alleged to be false, and the evidence that is available to support this allegation.

9.4.5.12.8
(05-15-2008)
Report Requirements by Criminal Investigation Relating To Compelled Testimony

(1) Within 10 workdays after the witness has testified, the SAC will prepare and submit a Form 6185, Witness Follow-up Report, to the Director, Field Operations on the use of the compulsion order. A copy should be immediately forwarded to the Criminal Section, DOJ, Tax Division. The report should be prepared whether or not the witness complies with the order, and whether or not it is believed the witness testified truthfully.

(2) A copy of the report will be sent to the following:

a. Chief, CI, Attn: Financial Crimes (CI:OPS:FC)
b. CT Counsel
c. Assistant Chief Counsel (Collection, Bankruptcy and Summonses)
d. Division Counsel/Associate Chief Counsel (Criminal Tax)
e. Criminal Section, DOJ, Tax Division

(3) The report shall contain the same information listed in subsection 9.4.5.12.7, entitled "Procedures for Potential Perjury/False Statement Referrals After a Compulsion Order."

(4) Supplementary reports should be submitted as necessary to report subsequent events of significance.

9.4.5.12.9
(05-15-2008)
Safeguarding Transcripts and other Immunized Information

(1) IRS personnel should not disclose the nature, content, scope, or any other facet of the witness' compelled testimony before the IRS. If inquiries are made by another government agency concerning an individual who has previously furnished information pursuant to an order issued under 18 USC §6004, the fact the person has given compelled testimony should be brought to the attention of the requesting department or agency.

(2) A copy of the verbatim transcript and order, together with pertinent records and documents supplied by the witness, should be included as exhibits to the special agent's final report recommending prosecution of the subject of the investigation. A transcript used for such purposes will be accompanied by a cover sheet listing the signature, name, and title of each person having access to the transcript. All case transmittal material must contain a reference to the fact the report contains such documents, and of the need for each reviewer to sign the cover sheet. The originals and all remaining copies of the transcript, as well as authenticated copies of documents furnished, will be placed under seal with the special agent's investigation files and will be retained for the same time as such file. In no instance shall a transcript, sealed documents, or any other records be destroyed less than 20 years from the date of the witness' appearance and testimony pursuant to the compulsion order.

9.4.5.12.10
(05-15-2008)
Prosecution of A Compelled Witness For Tax Offenses

(1) If a separate criminal tax investigation is subsequently undertaken of a person who has previously been compelled by the IRS to testify pursuant to an 18 USC §6004 order, no persons connected with the subsequent investigation should be permitted access to the transcript of the witness' prior testimony or the documents, or copies thereof, which the witness provided under the compulsion order. Any IRS personnel who had access to the compelled testimony

or documents provided, must exclude themselves from any investigative or review action in the subsequent investigation.

Note: Department of Justice, Tax Division will not authorize prosecution of a witness previously compelled to testify pursuant to 18 USC §6004 unless the independent nature of the evidence can be clearly demonstrated.

(2) Where prosecution of a previously compelled witness is undertaken, the government bears a heavy burden to establish the evidence of the offense was derived from independent sources and the search for such evidence did not emanate from the testimony given under compulsion.

(3) Accordingly, prior to initiation of such an investigation, the assigned special agent should prepare a memorandum for the local CT counsel detailing the source and information giving rise to the proposed investigation. Criminal Tax counsel will review this memorandum and the proposed subject's prior compelled testimony to ensure that they are not related. Criminal Tax counsel will advise the special agent by memorandum of its findings without disclosing the nature of the compelled testimony.

(4) If a prosecution recommendation is made to the DOJ, Tax Division and the recommended defendant is known to have previously been compelled to testify under an 18 USC §6004 order, the referring special agent should include the following information in the prosecution recommendation:

a. the dates the recommended defendant was previously ordered to give testimony and produce documents
b. a summary of the circumstances and information that will establish the proposed criminal tax prosecution is independent of the prior compelled testimony or documents provided by the recommended defendant

9.4.5.12.11
(02-01-2005)
Civil Use of Material Obtained Under A Compulsion Order

(1) Testimony and other information provided by a witness under an 18 USC §6004 order may be used in a related injunctive action under 26 USC §7407 or 26 USC §7408 prior to the conclusion of the criminal investigation. Such testimony and other information will not be utilized in any other civil action (i.e., conducting civil audits, issuances of statutory notices, etc., relative either to a witness or a subject of the investigation) during the pendency of the criminal aspects of the investigation without the express written consent of the Chief, CI. If a prosecution referral to the DOJ, Tax Division is ongoing, the concurrence of the DOJ, Tax Division must be obtained prior to the non-injunctive civil use of the testimony or information.

Exhibit 9.4.5-1 (06-30-1998)
Suggested Outline for Questioning Person Who Prepared Returns, If Other Than Taxpayer

(1) Occupation and qualifications of preparer

a. Education

b. Experience

c. Enrolled

(2) Description of primary books and records in detail

a. Cash receipts and disbursements book

b. Journals: sales, purchases, cash

c. Invoices and other original documents

(3) Description of secondary books and records in detail

a. Ledgers: general and subsidiary

b. Trial balance books, and records of financial statements

(4) Extent of witness' audit of books and records

(5) Source of all information on returns

a. Books and records (tie in with return)

b. No records (obtain information in detailed form)

c. Oral information

d. Records and books of other third parties

(6) Items not shown on books or records (including income, assets, etc.)

(7) Instructions and data received from taxpayer and any other persons

(8) Information as to whether returns were explained to taxpayer, and to what extent

(9) Copies of workpapers used in preparation of returns and copies of returns

a. Tie in with return

b. Supporting data

c. Arrange to inspect the workpapers and copies of returns

(10) Conversations regarding tax matters with:

a. Taxpayer

b. Taxpayer's agent or other persons

(11) Details about witness' and taxpayer's knowledge concerning the signing and filing of each return, including:

a. Identification of each return prepared by witness

b. Where each return was prepared

c. Where each return was signed

Exhibit 9.4.5-2 (06-30-1998)
Affidavit

Affidavit

United States of America _____)
_____, District of _____) ss

1 I, _____, state that:

2 I reside at _____.

3 _____

4 _____

5 _____

6 _____

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

20 _____

21 _____

22 _____

23 _____

24 _____

25 _____

26 _____

Affiant's Signature/Initial _____

Form 2311 (Rev. 2-96) Department of the Treasury — Internal Revenue Service

Exhibit 9.4.5-2 (Cont. 1) (06-30-1998)
Affidavit

1 _____

2 _____

3 _____

4 _____

5 _____

6 _____

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

I have read the foregoing statement consisting of _____ pages, each of which I have signed. I fully understand this state and it is true, accurate and complete to the best of my knowledge and belief. I made the corrections shown and placed my initials opposite each.

I made this statement freely and voluntarily without any threats or rewards, or promises of reward having been made to me in return for it.

_____
(Signature of affiant)

Subscribed and sworn to before me this _____
day of _____, 19_____.
at _____

_____
(Signature)

_____
(Title)
Internal Revenue Service

_____
(Signature of witness, if any)

Department of the Treasury — Internal Revenue Service Form 2311 (Rev. 2-96)

Exhibit 9.4.5-3 (06-30-1998)
Statement

(1) In re: Name and address of subject

(2) Time: Date and hour of interview

(3) Place: Location of interview

(4) On 20–, I, Special Agent questioned Mr. about Mr. stated Note: If feasible, the subject should be requested to examine the statement and sign it. If he/she refuses, insert the following legend at the end of the statement when applicable. “This statement was read by Mr. (the subject), on 20– who stated that it was true and correct, but refused to be placed under oath or to sign it.”

(5) Date and Time

(6) Internal Revenue Service Special Agent

(7) Date and Time

(8) Witness

(9) Date and Time

(10) Witness

Exhibit 9.4.5-4 (06-30-1998)
Question and Answer Statement

(1) Testimony of John J. Jones, 115 South Street, Chester, Pennsylvania 19013, given in the office of Criminal Investigation, Internal Revenue Service, Room 200, United States Courthouse, 401 N. Broad Street, Philadelphia, Pennsylvania, at 9:30 a.m., on Tuesday, September 7, 2001, about his Federal income tax.

(2) Present:

a. Mr. John J. Jones, Taxpayer

b. Adam Adam's, Attorney

c. John Smith, Special Agent

d. Alexander White, Revenue Agent

e. Evelyn Green, Reporter

(3) Questions were asked by Special Agent Smith and answers were given by Mr. Jones unless otherwise specified.

(4) Mr. Jones, this interview is being recorded, as we agreed, by means of the tape recorder on your left.

(5) 1. Q. Mr. Jones, you were requested to appear at this office to answer questions concerning your Federal income tax for the years 20– to 20–, inclusive. First, I advise you that under the Fifth Amendment to the Constitution of the United States I cannot compel you to answer any questions or to submit any information if such answers or information might tend to incriminate you in any way. I also advise you that anything you say and any documents you submit may be used against you in any criminal proceeding which may be undertaken. Do you fully understand this? (If the taxpayer requests clarification, either as to his rights or the purpose of the investigation, the special agent will give such clarification.) Do you swear that the answers you are about to give to the questions asked will be the truth, so help you God? (The special agent will stand while administering the oath).

(6) 270. Q. Mr. Jones, have I, or has any other federal agent, threatened or intimidated you in any manner?

(7) A. No.

(8) 271. Q. Have I, or any other federal agent, offered you any rewards, or promises of reward or immunity, in return for this statement?

(9) A. No.

(10) 272. Q. Have you given this statement freely and voluntarily?

(11) A. Yes.

(12) 273. Q. Is there anything further you care to add for the record?

(13) A. No.

(14) After this statement has been transcribed, you will be given an opportunity to read it, correct any typographical errors, and sign it.

(15) United States of ( )

Exhibit 9.4.5-4 (Cont. 1) (06-30-1998)
Question and Answer Statement

(16) America Eastern Judicial ( )

(17) SS District of Pennsylvania ( )

(18) I have carefully read the foregoing statement consisting of pages 1 to , inclusive, which is a correct transcript of my answers to the questions asked me on the day of , 20–, at the offices of Criminal Investigation, Internal Revenue Service, Philadelphia, Pennsylvania, relative to my federal income tax or other violation. I hereby certify that the foregoing answers are true and correct, that I have made the corrections shown and have placed my initials opposite each correction, and that I have initialed each page of the statement.

(19) Subscribed and sworn to before me this month/day/year.

(20) Special Agent

(21) Reporter, do hereby certify that I took the foregoing statement of - in shorthand, personally transcribed it from my shorthand pages, and initialed each page.

Exhibit 9.4.5-5 (05-15-2008)
RESERVED

Reserved exhibit

Exhibit 9.4.5-6 (05-12-2020)
Informal Notes or Memorandum of Interviews

(1) On Wednesday July–20–at 10:00 a.m., I questioned Tom Brown of 1124 Euclid Street, NW Washington, DC 20017 in his office, 117 Elm Street, Washington, DC, about his purchase of a 20– sedan from Smith Motors Inc. He stated that he purchased the sedan, bearing vehicle identification number 1173945, for $32,250.00 from Sam Smith, President of Smith Motors, and that he gave Mr. Smith his personal check number 117, dated 20– for $32,250.00. He agreed to submit an affidavit relating to his purchase. Internal Revenue Service Special Agent King, of Baltimore, Maryland, witnessed the interview which was concluded at 10:47 a.m.

(2) Special Agent July–20–

Exhibit 9.4.5-7 (03-14-2002)
Document 5661, Statement of Rights (Non-Custody) & (In-Custody)

In-Custody Statement of Rights

Before we ask you any questions, it is my duty to advise you of your rights.

- **You have the right to remain silent.**
- **Anything you say can be used against you in court, or other proceedings.**
- **You have the right to consult an attorney before making any statement or answering any question, and you may have an attorney present with you during questioning.**
- **You may have an attorney appointed by the U.S. Magistrate or the court to represent you if you cannot afford or otherwise obtain one.**
- **If you decide to answer questions now with or without a lawyer, you still have the right to stop the questioning at any time, or to stop the questioning for the purpose of consulting a lawyer. HOWEVER...**
- **You may waive the right to advice of counsel and your right to remain silent, and you may answer questions or make a statement without consulting a lawyer if you so desire.**

Department of the Treasury
Internal Revenue Service

Document 5661-A (3-2001)
Catalog Number 31877D

Exhibit 9.4.5-7 (Cont. 1) (03-14-2002)
Document 5661, Statement of Rights (Non-Custody) & (In-Custody)

Non-Custody Statement of Rights

(At the outset of your first official meeting with the subject of an investigation, **identify yourself as a special agent of the IRS and produce authorized credentials.** THEN STATE:)

" As a special agent, one of my functions is to investigate the possibility of criminal violations of the Internal Revenue laws, and related offenses.
" In connection with my investigation of your tax liability (or other matter), I would like to ask you some questions. However, first I advise you that under the 5th Amendment to the Constitution of the U.S., I cannot compel you to answer any questions or to submit any information if such answers or information might tend to incriminate you in any way. I also advise you that anything which you say and any documents which you submit may be used against you in any criminal proceeding which may be undertaken. I advise you further that you may, if you wish, seek the assistance of any attorney before responding.

" Do you understand these rights? "

Official Use Only
publish.no.irs.gov

Exhibit 9.4.5-8 (06-30-1998)
Form 5228, Waiver of Right to Remain Silent and of Right to Advice of Counsel

Form **5228** (April 1974)
Department of the Treasury
Internal Revenue Service

Waiver of Right to Remain Silent and of Right to Advice of Counsel

Statement of Rights

Before we ask you any questions, it is my duty to advise you of your rights.

You have the right to remain silent.

Anything you say can be used against you in court, or other proceedings.

You have the right to consult an attorney before making any statement or answering any question, and you may have him present with you during questioning.

You may have an attorney appointed by the U.S. Magistrate or the court to represent you if you cannot afford or otherwise obtain one.

If you decide to answer questions now with or without a lawyer, you still have the right to stop the questioning at any time, or to stop the questioning for the purpose of consulting a lawyer.

However --

You may waive the right to advice of counsel and your right to remain silent, and you may answer questions or make a statement without consulting a lawyer if you so desire.

Waiver

I have had the above statements of my rights read and explained to me and fully understanding these rights I waive them freely and voluntarily, without threat or intimidation and without any promise of reward or immunity. I was taken into custody at _____ *(time)*, on _____ *(date)*, and have signed this document at _____ *(time)*, on _____ *(date)*.

_____
(Name)

Witnesses:

_____
(Name)

_____
(Name)

GPO 942 006 Form **5228** (4-74)